# 12 The more it changes, the more it stays the same?

## Swiss liberalization and regulatory policies in comparative perspective

*Martino Maggetti, Alexandre Afonso and Marie-Christine Fontana*

The wave of liberalization that has swept over most industrialized nations in the course of the last 30 years has led to important changes in state intervention in the economy. It is believed to have provoked a shift from an *interventionist* state to a *regulatory state* that limits its activity to the supervision and regulation of markets rather than directly intervening within markets. While the state is still responsible for rule making through authoritative and binding decisions (*steering*), the functions of service provision and production (*rowing*) are increasingly assigned to private actors (Jordana and Levi-Faur 2004). Following an apparent paradox, reforms designed to promote market mechanisms over state intervention in areas such as telecommunications, energy and transport have not led to the disappearance of state activity, but have instead promoted a strengthening of public regulation through various instruments, notably independent regulatory agencies (IRAs). The expression ‘freer markets, more rules’ (Vogel 1996) incisively sums up this phenomenon. Over the last few decades, all industrialized countries seem to have converged towards this model.

Switzerland is an interesting case for the study of institutional change and the rise of the so-called *regulatory state* as it displayed varying degrees of ‘fit’ with this model. On the one hand, public interventionism has been limited in comparison with most Western European countries, and private solutions have always been preferred over public intervention. This greater degree of correspondence with the new liberal order is expected to imply a high degree of continuity in regulatory arrangements. On the other hand, however, the state in Switzerland has also notoriously shown a low degree of autonomy vis-à-vis private interests. In view of the fact that regulatory functions require a great degree of independence between regulators and regulatees, this, conversely, is likely to imply great disruption in existing regulatory arrangements. Moreover, Switzerland is not a member of the EU, the main promoter of liberalization and the diffusion of regulatory instruments in Europe, which should imply less severe adaptation pressures.

In this chapter, we provide an overview of liberalization and re-regulation reforms in Switzerland with particular attention to path-dependent dynamics in order to explore these ambiguous expectations. First, we will outline the traditional Swiss regulatory model of the post-war period, summarize changes over the last 20 years from a comparative perspective and provide case studies of regulatory reforms across economic sectors (telecoms and electricity, banking and finance, construction). We conclude with an assessment of regulatory reforms in Switzerland.

## The Swiss post-war model of economic regulation

If one considers the classical modes of social order put forward by Streeck and Schmitter (1985), namely hierarchical control by the state, dispersed competition through markets and organizational concertation through interest associations, the latter has featured particularly prominently in the Swiss model of regulation up to the 1990s (see Mach and Trampusch in this volume). When it came to promoting market-making in the 1990s, Switzerland's problem was at least as much the lack of state interventionism as it was public ownership and control. Hence, liberalization policies over the last 20 years have targeted private cartels and non-competitive practices by private actors in particular, as well as public monopolies. This section outlines the modes of economic regulation that prevailed in the Swiss political economy in the post-war period, by emphasizing *private* coordination and self-regulation on the one hand, and *public* ownership and control on the other.

### *Private coordination and self-regulation*

As made clear in the previous chapters, historically, direct state intervention in the economy in Switzerland has been hindered by a series of factors linked to institutions of the Swiss political system (direct democracy, federalism) and power relationships (weak labour, strong business). However, limits on state capacity have not resulted in the prevalence of arm's length competition as a dominant mode of organization in the domestic market seen in liberal market economies. Instead, it has favoured the prevalence of non-competitive practices (cartels) and self-regulation by private actors (so-called private interest governments) in many economic domains. The margin of manoeuvre left by low state intervention has allowed domestic economic sectors to establish a dense system of self-organization limiting competition. A prime example of this phenomenon is the traditionally very lenient legislation on cartels, which allowed for 'the proliferation of cartels with all sorts of market-sharing, price-fixing, and trade-restraining arrangements' (Danthine and Lambelet 1987: 173).

The prevalence of private coordination and anti-competitive practices in the Swiss domestic market can be understood as a compromise between domestic economic sectors (agriculture, retail trade, construction) and export industries (banks, machines, watchmaking). For instance, a soft anti-cartel law could be considered as a side-payment to ensure the support of domestic companies to the free trade policy necessary for the expansion of export industries: domestic economic sectors 'did not get the expected amount of government protection against international liberalization; in exchange, they got a mild anti-cartel legislation that left ample room for self-protection' (Rentsch 1989: 13). Similar mechanisms of self-protection could be observed in the field of corporate governance, where a whole set of regulations excluded outsiders from the market for corporate control. This system of 'selective protectionism' meant that Swiss companies could be deeply integrated in world markets while at the same time being protected against foreign competition on the domestic market (Mach 2006).

Self-regulation by private actors, or the granting of quasi-public status to private organizations, was the counterpart of these strong patterns of non-market coordination. Instead of direct state intervention, supervision and implementation was often delegated to advisory committees comprising representatives of the state and economic interests within what has been called a 'militia administration' (*Milizverwaltung*). These advisory bodies, or permanent 'expert commissions' existed in a wide variety of domains such as banking, agriculture, cartels, vocational training to form a relatively dense network. Around 60 such advisory bodies existed in the Department of Economic Affairs in the 1960s, and there were more than 800 in total in all departments by the end of the 1970s (Katzenstein 1984: 120). In some sectors, rules were set up by the sector's peak association, according to the principle of subsidiarity and given a quasi-public status (e.g. the Swiss Bankers' Association, SBVg; or the Association of Swiss Electricity Companies, VSE). Hence, public regulation was negotiated with the close involvement of the sector being regulated, or even controlled by that sector.

### *Public ownership and control*

Set against the central role of private coordination in economic governance, public ownership and direct public intervention are weakly developed in Switzerland as compared to most other countries, and public expenditure as a share of GDP has remained low by international standards. Even if it is difficult to measure the effective size of government in Switzerland due to the interlinkage between the public and private sectors (notably with respect to social and health expenditures) and various institutional levels (local, cantonal, federal), most studies point to its small size from a comparative perspective. Public expenditure, including compulsory social insurance schemes, amounted to 32.9 per cent in 2008, against 44 per cent in Germany, 52.7 in France and 48 per cent in the UK.[1] When the state became directly involved in the operation of services and utilities, it was often along decentralized and fragmented lines due to federalist structures and the persistence of private operators. Since private solutions have always been the preferred option of dominant political forces, public monopolies often emerged only as a last resort.

