

# CEPS POLICY BRIEF



Thinking ahead for Europe

## No Move without Free Movement: The EU-Swiss controversy over quotas for free movement of persons

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### Key points

The focus of this Policy Brief is the Swiss referendum of 2014 against 'mass immigration' in Switzerland. It identifies the challenges that a quota on EU citizens' free movement rights to Switzerland would pose to EU-Swiss relations, considering: i) the value of freedom of movement in the EU and its indivisibility from the internal market and other economic freedoms; ii) the specificity of the EU legal system following the Lisbon Treaty that has established specific democratic and judicial accountability mechanisms; iii) the lack of supranational judicial oversight of the EU-Switzerland agreements framework; and iv) the existence of the so-called guillotine mechanism, according to which the termination of the Free Movement Agreement would entail the automatic termination of the other agreements with the EU.

### Options and Recommendations

OPTION 1: keep the Agreement on the Free Movement of Persons (AFMP):

First, apply safeguard clauses in cases where there is evidence of "serious economic and social difficulties" in Switzerland, or introduce limitations that do not formally constitute a 'quota'.

A key dilemma with these safeguard clauses would be how to show objective evidence of these difficulties in Switzerland. Any limitations should not constitute 'hidden quotas' or quantitative restrictions in different guises.

Second, launch a new referendum asking the Swiss people to vote on free movement, highlighting the economic benefits of the internal market and other instruments such as research and study within the EU. It is unclear whether a new referendum based on purely economic arguments would change the results. Any new referendum should also insist on combating racism and xenophobia.

OPTION 2: review the AFMP and bring the *acquis* under EU democratic rule of law by ensuring judicial control by the Court of Justice of the EU. **This would be our preferred option, as it would bring the existing Agreements Framework in line with the Lisbon Treaty, and ensure proper democratic accountability and judicial control.**

OPTION 3: terminate the AFMP and conclude a new agreement with a reduced scope envisaging quotas while keeping all the remaining rights. This option would mean that, on the basis of reciprocity, Swiss nationals would become 'full' third-country nationals for the purposes of entry and residence in the EU.

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## 1. What are the issues?

The 9 February 2014 referendum in Switzerland backing the initiative to introduce annual quotas on immigration has been the subject of much debate. The initiative, which was put forward by the Swiss People's Party, passed with a narrow majority of 50.3% in favour. The outcome of the referendum must be implemented into the Swiss legal system by February 2017. The draft law to implement it aims to create "a new admission system" based on **quantitative limits and quotas on immigration to the country, including mobility by nationals of EU member states (EU citizens)**. A key challenge resulting from this referendum would thus be the reintroduction of migration controls of EU citizens moving to Switzerland and the end of the current legal regime on free movement of persons. This has caused deep controversy and undermines EU-Switzerland bilateral relations more generally.

The results of the referendum call for measures that would directly contradict the EU-Switzerland framework of cooperation, contravening as they do the Free Movement of Persons regime set out in an Agreement (AFMP) signed in 1999 and entering into force in 2002.<sup>1</sup> The AFMP reconfigured Swiss sovereignty and discretion as regards 'migration controls' by providing freedom of circulation and residence rights for EU nationals in Switzerland.

Current rights include quota-free circulation for EU nationals (right of entry and short stay in Switzerland) with no conditions beyond proper identification (passport or ID). They also cover the right to work or be self-employed and reside in Switzerland for that purpose, as well as

<sup>1</sup> Agreement between the European Community and its member states, on the one hand, and the Swiss Confederation on the other on the free movement of persons: Final Act, Joint Declarations, information relating to the entry into force of the seven agreements with the Swiss Confederation in the sectors of free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products, *Official Journal L 114*, 30/04/2002 P. 0006 – 0072.

residence on the basis of self-sufficiency. EU nationals residing in Switzerland on the basis of the agreement are entitled to a residence permit that evidences their right to security of residence (protection against expulsion, which is only permitted on the basis of public policy, public security or public health); geographic and work-related internal mobility between the cantons, and non-discrimination or equality of treatment with Swiss nationals in the labour market.

