

Zeitschrift: Swiss review : the magazine for the Swiss abroad
Herausgeber: Organisation of the Swiss Abroad
Band: 42 (2015)
Heft: 3

Artikel: A journey into the unknown - immigration and the EU
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DOI: <https://doi.org/10.5169/seals-907107>

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Download PDF: 28.04.2025

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A journey into the unknown – immigration and the EU

Switzerland is struggling with the implementation of the Swiss People's Party's (SVP) immigration initiative – the deadlines are tight, the list of problems long and the solutions complex.

JÜRGEN MÜLLER

In principle, there is great urgency – the highly complicated issue must be dealt with by February 2017. But more than a year since the adoption of the SVP's initiative on mass immigration on 9 February 2014, there is only one point on which everyone agrees: the situation is still very unclear. The confusion over free movement of persons – together with other economic problems, such as the strength of the Swiss franc – is becoming increasingly perturbing. "We require contractual security and legal certainty," remarks Eva Jausli, CEO of the tools firm PB Swisstools, in an interview with "NZZ-Folio". "We have come to terms with the bilateral agreements, and our business models are geared towards them. I cannot imagine having to abandon them." The monthly magazine of the "Neue Zürcher Zeitung" impressively documented the widespread anxiety and impatience in the economy in March 2015.

It is not politicians and association representatives who express their views in "NZZ-Folio" but various business leaders who feel the impact of the growing uncertainty every day over Switzerland's relationship with the EU. These include Bruno Chiomento, CEO of the internationally operating auditing and management consultancy firm Ernst & Young Switzerland: "The first effects of the impending restriction on immigration are being clearly felt. We are seeing that companies which originally intended to move to Switzerland are now opting for other locations and have set up in Ireland, for example."

Mobilising women

How long this paralysing uncertainty will continue remains to be seen. Only the current state of affairs can be documented at present. The Federal Council put forward a new immigration system in February 2015 which will enter the consultation process by the end of May 2015. This contains annual maximum ceilings and quotas for all foreigners to be set by the Federal Council. Preference is to be given to Swiss labour when filling vacant positions. Federal government is now seeking to ensure, through a specialist worker initiative, that women and older employees in particular fill foreseeable gaps after a limitation on immigration.

The Federal Council's dual strategy Admission for EU citizens is to be governed, as in the past, by the agreement on the free movement of persons, "which has to be amended in accordance with the constitutional obligation", as the Federal Council indicates in its press release. For this purpose, the government has also adopted a negotiating mandate with the EU. The objective is "to amend the agreement so that Switzerland can in future control and restrict immigration independently". The bilateral approach is also to be secured as the basis of relations with the EU: "In accordance with the mandate, both objectives are to be pursued in equal measure," the government stipulates. It seems very much as though the Federal Council is trying to fit a square peg into a round hole. The EU has thus far given no indication of willingness to allow Switzerland to adopt special regulations on the free movement of persons.

Several key questions therefore remain unanswered in spite of the Federal Council's proposals: What will happen if the EU maintains its stance? Will Switzerland implement the constitutional obligation to the letter and actually also introduce the quota system for EU citizens? Will Switzerland then also terminate the agreement on the free movement of persons or will the EU take that step? And will the set of bilateral I agreements coupled to it also then possibly cease to exist?

The SVP talks of an EU veto right.

This still very uncertain situation also explains why the Federal Council's proposals have hardly been greeted euphorically. The Swiss Christian Democratic People's Party (CVP) has dubbed the procedure "faint-hearted", the Swiss Conservative Democratic Party (BDP) believes the bill is "inexpedient and tentative", and Economiesuisse, the Swiss Business Federation, has awarded it the mark "unsatisfactory" because the Federal

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Council is targeting excessively rigid implementation and not using the room for manoeuvre provided for in the constitution. However, the Swiss FDP, The Liberals (FDP) and the Swiss Green Liberal Party (GLP) support the Federal Council in its efforts to implement the initiative correctly, while the Swiss Social Democratic Party (SP), on the other hand, believes negotiations should first be held with the EU.

