

The legal character of the capitulations

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The capitulations were treaties between sovereigns, but their purpose was to confer rights on private persons: merchants, carriers, drovers and consumers. Merchants invoked them before the courts and officials of both sides. The Confederate Diet and the Milanese governors received their petitions and raised them in diplomatic correspondence.¹ The treaties thus created an early form of directly applicable economic rights, enforced partly by courts and partly by diplomatic pressure. Their weakness was the absence of an independent dispute settlement mechanism. Where a Milanese official refused to apply an exemption, the merchant's only remedy was a complaint to his own government, which could raise the matter at the next conference or retaliate by closing its own market.

The modern relationship between Switzerland and Italy has the same structure. Market access for Swiss financial services in Italy depends on Italian and European Union law, on the absence of an equivalence decision and on bilateral arrangements (Chapter E.IV). Tariff preferences and customs cooperation depend on the Free Trade Agreement of 1972 between Switzerland and the European Economic Community, the bilateral agreements of 1999 and 2004 and the package negotiated with the European Union in 2024 (Chapter K.I).² The negotiation of such arrangements, the defence of acquired privileges against new regulation and the use of retaliation as a bargaining tool are the same techniques that the Confederates used with Milan.

Essentials. The trade between the Confederates and Milan was governed by the capitulations (*capitoli*, *Mailänder Kapitulat*), beginning with the settlement of 1426, renewed under the Sforza in 1467 and 1477 and by the peace of 1479/1480, and confirmed by France in the Perpetual Peace of 1516 and by Spain, above all in the alliance with the Catholic cantons of 1587. They provided freedom from Milanese tolls for Confederate goods up to the moat of Milan, the supply of grain and salt and rules on legal

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proceedings. The *Capitolato di Milano* of 3 September 1639 was the corresponding treaty between Spain and the Grisons, restoring the Valtellina to the Three Leagues and confirmed by Austria in 1726. The capitulations of the Confederates lapsed in 1706, when Austria conquered Milan.

1 Notes

1. Amtliche Sammlung der älteren Eidgenössischen Abschiede (as above), passim. ↩
2. Agreement of 22 July 1972 between the Swiss Confederation and the European Economic Community (with annexes and exchanges of letters), SR 0.632.401, <https://www.droit-bilingue.ch/de-fr/0.6/0.63/0.632.401-index.html>. See Chapter K.I on the package of 2024/2025. ↩

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