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The Last Gallic Village?

An Empirical Analysis of Switzerland's Differentiated European Integration 1990 – 2010

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Abstract

This thesis examines the European policy of Switzerland, a subject which has been hotly debated in Switzerland for many years. While most Western European countries have participated in building an economic and political organisation, which is the most developed regional integration project in the world, Switzerland still regulates its ties with neighbours by means of international treaties and occasionally transposing rules of this organisation, namely the European Union (EU), into domestic legislation. In contrast to its neighbours, Switzerland neither delegated legislative nor judicial competences to intergovernmental or supranational authorities. Despite this special situation, the instruments of Swiss European policies show similarities to the European integration of the EU member states. On the one hand, sectoral agreements with the EU as well as unilateral rule transpositions into domestic legislation have historical predecessors. Also other countries, which were more reluctant towards European integration, pursued similar policies at different time points. On the other hand, Switzerland's European policies rely heavily on EU law, which builds the core of European integration. Is it thus justified to call Switzerland the last Gallic village in Western Europe? The thesis examines this question based on an empirical dataset, which measures the integration quality of Switzerland's European policies between 1990 and 2010.

The dataset builds on the concept of differentiated integration, which describes the differential validity of EU rules. Even though Switzerland is not an EU member, EU rules are sometimes extended to Switzerland, because they are implicitly or explicitly included in sectoral agreements or transposed into domestic legislation. Therefore, Switzerland is conceived of as a case of differentiated integration. The dataset encompasses all sectoral agreements with the EU and all federal laws, and examines the integration quality of changes to this body of legislation. It is necessary to measure the integration quality, because the extension of EU rules to Switzerland differs from the way EU law is valid for member states on two dimensions: the degree of the substantive congruence with EU law and the strength of the legal link to the EU. Therefore, the dataset measures the substantive and legal integration quality of legal changes. Questions of implementation and enforcement are not subject of the thesis.

The empirical analyses showed that substantive extensions of EU rules to Switzerland appeared in domestic legislation as well as sectoral agreements throughout the whole research period. Extensions of EU rules with a stronger legal link to the EU became more frequent in recent years and were often related to the agreement packages Bilaterals I and Bilaterals II. Some of these agreements needed implementation measures in domestic legislation and some included obligations to continuously adopt new relevant EU rules. The thesis explains these developments with the help of supranationalist and intergovernmentalist theories of European integration and shows that though Switzerland is a special case, it is not a theoretical outlier. Bivariate and multivariate data analyses show that for the development of Switzerland's differentiated integration the institutional quality of the different integration instruments plays an important role. This finding is in line with the supranationalist view of integration. The clearer the link of a sectoral agreement to the EU and to EU law, the more frequent the agreement is revised and the more often these revisions refer to EU rules. In addition, more frequent agreement revisions are related to less frequent rule transpositions into domestic legislation.

Bivariate and multivariate analyses also showed that Switzerland's most important integration steps are the result of negotiations at the domestic as well as intergovernmental level. This corresponds to a core argument of liberal intergovernmentalism. Negotiations play an even more important role for Switzerland than for EU member states, because every integration step, which is not based on an already existing agreement provision, has to be negotiated anew. This succeeds if at the national and on the international level issues, which lie in the interest of different groups, can be linked. Therefore, Switzerland's differentiated integration is the result of compromises, which makes it difficult to explain with economic interests or developments, although theoretically these factors are also deemed relevant. Political factors like public attention, issue salience, seat share of pro-European parties and the domestic decision-making process are more important.

The analyses also indicated several points, which are of special relevance for Switzerland and are also significant for research on European integration in general. The different instruments of Switzerland's European policies are correlated to different explanatory factors. For example, the political factors mentioned above are especially important for new sectoral agreements and implementation measures in domestic legislation, whereas revisions, which are foreseen by specific agreement provisions, are not related to these political factors. Simi-

larly, new sectoral agreements, important agreement revisions and implementation measures are sometimes subject to popular referenda. In contrast, the day-to-day developments of the agreements as well as unilateral transpositions of EU rules into domestic legislation are rarely brought to the polls. In sum, the results suggest that the day-to-day development of Switzerland's differentiated integration is supported by a broad consensus. This consensus enables its rather dynamic development despite the many veto points of Switzerland's political system and this development can be explained by European integration theories. However, the Swiss way of differentiated integration is fragile, because it is not based on a general decision in favour of integration and because Switzerland preserved its freedom to decide case-by-case on integration, which implies that integration can also be rejected. This perhaps happened in a recent popular vote on immigration. The Swiss case shows that integration can develop in a euro-sceptic country with direct democratic political institutions, but this way of integration requires many compromises and can always be called into question.

Zusammenfassung

Die vorliegende Dissertation behandelt die Europapolitik der Schweiz und damit ein Thema, welches in der Schweiz seit Jahren kontrovers diskutiert wird. Während die allermeisten westeuropäischen Länder an einem wirtschaftlichen und politischen Integrationsprojekt bauen, das seinesgleichen sucht, regelt die Schweiz ihre Beziehungen mit der Europäischen Union (EU) bis heute in internationalen Abkommen und übernimmt nach Bedarf EU Bestimmungen ins Landesrecht. Im Gegensatz zu ihren Nachbarländern hat sie weder Gesetzgebung noch Rechtsprechung an intergouvernementale oder supranationale Behörden delegiert. Trotz dieser Sonderrolle weisen die Instrumente der Schweizer Europapolitik Ähnlichkeiten zur europäischen Integration von Mitgliedstaaten der EU auf. Einerseits hat die Schweiz weder bilaterale Verträge mit der EU noch Anpassungen des Landesrechts als Antwort auf die Europäische Integration ‚erfunden'. Vielmehr verfolgten auch andere weniger integrationsfreudige Länder zu verschiedenen Zeitpunkten ähnliche Politiken. Andererseits steht die Schweizer Europapolitik in engem Zusammenhang mit EU Recht, welches den Kern europäischer Integration darstellt. Kann die Schweiz trotzdem als letztes gallisches Dorf in Westeuropa bezeichnet werden? Die Dissertation untersucht diese Frage auf der Grundlage einer empirischen Datensammlung, welche die Integrationsqualität der Europapolitik der Schweiz zwischen 1990 und 2010 misst.

Die Datensammlung baut auf dem Konzept der differenzierten europäischen Integration auf, welches die differenzielle Gültigkeit von EU Recht beschreibt. Durch die bilateralen Abkommen und Anpassungen des Landesrechts gelten Rechtsakte der EU manchmal trotz ihrer Nichtmitgliedschaft in der EU auch für die Schweiz, weshalb die Schweiz als ein Fall differenzierter Integration zu verstehen ist. Entsprechend umfasst die Datensammlung alle Abkommen mit der EU sowie alle Bundesgesetze und misst die Integrationsqualität von allen Änderungen dieses Rechtsbestandes. Diese ‚Gültigkeit' von Rechtsakten der EU für die Schweiz unterscheidet sich jedoch im Hinblick auf die materielle Übereinstimmung mit dem entsprechenden EU Recht und im Hinblick auf die rechtliche Anbindung an die EU von der Form, wie das entsprechende Recht für EU Mitgliedstaaten gilt. Um diesem Umstand Rechnung zu tragen unterscheidet und untersucht die Dissertation die unterschiedlichen materiellen und

rechtlichen Integrationsqualitäten von Änderungen im Rechtsbestand. Fragen der Umsetzung und der Rechtsprechung wurden von der Untersuchung ausgeschlossen.

Die empirische Untersuchung zeigt, dass materielle Rechtsübernahmen sowohl im Landesrecht als auch in Abkommen mit der EU über den gesamten Untersuchungszeitraum auftraten. Stärkere rechtliche Anbindungen an die EU wurden erst in jüngerer Zeit häufiger, wofür vor allem die Abkommen der Vertragspakete Bilaterale I und II verantwortlich sind, die der Umsetzung in Landesrecht bedurften und in Einzelfällen dynamische Anpassungspflichten mit sich brachten. Die Dissertation erklärt diese Entwicklungen mithilfe von supranationalistischen und intergouvernementalistischen Theorien der europäischen Integration und zeigt, dass die Schweiz zwar ein besonderer, aber kein theoretisch unerwarteter Fall ist. Bivariate und multivariate Datenanalysen zeigen, dass auch für die Entwicklung der differenzierten Integration der Schweiz die institutionelle Qualität der Integrationsinstrumente eine wichtige Rolle spielt, wie das supranationalistische Theorien postulieren. Je enger die rechtliche Anbindung eines Vertrages an die EU, desto öfter wird er revidiert und desto eher enthalten diese Revisionen EU Recht. Ausserdem gehen häufigere Vertragsrevisionen mit weniger häufigen Anpassungen des Landesrechts einher.

Bivariate und multivariate Analysen zeigen ebenfalls, dass die wichtigsten Integrationsschritte der Schweiz das Ergebnis von Verhandlungen auf nationaler wie auf intergouvernementaler Ebene sind, wie es der liberale Intergouvernementalismus postuliert. Verhandlungen spielen für die Schweiz sogar eine grössere Rolle als für Mitgliedstaaten, da jeder Integrationsschritt, der nicht durch eine Vertragsklausel vorgesehen ist, neu verhandelt werden muss. Dies gelingt, wenn auf nationaler wie auf internationaler Ebene Themen verknüpft werden, die im Interesse verschiedener Gruppen stehen. Da die differenzierte Integration so das Ergebnis von Kompromissen ist, ist es entsprechend schwierig, ihre Entwicklung mit wirtschaftlichen Interessen und Entwicklungen in Zusammenhang zu bringen, obwohl diese Faktoren in der Theorie ebenfalls für zentral erachtet werden. Politische Faktoren wie die öffentliche Aufmerksamkeit, die Sitzstärke der Parteien, welche die Europapolitik der Regierung unterstützen, sowie der nationale Entscheidungsprozess scheinen für die Schweiz eine wichtigere Rolle zu spielen.

Die Analysen weisen auch auf einige Punkte hin, die für die Schweiz von besonderer Relevanz und teilweise auch für die Weiterentwicklung der Forschung zur europäischen Integra-

tion allgemein von Belang sind. Die verschiedenen Instrumente der Schweizer Europapolitik hängen mit verschiedenen Erklärungsfaktoren zusammen. Beispielsweise werden vor allem neue bilaterale Verträge und Umsetzungsmassnahmen im Landesrecht von den erwähnten politischen Faktoren beeinflusst, während Vertragsrevisionen, die einem im Vertrag vorgesehenen Mechanismus folgen, von diesen Faktoren unabhängig sind. Wichtige neue Verträge und Revisionen sowie Umsetzungsmassnahmen sind zudem oft dem fakultativen Referendum unterstellt. Die alltägliche Weiterentwicklung der Verträge sowie die Anpassungen des Landesrechts im Rahmen des autonomen Nachvollzugs werden hingegen höchst selten vors Volk gebracht. Insgesamt legen die Resultate nahe, dass die alltägliche differenzierte Integration der Schweiz von einem breiten Konsens getragen und deshalb trotz der vielen Vetopunkte regelmässig weiterentwickelt wird, was mit Integrationstheorien erklärt werden kann. Allerdings ist diese Art der Integration nicht stabil, da sie nicht auf einer grundsätzlichen Entscheidung für Integration beruht und sich die Schweiz die Freiheit bewahrt hat, sich im Einzelfall auch gegen Integration zu entscheiden, wie das vielleicht in der jüngsten Volksabstimmung geschehen ist. Der Fall der Schweiz zeigt deshalb, dass sich Integration auch in einem euro-skeptischen Land mit direktdemokratischen Volksrechten entwickeln kann. Diese Art der Integration bedarf aber mehr Kompromissen und kann immer wieder in Frage gestellt werden.

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Writing a PhD thesis is a very lonely undertaking and its success depends heavily on one's state of mind. It is precisely because of this reason that I could not have finished my thesis, had it not been for some colleagues and very good friends who supported me, either deliberately, because they knew what a PhD is, or by chance, just believing me that there were reasons for this entire struggle with self-discipline and self-doubt. Thank you that you did not lose interest in me despite my obsession with Swiss legislation.

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List of Abbreviations

AS	Official Collection of Federal Legislation *(Amtliche Sammlung des Bundesrechts)*
BBl	Federal Journal *(Bundesblatt)*
CFSP	Common Foreign and Security Policy
CVP	Christian Democratic People's Party *(Christlichdemokratische Volkspartei)*
DAA	Dublin Association Agreement
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice
ECSA	European Coal and Steel Agreement
EEA	European Economic Area, founded 1994
EEC	European Economic Communities
EFTA	European Free Trade Association, founded 1960
EMU	European Monetary Union or Economic and Monetary Union???
ENP	European Neighbourhood Policy
EU	European Union, founded 1992 with the Maastricht treaty
FDP	Liberal Party *(Freisinnig-Demokratische Partei)*
FMPA	Freedom of Movement of Persons Agreements
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
JHA	Justice and Home Affairs
MRCA	Agreement on mutual recognition in relation to conformity assessment
OECD	Organisation for Economic Cooperation and Development
OMC	Open Method of Coordination
OSCE	Organization for Security and Cooperation in Europe
QMV	Qualified Majority Voting
SAA	Schengen Association Agreement
SIS	Schengen Information System
SP	Social democratic Party *(Sozialdemokratische Partei der Schweiz)*
SR	Classified Compilation of Federal Legislation *(Systematische Sammlung des Bundesrechts)*
SVP	Swiss Peoples Party *(Schweizerische Volkspartei)*
UK	United Kingdom
WEU	Western European Union
WHO	World Health Organisation
WTO	World Trade Organisation
DAA	Dublin Association Agreement
EC	European Community
ECB	European Central Bank
ECJ	European Court of Justice

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1 Introduction

Switzerland lies in the geographical centre of Europe and three out of its four official languages are also official languages of the European Union. Switzerland is one of the wealthiest economies in Western Europe, not only in relative terms. The country is small in terms of geographical area and population, but by no means is a small player in terms of export volume or foreign direct investment. On the European political landscape, Switzerland acts as the host country for many international conventions and European headquarters of international organisations. It has also developed many ties with its neighbouring countries and their regional integration project, the European Union (EU). Switzerland has, however, a peculiar relationship with the EU. It has remained the only unequivocally Western European country that did not become a member of the EU, and not even a member of the less ambitious European Economic Area (EEA)[1]. Thus, is Switzerland the last Gallic village in Europe? The country participates selectively in some European regimes via the conclusion of sectoral agreements, and occasionally adapts its domestic policies to those of the EU. While its neighbours institutionalised their cooperation in intergovernmental settings and even supranational institutions, which provide an unprecedented level of regional integration, Switzerland still regulates the relations with its neighbours by means of traditional international treaties.

This way of dealing with the European challenge is puzzling, because in several regards Switzerland is theoretically a likely case for European integration. Switzerland is a small and open economy, a liberal democracy, and culturally and economically strongly tied to the member states of the EU. When the agreement on the EEA was on the table in the early 1990s, the country had even experienced five years of lower economic growth than the average of the then members of the European Community (EC), a factor that theoretically makes regional integration more attractive (Mattli 1999). Swiss voters, however, rejected the EEA agreement in 1992. Ever since, the question of European integration has been a political 'hot potato' in Switzerland. The main reason is that the vote on the EEA revealed dissent between the pro-European political elite and the euro-sceptic voters, as well as a linguistic and an

[1] Other exemptions are micro-states like Andorra, San Marino, and Monaco (Forster and Mallin 2014).

urban-rural cleavage in the electorate (Sciarini and Listhaug 1997). These cleavages were also present in later votes on European issues and were successfully mobilised by the Swiss People's Party (SVP), which rose from a marginal player to become the largest parliamentary party in the ten years following the rejection of the EEA (Kriesi 2007). Despite the divisive potential of European integration and the widespread use of popular referenda, the rejection of the EEA was by no means the end point of Switzerland's European integration. Since then, it has concluded sixteen major sectoral agreements with the EU, which were approved at the polls, and contributed its share to the cohesion fund for the new central European member states. It has also allegedly continuously adapted its domestic policies to developments in the EU. The puzzle of Switzerland's peculiar form of European integration is thus even more intriguing than twenty years ago.

Since 1992, when Switzerland embarked on its special path into Europe, and the EU completed its Single Market program, European integration has developed in an impressive way. The EU grew to 28 member states, substantially revised its founding treaties four times, became active in a wide array of new issue areas, and added to economic cooperation more political issues like, for example, common border control. This impressive "widening and deepening" has been accompanied by increasing differentiation in the degrees to which EU member states are integrated in EU policies (Stubb 1996). Today, not all EU members participate in all EU policies, and some EU policies have been extended to non-member states. An example is the Schengen agreement, from which several EU member states opted out, and to which several non-members, among them Switzerland, opted in. Switzerland thus is one of the non-member states participating in European integration, but it is a special case even among non-member states because it has not concluded any bilateral or multilateral agreements regulating its relationship with the EU supranationally. The Swiss puzzle of European integration is thus not only politically salient and divisive, it is also promising for research because Switzerland's sectoral integration resembles instances of sectorally differentiated integration that have developed in recent years among EU member states.

There exists a rich body of literature on Switzerland and its European policy, but crucial questions about the nature and reasons for Switzerland's approach to European integration are still unresolved. Today, scholars widely agree that Switzerland's characterisation as a non-member state downplays the degree of its European integration. Since the 1990s, the EU has had such a large impact on Swiss policies and politics that some researchers state

that Switzerland is “economically more integrated within the European Union than many of the EU’s own member states” (Goetschel 2003: 313, see also Goetschel 2007, Weder 2007). Scholars use labels like “customized quasi-membership” or just “quasi-member” to characterise this situation (Lavenex 2011; Maiani 2008; Haverland 2014; Kriesi and Trechsel 2008). This judgement was challenged by Sieglinde Gstöhl (2007) who argued that Switzerland should not be called a quasi-member, because the sectoral agreements lack any general institutional framework like common decision-making or implementing and supervising institutions, elements that are central to European integration. Existing research offers reasons for the qualification of Switzerland as a quasi-member, but also support for Gstöhl’s viewpoint. What we lack is a systematic assessment of the functioning of the heterogeneous institutions and policies which regulate Switzerland’s relationship with the EU. This is, however, necessary in order to examine the question of to what extent the lack of an institutional framework indeed distinguishes Swiss European policies from European integration.

Besides the nature of Switzerland’s relationship with the EU, also the reasons for its development are not entirely clear. There exists a consensus that the Swiss approach to European integration is characterised by ‘cherry-picking’, but there are also various viewpoints on the reasons why certain cherries are picked and others not. A widespread assumption is that cooperation with the EU is mainly necessary for economic reasons. Sectoral agreements provide selective access to the internal market, and the domestic EU-compatibility policy to some extent allows the removal of technical barriers to trade (Epiney 2009). Some scholars argue that cherry-picking is motivated by the aim to keep certain regulatory advantages compared to EU member states (Baudenbacher 2012). Others observe that especially the policy of making domestic legislation compatible with EU law is used by certain interest groups, and especially by the export-oriented economic sector, to push their own legislative agenda (Linder 2011, 2013). A third group of scholars do not relate Swiss European policies to interests. Some explain cherry-picking with the observation that the EU-compatibility policy is not pursued systematically (Maiani 2013). In contrast, others observe that EU compatibility has become the fundamental principle of domestic law-making and an end in itself (Oesch 2012; Wyss 2007). Scholars focusing on politics rather than policies emphasise the important role of power constellations and domestic compromises for the explanation of Switzerland’s European policy (Afonso et al. 2014; Fontana 2009, 2011; Fischer et al. 2002; Fischer and Sciarini 2013). What is missing is a systematic exploration of the relationship of

interests and actor constellation not only with single European policies, but with Switzerland's approach to European integration as a whole.

Some of the findings in the literature regarding the nature of Switzerland's relationship with the EU, but also regarding the reasons for Switzerland's European policies seem to diverge. At least partially, this must be related to the fact that they were the result of studies researching different issues, time periods and questions. To my knowledge, no studies exist combining the exploration of reasons for Switzerland's European policies with a broad empirical perspective, including the various elements of these policies. It seems that in the rich vein of literature on Switzerland and the EU, scholars either combined comparative case studies with detailed description and the identification of the mechanisms that led to certain outcomes, or they engaged in broad quantitative analyses, providing large amounts of data. So far, such quantitative studies only punctually made use of the rich knowledge about explanatory factors to explain their observations (Lehmkuhl 2014). This thesis builds on both strands of previous research and seeks to contribute in several regards to the existing literature. It provides new empirical data encompassing both sectoral agreements and domestic policies and allows distinctions to be made to different integration qualities. The data are then used for analyses dealing with both questions discussed above: on the nature and functioning of Switzerland's special relationship with the EU and the reasons for the policies this relationship consists of.

The thesis conceives of Switzerland as a case of differentiated integration, because many of Switzerland's policies towards the EU are similar to regional integration. Although Switzerland is not a member, its ties to the EU to some extent play the role of functional equivalents to formal European integration, and may thus be explicable by similar factors (cf. Fontana et al. 2008). The sectoral agreements cover an impressive range of issues, which is very unusual for relations of the EU with a third state. They are based on informal principles with a strong relation to the EU's supranational authorities and supranational legislation, and they are complemented by the practice of transposing EU rules into domestic legislation. Newer agreements even contain elements of supranational integration. Swiss European policies, however, also show many differences compared to ideal-type European integration. The sectoral agreements have remained selective even in regard to access to the Single Market and Swiss-EU relations lack general formal rules, let alone supranational institutions. Therefore, the questions about the nature and functioning of and the reasons for the Swiss form

of European integration can only be answered based on a detailed examination of the quality of its sectoral integration policies.

In this introductory chapter I will outline how this thesis provides such an examination. The first section describes the historical development of the different elements of Switzerland's European policy. This section shows that neither sectoral agreements nor domestic policy adaptations are a Swiss invention. Both were elements of the policies of European countries that were more reluctant towards European integration from the beginning of its history. This fact and a comparison of more recent Swiss European policies with ideal-type European integration justify the conception of Swiss European policies as functional equivalents to European integration. The second section summarises the state-of-the-art research about Switzerland and the EU. It explores the major research gaps in more detail and discusses what is needed to fill them. The third section explains how this thesis contributes to the identified research gaps and outlines its structure. In addition, it discusses the important issues the proposed research approach will not be able to solve. In the fourth section, I discuss the political relevance of the presented research.

1.1 Research Topic: Switzerland as a Case of Differentiated Integration

A conceptualisation of Swiss European policies as differentiated integration needs to be based on their comparison with ideal-type European integration. One of the earliest definitions of regional integration stems from Ernst B. Haas. According to Haas (1961: 366), integration is "the process whereby political actors (…) shift their loyalties, expectations, and political activities toward a new and larger centre, whose institutions possess or demand jurisdiction over the pre-existing national states." Walter Mattli (1999) added to this definition that the shift is voluntary, concerns economic and/ or political integration and that institutions of regional integration are supranational. Formally, Switzerland has to a large part resisted delegating decision-making rights to EU authorities. Informally, however, Switzerland has accepted rules made by these authorities as the basic principles for the sectoral agreements and probably also for parts of its domestic law-making. Legal rules are the basis

for most EU policies (Majone 2006), and EU policies and rules also lie at the heart of recent definitions of differentiated European integration.

Since the 1990s, it has become increasingly common to conceive of the European Union as a system of differentiated integration (cf. Stubb 1996). Alkuin Kölliker (2006) identified differentiated integration when EU member states have different rights and obligations with respect to specific policy areas. Katharina Holzinger and Frank Schimmelfennig (2012: 292) more clearly relied on rules and defined EU policies as differentiated when "the territorial extension of EU-membership and EU rule validity are incongruent". In this vein, Sandra Lavenex (2009: 547) conceived of Switzerland as a case of flexible integration because the country "subjected itself to considerable sections of the acquis". Other authors referred to Switzerland as a case of external differentiated integration (Leuffen et al. 2012; Kux and Sverdrup 2000); it is not the only such case[2]. The process of European integration proved to have strong centripetal effects, illustrated by the impressive growth of member states, but also by the reactions of countries reluctant towards integration[3]. These reactions have been of a multilateral, bilateral or unilateral nature, and they have sometimes been rather different, and sometimes very similar to the ideal-type integration of the inner circle.

Switzerland's actual European policies resemble earlier reactions to European integration by reluctant countries. I will start with an analysis of these historical predecessors of the policies under study, followed by a discussion of Switzerland's actual European policies against the background of the definitions of differentiated integration in order to "put the special case in its place". In an article with this title, Marie-Christine Fontana et al. (2008) argued that Switzerland is not too different or unique a case to be compared, although its specific features make comparisons a challenging task. This challenge is especially high in the case of the very specific European policy. The specificity of these policies sometimes makes scholars perceive of Switzerland as a complete outsider. Fontana et al., however, proposed looking for functional equivalents when an element of the Swiss political system seems to be incomparable because of its specificity. In a similar vein, I argue that although Switzerland's posi-

[2] The terms flexible and differentiated integration are often used interchangeably in the literature. I will use the term differentiated integration throughout this thesis, because the theoretical and conceptual work I draw upon mainly uses this term.

[3] I borrow the notion "reluctant European" from the title of Sieglinde Gstöhl's book, in which she explains the similarities and differences in the degree of reluctance in Scandinavian countries and Switzerland (Gstöhl 2002).

tion in Europe is unique, the elements of its European policy are not. This perspective is not only fruitful for comparative studies; the thesis is a case study of Switzerland and does not provide any systematic comparative analyses. Nevertheless, such a perspective is also fruitful for understanding to what extent Switzerland's European policies can be understood as functional equivalents to ideal-type European integration, and should thus be explicable by European integration theories.

1.1.1 Early Differentiated Integration: The History of the Reluctant Europeans

The predecessor organisations of the EU, the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM), were established in 1957 with the treaties of Rome. The signing countries were Germany, France, Italy, Luxembourg, Belgium and the Netherlands. This economic cooperation threatened to produce economic disadvantages for other Western European states. As a reaction, a rival group of states founded the European Free Trade Association (EFTA) in 1960, because they were sceptical regarding the political finality of the project of the six. This rival group consisted of the United Kingdom (UK), Austria, Denmark, Norway, Portugal, Sweden and Switzerland (Cottier and Liechti 2006). When the EEC accomplished its customs union in 1967, the EFTA countries abolished the tariffs on the movement of industrial goods between themselves. This first multilateral response to the challenge of European integration was aimed preventing trade diversions away from the outsiders towards the insiders of the EEC. However, although the EFTA countries continuously lowered their customs and tariffs in order not to propose less favourable conditions to their own as well as foreign economic actors compared to the EEC, export volumes dropped significantly for some EFTA members when the customs union of the EEC entered into force (Gstöhl 2002). The alternative approach to European integration thus did not prove to be very successful, although with the lowering of tariffs, already the first response to the integration of the six contained an alignment of policies. The EFTA still exists today, but it has lost most of its members and much of its economic and political weight.

The success of the EEC and the negative economic effects that this exerted on EFTA states made some of them re-evaluate the economic gains and political costs of joining the EEC, whereas others started to negotiate bilaterally with the EEC. The results of these negotia-

tions were Free Trade Agreements (FTA) covering industrial goods (Cottier and Liechti 2006). These FTAs entered into force on 1st January 1973, the same day that the UK, Ireland and Denmark left the EFTA and joined the EC. The remaining EFTA states increasingly pursued their individual integration aims by means of sectoral agreements with the EC. The FTAs and subsequent agreements were normal treaties of international law and did not entail any supranational integration. However, the EC managed already at this early stage to impose to a great extent its conditions for cooperation on the non-members. Although all EFTA states negotiated individually with the EC and they had different interests and concerns, at the end all FTAs contained almost identical provisions (Gstöhl 2002).

With the FTA, Switzerland seemed to have found its way of dealing with the European challenge and started to negotiate the next important agreement right away. This agreement dealt with insurance and was concluded in 1989 after 16 years of negotiations (Baudenbacher 2012). During these negotiations, the principle of 'equivalence of legislation' was invented. No party to the treaties formally lost its autonomy to issue legislation in the area of the agreement, but the parties accepted that the rules of both parties are equivalent (Grädel 2007; Marti 2013). Similarly, also Norway and Sweden concluded sectoral agreements with the EC in areas of their interest. Like the FTAs, these sectoral agreements revealed that the rules set in the EC were also the rules of reference when it came to sectoral cooperation (Gstöhl 2002). Among others, the negotiations of the insurance agreement lasted so long, because the EC worked on a new directive regulating insurance during that time and the agreement had to include the new rules. However, the primacy of EU rules was very informal and the reach of the agreements selective.

When the Single Market program appeared on the horizon in the 1980s, the individual and sectoral approach of the EFTA states was called into question and they started to negotiate their future market access in a multilateral arena. These negotiations were difficult because the EC by that time definitely accepted only its own acquis as a condition for market access. Moreover, the EU requested institutional mechanisms to guarantee the regular update of an agreement to new developments in Single Market legislation, as well as to monitor and enforce the agreement. The EFTA states did not gain any decision-making rights in exchange (Gstöhl 2002). The result of the negotiations was the agreement on the European Economic Area (EEA). This result was judged as unsatisfying by most EFTA states. As a consequence, all but Iceland and Liechtenstein decided to apply for membership in the European Union (EU).

These parallel developments were ended abruptly by popular votes in Switzerland and Norway. In Switzerland, the people rejected the EEA agreement in 1992. In Norway, the parliament ratified the EEA agreement, but the voters rejected accession to the EU two years later. In contrast, Finland, Sweden and Austria joined the EU in 1995 (Grädel 2007). Even more than the negotiations of the FTAs in the 1970s, the negotiations of the EEA revealed the increasing demand of the EU to cooperate with outsiders only on the basis of the acquis. At the same time, these negotiations showed the decreasing willingness of the EU to content itself with international law arrangements, as it requested supranational enforcement mechanisms. The EEA is thus an example of external differentiated integration, because it extends EU rules to non-member states and because it subordinates these non-members also to supranational judicial oversight (Frommelt 2012b; Frommelt and Gstöhl 2011).

With only four states remaining in the EFTA, three in the EEA, and a European Union having grown to fifteen states, the map of Western Europe appeared almost single-coloured by 1995. At the same time, however, new colours and nuances of the shape of European integration appeared on the map since the 1990s. In the last few decades, the EU has increasingly allowed for internal differentiations. As a result, Europe became much less diverse with regard to EU membership, but at the same time, membership in the EU ceased to be a synonym for uniform integration. The EU became a system of internally differentiated policies (Kölliker 2006; Leuffen et al. 2012). For example, the UK, one of the more reluctant Europeans and founding members of the EFTA, although an EU member today, does not participate in the Economic and Monetary Union (EMU), is not a member of the Schengen area, and has an opt-out regarding the Social Chapter of the Maastricht treaty (Adler-Nissen 2009). Such exemptions also accompanied enlargement when the new Eastern European member states that joined the EU in 2004 were not immediately guaranteed completely free movement of people, and did not immediately join the EMU and the Schengen area (Schimmelfennig 2014a). At the same time, the EFTA members Norway and Iceland were already associated members of the Schengen area, and Switzerland joined in 2008, just one year after the ten new member states. Functional equivalents to Switzerland's selective European integration can thus not only be found among the early policies of the EFTA states, but also in cases of internal differentiation of EU policies.

Although the EU is based on formal rules, mainly intergovernmental treaties and supranational legislation, the differentiations inside the EU as well as the integration ties with out-

sider countries also have more informal aspects. Many reluctant countries have adopted EU legislation although they were not (yet) members of the EU and some EU members transposed EU legislation in areas where they officially have an opt-out. Already back in the 1980s, when the EFTA states felt increasing pressure to react to the Single Market program, Sweden, Norway and Switzerland started to adapt their domestic legislation to EU law (Kux and Sverdrup 2000; Gstöhl 2002); Switzerland has pursued this policy ever since. Also member states of the EU sometimes adopt legislation they are not obliged to. An example is again the UK, which unilaterally transposed several EU directives in the area of the common border policy, although it has an opt-out in that area and was denied issue-specific participation by the European Council and the European Court of Justice (ECJ). Another is Denmark's policy of fixed exchange rates with the Euro. The Danish government has linked its monetary policy to the European Central Bank (ECB), although the Danish voters rejected participation in the EMU in a popular referendum in 2000 (Adler-Nissen 2009). Sometimes, like in the case of Sweden, formal European integration seems to be preceded by informal adoption of EU rules. In other cases, like Switzerland or the UK, informal adoption of EU rules seems to be a way to circumvent opt-outs.

This short history of European integration is not meant to be exhaustive. Its unusual focus on the more circuitous approaches of reluctant countries, however, teaches us that today Switzerland indeed has a unique status in relation to the European Union, but that its different ties with the EU are not unique. Either these ties have historical predecessors or they have counterparts among the policies of the EFTA states and internally differentiated policies that we observe today; often they have both. The following sections discuss the integration quality of Swiss policies towards the EU in more detail, examining the question of to what extent they can be conceived of as functional equivalents to ideal-type European integration.

1.1.2 At the Crossroads: Switzerland Re-Invents the 'Bilateral Way'

The development of Switzerland's specific approach to European integration gained new momentum after the rejection of the EEA in a popular vote. On 6 December 1992, Swiss voters rejected the EEA agreement by a tiny majority of 50.3% of the votes and 18 out of 26 cantons in an historically unprecedented high voter turnout of over 70 percent (Cottier and Liechti 2006). This decision, which suddenly made Switzerland the least integrated Western

European country, came as a shock for the political and administrative elite. Just a couple of months before, the Swiss government had sent a membership application to Brussels (Marti 2013). Now it was forced to put the accession plan on ice and find a quick response to the European challenge that respected the popular vote. In 1993, the Federal Council asked the EU to start sectoral negotiations. After lengthy negotiations about the issues to be included and about the content of the agreements, a package of seven agreements called Bilaterals I was signed in 1999 and entered into force in 2002. According to Christa Tobler (2008), this response was a transition from a passive attitude towards European integration to an active participation in the European integration process. Already before the Bilaterals I package entered into force, Switzerland and the EU started to negotiate anew. The resulting package of nine agreements is known as Bilaterals II and was signed in 2004. The last agreements of this package entered into force in 2008.

Switzerland has not been the only country negotiating sectoral agreements with the EU after 1992. Also the EFTA states have further concluded sectoral agreements with the EU in addition to their EEA membership. Examples are Liechtenstein's agreements on the taxation of savings (2004) and security procedures for the exchange of classified information (2010; Frommelt and Gstöhl 2011), or Norway's agreements covering areas like fishing (1980), security procedures for the exchange of classified information (2004) and cooperation in satellite navigation (2010; EU Treaties Office Database). Apparently, EU policies continue to exert centripetal effects even on the most reluctant European countries, and the EU still seems ready to cooperate with these countries on the basis of sectoral agreements under certain conditions. In the case of Switzerland, these conditions took the form of issue linkage for the Bilaterals I and II agreement packages. In both negotiation rounds, issues of genuine Swiss interests were linked with issues in which the EU wished for cooperation (Dupont and Sciarini 2007; Afonso and Maggetti 2007). Like in earlier negotiations with third states, the EU largely insisted on the primacy of the acquis communautaire (Jaag 2010).

After the rejection of the EEA, the domestic EU-compatibility policy also gained new importance. The Federal Council had already started to examine every bill with regard to its compatibility with EU law back in 1988 (Bundesrat 1988). At the beginning, this policy was passive, aiming mainly at avoiding new incompatibilities with EU law. After the EEA rejection, the Federal Council for the first time proposed legal reforms to parliament that were directly transposing rules of the *acquis communautaire* into Swiss domestic legislation.

These reforms originated in a large package of legal amendments and several new laws that had been passed by parliament in summer 1992 in order to implement the EEA agreement. After the rejection of the EEA, the original bill became obsolete, but the Federal Council proposed half of the legal reforms again to parliament after having made some adjustments consisting mainly of adding reciprocity clauses and deleting direct references to EU law. The project previously called Eurolex was renamed Swisslex (Bundesrat 1993). Similar to the evaluation by Christa Tobler cited above, Francesco Maiani (2008) also evaluates the domestic policy changes after the EEA rejection as a change from a passive to an active policy towards the EU. This eager unilateral adaptation of national legislation to EU rules is assumed to have facilitated the negotiations of Switzerland's sectoral agreements. Scholars assume that a similar policy in Norway eased the implementation of the EEA agreement (Kux and Sverdrup 2000; Thürer et al. 2007).

The judgments of Tobler and Maiani about the new quality of Swiss European policy contain aspects of the definitions of integration: Tobler understood the 1990s as a new phase because of the growing number of formal agreements with the EU and their legal and political inter-connections. Maiani observed a new phase because of the active transposition of EU rules into domestic law. The role of intergovernmental bargains in the case of the sectoral agreements and the formal regulation of the relationship between Switzerland and the EU, as well as the role of common rules of a supranational origin both in agreements and in domestic transpositions of EU rules are both similar to ideal-type European integration. Despite this informal subordination under EU policies, ever since the Federal Council has praised this 'bilateral way' of European integration of being able to combine the best of two worlds: the economic benefits of integration and the political benefits of independence of any supranational institution and thus the preservation of an important element of the national identity. The formal independence of the EU is an important characteristic of the sectoral agreements and an important difference to ideal-type European integration. The next section discusses this issue in detail.

1.1.3 Sectoral Agreements: Integration with Formal Shortcomings

For Switzerland, the sectoral agreements come closest to regional integration. As there is no institutional framework that regulates applicability, evolution, implementation and monitor-

ing of the sectoral agreements, every agreement contains its own respective provisions. These provisions, however, follow similar principles. With few exemptions the sectoral agreements do not delegate any decision-making power to an EU authority and accordingly lack a key characteristic of regional integration. Most sectoral agreements of the last twenty years legally are traditional treaties of international law, as are the 1972 Free Trade Agreement (FTA) and the 1989 Insurance Agreement (Oesch 2012). The main difference between an international treaty and EU or even EEA membership is that an international treaty is static, and that its implementation is supervised by the parties on their own territories by their own institutions. The EEA, on the contrary, is based on a dynamic agreement that contains formal rules about how new EU legislation in areas covered by the EEA is to be continuously included in the agreement (Frommelt 2012a, 2013). Although the sectoral agreements often contain evolutionary clauses and statements of intent with regard to the equivalence of rules, these provisions do not change anything with regard to the legal necessity that every amendment to the treaty has to be negotiated between the parties anew (Epiney et al. 2012). Thus the sectoral agreements lack important elements of integration, but a closer look shows that they contain provisions which could partly compensate for the general institutional shortcoming of the Swiss-EU relationship.

Almost all sectoral agreements contain some provisions regarding their administration, comprising rules regarding amendments, implementation and monitoring. Most sectoral agreements are administered by Mixed Committees and a few go beyond traditional international law and are directly linked to law-making and monitoring by the EU. The Mixed Committees are composed of representatives of the European Commission and the Federal Council, who decide in consensus and have limited competences in dispute settlement and amending annexes of the agreements (Epiney et al. 2012). The first agreement with stronger integration qualities was the agreement on air transport, part of Bilaterals I. It assigns intervention rights to EU authorities in matters of competition surveillance and the European Court of Justice (ECJ) supervises its implementation (Breitenmoser 2003). The sectoral agreements with the most direct subordination of Switzerland to EU policy-making are the Schengen and Dublin association agreements, both part of Bilaterals II and negotiated upon the request of Switzerland. Switzerland has to continuously adopt new Schengen relevant secondary legislation. If it fails to do so, the EU can abrogate the agreement (Good 2010). A few less publicly discussed agreements have similar dynamic provisions like, for example, the

new Customs Security Agreement of 2009, which obliges Switzerland to continuously transpose new EU legislation (Epiney et al. 2012).

The formal shortcomings of the majority of the sectoral agreements are complemented with informal, more often political than legal principles, which further distinguish the sectoral agreements from traditional forms of international cooperation. Laurent Goetschel (2003) observed that the sectoral agreements with the EU contain much more detailed regulations than bilateral or multilateral treaties normally do and that they often directly refer to EU law. The detailed regulations are perhaps an indicator of what Astrid Epiney et al. (2012) called 'parallel provisions'. Parallel provisions paraphrase provisions and principles of EU legislation without actually mentioning the source. Another political principle of the agreements is called the principle of 'mutual recognition of equivalence of legislation'. First applied to the 1989 Insurance Agreement, this principle allows Switzerland and the EU to achieve a certain level of material congruence between their issue-specific legislation without formally obliging each other to harmonise the legislation (Grädel 2007). Thus, the equivalence principle formally allows Switzerland to maintain its legislative autonomy and is looser than the 'homogeneity of legislation' requirement underlying the EEA agreement and the Single Market legislation. Although highlighting the political and not legal quality of this principle, different legal scholars state that the equivalence principle relativises the static character of the agreements and say that the agreement's aims can only be achieved if Switzerland continuously adapts its legislation to new EU law in the areas of the agreements (Oesch 2012; Thürer et al. 2007).

From this discussion of the form of the sectoral agreements we learned something about similarities, but also about differences of the agreements compared to ideal-type European integration. The primacy of the *acquis communautaire* is the basis of most sectoral agreements and thus hints at the extension of EU rules to Switzerland[4]. This role of the acquis is sometimes hidden in parallel provisions, and sometimes only implicitly acknowledged by the principle of equivalence of legislation, but often we find also direct references to EU law. In a few, though important, agreements Switzerland is even obliged to continuously transpose new rules emerging in the EU after signing of the agreement. Such provisions are similar to

[4] The two agreements without relation to the acquis are: the Agreement on Pension Funds, and the Agreement on Proceeded Agricultural Goods (both Bilaterals II, see Epiney et al. 2012).

subordination under a supranational authority. In some cases, Switzerland delegated not only policy-making, but also judicial oversight to supranational institutions. Although Swiss actors can approach the ECJ only in matters of the air transport agreement, the Schengen agreement, for example, contains provisions that oblige Switzerland to interpret Schengen legislation in accordance with the rulings of the ECJ (Epiney et al. 2012). Because the sectoral agreements transpose rules set by the EU, and because they sometimes even subject Switzerland to monitoring by EU organs, we should analyse the sectoral agreements as instances of external differentiated integration. In order to understand the nature and functioning, as well as reasons for this external differentiated integration, however, we need to explicitly measure their different integration qualities.

1.1.4 Domestic Rule Transpositions: Informal Way of Integration?

In addition to the formal differentiated integration via sectoral agreements, there is also a more informal way Switzerland pursues integration. This is the policy of transposing EU rules into domestic legislation. It is informal, because it is not legally related to the EU, but I argue that it is a form of differentiated integration, because it deals with EU rules. Partly, this policy is related to the sectoral agreements and their institutional shortcomings. Already in its first report on European integration in 1988, the Federal Council announced that an utmost compatibility of "Swiss legislation of transnational significance" with EU law is a precondition for successful negotiations with the EU on any form of further integration, be it accession to the EU, the EEA, or sectoral agreements (Bundesrat 1988). Tobias Jaag (2010) and Daniel Thürer et al. (2007) assumed that the negotiations of the Bilaterals I and II agreement packages were considerably simplified, because Switzerland had already adapted a significant part of the relevant domestic legislation to EU law. In areas where Swiss law was not compatible with EU standards, Switzerland was sometimes forced to adapt its legislation during negotiations. Examples are the step-by-step adaptations of Swiss regulations of vehicle weight, length etc. to EU standards during the lengthy negotiations of the agreement on road and rail transport (Bilaterals I; Dupont and Sciarini 2007). In a similar vein, Tobias Jaag (2010) assumed that domestic adaptations become less important, the more sectoral agreements Switzerland concluded with the EU. Other scholars, in contrast, state that the aims of the agreements based on the principle of equivalence of legislation can only be

achieved if Switzerland continuously adapts its domestic legislation to new developments in the EU (Oesch 2012).

Transposition of EU rules into domestic legislation may not only occur in relation to future or existing sectoral agreements, but may also be truly unilateral measures. Besides the facilitation of future integration steps, the Federal Council also had a second aim in mind when it introduced the policy of EU-compatibility in 1988. The Federal Council said that an utmost compatibility of Swiss legislation with EU law is necessary in order to maintain the competitiveness of the Swiss economy (Bundesrat 1988). However, in the opinion of the Swiss government, EU compatible legislation seems to be advantageous independent of a sectoral agreement. EU compatible legislation can, for example, minimise technical barriers to trade and remove disadvantages for Swiss firms on European markets (e.g., Epiney 2009). In the legislative process, EU compatibility is assured by the federal administration which prepares a message for each bill presented to parliament. Since 1988, these messages have included a chapter on the compatibility of the bill with EU law. This policy was formally institutionalised with the reform of the law on the federal parliament in 2002, which made the EU-compatibility examination a mandatory part of the legislative process (Nationalrat 2001).

Legal scholars observe that the EU-compatibility principle deeply affected Swiss law-making. Martin Philip Wyss (2007) observed that this principle led to a “mechanism of automatic adaptation”. Similarly Matthias Oesch (2012) stated that the principle of legal adaptation to the EU has become more important than finding the most appropriate national solution for a political problem. Deviations from EU law are normally only accepted if they are justified by particular national interests. Scholars agree that the adaptation to EU law is of a completely new quality that has nothing to do with the long-standing tradition of comparative legal analysis, but they also agree that the principle is pursued unsystematically (Oesch 2012; Baudenbacher 2012; Maiani 2013). Several quantitative studies showed that EU-compatible law-making has indeed become a steady characteristic of Swiss law-making, that it is not only related to sectoral agreements and that it covers a broad range of policy fields (Gava and Varone 2012, 2014; Jenni 2014). If the assumptions by these legal experts are true, a great number of EU rules are transposed into Swiss domestic legislation exactly because they are EU rules. Transpositions of EU rules contribute to the incongruence between EU borders and the validity of EU rules. Accordingly, they are instances of differentiated integration. However, these transpositions are not based on a rule that defines what rules should be

transposed, and they are not based on institutions that would legally link them to the EU. Therefore, we need to explicitly measure the integration quality of rule transpositions empirically.

1.2 Research Questions: Our Rich Knowledge and Its Gaps

The first section of this introduction discussed why Switzerland is conceived of as a case of differentiated integration in this thesis. The overview of Swiss European policies revealed that they are similar to policies by other non-member and member states. At the same time, the section made clear that the similarity between Switzerland's differentiated integration and ideal-type European integration varies across policies and, therefore, they have to be analysed in detail with regard to their integration quality. In the following, I will discuss the existing research regarding the quality of Swiss European policies, but also regarding the explanation of these policies. Although a comprehensive analysis from a differentiated integration perspective is a new approach to the study of Switzerland's European policies, its various elements have received broad attention from scholars of both legal and political sciences. The greater part of past research has engaged in detailed analyses of negotiations of sectoral agreements and their legal and political qualities, has analysed the mechanisms that led to specific transpositions of EU rules into Swiss domestic legislation or sought to depict the impact of the EU on Swiss law-making in quantitative terms. Depending on the focus of their research, scholars came to different conclusions with regard to the overall quality and state of Switzerland's differentiated integration, but also with regard to the reasons for this specific form of differentiated integration. This discussion will reveal the research gaps and accordingly I will formulate the question driving the research in this thesis.

1.2.1 The Quality of Switzerland's Integration: Quasi-Member or Not?

Legal studies of the sectoral agreements discuss in detail their legal quality compared to EU law, on the one hand, and to international law, on the other, as well as their institutional functioning. Two encompassing studies provide classifications of the agreements: the study by Astrid Epiney, Beate Metz and Benedikt Pirker (2012) and the handbook by Daniel Thürer,

Wolf H. Weber, Wolfgang Portmann and Andreas Kellerhals (2007); I drew on these works in the previous section. They provide legal expertise to categorise the sectoral agreements. However, both studies remain theoretical in the sense that they discuss the ways agreements can or should function, but they do not provide empirical evidence on how these rules have functioned in practice. To my knowledge, there is no empirical study that analyses, for example, how often sectoral agreements are amended and for what reasons. Therefore, we also do not know, for example, whether or not the formally static character of most agreements is indeed relativised by the informal principles underlying Swiss-EU relations. At the same time, it seems inappropriate to deduce the actual functioning of the sectoral agreements from their legal form precisely because of these informal norms and principles. In order to assess to what degree the sectoral agreements are functional equivalents of European integration, we must measure their quality. This quality concerns especially the transposition of EU rules, and the closeness of the institutional ties to the EU.

Similar gaps can be identified with regard to the transposition of EU rules into domestic legislation, although in the last few years researchers undertook considerable efforts to measure the influence of the EU on Swiss domestic law-making. The different studies provide empirical evidence for some of the rationales behind domestic transposition of EU rules discussed above, but no study addresses all of them. Two of the quantitative studies provide information about the share of domestic law-making related to sectoral agreements. Emilie Kohler (2009) examined all legal proposals in the period 2004 – 2007. She found that half of the proposals dealt with an issue regulated by EU law and that one third of these proposals was related to a sectoral agreement. Roy Gava and Frédéric Varone (2012) examined legal proposals as well as legal texts over time and across policy fields. They distinguished between “direct Europeanisation” related to sectoral agreements and “indirect Europeanisation” in other cases. In their analysis of legal acts, Gava and Varone found that direct Europeanisation was much more frequent than indirect Europeanisation and that the share of this direct Europeanisation was steadily increasing over time. In contrast, based on the legislative proposals, they found more indirect than direct Europeanisation and no clear time trend. In a recent analysis, including also secondary legislation, they found further evidence for the latter finding, plus an increasing time trend for indirect Europeanisation (Gava and Varone 2014).

For the question of to what extent Switzerland's European policies are integration policies, the relation of domestic legal adaptations to EU rules is important. Two of the quantitative studies distinguish different qualities of EU references in domestic law-making. Emilie Kohler elaborated the most detailed categories and found that adaptations to EU law are often only partial transpositions of EU rules. Ali Arbia (2008) distinguished between a "high Europeanisation degree" assigned to laws that are adaptations to EU law or implementations of sectoral agreements, and a "medium Europeanisation degree" assigned to laws that are compatible with EU law but do not aim at adaptation. The findings of Kohler and Arbia cannot be directly compared, because Kohler focused on legal adaptations, whereas Arbia's "high Europeanisation degree" encompassed adaptations and implementations of sectoral agreements alike. Kohler's categories of adaptations come closest to the concept of differentiated integration as rule extensions. The major gap in these studies is that neither allows the influence of the sectoral agreements to be linked to the quality of domestic legal change. Although we know that the sectoral agreements influence Swiss law-making, we do not know whether this influence leads to substantive transposition of EU rules. In that sense, the existing studies provide evidence for the significance of the EU for Switzerland and for the discussion of Swiss legislative autonomy, but they do not provide the grounds for an assessment of Switzerland as a case of differentiated integration.

The rich body of legal literature on the sectoral agreements and the discussed empirical studies measuring the influence of the EU on domestic law-making provide a convenient stepping stone for a comprehensive analysis of Switzerland's integration policies. A comprehensive analysis is still necessary, because although the existing research on the quality and extent of Switzerland's differentiated integration deals with all relevant questions, it does not link them. Whereas the case-oriented research dealing with the sectoral agreements mostly dealt with their legal and political qualities, the research on the Europeanisation of domestic law-making with a quantitative focus mostly concentrated on the extent of the influence of the EU. Measuring the quality and the extent of Switzerland's differentiated integration at the same time, however, is necessary in order to address explanatory questions. The first question this thesis aims to answer is thus the question of the integration quality of Swiss European policies as a whole. In order to find an answer we need to systematically assess the quality of the different instruments of Switzerland's European policies compared to ideal-type European integration policies.

The question of the overall quality of Switzerland's differentiated integration is closely related to the question of its functioning. For example, previous research hinted at the fact that sectoral agreements and domestic transpositions of EU rules are related: We know that the policy fields most often affected by some sort of reference to the EU in legal proposals as well as legal texts is immigration policies, which is most likely related to the Free Movement of People, the Schengen and the Dublin agreements. The latter two also happen to be the agreements with the strongest supranational elements. We also know that over time, domestic legal adaptation has become increasingly related to sectoral agreements, whereas the frequency of unilateral adaptations has remained stable over time, or has even decreased (Gava and Varone 2012; Jenni 2014). The legal literature emphasises that sectoral agreements need to be updated, but not all agreements provide mechanisms for amendments. An assessment of the quality of Switzerland's differentiated integration thus needs to be complemented by an analysis of the evolvement of Swiss differentiated integration, because we have to assume that the different elements are interrelated.

1.2.2 The Reasons for Switzerland's Integration: Theoretical Outlier or Not?

The comprehensive measurement of Switzerland's differentiated integration and the analysis of its functioning will also allow us to substantiate or refine explanations provided by previous case-oriented research and put this strand of research into relation to European integration theory. Differentiated integration was discussed in detail in relation to the three large families of European integration theories in a recent book by Dirk Leuffen, Berthold Rittberger and Frank Schimmelfennig (2012). The Swiss case seems to partly contradict theoretical hypotheses: Intergovernmentalist theories highlight the importance of economic interests and (negative) externalities of policies. Switzerland is located in the middle of Europe, its economy is highly internationalised and export dependent, but its differentiated integration is very selective even with regard to access to the Single Market (Cottier and Liechti 2006). Supranationalist theories highlight the importance of transnational exchange and the power of supranational bodies to press for the extension of regional integration. The volume of Swiss-EU trade has steadily increased over the last thirty years (Bundesamt für Statistik BFS 2014) and the EU is without any doubt the stronger bargaining partner, but Switzerland does not cooperate in all matters of EU interest. Constructivist theories highlight

the importance of exclusive national identities and domestic ratification constraints. Swiss political identity is strongly attached to its political institutions, many integration steps imply the option of a popular referendum, and European integration is highly politicised. For a bird's-eye view, Switzerland thus fits the constructivist picture of a reluctant country well.

In previous research, integration theories were mostly applied to explain the rejection of the EEA accession, but much less to explain the subsequent development of Swiss European policies. Sieglinde Gstöhl explained the EEA rejection with identity concerns that "construct the political impediments to integration" despite economic integration incentives (Gstöhl 2001: 545). Empirical analyses of the voting decisions, however, showed that economic considerations were as important as cultural reservations and that anticipations of economic benefits and losses did not concern the economy as a whole, but were sector specific (Sciarini and Listhaug 1997; Brunetti et al. 1998). Research on the development of Swiss European policies after the EEA rejection was often conducted under the label Europeanisation. This often led to a broader view on changes related to Europeanisation than a focus on integration would have implied.

For example, scholars focused on decision-making processes at both the intergovernmental and the domestic levels. Regarding the negotiations of both the Bilaterals I and Bilaterals II packages, scholars found that they succeeded because the EU and Switzerland linked several issues, of which some were more important to the EU and some more important to Switzerland. The many agreements concluded independently of these two well-known packages did not receive the same attention and we do not know which interest constellations and negotiation strategies explain them. Regarding the domestic decision-making process in Europeanised issues, scholars showed differences with regard to decision-making processes related to sectoral agreements ("direct Europeanisation") and such related to unilateral rule transpositions ("indirect Europeanisation"), but they also showed a generally stronger role of the government and a smaller one of the consultation and parliamentary phases for Europeanised decision-making processes (Fischer et al. 2012; Fischer and Sciarini 2013; Sciarini et al. 2004). Related research showed that opposition to integration can be overcome when the pro-integration coalition succeeds at making the domestic decision-making process more exclusive, but at the same time does not completely ignore the interests of groups that are able to call for a referendum (Mach et al. 2003; Jegen 2009; Maggetti et al. 2011). This

strand of research was mostly concerned with the influences Europeanisation has on Swiss politics, and not with the respective policy outcomes.

In contrast, integration outcomes were in the focus of a special issue of the Swiss Political Science Review with the title "Switzerland's Flexible Integration in the EU" edited by Sandra Lavenex (2009b). Lavenex et al. built on models of external governance and hypothesised that the governance mode prevalent inside the EU is decisive for how third countries gain access to EU policies. This strand of research provides detailed case studies, but its focus is restricted to important areas of sectoral cooperation. Less well-known agreements are not researched, and domestic rule transpositions are only analysed when they are related to one of the issue areas under study.

Similar to the case studies in the special issue by Lavenex et al., also case studies of domestic transpositions of EU rules often analysed the interests driving these integration steps and often emphasised economic interests. Economic interests might, for example, be related to the adaptation of technical regulations to EU standards in order to minimise technical barriers to trade and to remove disadvantages for Swiss firms on European markets (Epiney 2009; Epiney and Schneider 2004). Wolf Linder (2013) assumed that transposition of EU rules is used by the export-oriented economic sector to advance its policy preferences. Indeed, several case studies revealed that sectoral interests with regard to European integration are nuanced and play an important role in determining whether a Swiss policy is adapted to the EU or not, because sometimes also parts of internationalised sectors prefer regulations deviating from the EU model (Bartle 2006; Jegen 2009; Schäfer 2009).

This rich body of literature contains knowledge about many mechanisms and factors potentially relevant for the explanation of Switzerland's differentiated integration. It shows how the decision-making process in Europeanised issues differs from domestic issues, shows which strategies in sectoral negotiations with the EU led to which type of outcome, and indicates that the domestic economic interests driving integration policies in Switzerland are sometimes very particularistic and specific. The current research thus provides evidence about the relevance of many explanatory factors for Switzerland, which are also discussed in European integration theories, without explicitly dealing with Switzerland as a case of differentiated integration. Not all strands of this literature, however, are linked. The literature on the sectoral agreements examines domestic interests to a much lower extent than the case-

oriented literature on domestic rule transpositions, with the domestic compromise related to the Bilaterals I package being an exemption to that rule. The literature on domestic rule transposition, in contrast, does not always discuss the (potential) relation of these transpositions to sectoral agreements. Finally, the existing quantitative studies on the Europeanisation of domestic law-making do not yet seek to systematically explain their findings by the explanatory factors put forward by the literature. Establishing a link between the different strands of research, however, is necessary in order to resolve some puzzles. Such puzzles concern, for example, EU rules which, despite theoretical economic incentives, were not or not fully transposed into Swiss domestic legislation (Cottier 2006; Imstepf 2012; Robinson 2013). Also puzzling in light of the rest of the research are cases of domestic rule transpositions that were not mainly driven by economic interests, like the law on equal treatment of men and women, or the reforms of university education related to the Bologna process (Bieber 2010; Epiney and Duttwiler 2004).

1.3 Contribution: Connecting the Pieces of the Puzzle

After having opened the floor to a large area of research, in which many scholars have been active and contributed important insights, but in which some crucial questions remain unanswered, I now turn to the concrete aims of my thesis. The corner stone of my thesis is an empirical data set using law-making and its relation to EU legislation in order to measure the quality of Switzerland's differentiated European integration in the time period from 1990 until 2010. The focus on law-making seems appropriate for a quantitative study and has already been applied in many European countries (Brouard et al. 2012a; Töller 2010; Müller et al. 2010). The time period was chosen for historical and methodological reasons. Concerning the former, the first section showed that Switzerland only became the unique case it is today after its rejection of the EEA and that several scholars ascribe a new quality to its European policy after that date. The latter reason is related to the availability of coding sources (see Chapter 2). The data collection is based on the distinction between the legal and the substantive quality of the transposition of EU rules to Switzerland. This distinction enables me to conduct explanatory analyses, which deal with the questions about the functioning of Swit-

zerland's differentiated integration as well as those about the exogenous factors driving Switzerland's differentiated integration.

1.3.1 The Benefits of Measuring Switzerland's Differentiated Integration

This thesis is not the first study that aims to measure empirically Swiss law-making in general and the influence of the EU on Swiss law-making in particular. It is, however, the first to conceptualise Switzerland's European policies based on recent definitions of differentiated integration and measure them empirically. In some sense, the study has a broader focus than earlier quantitative analyses in the field, because it includes domestic as well as international law-making. Most of the earlier studies did not include the sectoral agreements (Mallepell 1999; Kohler 2009; Arbia 2008). In the case of Ali Arbias study, the reason is his reliance on the Europeanisation concept. Europeanisation studies are interested in the domestic consequences of European integration. The value of the main independent variable of Europeanisation studies – European integration – is, however, not known for Switzerland. Europeanisation of domestic law-making can thus not be understood properly without the sectoral agreements. Linder et al. (2009b), for example, showed that in general, the importance and amount of international legislation has grown over time compared to domestic legislation. In another sense, the thesis also has a narrower focus than the Europeanisation studies, because it focuses exclusively on EU-related law-making that is similar to integration because it extends the validity of EU rules to Switzerland. Earlier studies often measured general Europeanisation effects rather than rule extensions (Gava and Varone 2012; Arbia 2008). The focus of this study is also narrower, because it does not include secondary legislation (e.g., Federal Council regulations). This can be justified by the reliance on manual content analysis, which was necessary for the measurement of the integration quality, but not feasible for secondary legislation. Both together, the broad focus with regard to the instruments of Swiss European policy as well as the narrow focus on integration measures are necessary in order to enable explanatory analysis later on.

The data collection builds on the methodological and empirical insights of earlier quantitative studies of both Switzerland and other European countries. Especially, it seeks to measure the quality of rule transpositions to Switzerland as detailed as measured by Emilie Kohler (2009). At the same time, it acknowledges the importance of the distinction of "direct" and

"indirect" Europeanisation, thus the relation of domestic rule transpositions to sectoral agreements as proposed by Roy Gava and Frédéric Varone (2012). Furthermore, it follows methodological advice from the Europeanisation literature with regard to the choice of the units of analysis and the operationalisation (Töller 2010; Radaelli and Exadaktylos 2012). Using data from a twenty year period from 1990 until 2010 means the thesis covers a similarly long timespan to the one by Gava and Varone which is currently the most encompassing study in regards to time. With regard to the data collection approach, the study uses manual content analysis of legal and official texts, an approach also pursued by Kohler. This approach is necessary in order to measure the integration quality of the various instruments.

