

The domestic politics of the Swiss-EU negotiations on the Institutional Framework Agreement (and beyond)

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Abstract

This article examines the domestic political dynamics surrounding the negotiations between Switzerland and the European Union (EU) on the Institutional Framework Agreement. It identifies the main domestic difficulties that prevented an agreement from being reached. The empirical reconstruction of the negotiations suggests that domestic consensus became very difficult because the issues under negotiation were two-dimensional, activating both the anti-EU and the left–right dimensions. Moreover, the data suggest two main factors that prevented this difficulty from being resolved. First, political parties across the political spectrum were internally divided on the issues under negotiation. Second, the worsening corporatist dynamic between the Confederation and the social partners, as well as between the social partners themselves, made it very difficult to activate the concessions to the trade unions that had been used in previous EU negotiations to secure their agreement.

KEYWORDS

Consensus-building, Corporatism, Institutional framework agreement, Swiss-EU relations, Veto power

Zusammenfassung

Dieser Artikel untersucht die innenpolitische Dynamik bei den Verhandlungen zwischen der Schweiz und der Europäischen Union (EU) über das institutionelle Rahmenabkommen. Er zeigt die wichtigsten innenpolitischen Schwierigkeiten auf, die das Zustandekommen einer Einigung verhinderten. Die empirische Rekonstruktion der Verhandlungen deutet daraufhin, dass ein innenpolitischer Konsens sehr schwierig wurde, weil die verhandelten Themen zweidimensional

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waren und sowohl die Anti-EU- als auch die Links-Rechts-Dimensionen aktivierten. Außerdem weisen die Daten auf zwei Hauptfaktoren hin, die eine Lösung dieser Schwierigkeit verhinderten. Erstens waren die politischen Parteien des gesamten politischen Spektrums in Bezug auf die zu verhandelnden Themen innerlich gespalten. Zweitens machte es die sich verschlechternde korporatistische Dynamik zwischen dem Bund und den Sozialpartnern sowie zwischen den Sozialpartnern selbst sehr schwierig, Zugeständnisse an die Gewerkschaften zu aktivieren, die in früheren EU-Verhandlungen genutzt worden waren, um deren Zustimmung zu erhalten.

Résumé

Cet article examine la dynamique politique interne qui a entouré les négociations entre la Suisse et l'Union européenne (UE) sur l'accord-cadre institutionnel. Il identifie les principales difficultés internes qui ont empêché la conclusion d'un accord. La reconstruction empirique des négociations suggère que le consensus domestique est devenu très difficile parce que les questions négociées étaient bidimensionnelles, activant à la fois les dimensions anti-UE et gauche-droite. De plus, les données suggèrent deux facteurs principaux qui ont empêché cette difficulté d'être résolue. Tout d'abord, les partis politiques de l'ensemble du spectre politique étaient divisés en interne sur les questions en cours de négociation. Deuxièmement, l'aggravation de la dynamique corporatiste entre la Confédération et les partenaires sociaux, ainsi qu'entre les partenaires sociaux eux-mêmes, a rendu très difficile l'activation des concessions aux syndicats qui avaient été utilisées lors des précédentes négociations de l'UE pour obtenir leur accord.

Riassunto

Questo articolo esamina le dinamiche politiche interne che hanno caratterizzato i negoziati tra la Svizzera e l'Unione Europea sull'Accordo quadro istituzionale e identifica le principali difficoltà interne che hanno impedito il raggiungimento di un accordo. La ricostruzione empirica dei negoziati indica che il consenso interno è diventato molto difficile perché le questioni oggetto di negoziazione erano bidimensionali, attivando sia la dimensione anti-UE che quella sinistra-destra. Inoltre, i dati raccolti sottolineano due fattori principali che hanno impedito di risolvere queste difficoltà. In primo luogo, i partiti politici di tutto lo spettro politico erano internamente divisi sulle questioni oggetto di negoziazione. In secondo luogo, il peggioramento della dinamica corporativa tra la Confederazione e le parti sociali, così come tra le parti sociali stesse, ha reso molto difficile fare concessioni ai sindacati che nei precedenti negoziati con l'UE erano state utilizzate per ottenere il loro consenso.

INTRODUCTION

On 26 May 2021, the Swiss Federal Council broke off negotiations with the European Union (EU) on the Institutional Framework Agreement (InstA). This move was unexpected, as the Federal Council had no alternative plan (Wasserfallen, 2023) and the EU had already made important concessions to Switzerland (Schwok, 2022, p. 19). According to the Federal Council, there was no sufficient political majority to accept the EU's demands. However, if we look at the historical relationship between Switzerland and the EU, this can also be surprising. Despite the existence of a Eurosceptic party, the Swiss People's Party (SVP), and the rejection by the electorate of joining the European Economic Area (EEA) in 1992, Switzerland and the EU have signed several bilateral agreements (1999, 2004) leading to “integration without membership” (Linder, 2013, p. 199).

Since Bilateral Agreements I (1999), which were curiously endorsed by the SVP, all steps to deepen relations between Switzerland and the EU have been supported by a broad coalition of political and social forces other than the SVP. This broad alliance was necessary to avoid the “referendum threat” (Sciarini et al., 2004, p. 356) that exists in Swiss direct democracy. To achieve this broad consensus, there are pre-parliamentary formal and informal consultation processes (Sciarini et al., 2004) through which different stakeholders (cantons, social partners, etc.) can express their preferences and negotiate a compromise.

What were the main domestic difficulties that prevented the signing of the InstA? What were the positions of Swiss political and social actors? What factors hindered a domestic consensus? This article aims to answer these questions by focusing on an analysis of the domestic political dynamics of the Swiss-EU negotiations on the InstA (and beyond). This case is relevant for understanding Swiss-EU relations and Swiss politics itself. The lack of a new agreement affects many Swiss policy areas that are regulated by previous agreements with the EU (e.g. free movement, wage protection, etc.). A closer look at the negotiations can also provide us with some insights into the power relations between Swiss political and social groups and the dynamics that underpin these policies.