Two sets of rights are relevant in this matter: border- control-free access to the territory (Schengen border- control-free area) and EU free movement rights; the right to stay, reside and exercise economic activities. The referendum directly affects the second set of rights. Switzerland cannot place restrictions (such as quotas) on EU nationals' rights of residence and economic activities without breaching the AFMP. In theory, it could refrain from introducing border controls on EU nationals and remain within the Schengen free movement area and still honour the outcome of the referendum. However, as we argue in sections 2 and 3 of this Policy Brief, the EU Council has already stated that the planned reform would cast profound doubts on Swiss membership of the Schengen Agreements (the legal framework for border-control-free movement of persons) and of the Dublin Agreement (on the allocation of responsibility for asylum seekers).

The Swiss government introduced a draft law in June 2014 to transpose the referendum into the Swiss constitution with a new article following the "mass immigration initiative" (Article 121a of the constitution on "autonomous management of migration" (see Annex 1, in French, of this Policy Brief),<sup>2</sup> which would amend the Foreigners Law in a far-reaching way. Also, Switzerland did not sign the Protocol extending the free movement agreement to Croatian nationals; the Swiss government introduced a separate quota system for Croatian nationals applicable from July 2014.<sup>3</sup>

<sup>2</sup> See ([www.admin.ch/ch/f/pore/vi/vis413t.html](http://www.admin.ch/ch/f/pore/vi/vis413t.html)).

<sup>3</sup> [www.news.admin.ch/message/index.html?lang=en&msg-id=52804](http://www.news.admin.ch/message/index.html?lang=en&msg-id=52804)), see also EP briefing note:

The free movement of persons plays out in a wider setting of bilateral EU-Swiss legal instruments and agreements covering other domains. As the Council has reaffirmed that

by participating in parts of the EU's internal market and policies, Switzerland is not only engaging in a bilateral relation but becomes a participant in a multilateral project.<sup>4</sup>

The AFMP contains a 'guillotine mechanism' according to which its termination would entail the automatic termination of the six other agreements with the EU.<sup>5</sup> A 'standstill clause' in Article 13 AFMP states that the contracting parties undertake not to adopt any further restrictive measures vis-à-vis each other's nationals in the fields covered by AFMP. **Free movement is thus an integral part of a package of bilateral instruments.** Some are indeed intrinsically linked or cannot move without the other.

## 2. Reactions from EU institutions

The EU's position can be summed up in a letter signed by former High Representative C. Ashton of 24 July 2014, where it was stated that such a reform would be

in fundamental contradiction to the objective of the Agreement

and that

the EU is not in a position to agree with your request.

In addition, in December 2014 the Council Conclusions "on a homogeneous extended single market and EU relations with Non-EU Western European countries" made clear that

the free movement of persons is a fundamental pillar of EU policy and that the

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([www.europarl.europa.eu/RegData/etudes/BRIE/2014/536313/IPOL\\_BRI%282014%29536313\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/536313/IPOL_BRI%282014%29536313_EN.pdf)).

<sup>4</sup> Council conclusions on a homogeneous extended single market and EU relations with Non-EU Western European countries, General Affairs Council meeting Brussels, 16 December 2014, paragraph 44.

<sup>5</sup> They are retrievable from (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2002:114:TOC>).

internal market and its four freedoms are indivisible

and that

...the EU expects Switzerland to honour its obligations arising from the Agreement on the free movement of persons and the other agreements concluded with the EU. Furthermore, the Council expects Switzerland to fully ensure that EU citizens working or living on its territory, regardless of the moment of settlement and taking up employment in Switzerland, can exercise or continue to exercise their acquired rights without any restriction, and with the guarantee that the outcome of the popular initiative would not have a negative impact on them. In case of infringements of the above principles, the Council reserves its right to put an end to the abovementioned institutional negotiations and other internal market related negotiations.

The Council also stated in these conclusions that

... the planned implementation of the result of the vote threatens to undermine the core of EU-Switzerland relations, namely the so-called 'bilateral I agreements', and casts doubt on the association of Switzerland to the Schengen and Dublin *acquis* and the participation of Switzerland in certain EU programmes.<sup>6</sup>

As a consequence, the European Commission applied penalties by putting Swiss participation in H2020 and Erasmus+ on hold.<sup>7</sup> After the new

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<sup>6</sup> Council conclusions, paragraph 45.