The SVP, which initiated the successful popular initiative, takes a fundamentally different view on precisely that point. It does not want the Federal Council to first hold negotiations with the EU. In contrast, the government maintains "that the results of the targeted negotiations with the EU are of importance to the proposed bill" as the "overall evaluation of the implementation of the new constitutional provision can only be carried out once the outcome of the negotiations on the amendment to the agreement on free movement of persons has been established."

Not so, argues the SVP faction leader Adrian Amstutz. He writes in a propaganda sheet ("Extrablatt der SVP", March 2015) sent to all Swiss households that by adopting this approach the Federal Council would "effectively grant the EU a right of veto. This makes the implementation of the popular initiative's requirements dependent upon whether Brussels is willing to approve the inevitable amendment to the agreement on the freedom of movement." The SVP is still insisting on "the systematic implementation of the popular initiative's obligations, even if this means accepting the termination of the agreement on the freedom of movement".

The SVP took a different line prior to the referendum. It declared that by adopting the initiative "we are giving the Federal Council a mandate to renegotiate the free movement of persons with the EU". "The agreement on the free movement of persons will not have to be terminated." What is more: "The initiative is neither seeking a gen-

eral halt to immigration nor is it calling for the termination of the bilateral agreements with the EU." This is the statement on the initiative's official website. However, SVP Vice-President Christoph Blocher is today already threatening an initiative aimed at terminating all bilateral agreements if the free movement of persons cannot be regulated otherwise. There is also talk of an enforcement initiative. And finally a referendum against the implementing legislation is also a possibility.

RASA – an easy way?

Proposals have also been made in the opposite direction. A civic committee independent of any political party called "Raus aus der Sackgasse" (Out of the cul-de-sac), or RASA for short, is seeking to cut the Gordian knot by performing an about-turn. The popular initiative launched on 9 February 2015, exactly a year after the adoption of the SVP initiative, aims to achieve nothing more than to annul the applicable constitutional provision. The initiative is being touted as a plan B in the event that the negotiations with the EU fail, acutely jeopardising the bilateral agreements.

The think-tank "foraus" (foreign policy forum), set up at the universities of Geneva and Zurich in 2009, has identified "a fundamental conflict of objectives". It says the "systematic implementation of the initiative on mass immigration is not feasible – only various compromises are possible. A political decision is required on which objective should be given greater priority: economic prosperity or 'independently controlled immigration'."

Such a compromise has been put forward by the former State Secretary Michael Ambühl. As a fixed quota would never be accepted by the EU, he proposes a safeguard clause. This involves provisional quotas for the event that immigration exceeds average EU/EFTA immigration by a threshold value defined beforehand. However, as this proposal is also based on a quota system, it is doubtful whether this solution would be compatible with the agreement on the free movement of persons. And that would take things back to square one.

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able", as the Swiss Foreign Policy Association (SGA) writes. The sovereign power "is in contradiction with itself and only it can find a way out of the conundrum". Indeed, the Swiss people adopted the initiative on immigration but they have also approved the bilateral approach on several occasions. The SGA is therefore calling for a new referendum on the continuation of this approach. And it increasingly looks as though the Swiss people will have to make a fundamental policy decision sooner or later.

www.foraus.ch

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IMPRINT:
"Swiss Review", the magazine for the Swiss Abroad, is in its 41st year of publication and is published in German, French, Italian, English and Spanish in 14 regional editions. It has a total circulation of 400,000, including 165,000 electronic copies. Regional news appears four times a year. The ordering parties

are fully responsible for the content of advertisements and promotional inserts. This content does not necessarily represent the opinion of either the editorial office or the publisher.
EDITORS: Barbara Engel (BE), Editor-in-Chief; Stéphane Herzog (SH); Marc Lettau (MUL); Jürg Müller (JM); Peter Zimmerli (PZ), responsible for

"news.admin.ch". Relations with the Swiss Abroad, FDFA, 3003 Berne, Switzerland
TRANSLATION: CLS Communication AG
LAYOUT: Herzog Design, Zürich
PRINT: Vogt-Schild Druck AG, 4552 Derendingen
POSTAL ADDRESS: Publisher, editorial office, advertising: Organisation of the

Swiss Abroad, Alpenstrasse 26, 3006 Berne, Tel.: +41313566110, Fax: +41313566101, Postal account (Swiss National Giro): 30-6768-9. Email: revue@aso.ch

COPY DEADLINE for this edition: 07. 04. 2015

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