To explore these issues, the article uses qualitative case study methods. It draws on secondary sources and primary data collected by the author during 15 interviews with key stakeholders such as political parties, trade unions and employers' associations. The article adopts a descriptive approach to reconstruct the Swiss-EU negotiations from the emergence of the idea of the InstA in the mid-2000s until March 2024. It includes the latest developments between the end of the InstA negotiations in 2021 and the new mandate presented by the Swiss government on 8 March 2024 for a new comprehensive package to be negotiated with the EU in 2024.

The empirical reconstruction of the negotiations suggests that in a political system that needs clear majorities to avoid the threat of a referendum, consensus building became very difficult because the issues under negotiation were two-dimensional, activating both the anti-EU and the left–right dimensions. The preferences of political and social actors on the InstA were not organised as ‘yes’ or ‘no’ to the agreement. Rather, actors hold different views on the various issues that were negotiated, with varying degrees of support. The EU demanded Switzerland the adoption of Directive 2004/38/EC, known in Switzerland as the Citizenship Rights Directive (CRD), and Directive 2018/957/EU on Posting of workers, which mobilised opposition from the right and left respectively. In addition, the possible role of the Court of Justice of the European Union (CJEU) in the dispute settlement mechanism was questioned across the political spectrum for different reasons.

Moreover, the data suggest two main factors that prevented this difficulty from being resolved. First, intra-party divisions within the ruling coalition on the European directives have made it difficult to build broad coalitions. Second, the challenge to the Posting of Workers Directive shows that the Swiss social partners had considerable veto power to prevent consensus on the InstA. Employers' associations and trade unions opposed its implementation,

but the deterioration of the corporatist dynamic between the Confederation and the social partners, as well as between the social partners themselves, made it very difficult to activate concessions to the trade unions that had been used in previous EU negotiations to secure their agreement. Recently, the Federal Council has adopted some strategies to overcome these difficulties, but some problems remain in the relationship between the social partners, as employers' associations refuse to make concessions to the unions in order to further regulate the domestic labour market.

The article is structured as follows. The next section reviews the literature on the domestic politics of international negotiations. The third section presents the research methods and strategy. The fourth section provides a brief historical background of Swiss-EU relations. The fifth section empirically reconstructs the negotiation processes on the InstA, describes the main cleavage patterns and identifies the difficulties in reaching an agreement. The last section concludes.

THE DOMESTIC POLITICS OF INTERNATIONAL NEGOTIATIONS

This section reviews the literature on the domestic politics of international negotiations with the aim of identifying the main domestic institutional and political factors that may lead to difficulties in reaching agreement.

Cleavage Patterns

The study of domestic politics in international negotiations involves first the identification of the actors and social groups (voters, political parties, interest groups, bureaucrats, etc.) that are mobilised by the issues under negotiation and of the extent to which they can determine government decisions (Frieden & Walter, 2019, p. 136). There are two important dimensions that are activated in EU integration negotiations. The first cleavage is 'more or less integration': pro-EU integration versus anti-EU integration (Frieden & Walter, 2019, p. 138). Eurosceptic parties and pro-protectionist interest groups tend to oppose deepening EU integration. However, the relationship between territorial identity and support for the EU is more nuanced. Hooghe and Marks (2009) distinguish between exclusive (incompatible) and inclusive territorial identities. Actors with strong territorial identities may still support EU integration, but when these issues are politicised by Eurosceptic parties, identities are framed as exclusive (Hooghe & Marks, 2009, p. 13).

The second cleavage is the ideological divide between left and right. Issues of deregulation of social and labour protection are more likely to be contested by the left than by the right. Therefore, support for the Europeanisation of a policy does not depend on the type of policy, but on the *direction* of that policy. But even here the composition of left/right preferences is more nuanced. On the left, for example, material/economic issues are intertwined with non-material identities (green, libertarian, etc.), making the definition of preferences more complex (Hooghe & Marks, 2009, p. 16).

Moreover, negotiations on European integration are generally two-dimensional and activate both cleavages (Frieden & Walter, 2019, p. 138). However, the literature is divided on the impact of the number of issues on the outcome of negotiations. The more dimensions that are negotiated, the more likely it is that different views of the agreement will emerge, but in some cases the inclusion of more issues in negotiations has actually helped to overcome the opposition of strong domestic groups by generating alternative alliances (Putnam, 1988, pp. 446, 460).

Government and Partisan Dynamics

Once the cleavage patterns are identified, the analysis of domestic politics in international negotiations involves an examination of the political and institutional factors that might influence the outcome of the negotiations. The literature highlights two main factors, the relative strength of the government and the degree of party unity in the ruling party (or coalition), to assess the likelihood of ratification of international agreements (Putnam, 1988, p. 442). Majoritarian governments are generally considered to be strong whereas minoritarian governments and coalitions have to negotiate reforms with parties in the opposition or within the coalition (Afonso, 2013, p. 48).

Besides, intra-party divisions can also hinder domestic consensus-building processes during international negotiations (Kim, 2016, p. 294). Opposing views within the ruling party can cause problems in transferring domestic preferences to international negotiators. It is common for issues negotiated at the international level to affect different government departments unevenly. For example, finance and economic ministers may be more supportive of international agreements that deepen trade liberalisation. Labour and social affairs ministers, on the other hand, are more concerned with reducing the distributional costs of liberalisation for their constituents (Moury et al., 2021, p. 19). Moreover, political parties are likely to be divided when the issues being negotiated activate different cleavage patterns. When there is a high degree of intra-party cleavage in coalition governments, consensus-building mechanisms may be hampered, as leaders have to resolve two problems: intra-party divisions and intra-coalition divisions. As a result, consensus building is likely to be difficult in this context.

Corporatism and Veto Players

Finally, the analysis of the domestic politics of international negotiations requires the identification of veto players who can block the agreement. Weak governments are more vulnerable to the veto power of strong domestic groups (Putnam, 1988, p. 449). The types of domestic groups that can veto international agreements depend on the nature and characteristics (dimensionality) of the issues being negotiated, which cleavages are activated, and which actors are mobilised by them (Frieden & Walter, 2019). For the research of this article, corporatist theories provide useful insights for analysing issues that involve redistributive costs for social and labour market protection policies, such as those included in the InstA. These policies mobilise two specific domestic groups, the employers' associations and trade unions, which play an important role in the policy-making process in most Western European countries.