<sup>7</sup> See speech of former European Commissioner L. Andor of 26 February 2015 ([http://europa.eu/rapid/press-release\\_STATEMENT-14-32\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-14-32_en.htm)); *EU observer* article of 13 June 2014: (<https://euobserver.com/political/124591>); and the statement of the Swiss government: ([www.news.admin.ch/message/index.html?lang=en&msg-id=52251](http://www.news.admin.ch/message/index.html?lang=en&msg-id=52251)); The State Secretariat for Education, Research and Innovation (SERI) and the Federal Office of Culture (FOC) have been asked to draw up interim solutions for the three programmes; see also the website EUResearchCH, Swiss guide to European research and innovation: ([www.euresearch.ch/de/european-programmes/horizon-2020/swiss-participation-in-horizon-2020](http://www.euresearch.ch/de/european-programmes/horizon-2020/swiss-participation-in-horizon-2020)). See

Commission and the new European External Action Service (EEAS) were established, the Swiss government met in early 2015 with the Commission President Juncker, European Parliament President Schulz and Council President Tusk. They agreed on conducting ‘consultations’ and nominating contact points.<sup>8</sup> The EU position has therefore not changed with the new EU inter-institutional landscape. EU institutions continue to take a firm stance on free movement and the need for the Swiss authorities to find an appropriate solution that would not jeopardise the current agreements.

### 3. What are the challenges?

#### 3.1 Challenge 1: The value of freedom of movement in the EU

One of the characteristics of this controversy is that it affects individuals and one of the foundational principles of the EU – the free movement of persons, which is now recognised as a fundamental right in the EU Charter of Fundamental Rights and is a central component of the internal market. The relevance that was attributed to free movement by the contracting parties is envisaged in the AFMP Preamble, which states that

Convinced that the free movement of persons between the territories of the contracting parties is a key factor in the harmonious development of their relations.

**It is mainly EU citizens who would be affected by these measures.** As the Swiss Federal Office for Migration Statistics indicated, 23.8% of the population permanently residing in Switzerland has a migrant background (see Annex 2 of this paper for a detailed overview).<sup>9</sup> **Nearly 66% (65.9%) of foreigners living in Switzerland**

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also ([www.euractiv.com/global-europe/switzerland-gets-penalty-immigra-news-533548](http://www.euractiv.com/global-europe/switzerland-gets-penalty-immigra-news-533548))

<sup>8</sup> See ([www.swissinfo.ch/eng/labour-control-government-urges-calm-for-talks-on-eu-immigration-curbs/41267674](http://www.swissinfo.ch/eng/labour-control-government-urges-calm-for-talks-on-eu-immigration-curbs/41267674)).

<sup>9</sup> See publication “La population de la Suisse 2013” of the Confédération Suisse, Office fédéral de la statistique OFS, Neuchâtel 2014.

**originate from an EU member state or Iceland, Liechtenstein or Norway.**<sup>10</sup> The main nationalities are Italians (298,900), followed by Germans (292,300), Portuguese (253,200) and French (110,100).

By considering the introduction of quotas affecting the mobility of EU citizens to Switzerland, the Swiss authorities are not only challenging the most symbolic foundations of the EU, they are also categorising EU nationals as foreigners in Switzerland by subjecting them to new immigration rules. As the AFMP is reciprocal, one may wonder what implications the quotas would have on Swiss nationals moving to one of the EU member states. If the agreement is denounced, then Switzerland would be free to make any immigration rules it wishes regarding EU nationals seeking to move and reside there. But, **on the basis of reciprocity, Swiss nationals will equally become ‘full’ third country nationals for the purposes of entry and residence in the EU.** This means that they will need to fulfil the conditions of the Blue Card Directive for highly skilled, the Intra-corporate Transferees Directive or Seasonal Workers Directive if they want to come to work in the EU.<sup>11</sup>

It is true that Article 23 secures ‘acquired rights’ by private individuals in the case of termination or non-renewal. It is to be welcomed in this context that the Swiss Federal Council stated in clear terms that under Article 23 AFMP, citizens of EU and EFTA countries who already live and work in Switzerland will continue to be able to invoke the rights conferred by the AFMP, even if the Agreement is terminated. The Article expressly states that rights acquired by private individuals will not be affected. Naturally, this also applies to Swiss citizens living or working in EU or EFTA countries. This provision also states that contracting parties will settle by mutual agreement what action is to be taken in

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<sup>10</sup> Ibid.

