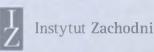MICHAŁ TOMCZYK
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THE IMPACT OF EUROPEANIZATION
ON THE DECISION-MAKING PROCESS
IN SWITZERLAND'S FOREIGN POLICY

In the light of growing globalization and deepening integration, the process of making specific political decisions is becoming increasingly difficult. The decision-making process is more complex as it is influenced not only by a variety of correlations and constellations, but also by specific restrictions at the institutional and personal levels. Accordingly, the nature or the way of making political decisions in both foreign and domestic policy is undergoing serious transformations. A thorough analysis of decision-making processes results in conclusions that can at least help understand the sources, mechanisms and rules of the specific changes. As a result, we can gain basic insight into the nature of this complex but also very interesting process not only at the local or domestic level but also at the international level. Interestingly, each of these levels is marked by its own specific and sometimes unique conditions which prevent extrapolations into other areas of political decision-making.

In this context, a particularly interesting research topic is Switzerland, a country whose activity on the international arena has been largely restricted by its foreign policy of perpetual neutrality.[1] In this respect, Switzerland for many years failed to attract special attention from researchers. Even when it did, it was only at the level of political practice, i.e. the effects of specific decisions, rather than at the level of broader theoretical considerations.[2] However that situation changed with the growth

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[1] See P. Andrzejewski, *Neutralność w polityce zagranicznej Finlandii i Szwecji*, Państwowe Wydawnictwo Naukowe, Warszawa 1988, p. 56 and D. Popławski, *Szwajcarska polityka bezpieczeństwa*, Warszawa 2007, p. 78. The year 1954 saw the formulation of official guidelines on neutrality, which later became known as the Bindschedler Doctrine. The content of the document is available in the DoDiS base (Diplomatische Dokumente der Schweiz), at: http://www.dodis.bar.admin.ch/dodis/dodis;jsessio nid=f43038f7021d4c86e458?XE7lhitk5AZh7Dfw9OYVZZzghtrLw7sN7xvmXB5111irfjt Wjzj7ogT-7P4OQr2J Qy9Qemj0KNJEQOhR9qYpv45a; dodis.ch/9565, (16.09.2009).

[2] See a a number of examples: A. Riklin, H. Haug & R. Probst (eds.), *Neues Handbuch der schweizerischen Aussenpolitik*, Bern / Stuttgart / Wien 1992; D. Frei, *Schweizerische Aussenpolitik*, Zürich, 1983; P. Hug, T. Geess, K. Dannecker, *Die Aussenpolitik der Schweiz im kurzen 20. Jahrhundert. Antibolschewismus, Deutschlandpolitik und organisierte Weltmarktintegration - segmentierte Praxis und öf-

of Switzerland's international activity triggered mainly by integrational processes in Europe and increasing globalization. For the Swiss decision-makers as well as a growing number of Swiss citizens it was becoming obvious that isolationism (*alleinstehen*) was not feasible anymore as a long term policy. However, the new geopolitical challenges created the need for both mental and institutional adjustment to existing conditions. For the Swiss decision-making institutions, known for their low level of innovation, it was and still seems to be a great challenge.[3]

As Switzerland increasingly involved itself in the international arena, the decision-making processes were becoming more and more complex, constituting thus an increasingly interesting research topic, especially in the context of European politics. The analysis of the decision-making processes in Switzerland's foreign policy not only provides illuminating insights into their uniqueness, but also serves as a starting point to investigate other aspects of the contemporary political system, inspiring further research questions.

Switzerland is among the countries that are most closely integrated with the European Union even though it is still not an official member. Moreover, integration with the EU or rather "flexible integration", as Sandra Lavenex calls it, is exerting an enormous impact on the functioning of the political structures in Switzerland.[4] This in turn generates discussion on Switzerland's institutional readiness for such forms of cooperation.

The present paper is an empirical analysis that focuses on the decision to join the Schengen Agreement and the Dublin Regulation. It aims to present changes in the decision-making process resulting from the integration processes. The analysis will draw on the concept of Europeanization, a process which is interpreted in academic works in numerous ways, but in its broadest sense, it refers directly to the EU's influence. As argued by T. Beichelt, Europeanization is "a process of something becoming more European"; however, "this something" (the subject of Europeanisation)" is undefined, which means that the range of objects that can be Europeanized is very broad, and comes to include individuals, institutions, processes, political processes, communities, etc.[5]

fentliches Ritual, NFP 42 Synthesis 49, Bern 2000; G. Schneider, *Vom Sonderfall zum Normalfall. Eine Einführung in die Aussenpolitik der Schweiz*, Zürich, 1998; D. Möckli, *Neutralität, Solidarität, Sonderfall – Die Konzeptionierung der schweizerischen Aussenpolitik der Nachkriegszeit 1943-1947*, „Zürcher Beiträge zur Sicherheitspolitik und Konfliktforschung", Nr. 55, Zürich, 2000; P. Widmer, *Schweizer Aussenpolitik und Diplomatie. Von Charles Pictet de Rochemont bis Edouard Brunner*, Zürich 2003.

    [3] See H. Kriesi, *Le systeme politique Suisse*, Paris 1998, pp. 293-297.
    [4] S. Lavenex, *Switzerland's Flexible Integration in the EU: A Conceptual Framework*, "Swiss Political Science Review" 15(4), pp. 547–575.
    [5] T. Beichelt, *Dimensions of Europeanisation*, in: F. Bafoil, T. Beichelt (eds.), *Européanisation. D'Ouest en Est*, 2008, p. 32; Cf. also K. Wach, *Wokół pojęcia europeizacji*, „Horyzonty Polityki" 2010, No. 1(1), pp.195-207.

This phenomenon can be approached in at least three basic ways: (1) as adjusting national legislation to the EU acquis, (2) as shaping national attitudes and beliefs, and (3) as structures, processes and functions of the state. In the present paper, however, the concept will be regarded as a process that has an enormous impact on the functioning of the national executive and legal bodies and of other entities involved in the decision-making process.

