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Switzerland – Safeguard Clause Abolished for EU-25 Nationals, Immigration Initiative Impacts on Others

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As of 1 June 2014, all European Union (EU) nationals from 25 specified countries (so called "EU-25")¹ can again enjoy unrestricted migration rights concerning Switzerland under the Agreement on the Free Movement of Persons ("AFMP").

Why This Matters

Switzerland's immigration policy has been undergoing important changes recently, in part due to termination of the applicability of the so-called "safeguard clause" stipulated in the AFMP, and in part due to the recent Stop Mass Immigration Initiative (further discussed below).

Termination of the safeguard clause will allow most EU nationals to be employed locally in Switzerland by a Swiss-based employer and to (again) enter Switzerland and begin working without restrictions (i.e., without prior formal application procedure) after due registration in Switzerland.

According to very recent announcements of the competent bodies, the Stop Mass Immigration Initiative adopted by Swiss voters in February 2014 affects future immigration of Croatian nationals to Switzerland.

Background

In spring 2012, Switzerland's Federal Council had invoked for EU-8 nationals² the safeguard clause³ stipulated in the AFMP. This allowed Switzerland unilaterally to introduce quotas for EU/European Free Trade Agreement (EFTA) nationals for purposes of employment locally in Switzerland if/when certain immigration numbers are reached.

In spring 2013, the Federal Council decided to re-apply the safeguard clause to EU-8 nationals for another year.⁴

Further, the Federal Council decided to invoke the safeguard clause for a period of one year for EU-17 nationals.⁵

However, according to the AFMP, the safeguard clause may no longer be invoked regarding EU-25 nationals after the year 2013. Consequently, from 1 May 2014 (regarding EU-8 nationals) and from 1 June 2014 (regarding EU-17 nationals) the number of permits for locally employed EU-25 nationals will no longer be limited.⁶

New Constitutional Provisions on Immigration

However, there are other restrictions on the rights of free movement that are anticipated in respect of all EU member countries in the near future. On 9 February 2014, Swiss voters adopted the “stop mass immigration” initiative (so-called “Initiative gegen die Masseneinwanderung”). (For prior coverage, see [Flash International Executive Alert 2014-023](#), 20 February 2014). The initiative, aiming to stop mass immigration, brings significant changes to Switzerland’s immigration policy. The new Swiss constitutional provisions established as a consequence of the stop mass immigration initiative require that all residence permits for foreign nationals be restricted (quantitative limits).

As we previously reported in *Flash International Executive Alert*, within three years the Swiss Federal Council and Parliament will have to implement a new system. This timeframe also applies to the re-negotiation of agreements, which are not compatible with the new constitutional provisions.

As per the Federal Council’s announcement on 30 April 2014, the aim is to draw up an implementation plan by the end of June 2014 and release a draft implementing legislation by the end of the year.⁷

Until a new legal status has been established, the AFMP, as well as the current Swiss immigration system, will remain fully in force and unchanged. However, from 9 February 2014, no international agreements could be or may be concluded that breach the new constitutional text.

KPMG Note

The new system only applies to foreign nationals who would like to migrate to Switzerland after the new legal provisions come into force. Already granted permits should not be affected (Art. 23 AFMP).

Consequences of the Stop Mass Immigration Initiative on EU Enlargement to Croatia

Croatia joined the EU on 1 July 2013. Switzerland and the EU thereafter launched negotiations on a so-called “protocol III” for appropriate transitional extension of the AFMP. During the transitional period of 10 years starting on the date of entry into force of protocol III, restrictions on immigrant workers would apply (preferences for Swiss residents, quotas, controls of salary and working conditions, etc.). After the lapse of these 10 years, the protocol envisages full free movement rights for Croatian citizens.

KPMG Note

As noted earlier, the new constitutional provisions arising from the initiative on mass immigration ban the conclusion of new treaties that are not compatible with the introduction of quotas for immigrants. Switzerland’s Federal Council is therefore not allowed to sign the initialled protocol III to extend the freedom of movement to Croatia in its original version.

As the Federal Council was unable to sign protocol III, the EU suspended negotiations and discussions in various areas. To avoid any discrimination against Croatia, the Federal Council is currently working closely with the competent EU bodies to seek solutions.⁸

The following measures have been decided up to now: Switzerland will grant Croatian citizens separate quotas as part of the admission to the Swiss labour market of third country nationals. These are the quotas that would have been granted between the time of the signing of protocol III and its implementation.

The granted quotas consist of 50 one-year category B permits, 450 short-term category L-permits, and 1,000 residence permits for under four months. These quotas can be introduced by the Federal Council by means of an ordinance. The entry into force of the necessary revision of the Ordinance on Admission, Period of Stay and Employment is planned for 1 July 2014.

Consequences of the Stop Mass Immigration Initiative on EU Enlargement to EU-2 Member States

Bulgaria and Romania (also referred to as "EU-2") entered into the EU on 1 January 2007. Unlike the other bilateral agreements, the AFMP is not automatically applicable after the entry of new states to the EU. By means of an additional protocol to the AFMP, Switzerland and the EU had negotiated an appropriate transitional extension of the regulation (protocol II). During a transitional period of seven years from 1 June 2009 (the date of entry in force of protocol II), restrictions on access to the labour market apply. For the citizens of Bulgaria and Romania, the restrictions will remain in force until (at least) 31 May 2016. After this period, Switzerland can reintroduce the safeguard clause quotas unilaterally for another three years.

In any case, the above stipulations and steps with respect to the new immigration system that is to be implemented by the Swiss Federal Council apply as well with regard to EU-2 nationals.

Footnotes:

1 Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden, Spain, United Kingdom,

2 Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Slovenia, Hungary.

3 In German, the "Ventilklausel".

4 See (in German): <https://www.news.admin.ch/message/index.html?lang=de&msg-id=48623> .

5 Ibid. "EU-17" refers to the "EU-25" (see footnote 1) minus the "EU 8" (see footnote 2).

6 See (in French): <https://www.news.admin.ch/message/index.html?lang=fr&msg-id=52803> .

7 Ibid.

8 See (in French): <https://www.news.admin.ch/message/index.html?lang=fr&msg-id=52804> .

Sources:

Medienmitteilungen, Der Bundesrat, 26.03.2014 – Neues System zur Zuwanderung: Bundesrat diskutiert das weitere Vorgehen.

Medienmitteilungen, Der Bundesrat, 30.04.2014 – Personenfreizügigkeit: Ventilklausel läuft aus.

Bundesamt für Migration, 21.05.2014 – Personenfreizügigkeit Schweiz-EU/EFTA.

Erklärung des Bundesrates betreffend die Nicht-Diskriminierung von kroatischen Bürgern und Bürgerinnen.

Erklärung des Bundesrates betreffend die erworbenen Rechte der Bürgerinnen und Bürger aus EU- oder EFTA-Ländern, die in der Schweiz leben oder arbeiten.

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