THE LONG ARM OF THE UNION

Norway and Switzerland, and their interpretation of state sovereignty in their relationship with the European Union

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Abstract

This article looks at two different affiliated non-members of the European Union (EU): Norway and Switzerland. They are eligible to become members of the EU, but a majority of the people of both countries decided through referendums not to apply for membership. Instead, they both have established a committed relationship with the EU through multiple agreements in order to gain unhindered access to the European single market. This article investigates the way in which these countries have interpreted state sovereignty in their relation with the European Union. The research question is: to what extent are Norway and Switzerland able to maintain their sovereignty in their relationship with the European Union? Sovereignty is operationalized by looking for cases of special deals in these relationships with the EU, which signifies the ability to exert control over the affected policy areas. The article analyzes the European Economic Area (EEA) Agreement for Norway and Bilateral Agreements I (1999) for Switzerland. The Norway-case is covered through secondary sources and the Swiss-case through process tracing of the official agreements. The findings in the Norway-case show no unique deals between the EU and Norway that benefit the country, except for some small ones in the agriculture sector and fisheries. The findings provide evidence that Switzerland has been able to strike special deals in certain policy areas that are covered by the relationship with the EU. Thus, Switzerland has been able to maintain more of its state sovereignty in its relationship with the EU than Norway.

I. Introduction

Why do countries seek to maintain sovereignty? Over the past few decades, countries have had differing relations with the EU. Most European countries have become member

states, while some have decided not to become members. Some countries in this last category instead agreed to maintain a (close) relationship with the EU; they have become affiliated with the EU. Recently, a majority of the citizens of the United Kingdom (UK) that cast their vote favoured to leave the EU. As a result, if the UK were to leave the EU, the country will create a new type of relationship with the EU: the ex-member. The core slogan of the Leave-campaign was "take back control," which referred to the ability of the country to have more sovereign power (Gamble 2018, 1216). Some of the affiliated countries also chose, following a popular referendum, not to become a member. Often, voices in the no-campaigns of these countries were referring to this notion of sovereignty as well. One important question to ask then is: to what extent have these countries been able to protect this national sovereignty?

EFTA-Members

Four of these affiliated countries — Iceland, Liechtenstein, Norway and Switzerland — are part of a European Free Trade Agreement (EFTA) and the first three are also part of the EEA. The EEA, of which the agreement was signed in 1992 and was established in 1994, is concerned with the European internal market. The EEA is an economic area that includes the EU and the EFTA countries, whereby the three EFTA members have unhindered access to the European single market.

Norway is the largest of the three EFTA EEA members and a small majority of the population voted to reject EU membership on two occasions (1972 and 1994) in referendums. As a result, the EEA Agreement is the basis of Norway's relationship with the EU. Switzerland is, as an EFTA member, not a member of the EU and is also not a member of the EEA. Just as Norway, Switzerland held a referendum, in 1992, on closer

relations with the EU, by asking citizens to vote on the desirability of EEA membership. On 6 December 1992, this membership was rejected by a small majority of the population that cast their vote, 50.34% to 49.66%, and Switzerland opted out of the EEA Agreement. Following this referendum, Switzerland closed the door towards negotiations on full EU membership. Instead, Switzerland started negotiating its relationship with the EU through several sets of bilateral agreements.

As in the case of the UK, one of the main reasons in both countries for the people to vote to stay out of the EU was the fear of loss of sovereignty (Fossum 2009, 2; Kużelewska 2013). The reasoning behind this fear was that by becoming a member of the EU, the countries would have to give up a part of their state sovereignty. I explain this concept of state sovereignty further in section 2.4, but in short, it refers to the ability of a state to exert its control independently over its own policy areas. At the same time, these countries did choose to have a close relation with the EU, because the relationship ensures them unhindered access to the internal market of the EU. But how far does the arm of the EU reach? One consequence of the free access to the single market could still be a loss of state sovereignty. In order to find out if this loss is the case for Norway and Switzerland, this article analyzes the extent to which these affiliated non-members have been able to maintain some kind of control over the policy areas affected by their relationship with the EU. The article attempts to answer the question: to what extent are Norway and Switzerland able to maintain their sovereignty in their relationship with the European Union?

The remainder of this article is structured as follows: in section II, I provide an overview of the existing literature related to the different relations between the EU and third countries, more specifically on the cases of Norway and Switzerland, and of the

literature related to the notion of sovereignty. Then, in section III I explain the way in which state sovereignty is operationalized and analyzed for the two cases of Norway and Switzerland. In section IV, I explain my findings from secondary sources on the Norway-case and in section V, I follow with a discussion on the consequences of these findings for Norwegian state sovereignty. In section VI, I present my findings from the first set of bilateral agreements between Switzerland and the EU, and in section VII, I analyze these findings and their effect on Switzerland's state sovereignty. In section VIII, I conclude with some final remarks on sovereignty and possibilities for future research.

II. EU Non-Member Affiliation

2.1 EU Partnership in a Broader Context

Currently, the EU maintains six different types of relations with third states that, as explained by Gstöhl, differ in "both the substance of the internal market which they cover and their degree of [institutionalization]" (2015, 20). What becomes apparent in the nature of these relationships is explained by John E. Fossum and Hans P. Graver in their book *Squaring the Circle on Brexit* (2018). They explain that affiliated non-members often have to comply with the EU rules and regulations if they want to have access to the European market on any level, even if they have explicitly decided not to become a member state. Furthermore, according to the authors the basic assumption in these EU-relations is that "the closer (in breadth and depth terms) the affiliation, *the stricter the requirements*" (2018, 29). As a result, "the EU sets down quite explicit conditions for the relevant types of access … and insists on mechanisms to ensure that states operate in accordance with what they have committed themselves to do in relation to the EU (2018,

29-30). In other words, the EU sets the ground rules of the relationships it holds with non-members and the partner countries simply have to accept these rules.