It is indisputable that European integration exerts a strong influence on the EU member states as well as on the countries that remain outside this institution. This impact is apparent in both external and internal policy as well as among the political institutions and actors. Based on a range of analyses, it can be concluded that Europeanization has influenced the world's countries in so many various ways that the overall image of this phenomenon is far from coherent. In some countries, the mechanisms of Europeanization can trigger considerable change in the functioning of state structures and, consequently, lead to fundamental reforms. In other countries, though, the same mechanisms can have such a small impact that the change will be hardly noticeable. Hence, in the research to date it is difficult to find a coherent framework that would account for the varied effects of Europeanization at the national level.[6] Nevertheless, based on the previous studies, it is feasible to make several assumptions underlying the present paper:

1. The processes of Europeanization have an impact, to a varying degree, both on the EU member states and non-member states, which are, however, strongly integrated with the Community.
2. Europeanization is a process that encompasses the area of political decision-making both at the conceptual level or at the level of political practice.
3. The processes of Europeanization have altered the positions and roles of the national decision-makers (the governments, parliaments, political parties, non-governmental organizations, interest groups, media, etc.), and influenced the interplay between them.
4. Europeanization is a phenomenon which strongly influences and modifies the nature of decision-making processes; however, this impact varies from country to country depending on the political system of the country.
5. The scale of the impact of Europeanization on decision-making is dependent on the nature of that process in a particular country.

The point of reference in the ensuing analysis is Switzerland's decision to join the Schengen Agreement (the Agreement on the gradual abolition of checks at the com-

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[6] Cf. M. Fontana, *Europeanization and domestic policy concertation: how actors use Europe to modify domestic patterns of policy-making*, "Journal of European Public Policy", vol. 18 (5): 654-671; T. Börzel, T. Risse, *Conceptualizing the domestic impact of Europe*, in: K. Featherstone, C. Radaelli (eds.) *The Politics of Europeanisation*, Oxford 2003; M. Giuliani, *Europeanization in Comparative Perspective: Institutional Fit and National Adaption*, in: K. Featherstone, C. M. Radaelli (eds.), *The Politics of Europeanization*, Oxford 2003, pp. 134-155.

mon borders) and the Dublin Regulation (a unified asylum policy).[7] This is a particularly interesting case because both agreements were part of a broader set of bilateral agreements which served as the basis of cooperation between Switzerland and the EU and, as one of the few agreements, they went through all of the stages of the decision-making process: from the pre-parliamentary phase to the forms of direct democracy, which will be analyzed in detail in the latter part of this paper. The empirical analysis will thus show the practical impact of Europeanization.

To elaborate on the key problem, various publications by Swiss researchers have been consulted. These works explore decision-making processes[8] in foreign policy in its traditional sense, and alterations resulting from the processes of internationalization and Europeanization.[9] The paper also draws on studies by Polish researchers who have investigated Swiss issues, i.e., publications by E. Kuželewska, A. Nitszke, M. Marczewska-Rytko, M. Musiał-Karg, and M. Tomczyk.[10]

The following sections will briefly discuss the Schengen Agreement and the Dublin Regulation. Then the nature of the decision-making process in Switzerland will be presented with focus on its evolution, which has resulted from the increasing integration with the EU. Finally, the decision-making process regarding the aforementioned agreements will be analyzed to show the practical dimension of the phenomenon of Europeanization.

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[7] More specifically, it is the Association Agreement concluded on 26 October 2004 between the Swiss Confederation, the European Union and the European Community on the application of the Schengen acquis, i.e. the 1985 Schengen Agreement and the 1990 Executive Convention to the Schengen Agreement. See *Abkommen vom 26. Oktober 2004 zwischen der Schweizerischen Eidgenossenschaft, der Europäischen Union und der Europäischen Gemeinschaft über die Assoziierung dieses Staates bei der Umsetzung, Anwendung und Entwicklung des Schengen-Besitzstands*, AS 2008/481, SR-0.362.31. Switzerland joined the Dublin Regulation of 15 June 1990, determining the state responsible for examining applications for asylum lodged in one of the Member States, including the Council Regulation (EC) No 343/2003 of 18 November 2003, establishing the mechanisms and criteria for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. See *Abkommen zwischen der Schweizerischen Eidgenossenschaft und der Europäischen Gemeinschaft über die Kriterien und Verfahren zur Bestimmung des zuständigen Staates für die Prüfung eines in einem Mitgliedstaat oder in der Schweiz gestellten Asylantrags*, AS 2008/515, SR-0.142.392.68.

[8] H. Kriesi, *Entscheidungsstrukturen und Entscheidungsprozesse in der Schweizer Politik*, Frankfurt/Main 1980; H. Kriesi, A. Trechsel, *The politics of Switzerland. Continuity and Change in a Consensus Democracy*, Cambridge 2008.

[9] P. Sciarini, S. Nicolet, *Internationalization and Domestic Politics: Evidence from the Swiss Case*, in: H. Kriesi, P. Farago, M. Kohli, M. Zarin-Nejadan (eds.), *Contemporary Switzerland. Revisiting the special case*, New York 2005, pp. 221-238; A. Fischer, *Die Auswirkungen der Internationalisierung und Europäisierung auf Schweizer Entscheidungsprozesse*, Zürich 2005; U. Klöti, *Verkannte Aussenpolitik. Entscheidungsprozesse in der Schweiz*, Zürich 2005; M. Fischer, *Entscheidungsstrukturen in der Schweizer Politik zu Beginn des 21. Jahrhunderts*, Zürich 2012.

[10] E. Kuželewska, *Referendum w procesie integracji europejskiej*, Warszawa 2006; A. Nitszke, *Zasady ustroju federalnego w państwach niemieckojęzycznych. Studium porównawcze*, Kraków 2013; M. Marczewska-Rytko, *Demokracja bezpośrednia w teorii i praktyce politycznej*, UMCS, Lublin 2002; M. Musiał-Karg, *Elektroniczne referendum w Szwajcarii. Wybrane kierunki zmian helweckiej demokracji bezpośredniej*, Poznań 2012; M. Tomczyk, *Polityka Szwajcarii wobec Unii Europejskiej*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2013.