If the costs of international agreements are higher than the status quo, social partners may try to block international agreements. To understand the extent to which social partners can influence international negotiations, we need to analyse domestic corporatist institutions, both formal (corporatism) and informal (concertation) procedures through which social partners can communicate their preferences and exercise veto power. These institutions and procedures are crucial for activating “non-parliamentary channels of consensus mobilisation” (Baccaro & Simoni, 2008, p. 1340). In the case of minority governments or those characterised by internal divisions and struggles, they need the consent of the social partners to avoid mobilisation against reforms (Baccaro & Simoni, 2008, p. 1342). Moreover, historical links between political parties and interest groups can also influence domestic consensus processes through cross-membership (Afonso, 2013, p. 48). Consensus building is more difficult where social partners are involved in policymaking and where governments need their consent to pass reforms (Schmidt, 1996, p. 112).

One strategy used by governments to overcome the opposition of social partners is to make concessions to them (Schmidt, 1996, p. 117). Governments can make side payments

(in game theory terms) to the social partners to secure their agreement to international agreements. For this system of concessions to work, there must be a relatively high degree of disagreement between the various political actors on domestic policies. But side agreements are not always successful. If the social partner that has to make concessions does not derive substantial benefits from the international agreement, it will also demand compensation at home, leading to multi-layered side payments that make consensus-building very challenging.

METHODS, RESEARCH STRATEGY AND DATA COLLECTION

This article uses qualitative case study methods and takes a descriptive approach. The type of inference used is descriptive because the aim is to answer *What? When? Who?* questions (Gerring, 2004, p. 347). The aim is to describe what domestic difficulties the Swiss-EU negotiations on the InstA encountered, with a particular focus on domestic politics, what the positions of the political and social actors were and how the domestic consensus-building processes developed. The type of descriptive arguments used in this article are *accounts* that refer to the description of a series of events of a case and do not have the purpose of generalising beyond this specific case (Gerring, 2012, p. 725).

Although it is not the purpose of this article to provide theoretical explanations, some theory is necessary before collecting data (King et al., 1994, p. 46). What we already know from previous studies helps us to organise the research strategy and to collect data in a more structured way, which will later help us to provide a clearer description of events. In this sense, the factors identified in the literature review (cleavage patterns, government and party dynamics, and corporatist relations), as well as those that emerge from the empirical historical accounts of Swiss-EU relations (presented in the next section), have guided the data collection and empirical analysis of this article. In the empirical analysis and the conclusions, some descriptive statements are made, which are the result of an implicit comparison with previous negotiations between Switzerland and the EU (Bilaterals I and II), as recommended by Gerring (2004, p. 347).

Moreover, extensive qualitative data were gathered, consisting of secondary and primary resources. Secondary resources include scientific literature, grey literature, official reports and media reports. Primary resources refer to data collected by the author during 15 interviews with key stakeholders such as representatives of the Swiss Confederation, political parties, cantons, interest groups, social institutions and the European Commission (a full list is provided in the references). The interviews were semi-structured and conducted online (Teams) or by telephone by the author between August 2022 and February 2024. They lasted between 30 minutes and one hour, were recorded and transcribed verbatim. All interviewees were guaranteed personal anonymity.

THE HISTORICAL BACKGROUND ON SWISS-EU RELATIONS

The focus of this article on Swiss domestic politics is justified because the lack of domestic consensus was the main reason given by the Federal Council for ending the negotiations on the InstA. In the case of Switzerland, achieving this majority is crucial because of the existence of direct democracy. The Federal Council needs a broad consensus on international agreements to avoid a negative vote in an optional referendum or the launch of a popular initiative (Papadopoulos, 2001, p. 36). Constitutional amendments must also be ratified in a mandatory referendum. This form of Swiss direct democracy has shaped the historical relationship

between Switzerland and the EU (Wasserfallen, 2023). All decisions on Switzerland's integration/cooperation in/with the EU have been subject to a referendum. Swiss voters rejected Switzerland's accession to the European Economic Area (EEA) in a 1992 referendum. A key factor influencing the negative vote was the opposition of the People's Party (SVP), which created a narrative based on incompatibility with EU membership and the need to preserve national autonomy that became dominant in Swiss discourse (Wasserfallen, 2023).

However, the geographical location of the Helvetic country and its economic ties with the EU made Switzerland interested in deepening relations, and both parties began negotiating a series of bilateral agreements in the late 1990s (Sciarini et al., 2004, p. 354). The agreements included pacts in seven areas, such as the free movement of persons, which gave EU citizens the right to live and work in Switzerland under certain conditions. An important feature of Bilaterals I is that they are linked by the so-called 'guillotine clause', which means that the suspension of one agreement automatically leads to the end of the whole package. The Bilaterals I were opposed by both the political right and the left, but for different reasons. On the one hand, the SVP opposed any extension of free movement and wanted to maintain a restrictive migration policy. On the other hand, the trade unions and some sectors of the employers' associations were concerned about the negative impact of free movement on Swiss labour market conditions. The unions feared a drop in wages and proposed a series of flanking measures (*flankierende Maßnahme*) to protect Swiss wages.

In order to overcome the opposition to Bilaterals I, the Federal Council initiated intensive negotiations with the interest groups and the flanking measures were eventually included in the Free Movement Agreement. These processes of consultation between the Confederation, the cantons and interest groups are also an important feature of the Swiss political system. There are various mechanisms to deal with the uncertainty that referendums create (Papadopoulos, 2001, p. 37) and to avoid the "referendum threat" (Sciarini et al., 2004, p. 356). The first is the configuration of the Federal Council as a consensus government, where all major political parties are represented, and decisions are made through cooperation and compromise (Linder, 2013, p. 198). The second mechanism is the existence of extensive pre-parliamentary consultation procedures (Sciarini et al., 2004, p. 356). There are both formal (expert committees and consultation procedures) and informal consultation processes (Sciarini et al., 2004). These consultation processes are used to build consensus before decisions reach parliament and to ensure a positive vote. Consensus-building mechanisms were successful before Bilaterals I, which were approved in 1999 and entered into force in 2002. Curiously, the agreements were also accepted by members of the SVP, despite the reluctance of its leader Christoph Blocher (Wasserfallen, 2023).