A comprehensive analysis of the Swiss case contributes in several ways to the literature on differentiated integration in the European Union and beyond. First, elements of Swiss differentiated integration can also be found in the European integration behaviour of other countries. Several other non-member states concluded sectoral agreements in areas where some member states have opt-outs; the best example is Schengen. Some member states openly discuss whether alternative arrangements below full membership in the EU would not fit their integration aims better; the best example is the United Kingdom (Buchan 2012). Also member states as well as non-member states sometimes unilaterally transpose EU rules in areas where they are not officially integrated. Examples are again the UK with the biometric passports directive or Denmark with the voluntary binding of the Crown to the Euro. The analysis of Switzerland might open up new arenas for comparisons of opt-ins with opt-outs, and of the day-to-day function of differentiation, or, as Rebecca Adler-Nissen (2011) put it, of the "management of opt-outs".

Chapter 2 presents in detail how I established the data set on Switzerland's differentiated integration. Based on the recent literature, the chapter defines external differentiated integration as the extension of EU rules to non-member states and introduces the distinction between the substantive and the legal quality of rule extensions. Based on this definition, it describes the methodological approach of the data collection, including a discussion of the units of measurement and the coding sources and coding rules for the content analysis. In its final section, Chapter 2 presents descriptive results of the data collection on an aggregate level. The descriptive results show that more legal reforms were substantively related to EU law than were legally linked to the EU. This holds for both sectoral agreements and federal laws. However, the federal law reforms with a legal link to the EU (direct Europeanisation),

proved to be of a higher substantive integration quality than unilateral rule transpositions (indirect Europeanisation). Regarding the development over time, the frequency of sectoral agreement reforms has been increasing since 2004, whereas the frequency of domestic rule transpositions remained more or less stable. Regarding the distributions across policy fields, the main finding is that domestic rule transpositions cover a broader range of issues than sectoral agreements. These results show that there is variance across sectoral agreements, over time, and across policy fields with regard to the frequency and quality of rule transpositions, which needs to be explained. In the concluding section of Chapter 2, I explain how the data will be used for the explanatory analyses in the following chapters.

1.3.2 The Challenge of Explanation

The thesis builds on the rich insights of previous research on Switzerland and aims to link these insights to the new data on the quality of Switzerland's differentiated integration in order to address some of the research gaps identified earlier. One of these gaps concerns the day-to-day dynamics and interrelation of the different elements of Switzerland's differentiated integration. The other concerns the factors related to interests, decision-making processes and negotiations with the EU which are likely to explain why Switzerland pursues differentiated integration even though it has refused to become a member of the EU. A separate chapter of the thesis is devoted to both of these questions.

The day-to-day dynamics of Switzerland's differentiated integration is still largely unknown. There are several reasons why this question deserves an extra chapter in this thesis: First, the legal literature on sectoral agreements is full of assumptions about the day-to-day dynamics of these agreements. The empirical measurement of the development of these agreements including their integration qualities enables an empirical analysis of these assumptions. Second, the functioning of the sectoral agreements has been subject to heavy criticism by the EU for several years. The EU is concerned with their correct implementation, and criticises that the static character of most agreements puts into danger the 'homogeneity of legislation' principle underlying the Single Market (Council of the European Union 2008, 2010, 2012). To my knowledge, however, there exists no empirical analysis of the functioning of the sectoral agreements. Third, also the relation of the sectoral agreements with domestic rule transpositions is disputed among scholars and observers alike. Whereas Gava

and Varone highlighted the importance of indirect Europeanisation, I found a decreasing relevance of indirect Europeanisation compared to direct Europeanisation (Gava and Varone 2012, 2014; Jenni 2014). Some observers use the policy of domestic rule transpositions to call into question the criticism by the Council, assuming that this policy compensates for institutional shortcomings of the sectoral agreements (Breitenmoser and Weyeneth 2013). Finally, an analysis of the interrelation of the various elements of Switzerland's differentiated integration policy will build the foundation for subsequent explanatory analysis, as it will reveal whether some integration steps are the consequence of other integration measures or whether they occurred independently of each other.

Chapter 3 analyses the dynamics of Switzerland's differentiated integration. Drawing on the legal literature, it analyses the consequences of the institutional shortcomings of the sectoral agreements compared to ideal-type European integration. Drawing on institutionalist arguments found in neo-functionalist and supranationalist theories of European integration, it then conceives of the sectoral agreements as incomplete contracts. This conception helps to formulate hypotheses about the likelihood of agreement revisions, the integration quality of these revisions, and the necessity of domestic rule transpositions. The general assumption is that agreements with stronger integration qualities are less incomplete and thus evolve more dynamically. The empirical analysis combines descriptive and bivariate data analysis with multivariate regression analyses. The results show that agreements with stronger integration qualities evolve more dynamically. Agreements with Mixed Committees and agreements with dynamic provisions are significantly more often revised than agreements without such institutionalised mechanisms for revisions. But only revisions of agreements with dynamic provisions are of a stronger substantive integration quality. Most interestingly, beside agreements with institutionalised revision mechanisms, also agreements with a higher substantive integration quality provide incentives for regular amendments. Domestic rule transpositions, in contrast, occur more often in areas with agreements that aim at harmonisation, but are not necessarily of a high integration quality.

The encompassing measurement and the exploration of the day-to-day dynamics set the stage for an analysis relating the development of Switzerland's differentiated integration to broader economic, social and political developments. The review of existing research offered several seemingly controversial conclusions about the reasons for Switzerland's differentiated integration. Whereas some scholars concluded after the popular rejection of the EEA that

its political identity hindered Switzerland from participating in European integration, later studies revealed economic motivations of voters. Nevertheless, many of the later integration steps were approved at the polls by the same euro-sceptic electorate, and many more integration steps were taken without needing popular approval, some even without parliamentary approval. To some extent, Switzerland's European integration, and especially the part related to domestic rule transpositions, has remained an unknown. Scholarly and public attention has only reached single cases. The empirical data provided by recent research have not yet been used to explore general patterns of Switzerland's differentiated integration, but they have provided even more reasons for speculations about the reasons and interests guiding Swiss European policies.

Chapter 4 analyses the development and quality of Swiss differentiated integration in light of explanatory factors put forward by the existing research and intergovernmentalist integration theories. A detailed review of the existing research on Switzerland and Europe reveals that it dealt with most factors deemed relevant for European integration in the theoretical literature. The liberal intergovernmentalist school of thought focusing on the role of domestic interests and intergovernmental negotiations seems especially relevant. What is missing in the literature is the link between specific explanatory factors with specific instruments of differentiated integration. As existing research focused on different elements of Switzerland's differentiated integration, the insights of this research may also hold only for specific elements of integration. In order to explore both dependent and independent variables, Chapter 4 pursues an explorative empirical analysis. Existing research and liberal intergovernmentalist integration theory provide the guiding hypotheses. A broad descriptive analysis of the data in relation to indicators of the social, economic, and political development puts the development of Switzerland's differentiated integration into a broader context. In addition, multinomial regression analyses are conducted.

The results show that the various elements of differentiated integration are indeed related to different variables. Especially, institutionalised forms of agreement revisions and revisions adopted by the Federal Council are related to different factors compared to agreement reforms, which have to be adopted by parliament. These findings support the results of Chapter 3. The results also revealed differences between sectoral agreements and domestic rule transpositions. For the former, party positions on European integration and salience of European integration in the electorate are more important. Domestic rule transpositions, in

contrast, are not related to the salience of European integration in the electorate or to the strength of pro-European parties in parliament. This may be related to the fact that important sectoral agreements and the respective implementation measures in domestic legislation often had to be approved at the polls, whereas unilateral rule transpositions, which were not related to sectoral agreements, were almost never brought to the polls. For both, sectoral agreements and domestic rule transpositions, dynamics of agreement negotiations play a role. Parliamentary approved agreement reforms were often part of a package deal with the EU, and a considerable part of unilateral transpositions of EU rules into domestic legislation was conducted in the course of agreement negotiations.

The analysis of Switzerland's differentiated integration behaviour contributes to the literature on differentiated integration, as well as to the research on Swiss politics. With regard to differentiated integration, the analysis of Switzerland probably brings to the foreground factors that may determine integration interests or strategies also in other comparable countries, but the consequences of which are not observable because these countries do not pursue a sectoral integration approach. Especially the analysis of the day-to-day dynamics of Switzerland's differentiated integration promises insights about the role of formal institutional arrangements for the development of integration policies, because Switzerland only punctually subordinated its policy-making to supranational institutions. The analysis of social, economic, and political factors related to Switzerland's differentiated integration may be informative for European countries, because several factors that for a long time have been specifically Swiss are likely to become more important in the future throughout Europe. Also European member states are experiencing a rise of euro-scepticism and are also increasingly using popular referenda for important decisions about integration (Haverland 2014). With regard to research on Swiss politics, the country's European policies are not only one of the most salient issues, but also one of the research areas with clearly open questions. Most importantly, the time period covered by this study is a period in which the Swiss political system underwent significant changes. Sometimes, the processes of Europeanisation and European integration are mentioned as reasons for or elements of some these changes. By measuring and hopefully explaining Switzerland's European integration, the study contributes to a better understanding of the present shape and functioning of the Swiss political system.

1.3.3 The Limitations of the Proposed Approach

The present study also has its limits and will not be able to answer all of the questions regarding Switzerland's position on the European integration map. Most importantly, the study is not able to answer the question of whether Switzerland is 'more' or 'less' integrated in the EU than the member states, although it builds on recent definitions and theories of differentiated integration. Thus the study is unable to fill the research gap identified by Frank Schimmelfennig in his assessment of the state of the research on Switzerland's Europeanisation (Schimmelfennig 2014b). The lack of formal rules embedding Switzerland in the EU institutions implies a lack of transparency about which Swiss integration measure is related to exactly which European policy or rule, and to what extent the Swiss measure covers a policy area or complies with an EU rule. This makes it methodologically difficult to compare Switzerland to member states, because data on member states is much more detailed, and it is possible to link their integration behaviour and transposition measures directly to the relevant EU policy. In the course of the data collection, all available information about concrete EU rules has nevertheless been collected. This is described in Chapter 2. The thesis, however, does not provide an analysis of this data, because such an analysis would need comparable data on EU member states, which were not available at the time of writing. Still, a comprehensive measurement of all elements of Switzerland's external differentiated integration and their interrelation will help us identify dynamics, trends and gaps of this policy that will allow us to compare Switzerland, at least in a qualitative manner, with the differentiated integration of other European states.

A second limitation to this thesis regards the causal explanation of Switzerland's differentiated integration. The reliance on a quantitative data set implies a certain distance from the individual cases of integrations. This implies that the causal mechanisms explaining the individual cases cannot be analysed at the same detailed level as this was done in the rich body of literature dealing with domestic decision-making processes in the context of Europeanisation. Although the relationship of interests and actor constellation with Switzerland's approach to European integration as a whole was identified as one of the major research gaps earlier in this introduction, the thesis will only partly be able to fill this gap. Chapter 4 provides an analysis of the correlation of differentiated integration measures and indicators of the social, political, and economic development. This analysis, however, remains at an ag-

gregate level, and is not able to identify the actors and interests responsible for individual integration measures.

A third limitation of this thesis is that its focus lies on two decades of Switzerland's European integration that have already passed by. Recently, European integration again became a salient and hotly debated issue in Switzerland, because the electorate approved a popular initiative, the implementation of which will potentially violate the free-movement-of-people principle and thus put into danger the whole Bilaterals I package. The present study is not able to predict how Swiss European policy will evolve, how the EU will behave in negotiations, and who is likely to win or lose in Switzerland if the Bilaterals I agreements have to be abrogated. At most, the thesis will provide the basis for a more informed debate about the advantages and the disadvantages of the approach to differentiated integration which Switzerland has pursued during the last two decades.

1.4 Political Relevance

The political salience appeared as a characteristic of the research topic throughout this introductory chapter and shall receive some extra attention in these last paragraphs, in order not to give false hopes about the results of the study. The approach of the present thesis is above all scientific: The research questions are derived based on previous research findings and on recent theoretical developments in the literature on European integration. The aim of the study is to explain past developments and eventually identify regularities and special events therein. Its aim is not to predict the future of Swiss-EU relations, nor to give policy advice. Still, the research is of course mainly motivated by the political salience of the question. I believe that an analysis of the 'hottest potato' of Swiss politics in a theoretically informed way, based on an encompassing empirical basis, and including at least in a rudimentary way a comparative perspective is a valuable contribution that political science can make to the debate about European integration in Switzerland.

Although a debate about the future of Switzerland in Europe needs to contain normative visions of how the Swiss citizens would like to shape their future, which this study will not provide, such a debate nevertheless profits from a theoretically informed empirical study in

several ways. First, the study perhaps helps Swiss politicians and diplomats – but also the representatives of the EU – to re-evaluate the costs and benefits of the current integration arrangements. In particular, the research will show in some respects whether the criticism by the Council regarding the functioning of the sectoral agreements is justified, or whether the view of the Federal Council that the sectoral agreements evolve dynamically despite their institutional shortcomings can be upheld. The most important findings in that regard are that a higher legal integration quality is indeed correlated with more frequent agreement revisions, as the Council assumes. However, also a higher substantive integration quality leads to more frequent agreement revisions, why in some regards also the Federal Council seems to be right. Agreements, which do not evolve dynamically, are such without a Mixed Committee, dynamic update obligations or direct references to EU law.

Related to this, a second point is that Switzerland will perhaps also be better able to assess its chances to satisfy its own interests in future negotiations. Sieglinde Gstöhl (2007) assumed that in recent years, the EU became active in policy fields where the inclusion of outsiders with the help of flexible institutional solutions is more difficult. The Swiss political leadership, however, shows no signs of thinking about abandoning the 'bilateral way' despite increasing negotiation difficulties. Based on the results presented in Chapter 4, which indicate that negotiations often led to domestic rule transpositions, the bilateral way can be re-evaluated with regard to the concessions it requires. In addition, recent dynamic agreements hint at the fact that Switzerland has had to accept stronger forms of supranational subordination in recent years. The proposed research reveals that this new legal form of integration already had important consequences: One of the agreements with dynamic update obligations, the Schengen Association Agreement, was very often revised already in its first years of existence. This leads to the question of whether the bilateral way indeed preserves Switzerland's autonomy.

Besides these more practical aspects, also a stronger normative question can profit from more thorough empirical analysis. Since the rejection of the EEA, European integration has not only been a 'hot potato', but also taboo. The sectoral agreements have often been discussed with regard to their sector-specific consequences, but only rarely in relation to the greater picture of European integration. Moreover, only the most important treaties were subject to a broad public debate. The questions of how often treaties are amended and, thus, how often legislation adopted in the EU enters Swiss legislation have neither been re-

searched systematically nor discussed publicly. This is most striking for the transposition of EU rules into Swiss legislation. The data collected for this study shows that it is by no means 80 per cent of law-making that is affected by the EU, as was predicted by Jacques Delors (Brouard et al. 2012a; König and Mäder 2008). The detailed analysis of the data also calls into question the significance of figures about the share of Swiss law-making that is related to EU law, which have been so eagerly reported in the media (Marty 2013; Schmid 2013, 2012; Schlaefli 2012). The analytical approach taken here departs from the point of view that the actual percentage share of domestic policies affected by the EU is not what makes the question salient. The salient questions concern the quality of the EU effect, the process by which the rules are transposed, and the reasons for the rule transpositions. The lack of transparency with regard to the question of where policies come from and for what reason they are adopted may be a problem for a democracy. In this vein, scholars and politicians alike regret that we still do not know what exactly is the empirical significance of the EU-compatibility policy (Goetschel 2003; Nordmann 2006; Gava et al. 2014). The present study does not address the question of legitimacy of Switzerland's differentiated integration policies, but it is hopefully able to describe the empirical significance of this policy in a more valuable way than by only citing a percentage share.

2 Measuring Switzerland's Differentiated Integration

At the beginning of the European integration process, integration meant uniform applicability of common rules to the project participants. The qualification 'differentiated' was added to European integration, when exemptions to the uniformity rule appeared (Stubb 1996). With the accession of more states to the European Union, and with the regulation of more and more issues at the European level, some states started to request exemptions while others wanted to cooperate in new matters. In some areas, policy-making was delegated to supranational bodies; in others policies have remained in the hands of intergovernmental bodies. Some EU member states do not participate in some EU policies, while some non-member states participate in EU policies. As a result, European integration takes different shapes for different countries and different policies. The notion differentiated integration aims to depict this.

In Chapter 1, I showed that the first problem we have to solve when we want to understand Switzerland's response to the challenge of European integration is the issue of measurement and proper description. Switzerland's political response to European integration is discussed in light of differentiated integration, because Switzerland, though not a member of the EU, has been integrated into a significant number of EU policies, but has also refrained from integration in important areas. Therefore, Switzerland is one of the countries contributing to the differentiation that is nowadays present on the map of European integration. This differentiation is the consequence of decisions by individual countries about non-integration or integration at certain points in time and with regard to certain policies. Differentiation across the European integration landscape is the consequence of the sum of these decisions. In that sense, I seek to measure and explain the European integration of Switzerland. In so doing, I draw on theories of differentiated integration, because they conceptualise European integration in a more accurate way than by only asking whether and why a country is a member of the EU or not. Some differentiated integration theories explicitly address the different degree of integration of different EU policies. This aspect is helpful in measuring the qualities of the elements of Switzerland's European integration, but it has to be adapted to the case of the outsider.

In the first section of this chapter, I provide a definition of external differentiated integration that puts EU rules in the focus of the analysis. In order to capture the differentiated quality of Switzerland's differentiated integration, I propose to distinguish the substantive from the legal integration quality of the extension of EU rules to Switzerland. The section concludes with a discussion on the relation of the concept of differentiated integration with Europeanisation, another research field that uses methodologically similar approaches to the present study, but pursues slightly different objectives. In the second section, I present the methodological approach to the empirical data collection. In that regard, I discuss the selection of cases and time period, coding procedure, as well as validity and reliability of the data. The third section presents the operationalisation of the variables that measure the quality of integration. The fourth presents descriptive results about the substantive and legal integration of Switzerland. This section focuses on the number of federal laws and sectoral agreements and the kinds of reforms, which are responsible for rule transpositions. It describes the quality of Switzerland's integration measures in terms of legal reforms, the development over time and the distribution across policy fields. These results provide first insights concerning the research questions formulated in the introductory chapters. The fifth section discusses how these descriptive results motivate the further proceeding of the explanation of the findings in Chapters 3 and 4 as outlined in the introduction.[5]

2.1 Grasping the Puzzle: What Is External Differentiated Integration?

What is and what is not differentiated integration needs to be defined in a way that can be measured and distinguished from other policy developments related to the European integration process. In order to make the insight into the Swiss case valuable for the general research on differentiated European integration, and to eventually compare Switzerland to

[5] The data set was established by the author on the basis of a data set on Swiss federal legislation by Wolf Linder and colleagues (Linder et al. 2009b; Linder et al. 2009a). All integration variables were added by the author. Table 25 in Annex A.1 lists the source for every variable, including whether or not it stems from the original data set. The manual coding was conducted in collaboration with the student assistants Laura Gies, Fabien Cottier and Elena Lorenzo. I wish to thank them for their coding assistance and their contribution to refining the coding procedure.

other European countries, this thesis draws on definitions from other recent theoretical and empirical studies on differentiated European integration. For the purpose of comparison, we of course would also need to use the same units of measurement as other empirical studies of differentiated integration. The coherence with regard to units of measurement is more difficult to establish than that with regard to definitions. The lack of institutional rules for the relations between Switzerland and the EU implies a lack of transparency with regard to the concrete EU rules extended to Switzerland. Nevertheless, the application of general definitions is the first stepping stone on the way to including Switzerland in the general picture of differentiated integration.

2.1.1 External Differentiated Integration as the Extension of EU Rules

I define external differentiated integration as the extension of EU rules beyond EU borders. Early on, the notions internal and external differentiated integration were used by Stephan Kux and Ulf Sverdrup (2000) to hint at the fact that the formal concept of EU membership is challenged by opt-outs by EU members and opt-ins by non-members. Recently, Katharina Holzinger and Frank Schimmelfennig (2012: 292) defined cases of differentiated integration as cases "in which the territorial extension of EU membership and EU rule validity are incongruent". If EU membership and EU rule validity do not overlap, one reason can be that a certain EU rule is not valid for a certain EU member. An exemption from a general applicable EU rule is called an opt-out. An example is the generally applicable provisions on the common currency in the treaty of Maastricht, from which the United Kingdom has a permanent opt-out (Adler-Nissen 2011). Recent empirical studies count opt-outs in order to measure the extent, development and distribution of differentiated integration (Schimmelfennig and Winzen 2014). In principle, Switzerland has opt-outs with regard to all generally applicable EU rules because it is not a member of the EU.

The complement to the opt-out is the opt-in. An opt-in is the other reason for which EU membership and EU rule validity sometimes do not overlap. In research on EU members, an opt-in is called an instance when a country applies an EU rule even though it has an opt-out

in this area and is not obliged to apply the rule[6]. A straightforward example is again the United Kingdom which has an opt-out with regard to the common border policy of the Schengen area, but nevertheless adopted some rules, like for example the directive on biometric passports (Adler-Nissen 2009). When we apply the same logic to Switzerland, and assume that Switzerland has a pre-determined opt-out with regard to all EU rules, every EU rule that is extended to Switzerland is an opt-in. These opt-ins constitute Switzerland's differentiated integration. Based on this reasoning, Sandra Lavenex (2009: 548) called Switzerland a case of flexible integration "because Switzerland has subjected itself to considerable sections of the acquis communautaire". As the most encompassing quantitative studies that exist today measure the degree of differentiation inside the EU by counting opt-outs per policy field or country, measuring the differentiated integration of Switzerland would ideally mean to identify and count the EU rules valid for Switzerland (Schimmelfennig 2014b).

The identification of EU rules is a challenging task because there are no general rules for how the validity of EU rules is extended to Switzerland. Most importantly, the information about the extension to Switzerland cannot be found in the EU rule itself, whereas, for example, opt-outs are assigned to individual member states in the respective legal text of the EU. We thus have to search for EU rules in Swiss legislation. There are two ways EU rules are made valid for Switzerland: they are included in sectoral agreements or transposed into domestic legislation. In both cases, however, EU rules are not always directly referred to. Sometimes, they are just copied into the legal text that is valid for Switzerland (e.g., a federal law) without mentioning what the source is. For many instances of differentiated integration, we can thus only find *that* an EU rule has been extended to Switzerland, but we cannot clearly identify *what* EU rule has been extended. For this reason, we have to refrain from the goal to count the opt-ins as the EU rules valid for Switzerland and content ourselves counting the instances of EU rule extensions observable in Swiss legislation. This restriction of the present study naturally hinders a comparison of the amount of opt-ins of Switzerland compared to the number of opt-outs of member states. It does not, however, hinder us comparing the development over time and the distribution of instances of differentiated integration across policy fields.

[6] In such cases, a member state normally receives an opt-out in primary legislation with regard to a whole issue area. An opt-in is then achieved via the application or the transposition of secondary law that is based on the treaty provisions from which the country has an opt-out (Adler-Nissen 2009).

2.1.2 Substantive and Legal Extension of Rules

The fact that EU rules are extended to Switzerland not in the EU legislation itself, but in Swiss legislation implies that the validity of an EU rule for Switzerland differs in important ways from the way in which the same rule is valid for a member state. EU legislation is valid for member states in the sense that it is either directly applicable on their territory (regulations), or has to be transposed into national law (directives). In any case, EU law is distinct from national law. Its correct transposition is supervised by the European Commission and its violations can be sanctioned by the ECJ. In contrast, if EU rules are extended to Switzerland because they are implicitly or explicitly included in a sectoral agreement, or because Switzerland unilaterally transposed them into domestic legislation, these extended EU rules become rules of either domestic or international legislation for Switzerland. Although the substance of these rules stems from the EU, the legal principles for supervising their implementation are the same as for domestic or international law, respectively. What complicates this picture even more are the findings of previous studies on the Europeanisation of Swiss domestic legislation. Several studies showed that EU rules that are extended to Switzerland sometimes lose some of their substance. At the same time, analyses of the sectoral agreements revealed that in some cases, Switzerland is legally subjected to EU institutions. Accordingly, I propose to measure not only whether or not an EU rule is extended to Switzerland, but also to measure the quality of the substantive as well as the legal extension of the EU rule to Switzerland.

The substantive and the legal quality of the extension of EU rules to Switzerland can be placed in relation to terms used by recent theories of differentiated integration. Dirk Leuffen et al. (2012) distinguished between horizontal and vertical differentiation in integration. Horizontal differentiation describes the differences with regard to territorial extension between policies, thus with regard to the number of member states participating. If an EU rule is valid for Switzerland, the according EU policy is horizontally differentiated, because a non-member state participates. Leuffen et al. discussed the Single Market as an example of horizontal external differentiation because non-member states like the EEA EFTA states and Switzerland participate in the internal market. Although participation in the Single Market lies at the heart of Switzerland's differentiated integration, in the introductory chapter I discussed that Swiss differentiated integration remained selective even with regard to Single

Market issues. Case studies of transpositions of EU rules into domestic legislation showed that Switzerland is not only selective with regard to the rules it transposes, sometimes it is even selective with regard to what parts of rules it transposes. Therefore, I argue that external horizontal differentiation, at least in the case of Switzerland, is not only a question of presence or absence, but a matter of degree. This is what the substantive quality of rule extension measures.

Whereas the concept of horizontal differentiation describes differences in the territorial extension of policies, the complementary concept of vertical differentiation describes differences in the level of centralisation between policies. The member states did not delegate their authority in all integrated policies to the same degree to European institutions. In some policies, the responsible EU body is an intergovernmental authority. In other policies, it is a supranational body. Both notions describe differentiations between policies. The legally different status of Switzerland adds to the vertical differentiation within EU policies, because the horizontal extension of an EU policy to Switzerland usually does not imply that Switzerland is vertically integrated in that policy to the same extent as member states. For that reason, we need to measure the vertical integration of an extended EU rule in Switzerland independently of the vertical integration quality of this same rule inside the EU. This is what I try to capture with the legal quality of rule extensions.

2.1.3 What is and what is not Differentiated Integration

One could argue that all instances of substantively imperfect extensions of EU rules to Switzerland, and extensions without a legally binding character are not instances of differentiated integration. This argument is strongest in the case of unilaterally transposed rules. Such transpositions are not necessarily accepted by the EU as transpositions of its own rules (Freiburghaus 2004; Wyss 2007). This contradicts the ideal type of integration that describes a process when parties explicitly agree on common rules. EU rules transposed into domestic legislation are nevertheless included in this study for the following reasons: First, I assume that at least parts of the transpositions of rules into domestic legislation enable or follow a mutual agreement on integration in the form of a sectoral agreement. Second, unilateral transposition of rules is a phenomenon that has accompanied the European integration process for a long time and not only in Switzerland. In the case of the EFTA states, it facilitated

later EU or EEA accession (Gstöhl 2002). In the case of the UK or Denmark it seems to ease negative consequences of opt-outs (Adler-Nissen 2009). The third indicator for the integration quality of the transposition of EU rules is related to the domestic law-making process. The examination of legal proposals with regard to their EU compatibility is conducted because EU law is seen as the most important reference point for law-making. This distinguishes the EU compatibility examination crucially from comparative legal analyses, which are traditionally conducted in Switzerland when new issues appear on the legislative agenda. Although also a comparative legal analysis can lead to the inclusion of foreign ideas into domestic legislation, it is always conducted for its own ends, whereas EU compatibility is assumed to be an end in itself (Oesch 2012).

This definition of the extension of EU rules to Switzerland that allows for imperfectly valid or transposed rules is rather wide. There may however be other access points for EU rules to enter Swiss politics not captured by this definition. First, the EU is also an important reference point for legal practice. When interpreting legislation that transposes EU law, Swiss courts sometimes take into account the motivations of the legislator. Legal scholars, however, disagree as to what extent judges should interpret provisions that were transposed from EU law in accordance with EU law and ECJ case law (Oesch 2012; Maiani 2008). The present study will focus on the inclusion of EU laws in Swiss law via the usual law-making process only, and will not examine the issue of interpreting and implementing the transposed EU rules. Second, European integration is first and foremost based on legislation, but other forms of policy-making mechanisms have gained in importance in recent years. Examples are non-binding recommendations by the Commission or the Council, or the Open Method of Coordination (OMC; Radaelli 2012). In contrast to the Community method, however, these policy modes do not produce generally applicable legislation. Such policies can of course also influence Swiss policies, but this influence is not necessarily observable in legislation and can therefore not be integrated in the analysis of Switzerland's differentiation integration defined as the extension of EU rules. This problem is also present in Europeanisation studies of EU member states (cf. Falkner 2007).

Although EU rules lie at the heart of many definitions of differentiated European integration, the phenomenon itself cannot be reduced to rules. For example, some scholars have been interested in the extension not only of the regulatory, but also the so-called 'organisational' boundary of the European Union to non-member states. In addition to the extension of EU

rules beyond EU borders, they have concentrated on the way the states to which the rules are eventually extended are included in EU policy-making (Lavenex and Schimmelfennig 2009; Lavenex 2009b). The focus of this study corresponds to the question about the extension of the regulatory boundary of the EU, because external differentiated integration is defined as the extension of EU rules. The question of whether Switzerland had a say in the elaboration of an EU rule or not is without doubt an important question, but the measurement of differentiated organisational integration is unfortunately beyond the scope of this study.

2.1.4 The Extension of EU Rules and the Concept of Europeanisation

The present study is similar to recent empirical studies on Europeanisation, because it includes domestic law-making. Empirical Europeanisation studies sought to measure the influence of the EU on domestic legislation (Brouard et al. 2012b; Müller et al. 2010). In contrast to differentiated integration as defined here, Europeanisation is usually understood as a process rather than an outcome. Europeanisation studies measure and explain the outcome of this process at the domestic level. Domestic political change in response to Europeanisation can affect policies, but also decision-making processes (politics), or the political system (polity). With regard to policies, a change in response to Europeanisation does not necessarily result in policy convergence or harmonisation between national and European policies. It can also lead to divergence of domestic policies compared to an EU policy (Radaelli 2002). The focus on the extension of EU rules to Switzerland is thus, in the language of the Europeanisation literature, a focus on convergence or harmonisation results of the Europeanization process. Naturally, this focus ignores some Europeanisation effects. For example, the flanking measures accompanying the Bilaterals I package were a reaction to Europeanisation and an important domestic policy change. However, the flanking measures did not extend an EU rule to Switzerland and thus were not integration measures, but they were a reaction to the anticipated consequences of the integration achieved by the Free Movement of Persons Agreement (FMPA).

The empirical analysis of the extension of EU rules to Switzerland can nevertheless significantly profit from methodological insights from the Europeanisation literature, because it meets similar challenges. The first challenge concerns the choice of valid indicators to identi-

fy the extension of EU rules at the domestic level. Annette Töller (2010, 2012) discussed the validity of legislation as a proxy for policy changes and reminds us that legislation is not equally important in all policies, that the EU can be used at the national level to justify policy changes that in reality have nothing to do with the EU, and that some EU rules exert constraints on the domestic legislator. The problem of the different importance of legislation in different policy fields is not that severe for this study, because the definition of integration and differentiation from the outset is limited to legal rules. The other two problems are important when measuring the extension of rules. If the EU is used as an excuse for a policy reform, this leads to false positive cases in the empirical study. If an EU rule hinders the domestic legislator from introducing legal change, the respective effect cannot be observed with legislation as the proxy for integration. The variables used to measure the quality of the extension of rules seek to take into account both problems. Finally, Töller (2010) underlined that quantitative studies deliver only information about the "scope" of Europeanisation. The "extent" of Europeanisation, defined as the quality of the policy effect, can only be analysed in case studies. To some extent, this limitation also holds for the present study. Although the variables seek to explicitly measure the quality of the rule extension, they do so necessarily on a rather abstract level because of the quantitative research design.

The second challenge that this study shares with Europeanisation studies is the issue of establishing causality. While Europeanisation studies face the danger of linking every domestic political change to developments at the European level, the present studies faces the danger to assume that every inclusion of an EU rule into Swiss law was included because its transposition produces some integration benefits for Switzerland. The Europeanisation literature provides different suggestions for dealing with the causality problem. One is to explicitly distinguish convergence and divergence effects of Europeanisation (Radaelli and Pasquier 2007). The exclusive focus on transposition of or adaptation to EU law follows this advice and reduces the amount of possible explanatory factors for domestic political change and thus makes it less difficult to attribute an integration intention to transpositions (Bache et al. 2012). Another suggestion is that Europeanisation research should start with an analysis of the political changes at the domestic level, and only then search for explanations for those changes (Radaelli 2012; Radaelli and Pasquier 2007). The present study also follows this suggestion, because it starts with the identification of all policy changes related to EU rules at the domestic level.

Hopefully, the present study cannot only build on the Europeanisation literature, but also contribute to the discussion of Europeanisation of non-member states in general and Switzerland in particular. In general, the Europeanisation approach emerged against the backdrop of integration theories that have focused on the 'bottom-up' influence of the member states on the development of European integration. Europeanisation, on the contrary, took a 'top-down' view, and started to research how integration retroacts on nation states (Ladrech 2010). Today, it is widely recognised that Europeanisation is part of a two-way relationship: European political processes affect domestic politics, but also domestic politics influence political change at the European level (Vink and Graziano 2007; Ladrech 2010; Bache et al. 2012). Nevertheless, European integration is the independent variable of interest in most Europeanisation studies that seek to explain political changes at the domestic level (Haverland 2006). This research interest faces the methodological problem of the lack of variance on the independent variable. Although it was sometimes discussed, Switzerland cannot be used as a control case, because its 'value' on the variable of European integration is far from zero (Haverland 2006, 2007; Radaelli 2012). The present study hopefully contributes to a better understanding of what Switzerland's value on the integration variable could actually be.

2.2 Gathering Empirical Data: EU Rules in Swiss Federal Legislation

The lack of general institutional rules for the extension of EU rules to Switzerland has two major implications for a quantitative data collection: First, the federal administration does not systematically publicise which EU legislation is included in sectoral agreements or is transposed into domestic legislation. The Federal Council even rejected a parliamentary request to mark domestic legal acts that contain transposed EU rules (Nordmann 2006). The identification of EU rules thus needs to start with the evaluation of the content of Swiss legislation. Second, this evaluation has to deal with two steadily developing bodies of law: EU legislation and Swiss federal legislation. An extension of an EU rule to Switzerland can have integration quality at one point in time, but the same rule can lose its integration quality when the EU changes its rules, if Switzerland does not adapt the transposition to the chang-

es. These two complications are the main reasons for the choice of the relevant population to search EU rules in Switzerland, for the selection of the units of measurement and the sources for the coding of the integration variables. These three decisions are discussed in the following.

2.2.1 Population: The Relevant Parts of Swiss Legislation

Switzerland is a federal country organised based on the principle of subsidiarity. Subsidiarity means that the federal authorities are only allowed to adopt legislation in matters for which they are explicitly assigned the responsibility in the constitution (Vatter and Linder 2001). All other issues remain under cantonal authority. Since 2000, the cantons have also had a formal say in foreign policy-making, but their role is limited to the consultation procedure at the domestic level (Bundesrat 1998). The conclusion of international agreements lies in the exclusive competence of the federal authorities. For the identification of EU rules that enter Swiss legislation via sectoral agreements with the EU, we can thus focus on federal legislation only. Swiss federal legislation[7] is organised in two parts: One is called international law *(Internationales Recht)* and contains all international agreements that Switzerland has ratified. The sectoral agreements are published in this part of the federal legislation. They were identified by their title, because the title names the parties to the agreement. We count as sectoral agreements all agreements concluded between Switzerland and the EU, one of its predecessor organisations, or an EU institution (e.g., Europol). As the aim is to identify EU rules, we only include agreements that are normative acts. This means that all acts simply approving or putting into force other acts and corrigenda were not included in the data set.

The entry points of EU rules in the case of unilateral transposition are less clear. Existing empirical studies showed that cantonal legislation only very rarely touches fields regulated by the EU (Wyss 2007; Arbia 2008). Unilaterally transposed rules should thus also be identifiable when looking only at federal legislation. Generally binding federal legislation can be adopted by the parliament, but also by the government, the departments, and federal offices. In contrast to the parliament, the government and federal offices need an explicit au-

[7] Throughout the study, Swiss federal legislation refers to all legal texts of the Classified Compilation of Swiss Federal Legislation (*Systematische Sammlung des Bundesrechts*, URL: http://www.admin.ch/bundesrecht/00566/index.html?lang=de, last access 29/07/2014.

thorisation from parliament in a federal law to adopt legislation. Federal laws are thus the only instruments, which can introduce new issues into domestic federal legislation. Therefore, they are also the entry points for new EU rules. However, EU legislation is often regulatory and contains technical standards. Scholars assume that Switzerland transposes most eagerly such EU rules, because the different technical standards constitute technical barriers to trade. At the same time, technical regulations are quickly developing issues. Therefore, the federal parliament sometimes adopts laws that state a general necessity to adapt Swiss legislation continuously to the relevant EU laws in an area, and delegate the responsibility for this continuous adaptation to the Federal Council (e.g., Imstepf 2012, Jaag 2010, Epiney and Schneider 2004). In such cases, EU rules are transposed into Swiss legislation via government regulations.

Unfortunately, the identification of EU rules in government regulations is much more difficult than the identification of EU rules in federal laws. Unlike in the case of the federal laws, the federal administration does not publish the results of the EU compatibility examination for the government regulations. EU rules could thus be identified in government regulations only based on the legal texts themselves[8]. For an examination based on the legal text, one would need legal expertise on every issue. This is not feasible for an empirical study that aims to be as encompassing as possible with regard to policy areas and time and to measure the quality of Switzerland's differentiated integration. Government and other federal regulations are thus not considered in the data collection. This exclusion will probably hide some of the dynamics of Swiss differentiated integration. Regulations are the most quickly developing legal instruments, and Roy Gava and Frédéric Varone (2014) recently presented data on the Europeanisation of government regulations and identified a considerable "EU footprint" in this legislation. Gava and Varone's data, however, are based on automatized keyword search, which is not suitable for the purposes of this thesis because it is not able to detect different integration qualities. Federal laws are published in the second part of Swiss federal legislation that is called domestic law *(Landesrecht)*. As in the case of sectoral agreements with the EU, we only consider federal laws with a normative character that introduce new substantive legal rules. Federal laws simply approving or putting into force other acts, corrigenda and similar texts are not relevant for the extension of EU rules (cf. Linder et al. 2009a).

[8] The messages sent to the government by the ministries and offices with the draft regulations are available only on request.

2.2.2 Units of Measurement: EU rules and Changes in the Swiss Body of Law

The choice of the units of measurement has to take into account that not only the Swiss federal legislation, but also the body of EU rules that can be transposed into Swiss legislation is steadily developing. When we identify the extension of an EU rule to Switzerland, either via a sectoral agreement or domestic legislation, any measure of the integration quality of this extension necessarily is valid only for the particular point in time when the EU rule is extended to Switzerland. The reason is that Switzerland´s legal integration is not dynamic: any extension of an EU rule to Switzerland may lose its external differentiated integration quality when the EU amends or abrogates the respective rule. Although some sectoral agreements contain provisions that regulate how the parties deal with the issues of new rules emerging in the EU in the area of the agreement, these new rules always have to be explicitly extended to Switzerland, either via the decision of Mixed Committees or an amendment to the agreement. With regard to the transposition of EU rules into domestic legislation, no rules exist at all regarding if and how laws transposing EU rules should be updated to developments in the EU. Moreover, the guidelines for the authors of federal legislation discourage from the use of dynamic references (Bundesamt für Justiz 2007). It would thus be misleading to interpret an EU rule that is introduced into Swiss legislation at one point in time as an instance of external differentiation until the rule is abrogated in Switzerland.

The units of measurement for which we can provide a valid measurement of the extension of EU rules are the reforms of Swiss federal legislation. A reform can be an adoption, a total or a partial revision of a sectoral agreement or a federal law. The choice of legal reforms as units of measurement also has the asset that it enables us to measure the development of rule extension over time (cf. Töller 2010). Accordingly, we measure the quality of the extension of EU rules in terms of the legal reforms that are responsible for the rule extension. The reforms to Swiss federal legislation are chronologically published in the Official Collection of Federal Legislation[9]. Because we are interested in the content of sectoral agreements and

[9] *Amtliche Sammlung*, URL: http://www.admin.ch/bundesrecht/00567/index.html?lang=de, last access 29/07/2014.

federal laws, it goes without saying that we could consider only legal reforms of which the contents were published in the Official Collection[10].

The other available quantitative studies of the impact of the EU on Swiss domestic legislation also focused on legal changes as unit of analysis, thus on the publications in the Official Collection of Federal Legislation (Gava and Varone 2012, 2014). Some of them, however, call their unit of analysis 'laws' (e.g., Arbia 2008). In this study, when I refer to a federal law or a sectoral agreement, I refer to one legal text in the Classified Compilation of Federal Legislation[11]. Such a legal text enters the body of legislation at the point in time when it is adopted. In this year, it enters also the data set. After that, it can be amended once or several times, until at a certain point in time, it is abrogated. When a legal text is abrogated, it drops out from the data set (cf. Linder et al. 2009a, Linder 2014). These reforms to the body of legislation, adoptions, amendments, and abrogation are published in the Official Collection of Federal Legislation. The integration quality is assigned to these changes in the body of legislation. In addition to earlier studies, the present study also collected the information on the federal law or sectoral agreement that a legal change belongs to. Like this, not only can we count the instances of rule extensions, but for example also whether they occur several times as amendments of the same sectoral agreement or federal law. In addition, the information about the federal law or sectoral agreement allows us to locate a legal text in a specific chapter of the Classified Compilation, and thus assign it to a policy field.

The assignment of publications in the Official Collection to federal laws and sectoral agreements, however, complicates the definition of what is to be counted as a legal change. The guiding principle is that one publication in the Official Collection can only be assigned to one federal law or sectoral agreement as change. By rule, the reform is assigned to the legal text, the SR number of which it bears. This reform is called a primary reform. In the case of the sectoral agreements, publications in the Official Collections almost never affect more than one SR number. The federal decrees adopted by parliament, which are the legal text putting into force a sectoral agreement, are not included in the data set as they do not contain nor-

[10] This restriction has no serious consequences, as there is only one agreement in the data set, whose text was not published in the Official Collection. It is the agreement on an association with EURATOM in the area of controlled thermonuclear fusion and plasma physics (SR 0.424.122), which entered into force only in 2009 and is thus responsible for only two observations.

[11] *Systematische Rechtssammlung*, URL: http://www.admin.ch/bundesrecht/00566/index.html?lang=de, last access 29/07/2014.

mative provisions themselves. In the case of the federal laws, legal reforms published in the Official Collection often also affect other federal laws, for example because terms, article numbers or references have to be adapted. Law revisions as a consequence of a reform bearing another SR number are called secondary reforms. Usually, the distinction between primary and secondary reform is straightforward; the definition is only complicated by the use of so-called framework laws. Framework laws are publications in the Official Collection of Legislation that do not enter the Classified Compilation of Legislation, and accordingly they cannot be assigned to a policy field. Framework laws list a series of legal reforms that are more or less closely connected (Müller 2013). In such cases, we count all legal reforms as primary reforms. For each of these reforms, the integration quality is coded separately, if the information in the coding sources is detailed enough (see Table 1).

The empirical data covers the period from 1990 until 2010. This period was chosen for historical and for practical reasons. The historical reasons are that the early 1990s are a turning point in European integration history. With the Single European Act and the Treaty of Maastricht, the EU finally overcame the stalemate in its development. This acceleration of the European integration process attracted reluctant outsiders. Because of the popular rejection of the EEA agreement, Switzerland became a special case in 1992. Before the sectoral agreements on insurance and transit between Switzerland and the EU entered into force in 1992, the only important sectoral agreement was the 1973 Free Trade Agreement and its protocols. We assume that the examination of EU compatibility introduced in 1988 also had its first effects only with regard to legal changes that occurred since 1990, because a federal law on average needed one and a half years after the presentation of the draft to parliament and its final adoption and publication in the official collection of federal legislation.

2.2.3 Coding Sources: Legal Texts and the EU Compatibility Examination

As mentioned above, the identification of EU rules that were extended to Switzerland has to start with the content of Swiss legislation. In sectoral agreements, EU rules are included either via so-called 'parallel provisions' or via direct references to EU secondary law. Parallel provisions paraphrase provisions and principles of EU legislation without actually mentioning the source. Therefore, they are only identifiable with legal expertise in the respective area. The literature mentions only two agreements between Switzerland and the EU that do not build on EU law at all: the Agreement on Pension Funds, and the Agreement on Proceeded

Agricultural Goods (both Bilaterals II, see Epiney et al. 2012). Accordingly, we assume that every agreement between Switzerland and the EU potentially extends EU rules to Switzerland. We measure the quality of this extension with regard to explicitness. This quality can be assessed based on the agreement texts themselves, because explicit references to EU rules are easy to identify. Nevertheless, both integration qualities are measured for sectoral agreements as well as for domestic rule transpositions.

In case of the federal laws, on the contrary, EU rules are only very rarely mentioned directly in the legal texts. Not only does the federal administration not mark federal laws that contain EU rules, but the legislative guidelines for the authors of federal legislation recommend that direct references to EU law should be avoided if the transposition of an EU rule is not based on a sectoral agreement (Bundesamt für Justiz 2007). The considerations behind this advice are that direct references to foreign law are questionable with regard to the sovereignty of the Swiss legislator if Switzerland is not legally obliged to transpose an EU rule. Moreover, direct references complicate a legal act, because they do not make it self-explanatory. If officials abide by these guidelines, we should only find direct references to EU rules in the case that their transposition is a consequence of a sectoral agreement. In all other cases, we should expect that the EU rule is paraphrased (Schweizerische Bundeskanzlei 2010)[12]. Similarly to parallel provisions in sectoral agreements, paraphrased EU rules in federal laws cannot be recognised as such without legal expertise in the respective area. However, unlike in the case of the sectoral agreements, we cannot assume that all federal law reforms extend EU rules to Switzerland.

As a consequence, and in contrast to the coding of the sectoral agreements, we cannot rely on the legal texts themselves to identify EU rules in domestic legislation. Fortunately, the examination of the EU compatibility is conducted in a rather systematic way by the lawyers of different units of the federal administration since 1988. The results of this examination are presented in the official reports accompanying every legal act presented to the parliament (Bundesamt für Justiz 2007). The relevant reports are the Federal Council messages for bills initiated by the government and the reports by parliamentary commissions for bills initiated by the parliament. They are drafted by the administrative unit that prepares a bill. The

[12] This could be an explanation for the finding by Gava and Varone (2012) that in legal texts, direct Europeanisation, i.e. references to the EU because of sectoral agreements, is much more frequent than indirect Europeanisation.

conclusions with regard to EU compatibility are systematically verified by the Directorate for European Affairs[13], the Directorate for International Law, and the Federal Office for Justice (Bundesamt für Justiz 2007). The involvement of these different bodies minimises the probability that the EU compatibility examination is not reported truthfully. Therefore, we used these texts as sources for the coding of the integration quality of federal law reforms.

The quality of an empirical data collection depends on the reliability of the coding procedure the validity of the measurement. The reliability of the coding procedure could be tested, because several researchers were involved in the coding via content analysis of the sources. The coding decisions of the different researchers were systematically compared and the results indicate that the reliability is fair enough to allow for substantive conclusions (see Annex A.4). The validity of the measurement is more difficult to assess. On the one hand, the validity depends on the quality of the coding sources, i.e. the official EU compatibility examinations. Based on her coding experience, Emilie Kohler (2009) stated that the information given in the European chapters is of different quality and sometimes incomplete. For example, the messages are not always clear with regard to what they refer when they discuss 'European law'. The results of the EU compatibility examination can be mixed with discussions of Conventions of the Council of Europe or other European international agreements. In cases of doubt as to whether a European rule is an EU rule, we rely on the criterion that only such rules that were published in the Official Journal of the European Union are EU rules. Another difficulty is that the messages do not always follow the same structure. In addition to the chapter explicitly dealing with the EU compatibility, we also evaluated the introduction of the message *(Übersicht)*, and searched with keywords to references to EU rules in the whole message.

On the other hand, the coding may not be valid because the examination of the EU compatibility reported in the coding sources refers to the draft of the legal reform after it has been discussed in the pre-parliamentary consultation procedure, but before it is discussed, probably amended, and finally adopted in parliament. If the parliament amends provisions of a law that are relevant for the EU rule transposition, the indicator is not valid. The crucial question

[13] The Directorate for European Affairs is part of the Federal Department of Foreign Affairs and coordinates the European policy of the Federal Council. Until 2012, the Directorate was called Integration Office *(Integrationsbüro),* and jointly supervised by the Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education and Research.

is thus whether we can assume that the parliament does not change anything with regard to the transposition of EU rules. The few empirical studies that report numbers with regard to the frequency of amendments by the parliament indicate an active role by the parliament in general, but show that its role is less influential in Europeanised issues. Annina Jegher and Wolf Linder (1998) found for the years 1995-1997 that almost half of all federal laws were amended by parliament to a medium or a substantial degree. Adrian Vatter (2008) reported that 39% of bills were amended in the years 1996-2004. Hanspeter Kriesi (2001) stated that the role of the parliament is especially important in controversial issues and when the pre-parliamentary phase does not result in a stable compromise. In that regard, Sciarini et al. (2002) showed that in cases of indirect Europeanisation, the decision-making process normally is less conflictive and the pre-parliamentary phase more important. Similarly, Jegher and Linder found that bills dealing with foreign policy issues are least likely to be amended by parliament (4.5%). In addition, the validity of the EU compatibility examination was checked based on the available legal studies on cases of EU rule transposition. In all cases, the coding decisions corresponded to the conclusions of the legal analyses, even in cases of selective transposition of rules[14]. We thus assume that the EU compatibility examinations are a valid indicator for EU rule extension.

2.2.4 Data Structure

Table 1 gives an overview of the structure of the data set on Switzerland's differentiated integration. This data structure was adapted for the different analyses presented throughout the thesis (number of reforms were aggregated over years or policy fields, only specific integration variables, etc.). The specific coding of the variables is explained in the respective analysis or in the Annex to the respective chapter. Table 1 gives an overview over the structure of the raw data, which has the structure of a panel data set. The header row of Table 1 contains selected variables. The first column (SR No.) contains the number that identifies a legal act in the Classified Compilation of Federal Legislation. The SR number of the first entry

[14] Examples for case studies used to verify coding decisions: environmental law (Epiney and Schneider 2004), cartel law (Sturny 2012; Amgwerd 1998), law on value added tax (Imstepf 2012; Robinson 2013), internal market law (Herren 2012), patent act (Cottier 2006), law on equal treatment of men and women (Epiney and Duttwiler 2004), law on investment trust (Forstmoser 1999), consumer protection and corporate law (Baudenbacher 2012).

is 0.142.112.681 and refers to the Free Movement of People Agreement. The SR number contains the information whether a legal text is a sectoral agreement or a federal law (the numbers of international legislation start with "0.") and the information about the chapter and sub-chapter it is assigned to in the Classified Compilation. The sectoral agreement with the number 0.142.112.681 belongs to chapter 0.1 and sub-chapter 0.14. The sub-chapter is used as an indicator for the policy field of the act. The variable publication year indicates in which year legal text was first published. This information is the same for all observations of the same legal text and stable over time.

In addition to the stable information, which is assigned to the sectoral agreement or federal law (SR number), the data set contains information that changes from observation to observation also for the same legal text. These are for example the variables measuring the integration quality of a reform. These variables are assigned to the AS number. "AS" stands for Official Collection of Federal Legislation *(Amtliche Sammlung).* In this collection, every new legal text, and every amendment to a legal text is chronologically published. The unit of analysis, the legal reform, can thus be identified by its AS number. In Table 1, all variables on the right side of the column AS number contain values that change for each reform of a legal text (rows 2 and 3 contain different variable values, because they refer to different AS numbers, but to the same SR number). When I refer to the year of a reform, I usually refer to the year when the reform was published in the Official Collection throughout this thesis. The variables "new" and "rev" indicate whether a publication in the Official Collection was a new adoption of or a revision to a legal text. The integration variables are coded based on the text of the publication in the Official Collection in the case of sectoral agreements, and based on the Federal Council message or Commission report to which the publication in the Official Collection refers in the case of federal laws.

Table 1: Data structure

	Stable variable values per legal text			*Changing variable values for the same legal text*								
	SR No.	**Publ. year**	**Policy field**	**AS No.**	**Year**	**New**	**Rev.**	**Primary reform**	**Integration variables**			
1	0.142.112.681	2002	14	2002 1529	2002	1	0	.	0	1	0	0
2	0.142.112.681	2002	14	2004 4203	2004	0	1	.	0	1	0	1
3	0.142.112.681	2002	14	2004 1277	2004	0	1	.	0	0	0	1
4	0.142.112.681	2002	14	…	…	…	…	.	…	…	…	…
5	161.1	1976	16	1994 2414	1994	0	1	.	0	0	0	0
6	161.1	1976	16	1997 753	1997	0	1	.	0	0	0	0
7	161.1	1976	16	…	…	…	…	…	…	…	…	…
8	161.1	1976	16	2003 3543	2003	0	1	0	0	0	0	0
9	…	…	…	…	…	…	…	…	…	…	…	…
10	171.10	2003	17	2003 3543	2003	1	0	1	0	0	0	0
11	…	…	…	…	…	…	…	…	…	…	…	…
12	142.20	1931	14	1999 2411	1999	0	1	1	0	1	0	0
13	142.20	1931	14	2000 1891	2000	0	1	1	0	0	0	0
14	…	…	…	…	…	…	…	…	…	…	…	…
15	837.0	1982	83	2002 701	2002	1	0	1	0	1	0	1
16	831.10	1946	83	2002 701	2002	1	0	1	1	0	0	1
17	…	…	…	…	…	…	…	…	…	…	…	…

The rows 5 to 18 in Table 1 contain information about federal laws. As discussed above, we distinguished between primary and secondary reforms of federal laws, because sometimes, one AS number changes several SR numbers. Usually, however, the substantive changes only concern one SR number. The reform with the respective combination of AS and SR numbers is then coded as primary, all other reforms with the same AS but other SR numbers are coded as secondary reform. The rows 8 and 10 give an illustration. Row 10 shows that in 2003, a new law with the SR number 171.10 was adopted: the law on the federal parliament. As a consequence, also the law with SR number 161.1, the law on political rights, had to be adapted to the new law. Therefore, row 8 contains the same AS number as row 10. This reform, however, is only a secondary reform. The integration variables contain the same values for the primary and the secondary reforms with the same AS number. Throughout the thesis, I only analyse primary federal law reforms.

In the case of framework laws, the same AS number can be coded several times as primary reform, although it relates to different SR numbers. The reasons were discussed in section

2.2.2. Rows 15 and 16 provide an example. Two reforms with the AS number 2002 701 were coded as primary reforms. The values of the integration variables can differ between the different combinations of AS and SR numbers if the coding source discusses the EU compatibility separately for the different legal reforms contained in the framework law and if it comes to different conclusions with regard to different federal laws. Annex A.1 gives a detailed overview of the variables, including format and coding sources.

2.3 Content Analysis: Measuring Integration Quality

In order to measure Switzerland's differentiated integration, we have to evaluate the changes in Swiss federal legislation with regard to the question of whether they extend EU rules to Switzerland, and, if so, we can proceed to the evaluation of the substantive and legal quality of this rule extension. The substantive quality of the rule extension is an issue that is most relevant in the case of domestic transpositions of EU rules. In the case of sectoral agreements, we know that the EU almost only accepts principles that are modelled on its acquis. The legal quality of rule extension, on the contrary, is of most interest in the case of sectoral agreements, because they differ significantly with regard to their procedural provisions. In the case of domestic rule transpositions, there are not many possibilities that an EU rule extended to Switzerland keeps its legal quality as an EU rule.

2.3.1 Measuring the Quality of EU Rule Extensions in Sectoral Agreements

Astrid Epiney and colleagues (2012) proposed a scheme to categorise the 17 most important sectoral agreements of the last two decades (Bilaterals I and II and some newer agreements). They examined the agreements with regard to four criteria that indicate the closeness of the agreements to EU law and the role of the ECJ. These criteria correspond well to what we need to know in order to identify the substantive and legal quality of the extension of EU rules to Switzerland. The two first criteria evaluate the closeness to EU law and measure whether an agreement directly refers to EU secondary legislation or whether an agreement contains parallel provisions. These two criteria correspond to the substantive quality of the extension of EU rules. Unfortunately, parallel provisions cannot be identified without

legal expertise in Swiss as well as EU law in every issue area, a resource not available to this study. As Astrid Epiney et al. (2012) identified only two sectoral agreements that neither contain parallel provisions nor direct references to EU law, and because we consider only normative legal changes, we assume that all agreements contain extensions of EU rules. Further, we assume that the substantive quality of these rule extensions is higher if the agreement directly refers to EU law. In contrast to parallel provisions, direct references to EU law are easily identifiable.

The two other criteria proposed by Epiney et al. are related to the legal quality of the sectoral agreements. One of these criteria is whether an agreement contains dynamic provisions, i.e. whether it obliges Switzerland to transpose future EU legislation in the relevant field. The other criterion asks whether or not a sectoral agreement states that ECJ case-law is relevant for Switzerland or not. We used similar criteria for the purpose of measuring the legal quality of the extension of EU rules to Switzerland. The first variable measures whether an agreement contains a dynamic provision, which explicitly obliges Switzerland to adopt EU legislation not only before, but also after an agreement is signed. The second variable concerns the question of monitoring the agreements. We defined this criterion broader than Epiney et al. and do not restrict the focus to the ECJ. We measure whether any EU authority has the competence to monitor the implementation of the agreement on Swiss territory. These three variables measuring the substantive and the legal quality of the extension of EU rules to Switzerland in sectoral agreements can be understood as characteristics of the sectoral agreements that distinguish them from usual agreements of international law. Table 2 gives an overview of the variables measuring the substantive and legal integration quality of sectoral agreement and federal law reforms. The detailed coding rules are described in Annex A.2 and Annex A.3.

2.3.2 Measuring the Quality of EU Rule Extensions in Domestic Legislation

In a first step, the federal laws have to be analysed with regard to the question of whether there exist EU rules for the issues or for part of the issues dealt with in the law, because national policies cover a wider range of issues than EU policies. If we come to the conclusion that there exist EU rules, we can evaluate whether the federal law reform (adoption or total or partial revision) transposes these EU rules. If we identify a transposition, we can evaluate

this transposition with regard to the substantive and legal quality of the extension of the EU rule or EU rules. The substantive quality of the extension of EU rules is measured with variables similar to those proposed by Emilie Kohler (2009). We distinguish between transpositions that result in a full adoption of the relevant EU rules and transpositions that result only in a partial adoption of the relevant EU rules. Per definition, a transposition is a change with regard to the extension of EU rules to Switzerland. Either, it transposes an EU rule for the first time, or it removes inconsistencies remaining after a first transposition, or it adapts an earlier transposition measure to new developments in the EU.

As in the case of Europeanisation, the extension of EU rules is not only a phenomenon of change; it can also be one of policy continuity. In terms of legal change, it is not possible to measure EU-relevant policy continuity, because continuity does not require change. This problem is similar to the one that the effect of prohibitive EU rules that hinder national policy-makers from adopting certain rules cannot be observed in terms of legal change (Töller 2010). In order to at least partly overcome this problem, we introduce a third variable to measure the substantive quality of EU rule extension. The EU compatibility examination normally discusses the status of the compatibility with EU rules of the concerned law as a whole. Accordingly, the examination sometimes concludes that the parts of the law that were changed concern issues that are either not regulated by the EU or lie within the regulatory leeway allowed by the relevant EU rule, and that therefore the law as a whole is compatible with EU law. Such legal changes are coded as 'compatible' changes.

The legal quality of the transposition of EU rules into Swiss legislation is in principle always the same. EU rules that are paraphrased in Swiss legislation become Swiss legal rules, regardless of the origin of their substantive content. With regard to differentiated integration, it nevertheless makes a difference whether an EU rule was transposed in relation to a sectoral agreement or unilaterally. In the case of a sectoral agreement, we can assume that Switzerland and the EU agreed on the relevant EU rules, and accordingly, a transposition related to an agreement comes closer to a mutually agreed ideal-type integration step. As was mentioned in the first chapter, transpositions of EU rules into domestic legislation can be implementation measures after an agreement has been signed. Accordingly, in order to measure the legal quality of EU rule extensions to Switzerland, we distinguish between transpositions of EU rules that are related to a sectoral agreement (implementations), on the one hand, and unilateral transpositions, on the other.

