Switzerland's Differentiated European Integration

THE LAST GALLIC VILLAGE?

SABINE JENNI

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palgrave
macmillan

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ISBN 978-3-319-33683-1 ISBN 978-3-319-33684-8 (eBook)
DOI 10.1007/978-3-319-33684-8

Library of Congress Control Number: 2016940528

Cover illustration: © imageBROKER / Alamy Stock Photo

Printed on acid-free paper

This Palgrave Macmillan imprint is published by Springer Nature
The registered company is Springer International Publishing AG Switzerland

Preface

The European policy of Switzerland is a subject which has been hotly debated in Switzerland for many years and which became salient again since the Swiss voters approved a popular initiative in February 2014, the implementation of which potentially violates the free-movement-of-persons principle. The difficult relationship between Switzerland and the European Union (EU), which is the result not only of this initiative, but also of the EU's request to give the relationship an institutional roof, is a good reason to look back on how this relationship developed. This book provides new evidence about this relationship. Its cornerstone is an empirical dataset, which measures the integration quality of Switzerland's European policies. This book also provides a fresh view on this old topic, because it analyses Swiss European policies from the point of view of European integration and namely the concept of differentiated integration.

The concept of differentiated integration to Switzerland was chosen not for normative but for analytical reasons. Applying this concept reveals unusual insights, because scholars often have stressed Swiss peculiarities rather than similarities between Swiss European policies and European integration in general. The reason is that while most Western European countries have participated in building the European Union, 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 incorporating rules originating in the 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. Sectoral agreements of outsiders with the EU as well as the incorporation of EU rules into domestic legislation have historical predecessors. Moreover, 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 book shows that Switzerland's differentiated integration can be explained by theories normally applied to EU member states. Switzerland is a Gallic village which largely adopted the Roman way of organising one's life. I hope that the detailed empirical analyses in this book help to put the discussions about Switzerland's place in Europe on a firmer ground. Not only will we, the Swiss voters, have to decide in the near future on the further development of our relationship with the EU; the EU will have to cope with the challenge to reconcile the principle of an ever-closer union with the reality of democratic opposition and differentiated integration.

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Acknowledgments

This book is the result of the research I conducted as a PhD student at the ETH in Zurich and as a visiting student at the European University Institute (EUI) in Florence. I wish to thank my PhD supervisor, Prof Dr Frank Schimmelfennig, for the opportunity to be a member of his research group and for his support. I wish to thank my second supervisors, Prof Dr Pascal Sciarini and Prof Dr Sandra Lavenex, for agreeing to be PhD committee members and I wish to thank Prof Dr Hanspeter Kriesi for the invitation to the EUI. The valuable and detailed comments by all of you helped me to transform my thesis into this book.

My position at ETH Zurich was part of the research project "Differentiated Integration in the European Union", co-directed by Prof Dr Frank Schimmelfennig and Prof Dr Katharina Holzinger and co-funded by the Swiss National Science Foundation (SNSF) and the German Research Association (DFG). My stay at the EUI was funded by a doc.mobility scholarship of the SNSF. Without this funding, my research would not have been possible.

Many colleagues and friends supported me at various stages of my work. I wish to thank Dr Rebecca Welge, Dr Edina Scözsik and Dr Céline Colombo for so many advices, I wish to thank Dr Roy Gava and Christian Frommelt for the discussions about coding Swiss law-making and research on external differentiated integration and I wish to thank Dr des Edith Siegenthaler, Gretchen Blegen and Peter Walton for their feedback on my writing. Of course, all errors remain my sole responsibility.

Contents

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
EEC	European Economic Communities
EFTA	European Free Trade Association
EMU	Economic and Monetary Union
ENP	European Neighbourhood Policy
EU	European Union
FDP	Liberal Party (*Freisinnig-Demokratische Partei*)
FMPA	Freedom of Movement of Persons Agreements
FTA	Free Trade Agreement
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

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CHAPTER 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 (EU). Switzerland is one of the wealthiest economies in Western Europe, and not only in relative terms. The country is small in terms of geographical area and population but is by no means 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. 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 it is 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,

S. Jenni, *Switzerland's Differentiated European Integration*,
DOI 10.1007/978-3-319-33684-8_1

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 Eurosceptic voters as well as a linguistic and an 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 16 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 it was 20 years ago. This book focuses on the years between 1990 and the present. It measures Switzerland's peculiar integration empirically and explains its evolution over time.

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, such as 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 defining its relationship with the EU formally. 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. By conceptualising Switzerland as a case of external differentiated integration, this book puts the similarities to rather than the differences of Swiss European policies from ideal-type European integration in the foreground and thus focuses on previously often neglected processes.

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. Scholars today 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 book provides such a systematic empirical measurement and analyses the driving forces of Switzerland's European policies over time.

Besides the nature of Switzerland's relationship with the EU, the reasons for the relationship's development are also 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 are not. A widespread assumption is that cooperation with the EU follows mainly an economic motivation. 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). In this logic, cherry-picking is motivated by the aim to keep certain regulatory advantages compared to EU member states (Baudenbacher 2012). At the same time, the policy of making domestic legislation compatible with EU law is allegedly used by certain interest groups, and especially by the export-oriented economic sector, to push their own legislative agenda (Linder 2011, 2013). Another 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 lawmaking 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). The existing literature does not provide a systematic exploration of the relationship of interests and the actor constellation with Swiss European policies as a whole.

Some of the findings in the literature regarding the nature of Switzerland's relationship with the EU diverge, and the same is true of the reasons for Switzerland's European policies. At least partially, this must be related to the fact that those findings 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 basis, including the various elements of these policies. 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 policies, or they engaged in broad quantitative analyses, providing large amounts of data. So far, such quantitative studies only perfunctorily made use of the rich knowledge about explanatory factors to explain their observations (Lehmkuhl 2014). This book builds on both strands of previous research and contributes in several regards to the existing literature. It provides new empirical data encompassing both sectoral agreements and domestic policies. In addition to earlier quantitative studies, it allows distinctions to be made to different integration qualities. The analyses linking insights from the legal literature and case studies to this broad empirical basis show that the integration qualities of European policy instruments

matter. Instruments which are closer to ideal-type European integration evolve more dynamically, and political factors matter most for sectoral agreements, which have to be approved by parliament.

The conceptualisation of Switzerland as a case of differentiated integration might sound a bit provocative to some readers. The conceptualisation is not motivated by a normative stance about what approach Switzerland should follow in its relations with the EU, but it is justified by the observation that many of Switzerland's policies towards the EU show characteristics typical of regional integration policies. 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 incorporating EU rules into domestic legislation. Newer agreements even contain provisions delegating authority to supranational organisations. Swiss European policies, however, also show considerable 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 or even supranational institutions. Therefore, the nature, functioning, and development of the Swiss form of European integration can only be properly described and explained based on a detailed examination of the integration quality of its elements.

This chapter introduces the reader to the concept of differentiated integration and the development of Switzerland's relationship with the European integration process. 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 discusses how the concept of differentiated integration helps to address open questions in the literature about Switzerland and the EU. The third section gives an overview of the book's structure and summarises the findings of each chapter. The fourth

section discusses important issues the proposed research approach will not be able to solve as well as the political relevance of the presented research.

1.1 Switzerland as a Case of Differentiated Integration

A conceptualisation of Swiss European policies as differentiated integration has to withstand a 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, that it concerns economic and/or political integration, and that institutions of regional integration are supranational. Formally, Switzerland has to a large extent 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 also for parts of its domestic lawmaking. Legal rules are the basis for most EU policies, and EU policies and rules also lie at the heart of recent definitions of differentiated European integration (Majone 2006; Schimmelfennig and Holzinger 2012).

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) 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. 2013; Kux and Sverdrup 2000).[2] Switzerland is not the only such case; the process of European integration proved to have strong centripetal effects, illustrated both by the impressive growth of the number of member states and 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. 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, will serve 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 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 position in Europe is unique, the elements of its European policy are not. This perspective is not only fruitful for comparative studies; the book is a case study of Switzerland and does not provide any systematic comparative analyses. Nevertheless, such a perspective is fruitful for understanding to what extent Switzerland's European policies can be understood as functional equivalents to ideal-type European integration, and to what extent they are explicable by European integration theories. Approached from this angle, the Swiss case helps us to understand external differentiation more generally.

1.1.1 Early Differentiated Integration: A Short 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 states. 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 at 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 states—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 negotiations were Free Trade Agreements (FTA) covering industrial goods (Cottier and Liechti 2006). These FTAs entered into force on 1 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 already managed 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 treaty 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, Norway and Sweden also 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. Although the primacy of EU rules was very informal and the reach of the agreements limited, at this early stage EC rules already reached beyond EC borders.

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 15 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. 2013). 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) and is not a member of the Schengen area (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 be found not only among the early policies of the EFTA states but also in cases of internal differentiation of EU policies.

Although the EU is based on mutually defined rules laid down in intergovernmental treaties and supranational legislation, the differentiations inside the EU as well as the effects on outsider countries also provoke unilateral policy measures. 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 or had an opt-out. Even 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. Member states of the EU also 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 example 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 those of 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. 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 more recent Swiss policies towards the EU in more detail, explaining to what extent they can be conceived of as functional equivalents to ideal-type European integration.

1.1.2 At the Crossroads: Switzerland Reinvents 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 % (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. This response was qualified as a change from a passive to an active policy towards the European Union (Tobler 2008; Maiani 2008). 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 was a transition to an active participation in the European integration process, because the agreements were legally and politically connected. Even 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. The EFTA states have also 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), and Norway's agreements covering areas like 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). As with 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 incorporating 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 incorporation of EU rules into national legislation 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 interconnections. Maiani observed a new phase because of the active incorporation 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 rules of a supranational origin both in agreements and in domestic lawmaking, is similar to ideal-type European integration. Despite this de facto subordination under EU policies, since then 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 evolution, implementation, and monitoring 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 20 years legally are traditional treaties of international law, as are the 1973 Free Trade Agreement (FTA) and the 1992 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 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). The sectoral agreements thus 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 lawmaking 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 policymaking 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, including the new Customs Security Agreement of 2009, which obliges Switzerland to continuously transpose new EU legislation (Epiney et al. 2012).

The majority of the sectoral agreements thus show formal shortcomings compared to ideal-type integration. But these shortcomings are complemented with informal, more often political than legal principles which 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 1992 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 the 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).

The description of the sectoral agreements revealed not only similarities but 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 is sometimes only implicitly acknowledged by the principle of equivalence of legislation, but we often also find direct references to EU law. In a few important agreements Switzerland is even obliged to continuously adopt new rules emerging in the EU after signing of the agreement. Such provisions are similar to subordination under a supranational authority. In some cases, Switzerland delegated not only policymaking but also judicial oversight to supranational institutions. Although Swiss actors can approach the ECJ only in matters related to the air transport agreement, the Schengen agreement, for example, contains provisions that oblige Swiss courts to interpret Schengen legislation in accordance with the rulings of the ECJ (Epiney et al. 2012). Because the sectoral agreements extend rules to Switzerland set by the EU, and because they sometimes even subject Switzerland to monitoring by EU organs, I analyse the sectoral agreements as instances of external differentiated integration. The analyses make the different integration qualities of different agreements explicit and reveal that the closeness of agreements to EU rules and institutional provisions also matter below the threshold of EU membership.

1.1.4 The "Autonomous Adaptation" Policy: A Swiss Peculiarity?

In addition to the differentiated integration via sectoral agreements, there is a unilateral way Switzerland reacts to European integration. This policy is called "autonomous adaptation" (Autonomer Nachvollzug) and means that

EU rules are incorporated into domestic legislation. This policy is not legally related to the EU, but I argue that it is a form of differentiated integration because it extends EU rules to Switzerland. This policy is partly related to the sectoral agreements and their institutional shortcomings. Even in its first report on European integration in 1988, the Federal Council announced that a great 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, becoming part of the EEA, or making 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, and so on 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 the more sectoral agreements Switzerland concluded with the EU, the less important became domestic adaptations. 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).

Incorporation 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 competitiveness of the Swiss economy (Bundesrat 1988). 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 lawmaking. 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 lawmaking has indeed become a steady characteristic of Swiss lawmaking, 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 incorporated into Swiss domestic legislation strictly because they are EU rules. The incorporation of EU rules contributes to the incongruence between EU borders and the validity of EU rules, and accordingly can be understood as instances of differentiated integration. However, they are not based on a rule that defines what rules should be incorporated, and they are not based on institutions that would legally link them to the EU. Therefore, as for the sectoral agreements, I explicitly measure the integration quality of the incorporation of EU rules into domestic legislation.

1.2 Form and Function of Switzerland's Differentiated Integration

The overview of Swiss European policies made clear that the similarity between Switzerland's differentiated integration and ideal-type European integration varies across policy instruments. In this section I discuss the implicit findings about the quality of Swiss European policies found in existing research on Swiss–EU relations and show how this book complements our rich knowledge thanks to the explicit measurement of this quality. In a second step, I discuss the explanations of these policies provided by existing research and show how the empirical measurement allows exploring the generalisability of these explanations. 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 cases of incorporation of EU rules into Swiss domestic legislation, or has sought to depict the impact of the EU on Swiss lawmaking 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 and also reached different conclusions about the reasons for this specific form of differentiated integration.

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. We do not know whether or not the legally static character of most agreements is indeed relativised by the political 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 implicit political norms and principles. In order to assess to what degree the sectoral agreements are functional equivalents of European integration, we must measure their integration quality. This quality has two dimensions: the degree to which they substantively rely on EU rules, and the degree to which they are institutionally and legally tied to the EU.

The integration quality of domestic lawmaking, which occasionally incorporates EU rules, is even less researched, although in the last few years researchers undertook considerable efforts to measure the influence of the EU on Swiss domestic lawmaking. The different studies provide

empirical evidence for some of the rationales behind domestic incorporation of EU rules discussed above, but no study addresses all of them. Two of the quantitative studies provide information about the share of domestic lawmaking 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 conception of Switzerland's European policies as integration policies, the substantive closeness of domestic lawmaking to EU rules is important. Two of the quantitative studies distinguish different qualities of EU references in domestic lawmaking. 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 lawmaking, we do not know whether this influence leads to substantive incorporation of EU rules. In that sense, the existing studies provide evidence for the significance of the EU for Swiss domestic lawmaking 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 lawmaking 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 most 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 lawmaking mostly had a quantitative focus and 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 allows me to address two descriptive questions. The first question concerns what will be called the substantive integration quality throughout this book: How substantively close are the rules governing Swiss–EU relations to EU rules? The second question concerns the legal integration quality: How close is Switzerland legally tied to EU institutions in the areas where it pursues differentiated integration? The substantive and legal integration qualities are evaluated based on assessment of the quality of the different instruments of Switzerland's European policies compared to ideal-type European integration policies.

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

The comprehensive measurement of Switzerland's differentiated integration and 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 (2013). 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, and 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 30 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. This book shows that explanations found in supranationalist and intergovernmentalist accounts of European integration also explain parts of Switzerland's differentiated integration.

Supranationalist theories claim that the nature of institutional rules of European integration creates new incentives and opportunities for further integration. Institutional functions were empirically researched for the European Economic Area (Frommelt 2012a, b) but not for Switzerland's differentiated integration. However, implicit assumptions can be found in the literature about the form and function of Switzerland's differentiated integration. For example, previous research hinted at the fact that sectoral agreements and the incorporation of EU rules into domestic legislation are related: We know that the policy fields most often affected by some sort of reference to the EU in domestic legal proposals as well as legal texts are immigration policies, which are 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 lawmaking has become increasingly related to sectoral agreements, whereas the frequency of unilateral incorporation of EU rules 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 amendment. The assessment of the quality of Switzerland's differentiated integration is thus complemented by an analysis of the evolvement of Swiss differentiated integration, which shows that the different procedural provisions in sectoral agreements influence the frequency of their update.

Intergovernmentalist theories hint at the importance of national (economic) interests and negotiation dynamics to explain European integration.

In previous research on Switzerland, integration theories of this family were mostly applied to explain the rejection of the EEA accession but used 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 anticipation 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 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 the unilateral incorporation of EU rules ("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 influence Europeanisation has on Swiss politics and not with the respective policy outcomes.

In contrast, integration outcomes were the focus of a special six-article issue of *Swiss Political Science Review*, edited by Sandra Lavenex (2009),

in which she wrote the article "Switzerland's Flexible Integration in the EU." 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 incorporation of EU rules into domestic legislation 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., case studies of domestic incorporation of EU rules also 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 the incorporation 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 model or not, because sometimes also parts of internationalised sectors prefer regulations deviating from the EU model (Bartle 2006; Jegen 2009; Schäfer 2009).

To sum up, 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 lesser extent than the case-oriented literature on the incorporation of EU rules into domestic legislation, with the domestic compromise related to the Bilaterals I package being an exemption to that rule. The literature on indirect Europeanisation, in contrast, does not always discuss the (potential) relation to sectoral agreements. Finally, the

existing quantitative studies on the Europeanisation of domestic lawmaking do not yet seek to systematically explain their findings by the explanatory factors put forward by the literature.

This book establishes a link between the different strands of research, which is necessary in order to address some puzzles. Such puzzles concern, for example, EU rules which, despite theoretical economic incentives, were not or were not fully incorporated into Swiss domestic legislation (Cottier 2006; Imstepf 2012; Robinson 2013). Also puzzling in light of the rest of the research are cases of incorporation of EU rules into domestic legislation that were not mainly driven by economic interests, such as 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). In the case of the sectoral agreement, the most salient questions concern the role of the Eurosceptic electorate, which approved several agreements at the polls but does not refrain from endangering them in other votes, and the validity of the criticism by the European Council, which says that the sectoral agreements have reached their limits.

1.3 Connecting the Pieces of the Puzzle: Overview of the Book

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 will now discuss the contributions this book makes in more detail. The cornerstone of the book is an empirical data set using lawmaking 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 lawmaking is appropriate for a quantitative study because it has already been applied in many European countries, and the appropriate methodology has been thoroughly discussed (Brouard et al. 2012; 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, which will be discussed in detail in Chap. 2.

The data collection is based on the distinction between the substantive and the legal quality of the extension of EU rules to Switzerland. In some regards, the measurement of the integration quality is similar to the notion of "legalisation" by Kenneth W. Abbott et al. (2000). The substantive quality of integration is similar to the "precision" dimension of legalisation, whereas the legal quality of integration is similar to the "delegation" dimension. Despite these similarities, I will use the notions substantive and legal integration qualities, because I seek to measure these qualities against the background of ideal-type European integration and not compared to ideal-types of legalisation more generally. The measurement of substantive and legal integration qualities enables me to conduct explanatory analyses based on integration theories, which provide hypotheses about the functioning of Switzerland's differentiated integration as well as about the exogenous factors driving it.

1.3.1 Measuring Switzerland's Differentiated Integration Empirically

This book is not the first study that aims to empirically measure Swiss lawmaking in general and the influence of the EU on Swiss lawmaking in particular. It is, however, the first to conceptualise Switzerland's European policies based on recent definitions of differentiated integration and measure them empirically. Chapter 2 presents this novel approach in detail. I argue that in some sense the study has a broader focus than earlier quantitative analyses in the field, because it includes domestic as well as international lawmaking. Most of the earlier studies did not include the sectoral agreements (Mallepell 1999; Kohler 2009; Arbia 2008). In the case of Ali Arbia's 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 lawmaking thus cannot be understood properly without the sectoral agreements. Linder et al. (2009), 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 study also has a narrower focus than the Europeanisation studies, because it focuses exclusively on EU-related lawmaking that extends the validity of EU rules to Switzerland and therefore is similar to integration. In that regard, the focus on the substantive

and legal integration quality provide a dependent variable which should be explicable by integration theories. Earlier studies often measured general Europeanisation effects rather than rule extensions (Gava and Varone 2012; Arbia 2008). Such general effects consist of very diverse cases, ranging from protective reactions to unilateral integration measures, and this diversity makes it difficult to find generalisable explanations. The focus of this study is also narrower than the one of earlier studies, because it does not include secondary legislation on the domestic level (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 of these—the broad focus with regard to the instruments of Swiss European policy and 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. It especially seeks to measure the quality of the incorporation of EU rules into Swiss domestic legislation 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 lawmaking 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 legal change as the unit of analysis and the use of qualitative categories to operationalise integration quality (Töller 2010; Radaelli and Exadaktylos 2012). Using data from a 20-year period from 1990 until 2010 means the study covers a time span similar to the one used by Gava and Varone, which is currently the most encompassing study with respect to time. As for 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 substantive and the legal 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). Member states as well as non-member states sometimes incorporate 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 introduces the term integration quality, presents the empirical data, and provides an overview over the development of Switzerland's differentiated integration over time. It is structured as follows. Based on the recent literature, the chapter starts with the definition of external differentiated integration as the extension of EU rules to non-member states and introduces the distinction between the substantive and the legal integration quality of rule extensions. Second, it discusses the methodological approach, including the choice of legal changes as units of measurement and the coding rules for the content analysis. According to these rules, changes to sectoral agreements were coded based on their texts and changes to federal laws were coded based on Federal Council messages and reports by parliamentary commissions. In the final section, Chap. 2 presents descriptive results. They show that substantive integration was more frequent than legal integration in the research period. This holds for both sectoral agreements and federal laws. In addition, both dimensions of integration quality are linked in the domestic realm: Federal law reforms with a legal link to a sectoral agreement (direct Europeanisation) proved to be of a higher substantive integration quality than the incorporation of EU rules which was not related to a sectoral agreement (indirect Europeanisation). Regarding the development over time, the frequency of sectoral agreement reforms has been increasing since 2004, whereas the frequency of the incorporation of EU rules into domestic legislation remained more or less stable. Regarding the distributions across policy fields, the main finding is that the incorporation of EU rules in domestic legislation covers a broader range of issues than sectoral agreements. In the concluding section of Chap. 2, I outline how this variance with regard to the frequency and quality of the extension of EU rules to Switzerland will be analysed in the subsequent chapters.

1.3.2 Analysing Switzerland's Differentiated Integration with Integration Theories

Chapters 3 and 4 build on the rich insights of previous research on Switzerland and link these insights to the new data on the quality of Switzerland's differentiated integration. Chapter 3 addresses a question, which to my knowledge has not yet been examined empirically: What are the day-to-day dynamics of Switzerland's differentiated integration and especially the interrelation of its different elements? The analysis of the interrelation of different sectoral agreements and domestic lawmaking provides the basis for the analysis of the choice of the different integration instruments and of the question of how this choice is influenced by domestic interests, the decision-making process in Switzerland, and negotiations with the EU. Chapter 4 explores this second set of questions.

Chapter 3 puts the integration quality of the sectoral agreements centre stage and analyses whether agreements closer to EU rules, thus of a higher substantive integration quality, and agreements with stronger institutional ties to the EU, thus of a higher legal integration quality, evolve more dynamically. This question deserves an extra chapter because the legal literature on sectoral agreements is full of assumptions about the day-to-day dynamics of these agreements. The new empirical data measuring the development of these agreements, including their integration qualities, enables an empirical analysis of these assumptions.

This question is also topical, because 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 in 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. Similarly, the relation of the sectoral agreements with domestic lawmaking 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 the incorporation of EU rules into domestic legislation 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). The analysis of the inter-

relation of the various elements of Switzerland's differentiated integration policy builds the foundation for subsequent explanatory analysis, because it reveals which integration steps are the consequence of earlier or other integration measures and which need to be explained by exogenous factors.

Chapter 3 draws on institutionalist arguments found in neo-functionalist and supranationalist theories of European integration and on the legal literature on the sectoral agreements. Conceiving of the sectoral agreements as incomplete integration contracts, it analyses the consequences of the ambiguity and obligational incompleteness of the sectoral agreements and claims that sectoral agreements of a higher substantive and legal integration quality are less incomplete and thus more likely to evolve dynamically. In particular, I claim that less incomplete agreements are more likely to be revised, that their revisions are more likely to explicitly refer to EU rules, and that they make the incorporation of EU rules into domestic legislation less necessary. The empirical analysis combines descriptive and bivariate data analysis with multivariate regression analyses and confirms the core hypotheses. Agreements with higher legal integration qualities (Mixed Committees and dynamic provisions) are significantly more often revised than agreements without such qualities, and their revisions more often rely explicitly on EU rules. In addition and most interestingly in light of previous research, agreements with a higher substantive integration quality also evolve more dynamically, independently of their legal integration quality. Domestic lawmaking, substantively relying on EU rules, in contrast, occurs more often in areas with agreements that aim at harmonisation but are not necessarily of a high-integration quality.

The encompassing measurement and the explanation of the day-to-day dynamics set the stage for the analysis in Chap. 4 relating the development of Switzerland's differentiated integration to broader economic, social, and political developments. The review of existing research offered several seemingly controversial hypotheses 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 Eurosceptic electorate, and many more integration steps were taken without needing popular approval, some even without parliamentary approval. But 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 draws on a liberal intergovernmentalist research agenda, which resonates well with the explanations put forward by the existing research on Switzerland and Europe. Liberal intergovernmentalists explain integration with domestic interests, intergovernmental negotiations, and an institutional decision which corresponds to the enforcement problems characteristic for the issue area. A detailed review of the existing research reveals that along with domestic interests and intergovernmental negotiations, the domestic decision-making process also seems especially relevant for Switzerland's European differentiated integration. What is missing in the literature is the link between specific explanatory factors with the choice of specific instruments of differentiated integration. As explanatory research often focused on single instruments of Switzerland's differentiated integration, the insights of this research may also hold only for these instruments. Based on the insights from Chap. 3, I argue that the liberal intergovernmentalist explanatory factors put forward by the literature are likely to hold only for those integration steps which have to be negotiated with the EU and approved by parliament. Drawing on existing research and liberal intergovernmentalist integration theory, I formulate hypotheses about which explanatory factors make the choice of which kind of integration measures more likely. The hypotheses are tested based on a broad descriptive analysis of the data in relation to indicators of social, economic, and political development. In addition, multinomial regression analyses are conducted.

The results presented in Chap. 4 support the claim that different integration measures are correlated to different explanatory factors and complement the results of Chap. 3. Most importantly, the results of the analyses in Chap. 4 put the findings presented in Chap. 3 into perspective. Chapter 4 shows that the majority of the most important and newly negotiated integration measures were approved in parliament or even at the polls. With regard to the choice of different integration measures, Chap. 4 shows that political factors like a low salience of European integration in the electorate and stronger party positions in favour of the government's European policies mattered most for sectoral agreement reforms which had to be adopted by parliament, whereas other integration measures were not influenced by these factors. The results also

revealed differences between sectoral agreements and domestic incorporation of EU rules. In contrast to the sectoral agreements, the domestic incorporation of EU rules is 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 often had to be approved at the polls, whereas the unilateral incorporation of EU rule was almost never brought to the polls. For both, sectoral agreements and domestic incorporation of EU rules, as well as dynamics of agreement negotiations, play a role. Parliamentary-approved agreement reforms were often part of a package deal with the EU, and a considerable share of the federal law reforms incorporating EU rules into domestic legislation was conducted in the course of agreement negotiations. Finally, Chap. 4 confirms Switzerland's outlier status in regard to Walter Mattli's economic integration hypothesis, which says that countries pursue regional integration when they are economically worse off than the integration participants (Mattli 1999). Switzerland undertook more integration measures in years when its GDP growth was higher than the average of the EMU countries.

1.3.3 Added Value and Limitations of the Proposed Approach

The analysis of Switzerland's differentiated integration behaviour contributes to the literature on differentiated integration and is one of the few attempts to measure external differentiated integration empirically. It provides a new perspective to the research on Swiss politics. With regard to differentiated integration, the analysis of Switzerland also brings to the foreground factors that may determine integration interests or strategies in other comparable countries, the consequences of which are not (yet) observable because these countries do not pursue a sectoral integration approach. The fact that decisions on European integration are taken case-by-case in Switzerland lowers the hurdle to advance or reject integration in a specific area. The analysis of the day-to-day dynamics of Switzerland's differentiated integration contributes to the research about external differentiation because it also shows that formal institutional arrangements matter for the development of integration policies below the threshold of EU membership. Even though the subordination of Swiss policymaking to EU institutions is much less far reaching than in the case of EU members or EEA EFTA states, this subordination triggers institutional dynamics.

The analysis of social, economic, and political factors related to Switzerland's differentiated integration is 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. European member states are also experiencing a rise of Euroscepticism and are also increasingly using popular referenda for important decisions about integration (Haverland 2014; Hooghe and Marks 2008). With regard to research on Swiss politics, the country's European policies are not only one of the most salient issues but are 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 (Bochsler et al. 2015). Sometimes the processes of Europeanisation and European integration are mentioned as reasons for or elements of some of these changes. By measuring and explaining Switzerland's European integration, the study contributes to a better understanding of the present shape and functioning of the Swiss political system.

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. For the analyses, this has two implications. On the one hand, this limits the possibilities to link single integration measures by Switzerland to EU agency, especially when it comes to day-to-day revisions. This limitation explains why the EU sometimes does not receive the attention that would correspond to its role in Swiss–EU relations throughout this book. On the other hand, this limitation 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. Still, a comprehensive measurement of all elements of Switzerland's external differentiated integration and their interrelation helps us to understand the function and functioning of this

policy. This allows us to compare Switzerland, at least in a theoretical and qualitative manner, with the (external) differentiated integration of other European states.

A second limitation to this book regards the causal explanation of Switzerland's differentiated integration. The reliance on a quantitative data set implies a certain distance from the individual observations of integration. This implies that the causal mechanisms explaining the individual cases cannot be analysed at the same detailed level as was done in the rich body of literature dealing with domestic decision-making processes in the context of Europeanisation of Swiss politics. Although the relationship of interests and actor constellations with Switzerland's approach to European integration as a whole was identified as one of the major research gaps earlier in this introduction, the book 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 aggregate level and is not able to identify the actors and interests responsible for single integration measures.

A third limitation of this book is that its focus lies on two decades of Switzerland's European integration that have already passed. 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. Hopefully, this book provides 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 two decades researched.

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 to not give false hopes about the results of the study. The approach of the present book 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 shows that in some respects the criticism by the European Council regarding the functioning of the sectoral agreements is justified, but that in other respects 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 European Council assumes. However, a higher substantive integration quality as well 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 in which 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 Chap. 4, which indicate that negotiations often led to the incorporation of EU rules into domestic legislation, 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 frequently revised

even 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, a stronger normative question can also profit from more thorough empirical analysis. Since the rejection of the EEA, European integration has not only been a "hot potato" but has been 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 researched systematically nor discussed publicly. This is most striking for the incorporation of EU rules into Swiss legislation. The data collected for this study shows that it is by no means 80 per cent of lawmaking that is affected by the EU, as was predicted by Jacques Delors (Brouard et al. 2012; König and Mäder 2008). The detailed analysis of the data also calls into question the significance of figures about the share of Swiss lawmaking 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 incorporated, and the reasons for the incorporation of EU rules. 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.

Notes

1. Other exemptions are micro-states like Andorra, San Marino, and Monaco (Forster and Mallin 2014).
2. The terms flexible and differentiated integration are often used interchangeably in the literature. I will use the term differentiated integration throughout this book, 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).
4. The Agreement on Pension Funds (Bilaterals II) is not related to EU law (cf. Epiney et al. 2012).

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CHAPTER 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). The term describes the situation that existed in which more states were admitted to the European Union, and with the regulation of more and more issues at the European level, some of these states started to request exemptions while others wanted to cooperate in new matters. Nowadays, some EU member states do not participate in some EU policies, while some non-member states participate in EU policies. In some areas, policymaking was delegated to supranational bodies; in others, policies have remained in the hands of intergovernmental bodies. As a result, European integration takes on different shapes for different countries and different policies. The notion of differentiated integration aims to describe this circumstance.

In Chap. 1, I showed that if we want to understand Switzerland's response to the challenge of European integration, we need to describe and measure this response properly. This book analyses Switzerland's political response to European integration 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. Differentiation across the European

S. Jenni, *Switzerland's Differentiated European Integration*,
DOI 10.1007/978-3-319-33684-8_2

integration landscape is the consequence of the sum of issue-specific decisions on integration by individual countries. The single decisions by individual countries are not necessarily decisions about "differentiation" but about non-integration or integration at certain points in time and with regard to certain policies. In that sense, I seek to measure and explain the European integration of Switzerland. In so doing, I draw on the concept of differentiated integration, because it conceptualises European integration in a more accurate way than by only asking whether and why a country is a member of the EU or not. Differentiated integration is thus not a new integration theory. Quite the contrary; many classic integration theories provide conjectures about the different probabilities for integration of different EU policies and different countries, as shown by Leuffen et al. (2013). Because the theoretical works have discussed the differentiated integration of non-member states only in very general terms, the concept needs to be concretised and adapted for 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. This section includes 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, the coding procedure, and the 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 figures on the substantive and legal integration of Switzerland in terms of legal reforms on the aggregate level, on its development over time, and on its distribution across policy fields. The fifth section discusses how these descriptive results motivate the further proceeding of the explanation of the findings in Chaps. 3 and 4 as outlined in the Introduction.[1]

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 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, which normally used treaty articles or legal acts of EU secondary law (Schimmelfennig and Winzen 2014; Frommelt 2013). Unfortunately, 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. Such an exemption from a generally 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 and others have 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, 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.[2] 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 the directive on biometric passports (Adler-Nissen 2009), for example. When we apply the same logic to Switzerland, and assume that Switzerland has a predetermined 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 2014).

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 texts 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 incorporated 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 step back from the goal of counting the opt-ins (counting the EU rules valid for Switzerland) and content ourselves with 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 with the number of opt-outs of member states in quantitative terms. It does not, however, hinder us comparing the development over time and the distribution of instances of differentiated integration across policy fields.