<sup>11</sup> For a detailed overview of the EU policy on legal immigration ([http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/legal-migration/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/legal-migration/index_en.htm)).

respect of rights in the process of being acquired.<sup>12</sup>

It is also worth noting that the results of the first referendum were welcomed by various populist (extreme) right and Eurosceptic political parties across Europe. As reported by *The Guardian*,<sup>13</sup> politicians like Geert Wilders (Dutch Party for Freedom) and Marine Le Pen (French Front National) celebrated the results and called on their respective countries to follow a similar anti-immigration initiative. Racism and xenophobia seem to have played a role in a second migration-related referendum,<sup>14</sup> which was initiated by Ecopop, a Swiss ecological association that campaigned to restrict immigration for alleged environmental reasons and to reduce overpopulation.<sup>15</sup> In this second referendum the Swiss population rejected a proposed net immigration cut to no more than 0.2% of the population in November 2014.

### 3.2 Challenge 2: The specificity of the EU legal system

Another key challenge for the handling of this affair is the fact that the EU is a *sui generis* supranational entity functioning within the confinements of a specific legal system. The EU legal system has been designed along a 'checks and balances' regime that aims to manage the delicate interaction between EU and member state competences. The regime also seeks to link 'more EU' to proper oversight and judicial supervision, based on common legal principles

<sup>12</sup> ([www.news.admin.ch/NSBSubscriber/message/attachments/34644.pdf](http://www.news.admin.ch/NSBSubscriber/message/attachments/34644.pdf)). This protective provision is part of the agreement, so if the agreement is denounced it too cease to apply although it is likely that the parties would respect its intended continuing effects.

<sup>13</sup> ([www.theguardian.com/world/2014/feb/10/switzerland-talks-eu-immigration-referendum](http://www.theguardian.com/world/2014/feb/10/switzerland-talks-eu-immigration-referendum)).

<sup>14</sup> ([www.independent.co.uk/news/world/europe/switzerland-votes-on-ending-mass-immigration-9893224.html](http://www.independent.co.uk/news/world/europe/switzerland-votes-on-ending-mass-immigration-9893224.html)).

<sup>15</sup> ([www.theguardian.com/world/2014/nov/30/switzerland-rejects-immigration-cap](http://www.theguardian.com/world/2014/nov/30/switzerland-rejects-immigration-cap)) and ([www.theguardian.com/world/2014/nov/30/switzerland-votes-on-tax-and-migration-billionaires-nationalists](http://www.theguardian.com/world/2014/nov/30/switzerland-votes-on-tax-and-migration-billionaires-nationalists)).

and rule of law standards. Freedom of movement as a fundamental right constitutes a core connecting principle to other freedoms and the internal market.

The EU-Switzerland agreements were negotiated when the EU legal system was largely unfinished and still subject to a pre-Lisbon Treaty setting. Since the entry into force of the Lisbon Treaty in December 2009 the EU has legal personality and clearer competences to conclude international agreements. The European Parliament now also has a strengthened role in giving consent to international agreements and in ensuring democratic accountability to the EU's external relations, including in policy domains related to mobility. Judicial scrutiny by the Court of Justice in Luxembourg (CJEU) has been equally expanded and consolidated. Not least, the EU Charter of Fundamental Rights has become legally binding, enshrining free movement as a key fundamental right. All these institutional and substantive arrangements have further delineated the specificity of the current EU legal regime, as well as the challenges inherent in finding a way forward that complies with a post-Lisbon Treaty scenario.

### 3.3 Challenge 3: Lack of independent judicial review

Judicial scrutiny indeed constitutes one of the innovations of the Lisbon Treaty. Yet the EU-Switzerland polemic poses a related challenge: how do we ensure that restrictions and renegotiations of free movement are subject to judicial oversight, which would in turn ensure stability and transparency, and effective remedies before independent judicial authorities in the event of dispute? A key challenge of the 'bilateral agreements framework' is the lack of independent supranational judicial oversight.<sup>16</sup> This has led external observers raising doubts

<sup>16</sup> The AFMP as an international agreement concluded by the EU with a third state forms an integral part of the EU legal order and the CJEU has the competence to rule on the interpretation and application of the agreement. However, the Court's jurisdiction currently only binds the member states and the EU.