THE SCHENGEN AGREEMENT AND THE DUBLIN REGULATION
IN THE CONTEXT OF SWISS-EU COOPERATION

The Schengen Agreement on the gradual abolition of checks at the common borders and the Dublin Regulation on asylum policy, both of which were signed by Switzerland and the EU in 2004, are the basis of cooperation between law enforcement and judicial authorities in the area of internal security in its broadest sense.[11] Besides the transportation agreement, these were the first accords that from the very beginning explicitly provided for the need to adjust the Swiss legislation to the EU acquis.[12] In practice, they presupposed the violation of the legislative sovereignty, one of the key arguments against Switzerland's entry into the EU. However, that decision was the first step towards building a new kind of bilateral relation with the EU, emphasizing the need for close cooperation at the operational level. It also opened up new possibilities of the so-called flexible integration with the Community.

In 2001, the Swiss government, while negotiating the second package of bilateral agreements (*Bilaterale I*), decided to use another set of talks that were held simultaneously as a bargaining chip. The government made the common solutions in the banking sector conditional on establishing close security cooperation.[13] The EU was ready to accept the proposal provided that the Swiss side adopted the whole of the acquis, not just some of it, which the Swiss were pushing for originally. Official talks began in July 2002 and within the next two years, the two sides reached a compromise on all of the contentious issues. That initiated a long legislative process that culminated in the 2005 referendum. Officially, the referendum question concerned only the implementation of Schengen/Dublin. However, in actuality, the vote had a broader significance: it was about whether or not to accept *Bilaterale II*, i.e. continued bilateral cooperation with the EU.[14]

The agreements signed with Switzerland were modeled on the previous agreements with Norway and Iceland, which the Community had concluded in 1999.[15]

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[11] For more insights see M. Tomczyk, *op. cit.*, pp. 183-187.

[12] D. Lehmkuhl, O. Siegrist, *Conditioned Networking: Swiss–EU Relations in Transport*, "Swiss Political Science Review" 15(4), pp. 603-627.

[13] Cf. C. Schoch, *Schweiz hält an parallelem Abschluss fest*, in: *Weiter auf dem bilateralem Weg*, «NZZ-Focus», November 2005, No 27, pp. 17-18.

[14] The proposal was finally supported by 54.6% of the voters. For more information on the referendum see http://www.europa.admin.ch/dokumentation/00438/00545/00547/index.html?lang=de (23.08.2014); Surveys by the gfs.Bern Institute: I. Engeli, A. Tresch, *Analyse der eidgenössischen Abstimmungen vom 5. Juni 2005*, No. 87/2005.

[15] *Abkommen vom 26. Oktober 2004 zwischen der Schweizerischen Eidgenossenschaft, der Europäischen Union und der Europäischen Gemeinschaft über die Assoziierung dieses Staates bei der Umsetzung, Anwendung und Entwicklung des Schengen-Besitzstands, AS 2008/481, SR-0.362.31; Abkommen vom 26. Oktober 2004 zwischen der Schweizerischen Eidgenossenschaft und der Europäischen Gemeinschaft über die Kriterien und Verfahren zur Bestimmung des zuständigen Staates für*

It is worth emphasizing that Switzerland managed to negotiate several important changes on several issues, such as: the right to carry out procedures on customs clearance at the borders or carry out customs procedures during passport checks. Unlike Norway and Iceland, Switzerland managed to negotiate much longer transitional periods for the required legal and institutional adjustment measures.[16] The key argument was that the unique nature of the decision-making process, including the instruments of direct democracy, requires more time for implementation.

The Schengen Agreement and the Dublin Regulation are an important component of building state security in the era of new threats, such as organized crime, illegal migration or violations of the asylum law. The government thus went ahead with its plans formulated in the 1999 integration policy report (*Integrationsbericht*) and the 2000 policy report (*Aussenpolitischer Bericht*). There is no doubt that the system of law enforcement and judicial cooperation coupled with coordinated asylum policy relieves the national authorities of some of their responsibilities. Full access to the Schengen Information System facilitates the work of the law enforcement authorities. As a result, it is much easier to fight crime despite the formal abolition of border controls. Also the Eurodac database, which was established to ensure the implementation of the Dublin Regulation, has contributed to curbing asylum violations, such as submitting asylum applications in several member states at the same time. Earlier on, due to its wealth level and a long asylum tradition, Switzerland had to grapple with the rising number of undocumented migrants.[17]

Hence, joining the Schengen Agreement was an important step in the development of Swiss-EU relations. It needs to be emphasized that in no other area had the EU ever made such substantial concessions to any non-member state, and it is highly unlikely that it will ever do so in the future.[18] The Schengen area membership brings considerable advantages; however, it should be remembered, as already stated, that this model of relations requires special attention due to a number of difficulties related to the adaptation of the acquis.

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die *Prüfung eines in einem Mitgliedstaat oder in der Schweiz gestellten Asylantrags*, AS 2008/515, SR-0.142.392.68.

[16] *Abkommen vom 26. Oktober 2004 zwischen der Schweizerischen Eidgenossenschaft, der Europäischen Union und der Europäischen Gemeinschaft über die Assoziierung dieses Staates bei der Umsetzung, Anwendung und Entwicklung des Schengen-Besitzstands*, AS 2008/481, SR-0.362.31; *Abkommen vom 26. Oktober 2004 zwischen der Schweizerischen Eidgenossenschaft und der Europäischen Gemeinschaft über die Kriterien und Verfahren zur Bestimmung des zuständigen Staates für die Prüfung eines in einem Mitgliedstaat oder in der Schweiz gestellten Asylantrags*, AS 2008/515, SR-0.142.392.68. Switzerland was given a two-year transitional period (Norway negotiated only six months, Iceland – just four weeks).

[17] Just in the first half of 2009, thanks to the Eurodac base nearly 3,500 cases of abuse were found.

[18] N. Wichmann, *"More in than out": Switzerland's Association with Schengen/Dublin Cooperation*, "Swiss Political Science Review" 15(4), p. 676.

