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Immigration policy – a never-ending story

Parliament approved a loose implementation of the mass immigration initiative last December. Yet the issue is far from resolved.

JÜRIG MÜLLER

There were unprecedented scenes in the Swiss Parliament. The Swiss People's Party (SVP) parliamentary group held protest placards aloft bearing slogans like "Mass immigration is continuing!" and "Breach of the constitution!". These events took place on 16 December last year during the final vote on implementing the mass immigration initiative in which the SVP was defeated. The SVP's popular initiative had been approved on 9 February 2014 by 50.3 % of voters. However, an astonishing political drama ensued between these two dates which did not end with the conclusion of the parliamentary process but instead led to much fiercer rows over Swiss policy on Europe.

This issue will continue to occupy Switzerland in the near future. Since the approval of the initiative, article 121a of the federal constitution has stated that Switzerland must govern immigration using quotas and maximum numbers. The new admission system should have been introduced within three years, so by 9 February this year, while protecting the interests of the whole economy and giving priority to Swiss citizens. International treaties that contravene the new provisions would be "renegotiated and amended within three years of approval by the Swiss people and cantons".

Refusal from Brussels

Flashback – in June 2014, shortly after the approval of the mass immigration

initiative, the Federal Council presented a plan for its strict implementation with maximum numbers and quotas and put it out to consultation. In July of the same year, the national government lodged a request with the EU to amend the Agreement on the Free Movement of Persons. Brussels did not take long to respond. Catherine Ashton, the EU's High Representative for Foreign Affairs, immediately informed Switzerland that the amendment request had been rejected. In February 2015, Simonetta Sommaruga, President of the Swiss Confederation, and Jean-Claude Juncker, President of the European Commission, agreed to hold "consultations" but actual negotiations were out of the question for the EU. Despite the EU's refusal, the Federal Council approved the negotiation mandate with Brussels in February 2015 and opened a consultation process for the bill on the implementation of the mass immigration initiative. Maximum numbers and quotas were no longer stipulated for EU citizens should it not be possible to amend the agreement on free movement.

The sluggish toing and froing was spiced up by a new development in October 2015. A politically independent committee submitted the popular initiative entitled "Out of the cul-de-sac". Its content is simple but radical: Article 121a should be deleted from the federal constitution.

In March 2016, the Federal Council presented the dispatch on the implementation of the constitutional

article concerning the mass immigration initiative. The national government was now focusing on a safeguard clause which could be implemented unilaterally without the approval of the EU if necessary. If immigration exceeded a certain threshold value, the Federal Council would have to define annual maximum numbers.

"Priority for Swiss, light"

Parliament took the reins in the autumn 2016 session and a new term emerged: "Priority for Swiss, light version". After protracted wrangling, the Federal Assembly finally adopted an implementing law in December that provides for some priority to be given to the unemployed. In regions and professions with an above-average number of jobless, companies must register their vacancies with the regional job centres and invite suitable applicants for interview. The aim is that immigration from abroad will fall because vacancies will be filled by people who are registered as unemployed in Switzerland.

After much toing and froing, harsh words were exchanged in Parliament on 16 December 2016 at the aforementioned final vote. Adrian Amstutz, leader of the SVP parliamentary group, said: "Our democracy is being trampled on with today's breach of the constitution." He dubbed this a dark day for the nation. "This almost traitorous course of action by the parliamentary majority – driven by the SP but led by FDP politicians, and which the CVP parliamentary group is also helping over the line with duplicitous abstention – constitutes unprecedented contempt for democracy."

In actual fact it was the Free Democrats, especially the National Councillor Kurt Fluri and the former FDP President and current Council of States member Philipp Müller, who

took the lead and creatively forged the now existing implementing legislation concerning the mass immigration initiative. The SP did not have to do a great deal as its main interests were in line with those of the FDP – maintaining the bilateral approach, which is only possible if the agreement on freedom of movement with the EU is not affected. Amstutz was not the

Not democracy's finest hour

The implementing law does not constitute implementation of the mass immigration initiative to the letter and is not direct democracy's finest hour either. However, this solution is not undemocratic, as the SVP claims. After all, the Swiss people have voted in favour of the bilateral

possible to continue the agreements with Switzerland.