However, every further step in Swiss-EU relations has met with the SVP's blunt opposition and has required the existence of a large coalition of other political and social forces. In this sense, 'Europeanisation without membership' in Switzerland has led to a strengthening of informal consultation procedures in order to build sufficient majorities (Sciarini et al., 2004, p. 364). This was also the case in 2004, when a new series of agreements were signed between Switzerland and the EU, the Bilateral Agreements II, to strengthen cooperation in new areas. Since then, Switzerland and the EU have signed a number of bilateral agreements to strengthen cooperation with various European agencies, such as Europol, Eurojust, the European Defence Agency and the European Asylum Support Office (EASO). Moreover, the interrelation between European and Swiss policies is strengthened by the autonomous adaptation of EU legislation into Swiss law (Oesch, 2018, p. 42). Switzerland monitors the compatibility of Swiss legislation with new changes in EU economic regulations. The network of agreements and the high degree of Swiss adaptation to the EU have led to a kind of "integration without membership" (Linder, 2013, p. 199).

In order to gain the consent of the interest groups for the Bilateral Agreements II, the Confederation once again negotiated an extension of the flanking measures with the trade

unions and employers' associations. This has become a routine practice in Swiss-EU policy, as trade unions demand concessions on the labour market to support further economic integration (Wasserfallen, 2023). Negotiations of the flanking measures in the context of EU agreement has given trade unions substantial concessions to regulate the labour market to avoid the referendum (Afonso et al., 2010, p. 572). In this sense, Europeanisation has given Swiss trade unions a great deal of domestic veto power. Despite the absence of corporatism in *strictum sensum* in Switzerland (Armingeon, 1997), the pre-parliamentary consultation procedures have created a similar dynamic that reinforces trade union participation in policy-making. Europeanisation without membership has also provided a window of opportunity for trade unions to achieve their demands and, in return for their acquiescence, to support EU integration.

THE EMPIRICAL RECONSTRUCTION OF THE INSTA NEGOTIATIONS

The First Round of Negotiations (2000–2018)

Despite the Swiss electorate's rejection of EEA membership in 1992, the EU hoped that Switzerland would eventually become a member. Only when it became clear that this was not going to happen did it set itself the goal of establishing a formal mechanism for updating the bilateral agreements (Oesch, 2020, p. 228). By the mid-2000s, broad sections of the Swiss political and business community also began to see the need to provide legal certainty, transparency and efficiency to the Swiss-EU relationship (Interview 3). In 2006, the Federal Council presented the option of a 'framework agreement' for the first time. For its part, the EU expressed the wish to establish common rules for the dynamic updating of the agreements in 2008 (Federal Council, 2021a). This framework would include the monitoring of the correct interpretation and implementation of the agreements as well as the creation of a dispute settlement mechanism in case of conflict (Oesch, 2018, p. 45) (Table 1).

From 2010 to 2013, a series of informal and technical discussions on the institutional framework took place between the parties. In the end, Switzerland and the EU agreed on a two-pillar model based on Switzerland's independent supervision of the application of the law and the exclusion of the European Commission (Federal Council, 2021a, p. 9). The two-pillar model recognised a complementary role for the CJEU in the settlement of disputes. At the same time, the Federal Council launched a consultation process with the cantons, interest groups and foreign policy commissions to create a mandate for negotiations with the EU. Most Swiss political and social actors supported the two-pillar model but demanded the creation of a joint

TABLE 1 The first round of negotiations (2000–2018).

2006	Federal Council presents the option of a framework agreement
2008	EU wants common rules to update the Bilaterals
2010–2013	Informal and technical Swiss-EU talks
2013	Federal Council elaborates mandate
Feb 2014	Mass migration initiative accepted in a referendum
Nov 2014 - Nov 2015	Swiss-EU talks suspended
2016–2018	Informal and technical Swiss-EU talks
2018	Formal negotiations of a draft
November 2018	Federal Council decides not to initial the draft

committee for dispute settlement (Federal Council, 2021a, p. 9). In addition, domestic actors opposed the adoption of the European Citizenship Directive as well as a relaxation of the flanking measures. Since 2013, these two demands have become the ‘red lines’ that the Federal Council could not cross in its negotiations with the EU (Federal Council, 2021a, p. 26).

With the 2013 mandate, the Federal Council began formal talks with the EU in 2014 to negotiate an Institutional Framework Agreement (InstA). However, the exchange was soon interrupted by domestic political events in Switzerland. In February 2014, a majority of Swiss voters and cantons approved the SVP’s ‘mass immigration’ initiative in a referendum. This initiative called for the introduction of quotas to limit migration from the EU, the possible application of which would conflict with the Agreement on the Free Movement of Persons (AFMP). The EU had made it clear that it would not accept any exceptions to the free movement of persons in Switzerland, which increased the burden on the Federal Council to implement the initiative. In this context, discussions on the InstA were suspended from November 2014 to November 2015 (Federal Council, 2021a, p. 13). In the end, a domestic compromise was found to implement the initiative without jeopardising the AFMP. Jobseekers resident in Switzerland have priority over EU migrants in job selection procedures. This solution did not satisfy the SVP, but it did win the support of the EU and preserve Bilateral Agreements I (Interview 2).