2.1.2 The Substantive and Legal Quality of the Extension of EU Rules

The fact that EU rules extended to Switzerland are 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 an EU member state or an EEA EFTA 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). For EEA EFTA states, relevant EU legislation is formally transposed by decisions of the Joint Commission. In both cases, 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. EEA EFTA states are subject to judicial overview by the EFTA court. In contrast, if EU rules are extended to Switzerland because they are implicitly or explicitly included in a sectoral agreement, or because Switzerland unilaterally incorporated 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. Sometimes, EU rules that are extended to Switzerland 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 measure not only whether or not an EU rule is extended to Switzerland but also 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. (2013) 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 corresponding 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 the incorporation of EU rules into domestic legislation showed that Switzerland is selective not only with regard to the rules it incorporates but sometimes even with regard to what parts of rules it incorporates. 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 authority. 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 capture with the legal quality of rule extensions. In Chap. 3, I show that the substantive and legal integration qualities of agreements are correlated with the frequency of revisions of the respective agreements. This complements our knowledge about the role of vertical integration triggering new integration steps in the EU and formal obligations ensuring rule transposition to the EEA EFTA states.

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 rule extensions which are not tied to the legal system of the EU, are not instances of differentiated integration. This argument is strongest in the case of rules unilaterally incorporated into federal legislation. Such an incorporation of EU rules is not necessarily

accepted by the EU as a transposition 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 incorporated into domestic legislation are nevertheless included in this study for the following reasons: First, I assume that at least a share of the incorporation of rules into domestic legislation enable or follow a mutual agreement on integration in the form of a sectoral agreement. Second, unilateral incorporation of EU rules in domestic legislation 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 incorporation of EU rules is related to the domestic lawmaking process in Switzerland. 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 lawmaking. This crucially distinguishes the EU compatibility examination 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 incompletely incorporated 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 contains EU law, Swiss courts sometimes take into account the motivations of the legislators. Legal scholars, however, disagree as to what extent judges should interpret provisions that stem 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 lawmaking process only and will not examine the issue of interpreting and implementing these EU rules in Switzerland. Second, European integration is first and foremost based on legislation, but other forms of policymaking mechanisms have gained in importance in recent years. Examples are non-binding recommendations by the European Commission or the European 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. A similar 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 of not only 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 policymaking (Lavenex and Schimmelfennig 2009; Lavenex 2009). 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 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 lawmaking. Empirical Europeanisation studies sought to measure the influence of the EU on domestic legislation (Brouard et al. 2012; 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 as well as decision-making processes (politics) and 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 an important domestic policy change and a reaction to Europeanisation. They were a reaction, because they anticipated negative consequences of the integration achieved by the Free Movement of Persons Agreement (FMPA), but because they did not extend EU rules to Switzerland, they were not integration measures.

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 identify 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. As the data was collected with manual content analysis, the problem of false positive cases is less severe in this study compared to studies based on automatised coding. The phenomenon of integration in the form of policy continuity is partially captured by the variable EU-compatibility (see Sect. 2.3.2). 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 of assuming that every inclusion of an EU rule into Swiss law was included because its incorporation 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 extension of EU law follows this advice and reduces the amount of possible explanatory factors for domestic political change, thus making it less difficult to attribute an integration intention to rule extensions (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 can both build on the Europeanisation literature and 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 other hand, 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 domestic politics also 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 shows how sectoral agreements influence the incorporation of EU rules into domestic legislation and thus 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 means that the identification of EU rules needs to start with the evaluation of the content of Swiss legislation. This identification is complicated by two aspects: First, the federal administration does not systematically publicise which EU legislation is included in sectoral agreements or is incorporated into domestic legislation. The Federal Council even rejected a parliamentary request to mark domestic legal acts that incorporate EU rules (Nordmann 2006). 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 incorporate the changes as well. 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 for the sources for the coding of the integration variables. These three decisions are discussed in the following sections.

2.2.1 Population: The Relevant Parts of Swiss Federal Legislation

The relevant population for the quantitative data collection is Swiss federal legislation, because the conclusion of international agreements lies in the exclusive competence of the federal authorities. Since 2000, the cantons have also had a formal say in foreign policymaking, but their role is limited to the consultation procedure at the domestic level (Bundesrat 1998). Foreign policy is thus an exception to the principle of subsidiarity, which lies at the core of Swiss federalism and 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. 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[3] 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 (e.g., EEC), 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 domestic legislation are less clear. Existing research showed that cantonal legislation only very rarely touches fields regulated by the EU (Wyss 2007; Arbia 2008). Unilaterally incorporated 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 authorisation from parliament to adopt legislation and such authorisation is given in a federal law. 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 incorporates 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 incorporated 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. The federal administration does not publish the results of the EU compatibility examination for the government regulations, unlike its process in the case of the federal laws. EU rules could thus only be identified in government regulations based on the legal texts themselves.[4] 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 seeks 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 automatised keyword search, which is not suitable for the purposes of this book 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 consider only 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).

2.2.2 Units of Measurement: EU Rules and Changes to the Swiss Body of Law

The units of measurement are the changes to Swiss federal legislation. The choice of legal changes takes into account that not only the Swiss federal legislation but also the body of EU rules that can be extended to Switzerland 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 domestic legislation, no rules exist at all regarding if and how laws containing EU rules should be updated to legal developments in the EU. Moreover, the guidelines for the authors of federal legislation discourage 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 changes to Swiss federal legislation. A change can be an adoption, a total or a partial revision of a sectoral agreement, or a federal law. The choice of legal change as units of measurement enables us to measure the development of rule extension over time and is in line with the state of the art in quantitative Europeanisation research (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.[5] Because we are interested in the content of sectoral agreements and federal laws, we could, of course, consider only legal reforms of which the contents were published in the Official Collection.[6]

The other available quantitative studies of the impact of the EU on Swiss domestic legislation also focused on legal changes as unit of analysis and 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* and thus to a legal text with a distinct number in this compilation (in the following: SR number).[7] Such a legal text enters the body of legislation at the point in time when it is adopted. In that year, it also enters 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 of the data set (cf. Linder et al. 2009a; Linder 2014). The reforms of the legal texts, adoptions, amendments, and abrogation are published in the *Official Collection of Federal Legislation*. The integration quality is assigned to these changes of the legal texts. 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. In this way, we can both count the instances of rule extensions and determine 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 guiding principle for the assignment of legal changes (publications in the Official Collection) to legal texts (texts in the Classified Compilation) is that one publication in the Official Collection can only be assigned to one federal law or sectoral agreement as a change. Exemptions to that rule are discussed in detail in Sect. 2.2.4.

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. I 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 (calculation based on my own data).

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. EU rules can be identified based on the legal texts in the case of sectoral agreements and based on the EU compatibility examination in the case of federal laws. 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. Only one agreement between Switzerland and the EU does not build on EU law at all: the Agreement on Pension Funds (Bilaterals II, see Epiney et al. 2012).[8] Accordingly, I assume that every agreement between Switzerland and the EU extends EU rules to Switzerland, and I 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.

In the case of the federal laws, on the other hand, 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 incorporation 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 legislature if Switzerland is not legally obliged to incorporate a rule of foreign origin into domestic legislation. 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 in which their adoption is a consequence of a sectoral agreement. In all other cases, we should expect that the EU rule is paraphrased (Schweizerische Bundeskanzlei 2010).[9] 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 has been 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 conclusions with regard to EU compatibility are systematically verified by the Directorate for European Affairs,[10] 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 and 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 Table 2.9). 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 and legal expertise, 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 incorporation of the EU rule, the indicator is not valid. Evidence from existing research supports the assumption that the parliament does not change too much with regard to the incorporation 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 "autonomous adaptations" of domestic legislation

to EU rules. In all cases, the coding decisions corresponded to the conclusions of the legal analyses, even in cases of selective incorporation of EU rules.[11] I thus claim that the EU compatibility examinations are a valid indicator for EU rule extension.

Table 2.5 in the Annex gives an overview of the structure of the raw data. This data structure was adapted for the different analyses presented throughout the book (number of reforms were aggregated over years or policy fields, only specific integration variables were used, etc.). The structure of the data used and the specific coding of the variables are explained in the respective analysis or in the Annex to the respective chapters. Table 2.6 in the Annex 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 the incorporation of EU rules into domestic legislation. In the case of sectoral agreements, we know that the EU nearly always accepts only principles that are modelled on its acquis. The legal quality of rule extension, on the other hand, is of most interest in the case of sectoral agreements, because they differ significantly with regard to their procedural provisions. In this section, I discuss the operationalisation of integration quality, first for sectoral agreements and then for domestic legislation.

2.3.1 Measuring the Quality of EU Rule Extensions in Sectoral Agreements

Astrid Epiney et al. (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). The variables measuring the substantive- and legal integration quality of sectoral agreements are inspired by these categories. Epiney et al. 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 first two 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) discussed that all but one sectoral agreement contain parallel provisions or directly refer to EU law, and because we consider only normative legal changes, we assume that all agreements contain extensions of EU rules.[12] 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. Direct references to EU law are thus the variable distinguishing sectoral agreements with low substantive integration quality from sectoral agreements with as high substantive integration quality. This variable proved to be decisive for the frequency and quality of agreement revisions in the analysis in Chap. 3.

The two other criteria proposed by Epiney et al. are related to the legal quality of the sectoral agreements. One criterion is whether an agreement contains dynamic provisions (i.e., whether it obliges Switzerland to adopt 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. This variable also plays an important role in the analysis in Chap. 3. The second variable concerns the question of monitoring the agreements. We defined this criterion more broadly than did 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.

Dynamic and monitoring clauses are a rare and recent characteristic of sectoral agreements. Much more often, Mixed Committees are responsible for monitoring and eventually updating an agreement. Mixed Committees come less close to ideal-type European integration than dynamic clauses, but they still provide procedural rules unusual for international treaties. Therefore, the existence and activities of Mixed Committees are also con-

sidered as indicators for legal integration quality. Chapter 3 shows that Mixed Committees indeed play a similar role as dynamic clauses. All these 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 2.1 gives an overview of the variables measuring the substantive- and legal integration quality. The detailed coding rules are described in Table 2.7 in the Annex.

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) incorporates these EU rules. If we identify incorporation, we can evaluate it 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 inspired by those proposed by Emilie Kohler (2009). I distinguish between rule incorporation that results in a full adoption of the relevant EU rules and incorporation that results only in a partial adoption of the relevant EU rules. Per definition, an incorporation of an EU rule is a change with regard to the extension of EU rules to Switzerland in the sense that it extends new (parts of) EU rules to Switzerland. Based on the information available, we cannot measure whether a change incorporates an EU rule for the first time, whether it removes inconsistencies remaining after a first incorporation, or whether it adapts an earlier incorporation measure to new legal developments in the EU. But we can measure whether the change is a step towards more substantive integration.

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 based on the fact that the effect of prohibitive EU rules that hinder national policymakers from adopting certain rules

Table 2.1 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 Table 2.7 andTable 2.8 for detailed coding 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 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, as they do not extend new EU rules to Switzerland (this would be coded as incorporation) but still can be an indicator of integration through policy continuity (see Sect. 2.1.4).

The legal quality of the incorporation 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 adopted in relation to a sectoral agreement or not. In the case of a sectoral agreement, we can assume that Switzerland and the EU agreed on the relevant EU rules, and accordingly, a rule adoption related to an agreement comes closer to rule transpositions by member states and thus to a mutually agreed ideal-type integration step. Accordingly, in order to measure the legal quality of EU rule extensions to Switzerland in domestic legislation, I distinguish between the incorporation of EU rules that is related to a sectoral agreement (implementations), on the one hand, and unilateral rule incorporation, on the other.

The substantive and the legal quality of EU rule extensions are evaluated separately. The substantive quality of EU rule extensions is evaluated based on the congruence between the rule that is incorporated into Swiss legislation and the rule that is valid in the EU. The legal quality of the rule extension is evaluated with regard to the relation of the rule to a sectoral agreement and thus to the "Bilateral law." Accordingly, a legal change that does not substantively extend an EU rule can also be related to a sectoral agreement. However, there are only very few such cases in the data set (cf. Table 2.3). Table 2.1 gives an overview of the variables measuring the substantive- and legalintegration qualities of federal law reforms. The detailed coding rules are reported in Table 2.8 in the Annex; the reliability tests of the coding decisions are reported in Table 2.9 in the Annex.

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

In the following sections, I present the data collected on an aggregate level, providing an overview of shares of different integration qualities, developments over time, and distributions across policy fields. These overviews motivate the focus of the subsequent analyses in Chaps. 3 and 4. In the first section, I present the data on the most technical level, focusing on the number and form of changes to agreements and laws and their respective integration qualities. After that, I turn to the questions of time (second section) and issues (third section), 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).

2.4.1 Legal Changes, Federal Laws, and Sectoral Agreements Responsible for Differentiated Integration

In total, 98 sectoral agreements and 533 federal laws were in force for at least one year during the period 1990–2010. As the unit of analysis is legal reform, we have no information about the possible integration quality of sectoral agreements and federal laws which have never been reformed during the research period. This concerns half of all sectoral agreements (46) and almost one-third of all federal laws (150), which were neither newly adopted nor revised even once during the research period. The remaining 52 sectoral agreements were subject to 204 legal reforms.

Table 2.2 shows legalintegration quality of changes to sectoral agreements and distinguishes between new agreements, total revisions, and partial revisions. Table 2.3 Table 2.3 shows the substantive integration quality of changes to sectoral agreements. The last columns of Tables 2.2 and 2.3 are the same and show that 43 out of these 204 legal reforms were new adoptions of agreements. This corresponds to one fifth of all legal changes associated with sectoral agreements (percentage share in italics). The famous and well-researched 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 mainly concern agreements associating Switzerland with multi-annual EU programs which have to be renewed at every renewal of the EU program.

Table 2.2 Legal integration quality of sectoral agreement reforms

	With legal integration quality			*Without legal Integr. quality*	*Missing Source**	*Total Reforms*
	Dynamic	*Monitoring*	*Total*			
New	4	6	**9**	**33**	1	**43**
	1.97	*2.96*	***4.43***	*16.26*	*0.49*	***21.08***
Total revisions	0	2	**2**	**2**	0	**4**
	0.00	*0.99*	***0.99***	***0.99***	*0.00*	***1.96***
Partial revisions	42	12	**54**	**103**	1	**157**
	20.69	*5.91*	***26.60***	***50.74***	*0.49*	***76.96***
Total reforms	**46**	**20**	**65**	**138**	2	**204**
	22.66	***9.85***	*32.02*	*67.98*	*0.98*	***100.00***

Note: The variables *dynamic* and *monitoring* are NOT mutually exclusive. Therefore, the columns dynamic and monitoring do not add up to the total number of reforms with legal integration quality

*For two cases, the agreement text was not published in the Official Collection of Federal Legislation and thus could not be coded

Table 2.3 Substantive integration quality of sectoral agreement reforms

	EU law reference	*No EU law ref.*	*Missing source**	*Total*
New	25	17	1	**43**
	12.25	*8.33*	*0.49*	***21.08***
Total revisions	3	1	0	**4**
	1.47	*0.49*	*0.00*	***1.96***
Partial revisions	98	58	1	**157**
	48.04	*28.43*	*0.49*	***76.96***
Total reforms	**126**	**76**	**2**	**204**
	61.76	***37.25***	***0.98***	***100.00***

Note: *For two cases, the agreement text was not published in the Official Collection of Federal Legislation and thus could not be coded

With regard to integration qualities, a comparison of the bottom rows of Tables 2.2 and 2.3 reveals that reforms with higher legal integration qualities are a rarer phenomenon than reforms which are substantively close to EU law. Whereas only one-third of all sectoral agreement reforms showed strong legal ties to the EU (column legal integration quality, total; dynamic or monitoring provisions or both in Table 2.2), almost two-thirds of all agreement reforms directly referred to EU law (first column, Table

Table 2.4 Substantive and legal integration quality of federal law reforms[a]

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

Missing sources: In total, the dataset contains 1154 federal law reforms. However, for ten of those reforms, coding sources were missing, and they had to be excluded from the data collection.
Note: *The three variables measuring the substantive quality of the extension of EU rules are mutually exclusive.

[a]The numbers reported in this table differ slightly from numbers reported in earlier publications (Jenni 2012, 2013, 2014), because data collection was ongoing until 2014.
[b]All numbers reported regarding federal law reforms refer only to primary legal reforms (see explanations in Sect. 2.2.3).

2.3). Both dimensions of integration qualities also have something in common: Partial revisions showed more often than not legal or substantive integration qualities. Table 2.2 shows that only four new agreements contained dynamic provisions and only six new agreements contained 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 2.2 shows that 42 out of a total of 157 partial revisions of sectoral agreements concerned dynamic agreements. The frequency of substantively strong integration, as shown by Table 2.3, signifies that many sectoral agreements went beyond "parallel provisions."

Also in domestic legislation, substantive integration measures are more frequent than legal integration measures. Table 2.4 shows the legal and substantive integration qualities of the 1144 federal law reforms which occurred during the research period and on which there exist coding sources. These reforms affected 383 federal laws. The last row of Table 2.4 shows that of these 1144 law reforms, slightly more than half concerned

purely domestic issues, where there does not exist any relevant EU law (648 reforms; column "No EU-relevance"). Of the EU-relevant reforms, less than 10 % were not at least compatible with EU law (last row, column No EU rule). The numbers in italics in Table 2.4 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 14 % of all law reforms were compatible with the respective EU law, and slightly more than 13 % were identified as full adaptations, thus incorporating the relevant EU rules fully into Swiss legislation. Rules incorporated with a "Swiss finish," labelled partial adaptations, were less frequent than full adaptations and compatible reforms and concerned only 7 % 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 40 % 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.

As with the case of sectoral agreements, in the case of domestic legal changes legal links to the EU were also rarer than substantive incorporation of EU rules. Whereas almost one-third of all changes to federal laws were substantively related to EU rules, only 10 % 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 "autonomous adaptation." 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 80 % of all implementation measures fully incorporated the respective EU rules, in contrast with only every fifth instance of reforms not related to sectoral agreements. 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 or in cases where the respective reform contains no substantive rule incorporation 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

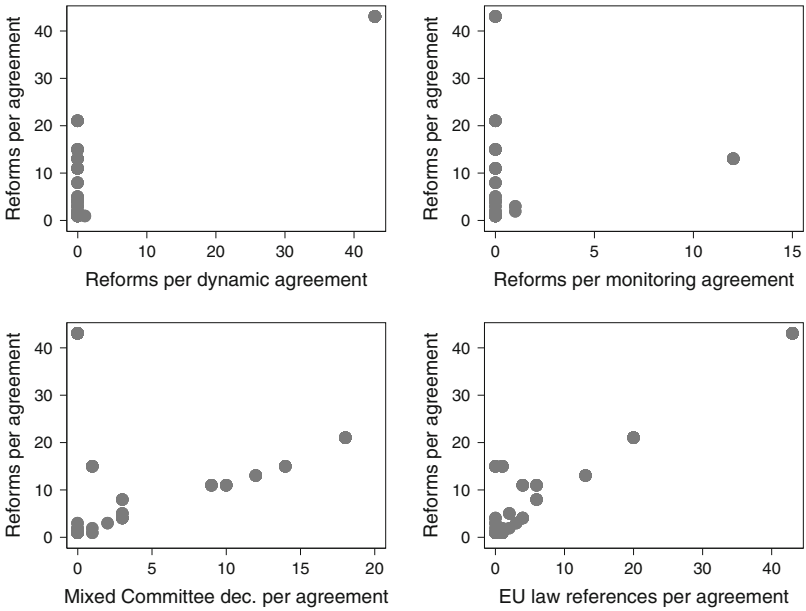

Fig. 2.1 Number of reforms (adoptions and revisions) per sectoral agreement 1990–2010

transport agreement, respectively. To that end, however, no substantive rule incorporation was needed.

To sum up, this first descriptive analysis shows us that legal integration qualities are less frequent than substantive integration qualities. However, partial revisions of sectoral agreements very often show legal- and substantive integration qualities clearly distinguishing them from normal international treaties, and the domestic incorporation of EU rules is of a higher substantive quality if it is legally linked to a sectoral agreement. The claim that the interrelation of different integration measures needs to be researched made in the introductory chapter finds further support when we look at the number of reforms per sectoral agreements and per federal law. If a certain integration quality requires more frequent adaptations, we should observe a concentration of revisions in certain agreements and laws.

Figure 2.1 shows the number of reforms per sectoral agreement (vertical axis in all four graphs). Most sectoral agreements were subject to less than ten reforms during the research period and many were subject

to even less than five reforms. However, the frequency of reforms per agreement varies with agreement qualities. The horizontal axes of the two upper graphs show the number of reforms of agreements with stronger legal integration qualities. The outlier in the upper left graph is the Schengen Association Agreement (SAA): it is dynamic and it was revised 42 times in the research period. The outlier in the upper right graph is the Air Transport Agreement: after its adoption, it was revised 12 times.

As was discussed in Sect. 2.3.1 and proved in the descriptive analysis, strong legal integration is seldom a phenomenon. Much more frequent than dynamic and monitoring provisions are Mixed Committees. The lower left graph shows the number of reforms per agreement that were adopted by Mixed Committees. This graph shows an almost linear relationship between the frequency of agreement revisions and the activity of Mixed Committees. Examples of agreements often revised by Mixed Committees are the Agreement on Agriculture (Bilaterals I), 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. An outlier is again the Schengen agreement, which by definition is not revised by the respective Mixed Committee.

The lower right graph shows the number of reforms directly referring to EU law per agreement, thus the number of reforms with a higher substantive integration quality than mere "parallel provisions." The graph looks similar to the one on Mixed Committees and suggests that often revised agreements tend to be revised with reference to EU law. In sum, Fig. 2.1 shows considerable variance with regard to the frequency of agreement revisions and provides further support for the claim that it is necessary to analyse the day-to-day development of the sectoral agreements in relation to their integration qualities.

Figure 2.2 shows similar graphs, with the total numbers of reforms per federal law and the numbers of EU rule extensions per federal law. The majority of federal laws were subject to only a few reforms and to even fewer EU rule extensions, 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 30 times, but only a few of these revisions contained EU rules; the Law on the Federal Tax was revised 20 times and surprisingly, a couple of these reforms fully incorporated EU rules (upper left graph), were compatible with EU law (lower left graph), or implemented sectoral agreements (lower right graph); the Law on Health Insurance and the Law on Old Age Insurance

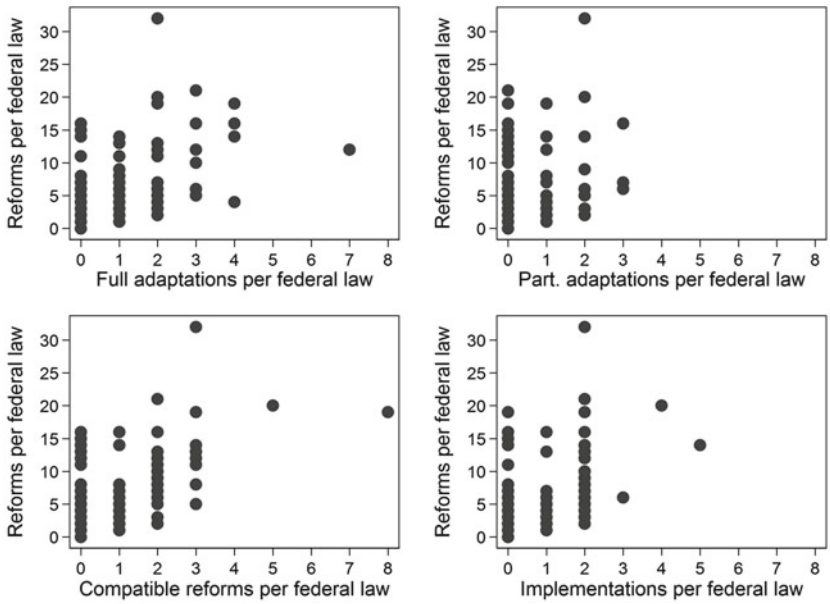

Fig. 2.2 Number of reforms (adoptions and revisions) per federal law 1990–2010

were also revised around 20 times, and sometimes incorporated EU rules; the Law on Agriculture was revised 20 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 fully incorporated EU rules (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 indicates 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 adapted to EU rules, and still other laws contained EU rules only in relation with sectoral agreement implementations. This picture supports the claim that

the relation between sectoral agreements and the incorporation of EU rules into domestic legislation needs to be researched more thoroughly.

2.4.2 Substantive and Legal Extension of EU Rules Over Time

The quality of the instruments of Switzerland's differentiated integration was subject to change over time. Figure 2.3 shows the development of the substantive quality of EU rules in Swiss legislation in terms of legal reforms over time. 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,

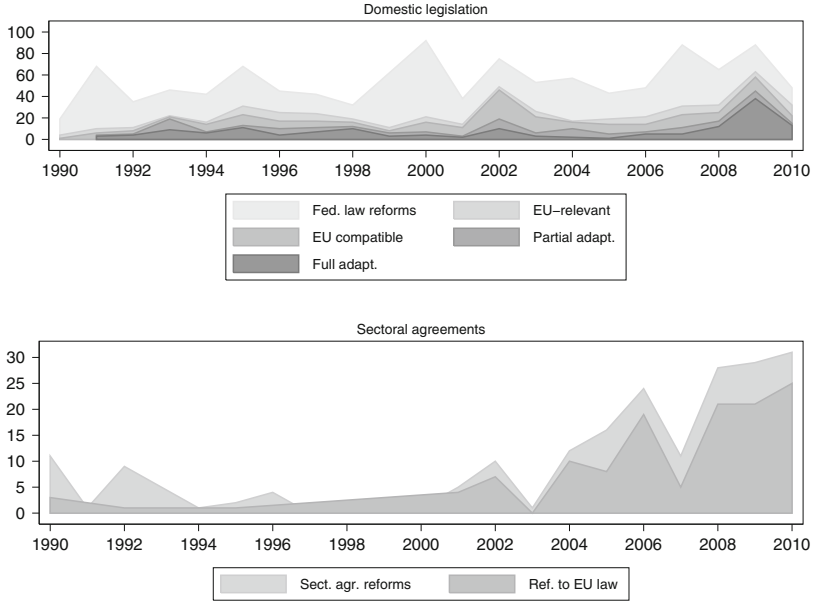

Fig. 2.3 Substantive quality of extensions of EU rules, number of reforms per year

thus legal reforms that fully incorporate 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.

The upper graph of Fig. 2.3 shows that despite some ups and downs, the characteristics detected in Table 2.4 hold for the whole research period. One of the findings of Table 2.4 was that only a tiny share of the EU-relevant reforms was not at least compatible with the EU rules. Figure 2.3 confirms that this rule holds for the whole research period. The topmost area in the upper graph of Fig. 2.3 represents the total number of yearly federal law 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 incorporate EU law anew. The tiny area above the full adaptations shows the adaptations that were selective and thus did not incorporate the relevant EU law fully. Also, selectivity was a steady characteristic of adaptations to the EU, but Switzerland more often incorporated 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) our data also 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 contrast to the continuity in domestic legislation, the lower graph of Fig. 2.3 shows a clear development with regard to the frequency of changes to sectoral agreements. 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 the trend is not clearly 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 changes to sectoral agreements that do not directly refer to EU law.

Figure 2.4 shows the development of the legal quality of the extension of EU rules to Switzerland over time. It confirms the findings of Tables 2.3 and 2.4: In both domestic legislation and sectoral agreements, legal links to the EU are less frequent than substantive closeness to EU rules. Again, the upper graph refers to domestic legislation and the lower to

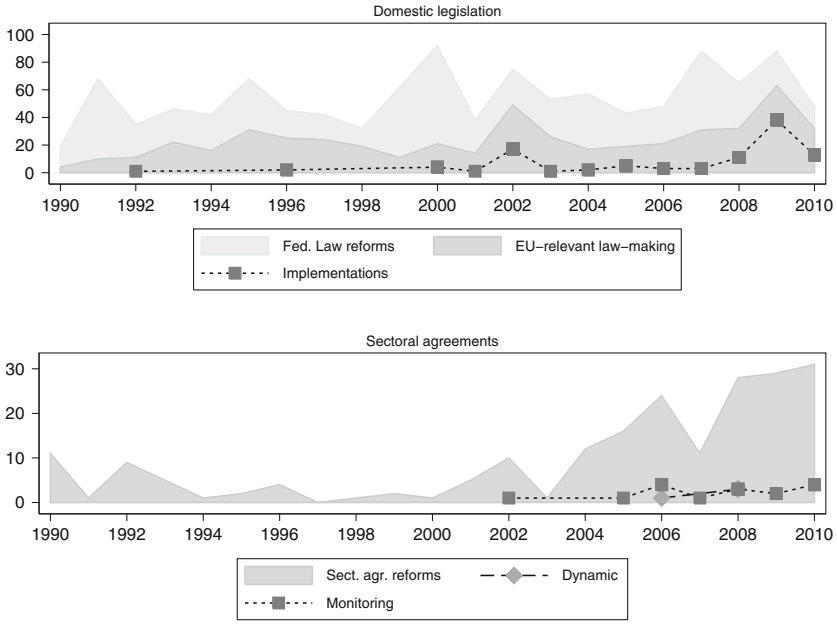

Fig. 2.4 Legal quality of extensions of EU rules, number of reforms per year

sectoral agreements. In both, the topmost area is the same as in Fig. 2.3 and reports the total number of federal law reforms, or sectoral agreement reforms, respectively. If we compare Fig. 2.4 to 2.3, we see that a much lower number of domestic lawmaking 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.

Interestingly, both graphs on domestic legislation (upper graphs in Figs. 2.3 and 2.4) 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 changes in domestic legislation, as the Schengen and Dublin

agreements are responsible for the increase in implementation measures after 2008. In the realm of the sectoral agreements, they are responsible for the appearance of dynamic provisions in the last years in the lower graph of Fig. 2.4. Also, the drop in the number of federal law reforms related to EU law in 2010 and the continuing increase in the number of sectoral agreement reforms could be related to the way the dynamic provisions of the Schengen and Dublin agreements are implemented: In these areas, new EU legislation is extended to Switzerland by exchanges of diplomatic notes and 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). The multivariate analysis in Chap. 3 confirms that the integration qualities of agreements are correlated to the frequency of their revisions but does not provide statistical significance for the assumption that incorporation of EU rules into domestic legislation is negatively correlated to more frequently revised agreements.

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 also have the right to control the correct spending of these funds on Swiss territory. Although monitoring provisions appeared earlier than dynamic provisions, respective agreements were not revised as often as agreements with dynamic provisions, but were still revised more often than agreements without special legal integration qualities (see Fig. 2.1).

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, and economic policy has had the most attention in the literature. The analysis of federal laws frequently affected by EU rules extensions (Fig. 2.2) showed that economic policy is not necessarily the area which is most affected by the EU in terms of legal reforms. An analysis of the distribution of integration measures across policy fields confirms that EU rules are extended in a wide range of policy fields, especially in domestic legislation. Figure 2.5 refers to the same variables as Fig. 2.3, but shows the distribution of the substantive quality of EU rule extension across policy fields.

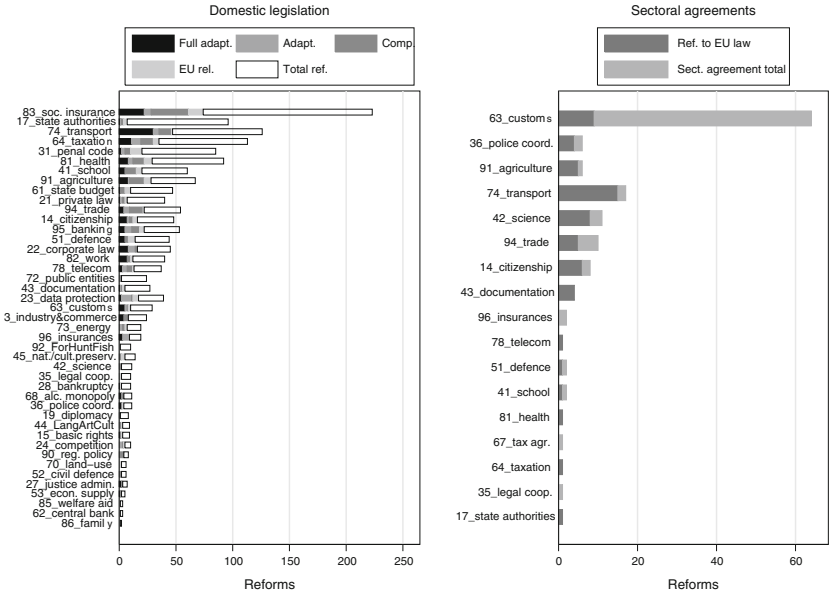

Fig. 2.5 Substantive quality of extensions of EU rules over policy fields

As policy fields, the sub-chapters of the Classified Compilation of Federal Legislation are used (see Table 2.10 in the Annex for an overview). As in Fig. 2.3, 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 lawmaking 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 were affected by the incorporation of EU rules. In contrast to Fig. 2.3, which showed little variation over time with regard to the share of EU-relevant law reforms extending EU rules to Switzerland, Fig. 2.5 shows variance in that regard across policy fields. 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 an issue-specific selectivity. In sectoral agreements, most direct references to EU law stem from the policy

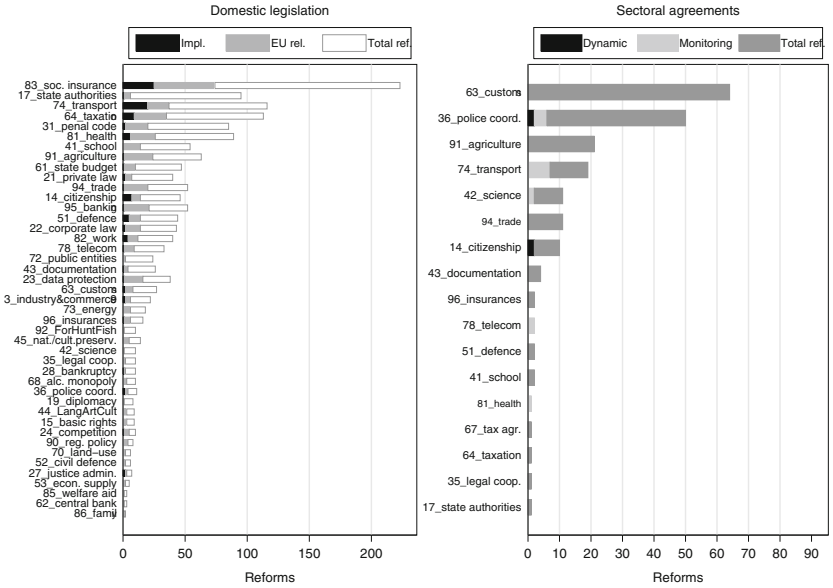

Fig. 2.6 Legal quality of extensions of EU rules over policy field

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 2.6 refers to the same variables as Fig. 2.4 and shows the distribution of the legal quality of EU rule extension across policy fields. As in Fig. 2.4, the darker parts of the bars depict the number of reforms with a higher legal integration quality. 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 Fig. 2.5. Dynamic and monitoring provisions are a very infrequent phenomenon and mainly related to the usual suspects for strong integration, Schengen and Dublin (policy field citizenship, which includes residence authorisation and migra-

tion issue in domestic legislation), as well as air transport. Science appears among the issues with monitoring provisions, because EU authorities can also inspect the correct implementation of research projects funded by EU programs on Swiss territory.