Norway and Switzerland, both non-members, have a close affiliation with the EU and both would be eligible to join. In reality, however, the relationships differ. Norway, on the one hand, has chosen to maintain a close relation with the EU through the EEA Agreement, instead of becoming a member. Switzerland, on the other hand, has established a relationship with the EU through sixteen bilateral agreements regarding various sectors, instead of full membership (Gstöhl 2015, 23).

2.2 Norway and the EEA Agreement

The EEA Agreement itself has been covered by other authors that focused on, for example, the bargaining process leading up to its creation (Gstöhl 1994) and its procedures of incorporating EU legislation (Fredriksen 2012). More specifically, the relationship between Norway and the EU has been extensively researched by academic authors. For example, some have focused on the legal aspects (Fredriksen 2015), some on regional aspects (Østhagen and Raspotnik 2017) and others on the consequences for the Norwegian constitution (Eriksen 2015; Holmøyvik 2015).

Most of these authors touch upon, or explicitly mention, the notion of (state) sovereignty in relation to the EEA Agreement. Different authors in the book *The European Union's Non-Members* (Eriksen and Fossum, eds. 2015) cover the relationships the EU has with third countries. Some focus specifically on the Norway-case in line with the notion of (state) sovereignty (Eriksen 2015; Egeberg and Trondal 2015; Fossum 2015; Holmøyvik 2015). The general consensus from these articles is that due to its dynamic nature, the EEA Agreement itself affects Norway's sovereignty in a number of ways. The

authors cover the EEA and its the effects on Norwegian democracy (Eriksen 2015; Holmøyvik 2015), on administrative sovereignty (Egeberg and Trondal 2015), and on political representation (Fossum 2015).

The dynamic character of the EEA Agreement and its effect on Norway's sovereignty is the core point of analysis in Fossum and Graver (2018). They provide a thorough analysis of the Norwegian EFTA EEA membership and analyze the Norwegian EEA membership as a possibility for the UK if it is to leave the EU. They attempt to construct a model for "ex-EU members;" a new type of EU-relationship (2018, xii). This book focuses extensively on the case of Norway, especially in relation to this notion of state sovereignty.

2.3 Switzerland and the Bilateral Agreements

Previous authors have focused on the unique relationship that Switzerland has with the EU (Blatter 2015; Lavenex 2009; Lavenex and Schwok 2015; Tovias 2006; Vahl and Grolimund 2006). Switzerland is different from the other EFTA states, because the Swiss voted to stay out of the EEA in 1992 through a referendum, and that "the relationship to the EU is instead based on two [sets of] bilateral agreements" and consist of a "unique … form of sectoral bilateralism" (Eriksen and Fossum 2015, 11).

There are authors that provide an analysis on the significance of Swiss European integration (Goetschel 2003) and the bilateral relationship between Switzerland and the EU (Lavenex and Schwok 2015; Vahl and Grolimund 2006). Some analyze the relationship as a possibility for other states (Tovias 2006), while others cover the sectoral bilateralism itself. For example, they analyze the way in which, on paper, the relationship appears to have a more static nature, which "[promises] a stronger preservation of Swiss

sovereignty vis-à-vis the EU than the more comprehensive, dynamic and hierarchical EEA" (Lavenex and Schwok 2015, 43). However, these authors explain that, in practice, the bilateral relationship is still more dynamic than static. A dynamic relationship would suggest that Switzerland has to adopt the EU *acquis communautaire*, which is the "body of common rights and obligations that is binding on all EU member states," in order to maintain unhindered access to the internal market (European Commission 2016).

Another analysis of the bilateral agreements is provided by Joachim Blatter, who focuses on Switzerland's specific direct democracy. He explains that, from a classic republican perspective, it makes sense for the country to maintain its "direct-democratic veto rights" instead of a "[representation] in rule-shaping and -making in Brussels," which would happen if the country were to become an EU member (2015, 52). He concludes that this ability to maintain the direct-democratic veto rights is possibly the basis for the perspective of the majority of the Swiss on the bilateral relationship with the EU, instead of full EU membership or an EEA membership.

Marius Vahl and Nina Gorlimund cover the first and second sets of bilateral agreements extensively, both on the functioning as well as on the implementation (2006). The book covers most of the aspects related to the bilateral agreements and their effects on Switzerland and focuses on the first set of bilateral agreements. They provide a thorough overview of the content of this first set of bilateral agreements, but do not describe or analyze the consequences of these agreements for Switzerland's state sovereignty.

2.4 Sovereignty

In this article, sovereignty refers to the notion of executive autonomy over policy areas in a country, and the ability to act independently and without interference from others in those policy areas. This definition refers back to the old "Westphalian" notion of sovereignty, which, as explained by Rudolph, is concerned with "political authority within a distinct territory that excluded external actors from domestic authority structures" (2005, 4). Eriksen explains this broad notion of state sovereignty as: "[s]tate sovereignty refers to the interests and willpower … and refers to the status that states are granted under classic international law … It is the right that states have in relation to other states, concerning their control of territory and inhabitants, which includes the right to issue orders backed by threats" (2015, 82). More recent concerns about globalization and interdependence have contested this notion of sovereignty, as states appear to 'give up' sovereignty (Jackson 2003). Fossum and Graver argue that in the EU-context the classical Westphalian notion of state sovereignty is no longer applicable, due to the economic interdependent context of the EU (2018, 29).