THE DECISION-MAKING PROCESS IN SWITZERLAND'S FOREIGN POLICY

The nature of decision-making processes in Switzerland's foreign policy has constantly evolved. It gained momentum in the 1990s. The changes under discussion are linked with the evolution of the decision centers as well as the structure of processes and policy approaches.

The predominant model of decision-making in Switzerland is based on consensus, and has basically remained unchanged. Switzerland can still be called a negotiating democracy which guarantees all interested parties access to the decision-making process.[19] It is a price that needs to be paid for the stable and peaceful socio-political growth of the state. However, recent years have seen essential changes in the division of power or the degree of impact of all participants on the decision-making process. This phenomenon deserves further elaboration.

Switzerland's foreign policy is conducted at the federal level. In accordance with the constitution, external relations are under the control of the Federation, i.e. the government in Bern.[20] As in other federal states such as Germany or Austria[21] the division of competences is vertical in nature. The responsibilities of the Federal Council are specified in detail in the Constitution,[22] under which the government represents the state externally and sets foreign policy objectives and measures. All state management decisions, including external relations, are made collectively by all members of the Federal Council because foreign policy is conducted by various departments, not only the by the Federal Department of Foreign Affairs. Thus, the government makes all decisions on a collective basis, naturally only at the strategic and conceptual levels, but not at the operational level, where a wide range of actors are involved to varying degrees in the specific stages of decision-making. The Swiss decision-making process can be subdivided into several stages. The following categorization has been proposed by DeLeon:[23]

- agenda setting or initiation,
- preparatory, pre-parliamentary phase,
- parliamentary phase,
- direct-democratic phase,
- implementation phase.

As practice has shown, the whole process, from initiation to the final vote in the Parliament usually takes about three years.[24] The greatest emphasis is usually placed

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[19] H. Kriesi, A. Trechsel, *op. cit.,* p. 115.

[20] Swiss Federal Constitution, Art. 54, Para 1.

[21] L. Goetschel. M. Bernath, D. Schwarz, *Schweizerische Aussenpolitik. Grundlagen und Möglichkeiten,* Zürich 2002, p. 60.

[22] Swiss Federal Constitution, Art. 180 and 184.

[23] P. DeLeon, *The stages approach to the policy process*, in: P. Sabatier (ed.), *Theories of the Policy Process*, Boulder, CO 1999, pp. 19-32.

[24] H. Kriesi, A. Trechsel, *op. cit.*

on the pre-parliamentary phase which is designed to work out a satisfactory compromise. The consultations are attended by various interest groups, experts as well as representatives of cantons and political parties. Establishing a common position can sometimes be difficult, which is why the pre-parliamentary phase has always taken the greatest amount of time in the decision-making process.[25] Interestingly, though, this did not result from the difficulties in reaching a compromise but from the protracted evaluation of the whole consultation process carried out by the state administration.[26] The pre-parliamentary process can itself be subdivided into several stages:[27]

- elaboration of a pre-proposal
- committee(s) of experts
- formal consultation procedure(s)
- administrative consultation procedures
- decision by the government

It needs to be said, however, that not every single proposal goes through the above stages. It can also be observed that the process tends to be shortened. The government reduces the number of legislative acts submitted for consultation and reduces the number of procedures.[28] Such decisions depend on the kind of act that is submitted, whether or not it is controversial, and how many entities are involved in its preparation.[29] However, as various analyses have shown, the pre-parliamentary phase, contrary to general assumptions, does not contribute to the reduction of conflict in the subsequent stages of the decision-making process.[30] It has been observed that controversial legislation usually remains controversial at every stage regardless of how strongly attempts were made to resolve the contentious issues at the pre-parliamentary stage. Moreover, if a legislative act is not passed by an overwhelming majority in the Parliament, it is more likely that a motion for a referendum is filed, which usually delays the decision-making process.

It is worth emphasizing that the role of the Parliament in the whole decision-making process is rather marginal. Most of the decisions on legislative proposals are made at the pre-parliamentary stage. Only to a small extent are they modified

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[25] In the 1970s, it took up to ¾ and in the 1990s ²/₃ of the total time needed to make the final decision, i.e. the adoption of specific legislation by the Parliament. See H. Kriesi, A. Trechsel, *op. cit.*, p. 117.

[26] P. Sciarini, *The decisions-making process*, in: U. Klöti (ed.), *Handbook of Swiss Politics,* 2nd edition, Zürich 2004, p. 531.

[27] H. Kriesi, A. Trechsel, *op. cit.*, p. 117.

[28] Under the new law, it is only the government and parliamentary commissions that can initiate such procedures. See *Bundesgesetz über das Vernehmlassungsverfahren (Vernehmlassungsgesetz VIG), 18 March 2005,* available online at http://www.admin.ch/opc/de/classified-compilation/20032737/index.html (24 August 2014).

[29] P. Sciarini, *The Impact of Internationalisation on the Swiss Decision-Making Process: A Quantitative Analysis of Legislative Acts, 1995-1999,* "Swiss Political Science Review" 8(3-4), pp. 16-19.

[30] Cf. *ibidem*; H. Kriesi, *op. cit.*

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in parliamentary negotiations. For many years, the dominating role of the government was not a problem. However, since European policy is carrying more and more implications for domestic policy, the marginalized role of the Parliament became a serious political and constitutional problem. An attempt to resolve the issue was the 1992 law on the division of competences, which specifies how the two chambers of the Parliament should coordinate the Federation's foreign policy. Under this document, cooperation is implemented through permanent parliamentary committees which perform informational and advisory roles.[31] However, their decisions are not binding for the government. Moreover, in accordance with Article 166 of the Constitution, the conclusion of some international agreements does not require parliamentary approval.[32] As some political scientists argue, the above regulations are actually designed to stimulate more intensive discussion rather than challenge the pre-existing division of competences.[33]

THE IMPACT OF EUROPEANIZATION ON THE DECISION-MAKING PROCESS

The above scheme of decision-making processes has been strongly influenced by the phenomenon of Europeanization. That topic has been the subject of many studies that have focused solely on Switzerland or have been conducted from a comparative perspective (e.g., comparing Switzerland to other federal states).[34] First of all, Europeanization as a phenomenon can be divided into two subtypes: direct and indirect. The former concerns all international relations which consist in reaching specific decisions and the resultant legislative acts. The agreements signed as part of the *Bilaterale I* and *Bilaterale II* packages can serve as typical examples here. Indirect Europeanization refers to the phenomenon of the so-called automatic adjustment; in other words, the unification of the law which does not result directly from the provisions of international agreements but from the increasing integration with the EU. A good case in point here is the decision to liberalize the telecommunications

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[31] A comprehensive analysis of the functioning of parliamentary committees can be found in R. Lüthi, *Die Legislativkommissionen der Schweizerischen Bundesversammlung: Institutionelle Veränderung und das Verhalten von Parlamentsmitgliedern*, Bern 1997.

