

BEING EUROPEAN, OUTSIDE THE EU: EFTA, EEA AND UK

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Abstract

Currently outside the European Union for various reasons, Iceland, Liechtenstein, Norway, Switzerland and the UK share with the EU common values which should lead to more intense cooperation in the present geopolitical situation, beyond economic matters and also including security and defence. On the constitutional level, we argue that the EU's relations with these countries – and with others such as Andorra, Monaco and San Marino – should be perceived as a special and distinct sub-part of the European Neighbourhood Policy under Article 8 TEU, where not only geographical proximity and economic ties, but also and foremost common values form an essential basis for the mutual relations and which must lead to mutual trust. These aspects should be seen as a key pillar of the EU's partnership architecture and of EU constitutionalism.

1. Introduction

The present contribution puts the focus on five States in Western Europe currently outside the European Union (EU), namely Iceland, Liechtenstein, Norway, Switzerland and the UK. Following the foundation of the European Coal and Steel Community by France, Germany, Italy and the Benelux States, the UK in 1956 proposed to the then Organization for European Economic Cooperation the creation of a much larger, intergovernmental regional free trade area.¹ It was an idea supported, for example, by Switzerland.² It did not succeed. Instead, the six Community States – subsequently referred to as ‘the inner six’ – preferred to pursue the supranational path following the Coal and Steel Community and founded the

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1. *The British Proposal for a Single Free Trade Area* <www.cvce.eu/en/education/unit-content/-/unit/02bb76df-d066-4c08-a58a-d4686a3e68ff/e719ad54-d9d9-4996-bf91-60aa489d5f29> (all websites last visited 20 November 2025).

2. For a historical account, see Dieter Freiburghaus, *Königsweg oder Sackgasse?* (Verlag NZZ 2009) 62–72.

European Economic Community (EEC) and Euratom. In response, the European Free Trade Association (EFTA) was set up in the 1960s as an alternative, intergovernmental project by ‘the outer seven’, namely Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK.³

On both sides, membership changed over time. When the UK and Denmark joined the Communities, the 1972 EEC-EFTA Free Trade Agreements linked the two spheres in international trade relations, building upon the GATT. Today, the EFTA consists of Iceland, Liechtenstein, Norway and Switzerland, with the former three also being the EEA/EFTA members of the European Economic Area (EEA).⁴ Since the mid-1990s, this comprehensive agreement has been linking the EEA/EFTA States to the EU’s internal market, thereby forming the first step of what the EU’s political institutions have come to perceive as the ‘extended internal (or single) market’.⁵ Rather than joining the EEA, Switzerland over time has concluded a large number of ‘sectoral’ treaties with the EU, providing, as far as the economic part of this network is concerned, for partial participation in the EU’s extended internal market. An institutional update and the conclusion of further treaties (the so-called ‘package’) has been negotiated by the parties and now (at the time of writing) awaits formal signature and then approval and ratification.⁶ As for the UK, it changed sides, from the EFTA to the Communities and subsequently the EU, but then more recently left the EU (Brexit), without rejoining EFTA.⁷

In this situation of different circles of integration, what are the common values and legal institutions that bind together Western Europe beyond the EU, and help articulate and defend European values as they come under

3. On the EFTA, see Georges Baur, *The European Free Trade Association. An Intergovernmental Platform for Trade Relations* (Intersentia 2020).

4. On the EEA Agreement, see Carl Baudenbacher (ed), *The Handbook of EEA Law* (Springer 2015), and Finn Arnesen and others (eds), *Agreement on the European Economic Area: EEA Agreement. A Commentary* (CH Beck 2017).

5. Eg the Council since 2014; Council Conclusions on a Homogeneous Extended Single Market and EU Relations with Non-EU Western European Countries (General Affairs Council Meeting, Brussels 16 December 2014) <www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/146315.pdf>.