What has happened with sovereignty in the context of the EU is what Keohane and Hoffmann call "pooling sovereignty" (1991, 7). They explain that the EU, or at time the European Community (EC), has accelerated "its practice of 'pooling sovereignty' through incremental change" (1991, 7). The 'pooling of sovereignty' means: "sharing the capability to make decisions among governments, through a process of qualified majority rule. For issues on which sovereignty is pooled, authority to make decisions is removed from individual states" (1991, 7). This process, then, takes the ability to exert control independently away from individual states and places the ability in the hands of the collective, in this case the EU.

On the occurrence of pooling sovereignty Martin Loughlin goes one step further as he argues that "[t]he sovereign rights of member states are not simply pooled by consent; they are also curtailed by virtue of integration through law" in order to continue European integration (2016, 73). As a consequence, "the capacity of a member state to rule by means of law is restricted by virtue of novel rights and obligations declared by the Court of Justice and which assume priority over domestic law" (2016, 73). This restriction leads to what he calls the "erosion of sovereignty" (2016, 73). He continues to explain that the "erosion of sovereignty" is caused by the "integrationist agenda" set by EU institutions that use, in order to achieve this agenda, an "instrumentalization of law, without the explicit authorization of member states" (2016, 73). By choosing to stay outside the EU, Norway and Switzerland decided not to pool their sovereignty and avoid this 'erosion of sovereignty,' but instead make their own agreements in order to gain free access to the European single market.

However, Kux and Sverdrup (2000) argue that even affiliated non-member states are affected by the role of 'Europeanization' across formal EU borders. They define Europeanization as "a process under which European-level institutions and policy-making grow in importance relative to those at the level of nation states … and it demands substantial institutional reorganization and policy adaptation at the domestic level" (2000, 238). They use Norway and Switzerland as their cases to show this extension of Europeanization "beyond the formal boundaries of the EU" (2000, 240). In other words, they explain that through the close affiliation with the EU, the sovereignty of both countries has been affected by EU legislation, more so in Norway than in Switzerland (2000, 260). Even though the analysis of the two cases is thorough and adds significantly

to the discussion on state sovereignty, the article was written in 2000 and does not cover the bilateral agreements between the EU and Switzerland to its full extent.

In this article I focus on the notion of state sovereignty as the ability of a state to control its own territory independently and negotiate its own agreements with the EU, while at the same time being (inter)dependent on the unhindered access to the European single market. Norway and Switzerland appear to be, on the one hand, holding on to the Westphalian notion of sovereignty, but, on the other hand, also want to be as close as possible to the EU, and as a result have had to give up some of that sovereignty. Although the case of Norwegian EEA membership has been thoroughly analyzed on the notion of state sovereignty, the literature on the bilateral Swiss-EU relations is not as extensive and falls short on a full discussion on this issue.

III. Operationalizing State Sovereignty

I analyze two different cases of affiliated non-members of the EU: Norway, as an EEA member, and Switzerland, as a bilateral partner. Although EU member states formally have to pool sovereignty in the EU, pooling sovereignty is not necessary for affiliated non-members. But, what effect does the affiliation with the EU have on their sovereignty? The premise of this article is that both countries have established agreements with the EU and have gained free access to the European single market, but wanted to maintain a part of their state sovereignty in these relations. Both countries retain sovereignty in theory, because both could withdraw from the agreements and they remain the official authority that could act in one way or another. However, in the remainder of this article, I examine the specific effects of these agreements on the state sovereignty in practice. So, in what

way the relationships affect the ability to act independently of these two countries in certain policy areas.

In order to operationalize the concept of state sovereignty, I investigate to what extent the countries have been able to strike deals that differ from EU membership, and help the country to retain its power to act independently. I analyze whether there are exceptions within the agreements the EU has with both Norway and Switzerland. If so, that could qualify as evidence that these countries are able to assert their state sovereignty, and maintain the ability to act independently and without restrictions in those policy areas affected by agreements. In the case of Norway, the focus of the analysis is on its role in the EEA Agreement. In the case of Switzerland, the focus is on the first set of sectoral agreements: Bilateral Agreements I (1999).

To investigate the case of Norway I mainly use secondary sources, as other authors have covered this case extensively in relation to sovereignty (Eriksen 2015; Fossum and Graver 2018; Gstöhl 2015; Kux and Sverdrup 2000). One of the main sources of information is Fossum and Graver's book and their analysis of Norway as a possible model for the UK after it leaves the EU.

There is not the same amount of comprehensive studies on the EU-Swiss relationship. Therefore, I use process tracing to provide a within-case analysis of the bilateral agreements. Process tracing allows me to analyze and explain a part of the relationship Switzerland has with the EU in relation to sovereignty. The theoretical starting point for process tracing is the assumption that being a member of the EU, or having a close relationship with the EU, affects state sovereignty. The first set of bilateral agreements serves as empirical evidence, to analyze whether Switzerland's sovereignty is affected. In line with Derek Beach's explanation of the role of process tracing I adopt

this research method "… for tracing causal mechanisms using detailed within-case empirical analysis of how a causal process plays out in an actual case" (2017, 2). This paper is concerned with the causal mechanisms in the case of Switzerland. The cause in this situation is Switzerland's unhindered access to the European single market, the outcome is the affected state sovereignty, and the causal mechanisms that are being traced are the bilateral agreements.