A case in point was the railway sector, which the central government decided to nationalize only after many of the private companies that operated the sector ran into severe financial difficulties towards the end of the 1880s, and the ineffectiveness of a structure that was too fragmented became apparent. A similar movement was observed in telecommunications policy, where a first phase of private operation at the end of the nineteenth century was reluctantly substituted with a public monopoly, in particular spurred by considerations guided by regional policy (Fischer 2008). An example of the obstructive impact of federalism was energy policy, where the cantonal structure led to a decentralized and fragmented structure of electricity production with local monopolies. Finally, in many domains, even if there was direct public intervention, room was also left for private service providers. This was the case not only in public utilities, but also in other domains of state intervention such as welfare policies. The three-pillar pension system is a case in point where substantial room was left for a market for private insurance in addition to a basic public scheme (Leimgruber 2008; Bonoli and Häusermann in this volume).

## Liberalization and new regulatory governance in Switzerland

Liberalization can be understood as an attempt to impose dispersed competition (markets) between firms rather than hierarchical control (by the state) or non-market coordination (cartels and self-regulation) in the economy. Whereas the 1970s and 1980s fostered little change in Switzerland, the 1990s marked a radical shift in this domain (Mach 2006). The constraints and opportunities linked to European integration have been a major driving force behind liberalization and regulatory reform in many domains: the opening of public monopolies to competition in telecoms, electricity and post, the suppression of technical barriers to trade within the internal market, more transparent rules in public procurement, a reinforcement of anti-trust laws, the opening of the labour market to EU workers, and the creation of a number of independent regulators in telecommunications, banking and competition.

In many ways, this can be understood as a result of a change in preferences amongst some segments of the business community, and a break in the compromise between sheltered and international business that underpinned the post-war model. First, high prices on the domestic market caused by non-competitive practices were now perceived by export industries facing fierce competition on world markets to be unacceptable. Second, Switzerland had to open its domestic market so that Swiss companies could gain access to the EU Single Market, on the basis of reciprocity. A new pro-liberalization coalition comprising export industries, economists and right-wing parties successfully overcame the whole series of veto points in the Swiss political system to promote markets (Mach *et al.* 2003). Switzerland adapted fairly quickly to this new international context, and liberalized many domains at a quicker pace than some EU member states, despite its non-membership (ibid.; Häusermann *et al.* 2004), and, in spite of the fact that liberalization initiatives were blocked in some domains through referenda, such as in the electricity sector (see below). However, Switzerland lost its status as a liberal haven in the centre of Europe. As regards network industries, for instance, EU countries engaged in massive liberalization; whereas market access was easier in Switzerland than in neighbouring countries in the 1980s, restrictions on market access are now somewhat more stringent (see Figure 12.1).

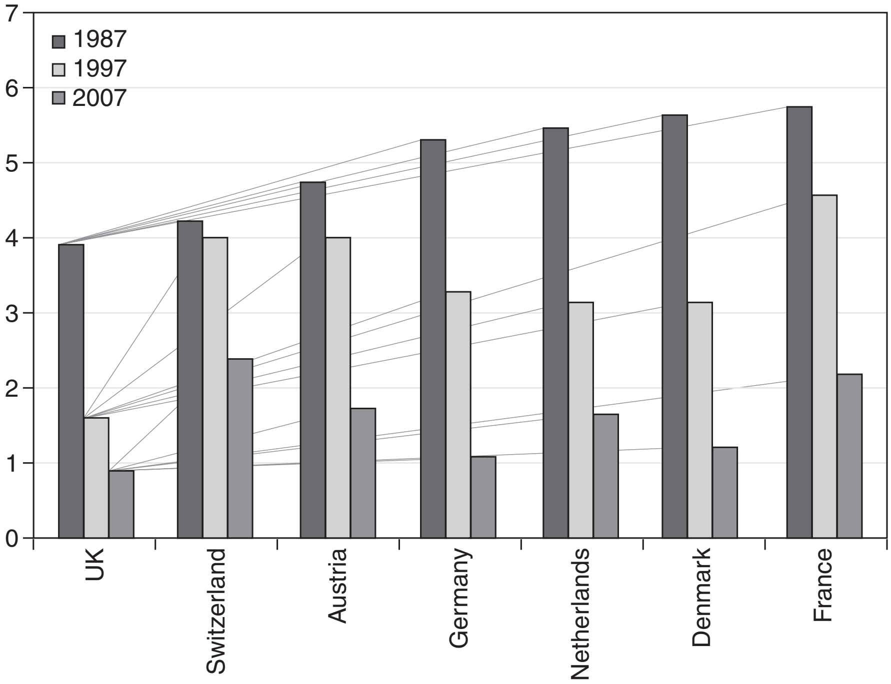


*Figure 12.1* Aggregate index of restrictions on market access in network industries (airlines, telecom, electricity, gas, post, rail, road), 1987–2007 (source: OECD 2008).

As in other countries, and in particular in the EU, the process of liberalization was accompanied by the establishment of so-called independent regulatory agencies (IRAs) (Gilardi 2005). However, in many domains, this process was characterized by strong path-dependent mechanisms. The legacy of self-regulatory practices and private interest governments played a central role here, since private actors were reluctant to surrender their control and delegate powers to the state. Moreover, the expertise required by independent regulators had to be drawn from the structures that existed, and were closely linked to companies themselves. Thus, it is not surprising that the independence of Swiss IRAs is relatively low in comparison with other European states, both in formal and de facto terms (Maggetti 2007; Gilardi 2008). This can be seen in particular in the index of formal independence of regulatory agencies devised by Gilardi (see Figure 12.2).

In the following section, we will analyse liberalization and re-regulation mechanisms in three domains which have been subject to important liberalization initiatives triggered by the EU: electricity and telecommunications, finance and banking, and construction and labour market opening. We will also emphasize the political logics which have underpinned institutional change in their prevailing mode of regulation. Depending on the sector and the specific problems of liberalization, the content of re-regulation may differ, in particular between regulation of competition and the provision of flanking measures.