6. On the EU-Swiss relations and in the English language, see Matthias Oesch, *Switzerland and the European Union. General Framework. Bilateral Agreements. Autonomous Adaptation* (Dike 2018). A great number of books are dedicated to the relationship, more recently see Marc Maresceau and Christa Tobler (eds), *Switzerland and the EU – A Challenging Relationship* (Brill 2023); Nicolas Forster and Andreas Schwab, *Schweiz und Europa: eine politische Analyse* (Herder 2022); Philippe G Nell, *Négotiations Suisse – Union Européenne: Regard critique sur des grands échecs et nouveaux espoirs* (éditions Slatkine 2025).

7. Eg Julie Smith, *The UK’s Journeys into and out of the EU: Destinations Unknown* (Taylor and Francis 2017); Graham Taylor, *Understanding Brexit: Why Britain Voted to Leave the European Union* (Emerald Publishing 2017), and Michael Dougan, *The UK’s Withdrawal from the EU. A Legal Analysis* (OUP 2021).

attack? What are the contributions by the EU and by the five countries mentioned, and what could the EU learn from them?

2. Respect for self-determination and pluralism

The very existence of non-Member States of the Union at the margins and in the middle of Europe bears witness to the full respect for the principle of self-determination, enshrined in Article 1(2) of the UN Charter. Respect for self-determination amounts to the most important foundational value and principle in third-party relations.

All EU relations with non-members are based upon international law and upon preferential trade and cooperation agreements, none of which was imposed. Territorial integrity is respected. Member States and the EU but also EFTA States have fully respected the ban on aggression in Article 2(4) UN Charter, subject to collective self-defence and humanitarian interventions justifiable under the emerging doctrine of responsibility to protect.⁸ Relations are based upon treaties mutually negotiated and agreed upon, absent coercion. This is not a matter of course considering European history. It is also in stark contrast to contemporary Russian imperialism, which is seeking to reestablish the boundaries of the former Soviet Union, and with contemporary US trade policy and the imposition of so-called reciprocal tariffs and lopsided agreements under an imperial and autocratic presidency, all providing a slap in the face for World Trade Organization (WTO) principles and law.⁹

Of course, the Union defends its interests in treaty negotiations and pulls its economic weight, but at the same time it respects the needs and concerns of non-members, prospering formally outside, but closely linked to, the internal market. Brexit as an act of national self-determination was accepted by the EU. Likewise, Switzerland is not bullied into agreements despite patience being strained. This is of profound importance in times when fundamental principles of international law are at stake and the world risks falling back in geopolitics to doctrines prevailing in the 18th and 19th centuries all the way to 1945, with a brief interlude for the League of Nations.

8. Peter Hilpold (ed), *Responsibility to Protect (R2P): A New Paradigm of International Law?* (Brill Nijhoff 2015).

9. Thomas Cottier, 'Die neue Zollpolitik der USA aus WTO-rechtlicher Sicht: Beurteilung und Vorgehen' (*Jusletter*, 28 April 2025) <jusletter.weblaw.ch/juslissues/2025/1238/die-neue-zollpolitik_19a9ecdb0.html_ONCE&login=false>; Christian Tietje, 'Welthandelsrecht im Abgrund?' (*Die öffentliche Verwaltung* 2025) 773.

Mutual respect for self-determination provides the foundations for the European architecture of variable geometry, reflecting the value of pluralism which, in terms of culture, politics, mentalities and languages characterizes the European continent. Evolutions following the 1972 EEC-EFTA Free Trade Agreements were tailor-made for the EFTA members. Relations range from the EEA (Iceland, Lichtenstein, Norway) to free trade agreements cum further bilateral agreements (Switzerland), and a free trade agreement with the UK following Brexit. Special arrangements also exist with the micro-States Andorra, Monaco and San Marino. For two of them (Andorra and San Marino), they are now turned into a particularly far-reaching internal market association.

This results in a European model of variable geometry with several layers of integration, notably economic: inside the EU the internal market and the customs union for all Member States and partial economic and monetary union for a number of them; in the Union's external relations the extended internal market, often supplemented by agreements in further fields such as Schengen and Dublin, and other types of association agreements and relations based on free trade agreements. Moreover, this model is not limited to Western Europe but informs EU trade policy beyond it. For example, relations with Turkey are based upon a customs union and association in further fields. Agreements with candidate States of accession, including Ukraine in particular, entail close cooperation seeking to extend and secure the basic values.