The subject of analysis in the Swiss-case is Bilateral Agreements I (1999), which consists of seven sectoral agreements. The focus of this paper is on these seven documents, which limits the scope of the research to the formal and legal language of the bilateral relationship. As a result, this paper leaves out the practical discourse and implications of the agreements. Generally, a relationship with the EU affects a country's ability to exert control over the concerned policy area. Therefore, I analyze the texts of the bilateral agreements in order to trace if there are parts in these documents that signify a special deal between the EU and Switzerland. It is also possible that the text signifies a (complete) copy of the EU's *acquis communautaire*. This signifier becomes visible when the articles in the text mention a 'Council Regulation' as the point of departure. This exercise allows me to operationalize the term 'sovereignty' in the analysis of the texts. If the latter of the two signifiers occurs, it suggests that Switzerland has not been able to exert its state sovereignty in that bilateral agreement. If the former of the two becomes visible, it suggests that Switzerland has been able to maintain (a part of) its ability to act independently in that particular issue and it would suggest a limitation to the extent of which sovereignty is affected. Even though these signifiers do not necessarily say anything about the practical implications of the agreements, formally they indicate that Switzerland has been able to have a relationship with the EU and gain unhindered access

to the single market, but has preserved a portion of its state sovereignty in this relationship.

In the following section, I first present the findings in relation to the Norway-model through secondary sources and discuss the implications in relation to state sovereignty. Then, I present the findings in relation to the Swiss-model and discuss these in regard to state sovereignty (see Table 1 below for a comprehensive overview of the findings and lessons learnt of both countries).

IV. Norway and the EEA Agreement

Norway has a deeply rooted relationship with the EU. Fossum and Graver explain that "Norway is associated with the EU through more than 130 agreements" and, as a result, has absorbed around three-quarters of EU law when compared to full EU members (2018, 41). The EEA Agreement plays a large role in this relationship and the agreement holds a core section that includes 129 articles, with 49 protocols and 22 annexes (Fossum and Graver 2018). The EEA includes all EU member states and three of the four EFTA members: Iceland, Liechtenstein, and Norway. Its aim is to extend the European single market to third parties. Nevertheless, the agreement is not as extensive as EU membership, because it is "not a supranational legal order" and "the EFTA states retain, formally speaking, their legislative and judicial sovereignty" (2018, 42).

Fossum and Graver clarify that the premise of the EEA Agreement is public international law, which ensures that "national law determines the extent to which international law is to have effect in the internal legal orders national law" (2018, 67). This premise means for the EFTA countries that "EU's legislation — in contrast to the situation in the member states — is not formally anchored in the legal precepts of

Table 1. *Main findings and lessons learnt of EU relationship with Norway and Switzerland*

Norway – EEA Agreement	*Switzerland – Bilateral Agreements*
Formal EEA institutions (ESA, EFTA Court) incorporate EU law.	No formal institutions are created, except for the independent authority that oversees the agreement on government procurement. The ECJ oversees compliance only in Civil Aviation Agreement.
EEA Joint Committee: provides the ability to help shape new EU decisions, but all EFTA countries have one combined vote, EU has the other vote. So, Norway has one fourth of the votes in this Committee.	Sectoral Joint Committees for each bilateral agreement: Switzerland has one vote, EU the other. So, Switzerland has half of the votes in these Committees.
Agreement is as valid as Norwegian law.	No formal application of EU law in Switzerland.
Main part of the initial agreement is not renegotiated each time EU adopts new legislation.	Parts of/Entire initial agreement are/is renegotiated each time EU adopts new legislation.
Norway has the formal ability to reject new EU legislation, but has never used this right. New EU legislation is presented as 'take it or leave it.'	Switzerland (and the EU) can terminate one of the agreements at any time, which allows the Swiss more flexibility, but doing so would also terminate all of the other agreements.
Dynamic character of the agreement: new EU legislation is added through annexes to the original agreement.	Static character of the agreements due to sectoral approach and renegotiation of agreements when new EU legislation is applicable.
Some sectors, most importantly agriculture and fisheries, are excluded from the original agreement, but through annexes have (partly) been included.	Each sectoral agreement affects (part of) one sector. Large part of these agreements take EU legislation as the point of departure.
Norway does not have any decision-making influence on (new) EU regulations, but most of the time it has to adopt it.	Switzerland does not have any decision-making influence on EU regulations.
The formal status of non-member provides Norway symbolic sovereignty.	The formal status of non-member provides Switzerland symbolic sovereignty.
Norway maintains the ability to strike trade deals with third countries jointly with the EFTA members. The EEA does not cover the Common Trade Policy of the EU.	Switzerland maintains the ability to strike trade deals with third countries.
Norway has been able to exclude subsidy policies on agriculture and the control over marine sources from the EEA Agreement	Switzerland has struck special deals in: agriculture, freedom movement of persons, overland transport and government procurement.

Source: Author's own compilation

supremacy and direct effect" (2018, 45). Nevertheless, the agreement does incorporate "EU legislation … and duties to ensure that EEA rules are given effect in national law and the ways in which EU legislation is valid in the member states" (2018, 67). This incorporation means that the EEA Agreement plays a similar role in the EFTA countries, and has a similar content as EU law in member states, despite the previously mentioned premise.

Moreover, Fossum and Graver illustrate that, in Norway specifically, the agreement has become part of national law and is as "'valid as Norwegian law'" (2018, 70). The EFTA Surveillance Authority (ESA), an institution that oversees the practical implementation of the EEA Agreement and its amendments, "ensures that legal incorporation is in accordance with EU law" (2018, 45). Furthermore, the EFTA Court is formally a separate court from the European Court of Justice (ECJ), but "in practice ensures the incorporation of EU law" in the EFTA countries (2018, 45).