One problem is that the initiative contains ambiguities. While the new constitutional article requires negotiations with the EU, it does not indicate what should happen if they fail or do not even take place. Negotiations clearly always require the willingness of both sides to engage.



only one to speak out. Ignazio Cassis, the leader of the FDP parliamentary group, also used strong words during the showdown in Parliament: He accused the SVP of “betraying the people” because it had led the public to believe prior to the referendum on the mass immigration initiative that the problem could be resolved simply through follow-up negotiations with the EU on the free movement of persons.

agreements five times but only once for independent controls on immigration. “We have tried to bring the various referendum decisions together under one hat and to achieve the best possible outcome within the scope of the bilateral agreements,” remarks SP President Christian Levrat in an interview with the “Bund” newspaper. EU leaders declared shortly before Christmas 2016 that it would now probably be

A clear sign: The SVP parliamentary group accused Parliament of violating the constitution on 16 December 2016.

Photo: Keystone

Adrian Amstutz, the leader of the SVP parliamentary group, believes it was a mistake from the outset to include the position of the EU in the implementation. In an SVP leaflet sent to all Swiss households in March 2015, he wrote that the Federal Council had effectively handed the EU a “right of veto” by adopting this approach. It made the implementation of the popular mandate dependent upon the willingness of Brussels to approve the

vital amendment to the agreement on the freedom of movement. The SVP was still insisting “on the systematic implementation of the popular mandate, even if this means accepting the termination of the agreement on free movement”.

However, the SVP took a different tone before the referendum. It declared that by approving the initiative “we are giving the Federal Council the mandate of renegotiating the free movement of persons with the EU” and “therefore the agreement on the free movement of persons will not have to be terminated”. It also said: “The initiative is neither seeking a general halt to immigration nor is it calling for the termination of the bilateral agreements with the EU.” In fact this appeared on the initiative’s official website. However, the SVP did not come up with any constructive compromise proposals during the implementation phase. Progress cannot be made without compromise, as the foreign policy think-tank foraus indicates: “The systematic implementa-

tion of the mass immigration initiative is not feasible, only various compromises are possible. A political decision is required on which objective is of greater importance – economic prosperity or autonomous control of migration.”

Christoph Blocher muddled the waters and clearly took up positions which his party later distanced themselves from, as the “Sonntagszeitung” documented in December 2016. According to the minutes of a meeting of business leaders and conservative parties, the SVP’s chief strategist was willing to refrain from maximum figures and even indicated priority for Swiss citizens could be acceptable.

A referendum called by supporters

The SVP also acted inconsistently in the aftermath of the battle. It decided against a referendum despite the party dubbing the implementing law a “breach of the constitution” and a “betrayal of the nation”. Party leader

Albert Rösti explains this position by remarking that a referendum “would simply cement the current status quo”. However, nothing is cut and dried yet. A series of major events that could set the course of policy on Europe is emerging on the horizon. Nenad Stojanovic, ironically a member of the SP rather than the SVP, has as a private individual now called a referendum against the law on the implementation of the mass immigration initiative. Stojanovic supports the controversial implementing law but wants to lend it the greater legitimacy of a referendum. This means that for the first time in Swiss history, it is the advocates rather than the opponents of a law who are calling for a referendum. He is also receiving support from other individuals and small groups who either vehemently back or vehemently reject the law. If the required number of signatures is collected and the law is adopted at the referendum, this would send a clear signal that the Swiss people wish to retain the

The mass immigration initiative has led to difficult discussions with the EU. (Pictured: Simonetta Sommaruga, President of the Swiss Confederation, and Jean-Claude Juncker, President of the European Commission, during negotiations in 2015) Photo: Keystone



From ceilings to the three-circles model

Switzerland has long been an attractive destination for foreign workers. There were large waves of immigration even before the First World War. But it really started to pick up with the economic boom after the Second World War. Politicians responded with various instruments to channel the growing level of immigration. They initially attempted to use the *rotation principle*. Residence permits were only issued for a short period after which the guest workers had to return to their native country. Many employers were critical of the system because they continually had to introduce and train different workers. From 1963, the Federal Council attempted to introduce a *simple ceiling*. Companies could only recruit foreigners if they did not increase their workforce significantly. It had little effect as immigration continued to rise. At the same time, xenophobic movements attracted strong support.