With regard to domestic legislation, Fig. 2.6 differs substantially from Fig. 2.5. Whereas Fig. 2.5 confirmed findings of the other descriptive analyses on the aggregate level and over time, namely that EU-relevant law reforms were to a large part at least compatible with the relevant EU law, Fig. 2.6 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 lawmaking 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 EU rules incorporated in domestic legislation, compared to the smaller number of implementation measures, and the smaller number of policy fields containing sectoral agreements, indicates that the incorporation of EU rules into domestic legislation is not always related to sectoral agreements. Therefore, Chap. 4 explores the correlation of integration measures with indicators of political dynamics and macroeconomic developments.

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 incorporation of EU rules into domestic legislation. At the aggregate level, the data showed differences with regard to the frequency of changes to different sectoral agreements and federal laws, as well as in the development over time and the distribution across policy fields. These differences are interesting in light of the controversies regarding the quality and extent of and the reasons for Switzerland's differentiated integration. Regarding the integration quality, the data 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. This supports the view that Switzerland's differentiated integration in large part lacks a supranational quality and therefore should not be labelled quasi-member. In that sense, the empirical data confirms common sense.

The descriptive results also leave several questions open, namely one regarding the interrelation of different integration measures and one regarding the explanations of integration measures which do not easily fit in the picture of "economic integration and political abstention," because they affect non-economic policy fields. Chapter 3 analyses the first question. The uneven distribution of reforms across sectoral agreements and federal laws points to considerable variation with regard to the frequency of revisions per legal text (federal law or sectoral agreement). The analysis of the development over time showed 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 lawmaking and sectoral agreement reforms. Substantive rule extensions, in contrast, occurred steadily in domestic legislation and increased steeply in recent years in sectoral agreements. Among others, Chap. 3 shows that the legal and the substantive integration quality of agreements at their first adoption and the frequency and quality of their subsequent revisions are correlated. It also shows that the rare dynamic provisions provoked a high number of substantive rule extensions. In addition, Chap. 3 provides modest evidence for the claim that the informal principles underlying Switzerland's sectoral agreements are responsible for the frequency of substantive rule extensions into domestic legislation in the same policy fields. It does not, however, support the claim that domestic incorporation of EU rules is less frequent in policy fields with agreements of a high legal integration quality.

Regarding the second open question, the descriptive results provide support for the claim made in the literature that EU compatibility is a fundamental principle of domestic lawmaking, cited in the introduction. Table 2.4 shows that substantive rule extensions into domestic legislation is to a large degree 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 EU rules were incorporated into domestic legislation in a wider range of policy fields than sectoral agreements, supports the claim of an "EU compatibility

principle." Chapter 4 supports this view, because it cannot find statistical evidence for the relationship between the incorporation of EU rules into domestic legislation and macroeconomic development or general political dynamics.

Table 2.4 showed that EU rules are almost twice as frequently incorporated fully in federal laws than partially and that federal law reforms implementing sectoral agreements are almost always full adaptations. This finding supports the analysis of the "autonomous adaptation policy" from the point of view of differentiated integration, defined as rule extension, and it somehow contradicts the common sense of Switzerland as a cherry-picker. In that regard, Chap. 4 shows that the incorporation of EU rules into domestic legislation are not only related to the implementation of sectoral agreements but are also related to negotiations of sectoral agreements. In addition, package deals already seem to play a role in domestic negotiations. On an aggregate level, Chap. 4 shows that substantive integration measures in general are also related to rule density in the EU in the respective policy field, which further supports the view of Switzerland's European policies as differentiated integration measures.

Annex

Structure of the Raw Data

Table 2.5 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 were used, etc.). The specific coding of the variables is explained in the respective analysis or in the Annex to the respective chapter. Table 2.5 gives an overview over the structure of the raw data, which has the structure of a panel data set. The header row of Table 2.5 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 is 0.142.112.681 and refers to the Free Movement of People Agreement. The SR number contains the information about 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

Table 2.5 Structure of the raw data

	Variables assigned to legal texts (SR numbers); values stable over time			*Variables assigned to legal changes (AS numbers); values changing over time for same legal text (same SR number)*								
	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	…	…	…	…	…	…	…	…	…	…	…	…

0.142.112.681 belongs to chapter 0.1 (International Law in General) and sub-chapter 0.14 (Citizenship and residency). The sub-chapter is used as an indicator for the policy field of the act. Table 2.10 provides an overview of the chapters and sub-chapters of the Classified Compilation. 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 also contains information that changes from observation to observation for the same legal text. This is the unit of measurement for the most important variables, namely for those measuring the integration quality of a reform. The integration quality variable values are assigned to legal changes. A legal change is identified by its number in the Official Collection of Federal Legislation (AS Number). In this collection, every new legal text, and every amendment to a legal text, is chronologically published. In Table 2.5, 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. 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.

In principle, one legal change can only be assigned to one legal text and by rule, a reform (AS number) is assigned to the legal text, the SR number of which it bears. In the case of the sectoral agreements, this principle is easy to follow, because 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 normative 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. With the aim of not overestimating the number of federal law reforms, I only consider primary federal law reforms for the analyses throughout this book. To distinguish primary from secondary federal law reforms, the variable primary contains the value 1 for the observations, where the legal change (AS number) bears the SR number of the respective legal text (SR number). The observations of the same AS number in combination with other SR numbers are coded as secondary reforms. Linder et al. (2011) did not distinguish between primary and secondary

Variable Description

Table 2.6 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.
15	ja_NR **	Number of deputies in the national council (Nationalrat) voting for the bill in the final vote		Official Bulletin

(*continued*)

Table 2.6 (continued)

No.	*Name*	*Description*	*Format*	*Source*
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

Table 2.6 (continued)

No.	*Name*	*Description*	*Format*	*Source*
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
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

(*continued*)

Table 2.6 (continued)

No.	*Name*	*Description*	*Format*	*Source*
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

reforms, thus one publication in the Official Collection can be assigned to several SR numbers in the original data set. This explains the difference in the number of observations.

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.

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 that do not enter the Classified Compilation and do not have an SR number but list a series of legal reforms that are more or less closely connected (Müller 2013). In such cases, I counted 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 2.5). 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.

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

Epiney et al. (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 by 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

Table 2.7 Variables measuring integration qualities of Switzerland–EU agreements

	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 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 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 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 lawmaking 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 EU law. (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

normal treaty of international law, and the variable takes the value 1. Table 2.7 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 Chap. 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 lawmaking, these variables were not used for the various analyses (see Sect. 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 can also be achieved when the parties to the treaties are asked to take measures in order to establish equivalent rules. Harmonisation of formal rules does not necessarily concern only 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., participa-

tion in the mission to Bosnia-Herzegovina 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.

Coding Rules for the Quality of the Incorporation of EU Rules into Domestic Legislation

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, publication in the *Official Journal of the European Union* was the criterion to define a legal rule as binding. A specific form of non-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 2.8.

Table 2.8 Variables measuring the incorporation 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 deviates in one or more aspects from the 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 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 Swiss rule do not go beyond the leeway left to EU 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	• An EU–Switzerland agreement 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

Table 2.9 Inter-coder reliability

Variable	*Average pairwise agreement in %*	*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*

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

Inter-coder Reliability Test

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 pretest phase. Parts of the sources were evaluated by all coders independently from each other in order to test the reliability of the data obtained by the different coders. Table 2.9 shows the results of the reliability test using different indicators. The grey-shaded rows in Table 2.9 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 last three rows of Table 2.9 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.

Sub-chapters of the Classified Compilation of Federal Legislation (SR)

Table 2.10 Chapters and sub-chapters of the Classified Compilation of Federal Legislation (SR)

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		

(*continued*)

Table 2.10 (continued)

Landesrecht		*Internationales Recht*	
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		
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***

Table 2.10 (continued)

Landesrecht		*Internationales Recht*	
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		
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

(*continued*)

Table 2.10 (continued)

Landesrecht		*Internationales Recht*	
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

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

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

Notes

1. 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 2.6 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.
2. 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). 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.

3. The messages sent to the government by the ministries and offices with the draft regulations are available only on request.
4. *Amtliche Sammlung des Bundesrechts*, online available since September 1998 (URL: http://www.admin.ch/bundesrecht/00567/index.html?lang=de, last access 09/03/2015), print copies available in most law faculty libraries in Switzerland.
5. 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 (see Table 2.5 for detailed information about the structure of the raw data).
6. *Systematische Sammlung des Bundesrechts*, URL: http://www.admin.ch/bundesrecht/00566/index.html?lang=de, last access 29/07/2014; the Classified Compilation always contains the actual valid version of a legal text. If a legal text is abrogated, it drops out from the Classified Compilation.
7. Epiney et al. (2012) also mention that the Agreement on Proceeded Agricultural Goods does not refer to EU law. Because the annexes to the agreement refer directly to EU law, the agreement is nevertheless included in the present study.
8. 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 (i.e., references to the EU without relation to a sectoral agreement).
9. 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 was jointly supervised by the Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education, and Research.
10. 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).
11. The exemption is the Pension Fund agreement, which was excluded from the analysis.

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CHAPTER 3

Institutional 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 in danger the homogeneity of legislation in the Single Market. In the terms substantive integration quality and legal integration quality, both introduced in Chap. 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). From the point of view of the concept integration quality introduced in Chap. 2, the Council calls for more legal integration. Apparently, the European diplomats assume that stronger legal integration would lead to more coherent substantive integration.

In this chapter, I claim that the Council's assumption is right and show that stronger integration qualities of some agreements has already led to their more dynamic evolvement in the past. In Chap. 2, I showed that the various sectoral agreements evolved quiet differently (see Fig. 2.1).

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DOI 10.1007/978-3-319-33684-8_3

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 claim that stronger substantive integration also produces incentives for a more dynamic development of sectoral agreements. These incentives are produced by the tension 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. This argument is based mainly on the legal literature about the sectoral agreements. 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, including 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 provides an empirical analysis of the day-to-day evolvement of the agreements.

As in this book I conceive of Switzerland as a case of differentiated European integration, I also rely on theories of European integration for the explanatory analyses. The claim that the different substantive- and legal-integration qualities of agreements influence their dynamic evolvement after they were adopted is a claim about the development of integration between the "great bargains." Among the classical strands of integration theory, supranationalism most explicitly assumes that integration also proceeds between intergovernmental negotiations. In the tradition of historical institutionalism, it ascribes important roles to institutional rules and rational supranational and transnational actors, who interpret, implement, and eventually develop the integration initiated by the great bargains (e.g., Sandholtz and Stone Sweet 2010).[1] Empirical research in the supranationalist tradition often focused on the development of the European Parliament, the role of the European Commission, or that of the European Court of Justice (ECJ), three of the most important supranational actors of the EU. In the case of the ECJ, research showed, for example, how ECJ case law advanced integration in directions which were not intentionally planned in treaty negotiations (Sandholtz and Stone Sweet 2010).

In order to explain the development of Switzerland's differentiated integration between the negotiations of the sectoral agreements, I argue

that higher legal or substantive integration qualities in sectoral agreements produce similar processes in Swiss–EU relations, even though Switzerland is not directly subordinated to any of the most researched supranational actors. Most sectoral agreements are implicitly or explicitly designed to integrate Switzerland in a certain policy field in an EU regime. Because EU policymaking is steadily developing, many sectoral agreements provide rules or fora that set in motion mechanisms of further integration similar to EU internal rules and supranational actors. However, sectoral agreements differ with regard to the explicitness of the integration aim and with regard to the formal rules, which are likely to set in motion integration dynamics. I thus conceive of the sectoral agreements as contracts which are to different degrees incomplete. Incomplete contracting arguments have been applied to the study of European integration in the supranationalist tradition before, and they are general enough to help to adapt the supranational theoretical focus to the Swiss case (Leuffen et al. 2013).

This chapter proceeds as follows. The first section reviews the mainly legal literature about the legal form and 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 domestic legal adaptations are also probably 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 supranationalist reasoning, especially drawing on a series of articles which applied incomplete contracting arguments to the study 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 findings confirm the main argument. Agreements of higher legal and substantive integration qualities were more frequently revised. However, only in the case of agreements with the highest substantive and legal integration qualities did they also produce revisions with a high substantive integration quality. This finding is complemented by the finding that lower integration qualities of sectoral agreements are correlated with more frequent domestic legal adaptations in the same policy field. The fourth section concludes the chapter.

3.1 Sectoral Agreements: Tension Between Form and Substance

The legal form of sectoral agreements—they are normal international treaties—stands in tension with their aim. The aim of many early agreements between Switzerland and the EU was trade liberalisation and later 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. As early as 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 mostly 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 (de 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. 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 the domestic legislation also 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 relativises the legally static character of the treaties. Adaptations of domestic legislation, and thus substantive incorporation[2] 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 this section, I discuss the existing evidence and common assumptions 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

Legal and substantive integration qualities are so important because the less clear the link to EU policies and politics, the more controversial are agreement revisions. In his above-cited speech, de Watteville stated not only that agreements are in constant danger of losing their effectiveness but 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 (de 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 renegotiation 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).[3] 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 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, 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 2013 protocol about the extension of the free-movement-of-persons principle to Croatia was not signed by the Swiss government after the outcome of a popular vote contradicting the protocol. Instead, Switzerland has guaranteed separate quotas for Croatian citizens since July 2014 (Staatssekretariat für Migration 2015).

This vote, the acceptance of the popular initiative against mass immigration, 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 audiovisual cooperation (MEDIA) have to be renegotiated 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 2014). Agreement revisions thus resemble new adoptions of agreements because of several reasons. First, they require an integration interest of both parties like, for example, in the case of the agreement on customs security measures. Second, agreement revisions can eventually be challenged in

a popular referendum like, for example, the extensions of the FMPA. Third, agreement revisions provide new opportunities for issue linkages like, for example, in the case of the agreement on research. These cases illustrate the practical consequences of the tension between the integration intention and the lack of institutional mechanisms for agreement revisions.

3.1.2 Institutionalised 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).[4] 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. This claim is similar to the effect which researchers assign to the EEA Joint Committee because it takes decisions in a "non-political atmosphere and with little public attention" (Frommelt 2012b: 20).

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, dynamic obligations also 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 approved in the normal legislative process in Switzerland.[5] 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). This reluctance to use formally possible veto rights in external differentiated integration is not unique to Switzerland. During the more than 20 years of its existence, the EEA EFTA did not make use of their right to veto the adoption of an EEA-relevant act of EU secondary law. This is regarded as an example of the effective functioning of the EEA agreement (Pelkmans and Böhler 2012).

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, renegotiations are necessary and open the door to new issue linkages, renegotiation 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 renegotiations 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, which enhances the costs of non-transposition considerably.[6]

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 domestic 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 (de Watteville 2011). The reason is that the unilateral incorporation 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 incorporation 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 studies 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 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 incorporation of EU rules into domestic legislation.

A distinction between measures related to negotiations and implementations of sectoral agreements, on the one hand, and later incorporation of EU rules into domestic legislation, on the other, is necessary in order to examine whether the adaptation of domestic legislation sometimes functions as a compensation of sectoral agreement updates. Regarding 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).[7] Regarding agreement implementation, we know that sectoral agreements led to a limited number of implementation measures at the level of federal laws, although Switzerland 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, that is, not clear enough to provide the foundation for a court to decide on a single case (Breitenmoser 2003). In case a sectoral agreement is not clear enough, it needs specification or clarification in a federal law, which then 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 they—as assumed above—are used to 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 reinstall the factual equivalence of valid legislation in the EU and Switzerland. There is, indeed, ample evidence that Switzerland unilaterally incorporated EU rules that are not direct implementations of sectoral agreements despite the disadvantage of unilateral rule incorporation 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 Figs. 2.5 and 2.6 in Chap. 2). Such adaptations could thus compensate for the static character of the agreements.

3.2 Theory: The Consequences of Incomplete Contracts

In the following sections, the tension between the integration intention of most agreements and their legal form is interpreted as a consequence of their incompleteness as integration contracts. In the previous section, I discussed assumptions found in research but also among political observers about the practical functioning of the agreements. But we lack empirical evidence for these assumptions. We especially lack theoretical discussions and empirical analysis of the two factors which may explain whether or not the tension between form and substance of the sectoral agreements is resolved via regular updates. The first factor is the incentive to update agreements and continuously incorporate EU rules. One of the 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 EU rules contained therein. Based on integration theories, I argue that these incentives depend on the substantive integration qualities of the agreements. The

second factor is the practical consequence 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 the agreements of higher legal quality also do not contain an update automatism. At the same time, the tension between form and substance may lead also to agreement updates in cases without institutional mechanisms. In addition, there may be cases where the tension is mitigated by compensatory adaptations of domestic legislation.

Higher substantive integration qualities produce incentives and higher legal integration qualities provide mechanisms for ongoing integration because they make sectoral agreements less incomplete as contracts. This argument 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 alter preferences and attain a life of their own. One of the reasons is that "great bargains" are necessarily incomplete and need to be interpreted for implementation. Supranationalists have focused on the role of supranational actors like the European Commission or the European Court of Justice, which are in charge of this interpretation work and thereby advance integration. These actors have no direct influence on Switzerland, because their influence depends on the formal institutions of membership. Arguments found 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 still promising for Switzerland, because they tell us in what regards the incompleteness of agreements plays a role. According to these arguments, I interpret the tension between the integration intention and the legal form of the sectoral agreements as 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. In the following sections, I first discuss how the role of ambiguities of contracts helps us to understand the effect of the substantive-

integration quality. Second, I discuss the role of ambiguous tasks and responsibilities to understand the effect of the legal integration quality.

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 transnational exchange, and that increasing transnational exchange is an important driver of integration, because actors engaging in transnational 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 transnational activities. Therefore, not all agreements threaten to become ineffective or cease to provide benefits in case they are not updated according to changing EU law. What is more crucial here, however, is to what extent the transnational activities are actually affected by changes in EU rules. If transnational activities become more difficult when a sectoral agreement is not updated, this means that the agreement threatens to lose its effectiveness.

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 all issues are not solved to everyone's satisfaction (Jupille 2007). In

the case of the sectoral agreements, it is straightforward 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 have served to reconcile the EU's principle of uniform rules and Switzerland's interest in retaining as much autonomy as possible during agreement negotiations (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.[8] 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 is the EU law, and thus rules in the bilateral agreements lose their effectiveness when the respective EU law changes. 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 the study 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 and 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 (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 Switzerland and the EU, respectively. These lists naturally have to be updated regularly in order to correspond to the actual market activities or they lose the intended effect of removing technical barriers to trade and facilitating cross-border exchange. The descriptive analysis in Chap. 2 showed that the Conformity Assessment Agreement is indeed one of the most frequently revised agreements (see Sect. 2.4.1).

In contrast to harmonisation agreements, the effectiveness of liberalisation and cooperation agreements depends less strongly on the equivalence or equality 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 and more strongly on the specific rights and duties 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 to interpretation. I discussed above how 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 anyway.

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 simi-

larities 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, the benefit of an agreement also 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 specifically 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 Fig. 2.1 in Chap. 2).

To sum up, I argue 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 incorporation 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 depends 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.

The following hypotheses summarise the theoretical considerations discussed above:

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

H A1
: be revised;

H B1
: have revisions that refer directly to EU law; and

H C1
: lead to domestic rule incorporation.

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

H A2
: be revised;

H B2
: have revisions that refer directly to EU law; and

H C2
: lead to domestic rule incorporation.

3.2.2 Obligational Incompleteness and Legal Integration

Incomplete contracts can be ambiguous with regard not only 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 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, and so on. The previous section 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. In this section, I argue that a higher legal-integration quality also makes agreement revisions more likely, 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 door to 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 focus of this chapter is on rule creation, because the empirical data measures rules and not their implementation. This may seem unorthodox, as in the EU rule enforcement by the ECJ has been one of the most important effects that a supranational actor has had when it comes to triggering integration. However, in Swiss–EU relations rule enforcement provisions are much less developed than rule creation provisions. Only one agreement creates a link between the ECJ and Switzerland. The ECJ is responsible for dispute settlement only in the case of the Air Transport Agreement. 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. Lastly, the monitoring provisions found in a few agreements do not aim to monitor the implementation of the respective agreements as such but to monitor the behaviour of beneficiaries of the agreements. Apart from these few exemptions, the Switzerland and the EU are responsible for the interpretation and enforcement of agreements on their own territories. Specifically because of this, the effect of relatively weak rule creation provisions on the development of integration between the great bargains, which I demonstrate in this chapter, contributes to supranationalist accounts of European integration.

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 also adopt new legislation emerging in the EU in the area of the agreement 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. The descriptive results presented in Chap. 2 (Sect. 2.4.1) showed that these dynamic agreements are very often revised. No other sectoral agreement in the data set contains similarly clear rules for rule updates.

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 argue 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. As in the last section, I expect that such provisions influence the probability of agreement revisions, of the substantive quality of these revisions, and of 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. Precisely for the reason that these rules reduce obligational incompleteness and thus facilitate agreement revisions, I also expect that they make rule incorporation into domestic legislation as compensatory measures less likely.

The following hypotheses summarise the argument:

Dynamic agreements are more likely to

H A3
: be revised than static agreements;

H B3
: have revisions that refer directly to EU law.
Dynamic agreements are less likely to

H C3
: lead to domestic rule incorporation.
Agreements with Mixed Committees are more likely to

H A4
: be revised;

H B4
: have revisions by Mixed Committees that refer directly to EU law.
Agreements with Mixed Committees are less likely to

H C4
: lead to domestic rule incorporation.

3.3 Analysis: Agreement Incompleteness and Everyday Integration

The hypotheses derived in the previous section claim that the substantive and legal integration qualities of agreements are correlated with three different dependent variables; namely with the frequency of agreement revisions (A hypotheses), the substantive quality of agreement revisions (B hypotheses), and the likelihood of the domestic incorporation of EU rules (C hypotheses). These hypotheses will be tested in three steps. For each step, a different subset of the data set presented in Chap. 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 based on all agreements in the data set. This analysis explains the number of revisions per agreement and year and 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 based on all agreement revisions in the data set. This analysis explains the number of agreement revisions of different types of agreements that contain direct references to EU law and 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. This analysis explains the frequency of domestic incorporation of EU rules that occur in policy fields with certain kinds of agreements and the probability of such incorporation.

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 higher 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. As new adoptions of agreements are the result of a bargain between Switzerland and the EU and this chapter focuses on the development in between the bargains, new adoptions 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 can be achieved not only 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 agreement are asked to establish equivalent rules. Harmonisation of formal rules does not necessarily concern only economic issues, and the harmonised rules do not necessarily need to be EU rules. In order to test Hypothesis 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.[9] For the test of Hypothesis A4, I distinguish between agreements that are administered by a *Mixed Committee* and agreements that are not (see Table 2.6 and Table 2.7 in the Annex to Chapter 2 for coding rules and sources).

A first glance at the data shows that overall, sectoral agreements were rarely revised during the research period. In total, the data set contains 1419 observations of agreement-year pairs, which 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 at least one total or a partial revision during the research period.[10] Table 3.1 uses the agreement-year pair as the unit of analysis and shows the frequency of different numbers of revisions per year (columns) for different types of agreements (rows). The first column contains most observations and thus shows that most agreement-year pairs count zero revisions. The last row of the table indicates that

Table 3.1 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*	*10-Mar*	*> 10*	*Total> 0*	*Mean*	*p*
Hypothesis A1								
Harmonisation agreement	214	16	13	5	3	37	0.43	
Other	*1134*	*20*	*9*	*4*	*0*	33	0.05	*0.0000*
Hypothesis A2								
EU law reference	190	14	11	5	3	33	0.46	
Other	*1159*	*22*	*11*	*4*	0	37	0.05	*0.0000*
Hypothesis A3								
Dynamic agreement	8	0	0	0	3	3	4	
Other	*1341*	*36*	*22*	*9*	0	67	0.08	*0.0000*
Hypothesis A4								
Agreement with Mixed Committee	454	33	22	9	3	67	0.3	
Other	*895*	*3*	*0*	*0*	0	3	0	*0.0000*
Total number of rev. per year								
All agreements	**1349**	**36**	**22**	**9**	**3**	**70**	**0.11**	

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. The Council's critique that the Swiss bilateralism is very static seems thus justified.

However, when we compare the different types of agreements, we see considerable and statistically significant differences in the frequency of revisions across agreements with different integration qualities. The first row of Table 3.1 compares the number of revisions of harmonisation agreements and other agreements (liberalisation and cooperation agreements) with a difference of means test 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 liberalisation and cooperation agreements are responsible for 1134 agreement-year pairs without revisions. In contrast, both agreement types are responsible for roughly the same number of agreement-year

pairs with revisions (37 for harmonisation agreements and 33 for other agreements). However, when we put the agreement-year pairs with and without revisions in relation to each other and compare harmonisation agreements with liberalisation and cooperation agreements, we see that in relative terms, harmonisation agreements were much more often revised. The difference of the mean number of revisions per year of harmonisation agreements compared to other agreements is statistically significant at the level $p < 0.0000$ (t-test, last column). The lower number of observations for harmonisation agreements is partly due to the fact that harmonisation agreements were published on average ten years later than other agreements. In the multivariate analysis, I will control for a time effect.

The second row of Table 3.1 contains the data to analyse Hypothesis A2 and shows a picture similar to the first row. The second row compares the number of revisions of agreements that referred directly to EU law when they entered into force to the number of revisions of agreements which did not refer to EU law. 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 ($p < 0.0000$). Harmonisation agreements and agreements with direct references to EU law, which are less ambiguous regarding their integration intention, indeed are updated more frequently than more ambiguous agreements.

Also, agreements with dynamic provisions or Mixed Committees, which reduce obligational incompleteness, are updated more frequently than other agreements. The third and fourth rows of Table 3.1 show this. 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. Whereas the Dublin agreement was not revised during the research period and the Frontex agreement was revised only once, the Schengen agreement was revised more than ten times in each of the three years that it was observed. The rare observations of dynamic agreements and the high number of revisions of the Schengen agreement 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 all observations concern Schengen.

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 that only agreements with Mixed Committees were revised. The difference of means test supports this conclusion and accordingly also Hypothesis A4. A reduction of obligational incompleteness via dynamic provisions or Mixed Committees seems to enhance the frequency of agreement revisions.

These bivariate hypotheses tests need to be complemented by a multivariate analysis because the four agreement categories are not mutually exclusive and, as mentioned in case of the harmonisation and dynamic agreements, other factors like time also could explain part of the variation in revision frequency. Therefore, we cannot exclude that the significant effects of the variables in the bivariate tests are due to third variables. For example, a harmonisation agreement can and often does, but does not necessarily, have to refer to EU law, and an agreement with a Mixed Committee can be at the same time a harmonisation agreement or a dynamic agreement. In addition, changes over time of the characteristics of Swiss–EU bilateralism could explain the frequency of agreement revisions, as certain integration qualities, especially dynamic provisions, but to some extent also harmonisation agreements and direct references to EU law, were observed only in recent years (see Figs. 2.3 and 2.4 in Chap. 2).

The multivariate regression tests all four A-hypotheses simultaneously and includes variables which control for a general time effect. I expect that there could be two types of time effects explaining part of the variation in revision frequency. First, the hypothesised mechanisms are most probable

to hold for newer agreements and less so for older agreements, because the hypotheses were derived drawing mainly 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 agreement revisions. Second, I control for a general time effect. The EU is a different partner for Switzerland today than it was 20 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 and should be correlated positively with the revision probability as well. The descriptive statistics of the variables used for the multivariate analysis are presented in Table 3.7 in the Annex .

The regression analysis confirms the results of the bivariate analysis for all variables but for the variable harmonisation agreements. Table 3.2 shows the results of a logistic regression analysis with a binary dependent variable (agreement was revised in a given year one or several times, yes or no), binary independent variables and continuous control variables.[11] Model A in Table 3.2 contains the variables testing hypotheses A1—A4, Model A+ in addition contains the control variables. The integration quality variables are positively correlated to the probability of the revision of an agreement in a given year as suggested by the bivariate analysis. The signs of the correlations are not affected by the control variables, but the statistical significance of the coefficient for dynamic agreements is lower in Model A+. There is thus a time effect, but it does not explain the whole difference between the frequencies of revisions of dynamic compared to static agreements. In sum, Model A+ corroborates the three hypotheses A2, A3, and A4: 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. Hypothesis A1 finds no support: 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.

Table 3.2 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

*$p < 0.05$, **$p < 0.01$, ***$p < 0.001$

The correlations of dynamic agreements and Mixed Committees with agreement revisions correspond to assumptions in the literature. On the other hand, the correlation of direct references to EU law with agreement revisions has not been explicitly discussed in the literature. At most, the density of the rules and the necessity of updates were discussed as characteristics which distinguish sectoral agreements from other international treaties (e.g., Goetschel 2003). Figure 3.1 shows the predicted probabilities to be revised in a given year for agreements with and without references to EU law. Although the figure once again shows the general low probability of agreement revisions (<0.1), it also shows that the probability to be revised is above zero. In addition, Fig. 3.1 shows that the probability to be revised is significantly higher for agreements with references to EU law only after 1994. Before that, the confidence intervals

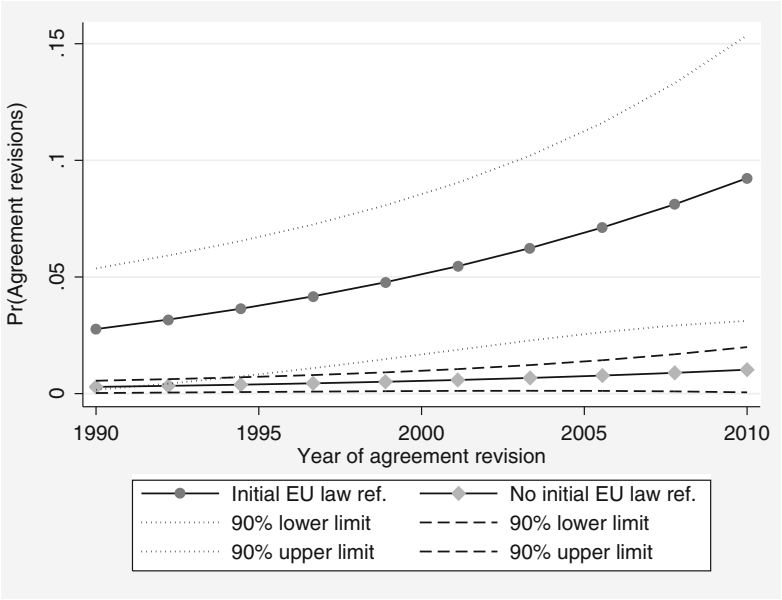

Fig. 3.1 Predicted probabilities of revisions for agreements with and without initial references to EU law

of the predicted probabilities for revisions for both agreements with and without EU law references overlap. The probability of revisions increased over time, but much more clearly so for agreements with initial EU law references. From the present analysis it follows that the higher rule density of sectoral agreements is correlated to a higher frequency of revisions, which provides grounds for the qualification of the sectoral agreements as instruments of differentiated integration.

Model A+ shows that only the general time effect is statistically significant. 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. 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 frequently updated agreements, and it is responsible for the large majority of agree-

ment 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 $p < 0.05$. However, the model fit tests are ambiguous with regard to the question of whether the control variables improve the overall model fit, so this result has to be interpreted cautiously.[12]

3.3.2 Integration Quality and Quality of Agreement Revisions

From the test of the revision probability for all agreements, I now move to an analysis of only those agreements which were revised and analyse the integration quality of these 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. For this analysis, the unit of analysis thus is the agreement revision. Agreements that were never revised during the research period as well as new adoptions of agreements were excluded from the analysis. The dependent variable 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 otherwise. 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 a Mixed Committee decision. This operationalisation measures the actual activity of the Mixed Committees. Although Table 3.1 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 3.3 shows the frequency of direct references to EU law for revisions of different types of agreements. The last row of Table 3.3 shows that in total, the sectoral agreements were revised 158 times during the research period from 1990 to 2010 and that almost two thirds of all agreement revisions referred directly to EU law. Of the total 98 agreements in the data set, only 19 agreements are responsible for these 158 revisions (see footnote 9).