[32] The Bundesrat signs international agreements with no parliamentary consent if: 1) they do not impose on Switzerland any obligations or do not cancel the previous agreements, 2) are supplementary in nature: they are designed to implement legislation approved by the Parliament, 3) concern technical and administrative issues, and 4) they do not entail high financial costs and concern issues that fall exclusively within the competence of the government.

[33] This opinion is voiced in L. Wildhaber, *Aussenpolitische Kompetenzordnung im schweizerischen Bundesstaat*, w: A. Riklin, H. Hans, R. Probst, *Neues Handbuch der schweizerischen Aussenpolitik*, Verlag Paul Haupt, Bern 1992, p. 135.

[34] Ch. Knill, D. Lehmkuhl, *Die Europäisierung nationaler Staatstätigkeit: Erkenntnisse der aus der vergleichenden Policy-Forschung*, in: E. Holtmann, *Staatsentwicklung und Policyforschung: politikwissenschaftliche Analysen der Staatstätigkeit*, Wiesbaden 2004, p. 141.

sector, which was implemented without any EU pressure. Finally, some changes in Switzerland have resulted from the impact of both subtypes of Europeanization. Examples include the modification of the consultation procedures, the reduction of the conflict level, transformations in the division of powers and the emergence of new entities in public life.

In view of the above factors, the analysis of decision-making processes should take into account new determinants and conditions. Direct Europeanization, which has had an impact on bilateral agreements, has contributed to decreasing the role of formal pre-parliamentary and parliamentary consultations and to increasing the role of informal consultations. This change has occurred because in the case of highly complex international agreements, it is the executive power that has more preroga-tives (compared to the Parliament) as it is the only institution which is involved in international negotiations. It formulates proposals that can either be approved or rejected in the subsequent stages of the decision-making process. In such cases, the role of the remaining decision makers is decreased; they cannot be directly involved in identifying a problem or formulating the government's position in negotiations. Thus, there is very little room left for negotiations or consultations at the national level.[35] Usually, all the government does meet with selected experts, discuss the issue and take its stand.

It should be stressed that the weakened position of the Parliament in the deci-sion-making process automatically restricts the role of the cantons represented in the Council of States, which is the upper chamber of the Parliament, in shaping foreign policy.[36] This impact should not be overlooked as in the past this was the area of numerous controversies and conflicts. European integration forces the cantons to harmonize their policies in the areas that were previously under the control of the re-gional authorities.[37] Fiscal policy is a good case in point here.[38] Brussels has accused the cantons of creating tax havens in their areas, which runs counter to the interests of the EU member states. In this case, on the one hand, the cantons are expected to cover the financial costs of the integration, while on the other hand, they are forced to conduct unfavorable fiscal policy. No wonder then that the cantons are demanding a guarantee of involvement in the Federation's foreign policy.

The Swiss political system allows canton representatives to participate in the de-cision-making process through the Conference of Cantonal Governments (*Konferenz der Kantonsregierung*, or KdK for short). However, besides the consultative and

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[35] A. Fisher, S. Nicolet, P. Sciarini, *Europeanisation of Non-EU Countries: The Case of Swiss Im-migration Policy Towards the EU*, In "West European Politics" 25(3), s. 148.

[36] Members of the Council are elected in general elections, which means that they do not represent regional governments and are not bound by any instructions.

[37] Such areas as education, security, asylum and immigration law, the free movement of people or the implementation of Schengen/Dublin are only marginally dependent on the federal government.

[38] The dispute is over the tax rates, which, according to Brussels, restrict free competition. The EU invokes here the Free Trade Agreement concluded between Switzerland and the EEC in 1972.

representative functions, this body does not have any additional legislative or controlling functions. Its decisions are hardly ever binding for the government.[39] It could thus be concluded that the role of the Council of States as the institution representing cantons is merely symbolic.[40]

The strengthened role of the government at the expense of the remaining decision-makers can give rise to numerous disputes and impede the decision-making process. However, research has found that in the case of direct Europeanization the level of conflict is relatively low. This finding can be explained through the argument that the agreements with the EU have an essential and undisputed economic significance, which aids conflict reduction at the national level. These assumptions are confirmed by Sciarini and Nicolet's analysis.[41] This does not mean, though, that the government has total control over the whole ratification process. The agreement on the free movement of people and the Schengen/Dublin agreements serve as perfect examples here. These agreements were voted on in referendums, whose outcomes were not easy to predict.

ANALYSIS OF THE DECISION TO JOIN THE SCHENGEN AGREEMENT AND THE DUBLIN REGULATION

To show the practical impact of Europeanization on the decision-making process, it is necessary to thoroughly analyze each of its stages. The analysis will be based on DeLeon's classification despite some weaknesses of this approach. For instance, it should be assumed that it may be difficult to thoroughly analyze the specific stages due to the lack of sufficient research materials (some of the documents, especially from the pre-parliamentary phase, were not made public). As a result, it is not feasible to reconstruct the exact course of every single stage of the decision-making process. This point applies in particular to the behind-the-scenes negotiations or consultations at the national and international levels. However, DeLeon's structure of the decision-making process is coherent enough to be applied as a benchmark in the analysis of numerous source materials. The following sections will discuss the most important phases of the decision-making process in connection with the conclusion of the Schengen Agreement and the Dublin Regulation.