Negotiations between Switzerland and the EU on the InstA resumed in November 2015, but the Brexit referendum hardened the EU’s position and made it hard to reach a compromise on Switzerland’s request for an exception to Directive 2004/38/EC (Federal Council, 2021a, p. 14; Schwok, 2022, pp. 27–28). Some technical discussions took place between 2016 and 2018, but substantive differences between the two parties remained. In 2018, the Federal Council appointed a state secretary, Roberto Balzaretto, as chief coordinator for negotiations with the EU, who presented the EU with new proposals on dispute settlement mechanisms. Switzerland asked the EU to exclude the CJEU from the dispute settlement mechanisms and (again) to request exemptions for the adoption of Directive 2004/38/EC. In view of the EU’s rejection of these proposals, the Federal Council then decided to make some adjustments to the mandate (Federal Council, 2021a, p. 15). Switzerland then proposed the creation of an arbitration tribunal that could refer questions of interpretation of EU law to the CJEU. The Federal Council also proposed to make some concessions on the free movement of persons but maintained the red lines on flanking measures (Federal Council, 2021a, p. 18).

Negotiators reached an impasse because the EU wanted compromises in precisely those areas where red lines had been drawn (Interview 1). The EU rejected the exclusion of flanking measures from the negotiations and instead included ‘Protocol 1 on the applicable rules to take account of the specificities of the Swiss labour market’ in the draft agreement (Federal Council, 2021a, p. 16). The annex, Protocol 1, included by the EU in the draft agreement, obliged Switzerland to implement the Posting of Workers Directive in the event of an agreement, which would lead to a flexibilisation of the flanking measures according to Swiss domestic actors. The Federal Council saw this as a unilateral move by the EU, as the protocol contradicted the 2013 mandate (Federal Council, 2021b), which the government wanted to maintain. The Federal Council’s interest in respecting the 2013 mandate may also have been motivated by the fact that the flanking measures were widely supported by the Swiss public (Lauener et al., 2022). This may have led the Swiss government to believe that, in the event of a referendum, the Swiss people would prefer to keep the flanking measures rather than sign the InstA, as shown by opinion polls (Lauener et al., 2022, p. 288).

Finally, in the context of Brexit, the EU put pressure on Switzerland to sign the agreement (Interview 2). The EU would have hardened its position during the 2016–2019 period, fearing that any concessions to Switzerland could complicate negotiations with the UK (Schwok, 2022, p. 28). However, despite the pressure from the EU, the Federal Council decided not to initial the first draft of the InstA agreement published in 2018 and to abandon the negotiations with the EU (Interview 3).

TABLE 2 The process of internal-consensus building (2019–2021).

Feb - April 2019	Consultation process with stakeholders
Nov 2020	Federal Council demands EU for exceptions
Jan 2021	Swiss-EU negotiations are resumed
April 2021	FC consults commissions foreign affairs
May 2021	FC decides to abandon the negotiations with the EU

Mapping of Cleavage Patterns (2019–2021)

The Federal Council then decided to launch a consultation process to gather the views of political and social groups on the most controversial issues of the InstA. The consultation process, which lasted from February to April 2019, was a *sui generis* informal process that differed from the consultations provided for in the Federal Act on the Consultation Procedure, which only take place when international agreements are signed. The aim of this process was to gather the positions of the main stakeholders and to consolidate the Swiss position for the renewal of the negotiations with the EU (Federal Council, 2019). Stakeholders involved in the process included parliamentary committees, the Conference of Cantonal Governments, political parties, interest groups and representatives of the business and scientific sectors (Table 2).

The Federal Council asked stakeholders for their positions on four issues: 1) the application of Directive 2004/38/EC 2) the application of the Posting of Workers Directive, 3) the dispute settlement mechanism and the role of the CJEU, and 4) state aid.¹ The consultation process did not produce any surprising results, but rather confirmed the positions that stakeholders had formulated for the 2013 mandate. With the exception of the SVP, which explicitly called for the rejection of the agreement, the other participants agreed in principle with the InstA but asked either for clarifications or for a substantial renegotiation of the most contentious issues.

The public report on the consultation distinguishes between three groups of stakeholders, depending on their level of support for the InstA (Federal Council, 2019, p. 17). The first group includes the Green Liberal Party (GLP) and the scientific community, which supported the InstA without reservations. It also includes the Liberal Party (FDP) and the Conservative Democratic Party of Switzerland (BDP), which made demands on some points. The FDP asked for exemptions from the adoption of Directive 2004/38/EC and to adopt only new legal developments on the provisions of the AFMP between Switzerland and the EU. However, the FDP did not have a unified position on these issues (Interview 5). Some sectors of the party believed that Switzerland could accept to grant social protection rights to EU workers, but other sectors were against the extension of rights that Directive 2004/38/EC would allow (Interview 5).

On the other hand, the FDP did not oppose the adoption of the Posting of Workers Directive (Federal Council, 2019, p. 9). The Liberals believe that the flanking measures made sense in the early 2000s but are outdated in the current context. Also, they think that they make it more difficult for service providers to come to Switzerland to do business (Interview 5). In addition, the FDP and the BDP asked for clarifications on the settlement mechanism. Finally, the business associations, AES and FIAL, were concerned about the settlement mechanism and the consequences of implementing European directives.

In the second group we find *economiesuisse* and the Swiss Employers' Federation (Union Patronale Suisse, UPS), which would only accept the InstA subject to important changes. They were concerned about the consequences of the adoption of the Citizenship and Posting

¹By 2021, the Federal Council admitted that it had already won some concessions from the EU and that an agreement on state aid could be reached if the other issues were resolved (Schwok, 2022, p. 25). For this reason, this article only analyses the conflict that arose from the other issues.

Directive and wanted guarantees that the tripartite commissions monitoring the implementation of the flanking measures would be maintained (Interview 8). As with the FDP, part of the employers would eventually agree to a relaxation of the flanking measures if the role of the social partners in the implementation process was maintained (Interview 8). The Green Party (GP), the Social Democratic Party (SDP) and Christian Democratic People's Party² (CVP) also demanded substantial changes in order to accept the InstA. However, the degree of their opposition also differed. While the GP and the SDP wanted clarifications on the impact of Directive 2004/38/EC, the CVP wanted it excluded from the agreement. Like the FDP, the SDP had internal divisions on the various issues contained in the InstA. The pro-European sections of the party minimised the impact of the adoption of the Posting of Workers Directive, while the pro-labour sections aligned themselves with the trade unions' positions and considered that the agreement would threaten the level of wage protection in Switzerland (Interview 7).