The substantive and the legal quality of EU rule transpositions are evaluated separately. The substantive quality of EU rule transposition is evaluated based on the congruence between the rule that is transposed into Swiss legislation, and the rule that is valid in the EU. The legal quality of the rule transposition is evaluated with regard to the relation of the rule to a sectoral agreement, thus to the 'Bilateral law'. Accordingly, also a legal change that does not substantively transpose an EU rule can be related to a sectoral agreement. There are only very few such cases in the data set (cf. Table 4). Table 2 gives an overview of the variables measuring the substantive and legal integration qualities of federal law reforms. The detailed coding rules are reported in Annex A.2 and A.3 and the reliability tests of the coding decisions are reported in Annex A.4.

2.3.3 Measuring the Amount of EU rules in Switzerland

Sectoral agreements and federal laws alike contain several legal rules. Neither agreements nor laws have counterparts in legal acts of the EU. The unit of measurement for the quality of Switzerland's differentiated integration is a change in the body of Swiss federal legislation that transposes EU rules. Such a transposition can include one or several EU rules, and one instance of differentiated integration thus can correspond to one or several opt-ins. As mentioned earlier, it is not possible to count the number of opt-ins for all instances of differentiated integration. In the case of sectoral agreements, parallel provisions are difficult to evaluate without legal expertise in the respective field. Also in the case of unilateral transpositions, the legal text usually only paraphrases EU rules and does not directly refer to the EU acts from which the rules originate. However, many sectoral agreements also contain long lists of EU secondary acts that are either directly applicable to Switzerland or that have to be transposed into Swiss legislation. In some cases, also the EU compatibility examinations in the messages on federal laws list the relevant acts of EU legislation from where the rules stem which are transposed into Swiss legislation.

Table 2: Variables measuring substantive and legal integration quality

	Sectoral agreements		**Federal laws**	
	Variable	*Description*	*Variable*	*Description*
Substantive integration quality	Direct reference to EU law	Text of agreement reform cites concrete EU legal act	Full adaptation to EU law	Federal law reform adapts Swiss legislation fully to the relevant EU law
			Partial adaptation to EU law	Federal law reform adapts Swiss legislation partially to the relevant EU law
			EU-compatible reform	Federal law reform adapts Swiss legislation partially to the relevant EU law
Legal integration quality	Dynamic provision	Switzerland is obliged to overtake new EU law after signing the agreement	Implementation measure	Federal law implements a sectoral agreement with the EU
	Monitoring provision	Switzerland has to abide by ECJ rulings after signing of agreement; EU authorities monitor agreement implementation on Swiss territory; Swiss citizens/ firms can appeal to the ECJ		

Note: See Annex A.2 and A.3 for detailed coding rules.

Based on this information, we established a list of all EU legal acts explicitly mentioned in domestic legislation or sectoral agreements. These data contain the information about the way how the rule entered Swiss law, thus the information about the legal form in which it is valid in Switzerland. The most difficult task after the identification of a concrete EU legal act is to find out, which version this legal act is or was valid for Switzerland and for which time period. It is straightforward that an EU act becomes valid in Switzerland in the year the transposing Swiss law enters into force. In addition, we assume that a legal act is valid for Switzerland in the form of the last amendment, or the last changing legal act that is explicitly mentioned in the Swiss source (sectoral agreement or federal council message). If the EU act is mentioned without updating acts, we assume that the act is valid in its original version. These data, however, can only be analysed meaningfully when compared to data about the EU law as a whole. Unfortunately, this lies beyond the scope of this study.

2.4 Descriptive Results: Hints at Substantive Integration of a Legal Outsider

In the introductory chapter, I identified several research gaps and formulated the contributions this thesis aims to make in order to fill these research gaps. In the following, I will present the data collected to that end on an aggregate level and with descriptive instruments in order to provide a first idea of the quality of Switzerland's differentiated integration, of the dynamics of this form of integration, as well as of potential reasons for the various integration measures. In the first section, I present the data on the most technical level, focusing on the number and form of law and agreement reforms and their respective integration qualities. After that, I turn to the questions of time and issues, because differentiated integration was often discussed as a question of time, as indicated by the notion multi-speed integration, or of issue, as indicated by the label à-la-carte integration (Stubb 1996). In the second section, I thus present the development of substantive and legal integration over time, and in the third section, I present the distribution of substantive and legal integration measures across policy fields.

2.4.1 Reforms, Laws and Agreements Responsible for Differentiated Integration

In total, the data set on Switzerland's differentiated integration contains 98 sectoral agreements and 533 federal laws. 46 sectoral agreements and 150 federal laws were neither newly adopted nor were they revised during the research period. As the unit of analysis is the legal reform, we have no information about the possible integration quality of these legal texts. The remaining 52 sectoral agreements were subject to 204 legal reforms. Table 3 shows the number of new agreements, total revisions, and partial revisions, and their respective substantive and legal integration quality. The last column of Table 3 shows that 43 legal reforms were new agreements. This corresponds to one fifth of all legal changes associated with sectoral agreements (percentage share in italics). The famous packages of Bilaterals I and II (16 agreements in total) thus are responsible for less than half of all new agreements during the research period. Total revisions of agreements are a rare phenomenon and concern mainly agreements associating Switzerland with multi-annual EU programs, which have to be renewed at every renewal of the EU program.

With regard to integration qualities, the first row of Table 3 shows that legal integration is a rare phenomenon. Only four new agreements contain dynamic provisions, and only 6 new agreements contain monitoring provisions. The agreements responsible for the dynamic provisions are the Schengen and Dublin association agreements and some related agreements. The agreements responsible for the monitoring provisions are the Air Transport Agreement and some cooperation agreements. The dynamic agreements, though rare, were very often revised. The last row of Table 3 shows that 42 out of a total of 157 partial revisions of sectoral agreements concerned dynamic agreements. In contrast to legal integration, substantively strong integration is more frequent. More than half of all new sectoral agreements directly referred to EU law, and thus went not only beyond normal international treaties, but also beyond parallel provisions. Among the partial revisions, even one third of all revisions contained direct references to EU law. In sum, Table 3 shows that legally strong integration is a rarer phenomenon than substantively strong integration.

The 383 federal laws that were newly adopted or at least once revised during the research period were subject to a total of 1154 legal reforms. For ten of those reforms, coding sources were missing and they had to be excluded from the data collection. Table 4 contains

thus information on a total of 1144 legal reforms. The last row of Table 4 shows that of these 1144 law reforms, 648 reforms or slightly more than half concerned purely domestic issues (column No EU-relevance). Only 496 legal reforms could thus possibly transpose EU rules or comply with EU rules. The last row shows that a large part of the EU-relevant reforms was indeed at least compatible with EU law. The numbers in italics in Table 4 refer to the percentage share of reforms with certain characteristics compared to the total number of federal law reforms. I provide the percentage share with regard to the total number of reforms rather than with regard to the number of EU-relevant reforms here in order to enable comparison with results from earlier studies. Slightly more than fourteen per cent of all law reforms were just compatible with the respective EU law, and slightly more than thirteen per cent were identified as full adaptations, thus transposing the relevant EU rules fully into Swiss legislation. Rule transpositions with a "Swiss finish", labelled partial adaptations, were less frequent than full adaptations and compatible reforms and concerned only 7 per cent of all federal law adoptions and revisions. These findings resemble the results of Ali Arbia (2008), who researched the period from 1996 to 2005 and found a "high Europeanization degree" of 8.1% of laws, and a "medium Europeanization degree" of forty per cent of the laws. The slightly different numbers are not surprising because Arbia focused on a shorter time period and on a random selection of laws.

Table 3: Substantive and legal integration quality of sectoral agreement reforms

	Dynamic	**Monitoring**	**EU law reference**	**Total**
New	4 *1.96*	6 *2.94*	25 *12.25*	**43** *21.08*
Total revisions	0 *0.00*	2 *0.98*	3 *1.47*	**4** *1.96*
Partial revisions	42 *20.59*	12 *5.88*	98 *48.04*	**157** *76.96*
Total reforms	**46** *22.55*	**20** *9.80*	**126** *61.76*	**204** *100.00*

Note: The variables measuring the legal and substantive qualities of the extension of EU rules in sectoral agreement reforms are NOT mutually exclusive.

Table 4: Substantive and legal integration quality of federal law reforms[15]

Legal quality of EU rules		Substantive quality of EU rules*					
		Full adapt.	Part. adapt.	Comp.	No EU rule	No EU-rel.	TOTAL
	Implementat.	83 *7.26*	14 *1.22*	0 *0.00*	1 *0.09*	3 *0.26*	101 *8.83*
	None	69 *6.03*	66 *5.77*	165 *14.42*	98 *8.57*	645 *56.38*	1043 *91.17*
	TOTAL	152 *13.29*	80 *6.99*	165 *14.42*	99 *8.65*	648 *56.64*	1144[16] *100.00*

Note: * The three variables measuring the substantive quality of the extension of EU rules are mutually exclusive.

Compared to the substantive quality of rule transposition, legal transposition of EU rules into domestic legislation was rarer. Whereas almost one third of all law reforms were to some degree substantively related to EU rules, only ten per cent were an implementation measure of a sectoral agreement. In absolute terms, the sectoral agreements thus exerted a lower influence on federal legislation than the policy of unilateral rule transposition. This finding is consistent with results reported by Gava and Varone (2012) and by Kohler (2009). Although rare, implementation measures seem to be related to stronger substantive integration. More than eighty per cent of all implementation measures are full adaptations, in contrast with only every fifth instance of unilateral rule transposition. This observation is consistent with the assumption that the EU usually insists that its agreements with third states closely follow Community Law (Jaag 2010; Oesch 2012). The four cases of implementation measures in issue areas for which there exists no relevant EU law (three cases), or in cases where the respective reform contains no substantive rule transposition are related to the funding of public transportation infrastructure. These funding measures were necessary to comply with obligations resulting from the transit and the land transport agreement respectively. To that end, however, no substantive rule transposition was needed.

[15] The numbers reported in this table slightly differ from numbers reported in earlier publications (Jenni 2012, 2013). Data analysis sometimes revealed cases that were coded inconsistently with regard to the coding rules. In such cases, the coding was corrected.

[16] All numbers reported in the paper regarding federal law reforms refer only to 'primary' legal reforms. 'Secondary' reforms, i.e. law amendments that followed the reform of another law (e.g. adaptation of references, terms, article numbers etc.) were not counted.

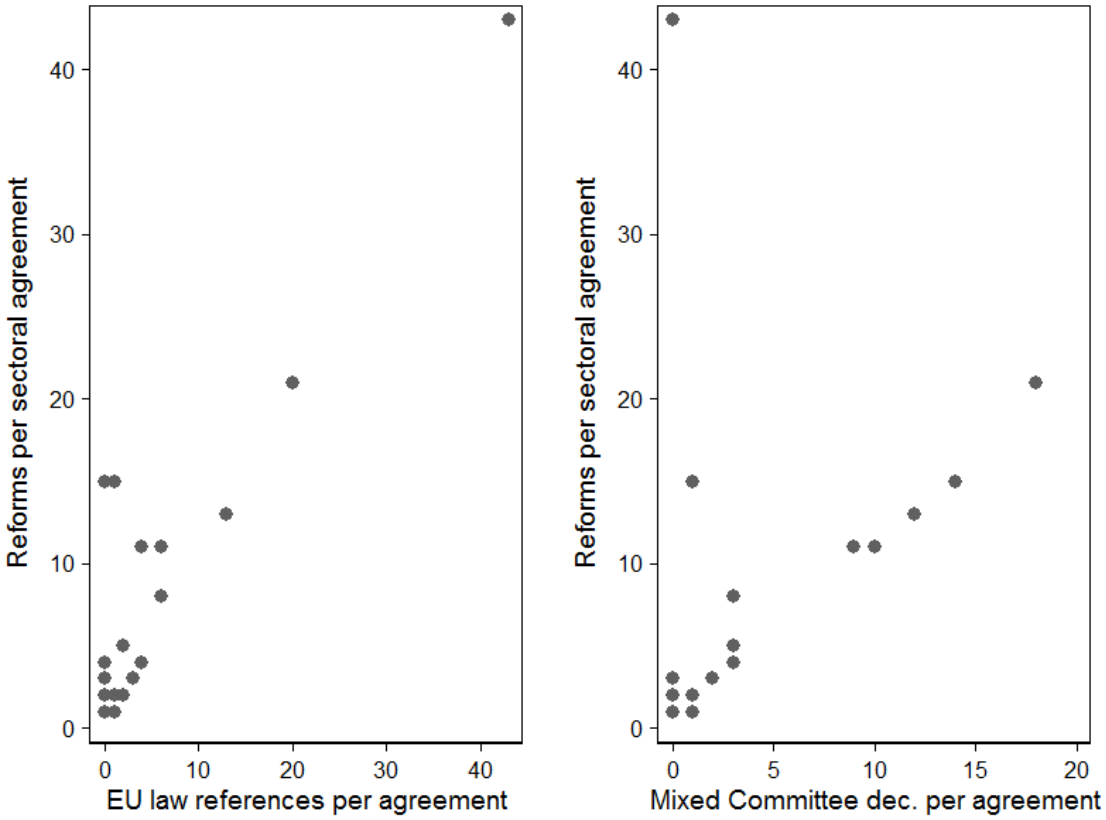

Figure 1: Number of reforms (adoptions and revisions) per sectoral agreement 1990 – 2010.

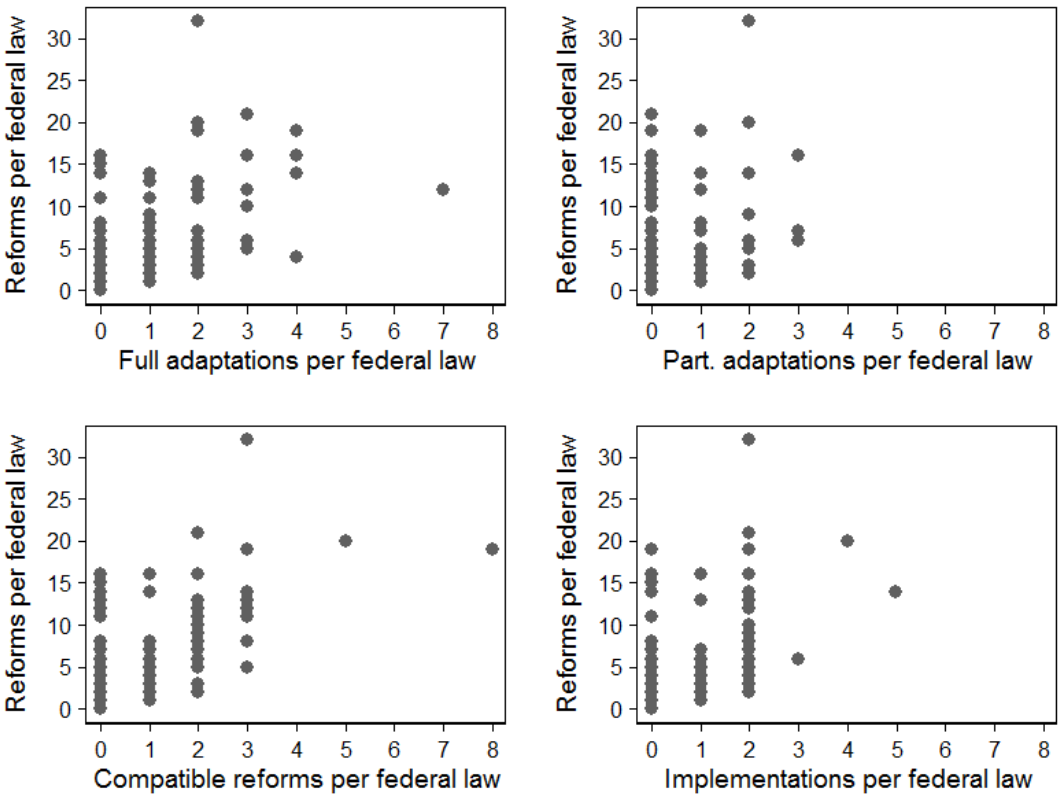

Figure 2: Number of reforms (adoptions and revisions) per federal law 1990 – 2010.

The introductory chapter identified a research gap with regard to the dynamics of Switzerland's differentiated integration. We lack the knowledge about how often different kinds of agreements are revised, and we lack the knowledge whether domestic rule transpositions always concern the same or always different federal laws. Figure 1 shows the number of reforms per sectoral agreement. In both graphs of Figure 1, the vertical axis shows the number of reforms. In addition, the horizontal axis of the left-hand graph shows the number of reforms directly referring to EU law per agreement, and the horizontal axis of the right-hand graph shows the number of reforms that were decided by a Mixed Committee. Figure 1 shows that most sectoral agreements were subject to less than five reforms during the research period. These agreements that were subject to few reforms were often also not reformed by Mixed Committees (right-hand graph), and their reforms often did not directly refer to EU law (left-hand graph). Among the agreements that were reformed more often, Figure 1 identifies an outlier: the Schengen Association Agreement (SAA), which was revised 42 times. The other agreements that were revised more than ten times are the Agreement on Agriculture (Bilaterals I), the Agreement on Products of the Watch Industry, the Protocol 3 on the Definition of "Originating Products", the Agreement on Air Transport, the Protocol 2 on Agricultural Products and the Agreement on Conformity Assessment. In sum, Figure 1 shows considerable variance with regard to the dynamic evolvement of agreements and provides support for the claim that it is necessary to analyse the day-to-day dynamics of the sectoral agreements, which was formulated in the introductory chapter.

Figure 2 shows similar graphs with regard to the number of reforms per federal law, as well as with regard to extensions of EU rules per federal law. The federal laws that were subject to fewer reforms and to fewer EU rule extensions are the majority, as indicated by the large amount of laws concentrated in the lower left angles of the graphs. There are a few outliers to the general picture: the Penal Code was revised more than thirty times, but only a few of these revisions contained EU rules; the Law on the Federal Tax was revised twenty times and surprisingly, a couple of these reforms were full adaptations (upper left graph), compatible reforms (lower left graph), or implementation measures (lower right graph); the Law on Health Insurance and the Law on Old Age Insurance were also revised around twenty times, and sometimes transposed EU rules; the Law on Agriculture was revised twenty times, often in an EU compatible manner (lower left graph); the Law on Foreigners was revised 15 times and five of these reforms were implementation measures related to sectoral agreements;

the Road Traffic Law was revised ten times and most of these revisions were full adaptations to EU law (upper left graph).

This heterogeneous list indicates that the legal adaptations researched in case studies are not related to the laws most frequently related to EU rules and thus supports the claim for an encompassing empirical data collection formulated in the introductory chapter. The relation between frequency of revisions per federal law, and frequency of different qualities of rule extensions indicate that these different qualities maybe related to different extension mechanisms. Whereas some of the often revised laws were at most compatible with EU law, other laws repeatedly were actively adapted to EU rules, and again other laws contained EU rules only in relation with sectoral agreement implementations. This picture thus justifies the analysis of the functioning of Switzerland's differentiated integration with regard to the question of the relation between sectoral integration and domestic rule transpositions. The heterogeneity of the laws affected by EU rule extensions also justifies an analysis of explanatory factors, as not all laws fit common explanations.

2.4.2 Substantive and Legal Extension of EU Rules Over Time

Switzerland's differentiated integration and the quality of the instrument it consists of was subject to change over time. Figure 3 shows the development over time of the substantive quality of EU rules in Swiss legislation in terms of legal reforms. The upper graph shows federal law reforms the lower graph shows sectoral agreement reforms. In both cases, a reform is either an adoption or a revision of a legal text. The reforms are reported for the years in which they were published in the Official Collection of Federal Legislation, which usually corresponds to the year they entered into force. The lowest and darkest areas in both graphs represent the number of reforms with the strongest substantive quality of extension of EU rules to Switzerland. In the case of domestic legislation, these are full adaptations, thus legal reforms that fully transpose the relevant EU rules. In the case of sectoral agreements, these are agreement reforms that directly refer to EU law. We observe that the yearly number of such full substantive extensions of EU rules was on average below ten in domestic legislation, and below five in sectoral agreements until 2008. In recent years, the numbers increased steeply in the case of the sectoral agreements.

In the upper graph, the topmost area represents the total number of yearly legal reforms that dealt with issues regulated at the EU level. The next lowest area shows the number of reforms that were compatible with the respective EU law, but did not transpose EU law anew. The tiny area above the full adaptations shows the adaptations that were selective, and thus did not transpose the relevant EU law fully. In general, we can conclude that only a tiny share of the EU-relevant reforms was not at least compatible with the EU rules. This confirms the numbers reported in Table 4 and shows that the finding holds for the whole research period. Also selectivity was a steady characteristic of adaptations to the EU, but Switzerland more often transposes EU rules fully than partially. This does not contradict Kohler's finding of a prevalence of partial adaptations, because for her research period (2004-2007), also our data show more partial adaptations. Most reforms in EU-relevant areas which did not contain any rule extensions were observed in the periods 1995 – 1998 and 2005 – 2008.

In the lower graph, the topmost area represents the total number of sectoral agreement reforms per year. We observe a general growth since 2004, which contrasts with the domestic legislation, where the number of yearly EU-relevant reforms seems to be subject to more fluctuation and it is not clear whether or not the trend is increasing. The darker area shows sectoral agreement reforms with direct references to EU law. We observe that in recent years, direct references to EU law have become much more frequent, but also in recent years, there are still reforms that do not directly refer to EU law.

Figure 4 shows the development over time of the legal quality of EU rules in Swiss legislation. Again, the upper graph refers to domestic legislation and the lower to sectoral agreements. In both, the topmost area is the same as in Figure 3 and reports the total number of federal law reforms, or sectoral agreement reforms, respectively. If we compare Figure 4 to Figure 3, we see that a much lower number of domestic law-making is strongly legally linked to the EU than is strongly substantively linked to EU rules. In the 1990s, only two reforms implemented a sectoral agreement. These implementation measures were related to the Free Trade Agreement (1973) and the Insurance Agreement (1992). Apart from that, implementations seem to be a phenomenon that mainly accompanied the entry into force of new important treaties, like the agreement packages Bilaterals I in 2002, and Bilaterals II from 2004 on.

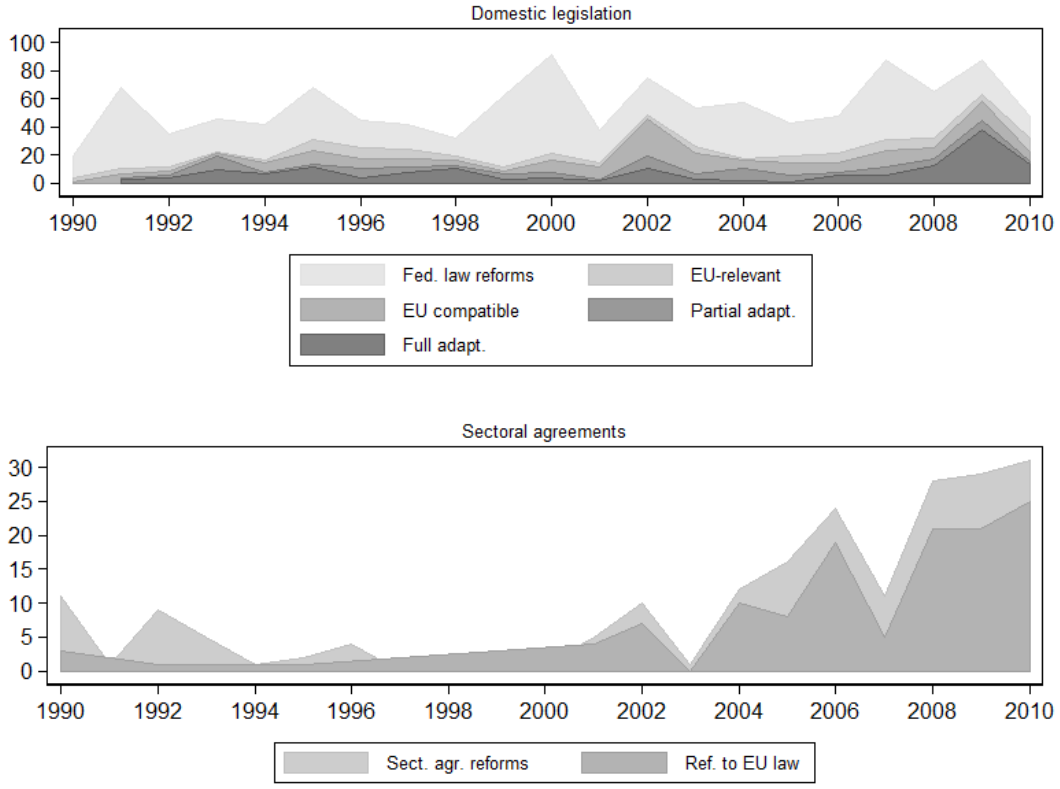

Figure 3: Substantive quality of extensions of EU rules, number of reforms per year

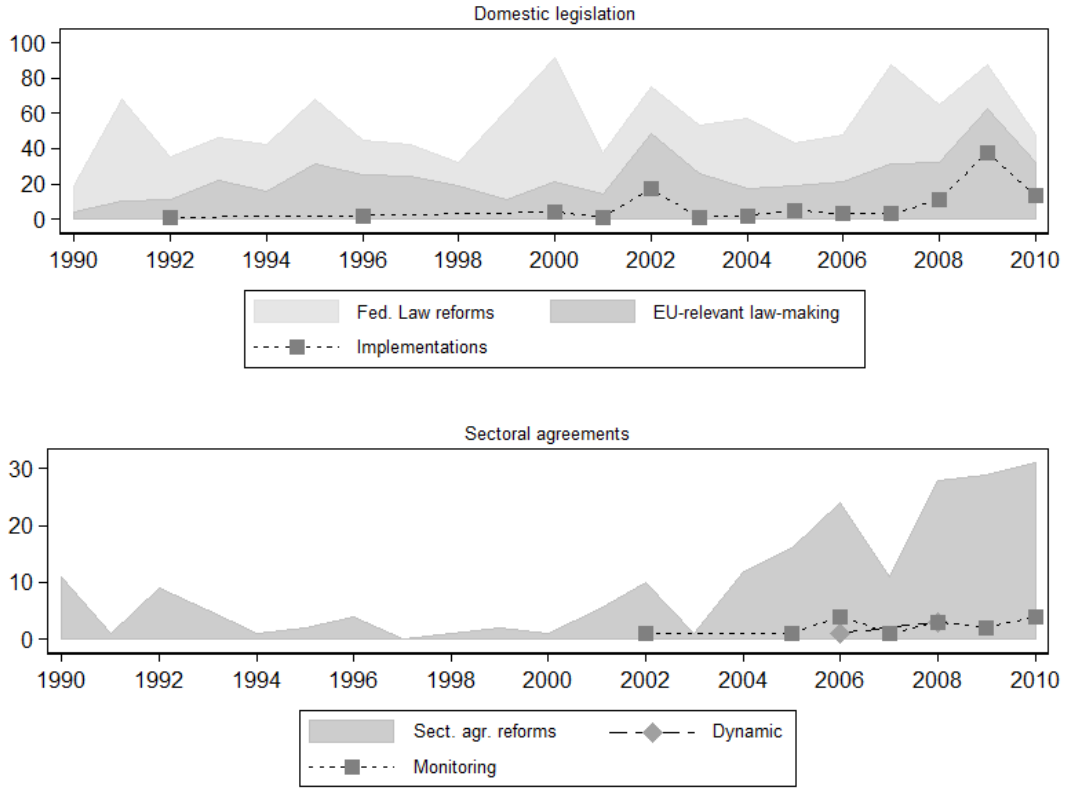

Figure 4: Legal quality of extensions of EU rules, number of reforms per year

Interestingly, both graphs on domestic legislation (Figure 3 and Figure 4) show peaks in 2008, when the most important treaties of Bilaterals II, the Dublin and Schengen association agreements, entered into force. This is a further indicator of the relation between sectoral agreements and domestic rule transpositions, as the Schengen and Dublin agreements are probably responsible for the increase in implementation measures after 2008 and surely responsible for the appearance of dynamic provisions in the last years in the lower graph of Figure 4. An interesting finding is that the amount of EU-relevant domestic law-making as well as the number of implementation measures dropped in 2010, whereas the number of sectoral agreement reforms was still increasing. This fact could be related to the way the dynamic provisions of the Schengen and Dublin agreements are implemented: In these areas, new EU legislation is transposed to Switzerland by exchanges of diplomatic notes, thus new sectoral agreements. If international law is clear enough to provide the basis for decisions in individual cases, it is considered self-executing in Switzerland and does not need transposition in domestic law (Thürer et al. 2007). Monitoring provisions entered sectoral agreements earlier than dynamic provisions. The adoption of the air transport agreement in 2002 represents the first instance of a monitoring provision. Later monitoring provisions were found in cooperation agreements, based on which Swiss citizens, organisations, or firms can receive funding from EU programs, and where EU authorities have the right to control the correct spending of these funds also on Swiss territory. The few instances of sectoral agreements with dynamic and/ or monitoring provisions shown in Figure 4 stand in contrast to the huge differences in the frequency of amendments of different sectoral agreements shown in Figure 3. An analysis of the day-to-day dynamics of Switzerland's differentiated integration needs to take that into account.

2.4.3 Substantive and Legal Extension of EU Rules Across Policy Fields

Switzerland's differentiated integration is often discussed in terms of policy fields. Figure 5 refers to the same variables as Figure 3, but shows the distribution of the substantive quality of EU rule extension across policy fields. As policy fields, the sub-chapters of the Classified Compilation of Federal Legislation are used (see Annex A.5 for an overview). Again, the darkest parts of the bars depict the number of reforms with the strongest substantive quality of EU rule extension. A comparison of the left graph describing domestic law-making and

the right graph describing sectoral agreements shows that EU-relevant domestic legislation covers a much wider range of policy fields than the sectoral agreements. In domestic legislation, most policy fields with EU-relevant reforms also experienced some rule transpositions. In contrast to Figure 3, which showed almost no variation with regard to the share of EU-relevant reforms that contained some EU rules, Figure 5 shows variance between policy field in that regard. Whereas, for example, in policy fields like transport or trade all but a few EU-relevant reforms contained EU rules, this was not the case in policy fields like penal code, health or energy. This indicates at issue-specific selectivity. In sectoral agreements, most direct references to EU law stem from the policy fields transport, science, agriculture, customs, and police coordination. Transport contains the Land and the Air Transport Agreement, science the Agreements on Research and Development, customs the Free Trade Agreement, and police coordination the Schengen Association Agreement. Whereas science and customs are policy fields in which international law traditionally plays an important role (Linder 2014), police coordination is a new field of international law.

Figure 6 refers to the same variables as Figure 4 and shows the distribution of the legal quality of EU rule extension across policy fields. With regard to sectoral agreements, the picture of the legal quality of rule extension resembles the picture of the substantive quality of rule extension shown in Figure 5. Dynamic and monitoring provisions are a very seldom phenomenon and mainly related to the usual suspects for strong integration, Schengen and Dublin (policy field citizenship), as well as air transport. Science appears among the issues with monitoring provisions, because EU authorities can inspect the correct implementation of research projects funded by EU programs also on Swiss territory based on the respective sectoral agreements.

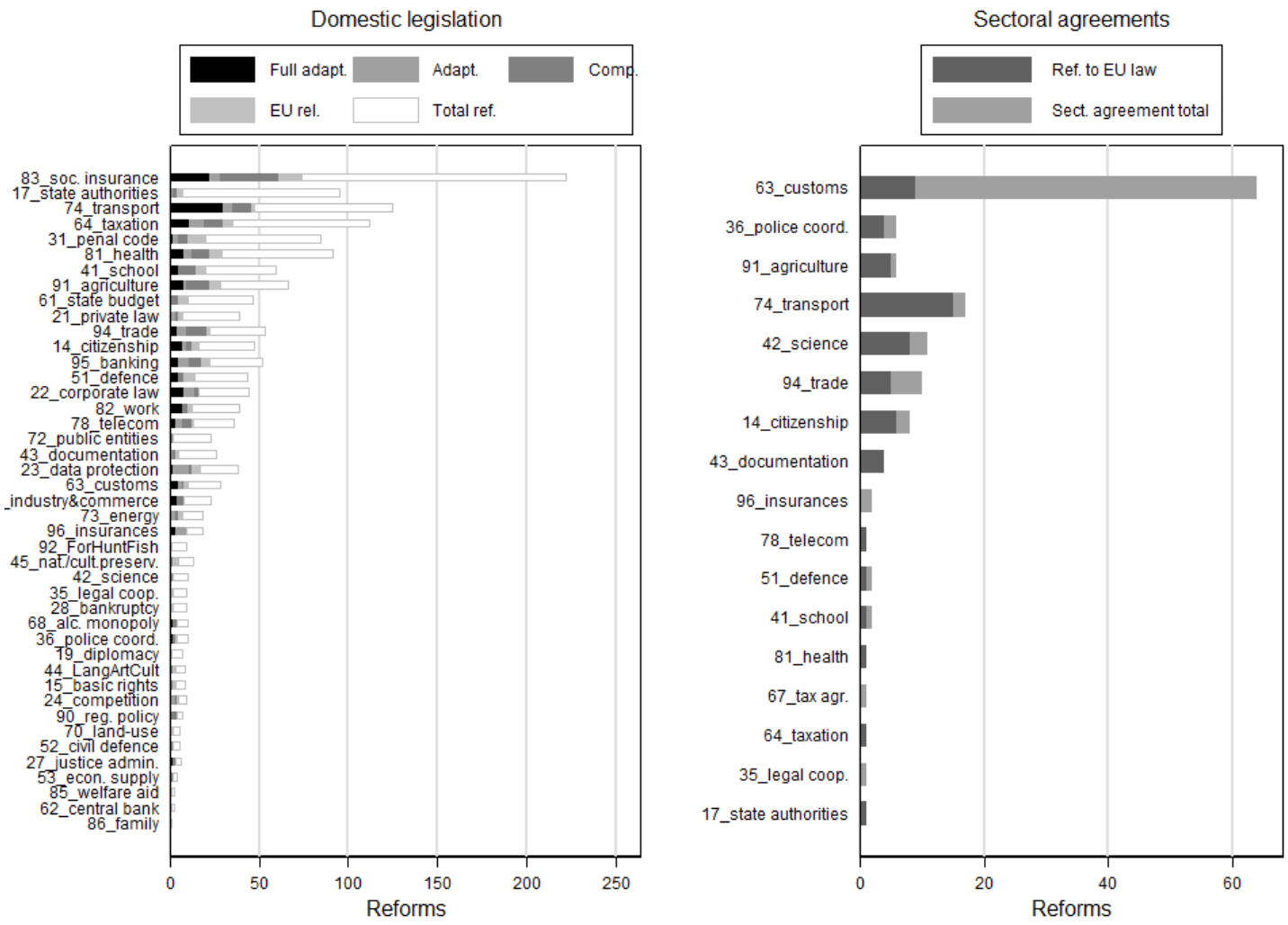

Figure 5: Substantive quality of extensions of EU rules over policy fields

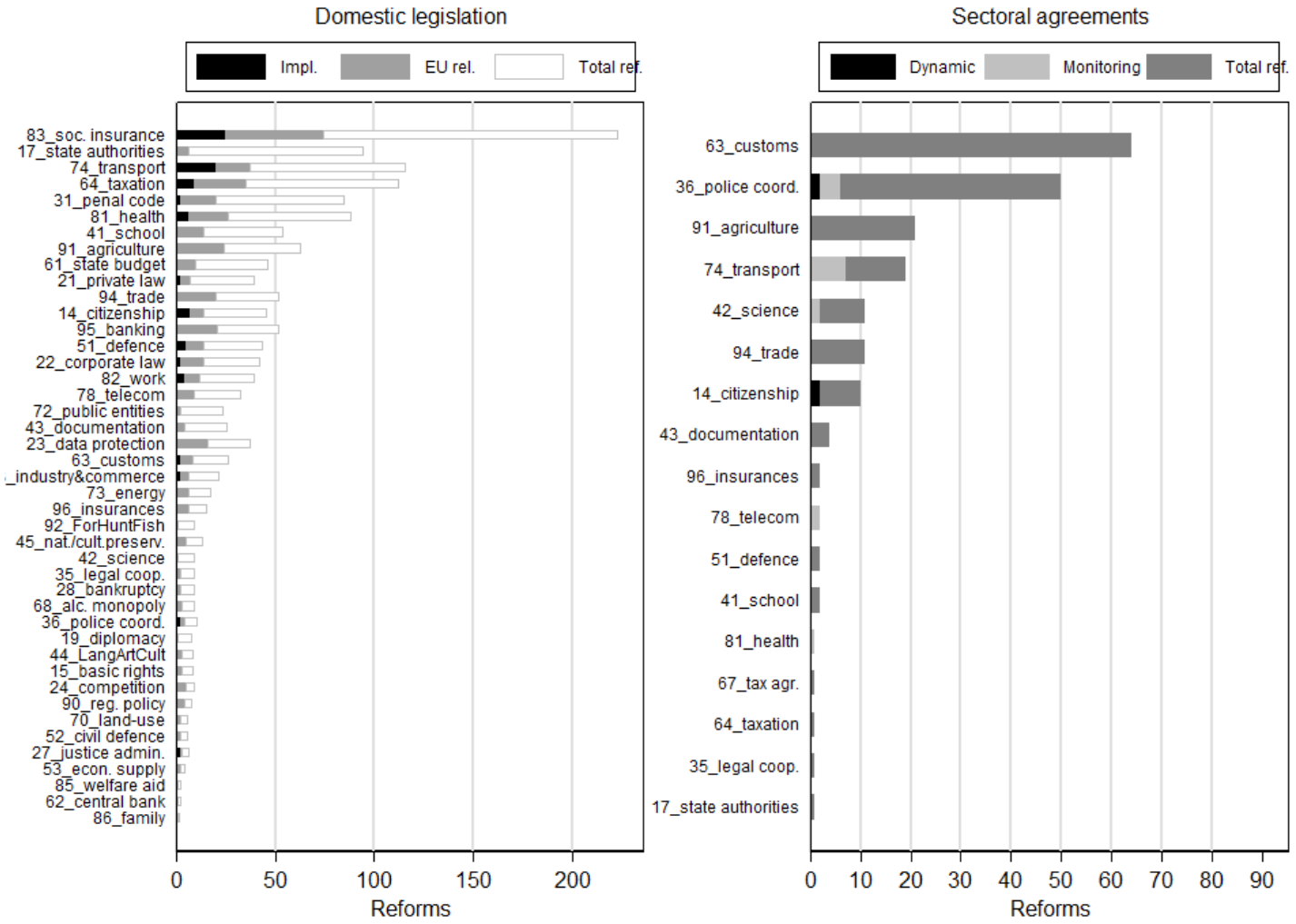

Figure 6: Legal quality of extensions of EU rules over policy fields

With regard to domestic legislation, Figure 6 differs substantially from Figure 5. Whereas Figure 5 showed that EU-relevant law reforms were to a large part at least compatible with the relevant EU law, Figure 6 shows that in most policy fields, less than half of all law reforms were EU relevant, and only a small part of all EU-relevant reforms are related to sectoral agreements. Interestingly, the policy fields with most implementation measures in domestic law-making are not the policy fields with the most sectoral agreement reforms. Whereas transport and agriculture rank high in the frequency of agreement reforms as well as implementation measures, the reverse is for example true for customs and science. The wide range of policy fields which contain some domestic rule transpositions, compared to the smaller number of implementation measures, and the smaller number of policy fields containing sectoral agreements indicates that domestic rule transpositions are not always related to sectoral agreements. An analysis of other explanatory factors is thus necessary.

2.5 Discussion: Where to Go From Here

The distinction between the substantive and the legal quality of the extension of EU rules to Switzerland revealed differences between different forms of integration, mainly sectoral agreements and domestic rule transpositions. At the aggregate level, at which the data were presented in this chapter, these differences could be seen with regard to the frequency of reforms of different sectoral agreements and federal laws, as well as in the development over time and the distribution across policy fields. These differences give first hints about interesting aspects of the controversies regarding the quality and extent of and the reasons for Switzerland's differentiated integration. Regarding the quality, these first results illustrate the controversy about the qualification of Switzerland as a quasi-member of the EU. The substantive quality of the extension of EU rules to Switzerland is indeed a phenomenon that occurred steadily over the last two decades and that affected a wide range of policy fields. This seems to justify the label quasi-member. At the same time, rule extensions of a high legal integration quality are less frequent than rule extensions of a high substantive quality. This supports the view that Switzerland's differentiated integration to large parts lacks a supranational quality, and therefore should not be labelled quasi-member.

These descriptive results give first ideas about the dynamics of Switzerland's differentiated integration, the puzzle with which Chapter 3 will deal. The analyses of the distribution of reforms across sectoral agreements and federal laws points to considerable variation with regard to the frequency of revisions between different agreements and between different laws. Among others, Chapter 3 seeks to answer the question whether the legal and the substantive integration quality of agreements and the frequency and quality of their revisions are correlated. The analysis of the development over time show that rule extensions of a high legal integration quality are not only a more recent phenomenon than substantive rule extensions, but are also less numerous and concentrated in specific years and policy fields. These findings hold for both domestic law-making and sectoral agreement reforms. Substantive rule extensions, in contrast, occurred steadily in domestic legislation and increased steeply in recent years in sectoral agreements. Chapter 3 will show that the rare dynamic provisions provoked a high number of substantive rule extensions. In addition, Chapter 3 will research the question whether the frequent transpositions of EU rules into domestic legislation are also related to agreement dynamics. For example, the informal principles underlying Switzerland's sectoral agreements could be responsible for the frequency of substantive rule extension in the absence of strong legal links to the EU.

It is difficult to interpret the descriptive results in light of possible explanatory factors which are exogenous to the instruments of Switzerland's differentiated integration. For example, Table 4 shows that federal law reforms implementing sectoral agreements are almost always full adaptations. At the same time, only half of all sectoral agreement reforms directly refer to EU law (Table 3). Parallel provisions thus seem to be as frequent as direct references to EU law, but implementations of sectoral agreements seem to require the transposition of EU rules. Other results difficult to interpret are the different qualities of rule transpositions in domestic legislation. Table 4 shows that full adaptations of federal laws to EU law are almost twice as frequent as partial adaptations. This finding contradicts the common sense of Switzerland as a cherry-picker. Table 4 also shows, however, that the substantive rule extensions into domestic legislation is to a large part not an active policy. Often, federal law reforms dealing with EU rules are just compatible with these rules. This observation, in combination with the finding that domestic rule transpositions occurred in a wider range of policy fields than sectoral agreements, supports the assumption that EU compatibility is a fundamental principle of domestic law-making cited in the introduction.

The findings which require most investigation are the large number of domestic rule transpositions which are not implementations of sectoral agreements and the recent increase in the frequency of sectoral agreement reforms. In addition to institutional factors discussed above, which will be analysed in Chapter 3, also exogenous factors like the political, social and economic development may influence domestic rule transpositions and sectoral agreement reforms. Chapter 4 explores such explanatory factors and especially focuses on the question of whether integration measures with different integration qualities are correlated to different independent variables or to different values of independent variables.

3 Dynamics of Switzerland's Differentiated Integration

Switzerland is a challenging case for diplomats and researchers of European integration alike. The main reason is that the country has refused to subordinate itself to European institutions, while nevertheless participating in a considerable number of EU policies. Since 2008, the Council of the European Union has repeatedly stated that Switzerland's sectoral approach has reached its limits. In particular, the Council has criticised the incorrect implementation of several agreements (FMPA, FTA) and the static character of the market access agreements that put into danger the homogeneity of legislation in the Single Market. In the terms introduced in Chapter 2, the Council criticises the incorrect substantive extension of EU rules to Switzerland and states that this is partially related to the lack of a mechanism for revision and enforcement of the agreements. As a solution, the Council calls for institutional rules that would ensure that Switzerland continuously adopts new EU legislation in the areas of the agreements as well as independent surveillance and enforcement of the agreements (Council of the European Union 2012, 2010, 2008). In the terms introduced in Chapter 2, the Council calls for more legal integration. Apparently, the European diplomats assume that stronger legal integration would lead to more coherent substantive integration.

The present chapter explores the differences between actual sectoral agreements and analyses whether stronger integration qualities led to a more dynamic evolvement of the agreements in the past. Surprisingly, the different integration qualities of actual sectoral agreements are often ignored in the discussion about new institutional rules for Swiss-EU relations (e.g., Gemperli 2013, Breitenmoser and Weyeneth 2013). In addition to the Council's assumption about the effect of stronger legal integration, I assume that also stronger substantive integration produces incentives for a more dynamic development of sectoral agreements. These incentives are produced by the tensions between the integration intention of an agreement and the institutional shortcomings of Swiss-EU relations, which are stronger when an agreement is substantively nearer to EU law. I developed this argument based on the mainly legal literature about the sectoral agreements, which in detail analyses their legal and substantive differences. These studies provide detailed descriptions of the agreements provisions, but to my knowledge there is no study that analyses the actual evolvement of the

agreements empirically. Also political scientists were mainly concerned with important events in Swiss-EU relations, among them also negotiations, conclusions, and major revisions of sectoral agreements (e.g., Dupont and Sciarini 2007, Afonso and Maggetti 2007, Lavenex 2009b). In contrast to these analyses, this chapter focuses on the day-to-day evolvement of the agreements and provides an empirical analysis.

As outlined in Chapters 1 and 2, this thesis conceives of Switzerland as a case of differentiated European integration. Accordingly, the thesis also relies on theories of European integration as a basis for the explanatory analyses of the data presented in Chapter 2. The question about the relation between different substantive and legal integration qualities and the dynamic evolvement of sectoral agreements in the focus of this third chapter concerns the development of integration between the 'great bargains'. Among the classical theoretical strands, supranationalism most explicitly assumes that integration also proceeds between intergovernmental negotiations and ascribes an important role to the form of institutional rules and the actors in charge of interpreting, implementing, and eventually developing the integration steps resulting from the great bargains (e.g., Sandholtz and Stone Sweet 2010)[17]. Theoretical arguments, but also empirical research in the supranationalist tradition often focused on the role of the European Commission or the European Court of Justice (ECJ), two of the most important supranational actors of the EU. Such arguments of course need some adaptations for the case of the non-member country Switzerland, which is not directly subordinated to these actors. However, some sectoral agreements with stronger legal or substantive integration qualities link Switzerland more closely to the activities of these actors than others. In addition, some sectoral agreements provide rules or fora that may set in motion similar mechanisms of further integration like EU internal rules and supranational actors. These integration qualities to some extent probably play the role of functional equivalents of ideal-type integration. In order to derive hypotheses about the consequences of the differences between the agreements, I conceive of the sectoral agreements as contracts which are to different degrees incomplete. Incomplete contracting arguments have been

[17] Supranationalist integration theory stands in the tradition of neofunctionalist reasoning as developed by Ernst Haas. I use the term supranationalism throughout this chapter, because I focus on the aspects of the theory that explain the significance of formal rules and the role of actors in developing integration with a day-to-day focus. I use the newer term supranationalism rather than neo-functionalism, because I do not focus on spill-over arguments which were important for the original argument.

applied to the study of European integration before, and they are general enough to help to adapt the supranational theoretical focus to the Swiss case.

Chapter 3 proceeds as follows. The first section reviews the mainly legal literature about the legal form and possible functioning of the sectoral agreements. This section reveals tension between the integration intention of most sectoral agreements and the absence of general institutional rules in Swiss-EU relations. In addition, the literature review shows that probably domestic legal adaptations are also used as an instrument to mitigate the institutional shortcomings of the sectoral agreements. In the second section, I discuss the current knowledge about the functioning of the sectoral agreements in light of supranationalism and especially draw on a series of articles which applied incomplete contracting arguments to the study of the day-to-day development of European integration. This literature proved to be fruitful for analysing the tension between the aim and form of the sectoral agreements theoretically and deriving testable hypotheses. The third section presents the empirical analyses and discusses the results. The main findings are that stronger legal and substantive qualities of agreements indeed led to more frequent agreement revisions, but that only very strong substantive and legal integration qualities also led to revisions with a strong substantive integration quality. In contrast, only agreements with a lower integration quality are correlated with domestic legal adaptations. The fourth section concludes.

3.1 Literature Review: Tension between Form and Substance

The legal form of sectoral agreements stands in tension with their aim. Many early agreements between Switzerland and the EU aimed at trade liberalisation and later at sectoral access to the Single Market. Examples are the Free Trade Agreement (1973), the Insurance Agreement (1992), and many agreements of Bilaterals I (2002). Some agreements also aimed at Swiss participation in EU programs. Already in the 1950s, Switzerland started to cooperate with EURATOM; in the 1980s the first framework agreement on cooperation in research and development was concluded. The Bilaterals I package renewed this agreement and the Bilaterals II package extended Swiss participation in EU regimes to issues like judicial and police cooperation. Market access as well as cooperation aims are often pursued via the extension of rules developed in the EU to Switzerland. The agreements largely build on EU legislation,

their provisions are either 'parallel' or 'equivalent' to EU rules, or they directly refer to EU law (Bundeskanzlei 2010). The legal form of the sectoral agreements, however, is not well suited to preserve the substantive integration quality of these rule extensions. The sectoral agreements are treaties of international law, implying that the contracting parties are responsible for the enforcement of the treaties on their own territory, and that the rules do not develop dynamically despite the fact that the respective EU rules are subject to steady change (Breitenmoser 2003).

This tension between integration intention and legal form of the agreements is one of the reasons for the Council's criticism of Switzerland's 'bilateral way' and similar quiet dramatic diagnoses. For example, in a speech in 2011, the then Swiss ambassador to the EU Jacques de Watteville stated that a sectoral agreement or parts of it can become ineffective when the EU rules that an agreement relies on change (Watteville 2011). This statement is probably related to the principle of 'equivalence of legislation' underlying many agreements. The functional equivalence of legislation is damaged if one party to the agreement changes its rules. As a consequence, the agreement becomes ineffective if it is not updated. Legal scholars widely agree that the sectoral agreements need to be regularly updated in order to ensure that they remain functional (Epiney 2006; Oesch 2012). In addition, some state that also the domestic legislation needs to be continuously adapted to EU rules in order to ensure the proper functioning of the sectoral agreements (Thürer et al. 2007). Matthias Oesch (2012) even assumed that this adaptation practice relativizes the legally static character of the treaties. Adaptations of domestic legislation, thus substantive transposition of EU rules into federal legislation with an integration intention, however, suffer from an even greater tension between aim and form than sectoral agreements. The EU does not have to grant Switzerland any rights based on rules that Switzerland transposed only unilaterally, but the recognition of rule transposition is the condition for market access, for example (e.g., Freiburghaus 2004).

Despite the lack of a general institutional framework, the different sectoral agreements contain mechanisms to deal with the questions of rule enforcement and rule updates. Beside the informal 'equivalence of legislation' principle there also exist institutions like Mixed Committees or rules that oblige Switzerland to continuously transpose new EU rules. In the remainder of the literature review, I will discuss the existing evidence and common assump-

tions about how the problems resulting from the tension between substance and form of the sectoral agreements are solved.

3.1.1 Cumbersome Negotiations and Cumbersome Re-Negotiations

In his above-cited speech, de Watteville not only stated that agreements are in constant danger of losing their effectiveness, but also that agreement revisions are a difficult task. Revisions imply new negotiations between Switzerland and the EU about parts of the agreement, during which negotiating parties can ask for new concessions, link new issues, or even question the entire terms of an agreement (Watteville 2011). Despite these difficulties, some agreement revisions were decided smoothly and largely unrecognised by the public. A telling example is the total revision of the agreement on customs security measures in 2009. The re-negotiation was a direct consequence of changes in EU law. The original agreement was concluded in 1990 and threatened to lose its effectiveness when the EU adopted a so-called prior notification requirement for goods entering the EU from third states. As a third state, Switzerland faced the danger that technical barriers to trade abolished 20 years ago would be reinstalled. In order to circumvent this, Switzerland adapted its own security requirements for goods from third states to EU standards. In the total revision of the agreement, the EU recognised the new Swiss standards as equivalent to its own on the condition that Switzerland will adopt the standards regularly to the developments in the EU. The totally revised agreement was provisionally applied as from the same date as the new EU directive, and adopted by parliament two years later (Die Bundesbehörden der Schweizerischen Eidgenossenschaft 2009)[18]. Apparently, the benefit of the agreement depended on the equivalence of rules and the benefit was important enough for Switzerland and the EU to quickly agree on a revision.

Other agreement revisions proved to be more cumbersome and contested in public. An example is the Free Movement of Persons Agreement (FMPA). As not only Switzerland and the EU, but also all member states are parties to the agreement, it has to be amended every time new countries join the EU. The amendments on the occasion of enlargement rounds,

[18] Because the total revision only entered into force in 2011, it does not appear in the data set, which covers all federal laws and sectoral agreements that entered into force until and including 2010.

however, did not only extend the agreement to new states, but also contained new transitory phases until the introduction of the completely free movement of persons and they were challenged in popular referenda in Switzerland. The revisions on the occasion of the 2004 and the 2007 enlargement rounds were approved at the polls. The fate of the 2013 protocol about the extension of the free-movement-of-persons principle to Croatia is unclear at the time of writing, because the government did not sign the initialled protocol after the outcome of a popular vote contradicting the protocol. This popular vote also revealed in another case that the necessity of agreement revisions can endanger Switzerland's sectoral integration. The agreements about Switzerland's participation in EU programs in the areas of education, research, and audio-visual cooperation (MEDIA) have to be re-negotiated at every renewal of the EU's respective multi-annual programs. This ad-hoc association was successful for several decades, because the areas are deemed technocratic and Switzerland is highly competitive, especially in the area of research (Lavenex 2009a). Nevertheless, the necessity of a total revision of the agreement of research provided an opportunity for the EU to sanction Switzerland for the refusal to extend the FMPA to Croatia (Schweizerische Depeschenagentur 2014a). Agreement revisions thus resemble new adoptions of agreements because they require an integration interest of both parties like in the case of the agreement on customs security measures, they can eventually be challenged in a popular referendum like the extensions of the FMPA, and they provide new opportunities for issue linkages like in the case of the agreement on research. These cases illustrate the practical consequences of the tension between the integration intention and lacking institutional mechanisms for agreement revisions.

3.1.2 Institutionalised Forms of Agreement Updates

The authors of the sectoral agreements did not completely ignore the difficulties of agreement revisions, the steady evolving character of EU law and the problems that this fact creates for the function of the agreements (Epiney 2006). Two institutions exist for adjusting the agreements to legal developments in the EU: Mixed Committees and dynamic obligations (Epiney et al. 2012). Most sectoral agreements establish a Mixed Committee responsible for the exchange of information between the contracting parties regarding new legal developments in European and Swiss legislation and for eventual agreement updates

(Epiney et al. 2012)[19]. In many cases, the Mixed Committees can amend the annexes to the agreements in their own right. The legal acts of EU secondary law applicable to Switzerland are listed in these annexes. To some extent, however, the Mixed Committees face the same difficulties as negotiators of agreement revisions. The Committees are staffed by representatives of the European Commission and the Swiss federal administration respectively and decide by consensus. If a Committee does not reach a consensus, no amendment is made. The Swiss delegates act on behalf of the Federal Council and Mixed Committee decisions do not need any parliamentary approval (Thürer et al. 2007; Jaag 2010; Epiney et al. 2012). Mixed Committees thus do not guarantee automatic updates, but they facilitate updates because they provide a platform for the exchange of information, are staffed by technocrats and experts on the issue at hand, are sheltered from parliamentary and public attention, and have some competences to update agreements.

The most institutionalised form of agreement revisions is observed in those few agreements that oblige Switzerland to continuously adopt EU legislation in the area of the agreement. So far, only the Schengen and Dublin association agreements and the agreement on customs security measures contain such obligations (Epiney et al. 2012). According to Tobias Jaag (2010), however, even these dynamic provisions do not legally 'oblige' Switzerland to adopt new EU legislation. Astrid Epiney et al. (2012) referred to an adoption obligation, but noted that the reach of this obligation is unclear. While it is uncontested that amendments to legal acts listed in the original agreements have to be adopted by Switzerland, the same is not clear for new acts in the area. Thus, also dynamic obligations do not guarantee automatic updates. The respective Mixed Committees can decide to exempt Switzerland from the transposition obligations (Jaag 2010). In addition, the Schengen and Dublin agreements recognise that the transposition of new rules in the areas of the agreements needs to be ap-

[19] Two agreements are not administered by a Mixed Committee: the Agreement on Pensions and the Agreement on Taxation of Savings (Thürer et al. 2007). The reasons for the lack of a Mixed Committee are different. In the case of the agreement on pensions, there is no need for a Mixed Committee because the agreement does not rely on EU law. The lack of a Mixed Committee in the taxation of savings agreement is more interesting, as this agreement builds directly on the respective EU directive.

proved in the normal legislative process in Switzerland[20]. In the case of international agreements, the required legislative process depends on the content of the agreement. New Schengen and Dublin legislation often contains new general rights and duties, and accordingly often needs parliamentary approval and can be subject to optional referenda (Good 2010). So far, only the adoption of the directive on biometric passports was challenged by a referendum, but finally accepted by the voters (Raaflaub 2009).

To sum up, the tension between the integration intention of the treaties and their legal form to some extent is present in all procedures to update agreements. In the case of regular revisions, re-negotiations are necessary and open the floor for new issue linkages, re-negotiation of the terms of the agreement and new parliamentary and popular votes. Although this process is generally assumed to be cumbersome, there are empirical examples where re-negotiations were unproblematic. The integration benefit of the substantive EU rules an agreement extends to Switzerland may play a role here. Mixed Committee decisions are the most frequent form of agreement revisions. They are adopted in a body of administrative officials acting on behalf of the European Commission and the Federal Council respectively, which takes its decisions unanimously. Mixed Committees do not provide a mechanism for automatic revisions, but a forum for the exchange of information and a decision-making process with fewer veto points. Interestingly, dynamic agreements, which oblige Switzerland to transpose any new relevant EU legislation, do not provide for a decision-making process circumventing the domestic veto points. Instead, the EU has the right to terminate the agreements if Switzerland fails to transpose new Schengen legislation[21].

[20] Technically, every amendment to be included in the Schengen agreement has the form of a diplomatic exchange of letters between the European Commission and the Federal Council. The dynamic provisions do not contain any delegation norm that would allow the government to adopt these exchanges of letters in its own right (Good 2010).

[21] The dynamic provisions in the new agreement on customs security are slightly different. The procedure to adopt new legislation is less clearly defined than in the Schengen and Dublin agreements, and the EU has only the right to take compensatory measures in case Switzerland does not transpose new legislation (Epiney et al. 2012).

3.1.3 Institutional Shortcomings: Compensation via Domestic Legislation?

Because revisions of static agreements can fail and neither Mixed Committees nor dynamic agreements provide automatic update mechanisms, the danger that parts of an agreement lose effectiveness when the underlying EU rules are changed is inherent in all sectoral agreements. Therefore, some scholars assume that continuous legal adaptation is necessary to guarantee the functioning of the sectoral agreements (Thürer et al. 2007; Oesch 2012). Stephan Breitenmoser and Robert Weyeneth (2013) even claimed that the Council's criticism and its request for automatic rule transposition is unjustified because Switzerland voluntarily transposes new EU rules in the areas of agreements and beyond. Also Jacques de Watteville listed "autonomous adaptations" of domestic legislation as one of the strategies that Switzerland has at its disposal when a sectoral agreement threatens to become ineffective because the relevant EU rules have changed. The former ambassador, however, stated that this is not a viable alternative to an agreement update (Watteville 2011). The reason is that unilateral transpositions of EU rules do not need to be accepted by the EU or its member states as such, and are thus less beneficial for Swiss actors than sectoral agreements (Bundesrat 2006). Unilaterally applied EU rules allow EU citizens and economic actors to become active in Switzerland while pursuing the same rules as in the EU, whereas Swiss citizens and economic actors need an agreement with the EU that guarantees their equal treatment in the EU (Freiburghaus 2004).

The relation between sectoral agreements and the transposition of EU rules into domestic legislation is not well researched. Quantitative studies normally focus on the Europeanisation of domestic legislation and the description of this phenomenon over time and across policy fields. Some of the existing studies distinguish the influence of the sectoral agreements from other instances of Europeanisation (Gava and Varone 2012, 2014; Jenni 2014, 2013; Kohler 2009). We know from case studies about instances of domestic legal adaptations to EU rules in the context of agreement negotiations, and as immediate implementation measures. To my knowledge, neither quantitative nor case studies have discussed the question of whether the adaptation of domestic legislation to EU rules is sometimes meant to compensate for the static character of sectoral agreements. Against the background of the above-cited assumption that the autonomous adaptation policy in practice relativises the static character of the agreements, this research gap is astonishing. What we know is

that the principle of 'equivalence of legislation' underlying many sectoral agreements indeed guarantees Switzerland formal independence from EU institutions, but that informally these agreements strongly build on EU law (Cottier and Liechti 2006). Sandra Lavenex (2009b: 551) saw the equivalence of legislation principle in a strong "shadow of hierarchy". None of these studies, however, discusses the implications of this principle for the transposition of EU rules into domestic legislation.