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[39] Under Art. 55 of the Constitution, the cantons are involved in the decision-making process only in the case of essential (*wesentlichen*) interests of the Federation, which is too imprecise and arouses many doubts. See J.F. Aubert, *Mitwirkung der Kantone an der europäischen Politik im Falle eines Beitritts der Schweizerischen Eidgenossenschaft zur Europäischen Union*, in eds. Konferenz der Kantonsregierung, *Die Kantone vor der Herausforderung eines EU-Beitritts, Bericht der Arbeitsgruppe „Europa-Reformen der Kantone"*, Zürich 2001, p. 175.

[40] For more insights see M. Tomczyk, *Wpływ kantonów na politykę zagraniczną Szwajcarii, w kontekście współpracy bilateralnej z UE*, „Niemcy-Austria-Szwajcaria. Rocznik Katedry Badań Niemcoznawczych Uniwersytetu Łódzkiego", vol. IV, Łódź 2010, pp. 177-198.

[41] Cf. P. Sciarini, S. Nicolet, *op. cit.*

AGENDA-SETTING OR INITIATION

Similar research has found that agenda-setting is usually initiated by the Parliament or the executive power, i.e. the government or the federal administration.[42] Less frequently this process is a result of external pressure, though as indicated by H. Kriesi, since the 1990s, agenda-setting in foreign policy has been increasingly influenced by international conditions.[43]

Regarding the Schengen/Dublin agreements with the EU, the initiative to conclude them came from the Swiss side. It was already in the early 1990s that the first calls for cooperation with the Community within the Schengen Agreement were made. In 1993, a parliamentary expert group chaired by Jean-François Leub (*Grenzpolizeiliche Personenkontrollen* – EGPK) published a report, which among other things put forward a proposal to conclude the agreement.[44] It was feared that if Switzerland was to remain outside the Schengen area, it would be affected by a rise in illegal migration and an increase in crime.[45] The EGPK final report conclusions and recommendations were approved by the government and served as the basis for building a new strategy of internal security, which focused on international cooperation. It could thus be assumed that the idea of Switzerland's entry into Schengen came from the government (in actuality, though, it was raised by the above-mentioned expert group).[46] This is an important element in the further analysis given that new legislative proposals usually generate greater tensions when they are motivated by external pressure.[47] However, this was not the case here; it was the Swiss side, not the EU, that pushed for joining Schengen/Dublin. Moreover, the European Union refused to sign the agreements unless Switzerland embarked on bilateral cooperation in the fight against tax fraud.[48] Thus, the EU treated the Schengen Agreement as an argument in negotiations with Switzerland or as an instrument for pursuing its own interests, not an end in itself. From the EU perspective, Switzerland's entry into the Schengen area was less important than the settlement of the tax fraud issue.

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[42] In the 1970s, the Parliament initiated the legislative proces in 46% of the cases. In the 1990s, this percentage decreased to 26%, P. Sciarini, *op. cit.*, p. 11.

[43] H. Kriesi, *op. cit.*

[44] N. Wichmann, *op. cit.*, pp. 653-682.

[45] H. Busch, *Eine ganz besondere Partnerschaft, Europa-Magazin*, http://europa magazin.ch/.ee6b-f3f/cmd.14/audience.D (20 August 2014).

[46] See *Interpellation Gegen eine Schweiz als «Insel der Unsicherheit»*, http://www.parlament.ch/d/suche/seiten/geschaefte.aspx?gesch_id=19933349 (20 August 2014).

[47] See R. E. Germann, *Staatsreform. Der Übergang zur Konkurrenzdemokratie*, Bern 1994; S. Hug, P. Sciarini, *Switzerland - Still a Paradigmatic Case?*, in: G. Schneider, P. Weitsman, T. Bernauer (eds.), *Towards a New Europe: Stops and Starts in Regional Integration*, New York 1995, pp. 55-74.

[48] *Botschaft zur Genehmigung der bilateralen Abkommen zwischen der Schweiz und der Europäischen Union, einschliesslich der Erlasse zur Umsetzung der Abkommen vom 1. Oktober 2004*, BBl 2004 5965, p. 5989.

The main reasons for initiating security cooperation were new forms of threats. The early 1990s saw several dramatic geopolitical changes, such as: the removal of the Iron Curtain, the outbreak of the war in the former Yugoslavia, unrest in the Middle East, terrorism, and an increase in organized crime. The rejection of the application to join the European Economic Area (EEA) in a referendum vote heightened the sense of alienation. It was believed that in an increasingly integrated Europe Switzerland might become "an island of uncertainty."[49] Against this background European integration was seen an element of state security against the new challenges at the turn of the millennium.

It should be stressed that close integration, including potential membership in the Community, was regarded in the early 1990s as one of the strategic objectives of the government's foreign policy.[50] It was only after the rejection of the EEA accession that the government decided to pursue bilateral cooperation, which was supported by the public opinion. According to polls, over half of Swiss citizens were in favor of further integration. In the early 1990s, the approval ratings were even at 65%, and in the following years they decreased only slightly, but throughout the whole decade they never fell below the 50% mark (with the disclaimer that the poll questions did not always concern unconditional integration).[51] Most citizens opted for closer cooperation with the EU, which would not, however, entail institutional dependency. Nevertheless, support for unconditional integration with the EU was relatively high in the 1990s, reaching 43% in 1993 and 52% in 1996.[52] Based on those figures, it could be argued that a substantial majority of the Swiss population did not have a clearly defined vision of the cooperation with the Community. Hence, it was a good time for political decision-makers to choose a strategy that would help win support for a specific political course.

It was only in the early 2000s that the situation changed, which was linked with increasing tensions as well as political and economic difficulties in the EU. Another factor was the increased pressure on Switzerland by the EU during the negotiations and implementation of the bilateral agreements. Thus, support for unconditional and full integration was gradually dwindling despite the government's numerous efforts to reverse that trend.

In view of the projected positive economic effects (for the tourism and hotel industries, for example) resulting from Switzerland's entry into the Schengen area, the government's decision was expected to be endorsed by major economic organizations.[53] The conservative and right-wing parties took an ambiguous, though to some

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[49] J. Hürlimann, *Negative Auswirkungen des Neins zum EWR im weiteren Bereich der Sicherheitspolitik*, „Bulletin zur schweizerischen Sicherheitspolitik", Zürich 1993, p. 72.