Finally, the third group consisted of stakeholders who were more reluctant or opposed to the InstA. These included the Swiss Trade Union Federation (Union Syndicale Suisse, USS), Travail.Suisse and the Swiss Trade Association (USAM), as well as the Farmers' Association. For USS and Travail.Suisse, the InstA simply could not guarantee wage protection in Switzerland (Interviews 9, 10). Another controversial issue was the role of the CJEU in the dispute settlement mechanism. Most domestic actors from the right and the left called for the exclusion of the CJEU. From the right, this controversy stems from the defense of national sovereignty and the idea that the CJEU would ask for an extension of social rights for EU citizens. On its side, the left feared that CJEU would reduce the level of wage protection (Interview 11).

The consultation process revealed the cleavages triggered by the InstA, which activated both the pro/anti-EU and the left/right dimensions. Moreover, instead of facilitating dialogue and compromise, the consultation process led to the polarisation of positions and the emergence of new doubts and questions on the most controversial issues. As a result, the Federal Council decided to adapt the mandate and, in November 2020, asked the EU to exclude the full incorporation of the Citizenship Directive and to maintain the level of protection of the flanking measures for reasons of legal certainty. Negotiations resumed in January 2021, but significant differences remained after six rounds of talks. In April 2021, the government again consulted the foreign policy commissions and the cantons, and a month later, on 6 May 2021, decided to break off negotiations. The Federal Council did not believe that there was a sufficient majority to support the InstA (Interviews 1, 3).

Identifying the Difficulties to Reach Domestic Consensus

One of the main difficulties in reaching a consensus was the division within the parties over the possible adoption of Directive 2004/38/EC. The directive was clearly rejected by the SVP and The Centre (Interview 2; Schwok, 2022, p. 56) and undoubtedly supported by the GLP and the GP (Federal Council 2019; Interview 6). However, two main parties in government, the FDP and the SDP, were divided on this issue. The FDP's overall preference was ambivalent. Pro-European sections of the liberals preferred to sign the agreement over the concerns of the most conservative sections. The latter had adopted the same reasons as the other right-wing parties for rejecting the directive, namely a possible extension of social and residence rights for EU citizens (Interview 5). The Swiss public discourse on the consequences of the Citizenship Directive was dominated by right-wing arguments (Summermatter, 2014), despite that the changes that Directive 2004/38/EC would require are minimal compared to the current AFMP (Abdelkhalek & Zilio, 2022, p. 20).

²Today The Centre (Die Mitte) after merging with the BDP.

On the other hand, there was no strong counter-narrative from the left to defend the adoption of Directive 2004/38/EC. The position of the SDP was ambivalent. The pro-European sections of the party supported its adoption, but other sections needed more clarification about its potential impact. The extension of social rights to EU migrants would in principle be compatible with the SDP ideology, but the pro-social Europe sectors did not manage to create a counter-narrative to convince the more sceptical sectors of the party (Interview 7). The trade unions, also in principle in favour of extending social rights to EU migrants, did not convey a strong position in favour of the directive and also asked for clarifications (Interview 11). Despite the centrality of this issue in building internal consensus, the Federal Council was also hesitant in its statements about the potential impact of the directive, which did not help to convince sceptical sectors (Federal Council, 2021a; Schwok, 2022, p. 35). Finally, some sectors in the Federal Department of Foreign Affairs and the State Secretariat for Migration were also reluctant to fully adopt Directive 2004/38/EC, as they felt that it conflicted with Article 121a of the Swiss Constitution and the sovereign right to control immigration (Interviews 1, 2, 3). Therefore, with the exception of the GLP and the GP, no other political actor, including the Swiss government, fully defended the Citizenship Directive.

The second difficulty to reach consensus was the deteriorating system of concessions to trade unions. One of the most contentious issues during the InstA negotiations was the adoption of Directive 2018/957/EU on the Posting of workers. In 2016, the Swiss Federal Council agreed to leave the flanking measures outside the negotiations, as they were part of the 'red lines' of the 2013 mandate. The EU objected that decision and demanded that Switzerland adopt the relevant EU directives in this regard (Federal Council, 2019, p. 14). In the new phase of negotiations in 2018, the flanking measures became one of the central points of discussion. As mentioned above, the EU decided to include Protocol 1 in the draft, even though the Federal Council had maintained that it did not have a mandate to negotiate a relaxation of the measures. Protocol 1 required Switzerland to adopt the Posting of Workers Directive and modified some of the flanking measures, such as the reduction of the notification period for self-employed service providers from eight to four days and the requirement of a financial deposit for service providers in risk sectors only.

Protocol I was included in the draft without the consent of the social partners which led to their discontent. For both, trade unions and employers' organisations, a key demand was the safeguarding of the system of dual enforcement and tripartite commissions that monitor the implementation of the flanking measures in the cantons (Interviews 8, 9, 10, 11). This system differs from the one provided for in the Posting of Workers Directive, which stipulates that implementation and monitoring must be carried out by the state and labour inspectors respectively. In addition, the social partners demanded that the flanking measures and the system of tripartite commissions be included as exceptions, which should not be subject to interpretation by the CJEU or other new developments in EU law.

The publication of Protocol 1 in the draft agreement created a degree of mistrust on the part of the unions towards the Federal Council and the Department of Foreign Affairs. The unions felt that they had not been informed in a transparent manner about the development of the negotiations (Interviews 10, 11). The unions explained in the interviews that Swiss negotiators had crossed the red lines established in the mandate and they felt that there was a political offensive against the flanking measures and the role of the social partners (Interviews 10, 11). According to the unions, this offensive came from the two liberal members of the Federal Council, Ignacio Cassis and Johann Schneider-Ammann, which were interested in a relaxation of the flanking measures (USS, 2018; Interview 10). This atmosphere of mistrust made it problematic for the domestic dialogue between stakeholders to find compromises.