Table 3.3 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 agreement	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**	

Table 3.3 shows that the integration qualities of sectoral agreements influence not only the probability that agreements are revised but also the probability that agreement revisions refer to EU law. The first row of Table 3.3 shows that the majority of revisions of harmonisation agreements directly referred to EU law, whereas the large majority of revisions of other agreements (liberalisation and cooperation agreements) did not refer to EU law. The difference of the means is statistically significant (t-test, $p < 0.0000$) and Hypothesis B1 is corroborated. The second row of Table 3.3 shows a very similar picture. 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 3.3 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 difference of means test is again highly statistically 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 in the previous analysis, the Schengen agreement 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 like policy field-specific integration incentives.

The fourth row of Table 3.3 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 is statistically not significant. Although agreements that are administered by a Mixed Committee are those agreements that are also revised (see Table 3.1), 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. The multivariate analysis shows that this result is explicable by the fact that the many revisions of the Schengen agreement were not decided by the respective Mixed Committee. Once we control for the dynamic provisions, Mixed Committee decisions significantly more often refer to EU law than regular revisions (see below).

As in the previous section, the bivariate hypothesis tests are complemented by a multivariate regression analysis. 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 B4 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. This low probability of politicisation facilitates a technical approach concerned with the well-functioning of the agreements. As Mixed Committee decisions are by far not the only agreement revisions that do not need parliamentary approval, I include a binary control variable that takes the value 1 when a revision is government-approved and 0 otherwise. 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 agree-

Table 3.4 Logistic regression analysis of the probability of references to EU law in agreement revisions

EU law reference	*(B)*	*(B+)*
Hypothesis B1		
Harmonisation agreement	−0.187	−0.948
	(−0.17)	(−0.56)
Hypothesis B2		
Initial EU law reference	3.605**	10.20***
	(3.03)	(4.79)
Hypothesis B3		
Dynamic agreement	2.046*	3.399**
	(2.44)	(2.67)
Hypothesis B4		
Mixed Committee decision	1.132	3.761*
	(1.58)	(2.32)
Control variables		
Time since last EU law reference		−1.794*
		(−2.23)
Federal Council decision		−4.007
		(−1.33)
First publication of bill, year		−0.199**
		(−3.03)
Year		0.0944
		(1.40)
Constant	−2.468**	206.4
	(−2.97)	(1.56)
Observations	158	158
AIC	117.3225	89.3084
BIC	129.5729	113.8092

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 agreement). *t* statistics in parentheses;

*$p < 0.05$, **$p < 0.01$, ***$p < 0.001$

ment may reduce the probability of a new revision with a direct reference, because the need of an update may be less urgent. Table 3.8 in the Annex shows the descriptive statistics for all variables.

For the multivariate analysis, I again apply a logistic regression analysis. Table 3.4 presents the results and confirms the findings from the bivariate analysis with regard to the effect of initial EU law references in agreements and dynamic agreements, but shows diverging results with regard to harmonisation agreements and Mixed Committee decisions. Analogously to

Table 3.2, Model B contains only the integration quality variables and Model B+ includes the control variables related to time and the variable measuring whether a revision was government-adopted. The variable dynamic agreement is a perfect predictor for EU law references in agreement revisions and thus would be dropped from the regression analysis by any statistical program. Because dynamic agreements are central to the argument of this chapter and the correlation coefficients of the other variables of interest can only be interpreted in a meaningful way if dynamic agreements are controlled for, I changed the value of the dependent variable for one observation of a Schengen agreement revision from 1 (EU law reference) to 0 (no EU law reference).[13] In order to account for the fact that observations of the same sectoral agreement are not independent, I estimated robust standard errors adjusted for the 19 different agreements.[14]

Table 3.4 shows that the same variables which are correlated to the probability of agreements revisions are also correlated to the probability that an agreement revision directly refers to EU law. As in the previous section, references to EU law in the initial agreement are the strongest predictor for references to EU law in agreement revisions. This is not surprising: Among the agreements which were revised with references to EU law, only the FTA and some of its protocols did not refer to EU law when they were first adopted. Even though the role of initial references to EU law seems tautological at first sight, it shows that agreements with fewer ambiguities regarding their integration intention not only create incentives to be updated but indeed are revised to keep these ambiguities low. Also as in the previous section, dynamic agreements are statistically significant predictors for EU law references.

In contrast to the bivariate analysis, Mixed Committee decisions are also positively correlated to EU law references in agreement revisions once the control variables are added in Model B+. The low significance level can be explained by the many revisions of the Schengen agreement which referred to EU law but were not decided by the Mixed Committee. Mixed Committee decisions with references to EU law concerned mainly agreements of the Bilaterals I package (air transport, FMPA, conformity assessment, agriculture, land transport). With 17 and 12 revisions, the agreements on agriculture and air transport count most Mixed Committee decisions with references to EU law. Mixed Committee decisions without references to EU law concerned mainly older agreements like the protocol on originating products and the agreement formalities in transit of goods, but also the agreements on processed agricultural goods and on confor-

mity assessment. Although Mixed Committees are not as big a driving factor as expected, they are positively correlated to EU law references as expected by theoretical considerations. Lastly, and also as in the previous analysis, the correlation of harmonisation agreements with EU law references is not statistically significant. Table 3.4 shows that the correlation is even negative, which contradicts Hypothesis B1. Harmonisation agreements which were often revised without references to EU law are mainly the agreement on the watch industry, the protocol on originating products, and other protocols to the FTA. As many of the above-mentioned agreements also are harmonisation agreements, I conclude that the harmonisation aim is not decisive once we control for explicit references to EU law and institutional characteristics.

The various model fit tests of Model B+ indicate that the control variables improve the model fit.[15] For the probability of EU law references in agreement revisions, the control variables thus play a role. Regarding the 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, but only the coefficient for the publication year is statistically significant. Again, the significant negative correlation may be an artefact of the few observations with very recent publication years. 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 farther in the past 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, but this correlation is not statistically significant.

3.3.3 Agreement Qualities and the Domestic Incorporation of EU Rules

The C hypotheses claim that sectoral agreements 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 test the assumption that the incorporation of EU rules into domestic

legislation is related to sectoral agreements, namely that domestic legal adaptations compensate for the static character of the sectoral agreements and that such compensatory measures are less necessary if agreement revisions are more strongly institutionalised. 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 incorporates EU law or not. The exclusion of domestic reforms dealing with exclusively domestic issues excludes "false negative" cases from the sample. The domestic incorporation of EU rules is operationalised as legal reforms that contain an adaptation to EU law (full or partial).[16] 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.[17] 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 3.5 provides an overview of the frequency of domestic legal adaptations across policy fields with and without different sorts of sectoral agreements and hints at an interesting role of harmonisation agreements. The subsample 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 3.5 shows that the data set contains 494 domestic legal reforms in areas with relevant EU laws.[18] 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 3.5 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 harmonisation 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

Table 3.5 Domestic incorporation of EU rules 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 agreement	74	53	127	0.58	
No Mixed Committee agreement	158	209	367	0.43	*0.0030*
Total	**232**	**262**	**494**	**0.47**	

level $p < 0.0000$. Hypothesis C1, claiming that domestic legal adaptations compensates for the static character of agreements especially in the case of harmonisation agreements, is thus supported by the data.

In contrast, the hypotheses C2–4 are not corroborated by the data. The second row of Table 3.5 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 adaptations 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 3.5 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 more often incorporate EU 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 thus seems 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). This finding requires explanation, as the multivariate analysis in Table 3.5 indicates that Mixed Committee decisions have a higher probability to refer to EU law than regular agreement reforms. Apparently, such revisions do not make domestic incorporation of EU rules less necessary.

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 the domestic incorporation of EU rules, although not exactly in the same way as in the previous analyses. The major difference from 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. The calendar year of a reform is included the same way and for the same reasons as above. Similarly to the test of the B hypotheses, I assume that a federal law reform is less likely to incorporate EU rules when the respective 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 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 3.11 in the Annex contains the descriptive statistics for all variables used in the following multivariate analysis.

Table 3.6 presents the results of the logistic regression analysis testing hypotheses C1–C4. As in the previous analyses, there are several influential observations in the sample. As 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. 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.[19] 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 variables. This is indicated by the model fit tests based on Bayesian information criteria as well as by the Wald test.

The multivariate model corresponds better to the theoretical expectations than the bivariate analysis. Hypothesis C1, which was already corroborated by the bivariate analysis in Table 3.5, is also supported by 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, agreements with EU law references are also negatively

Table 3.6 Logistic regression of the probability of domestic incorporation of EU rules

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;
*$p < 0.05$, **$p < 0.01$, ***$p < 0.001$

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 incorporation in the same policy fields less likely. This supports the expectation by Tobias Jaag (2010) that the domestic incorporation of EU rules becomes less important when Switzerland concludes more sectoral agreements.

Once we interpret the analysis of domestic EU rule incorporation in light of the previous analyses in this chapter, the results resonate quite well with the theoretical claim. 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++ shows that all control variables are significantly correlated to the probability of domestic legal adaptations and that the inclusion of the control variables does not change the correlations and significance of the independent variables. 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 farther in the past. The calendar year of a federal law reform is negatively correlated to the likelihood of domestic legal adaptations. However, this correlation is only significant in Model C++, which includes the control variables implementation and negotiation, but not in Model C+. This finding resonates with the descriptive results presented in Chap. 2 (Figs. 2.3 and 2.4), which indicated that implementation measures are a more recent phenomenon, whereas the rule incorporation in the 1990s was not related to sectoral agreements. This is in line with findings from earlier research (Jenni 2014). In a similar vein, a popular referendum is also negatively correlated to domestic legal adaptations in Model C++. This is explicable by the fact that implementation measures are often subject to a popular referendum because they are voted on in a package together with the respective sectoral agreements. Once we control for the possibility that a domestic adaptation to EU rules is an implementation measure, we see that without a formal relation to a sectoral agreement, domestic adaptations are less likely when a popular

referendum takes place. Finally, the often-mentioned variables implementation and negotiation are positively correlated to domestic legal adaptations, and the correlation is statistically significant. The inclusion of these strong predictors, however, does not affect the correlations of the independent variables. This means that the assumed compensation effect takes place independently of the formal relation to a sectoral agreement.

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 which does not guarantee a parallel development of the sectoral agreements with legal changes in the EU. The mainly legal literature describes renegotiations 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.

This chapter focused on issues which the existing literature does not explicitly 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, drawing on arguments of 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 argued 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 integration quality of sectoral agreements and can be described as the degree of "obligational incompleteness." Again, I argued that the clearer agreements define who is responsible for revisions, the more likely are agreement revisions, whereas agreements that are unclear tend to remain static. Finally, I argued 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 and revealed nuances which refine the argument. The degree of ambiguity with regard to substantive relation to EU law was captured by two hypotheses claiming 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. When the same explanatory factors were used to explain the substantive quality of the agreement revisions, only agreements with direct references to EU law showed a statistically significant correlation with the probability of revisions which also contain explicit references to EU law. Revisions of harmonisation agreements, in contrast, did not necessarily refer to EU law. This finding resonates well with the results from the third analysis testing the compensation hypothesis, which claimed 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 other hand, are negatively correlated with domestic adaptations in the same policy fields. These findings provide evidence in favour of the argument that agreements with strong substantive integration qualities are more often updated. A harmonisation aim without clear reference to EU law is substantively not clear enough with regard to the integration function. Although such agreements are often revised, the revisions do not necessarily refer to EU law. Instead, they lead to compensatory domestic adaptations.

The degree of obligational incompleteness of the sectoral agreements was captured by two hypotheses claiming 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 good predictors for the likelihood of agreement revisions in general and for the substantive quality of the agreement revisions. 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, but these correlations were not statistically significant. I thus reject the hypothesis that domestic legal adaptations are less frequent when agreements with a higher legal integration quality are in place.

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. In case of substantive ambiguities, however, only the stronger variable (direct EU law references, but not harmonisation agreements) leads to a higher substantive integration quality of the agreement revisions. This finding refines claims made in the literature. It seems to be the case that sectoral agreements are also updated because of their substantive integration quality and not only if legal update obligations exist. This conclusion is based on the multivariate models, where EU law reference was the strongest predictor and legal qualities are accounted for. However, most of the examples for regular revisions, which referred to EU law but were not decided by a Mixed Committee, are explicable by policy-field characteristics. Three revisions concerned policy fields, which in the EU are governed by multi-annual programs, in which Switzerland is integrated based on a totally revised agreement every time (research agreement and MEDIA). Two other regular revisions concerned the extension of the free-movement-of-persons principle to the new member states, which was a reaction to enlargement, which is an exceptional and much more fundamental change than day-to-day legislative activities in the EU. Only one revision of the agreement on agriculture was not related to major changes but still exceeded the competences of the Mixed Committee, which is why it had to be negotiated.

The analysis found only partial evidence for a second claim in the literature, namely the claim that Switzerland compensates for the static

character of the sectoral agreements through domestic legal adaptations. However, this mechanism only plays a role in the case of harmonisation agreements, which are neither correlated to agreement revisions nor to EU law references in revisions. Instead, they are correlated with more frequent domestic adaptations in the same policy fields. 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 case studies for compensatory adaptations. In case of the often-revised agreements with direct references to EU law, on the other hand, domestic legal adaptations are less frequent.

Finally, the analysis also provided evidence for the Council's assumption that stronger legal integration leads to stronger substantive integration. Dynamic provisions were a strong predictor, even though all respective revisions belong to the Schengen agreement. Mixed Committees decisions accounted for many revisions with references to EU law. They affected most strongly the Bilaterals I agreements but also the statistics agreement from the Bilaterals II package and a few protocols of the FTA. Only the agreement on the watch industry was frequently revised (16 times), but not by its Mixed Committee and without references to EU law. It is safe to say that this agreement is a special case, as the revision necessity is communicated by the federation of the watch industry to the integration office of the federal administration, which then updates the agreement (Bridy 2014).

The take-home message thus is that the frequency of agreement revisions and the probability of references to EU law in agreement revisions depend on whether the agreement referred to EU law when it was first adopted, on whether there is an (active) Mixed Committee in place, and on whether there is a dynamic provision in place. Harmonisations are neither more frequently revised, nor do their revisions more frequently refer to EU law than cooperation and liberalisation agreements, but they are correlated to more frequent domestic legal adaptations. Most cases which contradict these regularities can be explained by very old agreements, which did not refer to EU law when they were first adopted (mainly the FTA and its protocols), by specific developments inside the EU (multiannual programs in research and MEDIA, enlargement), and by an industry-specific agreement. To conclude this chapter, I reflect the role of the substantive and legal integration quality against the background of the literature about other forms of external differentiated integration.

The Council's critique of Switzerland's bilateralism and its assumption that everything would work smoothly if there was stronger legal integration is based on its implicit comparison of the bilateral agreements with the EEA. The findings of this chapter show that the differences between the functioning of the EEA and Swiss bilateralism are differences of the degree of dynamic development but not differences in kind. Most telling is the Schengen agreement, which was revised so frequently, even though every update has to be decided in the regular domestic decision-making process. Researchers observe a similar mechanism in the EEA, where states have a formal veto right, first in the Joint Committee, which decides on the inclusion of new internal market legislation in the EEA, and then when they transpose the new legislation according to their constitutional requirements. Nevertheless, the states did not use these possibilities to veto new legislation, as a veto would threaten the homogeneity-of-legislation principle underlying the EEA, and the EU members would have the right to suspend (parts of) the EEA agreement (Jonsdottir 2013; Bergmann 2011, 2012). The costs of suspension seem to be higher than the costs of adopting unwanted legislation in both the EEA and Switzerland's Schengen association. Instead of vetoing new legislation, EEA states sometimes delay the transposition of legislation (Frommelt 2012a; Frommelt and Gstöhl 2011). The timeliness of Switzerland's incorporation of EU rules was not analysed for the Schengen agreement, and could not be analysed for all other agreements, because there exist no time frames and because the analysis is not based on EU legislation but on the sectoral agreements.

Another similarity between Swiss bilateralism and the EEA is the fact that the EEA agreement itself has not been substantially revised, yet the number of EU legal acts it builds on grew in the two decades of its existence from initially 1600 EU legal acts to now over 5000 EU legal acts (Bergmann 2011; Pelkmans and Böhler 2012). Of course, the number of sectoral agreements with the EU grew for Switzerland, but as was shown in this analysis, agreements were only very rarely substantially revised. When they were revised, these revisions were conducted by Mixed Committees or in the shadow of a dynamic provision. The exemptions confirm the rule, as they are explicable by agreement-specific characteristics. These characteristics resonate well with another strand of research analysing the external dimension of European integration. In an article in 2009, Sandra Lavenex and colleagues stipulated that the way in which a third country is integrated in an EU policy does not so much depend on the macro-structure of its relationship with the EU but depends more

strongly on the internal governance mode of the respective policy field in the EU (Lavenex et al. 2009). Although this chapter started from another viewpoint, namely from the claim that the characteristics with the EU are influential, the findings do not contradict the case studies conducted by Lavenex et al. I showed that the agreements on research and MEDIA defer from the more usual way of revision because in the EU, the policy field is governed differently. In addition, the air transport agreement was one of the most often revised agreements, which corroborates the conclusion by Lavenex et al. that this policy field is highly institutionalised in Swiss–EU relations. This rough comparison between the findings of this chapter and findings reported in the research on the EEA revealed similar mechanisms and similar institutional effects. However, these similarities are not of a quantitative nature. This chapter and the empirical data does not allow us to tell whether the regular updates of sectoral agreements are timely compared to the evolution of EU law and whether their substantive integration quality is satisfactory from the point of view of the EU.

Apart from the role of the substantive and legal integration qualities, the empirical analyses also revealed the patterns of the development 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, the domestic incorporation of EU rules, which was not formally related to sectoral agreements, became rarer over time. These results confirm the descriptive picture presented at the end of Chap. 2. The sectoral agreements seem to have become more important over time, whereas the significance of the domestic incorporation of EU rules without a relation to agreements has decreased. More and more, domestic legislation seems to be adapted to EU rules mainly in cases where a sectoral agreements requires implementation measures. The evolvement of the extended EU rules contained in sectoral agreements, however, is increasingly assured by agreement revisions, and less often by domestic lawmaking.

Annex

Descriptive Statistics for Regression Analysis in Sect. 3.3.1

Table 3.7 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 reference	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)

Descriptive Statistics for Regression Analysis in Sect. 3.3.2

Table 3.8 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 reference	158	1.46	2.30	0	21
Federal Council decision	158	0.85	0.35	0	1
FTA	158	0.23	0.42	0	1

Table 3.9 Logistic regression analysis of the probability of references to EU law in agreement revisions

EU law reference	*(B)*	*(B+)*
Hypothesis B1		
Harmonisation agreement	0.272	−0.0876
	(0.29)	(−0.07)
Hypothesis B2		
Initial EU law reference	3.929***	10.79***
	(3.70)	(3.42)
Hypothesis B4		
Mixed Committee decision	0.0571	2.658
	(0.07)	(1.61)
Control variables		
Time since last EU law reference		−2.209
		(−1.75)
Federal Council decision		−5.445***
		(−3.74)
First publication of bill, year		−0.153*
		(−2.21)
Year		0.0492
		(0.53)
Constant	−1.776*	206.7
	(−2.07)	(1.20)
Observations	158	158
Wald Chi2	19.30***	29.90***
AIC	113.7013	83.61795
BIC	125.9517	108.1187

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 agreement). *t* statistics in parentheses; *$p < 0.05$, **$p < 0.01$, ***$p < 0.001$

Combining SR Sub-chapters of Domestic and International Law

Table 3.10 Combined SR sub-chapters for domestic and international law

Domestic legislation	*International 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
51	51	
52	52	52 Civil defence
53		53 Economic supply
61		61 State budged
62		62 Central banks

(*continued*)

Table 3.10 (continued)

Domestic legislation	*International legislation*	*Combined (own coding)*	
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*	

Descriptive Statistics for Regression Analysis in Sect. 3.3.3

Table 3.11 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
Agreement 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

Notes

1. Supranationalist integration theory stands in the tradition of neo-functionalist reasoning as developed by Ernst Haas. I use the term supra-nationalism 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 (cf. Leuffen et al. 2013: 64 ff.).
2. I use the term incorporation of EU rules (EU rule incorporation) to refer to the specific Swiss way of adopting EU rules into domestic legislation. The term transposition is widely used to describe the implementation of EU directives by member states and thus refers to a formally regulated and sanctionable process. This is an inadequate description of the Swiss way of incorporating EU rules. I thus use the term transposition only in order to refer to a process which is equivalent to the EU-internal process.
3. 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.
4. 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.

5. 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).
6. 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).
7. Negotiation dynamics are, among other factors, the subject of the analysis presented in Chap. 4.
8. 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.
9. 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.
10. The following agreements were once or more totally or partially revised in the period between 1990 and 2010: Insurance (SR 0.961.1), Schengen Association (SR 0.362.31), Land Transport (SR 0.740.72), Frontex (SR 0.362.312), Free Trade (SR 0.632.401), Cooperation with EURATOM (SR 0.420.513.1), Protocol No. 2 on Proceeded Agricultural Goods (SR 0.632.401.2), Protocol No. 3 on "Originating Products" (SR 0.632.401.3), Protocol No. 4 on Special Provisions regarding Ireland (SR 0.632.401.4), Protocol No. 5 on import of products requiring compulsory stockpiling (SR 0.632.401.5), Statistics (SR 0.431.026.81), Simplification of Formalities in Trade in Goods (SR 0.631.242.03), Agreement regarding Protocol No. 2 (SR 0.632.401.22), Trade with

Agricultural Goods (SR 0.916.026.81), Mutual Recognition of Conformity Assessments (SR 0.946.526.81), Free Movement of Persons (SR 0.142.112.681), Watch Industry (SR 0.632.290.131), MEDIA (SR 0.784.405.226.8), Air Transport (SR 0.748.127.192.68).

11. The dependent variable was recoded 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), because most agreements were revised only once or twice a year anyway (see Table 3.1). 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. 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.
12. 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. Test results are reported in the last three rows of Table 3.3.
13. The results of the same regression analysis with the original data (without the independent variable dynamic agreement) are reported in Table 3.9. In this analysis, the correlation of Mixed Committee decisions with references to EU law is statistically not significant.
14. The bootstrap technique could not be applied because several covariate patterns are rare. Therefore, the tests of significance have to be interpreted with care as they may be too optimistic.
15. The Wald test could not be performed. With only 19 clusters (19 sectoral agreements), there are not enough degrees of freedom in the model to estimate the probability that all coefficients are simultaneously zero.
16. 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).

17. 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. Table 3.10 shows how the sub-chapters were merged.
18. Unfortunately, for 15 more federal law reforms, the rule transposition variables could not be coded because of unavailable coding sources.
19. The missing value is due to missing information in the legal text itself with regard to whether or not a referendum was held. Normally, one can find this information in the last article of a law containing the provisions about the entry into force. For the coding of the referendum variable, this article was used instead of the chronology of popular votes on the website of the federal administration, because this chronology does not allow in every case to assign the votes unequivocally to the affected federal laws.

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CHAPTER 4

Political Dynamics of Switzerland's Differentiated Integration

The reasons for Switzerland's European policies are said to be economic, while their peculiar institutional form is explained by political factors. Often, Switzerland's differentiated European integration is 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. Some federal law reforms incorporating EU rules clearly also 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 that Switzerland's European policy is often 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 analyses the relationship between domestic economic interests, the domestic decision-making process, and the dynamics of negotiations with the EU with the various instruments of Switzerland's differentiated integration.

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DOI 10.1007/978-3-319-33684-8_4

Switzerland's case-by-case approach to European integration implies that every integration step not facilitated by the institutional rules analysed in Chap. 3 is the result of a compromise. Chapter 2 showed that in the case of the sectoral agreements, new agreements were much more rare than agreement revisions, which is a hint not only at the selectivity of Switzerland's differentiated integration but also at the difficulty of finding new compromises. Chapter 3 revealed that institutional rules which remove agreement revisions from the political arena are good predictors for agreement revisions. However, a large part of Switzerland's differentiated integration, and most importantly new integration steps, cannot be explained by institutional dynamics. This chapter focuses on the compromise-finding process which takes place at the domestic as well as the international level and in which actors, interests, political institutions, and bargaining strategies are involved.

The research on Swiss domestic integration interests points to the importance of domestic political institutions channelling the influence of these interests. 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 occasions, 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, such as 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 extensions 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 Chap. 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 the domestic incorporation of EU rules, Switzerland's critical stance towards substantive EU rules is reflected by a seemingly unsystematic approach to the incorporation of EU rules (Maiani 2013). Carl Baudenbacher assumed that the cherry-picking approach in domestic incorporation of EU rules may sometimes allow a regulatory advantage to be retained. 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.

These two levels of compromise-finding discussed in the literature, the domestic and international level, resonate well with the first two steps of Andrew Moravcsik's liberal intergovernmentalist model of European integration. 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). In addition to the factors at the centre of the liberal intergovernmentalist model, research on Swiss–EU relations dealt in a detailed way with domestic integration interests and the impact of domestic political institutions. These factors may indeed be more crucial for Switzerland's case-by-case decisions on integration measures than for the explanation of the advancement of integration among member states. Therefore, I complement the three steps of the liberal intergovernmentalist model with arguments from economic integration theories and insights from the Europeanisation literature about the role of domestic political institutions.

The crucial role of the domestic decision-making process for the explanation of Switzerland's differentiated integration implies the necessity to

examine how integration measures are affected by this process. Based on the insights from Chap. 3 and on the existing research, I argue that the extent to which domestic interests and opinions affect integration steps also depends on the characteristics of the integration instrument. The existing research is case-oriented and does not analyse whether factors identified as crucial for sectoral agreements also explain the incorporation of EU rules into domestic legislation or whether different factors explain full or selective incorporation 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). These studies indicate that the same domestic institutions may be differently related to different integration instruments. The same may also be true for other explanatory factors. The broad empirical basis of this book provides an opportunity to place the various explanatory factors in their position on the map of Switzerland's differentiated integration as a whole. This chapter thus presents an empirical analysis which not only researches a broad range of explanatory factors but also explicitly describes their relation with different integration instruments.

This 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. The chapter starts with a discussion of the role of domestic interests, the domestic decision-making process and negotiations between Switzerland and the EU. In addition, some alternative explanations found in the literature on Switzerland's European integration, which point to institutionalist rather than intergovernmentalist explanations, are discussed. The second section discusses the differing relevancies of specific explanatory factors for specific integration measures and derives testable hypotheses. The third section presents descriptive and bivariate empirical analyses. The fourth section provides multivariate hypotheses tests, first analysing separately sectoral agreements and domestic rule incorporation, and then analysing the development of substantive integration over time on an aggregate level. The fifth section concludes the chapter.

The main findings of the chapter are that sectoral agreements can be better explained than the domestic incorporation of EU rules, especially if the incorporation is not related to sectoral agreements. This corresponds

to one of the core arguments of the chapter, namely that the factors most prominently discussed in integration theory explain mostly integration steps of a high-integration quality. Among the explanatory factors related to interests, decision-making, and negotiation, the following results are most important. First, whereas the economic indicators did not show very consistent patterns across the analyses, the scope of a policy inside the EU did. Switzerland tends to conclude and revise sectoral agreements in policy fields which show a mid-scale value as an indicator of policy centralisation and formalisation inside the EU. In loosely integrated areas, the domestic incorporation of EU rules is more frequent, whereas in very centralised areas no external integration measure is frequent. Second, political factors matter, but not in the same way as for different integration steps. As the parliament and the people had the last word on many of the newly negotiated integration steps, they were more likely to have occurred in times when European integration was less salient in the electorate and parliamentary parties evaluated European integration more positively. On the other hand, the domestic incorporation of EU rules and institutionalised agreement revisions were not correlated to these political factors.

4.1 Existing Research 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. As discussed in the previous chapters, 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 for Switzerland's overall situation in order to focus on explanations for the differentiated integration which has actually been going on.

The analysis of Switzerland's European policies through the lens of theories of European integration required an adaptation of the usual analytical order. Normally, an analysis of regional integration starts with national preferences regarding integration and then proceeds to domestic and international negotiations between different actors which finally lead to specific integration outcomes (Mattli 1999; Leuffen et al. 2013). These integration outcomes may then trigger further integration if they create spill-over effects and empower supranational actors. In this book, the analyses are presented in the opposite order: First, the analysis of the effects of different sectoral agreements on further integration steps was presented in Chap. 3. Second, the analysis of the role of national preferences and domestic and international negotiations is presented in this chapter. Thanks to this, the present chapter can build on insights allowing me to distinguish those instances of differentiated integration which are the outcomes of national preferences and international negotiations from those instances which are better explained by earlier integration steps.

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

Economic integration interests explain why Switzerland negotiated the Bilaterals I package but fall short of explaining the cooperation agreements in the Bilaterals II package. 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 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 correspond to the theory: Nine out of the 15 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, 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).[1] 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 other hand, 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 explain integration preferences, but they do not automatically lead to Switzerland's integration.

In Swiss public discourse, the benefits of not only the sectoral agreements but also of the domestic incorporation of EU rules is often discussed in terms of access to the EU market (Gemperli 2013; Breitenmoser and Weyeneth 2013). Academics also often mention Switzerland's export dependence and the importance of market access, which can be justified by the focus on the market-access agreements of the Bilaterals I package (Breitenmoser 2003; Goetschel 2007; Weder 2007). The domestic incorporation of EU rules is 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 sector-specific. This is often left out of the public discussion. The literature on European integration and the position of small states has a great deal to say about the subject, which is also relevant for Switzerland.

Liberal intergovernmentalism assumes not only that national preferences are mainly economic and determined domestically but also that different interest groups have different negotiation interests (Leuffen et al. 2013). Scholars of Swiss European policy have researched particularistic integration interests and often came to the conclusion that European integration is in the interest of the export-oriented sector. For example, rule extensions facilitating cross-border trade and economic activities on the European market mainly benefit the export industry. 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 incorporation 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.

Another relationship between domestic sectoral economic interests and regional integration is postulated by the lead-sector argument. Christine Ingebritsen (1998) 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, and 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, and 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 may exploit the differentiated integration approach to its advantage.

Following a 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).

Despite the widespread assumption that Swiss European policies are in the interest of the export-oriented economic sector, a closer look at the literature shows that neither the export-orientation, nor the lead-sector argument fits perfectly with Switzerland's actual integration policies. Two points are especially interesting: On the one hand, economic interests are more particularistic than the distinction between outward- and inward-orientation assumes. The reason is that, on the other hand, political solutions are not necessary for market access in every case. Regarding these two points, the analysis of the non-member Switzerland adds to research

in the liberal intergovernmentalist tradition focusing on EU members. In the following section, I argue that the questions of whether particularistic interests form a pro-integration coalition and whether they seek political solutions for their integration interests depends on the cumbersomeness of negotiations of integration steps and the development of the issue at hand at the European level. In the next section, I analyse the research on the domestic decision-making system against this background.

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. This is an important difference compared to member states of the EU, not because they would not have high ratification constraints in their political systems as well, but unlike Switzerland they partially delegated legislative competences to the EU. The literature on Swiss European policies showed that the integration interests only translate into integration outcomes if the political actors apply the right strategies.

The different veto points in the Swiss political system to some extent determine the access of different actors to the decision-making process. 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.[2] 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 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 predefined 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. As the veto points determine the access of actors to the decision-making process, the constitutional requirements of specific integration measures also define whose interests are likely to be met in the integration step.

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. (2013) 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, which was also reflected in the referendum about the Schengen association of Switzerland (Kriesi 2007; Kriesi et al. 2006; Afonso and Maggetti 2007) and showed that the European question is part of a more general gap between universalistic and liberal values, on the one hand, and traditionalist and communitarian values, on the other (Bornschier 2015). Empirical research on popular votes on European issues provide evidence for the relevance of the (expected) gains and losses from European integration: For the vote on the EEA, Sciarini and Listhaug (1997) found that both cultural values and expected economic gains 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. 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 highlighting traditionalist and communitarian values against European integration (Albertazzi 2008). As important integration steps were approved at the polls, the crucial question is under what circumstances pro-integration coalitions win votes on European issues despite the strength of the Eurosceptic electorate.

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. 2013). Borrowing arguments and insights from other theoretical strands, I argue that the strategy of the government is crucial in explaining when

integration steps can clear the hurdles of the many veto points. 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 the role of different institutional settings, among other things. 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 government: 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 the 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 also explain whether or not EU rules are transposed into domestic legislation. The first and

most famous project of incorporating EU rules into Swiss domestic legislation 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 deregulation measures (Bundesrat 1993). However, the government also retained bills in the Swisslex package that were not of a deregulatory 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 consumer protection in Swiss legislation, 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-than-full liberalisation of the postal services that failed to meet the EU standards (Mach et al. 2003).

In sum, existing research on domestic political impediments to European integration and political strategies to overcome them revealed the following features. To what extent actors' interests are reflected in integration outcomes depends on the number of veto points which are required for an integration measure. If public opinion plays a role, as is the case for decisions in need of approval in parliament or at the polls, the pro-integration coalition has to convince an electorate, which to large parts is Eurosceptic. For this to function, the government's strategy is crucial. In the past, side-payments were successful. It was shown that groups which lose from increasing interdependence ask for political remedies for their (expected) losses. These remedies were of a re-regulatory nature. Sometimes they were not integration measures; an example is the flanking measures anticipating negative repercussions of the free-movement-of-persons principle, which were not based on EU rules. Sometimes a remedy was the incorporation of EU rules in the realm of social policy and thus positive integration measures; examples are the concessions in the framework of the Swisslex package. Finally, side-payments in the past also meant abstention from the incorporation of EU rules in sensitive areas, as the example of the liberalisation of the postal sector suggests. What these cases have in common is that several legal reforms were linked. It is not always the case, however, that a domestic compromise is enough.