3. A distinct part of the EU's ENP based on common values and mutual trust

Throughout their dealings with Western European non-Member States, the European Communities – and subsequently the EU – have worked on the basis of shared values. In the founding period after the World Wars, Swiss federalism and democracy in fact was an important template.¹⁰ Human dignity, and thus the individual, emerged centre stage in the post-World War II order. Today, the rule of law, separation of powers, independence of the courts, democracy and fair elections, and protection of human rights provide a common basis in European constitutional culture and law. Freedom was, and remains, a foundational value that makes other values

10. Heinrich Schneider, 'Die Eidgenossenschaft – Vorbild und Leitbild für die Einigung Europas?' in Thomas Cottier and Rachel Liechti-Mc Kee (eds), *Die Schweiz und Europa. Wirtschaftliche Integration und institutionelle Abstinenz* (Publikationen des Forums für Universität und Gesellschaft, Universität Bern v/d/f 2009) 107.

possible. Writing against the present background of the Russian war of aggression against Ukraine and of political developments in the US, historian Timothy Snyder argues that true freedom is more than ‘freedom from’, that is, a negative value; rather, it also must include ‘freedom to’ – that is, a positive value: ‘If we want to be free, we will have to affirm, not just deny ... Freedom is about knowing what we value and bringing it into life.’¹¹

The common values of the EU and its partners find shared foundations in domestic constitutions, international law and more particularly the UN Charter, and in the law of specialized organizations such as the WTO. In Europe, they extend to the regional law of the Council of Europe, particularly the European Convention of Human Rights, which informs both EU law and the law of European States, whether members of the Union or not. To some extent, the common values also appear in the agreements with the five States under discussion.

Most notably, both the Preambles of the EFTA Convention and the EEA Agreement refer to ‘long-standing common values and European identity’ as the basis of the relationship between the EFTA States and (now) the EU.¹² More recently, the Preamble to the negotiated Association Agreement between the EU and Andorra and San Marino has been formulated even more explicitly, referring to ‘relations based on values common to the EU and the Associated States of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, which constitute essential parts of this Agreement’.¹³

In the case of the UK, an explicit reference to ‘shared’ values can be found in Article 763 of the Trade and Cooperation Agreement (TCA), in Part VI on ‘Dispute settlement and horizontal provisions’, rather than at the beginning of the Treaty.¹⁴ Still, the Preamble notes the parties’ ‘commitment to democratic principles, to the rule of law, to human rights, to countering proliferation of weapons of mass destruction and to the fight against climate change, which constitute essential elements of this and supplementing agreements’.

11. Timothy Snyders, *On Freedom* (Crown 2024) xiii and xv.

12. Convention establishing the European Free Trade Association (EFTA), as amended <www.efta.int/Legal-Text/EFTA-Convention-1152>; European Economic Area Agreement [1994] OJ L1/3, as amended.

13. Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the Agreement establishing an association between the European Union and the Principality of Andorra and the Republic of San Marino respectively, COM(2024) 189 final.

14. Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [2021] OJ L149/10, as amended.

In the numerous EU-Swiss Agreements, values are not mentioned in the same manner but they are still very much part of the picture. In 2010, the Swiss Government in a report referred to the need for Switzerland ‘to remain a reliable and supportive partner in Europe in order to preserve and promote common values’.¹⁵ The European External Action Service notes that Switzerland and the EU share history, languages, culture, and political values, making them like-minded actors on the world stage.¹⁶ Common values also appear in the context of the package of negotiated agreements, where some of the new agreements refer to shared values. The Commission, in its Proposal for the conclusion of the package, states that it ‘would allow citizens, businesses, and researchers on both sides to fully benefit from the geographical proximity, shared values, and economic links between the Union and Switzerland’.¹⁷