In order to examine whether the adaptation of domestic legislation indeed sometimes functions as a compensation of sectoral agreement updates, we have to distinguish between measures related to negotiations and implementations of sectoral agreements, on the one hand, and later transpositions of EU rules into domestic legislation, on the other. Regarding the relation of domestic legal adaptations and agreement negotiations, we know that the fact that Switzerland had adapted a large part of its domestic legislation to the EU was an important condition for the success of the negotiations of the sectoral agreements (Thürer et al. 2007)[22]. Regarding domestic legal adaptations as implementation measures, we know that sectoral agreements led to a limited number of implementation measures at the level of federal laws, although Switzerland in principle has a monistic legal system. In a monistic legal system, international law requires transposition into domestic legislation only if it is deemed to be not self-executing, i.e. not clear enough to provide the foundation for a court to decide on a single case. In this case, it needs specification or clarification in the domestic legislation (Breitenmoser 2003). Like this, also sectoral agreements sometimes need to be implemented with the help of a federal law. In such a case, the federal law directly refers to the agreement, normally in a dynamic manner. A dynamic reference refers to the current version of a legal rule at any time, whereas normally references to other legal texts are static and thus refer to a legal rule in a defined version (Bundesamt für Justiz 2007). In Switzerland, dynamic references are only allowed if they refer to a legal text which has already been approved by Swiss authorities. This is the case for sectoral agreements, but not for EU legislation (Bundeskanzlei 2010).

If domestic legal adaptations are not related to agreement negotiations and are not implementation measures, they can still be related to sectoral agreements, namely if the assumption cited at the beginning of the paragraph is true and domestic adaptations are used to

[22] Negotiation dynamics are, among other factors, subject of the analysis presented in Chapter 4.

compensate for the absence of automatic agreement updates. Such compensatory measures could make sense in the context of the equivalence of legislation principle. Some agreements list legal acts from the EU and Switzerland, and state that they are recognised as providing 'equivalent' rules. The difference between the equivalence principle and the principle of homogeneity of law governing, for example, the EEA is that the equivalence of legislation principle leaves more room for interpretation, and that it is static: EU legal acts can expire in the EU, but still be the reference point for the equivalence in Swiss-EU relations. In such a case, and if an agreement revision is not possible or delayed for some reason, it could make sense for Switzerland to unilaterally transpose amendments to EU legal acts in order to re-install the factual equivalence of valid legislation in the EU and Switzerland. There is indeed ample evidence that Switzerland unilaterally transposed EU rules that are not direct implementations of sectoral agreements despite the disadvantage of unilateral rule transpositions compared to rule transpositions via sectoral agreements. Some of these rule transpositions occurred in policy fields where Switzerland also concluded sectoral agreements with the EU (see examples in Chapter 2). Such adaptations could thus be attempts to compensate for the static character of the agreements.

3.2 Theory: The Consequences of Incomplete Agreements

The literature review summarised the state of the research on the sectoral agreements and revealed tension between the integration intention of most agreements and their legal form. This research contains several assumptions about the practical functioning of the agreements, but lacks empirical evidence for these assumptions. Especially, we lack theoretical discussions and empirical analysis of two factors that may be important in order to explain whether or not the tension between form and substance of the sectoral agreements is resolved via regular updates. One of these prominent assumptions in the literature is that the function of the sectoral agreements and especially the legal security is undermined when these agreements are not regularly updated. The current literature does not, however, discuss the incentives for updates of sectoral agreements and the substantive EU rules contained therein. In order to fill this gap, I turn to theory and argue in this section that the incentives for agreement updates and repeated rule transpositions depend on the substantive

integration qualities of the sectoral agreements. The second factor largely ignored by the literature is the practical consequences of the different institutional settings of the sectoral agreements. Although the current literature, for example, describes the dynamic qualities of the Schengen and the Dublin association agreements, it does not provide evidence for the consequences of these legal forms, implicitly assuming that the institutional mechanisms foreseen for agreement updates are also applied. I argue that we should not deduce the actual functioning of the agreements from their legal form alone, because also the agreements of higher legal quality do not contain an update automatism. At the same time, the tension between form and substance may lead to agreement updates also in cases without institutional mechanisms. In addition, there may be cases where the tension is mitigated by compensatory adaptations of domestic legislation.

The argument that the substantive as well as the legal/ institutional integration qualities of an agreement are crucial in order to explain whether the danger of it becoming inefficient leads to revisions resonates well with supranationalist theories of European integration. Supranationalists reject the assumption of intergovernmentalists that the governments, which negotiated a certain treaty, remain in full control of the further development of that treaty. Accordingly, they emphasise the everyday development of integration in the time between the large integration steps which result from grand bargains and assume that institutions of regional integration to some extent attain a life of their own. For example, they emphasise the role of supranational actors like the European Commission or the European Court of Justice. Although these actors have no direct influence on Switzerland, because their influence depends on the formal institutions of membership, supranationalist arguments are still promising for the Swiss case. Especially arguments in the literature on new institutionalism as well as on the new economy of organisation, which were integrated on various occasions in supranationalist arguments, are promising for Switzerland. They are of a general nature and can be applied to Switzerland's differentiated integration.

In the following, I first discuss the role of the substantive integration quality of the sectoral agreements, and second the role of their legal quality, which in some cases might provide access points for supranational actors to shape the development of agreements. For both parts of the argument, I conceive of the sectoral agreements as incomplete contracts. Accordingly, the tension between the integration intention and the legal form of the sectoral

agreements is a consequence of the ambiguous relation of the substantive rules to EU law, the ambiguous tasks assigned to actors, or of the lack of actors responsible for the enforcement and development of the incomplete contracts.

3.2.1 Agreement Ambiguities and Substantive Integration

The concept of incomplete contracting stems from the literature on new economics of organisation. Scholars describe contracts as incomplete when they are imperfect in the sense that they do not realise all possible gains from a contract because the actors do not have the appropriate information at the time of signature, or because of future contingencies not foreseen by the contract (Tirole 1999). It is neither possible nor the aim of this section to discuss whether or not the sectoral agreements between Switzerland and the EU are incomplete in the sense that they do not ensure all possible economic gains of cooperation between Switzerland and the EU. It is nevertheless necessary to discuss the benefits of the sectoral agreements in order to discuss the interests that may be concerned by the threat of inefficiency of a sectoral agreement, because the literature on incomplete contracting provides arguments about when contracts are applied and revised to the benefit of specific actors. The fundamental assumption of the supranationalist literature provides a useful starting point regarding actors and interests. Supranationalists assume that regional integration facilitates cross-border exchange, and that increasing cross-border exchange is an important driver of integration, because actors engaging in cross-border activities demand that integration is upheld or even extended, and supranational actors respond to these demands (Stone Sweet and Sandholtz 1999, 1997). Probably not all agreements play the same role in fostering cross-border activities, and thus not for all agreements the risk of becoming ineffective has the same consequences for the agreement benefits. What is more crucial here, however, is to what extent the cross-border activities are actually affected by changes in EU rules, which in return my threaten the effectiveness of a sectoral agreement if it is not updated.

The incomplete contracting literature discusses ambiguities of contracts as one of the reasons why contracts are in constant need of interpretation and development. More ambiguous contracts leave more room for interpretation and in some cases, ambiguities in contracts are constructive in the sense that they enable negotiators to achieve an agreement even if not all issues are solved to everyone's satisfaction (Jupille 2007). In the case of the

sectoral agreements, it seems straightforward to assume that some ambiguities were constructive in the sense that they allowed Switzerland and the EU to reach agreement on controversial issues. Especially ambiguities with regard to the relation of agreement provisions to EU rules may be a possibility to reconcile the EU's principle of uniform rules and Switzerland's interest in retaining as much autonomy as possible (cf. Maiani 2008). For the question of under what conditions changing EU rules threaten the efficiency of an agreement, I argue that this depends on the degree of ambiguity with regard to the relation of a sectoral agreement to EU rules. In particular, I argue that agreements, which leave less ambiguity with regard to their relation to EU rules, are more strongly in need of revisions in order to fulfil their function because they leave less leeway to be interpreted in ways that differ from EU rules. The level of ambiguity with regard to the relation to EU law is especially low in agreements that aim at harmonising rules between Switzerland and the EU, and in agreements that directly refer to EU law.

The legal literature on sectoral agreements distinguishes between cooperation, liberalisation, and harmonisation agreements, but allows the three categories to overlap[23]. Harmonisation agreements lose their effectiveness if the parties to the agreement change the rules that were harmonised. Because of the 'shadow of hierarchy' hanging over Swiss-EU relations, we can assume that the basis for the harmonised rules in sectoral agreements more often than not are EU rules, and thus lose their effectiveness when EU rules change. I expect that Switzerland is interested in the regular update of harmonisation agreements, because the literature provides some evidence for the fact that harmonisation agreements facilitate cross-border activities. Evidence is provided by an empirical study of the economic consequences of Bilaterals I, which showed that harmonised rules for certain product groups in sectoral agreements significantly enhanced the export volume of these products, while it could not find a general economic effect of most agreements (Aeppli et al. 2008). The Conformity Assessment agreement is an illustration of how harmonisation facilitates trade, but also how important regular updates are. The agreement aims at removing technical barriers to trade by way of harmonisation of technical regulations between Switzerland and the EU

[23] The three categories are used, for example, by Astrid Epiney et al. (2012), Thürer et al. (2007) and Tobler (2008). Although these scholars share an understanding of what agreement belongs to which category, they do not define and use the categories in a way social scientists use variables. The operationalisation of the variables is thus a result of my own research, but clearly inspired by the work of these scholars.

(Epiney 2009). Its aim is not achieved through the extension of the *Cassis de Dijon* principle to Switzerland and thus, products authorised in Switzerland are not automatically allowed to be sold in the EU and vice versa. Instead, the agreement exhaustively lists products, product categories and assessment authorities that are recognised by the parties to the agreement. These lists naturally have to be updated regularly in order to correspond to the actual market activities. Otherwise they lose the intended effect of removing technical barriers to trade and to facilitate cross-border exchange. The descriptive analysis in Chapter 2 showed that the Conformity Assessment Agreement is indeed one of the most often revised agreements (see section 2.4.1).

In contrast to harmonisation agreements, the effectiveness of liberalisation and cooperation agreements depends less strongly on the equality of equivalence of agreement rules and EU rules. Liberalisation agreements remove national regulations in order to enhance liberal exchange in the areas of the four freedoms. To that end, they mainly prohibit certain kinds of rules and do not rely on new common ones. Cooperation agreements regulate the cooperation of EU and Swiss authorities, or other Swiss and EU actors (e.g., universities, customs authorities) and often contain (re-) distributive elements (e.g., Swiss contributions to EU funds). The effectiveness of cooperation agreements relies less on the actual equivalence or equality of EU and Swiss rules, but more strongly on the specific rights and duties as they are defined in the agreements.

The claim that less ambiguity with regard to the relation to EU rules makes agreement updates more necessary also holds for sectoral agreements that directly refer to EU law. Ambiguities in contracts open the door for interpretation. On the one hand, this leeway can be constructive in the sense that both parties to a contract can interpret the compromise to be in their own interest. For example, if an agreement only relies on parallel provisions, the EU can be satisfied to have extended its own rules to Switzerland, whereas Switzerland can claim that it secured its autonomy and did not subordinate itself to EU law. Such a covert relation to EU law, however, also allows interpretations that deny the relation to EU law. Examples are ECJ rulings on the Free Trade Agreement and on the Agreement on Air Transport. The ECJ repeatedly confirmed that provisions in agreements with third states need not necessarily be interpreted the same way as EU law, even if they contain the same provisions (Epiney 2008; Tobler 2008). As a consequence, the benefit of agreements with

parallel provisions cannot crucially depend on the congruence of the agreement rules with EU rules, as they are not interpreted in the same vein anyways.

In the case of agreements with direct references to EU law, the relation to EU law is overt and thus not ambiguous. This leaves less space for interpretations that highlight the differences rather than the similarities between the agreement rules and the EU rules. Examples are ECJ rulings on the Free Movement of Persons Agreement, where the ECJ explicitly referred to its own previous rulings on the respective primary law provisions to decide on cases related to the agreement (Thürer and Burri 2012). If an agreement directly refers to EU law, it is more likely that it is implemented and interpreted in a similar way as the respective EU law. Accordingly, also the benefit of an agreement more directly relies on the actual congruence of agreement rules and EU rules than on the genuine agreement provisions. As a consequence, such agreements threaten to become ineffective, or at least to produce fewer benefits as soon as the respective EU rules change. Many of the agreement revisions observed in the data set hint at the fact that agreements, which directly refer to EU law, are indeed often revised exactly because the relevant EU law changed. Examples are revisions of the Agreements on Agriculture, on Conformity Assessments, on Air Transport (Bilaterals I) and on the Schengen association (Bilaterals II; see Figure 1 in Chapter 2).

To sum up, I expect that harmonisation agreements are more likely to be kept up to date with EU rules than liberalisation and cooperation agreements and that agreements, which directly refer to EU law, are more likely to be kept up to date with EU law than agreements that do not explicitly mention EU law even if they may rely substantively on EU provisions. In both cases, the expectation is based on the assumption that the benefits of harmonisation agreements or agreements that directly refer to EU law more strongly depend on the actual congruence of agreement rules and EU rules. In the literature review, I discussed basically two different ways the EU rules contained in a sectoral agreement can be kept up to date: The revision of a sectoral agreement and the compensatory transposition of the relevant EU rules into domestic legislation. Accordingly, I assume that harmonisation agreements and agreements with direct references to EU law are more likely to be revised, and that they are more likely to lead to compensatory adaptations of domestic legislation. In addition, and following from the assumptions about the integration benefits of such agreements, I also assume that the revisions of these agreements are more likely to directly refer to EU laws. If

the benefit of an agreement is likely to depend on the congruence of its rules with EU rules, it makes sense that also the revisions of these agreements leave as few ambiguities as possible with regard to their relation to EU law in order to prevent contradictory rulings. An example could be the Free Trade Agreement, whose revisions often directly refer to EU law, although the initial agreement did not overtly mention EU law.

The following hypotheses summarise the theoretical considerations discussed above:

Compared to cooperation and liberalisation agreements, harmonisation agreements are more likely to:

H A 1: be revised;
H B 1: have revisions that refer directly to EU law; and
H C 1: lead to domestic rule transpositions.

Agreements, which directly referred to EU law when they were first adopted, are more likely to:

H A 2: be revised;
H B 2: have revisions that refer directly to EU law; and
H C 2: lead to domestic rule transpositions.

3.2.2 Obligational Incompleteness and Legal Integration

Incomplete contracts can be ambiguous not only with regard to their content, but also to the assignment of interpretation, implementation and enforcement responsibilities. Henry Farrell and Adrienne Héritier (2007) called this "obligational incompleteness". The concept of obligational incompleteness provides a description for the tension between legal form and integration intention described in the literature review. Although sectoral agreements often have the aim to establish equivalence of legislation between Switzerland and the EU, and although many sectoral agreements contain statements of intent to develop an agreement further, many agreements do not assign respective responsibilities. In that sense, the definition of the obligations to secure that agreement aims are achieved is incomplete. The literature review also showed that the absence of clear obligations make agreement revisions a cumbersome task. If revisions have to be negotiated from scratch, Switzerland and the EU can link new issues, negotiate new exemptions etc. The last paragraphs showed that agreement revisions are nevertheless necessary to uphold an agreement's function, especially if an agreement's function depends on the equivalence or equality of agreement rules and EU

rules. The EU's activity in creating new rules affects Switzerland in areas, where the latter substantively transposed EU rules. In this section, I argue that the EU's activity also affects Switzerland in the case of agreements with a higher legal integration quality, because such qualities reduce obligational incompleteness.

In the context of the European Union, the literature on incomplete contracting highlights the role of supranational actors in the case of ambiguities in contracts and obligational incompleteness. Ambiguities allow supranational actors to shape implementation and interpretation according to their own preferences, and obligational incompleteness opens the floor for contestation of obligations and according responsibilities and rights (Farrell and Héritier 2007; Jupille 2007). This reasoning stands in the supranationalist tradition which emphasises the influence of supranational actors on the development of integration, because of their capacity "to create, interpret, and enforce rules" (Sandholtz and Stone Sweet 2010). As mentioned above, the most important supranational actors relevant for European integration, like the Commission or the ECJ, have no direct competence *vis à vis* Switzerland. Sectoral agreements with stronger legal integration qualities, however, contain provisions that link them to the creation, interpretation and enforcement of rules by supranational actors. Sometimes they assign enforcement obligations and legislative competences to new authorities that may develop a similar function as supranational actors in the EU context.

The most direct legal link of sectoral agreements with rule creation in the EU is present in agreements with so-called dynamic provisions. Dynamic provisions oblige Switzerland to adopt new legislation emerging in the EU in the area of the agreement also after the signature of the agreement. Dynamic provisions are a recent phenomenon and the data set contains only two agreements with such provisions: the Schengen and Dublin association agreements. Already the descriptive results presented in Chapter 2 (section 4.1) showed that these dynamic agreements are very often revised. No other sectoral agreement in the data set contains similarly clear rules for rule updates. With regard to rule enforcement, only one agreement creates a link between the ECJ and Switzerland. The ECJ, one of the most influential supranational actors in the EU when it comes to triggering integration, is responsible for dispute settlement only in the case of one, namely the agreement on air transport. In two other agreements, the Schengen and Dublin association agreements, Switzerland is obliged to take into account ECJ rulings issued after the date of signature of the agreements, but the

ECJ is not responsible for dispute settlement (Good 2010). In addition, and as mentioned above, the ECJ is not always inclined to interpret the sectoral agreements in the same way it interprets similar provisions in the EU law. Apart from this few exemptions, the parties to the sectoral agreements are responsible for the interpretation and enforcement of the treaties on their own territories.

Instead of a direct obligation to adopt new EU legislation, most agreements contain a provision that establishes a Mixed Committee responsible for the exchange of information about new legal developments in the EU and Switzerland and for eventual transposition of these changes into the agreements. Some Mixed Committees have the right to amend annexes of the agreements and thus provide another access point for the EU's rule creation activity. The role of Mixed Committees resembles the role of supranational actors with regard to interpretation and development of the incomplete agreements. Mixed Committees are institutions staffed by policy field experts of the administration, and largely sheltered from public attention in Switzerland: the federal administration does not even systematically publish their decisions. When we assume that Switzerland's political and administrative elite is rather integration friendly, and that the technocratic experts are above all interested in the smooth functioning of the agreements, we can assume that Mixed Committees use their competences to update agreements as long as no major Swiss interest is against it. In the case of Swiss opposition, Mixed Committees are blocked because they decide by unanimity. In theory, the Mixed Committees are also the institutions responsible for dispute settlement when Switzerland and the EU disagree with regard to the implementation of some agreement provisions. As they have no sanctioning possibilities, and because they decide unanimously, I expect that their principal effect stems from their legislative competences.

To sum up, I assume in general that the obligational incompleteness of the sectoral agreements is an obstacle for agreement revisions. Agreements that contain some provisions that reduce the obligational incompleteness and thus provide some mechanisms to overcome the tension between integration intention and legal form are more likely to be kept up to date with legal developments in the EU. The two most powerful rules in this regard are dynamic obligations to adopt new EU law, and the establishment of Mixed Committees with the competence to update parts of the agreements in their own right. Like in the last section, I expect that such provisions influence the probability of agreement revisions, of the

substantive quality of these revisions, and the probability of domestic compensatory measures as well. Dynamic obligations and Mixed Committees make agreement revisions and agreement revisions that directly refer to EU law more likely. Exactly for the reason that these rules reduce obligational incompleteness and thus facilitate agreement revisions, I also expect that they make rule transpositions into domestic legislation as compensatory measures less likely. I expect that monitoring provisions affect the correct implementation of rules, and not rule transpositions. Therefore, I do not take into account this form of stronger legal integration for the explanation of rule transpositions.

The following hypotheses summarise the arguments:

Dynamic agreements are more likely to

H A 3: be revised than static agreements;
H B 3: have revisions that refer directly to EU law.

Dynamic agreements are less likely to

H C 3: lead to domestic rule transpositions.

Agreements with Mixed Committees are more likely to

H A 4: be revised;
H B 4: have revisions by Mixed Committees that refer directly to EU law.

Agreements with Mixed Committees are less likely to

H C 4: lead to domestic rule transpositions.

3.3 Analysis: The Incompleteness and Everyday Law-Making

The hypotheses derived in the previous section claim that there is a relation of the substantive and legal integration quality of agreements with three different dependent variables; namely with the frequency of agreement revisions, the substantive quality of agreement revisions, and the likelihood of domestic transpositions of EU rules. Accordingly, these hypotheses will be tested in three steps. For each step, a different subset of the data set presented in Chapter 2 is used. In the first step, I analyse the A hypotheses that make claims about the probabilities of revisions for different kinds of agreements. In that analysis, all agreements contained in the data set are analysed, and I am interested in the number of

revisions per agreement and year and in the probability that an agreement is revised in a given year. In the second step, I analyse the B hypotheses that make claims about the probabilities that agreement revisions contain direct references to EU law. For this analysis, only the agreement revisions are analysed and I am interested in the number of agreement revisions of different types of agreements that contain direct references to EU law, and in the probability that agreement revisions refer directly to EU law. In the third step, I test the C hypotheses which make claims about the probabilities that domestic legislation is adapted to EU law in order to compensate for the static character of most sectoral agreements. This last analysis uses the data on domestic legislation. The qualities of the sectoral agreements are used as independent variables and measured per policy field. I am interested in the number of domestic transpositions of EU rules that occur in policy fields with certain kinds of agreements measures, and in the probability of such transpositions.

In the following three sections, I present the tests of the A, B, and C hypotheses separately. Every section starts with the operationalisation of the variables, followed by frequency tables including difference of means tests for each type of sectoral agreements (A), agreement revisions (B), or domestic legal reforms (C). Finally, every analysis includes a logistic regression analysis testing whether the explanatory power of single variables depends on whether or not the variables measuring the other hypotheses are tested simultaneously or not.

3.3.1 Integration Quality and Frequencies of Agreement Revisions

The A hypotheses claim that specific substantive and legal integration qualities of sectoral agreements enhance the probability that these agreements are revised. The dependent variable is the number of revisions of a given agreement in a given year. New adoptions of agreements are not counted as revisions; thus they are not included in the analysis. The independent variables measure the qualities of agreements. In order to test hypothesis A1, I distinguish harmonisation agreements from other agreements. A *harmonisation agreement* aims at harmonising formal rules. Harmonisation cannot only be achieved when an EU legal rule is explicitly referred to in a sectoral agreement, but also when common rules are established in the agreement, or when the parties to the agreements are asked to establish equivalent rules. Harmonisation of formal rules does not necessarily only concern economic issues, and the harmonised rules do not necessarily need to be EU rules. In order to test hy-

pothesis A2, I distinguish between agreements that contained *direct references to EU law* when they were first adopted and agreements that did not contain any such references. In order to test hypothesis A3, I distinguish between dynamic and static agreements. *Dynamic agreements* oblige Switzerland to continuously adopt new EU legislation in the agreement area and foresee sanctions or compensatory measures in case Switzerland does not fulfil this obligation[24]. For the test of hypothesis A4, I distinguish between agreements that are administered by a *Mixed Committee* and agreements that are not (see Annex A.1 and A.2 for coding rules and sources).

Table 5: Revisions of different types of agreements per agreement and year

	Number of revisions per agreement and year					**Difference of means, T-test**		
	0	**1**	**2**	**3 - 10**	**> 10**	**Total >0**	**Mean**	***p***
Hypothesis A 1								
Harmonisation agreement	214	16	13	5	3	37	0.43	
Other	*1134*	*20*	*9*	*4*	*0*	33	0.05	0.0000
Hypothesis A 2								
EU law reference	190	14	11	5	3	33	0.46	
Other	*1159*	*22*	*11*	*4*	0	37	0.05	0.0000
Hypothesis A 3								
Dynamic Agreement	8	0	0	0	3	3	4.00	
Other	*1341*	*36*	*22*	*9*	0	67	0.08	0.0000
Hypothesis A 4								
Agreement with Mixed Comm.	454	33	22	9	3	67	0.30	
Other	*895*	*3*	*0*	*0*	0	3	0.00	0.0000
Total number of rev. per year								
All agreements	1349	36	22	9	3	70	0.11	

[24] The two agreements in the data set with dynamic provisions are the Schengen and Dublin association agreements. Technically, the updates of the Schengen agreement are all diplomatic exchanges of letters; thus new treaties of international law with an SR number separate from the original Schengen treaty. From the point of view of their significance, however, these exchanges of letters are not new treaties: their only purpose is to introduce changes in the original agreement, and they are never updated. For the purpose of the present analysis, I thus count them as revisions of the Schengen association agreement.

Table 5 shows the frequency of different numbers of revisions per year for different types of agreements. The unit of analysis is the agreement-year pair. In total, the data set contains 1419 agreement-year pairs. These observations stem from 98 different sectoral agreements, which were observed every year since the year they were first adopted and including the year they were abrogated. Only 19 of these agreements were subject to a total or a partial revision at least once during the research period. Accordingly, Table 5 shows that most observations; thus most agreement-year pairs, count zero revisions. The last row of the Table indicates that 1349 agreement-year pairs have a zero on the revision variable, whereas 70 agreement-year pairs count one or more revisions. The last row of the Table shows that most often, an agreement is revised only once or maximum twice a year. More revisions per year are rare. Overall, the picture is thus not very dynamic. But when we compare the different types of agreements, we see considerable and statistically significant differences in the frequency and number of revisions across the different types of agreements.

The first row of Table 5 compares the number of revisions of harmonisation agreements and other agreements (liberalisation and cooperation agreements) and provides evidence for the claim made in hypothesis A1. Most revealing is the number of observations without revisions per agreement and year. Harmonisation agreements are only responsible for 251 agreement-year pairs without revisions, whereas other agreements are responsible for 1134 agreement-year pairs without revisions. When we put the harmonisation agreement-year pairs in relation to the number of observations of harmonisation agreements, we see that they were much more often revised. A t-test shows that the difference of the mean number of revisions per year of harmonisation agreements compared to other agreements is statistically significant at the level $p < 0.0000$ (last column). The second row of Table 5 shows a similar picture with regard to the claim made in hypothesis A 2. It compares the number of revisions of agreements that referred directly to EU law when they entered into force to the number of revisions of other agreements. Again, agreements with references to EU law account for much less agreement-year pairs without revisions (190 compared to 1196) and this is again the main reason why the mean number of revisions per year is significantly higher for these agreements compared to others ($p < 0.0000$).

The third and fourth rows of Table 5 show that agreement-year pairs with and without revisions are very differently distributed across agreements with different legal integration qual-

ities. The third row compares the numbers of revisions between dynamic and static sectoral agreements. First and foremost, the numbers show that dynamic agreements are still a rare phenomenon. The reason is that the Schengen and the Dublin association agreements, and an additional agreement on Switzerland's contribution to the European Agency for the Management of Operational Cooperation at the External Borders (Frontex), are the only dynamic agreements in the data set. Together, these three agreements account only for 11 agreement-year pairs. Eight of these observations contained no revisions, whereas the other three agreement-year pairs of dynamic agreements count more than 10 revisions and are all observations of the Schengen association agreement. The rare observations of dynamic agreements and the high number of revisions of the Schengen agreement in its first three years are responsible for the high mean number of revisions per dynamic agreement and year and the highly significant difference to the mean of revisions per year of static agreements. Also hypothesis A3 is thus supported by the data, although some caution is appropriate because of the small number of observations.

The fourth row shows a similarly unbalanced distribution of revisions among agreements that are administered by a Mixed Committee and agreements that have no such committee. Of the 98 agreements in the data set, 35 are administered by a Mixed Committee, and 62 do not have a Mixed Committee. Agreements without a Mixed Committee were revised only three times during the research period, whereas agreements with Mixed Committees account for all other agreement-year pairs with one or more revision. The agreements without a Mixed Committee that were nevertheless revised are the agreement on Switzerland's contribution to Frontex, which has a dynamic provision, and the agreement on cooperation in research and development that was totally revised in 2005 and 2008. This research agreement has to be revised for every new Framework Program on research that the EU initiates. We can thus conclude that with some understandable exemptions, only agreements with Mixed Committees were revised. The difference of means test supports this conclusion and accordingly also hypothesis A4.

These bivariate hypotheses tests have two important weak points: Firstly, the four agreement categories are not mutually exclusive. A harmonisation agreement can and often does but does not necessarily have to refer to EU law. An agreement with a Mixed Committee can be at the same time a harmonisation agreement or a dynamic agreement. Because the vari-

ables overlap, we cannot exclude that the significant effect of the variables in the bivariate tests is due to the values of another variable, which is not included in the respective analysis. The second weak point of the analysis concerns the role of time that is not included in the bivariate analyses. Time could be another factor that boosts the influence of agreement characteristics in the bivariate analyses, because certain variables were observed only in recent years (see Figure 3 and Figure 4 in Chapter 2). This is true most clearly for the dynamic agreements, but to some extent also for the harmonisation agreements and for the agreements with direct references to EU law. The comparably low number of agreement-year pairs without revisions is mainly an indicator that such agreements were observed more often in recent years.

In order to overcome these weak points, a multivariate regression analysis including all independent and some control variables is conducted. The control variables test whether some of the influence of the independent variables is due to a general time effect. I expect that there could be two types of time effect in the data. First, the hypothesised mechanisms are most probable to hold for newer agreements and less so for older agreements, because the literature review and the theoretical section mainly drew on research of Bilaterals I and II. Unfortunately, almost no literature exists on the older agreements. In order to control for that uncertainty about older agreements, I include the year of the first publication of an agreement as control variable. If more recent agreements are more likely to be revised, the publication year should be positively correlated with the probability of an agreement revision. Second, I control for a general time effect. The EU is a different partner for Switzerland today than it was twenty years ago; its policies cover more and other issues; it has many more member states; and recently tensions between EU institutions and Switzerland about the functioning of the sectoral agreements increased (Gstöhl 2007; Council of the European Union 2012, 2010, 2008). These developments could have had the effect that sectoral agreements are more frequently revised independently of their integration quality. To control for that, the year of the observations is added as control variable as well. The descriptive statistics of the variables used for the multivariate analysis are presented in Table 6.

For the multivariate analysis, I apply a logistic regression analysis. Logistic regression analysis is appropriate because I recoded the dependent variable in a way that the count variable (number of revisions per agreement-year pair) became a binary variable (agreement was

revised in a given year one or several times, yes or no). The reason is that most agreements were revised only once or twice a year anyways (see Table 5). Using a count variable would thus attribute too much influence to the variable values of the few observations with very high numbers of revisions per agreement and year, although it is more plausible to assume that these high counts can be explained by specific agreement characteristics not measured in this analysis. The data structure of agreement-year pairs resembles a panel structure, but estimation techniques accounting for that structure are not necessary, because the independent variables apart from the control variables vary only between agreements, but not over time. The main research interest is to explain the variation between agreements.

Table 6: Descriptive statistics for variables used in Models A and A+

Variable	Obs.	Mean	Std. Dev.	Min	Max
Dep. Var. Agreement revisions per agr./year	1419	0.05	0.22	0	1
Harmonisation agreement *	1418	0.18	0.38	0	1
Initial EU law ref.	1419	0.16	0.36	0	1
Dynamic agreement	1419	0.01	0.09	0	1
Mixed Committee agreement	1419	0.37	0.48	0	1
Publication year of agreement	1419	1983.84	10.98	1957	2010
Year of observation	1419	2000.80	5.97	1990	2010

Note: * The lower number of observations is due to a missing value. The reason is an unpublished agreement text (this agreement entered into force only in 2010 and is thus responsible for only one agreement-year pair).

Table 7 shows the regression results. Model A contains the variables testing hypotheses A1 – A4. Model A+ contains the same variables as Model A and in addition the control variables accounting for time effects. The results of the model fit tests are ambiguous with regard to the question of whether the control variables improve the overall model fit. A test based on the Bayesian information criteria indicates that the control variables added in Model A+ do not significantly improve the model fit (reported as AIC and BIC, smaller numbers would indicate better model fit, see e.g., Long and Freese 2001). A Wald test hints at the opposite. The logistic regression analysis confirms the results from the bivariate analysis presented in Table 5 for three out of the four hypotheses also in the multivariate analyses. Only the correlation of harmonisation agreements with the probability of agreement revisions (hypothesis A1) is not statistically significant, but the coefficient still has the expected sign. Also the coefficients of the variables testing hypotheses A2-4 have the expected positive sign, and in addition, their correlation with the probability of agreement revisions is statistically significant.

Agreements with initial references to EU law, dynamic agreements, and agreements with Mixed Committees are more likely to be revised than agreements without these characteristics.

Model A+ provides evidence for only one of the two different time effects that the control variables sought to account for. Surprisingly, the publication year of an agreement is negatively correlated with the probability of agreement revisions, suggesting that older agreements are more likely to be revised.

Table 7: Logistic regression analysis of the probability of agreement revisions

Agreement revisions	(A)	(A+)
Hypothesis A1		
Harmonisation agreement	0.256	0.317
	(0.94)	(1.11)
Hypothesis A2		
EU law reference	2.230***	2.291***
	(7.51)	(3.97)
Hypothesis A3		
Dynamic agreement	2.392**	2.271*
	(2.60)	(2.32)
Hypothesis A4		
Mixed Committee agreement	4.121***	4.041***
	(6.71)	(6.05)
Year of first publication		-0.0191
		(-0.88)
Year		0.0638*
		(2.17)
Constant	-6.664***	-96.53
	(-10.82)	(-1.29)
Observations	1418	1418
Wald Chi2	97.20***	106.36***
AIC	387.61	385.98
BIC	413.89	422.78

Note: Logistic regression coefficients, robust standard errors; t statistics in parentheses
* p < 0.05, ** p < 0.01, *** p < 0.001

This result is not statistically significant and may be a consequence of the smaller number of observations of newer agreements, but it still indicates that older treaties are not necessarily revised less frequently than newer ones. The Free Trade Agreement from 1972, for example, is one of the most-often-updated agreements, and it is responsible for the large majority of agreement revisions that occurred in the 1990s. The second control variable, the year of revision, is positively correlated to the probability of agreement revisions, suggesting that agreement revisions have become more likely in recent years. This correlation is statistically significant at the level $p<0.05$. With regard to the other independent variables, the addition of the control variables only affects the significance level of dynamic agreements: their correlation with agreement revisions becomes less significant. As dynamic agreements are a very recent phenomenon, this effect is not surprising. Regarding the other independent variables, I assume that the effect of the independent variables is not only a result of their variance over time, but also that time has an additional effect on the likelihood of agreement revisions.

3.3.2 Integration Quality and Quality of Agreement Revisions

The B hypotheses claim that specific substantive and legal integration qualities of sectoral agreements enhance the probability that agreement revisions, once they occur, also contain direct references to EU law. The dependent variable to test this claim is a binary variable that measures whether or not an agreement revision directly refers to EU law. It takes the value 1 when a revision refers to EU law, and thus mentions at least one particular EU directive, regulation, or other binding legal act of the EU, and the value 0 when it does not. The independent variables are operationalised in the same way as in the previous analysis. The only difference is the way I operationalise the role of Mixed Committees: Whereas in the previous analysis, I measured whether an agreement is administered by a Mixed Committee, I now measure for each revision whether or not it was actually adopted by a Mixed Committee, thus whether or not it is a Mixed Committee decision. This operationalisation measures the actual activity of the Mixed Committees. Although Table 5 showed that almost all revisions concerned agreements that are administered by a Mixed Committee, this number does not tell us whether the Mixed Committees were actually responsible for the revisions.

Table 8 shows the frequency of direct references to EU law for revisions of different types of agreements. For this analysis, the sample is restricted to agreement revisions only. Agreements that were never revised during the research period as well as new adoptions of agreements were excluded from the analysis. The unit of analysis is the agreement revision, and like this, the values of the dependent as well as the independent variables are now measured at the lowest possible level. The last row of Table 8 shows that in total, the sectoral agreements were revised 158 times during the research period from 1990 to 2010. Of the total 98 agreements in the data set, only 19 agreements are responsible for these 158 revisions. The last row of Table 8 also shows that almost two thirds of all agreement revisions actually referred directly to EU law.

Table 8: Revisions with reference to EU law of different types of agreements

	Number of agreement revisions		**Difference of means, T test**		
	With EU law ref.	**No EU law ref.**	**Total**	**Mean**	***p***
Hypothesis B1					
Harmonisation agr.	91	15	106	0.86	
Other	10	42	52	0.19	*0.0000*
Hypothesis B2					
Initial EU law reference	92	9	101	0.91	
Other	9	48	57	0.16	*0.0000*
Hypothesis B3					
Dynamic Agreement	42	0	42	1.00	
Other	59	57	116	0.51	*0.0000*
Hypothesis B4					
Mixed Committee Decision	50	34	84	0.60	
Regular Revision	51	23	74	0.69	*0.2224*
Total	101	57	158	0.64	

The number of revisions with and without direct references to EU law across the different categories of agreements again reveals significant differences. The first row of Table 8 compares the frequency of references to EU law for revisions of harmonisation agreements to

other agreements (liberalisation and cooperation agreements). The large majority of revisions of harmonisation agreements directly referred to EU law, whereas the large majority of revisions of other agreements did not refer to EU law. A t-test of the difference of the means indicates that the difference is statistically significant at the level $p<0.0000$. The data thus support hypothesis B1. The second row of Table 8 shows a very similar picture. It compares the frequency of references to EU law for revisions of agreements that already at their first adoption contained such references compared to agreements that did not contain any such reference. Again, the large majority of revisions of agreements with initial references also refer to EU law, whereas the large majority of revisions of agreements without initial references to EU law do not refer to EU law. The difference in the means is statistically highly significant and also hypothesis B2 is corroborated by the data.

The third row of Table 8 shows the clearest picture: all revisions of dynamic agreements directly referred to EU law, whereas the revisions of static agreements referred almost as often to EU law as they did not refer to EU law. The t-test of the difference of means is statistically again highly significant and hypothesis B3 is supported by the data. Even more surprising than the fact that revisions of dynamic agreements always refer to EU law is the sheer number of revisions of dynamic agreements. Revisions of dynamic agreements already account for almost one third of all agreement revisions, although the dynamic agreements entered into force only in 2008. As mentioned already in the previous analysis, it is almost only the Schengen association agreement that is responsible for that result. Therefore, it is too early to tell whether the observed effect is the effect of the dynamic provision, or an effect related to some other characteristic of the Schengen agreement.

The fourth row of Table 8 compares Mixed Committee decisions to regular agreement revisions and reveals that regular revisions directly referred to EU law slightly more often than Mixed Committee decisions. This finding contradicts hypothesis B4. The t-test indicates, however, that the difference of the means of both categories is statistically not significant. Although agreements that are administered by a Mixed Committee are those agreements that are also revised (see Table 5), although Mixed Committees are responsible for more than half of all agreement revisions and although Mixed Committees often have the right to amend those parts of the agreements that refer to EU law, Mixed Committee decisions are not the principal drivers of references to EU law in agreement revisions.

As in the previous analysis, the bivariate hypothesis tests have some weak points, and a multivariate regression analysis is conducted in order to overcome some of them. Again, I added the two control variables publication year and year of observation in order to account for the possibility that there is a general time effect related to newer agreements and more recent revisions. In addition to these time-related variables, I added two more control variables. One is related to hypothesis B 4 that Mixed Committee decisions are more likely to directly refer to EU law. This hypothesis is partly based on the assumption that decisions by Mixed Committees do not receive much public attention and have to be approved by the government only, which makes the revision process less cumbersome and more technical and are thus more likely to refer to EU law. This hypothesis, however, was not corroborated in the bivariate analysis. As Mixed Committee decisions are by far not the only agreement revisions that do not need parliamentary approval; one possible explanation for this result is that government-approved agreement revisions are in general more likely to refer to EU law. In order to control for that possibility, the multivariate analysis includes a control variable taking the value 1 when an agreement revision was adopted by the Federal Council and 0 when it was adopted by parliament and/ or in a popular referendum. The second new control variable is the number of years that have passed since the last direct reference to EU law in a revision of the same agreement. I assume that a recent update of an agreement may reduce the probability of a new revision with a direct reference, because the need of an update may be less urgent. Table 9 shows the descriptive statistics for all variables.

Table 9: Descriptive statistics for variables used in Models B and B+

Variable	**Obs.**	**Mean**	**Std. Dev.**	**Min**	**Max**
Dep. Var. EU law reference in agreement revision	158	0.64	0.48	0	1
Harmonisation agreement	158	0.67	0.47	0	1
Initial EU law reference	158	0.64	0.48	0	1
Dynamic agreement	158	0.27	0.44	0	1
Mixed Committee Decision	158	0.53	0.50	0	1
Publication year of agreement	158	1994.67	15.04	1972	2010
Year	158	2005.41	5.41	1990	2010
Years since last EU ref.	158	1.46	2.30	0	21
Federal Council Dec.	158	0.85	0.35	0	1
FTA	158	0.23	0.42	0	1

For the multivariate analysis, I again apply a logistic regression analysis because the dependent variable is binary. Like in the previous analysis, some of the independent variables are very strong predictors of direct references to EU law in agreement revisions. Because these strong predictors are binary variables as well, some observations are very influential for the regression outcome. In order to account for this problem, I estimated robust standard errors adjusted for the 19 different agreements, and I estimated a third model including a dummy variable which accounts for some influential observations. Nevertheless, the tests of significance have to be interpreted with care as they may be too optimistic[25].

Table 10 presents the results of the logistic regression analysis testing hypotheses B1, B2, and B4. The variable for dynamic agreements was not included in the multivariate analysis because dynamic agreements are perfect predictors for EU law references in agreement revisions. Analogously to Table 7, Model B contains the variables testing hypotheses B1, B2, and B4 simultaneously. In addition Model B+ contains the control variables related to time and the variable measuring whether an agreement was in the responsibility of the Federal Council. Model B++ contains one additional control variable, a dummy indicating whether a revision is related to the Free Trade Agreement of 1972 and its various protocols or not. This dummy variable was included because the Free Trade Agreement and its protocols are the agreements that are responsible for most revisions before 2000, but these revisions seem to follow a different logic to the other agreement revisions. For example, the Free Trade Agreement initially did not refer to EU law, and its protocols mostly have no harmonisation aim, but in recent years revisions to these agreements nevertheless increasingly referred to EU law.

The various model fit tests of Model B+ indicate that the control variables improve the model fit (see Bayesian information criteria AIC and BIC and the Wald Chi2 test). The information criteria also suggest that the dummy variable for the Free Trade Agreement and its protocols increases the model fit. The Wald test, however, could not be performed. With only 19 clusters (19 sectoral agreements), there are not enough degrees of freedom in the model to es-

[25] Another possibility to account for influential observation is the bootstrap technique, which repeats the regression analysis several times with sub-samples of the whole sample (with replacement). Unfortunately, the bootstrap technique does not work here because several covariate patterns are rare. As a consequence, when observations with rare covariate patterns are dropped for some bootstrap replications, they do not converge.

timate the probability that all coefficients are simultaneously zero. Compared to Models A and A+ presented in Table 7, the control variables this time seem to play a more important role.

The logistic regression analysis partly confirms the results of the bivariate analysis presented in Table 8. Harmonisation agreements are positively correlated to the likelihood of references to EU law in agreement revisions, but in contrast to the results of the bivariate analysis, this correlation is not statistically significant. This result corresponds to the result of Models A and A+, where harmonisation agreements were also positively but not significantly correlated to the likelihood of agreement revisions. Hypothesis B1 is thus not supported by the multivariate analysis. The coefficients testing hypothesis B2 and B4, in contrast, confirm the results from the bivariate analysis. Revisions of agreements that initially referred to EU law are more likely to refer to EU law, the respective coefficient is statistically significant at the level $p<0.001$ in all three models and hypothesis B2 is corroborated. Mixed Committee decisions are positively correlated with references to EU law, but this correlation is not statistically significant. Accordingly, as in the bivariate analysis, hypothesis B4 has to be rejected.

Regarding the control variables measuring time effects, we observe the same pattern as in the previous analysis. The publication year of an agreement is negatively correlated to direct references to EU law, whereas the time of adoption is positively correlated. The coefficient for the publication year is statistically significant in both Models B+ and B++, the coefficient for the calendar year is only statistically significant when I control for the Free Trade Agreement and related protocols in Model B++. For the question of whether or not an agreement revision refers to EU law, the age of an agreement is even less important than for the likelihood of agreement revisions in general. Again, the significant negative correlation may be an artefact of the few observations with very recent publication years. At the same time, recent agreement revisions are more likely to refer to EU law as soon as we control for the Free Trade Agreement and its protocols, the revisions to which already contained references to EU law early on.

Table 10: Logistic regression analysis of the probability of revisions with references to EU law

EU law reference	(B)	(B+)	(B++)
Hypothesis B1			
Harmonisation agreement	0.751	0.828	0.672
	(0.89)	(0.71)	(0.30)
Hypothesis B2			
Initial EU law reference	3.453***	9.513***	34.07***
	(3.72)	(4.35)	(6.96)
Hypothesis B4			
Mixed committee decision	0.108	2.209	0.654
	(0.14)	(1.65)	(0.50)
Control variables			
Time since last EU law		-1.819	-2.920***
reference		(-1.95)	(-3.45)
Federal Council decision		-5.199***	-2.917**
		(-4.74)	(-3.06)
First publication of bill, year		-0.157**	-0.309***
		(-2.71)	(-5.10)
Year		0.0462	0.298**
		(0.56)	(2.77)
Free Trade Agreement			24.22***
and protocols			(9.88)
Constant	-1.889*	220.0	-4.687
	(-2.19)	(1.46)	(-0.02)
Observations	158	158	158
Wald Chi2	18.86***	34.79***	.
AIC	117.38	89.86	55.12
BIC	129.63	114.36	76.56

Note: Logit coefficients with robust standard errors adjusted for 19 clusters (one cluster is one sectoral agreement and accounts for the lack of independence between revisions of the same sectoral agreement). *t* statistics in parentheses; * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

The coefficients estimated for the two new control variables time since last EU reference and Federal Council decisions have counter-intuitive signs. The time since the last agreement revision with a reference to EU law is negatively correlated with EU law references in the actual revision: The longer ago the last reference, the less likely an actual reference. The assumption about the frequency must be revised. Apparently, direct references to EU law become more likely if they are more frequent. Compared to agreement revisions adopted by parliament, those adopted by the Federal Council are less likely to directly refer to EU law. This control variable was introduced in order to test whether it is the fact that the government can decide on its own rather than the institutional form of a Mixed Committee decision that makes references to EU law more likely. This is not the case, as Federal-Council-adopted reforms are even less likely to refer to EU law. Although this result seems counter-intuitive, it is consistent with the results presented in Chapter 4, where I explicitly analyse the role of different institutional actors.

3.3.3 Integration Quality and Domestic Legal Adaptations

The C hypotheses claim that sectoral agreement with certain substantive and legal integration qualities enhance or reduce the probability of domestic legal adaptations to the EU in the same policy fields. These hypotheses aim to test assumptions found in the literature that Switzerland compensates the static character of the sectoral agreements and the lack of mechanisms that ensure regular agreement updates with the adaptations of domestic legislation to legal developments in the EU. The dependent variable to test this assumption is a binary variable measuring whether or not a domestic legal reform in an area for which there exists EU law contains a transposition of EU law or not. The exclusion of domestic reforms dealing with exclusively domestic issues excludes 'false negative' cases from the sample. Domestic rule transpositions are operationalised as legal reforms that contain an adaptation

to EU law (full or partial)[26]. The independent variables are again the integration qualities of sectoral agreements; the presence or absence of a sectoral agreement with a certain quality is measured by the year and the policy field in which a domestic legal reform occurs. The policy fields used to link sectoral agreements with domestic legal reforms are the sub-chapters in the Systematic Compilation of Federal Legislation[27]. Although these sub-chapters may not correspond to theoretically meaningful policy fields in every case, they provide thematic categories that correspond to the legislative practice of the federal administration. Accordingly, I assume that domestic legal reforms are most likely to be linked to sectoral agreements in the same sub-chapter.

Table 11 provides an overview of the frequency of domestic legal adaptations across policy fields with and without different sorts of sectoral agreements. The sub-sample of the data used for this analysis consists of all federal law reforms (new adoptions, total and partial revisions) which concern issues that are regulated by EU law. The last row of Table 11 shows that the data set contains 494 domestic legal reforms in areas with relevant EU laws without missing values[28]. These 494 legal reforms concern 224 different federal laws. Slightly less than half of these legal reforms contained adaptations to EU law. The distribution of these adaptations over policy fields with certain kinds of sectoral agreements provides evidence for only one of the C hypotheses. The first row of Table 11 shows the frequency of adaptations to EU law in policy fields with and without harmonisation agreements with the EU. The data show that in general, federal law reforms are more frequent in issue areas without harmonisation agreements. But in policy fields with harmonisation agreements, two thirds of all federal law reforms were adaptations to EU law, whereas in policy fields without har-

[26] The present analysis focuses on the question of whether domestic rule transpositions are used as compensatory measures in areas with sectoral agreements. The hypotheses to be tested provide no arguments about the quality of such transpositions (full or partial adaptations). The same independent variables were also tested using a multinomial logit model, distinguishing between full and partial adaptations, compatible reforms, and reforms without relation to EU law. A test showed that compatible reforms cannot be distinguished from reforms without relation. A model using only full and partial adaptations and other reforms confirmed the positive correlation of harmonisation agreements with full and partial adaptations (results not reported).

[27] Domestic and international legislation is categorised separately in the Classified Compilation of Federal Legislation. The sub-chapters used to categorise both forms of legislation are similar but not completely equal. Annex 3 shows how the sub-chapters were merged.

[28] Unfortunately, for 15 federal law reforms, the rule transposition variables could not be coded because of unavailable coding sources.

monisation agreements, only two fifths of all federal law reforms contained adaptations to EU law. The difference of the means for both categories is statistically significant at the level p<0.0000. Hypothesis C1 claiming that domestic legal adaptations may compensate for the static character of agreements especially in the case of harmonisation agreements is thus supported by the data.

Table 11: Domestic rule transpositions in policy fields with different types of agreements

	EU-relevant federal law reforms		**Difference of means, t-test**		
	Adaptations to EU	**Other reforms**	**Total**	**Mean**	***p***
Hypothesis C1					
Harmonisation agreement	75	35	110	0.68	
No harm. agreement	157	227	384	0.41	*0.0000*
Hypothesis C2					
EU law reference	65	61	126	0.52	
No EU law reference	167	201	368	0.45	*0.2291*
Hypothesis C3					
Dynamic agreement	6	2	8	0.75	
No dynamic agreement	226	260	486	0.47	*0.1096*
Hypothesis C4					
Mixed Committee agreem.	74	53	127	0.58	
No Mixed Comm. agreem.	158	209	367	0.43	*0.0030*
Total	232	262	494	0.47	

In contrast, the hypotheses C2-4 are not corroborated by the data. Concerning hypothesis C4, the data even hint at a statistically significant relation with the opposite sign than expected. The second row of Table 11 shows that federal law reforms slightly more often than not are adaptations to EU law in policy fields with sectoral agreements that refer to EU law. In policy fields without such agreements, adaptations to EU law are less frequent than federal law reforms without adaptations. The difference in the frequencies, however, is not statistically significant and hypothesis C2 is not corroborated. The third row shows that in policy fields with dynamic agreements, federal law reforms more often than not contain adapta-

tions to EU law. In policy fields without dynamic agreements law reforms with adaptations are less frequent than law reforms without adaptations. This contradicts hypothesis C3, according to which domestic compensatory adaptations should be less necessary in the case of a dynamic sectoral agreements. The numbers also show that only a few federal law reforms occurred in the area of dynamic agreements and that the difference in the frequencies is not statistically significant.

The fourth row of Table 11 shows a frequency distribution that contradicts hypothesis C4, and this time the difference of the means is statistically significant at the level $p<0.01$. Federal law reforms in areas with sectoral agreements that are administered by a Mixed Committee are more often adaptations to EU law than not. In contrast, federal law reforms in areas without such agreements do not contain any adaptations to EU law more often than they contain adaptations to EU law. According to this bivariate analysis, it seems thus not to be the case that Mixed Committees make domestic compensatory measures unnecessary. This finding also holds if we do not use sectoral agreements that are administered by Mixed Committees as independent variable, but count only active Mixed Committees that also issue decisions. Federal law reforms are still more frequently adaptations to EU law in areas with Mixed Committee decisions, and the difference is statistically significant at the level $p<0.05$ (result not reported). In the light of the results reported in Table 8 and Table 10, this finding is not that surprising. Apparently, Mixed Committees do not guarantee a higher substantive integration quality of sectoral agreement revisions, and thus compensatory domestic rule transpositions may still be necessary in such areas.

Also for the C hypotheses, I conducted a multivariate regression analysis in order to test the variables simultaneously, and in order to control for some additional variables. Again, I expect that time plays a role for domestic transpositions of EU law, although not exactly the same way as in the previous analyses. The major difference to the previous analysis is that I do not include the variable about the publication year of a law. As there are only reforms in the analysis that concern issues regulated at the EU level, I expect that older laws dealing with EU relevant issues are as likely as newer laws to be adapted to EU rules. In contrast, the general time effect is included the same way and for the same reasons as above (calendar year of a reform). Similarly to the test of the B hypotheses, I assume that domestic rule transpositions in a federal law may be less likely when a federal law already was adapted to

EU rules recently. In order to account for this, I include a variable measuring the number of years since the last adaptation to EU rules of the same federal law.

In addition to these time related control variables, I included three more binary control variables. The first measures whether or not a popular referendum was held on a federal law reform. I expect that adaptations to EU law are more likely when a law reform does not gain the public attention that is produced by a referendum threat. The last two control variables are included in order to control for the fact that some of the adaptations in policy fields with certain sorts of sectoral agreements are preparations for agreement negotiations or agreement implementations, and thus cannot be compensatory adaptations. Both variables are binary and were coded based on the same coding sources as the dependent variable, the Federal Council messages or parliamentary commission reports. Table 12 contains the descriptive statistics for all variables used in the following multivariate analysis.

The technique applied is again a logistic regression analysis. Like in the previous analyses, there are several influential observations in the sample. Like in the analysis testing the A hypotheses, I account for the uncertainty produced by these observations by using the bootstrap technique for the estimation of the standard errors.

Table 12: Descriptive statistics for variables used in Models C, C+ and C++

Variable	**Obs.**	**Mean**	**Std. Dev.**	**Min**	**Max**
Dep. Var. Adaptation	494	0.47	0.50	0	1
Harmonisation agreement	494	0.22	0.42	0	1
Agr. with EU law reference	494	0.26	0.44	0	1
Dynamic agreement	494	0.02	0.13	0	1
Mixed Committee	494	0.26	0.44	0	1
Time since last adaptation (years)	494	2.54	3.63	0	15
Year	494	2001.93	5.81	1990	2010
Referendum *	482	0.08	0.27	0	1
Implementation	494	0.20	0.40	0	1
Negotiation preparation	494	0.10	0.30	0	1

Note: * The referendum variable is missing in 12 cases, because in these cases the Official Collection of Federal Legislation does not contain any information on whether a referendum took place or not.

Table 13: Logistic regression of the probability of domestic rule transpositions

Adaptations of federal laws	(C)	(C+)	(C++)
Hypothesis C1			
Harmonisation agreement	1.525***	1.487***	1.935**
	(4.11)	(3.70)	(2.99)
Hypothesis C2			
EU law reference agreement	-0.587	-0.675*	-1.366*
	(-1.84)	(-1.96)	(-2.27)
Hypothesis C3			
Dynamic agreement	0.793	0.713	-1.056
	(1.10)	(0.97)	(-1.17)
Hypothesis C4			
Mixed Committee agreement	-0.0971	-0.0924	-0.651
	(-0.28)	(-0.24)	(-1.19)
Control variables			
Time since last adapt.		0.107***	0.129**
		(3.30)	(3.02)
Year		0.00399	-0.0772**
		(0.19)	(-3.28)
Popular vote on reform		0.420	-1.707***
		(1.26)	(-3.50)
Implementation of agreement			7.228***
			(7.51)
Agreement negotiation			3.854***
			(6.50)
Constant	-0.295*	-8.531	153.1**
	(-2.35)	(-0.21)	(3.26)
Observations	494	482	482
Wald Chi2	30.44***	38.80***	197.91***
AIC	661.59	633.21	389.99
BIC	682.60	666.64	431.77

Note: Logit coefficients; results after 50 bootstrap replications; *t* statistics in parentheses;
* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

Table 13 presents the results of the regression analysis testing hypotheses C1-C4. Model C contains only the variables testing the four hypotheses, Model C+ contains in addition the control variables related to time and the domestic decision-making process, and Model C++ also contains the implementation and negotiation control variables.

The models with the control variables are based on fewer observations, because the referendum variable has missing values for 12 observations. The results of Model C do not change when they are run on a sample without the observations that are dropped in Models C+ and C++ (results not reported). The addition of both sorts of control variables considerably increase the model fit compared to Model C with only the independent variable. This is indicated by the model fit tests based on Bayesian information criteria as well as by the Wald test.

The multivariate model only partially confirms the theoretical expectations, as well as the results of the bivariate analysis. Only hypothesis C1, which was already corroborated by the bivariate analysis in Table 11, is also confirmed in the multivariate analysis. Adaptations of federal laws are more likely in policy fields with harmonisation agreements, and this correlation is statistically significant throughout all models. The coefficients of the hypotheses C3 and C4, measuring whether dynamic agreements and Mixed Committee agreements have an influence on domestic adaptations, show a negative correlation with domestic adaptations as assumed by the hypotheses. This finding contradicts the results of the bivariate analysis. In the case of the dynamic agreements, the sign of the coefficients changes in the expected direction only once the control variables implementation and negotiation are added to the analysis. Indeed, six out of the eight domestic legal adaptations in policy fields with dynamic agreements were agreement implementations. However, the negative coefficients are statistically not significant. Finally, also agreements with EU law references are negatively correlated to domestic legal adaptations in the same policy field. This finding contradicts hypothesis C2, and is statistically significant at the level $p<0.05$. Apparently, agreements with EU law references make domestic rule transpositions in the same policy fields less likely. This supports the expectation by Tobias Jaag (2010) that unilateral rule transpositions become less important when Switzerland concludes more sectoral agreements.

This result is not that surprising in light of the previous analysis. Initial EU law references in an agreement proved to be a strong predictor for agreement revisions in general (Model A)

and they proved to be a strong predictor for EU law references in agreement revisions as well (Model B). Seemingly, more frequent revisions and revisions with a higher substantive integration quality make compensatory domestic legal adaptations less necessary. This interpretation is in line with the assumption in the literature that domestic adaptations compensate for the lack of frequent agreement updates. We observe the contrary with regard to harmonisation agreements. While they are not significantly correlated with agreement revisions in general (Model A), and with EU law references in agreement revisions in particular (Model B), they are significantly correlated with domestic legal adaptations (Model C). This pattern again confirms the theoretical reasoning that domestic compensatory adaptations are necessary, because apparently harmonisation agreements are not revised often enough.

Models C+ and C++ also show that most of the control variables are significantly correlated to the probability of domestic legal adaptations. The time since the last adaptation to EU law of the same federal law is positively correlated to legal adaptations indicating that, as assumed, federal laws are more likely to be adapted to EU law if their last adaptation was longer ago. The other control variables are only statistically significant in Model C++ which also includes the control variables implementation and negotiation. This indicates that domestic legal adaptations without a direct relation to sectoral agreements are related to factors other than measures related to negotiations and implementations. For example, the calendar year of a federal law reform is negatively correlated to the likelihood of domestic legal adaptations once we control for implementation and negotiation. In a similar vein, a popular referendum is also negatively correlated to domestic legal adaptations once we control for implementation and negotiation. This finding resonates with the descriptive results presented in Chapter 2, which indicated that implementation measures are a more recent phenomenon whereas the rule transpositions in the 1990s were unilateral rule transpositions (see Figure 3 and Figure 4 in Chapter 2). The finding on the referendum variable is explicable by the fact that implementation measures often are voted on in a package together with the respective sectoral agreements. Finally, the often mentioned variables implementation and negotiation are positively correlated to domestic legal adaptations and the correlation is statistically significant. This is not surprising, as both variables were measured based on the same sources as the dependent variable, and their operationalisation is not very far away from the operationalisation of the dependent variable.

Most important, however, is the fact that the positive coefficient for harmonisation agreements and the negative coefficient for agreements with EU law references still have the same sign and the same statistical significance as in the model with the powerful control variables. We can conclude from this that sectoral agreements may have an influence on domestic legal adaptation not only in negotiation- or implementation-related cases. This provides support for the decision to count domestic rule transpositions as instances of differentiated integration alongside with sectoral agreement reforms.

3.4 Discussion: The Relevance of Substantive and Legal Integration Qualities

The starting point of this chapter was the call for an institutional mechanism ensuring the regular update of sectoral agreements by the Council of the European Union. It was interpreted as a call for stronger legal integration with the aim to ensure a more coherent substantive integration of Switzerland in the areas where it concluded sectoral agreements. The literature review revealed that many scholars and practitioners in the field point to tension between the integration intention of many agreements and their legal form that does not guarantee a parallel development of the sectoral agreements with legal changes in the EU. The mainly legal literature describes re-negotiations of agreements as cumbersome and highlights the role of Mixed Committees, but emphasises that none of the actual sectoral agreements guarantees automatic updates. Even the so-called dynamic agreements which oblige Switzerland to adopt future legislation do not guarantee automatic updates: The Schengen agreement, for example, explicitly recognises the domestic decision-making process and thus amendments to this agreement are subject to the normal domestic veto points, like parliamentary approval or even a popular referendum. Some scholars therefore assume that Switzerland has to regularly adapt its domestic legislation to EU law in order to compensate for the static character of most sectoral agreements.