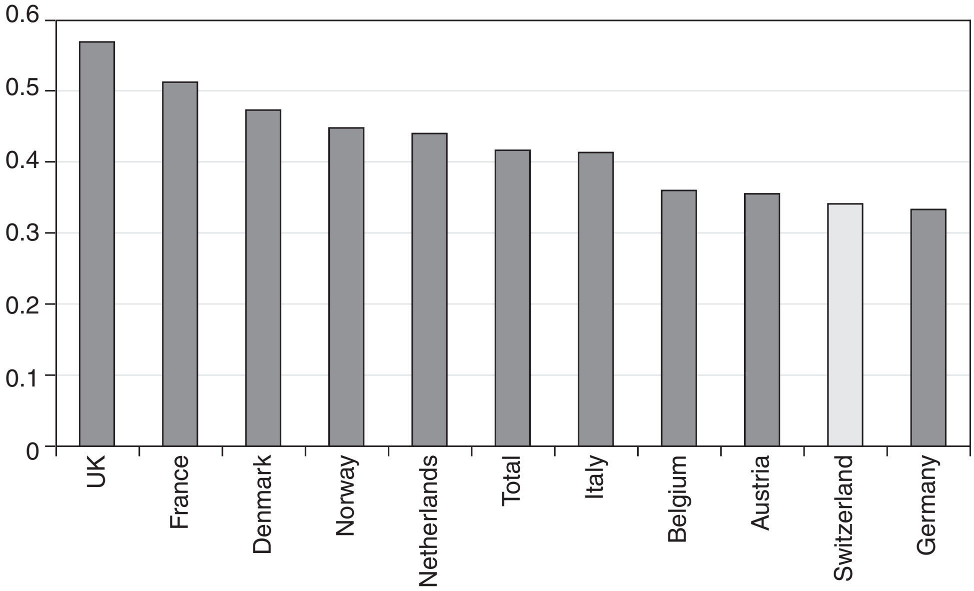


*Figure 12.2* Average formal independence of independent regulatory agencies (source: Gilardi 2008).

### *European initiatives, liberalization and the regulation of telecommunications and electricity*

Telecoms and electricity are two sectors in which liberalization and re-regulation triggered by European legislation put an end to public monopolies in most European countries. In the Swiss case also, the EU was the most important impulse for domestic reforms. However, changes have been ambivalent. On the one hand, market-making has been accompanied by re-regulation and the establishment of regulatory agencies in charge of ensuring compliance with the rules. On the other hand, the former monopoly in telecommunications and the big electricity firms continues to dominate the market. Nevertheless, the extent of transformation in these sectors is comparable to the situation in neighbouring countries such as France, Germany and Austria, with the exception of entry regulations for the electricity market (OECD 2008).

Traditional regulation differed strongly in the two sectors. Telecoms was one of the few sectors in which public ownership was prominent in Switzerland. Despite a first phase of private operations, a public monopoly was established at the end of the nineteenth century. In the 1920s, it was merged with the national post monopoly to form the PTT (Swiss Post, Telephone and Telegraph Companies). Public ownership and the legal framework persisted until recent reforms in the 1990s. In the electricity sector, contrary to most countries, no national public monopoly was set up. Instead, federalism and the implications of private capital resulted in a fragmented mixed economy system (similar to Germany, see Eising 2000: 48–51) with local monopolies controlled in a majority by cantons or municipalities. The competences of the federal authorities were limited to supervision and police safety regulations, nuclear energy, renewable energies and rational energy use (Sager 2007: 690), while those of the cantons included concessions for electricity production and water management (Benninghoff *et al.* 2002: 787). In accordance with the principle of subsidiarity, the regulation of the sector was organized mainly by the sector's industry, notably by its peak association, VSE. This system of self-regulation was supported by a dominant political coalition including the VSE, business associations, cantonal governments and the right-wing parties controlling these governments (Kriesi and Jegen 2001).

Since the mid-1980s, market-oriented reforms have reached utility sectors around the world, facilitated largely by technological innovations. The reforms resulted in fundamental transformations in sectors that until that point had been controlled by the state. In Europe, liberalization of telecommunications and electricity became part of the Single Market project, and several directives were adopted to liberalize the two sectors. Liberalization of the electricity sector was however a longer and more difficult process due to less intense technological and economic pressures, and national autonomy was more important than in the telecom sector (Levi-Faur 1999; Eising 2000; Bartle 2002; Humphreys and Padgett 2006). The Swiss government decided to adapt to both European reforms despite non-membership in order to participate in the Single Market, which was possible only under the condition of reciprocity (Mach *et al.* 2003; Sciarini *et al.* 2004; Fontana 2009). In Switzerland also, the reform of the telecommunications sector was a much faster and smoother process than that in the electricity sector.

The telecoms sector was liberalized by means of three reforms. In 1991, a new Telecommunications Act opened the terminal market and value-added services to competition, without affecting the network infrastructure and universal services. In addition, the law created a Federal Office of Communications (BAKOM) responsible for market regulation. In 1997, a second reform implemented the complete liberalization of the European telecom sector. The Telecommunications Company Law changed the organization of the PTT by allocating the regulation of telecommunications activities to a new firm – Swisscom – that was partly privatized (with the Swiss Confederation as the main shareholder). The parallel reform of the Telecommunications Act introduced a general framework for liberalization. It regulated universal services by concessions and introduced conditions for interconnections in order to enable third party access to the network. It also set up the Communication Commission (Comcom) as the independent authority in charge of concessions (Mach *et al.* 2003; Sager 2007). The most recent reform of the Telecommunications Act was adopted in 2006, opening up the local loop (so-called last mile), and thereby bringing competition to the entire telecommunications sector (Fischer 2008).

The reform of the telecoms sector was supported by a broad pro-liberalization coalition. The export-oriented sector demanded liberalization, which was considered necessary for the competitiveness of the Swiss economy; it was supported by the federal administration, a large part of the left (who favoured adaptation to European norms) and even the former monopoly, since it was a precondition for foreign expansion (reciprocity) and participation in Unisource (an alliance of national telecom companies in Europe) (Mach *et al.* 2003; Sciarini *et al.* 2004).