The overall picture amounts to a tailor-made network of agreements, extending principles and rules of Union law to non-Member States, all made possible by shared values. It is true that the Court of Justice, when interpreting such agreements, tends to emphasize differences rather than foundational commonalities, for example when contrasting the EEA Agreement with the economic treaties with Switzerland. For the latter, the Court repeatedly noted the lack of a system where *all* obstacles to free movement are removed through treaties and drew from this the conclusion that Switzerland ‘did not join the internal market’.¹⁸ Only more recently did it concede that ‘[a]lthough the Swiss Confederation does not participate in the [EEA] and in the [EU’s] internal market, it is nevertheless linked to the [EU] by numerous agreements covering vast fields and prescribing specific rights and obligations, analogous, in some respects, to those laid down by the Treaty’.¹⁹ As noted above, the EU’s political institutions take a different view, seeing Switzerland as part of the EU’s extended internal market.

In relation to the UK and in the context of judicial cooperation in criminal matters, the Court has compared the TCA with the legal frameworks created for Norway and Iceland through non-economic agreements outside and in addition to the EEA. It found the TCA regime on the surrender of persons not comparable and concluded from this that the

15. Swiss Federal Government, *Bericht des Bundesrates über die Evaluation der schweizerischen Europapolitik (in Beantwortung des Postulats Markwalder [09.3560] «Europapolitik. Evaluation, Prioritäten, Sofortmassnahmen und nächste Integrationsschritte»)*, BBl 2010 7239, 7340.

16. See <www.eeas.europa.eu/switzerland/european-union-and-switzerland_en?s=180>.

17. Proposal for a Council Decision on the conclusion of a broad package of agreements to consolidate, deepen and expand the bilateral relations with the Swiss Confederation, COM (2025) 309 final, 2.

18. Case law beginning with Case C-351/08, *Grimme*, EU:C:2009:697, para 27.

19. Case C-581/17, *Wächter*, EU:C:2019:138, para 36.

principle of mutual trust, which it sees as the foundation of the EU's specific system of surrender, is limited to the EU Member States, Norway and Iceland, to the exclusion of the UK.²⁰

At the same time, the Court stated that the principle of mutual trust, more broadly understood, is based on the premise of common values.²¹ We submit that, on the constitutional level, more emphasis should be put on the common foundation of the shared values in the relations with the States under discussion. Whilst we accept that legal differences between different regimes may lead to differences in their interpretation,²² we argue that, on a higher and more fundamental level, the EU should see relations with non-members such as the EFTA States, the UK, Andorra, Monaco and San Marino as a special and distinct sub-part of the European Neighbourhood Policy (ENP) under Article 8 TEU, where not only geographical proximity and economic ties, but also and foremost common values form an essential basis for the mutual relations and which must lead to mutual trust. These aspects should be seen as a key pillar of the EU's partnership architecture and of EU constitutionalism.

4. Diverging interests, local governance and direct democracy

Why, if they share the same values, would the Western European non-members, whose parameters comply with the values and criteria of membership, abstain from joining the EU? In seeking an answer, it is important to distinguish economic interests from shared values. Whilst there is a broad range of shared economic interests which have found their way into existing agreements, diverging interests so far have kept these countries outside the Union, abstaining from full membership or recalling it in the case of the UK.

Liechtenstein forms a customs union with Switzerland and at the same time squares the circle with the EEA. Norway and Iceland defend their fishing grounds and mineral resources. Like Switzerland, they protect family-based agriculture, enjoying roughly twice the level of support that they would receive in the EU. In Switzerland, EU regulations are often considered too intrusive and restrictive. Though often unilaterally adopted, it is with a 'national finish', cutting off what is perceived as hard edges or overly complex regimes found in compromise within the Union. Moreover,

20. Case C-202/24, *Alchaster*, EU:C:2024:649, as of para 55.

21. *Ibid*, para 62.

22. Christa Tobler, 'Die EuGH-Entscheidung *Grimme* – Die Wiederkehr von *Polydor* und die Grenzen des bilateralen Rechts' in Astrid Epiney and Nina Gammenthaler (eds), *Schweizerisches Jahrbuch für Europarecht 2009/2010* (Stämpfli, Schulthess 2010) 369.

the view prevails that trade interests are best independently secured within the WTO and a network of preferential agreements, including the dense network with the EU. The potential of the common commercial policy is not estimated highly, and it is felt that a proper network within or without EFTA is preferable. Negotiations often compete with the efforts of the EU, and in some cases, such as the Swiss free trade agreement with China (2013)²³ or the EFTA Agreements with Indonesia (2018)²⁴ and India (2024),²⁵ shallow agreements within the EFTA framework were concluded before the deeper and more complex EU agreements, if the latter ever materialized.