Another element of the EEA Agreement is that, as the EU expands and advances by creating new legislation to deal with additional issues, the EEA develops with it. Eriksen explains that the main part of the initial agreement consists of a "dynamic framework … that does not need to be renegotiated whenever the EU adopts a new regulation. The agreement is continually updated so that the laws and regulations remain consistent throughout the EEA" (2015, 87). What Fossum and Graver note is that formally, "[t]he EEA Agreement does not oblige the EFTA states to take on new EU legislation, but thus far in the 23 years of the EEA's existence Norway has never used its right to reject an update of the agreement" (2018, 90).

New EU legislation is added to the agreement through annexes. These annexes are included in the main agreement and, as a result, over 11,000 new EU laws have been

added to the agreement since 1992 (Fossum and Graver 2018). The legislation is formally not incorporated straight away, but is discussed in the EEA Joint Committee (EJC) before implementation. This EJC was constructed with the signing of the EEA Agreement and consists of representatives from the three EFTA countries and the EU. Gstöhl clarifies that discussion on new EU legislation happens "in the so-called decision-shaping phase after the EC transmitted its proposal to the EU Council and the European Parliament as well as to the EEA EFTA states" (2015, 21). Fossum and Graver explain that, in practice, whenever a new EU legislation is created that is relevant for the EEA countries, "a decision must be taken by the EEA Joint Committee on whether to include it in the EEA Agreement or not. The EFTA has one vote in the EEA Joint Committee, so all the EFTA countries must agree before an act can be included in the EEA Agreement" (2018, 71). Thus, the three EFTA countries have to consider the choices of the two other countries in this decision-shaping phase and have to reach a consensus before voting. Additionally, Kux and Sverdrup illustrate that Norway has the right to send experts and officials to Brussels to participate in "meetings of the Commission in the preparatory stage and implementation of new regulations and directives. At present, Norwegian experts participate in more than 200 different joint committees" (2000, 247).

Kux and Sverdrup note that in the EJC, all parties have a "formal right of veto," but the EFTA countries are hesitant to use this right, because the veto would affect the EEA agreement in its entirety (2000, 242). The reason for this hesitation is that EU member states "may threaten to suspend certain parts of, or terminate the entire EEA Agreement if the veto is used," which endangers the unhindered market access for all EFTA countries, and not just the one using the veto (2000, 242).

What is not included in the EEA Agreement are the Common Agriculture and Fisheries Policies, the Customs Union, the Common Trade Policy, the Common Foreign and Security Policy and the Monetary Union (EMU). Eriksen explains that, as a result of this absence, "Norway retains the status of a sovereign state that is free to pursue its own foreign policy; it is seen as able to protect its own vital interests" in these areas that have been excluded (2015, 87). The exclusion of certain areas is especially important for the agricultural sector and fisheries, which are of vital interest to the country. For example, Norway has been the largest producer of salmon globally for over ten years (Ernst & Young 2017). However, Fossum and Graver illustrate that the dynamic character of the agreement has ensured that even parts of these areas have now been included: "40% of the rules and regulations that Norway incorporates are in the field of agriculture as a result of the agreement on veterinary issues … Important reasons for inclusion were the need for market access for fish and the sheer dynamics of spillover effects from related policy areas" (2018, 88). Nevertheless, subsidy policies in the agricultural sector and control over marine resources are still under national Norwegian control and are not affected by the EEA Agreement (2018, 89). The ability to control these specific elements of the sectors was the original goal for Norway to exclude them from the agreement in the first place (2018, 89).

V. The Norway-Model and State Sovereignty

The findings on the relationship between Norway and the EU show a large consistency with the rules and regulations that bind EU member states. In order to create a homogeneous internal market, the EU requires the three EFTA EEA members, just as EU member states, to adopt and implement EU regulations in a dynamic manner. The

dynamic nature of the agreement is key for the progressive relation between the EU and the EEA countries and essential to the agreement.

Norway does not have any decision-making influence on the EU regulations that affect the country in policy areas that are part of the agreement. Norway is, however, able to influence the decision-shaping phase of new legislation in the EEA Joint Committee, but even this power is limited. The country has to share this ability with the two other EFTA countries and they have to reach a consensus, because they only have one vote combined in the EEA Joint Committee. Even though the advisory power in EU committees does provide Norway with some influence, the influence is highly informal and does not provide any guarantees.

One key element in the findings is that although Norway has the formal right to reject EU legislation in the Joint Committee, Norway has never used this right in practice. The fact that Norway has never used this right to reject new legislation may suggest that Norway still is limited in its ability to act independently. Kux and Sverdrup explain that one of the main reasons for this limited ability is that although all parties have a formal (veto) voting right in the Joint Committee, "the legislation presented … is already agreed upon among the EU member states in the Council of Ministers," and therefore, "it is presented as a 'take it or leave it' choice" (2000, 242). This choice places significant limitations on Norway's ability to exercise influence and act without restrictions in the policy areas connected to the agreement and, thus, limits Norway's state sovereignty.

By contrast, Norway has been able to keep certain areas out of the main agreement: the ability to strike trade deals with other countries and, most importantly, the agriculture sector and fisheries. However, the findings show that the latter have become affected by EU regulations due to the dynamic character of agreement. Fossum and

Graver argue that, as a result, "EFTA countries have ensured market access but at the expense of state sovereign control and democratic self-governing, not formally speaking, but in actual practice" (2018, 90). Nevertheless, the fact that the subsidy policies and the control over marine resources are still in the hands of the national government exemplifies some element of control in these areas.