Since the introduction of competition in 1997, the Swiss telecoms sector has had a fairly high number of operators, but the former public monopoly Swisscom, with the federal state as the largest shareholder, still has the largest market share and has remained the concessionaire for universal services to date. As regards regulation, the Comcom (together with the BAKOM) was granted far-reaching powers by the 1997 Act. However, these were reduced to '*ex post*' control, and the impact and room for manoeuvre of the regulator was reduced by the interpretations of the vague legislation by the Federal Court (Finger and Voets 2003; Fischer 2005).

The electricity sector was liberalized in 2007, following a long decision-making process. Although the Swiss government initiated a reform as far back as in 1994, even before the adoption of the European directive in 1996, the Electricity Market Act (EMG) was only adopted in 2000 – and rejected in a popular referendum in 2002. This framework law aimed to open the energy market to competition with a minimum of re-regulation. In order to guarantee third party access, the law introduced separation of the management of the high-voltage network (a natural monopoly) from the owners (the six largest electricity firms), and installed a private but Swiss-controlled firm to manage that network (so-called transmission system operator, TSO). A dispute resolution body was to be set up for conflicts regarding third party access. After the popular referendum against the law in 2002, a new law was drafted and, in 2007, the Electricity Supply Act was finally adopted. This time, the independence of the high-voltage network (TSO) from the former owners was strengthened, an independent regulatory agency (ElCom) was set up, and the Act included measures to guarantee supply security and to encourage the use of renewable energies.

The referendum against the EMG – initiated by the trade unions and small left-wing parties – surprised the government and the administration since there was a large coalition in favour of the law, including all segments of the industry, all of the major parties (including a majority of the Social Democratic Party in the parliament)[2] and the cantons. Again, adaptation to European developments was considered necessary to ensure the competitiveness of the Swiss economy and its electricity sector, and demands for re-regulation were rejected by the majority of the 'bourgeois bloc'. Following the referendum, the opponents were integrated into the decision-making process, which led to more measures of re-regulation in the 2007 Act. However, the law and its implementation decree only define the general principles, with the regulation of details delegated to the electricity industry, according to the principle of subsidiarity.[3]

The law entered into force in 2008, and competition was introduced in 2009. It is still too early to be able to draw any meaningful conclusions regarding the effects of the new legal framework on the sector. The main transformation is expected from the separation of the network from its former owners, which is planned over a period of several years. An important element of change is the

ElCom (with a staff of 25, which is rather small by comparison) that is already active and has *ex ante* power to control the prices for the high-voltage network. An element of continuity was the establishment of the TSO. While the political process was delayed, the large electricity firms who owned the network themselves established a TSO (Etrans in 2000, then Swissgrid in 2004). This indicates strong path-dependent patterns in the regulation of a sector through self-regulation rather than arm's length competition.

### *Liberalization of financial markets and the regulation of the banking sector*

The regulation of the Swiss banking and financial sector has traditionally drawn on two complementary pillars (Zufferey 1998): the norms and practices of self-regulation on the one hand, and the Swiss Federal Law on Banks and Savings Banks of 1934 (BA) with its implementing provisions on the other. Self-regulatory arrangements were traditionally predominant (Bänziger 1986), while the Swiss state was barely involved in the details of banking regulation (Nobel 1998). The SBVg, the peak association representing the interests of the big banks, cantonal banks and a large number of savings and commercial banks, played and continues to play the most important role in regulating the sector (Busch 2007). In particular, the SBVg issues a series of standards, known as 'deontological' principles, which stipulates the standards to which the management of the affiliated banks must conform. The principal instrument designed on this subject is the Agreement on Due Diligence of Banks, the first version of which dates from 1977. In this context, the regulatory body which ensures compliance with the Banking Act, the Swiss Federal Banking Commission (EBK), had an essentially *reactive* role. Private actors used to set up self-regulatory measures (sometimes called 'codes of conduct') first, which were subsequently adopted by the EBK as minimum standards for all supervised institutions. The traditional regulatory framework of the Swiss banking and financial sector was typical of an (asymmetric) corporatist system (Lütz 1996, 2000), whereby peak associations and the big banks played a crucial role not only in defining the rules but also by enacting them. Here too, regulation was close to a *private interest government*.

The liberalization of capital markets at the global level posed a serious challenge to these arrangements. Capital controls disappeared and the span of activity of banks diversified. Banks no longer acted only as intermediaries and credit lenders, but also became involved in new economic activities in securities trading and insurance (Cerny 2005). While these processes created new business opportunities, they also produced new risks and led to increased competition (Busch 2004), entailing changes in international and domestic regulatory regimes. As Vogel (1996) argued, this was not simply a top-down initiative. Economic actors, including big conglomerates did not simply seek permissive environments (i.e. 'deregulation'), but also looked for stability, high standards and a reliable legal system. As a result, an expert-based regulatory model supported by legislative provisions has spread across the globe.

In the late 1980s, in line with these general developments, the Swiss competition commission pushed forward the liberalization of banking and finance, leading for instance to the abolition of standardized prices and cartel conventions in the sector. A process of re-regulation geared towards replacing the norms and practices of self-regulation of the Swiss financial sector took place. Three crucial items of legislation were passed in the 1990s, the application of which was delegated to the EBK, thereby expanding its formal competences significantly (Maggetti 2009). The first two new federal acts provided for the enhancement of transparency and investor protection (regulation-for-competition). They also complied with international and European standards (Bischof 1995; Mach *et al.* 2007). On the one hand, the Act on Securities Exchanges and Trading (24 March 1995) introduced public regulation in the functioning of the stock market. After the federal government and the parliament gave up on establishing direct public regulation, a compromise was reached with the SBVg and the representatives of the stock exchange. This provided for power sharing in the regulation and supervision of the sector between the Swiss Federal Banking Commission, the Swiss National Bank and the Swiss Stock Exchange (SWX). On the other hand, pursuant to the Act on Investment Funds (18 March 1994), the regulatory competences on this subject were delegated to the EBK and to external auditors, while public intervention was limited to a minimum. However, the law formally entrenched the priority principle for shareholders' and investors' protection. The third piece of legislation, the Money Laundering Act (1 April 1998), followed a slightly different logic. In the wake of a slew of scandals, a consistent majority of political parties and key economic actors agreed on the need for a reform. This could be interpreted as a regulation of risk (regulation of competition) (Bischof 1995). The new act maintained a coexisting system of public and self-regulation, but also provided for the general obligation to communicate 'every relevant suspicion' of money laundering to the public authorities.