Apart from sectoral interests, it is important to note that domestic constitutional structures often play an important role in understanding the motives of non-members in abstaining from joining the EU. While basic and shared values remained largely non-controversial, the importance of decentralized, local governance and of direct democracy amount to structural values impeding membership of the EU. The Swiss and UK experiences offer lessons of interest also to the EU and its Member States. In Switzerland, which has a strong decentralized tradition, it is feared that further centralization through EU membership will curtail voters' rights in referenda and constitutional initiatives and limit domestic sovereignty. The UK, in contrast, suffers from extensive centralization. The absence of effective local government backfired and was one of the driving motives to leave the EU and to 'take back control'. Populism blamed the EU for poor services and domestic problems in neglected regions of the country, stirring resistance to European integration.

Globalization and Europeanization and the shift of powers to national and transnational governance triggers resistance by non-members and members alike. People are mainly interested in the local level, where they live and die. It is here that they wish to be involved. This needs to be considered in the overall architecture. It is here that the Union may learn lessons from non-members to strengthen local governance in response to globalization and Europeanization with a view to achieving an overall balance of powers between different layers of governance. It is important to attain an overall

23. Free Trade Agreement between the Swiss Confederation and the Peoples' Republic of China <investmentpolicy.unctad.org/international-investment-agreements/treaty-files/2751/download>.

24. Comprehensive Economic Partnership Agreement between the Republic of Indonesia and the EFTA States <www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/indonesia/fta-indonesia-main-agreement.pdf>.

25. Trade and Economic Partnership Agreement between the EFTA States and the Republic of India <www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/india/1.%20Main%20Agreement.pdf>.

governance structure entailing local, regional, national, European and international levels which secures a vertical balance of power and protects fundamental rights on all levels alike. Public goods need to be assigned to the appropriate level of governance. Tasks should be allocated to the level most suitable to achieve the goal, subject to judicial review.²⁶

In Switzerland, direct democracy, extensively practised at all layers of governance, is a value often considered inconsistent with the EU, the members of which all rely upon representative government. We do not agree. Both the EU and the Swiss Constitution share principles of (quasi-) federalism and enumerated powers. Both accept that law-making on different layers of governance follows different procedures. Representative democracy at the EU level is as legitimate as direct democracy and more suitable for a large Union. We recall that in the US, direct democracy exists in half the states of the Union, but not at the federal level. US constitutional history shows that the two are mutually compatible.

With respect to Switzerland, the negotiated new generation of bilateral agreements with the EU respect direct democracy and allow for referenda on new EU law to be dynamically integrated into the agreements, subject to dispute settlement and proportionate countermeasures in case of rejection. Opponents to the mechanism of dynamic alignment argue that this is not compatible with Swiss-style direct democracy and substantially erodes national sovereignty. We do not agree. Instead, we argue that direct democracy, predictability and legal security are reinforced and enhanced as countermeasures henceforth are subject to judicial review and the requirement of proportionality.

5. Common challenges and the need for action

Regardless of diverging interests, all European States, whether members of the EU or not, face comparable problems and challenges, ranging from enhanced international competition to an ageing population, increased welfare costs and an attraction to migrants. In return, they all face hard right and left populism and a surge of nationalism, defying the legitimacy of the EU and of international cooperation. All countries, if to different degrees, suffer from the aggressive actions of the governments of Russia and the US. Russian imperialism and an autocratic and unpredictable US presidency are threats to European values. They undermine security and independence of the EU and non-members alike.

26. Thomas Cottier and Maya Hertig Randall, 'The Prospects of 21st Century Constitutionalism' in Armin von Bogdandy and Rüdiger Wolfrum (eds), *7 Max Planck Yearbook of United Nations Law* (Kluwer 2004) 261.