about the overall effectiveness of the framework of bilateral relations. Lazowski (2014) has argued that

From the legal point of view, the Swiss model of enhanced bilateralism or ‘chocolate box’ integration has been flawed from the start.... the lack of robust enforcement machinery has allowed Switzerland to allegedly breach the Free Movement of Persons Agreement as well as to undermine the effectiveness and uniformity of EU law.<sup>17</sup>

Since 2008 the Council emphasised the need for an overarching institutional framework for EU-Switzerland relations. In 2012, the Council specified that it

... considers that further steps are necessary in order to ensure the homogeneous interpretation and application of the Internal Market rules. In particular, the Council deems it necessary to establish a suitable framework applicable to all existing and future agreements. This framework should, inter alia, provide for a legally binding mechanism as regards the adaptation of the agreements to the evolving EU acquis... All in all, this institutional framework should present a level of legal certainty and independence equivalent to the mechanisms created under the EEA Agreement.<sup>18</sup>

The AFMP set up a ‘Joint Committee’ of representatives of the contracting parties (Article 14.1) that should reach its decisions by mutual agreement. The contracting parties limited the settlement of disputes to this Joint Committee concerning “the interpretation or the application of the agreement”. The decisions of the Joint Committee are not public, however. According to interviews conducted for the purposes of this paper, a number of disagreements concerned the so-called flanking measures. Flanking measures are meant to protect Swiss workers from social dumping. The

EU regarded them as discriminatory and incompatible with the FMP Agreement.<sup>19</sup>

### 3.4 Challenge 4: Conditionality and inter-linkages between agreements

The AFMP is only one of a wider set of bilateral agreements that regulate EU-Swiss relations. There are, however, strong inter-linkages between the latter agreement and the others. As stated above, and in line with the guillotine clause, the termination of Swiss participation in the free movement regime would terminate the other agreements. As mentioned above, the EU institutions have already clearly indicated that the end of the free movement system would also raise serious doubts about cooperation in other related areas, such as the Schengen and Dublin Agreements, where Switzerland is an associated partner.<sup>20</sup> Switzerland had expressed strong interest in participating in Schengen since the late 1990s, due to the expected negative consequences of non-participation for transit, tourism, security and the economy.<sup>21</sup> Switzerland has been an associated country to Schengen since December 2008.<sup>22</sup> The introduction of quotas for EU citizens would jeopardise the intrinsic relationship between

<sup>19</sup> Other disputes have dealt with the recognition of professional qualifications, as well as the fees charged for the recognition procedure.

<sup>20</sup> F. Filliez, Schengen/Dublin: The Association Agreements with Iceland, Norway and Switzerland, in B. Martenczuk and S. van Thiel (eds), *Justice, Liberty and Security: New Challenges for EU External Relations*, VUB Press, Brussels University Press, pp. 145-183.

<sup>21</sup> Refer to the answer by Federal Council of 25 February 1998 on the consequences of Switzerland exclusion from the Schengen Agreement ([www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch\\_id=19973676](http://www.parlament.ch/F/Suche/Pages/geschaefte.aspx?gesch_id=19973676)).

<sup>22</sup> See ([http://europa.eu/rapid/press-release\\_IP-08-1955\\_en.htm](http://europa.eu/rapid/press-release_IP-08-1955_en.htm)). Refer to Council Decision of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen acquis (2008/146/EC) (see <http://eur-lex.europa.eu/legal-content/en/ALL/?uri=OJ:L:2008:053:TOC>).

<sup>17</sup> A. Lazowski (2014), *The End of Chocolate Box-Like Integration? EU-Swiss Relations after the Referendum*, CEPS Commentary, February 2014.

<sup>18</sup> Council Conclusions 20 December 2012.

migration and border controls in EU-Swiss relations.

#### 4. Ways forward: Three scenarios

There are several possible scenarios to deal with the challenges emerging from the EU-Switzerland controversy on the free movement of persons. The following three options can be considered:

- *Option 1: Current AFMP – A sort of status quo*

1. One possibility could be to apply one of the following **safeguard clauses**:

First, Article 14.2 of the Agreement that foresees that in the event of “serious economic and social difficulties” the Joint Committee can examine appropriate measures to remedy the situation. It is not clear how these would be assessed in practice. The challenge here is who would determine and scrutinise these difficulties on the basis of objective, de-politicised evidence on the ground? Can Switzerland currently and objectively prove any of these circumstances?