Most of the institutions that were formally created with the EEA Agreement, for example the ESA and the EFTA Court, play a significant role in the transfer of EU law and regulations into the EFTA countries. Although this article does not cover all of these institutions extensively, what should be noted here is, as Kux and Sverdrup explain, that because of the agreement, "[a] complex set of joint institutions was established to control and monitor political, legal, social and cultural cooperation" (2000, 242). Formally, the institutions are part of the EEA Agreement and are separate from EU institutions. However, often these institutions act in accordance with EU law.

What these findings suggest is that Norway's state sovereignty in most areas has been significantly affected by its relation with the EU. The question then rises: why does Norway choose to remain in this relationship and not become a full EU member to gain more decision-making power? Fossum and Graver explain that "[t]he formal status of non-membership is politically important. It provides symbolic reassurance of constitutional-democratic sovereignty, and enables the no-parties to reassure their voters that as 'parties in the electorate' — those specific issues that the electorate associates that particular party with … — they have successfully managed to keep Norway out of the EU" (2018, 92). Thus, the formality of non-membership provides a symbolic sovereignty for Norway.

VI. Switzerland and Bilateral Agreements I (1999)

After the referendum on EEA membership, the first set of bilateral agreements between Switzerland and the EU in 1999 consisted of seven sectoral agreements. The seven sectors that were included are: agriculture (Agricultural Products), civil aviation (Air Transport), Free Movement of Persons, overland transport (Carriage of Goods and Passengers by Rail and Road), public procurement markets (Certain Aspects of Government Procurement), research (Scientific and Technological Cooperation), and technical barriers to trade (Mutual Recognition in Relation to Conformity Assessment). In what follows, I discuss each of these sectors separately. I found that large parts of these agreements, and some completely, have taken EU regulation as the point of departure. However, in various agreements I also found evidence of a special deal between Switzerland and the EU.

6.1 General Findings

There are some unique elements in the relationship that become apparent in all of the agreements. First, all seven agreements initiate a Joint Committee (JC) on the topic of each individual agreement. Consequently, there is not one overarching institution that oversees the entire relationship between the two parties, but the relationship is regulated per sector. Both parties — the EU and Switzerland — have an equal voice in those committees. The JCs are mostly concerned with implementation, future alterations to the agreements, and dispute settlements. Secondly, all of the agreements state that the EU grants Switzerland the 'observer status' in European committees related to the sectoral agreements. Thirdly, all agreements cover only the relationship between Switzerland and the EU. As a result, any trade agreement with third parties, for both the EU and Switzerland, is not affected by these agreements. This stipulation is explicitly stated in all

the agreements. Fourthly, all of the agreements contain a part on early termination of the agreement, which is an option for both parties. However, this part also states that if one of the agreements is ended, all of the other six agreements are also terminated. Finally, none of the agreements suggest that (new) EU law has to be incorporated into Swiss law directly in order for the agreement to continue. New legislation is discussed and decided upon in each JC relevant to the policy area. In the remaining parts of this section I briefly present the bilateral agreements and whether there are any elements in the agreements that signify exemptions or exceptional deals for Switzerland.

6.2 Agriculture (A)

This agreement covers some of the areas of the agricultural sector that are important for the Swiss-EU trade. The aim of the agreement is "to continue to work towards achieving gradually greater [liberalization] of trade … in agricultural goods" (A 2002, Art. 13, par. 1). The areas that are covered include: "Cheese, Plant Health, Animal feed, Seeds, Trade in Wine-Sector Products, Names of Spirit Drinks and [Aromatized] Wine-Based Drinks, Organically Produced Agricultural Products and Foodstuffs, Recognition of Conformity Checks for Fruit and Vegetables Subject to Marketing Standards, and Animal-Health and Zootechnical Measures Applicable to Trade in Live Animals and Animal Products" (2002, Annexes 3-11). Although the agreement follows the EU's *acquis communautaire* to a great extent, the agreement is not as comprehensive as the Common Agricultural Policy (CAP) of the EU. The CAP covers the trade of over twenty types of products and is not only concerned with (the liberalization of) trade, but also with, for example, subsidies.

6.3 Civil Aviation (CA)

In the agreement on air transport, there is no explicit deviation from the regulations that exist in the EU. For example, the agreement states that "the provisions laid down in this Agreement as well as in the regulations and directives specified in the Annex shall apply under the condition set out hereafter. Insofar as they are identical in substance to corresponding rules of the EU Treaty and to acts adopted in application of that Treaty" (CA 2002, Art. 1, par. 2). The agreement furthermore states that any future alterations to EU regulations in this policy area will first be processed through the relevant JC.

6.4 Free Movement of Persons (FMP)

This agreement involves the movement of people between Switzerland and the EU. Part of this agreement includes a special deal for Switzerland. In Article 10 there is a significant difference between the implementation restrictions for the Swiss side and the EU side. The article is concerned with "[t]ransitional provisions and development of the Agreement" and lays out the practical implications of the implementation (FMP 2002, Art. 10). The agreement came into force in 2002 and states in paragraph 1 that during the first five years, "Switzerland may maintain quantitative limits in respect of access to an economic activity for the following two categories of residence: residence for a period of more than four months and less than one year and residence for a period equal to, or exceeding one year" (2002, Art. 10, par. 1). This stipulation means that Switzerland holds the ability to set a quota for certain EU citizens applying for residency in Switzerland for five years after the enforcement of the agreement.