Both EU Member States and non-Member States thus find themselves in the same boat. For one, the Swiss Government in its explanatory report on the negotiated agreements makes the following observation, which in our opinion can be transposed to other EU non-Member States:

‘Switzerland can only counter these global instabilities if its relations with its immediate neighbours and with partners who share its values are stable and predictable. Relations with the EU are therefore of central importance for safeguarding Switzerland’s foreign, security and economic policy interests. They are not only a strategic necessity for Switzerland’s security, prosperity and independence. They also ensure that the Swiss population – especially future generations – will continue to enjoy a wide range of opportunities in the future.’²⁷

Certain steps have been taken to defend common interests and values in the economic field, *inter alia*. The EU in 2023 adopted the European Economic Security Strategy²⁸ and, in the wake of it, embarked on a number of cross-sectoral (or horizontal) initiatives. The Commission, considering the internal market as an anchor for stability and resilience, has presented a policy of strengthening it in an ‘uncertain world’.²⁹ In turn, the EEA/EFTA States have noted the EU’s evolving understanding of the internal market and the enhanced focus placed on competitiveness, economic security and the resilience of Europe. For these States, this development has raised questions as to how the new understanding of the internal market might affect EEA cooperation in the extended internal market. In reaction, a specifically set up Task Force on Files with Distinctive Horizontal Dimensions in 2024 presented a report on this issue to the Standing Committee of the EFTA States.³⁰

27. Swiss Federal Government, *Paket «Stabilisierung und Weiterentwicklung der Beziehungen Schweiz–EU»*. Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens, 13 June 2025 <www.europa.eda.admin.ch/de/vernehmlassung-paket-schweiz-eu#Abkommen> 50 (authors’ own translation).

28. Joint Communication to the European Parliament, the European Council and the Council on ‘European Economic Security Strategy’, JOIN/2023/20 final.

29. Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, *The Single Market: Our European Home Market in an Uncertain World*, COM(2025) 500 final.

30. Task Force on Files with Distinctive Horizontal Dimensions, *Cross-Sectoral EU Initiatives: The Way Ahead for the EEA* (Report to the Standing Committee of the EFTA States, Ref 24-452, 4 July 2024) <www.efta.int/sites/default/files/uploads/2024-07/24-452%20Report%20by%20the%20Task%20Force%20on%20Files%20with%20Distinctive%20Horizontal%20Dimensions.pdf>.

In 2024, the UK and the EU decided to enhance strategic cooperation.³¹ In May 2025, a new Security and Defence Partnership was formally concluded.³² Talks or negotiations on such a partnership are also planned with Iceland and Switzerland (Liechtenstein does not have an army). Indeed, security and resilience have moved to centre stage.³³ At the time of writing, Norway is the only EEA/EFTA State formally associated to EU defence tools, also including common procurement. However, the above steps will not be sufficient to address the present situation. Instead, a new alliance in defence of European values is needed.

6. A new alliance in defence of European values

Until now, Western European States who are not members of the EU have been able to stay outside the Union due to international law principles and rules that protect them. Trade by the EFTA States and the UK with most other countries has been based on WTO rules, in addition to building a network of preferential trade agreements. In other words, these countries were able to pursue their interests as non-members of the Union due to the US, the EU and a total of 166 WTO members underwriting the multilateral trading system.

With the policy shift in the US Federal Government in 2025, these foundations are threatened and risk affecting trade not only with the US but with the world at large. As of 1 August 2025, the US has been imposing a 39% tariff on most goods of Swiss origin.³⁴ The rate was defined in a completely arbitrary manner, assessing the balance of trade in goods only, while fully ignoring trade in services, where the picture is the opposite. In comparison, the tariff rates for the EU and the UK are less than half (EU) or even a less than a third (UK) of the Swiss rate. The EU was able to settle a 15% tariff rate while making non-enforceable pledges for enhanced investments and consumption of US energy resources on behalf of the private sector. A comparable offer by Switzerland was initially refused, bluntly showing the face of raw power politics. Only after further diplomatic

31. Statement by the President of the European Commission and the Prime Minister of the United Kingdom on Enhancing Strategic Cooperation (2 October 2024) <ec.europa.eu/commission/presscorner/detail/cs/statement_24_5003>.

