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Autor: [s.n.]

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Switzerland Protects Herself Against Foreign Infiltration on the Market for Real Estate

For some time already, Swiss circles had been viewing with great concern certain developments on the market for real estate. An unprecedented demand on the part of foreign buyers was threatening to lead to a major economic infiltration. There are no detailed statistics for such purchases of property, but these have certainly been of the order of many hundreds of million francs over recent years. In the canton of Zurich, for instance, it is estimated that real estate bought by foreigners aggregated 155 million francs for the period 1952-1959. Though this is a modest figure when given as a percentage of the total value of Swiss landed property, it must not be forgotten that it expresses merely an *addition* to the already large foreign stake in Switzerland. As the process seemed to be continuing without any sign of a reversal of trend, there were good grounds for anxiety. The buying was by no means confined to villas, holiday chalets and land in the most favourably situated parts of the country (Ticino, Vaud, Grisons, etc.) but extended to and even concentrated upon blocks of flats and offices in the big towns, the aim in view being a substantial yield or capital appreciation. However, the land available in Switzerland is severely finite in extent, so that a large foreign demand, based on the considerable foreign capital invested in the country, threatened to set off a massive increase in the price of landed property and to start a wave of real estate speculation very undesirable for the Swiss economy as a whole. Many responsible citizens, anxious to prevent such an evolution, raised their voices in the Federal and cantonal parliaments or wrote to the daily press, demanding state intervention to control this foreign infiltration which bid fair to weaken Switzerland's economic independence.

The agitation led the Federal Council to submit in November 1960 a draft decree subjecting to official authorization purchases of real estate by persons domiciled abroad. The draft gave rise to much discussion, was repeatedly amended and modified, and finally received the approval of the Federal parliament in March 1961. As it was declared a matter of urgency, the new decree came into force on 1st April 1961 and remains valid in the first place until 31st December 1965. Under the Swiss constitution, the right of referendum may (but need not) be invoked against the decree.

Since 1st April 1961 onwards, the purchase of real estate by persons domiciled abroad or by bodies whose registered offices are in foreign countries requires the approval of the competent cantonal authority if it is to escape being declared null and void.

According to the new decree, this approval *must* be withheld when no legitimate interest can be proved by the buyer or when the property to be acquired lies near an important military work. Approval *may* be withheld when the object of the purchase is situated in a given region where persons or bodies domiciled or registered abroad have already acquired disproportionately large interests or in a landscape worthy of preservation and of national

importance. Finally, approval *may not* be withheld when the purchaser is a relative in direct line of ascent or descent of the seller, when the building to be acquired is wholly or partly intended to house permanently an undertaking of a commercial nature and when the real estate is to serve as a guarantee for the actuarial reserves of the Swiss branch of a foreign insurance company operating in Switzerland. Furthermore, *a cantonal authorization is not required* for purchase of real estate by

- (a) individuals born in Switzerland and domiciled there for at least fifteen years;
- (b) legal heirs acquiring real estate under the provisions of a last will and testament;
- (c) foreign states and international organizations purchasing property for purposes recognized by Switzerland as being of public utility.

In certain quarters, it has caused surprise that Switzerland, the country of liberal traditions, has had recourse to a measure restricting property rights and freedom of contract. In this connection, it may be as well to mention that Switzerland is by no means the innovator in this sphere. Other countries, among them Germany, Austria, Sweden and Denmark, introduced similar legislation several years ago. Moreover, *subjecting to authorization is not the same as forbidding*. The cantons have full scope to exercise their discretion in granting or withholding authorization. All the same, the Swiss living abroad have been greatly disappointed to learn that they, too, come under the new Federal decree and cannot acquire real estate without permission, whereas foreigners resident in Switzerland can do so. This discrimination against Swiss nationals residing abroad, which seems a shocking one at first sight, is the inevitable consequence of the international treaties under which Switzerland has bound herself to treat foreigners residing within her frontiers in the same way as her own subjects. This obligation forced the Swiss government to take domicile, and not nationality, as the basis for applying the new decree. Of course, it is obvious that a Swiss living abroad who wants to buy property in his native land will not be refused permission, but the mere fact of having to ask for this may wound his self-esteem. It is to mitigate the psychologically undesirable effects to this discrimination that the provisions of the decree have been declared inapplicable in the case of individuals born in Switzerland and domiciled there for at least fifteen years.

The new Federal decree is a further step in the campaign Switzerland has been forced to undertake recently against growing foreign infiltration. The cantons are entrusted with the execution of the decree, and there is a right of appeal against their decisions to a Federal Commission.

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