In sum, the legislative framework of the financial sector displays an incremental shift from traditional settlements, namely a highly coordinated system based on the primacy of self-regulation, to a more formal and transparent model that includes, if only partially, some characteristics of the ideal type of regulatory capitalism. However, before drawing any conclusions, it is crucial to examine the reform of the EBK, the agency in charge of implementing the new regulatory model. As mentioned above, during the 1990s, the EBK was conferred significant powers, before ultimately being transformed into an integrated regulator in 2009, the FINMA. It profited from a remarkable increase both in capacities and human and financial resources. In fact, the EBK's regulatory competences, which have remained minimal for several decades, were considerably broadened. Their scope widened to include many additional activities, such as the supervision of securities traders, investment funds, securities exchanges, capital markets, bank acquisitions, mergers and competition (Maggetti 2009). The EBK's competences have not only been extended, but also strengthened, as the agency now has the right to initiate new inquiries autonomously and to promulgate severe sanctions that can involve the revocation of an institution's licence or the removal of individuals from a company. The EBK even enjoys rule-making powers, in the form of issuing ordinances.

However, the authority to directly investigate the supervised institutions has been used very rarely (Müller 1997). In fact, the EBK's sanctioning tools display a mere preventive character. The main task of supervision is contracted out to private audit firms that monitor compliance with prudential rules (Busch 2007). This system is often questioned because private auditors may be subject to pressure from the supervised institutions, for which they are actually hired (Gugler 2005). Second, even if the model has been modified in favour of public regulation through the Swiss Federal Banking Commission, at the same time, the degree of independence of this agency from the banking industry is low, and has even been decreasing. In particular, the EBK's board is being progressively populated by representatives of the private sector who are replacing the former members who mostly had a background career in the civil service or academia. Moreover, there is a tendency among regulated industries to intervene even more intensively in some crucial phases of the day-to-day activity of regulation executed by the EBK (Maggetti 2007). More recent developments follow this mixed trend. As anticipated, a new, more powerful, integrated regulator was created in 2009 (FINMA) in order to ensure the supervision of financial markets and insurance. This new regulatory body benefits from more resources, a different organizational structure and a greater level of formal autonomy. At the same time, however, the hiring policy of the FINMA is even more explicitly oriented towards the recruitment of former employees of financial institutions (Gugler 2005).

To sum up, some characteristics of the regulatory capitalism model are encroaching upon the supervision and regulation of the Swiss banking and financial sector, although in a minimal and rather incomplete fashion. In fact, this policy sector still largely appears to be under the control of the same dominant coalition in which the banking industry plays a prominent role, namely through the Swiss Bankers Association. In this respect a great deal of continuity can be observed. As for the UK, France and Germany (Busch 2002; Lütz 2004), Switzerland preserves the main distinctive features of its traditional regulatory model in banking and finance. The UK did this by maintaining its financial openness, France by remaining strongly influenced by the traditional ministerial dirigisme, Germany by continuing to support its credit-based banking branch and Switzerland by partially preserving a sort of private interest government by other means.

### *Free movement of workers and flanking measures in the construction sector*

Set against important wage differentials between Switzerland and EU countries, the bilateral agreement on the free movement of workers with the EU signed in 2000, and extended later to include the new EU members, spurred an important movement of re-regulation of the Swiss labour market through so-called 'flanking measures' designed to prevent wage dumping. The opening of the labour market fostered an increase in domestic coordination mechanisms through collective bargaining, notably in the establishment of minimum standards. In this context, the construction sector provides an interesting example of liberalization and re-regulation in a context where liberalization occurs through labour mobility. The opening of the Swiss labour market for EU workers and service providers subjected construction to massive potential challenges that were met with new regulatory instruments supported by a coalition of employers and trade unions sharing a common interest in the protection of the labour market. In many ways, the logics observed in this sector had much more far-reaching consequences for many other economic sectors (Afonso 2009).

Construction is a very labour-intensive sector and since production sites cannot be moved abroad, the mobility of labour constitutes a functional equivalent to cut down on costs (Balch *et al.* 2004; Menz 2005). The construction sector in Switzerland has traditionally been highly coordinated, highly protected and has relied upon a large share of foreign workers (36 per cent of the workforce in 2009). With the exception of a few international companies, national and regionally operating firms dominated the market (Koch 2005). Foreign companies were very rare for two main reasons. First, close networks between construction companies and their clients, facilitated by loose rules on public tendering, made it very difficult for foreign companies to gain access to the Swiss market. Second, foreign companies could not pit their competitive advantage of lower labour costs because they had to comply not only with local labour law, but also with the employment and social security provisions contained in binding collective labour agreements covering the whole sector. The sector was characterized by a highly coordinated system of collective bargaining and strong trade unions, at least by Swiss standards. Collective labour agreements included provisions not only on wages, but also on social security provisions (for instance a sectoral early retirement scheme) and vocational training funded jointly by employers and employees. The sector was jointly regulated by the Swiss Construction Industry Employers' Association and the Construction and Industry Trade Union (GBI, later part of *Unia*). Employers in the sector were keen on binding collective regulations because they set minimum standards and thus limited potentially damaging competition among member firms (Mach and Oesch 2003). The sheltered nature of the market allowed wages to be high, and social provisions generous, despite the deep recession that hit the sector in the 1990s.

While construction was a sheltered sector in most EU countries up until the 1990s, the situation radically changed with the introduction of the Single European Market in 1992. The liberalization of labour mobility and services markedly increased the competition in construction and contract work in general across the EU. The new public procurement legislation required member states to tender public construction projects publicly, standards were harmonized and rulings of the European Court of Justice forbade member states from restricting entry to their markets. This led to a massive increase in cross-border service provision and the posting of workers (Menz 2005). Switzerland wanted to participate in the Single Market, which would be highly beneficial for export industries and banks, but, in order to do so, it had to open its labour market for European workers and services as well. The rules of public procurement also had to be changed and contract work opened to competition.