The Swiss government now introduced the *double ceiling*. Every company had to reduce the number of foreign staff by 5 % while also ensuring that the total number of employees did not increase. These measures had an impact but more foreigners arrived owing to a simplified family reunion procedure. In 1970, *quotas* were brought in. This curbed immigration but significantly more seasonal workers came to Switzerland at the same time. The *three-circles model* was then devised in 1991 but never implemented in its purest form: free movement of persons with the EU states (first circle), recruitment of highly qualified workers from other western countries, like the USA and Canada (second circle), and no immigration, as far as possible, from the rest of the world (third circle). *Free movement of persons with the EU* was then gradually implemented in 2002.

There has been one sobering constant in all the political attempts to control immigration to this day. Migratory movements have had less to do with immigration laws but have rather reflected the economic situation in Switzerland and also in the countries of origin. (JM)

free movement of persons. This is precisely the outcome the SVP fears, which is why it is refraining from calling a referendum. However, if the people were to vote against it, there would be no implementing law. The bilateral agreements would be in acute danger as Parliament would have to adopt tighter legislation which would probably be incompatible with the agreement on free movement of persons.

This agreement is now coming under direct attack from the SVP in any case. In January, the party decided to prepare a popular initiative

opposing the agreement by the middle of this year. There is talk not just of termination but of a general constitutional ban on the free movement of persons. The Campaign for an Independent and Neutral Switzerland (Auns) initially took the lead. Last December, it declared that it would soon be launching a termination initiative. Auns chief executive Werner Gartenmann told "Swiss Review" that the next steps would now be coordinated with the SVP: "We sought to create pressure in December to finally move forwards," he said. If this initiative is put forward, the people could make a clear fundamental decision over policy on Europe – either independent control of immigration and a possible break with the EU or continuation of the bilateral relations with Brussels as at present.

Decision based on the "out of the cul-de-sac" initiative?

The "out of the cul-de-sac" initiative, which has already been submitted and would remove the mass immigration article from the constitution without substitution, would also present the opportunity for a fundamental decision to be made. However, the initiative is given little chance of success. Rejection would also increase the pressure to implement the mass immigration initiative to the letter. The Federal Council has therefore submitted two variants of a direct counterproposal for consultation. One variant provides for the implementation of the mass immigration initiative in accordance with "international treaties". The other solution seeks to leave the text of the SVP initiative in the constitution in full but to delete the three-year implementation period from the transitional provisions. This would make the control of immigration a long-term matter for the Federal Council.

It would have to knock on Brussels' door again to seek a solution, but could wait for an opportune moment. An opportunity may arise after a period of time to renegotiate the free movement of persons without fundamentally jeopardising relations with the EU. After all, the free movement of persons is also a contentious issue in several EU states. It was one of the reasons for Brexit, the UK's departure from the EU.

Switzerland will therefore have to weather further storms over policy on Europe before the immigration issue is resolved for good. In the meantime, mass immigration will continue "unchecked", according to the SVP's website. However, the influx of foreigners has been falling for three years. In 2016, the lowest level of immigration was recorded since the full free movement of persons was introduced in 2007. Net migration, which is the difference between immigrants and emigrants in the permanent resident foreign population, has been declining since 2013. Net migration gain then stood at over 81,000. In 2014, it was just under 79,000 and in 2015 around 71,500. The latest statistics on foreigners released by the State Secretariat for Migration indicate that net migration in 2016 was over 15 % lower than in 2015, standing at 60,262.

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