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Switzerland – Voters Approve New Immigration Restrictions

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With a narrow majority of 50.3 percent, Swiss voters decided to add a new article to the Federal Constitution that re-introduces immigration quotas in regard to all types and categories of Swiss residence and work permits.

According to a 9 February 2014 press release from the Swiss Federal Council, on 9 February 2014, Swiss voters adopted the "Stop mass immigration" initiative ("Initiative gegen die Masseneinwanderung") as initiated by the Swiss People's Party (SVP) amid growing concerns, in regard to, for instance, wage dumping, increased crime, rising rental and property costs, congested transportation networks, etc.

Why This Matters

This verdict not only calls the bilateral agreement between Switzerland and the European Union (EU) into question – as a consequence of the so-called "Guillotine Clause," entitling one party to unilaterally terminate the whole set of bilateral agreements if one agreement is violated – but also all other bilateral treaties with the EU (in the context of mobile workforces (e.g., the Schengen Agreement).

The Swiss Federal Council now faces the challenge of turning the initiative into law and at the same time trying to save Switzerland's bilateral agreements to the extent possible.

At this early stage it is difficult to know how this is going to affect non-Swiss workers who work or plan to work in Switzerland and employers (whether based in or outside Switzerland) who wish to employ such workers.

As a first reaction, EU representatives stated that they would examine the implications of the vote on the relationship with Switzerland based on the position of the Swiss Federal Council, which had urged citizens to reject the initiative. However, they emphasize that the principle of free movement of persons is a cornerstone of the EU and as such not negotiable.

Background

Even now, the majority of work permit types are subject to a quota, namely the following:

- Work permits for all non-EU/European Free Trade Agreement (EFTA) citizens, whether locally employed by a Swiss employer or assigned to Switzerland;
- Work permits for EU/EFTA citizens that are locally employed by a Swiss employer with a limited or unlimited employment contract exceeding one year;

- Work permits for employees of EU/EFTA-domiciled employers to be assigned to Switzerland if the total number of days on which one or several such employees are working in Switzerland exceeds 90 days in a calendar year.

However, according to the agreement on the free movement of persons, the restrictions on the second group above ceases to apply as per 31 May 2014, with regard to all EU citizens, with the exception of Romanian and Bulgarian citizens for whom the restrictions remain in place until (at least) 2016.

In other words, currently only the following work permit types are not subject to quota:

- Residence/work permits type L for EU/EFTA citizens employed by a Swiss employer with a limited contract of a maximum of 12 months.
- Short-term residence permits for short-term assignees of EU-domiciled employers if a maximum of 90 days (per calendar year) has not been exceeded (basically applicable to EU/EFTA citizens and to non-EU/EFTA citizens only if they are already employed in the EU/EFTA and by an EU/EFTA employer for more than 12 months).
- All kinds of dependent permits (with or without employment).

The quotas are being set annually by the Swiss Federal Council and are allocated based on the “first come first serve” principle to applying employers. However, in 2013 as well as in 2012 only the quotas regarding EU/EFTA assignees became scant towards the end of the calendar year, whereas for all others they were in sufficient quantity.

What Will Change?

For the time being Switzerland's current immigration system remains fully in force and unchanged. However, the outcome of the vote obliges the Swiss Federal Council to mandate the parliament with elaborating a new article in the Federal Constitution based on the initiative and to enforce it within three years.

It may be some time before any real change takes place in practice. As per the Federal Council's announcement on 12 February 2014, the current aim is to issue a step-by-step plan by June 2014 and release draft implementing legislation by year-end.

KPMG Note

What exactly such changes will look like depends on the way the Federal Council turns the initiative into law and the outcome of the corresponding negotiations with the EU. In this regard, the initiative leaves some wiggle room to the Swiss government and, in particular, does not provide any (maximum) quota figures. Thus, at this early stage predictions cannot be made as to the impact or the outcome.

In any case, however, permits for cross-border commuters, dependents, and asylum seekers shall once again be subject to quota once the new article in the Swiss constitution is in place.

Through its constant contact with the federal and cantonal authorities, the KPMG Immigration Services Team will closely monitor any developments and endeavor to keep readers informed of anything relevant.

Sources:

Medienmitteilungen, Der Bundesrat, 09.02.2014 -- Systemwechsel bei der Zuwanderung: Ja zur Volksinitiative "Gegen Masseneinwanderung" (Change in immigration system: Yes to popular initiative aimed at stopping mass immigration)

Medienmitteilungen, Der Bundesrat, 12.02.2014 -- Neues System für Zuwanderung: Bundesrat legt Schritte für Umsetzung fest

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