[50] *Bericht über einen Beitritt der Schweiz zur Europäischen Gemeinschaft*, BBl 1992 III 1185.

[51] See K. W. Haltiner, L. Bertossa, K. R. Spillmann, *Sicherheit '97*, „Zürcher Beiträge zur Sicherheitspolitik und Konfliktforschung", Heft Nr. 42, Zürich 1997, p. 11.

[52] *Ibidem*.

[53] The tourism sector accounts for 5% of GDP. Tourists in Switzerland spend around 12 billion

extent predictable, position. It should be highlighted here that the initiation stage is of utmost importance to the whole decision-making process as its successful completion has an impact on the remaining stages.

PRE-PARLIAMENTARY AND PARLIAMENTARY PHASES

The final text of the agreement initialed on 24 June 2004 was submitted to public consultation six days later.[54] At this stage of the decision-making process all interested parties had an opportunity to present their position. However, in practice, those consultations were rather restricted in nature as it was not possible to introduce changes to the content of the negotiated agreements. The interested parties could only support or take a critical stand on the submitted proposal.

Most frequently, as was the case with canton representatives, institutional weaknesses were indicated. They resulted from the need to transpose the EU's *aquis communitaire* to the national law. The canton representatives also emphasized the need to maintain further cooperation between the federation and the cantons, also at the following stage of the agreement's implementation. Most of the detailed regulations, which concerned the broad scope of Schengen/Dublin, were to be determined at a later stage within the joint committees.[55] The cantons' position on that issue was of special importance because it was the cantons' responsibility to implement the bilateral agreements, and accordingly bear substantial costs of those arrangements (e.g. the need to bear costs for training the cantonal police to cooperate closely with the border guards and international law enforcement authorities).

General support for the negotiated agreement was expressed by nearly all political parties with the exception of the Swiss People's Party (SVP) and the Swiss Democrats (SD). According to the SVP, Schengen/Dublin undermined the basic pillars of the rule of law, such as internal security and sovereignty.[56] The Bilateral II Agreements package was viewed by the SVP as another step towards complete integration with the EU, which the party strongly opposed from the beginning.

Positive comments on Switzerland's entry into the Schengen area were made by social partners, associations and other interest groups.[57] Economic organizations

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Swiss francs annually. See *Schweizer Tourismus in Zahlen*, http://www.swisstourfed.ch/files/infothek/ Vademecum/ 2004/Vade_2004_de.pdf (26 August 2014).

[54] Under Article 147 of the Swiss Federal Constitution and *Verordnung vom 17. Juni 1991*, SR 172.062, Art. 1 Para 2b.

[55] See *Bilaterale II: Schengen / Dublin. Die Stellungnahme der Kantone*, Konferenz der Kantonsregierungen, 17. September 2004, available online at http://www.kdk.ch/uploads/media/ Stelg_BilateraleII_ SCHENGEN_ DUBLIN20040917.pdf (9 September 2014).

[56] *Botschaft zur Genehmigung der bilateralen Abkommen zwischen der Schweiz und der Europäischen Union, einschliesslich der Erlasse zur Umsetzung der Abkommen («Bilaterale II») vom 1. Oktober 2004*, BBl 2004 5965, p. 6015.

[57] *Ibidem*, p. 6017.

((*Economiesuisse, Schweizerische Arbeitgeberverband*) strongly supported the agreements with the EU. It was emphasized that smooth border crossing, both for goods and people, was central to further economic development. Trade unions opted for the harmonization of visa policy, including workers from outside the European Union. The Schengen/Dublin agreements were also important for the development of the hotel and tourism industries, which were represented by *GastroSuisse, Schweizer Tourismus-Verband,* and *Hotelleriesuisse.* It was estimated that the introduction of uniform visas for the whole of the Schengen area would increase the turnover of this sector as it would facilitate the travel of tourists from non-member states. Growing numbers of tourists were expected primarily from such countries as China, India and Russia. The humanitarian organizations (*Schweizerische Flüchtlingshilfe, Caritas Schweiz*) viewed Schengen/Dublin as a chance to curb the increasingly tough restrictions on asylum policy. It was believed that all problems in this field could only be resolved through international cooperation even though the agreements raised some minor objections.

The agreements were negatively evaluated only by the Campaign for an Independent and Neutral Switzerland (*Aktion für eine unabhängige und neutrale Schweiz* – AUNS). In its view, the Schengen regulations were ineffective in practice, led to an increased crime rate and lawlessness, posed a threat to bank secrecy, and their legal structure restricted Swiss sovereignty. The AUNS demanded an obligatory referendum. Interestingly, in the course of consultations, this organization took its stand only on the Schengen/Dublin agreements, ignoring the remaining agreements from the Bilaterale II package, which were also submitted for consultation.

In the light of the general consensus about the agreements, the parliamentary phase did not have a significant impact on the decision-making process. The draft agreement was approved by both chambers of the Parliament, though not by all political parties. The National Council adopted the proposal with 129 votes in favor and 60 against. In the Council of States, support was even stronger: 36 votes in favor and 3 against.

The low conflict level in the pre-parliamentary phase as well as during the parliamentary debate and vote did not by any means preclude the direct-democratic phase. Hence, the argument that uncontroversial proposals are hardly ever submitted to a referendum vote is not true in this case.

DIRECT-DEMOCRATIC PHASE

As none of the Bilateral II agreements initialed in June 2004 met the constitutionally-defined formal criteria, there was no need to submit them to an obligatory referendum.[58] The vast majority of the agreements, including the Schengen/Dublin

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[58] Pressemitteilung, *Bilaterale II: Fakultatives Referendum für sieben Abkommen*, Schweizerische Bundeskanzlei http://www.admin.ch/cp/d/40d95eb8_1@fwsrvg.html, (21 September 2014).

agreements, could only be voted on in an optional referendum, which obviated the need for obtaining a double majority. Under that scenario, the proposal would probably have been rejected.