Trade unions, as well as employers in the construction sector, were highly concerned by the potential impact of free movement, more with respect to cross-border service provision than migration as such. For trade unions, this meant increased wage competition and potential downward pressures on wages. For employers, this also meant increased competition from foreign contractors who could take advantage of wage differentials by posting their workers in Switzerland without complying with collectively agreed wages, for instance through 'bogus' independent workers for whom social security contributions do not have to be paid. Compliance with collective labour agreements when employing posted workers is difficult to monitor, and the legislative instruments available in this context were weak. In the wake of the negotiations on the bilateral agreement on the free movement of workers between Switzerland and the EU, the trade unions, supported by employers' associations in the construction industry, exerted strong pressure on the government to agree on a package of legislation to protect the labour market against wage dumping through the posting of workers. Employers in export sectors that would essentially have benefited from increased competition on the domestic market reluctantly agreed on measures of re-regulation because they could not afford for the bilateral agreements to fail, since these were of the utmost importance for the whole economy.

With respect to a referendum on this issue, it was too risky to oppose the views of the trade unions considering that the populist right would oppose labour market opening regardless (Fischer *et al.* 2002; Oesch in this volume). The measures of re-regulation adopted in the framework of the 'flanking measures' to the free movement of workers included a loosening of the rules on the extension of collective labour agreements in the case of 'observed abuse', the creation of cantonal tripartite commissions endowed with the power to impose minimum wages and a law on posted workers that introduced an 'announcement obligation' for contractors and set minimum standards for posted workers. In a second batch of measures accompanying the extension of free movement to the new EU member states in 2005, these measures were even reinforced with a further facilitation of extension of CLAs, and an increase in resources in the public labour inspectorate (Afonso 2010). As astutely noted by the head of a cantonal labour market service, 'even if it may sound paradoxical, one has to increase controls in order to give more freedom to the labour market',[4] which follows nicely from the argument formulated by Vogel. Interestingly, a similar process was observed in Norway after EU enlargement, which also relied on the extension of collective labour agreements to set minimum standards (Alsos and Eldring 2008).

An interesting phenomenon in the aftermath of labour market opening is the increase in coordination in the Swiss labour market as a whole. The number of collective labour agreements extended and made compulsory has increased since the entry into force of the free movement of workers: from 14 in 1995 to 35 in

2000, 41 in 2003 and 64 in 2006 (Oesch 2007). The number of workers covered by such agreements increased from 360,000 (8.6 per cent of the workforce) in 2003 to 588,000 (13.3 per cent) in 2007. Moreover, the overall degree of coverage of CLAs has remained stable (at around 48 per cent) despite an 8 per cent increase in the size of the workforce during this period.[5] Interestingly, this did not happen as a result of the procedure linked to 'observed abuse', but through regular procedures implemented in a preventative manner. Domestic companies in other sectors (such as security services) have used these tools to set minimum standards in order to prevent foreign companies from undercutting them on the Swiss market (Oesch 2007). Here, too, a great deal of continuity can be observed, and regulation through existing modes of coordination has even expanded. Previous research has shown, however, that in Germany, the failure of trade unions and employers to find an agreement on re-regulatory measures led to new avenues through which employers could avoid contractual obligations to standard wages, thereby exposing the 'Achilles heel of *Modell Deutschland*' (Menz 2003).

## Conclusion

This chapter explored the issue of whether the predominant modes of economic regulation in the Swiss economy have been substantially reshaped by adaptive pressures – stemming from globalization, Europeanization and liberalization – in the direction of the *regulatory state* model. Empirical evidence supports the persistence of prevalent modes of regulation (especially self-regulation) despite a whole series of institutional reforms spanning many economic sectors. This apparently contradictory finding can be explained by the strong tradition of self-organization and the related principle of subsidiarity: while the legislative frameworks were modified in order to introduce competition in the economic sectors under investigation, the competences for supervising and implementing pro-competition measures were partially delegated to private actors or tripartite committees. As a consequence, regulatory reforms were often adaptive rather than transformative, even if patterns differed across sectors depending on specific power configurations. Table 12.1 provides a synthetic view of the elements of change and continuity in regulation, which have been highlighted throughout this chapter. Ultimately, the specific variety of regulatory state that emerges in Switzerland corresponds to a regulatory order with a strong dimension of self-regulation.

As we can see from the columns indicating 'change', the adjustment of regulatory instruments has been fairly extensive in the face of increased internationalization and Europeanization. Far-reaching reforms introduced pro-market mechanisms, more transparency and new regulatory tools and institutions. Despite Switzerland's non-membership, the European Union was a central driving force for the regulatory reforms. Pressures were either direct, such as regarding the bilateral agreements that governed the free movement of workers, or indirect such as in the case of telecom and electricity. At the same time, the

*Table 12.1* Changes and continuity in the economic sectors under scrutiny

| *Sectors* | *Impulse* | *Actor constellation* | *Change: liberalization* | *Change: re-regulation* | *Elements of continuity* |
|---|---|---|---|---|---|
| Telecom | Combination of European legislation, technological development and demands of export-oriented industry | A broad pro-liberalization coalition including the former monopoly supported the reform | • Abolition of monopoly<br>• Introduction of competition (services, third party access to the network) | • Introduction of a concession system<br>• Supervision by Comcom/Bakom and WEKO | • Limited scope of regulation<br>• Dominant role of Swisscom (former state monopoly) |
| Electricity | Combination of European directives and demands of large electricity consumers | The broad pro-liberalization coalition was challenged by the trade unions (referendum). A compromise was reached following the rejection of the law | • Abolition of (local) monopolies<br>• Introduction of competition (production and distribution, third party access to network) | • Introduction of regulation of the network<br>• Flanking measures (renewable energies)<br>• Supervision by ElCom and WEKO | • Limited scope of regulation<br>• Regulation of 'details' by sector's industry<br>• Self-regulation in Swissgrid |
| Banking and finance | Combination of internationalization, pressures for competition and new structure of opportunities | The Competition Commission and the federal administration found a compromise with the private sector | • Abolition of protectionist rules<br>• New rules of transparency | • Introduction of investor protection and pro-market rules<br>• Risk regulation<br>• Increased role EBK/FINMA | • Limited scope of regulation<br>• Doubtful effectiveness of EBK<br>• Influential role of the industry in regulatory policy making |
| Construction | Bilateral agreements with EU | A coalition between trade unions and employers won against reluctant export-oriented sectors | • Free movement of workers and services with the EU | • Facilitation of extension of collective agreements<br>• Introduction of labour inspectorate<br>• Adoption of law on posted workers | • Weak state regulation<br>• Self-organization of social partners |

internationalization of markets created new opportunities and risks for Swiss actors, and thus led to demands for ‘autonomous adaptation’. These external factors strengthened the domestic pro-liberalization coalitions (Mach *et al.* 2003).