Subsequently, paragraph 3 states a maximum amount of residence permits for the previously mentioned groups of EU residents (2002, Art. 10, par. 3). An even extra

possible limitation to the resident permits is explained in paragraph 4, where the conditionality is expanded further upon (2002, Art. 10, par. 4). In short, the agreement states that Switzerland has the ability to limit the amount of resident permits provided to EU citizens for up to twelve years after the initiation of this bilateral agreement.

By contrast, there is not such a restriction for Swiss citizens that apply for an EU residence permit. The only limitations exist in the first two years after the implementation of the agreement, during which both parties "may maintain the controls on the priority of workers integrated into the regular labour market and wage and working conditions applicable to nationals of the other Contracting Party" (2002, Art. 10, par. 2). This particular ability of control falls away after two years for both parties, leaving only the conditionality applied to EU citizens mentioned above.

6.5 Carriage of Goods and Passengers by Rail and Road (CGPRR)

The bilateral agreement on overland transport is concerned with transport in the broadest sense. Although a large part of the agreement follows EU regulations, one segment on the weight limit of trucks shows a special deal between the EU and Switzerland.

First, the agreement states in article 7, paragraph 3, that from 2005 onwards "Switzerland shall make its legislation on the maximum permissible weight limits for these vehicles in international traffic equivalent to that in force in the Community" (CGPRR 2002, Art. 7, par. 3). This provision means that Switzerland has to accept the weight limit set by the EU, which is defined in Article 8, paragraph 1 as a maximum of 40 tons (2002, Art. 8, par. 1). Secondly, however, in relation to this acceptance, Switzerland is allowed to introduce "a non-discriminatory tax on vehicles" (2002, Art. 30, par. 1). The agreement sets out a detailed description on how much Switzerland is

allowed to tax vehicles based on their weight, but the overall consensus is that the more a vehicle weighs, and therefore pollutes, the more tax Switzerland is allowed to charge (2002, Art. 30).

6.6 Government Procurement (GP)

This agreement affects the liberalization of certain public goods markets for both the EU and Switzerland. Most of the agreement follows the same liberalization processes as those of the EU. One significant element is stated in Article 8, paragraph 1: the "implementation of this Agreement shall be monitored within each Party, by an independent authority. This authority shall be competent to receive any complaint or grievance concerning the application of this Agreement and shall act promptly and effectively" (GP 2002, Art. 8, par. 1). Furthermore, the agreement states that within two years after 2002, the authority would also have the ability "to initiate proceedings or take administrative or judicial action" (2002, Art. 8, par. 2). This element signifies a slight difference from the other bilateral agreements, where the monitoring power lies with the JC. Although there is a JC related to this agreement, which is also concerned with disputes, this independent authority provides an extra autonomous body that deals with issues concerned with this agreement.

6.7 Research (R)

This agreement provides Switzerland unhindered access to EU research programs and enables an easier share of resources related to research. In exchange for the access, Switzerland has to pay the EU money. This amount is calculated proportionally, "to meet the Commission's financial obligations stemming from work to be carried out in the forms

necessary for the implement, management and operation of those [programs] and activities covered by this Agreement" (R 2002, Art. 5, par. 1). This agreement shows no significant difference between EU membership and the Swiss-EU relationship on this topic.

6.8 Technical Barriers to Trade (TBT)

This agreement focuses on recognizing technical barriers to trade and attempts to harmonize "the technical regulations, standards and principles governing implementation of conformity assessment procedures" (TBT 2002, Statement of Agreement). There is no special deal in this agreement for Switzerland, and, as stated in article one, paragraph two, the conformity procedures "shall in particular indicate conformity with the Community legislation" (2002, Art. 1, par. 2). This section indicates that Switzerland has to adapt EU legislation in this particular policy area.

VII. Switzerland and State Sovereignty

7.1 General Consequences

The creation of JCs for every sectoral agreement means that, formally, Switzerland not only has had a voice in the establishment of the agreements, but that the country maintains that voice in future negotiations. These negotiations can be concerned with, but are not limited to, disputes related to the existing agreement, implementation issues of the agreement, future alterations to elements of the agreement, and changes in legislation in either party's own regulations. Both parties will be able to voice their concerns regarding each agreement equally. So, instead of having 1/28 of a voice as a member state, Switzerland has half of the 'power' in each JC. This ability to voice concerns allows the

country to increase the chance to influence negotiations significantly. However, these JCs are only concerned with the language and implementation of these bilateral agreements and do not have any substantial influence in EU decision-making.

The fact that both parties maintain the right to make deals on trade agreements with third countries, provides Switzerland a certain level of autonomy. As a result, the country has been able to make trade agreements with countries from all over the world, although most were made within the framework of EFTA (SECO 2018). By contrast, EU member states are subject to the EU's common trade policy and are therefore not allowed to make their own trade deals with third countries.

The formal possibility of terminating one of the agreements allows Switzerland a positive level of control. If the country is dissatisfied with how the agreement turns out, it holds the capacity to dismiss the agreement. However, as mentioned in the findings, the clause in all the agreements states that if one of the parties cancels one agreement, all of the other six are also terminated. Therefore, this provision only provides control over the policy areas in a formal sense.

7.2 Consequences for Policy Areas

On the one hand, what becomes apparent from the findings is that Switzerland has had to adopt the EU regulations fully in a few areas: civil aviation, research and technical barriers to trade. Therefore, state sovereignty was affected by the country's relationship with the EU in these areas, because the country can no longer act as an independent authority. On the other hand, the findings also demonstrate that there are areas in which Switzerland has been able to strike a special deal with the EU: agriculture, free movement

of persons, carriage of goods and passengers by rail and road, and government procurement.