Second, the insertion of a revamped general safeguard clause (as proposed by Ambuehl)<sup>23</sup> for “statistically exceptional situations”, meaning in the case of serious economic or social difficulties. This general safeguard clause would stipulate an upper ceiling based on a formula in cases of ‘mass immigration’, and would therefore not be as strict as annual quotas. The revamped general safeguard clause would replace the existing (and expired) safeguard clause foreseen in Article 10 of the FMP Agreement. In the same provision the transitional restrictions are set out: the restrictions expired for all EU nationals except for Bulgarian and Romanian nationals for whom restrictions are in place until 31 May 2016 (plus a safeguard clause that could be invoked until May 2019).

<sup>23</sup> <http://onlinelibrary.wiley.com/doi/10.1111/spsr.12143/abstract>

Alternatively, the Swiss government could also decide not to introduce a ‘formal quota’. This approach could only be contested with a new referendum, given that no constitutional court exists in the Swiss legal system that could review the implementation of the referendum at national level. In our view, however, careful attention should be paid to actual effects that the application of these ‘safeguard clauses’ would have in practice, so that they are not turned into a system of ‘hidden quotas’ or quantitative restrictions in different guises based on political decisions without proper independent scrutiny and evidence.

2. A new referendum: the Swiss government could launch a new referendum asking people to vote on a package of measures, not only including free movement rights of EU citizens again, but linking this to the internal market and other instruments such as research and students (Horizon 2020 and Erasmus+), Creative Europe and energy policies.<sup>24</sup> A new referendum by the end of 2016 is reported to be one of the preferred options of the EEAS.<sup>25</sup>

Notwithstanding this, if a second referendum were to be held several issues should be taken into consideration. As Acosta (2014) has previously argued, the main reason for the vote in the first referendum differed greatly from discussions that have emerged in other parts of Europe regarding immigration. In a country where the unemployment rate among Swiss citizens is low and the wealth of the economy is almost beyond imagination, a key factor that played a role in the ‘yes vote’ was the perceived overpopulation and the problems it seems to entail (e.g., transportation gridlock, housing shortages and booming prices).<sup>26</sup> **The extent to**

<sup>24</sup> See <http://ec.europa.eu/programmes/creative-europe>

<sup>25</sup> See *EUobserver* (<https://euobserver.com/institutional/128281>), which states that “EU diplomat Maciej Popowski said that a new referendum is ‘inevitable, probably at the end of 2016’”.

<sup>26</sup> D. Acosta (2014), “The Swiss referendum: Is free movement of people in danger in Europe?”, BEPA Monthly Brief, Issue 71, February 2014.

which purely economic arguments would change the results in a second vote is thus unclear.

- *Option 2: Review the current AFMP*

Any way forward needs to take account of the legal framework emerging from the Lisbon Treaty since December 2009, which has secured a specific version of EU rule of law. The agreements do not currently provide a comprehensive institutional framework in compliance with the ‘Lisbonisation’ of the EU legal system.

Bringing the Agreement into line with EU democratic rule of law as envisaged in the Lisbon Treaty could therefore be another plausible option. **This would be our preferred option, as it would bring the existing Agreements Framework in line with the Lisbon Treaty, and ensure proper democratic accountability and judicial control.** A revised or ‘revamped’ agreement could include jurisdiction within the CJEU that is binding on all contracting parties, including Switzerland. It should be within CJEU competence to have the last word on the interpretation and application of the agreement. This should be based on an independent assessment of the ways in which the Joint Committee has functioned and performed its tasks over the last few years. This could also go hand in hand with setting up an effective accountability mechanism of the Joint Committee functioning and its decisions.