However, given that it was an optional referendum, its outcome was not easy to predict.[59] Pre-referendum polls on further integration with the EU indicated divisive opinions. According to the gfs.Bern research institute, 45% of the respondents were in favor of integration, albeit in varying degrees, while 35% were against. Interestingly, as many as 25% of the respondents remained undecided, which was of particular importance to the government as that group could affect the decision-making process.

In the referendum, Swiss citizens approved the draft proposal to sign the Schengen Agreement and the Dublin Regulation. 54.6% of the voters were in favor at the 56% turnout, which was relatively high. It could thus be concluded that further cooperation with the EU was an important issue for the Swiss public opinion.

Interesting data were revealed by the public opinion surveys before the referendum vote (the data below come from the surveys conducted by the gfs.Bern institute). They indicated that regarding the Schengen/Dublin agreements, only one point was not a contentious issue. Most of the respondents viewed Schengen/Dublin as beneficial for the tourism industry (this opinion was shared by 57% and opposed by only 27%). With regard to the security issue, opinions were much more divided. According to 39% of the respondents, joining the Schengen area would result in increased security. The opposite view was held by 46% respondents while 15% were undecided.[60] There could be two reasons for such divergent opinions. First, the arguments presented by the government and pro-integration groups were not clear or convincing enough. Second, the issues of internal security and potential threats to it in the context of crime and illegal migration were not at the time strongly supported by the hard statistics, which could have weakened the government's message. Also the issue of asylum policy could not then raise considerable controversy.[61] The data from that period show that in 2005 the number of asylum applications was at its lowest since 1986, and totaled 10,795.[62]

The result of the referendum vote reflected the traditional divisions between the German-speaking and French-speaking cantons. However, the actual differences

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[59] According to the gfs.Bern surveys, the proposal was supported by 55% of citizens, with 10% undecided. Very often such people reject a new proposal in the actual vote. Besides it should be noted that within a year (i.e. between April 2004 and May 2005), the number of the followers of the association agreement fell by 9% while the number of opponents rose from 12% to 35%, gfs.Bern, *Medienbericht zur Befragung für die SRG SSR Idee Suisse vom 17.-21. Mai 2005*, Bern, den 24. Mai 2005.

[60] As many as 23% of the respondents did not have specific views on the potential effects of joining Schengen. The rest were divided into two equal camps: the supporters and the opponents.

[61] See *Sichtbare politische Hände erwünscht. Credit Suisse Sorgenbarometer 2010 Schlussbericht*, "34. Credit Suisse Sorgenbarometer im Auftrag des Bulletin der Credit Suisse", September 2010.

[62] See the Data of the Swiss Federal Statistics Office at http://www.bfs.admin.ch/bfs/portal/ de/index/themen/01/07/blank/key/01/04.html (12 September 2014).

were a little smaller than in the case of the EEA vote. Overall, Swiss society still remained polarized[63] although the key differentiating factors were not language divisions but rather the material status, educational level and, last but not least, general political views (92% of the SVP supporters voted against the Schengen/Dublin agreements). What also had an impact was confidence in the government, which was regarded as an important opinion-forming body.

Joining the Schengen Agreement involved the need to transpose the EU acquis into the Swiss legal order. However, the adjustment was not conducted on an automatic basis, which was the position constantly put forth by the government and other centers.

In view of the above, it can be argued that the result of the vote was influenced not by substantive arguments or external factors linked with Switzerland's political system but rather by the fact that the majority of Swiss citizens felt the need to continue the bilateral cooperation as the best form of integration with the EU. The actual benefits resulting from the entry into the Schengen area, albeit essential, were not regarded as a priority. The rationale behind that decision was the opening of Switzerland to international cooperation and support for the government. The ensuing advantages played a minor role, which is supported by the hard statistics and the results of the public opinion surveys from that period.

CONCLUSIONS

The Schengen Agreement and the Dublin Regulation are perfect examples of the evolution of the decision-making process in Swiss foreign policy of recent years. Europeanization has undisputedly influenced the way this process works and its institutional dimension. First, the pre-parliamentary phase gained much more importance in the decision-making process. More importantly, that phase also underwent considerable changes linked with the evolution of its nature and the decreased role of consultations, which were confined to a 'yes' or 'no' response to the government's proposals. This does not mean that consultations have become totally insignificant. They are designed to survey the opinions of various interest groups, based on which it is possible to make predictions about the following stages of the decision-making processes (which are primarily linked with the possibility of holding a referendum). Second, the Executive has gained in power. The government not only initiates but also, to a large extent, influences and at least tries to control the subsequent stages of the decision-making process. However, as was proved in the above case, even if a proposal arouses little controversy, it is still submitted to a referendum vote. In this case, of great significance is the relatively large degree of confidence in the

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[63] gfs.Bern found that the difference between the SVP supporters and the sympathizers of other right-wing parties had risen more than three times since the vote on EEA in 1992.

federal government, which is regarded as one of the top opinion-forming bodies in Switzerland. This is particularly essential in the direct-democratic phase.

Thanks to the effective information policy, the government managed to secure a successful outcome of the referendum despite the lack of objective arguments in favor of Switzerland's entry into the Schengen area. The above case study also shows that decision-making in European affairs may require more time and considerable involvement, especially on the part of the Executive. For it is the government that bears responsibility for the success of the decision-making process. As a result, it needs to demonstrate considerably greater involvement than before.

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ABSTRACT

The specificity of decision-making processes in the foreign policy of Switzerland has undergone constant changes in recent years due to European integration processes and globalization. New geopolitical challenges brought the need not only for mental, but also institutional adaptation to the current conditions. These transformations refer to the evolution of decision-making centres, as well as to political processes and concepts. Analysing this particular phase of Swiss decision-making process we can conclude that the effect of internationalization has a significant impact on consultation procedures, reduction in the level of conflict, shift in the distribution of power and the rise of new actors. Thus, this article is an attempt to indicate to what extent European integration influenced the decision-making processes in the foreign policy of non-EU countries. The decision on accession to the Schengen/Dublin agreements serves as a point of reference, which perfectly illustrates the practical dimension of the discussed phenomenon.