4.1.3 Negotiations Between Switzerland and the EU

If Swiss interests are best met by European integration, they are better met with a sectoral agreement than with federal laws incorporating EU rules, 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 because the EU has its own interests and this requires even more strategic action by the Swiss actors. The history of Swiss–EU relations shows that sectoral agreements were often concluded only after 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 16 years (1973–1989). The official negotiations of the Bilaterals I agreements lasted six years (1993–1999). The difficult issues were land transport and the free-movement-of-persons principle. In both issues, Swiss policies differed considerably from EU rules, and Switzerland accepted the EU rules step by step. 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). The issue currently on the negotiation table, an institutional framework agreement, is so controversial that Switzerland and the EU have not managed to set the terms of negotiations since 2012 (Gemperli and Nuspliger 2015).

Negotiation conflicts often concerned the substantive and legal integration quality of the EU rules to be extended to Switzerland. This conflict is most pronounced in the institutional questions currently on the table, where the EU asks for a common monitoring and enforcement structure and wants to oblige Switzerland to continuously adopt new EU legislation in the areas of the sectoral agreements. The EU thus asks for very strong legal integration. But in earlier negotiations, the EU in the end successfully already extended its own rules. An example is the Land Transport Agreement (Maiani 2008; Church et al. 2007). Intergovernmental negotiations lie at the core of intergovernmentalist theories. The founding father of liberal intergovernmentalism 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 export rules 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. This research showed that issue linkage is widely used and that absolute bargaining power may matter less than the issue specific constellation of interests. Although Switzerland 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 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 interests 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 have 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 principle).

In the negotiations of the Bilaterals II package, Switzerland could use issue linkage to its own advantage because Switzerland could credibly

threaten to exit the negotiations. 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. 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 times, and the abrogation of one treaty has no effect on the other treaties.[3] 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; Gemperli and Nuspliger 2015). This negotiation stalemate has become even more severe since the Swiss voters accepted a popular initiative, the implementation of which will most probably violate the free-movement-of-persons principle (Schöchli 2014a; Nuspliger 2014; Gemperli 2014, 2015).

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, the domestic incorporation of EU rules by Switzerland might play the role of credible commitments during agreement negotiations. Even when the Federal Council introduced the autonomous adaptation policy in 1988, it expected that a great degree of 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, accession to the EEA, or completing sectoral agreements (Bundesrat 1988, 1993). Almost 20 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 insisted on the primacy of the acquis communautaire in negotiations with third states. For example, Switzerland adapted its regulations of vehicle weight, length, and so on, 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 explains the most important sectoral agreements with the linkage of different issues, when the EU was interested in one issue, while Switzerland was interested in another. 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 Institutional Choice in External Differentiated Integration

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). In Swiss–EU relations, this institutional choice is a question of the legal and substantive integration quality of an integration measure. Even in the agreements with the highest legal integration quality, Switzerland largely refrained from subordination to common institutions with the EU. Nevertheless, some institutional provisions in sectoral agreements produce benefits similar to those expected from integration institutions in the intergovernmentalist literature. In this literature, 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, which states seek to avoid, but it also produces benefits. Common institutions provide arenas for intergovernmental negotiations and decision-making, which reduce transaction costs compared to ad hoc intergovernmental negotiations. To some extent, Mixed Committees can fulfil such a function. In addition, common institutions can monitor, interpret, and enforce integration decisions, which can minimise the risk of free-riding. This aspect is largely missing in Swiss–EU relations and lies at the core of the "institutional solution" the EU has been asking for since 2008. An additional aspect detected in Chap. 3 is that the substantive integration quality of sectoral agreements also matters for their evolvement. Finally, the greatest difference in integration quality is

the difference between a sectoral agreement and the domestic incorporation of EU rules, as the latter is not based on a mutual agreement and does not bind the EU in any way. In this chapter, I argue that the conflict about the legal and substantive integration qualities described in the previous section corresponds to the conflict about the institutional solution in the liberal intergovernmentalist literature.

Scholars researching Switzerland's European policies have not explicitly dealt with the choice of the legal and substantive integration quality 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 incorporation of the respective EU rules. Switzerland 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. Finally, the long-lasting and very successful participation of Switzerland in EU research policy was terminated by the EU as a reaction to the approval of the popular initiative "against mass immigration" in February 2014. A technocratic policy field was unexpectedly politicised. For the analysis of the development of Switzerland's legal and substantive integration, I thus argue that the collective action problems underlying a policy field are less decisive for the accessibility of a regime for Switzerland than negotiation dynamics and the degree to which a policy field is formally regulated in the EU.

4.2 Hypotheses: What Differentiated Integration for What Needs?

The review of the existing research in light of the liberal intergovernmentalist theory revealed several puzzles. Although a common assumption is that economic integration lies mainly in the interest of the export-oriented sector in Switzerland, a closer look at existing research revealed accounts of EU rules incorporation, which served the interests of other groups. Often, such integration measures were adopted as a reform package. 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 Chap. 2). At the level of domestic legislation, we do not know whether sectoral economic interests are best met with full or partial incorporation of EU rules into domestic legislation. On the one hand, Switzerland's differentiated integration is discussed as primarily serving the aim of market access which requires full incorporation of EU rules. On the other hand, the selective incorporation 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. Accordingly, both instruments do not serve the same interests.

Another puzzle is the incorporation of EU rules into domestic legislation 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). However, Chap. 2 showed that the incorporation of

EU rules into domestic legislation covers a wider range of issues than sectoral agreements and that more than half of all instances of domestic rule incorporation were not related to a sectoral agreement. Finally, it is puzzling 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. I argue that these puzzles in the literature are best explained not as contradictions but as explanations that diverge because they explain different integration outcomes.

There is also a methodological reason for the focus on explaining the difference between different integration measures. The data set on Switzerland's differentiated integration contains only positive cases, in which integration actually happened.[4] For methodological reasons, it is thus not possible to analyse the factors which lead to integration at all but only to analyse the factors which make or enable Switzerland to choose a certain integration measure over another. In the following sections, I derive testable hypotheses about which of the explanatory factors put forward by the literature are correlated to which instruments of Switzerland's differentiated integration.

4.2.1 Domestic Interests and Differentiated Integration

Domestic economic interests lie at the core of national integration interests in the liberal intergovernmentalist model. The literature review showed that the general assumption that Swiss integration measures serve the aim of ensuring access to the Single Market is not readily generalisable for the different integration instruments. The reasons are twofold: On the one hand, integration measures 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 the incorporation of EU rules into domestic legislation and that full incorporation of EU rules is a more valuable instrument than selective incorporation of EU rules. On the other hand, the preferences of domestic interest groups are greatly nuanced. A current example from the financial sector is revealing in both regards.

The example concerns the liberalisation of trade in services between the EU and Switzerland, an issue which was initially included in the Bilaterals II negotiations but abandoned because of irreconcilable positions. The question of whether or not Switzerland should restart negotiations with

the EU on that matter recently emerged anew. Whereas the association of insurance providers is against a sectoral agreement, the association of private banks recently changed its position and now favours an agreement. The reasons for the opposition 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).[5] Translated into the terms of integration quality, 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 2014b). Swiss insurance firms with subsidiaries in the EU, on the other hand, 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, for example, if they can afford to establish subsidiaries.

Based on this example and theoretical considerations, I argue that formal integration measures are more likely when Swiss economic performance is worse and the EU policies in question are more centralised inside the EU. Swiss economic performance is important, because gaining market access with other than political instruments is possible but costly. The strategy of establishing subsidiaries in the EU is more costly than direct cross-border trade. Therefore, this strategy is a valuable alternative to political integration in wealthy times but is evaluated less favourably during economic downturns. Market access is most important for the export-oriented economic sectors. Thus, not only the general economic performance of the Swiss economy but also the development of the export-oriented sectors influence the probability of integration steps. This argument corresponds to economic integration theory, which claims that the economic performance of a country influences its integration willingness (Mattli 1999).

The degree of centralisation and formalisation of a policy inside the EU is important because the availability of alternatives to formal integra-

tion can change with rule changes in the EU. The example of the banking sector is enlightening: The banking sector changed its official stance over negotiations of trade liberalisation after the EU rules had changed. This finding is in congruence with the conclusions of several case studies cited above. Policy fields are more easily accessible for third states like 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, 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. An example from the special issue is transport policy, where Switzerland had cooperated with its European partners for a long time but needed sectoral agreements with the EU once transport policy was overtaken by the EU. Resulting from this, I argue that the probability of legal integration measures depends on the level of centralisation and formalisation of a policy inside the EU.

The domestic interest in formal integration, either because the economic performance is worse or because a policy was centralised inside the EU, is best satisfied with measures of a high substantive and legal integration quality. I thus argue that the explanations are more likely to hold for sectoral agreements with references to EU law than for agreements without such references, that they are more likely to hold for sectoral agreements than for the domestic incorporation of EU rules, and that they are more likely to hold for domestic legal changes which implement sectoral agreements or which fully incorporate EU rules than for those which incorporate EU rules only partially.

Integration measures of a high substantive and legal integration quality are 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

Whereas for the satisfaction of economic integration interests only the substantive and legal integration quality matters, for the probability that an integration compromise is reached the actors involved in the decision-making process and their strategies also matter. The literature review pointed to several characteristics of the domestic decision-making system which are likely to hamper integration, namely the veto points in the form of the bi-cameral parliament, popular referenda, and a Eurosceptic electorate. Therefore, I argue that integration measures are more likely if the Federal Council exerts a role which allows these veto points to be circumvented. The Federal Council controls the decision-making process more tightly either if the institutional procedures only require the approval of the government or if the government initiates an integration measure. This reasoning corresponds to Moravcsik's argument that national executives are not only empowered by international cooperation but are also able to exploit their strategic advantage to overcome domestic constraints. Two of the mechanisms by which executives can do this are institutional procedure and initiative (Moravcsik 1994).

In Switzerland, as in most countries, foreign policy decisions are subject to high ratification constraints at the domestic level. However, the Federal Council can design institutional rules which assign the competences for subsequent integration steps to the government. Whereas a new agreement or federal law in almost every case faces the veto points of ratification by parliament or the electorate, subsequent integration steps can be delegated to the Federal Council. In the realm of the sectoral agreements, the Federal Council can adopt integration measures in its own right if they concern issues which have been previously delegated to the Federal Council or which do not assign new general rights and duties. This can be the case for both new agreements and agreement revisions. The establishment of a Mixed Committee is one example of an institutional solution which empowers the government, because the Swiss delegates in the Mixed Committees act on behalf of the Federal Council. In the realm of domestic legislation, the Federal Council can incorporate EU rules in its own right via federal regulations if a federal law delegated the respective responsibility to the government. As the data set does not contain federal regulations for reasons described in Chap. 2, the influence of the institutional role of the Federal Council on the probability of integration measures can only be tested for sectoral agreements.

The influence of the Federal Council's possibility to initiate integration measures, on the other hand, can be tested only for domestic legislation. In the realm of sectoral agreements, the data set contains no information on who initiated (the negotiation of) an integration measure. For federal laws, we know whether the law was initiated by the government, the parliament, or the cantons. I argue that the incorporation of EU rules into a federal law is more likely if the law or law revision was initiated by the government, because the government possesses the best information about processes at the European level or connections between domestic legal changes and EU policies. I argue that the Federal Council is likely to exploit its strategic advantage to overcome domestic constraints, that integration measures via sectoral agreements are more likely if they require only the approval by the government, and that rule incorporation into domestic legislation is more likely if the Federal Council initiated the legislative process.

H 2.1

Integration measures of a high substantive and legal integration quality are more likely adopted or initiated by the Federal Council.

In many cases, veto points cannot formally 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. Nevertheless, government strategy can be crucial to forming pro-integration coalitions broad enough to overcome domestic veto points. The literature review showed that a broad pro-integration coalition is crucial in order to clear the referendum hurdle which exists for almost every integration step not adopted by the government in its own right. In Switzerland, international agreements assigning new rights and duties and federal laws not only need the support of a parliamentary majority but are also usually subject to an optional referendum. The referendum threat influences the decision-making process, because actors in favour of a reform seek a compromise against which no group is likely to call for a referendum. In his analysis of government power in international cooperation, Moravcsik names side-payments to domestic opponents as one strategy available to governments (Moravcsik 1994).

The literature on Swiss–EU relations provides several examples for domestic side-payments in the context of integration measures. The liberalisation of the telecommunications sector, which was achieved by a full incorporation 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 measures were adopted as part of a reform package. As a consequence, I argue that integration steps are more likely if they are adopted as a reform package at the domestic level.

In the case of the incorporation of EU rules into domestic legislation, concessions to opponents of an integration measure may not always have the form of reform packages. Concessions may also be granted as a selective incorporation of EU rules which takes into account the concerns of opponents. An example at hand is the liberalisation of the electricity sector. 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 would 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 adopted a new Electricity Supply Act and started the liberalisation process, but the new act set up an independent regulatory agency, provided more guarantees for supply security, and encouraged the use of renewable energies. In contrast to the first proposal, the new act only selectively incorporated the relevant EU rules (Maggetti et al. 2011). For the domestic incorporation of EU rules, I thus argue that reform packages are facilitators for integration measures of a higher substantive and legal quality. Integration steps of lower integration qualities may already contain the concession to opponents in the form of selectivity.

H 2.2

Integration measures of a high substantive and legal integration quality are more likely if they are part of a reform package at the domestic level.

The success of a government strategy to overcome domestic veto points partly depends on the degree of public attention and the salience of European integration in the electorate. Moravcsik (1994) argues that executives can depoliticise issues because they possess the information and can decide with whom to share it. For the case of Switzerland, 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). This could be an indicator that the Federal Council makes use of the strategy described by Moravcsik. However, researchers also showed 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. 2014). This argument is important for integration measures, because Euroscepticism is high in Switzerland compared to other European countries (Kriesi 2007). Following from this, I argue that with the politicisation of European integration the probability of integration steps decreases, because politicisation makes it more difficult to build a broad coalition, as more actors need to be included and probably compensated. Politicisation is most likely to play a role for integration decisions which have to be approved by parliament. This argument is in line with liberal intergovernmentalism (Leuffen et al. 2013).

But politicisation has to be used by political actors in order to influence decisions (Afonso et al. 2014). This argument is crucial for Switzerland for two reasons. The first is that one of the most famous veto points, the possibility of a popular referendum, in most cases is an optional referendum. This means that a public vote only takes place if an actor deems the issue relevant enough to call for a referendum. This requires opponents to collect the necessary amount of signatures, which requires considerable resources. The other reason specifically concerns the incorporation of EU rules into domestic legislation. Scholars assume that this policy has remained largely unnoticed by the public (Goetschel 2003, 2007). Accordingly, the domestic incorporation of EU rules is not hampered by the issue salience of European integration as long as a specific incorporation does not reach public attention. Following from this, I argue that integration steps are more likely if they are not brought to the polls.

Even if the government holds the decision-making process inclusive, if the salience of European integration and public attention is low, all federal law and revisions and many sectoral agreements have to be approved by parliament. In the research period, both the stances of parliamentary parties on the question of European integration, as well as the seat share of the largest parties, were subject to considerable change. At the beginning of the 1990s, the social democrats (SPS), the Christian democrats (CVP), and the liberals (LPS) were in favour of EU membership, and the liberal democratic party (FDP) was in favour of the EEA agreement (Grädel 2007).[6] After the popular rejection of the EEA in 1992, the issue was

step-by-step removed from party manifestos. Nowadays, only the social democrats and the Greens favour EU membership, but not even for them is the issue a priority. At the same time, the SVP, the only party opposing the EEA agreement in 1992—nota bene, against its own minister—grew to become the largest party in parliament by 2003 (Kriesi 2007). In addition, federal parties are not only among the most powerful actors in the Swiss decision-making process besides the government but have even become more powerful over time (Fischer et al. 2009). I thus argue that the party positions regarding the European policy of the government are crucial and that integration steps are more likely if the seat share of parties, which are in favour of the government's policy, is higher. Naturally, the three last arguments about the role of issue salience, popular referenda, and party stances hold only for integration measures which need approval by parliament.

Integration measures, which have to be approved by parliament, are more likely

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

So far, the interests and decision-making processes explaining integration measures were discussed at the domestic level in Switzerland and thus at the level of the first step of the liberal intergovernmentalist argument. The second step of the argument addresses intergovernmental negotiations and theorises how bargaining power affects integration outcomes (Moravcsik 1993). In Swiss–EU relations, negotiations take place between the Swiss government and representatives of the EU. The literature review showed that the mechanisms central to the liberal intergovernmentalist argument can be observed in Swiss–EU negotiations on sectoral agreements. In the past, the use of threats of exit or exclusion by the party less in need of an agreement led to negotiations which linked several issues. In the forefront

of the Bilaterals I negotiations, the EU threatened to abandon market access negotiations if the free-movement-of-persons principle was not included. In the forefront of the Bilaterals II negotiations, Switzerland had been excluded from the advantages of the Schengen regime for years and gained access only because it had to offer concessions in another issue area. In line with the literature, I thus argue that issue linkage is crucial in explaining sectoral agreements. However, in addition to common knowledge, I add to considerations about what kind of integration measures are actually enabled by issue linkage.

Issue linkage is naturally important for integration steps which need to be negotiated with the EU. This concerns only sectoral agreements, and apart from the new agreements, only those agreement revisions that do not follow an institutionalised mechanism. As institutional mechanisms, I label those forms of agreement revisions which are enabled by high legal integration quality researched. In Chap. 3, I showed that Mixed Committees and dynamic provisions are crucial for the frequency of agreement revisions. I argue that such institutionalised revisions are not subject to the same integration dynamics, even though Mixed Committees are composed of delegates from both Switzerland and the EU, who decide in consensus, and even though dynamic provisions do not exempt revisions from the constitutionally required ratification process in Switzerland. The reasons are the update incentives created by the initial integration measure. In Chap. 3, I argued that once Switzerland agreed on an integration measure of a high substantive and legal integration quality, this creates incentives to uphold this integration quality in order to reap the benefits from the integration. I thus claim that issue linkage enhances the probability of newly negotiated integration steps, which can come in the form of new agreements and in the form of agreement revisions.

In addition, I argue that issue linkage leads to integration measures of a higher legal and substantive integration quality for one empirical and one theoretical reason. The empirical reason stems from the research on the Bilaterals I and II negotiations: Although some scholars assign sector-specific bargaining power to Switzerland, and although Switzerland has used 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. As argued before, the

main conflict between Switzerland and the EU concerns the substantive and legal quality of sectoral agreements. Issue linkage may be used by the EU precisely in order to achieve agreements of a higher substantive and legal integration quality. 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 argue that issue linkage enhances the probability of integration steps which are of high substantive and legal integration quality.

H 3.1

The probability, as well as the substantive and the legal integration quality of negotiated sectoral agreement reforms increase, if they are part of a package deal with the EU.

The EU brings its own interests in negotiations with Switzerland, and the EU has changed considerably during the research period. In the literature review, I described the finding that the EU becomes less flexible in negotiations with Switzerland, the more its own policymaking relies on formal rules. This is the argument of hypothesis 1.3. 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, Gstöhl argued that the EU developments have made tailor-made solutions for Switzerland more difficult. Therefore, I do not assume that integration measures became more likely over time, but I claim that integration steps, if agreed upon, are likely to have become of a higher legal and substantive integration quality over time. This means that sectoral agreements have become more likely than the domestic incorporation of EU rules and that among the latter, implementation measures have become more frequent. For the domestic level, I described this development over time in an earlier article (Jenni 2014).

H 3.2

Integration measures of a higher substantive and legal quality become more likely over time.

The underlying conflict in Swiss–EU negotiations about the substantive and legal quality of integration measures is also likely to lead to the incorporation of EU rules into domestic legislation. The liberal intergovernmentalist argument highlights the role of credible commitments in

difficult negotiations. In the literature review, I argued that the incorporation of EU rules in domestic legislation could have played the role of credible commitments in the forefront of or during negotiations with the EU. Several scholars said that negotiations were facilitated by the policy of "autonomous adaptation." In terms of integration quality, I expect that such credible commitments must be of a high substantive integration quality in order to convince the EU. Finally, I thus expect that the incorporation of EU rules into domestic legislation is especially likely in relation to agreement negotiations.

H 3.3

The incorporation of EU rules into domestic legislation is more likely in relation to agreement negotiations between Switzerland and the EU.

4.2.4 Alternative Explanation for the Domestic Incorporation of EU Rules

In the preceding paragraphs, I discussed interests, actor strategies, and negotiation dynamics likely to lead to integration measures of a high substantive and legal integration quality. In the beginning of the chapter, I stated that for most integration interests discussed in the literature, sectoral agreements are more suitable than the domestic incorporation of EU rules and that a full incorporation of EU rules is more beneficial than a partial incorporation. But if sectoral agreements are superior to domestic rule incorporation, we need an alternative explanation for those instances when EU rules are incorporated into domestic legislation without being related to the negotiation or implementation of a sectoral agreement, or without transposing the EU rules fully. In the section discussing the domestic decision-making process, I showed that the selective incorporation of EU rules can serve as concessions to opponents of (too strong) European integration, and in the section about agreement negotiations, I mentioned that the domestic incorporation of EU rules may serve as credible commitments during agreement negotiations. In addition, there may be one more reason for incorporation of EU rules in Switzerland 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). Switzerland shares all its borders, its languages, and its religions with EU member states. Perhaps, Swiss legal scholars thus 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 an article about the Europeanisation of Swiss lawmaking, I showed that besides economic policies, issues like social insurance, agriculture, and even basic rights were also increasingly influenced by EU rules (Jenni 2013). These findings support the idea that domestic incorporation of EU rules may not in any case be correctly understood as integration but could also be the consequence of policy learning or policy diffusion processes.

The legal literature provides examples of the incorporation of EU rules which contain concessions to specific interests, and it provides examples of the incorporation of EU rules 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, incorporated 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 outdated 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). In these cases, policy learning and the protection of particularistic interests went hand in hand.

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 trans-

national networks provided legitimacy for domestic reforms that had been on the agenda for a long time. Nicole Wichmann (2009) showed that Switzerland already adapted its asylum legislation 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 instances of EU rule incorporation 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). EU rules thus may not always be incorporated 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. If the underlying mechanism is policy learning, the outcome may well be of a lower substantive integration quality and thus only selectively incorporate EU rules.

H 4

The domestic incorporation of EU rules is more likely when federal laws are newly adopted or totally revised.

4.2.5 The Choice of Integration Instruments

All twelve hypotheses derived in the previous paragraphs are correlated to different categories of the dependent variable being "Switzerland's differentiated European integration." Table 4.1 gives an overview of the frequency of the different categories used for the hypotheses test. The categories distinguish between integration measures which most prob-

Table 4.1 Total number of sectoral agreement adoptions and revisions 1990–2010

Sectoral agreements		*Domestic legislation*				*Total*
Institutionalised	*Negotiated*	*Implementation*	*Full adaptation*	*Partial adaptation*	*Compatible ref.*	
142	61*	101	69	66	165	**604**

Note: *Of the 61 negotiated agreement reforms, 32 were adopted by the parliament and 36 directly referred to EU law. The categories overlap

ably are differently related to the explanatory factors put forward by the literature. The categories were derived based on the previous sections and on the findings of Chap. 3. For sectoral agreements, I distinguish between institutionalised agreement reforms and those that have to be negotiated. As institutionalised reforms I label Mixed Committee decisions and partial revisions of dynamic agreements. Those reforms proved to be predicted very well by the legal integration quality of the respective agreement. Building on this finding, I argue that by the same token these reforms are less likely to be affected by the domestic decision-making process or negotiations with the EU than are all the other sectoral agreement reforms, which I label negotiated reforms. Table 4.1 shows that institutionalised reforms were more than twice as frequent as negotiated agreement reforms.

For the empirical analyses, I make further distinctions among the negotiated agreement reforms for two reasons: First, some arguments related to the domestic decision-making process hold only for decisions needing approval by the parliament. Accordingly, I distinguish between negotiated reforms that have to be adopted by parliament and those that can be adopted by the government in its own right. Second, several hypotheses make claims about the likelihood of integration of a higher quality. Accordingly, I distinguish negotiated agreement reforms with regard to the question of whether they directly refer to EU law or not. Table 4.1 shows that half of all negotiated agreement reforms were adopted by parliament and/or directly referred to EU law (categories can overlap). In the case of federal laws, there is no need to distinguish other categories than those discussed in detail in Chap. 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 4.2 gives an overview of the hypotheses and illustrates which explanatory factor is expected to be related to what sorts of integration instruments. A plus sign (+) indicates a positive relationship between an independent variable and the respective category of the dependent variable, and a minus sign (−) indicates a negative relationship. A double sign indicates a strong hypothesised relationship.

Five hypotheses concern differentiated integration in general, and I expect that they hold for all categories of the dependent variable. These 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 (H 1.1, H 1.2, H 1.3, H 2.1, H 3.2).

Table 4.2 Hypothesised relationship with categories of the dependent variable "Switzerland's Differentiated European Integration"

Dep. var. / *Indep. var.*		*Sectoral agreements*		*Domestic legislation*			
		Institutionalised	*Negotiated*	*Implementation*	*Full adaptation*	*Partial adaptation*	*Compatible ref.*
Domestic interests	H 1.1 GDP growth diff. CH-EMU	– (EU law ref.)	– (EU law ref.)	–	–	~	~
	H 1.2 Balance of trade CH	– (EU law ref.)	– (EU law ref.)	–	–	~	~
	H 1.3 EU policy scope	++ (EU law ref.)	++ (EU law ref.)	++	+	+	+
Domestic decision-making	H 2.1 Role of government	++	++	++	++	+	+
	H 2.2 Linked reform	n.a.	n.a.	++	++	~	~
	H 2.3 Issue salience of European integration	n.a.	– (parliament)	–	–	–	–
	H 2.4 referendum	n.a.	– (parliament)	–	–	–	–
Negotiations with EU	H 2.5 Party position/seat share	n.a.	++ (parliament)	++	+	~	~
	H 3.1 Issue linkage	++	++	n.a.	n.a.	n.a.	n.a.
	H 3.2 time	++	+	++	–	–	~
	H 3.3 Negotiation related	n.a.	n.a.	+	++	++	~
Alt.	H 4 New laws	n.a.	n.a.	+	++	++	++

According to the elaborations in the previous sections, I expect that these explanatory factors are most strongly correlated to integration measures of a higher substantive and legal integration quality. This is illustrated by the double signs in the columns of the sectoral agreement reforms and domestic implementation measures. The domestic incorporation of EU rules without a relationship to a sectoral agreement is less helpful to fulfil economic interests, and thus I assume that the relationship with rule incorporation at the domestic level is weaker. Likewise, I expect that these explanatory factors are most strongly correlated to integration measures of a higher substantive integration quality. This is indicated by the note "EU law reference" in the columns with the sectoral agreement reforms. Six hypotheses concern only differentiated integration steps which are subject to approval by parliament or negotiated with the EU. In the rows with these hypotheses, the column of the institutionalised agreement reforms contains "n.a.," which stands for not applicable. For example, the hypothesis about the role of issue linkage in agreement negotiations holds only for sectoral agreement reforms, which do not follow an institutionalised mechanism (hypothesis 3.1). Three further hypotheses make assumptions of the domestic decision-making process. As they make claims about referenda, the salience of European integration in the electorate and the strength of parties which support the government's EU policy in parliament, I expect that they are correlated to those negotiated agreement reforms which need to be approved by parliament (H 2.3, H 2.4, H 2.5). Similar to the reasoning above, I expect that the correlation with domestic rule incorporation is weaker, indicated by single signs.

Finally, three hypotheses are tested only for the incorporation of EU rules into domestic legislation. The first, about the role of a domestic reform package, also applies theoretically to sectoral agreements, but there is no comprehensive data on whether or not a sectoral agreement was adopted in a package at the domestic level (H 2.2). The other two hypotheses, about the relationship with sectoral agreement negotiations and new federal laws, concern domestic rule incorporation only (H 2.3, H 4).

4.3 Bivariate Analyses: Integration As a Result of Package Deals

This section presents descriptive statistics and bivariate hypothesis tests for all hypotheses. The bivariate analyses allow me to examine Switzerland's differentiated integration at the level of aggregation, which corresponds

to the respective independent variables. For the variables which vary only over time (Swiss economic performance, issue salience of European integration, and party strength), Swiss differentiated integration measures are aggregated per year.[7] For the variable policy scope in the EU, which varies over time and across policy fields, Swiss differentiated integration measures are aggregated per year for the descriptive analysis and per year *and* policy field for the multivariate analyses. All the other independent variables are characteristics of reforms and are measured in binary variables. The section follows the order of the arguments discussed in the previous section.

4.3.1 The Role of Economic Performance and the Scope of EU Policies

The descriptive analysis starts with the hypotheses concerning the domestic integration interests. Hypothesis H 1.1 claims that the general economic performance affects Switzerland's integration interest. 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, I expect that Switzerland is more likely to pursue regional integration in times of comparably lower economic growth.[8] Hypothesis H 1.2 claims that the performance of the export-oriented sector affects Switzerland's integration interest. The performance of the export-oriented sector is measured as the balance of trade (source: Swiss Federal Office of Statistics). I expect a negative correlation of the trade surplus and integration measures, because with a lower volume of exports the export industry is less capable of pursuing costly alternatives to legal integration. This makes the legal relationship with the European Union, the main destination for exports, more important for the Swiss economy. The coding of the independent variables is explained in more detail in Table 4.11 in the Annex .[9]

Figures 4.1 and 4.2 show the aggregate numbers of integration measures per year along with the development of the economic indicators. In both figures, the left axis of the graphs shows the number of integration measures per year and the right axis of the graphs show the values of the economic indicators. Figure 4.1 distinguishes the same categories of sec-

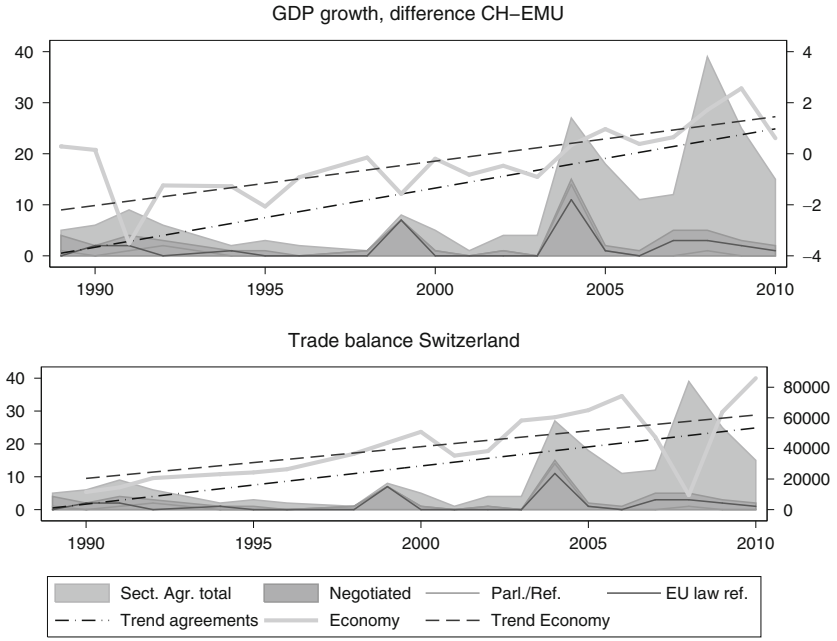

Fig. 4.1 Sectoral agreements and indicators of economic development over time

toral agreement reforms as Tables 4.1 and 4.2; Fig. 4.2 distinguishes the same integration qualities as Table 4.2 but does not differentiate between full and partial adaptations for reasons of legibility. 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 not related to sectoral agreements. In both figures, the dashed trend line indicates the trend in the development of the economic indicators, and the dashed-dot trend line indicates the trend in the development of the number of Switzerland's integration measures per year.

In both figures, the integration trends as well as the trend of the economic indicators are increasing. This picture contradicts the hypothesised relationships, as they hint to a positive correlation between economic performance and integration measures. The integration trend line is steeper

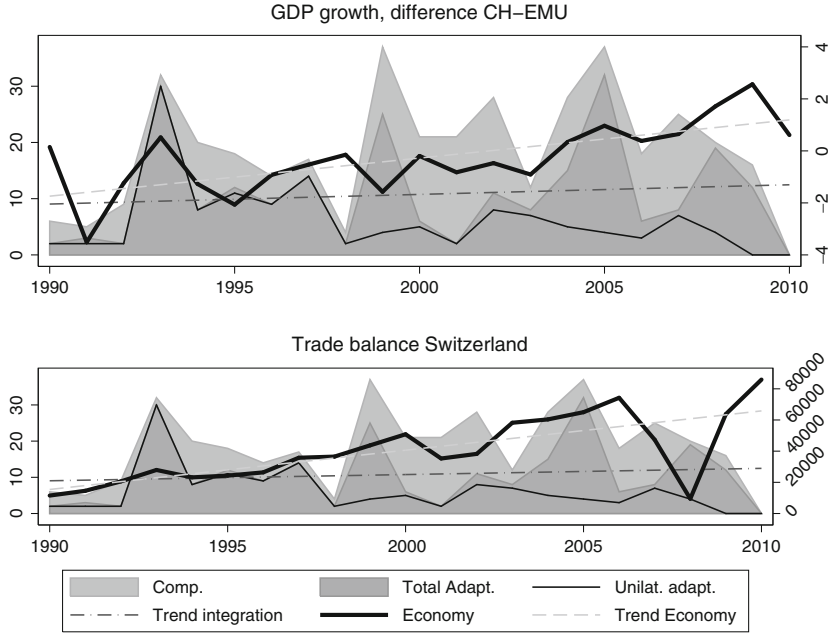

Fig. 4.2 EU rules in domestic legislation and indicators of economic development over time

Note: The integration trend in Fig. 4.2 is calculated based on active rule incorporation (full and partial adaptations, but not compatible reforms). The reason is that compatible reforms are not related to the independent variables (see multivariate analysis in section 4.4.2). In Fig. 4.1, the integration trend is calculated based on all sectoral agreement reforms.

in the case of sectoral agreement reforms, which is due to the large increase of institutionalised agreement reforms in recent years (Fig. 4.1). However, if institutionalised agreement reforms are not counted for the integration trend, the trend line is still increasing and thus contradicting H 1.1: Integration steps became more frequent over time, although the Swiss economy also performed better over time compared to the EMU average.

