

Switzerland: Migration quotas versus market access

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11 October 2016

The Swiss parliament last month gave up on attempts to introduce quotas for foreign residents when it became obvious that any such move would violate Switzerland's obligations on freedom of movement under bilateral agreements with the European Union. The parliament's decision is expected to defuse the latest tension in EU-Swiss relations, which erupted in February 2014 when Swiss voters narrowly approved a constitutional amendment to introduce mandatory quotas for foreign residents, including EU citizens. Parliamentarians have now put continued access to the Union's internal market above the political imperative for tighter immigration controls. But their choice does nothing to address the dynamic underlying the bilateral relationship, which is unfavourable to Switzerland and becoming more so as time passes.

The new regime

The lower house of parliament (the National Council) adopted new legislation on September 21st that purports to implement the constitutional requirement for quotas for foreign residents. But the choice before the house was unpalatable: implement the letter and spirit of the constitutional amendment by adopting quotas, thereby endangering relations with the EU, or defy the expressed will of the people and protect Switzerland's all-important access to the EU's internal market. After seven hours of debate, it chose the latter, on a recommendation backed by a majority of the parties represented in the governing grand coalition. Quotas were tacitly set aside in favour of a regime that is supposed to give preference to established residents (irrespective of their citizenship) in recruitment and a staged approach to managing immigration, with quotas for EU citizens at the government's disposal as the very last resort.

Rather than introducing quotas, the new regime gives local residents (including non-citizens) a slight edge in recruitment for new vacancies: when immigration exceeds certain, as yet undefined, thresholds, companies wishing to fill vacancies are obliged to notify local job centres, to which non-residents have, in principle, no access. Quotas for EU citizens would be imposed only in cases where immigration reaches levels that are no longer in line with Switzerland's overall interests. This would give the government sufficient leeway to avoid them altogether. In the government's analysis, this approach should be sufficient to satisfy the EU and safeguard the principle of free movement.

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The Council of States, the upper chamber of parliament in which Switzerland's cantons are represented, is now expected to approve the draft legislation by mid-December, very likely with some tweaks (for example, the lower house sets a three-month deadline for foreigners who lose their jobs to leave Switzerland, which in the government's interpretation would violate the freedom of movement agreement with the EU). This would put it on the statute books just in time for a February 2017 deadline to implement the constitutional amendment. It would also set the stage for a new referendum in which Swiss voters might be asked to make an explicit choice between limiting the number of foreigners, on the one hand, and continuing the current relationship with the EU, on the other. Opinion polls suggest a solid majority in favour of preserving access to the internal market.

What's at stake

The government and most parliamentarians rightly feared that a literal interpretation of the constitutional amendment would violate the terms of Switzerland's relationship with the EU, its most important export market by far. More than half of the country's trade is with the Union, and Switzerland is the EU's third biggest partner for trade in goods, after the US and China. The Swiss economy is highly dependent not just on exports, especially to the EU, but also on foreign workers. Some 28.3% of Swiss residents were born abroad - the second-highest rate among the world's leading economies, according to figures from the OECD for 2013 (first-placed Luxembourg, at 43.7%, is an outlier). It is followed by two classic countries of immigration - Australia, at 27.7%, and Israel, at 22.6%. The UK is far behind, with a foreign-born population of just 12.3%. Switzerland, a country of 8.1 million, is home to some 1.36 million EU citizens. The UK (population: 64 million) has 1.5 million residents from other EU member states.

It is quite evident that the legislation is a tacit acknowledgement that the constitutional requirement for quotas, at least in a literal reading, is incompatible with Switzerland's obligations under the bilateral agreements with the EU. Moreover, its effect on immigration - the focus of the 2014 vote - is expected to be negligible. Even its proponents expect an annual net reduction in immigration of 11,000 at most, around one-seventh of last year's net immigration. The parliament has chosen a path that protects access to the internal market with just the slightest of nods towards migration management.

The EU side

Jean-Claude Juncker, President of the European Commission, suggested after talks in Berne that the new legislation might satisfy the Commission. Several EU member states (including Belgium and Sweden) have similar systems in place, which would suggest that they are compatible with the rules on free movement.

But Juncker's amenability is superficial. The Commission has grown hostile to special deals, and particularly those to do with migration and freedom of movement. Post-Brexit referendum, it is hunkering down in a bid to arrest any restrictive tendencies among member states. The member states in the Council of the EU are also quite hostile to special demands, a hostility that has deepened in the aftermath of the Brexit vote. The UK, which in principle might be an ally, is not going to use what little influence it has in the EU to lobby for a country without much strategic importance. Switzerland's neighbours are focused on the hundreds of thousands of jobs that Switzerland provides to their citizens. And the member states that joined in 2004 and after are exercised about anything that smacks of discrimination against their nationals.

The broader picture

The decision of the Swiss parliament is probably sufficient to defuse the immediate crisis created by the 2014 vote; but it does nothing to help with the broader question of Swiss-EU relations. In a traumatic vote in 1992 that poisoned the debate on Europe for many years, Swiss voters went against the government and all major political parties and rejected accession to the European Economic Area, which had been set up to give EFTA members such as Switzerland and Norway access to the Union's internal market.

In the wake of the vote, which split the country and propelled the anti-EU and anti-immigration Swiss People's Party to become the leading force in national politics, Swiss diplomats pulled off a major feat by negotiating favourable terms for Switzerland's access to the internal market. But in recent years, the EU has become increasingly frustrated with the tangle of sector-specific, static agreements that formalised the post-1992 relationship. These deals (some 120 in all) were grouped in two main packages. The first, adopted in 1999, concerns, among other things, freedom of movement between the two sides and includes a 'guillotine clause': failure to implement a single agreement would lead to the automatic suspension of the other agreements in the package.

The EU is now demanding a comprehensive framework agreement that would set the terms for sectoral deals, including mechanisms to ensure compliance by the Swiss side and the automatic application of new EU law in a given field – a "common institutional framework for existing and future agreements through which Switzerland participates in the EU's internal market, in order to ensure homogeneity and legal certainty in the internal market," according to the Council of the EU).¹ The Council approved a negotiating mandate for a framework agreement with Switzerland in May 2014; a senior official involved in the talks estimated that they would take anything from a few months to a year. Two and a half years later, they remain in deadlock.

On the Swiss side, a framework agreement that is so evidently modelled on the EEA might not easily meet with the approval of the national parliament or the electorate. On the EU side, the Brexit vote appears to have turned the mood against special regimes to appease national sensitivities – be they of members or non-members. Swiss diplomats may yet find that the post-Brexit EU that is gradually taking shape is far less accommodating towards Swiss demands than it was after 1992.

¹ Council Conclusions of 16 December 2014.