The existing literature thus analyses in detail the legal forms of the sectoral agreements and describes the strategies and possibilities available in order to ensure their dynamic evolvement. However, the literature does not discuss the incentives for regular updates of sectoral

agreements or domestic legal adaptations, and the practical consequences of different legal qualities of agreements. In the theoretical section, I addressed these questions with the help of arguments found in the supranationalist literature on European integration. To that end, I conceived of the tension between integration intention and legal form of the sectoral agreements as a consequence of their incompleteness as contracts. The tension stems from two sources of incompleteness, one of which is related to the substantive quality: a sectoral agreement can be more or less ambiguous with regard to its relation to EU law. I assumed that the less an agreement is ambiguous about its relation to EU law, the more an agreement's benefit depends on the congruence of EU law and agreement law, and thus the stronger are the incentives for regular agreement updates. The other source of incompleteness is related to the legal quality of sectoral agreements and can be described as the degree of 'obligational incompleteness'. Again, I assume that the clearer agreements define who is responsible for revisions, the more likely are agreement updates, whereas agreements that are unclear tend to remain static. Finally, I assumed that stronger substantive integration makes domestic legal adaptations more likely, whereas stronger legal integration in sectoral agreements probably makes domestic legal adaptations less likely.

The empirical analysis provided evidence in favour of the general argument, but also revealed nuances that contradicted some of the hypotheses derived in the theoretical section. The hypotheses tried to capture the degree of ambiguity with regard to substantive relation to EU law and with regard to the obligation for the development of agreements. I assumed that harmonisation agreements and agreements that directly refer to EU law are less ambiguous with regard to their relation to EU law and are thus more likely to be updated. These hypotheses were supported by the bivariate as well as the multivariate analyses explaining the likelihood of agreement revisions in general. When the same explanatory factors were used to explain the substantive quality of the agreement revisions that actually occurred, only agreements with direct references to EU law showed a statistically significant correlation with the probability of such revisions. Revisions of harmonisation agreements, in contrast, were not necessarily of a high substantive quality. This finding resonates well with the results from the third analysis testing the compensation hypothesis. I assumed that harmonisation agreements and agreements with direct references to EU law are also more likely to lead to domestic legal adaptations. The empirical analysis showed, however, that only harmonisation agreements are correlated with domestic adaptations in the same policy fields.

Agreements directly referring to EU law, on the contrary, are negatively correlated with domestic adaptations in the same policy fields. In sum, these findings provide strong evidence in favour of the assumption that agreements with strong substantive integration qualities are more often updated. A harmonisation aim without clear reference to EU law is substantively not strong enough. Although such agreements are often revised, the revisions do not necessarily refer to EU law, but they perhaps lead to compensatory domestic adaptations.

With regard to the obligational incompleteness of the sectoral agreements, I assumed that Mixed Committees and dynamic obligations to adopt new EU legislation in the area of an agreement reduce this incompleteness and thus make agreement revisions more likely. These two variables proved to be very strong predictors for the likelihood of agreement revisions in general. In the analysis of the substantive quality of the agreement revisions, however, the actual activity of the Mixed Committees, thus their decisions to revise agreements, proved to be not significantly related to EU law references in agreement revisions. Mixed Committee decisions referred to EU law as often as they did not. In contrast, every revision of an agreement with a dynamic obligation directly referred to EU law. Because all observations of dynamic agreement revisions so far stem from the Schengen association agreement, it is too early to draw conclusions about the significance of the dynamic provisions as such. As expected by theory, Mixed Committees and dynamic agreements were negatively correlated with domestic legal adaptations. However, these correlations were not statistically significant.

The empirical analysis thus provided evidence in favour of the argument that agreements which are less ambiguous with regard to their relation to EU law, and less ambiguous with regard to the obligation for their further development evolved more dynamically. The analysis also showed, however, that it is in both cases the stronger variables (direct EU law references instead of only harmonisation agreements and dynamic agreements instead of only Mixed Committees) that also lead to a higher substantive integration quality of the agreement revisions. These findings support and refine claims made in the literature. It indeed seems to be the case that sectoral agreements are updated also because of their substantive integration quality and not only if legal update obligations exist. This finding probably also attenuates the diagnosis that agreement revisions through the regular decision-making process are difficult because they imply re-negotiations between Switzerland and the EU and

because they can be challenged by veto players. Although it is true that agreement revisions often lie in the responsibility of the government and thus need to overcome fewer veto points, it is not true that government-adopted revisions are of a higher integration quality; quite the contrary: when the parliament is in charge of agreement revisions, they are mostly of a higher substantive integration quality. The analysis also found evidence for a second claim in the literature. It seems to be true that agreements, which lack at the same time legal update obligations and a clear relation to EU law, are correlated to domestic legal adaptations in the same policy fields. The claim in the literature that Switzerland compensates the static character of the sectoral agreements through domestic legal adaptations thus finds some initial support. Whether or not these adaptations can indeed be qualified as compensatory measures will have to be analysed in further research in case studies. To my knowledge, the literature so far does not provide examples for compensatory adaptations.

Finally, the analysis also provided evidence for the Council's assumption that stronger legal integration leads to stronger substantive integration. However, the findings also allow us to refine this general assumption. Only dynamic agreements, which are a relatively recent phenomenon, ensure a close relation to EU law of agreement revisions. Mixed Committees, though very active during the research period, were responsible only for slightly more than half of all agreement revisions, and the revisions in their responsibility did not refer to EU law more often than regular agreement revisions. This finding may be related to the fact that the dynamic agreements like Schengen and Dublin are administered by a Mixed Committee, but that their revisions are not issued by these Mixed Committees. In the multivariate regression analysing the factors driving EU law references in agreement revisions, dynamic agreements had to be excluded as independent variables, because they are perfect predictors. Future analyses, with more and diverse observations of dynamic agreements will allow their inclusion in a multivariate setting alongside Mixed Committees, which will probably allow us to properly evaluate the role of Mixed Committees. So far, based on the present results, we can conclude that the Council's assumptions seem to be correct based on the experience with the actual agreements. Moreover, it seems to be true that the weak institutionalisation of agreements in the form of Mixed Committees, which have limited competences and decide unanimously, do not guarantee that the agreement develop in parallel with EU law.

The empirical analyses showed also an issue that was not explicitly theorised: The evolvement of Swiss-EU relations over time. Agreement revisions and EU law references in agreement revisions became more likely in recent years. At the same time, domestic rule transpositions are negatively correlated to time as soon as I controlled for implementation measures and rule transpositions related to agreement negotiations. These results confirm the descriptive picture presented at the end of Chapter 2. The sectoral agreements seem to have become more important over time, whereas the significance of unilateral rule transpositions has decreased. More and more, domestic legislation seems to be adapted to EU rules mainly in cases where a transposition of rules of sectoral agreements is required. The evolvement of the extended EU rules contained in sectoral agreements, however, is increasingly assured by agreement revisions, and less often by domestic law-making.

4 Reasons for Switzerland's Differentiated Integration

Switzerland's differentiated European integration is often described in terms of its selective participation in the Single Market of the EU. The 1972 Free Trade Agreement, the 1989 Insurance Agreement, as well as most agreements of the Bilaterals I package were concluded to facilitate cross-border economic activities between Switzerland and the EU. Also some transpositions of EU rules into domestic legislation clearly served economic policy aims. In the 1990s, important paradigm shifts in economic regulations were undertaken by means of adaptation of domestic legislation to EU rules (Mach et al. 2001; Forstmoser 1999; Amgwerd 1998). Implicit to these assumptions is often that Switzerland's European policy is a continuation of its foreign policy tradition, which for many decades has been characterised by the paradigm of economic integration without political involvement beyond the nation state (Mach and Trampusch 2011; Goetschel 2007). Political involvement in the international arena has been deemed contradictory to the neutrality paradigm, and incompatible with domestic political institutions like federalism and direct democracy – elements important for Swiss political identity (Sciarini et al. 2001; Gstöhl 2002). This chapter explores the relation of economic factors and domestic political institutions, as well as of dynamics in the international arena with Switzerland's differentiated integration.

Switzerland's case-by-case approach to European integration implies that every integration step is the result of compromises. Such compromises must be achieved at the domestic as well as international level, and the compromise-finding process implies that a broad range of explanatory factors might be important, depending on the domestic and international decision-making processes. Not only economic considerations, but also political institutions and opinions, as well as bargaining strategies play a role. Scholars focusing on domestic conflicts of interest regarding European integration often found that Switzerland participated in EU policies mostly in order to meet the interests of its economically open and outward-oriented sectors. The inward-oriented economic sectors, in contrast, have been sheltered from international competition by the domestic economic policy and are said to be opposed to European integration, which calls into question this traditional policy (Goetschel 2007; Linder 2013). Opponents successfully hindered European integration measures on several occa-

sions, most famously in the vote on EEA accession in 1992 and in the one on the liberalisation of the electricity sector in 2002. Often, however, referenda were also won by the pro-Europeans, like, for example, those on the Bilaterals I package in 2001 or on the Schengen association in 2005. This hints at the importance of domestic veto points like optional and mandatory referenda, but also at the occasional success of pro-integration coalitions.

Scholars focusing on negotiations between Switzerland and the EU often assume that conflicts between Switzerland and the EU concern the substantive and legal integration quality of extensions of EU rules to Switzerland. In general, the EU prefers uniform applicability of its own rules also in cooperation with third states, whereas Switzerland prefers tailor-made solutions respecting its legislative autonomy (Maiani 2008). This conflict concerns substantive rule transpositions when, for example, Switzerland and the EU have different regulatory traditions, as is the case in some areas of economic policy (Church et al. 2007). This conflict may also concern the legal quality of rule extensions, as the EU prefers mutually binding monitoring and enforcement authorities, whereas Switzerland prefers to rely on its own institutions for these tasks. An example is the call of the Council for a framework agreement regulating monitoring and enforcement of all sectoral agreements, which was discussed in the introduction to Chapter 3 (Council of the European Union 2012, 2010, 2008). In the case of sectoral agreement negotiations, the conflict over the extension of EU rules was sometimes resolved by the linkage of issues (Dupont and Sciarini 2001, 2007; Afonso and Maggetti 2007). In the case of domestic rule transposition, Switzerland's critical stance towards substantive EU rules is reflected by a seemingly unsystematic approach to the transposition of EU rules (Maiani 2013). Carl Baudenbacher assumed that the cherry-picking approach in domestic rule transposition may sometimes allow a regulatory advantage to be retained. At the same time, however, cherry-picking undermines the central aim of market access, namely the object of creating a level playing field (Baudenbacher 2012: 621 ff.). Existing research does not systematically deal with the question of under what conditions and form and quality of substantive and legal rule extensions Swiss interests are best met.

Among the classical theories of European integration, liberal intergovernmentalism is suited best to analysing the factors explaining Switzerland's case-by-case decisions on integration measures, because liberal intergovernmentalism proposes to analyse intra-state as well as inter-state decision-making processes. Andrew Moravcsik developed a three-step model of

integration and argued that in the first step, integration preferences have to be negotiated at the domestic level; in the second step, concrete integration steps have to be negotiated at the intergovernmental level; and in the third step, the negotiating parties have to agree on appropriate institutions for integration (Moravcsik 1993). This model is also promising for the analysis of Switzerland's differentiated integration because existing research usually dealt with factors highlighted by this model. In addition, existing research dealt in a more detailed way with domestic integration interests and the impact of domestic political institutions. Thus, for the structure of this chapter I rely on the three steps of the liberal intergovernmentalist model, and complement the section about domestic interests by arguments from economic integration theories and the section about domestic political institutions with insights from the Europeanisation literature.

The broad empirical basis of this thesis provides an opportunity to explore the broad range of explanatory factors discussed in the literature. This undertaking is challenging, because existing research of Switzerland's European policy was case-oriented and thus provided insights on factors explaining a specific form of differentiated integration, for example, the adoption of a new sectoral agreement. At this stage of research, we thus do not know whether factors identified as crucial for sectoral agreements also explain domestic rule transpositions, or whether different factors explain full or partial transpositions of EU rules, as the former may guarantee market access while the latter may allow a regulatory advantage to be kept. Comparative case studies, which analysed decision-making processes that were directly or indirectly Europeanised or purely domestic, showed that decision-making processes differ between directly and indirectly Europeanised cases (Sciarini et al. 2004, 2002). Although these studies focused on the effects of Europeanisation and not on integration steps, they indicate that the same domestic institutions may be differently related to different integration instruments. The same may also be true for other explanatory factors. This chapter thus presents an empirical analysis which not only researches a broad range of explanatory factors, but also explicitly their relation with different integration instruments. To some extent, Chapter 3 already dealt with the question of different forms of integration, as it showed that some types of sectoral agreement revisions are explicable by the institutional forms of the agreements. The present chapter builds on these insights.

The chapter proceeds as follows. The first section reviews the existing literature on Switzerland's differentiated integration in light of liberal intergovernmentalist theory. The section is structured according to the theoretical argument, discussing first the role of domestic interests, second the domestic-decision making process, and third negotiations between Switzerland and the EU. Fourth, I discuss some alternative explanations found in the literature on Switzerland's European integration, which point to institutionalist rather than intergovernmentalist explanations. The second section discusses the relevance of the different explanatory factors for different forms of differentiated integration and derives testable hypotheses. The third section presents a descriptive and partially bivariate empirical analysis of the theoretical arguments. This section's structure follows the theoretical argument as well. The fourth section provides multivariate hypotheses tests, first analysing separately sectoral agreements and domestic rule transpositions, and second analysing the reasons for substantive integration steps on an aggregate level. The fifth section concludes.

The main findings are that neither sectoral agreements nor unilateral rule transpositions can be explained by the performance of the Swiss economy in general, or by the performance of the export-oriented economic sectors. In contrast to the theoretical expectations, on an aggregate level substantive integration steps are even more likely when the Swiss economy performs better. In the case of important sectoral agreement reforms (those that were adopted by parliament), as well as in the analysis explaining substantive integration steps on an aggregate level (including domestic rule transpositions), factors related to public opinion and the domestic decision-making system are correlated to integration steps in the theoretically expected way: they are more likely if European integration is less salient in the electorate and if the seat share of pro-European parties in parliament is higher. Unilateral rule transpositions, on the contrary, are not influenced by opinion factors and almost never brought to the polls; they are the result of domestic compromises. These results indicate that unilateral rule transpositions are indeed mostly unrecognised by the public. Domestic implementation measures and the most important agreement reforms, on the contrary, are quite often brought to the polls. In the realm of sectoral agreements, the Federal Council plays only a dominant role in the case of the institutionalised agreement revisions (those analysed in Chapter 3). In sum, the results show that different integration instruments are indeed driven by different factors.

4.1 Literature Review: Switzerland in Light of Liberal Intergovernmentalism

The existing research on Swiss European policy only rarely combined explanatory analyses with integration theories. Since the rejection of the EEA in a popular vote in 1992, scholarly attempts to explain Switzerland's integration situation as a whole have become rare, because the rejection of the EEA was theoretically unexpected. Switzerland was and is still a small and open economy and had experienced several years of below-average economic growth before 1992 (Weder 2007). If economic performance is comparatively worse, countries are normally more likely to pursue regional integration (Mattli 1999). Sieglinde Gstöhl (2001) explained the outcome of the vote by Swiss political identity, because this identity has exclusionary elements and is thus difficult to reconcile with formal EEA or EU membership (Sciarini et al. 2001). Below the threshold of formal membership, however, political identity was not an impediment for the impressive development of Switzerland's integration in the immediate aftermath of the vote and right up until today. The country gained access to a wide array of EU regimes via the conclusion of issue-specific sectoral agreements. These agreements often rely on EU law, but they neither integrate Switzerland fully in the EU nor subordinate Switzerland to EU authorities. An analysis of the development of Switzerland's differentiated integration below the threshold of membership in the last two decades needs to re-evaluate the economy- and identity-based explanations and focus on explanations for the differentiated integration, which has actually been going on.

Any analysis of regional integration has to start with national preferences regarding integration, and then proceed to domestic and international negotiations between different actors which finally lead to specific integration outcomes (Mattli 1999; Leuffen et al. 2012). These integration outcomes may then trigger further integration if they create spill-over effects and empower supranational actors. Because Switzerland is not formally subordinated to any supranational institution, the institutional effects of its integration could not be deduced from its formal integration. Therefore, Chapter 3 dealt with the question of the effects of different institutional settings present in different sectoral agreements. Based on these findings, the present chapter now turns to the analysis of those instances of differentiated integration most likely to be the outcome of national preferences and international negotiations, because they cannot be explained by institutional dynamics. Liberal intergovernmentalist

theory, which serves as a guideline for this analysis, relies on a rational choice view of integration and discusses three stages: domestic preference formation, intergovernmental negotiations and institutional choice (Pollack 2001; Moravcsik 1995, 1993). The following literature review shows that existing research on Switzerland's European policies touched upon all explanatory factors put forward by liberal intergovernmentalism and reveals that we lack the knowledge about what explanatory factors lead to precisely what form of differentiated integration.

4.1.1 Domestic Integration Interests

Regional economic integration exerts various effects on outsiders, depending on their economic structure and on the kind of economic cooperation. Economic integration can mean the abolishment of barriers to trade in an internal market, which leads to trade diversions away from the outsiders and thus to losses of outsider firms. For example, a customs union allows for the exploitation of economies of scale for insider firms and makes production for outsiders more expensive. As a result, investments can also be diverted (Gstöhl 2001). Walter Mattli (1999) argued that these effects pull outsiders into an integration project if they are facing economic difficulties. The EEA rejection by Switzerland contradicts this theory, because Switzerland had already been facing five years of GDP growth below the average of the EC-6 in 1992. However, the negotiations of the Bilaterals I package confirm the theory: nine out of the fifteen issues, which the Federal Council wanted to negotiate with the EU after the EEA rejection, were related to access to the EU market and had been on the agenda of Swiss European policy since the realisation of the Single Market was foreseeable (Bundesrat 1995). As a result of the lengthy negotiations, finally six out of the seven Bilaterals I agreements were market access agreements.

In contrast, only one of the nine agreements of the Bilaterals II package served sectoral market access. For the second round of bilateral negotiations, negative externalities were the reason for the negotiation interests of both sides. Examples important for Switzerland are the Schengen border control regime and the Dublin asylum regime. Already in a report on foreign policy in 1993, the Federal Council stated that non-participation in the EU threatened the internal security of Switzerland because the country was excluded from cooperation in matters of asylum, organised crime, combat of trade in drugs and similar issues (Bundesrat

1994). Examples important for the EU are the issues of the taxation of savings and the fight against fraud. EU rules in these areas would have been less effective if Switzerland had not been included (Afonso and Maggetti 2007). In a similar vein, Switzerland's non-participation in the emission trading system will likely be perceived as free-riding as soon as aviation is included in the EU trading system (Schäfer 2009). Negative externalities, however, do not lead to integration in any case. An actual example is Swiss cantonal taxation policy that affects EU member states negatively. Referring to some provisions in the Free Trade and the Free Movement of Persons agreements, the Commission argues that Swiss tax policies violate competition and state aid principles. Switzerland, on the contrary, argues that the sectoral agreements have no effect on the federation and the cantons' autonomy in taxation policy. Legal scholars share the official positions of the Federal Council and the European Commission to different degrees (Epiney 2008; Tobler 2008). Externalities may thus be the reasons for integration preferences, but they do not automatically lead to Switzerland's integration.

In Swiss public discourse, not only the benefits of the sectoral agreements, but also of domestic transpositions of EU rules are often discussed in terms of access to the EU market (Gemperli 2013a; Breitenmoser and Weyeneth 2013). Also academics often mention Switzerland's export dependence and the importance of market access, which can be justified by the focus on the Bilaterals I agreements (Breitenmoser 2003; Goetschel 2007; Weder 2007). Domestic transpositions of EU rules are discussed in terms of economic interests, because they enhance the competitiveness of Swiss economic actors on the European market and facilitate cross-border activities by the reduction of technical barriers to trade (Maiani 2013; Baudenbacher 2012; Epiney 2009). These economic interests, however, are most probably the interests of specific economic sectors. Liberal intergovernmentalism not only assumes that national preferences are mainly economic and determined domestically, but also that different interest groups have different negotiation interests (Leuffen et al. 2012). Scholars of Swiss European policy have researched particularistic integration interests. For example, rule transpositions facilitating cross-border trade and economic activities on the European market are mainly in the interest of the export-oriented economic sectors. Therefore, Wolf Linder (2011) assumed that the Europeanisation of domestic legislation is used by actors of these sectors to advance their own policy interests. This claim finds partial support in case studies. For example, Ian Bartle (2006) analysed the liberalisation of telecommunication,

which was conducted by the transposition of the respective EU rules in Switzerland, and showed that this liberalisation mainly served the interests of the publicly owned telecommunications operator Swisscom, which needed the new regulations to enter the European market.

Several scholars built specific theoretical arguments about international cooperation and regional integration based on the analysis of domestic sectoral economic interests. One of them is the lead sector argument by Christine Ingebritsen (1998). Ingebritsen showed that the interests of the leading economic sector considerably influenced the integration decisions of the Northern European countries. According to Ingebritsen, a leading sector's integration interest is determined by its dependence on the international and the European market, by its reliance on mobile or immobile factors of production, as well as by the export dependence of a country. In Switzerland, the financial sector may play the role of a lead sector (Schimmelfennig 2012). Its stance towards European integration, however, is unclear. On the one hand, its factors of production are mobile, thus the representatives of the sector can make credible threats to leave the country if their regional integration interests are not met. On the other hand, this sector relies as much on the world market as on the European market, and it may partly use comparative regulatory advantages thanks to Switzerland's outsider status in the EU (Church et al. 2007). The sector thus may not be crucially dependent on the EU and exploit the differentiated integration approach to its advantage.

Following similar but slightly different reasoning, Peter Katzenstein argued that small and open economies are more interested in international cooperation because they are more vulnerable than large countries and have less to lose in matters of sovereignty as they are not large players on the international scene anyway (Katzenstein 2006). Katzenstein focused on the domestic consequences of such a policy and observed that small and open economies compensate domestic losers of an open economy in corporatist agreements. This pattern can be observed in Switzerland. The Swiss economy has a "dual" structure with an open economic sector oriented towards world markets and a sector mainly oriented towards the domestic market and sheltered from international competition (Sciarini and Listhaug 1997; Church et al. 2007). The outward-oriented sectors, where Switzerland has comparative advantages, are, among others, banking, watches, electronics, pharmaceuticals, insurance and machinery (Weder 2007). The large export-oriented firms, however, may not in every case

rely on Swiss politics to get them what European integration promises. Especially for firms in the areas of banking and insurance, the Swiss market is often small compared to the European and world markets. In some sectors, these firms often just establish subsidiaries in the EU and behave like EU firms (Church et al. 2007). The economic structure alone thus seems not to explain when political solutions for market access are sought. The domestic decision-making system and the dynamics of negotiations with the EU are additional explanations and are discussed in the following.

4.1.2 Domestic Political Impediments and Political Strategies

Liberal intergovernmentalist theory is liberal not only because it acknowledges that various domestic interest groups can have diverging integration interests, but because it also highlights that the negotiation mandate of the government is defined in a domestic decision-making process (Hix 2005). This process is especially important in Switzerland, because diverging domestic interests have to be reconciled for almost every differentiated integration step, as only broad supporting coalitions can tackle the hurdles of the many veto points of the domestic political system. The most important institutional veto points in Switzerland are the bicameral parliament and the probability of an optional popular referendum for almost every decision taken by parliament[29]. The optional popular referendum enables every societal group capable of collecting the necessary amount of signatures in due time to become a veto player. As a consequence, every parliamentary decision requires a broad political consensus in order to clear the referendum hurdle (Linder 2005). The only integration steps, which do not face these veto points, are updates of sectoral agreements conducted by Mixed Committees, which were dealt with in Chapter 3, and agreement revisions which can be conducted by the Federal Council without the need for outside approval. However, Mixed Committees and the government can only decide on pre-defined issues, as the competences of the former are defined in agreements and the latter needs a mandate by parliament to conclude or amend international agreements. In contrast, federal laws are always adopted by parliament and subject to optional referenda. An explanatory analysis of Switzerland's

[29] All parliamentary decisions defining general new rights and duties (in federal laws or international treaties) are subject to an optional popular referendum. Every bill can be contested by the collection of 50,000 signatures within 90 days what leads to a popular referendum (Linder 2005).

differentiated integration thus must necessarily include the role of domestic institutions, actors and the public opinion, but also must take into account that their importance probably varies between forms of differentiated integration.

Liberal intergovernmentalists argue that preferences regarding European integration diverge between social groups, because not all groups are affected the same way by international interdependence. Dirk Leuffen et al. (2012) argued that groups benefitting from interdependence ask for negative integration whereas groups losing from interdependence ask for positive integration. To my knowledge, research on Switzerland's European policies has not explicitly dealt with the question of whether different groups ask for different forms of integration. But research on Switzerland revealed an increasing gap in the electorate between "winners" and "losers" of globalisation (Kriesi 2007; Kriesi et al. 2006). This gap is also apparent in popular votes on European issues: For the vote on the EEA, Sciarini and Listhaug (1997) found that both cultural values and expected economic gains and explain voting decisions. In an analysis of aggregate data of the same vote, Aymo Brunetti et al. (1998) showed that the share of voters employed in economic sectors expected to lose from increased economic integration explained higher shares of no votes in the respective cantons. In a similar vein, also the referendum on Schengen reflected the conflict line between "winners" and "losers" of globalisation (Afonso and Maggetti 2007). It is therefore no coincidence that the Swiss People's Party, which attracts a disproportionally high share of the economic losers of globalisation, also successfully mobilises voters based on arguments related to cultural and political identity and against European integration (Albertazzi 2008). The open question is under what circumstances pro-integration coalitions can win votes on European issues.

Despite the emphasis on diverging domestic interests, liberal intergovernmentalism does not discuss the role of domestic political institutions, the electorate and the public in detail (Leuffen et al. 2012). The Europeanisation literature provides theoretical arguments about the role of the government, as it deals with the responsiveness of domestic politics to the process of European integration and analyses, among other things, the role of different institutional settings. Adrienne Héritier and Christoph Knill (2001) stated that more integrated governments facilitate Europeanisation because they are able to exert a stronger leadership role. Héritier and Knill also listed long-standing and consensus-oriented coalition governments among the strong leaders. The Swiss executive is a long-standing coalition govern-

ment: for half a century it has consisted of the same four largest parliamentary parties and once elected by parliament, a federal councillor cannot be voted out of office before his or her four-year term is over. Notwithstanding this strong institutional position, Markus Grädel (2007) found that the Swiss government does not have much freedom of movement with regard to the content of policies because it is so heterogeneous. Grädel's conclusions are based on the government's role in the EEA referendum campaign. Analysing the same decision-making process, Simon Marti (2013) added nuances to the problem of weak leadership, when he showed that the government and other proponents of EEA accession were defeated at the polls, because they did not invest enough in building a broad pro-coalition. Too many groups considered themselves potential losers and those who considered themselves potential winners from EEA accession were not ready to compensate their opponents for their losses.

Recent successful integration steps including popular referenda indicate that the government has learnt its lesson from this defeat. The Bilaterals I agreements were approved at the polls because the government and the key economic interest associations invested a great deal in building a broad coalition. At the beginning, the Free Movement of Persons Agreement (FMPA) met opposition both from the conservative right because of anti-immigration attitudes and from the political left because of fears of wage-dumping and dilution of social protection standards. The trade unions joined the pro-coalition after they achieved one of their long-aimed-at policy changes: stronger labour market regulations, which protect the domestic workforce against wage and social dumping. These policies became famous under the name "flanking measures" and were interpreted as side-payments (Fischer et al. 2002). Similar strategies of side-payments or concessions to opponents may also explain whether or not EU rules are transposed into domestic legislation. The first and most famous project of unilateral transposition of EU rules was the Swisslex package, which contained a considerable part of the federal law reforms initially planned to implement the EEA agreement. When reintroducing the Swisslex bills, the major concern of the Federal Council was the enhancement of the competitiveness of the Swiss economy with the help of liberalisation and de-regulation measures (Bundesrat 1993). However, the government also retained bills in the Swisslex package that were not of a de-regulatory, but of a re-regulatory nature and served the interests of consumers and employees. Examples are the Product Liability Act, which for the first time introduced legislation to protect consumer interests in Switzerland,

as well as the Act on Employees' Rights to Information and Participation (Maiani 2013; Baudenbacher 2012). In a more recent example, compensation for possible losers from integration took the form of non-adaptation. In exchange for their support for the liberalisation of the telecommunications sector, the trade unions requested a less-far-reaching liberalisation of the postal services that failed to meet the EU standards (Mach et al. 2003).

Existing research thus provides some evidence for the theoretical argument that groups, which lose from increasing interdependence, also ask for political solutions. These solutions were of a re-regulatory nature, but were not always integration measures. Whereas the flanking measures were not based on EU rules, the concessions in the framework of the Swisslex package were transpositions of EU rules in the realm of social policy and thus positive integration. In the example of the liberalisation of the postal sector, the concession meant abstention from rule transposition in sensitive areas. In every case, however, several EU-related reforms were linked. We can conclude from this that the referendum threat does not necessarily impede European integration, but it may require side-payments if the opponents of integration are strong enough to make use of the referendum threat (Fischer et al. 2002; Afonso et al. 2010). Not always, however, a domestic compromise is enough.

4.1.3 Negotiations

If Swiss interests are best met by European integration, it is also likely that they are better met with a sectoral agreement than with unilateral rule transpositions, because the latter does not guarantee that the EU accepts the equivalence of the rules (Freiburghaus 2004). The fact that sectoral agreements have to be negotiated with the EU, however, complicates the finding of a compromise further. The history of Swiss-EU relations shows that integration in the form of sectoral agreements often required long negotiations. The Insurance Agreement, which was the first agreement building on the principle of 'equivalence of legislation' and thus the forerunner of the sectoral agreements of the last two decades, was negotiated for sixteen years (1973-1989). The official negotiations of the Bilaterals I agreements lasted six years (1993-1999). The difficult issues were land transport and free movement of persons. In both issues, Swiss policies differed considerably from EU rules, and Switzerland step-by-step accepted the EU rules. The negotiations of the Bilaterals II package lasted four years (2001-2004) and the hardest bargains concerned the extension of the taxation of savings

directive to Switzerland, which was finally achieved. Two years also seem to be the minimum for more recent agreement negotiations (e.g., Agreement on Education 2008-2010; Agreement with the European Defence Agency (EDA) 2009-2013; Agreement on Competition Issues 2011 – 2013).

Negotiation conflicts often concerned the substantive and legal integration quality of the EU rules to be extended to Switzerland and often, like in the Land Transport Agreement, in the end the EU successfully extended its own rules (Maiani 2008; Church et al. 2007). Intergovernmental negotiations lie at the core of intergovernmental theories. The founding father of liberal intergovernmentalism once wrote that intergovernmental bargaining "reflects the unilateral and coalitional alternatives to agreement, including offers to link issues and threats of exclusion and exit" (Moravcsik 1995: 612). These three points – alternatives to agreement, issue linkage and exit threat – are crucial for negotiations between Switzerland and the EU, too, and are all related to one more issue: the question of bargaining power. Sandra Lavenex and Frank Schimmelfennig (2009) highlighted the crucial role of bargaining power with regard to EU rules export and stated that the higher and the more asymmetrical the interdependence between the EU and a third state, the more bargaining power has the EU.

Negotiations of sectoral agreements have received a great deal of attention from scholars of Swiss-EU relations. Research showed that absolute bargaining power may matter less than the actual constellation of interests. Although Switzerland in general has less economic and political power and negotiations are deemed asymmetric (Linder 2013), it may have bargaining advantages in some sectors where it is in competition with the EU, or when a negotiation step has to be submitted to a popular referendum at home (Church et al. 2007; Christin and Hug 2002). Therefore, the strategy of issue linkage, also highlighted by Moravcsik, is crucial to explaining the outcomes of negotiations between Switzerland and the EU. An early example is the transit agreement of 1992. The EC member states asked Switzerland along with the other EFTA members to conclude transit agreements in exchange for some concessions in the EEA negotiations (Kux and Sverdrup 2000; Trechsel 2007). The most famous example of issue linkage is the Bilaterals I package. When Switzerland approached the EU with a request to negotiate access to the Single Market just two months after it rejected access via the EEA agreement, the EU agreed on two conditions: It adjusted the list of issues to its own inter-

ests and insisted on parallel negotiations of all issues. This principle was given the name 'parallélisme approprié' and forced the parties to agree on compromises. If one agreement was not concluded, or if one was rejected at the polls, all others would become obsolete (Dupont and Sciarini 2007). This parallelism has a legal quality and is still effective: all seven treaties will be automatically abrogated when one agreement is terminated. The rationale behind the parallelism was that Switzerland was interested in certain issues (e.g., transport, public procurement, technical barriers to trade), whereas the EU, being not crucially dependent on agreements with Switzerland, could force Switzerland to negotiate on issues of its own interest (most importantly, the free movement of persons).

In the negotiations of the Bilaterals II package, Switzerland used issue linkage to its own advantage. The EU wanted Switzerland to participate in its new policies regarding taxation of savings and the fight against fraud. The EU members Austria, Luxembourg and Belgium made Switzerland's participation a condition for their own consent to coordinate policies in these areas at the EU level. Therefore, the EU had no alternative to an agreement with Switzerland and Switzerland gained a factual veto position concerning the respective EU policies (Afonso and Maggetti 2007). In exchange for its participation, Switzerland asked for association to the Schengen and Dublin agreements, a goal it had pursued since the early 1990s (Bundesrat 1994). The parallelism of the Bilaterals II package, however, was only political and concerned only the negotiations. The agreements had to be signed as a package, which again forced Switzerland and the EU to reach compromises in all issues. In contrast to Bilaterals I, however, the treaties entered into force at different time points, and the abrogation of one treaty has no effect on the other treaties[30]. In recent years, it is again the EU rather than Switzerland that insists on the linkage of issues. Although negotiations on an electricity agreement started in 2007 and negotiations on agricultural and health issues started in 2008, they have still not reached an end point because the EU is unwilling to sign them until Switzerland agrees to an 'institutional solution' for the enforcement and development of the existing and new sectoral agreements (Breitenmoser and Weyeneth 2013).

[30] Exemptions are the Schengen and the Dublin association agreements that are linked also legally. They could only enter into force together, and the abrogation of one of the agreements will also lead to the automatic abrogation of the other (Jaag 2010).

When negotiations are conflictive, and parties link issues and seek compromises, sometimes credible commitments by one negotiation partner are necessary in order to convince the other of its serious intentions (Moravcsik 1995). In Swiss-EU relations, domestic transpositions of EU rules by Switzerland might play the role of credible commitments during agreement negotiations. Already when the Federal Council introduced the autonomous adaptation policy in 1988, it expected that an utmost compatibility of Switzerland's domestic legislation with EU law would be a precondition for successful negotiations with the EU on any form of further integration, be it accession to the EU, the EEA or sectoral agreements (Bundesrat 1988, 1993). Almost twenty years after the first integration report, and after the conclusion of the Bilaterals I and II packages, Thürer et al. (2007) stated that the negotiations of both agreement packages were indeed facilitated by the fact that Swiss domestic legislation with transnational significance had already been adapted to EU law "over the last ten years", because the EU normally insisted on the primacy of the acquis communautaire in negotiations with third states. For example, Switzerland adapted its regulations of vehicle weight, length etc. step by step to the EU standards during the negotiations of the Land Transport Agreement (Dupont and Sciarini 2007). Similar developments were observed in the course of the negotiations of the agreement on the fight against fraud (Afonso and Maggetti 2007). In sum, the literature on sectoral agreement negotiations shows clear patterns and explains the most important sectoral agreements with the linkage of issues in which the EU and those in which Switzerland was interested. The literature on negotiations does not discuss why agreements in the end differ with regard to their substantive and legal integration qualities.

4.1.4 Integration Institutions

In his three-step model of integration, Andrew Moravcsik relies on regime theory to explain the final institutional choices which result from intergovernmental negotiations (Moravcsik 1993). Setting up an intergovernmental or supranational institution means pooling or delegating sovereignty by the participating states. This always implies some costs in terms of sovereignty loss, but it also produces benefits. Common institutions provide arenas for intergovernmental negotiations and decision-making, which reduces transaction costs compared to ad-hoc intergovernmental negotiations. In addition, common institutions can moni-

tor, interpret and enforce integration decisions, which can minimise the risk of free-riding. Switzerland largely refrained from subordination to common institutions governing European integration. Nevertheless, there exist differences with regard to the institutional quality of Switzerland's integration. The main difference is the one between sectoral agreements and domestic rule transpositions, but there also exists variance in the legal quality between different forms of domestic rule transpositions and sectoral agreements. Throughout this thesis, I call these differences the legal quality of integration measures. Chapter 3 dealt with the consequences of different qualities of agreements and found that not only the legal, but also the substantive integration quality of sectoral agreements matters for their evolvement. With regard to the question of what institutional solutions result from integration negotiations, thus for Switzerland not only the choice of the legal but also the choice of the substantive integration quality matters.

To my knowledge, scholars researching Switzerland's European policies have not explicitly dealt with the choice of the institutional solution for an integration measure. What has been dealt with in the area of the institutional quality of integration is the question of to what extent the way a policy area is governed inside the EU is decisive for the way they are accessible for third countries. In a special issue about "Switzerland's Flexible Integration in the EU" edited by Sandra Lavenex (2009b), various case studies found that the governance mode characteristic for a policy field partly depends on the related collective action problems, and that policy fields where collective action is less problematic are more accessible for third countries like Switzerland. Examples are technocratic policy fields with no or few enforcement problems, in which expert committees and regulatory agencies play an important role. Access to such agencies is often guaranteed based on expertise, whereas political considerations and the question of EU membership of the expert's country is deemed less important. Examples are research and transport policy (Lavenex 2009a; Lehmkuhl and Siegrist 2009). In both areas, Switzerland has participated for several decades, and sometimes, Swiss participation in European policy coordination preceded the inclusion of the policy fields in the EU.

Over the long term, Switzerland has also started to participate in EU regimes with serious enforcement problems, and participation in technocratic policy fields has become more difficult. Especially if European coordination in an issue area preceded the EU, non-members of the EU tended to be excluded from common policies once they became incorporated into EU

agencies and once formal EU rules became the point of reference. This process was observed both in transport and energy policies (Jegen 2009; Lehmkuhl and Siegrist 2009). Werner Schäfer (2009) reached a similar conclusion in his analysis of Switzerland's non-participation in the EU's emission trading system. Although Switzerland is interested in a sectoral agreement on that matter and the EU is ready to grant Switzerland access to the regime, the EU's condition is the full transposition of the respective EU rules. Switzerland, however, has not agreed to that. Following from this, Schäfer concluded that the more important binding regulations are for the internal governance of a policy field, the more inflexible is the EU as a negotiator with third countries. For the analysis of the development of Switzerland's legal and substantive integration, I thus assume that the collective action problems underlying a policy field are less decisive for the accessibility of a regime for Switzerland than the degree to which a policy field is formally regulated in the EU.

4.2 Hypotheses: What Differentiated Integration for what Needs?

The literature review showed that economic integration lies mainly in the interest of the export-oriented sector in Switzerland, but that sometimes, integration measures are adopted as a reform package and serve also the interests of other domestic actors. The literature review also showed that issue linkage explains what issues were included in the Bilaterals I and II packages, but we know that the majority of sectoral agreement reforms were not part of these packages (see Chapter 2). Following from this, I conclude that the explanatory factors discussed in the literature and in liberal intergovernmentalist theory alike, are differently related to different integration measures. At this stage of research, we do not know whether, for example, sectoral economic interests are best met with full or partial transpositions of EU rules into domestic legislation, or whether they are also the drivers behind sectoral agreements. On the one hand, Switzerland's differentiated integration is discussed as primarily serving the aim of access to the EU market. On the other, selective transpositions of EU rules may allow Switzerland to retain a regulatory advantage, but undermines the principle of equal standards, which would be necessary for market access. Another puzzle is that unilateral rule transpositions are deemed inferior to sectoral agreements from a Swiss

point of view because they allow EU citizens and economic actors to become active in Switzerland while pursuing the same rules as in the EU; however, they cannot guarantee equal treatment of Swiss economic actors or citizens in the EU, for which a sectoral agreement is necessary (Freiburghaus 2004; Bundesrat 2006). In Chapter 2 I showed that domestic rule transpositions cover a wider range of issues than sectoral agreements, and that more than half of all domestic rule transpositions were unilateral. A third puzzle is that the EU and Switzerland sometimes experience negative externalities if Switzerland does not (fully) participate in an EU policy. These externalities, however, did not lead to cooperation in any case.

In this section, I discuss the relevance of the explanatory factors put forward by the literature for the different elements of Switzerland's differentiated integration. The research on the role of the governance mode inside the EU for the accessibility of EU policies for third states alongside some insights from the literature help to derive hypotheses about which explanatory factors might be related to which elements of Switzerland's differentiated integration.

4.2.1 Domestic Interests and Differentiated Integration

The discussion of domestic economic interests, which are crucial for the definition of the national integration interest in the liberal intergovernmentalist model, showed that researchers assume that Switzerland's differentiated integration primarily serves the aim of ensuring access to the Single Market, and that market access is mainly in the interest of the export-oriented sector. Moreover, the literature review showed that to that end, Switzerland's differentiated integration must be of high substantive and legal integration quality, because the Single Market relies on common rules. This implies that sectoral agreements are more valuable instruments for market access than domestic rule transpositions. A current example from the financial sector is revealing in this regard, but also shows that domestic preferences are greatly nuanced.

The example concerns the question of whether or not Switzerland should restart negotiations with the EU on the liberalisation of trade in services. Whereas the association of insurance providers is against a sectoral agreement on that matter, the association of private banks recently changed its position and now favours an agreement. The reasons for the op-

position by the insurance association are doubts that an agreement would guarantee equal treatment of Swiss and EU firms. In the absence of equal treatment, the Swiss insurance sector is better off without an agreement according to the head of the association (Bütikofer 2013)[31]. Translated into the terms applied throughout this thesis, the Swiss insurance sector is better off without an agreement as long as an agreement does not guarantee full substantive and legal integration of Switzerland. In contrast to the insurance sector, the association of private banks *(Bankiervereinigung)* has advocated an agreement since a new EU directive regulating financial services entered into force. Apparently, and unlike insurance companies, the private banks normally do not have subsidiaries in the EU and therefore fear stricter EU regulations which protect the EU market from companies from third states (Schöchli 2014). Swiss insurance firms with subsidiaries in the EU, on the contrary, act in the Single Market like EU firms (Church et al. 2007). This example shows the relevance of the substantive and legal quality of integration measures for market access, but it also shows that Swiss firms do not in every case need a political solution to gain market access if they can afford to establish subsidiaries.

The question resulting from this is under what circumstances Switzerland is likely to pursue differentiated integration via sectoral agreements or domestic rule transpositions, as actors also have other possibilities to gain market access. I argue that the general argument of economic integration theory cited in the literature review may play a role. It says that the economic performance of a country influences its integration willingness. The strategy of establishing subsidiaries in the EU is more costly than direct cross-border trade. Therefore, this strategy may be a valuable alternative to political integration in wealthy times, but may be evaluated less favourably during economic downturns. The literature review showed that Switzerland's differentiated integration is in the interest of export-oriented economic sectors. Thus, not only the general economic performance of the Swiss economy, as expected by economic integration theory, but also the performance of the export-oriented sectors may matter in the evaluation of alternatives to integration. As a consequence, I expect that Switzerland is more likely to pursue differentiated integration, and that this integration is of

[31] The insurance agreement, which entered into force in 1992, only guarantees the right of establishment of subsidiaries in the EU to Swiss firms, but does not liberalise the trade in services (Sozialdemokratische Fraktion 2006).

a higher substantive and legal integration quality, when the Swiss economy in general and the export-oriented sectors in particular experience downturns (hypothesis 1.1 and 1.2).

The example of the banking sector also hinted at a second factor: the banking sector changed its official stance over negotiations of trade liberalisation after the EU rules had changed. The availability of alternatives to formal integration may thus also change with rule changes in the EU. This finding is in congruence with the conclusions of several case studies cited above. Policy fields seem to be more accessible for Switzerland when the governance mode is less centralised and less formalised inside the EU. Loose regulations in the banking sector were probably the reason the Swiss banking sector did not need an agreement for a long time. When the EU's policies became more formally regulated internally, however, ad-hoc access to the EU market became more difficult. This interpretation is in line with the findings of the special issue on Switzerland's flexible integration reported in the literature review, which were that EU policies become less accessible for third states and the EU becomes a less flexible negotiation partner when its policies rely more on formal rules. An example is transport policy, where Switzerland always cooperated with its European partners, but needed sectoral agreements once transport policy was overtaken by the EU. Resulting from this, I assume that the legal and substantive integration quality also depends on the level of centralisation and formalisation of a policy inside the EU.

Differentiated integration, and especially integration with a higher substantive and legal quality, is more likely

H 1.1 if Swiss economic performance is worse;
H 1.2 if the export-oriented economic sectors perform worse;
H 1.3 in issue areas with stronger supranational governance inside the EU.

4.2.2 Domestic Decision-Making and Differentiated Integration

The literature review pointed to many characteristics of the domestic decision-making system which are likely to hamper integration. Therefore, several scholars highlighted that the leadership role of the Federal Council is crucial. This resonates with theoretical arguments, which say that domestic political change in response to the EU is facilitated by a strong government. Therefore, I argue that integration steps are more likely if the Federal Council plays a more active role in the decision-making process. Of the integration measures covered by the empirical data collected for this thesis, only sectoral agreement reforms can sometimes

be adopted by the Federal Council in its own right, and only if they concern issues which have been previously delegated to the Federal Council, or which do not assign new general rights and duties. Based on the considerations discussed in the literature, I nevertheless assume that agreement revisions are more likely if they are adopted by the Federal Council. Federal law reforms always have to be adopted by parliament and are subject to an optional referendum. Still, a federal law reform can be initiated by the government, parliament, or the cantons. Based on the considerations discussed in the literature review, I assume that domestic rule transpositions are more likely for federal law reforms initiated by the Federal Council.

Leadership by the Federal Council might be successful in some decision-making processes, but it is no guarantee that veto points can actually be circumvented. Often, the need for parliamentary approval or a popular vote is not a strategic decision, but legally prescribed depending on the content and the form of a legal reform. In such cases, the factors put forward by the literature review, like broad pro-integration coalitions, domestic veto points and public opinion may determine whether an integration measure takes place. Especially if sectoral agreement or federal law reforms have to be adopted by parliament, they not only need the support of a parliamentary majority, but are also usually subject to an optional referendum. For such cases, the literature review showed that a broad pro-integration coalition is crucial in order to clear this hurdle. Such a coalition can be built by granting the opponents side-payments in the form of related policy reforms in their interest. The liberalisation of the telecommunications sector, which was achieved by a full transposition of the respective EU rule, was successful because in return the pro-liberalisation actors refrained from a full liberalisation of the postal sector (Mach et al. 2003). This less-far-reaching liberalisation of postal services, but also the flanking measures accompanying the Bilaterals I package and the social policy bills included in Swisslex may be interpreted as side-payments. All these reforms have in common that the integration measure and the side-payments were adopted as part of the same reform package. I thus assume that integration steps are more likely if they are adopted as a reform package at the domestic level, because this enhances the chance for opponents to receive side-payments.

Not in every case, however, may concessions to opponents have the form of reform packages. Sometimes concessions may lead to selective transpositions of EU rules. The liberalisa-

tion of the electricity sector is an example of concessions within one reform. The first attempt to liberalise the electricity market failed, because actors from within the sector as well as trade unions and consumers opposed the proposed roadmap. The opposition came from companies, which feared that they would lose their monopoly position in case of an EU-compatible liberalisation and from consumers, who feared that the supply of electricity will not be secure after liberalisation. As a result of this constellation, the reform was defeated in a referendum in 2002 (Bartle 2006; Jegen 2009). Five years later, Switzerland nevertheless adopted a new Electricity Supply Act and started the liberalisation process. However, the new act set up an independent regulatory agency, provided more guarantees for supply security and encouraged the use of renewable energies, which resulted in only a selective transposition of the respective EU rules (Maggetti et al. 2011). The concessions to the sceptics thus led to selective rule transposition. Therefore, I assume that reform packages are likely to lead to integration of a higher substantive and legal quality, because integration steps of lower integration qualities may already contain the concession to opponents in the form of selective rule transpositions.

Related to the argument about the leadership role of the Federal Council and the role of side-payments, scholars observed a more exclusive decision-making process, with more informal and less formal consultations in Europeanised issues (Sciarini et al. 2004; Mach et al. 2003). An exclusive decision-making process seems to be a facilitator for integration. However, making a decision-making process exclusive is easier in technical issues than in politicised ones. Alexandre Afonso et al. (2014) showed in comparative studies that decision-making processes tend to be more inclusive if an issue is more politicised, and that Switzerland is no exemption compared to other European countries. Afonso et al. also stated, however, that politicisation has to be used by political actors in order to influence decisions. This argument is important especially for domestic rule transpositions, as scholars assume that this policy has remained largely unnoticed by the public (Goetschel 2003, 2007). These two arguments have the following implications for the likelihood of integration steps. On the one hand, I assume that politicisation of European integration makes integration steps less likely, especially if they have to be adopted by parliament, because politicisation makes it more difficult to build a broad coalition, as more actors need to be included and probably compensated. This argument is in line with liberal intergovernmentalism, where scholars also assume that European integration is more likely if an issue is less politicised (Leuffen et al.

2012). On the other hand, I assume that politicisation alone may not hinder integration steps. More important is whether politicisation is actually used by actors, and this is surely the case if an integration step is challenged in a referendum. As euro-scepticism is high in Switzerland compared to other European countries (Kriesi 2007), I expect that integration steps are more likely if they are not brought to the polls.

Most decisions in the parliament, even if they are subject to an optional referendum, are not brought to the polls, and the decision in parliament is the final one on an integration measure. It is thus unsurprising that the federal parties are among the most powerful actors in the Swiss decision-making process besides the government and they have become more powerful over time (Fischer et al. 2009). For decisions in parliament, the positions of the parties regarding Switzerland's European policy are thus crucial. Integration steps are more easily adopted by parliament, if the seat share of pro-European parties in parliament is higher. In sum, I assume that integration steps are more likely if the Federal Council plays a more central role. If veto-points are present, I assume that integration steps with high substantive and legal quality are more likely if they are part of a reform package, because this makes concessions and side-payments possible. If integration measures have to be approved by parliament, I assume that also the salience of European integration and the share of pro-European parties in parliament are crucial for integration steps.

Differentiated integration, especially of higher substantive and legal quality, is more likely

H 2.1 if the Federal Council plays a more central role in the decision-making process.

Differentiated integration steps, which have to be approved by parliament, are more likely

H 2.2 if a legal reform is linked to other reforms at the domestic level;
H 2.3 when no referendum is held;
H 2.4 if European integration is less salient in the electorate;
H 2.5 if the seat share of pro-European parties in parliament is higher.

4.2.3 Agreement Negotiations and Differentiated Integration

The literature review gave several hints about Switzerland's alternatives to agreement, the use of issue linkage, and the use of exit threats. The literature shows that both the EU and Switzerland have used issue linkage in their interest in order to include issues in negotiations

that were crucial for them. I assume that negotiation dynamics, and especially issue linkage, are related to stronger legal and substantive integration of Switzerland because of one empirical and one theoretical reason. The former concerns the actual experience with issue linkage: Although some scholars assign sector-specific bargaining power to Switzerland, and although Switzerland has used and tries to use issue linkage to its own advantage, issue linkage did not lead to sectoral agreements of a lower integration quality in the past. Quite the contrary: the agreements, which Switzerland asked to be included in the Bilaterals II package, are actually those with the highest legal integration quality so far, the Schengen and Dublin Association Agreements. The theoretical reason why issue linkage leads to stronger integration concerns the nature of the conflicts between Switzerland and the EU. In cases when the main conflict between Switzerland and the EU concerns the substantive and legal quality of the extension of EU rules, issue linkage may be used exactly in order to achieve full substantive and legal extension of EU rules in areas, where the EU wishes this. In areas where Switzerland wishes an agreement, it is likely to prefer an agreement of high substantive quality anyway, because only equal rules provide a level playing field. I thus assume that issue linkages make differentiated integration, and especially integration of a higher substantive and legal integration more likely, because it may lead to integration in areas that are not in Switzerland's genuine interests, and thus cannot be explained by other factors.

Agreement negotiations and issue linkage are naturally important for integration steps which need to be negotiated with the EU. This concerns all integration steps which do not follow an institutionalised mechanism. As institutional mechanisms, I label those forms of agreement revisions researched in Chapter 3. Mixed Committees and dynamic provisions proved to be crucial for the frequency of agreement revisions. Although Mixed Committees also decide only after a consensus between representatives of the EU and Switzerland, and also dynamic provisions formally do not allow the circumvention of Switzerland's domestic veto points, I assume that they are not subject to the same negotiation dynamics between Switzerland and the EU like agreement reforms not foreseen by such an institutionalised mechanism. I thus assume that issue linkages do not affect institutionalised agreement reforms.

Related to agreement negotiations between Switzerland and the EU, two more arguments are found in the literature. The first emerged in the literature review with the observation

that the EU becomes less flexible in negotiations with Switzerland, the more its own policy-making relies on formal rules. In a similar vein, Sieglinde Gstöhl (2007) argued that negotiations between Switzerland and the EU have become more difficult over time, as the EU increasingly deals with policy issues that require more formal regulation. Following from this we cannot assume that negotiated integration steps become more likely over time, because Gstöhl also argued that the EU developments make tailor-made solutions for Switzerland more difficult. However, we can assume that integration steps, if agreed upon, are likely to be of a higher legal and substantive integration quality in recent times if it is true that the EU became less flexible. The second argument related to negotiations concerns domestic rule transpositions. In the literature review, I stated that liberal intergovernmentalists highlight the role of credible commitments in difficult negotiations, and argued that domestic rule transpositions could play the role of credible commitments for Switzerland. In sum, I expect that sectoral agreement reforms, which do not follow an institutionalised mechanism, are more likely if they are part of a package deal with the EU. I expect also that a package deal leads to stronger substantive and legal integration quality. Regarding integration measures in general, I expect that substantive and legal integration quality increases over time. Regarding domestic rule transpositions, I expect that they are more likely when they are related to agreement negotiations.

Sectoral agreement reforms, especially such of a higher substantive and legal integration quality and not following an institutionalised mechanism

H 3.1 are more likely, if the respective legal reform is part of a package deal with the EU.

Differentiated integration measures of a higher substantive and legal quality

H 3.2 become more likely over time.

Domestic rule transpositions, and especially such of a higher substantive integration quality, are more likely

H 3.3 in relation to agreement negotiations between Switzerland and the EU.

4.2.4 Alternative Explanation for Domestic Rule Transpositions

If access to the Single Market can only be guaranteed by integration measures of high substantive and legal integration quality, we need an alternative explanation for the unilateral

rule transpositions without legal recognition by the EU in general and for selective domestic transpositions of EU rules in particular. The last sections showed that selective rule transpositions can be the result of concessions to opponents of (too strong) European integration, or that unilateral rule transpositions may serve as credible commitments during agreement negotiations. The phenomena of selective rule transpositions and unilateral rule transpositions, however, may also be related to an aspect which is only rarely discussed in the literature on Swiss European policies, and which is not part of the liberal intergovernmentalist argument. In the Europeanisation literature, scholars argue that Europeanisation of domestic policies is not necessarily always the consequence of legal obligations. Europeanisation may also be the result of policy learning, and policy learning is more probable between countries that share borders and economic and cultural ties (Haverland 2006). Perhaps, Swiss legal scholars observe policy learning when they state that the EU-compatibility policy has become an important policy paradigm, or led to automatic adaptations without necessarily a concrete integration interest (Oesch 2012; Wyss 2007). In that regard, domestic transpositions of EU rules may not in any case be correctly understood as integration measures.

The legal literature provides examples of rule transpositions, which contain some concessions to specific interests, and it provides examples of rule transpositions which were probably the result of policy learning. Interestingly, both phenomena sometimes overlap. One example is the total revision of the Patent Law in 2006, which, though modelled on EU legislation, transposed the EU rules only selectively, which benefited the chemical industry at the expense of, for example, tourism or consumers in general (Cottier 2006). Ralf Imstepf (2012) showed a similar outcome for the new law on the value-added tax in 1993. The replacement of the out-dated purchase tax by a value-added tax was clearly conducted with reference to the EU taxation principles, mainly because the EU provided an example of a law that followed the state of the art of legal expertise. Imstepf explained the deviations from EU law in the Value-Added Tax Law by social policy (e.g., no value-added tax for housing in Switzerland) and fiscal policy aims (e.g., no tax exemption of financial services implemented abroad). However, the Swiss law in some cases also benefits Swiss companies compared to companies from the EU because the services of the latter are sometimes taxed twice (Imstepf 2012; Robinson 2013). In addition, the Swiss value-added tax is much lower than the minimum tax prescribed by EU law (Breuss 2008).

The Patent Law and the Value-Added Tax Law both replaced outdated regulations. The role of an EU policy as an example of the modernisation of a policy was also observed outside the economic realm. Tonia Bieber (2010) analysed the convergence of Swiss higher education policy with the standards set in the Bologna Process. Bieber highlighted that the European development and the participation of Swiss specialists in transnational networks provided legitimacy for domestic reforms that had been on the agenda for a long time. Nicole Wichmann (2009) showed that Switzerland adapted its asylum legislation already in the 1990s to the Dublin directive, partly because the Dublin directive was perceived as a superior regulation to the existing national regulations. The question of whether other transpositions of EU rules outside the economic realm can also be explained by policy learning is not explicitly discussed in the literature, but is plausible, for example, in areas like environmental policy or the equal treatment of men and women (Englaro 2009/2010; Epiney and Duttwiler 2004; Epiney and Schneider 2004). The transposition of EU rules thus may not always be transposed in order to secure benefits related to integration. Sometimes EU rules may provide orientation in the process of policy learning and this may especially be the case if new issues have to be regulated or if laws are outdated and need to be totally revised.

Domestic rule transpositions are more likely

H 4 when federal laws are newly adopted or totally revised.

4.3 Descriptive Analyses: Integration as a Result of Package Deals

In the previous section, I discussed the expected relation of the broad range of explanatory factors discussed in the literature with integration measures of different substantive and legal quality. Based on these considerations, I derived twelve hypotheses making claims about the likelihood of Swiss integration measures. Five hypotheses concern differentiated integration in general, and I expect that they hold for sectoral agreement reforms as well as domestic rule transpositions: Those are the hypotheses concerning Swiss economic performance, the degree of formal policy regulation inside the EU, the role of the Federal Council and the development over time (hypotheses 1.1, 1.2, 1.3, 2.1, 3.2). Three hypotheses concern only differentiated integration steps which are subject to approval by parliament: These

hypotheses make claims about the role of referenda, the salience of European integration and the strength of pro-European parties (hypotheses 2.3, 2.4, 2.5). The hypothesis about the role of issue linkage in agreement negotiations is likely to hold only for sectoral agreement reforms, which do not follow an institutionalised mechanism (hypothesis 3.1). Three hypotheses can only be tested for domestic rule transpositions. They claim that rule transpositions are more likely if they are part of a domestic reform package, if they are related to sectoral agreement negotiations, and if a federal law is newly adopted (hypotheses 2.2, 3.3, 4).

The empirical analysis is explorative in the sense that it explores the relation of the explanatory factors summarised in the hypotheses with all kinds of integration steps. Like this, it examines not only the relation of the independent variables with Swiss integration, but also whether the independent variables were assigned to the right characteristics of the dependent variable in the hypotheses. The following characteristics of the dependent variable seem to be relevant based on the last section and based on the findings of Chapter 3. In the case of the sectoral agreements, I distinguish between institutionalised agreement reforms and those that have to be negotiated. Among the negotiated agreement reforms, I further distinguish between negotiated reforms that have to be adopted by parliament and those that can be adopted by the government in its own right. Because several hypotheses make claims about the likelihood of integration of a higher quality, I further distinguish negotiated agreement reforms with regard to the question of whether they directly refer to EU law or not. Table 14 gives an overview of the different categories of sectoral agreement reforms. In the case of federal laws, there is no need to distinguish categories of rule transpositions other than those discussed in detail in Chapter 2, because all federal law reforms are subject to parliamentary approval, and no mechanisms exist ensuring the updating of rules transposed into domestic legislation.

Table 14: Total number of sectoral agreement adoptions and revisions 1990 – 2010

	Institutionalised	Negotiated - dimension 1		Negotiated - dimension 2	
		Federal Council	**Parl./ Ref.**	**No EU law ref.**	**EU law ref.**
New adoptions	0	18	25	17	25
Total revisions	0	2	2	1	3
Partial revisions	142	9	5	6	8
		29	32	24	36
TOTAL	**142**	**61**		**60 ***	

Note: * For one observation the information about a direct reference to EU law is missing, because the text of this agreement was not published.

