

Implication of the Popular Initiative for Constitutional Amendment against Large-Scale Immigration ("*Masseneinwanderungs-Initiative*")

On 9 February 2014 an extremely thin majority of the Swiss citizens voted in favor of the political initiative for a constitutional amendment "against large-scale immigration" ("*Masseneinwanderungs-Initiative*"). The initiative restricts the access of foreign workers to the Swiss labor market by re-establishing annual quotas for EU and EFTA nationals, however, granting the Swiss legislator a three year transitional period. The Federal Council will now have to re-negotiate the bilateral *Agreement on the Free Movement of Persons* with the European Union.

Factual Background

By abolishing all numerical restrictions for EU and EFTA citizens in accordance with the *Agreement on the Free Movement of Persons* Switzerland had in June 2007 given up its long standing tradition of restricting the number of foreign employees by annual quotas (a system still in place for non-EU nationals and some of the new EU-countries). Due to an increasing immigration from EU countries (net approx. 80,000 new immigrants per year increasing the non-Swiss population in Switzerland to an unprecedented number of approx. 23%), the political party "*Schweizerische Volkspartei*" ("*SVP*") put out a political initiative to restrict the access of foreign employees to the Swiss labor market by re-establishing annual quotas for all foreign nationals. The initiative was mainly aiming at prohibiting the immigration of lower qualified, socially less integrated work forces. The Federal Council, the Federal Parliament and all Swiss political parties other than SVP fought against the initiative, however, 50.3% of the Swiss citizens in the end voted in favor.

The wording of the new constitutional provisions provides for the following:

Article 121a Swiss Constitution Regulation of Immigration

Para. 1: Switzerland regulates the immigration of foreigners independently.

Para. 2: The number of residence permits is restricted by annual maximum numbers and quotas for foreigners migrating to Switzerland. The quotas are valid for all permits under the Federal Law on Foreign Nationals, including asylum seekers and cross border commuters. The right of permanent residency, family reunification and social security benefits may be restricted.

Para. 3: The annual maximum numbers and quotas for working foreigners have to be adjusted to the overall economic interests of Switzerland taking into account a priority for Swiss employees. To grant a residence permit, decisive criteria are particularly

the request of an employer, the integration ability and sufficient and independent financial means of the applicant.

Para. 4: International treaties shall not be concluded if they violate this article.

Para. 5: The details are regulated by a Federal Law.

The new constitutional text does not specify how high the quotas should be, nor does it specify who should set and allocate them and according to what exact criteria. These details still need to be defined. The transitional provisions determine that the Swiss Federal Council has time to re-negotiate international treaties within three years. Also it is only within three years, that the Swiss Federal Parliament will have to provide a Federal Law regulating the details.

Implications

With regard to the permits of currently admitted EU/EFTA citizens no significant changes are to be expected momentarily. Since May 2013, permits for all EU citizens were – due to the invoked safeguard measures provided for under the bilateral treaties with the EU – already put back under an annual quota – with no consequences for any work and residence applications so far.

In a first official statement on Sunday, the Swiss Federal Council stressed that "the constitutional text is formulated in a very open manner" and that "the agreement on the free movement of persons and the other bilateral agreements will remain in place until a new legal status has been established." This was confirmed by a spokesman of the European Commission. The Federal Council will now first analyze what consequences the change of direction resulting from the political vote will have on Switzerland's European policy and will then approach the EU authorities accordingly.

When implemented as intended by the initiative the differences between EU/EFTA and non-EU/EFTA citizens will disappear in the future and every category of foreigners will be affected by the quotas equally. As the new article 121a of the Swiss

Constitution is not compatible with the *Agreement on the Free Movement of Persons*, however, the Swiss government will certainly have to successfully re-negotiate this bilateral treaty if it doesn't want to put at risk the existence of all other bilateral treaties with the European Union.

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