Despite the average increase of economic growth, we also observe some temporary downturns. The most pronounced was in 1992, coinciding with a small peak in sectoral agreement reforms (Fig. 4.1); it is followed by the largest amount of unilateral rule incorporation into domestic legislation of the whole research period (Fig. 4.2). At least for this peak, the

hypothesised relationship holds, as most of the EU-related legal reforms in the early 1990s were part of an economic policy reform which was a reaction to the economic recession accompanied by a rise of unemployment (cf. Mach et al. 2003). The following temporary downturns were smaller, and since 2004, Swiss GDP growth has been higher than average GDP growth in the EMU countries. These descriptive findings call into question the causality assumption underlying H 1.1, and even though they do not prove the inverse relationship, they at least show that increasing integration does not hinder increasing economic growth.

The lower graphs of Figs. 4.1 and 4.2 show the development of Switzerland's balance of trade over the research period, the indicator to test the claim made in H 1.2. The trend is the same as in the upper graphs, but apart from one sharp downturn in 2008, the curve has fewer ups and downs than the GDP growth curve. The coincidence of the downturn with the global banking crises is obvious and so is the coincidence with the entry into force of the most-far-reaching agreements Switzerland has concluded with the EU from the point of view of legal integration quality: Schengen and Dublin Association. However, these agreements were signed four years earlier, when the trade surplus was rising. In the years after 2004, sectoral agreement reforms were mainly institutionalised reforms. The development of the incorporation of EU rules into domestic legislation is difficult to interpret in terms of balance of trade development, as the curves show considerable ups and downs (Fig. 4.2). Although the last peak coincides with the downturn of the balance of trade in 2008, it may as well just be related to the far-reaching Schengen and Dublin association, as most reforms were implementation measures of sectoral agreements.

Hypothesis H 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 4.12 in the Annex). Figure 4.3 shows the number of agreement reforms and Fig. 4.4 shows the number of federal law reforms for the different values of the EU policy scope indicator. The scope indicator varies over time and across policy fields, but Figs. 4.3 and 4.4 are only two-dimensional (developments over time are not visible).

The graphs hint at different forms of relationship between the EU policy scope and sectoral agreement reforms (Fig. 4.3) on the one hand, and domestic rule incorporation (Fig. 4.4) on the other. Figure 4.3 points

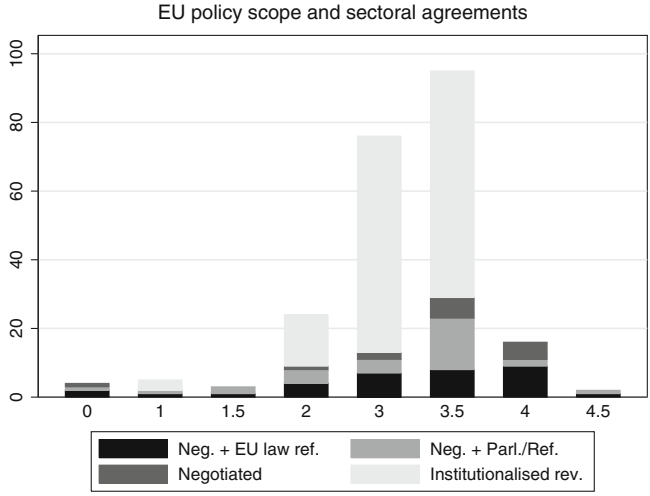

Fig. 4.3 Sectoral agreement reforms and EU policy scope

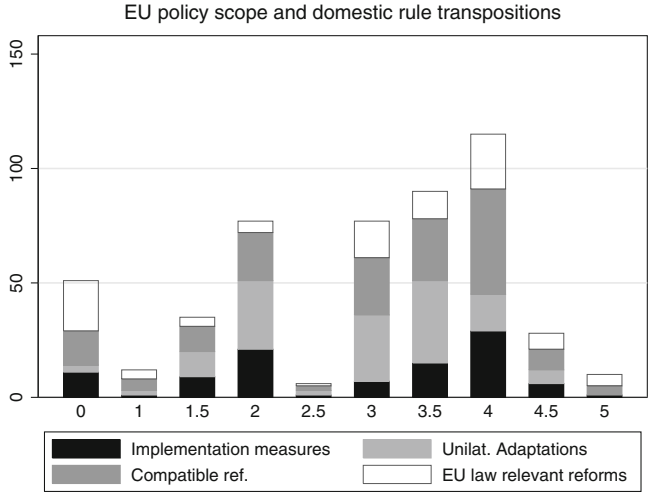

Fig. 4.4 Federal law reforms, EU rule incorporation, and EU policy scope

to a relationship of an inverse U-shape. Agreement reforms were most frequent in policy fields with a scope indicator of 2, 3, or 3.5; reforms in policy fields with very low or very high scope indicators were much rarer. Interestingly, the frequent reforms in policy fields with middle values of the scope indicator most often were institutionalised agreement revisions (Mixed Committee decisions or revisions of dynamic agreements), but the relationship is the same when we look only at the negotiated reforms. Apparently, a policy scope indicator of 2–3.5 creates an incentive not only for integration measures but also for creation of legal mechanisms to keep the integration measures up to date. The reason for the rare integration measures in fields with a low policy scope indicator corresponds to theory, whereas the lower number of reforms in areas with very high values on the policy scope indicator could hint to the fact that third states' access to strongly centralised policy fields is limited.

Figure 4.4 reports federal law reforms and, if anything, points to a linear relationship between the EU policy scope and the frequency of domestic incorporation of EU rules. This corresponds to hypothesis H 1.3. Interestingly, implementation measures are frequent at the level of policy scope where also sectoral agreement reforms are frequent (policy scope values of 2, 3, 3.5, 4). An interesting difference between Figs. 4.3 and 4.4 is the frequency of domestic incorporation of EU rules in areas which score lower on the policy scope indicator. An explanation which is in line with the concept of different integration qualities would be that measures of low integration quality (like the domestic incorporation of EU rules) are suitable in policy areas where the EU policy is of a small scope. Surprisingly, we even observe rule incorporation in issue areas with an EU policy scope of 0. This is partly related to the validity of the coding sources and partly to the coding of the scope indicator.[10]

Figures 4.3 and 4.4 require a refinement of hypothesis H 1.3. In the case of the sectoral agreements, the relationship is not linear, as expected, but has an inverse U-shape. The inverse U-shape of the relationship will be taken into account in the multivariate analysis. In the case of the domestic incorporation of EU rules, the relationship seems to be linear as expected, but with a considerable number of integration measures in areas with a low scope indicator.

4.3.2 The Role of Veto Points, Party Positions, and Issue Salience

Integration interests must be translated into integration decisions via the domestic political system. Hypotheses H 2.1–2.5 make claims about how domestic veto points, public opinion, and party positions influence

Table 4.3 Sectoral agreement reforms and binary independent variables (1)

Hypothesis	*Variable*	*Institutionalised rev.*		*Negotiated rev.*		*Total*
		Number	*Mean*	*Number*	*Mean*	
H 2.1	**Federal Council**	129	*0.83*	27	0.17	**156**
	Parliament/ref.	17	*0.35*	31	0.65	**48**
	Missing value					**2**
	Diff. of means		*p = 0.0000*		*p = 0.0000*	**Total: 206**
H 2.3	**Referendum**	1	*0.09*	10	*0.91*	**11**
	No referendum	145	*0.74*	50	*0.26*	**195**
	Missing value					**0**
	Diff. of means		*p = 0.0000*		*p = 0.0000*	**Total: 206**
H 3.1	**Issue linkage**	46	*0.62*	28	*0.38*	**74**
	No issue linkage	100	*0.76*	32	*0.24*	**132**
	Missing value					**0**
	Diff. of means		*p = 0.0395*		*p = 0.0395*	**Total: 206**

the probability of integration measures. Tables 4.3, 4.4, and 4.5 provide bivariate difference of means tests for the hypotheses H 2.1–2.3. These hypotheses make claims about the institutional characteristics of integration measures like the authority in charge. They are operationalised as binary independent variables. At first glance, we see that the differences of the means in Tables 4.3 and 4.4, testing the hypotheses based on the data of the sectoral agreements, are all highly statistically significant. On the other hand, only some of the differences of means in Table 4.5, based on the data on federal law reforms, are statistically significant. The statistically significant differences in Table 4.5 are shaded grey. Only in the case of implementation measures, the domestic law reforms with the highest integration quality, are all differences statistically significant. This, together with the difference between sectoral agreements and domestic law reforms, allows the first conclusion that indeed, the hypotheses hold better for measures of higher integration quality.

A closer look at the figures in Tables 4.3 and 4.2 show that the highly significant differences of means in some cases point to a relationship between the independent variables and integration measures opposite to that which I argued in the theory section. Hypothesis H 2.2 claims that integration measures, and especially such measures of a higher integration quality, are less

Table 4.4 Sectoral agreement reforms and binary independent variables (2)

Hypothesis	*Variable*	*Negotiated + EU law ref.*		*Negotiated + Parl.*		*Total neg.*
		Number	*Mean*	*Number*	*Mean*	
H 2.1	**Federal Council**	14	*0.09*	–	–	**27**
	Parliament/ref.	20	*0.42*	–	–	**31**
	Missing value					**2**
	Diff. of means		*p = 0.0000*		–	**60**
H 2.3	**Referendum**	10	*0.91*	10	*0.91*	**10**
	No referendum	24	*0.12*	21	*0.12*	**50**
	Missing value					**0**
	Diff. of means		*p = 0.0000*		*p = 0.0000*	**60**
H 3.1	**Issue linkage**	23	*0.31*	20	*0.27*	**28**
	No issue linkage	11	*0.08*	11	*0.08*	**32**
	Missing value					**0**
	Diff. of means		*p = 0.0000*		*p = 0.0003*	**60**

Note: Hypotheses H 2.2 cannot be tested for agreement reforms because they were coded based on their legal texts, which do not provide the needed information. Information about a possible link of a reform at the domestic level could have only been coded based on the federal decrees, by which the agreement reforms are adopted by parliament, and/or based on the messages to parliament related to the decrees (*Bundesbeschlüsse*). However, the data collection is not based on the decrees but on the agreement texts, because the decrees do not contain information about the integration quality, the main dependent variable (see Chap. 2)

likely to be adopted via legal reforms subject to approval by parliament or even to a popular vote. However, Table 4.3, column "negotiated revisions," shows that negotiated revisions were slightly more often adopted by parliament than by the Federal Council alone. Compared to the total number of integration measures adopted by parliament and government, respectively, the difference is statistically significant. More interesting than this finding is the one shown by Table 4.4. Negotiated agreement reforms, which directly refer to EU law, were significantly more often adopted by parliament. And they were also significantly more often brought to the polls than negotiated reforms without references to EU law or institutionalised reforms. These findings do not allow us to reject the theoretical considerations behind hypotheses H 2.1 and H 2.3, because the findings only compare the different categories of integration measures. However, the findings show that measures of high integration quality were not introduced without a say by the parliament and the voters.

Unsurprisingly, the hypotheses are corroborated for the institutionalised agreement revisions (Table 4.3). Only a small minority of the institutionalised revisions required approval by parliament (H 2.1), although

Table 4.5 Federal law reforms, EU rule incorporation and binary independent variables

	Variable	*No EU rule**		*Compatible*		*Partial adaptation*		*Full adaptation*		*Implementation*		*Total*
		Number	*Mean*	*Number*	*Mean*	*Number*	*Mean*	*Number*	*Mean*	*Number*	*Mean*	
H 2.1	**Gov. initiative**	91	*0.20*	146	*0.31*	63	*0.14*	68	*0.15*	97	*0.21*	**465**
	Parl./cant. initiative	10	*0.30*	19	*0.58*	3	*0.09*	0	*0.00*	1	*0.03*	**33**
	Missing values											**15**
	Diff. of means		*p = 0.1390*		*p = 0.0020*		*p = 0.2320*		*p = 0.0179*		*p = 0.0126*	**513**
H 2.2	**Linked reforms**	26	*0.13*	45	*0.23*	22	*0.11*	33	*0.17*	74	*0.37*	**200**
	Not linked reforms	75	*0.25*	120	*0.40*	44	*0.15*	36	*0.12*	24	*0.08*	**298**
	Missing values											**15**
	Diff. of means		*p = 0.0007*		*p = 0.0000*		*p=0.2253*		*p= 0.1623*		*p=0.0000*	**513**
H 2.3	**Referendum**	7	*0.18*	10	*0.26*	1	*0.03*	1	*0.03*	20	*0.51*	**39**
	No referendum	89	*0.20*	148	*0.33*	64	*0.14*	65	*0.15*	78	*0.18*	**443**
	Missing values											**31**
	Diff. of means		*p=0.7537*		*p = 0.3228*		*p=0.0373*		*p=0.0350*		*p=0.0000*	**513**

H 3.3	**Negotiation rel.**	0	*0*	3	*0.06*	13	*0.26*	34	*0.68*	–	–	**50**
	Other	101	*0.22*	162	*0.36*	53	*0.12*	35	*0.08*	–	–	**448**
	Missing value											**15**
	Diff. of means		*p = 0.0002*		*p = 0.0000*		*p = 0.0050*		*p = 0.0000*	–	–	**513**
H 4	**New laws**	30	*0.20*	52	*0.35*	28	*0.19*	24	*0.16*	15	*0.10*	**148**
	Partial revisions	71	*0.19*	113	*0.32*	38	*0.11*	45	*0.13*	83	*0.24*	**350**
	Missing values											**15**
	Diff. of means		*p = 0.8332*		*p = 0.5379*		*p = 0.0153*		*p = 0.3224*		*p = 0.0005*	**513**

Note: *The table counts only federal law reforms which were EU relevant and thus which concerned areas where EU law exists. This excludes false negative cases. The category "No EU rule" depicts those reforms which were EU relevant but were neither compatible with EU law nor adapted Swiss law to EU law

the Schengen and Dublin agreements allow Switzerland to decide upon updates of the Schengen acquis according to its constitutional requirements. Only once was such an update brought to the polls (H 2.3). Whether this finding can be explained by strategic action and coalition building by the Federal Council, as hypothesised by H 2.1, or whether the functionalist incentives and institutional mechanisms detected in Chap. 3 are decisive for this finding must be researched in case studies of the decision-making processes. What can be said is that although the large majority of sectoral agreement reforms are adopted by the Federal Council, and only a small minority are brought to the polls, those reforms which are subject to approval by parliament or the people are not of lower integration quality than those which do not face these veto points.

Table 4.5 presents the hypothesis tests for domestic legislation and shows that the relationship points in the hypothesised direction for law reforms of higher substantive (partial and full adaptation) and legal (implementation) integration quality. Note that for this hypothesis test, the data were recoded and only implementation measures were included in that category, regardless of their substantive integration quality. The other columns thus do not contain any implementation measures. Among the federal law reforms which were initiated by the Federal Council partial and full adaptations and implementation measures were more frequent than among the reforms initiated by the parliament or a canton (H 2.1). This difference is statistically significant in the case of full adaptations and implementations. This result supports findings from earlier studies (Gava and Varone 2012). The hypothesis and earlier findings, however, also have to be refined: Although not in charge of active rule incorporation, the parliament also follows the EU compatibility doctrine.

The picture is less clear for hypothesis H 2.2, which claims that integration measures are more likely among reforms which come as a package. A federal law reform was coded as linked if it was proposed in a Federal Council message which presented more than one law reform to the parliament at the same time (examples are the Swisslex package or the public transportation reform).[11] The difference of means is significant for implementation measures, which more often than not were part of a reform package. It is also significant for EU-relevant reforms which were not integration measures and for compatible reforms. Both were significantly less often part of a package than not. These findings corroborate the hypothesis but call into question the generalisability of the argument. The significant difference in the case of the implementation measures is probably

an effect of the already well-documented reform packages related to the sectoral agreements. The data do not provide evidence for the assumption that the strategy of reform packages is also successful in cases of purely domestic incorporation of EU rules.

Finally, the difference of means tests for reforms with and without a popular referendum paints a picture which supports the findings regarding the sectoral agreements. Among the few federal law reforms which were brought to the polls more than half were implementation measures of sectoral agreements. In contrast, only two referenda concerned a domestic incorporation of an EU rule which was not related to a sectoral agreement (one partial and one full adaptation). Hypothesis 2.2 is thus corroborated for purely domestic rule incorporation, but it is called into question for implementation measures. I conclude that although referenda are rare, they are more frequent in cases of a higher legal integration quality than in purely domestic reforms. This conclusion is similar to my conclusion about the sectoral agreements. In sum, these bivariate hypotheses tests point at the important and active role of the Federal Council in both sectoral agreement reforms and domestic rule incorporation, and they point at the rarity of popular votes. At the same time, they show that integration measures which face a larger number of veto points are not necessarily of lower integration quality.

Figures 4.5 and 4.6 shed light on the parliament and the public, which are responsible for some of the integration steps with a high-integration quality. Hypothesis H 2.4 claims that integration measures are more likely when European integration is less salient among the Swiss electorate. The salience of European integration is measured as the percentage of respondents in the SELECTS survey who named European integration as the most important problem.[12] The thick line in the lower graphs in Figs. 4.5 and 4.6 depicts the percentage share; the corresponding numbers are indicated on the right-hand axis. Throughout the 1990s, the share was between 15 and 20 %. In 2003, the perceived salience of European integration among voters dropped. Interestingly, and in line with the hypothesis, this drop coincides with an increasing number of sectoral agreement reforms per year (Fig. 4.5).

The picture for the domestic incorporation of EU rules is more nuanced (Fig. 4.6). The 1990s, the years when European integration was most salient, were also the years with the highest frequency of domestic rule incorporation without a relation to sectoral agreements. This contradicts hypothesis H 2.4. In contrast, and with the exemption of the peak in 1999,

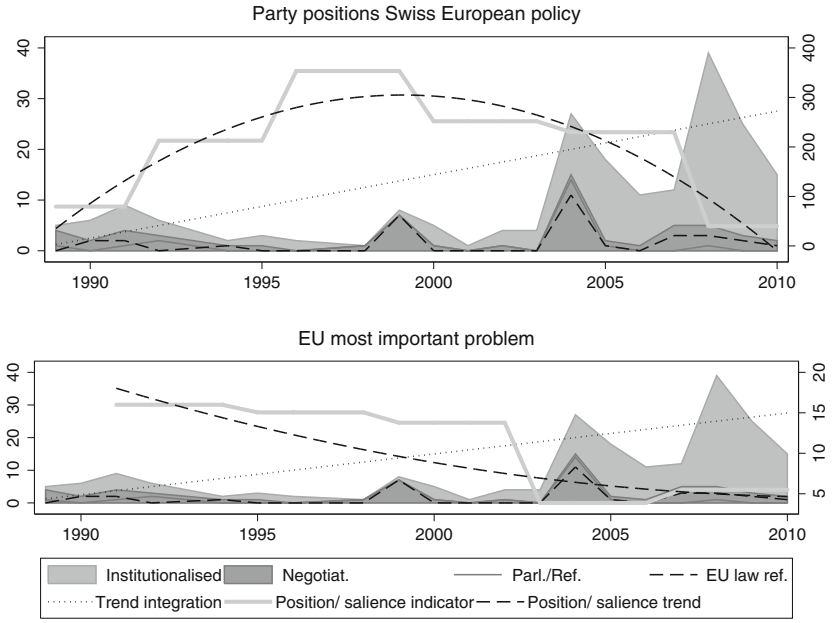

Fig. 4.5 Sectoral agreement reforms, party positions, and issue salience

implementation measures became more frequent than unilateral adaptations only 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 other instances of rule incorporation are almost never brought to the polls.

Hypothesis H 2.5 claims that integration measures are more likely when the seat share of pro-European parties is higher in parliament. The party positions were measured based on the data of the Manifesto project. The Manifesto project measures party positions based on the frequency of positive and negative mentioning of European integration, the European Union, and European policies in party manifestos (Volkens et al. 2012). This measurement gives a more accurate picture of the stance of Swiss parties than their official (mostly negative) position on EU membership because it is based on their actual statements regarding concrete policies, which is decisive for the explanation of differentiated integration.[13] As for

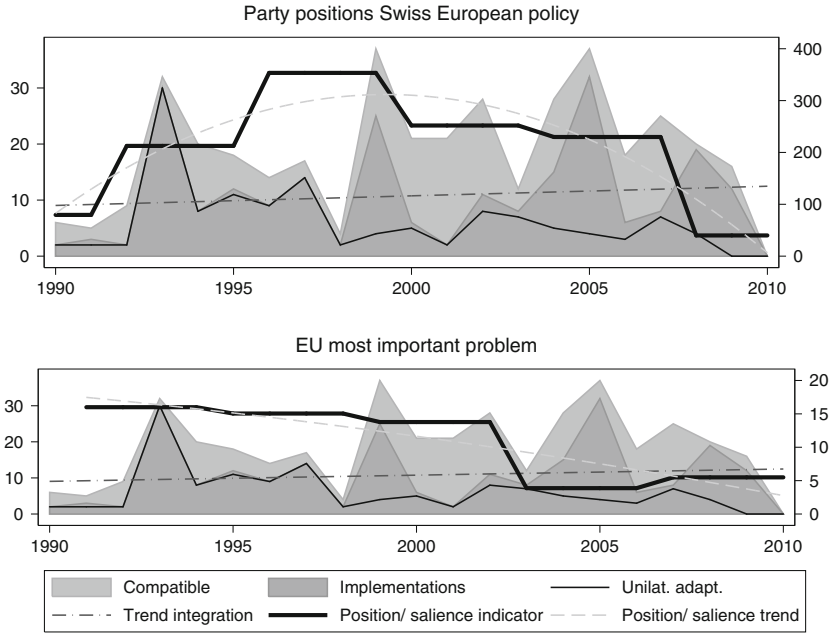

Fig. 4.6 EU rules in domestic legislation, party positions, and issue salience

an earlier article, I created an indicator of the parties' positions towards European integration by subtracting the share of the party's negative statements about Europe from the share of the party's positive statements about Europe and multiplying the value by the seat share in order to get an indicator of the strength of the parties with more positive than negative statements regarding European integration (cf. Jenni 2015).[14]

The party position indicator is depicted by the thick line in the upper graphs in Figs. 4.5 and 4.6, and the right-hand axes show the value of the party position indicator. Positive values mean that the seat share of parties with more positive than negative statements is higher than the seat share of parties with more negative than positive statements. The actual value has no substantive meaning. The indicator shows low values in the beginning of the 1990s, reaches a peak between 1999 and 2003, and drops to the level of the 1990s in 2008. 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 in 1999 (Bilaterals I; Fig. 4.5). However, according to the manifesto indicator, the consensus was still rather broad when the SVP launched the referendum against the Schengen association, part of the Bilaterals II package (Afonso and Maggetti 2007). Also at the beginning of the 1990s and in the years 2007–2010, a couple of negotiated agreement steps were adopted despite the very small value of the positions indicator. Finally, the lion's share of the agreement reforms since 2004 has consisted of institutionalised reforms. Apparently, they were not hampered by the decreasing share of parties with pro-European positions.

Figure 4.6 does not point at an obvious relationship between the party position indicator and the different forms of incorporation of EU rules into domestic legislation. In the years with the highest value of the party position indicator, compatible reforms were the most frequent EU-related law reforms (light-grey area), but implementation measures (dark-grey area) and adaptations unrelated to agreements (line) were even less frequent. The descriptive analysis based on these two graphs thus does not allow us to draw clear conclusions regarding the validity of hypothesis H 2.5 for the domestic incorporation of EU rules.

4.3.3 The Role of Issue Linkage and Credible Commitments in Negotiations

Swiss integration interests not only have to clear the various hurdles in the domestic decision-making process in order to translate into integration measures; in case of integration via sectoral agreements, Switzerland also has to reach an agreement with the EU. Therefore, hypotheses H 3.1–H 3.3 make claims about the role of negotiation dynamics. Hypothesis 3.1 claims that the strategy of issue linkage is crucial to explaining the success of difficult negotiations between Switzerland and the EU. 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 also remained effective after the adoption of the agreements; all agreements of Bilaterals I are abrogated as soon as one agreement is terminated.

Table 4.3 shows that in total, one-third of all agreement reforms were part of a package deal (last column). Institutionalised revisions were stand-alone

revisions more often than part of a package deal. Negotiated reforms were more frequent among the linked than among the stand-alone reforms. This finding corresponds to the theory. More interesting are the findings shown by Table 4.4. Negotiated agreement reforms with direct references to EU law and negotiated reforms in need of approval by parliament are both more frequent among the linked reforms, and these differences are statistically significant. Hypothesis H 3.1 is thus corroborated by the bivariate analysis. As expected, issue linkage is especially important for agreements of a higher substantive integration quality, and issue linkage may help to clear the veto point of approval by parliament. By the way, Table 4.3 also revealed that one-third of the institutionalised revisions concerned the Bilaterals I, as only revisions of this agreement package were coded as linked. Besides the Schengen agreement and the Bilaterals I, the last third of institutionalised agreements thus concern agreements which were not subject of previous research.

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.

Hypothesis 3.3 claims that negotiations with the EU also affect the incorporation of EU rules into domestic legislation. I argued that rule incorporation is more likely in relation to negotiations with the EU. Table 4.5 shows that about 10 % of all EU-relevant federal law reforms were related to agreement negotiations (row H 3.3, last column). Unsurprisingly, all of the reforms related to negotiations in some way referred to EU rules. Very few were only compatible with EU law. 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. Most of the negotiation related reforms were full and some were partial adaptations. They were more frequent among negotiation-related reforms than among other reforms, and these differences are statistically significant. Hypothesis H 3.3 is thus corroborated by the bivariate analysis, with the specification that negotiation concessions normally need active rule incorporation and not merely compatible reforms.

4.3.4 Domestic Incorporation of EU Rules as Policy Learning?

Hypothesis 4 claims that the domestic incorporation of EU rules might be the result of policy learning or policy diffusion 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 4.5 shows that almost one- third of all federal law reforms in the research period were new adoptions or total revisions of federal laws (H 4, last column). Only for two categories of incorporation of EU rules is the different frequency of the categories among new adoptions and partial revisions statistically significant. Partial adaptations to EU law were significantly more frequent among new laws, whereas implementation measures were significantly more frequent among partial revisions of federal laws. Only the different frequency of partial adaptations corresponds to Hypothesis H 4.

In this section, I analyse the data step by step according to the liberal intergovernmentalist model of European integration. With regard to the first step, the integration interests, the descriptive graphs did not show a clear picture. If anything, integration grew along with Switzerland's economic performance. An interesting finding with regard to integration interests concerns the policy scope in the EU. Apparently, sectoral agreements are most suitable for ad hoc integration in areas with a mid-scale policy scope, but not for very centralised and formalised issues. Agreements may not be necessary for loosely governed issues. Here, domestic incorporation of EU rules was more frequent than expected. The analysis of the domestic decision-making process revealed the expected tendencies but with some nuances regarding the integration qualities. As expected, most integration steps are conducted by the Federal Council and not brought to the polls. However, reforms only subject to approval by the Federal Council are not of a different (higher) integration quality. The reforms approved by the parliament and the people were mostly of a high substantive integration quality.

These findings resonate with the findings about the role of party positions and issue salience. Sectoral agreement reforms and domestic implementation measures became more frequent when European integration was less salient, whereas the incorporation of EU rules into domestic legislation without a relation to an agreement was most frequent when European integration was salient in the electorate. One explanation for this form of domestic rule incorporation was found in their relationship to

agreement negotiations, the second step of the liberal intergovernmental models. Reform packages at the domestic level seem to facilitate implementation measures.

4.4 Multivariate Analyses: Integration as a Result of the EU Policy Scope and Low Issue Salience

In the second part of the empirical analysis, I test the hypotheses in three multivariate analyses. First, I analyse sectoral agreements and domestic rule incorporation separately, and in a third step I analyse Switzerland's differentiated integration measures per year and policy field on an aggregate level, testing only their relation with the time-variant independent variables. The multivariate analyses largely confirm the findings of the descriptive analyses and reveal some new correlations. The indicators for domestic economic performance are neither consistently correlated to negotiated agreement reforms nor to the different forms of incorporation of EU rules into domestic legislation. But their correlations with the aggregate number of integration measures per year are statistically significant. In contrast, the indicators for party positions and issue salience are correlated only to negotiated agreement steps but not to the domestic incorporation of EU rules. In general, the analyses of the domestic incorporation of EU rules does not reveal many statistically significant results, although the applied multinomial regression analysis takes into account the different explanations for different categories of domestic rule incorporation and the difference of these categories in terms of the independent variables is statistically corroborated.

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.[15] Therefore, the multivariate analysis, analogously to the bivariate difference of means

tests in the previous section, tests only whether different forms of sectoral agreement reforms are differently correlated to independent variables.

For the descriptive analyses, I distinguished between institutionalised agreement revisions and negotiated agreement reforms (new agreements and revisions). Then I distinguished negotiated agreement reforms adopted by the Federal Council from negotiated agreement reforms adopted by parliament or at the polls. Further, I distinguished negotiated agreement reforms with direct references to EU law from negotiated agreement reforms without such references (see Tables 4.1 and 4.2). Preliminary multinomial regression analyses[16] showed that not all of these categories are distinguishable from one another with respect to their correlation with the independent variables in the model. Concretely, a Wald test[17] based on a multinomial regression analysis distinguishing institutionalised reforms, negotiated reforms without EU law reference, and negotiated reforms with EU law reference showed that negotiated agreement reforms with and without references to EU law are not statistically distinguishable in terms of their correlation with the independent variables. In a second analysis, the regression model distinguished institutionalised reforms from negotiated reforms adopted by the Federal Council and from negotiated reforms subject to parliamentary approval. For this regression, the Wald test showed that negotiated reforms adopted by government are not distinguishable from institutionalised revisions with respect to the independent variables in the model.

This means that with 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 does matter whether a sectoral agreement reform was negotiated or followed an institutional update mechanism. However, only negotiated reforms adopted by parliament are distinguishable from institutionalised reforms. This adds nuances to the findings of Chap. 3. Apparently, the decision-making process matters more than whether or not a revision is conducted according to a predefined institutional mechanism, and it also matters more than the substantive quality of a reform.

Table 4.6 presents the results of two logistic regressions for these two binary variables, which proved to be differently correlated to the rest of sectoral agreement reforms. 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

Table 4.6 Logistic regression analysis of negotiated sectoral agreement reforms

	Negotiated total (1)	*Negotiated, adopted by parl. (3)*
H 1.1		
GDP growth diff. CH-EMU	−0.357	0.329
	(−1.05)	(0.98)
H 1.2		
Balance of trade CH	0.00000221	−0.0000231
	(0.21)	(−1.03)
H 1.3		
EU policy scope	0.0542	−0.0223
	(0.06)	(−0.06)
EU policy scope *square*	−0.00225***	−0.000918*
	(−3.31)	(−2.30)
H 2.1		
Adopted by Federal Council	−3.239**	-
	(−2.91)	
H 2.3		
Popular vote on reform	−0.439	3.288*
	(−0.28)	(2.04)
H 2.4		
Issue salience EU	0.168	−0.250*
	(1.15)	(−2.04)
H 2.5		
Party position and seat share	0.00208	0.0118***
	(0.55)	(3.44)
H 3.1		
Issue linkage	1.702	0.480
	(1.48)	(0.84)
H 3.2		
Year of adoption	0.124	−0.286
	(0.91)	(−1.90)
Constant	−248.4	571.9
	(−0.91)	(1.90)
Observations	192	192
Wald Chi2	124.96***	137.63***
AIC	158.70	130.94
BIC	194.53	163.51

Note: Logit coefficients with robust standard errors adjusted for 17 clusters (one cluster is one policy field); *t* statistics in parentheses; $^{*}p < 0.05$, $^{**}p < 0.01$, $^{***}p < 0.001$

by parliament, and 0 in all other cases. Naturally, the two variables partially overlap (corr=0.67). Some of the regression results are consistent across the two models. The economic indicators are not significantly cor-

related to negotiated agreement steps. On the contrary, the square value of the EU policy scope indicator is significantly correlated to integration steps in the way suggested by the descriptive analysis.[18] The statistically significant negative correlation indicates that the relationship between the policy scope in the EU and the probability of negotiated agreement reforms indeed has the form of an inverse U-shape. Negotiated agreement steps are thus most likely in policy fields and years when the respective EU policy has a mid-scale value on the policy indicator. Future research on external differentiated integration should examine this finding in the light of what Leuffen et al. (2013) call vertical differentiation. The authors show that the most vertically integrated policy field, European Monetary Union, does not have any external differentiation, whereas policy fields with lower vertical integration are also externally differentiated.

The variables related to the domestic decision-making process are differently correlated in the two models and the correlations confirm the bivariate analyses. Agreement reforms are less likely to be negotiated if the Federal Council is in charge (Model 1) and negotiated agreement reforms adopted by parliament are positively correlated to popular referenda (Model 2). The parliament and the people thus significantly more often than not have the final word regarding negotiated agreement reforms. Hypotheses 2.1 and 2.3 must be rejected for the most important integration steps. On the contrary, hypotheses H 2.4 and H 2.5 about the role of party positions and issue salience are corroborated by Model 2. Negotiated agreement steps approved by parliament were more likely in times with a higher value of the party position indicator and were less likely in times when the issue of European integration was more salient in the electorate. These findings make the counter-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.

4.4.2 Domestic Incorporation of EU Rules

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 incorporation 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 incorporate 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 incorporation in Chap. 3: the time since the last adaptation of a federal law.