The relationship between employers and unions has also deteriorated. In the early 2000s, during the negotiations on the first round of bilateral agreements, both social partners agreed on the need to establish a wage protection system. However, the employers' associations did not

want to further regulate the domestic labour market and important differences emerged. A political effort on the part of the Minister for Economic Affairs was necessary to convince the employers to accept the trade unions' demands and to facilitate the agreement between the social partners (Interview 10). In return for their support for Bilateral Agreements I, the unions won the extension of collective agreements and the introduction of minimum wages where there were no collective agreements (Afonso, 2013, p. 65). Each time the unions' support was needed to advance Switzerland-EU relations (2006, 2009, 2013), they received side payments (Interview 10).

This dynamic of concessions broke down in 2014 in the context of the SVP's 'mass migration' initiative, which aimed to introduce quotas on free movement within the EU. The unions wanted to launch a campaign to mobilise their members to vote 'no' to the initiative. However, they realised that they could get some concessions from the government and the employers (who were interested in a 'no' vote) in exchange for the campaign. This time the unions demanded a new social benefit, the so-called bridging pension, for unemployed people aged 60 and over who have left the labour market or who are unemployed from the age of 58. This suggests that the system of concessions to the trade unions in the context of Swiss-EU relations goes beyond negotiations on flanking measures or labour market measures and affects social policy in general.

The employers opposed this concession³ because, together with some sectors of the confederation, they felt that the unions had accumulated a lot of veto power since Bilateral Agreements I (Interviews 3, 8, 10). Since then, the relationship between the social partners has deteriorated. During the InstA negotiations, the employers' associations also opposed further regulation of the Swiss labour market, arguing that this was not the forum for discussing internal labour and social policies (Interview 8). This made it very difficult to win trade union support for the InstA. This suggests that the Swiss government has not been able to activate the system of concessions to trade unions that worked in the past. In addition, employers' organisations are now more fragmented than in previous phases. There are new associations, such as *Autonomiesuisse* or *Kompass Europea*, which opposed the InstA, which also made internal consensus-building more complex (Interview 10).

Moreover, two events may have signalled that trade unions still have considerable power to persuade Swiss public opinion. The Mass migration initiative, for which the unions decided not to campaign actively, was accepted by the majority of the Swiss people. On the other hand, the 2020 Limitation initiative,⁴ which the unions actively campaigned against (TdG, 2020), was rejected by the Swiss people. This, together with the broad preference of the Swiss people for the flanking measures rather than a new agreement (Lauener et al., 2022), may have confirmed the widespread and long-standing notion that a referendum on an agreement with the EU cannot be won without the support of the trade unions (Afonso et al., 2010, p. 571).

Beyond the InstA (2021–2024)

Following Switzerland's withdrawal from the negotiations in May 2021, the government launched a new internal process to build a majority in favour of an agreement with the EU. The government's strategy to overcome the obstacles of the previous phases was twofold. First, at the EU level, there has been a shift from negotiating the institutional framework to a comprehensive approach based on a package in which the institutional factor is one more element to be negotiated. Switzerland started exploratory talks with the EU in March 2022, which ended in October 2023 with the adoption of the 'common understanding' document.

³Although the bridging benefits were later approved in 2020 (Swiss Confederation, 2020).

⁴Launched by the SVP also with the aim to introduce quotas to EU free movement.

The package includes three new agreements on electricity, food safety and health, as well as Switzerland's participation in EU programmes on research, innovation and education (e.g. Erasmus, Horizon Europe) (Table 3).

Moreover, the package, which is beginning to be known as Bilateral Agreements III, is based on a clear compromise between Switzerland and the EU. The Swiss government accepts the adoption of EU directives and recognises the CJEU for their interpretation. The government accepts the need for a uniform interpretation of EU legal acts “in accordance with the case law of the Court of Justice and agrees to the dynamic adaptation of Swiss law to EU law” (Federal Council, 2023). With regard to the settlement of disputes, the new common understanding provides for the creation of a sectoral committee and an arbitration tribunal which, in the event of a dispute, should refer the matter to the CJEU and accept the decision of the CJEU. In the case of disputes on issues subject to derogations (free movement and protection of wages), the arbitration tribunal should decide without referring the matter to the CJEU.

In return, the EU agrees to precise exceptions in the areas of the free movement of persons and the posting of workers. With regard to the free movement of persons, Switzerland will retain the possibility of withdrawing residence permits from EU citizens who have committed crimes and are a burden on the welfare state. With regard to the posting of workers, Switzerland can maintain the dual enforcement system and the cantonal tripartite commissions to monitor an adequate level of protection. It can also maintain the four-day notification period for service providers and the financial deposit if they have not previously fulfilled their obligations. In view of the substantial concessions made to Switzerland on controversial issues, a shift in the EU's position can be observed. This may be due to two factors. First, the EU was no longer under pressure because of Brexit, and second, these concessions from the EU were now possible because the European Commission saw the Swiss government as committed to concluding a new agreement, which had not been the case in previous phases of the negotiations (Interview 15).

The second strategy for building a national consensus was the creation of a steering committee with representatives from all departments of the Federal Council and a sounding board composed of the Confederation, the cantons, employers' associations and trade unions. The sounding board, which was set up on 31 August 2022, continued discussions in the areas of wage protection, electricity and overland transport. It was also regularly informed by the Federal Council about the exploratory talks with the EU. In June 2023, the government approved the main guidelines for drawing up a mandate, and on 8 November it analysed in detail the results of the exploratory talks with the EU and the discussions in the steering committee and the sounding board (Federal Council, 2023). This strategy has helped to overcome the mistrust between domestic actors of previous phases and to develop social dialogue between all stakeholders (Interview 10).

However, other obstacles to internal consensus remain. On 6 November, the trade unions published various documents affirming there was still a risk of a fall in wages if the current package was adopted (Travailsuisse, 2023; Unia, 2023). In the sounding board, the unions presented a document with 15 proposals to strengthen wage protection if the Posting of Workers Directive is adopted. The employers' association, however, rejected any proposal to further

TABLE 3 Beyond the InstA (2021–2024).