On the other hand, as the last column of Table 12.1 indicates, public intervention remains relatively weak in comparative perspective, and private coordination continues to play a predominant role in the actual implementation of the regulatory framework. The public monopoly in the telecommunications sector was replaced by competition and a new regulator was established, but the former state-controlled company remains the dominant actor, with the government as the main shareholder. The formal independence of regulatory agencies, such as the ComCom, WEKO and the FINMA may conceal strong persisting linkages with the regulated sectors, so that their de facto independence can be seriously questioned. Self-organization in the electricity and in the banking and finance sectors was replaced by a new legal framework accompanied by the reinforcement or establishment of IRAs, but the regulatory system preserved a strong self-regulatory component. In fact, private actors continue to play a dominant role both in policy formulation and the implementation of new rules. In this respect, our analysis may differ slightly from earlier accounts of liberalization policies as a change of paradigm in the Swiss political economy (Mach 2006). The actual implementation of liberalization policies revealed a relatively strong path-dependent nature of change, and underlines the resilience of existing power configurations.

## Notes

1 Data online, available at: www.bfs.admin.ch/bfs/portal/fr/index/themen/18/22/lexi.Document.21852.xls (accessed 18 May 2010).
2 However, during the referendum campaign, the Social Democratic Party opposed the law.
3 Press release DETEC 17 March 2008: *Strommarkt und kostendeckende Einspeisevergütung: Verordnungen verabschiedet*.
4 Roger Piccand, Head of the Service for Employment of the Canton of Vaud, *Le Temps*, 14 September 2005 (translation by authors).
5 Data online, available at: www.bfs.admin.ch/bfs/portal/fr/index/themen/03/05/blank/data/00.html (accessed 18 May 2010).

## References

Afonso, A. (2009) ‘The Domestic Regulation of Transnational Labour Markets: EU enlargement and the politics of labour migration in Switzerland and Ireland’, in L. Bruszt and R. Holzhacker (eds), *The Transnationalization of Economies, States and Civil Societies: New challenges for governance in Europe*, New York: Springer: 83–106.

Afonso, A. (2010) ‘Europeanisation, Policy Concertation and New Political Cleavages: The case of Switzerland’, *European Journal of Industrial Relations*, **16**(1): 57–72.

Alsos, K. and Eldring, L. (2008) ‘Labour Mobility and Wage Dumping: The case of Norway’, *European Journal of Industrial Relations*, **14**(4): 441–59.

Balch, A., Fellini, I., Ferro A., Fullin, G. and Hunger, U. (2004) 'The Political Economy of Labour Migration in the European Construction Sector', *IMIS-Beiträge* **25**: 179–200.

Bänziger, H. (1986) *Die Entwicklung der Bankenaufsicht in der Schweiz seit dem 19. Jahrhundert*, Bern: Haupt.

Bartle, I. (2002) 'When Institutions No Longer Matter: Reform of telecommunications and electricity in Germany, France and Britain', *Journal of Public Policy*, **22**(1): 1–27.

Benninghoff, M., Knoepfel, P., Terribilini, S. and Varone, F. (2002) 'Aménagement du territoire, politiques infrastructurelles (transports, énergie) et de l'environnement', in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder and Y. Papadopoulos (eds), *Handbuch Schweizer Politik*, Zürich: NZZ Verlag, 769–808.

Bischof, T. (1995) 'The Swiss Securities Exchange Act and Investment Fund Act: A new regulatory framework for the Swiss capital markets', *North Carolina Journal of International Law and Commercial Regulation*, **20**(3): 457–93.

Busch, A. (2002) 'National Filters: The role of institutions and discourse in European banking regulation', paper presented at the workshop Opening the Black Box: Europeanisation, Discourse, and Policy Change at St Antony's College, University of Oxford, UK, 23–24 November.

Busch, A. (2004) 'State Regulation of the Banking Sector in the Era of Globalization: Divergence or convergence?', in D. Levi-Faur and E. Vigoda-Gadot (eds), *International Public Policy and Management: Policy learning beyond regional, cultural, and political boundaries*, New York: Marcel Dekker, 67–90.

Busch, A. (2007) 'Confronting Stylized Facts with Reality', *Economics of Governance*, **8**(3): 219–32.

Cerny, P.G. (2005) 'Power, Markets and Accountability: The development of multi-level governance in international finance', in A. Baker, D. Hudson and R. Woodward (eds), *Governing Financial Globalization: International political economy and multi-level governance*, Oxford: Routledge, 24–48.

Danthine, J.P. and Lambelet, J.C. (1987) 'The Swiss Recipe: Conservative policies ain't enough!' *Economic Policy*, **2**(5): 149–79.

Eising, R. (2000) *Liberalisierung und Europäisierung: Die regulative Reform der Elektrizitätsversorgung in Grossbritannien, der Europäischen Gemeinschaft und der Bundesrepublik Deutschland*, Opladen: Leske + Budrich.

Finger, M. and Voets, A. (2003) 'Comparative Study on the Effectiveness of Telecommunications Regulators', technical report prepared for the Swiss Federal Office of Communications, Lausanne, Switzerland: MIR.

Fischer, A. (2005) *Die Auswirkungen der Internationalisierung und Europäisierung auf Schweizer Entscheidungsprozesse*, Zürich: Rüegger.

Fischer, A. (2008) 'Swiss Telecommunications Policy: From state monopoly to intense regulation', *Flux*, **72/73**: 78–91.

Fischer, A., Nicolet, S. and Sciarini, P. (2002) 'Europeanisation of a Non-EU Country: The case of Swiss immigration policy', *West European Politics* **25**(4): 143–70.

Fontana, M.-C. (2009) 'Transnationalisation and Domestic Policy-making Processes: Electricity market reform in Belgium and Switzerland', in L. Bruszt and R. Holzhacker (eds), *The Transnationalization of Economies, States and Civil Societies: New challenges for governance in Europe*, New York: Springer, 157–78.