32. Security and Defence Partnership between the European Union and the United Kingdom of Great Britain and Northern Ireland <www.eeas.europa.eu/sites/default/files/documents/2025/EU-UK%20Security%20and%20Defence%20Partnership.pdf>.

33. For Switzerland see Thomas Cottier, 'Sicherheitspolitische Herausforderungen der Schweiz in Europa', *Schweizerisches Jahrbuch für Europarecht / Annuaire suisse de droit européen 2023/2024* (Schulthess 2024) 421.

34. At the time of writing except for pharmaceutical goods (imposing and then again deferring a 100% tariff) and gold exports, while both of these are claimed to lead to an excessive imbalance of trade.

efforts, including also from influential Swiss companies, did the door open for negotiations on the same tariff rate as for the EU which, at the time of writing, is being applied provisionally.

Without the effective protection of WTO law, an independent trade policy for the EFTA States and the UK is at risk and may no longer be sustainable. Security and predictability are much impaired. The international rule of law is under threat. Much will depend on third markets and to what extent WTO members other than the US continue to comply with the rulebook.

In this situation, a new alliance is warranted in defence of shared values and interests, including also common security and defence. Both may eventually lead the EFTA States and the UK to consider (re-)joining the EU and the common commercial policy in defence of their economic and security interests and – foremost – of shared constitutional values. But common action is needed now.

Defence cooperation is a comparatively new field of European integration in defence of shared values. The Union, step by step, is returning to its beginnings when the negotiated European Defence Treaty was defeated by Gaullist France and when ‘the inner six’ decided to focus on economic integration. Today, the EU actively engages in building, funding and coordinating defence procurement. National champions and protectionism must make way for an internal market on defence procurement which allows resources to be allocated for defence purposes much more efficiently and at lower costs. A new field of variable geometry is warranted which may best be built upon the model of the Schengen and Dublin arrangements, including originally only some EU Member States, and eventually extended to non-members. European States may pool their defence resources within such a model, streamline procurement and training, and liaise in working within and with NATO.

A common effort, beyond joint and more efficient procurement of armament and materials, also requires joint training and coordination of security and military operations. It requires close cooperation in addressing cyber war and autocratic infiltration of society. Step by step, structures of common security and resilience will be built. Building a European army, air force and navy able to work within NATO as a third pillar next to the US and Turkey, must also include non-members of the Union, in particular the UK, Norway, Switzerland and Canada. The Swiss experience of defence federalism, starting in 1291 and expanding the alliance of centuries, is a historical example in point. A constitutional union was only formed in 1848, and the Swiss Army was gradually formed based on a joint federal staff, cantonal and eventually federal troops.³⁵ Procurement became the sole

35. For a historical account see Alfred Ernst, *Die Konzeption der schweizerischen Landesverteidigung 1815–1966* (Verlag Huber 1971).

competence of the federal government. From this perspective, the participation in a European Army would amount to a continuum for members and non-members of the EU alike in a globalized world facing new geopolitical challenges.

Writing from Switzerland, we note that – whether an EU Member State or not – Switzerland will have to give up splendid isolation, free-riding and its traditional understanding of neutrality and finally assume responsibilities commensurate to its economic and financial means. Western European non-Member States will have to accept the need for a new alliance based on cooperative sovereignty. They will build on their former alliances throughout history and develop new modes of transnational federalism. They will learn and accept that their contribution is essential to strengthen the EU and a precondition to enlargement in South-East Europe – and for staying outside the Union for those who so wish. They will learn that short-term national interests need to cede to long-term defence of European values and shared interests. In the end, values and interests may merge. Trade, economic regimes and security will align and mutually adjust. Allocation of powers will be adjusted, strengthening both European law and local powers and self-governance of peoples. Interests and tools change, but fundamental values of self-determination, the rule of law, democracy and the protection of human rights persist and will guide and inform future decisions in the process of European integration.