Multinomial logit coefficients are difficult to interpret substantively. To ease interpretation, Table 4.7 shows first the results of a likelihood ratio test testing whether the null hypothesis that all coefficients of an independent variable are simultaneously zero can be rejected. The variables for which the null hypothesis can be rejected, and that thus are significantly correlated to the domestic incorporation of EU rules, are emphasised in italics and bold. Table 4.7 shows that unlike in the regression analysis of negotiated agreement reforms (Table 4.6), one indicator of Swiss economic performance is correlated to the domestic incorporation of EU rules (comparative GDP growth), as are some of the 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 incorporation. As suggested by the bivariate analyses, agreement negotiations influence domestic rule incorporation (cf. Tables 4.5 and 4.7). As in the regression analysis in Chap. 3, the time since the last rule incorporation in the same federal law is also in this analysis significantly correlated to new incorporation measures.

Table 4.8 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.[19] For example, the difference between Swiss GDP growth and EMU growth has a statistically significant and positive average marginal effect on the probability that a federal law reform is a full adaptation to the respective EU rules. This effect is shown in the first row of the fourth column of Table 4.8. The effect contradicts hypothesis H

Table 4.7 Likelihood-ratio tests for independent variables (N = 457)

Variable	*chi2*	*df*	*P>chi2*
Growth, CH-EMU	***19.969***	***6***	***0.003***
Balance of trade CH	3.687	6	0.719
EU Policy scope	2.46	4	0.873
Federal Council	***11.296***	***3***	***0.01***
Linked reform	**41.831**	***6***	***0***
Referendum	**14.054**	***5***	***0.015***
Issue salience	4.337	4	0.362
Party position and seat share	3.614	6	0.729
Year	***34.004***	***4***	***0***
Negotiation related	***98.929***	***5***	***0***
New law	4.246	6	0.643
Time since last adapt.	***20.648***	***6***	***0.002***

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

1.1, which claims that integration measures are more likely in times when Swiss economic performance is worse. When we interpret this surprising result in light of Fig. 4.2, we may argue that domestic rule incorporation can only come as a reaction to economic performance and may thus be adopted in years when the economy has already recovered. Examples are the years 1992 and 1995, which both followed years of comparatively low economic growth and showed peaks in the frequency of incorporation of EU rules into domestic legislation.

Among the hypotheses related to the domestic decision-making process, the multinomial regression analysis confirms the findings of the bivariate analysis and partly corroborates hypothesis 2.2. Domestic implementation measures are more likely if they are linked to other domestic reforms, and federal law reforms not incorporating EU rules are less likely if they are linked to other reforms. Although the positive effect on full and partial adaptations by linked reforms are not statistically significant, reform packages at the domestic level thus seem to play a role for reforms incorporating EU rules. The results regarding the role of the Federal Council (H 2.1) and referenda (H 2.3) do not confirm the results from the bivariate analyses. Although the null hypothesis that all coefficients associated with these variables are zero cannot be rejected (Table 4.7), they do not have statistically significant average marginal effects on the categories of the dependent variables. The same is true for the relation of federal law reforms to agreement negotiations. Because the significance

Table 4.8 Multinomial logit regression analysis; average marginal effects on domestic incorporation of EU rules

	(1)	*(2)*	*(3)*	*(4)*
	No EU rule	*Partial adapt.*	*Full adapt.*	*Implementation*
H 1.1				
GDP growth diff. CH-EMU	−0.0470	0.0354	0.0412***	−0.0297
	(0.0303)	(0.0197)	(0.0124)	(0.0291)
H 1.2				
Balance of trade CH	0.00000180	−0.000000796	−0.00000246	0.00000146
	(0.00000203)	(0.00000157)	(0.00000179)	(0.00000145)
H 1.3				
EU policy scope	0.0138	−0.00670	0.00798	−0.0150
	(0.0149)	(0.0122)	(0.0108)	(0.0112)
H 2.1				
Federal Council initiative	−0.658	−0.387	0.875	0.171
	(44.60)	(41.03)	(95.42)	(9.786)
H 2.2				
Linked reform	−0.232***	0.000602	0.0282	0.203***
	(0.0393)	(0.0328)	(0.0245)	(0.0299)
H 2.3				
Popular vote on reform	1.008	−1.709	0.287	0.414
	(101.4)	(173.3)	(42.36)	(29.55)
H 2.4				
Issue salience	0.0167	0.00204	−0.0143	−0.00442
	(0.00993)	(0.00775)	(0.00828)	(0.00702)
H 2.5				
Party position/seat share	0.0000559	−0.0000508	0.000373	−0.000378
	(0.000370)	(0.000271)	(0.000239)	(0.000322)
H 3.2				
Year of adoption	0.0196*	−0.00306	−0.0293***	0.0128
	(0.00974)	(0.00631)	(0.00611)	(0.00847)
H 3.3				
Negotiation related	1.033	0.527	0.331	−1.891
	(380.5)	(80.26)	(27.43)	(488.2)
H 4				
New law/ total revision	−0.0451	0.0685*	−0.0100	−0.0134
	(0.0476)	(0.0330)	(0.0245)	(0.0405)
Control variable				

(*continued*)

Table 4.8 (continued)

	(1)	*(2)*	*(3)*	*(4)*
	No EU rule	*Partial adapt.*	*Full adapt.*	*Implementation*
Time since last adapt.	−0.0243*** (0.00592)	0.00185 (0.00440)	0.0115** (0.00355)	0.0110** (0.00418)
Observations	457	457	457	457

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

Table 4.9 Predicted probabilities of domestic rule incorporation by binary independent variables

	No EU relation	*Partial adapt.*	*Full adaptation*	*Implementation*
Federal Council	0.80	0.09	0.07	0.04
Linked reform	0.69	0.04	0.08	0.18
Referendum	0.58	0.00	0.00	0.41
Negotiation related	0.02	0.17	0.81	0.00
New law	0.77	0.17	0.05	0.01

Note: Predicted from the multinomial regression results presented in Table 17 with the given binary independent variable with value 1 and all other independent variables at their mean values

level is sensitive to model specification, Table 4.9 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 the full incorporation of EU rules very likely.

Interestingly, the time variable has statistically significant effects on EU-relevant law reforms without EU rules and on full adaptations (H 3.2). However, the average marginal effects contradict the hypothesis: Full adaptations became less likely over time, whereas EU-relevant reforms not incorporating EU rules became more likely. Finally, partial adaptations are more likely among new laws. In sum, the picture drawn by the multinomial analysis does not point to clear and consistent explanatory factors for the domestic incorporation of EU rules. Indicators for domestic integration interests and indicators related to the domestic decision-making sys

tem are not consistently related to domestic rule incorporation. Whereas the statistical significance of the variables Federal Council and referenda depend on model specification, issue salience and party positions have no effect on the domestic incorporation of EU rules. This finding is not surprising in light of the bivariate analysis (cf. Table 4.5) as well as the literature, where some scholars assume that the domestic incorporation of EU rules is unrecognised by the public (Goetschel 2007; Trechsel 2007) and others argue that the incorporation of EU rules is not systematic and better explained by a policy paradigm than issue-specific interests (Maiani 2013; Oesch 2012; Wyss 2007).

4.4.3 Explanation of Substantive Integration Over Time

The separate multivariate analyses of sectoral agreements and the domestic incorporation of EU rules offer a detailed picture of Switzerland's differentiated integration. In the case of the sectoral agreements, the analysis corroborated the claim that negotiated and institutionalised agreement reforms are driven by different factors. Moreover, mostly the negotiated agreement reforms adopted by parliament are driven by political factors like party positions and issue salience. With regard to the domestic incorporation of EU rules, the multivariate analysis did not reveal clear patterns. This could be related to an assumption sometimes discussed in the literature and a claim made in Chap. 3: The domestic incorporation of EU rules serves as an alternative to sectoral agreements. In Chap. 3, I showed that the domestic incorporation of EU rules is more likely in policy fields with harmonisation agreements but less likely in policy fields with agreements that directly refer to EU law. In this section, I test whether these findings are part of a more general effect. If they are, the time-variant variables are likely to affect Switzerland's differentiated integration at the aggregate level.

For this last multivariate analysis, 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 and implementation measures in federal laws and the total number of sectoral agreement reforms per policy field (sub-chapter of the Classified Compilation of Federal Legislation) and year. For the 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. These dependent variables are best interpreted as count vari-

Table 4.10 Poisson regression analyses of the 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	0.215***	0.288***
	(3.63)	(4.85)
H 1.2		
Balance of trade CH	−0.00000456	−0.00000964***
	(−1.50)	(−3.36)
H 1.3		
EU policy scope	0.157***	–
	(4.23)	
EU policy scope square	−0.0000261***	–
	(−9.23)	
H 2.4		
Issue salience	−0.0239	−0.112***
	(−1.15)	(−5.43)
H 2.5		
Party position/seat share	−0.00119	−0.000167
	(−1.80)	(−0.27)
H 3.2		
Year	−0.0403	−0.0676**
	(−1.86)	(−3.06)
Constant	81.97	139.9**
	(1.89)	(3.16)
Observations	297	20
AIC	1116.1	202.1
BIC	1145.6	208.1

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

ables; therefore, I conducted a Poisson regression analysis. The results are reported in Table 4.10. Model 1 shows the results for the total number of integration steps per policy field and year. Model 2 shows the results for the total number of integration steps per year. 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.

Table 4.10 partly corroborates the hypotheses regarding domestic integration interests and reveals an unexpected correlation. Most surprisingly,

comparative GDP growth is positively correlated with the total number of substantive integration steps at both levels of aggregations. This result corresponds to the finding regarding full adaptations of federal laws (see Table 4.8) and to the descriptive analysis, which showed increasing trends for both Swiss comparative economic performance and Swiss differentiated integration measures (cf. Figure 4.1 and Fig. 4.2). However, it contradicts hypothesis H 1.1. The other two hypotheses regarding domestic integration interests are corroborated. The increasing trade surplus has a statistically significant negative effect on the aggregate number of integration measures (H 1.2, Model 2). The inverse U-shape relationship of the policy scope in the EU with Switzerland's differentiated integration is corroborated (H 1.3, Model 1). With regard to economic integration interests, the multivariate analyses suggest that integration measures are more frequent in times of generally good economic performance. More robust across the analyses, however, is the result regarding the policy scope in the EU. Switzerland's way of external differentiated integration seems to be best suited for EU policy areas with an average level of centralisation.

Similar to the hypotheses about integration interests, the coefficients for the time-variant indicators of political developments also only partially corroborate the hypotheses. As expected, issue salience shows a statistically significant negative correlation with integration measures (H 2.4, Model 2). The less salient European integration in the electorate, the more frequent were integration measures. 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). On this aggregate level, party positions do not influence integration measures. This result contradicts hypothesis H 2.5 but confirms the assumption that not all integration measures are influenced by political factors like party positions. A large number of the integration measures in this model are institutionalised agreement revisions and domestic legal adaptations, which only rarely reach the attention of parties.

Lastly, Table 4.10 confirms another surprising correlation, which was already statistically significant in the analysis of the domestic incorporation of EU rules: the negative and statistically significant correlation of time with integration measures in Model 2. Time also has a negative effect on full adaptations in domestic legislation (Table 4.8) and on negotiated sectoral agreement reforms adopted by parliament (Table 4.6), but only the former effect is statistically significant. This effect was even more pro-

nounced and could also be observed in Model 1, when institutionalised agreement reforms were not included in the total number of integration measures (results not reported). I conclude from this that the negative effect is driven by negotiated agreement reforms approved by parliament and the domestic incorporation of EU rules of a high substantive integration quality. The positive trend of the frequency of integration measures observed in the descriptive analyses (Figs. 4.1, 4.2, 4.5, and 4.6) is driven by institutionalised agreement revisions, negotiated agreement reforms adopted by the government, and domestic implementation measures. Large integration steps became less frequent over time, whereas updating and implementing measures became more frequent.

4.5 Discussion: Switzerland's Integration Compromises

The starting point of this chapter was the claim that Swiss differentiated integration is the result of compromises at both the domestic and international level, 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 existing research on the Europeanisation of Swiss politics and policies and on the relationship between Switzerland and the EU has discussed factors explaining these various phenomena, which correspond to a liberal intergovernmentalist research agenda. Liberal intergovernmentalism makes claims about domestic (economic) integration interests, intergovernmental negotiations, and institutional solutions for integration measures. The general argument was adapted and complemented based on existing research on Switzerland. I argued that Switzerland's integration interests depend on economic performance and the level of policy centralisation in the EU; that integration steps are influenced by domestic veto points, party positions, and issue salience; and that agreement negotiations succeed if issues are linked and Switzerland agrees to considerable substantive integration.

4.5.1 Different Explanations for Different forms of Integration

For several reasons, I argued that different forms of integration measures (i.e., sectoral agreements or domestic incorporation of EU rules) are driven by different factors. One reason is that depending on the constitutional requirements, integration measures face more or fewer veto points and therefore are also more or less affected by political factors like party positions or issue salience. In a similar vein, researchers observed that the domestic incorporation of EU rules only rarely reaches public attention. Another reason is that most existing research has been based on case studies, either of single instances of the incorporation of an EU rule into a federal law or of concrete agreement negotiations. Accordingly, the generalisability of the findings cannot be taken as granted but has to be tested. For these reasons, I started the multivariate analyses with tests of the distinguishability of the different categories of differentiated integration measures.

The empirical analysis of the sectoral agreements built on the insights from Chap. 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, and assumed that the latter are more likely to be related to political explanatory factors than the former. The distinction between institutionalised revisions and negotiated revisions with respect to the independent variables included in the models was statistically corroborated. The claim had to be adopted only slightly: Negotiated reforms approved by the government in its own right proved not to be distinguishable from institutionalised revisions. This is not surprising, as such reforms are to a similar degree sheltered from public attention. More surprising is that the difference between negotiated reforms referring directly to EU law and those without such references was not corroborated. In terms of the independent variables included in the statistical models, constitutional requirements mattered more than the substantive integration quality.

For the analysis of the domestic rule incorporation, I distinguished between implementation measures of sectoral agreements on the one hand, and legal adaptations without a relation to a sectoral agreement on the other. Among the latter, the distinction between full and partial adaptations to EU rules was statistically corroborated, whereas merely

EU-compatible reforms could not be distinguished statistically from reforms in EU-relevant areas not incorporating EU rules. These findings indicate that the differentiated measurement of different legal and substantive integration qualities was fruitful at the domestic level, whereas at the level of sectoral agreements, the constitutional requirements for the adoption of agreement reforms seem to matter more in terms of the independent variables than their integration quality.

4.5.2 The Role of Interests, Politics, and Negotiations

The statistically distinguishable categories of integration steps were analysed in terms of hypotheses regarding domestic integration interests, the domestic decision-making system, political factors like issue salience and party position, and factors related to negotiations with the EU. Regarding Switzerland's integration interests, I argued that Switzerland is more interested in integration in times when its general economic performance is worse compared to the EMU average. The empirical analyses did not corroborate these hypotheses. 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. The positive correlation of a higher GDP growth with the frequency of integration steps is statistically significant in the case of the full incorporation of EU rules into domestic legislation and in the case of the total number of substantive integration measures per year. These findings contradict a basic claim of economic integration theory that a country is 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. The finding is also relevant regarding the topical but not well-researched question about the economic significance of Switzerland's differentiated integration: Has Switzerland been more willing to pursue integration in comparatively wealthy times, or has the increasing wealth been a result of the integration? Of course, variables exogenous to the European integration process must not be ignored when searching for answers to this question. But whatever influences economic performance, the economic interests and performance of the EU average could also play a role in the treatment of the non-member state Switzerland. Perhaps the EU tolerates less special treatment and exerts higher pressure on Switzerland in times when it is performing worse economically.

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. For this reason, I argued that Switzerland's integration interests are also influenced by the performance of the export-oriented sector. The empirical analyses revealed only a single statistically significant correlation. Switzerland's balance of trade is negatively correlated to the aggregated number of substantive integration steps per year. This corresponds to the argument that Switzerland undertakes fewer integration steps in years with a high trade surplus and undertakes more integration steps when the export-oriented sector is less successful abroad because integration could spur exports. Although this correlation is intriguing, it is not a corroboration of the often-read claim that Switzerland's European policies serve the interests of the export-oriented sector. The reasons are twofold: First, the differentiated integration measures were not categorised with regard to the question of who benefits from integration steps. Second, the negative sign of the coefficient could be an effect of the deep drop in 2008, the year of the banking crises. Apart from that year, Switzerland's trade surplus was steadily increasing and so was the total number of integration measures.

One of the most intriguing results of the empirical analysis is the relationship of the scope of EU policies with the probability of integration measures by Switzerland. Whereas the nature of the EU policy seems not to play a role in the domestic incorporation of EU rules, it plays a role in negotiated agreement reforms and, most importantly, at the aggregate level. The relationship takes the form of an inverse U-shape. Integration measures by Switzerland in only loosely and very strongly centralised EU policies are less likely than integration measures in areas of EU policies with a middle degree of centralisation. This result resonates well with earlier findings. For example, some of the case studies in the 2009 special issue of the *Swiss Political Science Review* concluded that Switzerland's access to common policies has become more difficult, the more centralised a policy has become (Lavenex 2009b; Lehmkuhl and Siegrist 2009; Schäfer 2009). At the same time, in areas governed almost without legislation, such as research policy, Switzerland's participation in the common policy does not require legal measures (Lavenex 2009a). This finding is important for future research on external differentiated integration, as it indicates potentials and limits of Switzerland's ad hoc integration. Whereas "integration without legislation," as Sandra Lavenex put it, is probably an ideal case for Swiss sensitivities, it may be bad news for Switzerland that its

way of external differentiated integration reaches its limits when the EU centralises its policies. This finding must be examined in future research on external differentiation.

A second set of hypotheses dealt with political institutions, party positions, and the salience of European integration in the Swiss electorate. Based on the rich literature on this matter, I argued 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 claims 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. But quantity should not be confused with quality. Half of the most important sectoral agreement reforms, those negotiated between Switzerland and the EU anew, were adopted by parliament. Among these, the substantively strongest integration steps with direct references to EU law were even in most cases adopted by parliament and a majority was also subject to an optional or mandatory popular referendum. This finding similarly holds for implementation measures at the domestic level, which almost always were initiated by the Federal Council but often had to be approved at the polls. I conclude from this 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.

Political institutions are crucial, because they channelise the influence of factors like public opinion or party politics on the adoption of integration measures. In the Swiss political system, the referendum threat strongly influences the decision-making process. If a parliamentary decision is subject to an optional or mandatory referendum, a broad coalition is necessary to clear the referendum hurdle. For integration measures, which must face the referendum threat, I therefore argued that they are more likely when they come as a domestic reform package in times when European integration is less salient in the electorate and in times when parties with a more positive attitude towards the process of European integration possess more seats in the federal parliament.

These claims found partial confirmation in the empirical analyses. The most consistent results were found regarding issue salience. Negotiated sectoral agreement reforms adopted by parliament as well as substantive integration steps on the aggregate level were more likely when European

integration is less salient in the electorate. Also, the party position indicator shows the expected, in this case positive, correlations, but this result is less robust as it is only statistically significant in the case of agreement reforms negotiated and adopted by parliament. The domestic incorporation of EU rules is not related to these political factors. I conclude that the domestic incorporation of EU rules is not correlated to these factors, because it does not reach public attention. For example, domestic measures unrelated to sectoral agreements were almost never brought to the polls—in contrast to implementation measures. This corresponds to the finding by Afonso et al. (2014) that politicisation has to be used by political actors in order to make a difference. As sometimes claimed in the public, the incorporation of EU rules into domestic legislation goes on by stealth. However, they are conducted in an arena to which a broad range of political actors have access.

Switzerland's integration steps do not only have to correspond to domestic interests and pass the domestic decision-making system. They also have to be agreed upon with the EU, at least if Switzerland wishes to have an agreement with the EU. Based on earlier research on the negotiations between Switzerland and the EU of the Bilaterals I and II agreement packages, I argued that at the domestic level, the incorporation of EU rules is triggered by agreement negotiations and that at the international level, issue linkage is crucial for the success of negotiations between Switzerland and the EU. The first claim found only weak confirmation in the multivariate analyses. Issue linkage played a less important role than hypothesised. This result is unsurprising, as the claim stems from literature which dealt with a few, though important, agreements. Issue linkage indeed probably played a role for these large integration steps but not for the many smaller ones. However, one should keep in mind that only the most obvious linkages of issues were considered in the analysis. More informal linkages of issues could not be identified with the means of a quantitative data collection.

4.5.3 Development over Time and Prospects for the Future

In regard to development over time, the distinction of different categories of differentiated integration measures proved to be valuable. The frequency of the different forms of differentiated integration changed differently over time. The steadily increasing trend in the total number of integration measures per year between 1990 and 2010 is clearly driven by

institutionalised agreement revisions and domestic implementation measures. Both were nearly absent in the 1990s and gained in importance with the adoption of the Bilaterals I (implementation measures) and Bilaterals II agreements (institutionalised revisions). The latter have been more frequent than negotiated reforms since 2004. On the aggregate level, in a multivariate analysis taking into account other time-variant factors, time is even negatively correlated to the total number of substantive integration measures per year. This effect is driven by full adaptations in the domestic legislation and negotiated agreement reforms. Both were less frequent in the last years of the research periods.

In the terms of integration quality, the development over time can be interpreted as follows. The legal integration quality of new sectoral agreements has had an increasingly strong effect over time. Sectoral agreements have been revised more often, and they also needed implementation measures in domestic legislation more often. At the same time, new integration steps of a high substantive and legal integration quality have become less frequent. This finding could be a consequence of Sieglinde Gstöhl's observation that the EU has become less flexible with regard to special solutions for Switzerland and that it has become difficult for Switzerland to get access to new EU policies.

However, the observed effects are not the end of the story. The empirical analysis covered only 20 years. In the last years of this period, the relationship between Switzerland and the EU entered a difficult stage, because the EU put the question of an "institutional solution" for all sectoral agreements on the table. Switzerland has not yet found an answer to this request, and as a consequence many negotiations have been put on hold. This is the most probable explanation for the decrease in the frequency of negotiated integration measures in the last years of the research period. This trend must be interpreted cautiously. The analyses in this chapter showed that especially negotiated integration steps are unequally distributed over time, because negotiations last several years and in the end the most far-reaching agreements were adopted as packages. Even if the "institutional solution" is found later rather than sooner, once it is in place it will certainly trigger the ratification of the new agreements which have been in the pipeline for some time. This could reverse the negative trend of negotiated agreement reforms.

The chapter built the argument on the liberal intergovernmentalist theory of European integration. It showed that liberal intergovernmentalism 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-to-day decisions. For Switzerland, the liberal intergovernmentalist framework was mainly fruitful because it could build on the insights from Chap. 3. Even though Switzerland refrained from supranational integration, Chap. 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 is called into question even for the non-member state Switzerland.

On the one hand, I found that the integration steps, which must be considered the most important ones because of their high integration quality, were mostly approved by parliament and often even at the polls. National politics thus kept a firm hold on the important integration steps. Intra-state decision-making processes are probably, more important for non-member states like Switzerland than expected by theory, where they do not get much attention. This shortcoming of liberal intergovernmentalist theory is likely to also become more apparent for other European countries, where the call for popular referenda on issues of European integration has become louder in recent years. On the other hand, even if the Swiss government may have also remained in control for the other integration steps, this is surely not the case for parliamentary parties or public attention. Neither the institutionalised agreement revisions, which were analysed in the last chapter, nor the domestic incorporation of EU rules reached the attention of the broad political arena. For a liberal intergovernmentalist research agenda of external differentiated integration, this means that endogenous institutional mechanisms, normally disregarded by this literature, are even more important for non-member states.

Annex

Coding of Independent Variables

Table 4.11 Coding and sources of independent variables used in this chapter

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
Balance of Trade CH	Balance of trade per year in millions of Swiss Francs *("Ertragsbilanz, Saldo")*	Federal Office of Statistics; URL http://www.bfs.admin.ch/bfs/portal/de/index/themen/06/05/blank/key/handelsbilanz.html
*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)

(continued)

Table 4.11 (continued)

Variable	*Operationalisation*	*Source*
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 sub-chapters see table.	(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 this chapter

Table 4.12 Policy fields for EU policy scope indicator

Policy Field Börzel (2005)	*SR chapters and sub-chapters*
Justice and Home Affairs	
Criminal/domestic security	Chap. 3
Civil security	Sub-chapters 52 and 53
Sociocultural 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 coded the scope values based on the later rejected constitutional treaty, which served as a basis for the coding of the years 2009 and 2010, after the Lisbon treaty entered into force

Descriptive Summary Statistics Regression Analyses

Table 4.13 Summary statistics logistic regression negotiated sectoral agreement reforms

Variable	*Obs.*	*Mean*	*Std. Dev.*	*Min*	*Max*
Negotiated agreement ref.	203	0.29	0.45	0	1
Negotiated agreement ref., EU law reference	203	0.16	0.37	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
Trade balance	198	45428.87	25589.51	9460.634	85911.43
EU policy scope	203	2.98	0.71	0	4.5
Federal Council	203	0.76	0.43	0	1
Popular vote	203	0.05	0.23	0	1
Issue salience	192	6.99	4.21	3.87	16.00
Party position	203	148.42	102.72	39.98	353.43
Issue linkage	203	0.36	0.48	0	1
Year of adoption	203	2003.78	6.11	1989	2010

Table 4.14 Summary statistics multinomial regression analysis of domestic rule incorporation

Variable	*Obs.*	*Mean*	*Std. Dev.*	*Min*	*Max*
EU rule incorporation	498	1.47	1.67	0	4
Growth diff. CH-EMU	496	−0.17	1.18	−3.51	2.56
Balance of trade	489	41041.19	18398.28	9460.634	85911.43
EU policy scope	513	2.83	1.35	0	5
Federal Council initiative	498	0.93	0.25	0	1
Linked reform	513	0.41	0.49	0	1
Referendum	483	0.08	0.27	0	1
Issue salience	475	10.53	5.14	3.87	16
Party position	509	221.45	92.09	39.98	353.43
Year	500	2000.15	5.67	1983	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

Notes

1. 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).
2. 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, which leads to a popular referendum (Linder 2005).
3. 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).
4. In the case of domestic legislation, the data set also contains negative cases, and thus federal law reforms of EU relevance, which do not contain EU rules. However, the data set still does not contain those negative cases in which no legislative measure was taken at all.
5. 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).
6. The FDP and the LPS merged in 2009 and have existed since then with the name FDP.
7. In this chapter, the differentiated integration measures are assigned to different years than those thus far. In the descriptive statistics in Chap. 2 and in the regression models in Chap. 3, I used the date of the publication in the Official Collection of Federal Legislation as the year of reference for reforms. This is usually the year of entry into force. In this chapter, 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. The reason is that this year corresponds to the year in which an integration decision was taken. As the arguments in this chapter concern the integration decision, I argue 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, which varies considerably between reforms.
8. 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.
9. Preliminary analyses 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. This is not surprising, as the literature says that the financial sector is not crucially dependent on European integration.

10. 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). These sub-chapters, however, contain well-known cases of EU rule incorporation, like the Law on Equal Treatment of Men and Women, the Law on Public Procurement, and the Law on Acquisition of Houses by Foreigners (cf. Englaro 2009/2010, 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 Chap. 2).
11. 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.
12. 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.
13. In preliminary analyses, also alternative measures for party positions were used: The seat share of the most Eurosceptic 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.
14. This is one of two possible ways to calculate the stance of parties towards European integration based on the manifesto data proposed by Gary Marks et al. (2007). The share of the party's negative statements about Europe is the variable *per110*; the share of the positive statements is the variable *per108* (Volkens et al. 2012). Sometimes manifesto data are said to measure salience of a topic rather than the party position. The indicator as calculated here does not account for the total frequency of statements about Europe in a party manifesto, but only for the ratio between negative and positive statements in order to focus on position and not on salience (cf. Ray 2007).
15. See Chap. 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.

16. A multinomial regression predicts the value for different categories of a dependent variable based on the same set of independent variables, while not assuming that the categories of the dependent variables are ordered (cf. Kohler and Kreuter 2009). It simultaneously estimates binary logits for all comparisons among the categories of the dependent variables and allows testing whether the nominal categories of the dependent variable are correlated differently to the independent variables with the help of Wald tests (Long and Freese 2001).
17. The applied Wald test tests the null hypothesis, stating that the nominal categories of the dependent variables can be combined in terms of the independent variables in the model.
18. The square value of an independent variable is included in addition to the independent variable in order to model the inverse U-shape of the relationship between the independent and dependent variable.
19 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.

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CHAPTER 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 claim, I conceptualised Switzerland as a case of differentiated European integration and justified 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, 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.

The major contribution of this book is the empirical measurement of Switzerland's differentiated integration. It is a contribution to research on Switzerland's policies towards the European Union, because the operationalisation focuses on the degree of similarity between Switzerland's policies and "ideal-type" European integration. To that end, I introduced

S. Jenni, *Switzerland's Differentiated European Integration*,
DOI 10.1007/978-3-319-33684-8_5

the terms substantive integration quality, describing the substantive closeness of the rules in Swiss policies to the original EU rules, and legal-integration quality, measuring the institutional ties between Switzerland and the EU based on concrete policies. Other Europeanisation effects are not captured by the empirical analyses. The measurement also contributes to the research on external differentiation and external governance of the EU. Also in these areas, existing research often consisted of conceptual work and case studies. To my knowledge, only research on the EEA has also used quantitative measurement. These data, however, so far have been used to explain the institutional functioning but not to explain the developments by integration theories. In this regard, the book made a first attempt to catch up in terms of research with the EU rules, which were extended beyond EU territory.

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 covered by the empirical data, 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 (cf. Bochsler et al. 2015). 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; Bornschier 2015). 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 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 Chap. 4. In this conclusion, I discuss the development 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 was 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 as a consequence 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. In the EU, popular referenda have shaped the integration process on various occasions and sometimes led to internal differentiation. Examples are the Danish opt-outs resulting from the popular rejection of the Maastricht treaty in 1992, the rejection of the constitutional treaty in France and the Netherlands, or the Irish votes on the Nizza and Lissabon treaties. In 2017, the British voters will decide on the future of their European integration. The challenge to reconcile democratic participation with European integration is thus not only urgent for Switzerland but for the EU and its member states, too. The Swiss example shows that integration, which regularly has to be approved at the polls, is shaped by similar institutional mechanisms but develops less smoothly and in a less foreseeable way.

This concluding chapter summarises the findings of the book and discusses to what extent the research questions were answered. It proceeds

as follows. The first section serves as summary and retells the history of Switzerland's differentiated integration since 1990 in light of the findings of the book. 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 and of the explanatory power of integration theories for Switzerland, and also includes some comparative remarks. In the third section, I discuss the findings in light of the question posed in the introduction: To what extent can Switzerland 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 empirical evidence presented in Chap. 4 suggests 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 Switzerland's Differentiated Integration: Continuity and Change Since 1990

The book 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 incorporation 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 incorporation of EU rules into domestic legislation without a

relation to a sectoral agreement, 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 lawmaking in the 1990s, it had been replaced by measures implementing sectoral agreements by the end of the research period.

5.1.1 Sectoral Agreements: Bilaterals I and II as Turning Points

Most sectoral agreements between Switzerland and the EU are treaties of international law. Treaties of international law differ significantly from instruments of ideal-type European integration. The most important difference is that traditional international treaties are usually static and monitored by the parties to the treaties on their respective territories. Static means that every amendment has to be negotiated between the parties. This is fundamentally different in the EU, 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, 35 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. This part did not lie in the focus of this book, as the empirical measurement relied on legal reforms as units of analysis. The dynamics analysed in this book and the conclusions summarised in the following sections 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 Chap. 2 and analysed in Chap. 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 observed 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 book, as the book's focus is 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 in the literature, 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 is thus 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 Chap. 3, I claimed that the dynamic development of some sectoral agreements is related to their integration quality. 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, thus the legal integration quality, as well as on the explicitness of their relation to EU law, thus the substantive integration quality. Agreements that are administered by a Mixed Committee, agreements with dynamic provisions, and 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 confirmed the claim that substantive closeness to EU law creates incentives to update agreements in order to uphold their function as sectoral integration treaties. On the other hand, the findings revealed the strong impact of recent changes in the legal quality of agreements on the development of sectoral agreements: 42 out of 157 partial revisions of sectoral agreements between 1990 and 2010 were the result of the dynamic provision in the Schengen Agreement. The Dublin Agreement, the other agreement with a dynamic provision, was revised the first time after 2010 and is thus not responsible for the effect detected in Chap. 3. Thus, the entry into force of the association with the Schengen regime 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 Mixed Committee decisions, and thus they were not the result of an institutionalised mechanism. In Chap. 4, I analysed these reforms and claimed that they must be correlated to the explanatory factors discussed in research on Swiss–EU relations. In order to examine that claim, I distinguished agreement steps, which are the result of the institutional mechanisms detected in Chap. 3 from agreement reforms, which have to be negotiated between Switzerland and the EU (new adoptions and revisions alike). 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 the legal integration quality detected in Chap. 3, 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 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: The negotiations of the Bilaterals I package were also put on hold at least once. Therefore, the conclusion regarding the development over time is not definitive. The future will show whether Switzerland and the EU indeed have become more reluctant to negotiate new substantive integration steps. I rather expect that the current negotiations eventually turn into a new package of negotiated agreement reforms once the institutional question is resolved. The adoption of all agreements currently on the table would reverse the negative trend over time.

In this book, I analysed the sectoral agreements against the backdrop of Switzerland's European policy, but not in relation to Switzerland's general foreign policy. It is worth noting, however, that some sectoral agreements evolved more dynamically recently and that the importance of international law has increased in general. Wolf Linder et al. (2009) 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 my findings, 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 data presented in this book, I am not able to evaluate this interpretation. But I identified one important difference with regard to the development of international law as described by Linder et al. and the development of the sectoral agreements as I researched it. Linder et al. observed that parliament has had an increasing role in approving international treaties in general. My analysis in Chap. 4 showed, however, 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 than traditional international law and that this difference can partly be explained by the integration quality of sectoral agreements. The Federal Council is responsible for most institutionalised revisions. This observation supports the conception of the sectoral agreements as instruments of differentiated European integration, although legally they are treaties of international law.