This section presents the operationalisation of the independent variables in detail and provides descriptive statistics and bivariate hypothesis tests for all hypotheses. The independent variables measuring Swiss economic performance, issue salience of European integration and party strength vary only over time. To analyse these factors, Swiss differentiated integration measures are aggregated per year. The degree of supranational governance in the EU varies over time and across policy issues. To analyse this factor, Swiss differentiated integration measures are aggregated per year and policy field. The year used to relate the time-varying independent variable with differentiated integration measures differs from the year used thus far. In the descriptive statistics in Chapter 2 and in the regression models in Chapter 3, I used the date of the publication in the Official Collection of Federal Legislation as year of reference for reforms, which usually is the year of entry into force. Decisions on integration measures, however, are taken before, and I assume that the values of the independent variables at the time when the decision is taken influence the integration outcome. Using time lags for the independent variables would ignore that time between adoption of a reform and entry into force varies considerably between reforms. Therefore, I use the year of the adoption of a sectoral agreement reform or the year when the Federal Council message or the Commission report accompanying a federal law was published as the year of reference throughout this chapter. The other explanatory factors are characteristics of reforms and measured in binary variables. They can thus be analysed on the most detailed level of analysis, the single reform. The section follows the order of the arguments discussed in the previous section.

4.3.1 Economic Performance, EU Rules, and Differentiated Integration

The descriptive analysis starts with hypotheses 1.1 and 1.2. Hypothesis 1.1 claims that the general economic performance influences Switzerland's integration behaviour, and hypothesis 1.2 claims that the performance of its export-oriented sector plays a role. Swiss general economic performance is measured with a comparative indicator: the difference between Swiss Gross Domestic Product (GDP) growth per year and the average GDP growth of the member states of the Economic and Monetary Union (EMU; source: Eurostat). Negative figures indicate that Swiss growth was lower than average EMU growth and according to economic integration theory we would expect that Switzerland is most likely to pursue regional integration in times with comparably lower economic growth[32]. Hypothesis 1.2 claims that the export-oriented sector is crucial for Swiss differentiated integration. The performance of the export-oriented sector is measured as the percentage change of the volume of exports from Switzerland to the EU compared to the previous year (source: Swiss Federal Office of Statistics). The relative export growth rather than the absolute volume of exports was chosen because I expect that the current performance influences the evaluation of integration. The absolute volume of exports, in contrast, is more likely to be the result of, rather than the reason for, integration measures. The coding of the independent variables is explained in more detail in Annex C.1[33].

Figure 7 shows the two economic indicators and the number of agreement adoptions and revisions per year; Figure 8 shows the same two economic indicators and the number of domestic legal reforms containing EU rules per year. In both figures, the left axis of the graphs shows the number of integration measures per year and the right axis of the graphs shows the values of the economic indicators. The upper graphs show the development of comparative GDP growth, the indicator used to test the claim made in hypothesis 1.1. The

[32] The EMU average growth was chosen rather than the EU average growth because the EMU is a more homogenous group of countries with economic development more comparable to Switzerland.

[33] Preliminary analyses also included alternative measures of Switzerland's economic performance, like the per-capita growth rate of Swiss GDP per year (source: World Bank) or the economic barometer published by the Swiss economic institute KOF. They showed no correlation with the development of Switzerland's differentiated integration. With regard to Swiss sectoral economic performance, the performance of the probable lead sector of the Swiss economy, the financial sector, was included in preliminary analyses. This indicator is not correlated to differentiated integration measures, which is not surprising, as the literature says that the financial sector is not crucially dependent on European integration.

lower graphs show the development of exports to the EU over the research period, the indicator to test the claim made in hypothesis 1.2. Figure 7 distinguishes the same categories of sectoral agreement reforms as Table 14; Figure 8 distinguishes the integration qualities of EU rules in federal law reforms as presented in Chapter 2. The topmost area shows the number of reforms that were at least compatible with EU law. The darker area below shows the total number of federal law reforms that contained adaptations to EU law (full and partial adaptations). The line indicates the share of adaptations that were unilateral adaptations to EU law. In both figures, the dashed trend line indicates the trend in the development of the economic indicators, and the dash-dot trend line indicates the trend in the development of the number of Switzerland's integration measures per year. The integration trend in Figure 7 is based on all sectoral agreement reforms. The integration trend in Figure 8 is only based on active rule transpositions, as compatible reforms are not related to the independent variables (see multivariate analysis in section 4.4.2).

Hypothesis 1.1 claims that integration measures are more likely in times when the Swiss economy performs worse than the economies of its EU-participating neighbours. Based on the aggregate number of integration measures per year, this hypothesis does not hold. On the contrary, the Swiss economy recovered from the recession in the 1990s, and since 2005 Swiss economic growth rates have been above the EMU average.

The trend lines of number of integration measures per year are also increasing and almost parallel to the trend line of comparative GDP growth. The integration trend line is steeper in the case of sectoral agreement reforms, which is due to the large increase of institutionalised agreement reforms in recent years. However, also if institutionalised agreement reforms are not counted for the integration trend, the trend line is still increasing and thus contradicting hypothesis 1.1: Integration steps became more frequent over time although the Swiss economy also performed better over time compared to the EMU average. The causality assumption underlying hypothesis 1.1 thus probably needs to be revised: It is possible that the effect that integration measures spur growth is more observable than the effect of economic recessions on the likelihood of integration measures. With regard to the performance of the export-oriented sector, the picture shows a less clear relation: Although this indicator also shows ups and downs during the research period, these ups and downs do not follow a trend over time. Thus, the data neither support nor contradict hypothesis 1.2.

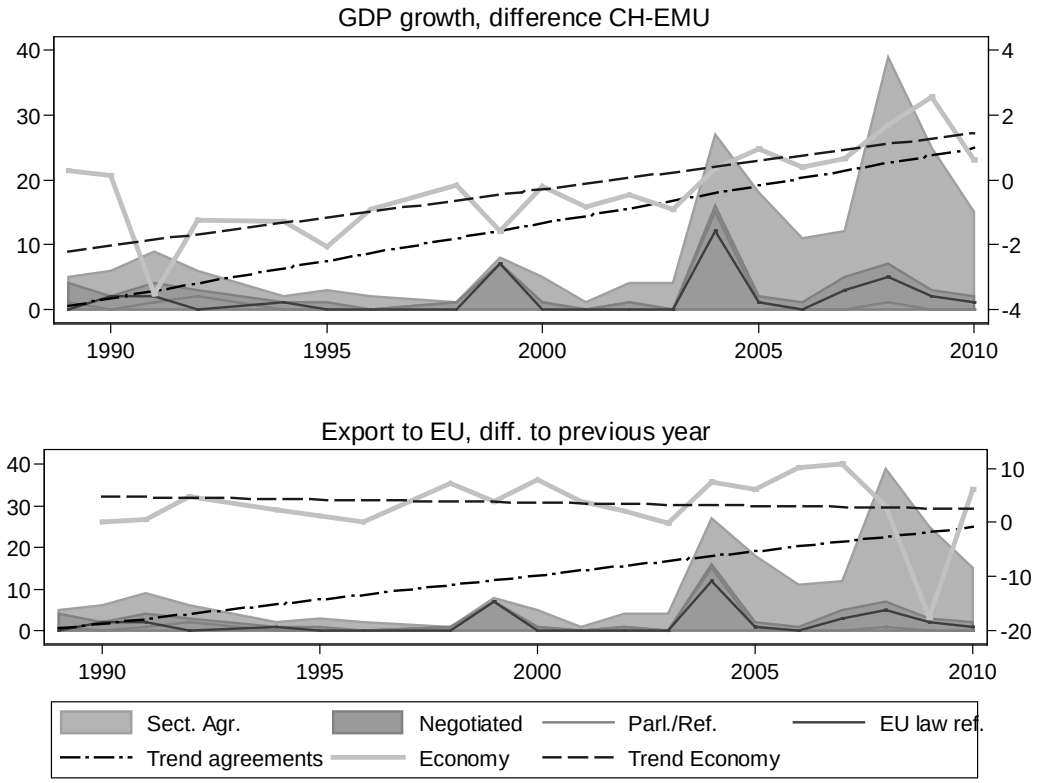

Figure 7: Sectoral agreements reforms and indicators of economic development over time

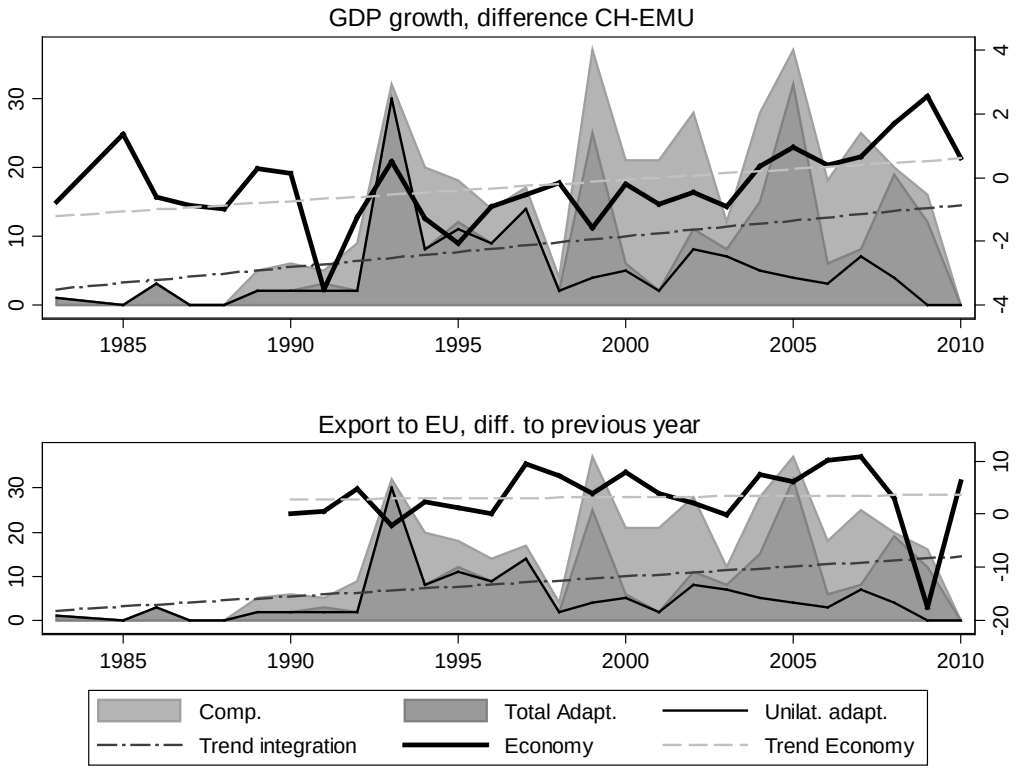

Figure 8: Domestic rule transpositions and indicators of economic development over time

Hypothesis 1.3 claims that differentiated integration measures are more likely in areas, which are more formally and centrally governed inside the EU. The level of policy centralisation in the EU was measured based on the indicator "scope of authority" proposed by Tanja Börzel (2005). The policy fields used by Börzel were assigned to the sub-chapters of the Classified Compilation of Federal Legislation (for coding details see Table 32 in Annex C.1). Figure 9 shows the number of agreement reforms and Figure 10 the number of federal law reforms for the different values of the scope indicator. The scope indicator varies over time and across policy fields, but Figure 9 and Figure 10 are only two-dimensional and developments over time are not visible. Legal reforms in the same policy field, however, were assigned to different scope indicators if the degree of centralisation changed inside the EU over time.

Figure 9 supports the claim that differentiated integration is more frequent in areas with more centralised governance inside the EU. Agreement reforms were most frequent in policy fields with a scope indicator of 3 or 3.5. Interestingly, institutionalised agreement revisions (Mixed Committee decisions or revisions of dynamic agreements) are most frequent in these areas. Apparently, a more formal regulation of a policy field inside the EU leads to a more dynamic development of agreements in these areas. Reforms in policy fields with very low or very high scope indicators were much rarer. Figure 10 shows that the total number of federal law reforms is also highest in policy fields which score higher on the policy scope indicator. This confirms the expectation and the findings from Figure 9 regarding the sectoral agreements. We observe many compatible legal reforms, unilateral adaptations and implementation measures in policy fields which score between three and four – the same area Figure 9 showed agreement reforms. Also similar to the data on sectoral agreement are the few observations at the very high levels of EU policy scope. However, Figure 10 also shows many reforms in areas which score lower on the policy scope indicator and we even observe rule transpositions in issue areas with an EU policy scope of 0. The latter is partly related to the validity of the coding sources, and partly to the coding of the scope indicator. With regard to the coding sources, the problem is that sometimes Federal Council messages may state that a law reform is compatible with EU law when actually the reform is unproblematic because no EU law exists in the area. With regard to the coding of the scope indicator, the value zero was assigned to sub-chapters of the Classified Compilation like basic rights (15), federal authorities (17) and civil law (21).

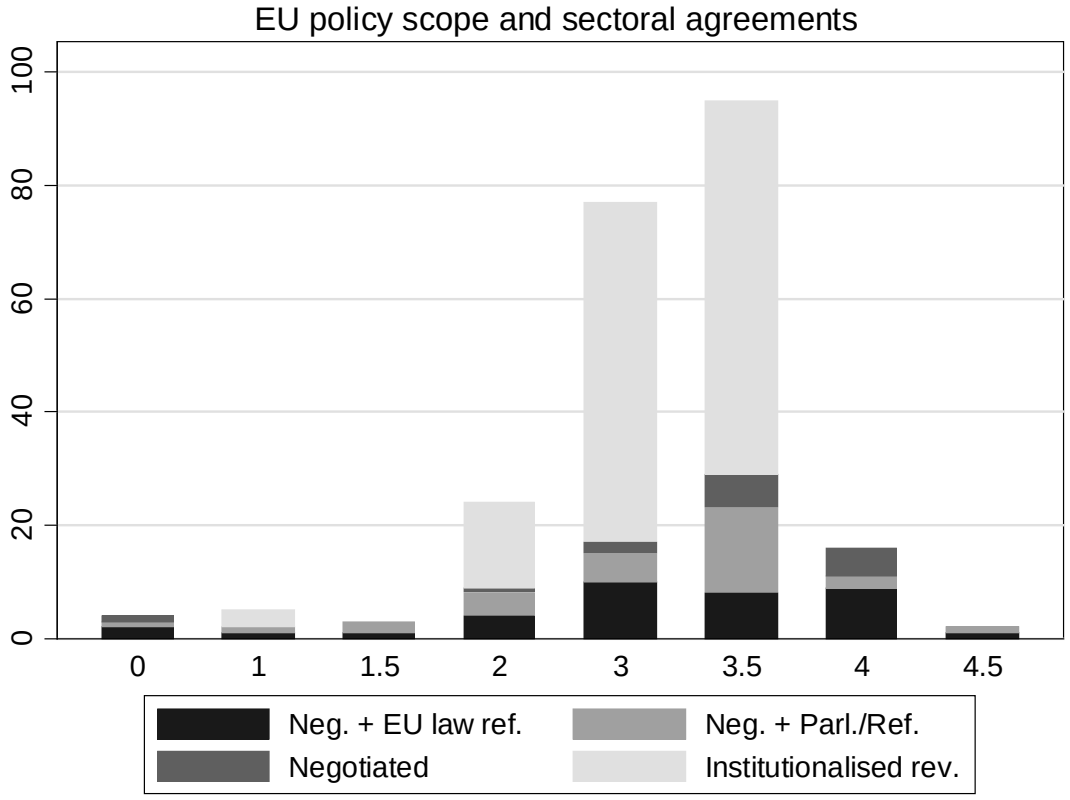

Figure 9: Sectoral agreement reforms and EU policy scope

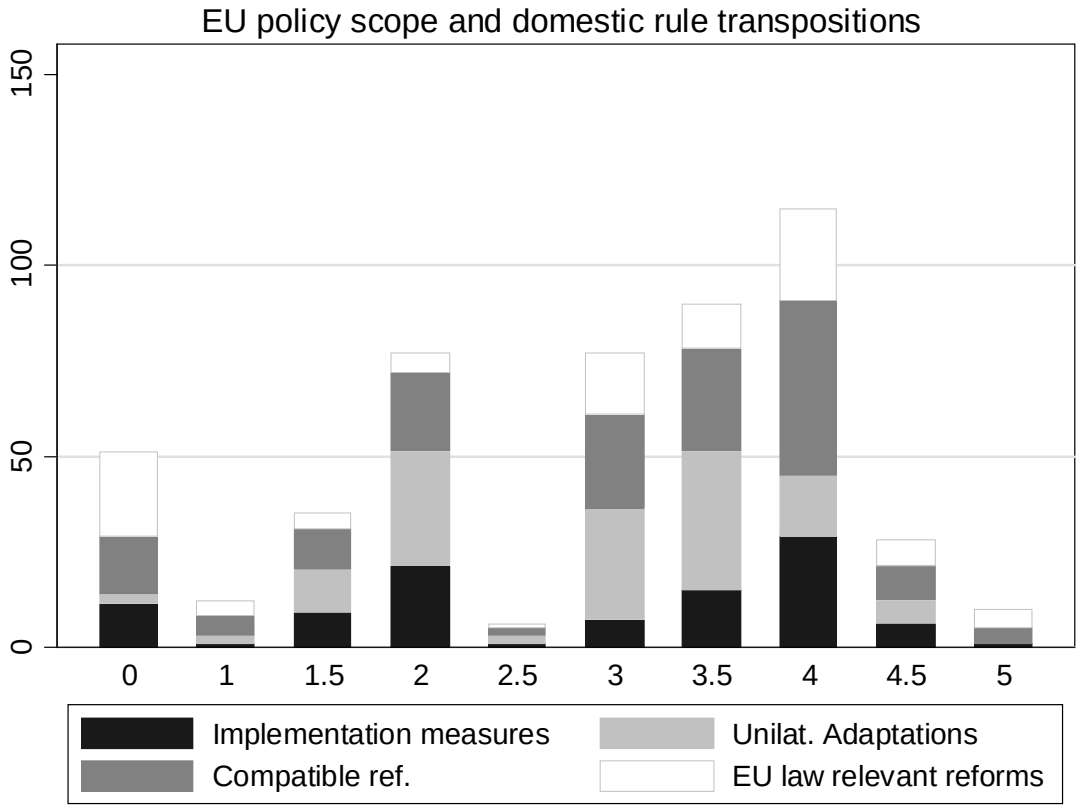

Figure 10: Federal law reforms, rule transpositions and EU policy scope

These sub-chapters, however, contain well-known cases of unilateral rule transpositions like the Law on Equal Treatment of Men and Women, the Law on Public Procurement, as well as the Law on Acquisition of Houses by Foreigners (cf. Englaro 2010, Cottier and Oesch 2002). The implementation measures in areas with an EU policy scope of 0 were those related to funding of projects necessary to comply with transport agreements with the EU (see Chapter 2).

Following from the data in Figures 9 and 10, hypothesis 1.3 has to be refined. Apparently, the degree of policy centralisation is not equally important for all forms of differentiated integration. It seems to matter more for sectoral agreement reforms than for federal law reforms, and in the realm of sectoral agreements, it seems to be especially related to institutionalised revisions. This interpretation is in line with the findings from earlier research, which claimed that ad-hoc participation in EU policies is more difficult for Switzerland in more centralised areas. Apparently, sectoral agreements which develop dynamically are the key for participation in such areas. In addition, especially Figure 9 suggests that the relation between the policy scope inside the EU and the frequency of integration steps by Switzerland has an inverse U-shape. Agreement reforms were rare in policy fields with low and high scores on the policy scope indicator, and more frequent in fields with middle scores.

4.3.2 Political Factors: Veto Points and Opinion

Hypotheses 2.1 – 2.5 focus on the domestic decision-making process. Hypothesis 2.1 – 2.3 highlight the effect of political institutions and hypothesis 2.4 and 2.5 highlight the role of party positions in parliament and the salience of European integration in the public (H 2.4, H 2.5). Table 15 presents bivariate tests for hypotheses 2.1 and 2.3 for sectoral agreement reforms; Table 16 presents bivariate tests for hypotheses 2.1 – 2.3 for federal law reforms. Hypotheses 2.2 cannot be tested for agreement reforms, because they were coded based on their legal texts, which do not provide the needed information (see Chapter 2). The federal decrees by which the agreement reforms are adopted by parliament were not considered for the data collection. Information about a possible link of a reform at the domestic level, however, could have only been coded based on the federal decrees or their accompanying official messages.

Regarding hypothesis 2.1, which claims that integration measures are more likely if the Federal Council plays a more important role in a decision-making process, the last column of Table 15 shows that the Federal Council adopted the large majority of sectoral agreement reforms in its own right. For federal law reforms, the last column of Table 16 shows that the majority of reforms were initiated by the Federal Council as well. Both findings support hypothesis 2.1. An analysis of the different forms of sectoral agreement reforms, and of the different qualities of rule transpositions into domestic legislation, however, reveals a more nuanced picture. Table 15 distinguishes the same categories of sectoral law reforms as Table 14. It shows that the large majority of institutionalised reforms were adopted by the Federal Council and that the difference in means is statistically significant. This finding supports hypothesis 2.1. The data on the negotiated law reforms, on the contrary, contradict hypothesis 2.1. Negotiated reforms were more often adopted by parliament than by government. The data on negotiated agreement reforms, which are of a higher substantive integration quality because they directly refer to EU law, confirm this finding. Such reforms were more often adopted by parliament, too. For both categories of sectoral agreements, the difference is statistically highly significant. With regard to sectoral agreements, hypothesis 2.1 thus has to be refined. Whereas it is true that the Federal Council is in charge of the last majority of agreement reforms, its responsibility mainly concerns the development of agreements, once an update necessity has been institutionally defined.

Regarding the different integration qualities of federal law reforms, Table 16 shows that adaptations to EU law and implementations of sectoral agreements happen almost only when the Federal Council initiates a reform and this difference is statistically significant.

Table 15: Sectoral agreement reforms and binary independent variables

Hypothesis	**Variable**	**Institutionalised rev.**		**Negotiated, dimension 1 (parl./gov.)**		**Negotiated, dimension 2 (with EU law ref.)**		***Total ref.***
		Number	*Mean*	*Number*	*Mean*	*Number*	*Mean*	*Number*
H 2.1	Federal Council	127	*0.81*	29	*0.03*	16	*0.10*	*156*
	Parliament/ ref.	17	*0.35*	31	*0.65*	20	*0.42*	*48*
	Diff. of means		*p = 0.0000*		*p = 0.0000*		*p = 0.0000*	
H 2.3	Referendum	1	*0.09*	10	*0.91*	10	*0.91*	*11*
	No referendum	143	*0.73*	21	*0.11*	26	*0.13*	*195*
	Diff. of means		*p = 0.0000*		*p = 0.0000*		*p = 0.0000*	

Table 16: Federal law reforms, rule transpositions and binary independent variables

Hypothesis	**Variable**	**Total EU relevant**		**Comp.**		**Adaptation**		**Implementation**		***Total ref.***
		Number	*Mean*	*Number*	*Mean*	*Number*	*Mean*	*Number*	*Mean*	*Number*
H 2.1	Gov. initiative	464	0.46	146	0.40	131	0.36	100	0.21	*1000*
	Parl./cant. initia-tive	33	0.23	19	0.59	3	0.09	1	0.03	*145*
	Diff. of means		*p = 0.0000*		*p = 0.0309*		*p = 0.0024*		*p = 0.0126*	
H 2.2	Linked reforms	200	0.41	45	0.36	55	0.44	77	0.37	*491*
	Not linked re-forms	298	0.45	120	0.44	80	0.29	24	0.08	*671*
	Diff. of means		*p = 0.2419*		*p=0.1279*		*p=0.0044*		*p=0.0000*	
H 2.3	Referendum	39	0.68	10	*0.53*	2	*0.11*	20	0.51	*57*
	No referendum	443	0.44	148	*0.41*	129	*0.35*	81	0.18	*1009*
	Diff. of means		*p=0.0003*		*p=0.2979*		*p=0.0261*		*p=0.0000*	

Note: The total numbers of reforms slightly differ from row to row, because for different independent variables, a different number of observations contain missing values.

The compatible reforms add an interesting nuance to this picture. In relative terms, reforms initiated by parliament were more often than not compatible with EU law: Almost two thirds of reforms initiated by parliament were EU compatible, compared to only forty percent of government-initiated reforms. This difference is statistically significant at the level $p<0.05$. The finding that the Federal Council is responsible for unilateral rule transpositions and implementations supports hypothesis 2.1 and findings from earlier studies (Gava and Varone 2012). The hypothesis and earlier studies, however, also have to be refined: although not in charge of active rule transposition, parliament nevertheless also follows the EU compatibility doctrine.

Because domestic veto points cannot always be circumvented, hypothesis 2.2 claims that domestic rule transpositions are more likely when several legal reforms are linked, because this allows actors to agree on side-payments for those who are more critical towards a certain integration step. A federal law reform was coded as linked if it was proposed in a Federal Council message which presented at the same time more than one law reform to the parliament (examples are the Swisslex package or the public transportation reform)[34]. Table 16 shows the number of reforms that were linked to other reforms compared to the number of reforms that were not linked. In total, linked reforms are less frequent in the data set than not linked reforms (last column). This also holds for reforms in EU-relevant areas in general and for EU-compatible reforms in particular. In contrast, unilateral rule transpositions (adaptations) and implementation measures are more frequent among linked reforms than among not-linked reforms. These differences are statistically significant. Hypothesis 2.2 is thus supported by the bivariate tests. Only EU-compatible reforms are not more likely when they are linked to other reforms.

Related to the effect of veto points as well, hypothesis 2.3 claims that integration steps are more likely if no popular referendum is held. Table 15 shows that only 11 of the total 204 sectoral agreement reforms were voted on at the polls. The small number in Table 15 is somewhat misleading, as not all sectoral agreements are subject to an optional referendum in the first place: Only 34 agreement reforms were subject to an optional or mandatory referendum, and thereof 11 referenda were actually held. Based on the total number of sec-

[34] Note that secondary law reforms, thus administrative or technical adaptations of laws resulting from the reform of another law, were not coded as linked; secondary law reforms were excluded from this analysis.

toral agreement reforms, hypothesis 2.3 is thus supported. Similar to the analysis of the role of the government, however, a closer look at the different categories of agreement reforms reveals a more nuanced picture. Whereas only one institutionalised agreement revision was challenged at the polls, all other referenda concerned negotiated agreement reforms. Hypothesis 2.3 thus has to be refined: although we can conclude that the majority of integration steps indeed circumvent referenda, agreement reforms adopted by parliament and those directly referring to EU law are often brought to the polls. This finding resonates with the one regarding the role of the Federal Council, which was mostly in charge of the institutionalised agreement revisions and thus of those revisions that were almost never brought to the polls (hypothesis 2.1).

Regarding federal law reforms and referenda, Table 16 reveals an interesting picture. While federal law reforms were rarely brought to the polls (last column), Table 16 shows that more than half of all referenda that were held concerned issues in EU-relevant areas (first column after variable names). This higher frequency of referenda in areas with relevant EU law compared to referenda in purely domestic areas is also statistically significant at the level $p<0.001$. The reason for this surprising finding is probably the implementation measures. Implementation measures were responsible for one third of all referenda, and for half of all referenda held in EU-relevant areas. This contradicts hypothesis 2.3, but can be explained by the fact that implementation measures were often voted on together with important sectoral agreements. Apart from the implementation measures, the figures support the claim made in hypothesis 2.3. Only 2 out of 131 unilateral rule transpositions were challenged in a referendum and this difference is statistically significant.

The findings about the relevance of decisions by parliament and popular referenda for negotiated agreement reforms emphasise the relevance of hypotheses 2.4 and 2.5. Hypothesis 2.4 claims that integration measures are more likely when European integration is less salient among the Swiss electorate; and hypothesis 2.5 claims that integration measures are more likely when the seat share of pro-European parties is higher in parliament. For the measurement of the salience of European integration, the percentage of respondents in the SELECTS survey who named European integration as the most important problem was

used.[35] For the measurement of the seat share of pro-European parties in parliament, the data of the Manifesto project were used. The Manifesto project measures the stance of a party based on the positive mentioning of European integration, the European Union and European policies in general. This measurement gives a more accurate picture of the stance of Swiss parties than their official position on EU membership. The indicator is based on the parties' actual statements with regard to European policy, which depicts their stance towards the actual integration policy of Switzerland. This is more relevant for the explanation of differentiated integration, because a relatively broad consensus exists on the Swiss way of European integration, but it has become almost taboo to be overtly for EU membership after the rejection of the EEA. [36]

Figure 11 shows the development of both indicators over time along with the frequency of agreement reforms and Figure 12 shows the development of the opinion indicators along with the frequency of federal law reforms. The upper graphs of both figures show the seat share of pro-European parties according to the Manifesto project; the lower graphs show the perceived salience of European integration according to SELECTS. The left-hand axes of the graphs show the number of agreement reforms or federal law reforms respectively; the right-hand axes show the percentage share for the opinion indicators. In both figures, the graphs with the seat shares of pro-European parties are difficult to interpret. On average, the seat share of pro-European parties seems to lie at around a comfortable 75 percent on average, with a peak at over 90 percent between 1999 and 2003. The peak is probably due to the SVP's abstention from the referendum campaign against the Bilaterals I package, because the party was internally divided on the issue (Dupont and Sciarini 2007). This broad consensus, based on the silence of an important critical actor, might have played the role of a facilitator for the many negotiated integration steps adopted between 1999 and 2004.

[35] The theoretical argument about the role of issue salience is not entirely clear with regard to the question of whether the salience of European integration in general or the salience of a concrete policy issue matters for European integration in the respective area. In order to test what matters more for the Swiss case, the whole empirical analysis was also conducted with an alternative measurement of salience – one that measures not the salience of European integration, but the salience of policy areas (also based on the "most important problem" question of selects). Throughout all analyses, this indicator performed worse than the indicator of general issue salience used here.

[36] In preliminary analyses, also alternative measures for party positions were used: the seat share of the most euro-sceptic party, the SVP, and the seat share of the pro-European parties, the SP and the Greens. Throughout all analyses, both variables performed worse than the indicator based on the Manifesto data.

In contrast, the SVP launched the referendum against the Schengen association, part of the Bilaterals II package (Afonso and Maggetti 2007), which may be the reason for the drop in 2003 (the SVP did not lose in the elections). This drop in the seat share of pro-European parties, however, did not coincide with fewer agreement reforms, as shown by Figure 11. Quite the contrary, a large part of the negotiated agreement reforms and the large majority of institutionalised revisions were adopted only after 2003. Also Figure 12 does not point to a relation between the seat share of pro-European parties and domestic rule transpositions. In the years with the highest pro-European seat shares, only compatible reforms were frequent, but implementation measures (dark-grey area) and unilateral adaptations (line) were even less frequent. Hypothesis 2.4 is thus not supported by the descriptive data analysis. Apparently, the average of a 75-percent seat share of pro-European parties in parliament is enough for sectoral agreement reforms and domestic rule transpositions, and therefore, higher seat shares are not related to more integration measures.

The lower graphs of Figure 11 and Figure 12 show a clearer picture: Just after the perceived salience of European integration among voters dropped in 2003, the number of sectoral agreement reforms started to increase. Many negotiated agreement reforms and most institutionalised agreement revisions took place in years when European integration was not perceived as a salient issue. Hypothesis 2.5 is thus supported by the data on sectoral agreements. The picture for domestic rule transpositions is more nuanced. The 1990s, the years when European integration was most salient, were also the years with the highest numbers of unilateral rule transpositions. This contradicts hypothesis 2.5. In contrast, and with the exemption of the peak in 1999, implementation measures only became more frequent than unilateral adaptations after 2003 when European integration was no longer salient. For implementation measures, hypothesis 2.5 thus holds. This finding is probably related to the finding reported above that implementation measures are often brought to the polls, while unilateral adaptations are almost never brought to the polls.

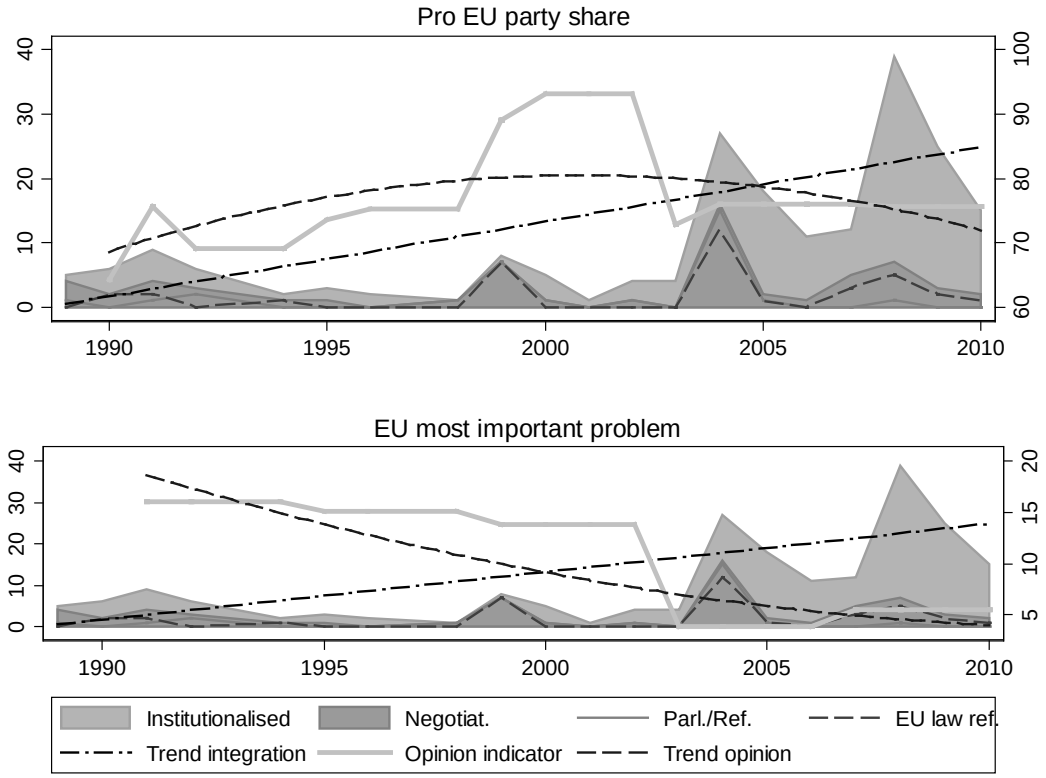

Figure 11: Different types of sectoral agreement reforms opinion indicators

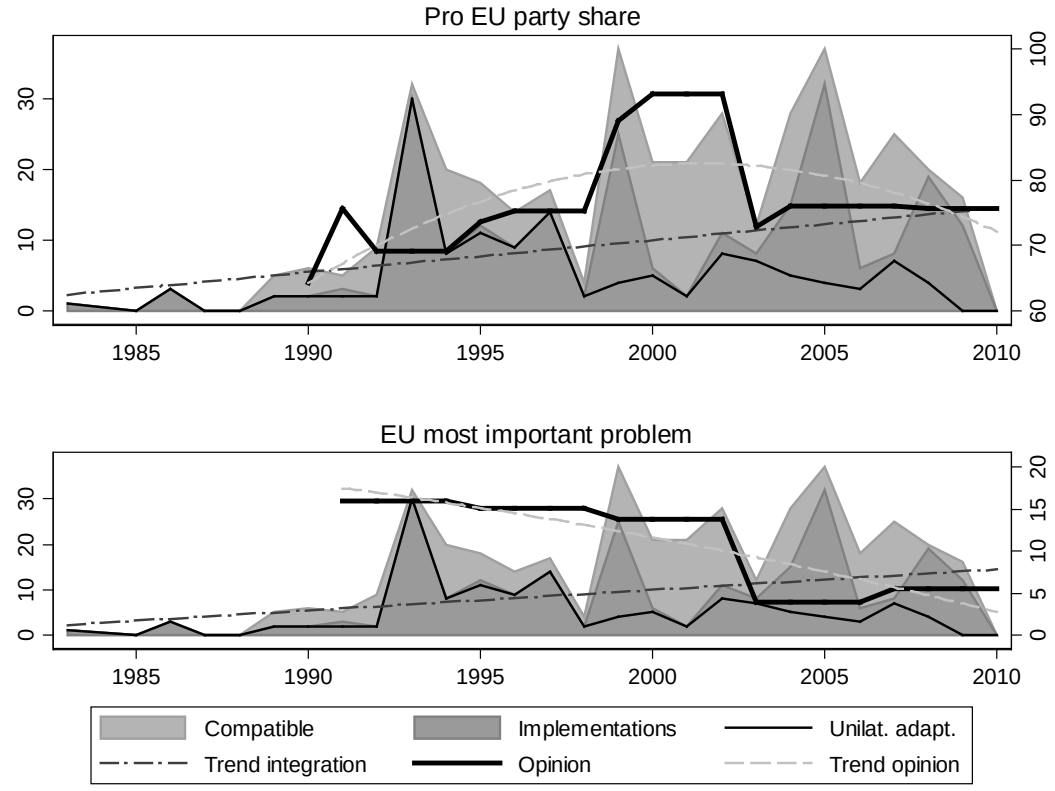

Figure 12: Different types of domestic rule transpositions and opinion indicators

4.3.3 Negotiation Dynamics: Issue Linkage and Credible Commitments

Hypotheses 3.1 – 3.3 make claims about the influence of negotiation dynamics on the likelihood of sectoral agreement reforms and domestic rule transpositions. Hypothesis 3.1 claims that the strategy of issue linkage is crucial to explaining the success of difficult negotiations between Switzerland and the EU. For the present analysis, all new adoptions of the agreements adhering to either the Bilaterals I or the Bilaterals II packages were coded as being part of a package deal. In addition, all revisions of agreements adhering to Bilaterals I were also coded as being part of a package deal, because the issue linkage in the case of Bilaterals I has remained effective also after the adoption of the agreements; all agreements of Bilaterals I are abrogated as soon as one agreement is terminated. Table 17 shows the number of agreement reforms that were part of a package deal. In total, only one third of all agreement reforms were part of a package deal (last column). Also institutionalised revisions were not usually subject to issue linkage; however, the difference is not statistically significant. This figure also signifies that 46 of the institutionalised revisions concerned the Bilaterals I package, as agreement revisions were coded as part of a package deal only for Bilaterals I agreements.

Among negotiated agreement reforms, the share of package deals is higher, but also for negotiated agreement reforms the difference is not statistically significant. The effect of issue linkage is only statistically significant for negotiated agreement reforms adopted by parliament, and for negotiated reforms that directly referred to EU law. Among these reforms, package deals were twice as high as single reforms, and this higher frequency is also statistically significant ($p<0.001$). Hypothesis 3.1 thus has to be refined: issue linkage matters only for negotiations of agreement reforms which have to be adopted by parliament, or which are of a higher substantive integration quality.

Hypothesis 3.2 claims that integration steps with a higher substantive and legal integration quality become more likely over time. As already discussed in relation to the time-variant independent variables, the clearest development over time can be identified with regard to institutionalised agreement revisions and with regard to domestic implementation measures: both became much more frequent in recent years. With regard to the other forms of differentiated integration, the multivariate analysis will provide more detailed results.

Table 17: Sectoral agreement reforms and package deals

Hypothesis	**Variable**	**Institutionalised rev.**		**Negotiated, total**		**Negotiated, dimension 1 (adopted by parl.)**		**Negotiated, dimension 2 (with EU law ref.)**		***Total ref.***
		No.	*Mean*	*No.*	*Mean*	*No.*	*Mean*	*No.*	*Mean*	*No.*
H 3.1	Issue linkage	46	*0.62*	28	*0.38*	20	*0.27*	23	*0.31*	*74*
	No issue linkage	98	*0.74*	34	*0.26*	11	*0.08*	13	*0.10*	*132*
	Difference of means		*p = 0.0703*		*p=0.0703*		*p=0.0003*		*p=0.0001*	

Table 18: Federal law reforms related to sectoral agreement negotiations

Hypothesis	**Variable**	**Total EU relevant**		**Comp.**		**Adaptation**		**Implementation**		***Total ref.***
		No.	*Mean*	*No.*	*Mean*	*No.*	*Mean*	*No.*	*Mean*	*No.*
H 3.3	Negotiation rel.	50	1.00	3	0.06	47	0.94	0	0.00	*50*
	Other	448	0.41	162	0.46	88	0.25	101	0.22	*1112*
	Difference of means		*p=0.0000*		*p=0.0000*		*p=0.0000*		*p=0.0002*	

Table 19: New adoptions and total revisions of federal laws

Hypothesis	**Variable**	**Total EU relevant**		**Comp.**		**Adaptation**		**Implementation**		***Total ref.***
		No.	*Mean*	*No.*	*Mean*	*No.*	*Mean*	*No.*	*Mean*	*No.*
H 4	New laws	148	0.49	52	0.39	52	0.04	15	0.10	*299*
	Partial revisions	350	0.41	113	0.42	83	0.03	86	0.24	*863*
	Difference of means		*p=0.0136*		*p=0.5383*		*p=0.1109*		*p=0.0005*	

Hypothesis 3.3 claims that domestic rule transpositions are more likely in relation to negotiations with the EU than when they are not undertaken with the perspective of an agreement. Table 18 shows the number of federal law reforms that were related to agreement negotiations. Unsurprisingly, they all took place in EU-relevant areas, and none at the same time as implementation measures. Most negotiation-related federal law reforms were unilateral adaptations to EU law: about one third of all unilateral adaptations to EU law were related to agreement negotiations. This difference between the frequencies of unilateral adaptations among negotiation-related and non-negotiation-related reforms is statistically highly significant ($p<0.0001$). In three cases, legal reforms that were merely compatible with EU law were conducted in order to facilitate negotiations. These reforms were related to the negotiation of research agreements and concerned the approval of financial means for the participation in the respective EU programs. These reforms did not transpose EU rules, but were necessary for the successful conclusion of the negotiations. Hypothesis 3.2 is thus supported, with the specification that negotiation concessions normally need active rule transpositions, and not merely compatible reforms.

4.3.4 Alternative Explanation for Domestic Rule Transposition

Hypothesis 4 claims that domestic rule transpositions might be the result of policy transfer in case new issues appear on the political agenda. A legal reform is more likely to deal with a new issue when the reform is a new adoption or a total revision of a federal law, than when it is a partial revision. Table 19 shows the number of new adoptions and total revisions compared to partial revisions. About one third of all federal law reforms in the research period were new adoptions or total revisions of federal laws (last column). Among EU relevant law reforms, new laws were more frequent than in the whole data set, and this difference is statistically significant ($p = 0.0136$). On the contrary, regarding different categories of domestic rule transpositions, new laws did not contain EU rules more often than partial revisions. In the case of implementation measures, even the contrary is statistically significant. Implementation measures were more frequent among partial revisions of federal laws than among new laws and total revisions. Although the data show that EU law is more often relevant when laws are newly adopted or totally revised, EU rules are not more frequently

transposed via new laws or total revisions. Hypothesis 1.3 is thus not supported by the bivariate analysis.

The descriptive and the bivariate analyses support some hypotheses: As expected, most integration steps are conducted by the Federal Council and not brought to the polls. Domestic rule transpositions are indeed more likely if they are part of a reform package or if they are linked to agreement negotiations. These explanatory factors are related to domestic and intergovernmental negotiations and, therefore, the section is entitled Integration as a Result of Package Deals. The results of the descriptive analyses also revealed differences between different forms of integration: Institutionalised agreement revisions were more frequent in issue areas with more centralised governance in the EU, whereas negotiated agreement reforms and domestic rule transpositions are not clearly related to the scope of EU policies. Similarly, sectoral agreement reforms and domestic implementation measures became more frequent when European integration was less salient, whereas unilateral domestic adaptations were most frequent when European integration was salient in the electorate. Finally, the descriptive analysis also contradicted some hypotheses: In contrast to theoretical expectations, integration measures are more likely when the Swiss economy performs better, the seat share of pro-European parties seems not to play a role and new federal laws are not more likely to transpose EU rules.

4.4 Multivariate Analyses: Integration as a Result of Low Salience and Broad Consensus

In the following second part of the empirical analysis, I test the hypotheses in a multivariate setting. The descriptive and bivariate analyses confirmed the general expectation that not all independent variables and sometimes not all values of the independent variables are equally related to all forms of integration. The descriptive analysis did not always confirm the expectations formulated in the hypotheses section. Most importantly, I also found different effects for the independent variables I expected to matter for all forms of differentiated integration. Therefore, the multivariate analysis also follows an explorative path with the application of multinomial regression analyses. A multinomial regression predicts the value for different categories of a dependent variable based on the same set of independent varia-

bles, while not assuming that the categories of the dependent variables are ordered (cf. Kohler and Kreuter 2009).

Multinomial regressions simultaneously estimate binary logits for all comparisons among the categories of the dependent variables (Long and Freese 2001). Furthermore, they allow testing whether the nominal categories of the dependent variable are correlated differently to the independent variables. To that end, I conducted Wald tests that test whether the null hypothesis, which states that the categories of the dependent variable are equally related to the independent variables, can be rejected. Based on the Wald tests, I then conducted the final regression analyses distinguishing those categories of the dependent variable that are differently related to the independent variables. After the separate analyses of sectoral agreements and domestic legislation, I added a third multivariate analysis in which I analysed the data on an aggregate level, using the sum of integration steps both via sectoral agreements and via domestic rule transposition per year and policy field as dependent variable and testing their relation with the time-variant independent variables.

4.4.1 Sectoral Agreements

Ideally, a multivariate analysis of Switzerland's differentiated integration in general and the development of the sectoral agreements in particular would test the correlation of the independent variables with actually realised integration steps compared to the sum of theoretically possible integration steps. Unfortunately, this is not possible for the sectoral agreements, because we cannot measure integration steps that would have been theoretically possible but that Switzerland did not undertake.[37] Therefore, a multivariate analysis can only test whether different forms of sectoral agreement reforms are differently correlated to independent variables. Although this approach is the consequence of a shortcoming of the data, the hypotheses section as well as the descriptive analyses suggested that different forms of agreement reforms are differently related to independent variables, which is why this approach also promises further insights in that regard.

[37] See Chapter 2 for a discussion of the focus and limitations of the data set and why the measurement of the number of EU rules extended to Switzerland is very difficult.

The multinomial regression analyses started with the categories of sectoral agreement reforms introduced in section 4.3 and summarised in Table 14. In a first multinomial regression analysis, I tested the relation of the independent variables with a dependent variable with the following three categories: institutionalised reforms vs. negotiated reforms without EU law reference vs. negotiated reforms with EU law reference (dimension 2, Table 14). A Wald test showed that the null-hypothesis, stating that the nominal categories of the dependent variables can be combined, cannot be rejected in the case of negotiated agreement reforms with and without references to EU law. This means that in respect to the independent variables included in the model, it does not matter whether a negotiated agreement reform directly refers to EU law or not, but it matters whether a sectoral agreement reform was negotiated or followed an institutional update mechanism. This finding supports the results of Chapter 3 that the institutional characteristics of an agreement matter for the likelihood of agreement revisions. The second analysis distinguished between the following three categories of the dependent variable: institutionalised reforms vs. negotiated reforms adopted by the Federal Council vs. negotiated reforms subject to parliamentary approval (dimension 1, Table 14). For this regression, the Wald test showed that negotiated reforms adopted by government are not distinguishable from institutionalised revisions in respect of the independent variables in the model. Only negotiated reforms adopted by parliament are distinguishable from institutionalised reforms. This attenuates the findings of Chapter 3. Apparently, the decision-making process matters more than whether or not a revision is conducted according to a pre-defined institutional mechanism, and it also matters more than the substantive quality of a reform.

These preliminary analyses showed that there are two dimensions on which we can distinguish sectoral agreement reforms, which matter for the correlation with the independent variables. Table 20 presents the results of logistic regressions for these two binary variables. In Model 1, the dependent variable is negotiated agreement reforms, which takes the value 1 if a reform was negotiated and 0 if it was an institutionalised revision. In Model 2, the dependent variable takes the value 1 only if a reform was negotiated and adopted by parliament, and 0 in all other cases. The two variables overlap partially (corr=0.67). The regression results confirm a few of the theoretical expectations and some findings of the descriptive analysis. Model 1 shows that negotiated agreement reforms are more likely if they are linked to other issues. This confirms hypothesis 3.1 and the findings from the bivariate analysis

(Table 15). Issue linkage is also positively correlated to negotiated reforms adopted by parliament, but this correlation is not statistically significant (Model 2). Model 1 also shows that agreement reforms are less likely to be negotiated if they are adopted by the Federal Council. This finding supports the finding of the bivariate analyses that negotiated agreement reforms are most often approved by parliament. Accordingly, hypothesis 2.1 does not hold for negotiated agreement reforms.

Model 2 shows that negotiated agreement reforms subject to approval by parliament are often also brought to the polls. This finding supports the finding of the bivariate analysis presented in Table 15. Accordingly, hypothesis 2.3 must be rejected for negotiated agreement reforms adopted by parliament. In addition, Model 2 shows that negotiated agreement reforms, which have to be approved by parliament, are less likely if European integration is more salient, and more likely if the seat share of pro-European parties in parliament is higher. These findings support the claims made in hypotheses 2.4 and 2.5 and reveal correlations that could not be detected in the descriptive graphs in Figure 11. These findings also make the contra-intuitive finding regarding the likelihood of referenda less surprising, as low issue salience and stronger pro-European parties make it easier to win a referendum for the pro-integration actors.

Finally, Model 1 and Model 2 include the year of adoption of a sectoral agreement reform as independent variable in order to test the claim made in hypothesis 3.2. Hypothesis 3.2 claimed that the substantive and legal quality of Swiss differentiated integration is likely to increase over time. Whereas Model 1 shows a very small positive but statistically insignificant correlation of time with negotiated agreement reforms, Model 2 shows a negative and statistically significant correlation of time with negotiated agreement reforms adopted by parliament. This finding supports the descriptive picture shown in Chapter 2: institutionalised agreement reforms became much more likely in recent years, negotiated agreement reforms are still frequent, but reforms adopted by parliament became less frequent. This finding, however, is only partly appropriate for testing hypothesis 3.2 as the dependent variables do not measure the substantive and legal integration quality of agreement reforms. These qualities proved not to matter for the distinction of different agreement reforms in respect to the independent variables used in this analysis. In sum, the multivariate analysis of negotiated agreement reform showed that political factors and negotiation-related varia-

bles are correlated to some forms of agreement revisions, whereas economic factors and the policy scope in the EU are not correlated to negotiated agreement reforms.

Table 20: Logistic regression analysis of negotiated sectoral agreement reforms

	Negotiated	Negotiated, adopt. by parl. *
	(1)	(2)
H 1.1		
GDP growth diff. CH-EMU	-0.283	0.956
	(-0.82)	(1.81)
H 1.2		
Export to the EU	0.0263	0.107
	(0.71)	(1.04)
H 1.3		
EU policy scope	0.00900	-0.0224
	(0.03)	(-0.07)
H 2.1		
Adopted by Federal Council	-2.539***	-
	(-5.06)	-
H 2.3		
Popular vote on reform	-0.109	3.752***
	(-0.11)	(3.40)
H 2.4		
Issue salience	0.121	-0.473*
	(0.99)	(-2.46)
H 2.5		
Pro-Europ. parties seat share	-0.0300	0.173**
	(-0.60)	(2.58)
H 3.1		
Issue linkage	1.363*	0.232
	(2.37)	(0.35)
H 3.2		
Year of adoption	0.00817	-0.751**
	(0.07)	(-3.10)
Constant	-14.80	1491.3**
	(-0.06)	(3.09)
Observations	192	192
LR Chi2	61.00***	56.89***
AIC	183.29	127.54
BIC	215.86	156.86

Note: Logit coefficients; *t* statistics in parentheses; * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

* The independent variable measuring whether a reform was adopted by the Federal Council was excluded from Model 2, as it is a perfect predictor for a reform not to be adopted by parliament.

4.4.2 Domestic Rule Transpositions

The descriptive analyses led to different conclusions regarding the validity of the hypotheses also for different types of domestic rule transpositions. In the following, I also test for domestic rule transpositions whether the independent variables are differently correlated to the various categories of rule transpositions. In the case of domestic legislation, in contrast to the sectoral agreements, the data set contains information about unrealised integration steps: Federal law reforms in EU-relevant areas, which were neither compatible with the relevant EU rules nor transposed EU rules, can be interpreted as possible but unrealised integration steps. Federal law reforms in purely domestic areas were excluded from the analysis. The multinomial regression analysis used a dependent variable with the following categories: (1) federal law reforms without active transpositions of EU rules; (2) unilateral partial adaptations; (3) unilateral full adaptations; and (4) implementation measures. These categories are again the result of a preliminary multinomial regression analysis, after which a Wald test showed that EU-compatible federal law reforms can be combined with federal law reforms in EU-relevant areas that do not transpose EU rules. Category 1 thus contains EU relevant federal law reforms that were not EU compatible and those that were EU compatible. In addition to the independent variables testing the hypotheses, the analysis includes one control variable, which proved to be positively correlated to domestic rule transpositions in Chapter 3: the time since the last adaptation of a federal law.

Multinomial logit coefficients are difficult to interpret substantively. To ease interpretation, Table 21 shows first the results of a likelihood-ratio test testing whether the null hypothesis that all coefficients of an independent variable are 0 can be rejected. The variables for which the null hypothesis can be rejected, and that thus are significantly correlated to domestic rule transpositions are emphasised in italics and bold. Table 21 shows that unlike in the regression analysis of negotiated agreement reforms (Table 20), the economic variables are correlated to domestic rule transpositions; so are variables related to the domestic political system (Federal Council initiative, linked reforms, referenda). The political variables measuring issue salience and strength of pro-European parties, which are correlated to negotiated integration steps, are not correlated to domestic rule transpositions. As suggested by the bivariate analyses, agreement negotiations also influence domestic rule transpositions (cf. Table 18). Like in the regression analysis in Chapter 3, the time since the last rule transposi-

tion in the same federal law is also in this analysis significantly correlated to rule transpositions.

Table 22 presents the average marginal effects of the independent variables on the four categories of the dependent variable. Average marginal effects show the average change in the probability of the respective category of the dependent variable when the independent variable increases by one unit. In terms of interpretation, average marginal effects have the advantage that they are the same for the effect of a specific independent variable on the respective category of the dependent variable, regardless of which outcome category was used for comparison in the regression estimation, because they are based on absolute rather than relative differences. For example, the difference between Swiss GDP growth and EMU growth has a negative average marginal effect on the probability that a federal law reform is an implementation measures. The same is true for the volume of exports to the EU compared to the previous year. These effects are shown by the first two rows in the last column (4, Implementation) of Table 22. Hypotheses 1.1 and 1.2 are thus supported for implementation measures in domestic legislation. On the contrary, for unilateral full adaptations, hypothesis 1.1 must be rejected: better performance of the Swiss economy even has a positive marginal effect on unilateral full adaptations.

Among the hypotheses related to the domestic decision-making process, the multinomial regression analysis supports hypothesis 2.1 and 2.2, but only for implementation measures: Domestic implementation measures are more likely if they are initiated by the Federal Council and more likely if they are linked to other domestic reforms. The average marginal effects of the Federal Council are not significant, but the relative risk ratios, which are based on relative differences, are (see Table 35 in Annex C.3). The statistical significance of the effect thus depends on model specification, but the direction of the effect does not. Linked reforms also have a positive effect on unilateral full and partial adaptations, but neither the average marginal effects nor the relative risk ratios are statistically significant. The results from the bivariate analysis are thus only partly confirmed by the multivariate analysis (cf. Table 16). Interestingly, however, linked reforms negatively affect the probability that a reform does not contain a rule transposition, and this effect is statistically significant. Reform packages at the domestic level thus seem to play a role for reforms transposing EU rules.

The result on referenda, on the contrary, does not confirm the results from the bivariate analyses and contradict hypothesis 2.3. The null hypothesis that all coefficients associated with this variable is 0 cannot be rejected (Table 21), it does not have a significant average marginal effects on the categories of the dependent variables, but it significantly enhances the relative risk of a federal law reform to be an implementation measure (Table 35). Also with regard to the variable negotiation relation, the model specification affects the statistical significance of the results. The likelihood-ratio test indicates that the variable is highly significant, so do the relative risk ratios, which indicate that both full and partial adaptations are much more likely in relation to negotiations, but the average marginal effects are not statistically significant.

Table 23 shows the predicted probabilities of the different categories of the dependent variables for the binary independent variables. This table corresponds to the results of the bivariate analysis, which indicated that unilateral adaptations are almost never brought to the polls, whereas implementation measures are often subject to a referenda and it also shows that a relation to agreement negotiations makes full transpositions of EU rules very likely. Hypothesis 2.1 regarding the role of the Federal Council, hypothesis 2.3 regarding popular referenda and hypothesis 3.3 regarding the relation to agreement negotiations thus must not be rejected based on the regression analysis.

Table 21: Likelihood-ratio tests for independent variables (N=457)

Variable	chi2	df	P>chi2
Growth, CH-EMU	***14.156***	***5***	***0.015***
Export to EU	***19.097***	***6***	***0.004***
EU Policy scope	2.566	4	0.633
Federal Council	***11.338***	***5***	***0.045***
Linked reform	***38.526***	***6***	***0.000***
Referendum	***14.989***	***5***	***0.010***
Issue salience	2.897	6	0.822
Pro EU party share	4.309	6	0.635
Year	6.812	4	0.146
New law	4.08	4	0.395
Negotiation related	***104.153***	***5***	***0.000***
Time since last adapt.	***16.476***	***4***	***0.002***

Note: Null hypothesis: All coefficients associated with given variable(s) are 0.

Table 22: Multinomial Logit Regression; Average Marginal Effects on domestic rule transpositions

	(1) No EU rule	(2) Partial adapt.	(3) Full adapt.	(4) Implementation
H 1.1				
GDP growth diff. CH-EMU	-0.00285	0.0401	0.0276*	-0.0649**
	(0.0288)	(0.0212)	(0.0139)	(0.0250)
H 1.2				
Export to the EU	0.00782	0.00200	0.00202	-0.0118***
	(0.00439)	(0.00336)	(0.00309)	(0.00273)
H 1.3				
EU policy scope	0.0180	-0.00108	-0.000288	-0.0167
	(0.0151)	(0.0126)	(0.0110)	(0.0107)
H 2.1				
Initiated by Federal Council	-0.696	-0.379	0.894	0.181
	(51.81)	(43.23)	(102.0)	(6.933)
H 2.2				
Linked reform	-0.220***	0.00315	0.0269	0.190***
	(0.0394)	(0.0318)	(0.0245)	(0.0290)
H 2.3				
Popular vote on reform	1.028	-1.717	0.315	0.374
	(104.6)	(172.9)	(41.98)	(26.25)
H 2.4				
Issue salience	-0.00160	0.00865	0.00498	-0.0120
	(0.0123)	(0.00966)	(0.00810)	(0.00928)
H 2.5				
Pro-Europ. parties seat share	0.00365	-0.000787	-0.00505	0.00218
	(0.00436)	(0.00320)	(0.00291)	(0.00362)
H 3.2				
Year of adoption	-0.00918	-0.000349	-0.0129	0.0224*
	(0.0129)	(0.00990)	(0.00832)	(0.0101)
H 3.3				
Negotiation related	0.921	0.503	0.306	-1.730
	(311.7)	(62.23)	(15.96)	(389.9)
H 4				
New law/ total revision	-0.0441	0.0643*	-0.00185	-0.0184
	(0.0470)	(0.0325)	(0.0243)	(0.0386)
Control variable				
Time since last adapt.	-0.0212***	0.00253	0.0124***	0.00627
	(0.00607)	(0.00446)	(0.00372)	(0.00413)
Observations	457	457	457	457

Note: Average marginal effects; standard errors in parentheses; * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

The hypothesis regarding issue salience and the strength of pro-European parties is not supported by the multivariate analysis (hypotheses 2.4 and 2.5). This is not surprising in light of the bivariate analysis (cf. Table 16) as well as the literature where many scholars assume that domestic transpositions of EU rules are unrecognised by the public. Table 23 confirms that unilateral rule transpositions are almost never brought to the polls. In contrast, hypothesis 3.2, which claims that the substantive and legal integration quality of Swiss differentiated integration increases over time, cannot be rejected by the multinomial regression analysis. Implementation measures, the legally strongest form of domestic rule transpositions became more likely over time, and this average marginal effect (and the relative risk ratio) is statistically significant. The negative effect of time on unilateral adaptation measures, on the contrary, is not statistically significant, and the likelihood-ratio test does not allow the rejection of the null hypothesis that all coefficients associated to time are zero. The development over time of domestic rule transpositions, and especially the increase of implementation measures and the decrease of unilateral rule transpositions, which was indicated to by Figure 8, is thus not statistically significant.

Finally, also the alternative hypothesis regarding domestic rule transposition finds only weak support in the multinomial regression analysis, which confirms the results from the bivariate analysis: New federal laws are slightly more likely to be partial adaptations to EU law, but this effect is not statistically significant according to the likelihood-ratio test (see Table 21). Hypothesis 4 is thus not confirmed.

Table 23: Predicted probabilities of domestic rule transpositions by binary independent variables

	No EU relation	Partial adapt.	Full adaptation	Implementation
Federal Council	0.80	0.09	0.08	0.03
Linked reform	0.73	0.04	0.08	0.15
Referendum	0.59	0.00	0.00	0.41
Negotiation related	0.02	0.17	0.81	0.00
New law	0.78	0.17	0.05	0.01

Note: Predicted from the multinomial regression results presented in Table 22 with the given binary independent variable with value 1 and all other independent variables at their mean values.