March 2022 - Oct 2023	Swiss-EU exploratory talks
June 2023	FC approves main guidelines for a mandate
August 2023	Creation of a sounding board with social partners
Dec 2023	FC approves new mandate for the Bilaterals III
Dec 2023 - Feb 2024	New consultations with parliament, department of foreign affairs and social partners
March 2024	FC presents final mandate to start negotiations with the EU

regulate the domestic labour market (Interview 8). The unions have made three main demands: an opt-out from EU rules on the reimbursement of workers' expenses, binding collective agreements and better rules on temporary work. There appears to be agreement between employers and unions on the expense's regulation. The Posting of Workers Directive is based on the idea of 'equal work, equal pay' but it allows employers to reimburse expenses (e.g. food, accommodation, etc.) according to prices in the home country. The social partners want this to be regulated so that expenses are reimbursed according to Swiss prices. However, they are still divided on the other two measures (Humbel & Kučera, 2024). Employers do not believe that there is a problem with temporary work in Switzerland and they are not willing to discuss these issues with the unions in relation to Bilaterals III (Interview 8).

On 15 December 2023, the Federal Council presented the new mandate for renewed negotiations with the EU. The document on wage protection stated that employers and trade unions were going to negotiate these issues before the final mandate was approved (Confederation, 2023b). However, when the Swiss government published the final mandate on 8 March 2024 to be negotiated with the EU, the question was still opened, and no agreement was reached between the social partners (Federal Council, 2024). Trade unions insisted in the need of domestic solutions like binding collective agreements and better rules for temporary work. On the contrary, employers rejected additional interventions in the domestic labour market (Federal Council, 2024).

CONCLUSIONS

This article has examined the domestic political dynamics surrounding the negotiations between Switzerland and the European Union on the InstA in order to identify the main domestic political difficulties that prevented an agreement. The empirical reconstruction of the negotiations suggests that in a political system that requires clear majorities to avoid the threat of a referendum, consensus-building became very difficult because the issues under negotiation were two-dimensional, activating both the pro/against-EU and the left–right dimensions. The preferences of Swiss political and social actors were not organised as 'yes' or 'no' to the InstA. Rather, actors hold different views on the various issues under negotiation, with varying degrees of support.

The right opposed the adoption of the Citizenship Directive in order to guarantee Switzerland's autonomy to control migration and to exclude EU citizens from social benefits. The left, for its part, opposed the adoption of the Posting of Workers Directive in order to protect labour market conditions. But there was also a cross-cutting issue contested by both the right and the left: the role of the CJEU in the dispute settlement mechanism. The right feared that intervention by the CJEU would lead to an extension of the residence and social rights of EU citizens. The concerns of the left, on the other hand, revolved around a downgrading of the protection of workers' rights. The right sees the EU as 'too social', while the left sees it as 'not social enough'.

Moreover, certain partisan and political dynamics have made it problematic to build consensus on these issues. Firstly, the ambivalent position of the FDP and S has led to some inconsistencies between what the parties say in different forums. Intra-party divisions have been an obstacle to the creation of unified narratives that would send a strong message for or against the issues under negotiation. The intra-party position in the FDP and SDP was not consolidated at the start of the InstA negotiations, further complicating consensus-building mechanisms. Second, the worsening corporatist dynamic between the Confederation and the social partners, and between the social partners themselves, has also hampered internal consensus-building. In contrast to the negotiation of previous bilateral agreements, the government and the social partners have not been able to activate the concession system to gain the support of the trade unions.

The Federal Council has recently adopted two strategies to overcome these difficulties. First, the shift from the InstA to Bilaterals III reduces the weight of the institutional element and could thus convince the more Eurosceptic sectors on both sides of the political spectrum. Another important achievement is the clear definition of the exceptions in the Citizenship and Posting Directives that will not be subject to interpretation by the CJEU. This could also help to deactivate the left–right divide. It is important to note the change in the EU's position in this regard. After the pressure of Brexit has disappeared and the Commission's confidence in domestic actors has increased, the EU seems to be more open to making clear concessions to Switzerland.

Another strategy has been to set up various committees to improve dialogue within the Confederation and between the Confederation and the social partners. Only the relationship between the social partners remains problematic. The employers' associations want to put an end to the system of additional concessions to the trade unions and are opposed to further regulation of the domestic labour market. The question now is whether the system of concessions to the unions can finally be activated or whether a majority coalition can be built that excludes the unions. The latter option seems unlikely for two reasons. Firstly, the SDP has already declared that its position is in line with that of the unions, and secondly, there seems to be a widespread view among the actors that a positive vote in a referendum is doubtful without the support of the unions.

ACKNOWLEDGMENTS

I would like to thank the participants of the Workshop on Switzerland-EU Relations (Haus der Universität, Bern) and the Workshop on Swiss-EU Relations at the SPSA Congress (St. Gallen) for their comments on an earlier draft of the article. In particular, I would like to thank Théoda Woelfrey and Christian Freudlsperger for their feedback and suggestions. Finally, I would like to thank the anonymous reviewers for their many insightful comments, which have improved the quality of the paper. Open access funding provided by Université de Fribourg.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request.

LIST OF INTERVIEWS

Interview 1	Representative of Directorate of Foreign Affairs (DFA)
Interview 2	Representative of the State Secretariat for Migration (SEM)
Interview 3	Representative of the Legal Section of the Europe Division and Secretary of the Delegation for the EU
Interview 4	Representative of the Conference of Cantonal Governments
Interview 5	Representative of the Liberal Party
Interview 6	Representative of the Green Party
Interview 7	Representative of the Social Democratic Party
Interview 8	Representative of the Swiss Employers Confederation
Interview 9	Representative of Travail.Suisse
Interview 10	Representative of the Swiss Trade Union Confederation
Interview 11	Representative of UNIA
Interview 12	Representative of the Swiss conference of institutions of social action
Interview 13	Representative of Caritas
Interview 14	Representative of Foraus
Interview 15	Representative of the European Commission

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How to cite this article: Gago, A. (2024). The domestic politics of the Swiss-EU negotiations on the Institutional Framework Agreement (and beyond). *Swiss Political Science Review*, 00, 1–18. <https://doi.org/10.1111/spsr.12623>