The agreement between Switzerland and the EU on agriculture allows Switzerland, partly, to act independently and maintain its sovereignty in this policy area. The deal is concerned with those products that are relevant for Switzerland and regarding those products, Switzerland has to adopt EU regulations. However, this agreement is not as extensive as the EU's CAP and is therefore also not as intrusive. Switzerland's agricultural sector is not completely integrated into the EU, which allows the country to make decisions on parts of this sector that are not included in the agreement.

In the agreement on free movement of persons the difference in conditionality between EU citizens and Swiss citizens during the first twelve years of this agreement signifies a special deal. The fact that EU member states have to eliminate all barriers for Swiss citizens within two years after the enforcement of the agreement and that Switzerland is allowed to maintain quotas and barriers for up to twelve years, is a significant exception. This agreement shows that the country formally has been able to document that it will maintain a part of its sovereign power over the influx of persons from the EU for a set amount of time, and that this form of control is not extended to EU countries.

The fact that Switzerland is allowed to tax overland vehicles in relation to their weight on Swiss territory is an interesting element of the agreement on overland transport. The findings show that the country has to accept most of the EU regulations in this policy area. However, Switzerland is able to tax specifically vehicles from EU countries that weigh over a certain amount and thus cause more pollution. This element of control allows the country to make it more expensive for European vehicles that pollute more to

use Swiss roads. Therefore, the agreement indirectly provides Switzerland independency in the decision which vehicles use the roads.

The only significant element worthy of noting in the agreement on government procurement in relation to state sovereignty, is the independent authority. In EU member states, liberalization of government procurement follows the Court of Justice of the EU, but the independent authority of the bilateral agreement is not formally bound by EU law. The agreement allows Switzerland to go to an autonomous body that deals with issues related to the agreement, and therefore makes the country less dependent on the JC during dispute settlements. The authority monitors the implementation of the agreement in both parties and can take judicial action. The difference from other agreements is that in those, half of the JC's voice comes from the EU, whereas the authority created here is supposed to be independent and, therefore, can make an unbiased decision. This independent body does not necessarily provide Switzerland with the ability to exercise its state sovereignty over this policy area, but it also does not mean that the country has to cede that sovereignty to the EU; Switzerland transfers the control to an independent authority.

VIII. Conclusion

Although Norway and Switzerland did not become members of the EU, they did establish a close relationship with the EU. This article has investigated in what way this relationship has affected the state sovereignty of these two countries. The findings of this study reveal that for both affiliated non-members, state sovereignty is affected by the relationship with the EU. However, in the case of Norway, the effects on state sovereignty become more evident than in the case of Switzerland. Although both countries have made deals with the EU in which they have had to adopt the EU's regulations, Switzerland appears to have

been able to strike some significant deals with the EU, outside of the EU's legal framework. This ability means that the bilateral relationship between Switzerland and the EU affects state sovereignty less than the EEA relationship between Norway and the EU.

This study has shown that 'sovereignty' has a dynamic character, and that sovereignty is not an either/or question, whereby a country either holds sovereignty, or it does not. The article provides evidence that there are different levels of sovereignty. At first glance, it may appear as if Norway and Switzerland have similar relations with the EU: both countries have agreed to make deals with the EU and conform to EU regulations to an extent in order to gain unhindered access to the European single market. What this article has also shown, however, is that there are significant differences in the way in which sovereignty has been affected in these two countries.

Switzerland has been able to negotiate agreements on different sectors, which sometimes led to a direct incorporation of EU regulation, but sometimes the country was able to strike a special deal. The agreements are sector-based and do not have an overarching institution that controls or affects them. The relationship allows Switzerland to retain its control over specific policy areas and act independently, and thus, the country maintains its sovereignty to a certain extent. At the same time, new EU legislation that would affect the current agreement has to be negotiated in the JCs, which provides Switzerland the opportunity to voice its concerns as a full partner.

By contrast, the EEA Agreement is more intrusive and provides an encompassing body, because the agreement is incorporated into Norway as national law. Although the EEA Agreement is not as extensive as full institutionalized membership and the countries do not formally cede sovereignty, the agreement holds elements that foster similar aspects. For example, the EEA Agreement does not allow for states, e.g. Norway, to

negotiate individual deals with the EU on specific sectors, but requires one coherent voice from all three countries. At the same time, the EEA Agreement has in itself the ability to adopt new EU legislation, without renegotiating the original agreement. Norway has almost no influence on any decisions made in EU legislation that often modify the agreement. Furthermore, the agreement initiated several institutions that incorporate EU legislation.

All of these elements contribute to the fact that this type of arrangement has a greater restrictive effect on sovereignty than the bilateral Swiss-EU relationship. This evidence is in line with the argumentation by Kux and Sverdrup that 'Europeanization' has extended beyond the formal borders of the EU and that 'Europeanization' has formally become more visible in Norway than in Switzerland.

The research reported in this article focused only on the first set of bilateral agreements. There have been other sets of bilateral agreements between Switzerland and the EU that have not been taken into account in this study. This research has looked only at the official language of the bilateral agreements and not at the negotiations, speeches or other discourse surrounding the agreements. Further work would need to address the practical implications of the bilateral agreements. Such a follow up study might enable us to see whether the special deals that were struck on paper contribute to the ability, in practice, of controlling those policy areas. Research on these practical implications may allow us to say more about the role of sovereignty in the relationship between Switzerland and the EU.

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