4.4.3 Substantive Integration across Time and Policy Field

The regression analysis in sections 4.4.1 and 4.4.2 tested differentiated integration via sectoral agreements and domestic rule transpositions separately. This revealed a detailed picture of the relationship between the tested explanatory factors and different integration measures. At the same time, the separate analysis might also hide some effects as it is probable and sometimes discussed in the literature that domestic rule transpositions can serve as an alternative for sectoral agreements. Partially, such effects were already analysed. In Chapter 3, I showed that domestic rule transpositions are more likely in policy fields with harmonisation agreements, but less likely in policy fields with agreements that directly refer to EU law. If these findings are part of a more general effect that domestic rule transpositions complement sectoral agreements, the time-variant variables measuring general developments and not processes related to single reforms are likely to also affect Swiss differentiated integration at the aggregate level. In order to test this assumption, I conducted another multivariate regression analysis testing the correlation of the time-variant variables with the total number of substantive integration steps per policy field and year. Table 24 presents the results.

The dependent variable was measured in two different ways, representing two levels of aggregation. First, at the more detailed level, I used the total number of full and partial adaptations of federal laws (including implementation measures) and the total number of sectoral agreement reforms per policy field (sub-chapter of the Classified Compilation of Federal Legislation and year). This dependent variable is a count variable, for which I conducted a Poisson regression analysis. The results are reported in Table 24, Model 1. For a second analysis, the dependent variable was measured on the most aggregate level, counting substantive integration steps per year and omitting the distinction of policy fields. The results are reported in Table 24, Model 2. For the Model 2 estimation, the EU policy scope variable was omitted, because it measures not only the development over time, but also the variance between policy fields.

The two models in Table 24 contradict some of the hypotheses, show a previously unobserved correlation and support some other hypotheses. The most surprising finding is that Swiss differentiated integration is more likely in years when the Swiss economy performs better than the average of the EMU. This finding contradicts hypothesis 1.1, but is plausible

based on the descriptive analysis of the development over time, which showed increasing trends for both, Swiss comparative economic performance and Swiss differentiated integration measures (cf. Figure 7 and Figure 8) and it is consistent with the positive correlation of GDP growth with negotiated agreement reforms adopted by parliament (Table 20) and with unilateral full transpositions of EU law (Table 22). However, it contradicts the significant negative average marginal effect of comparative GDP growth on the probability of implementation measures (Table 22).

Table 24: Poisson regression analyses of aggregate number of substantive integration steps

	(1)	(2)
Substantive integration steps	per policy field and year	per year
	Poisson regression	*Poisson regression*
H 1.1		
GDP growth diff. CH-EMU	0.213**	0.377***
	(2.93)	(5.43)
H 1.2		
Export to the EU	-0.00434	-0.00606
	(-0.57)	(-0.82)
H 1.3		
EU policy scope	0.110**	-
	(3.04)	-
H 2.4		
Issue salience	-0.00999	-0.128***
	(-0.38)	(-5.14)
H 2.5		
Pro-Europ. parties seat share	-0.00935	0.0236*
	(-0.89)	(2.37)
H 3.2		
Year	-0.00478	-0.118***
	(-0.15)	(-4.14)
Constant	10.49	238.1***
	(0.17)	(4.21)
Observations	297	20
LR Chi2	54.86***	98.36***
AIC	1217.7	209.7
BIC	1243.5	215.7

Note: *t* statistics in parentheses; * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

With regard to the second hypothesis on economic performance, both models in Table 24 show the expected negative correlation, but these coefficients are not statistically significant. The other surprising finding contradicting a hypothesis is the negative and statistically significant correlation of time with integration measures in Model 2. This effect was even more pronounced and could also be observed in Model 1, when institutionalised agreement reforms were not included in the dependent variable (results not reported). Following from this, I conclude that only institutionalised agreement revisions and implementation measures became more frequent over time, but that this increase is not statistically significant (cf. Table 21). Agreement reforms adopted by parliament and unilateral rule transpositions, on the contrary, became less frequent over time. The effect, however, is statistically only significant for agreement reforms adopted by parliament (cf. and Table 22). Regarding hypothesis 3.2, this interpretation means that legal integration became stronger over time, whereas new substantive integration steps became less frequent.

Model 1 shows a correlation, which could not be observed in the previous regression analysis and Model 2 shows results that support hypotheses 2.4 and 2.5. Model 1 shows that the scope of an EU policy is positively correlated to the probability of integration steps per year and policy field and this correlation is statistically significant. Hypothesis 1.3 thus seems to hold for Swiss differentiated integration in general, and not for single forms of differentiated integration measures. The questions of whether domestic rule transpositions compensate for lacking sectoral agreements and of whether sectoral agreements make domestic rule transpositions unnecessary, thus gain in importance with this finding and deserve more attention in future research. Model 2 supports a result of the regression analysis of negotiated agreement reforms adopted by parliament: On the aggregate level, differentiated integration steps are more likely if European integration is less salient in the electorate and if the seat shares of pro-European parties are higher. This effect was even more pronounced and could also be observed in Model 1 when institutionalised agreement reforms were not included in the dependent variable (results not reported).

4.5 Discussion: Switzerland's Integration Compromise

This chapter started with a review of the rich literature on Swiss differentiated integration, the Europeanisation of Swiss politics and policies, and the policy of 'autonomous adaptation' of domestic legislation to EU rules. The starting point of the chapter was the assumption that Swiss differentiated integration is the result of compromises at both the domestic and international levels, because every single integration step has to be decided upon anew. At the domestic level, these compromises have to be negotiated, for example, between the export-oriented economic sector, on the one hand, and the inward-oriented economic sector alongside representatives of social interests, on the other. At the international level, between Switzerland and the EU, compromises are necessary mainly because the EU prefers the uniform applicability of its own rules, whereas Switzerland prefers tailor-made solutions, especially when its regulatory traditions differ from those in the EU. The main insight from the literature review was that the explanatory factors correspond well to classical theoretical arguments, most prominently those found in the liberal intergovernmentalist literature, but that they are probably related differently to different integration measures. Because most research has been based on case studies, we do not know what kind of integration steps can be explained by what explanatory factors. Therefore, the empirical analyses explored to what extent qualitatively different forms of differentiated integration can be explained by the same or different variables, or by different values of the same independent variables.

With regard to the differences between various forms of integration steps, the empirical analyses led to the following conclusions. The empirical analysis of the sectoral agreements built on the insights from Chapter 3, where I showed that agreement revisions can to a considerable degree be predicted by the institutional form of the sectoral agreement. I thus distinguished between such institutionalised agreement revisions (revisions of dynamic agreements and Mixed Committee decisions), on the one hand, and negotiated agreement reforms, on the other, building on the assumption that the latter are more likely to be related to the exogenous explanatory factors discussed in the literature. Among these negotiated reforms, I further distinguished between negotiated reforms approved by parliament and those approved by the government, and between negotiated reforms referring directly to EU law and those without such references. The descriptive analysis showed that the frequency of institutionalised agreement reforms has been much higher since 2005, whereas

the frequency of negotiated reforms is related to the adoption of important agreements. Preliminary multinomial regression analyses showed that institutionalised revisions indeed differ from negotiated revisions in respect to the independent variables included in the models. In the case of negotiated reforms with and without direct references to EU law, the distinct substantive integration quality does not matter statistically for their correlation with the independent variables, but the distinction between institutionalised and negotiated reforms does. In the case of negotiated reforms adopted by parliament or the government, the relevance of institutionalised revisions had to be attenuated: negotiated reforms approved by the government in its own right proved not to be distinguishable from institutionalised revisions in respect of the independent variables.

For the analysis of domestic rule transpositions, I distinguished between rule transpositions which are related to the implementations of sectoral agreements on the one hand, and unilateral rule transpositions on the other. Among the unilateral rule transpositions I further distinguished between full and partial adaptations to EU rules, and merely EU compatible federal law reforms. The descriptive analysis presented in sections 4.3.1 and 4.3.2 showed that all forms of rule transpositions were subject to large ups and downs during the research period, but that unilateral rule transpositions became less frequent in recent years, whereas implementation measures were nearly absent in the 1990s and gained in importance with the implementation of the Bilaterals I package. A preliminary multinomial regression analysis showed that EU-compatible reforms cannot be distinguished from reforms in EU-relevant areas not transposing EU rules to Switzerland in respect of the independent variables used throughout this chapter, whereas the remaining three categories (unilateral full and partial adaptations and implementation measures) seem to follow slightly different mechanisms. These findings indicate that it was fruitful to measure different substantive and legal qualities of domestic transpositions of EU rules, because they are related differently to the independent variables.

These statistically distinguishable categories of integration steps were analysed in terms of three sets of hypotheses. A first set of hypotheses is related to the role of economic performance in general and sectoral economic preferences in particular. Economic integration theory expects a country to be more likely to pursue regional integration when its economy performs comparatively worse than the economy of those countries participating in the relevant regional integration project. In the literature on Swiss European policy, scholars often

argue that the interests of the export-oriented sector are crucial for Switzerland's European policies. Regarding Swiss economic performance, the empirical analysis shows a picture that contradicts the theoretical expectation: during the research period, the Swiss economy recovered from its recession in the early 1990s and since 2005 its economic growth has been higher than the growth of the EMU average. At the same time, Switzerland has also undertaken more integration steps. This effect is statistically significant in multivariate analyses of domestic rule transpositions (in the case of unilateral full transpositions) and of the aggregate number of substantive integration measures. Only domestic implementation measures are more likely when Swiss comparative economic growth is worse. This corresponds to the theoretical expectation. This finding puts an often discussed question on the table, namely of the contribution of Switzerland's differentiated integration in spurring its economic performance. Also another explanation seems plausible: perhaps the EU tolerates less special treatment and exerts higher pressure on Switzerland in times when it is economically performing worse. Both these questions deserve attention in future research.

With regard to the hypothesis about the relevance of the export-oriented sector, the analysis provides only tentative findings, because the integration variables do not measure who benefits from integration steps, and because only aggregate data on economic performance were used as independent variables. The tentative conclusions are the following: Only domestic implementation measures are affected negatively if export to the EU increased compared to the previous years. Negotiated sectoral agreement reforms, as well as differentiated integration measured on the aggregate level seem not to be related to the performance of the export sector. This is not very surprising as agreement negotiations often last several years, and even if they are conducted because of economic concerns the time point of their entry into force is more likely to depend on political factors than on the state of the economy.

A second set of hypotheses dealt with political factors. The literature review showed that the domestic decision-making system and its institutions have been in the focus of much of the research on Switzerland's differentiated integration. Theoretically, I expected that integration is more likely when the Federal Council is in charge of it, when reforms are adopted as packages at the domestic level, and when popular referenda are not necessary or at least not held. These hypotheses are only partly supported by the empirical analyses. The claim that the Federal Council is in charge of most integration steps is true for both sectoral

agreements and domestic legislation. Nevertheless, the claim has to be nuanced. Half of the most important sectoral agreement reforms, those negotiated between Switzerland and the EU anew, are adopted by parliament. Among these, the substantively strongest integration steps with direct references to EU law were even in most cases adopted by parliament. In addition, a majority of all important integration steps – the negotiated reforms adopted by parliament and those referring to EU law – were also subject to an optional or mandatory popular referendum. The empirical analysis of the domestic rule transpositions showed similar results. Although the Federal Council was in charge of almost all unilateral rule transpositions and implementation measures, especially the latter often had to be approved in popular referenda. Unilateral rule transpositions, on the contrary, were almost never challenged in a referendum. We can thus conclude that although institutional mechanisms are responsible for the recent dynamic in the development of the sectoral agreements, important integration steps via sectoral agreements and their implementation measures were by no means conducted by stealth: they go through the normal decision-making process.

Public attention, however, seems not to be high enough to challenge unilateral rule transpositions – they are almost never brought to the polls. This finding is related to two other findings: domestic rule transpositions and especially implementation measures are more likely when the respective reforms are part of reform packages at the domestic level. This confirms expectations found in the literature and in the theory that opponents of sectoral agreements need to be compensated for their potential losses in order to gain their support and clear the hurdle of an optional referenda. Seemingly, this strategy is successfully applied. In the case of unilateral rule transpositions, this may help in avoiding referenda. These findings also fit well with the results about the role of the salience of European integration in the electorate and the party positions with regard to Europe. Negotiated sectoral agreement reforms adopted by parliament as well as substantive integration steps on the aggregate level are less likely when European integration is more salient in the electorate. In contrast, and also as expected by theory, a higher seat share of pro-European parties makes negotiated sectoral agreement reforms adopted by parliament and substantive integration steps in general more likely. Both, the salience of European integration and party positions are not related to domestic rule transpositions. As discussed in section 4.2.2, the relevance of issue salience and party positions depends on the domestic decision-making process. In the case of the sectoral agreements, the important elements are the necessity of approval by parlia-

ment and the possibility of popular referenda. In the case of domestic rule transpositions, the claim made by Afonso et al. (2014) that politicisation has to be used by political actors in order to make a difference is confirmed. As unilateral rule transpositions are almost never challenged in popular referenda, issue salience and party positions do not matter. As claimed in the literature, these integration measures are conducted behind closed doors and not influenced by public opinion.

The literature review showed that not only domestic, but also international factors and the EU internal development may affect the likelihood and quality of Switzerland's differentiated integration. Regarding negotiations, research showed that issue linkage was crucial for the success of negotiations between Switzerland and the EU and allowed them to overcome conflicts. This finding is corroborated by the empirical analysis of negotiated agreement reforms and negotiated agreement reforms adopted by parliament: they were more likely if they were part of a package deal, and unilateral rule transpositions were quite often conducted during agreement negotiations. The result about issue linkage, however, has to be interpreted cautiously. Only the most obvious issue linkages, the Bilaterals I and II agreement packages, were coded as such. More informal linkages of issues could not be identified with the means of a quantitative data collection. The positive correlation of issue linkage with negotiated agreement reforms points at the relevance of the Bilaterals I and II packages. Future research has to show, how Switzerland and the EU agreed on the negotiated agreement reforms which were adopted by parliament, and which cannot be explained by issue linkage.

The finding about the declining probability of negotiated sectoral agreement reforms approved by parliament and of the declining probability of substantive integration measures on an aggregate level is surprising. The finding is attenuated by the fact that institutionalised reforms and reforms adopted by the Federal Council and domestic implementation measures became more frequent over time (cf. Table 20 and Table 22). Regarding the development over time, I thus conclude that the legal integration of Switzerland has had an increasingly strong effect over time. Sectoral agreements have been revised more often, and also they needed implementation measures in domestic legislation more often. New substantive integration steps, on the contrary, have become less frequent over time. This finding confirms the assumptions that the EU has become less flexible over time with regard to special solutions for Switzerland, and that it has become difficult for Switzerland to get ac-

cess to new EU policies. The time effect is probably also related to the effect of the scope of a policy inside the EU. The empirical analysis provided only weak support for the assumption that stronger policy centralisation leads to integration. Only on the aggregate level is substantive integration more likely in policy fields and years with a larger policy scope inside the EU. Like the EU's inflexibility, also the policy scope thus could have a contradictory effect on Switzerland's differentiated integration. On the one hand, integration becomes more difficult and thus less likely over time and with increasing policy scope. On the other hand, if integration still takes place, it is of a higher legal quality. However, the observed effects are not the end of the story. The empirical analysis covered only twenty years and showed that especially negotiated integration steps are unequally distributed over time, because agreements were often adopted as packages. Negotiations with the EU on many new issues are ongoing, and probably new packages will enter into force in the coming years and reverse the trend.

The chapter built the argument on liberal intergovernmentalist theory of European integration. In sum, the chapter showed that the theory is not only able to explain 'grand bargains', but that it also provides a useful guideline for the analysis of the peculiar Swiss approach to differentiated integration, for which grand bargains are less important than day-by-day decisions. However, the analysis based on the liberal intergovernmentalist framework was mainly fruitful, because it could build on the insights from Chapter 3 where I analysed the institutional dynamics. Even though Switzerland refrained from supranational integration, Chapter 3 showed that the institutional form of its agreements with the EU matter for their dynamic development. In that regard, the liberal intergovernmentalist claim that governments remain in full control of the integration steps they agreed upon in intergovernmental settings must be attenuated even for the non-member state Switzerland. Although the Swiss government may remain in full control, this is surely not the case for parliament or public attention. Institutionalised agreement reforms do not depend on the stance of parliamentary parties or public opinion. The analysis of different forms of differentiated integration separately revealed further that the intra-state decision-making process is indeed crucial for differentiated integration. In that regard, the present findings are important for the intergovernmental claim that integration interests are defined domestically, and they are also important for other European countries where the call for popular referenda on issues of European integration has become louder in recent years.

5 Conclusion

Switzerland is a special case with regard to its European integration situation; however, the characteristics which make this small country in the heart of Europe so special are not unique. Based on this assumption, I conceptualised Switzerland as a case of differentiated European integration and motivated this empirically and theoretically. Empirically, the Swiss policies dealing with the challenge of European integration are similar to those of other European countries that have taken a more reluctant stance towards European integration – both member states and non-member states alike. The Swiss policies towards European integration are thus not a uniquely Swiss invention, but have been a permanent characteristic of the broader picture of European integration and thus need to be researched as part of that phenomenon. Theoretically, the conceptualisation of Switzerland as a case of differentiated integration was motivated by recent theoretical and empirical research in that area, which usually defines differentiated integration as the differentiated validity of EU rules. The instruments of Switzerland's European policy all rely to some extent on EU rules. Swiss European policies are thus part of European integration by their history, nature, and recent definitions of differentiated integration.

Switzerland's differentiated integration is an important area of research, because it is related to other transformations of the Swiss political system during the research period of this thesis, namely the two decades between 1990 and 2010. Besides the rapid development of European integration, these transformations concern the power constellations among political actors, the changing nature of decision-making processes and structural changes in the economy. For example, the right-wing Swiss People's Party, which was a small player in the early 1990s, had grown to become the largest parliamentary party by 2003. It owes its success partly to the mobilisation of the losers of globalisation and opponents to European integration. At the same time, the leftist parties also increased their vote share, which led to an increasing polarisation of the party system (Albertazzi 2008). Today, the decision-making process in Switzerland is dominated by these polarised federal parties, the government, and a few economic peak associations. When an issue is related to European integration, research showed that decision-making processes are more exclusive and consultations are more informal than in purely domestic processes. In the economic realm, Switzerland went

through recessions in the early 1990s, after the turn of the millennium and during the financial crisis. The financial sector has doubled in size during the research period and became more centralised and exports to the European Union have risen steeply (Church et al. 2007). Some of these developments were analysed in relation to Switzerland's differentiated integration in Chapter 4. In this conclusion, I will discuss the transformations of Swiss-EU relations in light of these general transformations of the Swiss political system.

The transformation of the Swiss political system and its differentiated European integration are not only of interest for scientific debates, but are also issues which are politically salient in Switzerland and beyond. The various popular votes on European integration in Switzerland revealed a new cleavage in the Swiss electorate, which was also observed in other European countries, but more influential in Switzerland, because Switzerland decides on integration measures case by case, and many integration steps can be challenged in a popular referendum. So-called "losers" of globalisation oppose European integration for economic as well as cultural reasons (Kriesi 2007). Besides the fear of increasing economic competition, fears related to political identity are important in Switzerland. One argument against formal EU membership in Switzerland is that it could take some political rights away from citizens and the cantons. Federalism, direct democracy and neutrality are important elements of the national identity. In recent years, however, issues of subsidiarity and more direct citizen participation have also been discussed in EU member states and the EU itself. The questions, which have sought urgent answers in Switzerland since the early 1990s, have become general concerns.

The current stalemate in negotiations between Switzerland and the EU on an institutional framework for the sectoral agreements can be interpreted not only as a consequence of the shortcomings of Switzerland's bilateral way, but also of these general tensions of the European integration project. Swiss politicians are reluctant to assign enforcement competences to an international institution and agree on automatic agreement updates, because they fear a loss of democratic control and do not believe that decision-making rights in the EU would compensate for that loss. At the same time, citizens call for referenda and participation rights in the EU as well. The challenge to reconcile democratic participation with European integration is thus not only urgent for Switzerland, but for the EU, too. The Swiss example shows that integration, which regularly has to be approved at the polls, is possible, but develops less smoothly and in a less foreseeable way.

This concluding chapter summarises the findings of the thesis and discusses to what extent the research questions formulated in Chapter 1 were answered. It proceeds as follows. The first section serves as summary and re-tells the history of Switzerland's differentiated integration since 1990 in light of the findings of the thesis. In the second section, I discuss the findings in light of the literature on differentiated integration and Europeanisation. This section includes a critical assessment of the benefits and shortcomings of the conceptualisation of Switzerland as a case of differentiated integration, of the explanatory power of integration theories for Switzerland as well as some comparative remarks. In the third section, I discuss the findings in light of the question posed in the introduction: in what regards Switzerland can be considered a Gallic village based on the analysis of its European policies. Related to this question, I discuss the role of public opinion, as the results of this thesis suggest that some integration steps are enabled by a permissive consensus, but that the whole integration framework remains fragile because of a 'constraining dissensus'. The fourth section resumes the discussion started in the last section of the introductory chapter and discusses the political relevance of the findings and the open questions.

5.1 Swiss Differentiated Integration: Continuity and Change since 1990

This thesis covered the development of Switzerland's differentiated integration after 1990, because the early 1990s were identified as a turning point for Switzerland's European policy. This is not surprising, as the early 1990s were a turning point not only in Switzerland, but also geopolitically and with regard to European integration. For Switzerland, the early 1990s were a turning point because the country started to pursue more active European policies via the transposition of EU rules into domestic legislation and the negotiation of sectoral agreements, even though it had rejected the EEA agreement (Tobler 2008; Maiani 2008). The analysis of the development of these policies since then revealed some continuity but also some changes, and more turning points. The most important aspect of continuity is the legal form of Swiss-EU relations: they are still regulated in the form of sectoral agreements, which are formally treaties of international law. The most important changes, however, also concern the legal quality of integration. In recent years, sectoral agreements were revised

much more often, and required implementation measures in domestic legislation more often than in the 1990s. At the same time, the policy of unilateral rule transposition, which was discussed as an important element of Switzerland's new European policy after the rejection of the EEA, lost importance. Whereas it indeed had an important impact on domestic law-making in the 1990s, it had been substituted by rule transpositions related to sectoral agreements by the end of the research period.

5.1.1 Sectoral Agreements: Still Life with Dynamic Surprises

The most important differences between ideal-type European integration and traditional international treaties are that international treaties are usually static and monitored by the parties to the treaties on their respective territory. The treaties are static because every amendment has to be negotiated between the parties. This is fundamentally different in European integration, where in the founding treaties member states assign enforcement competences and legislative rights to intergovernmental and supranational institutions. Legally, most sectoral agreements between Switzerland and the EU are static and also, empirically, most proved to be static in the research period. Almost half of the sectoral agreements in force for at least one year between 1990 and 2010 were adopted before 1990 and never revised until 2010. But also after 1990, many agreements that were newly adopted were never revised. The large majority of sectoral agreements are thus not only legally static international treaties, but are indeed never amended. This is the part of the relation between Switzerland and the EU that resembles a still life and that did not lie in the focus of this thesis, as the thesis used legal reforms as units of analysis. The dynamics analysed in this thesis and the conclusions summarised in the following concern 43 sectoral agreements which were newly adopted during the research period and 19 sectoral agreements which were revised at least once in that time.

The dynamic surprises hidden in the still picture of Swiss-EU relations were discovered in Chapter 2 and analysed in Chapter 3. The empirical data on agreement reforms showed that the number of agreement reforms per year was below five until 2001 and increased steeply afterwards. These reforms were also often of a high substantive integration quality, as they referred directly to EU law. Only recently, however, have sectoral agreements shown legal qualities that distinguish them from conventional international treaties. After 2002, we ob-

served agreements, which assign monitoring rights to the EU, and those that oblige Switzerland to transpose future EU legislation. The effect of the former was not analysed in the thesis, as the thesis' focus are legal reforms and not implementation of integration steps, which is most likely affected by monitoring provisions. The effect of obligations to continuously transpose EU legislation, called dynamic provisions throughout the thesis, proved to be an important explanatory factor for the recent increase in frequency of agreement revisions. In the realm of the sectoral agreements, the effect of the more active European policy since the early 1990s thus is observable since 2002. In 2002, the Bilaterals I package entered into force and agreements began to be revised much more frequently and started to show legal qualities distinct from traditional international law.

In Chapter 3, I examined the agreements with the EU showing a dynamic development. The observation by many scholars that the legal form of the sectoral agreements stands in contrast to their integration intention, and that this conflict can only be resolved if the agreements are revised regularly, served as starting point for the analysis. The analysis focused only on agreement revisions, leaving out the question of why agreements are adopted in the first place. It showed that the frequency of agreement revisions depends on legal provisions of the agreements as well as on the explicitness of their relation to EU law. Agreements that are administered by a Mixed Committee, agreements with dynamic provisions, as well as agreements which directly refer to EU law were revised more often. In addition, the revisions of agreements with dynamic provisions and explicit references to EU law also explicitly referred to EU law. On the one hand, these findings show that the explicit reliance on EU law has had an effect on the development of the sectoral agreements. On the other hand, they show that more recent changes in the legal quality of agreements has had an even stronger impact on the development of sectoral agreements: 42 out of 157 partial revisions of sectoral agreements between 1990 and 2010 were the result of a dynamic provision, although the only agreements with dynamic provisions, the Schengen and the Dublin Association Agreements, entered into force only in 2008. The Schengen agreement is responsible for most of these revisions and, thus, its entry into force was a second turning point for Swiss-EU relations after the entry into force of the Bilaterals I package, as it introduced a new integration quality with huge practical consequences.

More than one third of all sectoral agreement reforms, however, were neither the result of dynamic provisions nor were they Mixed Committee decisions and thus were not the result

of an institutionalised mechanism. For the analysis presented in Chapter 4, I distinguished such agreement reforms, which have to be negotiated between Switzerland and the EU (new adoptions and revisions alike) from institutionalised revisions. If we look at the negotiated reforms only, we see that many were related to the adoption of the Bilaterals I and Bilaterals II packages, supporting the qualifications of these packages as cornerstones in Swiss-EU relations. Between these agreement packages, negotiated reforms were rare. A multivariate analysis even showed that the most important negotiated agreement reforms, namely those that have to be approved by parliament, became less frequent over time. This finding shows that apart from the impact of institutional provisions in agreements, the Swiss-EU relations do not reach that much further than what was already known. Bilaterals I and II are the most important packages, and in recent years, similarly large integration steps became less frequent. This might be related to the fact that since 2008, the Council of the EU has repeatedly criticised Switzerland and called for an institutional framework for the sectoral agreements. Since then, only agreements of minor importance were concluded and many important dossiers are pending, because the EU made the solution of the institutional question a condition for the conclusion of new agreements. This stalemate has historical predecessors: also the negotiations of the Bilaterals I package were put on hold at least once. For the conclusion regarding the development over time, this means that the future will show whether Switzerland has become more reluctant to undertake new substantive integration steps, or whether in a couple of years we will observe the next package of negotiated agreement reforms, which reverses the negative trend over time.

The changes and continuities in the development of the sectoral agreements are probably also related to a general increase in importance of international law. In this thesis, however, I only analysed the sectoral agreements against the backdrop of Switzerland's European policy, but not in relation to Switzerland's general foreign policy. Wolf Linder et al. (2009b) showed in their empirical analysis of the development of Swiss federal domestic and international legislation that international legislation in general has gained in importance. Corresponding to the finding of my thesis, their figures show a steeper increase since the turn of the millennium. The authors assumed that this may be related to the new packages of sectoral agreements with the EU, without actually measuring this relation. Based on the findings presented throughout this thesis, I am not able to evaluate this assumption, but I can identify an important difference with regard to the conclusion about the development of

international law in general and the development of the sectoral agreements. Linder et al. showed that parliament has had an increasing role in approving international treaties in general. The analysis in Chapter 4, however, showed that the Federal Council is in charge of the majority of sectoral agreement reforms. Sectoral agreement reforms adopted by parliament even became rarer over time. This finding indicates that the sectoral agreements with the EU follow a different logic to traditional international law. Because the Federal Council is responsible for most institutionalised revisions, the legal integration qualities of the sectoral agreements may be the factor that distinguishes them from other international agreements. This observation supports the conception of the sectoral agreements as elements of Switzerland's European integration.

5.1.2 Domestic Rule Transpositions: From Autonomy to Implementation

Domestic transpositions of EU rules were observed early on in the process of European integration. At the beginning, reluctant European countries transposed rules to prepare for membership negotiations; later, countries with opt-outs sought to mitigate some disadvantages resulting from these opt-outs via the transposition of EU rules, which they were not obliged to transpose. The findings of this thesis show that Switzerland is an example for both policies if we interpret its non-membership as a general opt-out from European integration. On an aggregate level, the thesis showed that EU-compatibility was a constant characteristic of Swiss domestic law-making during the whole research period. Between 1990 and 2010, almost all federal law reforms, which touched upon issues regulated in the EU, were at least compatible with the respective EU law. Moreover, active rule transpositions were a steady characteristic of law-making, with a small peak in 2002 and a larger one in 2008, the years when Bilaterals I and II entered into force. The domestic rule transpositions did not increase as much in frequency over time as sectoral agreement reforms. Seemingly, although the EU-compatibility examination became a mandatory step in the legislative process with the total revision of the Law on the Federal Parliament in 2002, this did not lead to a higher share of law-making affected by EU rules.

A similarity to the finding about the sectoral agreements, however, is the changing integration quality of domestic rule transpositions over time, and the different explanations for rule transpositions of different quality. The multinomial analysis conducted in Chapter 4 revealed

that EU-compatible reforms are statistically indistinguishable from EU-relevant law reforms that are not compatible with EU law and do not transpose EU rules. If we assume that the models in Chapter 4 do not miss important variables, we can conclude that EU-compatible reforms are not the result of economic, political or social explanatory factors; rather, we can interpret this finding as a confirmation of the observation that EU-compatibility has become a fundamental principle of domestic law-making in Switzerland. If federal laws are reformed in issue areas where EU law exists, the legislator seeks to avoid contradictions with the relevant EU law. Unilateral rule transpositions and implementation measures of sectoral agreements, on the contrary, are differently related to explanatory variables and their importance changed in the research period: Unilateral rule transpositions were important in the 1990s and became less frequent afterwards. Implementation measures of sectoral agreements, which were very rare before the Bilaterals I package entered into force, became much more frequent over time. This development was detected in the regression analyses in Chapter 3 and Chapter 4 and supports earlier descriptive findings presented, for example, in Jenni (2014). For the quality of domestic rule transpositions, the entry in to force of the Bilaterals I agreements can thus be called a turning point.

These findings complement some observations and statements in the literature regarding the development and quality of domestic rule transpositions. Francesco Maiani's (2008) observation that domestic rule transpositions became an active policy after the rejection of the EEA is supported by the data, but is more important for the 1990s than afterwards. Tobias Jaag's (2010) observation that unilateral rule transpositions became less important, the more sectoral agreements Switzerland concluded with the EU is supported by the data as well. Also Daniel Thürer et al.'s (2007) observation that sectoral agreement negotiations were facilitated by previous rule transpositions finds some support in the analysis conducted in Chapter 4: About one third of all unilateral rule transpositions were related to agreement negotiations. Moreover, the regression analysis in Chapter 3 indicated that unilateral rule transpositions are more frequent in policy fields with harmonisation agreements and less frequent in policy fields with agreements that directly refer to EU law. This picture of the decreasing relevance of unilateral rule transpositions, the increasing relevance of implementation measures and the relation of unilateral rule transpositions to agreement negotiations and development fits into the picture of the development of the sectoral agreements. Over-

all, the legal quality of Swiss differentiated integration has increased over time and domestic rule transpositions were conducted in an autonomous manner less often.

The findings about the development over time, and especially the finding of a decreasing frequency of unilateral rule transpositions is challenged by a recent study on the Europeanisation of Swiss law-making, which also encompasses secondary legislation (legal acts adopted by the government). The study showed that indirect Europeanisation is much more frequent in secondary legislation than in primary legislation (federal laws) and that the share of secondary law-making with an "EU footprint" has been increasing more steeply than the number of federal law reforms with an EU footprint (Gava and Varone 2014). This thesis only analysed federal law reforms, and therefore, the finding about decreasing frequency of unilateral adaptations and increasing frequency of implementation measures does not necessarily contradict the newer figures by Gava and Varone, but they do concretise an assumption that has been around for quite a while: It is sometimes said that in the process of Europeanisation, parliament delegates not only implementation, but also transposition of EU rules to the Federal Council. If this assumption is true, we observe only one instance of indirect Europeanisation in a federal law reform, but this observation is the reason for more rule transpositions via secondary legislation. Further research must show whether the federal laws, which were unilaterally adapted to EU rules in the 1990s, are also the laws on which the large amount of indirect Europeanisation in secondary legislation is based. If this proves to be true, we observe one more similarity between domestic rule transpositions and sectoral agreement reforms: the recent dynamics are then based on important decisions for unilateral rule transpositions and on the important agreement packages for sectoral agreements and these important integration steps had a large impact. Namely, the agreements were revised by Mixed Committees and following dynamic obligations and required domestic implementation measures, and the unilateral rule transpositions were developed further via secondary legislation.

5.2 Switzerland in Light of Differentiated European Integration

There are three reasons why I conceptualised Switzerland as a case of differentiated integration for this thesis. The first is related to the state of the art of research on the relationship

between Switzerland and the EU. Existing research has been either case-oriented or has pursued quantitative measurement of the impact of the EU on Switzerland. The rich knowledge provided by the case-oriented research, however, has not yet been systematically linked to quantitative data. This thesis sought to establish this link by providing a more fine-grained measurement of Switzerland's differentiated integration and explaining it by factors discussed in the literature. To that end, the conceptualisation as differentiated integration was useful, because it allowed the reduction of the heterogeneity of both the cases to be explained and the explanatory factors. The second reason concerns the theoretical explanation of Switzerland's differentiated integration. The thesis built on the assumption that Switzerland differs by degree but not in kind from European countries which have participated more eagerly in European integration. Accordingly, Switzerland's European policies should also be explicable by theories of European integration. This theoretical focus revealed dynamics, which were previously undetected, namely the dynamic development of sectoral agreements and the interrelations between agreements and domestic rule transpositions. The third reason is related to the claim by Fontana et al. (2008) cited in the introduction that Switzerland should not be qualified as being too different to be compared. The analysis of Switzerland in light of integration theories is the basis for such comparison and sheds light on factors important for Switzerland and likely to become more important among EU member states, such as for example the role of popular referenda. In the remainder of this section, I will critically assess to what extent the conceptualisation of Switzerland as a case of differentiated integration throughout this thesis proved fruitful.

5.2.1 Quantitative Measurement: New Findings and New Puzzles

The reliance on the concept of differentiated integration allowed Switzerland's European policies to be measured at the same time with a broader and a narrower focus than many of the previous quantitative studies on the Europeanisation of Swiss law-making. The broader focus means that I included both sectoral agreements and domestic legislation in the empirical data collection. This allowed me to detect the interrelation between both instruments of differentiated integration, as domestic rule transpositions sometimes facilitated agreement negotiations, sometimes implemented agreements, and sometimes probably complemented agreements with a harmonisation aim. The narrower focus means that I operationalised in-

tegration measures as legal reforms, which contain EU rules, thereby excluding other policy reactions to the process of European integration. This focus implies that the thesis is not appropriate for assessing the entire impact of the EU on Switzerland as domestic reactions to European integration, which did not rely on EU rules, were not counted. However, this focus made explanatory analyses more straightforward, as different factors may explain when European integration provokes rule transposition, and when it leads to domestic reactions not related to EU rules.

The focus on EU rules was further concretised by the measurement of the integration quality of the extension of EU rules to Switzerland. These rule extensions were qualified with regard to the degree of their similarity to ideal-type European integration on two dimensions: substantive integration quality, measuring the degree of congruence with EU law, and legal integration quality, measuring whether the rule transposition is legally linked to the EU. The distinction of these two qualities proved fruitful, because they showed different development over time and proved to be partly inter-related. Substantive rule extensions were observed earlier than legal rule extensions. The unilateral rule transpositions into domestic legislation, which were frequent in the 1990s, to a large part were not linked to sectoral agreements and thus not legally linked to the EU. Domestic rule transpositions implementing sectoral agreements only became more frequent with the entry into force of the Bilaterals I agreements. Similarly, also the early sectoral agreements already substantively referred to EU law, but agreements with stronger legal integration qualities appeared only recently. The more recent legal integration influenced the substantive quality of rule extensions in both domestic legislation and sectoral agreements. Implementations of sectoral agreements proved to be full adaptations more often than unilateral rule transpositions. Partial adaptations occurred almost only as unilateral rule transpositions. Sectoral agreements with a high legal integration quality proved to be revised more often, and these revisions were often of a substantively higher integration quality. Interestingly, sectoral agreements without legal integration qualities but with substantive rule transpositions also proved to be revised more often.

The relation of legal integration measures with rule extensions of a substantively higher integration quality raises the question of whether it is justified to conceive of substantively imperfect transpositions of EU rules and transpositions of EU rules without any legal relation to the EU as elements of differentiated integration. This concerns especially unilateral rule

transpositions into domestic legislation. In Chapter 2, I justified their inclusion by the expectations that they extend EU rules to Switzerland and are partly related to sectoral agreements. The empirical analyses confirmed these expectations. Domestic rule transpositions not only sometimes implement sectoral agreements, but also often facilitate agreement negotiations. The Federal Council's early expectation that EU-compatible domestic legislation facilitates negotiations with the EU is thus supported by the empirical analysis and the 'shadow of hierarchy' lying over Swiss-EU relations becomes clearer: the concessions to the EU in terms of substantive rule extensions are not always formal concessions in agreements, but sometimes occur before conclusion. Moreover, agreements that are more frequently revised are correlated with fewer unilateral rule transpositions and agreements that are less frequently revised, like harmonisation agreements without direct references to EU law, are correlated with more unilateral rule transpositions. Although this informal element seems to be a peculiarity of Switzerland's differentiated integration, its interrelation with formal integration steps justifies its conceptualisation as an integration measure.

There are also legal reforms related to EU rules, the function of which in the bigger picture of Switzerland's differentiated integration could not be clarified by the analyses in this thesis. The most important examples are the EU-compatible federal law reforms. They were a constant characteristic of federal law-making, but proved to be statistically indistinguishable from EU-relevant federal law reforms that were incompatible with EU law. Therefore, they could also not be explained by the independent variables researched in Chapter 4. Two explanations are possible: On the one hand, EU-compatible reforms indicate EU-compatible policy continuity, and policy continuity as an Europeanisation effect is difficult to measure (cf. Gava et al. 2014). On the other hand, legal scholars argued that EU compatibility has become an aim in itself (Oesch 2012). This could explain why EU-compatible reforms are not related to other economic and political explanatory factors. This consideration also applies to the second kind of legal reforms, the function of which remains partly unclear: the unilateral rule transpositions not explained by sectoral agreements. Although they proved to be statistically distinguishable from merely EU-relevant and EU-compatible law reforms, they were less clearly related to the independent variables in the models in Chapter 4 than the implementation measures. Only in-depth analysis of the decision-making process leading to EU-compatible law reforms or unilateral rule transpositions will reveal whether the policy outcome is the result of a general policy paradigm or serves another function in Switzer-

land's differentiated integration. Therefore, it is too early to decide whether EU-compatible reforms and unilateral rule transpositions not related to sectoral agreements are part of Switzerland's differentiated integration.

Complementary to the question of whether everything conceptualised as part of Switzerland's integration deserved this conceptualisation is that of whether important elements of integration were excluded by the choice of legal reforms as units of analysis. The focus on legislation for the measurement of Switzerland's differentiated integration is straightforward, as the definitions of differentiated integration, on which the thesis built, rely on legal rules. However, the reliance on legislation in general and on legal reforms in particular still has some implications for the results, which were discussed in Chapter 2. Many drawbacks could be dealt with in this thesis by the rather narrow operationalisation of the variables of interest. By distinguishing different integration qualities, not only the quantitative but also the qualitative impact of integration could be measured to some extent. Others are still present, like for example the fact that the significance of legislation varies between policy issues (Töller 2010). Some policies rely heavily on regulations, whereas others are conducted via other means. This is an important reason why I did not seek to explain the distribution of rule extensions across policy fields. In some cases, however, I used the policy fields as the units of analysis for the coding of independent and dependent variables. One such analysis is the last regression analysis presented in Chapter 3 testing whether domestic rule transpositions occur more often in policy fields characterised by specific types of agreements. Similarly, also the policy scope indicator used in Chapter 4 is based on policy fields. Case-oriented research is necessary to reveal the mechanisms leading to rule transpositions in fields with harmonisation agreements or a higher value on the policy scope indicator and thus answer the question of what effect can be ascribed to the respective agreement or EU policy.

The important issue related to the choice of the units of analysis is the question of the effects that this choice has on the results of the empirical analyses. The focus on legal reforms excluded all legal texts that were never reformed in the research period. The thesis does not provide any information on the integration quality of almost half of all sectoral agreements, and of one third of all federal laws. As mentioned several times throughout the thesis, the dynamic picture of some sectoral agreements has to be understood against the backdrop of the many agreements that were never revised after their adoption. Regarding the federal laws, the choice of law reforms makes it impossible to assess the share of Swiss legislation

that contains EU laws at a given point in time. Similarly, the finding that the majority of EU-relevant law reforms were compatible with EU law or transposed EU rules does not mean that all EU relevant laws are EU compatible. When a law was not reformed, I could not observe whether it was EU relevant. Moreover, and as discussed above, the focus on federal laws, which excluded secondary legislation, probably hides some dynamics of domestic rule transpositions, and especially of unilateral rule transpositions (indirect Europeanisation). As secondary legal acts need a basis in federal laws, I consider the descriptive results presented in this thesis as complete with regard to policy fields, but I assume that I do not observe the whole development over time. This consideration offers an additional explanation as to why unilateral rule transpositions were statistically distinguishable from reforms not transposing EU rules but nevertheless were not related to the time-varying explanatory factors: Probably, secondary legislation reflects the reaction to current economic development better than federal law reforms. However, this does not hold for indicators of social and political development, which may affect secondary legislation even to a less extent, because it is even more sheltered from public attention than law-making by parliament. Future research has to test this assumption by seeking to explain the Europeanisation of secondary legislation.

The focus on legal reforms also excluded the implementation of laws and judicial practice. Answers to the questions of whether the administration and cantons implement the agreements and EU rules transposed into domestic law in an EU-compatible way, and the question of whether courts interpret EU rules in agreements or federal laws in the sense of the ECJ would add to our understanding of the quality of Switzerland's differentiated integration. The questions of implementation and legal practice are relevant for the salient discussion about 'foreign judges' in Switzerland, which is related to the call by the European Council for an institutional framework for the sectoral agreements, including a surveillance authority. This thesis thus provides only some insights about the evolvement of the sectoral agreements, which is related to the Council's call for automatic rule transpositions in the areas of the agreements, but it does not provide analyses, which would allow us to assess the call for surveillance in light of past developments. However, the empirical data collected for this thesis provide variables measuring monitoring provisions in sectoral agreements, which could be used for analyses of such questions in the future.

5.2.2 Explanation: Applicability of Integration Theories to Non-Member States

The second reason for the conceptualisation of Switzerland as a case of differentiated integration was the aim to explain Switzerland's peculiar political response to the challenge of European integration based on integration theories. In the introduction, I asked whether Switzerland was a theoretical outlier and stated that from a bird's-eye view, Switzerland seems to correspond at best to the constructivist view about European integration, because only its political identity speaks against European integration, whereas its economic interests and ties with EU member states speak for integration. Throughout the thesis, however, I did not seek to examine Switzerland's differentiated integration from a bird's-eyes view or focus on the big decision to stay out of the EEA. Rather, the thesis examined Switzerland's differentiated integration as it has actually happened. For these incremental integration steps, political identity only implicitly mattered for expectations regarding explanatory factors like the role of political institutions and public opinion. In general, the explanatory factors discussed in the literature resonated better with a rationalist view of integration. In this realm, two theoretical strands exist: intergovernmentalism and supranationalism. Whereas intergovernmentalism focuses on important integration steps decided upon by national governments, supranationalism focuses on the development of integration between these steps. For the EU, important integration steps are, for example, amendments to the founding treaties. Developments between these amendments concern, for example, secondary legislation or ECJ rulings. Although for Switzerland it is straightforward to assume that new sectoral agreements are important integration steps, we lack the knowledge about the drivers of the development in between these steps. Therefore, the thesis examined first institutional mechanisms explaining the day-to-day development of Switzerland's differentiated integration (Chapter 3), and then turned to exogenous factors explaining the 'big' integration steps (Chapter 4).

Chapter 3 drew on supranationalist arguments and showed that Switzerland is not a theoretical outlier. To my knowledge, the reliance on supranationalist arguments was new to the literature on Swiss-EU relations and revealed previously unsearched for mechanisms. Although the supranationalist literature usually builds in a very detailed manner on institutions of the EU, like the Commission or the Council, or on formal procedures of the EU, like a certain decision-making process, and although these institutions and processes do not matter

for Switzerland in the same way, Chapter 3 showed that the general supranationalist argument also holds for Switzerland: Switzerland's differentiated integration measures differ with regard to institutional rules and with regard to actors they empower, and these differences matter for the dynamics of the development of sectoral agreements and domestic rule transpositions. The general supranational argument was adapted to the Swiss case with the help of the literature on incomplete contracting. I conceived of the sectoral agreements as incomplete contracts with regard to their legal and substantive integration quality, and argued that less incomplete agreements are more likely to evolve dynamically, as their benefits are more likely to depend on their integration quality. Indeed, agreements with Mixed Committees, dynamic provisions or direct references to EU law were more frequently revised. Thus, not only institutions with special competences like Mixed Committees or provisions, which foresee sanctions like dynamic provisions, but also strong substantive integration, like references to EU law, induce more dynamic developments of sectoral agreements. Strong legal integration via sectoral agreements thus can be considered to be a functional equivalent to formal integration, whereas the finding regarding the effect of strong substantive integration hints at additional mechanisms relevant for the Swiss case.

The sectoral agreements were the main focus of Chapter 3, but the relation of sectoral agreement qualities to domestic rule transpositions was also analysed. This analysis indicated that sectoral agreements, which lack the integration qualities that spur dynamic evolvement, do not always remain static: harmonisation agreements, which are not correlated to frequent revisions, are correlated with more domestic rule transpositions, whereas agreements directly referring to EU law, which are frequently revised, are correlated with fewer domestic rule transpositions. Although this finding may be sensitive to the coding of policy fields, which was discussed in the previous section, it deserves further examination: The underlying argument built on an assumption discussed in the media and used in discussions with the EU about an appropriate institutional framework for the sectoral agreements (Breitenmoser and Weyeneth 2013). Theoretically, the argument points to a specific characteristic of Switzerland's integration below the threshold of formal EU membership, which is not covered by supranationalist arguments, but was already discussed in relation to other cases of differentiated integration. It has to be answered by further research on whether unilateral rule transpositions are indeed conducted to compensate for lacking integration

qualities of sectoral agreements, and thus to circumvent disadvantages resulting from opt-outs from European integration, to paraphrase Rebecca Adler-Nissen (2009).

Chapter 4 drew on liberal intergovernmentalist arguments in order to analyse the exogenous factors driving Switzerland's differentiated integration. The integration qualities of the different integration instruments were used only as dependent and not as independent variables. The aim was to explain those instances of integration via legal reforms, which remained unexplained by the institutional analysis of Chapter 3. To my knowledge, also the explicit reliance on intergovernmentalist arguments is a new approach in the literature on Swiss-EU relations, although the respective explanatory factors, like domestic economic interests, decision-making processes and negotiations with the EU have been researched widely. What has not been explicitly discussed in the literature is the question of what explanatory factors are likely to explain what kind and quality of differentiated integration measure. Therefore, the analyses in Chapter 4 built on the measurement of different integration qualities as described in Chapter 2 and on the results of Chapter 3 in order to examine the relation of different independent variables and different values of independent variables with different forms and qualities of differentiated integration measures. The findings regarding sectoral agreements confirmed some findings from Chapter 3 and made necessary the refinement of others. Chapter 4 supports the finding that institutionalised agreement revisions (Mixed Committee decisions and revisions of dynamic agreements) and negotiated reforms are related to different independent variables. In addition, Chapter 4 revealed that the distinction between institutionalised and negotiated agreement reforms is more important than the distinction between different substantive integration qualities: negotiated agreement reforms with and without direct references to EU law were statistically indistinguishable with respect to the independent variables. On the other hand, Chapter 4 revealed that the institution responsible for a reform is more decisive for the relation with the independent variables than the distinction between institutionalised and negotiated reforms: agreement reforms adopted by the Federal Council could not be statistically distinguished from institutionalised agreement reforms. The findings regarding domestic rule transpositions revealed that EU-compatible reforms are not distinguishable from merely EU-relevant reforms and that independent variables have a different relation to unilateral rule transpositions than they do to implementation measures.

The empirical analyses in Chapter 4 do not allow a concluding answer to the question of whether or not Switzerland is a theoretical outlier with regard to explanatory factors brought up by liberal intergovernmentalism. The role of economic interests, which lie at the core of liberal intergovernmentalism, could not be shown for Switzerland's differentiated integration. The aggregate number of substantive integration steps is correlated positively with Switzerland's economic performance. Based on economic integration theories, I expected that Switzerland would be more likely to take integration steps when its economy performs worse than the participants of regional integration. The results indicate that economic performance matters less than interdependence, which was not explicitly analysed, but is an important argument of liberal intergovernmentalism.

The second important element of liberal intergovernmentalism, negotiations at the domestic and international levels, proved to be important for Switzerland. This indicates that political processes may be more important than economic developments for the timing of integration steps. Especially two correlations point to the conclusion that Switzerland's differentiated integration is indeed decided in domestic and international negotiations. At the domestic level, rule transpositions are often part of reform packages and at the international level, sectoral agreement reforms are often linked to one another. Both indicate issue linkage as a negotiation strategy. However, both correlations only find partial support in the multivariate analyses. Two further correlations also indicate that Switzerland is not a theoretical outlier, but these factors do not lie at the core of liberal intergovernmentalism: negotiated agreement reforms adopted by parliament and the aggregate number of substantive integration steps were correlated to lower salience of European integration in the electorate and to a higher seat share of pro-European parties in parliament. Integration in times when European integration is not salient can be interpreted as "permissive consensus" (e.g., Hooghe and Marks 2008). This also holds for domestic rule transpositions, although for another reason. They are not significantly correlated to the salience of European integration and party seat shares, but they are almost never challenged at the polls. Also low awareness can be interpreted as permissive consensus (cf. Trechsel 2007).

The empirical analysis of Switzerland through the lens of integration theories met several methodological challenges, which are related to Switzerland's formal outsider status and to its case-by-case approach to integration. Although I conceived of Switzerland as a case of differentiated integration having a general opt-out with regard to the whole acquis commu-

nautaire and opting-in occasionally, I could not measure Switzerland's opt-ins in relation to its opt-outs. As a consequence, Switzerland's actual opt-ins could not be explained against the backdrop of all possible opt-ins. Especially in the case of sectoral agreements, I could only compare the relation of different forms and qualities of integration measures to different explanatory factors. In the case of domestic rule transpositions, I was able to compare federal law reforms transposing EU rules to federal law reforms in EU-relevant areas that did not transpose EU rules. However, also for federal law-making, I cannot exclude that to some extent, law-making in general and rule transpositions are driven by similar factors and for that reason these reforms are not differently related to explanatory factors. This methodological challenge could be met either by the inclusion of a more policy-field sensitive independent variable in an analysis of Switzerland's integration measures[38] or by an analysis of the share of EU rules extended to Switzerland. The second approach would meet a research interest formulated recently (Schimmelfennig 2014b). The data collected for this thesis also include dataset of EU acts valid for Switzerland, which will be analysed in comparison to EU law in the future.

Also for the question about the role of economic interests, which could not be answered by this thesis, other methodological approaches and especially case-oriented research seems more promising. Switzerland's case-by-case approach to European integration allows particularistic interests to pursue an issue-specific integration agenda, which is facilitated by the abundance of veto points in the Swiss political system. Although the nuanced economic integration interests are often discussed in the literature, this thesis could not find a consistent correlation of indicators of economic development with integration measures. There are two probable reasons for this non-finding, one methodological and one substantive. The former is related to the measurement of Switzerland's integration measures. Their quality was only measured with regard to their relation to EU rules, but not with regard to their distributive consequences, or with regard to the question of whether they are measures of negative or positive integration. Switzerland's differentiated integration, however, covers a wide range of issues and also policy fields, which are not the usual suspects regarding negative integration and economic liberalisation. The overall relevance of economic interests for integration

[38] On an aggregate level the development of secondary legislation proved not to be correlated to Switzerland's integration. In preliminary analysis, I included for example the aggregate numbers of secondary legal acts adopted in the EU per year (results not reported).

steps can thus only be analysed in light of the distributive consequences of the integration steps. The probable substantive reason is related to Switzerland's decision-making system. The veto points make broad coalitions necessary, and these policy-specific coalitions and compromises probably explain integration steps better than particularistic economic interests. This interpretation shows that the role of the domestic decision-making system and resulting policy compromises is an important difference between Switzerland's case-by-case integration and formal EU membership. When integration decisions are taken case by case, nuanced interests and compromises have stronger effects than when a country decides only once and on the whole package of European integration.

5.2.3 Comparison: Switzerland's Place on the Map of European Integration

The thesis started from the assumption that the Swiss European policies are not too special to be compared with other European countries, because similar policies have also been pursued by other reluctant European countries throughout the history of European integration up until today and because to some extent Switzerland's policies can be understood as functional equivalents to formal European integration. The thesis started by offering a comparative view of Switzerland's differentiated integration, which helped to measure it quantitatively and explain it by integration theories. However, the thesis was a case study of Switzerland. Although the quantitative measurement does not allow us to compare the amount of Switzerland's differentiated integration to that of member states, I expected that the thesis might still provide findings, which would allow us to compare Switzerland at least in a qualitative way with member states in terms of the development of its differentiated integration. This section ties the comparative perspective of the introduction to the findings of the empirical analyses in order to discuss Switzerland's place on the map of European integration.

The development of European integration since the 1990s has been characterised by the accession of new member states (in 1995, 2004, 2007 and 2013), the inclusion of new policy fields (e.g., EMU, border control) and a growing 'supranationalisation' of EU policy-making (e.g., increasing role of the European parliament). Switzerland's integration below the threshold of membership was affected by these developments and in some regards it even went through similar developments. The accession of new member states affected Switzerland most directly because of the Free Movement of Persons Agreement, which was initially

negotiated with the 15 countries that were members in 1999, the year of signature. Subsequently, the agreement was extended to the new member states on the occasion of every enlargement round and in two cases these extensions were challenged in an optional referendum, but approved at the polls. Moreover, Switzerland also contributed its share to the cohesion fund for the new Central and Eastern European member states. The latter was not analysed as these measures were conducted without the transposition of EU rules and not by means of treaties with the EU, but by means of bilateral treaties with the beneficiary states, which is why they fell short of the definitions underlying the data set. This smooth extension of the free-movement principle to new member states was put on hold by a popular vote in February 2014 in Switzerland. Swiss voters accepted a popular initiative, whose implementation is likely to violate the principle and, therefore, the Federal Council could not sign the protocol to extend the free-movement principle to the new EU member Croatia. At the time of writing, when implementation and re-negotiation of the FMPA is still pending, Switzerland and the EU had agreed on a provisional solution to allow Croatian citizens access to the Swiss labour market without the official protocol (Nuspliger 2014).

The inclusion of new policy fields in the EU is also reflected by the development of Switzerland's differentiated integration. At the beginning of the research period, the most important agreements were the Free Trade and the Insurance Agreements. Although the FTA, for example, excluded agricultural products and the insurance agreement did not introduce liberalisation of trade in services, they reflected the focus of the EU at that time: it was an economic community. The transit agreement in 1992 was related to an increasing activity of the EU in transport policy and the Bilateral I agreement packages signed in 1999 dealt with access to the Single Market. In 1992, the EU had realised its Single Market, but Switzerland failed to gain access because it rejected the EEA agreement. Therefore, new lengthy negotiations were necessary, but it finally gained market access, though only selectively and only ten years after the completion of the Single Market in the EU (Bilaterals I entered into force in 2002; cf. Dupont and Sciarini 2007).

Almost directly after this package, a second agreement package called Bilaterals II was negotiated, but only one agreement dealt with market access in the narrow sense (proceeded agricultural goods). The other agreements concerned, among other things, judicial cooperation (taxation of savings, fight against fraud, Schengen and Dublin) and measures of positive integration (MEDIA, research, environment). This development is also reflected in domestic

legislation where rule transpositions cover even a wider range of policy fields than the sectoral agreements and also reached policy fields, which are not traditional areas of international influence like social insurance, health, citizenship, corporate law and employment, to name just a few (cf. Chapter 2). As the EU developed from a purely economic community, also Swiss differentiated integration lost its purely economic quality. The biggest difference between Switzerland's differentiated integration and the EU, however, is the time lag and Switzerland's selectivity.

The degree of 'supranationality' of EU policy-making is not very likely to influence the development of Switzerland's differentiated integration, as Switzerland has not agreed on any form of supranational subordination and does not participate in decision-making in the EU. Moreover, the theoretical expectations with regard to the effect of more centralised policy-making on third states were contradictory: On the one hand, centralisation and formalisation of EU policies make access for non-member states more difficult. On the other, centralisation and formalisation requires third states to participate, if at all, by means which guarantee similar substantive and legal integration qualities. Effects related to this discussion could be observed in two analyses. The first was the one conducted in Chapter 3, which showed that legal integration increased over time in Switzerland and that this legal integration had a large impact on the dynamics of the sectoral agreements. Especially the inclusion of dynamic update obligations in the Schengen agreement had a huge effect on the frequency of the revision of that agreement, leading to more agreement revisions, and more agreement revisions, which directly refer to EU law in recent years. Although this analysis did not deal directly with EU policies, it showed the relevance of the institutional form of differentiated integration agreements.

The second was the analysis conducted in Chapter 4, in which I analysed whether the degree of policy centralisation inside the EU affects Switzerland's integration measures. The policy scope indicator used in Chapter 4 measured the characteristics of EU policies, but proved to be correlated only to the aggregate number of substantive integration steps. More centralised policies are correlated with more rule extensions in agreement reforms and domestic legislation at the same time. Switzerland's differentiated integration was thus subject to widening with regard to new member states and deepening with regard to new policy issues and an increasing legal quality of its integration measures. However, the widening is in dan-

ger as a consequence of the recent popular vote violating the free-movement principle and the deepening has been heavily criticised by the European Council as being insufficient.

Although we observe similar developments in Swiss differentiated integration as in European integration in general, we must acknowledge that these similar developments are still related to a way of integration lacking many important characteristics of ideal-type European integration. From a comparative perspective, especially two characteristics distinguish the Swiss way of integration from formal membership and both are related to the case-by-case approach of Switzerland's differentiated integration. This approach implies that negotiations play a more important role for Switzerland than for member states because most of the important integration steps have to be negotiated anew. Some negotiation dynamics are explicable with existing theories. The results of issue linkage, for example, indicate that bargaining power is not that asymmetric, as also Switzerland gets the issues it wishes on the negotiation table. However, negotiations in general and issue linkage in particular are no guarantee that Switzerland will receive substantive exemptions. The negotiated agreement reforms and the linked packages, Bilaterals I and II, contain those agreements with the highest integration qualities and agreement negotiations sometimes even require rule transpositions in advance. The frequent negotiations thus partly hide the fact that sometimes the negotiation result with regard to substantive and legal integration quality is not really negotiable. This relativises the legislative independence sometimes associated with the 'bilateral way' and the principle of equivalence of legislation. Rather, the 'bilateral way' seems to be a functional equivalent to integration with the important difference that this integration is selective. More important than the formal independence preserved in the realm of an existing sectoral agreement is probably the freedom not to conclude an agreement where it is not deemed necessary or beneficial. A current example for this freedom is the refusal of Switzerland to cooperate with the EU in matters of taxation (Epiney 2008).

The other special characteristic of Switzerland's differentiated integration is related to the Swiss domestic political system. The frequent use of popular referenda makes the development of integration sensitive to public opinion. Some of the most important integration steps – those that had to be negotiated and approved by parliament as well as many implementation measures in domestic legislation – were challenged at the polls, but finally approved. No other country in Europe has approved European integration measures at the polls so often. However, this often-cited fact has to be put into perspective: The analyses in

Chapter 4 showed that only a few integration steps were brought to the polls and many were not even subject to approval by parliament. Chapter 3 showed that also without delegation of legislative competences to the EU, legal and substantive integration provides incentives for a dynamic development of integration measures. Also in Switzerland, the referendum threat thus only concerns new issues and voters are probably not aware of the dynamics, which some of these integration steps have developed. Again, Switzerland differs only by degree from member states, as also members sometimes held referenda on important treaty changes, but EU legislation develops without their participation. Popular opposition or referendum threats regarding new integration measures also induce similar domestic dynamics in Switzerland and in EU member states. They sometimes led to side-payments for political opponents. In Switzerland, this strategy seems to be used not only in the case of agreements, but also in the case of domestic rule transpositions. Thus popular opposition or referenda usually do not hinder integration, but they make the decision-making process more sensitive to the interests of opponents.