5.1.2 Domestic Incorporation of EU Rules: From "Autonomous Adaptation" to Implementation

The domestic incorporation of EU rules was observed early on in the process of European integration. At the beginning, reluctant European countries like Sweden or Norway incorporated EU rules in their domestic legislation to prepare for membership negotiations; later, countries with opt-outs like the United Kingdom sought to mitigate some disadvantages resulting from these opt-outs via the transposition of EU rules, which they were not obliged to transpose. This book showed 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, EU-compatibility was a constant characteristic of Swiss domestic lawmaking 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 incorporation was a steady characteristic of lawmaking, 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 incorporation 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 lawmaking affected by EU rules.

As in the case of the sectoral agreements, the integration quality of the domestic incorporation of EU rules has changed over time, and different categories of rule incorporation are differently correlated to explanatory factors. Unsurprisingly, the multinomial analysis conducted in Chap. 4 revealed that EU-compatible reforms are statistically indistinguishable from EU-relevant law reforms that are not compatible with EU law. I thus conclude that the EU-compatible law reforms are not the result of the economic and political factors discussed in political science research on Swiss–EU relations. Rather, I would interpret this finding as a confirmation of the observation that EU-compatibility has become a fundamental principle of domestic lawmaking 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. On the other hand, full and partial adaptations of federal laws to EU rules and implementation measures of sectoral agreements are distinguishable from one another and from other law reforms in EU-relevant areas. Moreover, their respective importance changed in the research period: The incorporation of EU rules without a relation to sectoral agreements was 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. The multivariate analyses in this book thus support earlier descriptive findings. For the integration quality of the domestic incorporation of EU rules, the entry into force of the Bilaterals I agreements can thus be called a turning point.

These findings complement statements in the legal literature regarding the development and quality of domestic rule incorporation. Francesco Maiani's (2008) observation that domestic rule incorporation 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 domestic rule incorporation became less important when Switzerland concluded more sectoral agreements with the EU is supported by the data as well, with the qualification that implementation measures are still necessary. Also, the observation by Daniel Thürer et al. (2007)

that sectoral agreement negotiations were facilitated by previous incorporation of relevant EU rules into domestic legislation finds some support in the analysis conducted in Chap. 4: About one-third of all federal law reforms incorporating EU rules were related to agreement negotiations. Moreover, I showed in Chap. 3 that the domestic incorporation of EU rules is more frequent in policy fields with harmonisation agreements and less frequent in policy fields with agreements that directly refer to EU law. As the latter agreements are also significantly more often revised, this finding can be interpreted as a confirmation for the claim that sectoral agreements substitute for the domestic incorporation of EU rules. This picture of the decreasing frequency of domestic rule incorporation, the increasing frequency of implementation measures, and the relation of domestic incorporation of EU rules to agreement negotiations and agreement characteristics fits into the larger picture of the development of the sectoral agreements. Overall, the legal quality of Swiss differentiated integration has increased over time, and the domestic incorporation of EU rules was conducted in an autonomous manner less often.

The findings about the development over time, and especially the finding of a decreasing frequency of domestic rule incorporation is challenged by a recent study on the Europeanisation of Swiss lawmaking, 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 lawmaking with an "EU footprint" has been increasing more steeply than the number of federal law reforms with an EU footprint (Gava and Varone 2014). For this book, I only analysed federal law reforms and therefore the finding about a decreasing frequency of indirect Europeanisation (domestic incorporation of EU rules not related to a sectoral agreement) and increasing frequency of direct Europeanisation (implementation measures of sectoral agreements) does not necessarily contradict the figures by Gava and Varone. They do, however, call for an in-depth examination of an assumption that has been around for quite a while: It is sometimes said that in the process of Europeanisation, parliament delegates the continuous incorporation of EU rules in a certain area to the Federal Council. If this is true, we would observe an instance of rule incorporation in a federal law reform only once, but this rule incorporation would trigger more instances of rule incorporation into secondary legislation. Further research must show whether the federal laws which incorporated 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 would observe one more similarity between the domestic incorporation of EU rules and sectoral agreement reforms: The recent dynamics in secondary legislation would be based on important decisions to incorporate EU rules into federal laws in a similar way as the frequent revisions of sectoral agreements are the consequence of the conclusion of a few agreements with a stronger integration quality.

5.2 Switzerland in Light of Differentiated European Integration

There are three reasons why I conceptualised Switzerland as a case of differentiated integration. 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. The book established 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 book claimed 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 institutional dynamics which figure prominent in supranationalist integration theory but were previously undetected in the case of Switzerland. This theoretical focus also showed what prominent explanations of Swiss–EU relations resonate with research on European integration and what explanatory factors, which are not in the focus of the latter, are important for Switzerland. One important finding in that regard is the role of the policy scope inside the EU. The quantitative analysis corroborated findings from case studies. These findings can be summarised as follows: A third state can get ad hoc access to loosely formalised EU policies, but it needs a formal agreement for participation in more formalised policies and it tends to be excluded from very formalised

and centralised issues. Integration theory must thus take into account additional factors in order to also be valuable for external differentiation.

The third reason for the conceptualisation of Switzerland as a case of differentiated integration 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 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 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 lawmaking. The broader focus means that both sectoral agreements and domestic legislation were included in the empirical data collection. This allowed me to detect the interrelation between both instruments of differentiated integration, as the domestic incorporation of EU rules sometimes facilitated agreement negotiations, sometimes implemented agreements, and sometimes probably complemented agreements with a harmonisation aim. The narrower focus means that I operationalised integration measures as legal reforms, which contain EU rules, thereby excluding other policy reactions to the process of European integration. This focus implies that the book is not appropriate for assessing the entire impact of the EU on Switzerland. European states not only transpose EU rules but also react to European integration in other ways. An example from Switzerland is the so-called flanking measures, which intend to soften the negative impact of the free-movement-of-persons principle on certain groups, namely domestic workers. However, this focus made explanatory analyses more straightforward, as different factors may explain when European integration provokes the extension of EU rules 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 incorporation 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 interrelated. The substantive extension of EU rules to Switzerland was observed earlier than the legal rule extension. The federal law reforms incorporating EU rules, which were frequent in the 1990s, in large part were not linked to sectoral agreements and thus not legally linked to the EU. Domestic measures implementing sectoral agreements only became more frequent with the entry into force of the Bilaterals I agreements. Similarly, 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 to the respective EU rules more often than federal law reforms not related to sectoral agreements. Partial adaptations to EU rules occurred almost only in federal law reforms without a relation to a sectoral agreement. Interestingly, sectoral agreements with a high legal integration quality but also agreements with a high-substantive integration quality proved to be revised more often, and these revisions were often of a substantively higher integration quality.

The interrelation of integration measures of a high legal integration quality with measures of a high substantive integration quality raises the question of whether it is justified to conceive of substantively imperfect extensions of EU rules and extensions of EU rules without any legal relation to the EU as elements of differentiated integration. This concerns especially the incorporation of EU rules into domestic legislation without a relation to a sectoral agreement. In Chap. 2, I justified their inclusion by the expectation that they are partly related to sectoral agreements. The empirical analyses confirmed these expectations. Although implementation measures very often were full adaptations to EU rules, federal law reforms related to agreement negotiations were just as often only partial adaptations and thus imperfect extensions of EU rules. 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 rule extensions via domestic legislation, whereas agreements that are less frequently revised, like harmonisation agreements without direct references to EU law, are correlated with more domestic incorporation of EU rules. These informal elements seem to be a peculiarity of Switzerland's differentiated integration. Although their interrelation with formal integration steps justifies the conceptualisation as integration measures, their peculiarity calls for more attention from research in the future. For example, one could examine whether partial adaptations in federal laws are similar to compliance problems in the EU or transposition delays in the EEA.

In a similar way, it is questionable whether EU-compatible reforms, which proved to be statistically indistinguishable from EU-relevant federal law reforms that were incompatible with EU law, are rightly conceptualised as differentiated integration measures. One justification could be that EU-compatible reforms indicate EU-compatible policy continuity, and policy continuity as an Europeanisation effect is difficult to measure (cf. Töller 2010; Gava et al. 2014). However, 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 economic and political indicators in a different way than incompatible reforms. This consideration could also apply to the domestic incorporation of EU rules not explained by sectoral agreement negotiations or implementations. Their function remained partly unclear, even though they proved to be statistically distinguishable from merely EU-relevant and EU-compatible law reforms. These reforms could thus also be the consequence of an "EU-compatibility paradigm" in the federal administration. Only in-depth analysis of the decision-making process leading to EU-compatible law reforms or the domestic incorporation of EU rules will reveal whether the policy outcome is the result of a general policy paradigm or serves another function in Switzerland's differentiated integration. Therefore, it is too early to decide whether EU-compatible reforms and the domestic incorporation of EU rules 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 book 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 Chap. 2. Many drawbacks could be dealt with 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, such as 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 Chap. 3 testing whether domestic rule incorporation is more likely in policy fields characterised by specific types of agreements. Similarly, the policy scope indicator used in Chap. 4 is also based on policy fields. Case-oriented research is necessary to reveal the mechanisms leading to rule extensions in fields with harmonisation agreements or a mid-scale value on the policy scope indicator. For the latter, a change of the scope in a specific policy field in the EU and the consequences of this change for Switzerland could be revealing.

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 book 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, 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 incorporated 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 important dynamics of the domestic

incorporation of EU rules (indirect Europeanisation). As secondary legal acts need a basis in federal laws, I consider the descriptive results presented in Chap. 2 as complete with regard to policy fields, but I assume that I do not observe the entire dynamic over time. This consideration offers an additional explanation as to why the domestic incorporation of EU rules was not related to the time-varying explanatory factors in Chap. 4: Secondary legislation probably reflects the reaction to current economic development changes of the policy scope in the EU better than federal law reforms. However, this does not hold for indicators of political development, which affect secondary legislation even to a lesser extent, because it is even more sheltered from public attention than lawmaking by parliament. The conclusion of a "permissive consensus" enabling the domestic incorporation of EU rules thus remains unaffected. Future research needs to explain the Europeanisation of secondary legislation.

The focus on legal reforms also excluded the practical 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 book provides 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 provide variables measuring monitoring provisions in sectoral agreements which can 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 is a consequence of the first. If Switzerland is a case of differentiated integration, its peculiar political response to the challenge of European integration should be explicable by 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. This book, however, 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 book examined Switzerland's differentiated integration as it has actually happened. For these incremental integration steps, political identity only implicitly mattered 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 the rationalist 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. In the case of Switzerland the distinction between "grand bargains" and the day-to-day development of integration could not be deduced from a macro-institutional setup because there is no such setup. Although it seems straightforward that new sectoral agreements are important integration steps, there are also agreement revisions which deserve that qualification because of their substantial significance. An example is the partial revision of the FTA, which became known as the agreement on processed agricultural goods, part of the Bilaterals II package. Other agreement revisions, on the other hand, must clearly be defined as updates of earlier integration steps. Therefore, the book followed the unusual order of first examining institutional mechanisms explaining the day-to-day development of Switzerland's differentiated integration (Chap. 3) in order to be then able to focus on the "big" integration steps and their explanation by factors exogenous to the integration instruments themselves (Chap. 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, Chap. 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 the domestic incorporation of EU rules. 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 dynamic provisions, which foresee sanctions, 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. If this additional mechanism is a general characteristic of external differentiation, it could be researched based on the so-called parallel agreements which, for example, EEA EFTA states concluded with the EU. It would be interesting to learn whether they also evolve more dynamically if they refer directly to EU law.

Also with regard to the relation of sectoral agreement qualities to the domestic incorporation of EU rules, the analysis indicated that sectoral agreements, which lack the integration qualities that spur dynamic evolvement, do not always remain static: Harmonisation agreements, which are not frequently revised, are correlated with more frequent domestic incorporation of EU rules in the same policy field. On the other hand, agreements directly referring to EU law, which are frequently revised, are correlated with fewer instances of domestic rule incorporation. This finding may be sensitive to the coding of policy fields, which was discussed in the previous section, but it deserves further examination: The underlying argument built on the assumption that Switzerland compensates for the lacking agreement updates by incorporating the necessary new EU

rules into domestic legislation, which is sometimes discussed regarding the EU's request of an 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 the domestic incorporation of EU rules is 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 and revealed some explanations for Switzerland's differentiated integration, which are normally not discussed for member states and which have not yet reached the attention of scholars of Swiss politics or external differentiated integration. The integration qualities of the different integration instruments were used only as nominal categories of the dependent variable. The focus was on those instances of integration via legal reforms which remained unexplained by the institutional analysis of Chap. 3. To my knowledge, the explicit reliance on intergovernmentalist arguments is also 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 Chap. 4 built on the measurement of different integration qualities as described in Chap. 2 and in the results of Chap. 3.

Chapter 4 supports the finding that institutionalised agreement revisions (Mixed Committee decisions and revisions of dynamic agreements) and negotiated reforms are explained by different factors. In addition, Chap. 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 are not explained by different factors. However, Chap. 4 also suggests 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. I conclude from this that it is not only institutional mechanisms that are responsible for the part of Switzerland's differentiated integration which is going on "by stealth;" the Federal Council is responsible as well. This conclusion should not be prematurely interpreted as some sort of a hidden agenda of the Federal Council. Instead, the integration steps which lie in the sole responsibility of the government should be examined in case studies, just as the Bilaterals I and II packages were.

The empirical analyses in Chap. 4 suggest that Switzerland is a theoretical outlier with regard to some explanatory factors brought up by liberal intergovernmentalism. The role of economic interests which lie at the core of liberal intergovernmentalism could not be confirmed for Switzerland's differentiated integration. The aggregate number of substantive integration steps is correlated positively with Switzerland's economic performance, which contradicts a basic argument of economic integration theory—that a country is more likely to pursue regional integration when its economy performs worse than the economies of the participants of regional integration. When Walter Mattli made this claim in the 1990s, he stated that Switzerland's rejection of the EEA contradicts the claim (Mattli 1999). According to my analyses, Switzerland kept its outlier role. At this point, it is important to recall that research on Swiss–EU relations rarely refers to economic performance. More often, sector-specific interests and the general interdependence with the EU are mentioned. In that regard, I found weak confirmation for the claim that a weaker performance of the export-oriented industry leads to more integration measures. As these results suggest that economic performance matters less than sector-specific interdependence, a policy field sensitive analysis of the latter could be a promising starting point for future research. In addition, an analysis of the detailed data on the development of the EEA in terms of the economic performance and interests of the EEA EFTA state would be revealing with regard to the question if Mattli's claim only explains accession to a regional integration project or the development of integration below the threshold of membership.

With regard to several other explanations, Switzerland proved not to be a theoretical outlier. Two of these factors, the role of negotiations at the domestic and international levels, are core elements of liberal intergovernmentalism. This indicates that political processes may be more important than economic developments for the timing of integration steps. Two correlations in particular point to the conclusion that Switzerland's

differentiated integration is indeed decided in domestic and international negotiations. At the domestic level, the incorporation of EU rules is often conducted as 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. Further, for Switzerland two other factors also proved to be important which do not lie at the core of liberal intergovernmentalism: the salience of European integration in the electorate and the positions of parties in parliament. The former proved to be negatively correlated to agreement reforms adopted by parliament and the aggregate number of substantive integration steps. The latter was positively correlated only to agreement reforms approved by parliament. Integration in times when European integration is not salient can be interpreted as being facilitated by a "permissive consensus" (e.g., Hooghe and Marks 2008). This also holds for the domestic incorporation of EU rules, although for another reason. They are not significantly correlated to the salience of European integration and party positions, 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 communautaire 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 the domestic incorporation of EU rules, I was able to compare federal law reforms incorporating EU rules to federal law reforms in EU-relevant areas not incorporating EU rules. However, also for federal lawmaking, I cannot exclude that to some extent, lawmaking in general and domestic rule incorporation are driven by similar factors and that this is a reason why the statistical analyses did not produce many statistically significant results. 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[1] or by an analysis of the share of EU rules extended to Switzerland. The second approach would meet a

research interest formulated recently by Frank Schimmelfennig (2014). A first attempt to meet this challenge, which was based on the available data on differentiation in EU secondary legislation, revealed that Swiss opt-ins via sectoral agreements cover approximately one-fifth of all secondary legal acts in the EU since 2002 (Frommelt and Jenni 2015). Against the background of this preliminary finding, the dynamics described in Chap. 3 must be interpreted as an indicator for a tighter relation to EU lawmaking but not as a dynamic which led to more opt-ins.

Also for the question about the role of economic interests, which calls for more in-depth analysis, 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, the empirical analyses did not provide evidence for the role of the export sector. There are two probable reasons for this weak evidence, 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 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 explain integration steps better than particularistic economic interests. This interpretation suggests that the domestic decision-making system and resulting policy compromises are more influential for Switzerland's case-by-case integration than for formal EU membership.

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

One of the central claims of this book is that 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 coun-

tries 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 book started by offering a comparative view of Switzerland's differentiated integration, which helped to measure it quantitatively and explain it by integration theories. Despite this endeavour, the book is a case study of Switzerland, and the quantitative measurement does not allow us to compare the amount of Switzerland's differentiated integration to that of member states. However, the book still provides findings which 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 extension 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.

In recent years, some EU-principles like the free movement of persons have increasingly become criticised, in Switzerland and in EU member states. In Switzerland, the smooth extension of the free-movement principle to new member states was put on hold by a popular vote in February 2014. 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 renegotiation 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). In EU member states, the free-movement-of-persons principles is one of the hotly debated issues related to the vote on EU membership in the United Kingdom. Moreover, on a related subject, rules on border controls have been increasingly interpreted in a flexible way by EU members since the number of refugees entering the EU is increasing.

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 (processed 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 federal law reforms incorporating EU rules occurred in 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 (cf. Chap. 2). As the EU developed from a purely economic community, Swiss differentiated integration also 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 former is also a characteristic for the most formalised external differentiated integration arrangement, the EEA. Although the EEA EFTA countries so far have never vetoed the transposition of an EU rule, delayed transposition is not an exemption (Fredriksen and Franklin 2015). Christian Frommelt interpreted these delays as "one of the ways in which countries protect their interests and sovereignty" (Frommelt 2012: 19). Future research must seek answers to the questions of whether Switzerland's "delay" protects Swiss interests or hampers the benefit of its differentiated integration measures.

The growing "supranationalisation" of EU policymaking, which developed during the research period as a result of various revisions of the founding treaties of the EU, was expected to have little effect on the development of Switzerland's differentiated integration. Most importantly, Switzerland has not agreed on any form of supranational subordination and does not participate in decision-making in the EU. Therefore, supranational actors cannot exert much leverage on Switzerland. In Chap. 3, I showed that despite the absence of supranational actors, the degree of legal integration increased over time in Switzerland and that this legal integration had a large impact on the dynamics of the sectoral agreements. The inclusion of dynamic update obligations in the Schengen agreement, in particular, had a huge effect on the frequency of the revision of that agreement, leading to 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.

In Chap. 4, I tested the argument of whether the degree of "supranationality" of EU policies is related to the probability of differentiated integration measures. The theoretical expectations with regard to the effect of more centralised policymaking on third states were the following: On the one hand, centralisation and formalisation of EU policies make access for non-member states more difficult. On the other hand, centralisation and formalisation requires third states to participate, if at all, by means which guarantee similar substantive and legal integration qualities as for member states. The results confirm that external differentiated integration measures are unlikely in areas where the EU policies are only loosely formalised and centralised. But the probability of external differentiation is highest in policy fields with a mid-scale value, and not in the most centralised ones. Both theoretical assumptions are thus right: Differentiated integration measures become necessary with increasing centralisation and formalisa-

tion of EU policies, but they serve only up to a certain degree. From a bird's-eye-view, this finding corresponds to differentiated European integration in general. For example, the most "vertically integrated" issue, the Economic and Monetary Union, is internally but not externally differentiated (cf. Leuffen et al. 2013).

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, both developments are not irreversible. The widening is in danger as a consequence of the recent popular vote violating the free-movement principle. The deepening via sectoral agreements with a higher legal integration quality has been criticised by the European Council as being insufficient. And the deepening of EU policies is likely to make it at the same time more necessary and more difficult for Switzerland to participate via sectoral agreements. This is suggested by the results in Chap. 4.

Although we observe similar developments in Swiss differentiated integration as in European integration in general, we must acknowledge that these similar developments are related to a way of integration lacking many important characteristics of ideal-type European integration. From a comparative perspective, two characteristics in particular distinguish the Swiss way of integration from formal membership, and both are related to the case-by-case approach of Switzerland's differentiated integration. On the one hand, 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. On the other hand, the approach also means that domestic decision-making plays a more important role in Switzerland. Up until recently, an exit of the EU was inconceivable. However, with the planned renegotiation of the terms of membership by the United Kingdom and the announced referendum, this option must be considered, and the findings of Switzerland may hint at more general dynamics.

Some of the negotiation dynamics between Switzerland and the EU are explicable with existing theories. The results of issue linkage, for example, indicate that bargaining power is not that asymmetric, as Switzerland also 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 even

require the incorporation of EU rules into domestic legislation in advance. The frequent negotiations thus partly hide the fact that 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. The finding could also be bad news for British diplomats, who wish to reduce the integration quality, although they have undoubtedly more bargaining power than the Swiss. At least for Switzerland, I conclude that 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). This pattern is mirrored in the EU. Whereas opt-outs with regard to whole policy fields are frequent, there is only one opt-out which concerns the integration quality but not the issue. Examples for the former are the Swedish or British opt-outs from the Monetary Union; the example for the latter is the Danish opt-out from supranational decision-making in the Area of Freedom Security and Justice (cf. Leuffen et al. 2013; Tekin 2012).

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: Although the analyses in Chap. 4 showed that the most important integration steps were brought to the polls, the various analyses throughout the book showed that many agreement revisions were not even subject to approval by parliament. Chapter 3 also showed that 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 and important 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 members also 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 the domestic incorporation of EU rules. 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, but they do this in different ways for member states and non-member states. The popular rejection of a treaty revision in an EU member state can bring the whole integration process in the EU to a halt. Sometimes the rejected integration project was abandoned, as in the case of the French and Dutch rejection of the constitutional treaty in 2005 (Majone 2006). In other cases, a popular vote allowed a country to negotiate far-reaching opt-outs, as in the case of the Danish rejection of Maastricht. Sometimes, popular votes only led to minor revisions of the integration project, as in the case of the initial Irish rejections of the treaties of Nice and Lisbon. In contrast to these cases, a rejection of an integration step by Switzerland only freezes the relations between Switzerland and the EU. In that sense, voters of EU member states may even be more influential—if they have the chance to vote.

In Switzerland, the frequent use of referenda in relation with the case-by-case approach to European integration has different implications. The recent vote against immigration called into question existing integration even though it was not even explicitly a vote on integration. This vote was possible because of Switzerland's formal independence and shows that although this independence may not always matter 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 renegotiation clause in the sectoral agreement literally, whereas EU representatives have called the free-movement principle non-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 book, 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. The domestic incorporation of EU rules, as long as they are not implementation measures, still does not reach public attention. Popular referenda still put at risk the smooth development of integration dynamics, which has not been formally delegated to the government and the administration. In this section, I discuss two topics brought up in the introduction in light of the findings of the book. 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 book showed that in the area of sectoral agreements, the Bilaterals I and II agreements are those with the highest integration qualities and those that 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 exchange, such as 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. 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 Chap. 3, as it does not directly refer to EU law, and its revisions have not been 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 paradigm of economic cooperation and political abstention is thus still visible, but the strict line between both areas has become blurred.

The developments in the realm of domestic legislation indicate that the 1990s marked the heyday for the policy of "autonomous adaptation," which led to the incorporation 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 the domestic incorporation of EU rules into federal laws which are not related to agreements has decreased, and therefore the economic rationale discovered in the 1990s may not have the same relevance anymore. 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 instances of EU rule incorporation in the 1990s have served as the foundation for a continuous incorporation of EU rules via secondary legislation. If we interpret these developments as a formalisation of EU–Swiss relations over time, Switzerland has become less special during the research period.

The foreign policy paradigm of economic cooperation and political abstention often suggests not only that Swiss foreign policy serves economic interests but that it is driven by the economy rather than by politics. This book suggests the contrary. The correlation of the time-varying indicators of economic performance either contradicts the theoretical expectations or is very weak. Switzerland tended to undertake more integration steps if it was economically better off than its neighbours in the EU (see Chap. 4). Judged based on the time points of integration steps, Switzerland's differentiated integration was instead determined by political processes than by economic performance. Political processes (such as the change of party positions and strength, issue salience and negotiation dynamics in the case of sectoral agreements, and reform packages and relation to agreements in the case of the domestic incorporation of EU rules) were more decisive for the time points of integration. Therefore, although the most important and most-often revised agreements serve economic exchange, they were clearly the result of political processes. This does not mean, however, that economic interests did not play a role. The analyses in this book are not detailed enough with regard to economic implications of and reasons for differentiated integration steps. Case-study research must show whether the political processes lead to the inclusion of more interests than one would expect based on the traditional foreign policy paradigm.

In order to evaluate the changes described throughout this book, one once again must remember the implications of the research design decisions. I showed that the integration quality of sectoral agreements and the domestic incorporation of EU rules increased over time, and this seems to be related to a more dynamic development of Switzerland's differentiated integration. However, this finding has to be put into relation with the whole picture of Switzerland's differentiated integration. The conclusions regarding the effects of legal integration qualities of sectoral agreements formulated in Chap. 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 book 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 and point to important differences between Switzerland and EU member states.

A similar qualification is necessary with regard to the domestic incorporation of rules. The result of increasing legal integration needs to be qualified against the background of the finding that over the whole research period, more than half of all federal law reforms incorporating EU rules were not implementations of sectoral agreements. Parts of these reforms could be explained by their relation to agreement negotiations or by their occurrence in policy fields, where harmonisation agreements are in force. The relation of such instances of rule incorporation to concrete agreements has to be researched in the future. For other instances of the domestic incorporation of EU rules, however, the book did not find a consistent explanation. In general, EU rule incorporation is not related to issue salience, party positions or indicators of economic performance. Nevertheless, the inclusion of the domestic incorporation of EU rules in an aggregate analysis of Switzerland's substantive integration proved fruitful (see Chap. 4). The aggregate analysis confirmed several correlations detected already for sectoral agreements. These results indicate that the domestic incorporation of EU rules can only be properly understood in the context of Switzerland's differentiated integration as a whole.

Can Switzerland thus be characterised as a Gallic village in the European integration landscape? Affirmative answers to this question can say that most agreements are static and do not encroach upon Switzerland's freedom to hold referenda on any question, even if it contradicts integration principles. In addition, most EU rules, which were incorporated into domestic legislation, were overtaken voluntarily, without an obligation in a sectoral agreement. Switzerland thus indeed abstained from political integration. Finally, in the 1990s, the years when we most EU rules were incorporated into domestic legislation, these legislative activities were part of larger developments which were related not only to European integration but also to an economic recession and a paradigm change in economic

policy. Negating answers regarding the Gallic village can say that 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 Gauls 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 Gauls thus lost some control over the development of their European integration to their governments and administrations.

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 at 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 Euroscepticism 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 incorporation of EU rules into domestic legislation. Agreement reforms adopted by the Federal Council cannot be challenged at the polls, and the incorporation of EU rules into federal laws, which can be, were almost never challenged there. This corresponds to the liberal intergovernmentalist arguments that gov-

ernments 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 Chap. 4 showed that although the Federal Council was in charge of most reforms, which extended EU rules to Switzerland 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 referendum. 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 Euroscepticism 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 also valuable beyond Switzerland, because politicisation of European integration has grown in member states. The findings presented in Chap. 4 give some hints about how integration proceeded in a Eurosceptic country with the wide use of popular referenda. The question of issue salience is 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. Moreover, the finding confirms Liesbet Hooghe's and Gary Marks's claim that European integration has been facilitated by a "permissive consensus" in the public (Hooghe and Marks 2008). The relationship between issue salience and European integration is thus the same in Switzerland as elsewhere. The difference is that the electorate expressed a constraining dissensus earlier on than in the majority of European countries.

The relevance of issue salience is related to another factor which was not researched in this book 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 repeat-

edly regretted that the incorporation of EU rules into domestic legislation is conducted by stealth. The fact that federal law reforms incorporating 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 Eurosceptic. There are two explanations for this. The first is that the case-by-case incorporation 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) suggested when he said that the policy of "autonomous adaptation" is facilitated by a permissive consensus. The second explanation is that the public and politicians are simply not aware of the ongoing rule incorporation. This interpretation supports the view of Afonso et al. (2014) that politicisation has to be used by political actors in order to influence policy outcomes. The analysis of the development of Switzerland's differentiated integration thus 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 presented research started in the introduction.

5.4 Political Relevance: Back to Square One?

To conclude this book, I return to the political discussions related to Switzerland's way of differentiated integration. Quite unexpectedly, the topic gained new political relevance recently, after Swiss voters accepted a popular initiative in February 2014. The implementation of this initiative will most probably violate the Free Movement of Persons Agreement. Based on the results presented in the book, 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, it seemed, could be resolved (Zünd 2010). The main reason why the agreement has not been concluded is 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 other hand, 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 renegotiations 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 exper-

tise 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 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 Chap. 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 lawmaking, 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 the 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 book did not research the economic benefits of these agreements, but it showed that the market access agreements of the Bilaterals I package are among the most fre-

quently revised agreements, which hints at the relevance of formal regulations of the relations with the EU in these areas. However, the book 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. This makes the situation more difficult for both Switzerland and the European Union.

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 renegotiation of the sectoral agreements often emphasise that the EU is also interested in certain issues, and therefore Switzerland has a new chance to link issues. The detailed review of the relevant literature throughout this book and the empirical analyses in Chaps. 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 federal law reforms incorporating EU rules (without implementation measures) 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. The EU thus not only successfully extends its rules to Switzerland. It also seems to be successful in extending integration dynamics.

Despite the relevance of European integration dynamics, the EU recognised the international law form of the sectoral agreements and the constitutional requirements for legal reforms in Switzerland. 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, just as it recognised the constitutional requirements of the EEA EFTA states in the process of transposing new secondary law acts in the framework of the EEA agreement (Fredriksen and Franklin 2015). In both cases, the EU also accepts that such constitutional requirements may require more time and lead to a transposition delay compared to the transposition deadline for the full members. However, this does not signify that the EU would also accept a rejection of an amendment to the Schengen agreement in Switzerland or a rejection of an EEA relevant act in an EEA EFTA state. In some regard, the current situation in Switzerland is thus a test for the practical significance of this recognition by the EU of different constitutional requirements in different countries. For Switzerland, it is a test of the significance of its legislative autonomy in general. 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 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 2014). Regarding monitoring and enforcement, the book does not provide insights, as the question of implementation and legal practice was excluded from the empirical analysis. Regarding the discussion of "automatic updates" of agreements, the book provides empirical data which could inform the discussion about the changes that 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 book

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 book, 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 Chap. 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 if they serve to protect specific political interests. In the EEA, transposition delays are sometimes said to be a way of protecting national interests and autonomy (Frommelt 2012). Because of the quantitative approach, this book 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 substantial issues related to Swiss–EU relations. Such an analysis would complement discussions of a loss of sovereignty and autonomy with a discussion of distributional consequences and policy choices, in case Switzerland would agree 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 book 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 they were partly subject to parliamentary approval and thus potentially could also have been challenged in popular referenda. Although the parliament approved many important integration steps and the most important were also approved at the polls, these results suggest that Switzerland has to re-evaluate its legislative autonomy in the current integration situation.

The book also provided new data on the share of domestic lawmaking 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 lawmaking affected by the EU is not per se important for the democratic decision-making process, its development over time and the integration quality of the domestic incorporation of EU rules allow some thoughts about the important issues of legislative autonomy and transparency. The empirical data show that one-third of Swiss federal law reforms which took place between 1990 and 2010 contains EU rules. Out of these legal reforms, two-thirds actively incorporated EU rules. 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 incorporation. These figures are, however, comparable to figures provided for EU member states. Thus, as in EU member states, much less than the 80 % of lawmaking predicted by Jacques Delors is affected by the EU (Brouard et al. 2012). In addition, we must recall that this book only focused on legal changes, and we thus cannot say whether all the unchanged federal laws ever incorporated EU rules. Therefore, I conclude that although the EU is an important source for new legal rules, it is by no means affecting every area of legislation.

This picture looks slightly different if we take into account only law reforms in areas with relevant EU rules. The empirical data allows 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 2.4 in Chap. 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, this incorporation of EU rules into federal laws does not gain public attention and is 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 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 the incorporation of EU rules into domestic legislation is relevant for Swiss democracy. The book showed that federal law reforms incorporating EU rules without an agreement obligation became less frequent over time and implementation measures of sectoral agreements became more frequent over time. In addition, I interpreted the results of Chap. 4, which suggest that the domestic incorporation of EU rules is not influenced by the salience of European integration or party positions in parliament and almost never brought to the polls, as a sign that the public is not aware of this process. On the one hand, these findings underline the transparency problem. On the other, the findings show that in certain regards, it has become less severe over time. Therefore, the issue of federal law reforms incorporating EU rules should be discussed in the context of the Swiss integration situation as a whole.

In recent years, the increasing legal quality of Switzerland's differentiated integration probably enhanced the transparency problem more strongly 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 in general and Switzerland's constitutional requirements in particular, 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.

Note

1. On an aggregate level the development of EU 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).

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Note: Page numbers with "n" denote notes

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DOI 10.1007/978-3-319-33684-8