Gilardi, F. (2005) 'The Institutional Foundations of Regulatory Capitalism: The diffusion of independent regulatory agencies in Western Europe', *ANNALS of the American Academy of Political and Social Science*, **598**(1): 84–101.

Gilardi, F. (2008) *Delegation in the Regulatory State: Independent regulatory agencies in Western Europe*, Northampton: Edward Elgar.

Gugler, P. (2005) 'The Integrated Supervision of Financial Markets: The case of Switzerland', *Geneva Papers*, **30**: 128–43.

Häusermann, S., Mach, A. and Papadopoulos, Y. (2004) 'Explaining Policy Transfer Mechanisms in Small European Countries: The case of telecommunication reform', in D. Levi-Faur and E. Vigoda-Gadot (eds), *International Public Policy and Management: Policy learning beyond regional, cultural, and political boundaries*, New York: Marcel Dekker, 121–54.

Humphreys, P. and Padgett, S. (2006) 'Globalization, Europeanization and the Governance of the Telecoms and Electricity Industries in Britain, France and Germany', *Governance* **19**(3): 383–406.

Jordana, J. and Levi-Faur, D. (2004) *The Politics of Regulation: Institutions and regulatory reforms for the age of governance*, Cheltenham: Edward Elgar.

Katzenstein, P.J. (1984) *Corporatism and Change: Austria, Switzerland, and the politics of industry*, Ithaca, NY: Cornell University Press.

Koch, P. (2005) 'Mit ungleichlangen Spiessen: Die Europäisierung der Sozialpartnerschaft im Schweizer Bauhauptgewerbe', unpublished master thesis, University of Berne.

Kriesi, H. and Jegen, M. (2001) 'The Swiss Energy Policy Elite: The actor constellation of a policy domain in transition', *European Journal of Political Research*, **39**(2): 251–87.

Leimgruber, M. (2008) *Solidarity without the State? Business and the shaping of the Swiss welfare state, 1890–2000*, Cambridge: Cambridge University Press.

Levi-Faur, D. (1999) 'The Governance of Competition: The interplay of technology, economics, and politics in European Union electricity and telecom regimes', *Journal of Public Policy*, **19**(2): 188–93.

Lütz, S. (1996) 'The Revival of the Nation-State? Stock exchange regulation in an era of internationalized financial markets', *MPIFG Discussion Paper 96/9*, Cologne: Max Planck Institute for the Study of Societies.

Lütz, S. (2000) 'From Managed to Market Capitalism? German finance in transition', *MPIfG Discussion Paper 00/2*, Cologne: Max Planck Institute for the Study of Societies.

Lütz, S. (2004) 'Convergence within National Diversity: The regulatory state in finance', *Journal of Public Policy*, **24**(2): 169–97.

Mach, A. (2006) *La Suisse entre internationalisation et changements politiques internes: Les relations industrielles et la législation sur les cartels dans les années 1990*, Chur: Rüegger.

Mach, A. and Oesch, D. (2003) 'Collective Bargaining between Decentralization and Stability: A sectoral model explaining the Swiss experience during the 1990s', *Industrielle Beziehungen*, **10**(1): 160–82.

Mach, A., Häusermann, S. and Papadopoulos, Y. (2003) 'Economic Regulatory Reforms in Switzerland: Adjustment without European integration, or how rigidities become flexible', *Journal of European Public Policy*, **10**(2): 301–18.

Mach, A., Schnyder, G., David, T. and Lüpold, M. (2007) 'Transformations of Self-Regulation and New Public Regulations in the Field of Swiss Corporate Governance (1985–2002)', *World Political Science Review*, **3**(2): 1–30.

Maggetti, M. (2007) 'De Facto Independence after Delegation: A fuzzy-set analysis', *Regulation and Governance*, **1**(4): 271–94.

Maggetti, M. (2009) 'The Role of Independent Regulatory Agencies in Policy-Making: A comparative analysis', *Journal of European Public Policy*, **16**(3): 450–70.

Menz, G. (2003) 'Re-regulating the Single Market: National varieties of capitalism and their responses to Europeanization', *Journal of European Public Policy*, **10**(4): 532–55.

Menz, G. (2005) *Varieties of Capitalism and Europeanization: National response strategies to the single European market*, Oxford and New York: Oxford University Press.

Müller, B. (1997) *La pratique de la Commission fédérale des banques*, Zürich: Schulthess.

Nobel, P. (1998) 'Selbstregulierung', in C.-A. Margelisch and C. Winzeler (eds), *Freiheit und Ordnung im Kapitalmarktrecht*, Zürich: Schulthess, 119–34.

OECD (2008) 'Product Market Regulation of Non-Manufacturing Sectors in OECD Countries: Measurement and highlights. Indicators of regulation in energy, transport and communications (ETCR)', *OECD Economics Department Working Paper No. 530*, Paris: OECD.

Oesch, D. (2007) 'Weniger Koordination, mehr Markt? Kollektive Arbeitsbeziehungen und Neokorporatismus in der Schweiz seit 1990', *Swiss Political Science Review*, **13**(3): 337–68.

Rentsch, H. (1989) *Cartels and Wealth: A paradox in the Swiss economic system*, Zug: Forschungsinstitut für Wirtschafts-und Sozialpolitik.

Sager, F. (2007) 'Infrastructure Policy: Transport, energy and telecommunications', in U. Klöti, P. Knoepfel, H. Kriesi, W. Linder, Y. Papadopoulos and P. Sciarini (eds), *Handbook of Swiss Politics*, Zürich: NZZ Verlag, 677–703.

Sciarini, P., Fischer, A. and Nicolet, S. (2004) 'How Europe Hits Home: Evidence from the Swiss case', *Journal of European Public Policy*, **11**(3): 353–78.

Streeck, W. and Schmitter, P.C. (1985) 'Community, Market, State – and Associations? The prospective contribution of interest governance to social order', in W. Streeck and P.C. Schmitter (eds), *Private Interest Government*, London: Sage, 1–29.

Vogel, S.K. (1996) *Freer Markets, More Rules: Regulatory reform in advanced industrial countries*, Ithaca, NY: Cornell University Press.

Zufferey, J.-B. (1998) 'Vaut-il mieux être banque ou négociant?', in C.-A. Margelisch and C. Winzeler (eds), *Freiheit und Ordnung im Kapitalmarktrecht*, Zürich: Schultess, 193–216.