Popular referenda, however, differ in one crucial aspect from other forms of political opposition to integration. Popular referenda can halt the integration process, because they are legally binding in Switzerland. The rejection of the EEA agreement and probably also the recent vote against immigration are examples at hand. These events have counterparts in the EU as well, as France and the Netherlands rejected the constitutional treaty in 2005 (Majone 2006). In the case of the recent vote there is, however, also an important difference, because this vote called into question existing integration even though it was not even explicitly a vote on integration. On the contrary, the referenda on the constitutional treaty explicitly concerned a new integration step. This difference is related to Switzerland's formal independence and shows that although this independence may not matter so much for the day-to-day development of differentiated integration, it matters when an issue becomes salient and politicised, and when issues are interrelated. Although the Swiss voters approved the free-movement-of-persons principle various times at the polls, they never delegated immigration policies to the EU and some Swiss representatives take the re-negotiation clause in the sectoral agreement literally, whereas EU representative call the free-movement principle not negotiable. The latter does not follow from the agreement text but from the integration intention of the agreement. This current conflict shows that, though the incompleteness of agreements allows overcoming conflicts between Switzerland and the EU, an incomplete

agreement is not more than a fragile equilibrium and, among other things, the referendum has the potential to trouble the equilibrium.

5.3 "The more it Changes, the More it Stays the same"

In an article with this title, Mario Maggetti et al. (2011) analysed the development of Switzerland's economic regulatory policy. Based on the analyses in this thesis, I draw a similar conclusion with regard to Swiss-EU relations. Swiss European policies changed considerably during the research period. Most importantly, their frequency and substantive and legal integration quality increased. At the same time, the processes explaining these developments are not new. Negotiations between Switzerland and the EU are still difficult and require many years and many compromises. Domestic rule transpositions, as long as they are not implementation measures, still do not receive public attention. Popular referenda still pose a danger to the smooth development of integration. In this section, I discuss two topics discussed in the introduction in light of the findings of this thesis. The first relates to the traditional foreign policy paradigm, according to which Switzerland cooperates economically with other states but abstains from political participation in the international arena. The second relates to domestic politics and discusses whether the diagnosis of a "permissive consensus" or of a "constraining dissensus" is more appropriate for the explanation of Switzerland's differentiated integration.

5.3.1 Is Switzerland the Last Gallic Village in Europe?

The thesis showed that in the area of sectoral agreements, the Bilaterals I and II agreements are those with the highest integration qualities and those, which were most frequently revised in the research period. The treaties with the highest legal integration qualities are the Air Transport Agreement and the Schengen and Dublin Association Agreements. The Schengen agreement is also the most frequently revised agreement in the data set, although it was in force for only three years during the research period and is not an economic agreement. Many other treaties which were often revised in the research period belong to the Bilaterals I package and most regulate issues related to cross-border economic ex-

change, such as, for example, the agreements on agriculture, on the watch industry, on originating products, on air transport and on conformity assessment. A few frequently revised agreements are older than the Bilaterals I agreements. Two interesting examples are the protocols to the Free Trade Agreement and the Agreement on Products of the Watch Industry. The FTA is often mentioned in the literature, but its implications are rarely thoroughly discussed. Especially the frequency of its revisions, however, indicates that it is still an important element of Switzerland's differentiated integration. The Watch Industry Agreement is largely unknown and probably only relevant for the watch industry. It is also not an example of the regularities observed in Chapter 3, as it neither directly refers to EU law nor are its revisions adopted by the Mixed Committee. Rather, the watch industries of both Switzerland and the EU, together with lower units in the federal administration agree upon updates of the annexes to the agreement. This indicates that particularistic interests can sometimes be met in a non-bureaucratic way. In sum, although Swiss-EU relations reach beyond issues related to market access, the agreements related to international economic exchange are those that are most frequently revised. High legal integration quality explains the exemptions to this rule.

The developments in the realm of domestic rule transpositions indicate that the 1990s marked the heyday for the policy of "autonomous adaptation", which led to unilateral transpositions of EU rules into domestic legislation. This finding adds weight to the analyses of the economic regulatory reforms of the 1990s and their relation to European Union policies (Mach et al. 2003; Maggetti et al. 2011). However, besides European integration, the policy reforms in the 1990s were related to an economic downturn and a general trend towards liberalisation and privatisation in economic policy in the Western world, which challenged a rather protectionist economic order in Switzerland. Over time, the relevance of unilateral rule transpositions into federal laws has decreased. Accordingly, also the economic rationale of domestic rule transpositions may not have the same relevance anymore, as they are more often related to agreement implementations. Once again, however, this finding has to be interpreted in light of the recent study by Gava and Varone, who showed that "indirect Europeanisation" is more important in secondary federal legislation. It thus remains a question to be answered in future research whether the important unilateral adaptations in the 1990s have served as the foundation for a continuous unilateral transposition of EU rules via secondary legislation.

This economic rationale of the sectoral agreements, which is also often discussed in the literature, could not be shown in multivariate analyses. The time-varying indicators of economic performance are not consistently correlated to sectoral agreement reforms or domestic rule transpositions and comparative GDP growth is even positively correlated to the aggregate number of substantive integration steps (see Chapter 4). Judged based on the time points of integration steps, Switzerland's differentiated integration was not determined by economic performance. Political dynamics, like party strength, issue salience and negotiation dynamics in the case of sectoral agreements and reform packages and relation to agreements in the case of domestic rule transpositions were more decisive for the time points of integration. The analyses conducted throughout this thesis, however, are not detailed enough with regard to economic implications of and reasons for differentiated integration steps for the rejection of any economic rationale behind Switzerland's differentiated integration. Nevertheless, the analyses indicate that the case-by-case approach to integration and the importance of the domestic decision-making process and international negotiations make it difficult to assign integration to the interests of one specific economic sector, because the domestic interest groups can negotiate the most convenient solution in every single case.

The thesis showed that the integration quality of sectoral agreements and domestic rule transpositions increased over time and this seems to be related to a more dynamic development of Switzerland's differentiated integration. However, this finding also has to be put into relation with the whole picture of Switzerland's differentiated integration. For example, the conclusions regarding the effects of legal integration qualities of sectoral agreements formulated in Chapter 3 build on the analysis of only 19 sectoral agreements, because only 19 sectoral agreements were partially revised at least once during the research period. The remaining 32 agreements in the data set, which were responsible for at least one reform, and which thus could be analysed with regard to their integration quality, were only adopted and never revised. Moreover, 46 agreements were in force for at least one year in the research period, but were neither adopted nor revised during it. Because of the choice of legal reforms as units of measurement, this thesis did not analyse the quality and significance of these agreements. The dynamic picture of evolving legal integration is attenuated by these figures. Future research has to show whether they are of minor importance and therefore

do not evolve dynamically, or whether they are the 'normal' cases of Switzerland's differentiated integration, which would hint at a rather static picture.

Also with regard to domestic rule transpositions, the result of increasing legal integration needs to be attenuated. Over the whole research period, more than half of the domestic rule transpositions were not implementations of sectoral agreements. Parts of these unilateral transpositions could be explained by their relation to agreement negotiations or by their occurrence in policy fields, where harmonisation agreements are in force. Such rule transpositions are probably not entirely unilateral, but their relation to concrete agreements has to be researched in the future. For the rest, however, the thesis did not find a consistent explanation. Only partial rule transpositions seem to occur mainly in new federal laws, which indicates that EU law sometimes serves as a reference or source for policy learning when new issues are to be solved. In general, however, unilateral rule transpositions are not related to issue salience, party positions or indicators of economic performance. The analyses in Chapter 3 showed that domestic transpositions are less likely in areas with agreements, which are of a higher integration quality. In Chapter 4, the inclusion of domestic rule transpositions in an aggregate analysis of Switzerland's substantive integration proved fruitful. When counting both sectoral agreement reforms and domestic rule transpositions as instances of sectoral integration, I found correlations with several explanatory factors mentioned in the literature. These results indicate that domestic rule transpositions can only be properly understood in the context of Switzerland's differentiated integration as a whole.

Switzerland can thus be characterised as a Gallic village in the European integration landscape, as most agreements are static and do not encroach upon its freedom to hold referenda on any question, even if it contradicts integration principles, and because the majority of domestic rule transpositions were unilateral. Switzerland thus indeed abstained from political integration. In addition, the 1990s, the years when we observed most unilateral rule transpositions, experienced these transpositions because they were part of larger developments, which were related to European integration, but also to an economic recession and a paradigm change in economic policy. However, as soon as Switzerland decides to negotiate a sectoral agreement with the EU, and this increasingly holds in recent years, it is subject to a rather dynamic evolvement of integration and usually agrees on integration measures of high substantive and legal integration quality. In order to conclude agreements with the EU, Switzerland needs to adapt is policies at the domestic level and also negotiate on issues of

interest to the EU. These developments have reached beyond economic policy. The Galls are thus often subject to the same rules as the Romans, their European neighbours. Once agreements are in place they need to be revised regularly and this is normally achieved by competences assigned to Mixed Committees. In many other cases, the Federal Council is in charge of agreement revisions. Like their neighbours, also the Galls thus lost some control over the development of their European integration.

However, the integration of the Gallic village via sectoral agreements is a fragile integration. The dynamic elements developed without public awareness and, therefore, they are not based on a broad and legitimate decision to develop Switzerland's differentiated integration in such a way. The Swiss voters are free to decide against European integration in any future vote. In the next paragraph, I discuss that fragile integration is possible thanks to a permissive consensus, but can be halted by constraining dissensus on any point in time.

5.3.2 Constraining Dissensus or permissive Consensus?

Markus Haverland (2014) expected that research on the European Union, the development of which for a long time has been facilitated by a "permissive consensus", could learn something from research on Switzerland, whose European policies from the beginning have had to deal with a "constraining dissensus" because of high euro-scepticism and the use of popular referenda (Afonso et al. 2014). Also for Switzerland, however, parts of its integration measures were conducted with a permissive consensus, as the Federal Council was in charge of the majority of agreement reforms and initiated most of the rule transpositions into domestic legislation. Agreement reforms adopted by the Federal Council cannot be challenged at the polls and unilateral rule transpositions in federal laws, which can be, were almost never challenged there. This corresponds to the liberal intergovernmentalist arguments that governments are the key actors of European integration and to the assumption in the Europeanisation literature that governments are empowered by Europeanisation processes at the expense of parliaments. However, the analyses in Chapter 4 showed that although the Federal Council was in charge of most reforms, which transposed EU rules in absolute terms, the most important reforms – those introducing new rules to Swiss-EU relations or approving new legal integration – were approved by parliament, and often also in a popular refer-

endum. The permissive consensus and the constraining dissensus thus affect different forms of integration.

The observation of a "constraining dissensus" regarding European integration in Switzerland is related to the euro-scepticism and related cleavages in the electorate, which produce dissensus, and to the referendum threat, which is constraining for the government. The large amount of reforms approved by parliament and some even in popular referenda is an element of Switzerland's European integration which is not thoroughly theorised and researched in European integration studies, because it is less relevant for member states without direct democratic instruments. Haverland expected that insights on the Swiss case are valuable also beyond Switzerland, because politicisation of European integration has grown in member states. The findings presented in Chapter 4 give some hints about how integration could proceed in a euro-sceptic country with the wide use of popular referenda. The question of issue salience seems to be crucial in that regard. The salience of European integration is correlated negatively to agreement reforms that need parliamentary approval and to the aggregate number of substantive integration steps. This finding resonates well with the results of research on the domestic decision-making process in Switzerland, which showed that the decision-making process tends to be more exclusive if it is Europeanised.

The relevance of issue salience probably is related to another factor, which was not researched in this thesis and to my knowledge was also not the subject of earlier studies. An issue can only be salient if the public and politicians are aware of its existence and significance. Scholars and politicians alike repeatedly regretted that domestic rule transpositions are conducted by stealth. The fact that unilateral transpositions of EU rules were almost never challenged at the polls although every federal law reform is subject to an optional referendum may indicate that they do not reach public attention. Although it is usual that less than ten percent of all federal law reforms are challenged in a referendum, the fact that referenda are not used is surprising against the backdrop of the assumption that the Swiss electorate is so euro-sceptic. There are two explanations for this. Either the case-by-case transposition of rules is perceived as a pragmatic response to current political challenges rather than a policy of European integration. This is perhaps what Alexander H. Trechsel (2007) called a permissive consensus regarding domestic rule transpositions. Or the public and politicians are simply not aware of the rule transpositions. This interpretation supports the view of Afonso et al. (2014) that politicisation has to be used by political actors in order to influ-

ence policy outcomes. The analysis of the development of Switzerland's differentiated integration in this thesis thus mostly hints at a permissive consensus, which enables even rather dynamic developments of integration below the threshold of membership. The constraining dissensus, however, is responsible for the case-by-case approach to integration, as an encompassing participation was rejected with the EEA agreement. Also, the constraining dissensus makes Switzerland's differentiated integration a fragile integration arrangement. As this question recently became salient again, I discuss it in the next section in light of the discussion of the political relevance of the thesis started in the introduction.

5.4 Political Relevance: Back to Square One?

To conclude this thesis, I return to the political discussions related to Switzerland's way of differentiated integration. Quite unexpectedly, the topic gained new political relevance during the last months of writing, after Swiss voters accepted a popular initiative, whose implementation will most probably violate the Free Movement of Persons Agreement. Based on the results of the thesis, I will first discuss the current developments related to the recent popular vote on immigration and show that the consequences are not surprising, because they result from the fragility of Switzerland's differentiated integration arrangement. Second, I resume the issues discussed in the introduction, mainly the questions of Switzerland's autonomy and a new institutional framework for the sectoral agreements and the lack of transparency inherent in its way of differentiated integration.

5.4.1 Consequences of the Immigration Initiative

As a reaction to the popular initiative, whose implementation probably violates the free-movement principle, the EU put on hold the negotiations for an Energy Agreement and refused to sign the upcoming total revisions of the Agreements on Research and Development and on Education. As a result, Switzerland immediately lost access to the EU programs Erasmus and "Horizon 2020", the eighth framework program for research. Judging based on how they were reported in the media these reactions came as a surprise for the Swiss public and even for political observers. The halt in negotiations for the Energy Agreement, however,

was more a signal than a real sanctioning measure. Negotiations in the area of electricity had already been ongoing since 2007. In 2010, the Federal Council adapted its negotiation aims to new EU directives and technical issues could be resolved (Zünd 2010). The main reason why the agreement has not been concluded are the unresolved issues with regard to its legal integration quality, and these issues are related to the general request of the EU to negotiate an institutional framework agreement for all sectoral agreements (Pressedienst UVEK 2013). Thus stopping these negotiations has no immediate consequences for Switzerland or the EU, because the success of the negotiations depends on another difficult issue.

The exclusion of Switzerland from Horizon 2020, on the contrary, was a sanction with immediate consequences for Switzerland. Since the 1980s, Switzerland had successfully participated in the framework programs of research, and since the early 1990s it had participated in the Erasmus exchange program. In both cases, it was only in recent years that participation granted Swiss researchers and students equal rights compared to their colleagues from EU member states. Before that, Switzerland was a third state with privileged access to EU programs, but for example without the right of its researchers to be project directors. Until the sanction, the cooperation agreements had been renewed on the occasion of every new framework program without difficult re-negotiations and without public attention. The sanction, however, shows the fragility of Switzerland's differentiated integration. Although education and research are deemed issues of low politics, in which Switzerland's technical expertise has counted more than its non-membership in the EU, these issues suddenly became politicised, as the upcoming renewal of the respective cooperation agreements provided the EU with a possibility to sanction Switzerland for its refusal to sign the protocol extending the FMPA to Croatia. This sanction thus is a negative consequence for Switzerland of an ad-hoc linkage of issues by the EU and indicates that the EU perceives the agreements with Switzerland as an integration framework rather than single international treaties.

Apart from these immediate reactions from the EU, the potential violations of the FMPA can affect the whole Bilaterals I package. The FMPA is part of Bilaterals I and if it is terminated, the other six agreements are automatically abrogated as well. At least this is what the agreement provisions foresee. EU representatives emphasised that they are not ready to renegotiate the free-movement principle in order to put it into accordance with the new constitutional article in Switzerland, although the FMPA also contains a provision regarding renegotiations of the agreement. The disagreement between Switzerland and the EU reflects

the tension, which was discussed in detail in Chapter 3. This tension stems from the discrepancy between the form of the agreement, which is an international treaty that can be renegotiated as the parties to the treaties wish, and its integration intention, which at least the EU interprets in a way that the free-movement principle has to be applied in Switzerland the same way as in the member states. In the past, the tension was resolved by frequent amendments to agreements of higher integration quality. The current disagreement shows once again that the tensions can be overcome in day-to-day law-making, but very difficult situations arise when decisions become salient and politicised. The current provisional solution, which allows Croatian citizens access to the Swiss labour market without the formal ratification of the respective protocol, shows that informal principles are important even in such situations.

In certain regards, this recent popular vote is similar to the situation in 1994 when Swiss voters accepted a popular initiative to protect the Alps from road traffic during the already difficult negotiations of the Agreement on Road and Rail Transport. This vote endangered the negotiations of the Bilaterals I package, which was deemed very important for Swiss economy at that time. Also today, for Switzerland the economic relevance of the Bilaterals I agreements, which were endangered by the current situation, is an important question. The thesis does not provide any evidence with regard to the economic benefits of the respective agreements, but it showed that the market access agreements of the Bilaterals I package are among the most frequently revised agreements, which hints at the relevance of formal regulations of the relations with the EU in these areas. However, the thesis also showed that agreement negotiations often lasted several years and were complicated by political decisions in Switzerland. Also when the Swiss voters approved the Alps initiative, the EU put the negotiations of the transport agreement immediately on hold and Switzerland had to present an EU-compatible implementation of the initiative and make concessions in other areas in order to gain concessions in the issues touched by the initiative. The difference between the two situations is that the transport policy in the EU was still being developed in the 1990s, whereas the free-movement-of-persons principle is already established and Switzerland is asking for exemptions in an area where it is already integrated.

5.4.2 Swiss Differentiated Integration and Swiss Democracy

All politically important questions of Switzerland's differentiated integration are reflected in the current difficult situation between Switzerland and the EU. The 'bilateral way' is said to protect Switzerland's autonomy, as agreements are negotiated only in areas of Swiss interests and respect Switzerland's political institutions, above all its direct democracy. Advocates of a re-negotiation of the sectoral agreements often emphasise that also the EU is interested in certain issues and, therefore, Switzerland has a new chance to link issues. The detailed review of the literature throughout this thesis and the empirical analysis in Chapters 3 and 4, however, suggest that issue linkage was applied successfully by Switzerland in order to get an issue on the negotiation table, but this strategy did not necessarily lead to exemptions with regard to the legal and substantive integration qualities of the agreements, which were the result of such issue linkage. Once the parties agreed to negotiate issues, it seems that the EU rules are the only game in town. This is suggested by the finding that one third of all unilateral rule transpositions were conducted in order to facilitate negotiations with the EU, and by the fact that Schengen, the agreement which Switzerland linked to requests by the EU, is the agreement with the highest legal integration quality and with the highest frequency of revisions.

Nevertheless, even in the Schengen agreement the EU acknowledged that amendments to the agreement, which Switzerland is obliged to adopt, are approved in the normal domestic decision-making process in Switzerland (Good 2010). Depending on the content of an amendment, this process requires approval by parliament and an optional referendum. The EU thus recognised Swiss direct democratic institutions, but this does not signify that the EU would also accept a rejection of an amendment to the Schengen agreement. In some regard, the current situation is a test for the practical significance of Switzerland's legislative autonomy in general and this provision in the Schengen agreement in particular. If the EU is not ready to accept a result of a popular vote that contradicts the integration principle, the recognition of the domestic decision-making process is meaningless.

The practical significance of Switzerland's formal right to conduct popular referenda on integration measures is also important for the discussions about an institutional framework agreement. Despite the difficult situation, Switzerland and the EU started to negotiate an institutional framework agreement in May 2014. The framework agreement should regulate

the development of the 'bilateral law' in accordance with the development of the respective EU law as well as issues of monitoring and enforcement (Schweizerische Depeschenagentur 2014b). Regarding monitoring and enforcement, the thesis provides no insights as the question of implementation and legal practice was excluded from the empirical analysis. Regarding the discussion of 'automatic updates' of agreements, the thesis provides empirical data, which could inform the discussion about the changes, which an institutional agreement would bring. Chapter 3 took the Council's criticism, which is the reason for these negotiations, as a starting point and in the introduction I formulated the expectation that this analysis could help us re-evaluate the Council's criticism. The thesis gives some hints at interesting points, which would be worth analysing for Swiss and EU representatives alike. The first point concerns the many agreements, which were never revised since their adoption, or which were adopted before the 1990s and never revised in the research period. For Switzerland, the interesting question is whether these agreements are still relevant for Swiss-EU relations, whether they fulfil their function, and whether it is an advantage or a disadvantage that they were never adapted to changed realities and circumstances. For the representatives of the EU, such an analysis could corroborate their criticism. Do the agreements, which proved to be very static, really endanger the homogeneity of law in the Single Market? The empirical analysis suggests the contrary, as the FTA and market access agreements of Bilaterals I are the most often revised agreements. This thesis, however, does not allow an evaluation of the question of whether the revisions kept pace with the legal developments in the EU.

The second point concerns the agreements which were revised. The analysis in Chapter 3 indicates that there are different characteristics of agreements, which are correlated to more frequent revisions: Mixed Committees, direct references to EU law and dynamic provisions. Of these, only the latter two also proved to be related to a higher substantive quality of agreement revisions. In that regard, both Switzerland and the EU could profit from more thorough analyses of these revisions. The quantitative results suggest that an institutional update mechanism was not always necessary, as agreements with direct references to EU law were often revised, regardless of their institutional provisions. Moreover, regular agreement revisions, which had to be negotiated, were not always difficult. Following from this, an interesting question for Switzerland is whether imperfect or missing updates in the case of agreements with high integration qualities are indeed caused by their institutional

shortcomings or specific political interests. Because of the quantitative approach, this thesis theorised incentives to update agreements in a rather abstract way. A more detailed analysis of the political interests behind sectoral agreement revisions could help the politically interested Swiss to gain an understanding of substantive issues related to Swiss-EU relations. Such an analysis would complement discussions of a loss of sovereignty and autonomy, in case Switzerland agreed to transpose EU law continuously.

However, even if political interests were discussed more openly, the question of possible autonomy and sovereignty loss remains salient. The thesis showed that this question is already salient in the current integration situation in several regards. One concerns the increasingly dynamic development of the sectoral agreements in recent years and especially the frequent revisions of the Schengen agreement. So far these dynamics have been related to a few important agreements, but they developed largely unrecognised by the public, although some were subject to parliamentary approval and thus potentially could also have been challenged in popular referenda. These results suggest that Switzerland probably has to re-evaluate its legislative autonomy in the current integration situation.

The thesis also provided new data on the share of domestic law-making affected by the EU, an issue often discussed by the Swiss public and media in relation to Switzerland's autonomy. Although in the introduction I argued that the percentage share of domestic law-making affected by the EU is not per se important for the democratic decision-making process, its development over time and the quality of domestic transpositions of EU rules allow some thoughts about the more important issues of legislative autonomy and transparency. The empirical data show that only one third of Swiss domestic law-making contains EU rules. Out of these legal reforms, two thirds are active rule transpositions. These figures are higher than some reported in earlier studies, which is most probably related to the manual coding procedure that allowed the detection of more hidden rule transpositions. These figures are, however, comparable to figures provided for EU member states. Thus, as in EU member states, much less than the 80 per cent of law-making predicted by Jacques Delors is affected by the EU. The empirical data, however, also allow the distinction of purely domestic law reforms from law reforms in EU-relevant areas. Only 90 out of 498 EU-relevant federal law reforms in the period between 1990 and 2010 were not at least compatible with EU law (see Table 4 in Chapter 2). With four fifths of all EU-relevant federal law reforms being compatible with EU law, Switzerland seems to almost not use its legislative autonomy. Nevertheless,

domestic rule transpositions do not gain much public attention and are almost never challenged at the polls. Like the conclusion regarding the dynamic development of agreements, this data suggest that Switzerland has to re-evaluate its current legislative autonomy – or its use of this formal autonomy – in order to correctly assess the potential autonomy loss with a framework agreement.

The discussion of legislative autonomy is often related to discussions about the implications of Switzerland's differentiated integration for its democratic decision-making processes. In the introduction I argued that the lack of transparency related to domestic transpositions of EU rules is relevant for Swiss democracy. The thesis showed that unilateral rule transpositions became less frequent over time and implementation measures of sectoral agreements became more frequent over time. In addition, I interpreted the results of Chapter 4, which showed that unilateral rule transpositions are not influenced by the salience of European integration or party positions in parliament and are almost never brought to the polls as a sign that the public is not aware of unilateral rule transpositions. This underlines the related transparency problem. Implementation measures are more often approved in popular votes. As they became more frequent over time, this attenuated the transparency problem.

On the contrary, the increasing legal quality of Switzerland's differentiated integration enhanced the transparency problem in the case of the frequent revisions of sectoral agreements. In the case of the sectoral agreement, this transparency problem is also informative for the discussion about the role of direct democratic instruments in Switzerland's differentiated integration. Several sectoral agreements have developed dynamically, although the Swiss voters never agreed to delegate legislative competences to the EU. As a consequence, it is still possible to hold referenda, which endanger the current level of integration. If the EU, which accepted the international law form of Switzerland's integration framework, and the Swiss, who enabled a dynamic development of this integration framework by a permissive consensus, are not ready to accept the outcomes of popular votes that contradict integration principles, Switzerland's differentiated integration arrangement will require regulations of the use of popular referenda in order to guarantee legal security.

Annex

A Annex Chapter 2

A.1 Variable Description

Table 25: Detailed variable description

No.	Name	Description	Format	Source
Variables for both sectoral agreements and domestic legislation				
1	sr	SR number (number in the Classified Compilation of Federal Legislation) of the sectoral agreement or the federal law	String	Linder et al. (2011), SR
2	jahr	Year of the observation, publication year of the AS number		ibd.
3	gebiet	1 = international law 0 = domestic law	Binary	ibd.
4	as	AS number, number in the Official Collection of Federal Legislation	YEARPAGE	Linder et al. (2011), AS
5	pj	Year of the first publication of a legal act with this SR number, or year of the last total revision of this SR number	Continuous	ibd.
6	gb	Year in which the legal act was abrogated (9999 in case the legal act was still in force on 31/12/2010)	Continuous	ibd.
7	umfang	Number of pages of the text with the respective AS number	Continuous	AS
8	neu	The respective AS number introduces for the first time a legal act with the respective SR number	Binary	ibd.
9	totalrev	The respective AS number completely replaces a legal act with the same SR number	Binary	ibd.
10	partrev	The respective AS number revises a legal act	Binary	ibd.
11	aufhe	Legal act is abrogated in a given year.	Binary	ibd.
12	aufhetot	Legal act is abrogated because of a total revision of the corresponding SR number.	Binary	ibd.
13	referendum *	Popular referendum on the legislative activity was held	1 = yes 0 = no	Federal Chancellery, Chronology Popular Votes
14	ja_prozent	If a referendum = 1: percentage of yes-votes, if referendum = 0: missing.		ibd.

No.	Name	Description	Format	Source
15	ja_NR **	Number of deputies in the national council (Nationalrat) voting for the bill in the final vote.		Official Bulletin
16	nein_NR **	Number of deputies in the national council (Nationalrat) voting against the bill in the final vote.		ibd.
17	ja_SR **	Number of deputies in the states council (Ständerat) voting for the bill in the final vote.		ibd.
28	nein_SR **	Number of deputies in the states council (Ständerat) voting against the bill in the final vote.		ibd.
Variables only measured for sectoral agreements				
29	monitoring	Agreement contains monitoring rights for EU authorities	Binary	Legal text, AS
30	dynamic	Agreement contains dynamic update obligations	Binary	ibd.
31	comitology	Agreement contains decision-shaping rights for Switzerland	Binary	ibd.
32	data_eulaw	AS number contains direct references to EU law	Binary	ibd.
33	coop	Cooperation agreement	Binary	ibd.
34	lib	Liberalisation agreement	Binary	ibd.
35	harm	Harmonisation agreement	Binary	ibd.
36	hauptgebiet_i	Chapter in the international part of the Classified Compilation of Federal Legislation (first digit after "0." of the SR number)		ibd.
37	nebengebiet_i	Sub-chapter in the international part of the Classified Compilation of Federal Legislation (first two digits after "0." of the SR number)		ibd.
38	genehm	Competence to adopt the legal act when adopted as new act (equal to *genehm_rev* if *neu* = 1): 1 = Adoption by Federal Council (government) 2 = Adoption by Federal Assembly (parliament) 3 = Adoption by Federal Assembly (parliament) with a federal decree subject to mandatory or opt. referendum		Linder et al. (2011), AS
39	genehm_rev	Competence to enact the concrete legislative activity (corresponds to *genehm* if *neu* = 1, but can differ from *genehm* because the government may have the competence to amend an international treaty the parliament had to adopt in the first place): 1 = Adoption by federal council (government) 2 = Adoption by federal assembly (parliament) 3 = Adoption by federal assembly (parliament) with a federal decree subject to mandatory or optional referendum		AS
40	gemaus	AS number is a decision of a mixed committee	Binary	AS
41	adopt_yr	Year when an AS number was adopted (year of signature in case of adoption by Federal Council, year of parliamentary vote in case of parliamentary approval)		Legal text

No.	Name	Description	Format	Source
Variables only measured for domestic legislation				
42	AN_tot	AS number transposes the relevant EU rules	Binary	BBl
43	AN_part	AS number transposes the relevant EU rules partially	Binary	ibd.
44	comp	AS number does not transpose EU rules, but the SR number is (still) compatible with the relevant EU rules after the reform.	Binary	ibd.
45	impl	AS number fulfils an obligation by a Switzerland-EU agreement	Binary	ibd.
46	negprep	AS number serves the preparation of a sectoral agreement with the EU	Binary	ibd.
47	intag	AS number implements a multilateral agreement other than a sectoral agreement with the EU	Binary	ibd.
48	bbl	Number of the Federal Council message or parliamentary report presenting the bill to parliament in the Federal Journal (Bundesblatt)	string	AS
49	bbl_yr	Year in which the Federal Council message or parliamentary report was published in the Federal Journal (Bundesblatt)	Continuous	ibd.
50	Norm	Federal law is urgent	Binary	Linder et al. (2011), AS
51	hauptgebiet_l	Chapter in the domestic part of the Classified Compilation of Federal Legislation (first digit of the SR number)		ibd.
52	nebengebiet_l	Sub-chapter in the domestic part of the Classified Compilation of Federal Legislation (first two digits of the SR number)		ibd.
53	primary	AS number of the reform in the given year was published under the same SR number as the observation in the data set (legal act in the given year) has	Binary	ibd.
54	secondary	AS number of the reform in the given year was published under another SR number than the observation in the data set (legal act in the given year) has	Binary	ibd.
55	multiple	Number of primary reforms contained by the AS number if it is a framework law; 1 otherwise	Continuous	ibd.
56	initiative_BR	The Federal Council has initiated the legislative proposal	Binary	ibd.
57	initiative_parl	Parliament has initiated the legislative proposal	Binary	ibd.
58	initiative_stand	A canton has initiated the legislative proposal	Binary	ibd.
59	Eulaw	AS number concerns issues with relevant EU rules	Binary	BBl

Note: * In the case of sectoral agreements, a referendum can only be held if *genehm* = 3 and *genehm_rev* = 3. The variable referendum takes a missing value if *genehm_rev* < 3.

** In the case of sectoral agreements (*gebiet* = 1), parliamentary votes were only held if *genehm_rev* > 1. Accordingly, the variables on the vote shares are missing for all sectoral agreements and their reforms that were adopted solely by the Federal Council.

A.2 Coding Rules for the Quality of EU Rule Extensions in Sectoral Agreements

Epiney and colleagues (2012) proposed a scheme to categorise the bilateral treaties of the so called first (signed in 1999) and second round (signed in 2002) as well as some newer important treaties. The scheme contains seven categories and 17 treaties. Inspired from this coding scheme, the integration quality of the sectoral agreements was measured with the four variables dynamic, monitoring, adaptation and comitology. The basic coding rule for these variables was the question whether a given sectoral agreement differs on the respective dimension from a normal treaty of international law. If it differs, it is deemed to be of a stronger integration quality than a normal treaty of international law and the variable takes the value 1. Table 26 contains the concrete coding rules for the variables measuring the integration quality of the sectoral agreements. The variables comitology and monitoring were not used (or only used for the descriptive analysis in Chapter 2), because the first measures the extension of the organisational boundary to Switzerland and the second measures supranational integration with regard to enforcement. As the focus of the thesis lies only on the extension of the regulatory boundary and only on law-making, these variables were not used for the various analyses (see Chapter 2, section 2.1.3)

In the legal literature, it is also common to distinguish between harmonisation, liberalisation, and cooperation treaties (Epiney et al. 2012; Thürer et al. 2007). The distinction is based on the character of the agreement aims and by the means foreseen by the agreement to achieve these aims. For the purpose of the quantitative data collection, the categories were defined as follows:

Liberalisation treaty:

Liberalisation treaties concern economic liberalisations in the area of the four freedoms (goods, persons, capital, services). In order to categorise a treaty as a liberalisation treaty, it does not have to equalise Switzerland's status with the status of a member state, but it has to liberalize EU-Switzerland relations in the areas of the four freedoms further. Such a liberalisation can be achieved through the elimination (or reduction) of technical barriers to trade, and/or the reduction of the disadvantage of Swiss actors on EU markets compared to EU actors (and vice versa).

Harmonisation treaty:

Harmonisation treaties aim at a harmonisation of formal rules. A harmonisation cannot only be achieved when a EU legal rule is explicitly extended to Switzerland, but also when the parties to the treaties are asked to take measures in order to establish equivalent rules. Harmonisation of formal rules does not necessarily only concern economic issues, and the harmonised rules are not necessarily EU rules.

Cooperation treaty:

Cooperation treaties regulate some form of institutional cooperation between Switzerland and the EU. Cooperation can happen between Swiss and EU authorities (legal assistance, exchange of information), or can take the form of Swiss participation in an EU programme or project, for which Switzerland provides human and/ or financial resources (e.g. participation in the mission to Bosnia-Hercegovina or in the framework programs for research).

An agreement can have the characteristics of all three integration qualities (e.g. the Schengen agreement that liberalizes freedom of movement inside the EU, harmonises many rules among the members, and requests financial and human cooperation in the framework of Frontex), or only of two or one of these forms.

Table 26: Variables measuring integration qualities of Switzerland-EU treaties

	Principle	**We count as deviation from the principle…**	**We do not count as deviation from the principle…**
Monitoring	Every party to the treaty is responsible for the correct implementation of the treaty on its territory (Thürer et al. 2007: 70, 76).	… if Switzerland is obliged to adhere to ECJ rulings not only before, but also after a treaty has been signed; if certain EU authorities (e.g. the Commission) are guaranteed a right to control the correct implementation of the treaty on Swiss territory and/or have the right to intervene in case of violations of the treaty's provisions; … if Switzerland or Swiss firms or citizens can bring violations of the treaty to the European Court of Justice, and/or if Switzerland, Swiss firms or citizens can be brought to the ECJ.	… if the treaty lists Swiss or European authorities responsible for the monitoring of the correct implementation of the treaty, as long as they do not get additional competences on the territory of the other party; … if the mixed committee is responsible for dispute settlement (it is not an EU authority, and the delegates of Switzerland and the EU have to decide in consensus).
Dynamic	Future law-making of one party to the treaty is not relevant (and in no form binding) for the implementation of the international treaty by the other party (Epiney et al. 2012: 97).	… if Switzerland is obliged to overtake new community legislation in the future (after signature of the treaty, e.g. because the EU has the right to terminate the agreement unilaterally in case Switzerland does not transpose relevant EU acts).	… if the mixed committee is responsible to inform the parties on new legislation in the other party, to discuss their compatibility with agreement provisions, and to propose amendments to the treaty, if necessary.
Comitology	Switzerland cannot participate in EU decision making (Thürer et al. 2007: 74 f.).	… if Switzerland can send delegates to committees or expert groups of the EU in the area of the treaty, or if Switzerland has to be consulted during the decision making phase "on the same grounds as delegates of member states" (also if Switzerland has no voting rights, because Switzerland never has voting rights).	… if Switzerland can be consulted, without an obligation or a general rule in the treaty.
Direct reference to EU law	Treaties create genuine 'bilateral law' and do not explicitly refer to (Thürer et al. 2007: 13, 54; Epiney et al. 2012: 95, 98)	… if a treaty lists concrete EU acts that are valid for Swiss-EU relations (concrete means with title or number)	… if the treaty mentions EU law in general, without referring to a concrete legal act of secondary legislation or article of primary legislation

Note: The variables monitoring, adaptation, dynamic and comitology are NOT mutually exclusive

A.3 Coding Rules for the Quality of Domestic Rule Transpositions

Differentiated integration was defined as the extension of EU rules to Switzerland. For the practical coding, EU rules were defined as follows: In general, only binding law was counted as EU rules. Binding law can be primary and secondary law, as well as binding commission law ('tertiary' law). Recommendations and similar texts were not counted as legal rules. In case of doubt, a publication in the Official Journal of the European Union was the criterion to define a legal rule as binding. A specific form of not binding EU rules are EU legal projects which were not yet adopted by the responsible authorities. Adaptations of domestic legislation to legal projects were not counted as transpositions of EU rules. The criterion for whether or not an EU law is in force is whether it has already been published in the Official Journal of the European Union.

All federal law reforms (adoptions, total and partial revisions, no abrogation) were coded with regard to their relation to the EU and to EU law. In order to measure the legal/ institutional relation of a federal law reform to the EU, legal reforms implementing a sectoral agreement are distinguished from legal reforms that do not result from an obligation resulting from an agreement with the EU. In order to measure whether a federal law reforms contains an EU rule, three different variables were used. As federal laws may contain several legal rules, and whole federal acts may or may not have a counterpart in a European act, the coding criterion is not full congruence between two acts. Rather, a legal reform is examined with regard to the question whether or not it aligns Swiss law to EU law. The coding rules for these EU relation variables (one dichotomous variable for the relation to an EU-Switzerland agreement and three dichotomous variables for the adaptation/ congruence character of a reform) are described in more detail in Table 27.

Table 27: Variables measuring transpositions of EU rules into Swiss federal laws

	Description	**Necessary condition**	**Sufficient condition**	**Special rules**
Full adaptation	In a given reform, the legislator adapts Swiss rules contained in this reform totally to the corresponding EU rules	- There exists EU law in the relevant area - Swiss legislation has been adapted to EU law (legislation corresponds better to EU law than before the reform)	- The legislator overtakes EU rules as a whole, without exemptions	- The same adaptation cannot be counted twice: if a reform does not bring Swiss law nearer to EU law than it was before, it is counted as compatible.
Partial adaptation	In a given reform, the legislator adapts Swiss rules contained in this reform to the corresponding EU rules, but	- There exists EU law in the relevant area - Swiss legislation has been adapted to EU law (legislation corresponds better to EU law than before the reform)	- The legislator overtakes EU rules with exemptions that would have not been allowed for member states	- Necessity of an international treaty for equal effect of equal provisions is not a reason to code partial instead of full adaptation; - The fact that Swiss law provides higher standards than EU laws is not a reason to code partial instead of full adaptation as long as Switzerland does not leave the leeway left to member states
Compatible reform	After a given reform, Swiss legislation is compatible (does not contradict) the relevant EU legislation	- There exists EU law in the relevant area - Swiss law is compatible with EU law	- Swiss legislation does not correspond better (or worse) to EU law than before the reform	
No relation (full adaptation, partial adaptation, and compatible var. are zero)		- The reform is not adapting Swiss law to EU law - There is no statement that Swiss legislation is compatible with EU law	-	
Implementation	A legal reform is necessary in order to fulfil obligations resulting from an international treaty with the EU	- A EU-Switzerland agreements is mentioned in the coding source		

Note: The variables total adaptation, partial adaption, and compatible reform are mutually exclusive. The variable implementation can be positive in conjunction with any (or none) of the three other EU relation variables.

A.4 Inter-coder Reliability Test

Table 28: Inter-coder reliability

Variable	Average pairwise agreement in percent	Fleiss' Kappa	Average pairwise Cohen's Kappa	Krippendorff's Alpha (nominal)
Full adaptation	94.066 %	0.660	0.659	0.661
Partial adaptation	88.005 %	0.472	0.477	0.473
Compatibility	90.025 %	0.482	0.489	0.483
Implementation	94.318 %	0.663	0.665	0.663
Full or partial adaptation	*90.909 %*	*0.741*	*0.742*	*0.742*
Partial adaptation or compatibility	*83.207 %*	*0.535*	*0.535*	*0.536*
Full or partial adaptation or compatibility	*87.500 %*	*0.719*	*0.719*	*0.718*

Note: number of coders: 4; scale level: nominal; number of cases: 132; number of decisions: 528.
Source: Values computed with ReCal3 by Deen Freelon (2010).

The evaluation of qualitative sources does not go without any ambiguities. The data were collected by four coders who obeyed the same coding instructions that were refined several times during a pre-test phase. Parts of the sources were evaluated by all coders independent from each other in order to test the reliability of the data obtained by the different coders. Table 28 shows the results of the reliability test using different indicators. The grey-shaded rows in Table 28 highlight the variables that are the most reliable according to the tests. According to the literature on content analysis, these indicators show 'substantial agreement' when assessed by Cohen's kappa (Stemler 2001) and allow 'tentative conclusions' following the rigorous criteria of Krippendorf (2004: 429). The three last rows of Table 28 show the reliability indicators if we count two or three variables describing the extension of EU rules as one variable. This exercise was conducted to test whether the distinction between different forms of rule extension may lead to disagreement between coders. Indeed, the combined variables adaptation (full or partial adaptation) and EU rule compatibility (full or partial adaptation or only compatible reform) show better values than the single variables. Three coders coded German sources, one coded French sources.

A.5 Policy Fields of the Classified Compilation of Federal Legislation

Table 29: Chapters and sub-chapters of the Classified Compilation of Federal Legislation

Landesrecht		**Internationales Recht**	
1	***Staat - Volk – Behörden***	***1***	***Internationales Recht im allgemeinen***
10	Bundesverfassung	10	Menschenrechte und Grundfreiheiten
11	Wappen. Bundessitz. Bundesfeiertag	11	Recht der Verträge
12	Sicherheit der Eidgenossenschaft	12	Internationale Zusammenarbeit
13	Bund und Kantone	13	Eidgenossenschaft. Kantone. Nachbarstaaten
14	Bürgerrecht. Niederlassung. Aufenthalt	14	Staatsangehörigkeit. Niederlassung und Aufenthalt
15	Grundrechte		
16	Politische Rechte		
17	Bundesbehörden	17	Beglaubigung. Staatshaftung. Öffentliches Beschaffungswesen
18	Staat und Kirche	18	Staat und Kirche
19	Diplomatische und konsularische Beziehungen. Internationale Organisationen. Regelung internationaler Streitigkeiten. Präsenz der Schweiz im Ausland	19	Diplomatische und konsularische Beziehungen. Sondermissionen. Internationale Organisationen. Regelung von Streitigkeiten. Weitergeltung von Verträgen
2	***Privatrecht – Zivilrechtspflege – Vollstreckung***	***2***	***Privatrecht - Zivilrechtspflege – Vollstreckung***
		20	Organisationen
21	Zivilgesetzbuch	21	Personen-, Familien-, Erb- und Sachenrecht
22	Obligationenrecht	22	Obligationenrecht
23	Geistiges Eigentum und Datenschutz	23	Geistiges Eigentum
24	Unlauterer Wettbewerb	24	Unlauterer Wettbewerb
25	Kartelle		
27	Zivilrechtspflege	27	Zivilrechtspflege
28	Schuldbetreibung und Konkurs	28	Schuldbetreibung und Konkurs
29	Internationales Privatrecht		
3	***Strafrecht – Strafrechtspflege – Strafvollzug***	***3***	***Strafrecht – Rechtshilfe***
31	Bürgerliches Strafrecht	31	Unterdrückung von bestimmten Verbrechen und Vergehen
32	Militärstrafrecht		
33	Strafregister		
34	Strafvollzug	34	Strafvollzug
35	Rechtshilfe. Auslieferung	35	Rechtshilfe und Auslieferung
36	Polizeikoordination und Dienstleistungen	36	Zusammenarbeit der Polizeibehörden
37	Flüchtlingshelferinnen und -helfer zur Zeit des Nationalsozialismus		

Landesrecht		**Internationales Recht**	
4	***Schule - Wissenschaft – Kultur***	***4***	***Schule - Wissenschaft – Kultur***
		40	Allgemeine Abkommen
41	Schule	41	Schule
42	Wissenschaft und Forschung	42	Wissenschaft und Forschung
43	Dokumentation	43	Dokumentation
44	Sprache. Kunst. Kultur	44	Kunst. Kultur
45	Natur- und Heimatschutz	45	Natur- und Heimatschutz
46	Schutz der Kulturgüter bei bewaffneten Konflikten	46	Schutz der Kulturgut bei bewaffneten Konflikten
5	***Landesverteidigung***	***5***	***Krieg und Neutralität***
50	Allgemeine Bestimmungen		
51	Militärische Verteidigung	51	Militärische Verteidigung
52	Bevölkerungs- und Zivilschutz	52	Schutz von Kulturgut
53	Wirtschaftliche Landesversorgung		
6	***Finanzen***	***6***	***Finanzen***
61	Organisation im Allgemeinen		
62	Münzwesen. Schweizerische Nationalbank		
63	Zollwesen	63	Zollwesen
64	Steuern	64	Steuern
66	Wehrpflichtersatz		
67	Ausschluss von Steuerabkommen. Doppelbesteuerung	67	Doppelbesteuerung
68	Alkoholmonopol		
69	Salzregal		
7	***Öffentliche Werke - Energie - Verkehr***	***7***	***Öffentliche Werke - Energie - Verkehr***
70	Landes-, Regional- und Ortsplanung	70	Raumplanung
71	Enteignung		
72	Öffentliche Werke	72	Öffentliche Werke
73	Energie	73	Energie
74	Verkehr	74	Verkehr
78	Post- und Fernmeldeverkehr	78	Post- und Fernmeldeverkehr
		79	Weltraumrecht
8	***Gesundheit – Arbeit – Soziale Sicherheit***	***8***	***Gesundheit – Arbeit – Soziale Sicherheit***
81	Gesundheit	81	Gesundheit
82	Arbeit	82	Arbeit
83	Sozialversicherung	83	Soziale Sicherheit
84	Wohnverhältnisse		

Landesrecht		**Internationales Recht**	
85	Fürsorge	85	Fürsorge
86	Schutz der Familie		
9	***Wirtschaft – Technische Zusammenarbeit***	***9***	***Wirtschaft – Technische Zusammenarbeit***
90	Regionalpolitik (Wirtschaftliche Entwicklung)		
91	Landwirtschaft	91	Landwirtschaft
92	Forstwesen. Jagd. Fischerei	92	Forstwesen. Jagd. Fischerei
93	Industrie und Gewerbe	93	Industrie und Gewerbe
94	Handel	94	Handel
95	Kredit	95	Kredit
96	Versicherung	96	Versicherung
97	Internationale wirtschaftliche und technische Zusammenarbeit	97	Entwicklung und Zusammenarbeit
98	Entschädigung schweizerischer Interessen	98	Entschädigung schweizerischer Interessen. Washingtoner Abkommen
99	Wirtschaftsstatistik	99	Wirtschaftsstatistik

Note: For English translation of sub-chapter titles see Table 30.

Source: Table adapted from Linder et al. (2011); URL of the Classified Compilation: http://www.admin.ch/bundesrecht/00566/index.html?lang=de, last accessed 17.07.2014.

B Annex Chapter 3

B.1 Combining SR Sub-Chapters for domestic and international law

Table 30: Combined policy field categories for domestic and international law

Domestic legislation	**Internat. legislation**	**Combined (own coding)**	
10	10	*No legislation, not coded*	
11	*11*	11	Capital
12	*12*	12	Security
13	13	13	Federation
14	14	14	Citizenship
15		15	Basic rights
16		16	Political rights
17	17	17	State authorities
18	18	*No legislation, not coded*	
19	19	19	Diplomacy
	20	*No legislation, not coded*	
21	21	21	Private law
22	22	22	Corporate law
23	23	23	Data protection
24	24	24	Competition
25			
27	27	27	Justice administration
28	28	28	Bankruptcy
29		21	Private law
31	31	31	Penal Code
32			
33			
34	*34*	34	Penal system
35	35	35	Legal cooperation
36	36	36	Police coordination
37		37	Refugee helpers
	40	*No legislation, not coded*	
41	41	41	School
42	42	42	Science
43	43	43	Documentation
44	44	44	Language, Art, Culture
45	45	45	National and cultural preservation
46	46	*No legislation, not coded*	
50		51	Defence

Domestic legislation	**Internat. legislation**	**Combined (own coding)**	
51	51		
52	52	52	Civil defence
53		53	Economic supply
61		61	State budged
62		62	Central banks
63	63	63	Customs
64	64	64	Taxation
66		66	Conscription tax
67	67	67	Tax agreements
68		68	Alcohol monopoly
69		*No legislation, not coded*	
70	70	70	Land-use
71		71	Expropriation
72	72	72	Public entities
73	73	73	Energy
74	74	74	Transport
78	78	78	Telecommunication
	79	*No legislation, not coded*	
81	81	81	Health
82	82	82	Work
83	83	83	Social insurance
84		84	Habitation
85	85	85	Welfare aid
86		86	Family
90		90	Regional policy
91	91	91	Agriculture
92	92	92	Forestry, Hunting, Fishing
93	93	93	Industry and Commerce
94	94	94	Trade
95	95	95	Banking
96	*96*	96	Insurance
97	97	97	International cooperation
98	98	98	National interests
99	99	*No legislation, not coded*	

C Annex Chapter 4

C.1 Coding of Independent Variables

Table 31: Coding and sources of independent variables used in Chapter 4

Variable	Operationalisation	Source
GDP growth diff. CH-EMU	Real GDP growth rate Switzerland (percentage change on previous year) minus real GDP growth rate of EMU (EU-17)	Own calculation based on Eurostat, URL: http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&plugin=1&language=en&pcode=tec00115
*GDP growth CH **	*Annual GDP growth Switzerland in per cent*	*World Bank, URL: http://data.worldbank.org/country/switzerland?display=default*
Export to the EU	Export volume to EU countries, percentage change to previous year	Own calculations based on data from the Federal Office of Statistics; URL: http://www.bfs.admin.ch/bfs/portal/de/index/themen/06/05/blank/data.html
*Gross value added financial sector **	*Gross value added of the financial sector (services in the areas of finances and insurances); percentage change on previous year in previous years prices*	*Federal Office of Statistics; URL: http://www.bfs.admin.ch/bfs/portal/de/index/themen/04/02/02/key/nach_branchen.html*
Issue salience	Percentage of survey respondents mentioning European integration as most important problem; variable *mip1* "most important problem, 1st mention" of selects survey	SELECTS survey; URL: www.selects.ch (Selects 2010)
Pro-European parties seat share	Seat share of parties in the federal parliament which are pro-European according to the Manifesto data set (variable *per108*)	Manifesto project; URL: https://manifesto-project.wzb.eu/, (Volkens et al. 2012)
Issue-linkage, international level	All new adoptions of the agreements adhering to either Bilaterals I or Bilaterals II, and all revisions of agreements adhering to Bilaterals I (binary variables).	Coding based on own data
EU policy scope	Indicator scope of EU policy proposed by Tanja Börzel; assignment of Börzel's policy fields to SR subchapters see Table 32.	(Börzel 2005)
Linked reforms, domestic level	A reform is linked if it was proposed in a Federal Council message which presented at the same time more than one law reform to the parliament	Coding based on own data

Note: * The variables marked with a star were used for preliminary analyses, but were not used for the final analyses presented in Chapter 4.

Table 32: Policy fields for EU policy scope indicator

Policy Field Börzel (2005)	**SR chapters and sub-chapters**
Justice and Home Affairs	
Criminal/ domestic security	Chapter 3
Civil security	Sub-chapters 52 and 53
Socio-cultural affairs	
Environment/ consumer protection	Sub-chapters 23, 45 In addition, domestic legislation: SR numbers starting with 813, 814, 817, 944 In addition, international legislation: SR numbers starting with 813, 814, 817, 944
Occupational Health and Safety Standards	Sub-chapter 81 In addition, domestic and international legislation: SR numbers starting with 822
Labour	Sub-chapter 82
Culture	Sub-chapter 43
Welfare	Sub-chapters 83 and 85
Research and Development	Sub-chapters 41 and 42
Economic affairs	
Economic Freedoms	Sub-chapters 14, 24, 25, 63, 82, 93, 94, 95, 96
Competition and Industry	Sub-chapters 22, 24, 25, 93
Energy and Transport	Sub-chapters 74, 72, 73, 78
Macroeconomic policy and Employment	Domestic legislation, SR numbers initiating with 611, 613, 616, 823 International legislation, SR numbers initiating with 823
Agriculture	Sub-chapters 91 and 92
Territorial (Regional), Economic and Social Cohesion	Sub-chapters 90 and 97
Monetary Policy	Sub-chapters 61 and 62
Tax	Sub-chapters 64 and 67

Note: The scope indicator was assigned to the policy fields, as described in the Table, and the respective year (adoption year in the case of sectoral agreements and year of the Federal Council message in the case of federal law reforms). Although Tanja Börzel's coding stems from the year 2005, she also a coded the scope values based on the later rejected constitutional treaty, what served as a basis for the coding of the years 2009 and 2010 after the Lisbon treaty entered into force.

C.2 Descriptive Summary Statistic Regression Analyses

Table 33: Summary statistics logistic regression sectoral agreement reforms

Variable	Obs.	Mean	Std. Dev.	Min	Max
Negotiated agreement ref.	203	0.29	0.45	0	1
Negotiated agreement ref., adopted by parliament	203	0.15	0.36	0	1
Growth diff. CH-EMU	203	0.55	1.43	-3.51	2.56
Export to EU	198	2.28	8.12	-17.59	10.78
EU policy scope	203	3.08	0.72	0	4.5
Federal Council	203	0.76	0.43	0	1
Issue linkage	203	0.36	0.48	0	1
Pro EU party share	198	76.47	5.29	64.23	93.09
Issue salience	192	6.99	4.21	3.87	16.00
Year of adoption	203	2003.78	6.11	1989	2010

Table 34: Summary statistics multinomial regression domestic rule transpostions

Variable	Obs.	Mean	Std. Dev.	Min	Max
Dependent variable					
No EU relation	513	0.52	0.50	0	1
Partial adaptation	498	0.13	0.34	0	1
Full adaptation	498	0.14	0.35	0	1
Implementation	498	0.20	0.40	0	1
Independent variables					
Growth diff. CH-EMU	500	-0.18	1.18	-3.51	2.56
Export to EU	489	3.51	5.53	-17.59	10.78
EU policy scope	513	2.84	1.34	0	5
Federal Council initiative	498	0.93	0.25	0	1
Linked reform	513	0.41	0.49	0	1
Referendum	483	0.27	0.08	0	1
Issue salience	475	10.53	5.14	3.87	16
Pro EU party share	489	78.25	8.38	64.23	93.09
Year	513	2001.74	5.94	1990	2010
New	513	0.29	0.45	0	1
Negotiation related	513	0.10	0.30	0	1
Time since last adapt.	513	2.41	3.56	0	15

C.3 Multinomial regression results

Table 35: Multinomial regression; Relative Risk Ratios of domestic rule transpositions

Base outcome: no EU rule	(1) Part. adapt.	(2) Full adapt.	(3) Implementation
H 1.1			
GDP growth, diff. CH-EMU	0.446*	0.610*	-0.553*
	(0.222)	(0.258)	(0.259)
H 1.2			
Export to EU	0.00854	0.0293	-0.116***
	(0.0351)	(0.0545)	(0.0307)
H 1.3			
EU policy scope	-0.0457	-0.0361	-0.176
	(0.125)	(0.189)	(0.110)
H 2.1			
Federal Council initiative	0.471	15.22	2.507*
	(0.683)	(1693.4)	(1.085)
H 2.2			
Linked reform	0.532	0.809	2.015***
	(0.355)	(0.458)	(0.353)
H 2.3			
Popular vote on reform	-16.60	-1.737	1.019*
	(1644.6)	(1.638)	(0.501)
H 2.4			
Issue salience	0.0953	0.116	-0.100
	(0.0974)	(0.141)	(0.0946)
H 2.5			
Pro EU party share	-0.0285	-0.0950	0.0134
	(0.0319)	(0.0502)	(0.0369)
H 3.2			
Year	-0.0218	-0.209	0.212*
	(0.101)	(0.147)	(0.105)
H 3.3			
Negotiation relation	3.615***	5.494***	-16.49
	(0.824)	(0.862)	(3898.2)
H 4			
New law/ total revision	0.661	0.245	-0.0681
	(0.339)	(0.439)	(0.397)
Control variable			
Time since last adapt.	0.0992*	0.253***	0.0889*
	(0.0487)	(0.0689)	(0.0441)
Constant	42.62	405.6	-429.1*
	(201.4)	(1718.6)	(209.0)
Observations	457	457	457
LR Chi2	389.77***	389.77***	389.77***

Note: Standard errors in parentheses; * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

Curriculum Vitae

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Education

2010 – 2014	PhD Student at ETH Zurich European Politics Research Group of Prof. Dr. F. Schimmelfennig
2013 – 2014	Visiting Student at EUI Florence doc.mobility scholarship from the Swiss National Science Foundation
07/2012	Summer School in Social Science Data Analysis, University of Essex
2003 – 2008	MA in Political Science (Lizentiat), University of Bern, Switzerland
01 – 05/2007	Exchange Student at Institut d'Etudes Politiques de Bordeaux, France
1998 – 2002	Gymnasium Neufeld, Bern
1991 – 1998	Primary and secondary schools, Fraubrunnen

Teaching and Knowledge Transfer

05/2014	Future workshop at “European Youth Conference”, co-teaching with Rebecca Welge, Ernsthofen, Germany
05/2014	Guest lecture on Switzerland’s relationship with the European Union, University of Lucerne
03/2013	Presentation on the adaptation of Swiss legislation to EU law, Café d’Europe 20/03/2013, nebs Zurich
02 – 06/2011	Tutorial „International Politics“, B.A. in public policy, ETH Zurich
11/2011	One week workshop for „Schweizer Jugend forscht“, co-teaching with Rebecca Welge, ETH Zurich

Languages

German (native), English, Russian, French, Italian

Professional Experience

2009 – 2011	Reviewer Book series “Soviet and Post-Soviet Politics and Society”, Stuttgart
2009 – 2010	Ski instructor Swiss Ski School, St. Moritz
08 – 12/2009	Researcher Equal Education Fund, Bern *Project:* Development of a monitoring and evaluation manual for non-formal education projects in development cooperation
01 – 03/2009	Intern Research group Russia/CIS, German Institute for International and Security Affairs, Berlin, Germany *Project:* Research and analysis on situation after war in Georgia in 2008
05 – 06/2008	Coder PISA study data collection, M.I.S. Trend, Lausanne
2005 – 2006	Intern NGO Medienhilfe, Zurich *Project:* Documentation of the legal framework for minority media in Central And Southeast European countries.

Voluntary Work

2007 – 2012	Chairwoman Upsala e.V. – Interkultureller Zirkusaustausch für Kinder und Jugendliche, Berlin, Germany *Responsibilities:* coordination of members, communication with Russian partners, strategic and financial planning, fundraising, website administration, tour organisation 2006-2007, 2009-2011.
2002 – 2003	Volunteer Social circus organisation Upsala-Circus, Saint Petersburg, Russia

Publications

Related to PhD

2014. "Europeanization of Swiss Law-Making: Empirics and Rhetoric are Drifting Apart." *Swiss Political Science Review* 20 (2):208-15.

2013. "Direkte und indirekte Europäisierung der schweizerischen Bundesgesetzgebung." *LeGes. Mitteilungsblatt der Schweizerischen Gesellschaft für Gesetzgebung (SGG) und der Schweizerischen Evaluationsgesellschaft (SEVAL)* 24 (2):489 – 504.

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Conference Papers

2014. "Mapping Switzerland's Differentiated Integration." *Paper presented at the Annual Conference of the Swiss Political Science Association*, Bern, 30-31.01.2014

2013. "The Non-Autonomous Adaptation of Domestic Legislation. Exploring the Driving Factors behind Switzerland's Policy of "Autonomous Adaptation"." *Paper presented at 3-Länder-Tagung, Innsbruck, 21.09.13.*

2012. "The impact of the ‚bilaterals' on Swiss legal adaptation to the EU." *Paper presented at the ECSA-Suisse conference,* Basel, 07.12.12, *and at the Annual Conference of the Swiss Political Science Association*, Zurich, 31.01.-01.02.13.

2011. "Swiss legal adaptation to the EU: a quantitative data set." *Paper presented at the ECSA-Suisse conference*, 09.12.11 in Basel.

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