- *Option 3: Termination of the AFMP*

Article 25 of the AFMP provides the rules for termination. In line with Article 25.4 the termination of the FMP Agreement would trigger the termination of all six other Bilateral Agreements I.<sup>27</sup>

The termination of the FMP Agreement would have serious consequences for Switzerland’s

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<sup>27</sup> Dealing with air transport, carriage of passengers and goods by road and rail, trade in agricultural products, the mutual recognition of conformity assessment, certain aspects of government procurement and scientific and technological cooperation.

participation in the Schengen system on the abolition of border checks and the Dublin system on asylum. Both the Schengen Association Agreement and the Dublin Association Agreement concluded with Switzerland fall under the Bilateral Agreements II. The termination of the AFMP would not automatically lead to the termination of the two former agreements. However, as stated above, the Council has declared that the introduction of immigration quotas would cast doubt on the association of Switzerland to the Schengen and Dublin *acquis*. EU nationals would de facto become foreigners in Switzerland and be subject to checks and migration controls. Their foreigners would be EU nationals. The practical application of quotas would therefore raise tricky questions about Schengen participation and police cooperation.

In the event of termination of the FMP Agreement the EU and Switzerland could consider **concluding a new agreement with a reduced scope**.<sup>28</sup> Such an agreement could envisage the introduction of quotas while maintaining all the remaining rights and guarantees included in the current FMP Agreement, e.g. geographic and work-related internal mobility between the cantons for those with a residence permit. This would in any case constitute a considerable step backwards in EU-Swiss relations, given that the AFMP (along with the EEA Agreement) has been considered as a prime model in EU external relations.

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<sup>28</sup> The EU currently maintains a wide variety of other, much less close forms of cooperation and partnership agreements with third countries, partly covering migration.



## Annex 1. Initiative populaire fédérale 'Contre l'immigration de masse'<sup>29</sup>

### I

La Constitution<sup>1</sup> est modifiée comme suit:

Art. 121 Titre (nouveau) Législation dans le domaine des étrangers et de l'asile

#### **Art. 121a (nouveau) Gestion de l'immigration**

1 La Suisse gère de manière autonome l'immigration des étrangers.

2 Le nombre des autorisations délivrées pour le séjour des étrangers en Suisse est limité par des plafonds et des contingents annuels. Les plafonds valent pour toutes les autorisations délivrées en vertu du droit des étrangers, domaine de l'asile inclus. Le droit au séjour durable, au regroupement familial et aux prestations sociales peut être limité.

3 Les plafonds et les contingents annuels pour les étrangers exerçant une activité lucrative doivent être fixés en fonction des intérêts économiques globaux de la Suisse et dans le respect du principe de la préférence nationale; ils doivent inclure les frontaliers. Les critères déterminants pour l'octroi d'autorisations de séjour sont en particulier la demande d'un employeur, la capacité d'intégration et une source de revenus suffisante et autonome.

4 Aucun traité international contraire au présent article ne sera conclu.

5 La loi règle les modalités.

### II

Les dispositions transitoires de la Constitution sont modifiées comme suit:

#### **Art. 197, ch. 92 (nouveau)**

9. Disposition transitoire ad art. 121a (Gestion de l'immigration)

1 Les traités internationaux contraires à l'art. 121a doivent être renégociés et adaptés dans un délai de trois ans à compter de l'acceptation dudit article par le peuple et les cantons.

2 Si les lois d'application afférentes ne sont pas entrées en vigueur dans les trois ans à compter de l'acceptation de l'art. 121a par le peuple et les cantons, le Conseil fédéral édicte provisoirement les dispositions d'application nécessaires par voie d'ordonnance.

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<sup>29</sup> Swiss Confederation, Federal Chancellery (<http://www.admin.ch/ch/f/pore/vi/vis413t.html>).

## Annex 2.

### Migration and Integration – Indicators on Foreign Population residing permanently in Switzerland by nationality<sup>30</sup>

en milliers ( <i>in thousands</i> )					
	2009	2010	2011	2012	2013
Total	1714.0	1766.3	1816.0	1870.0	1937.4
Pays de l'UE-28/AELE	1112.7	1135.0	1177.5	1223.4	1276.9
Allemagne	251.9	263.3	275.3	284.2	292.3
France	92.5	95.6	99.9	104.0	110.1
Italie	290.6	287.1	288.0	291.8	298.9
Autriche	36.7	37.0	37.9	38.8	39.5
Portugal	206.0	212.6	223.7	237.9	253.2
Espagne	65.0	64.1	65.8	69.4	75.3
Autres pays de l'Europe	367.1	369.1	368.3	368.4	369.9
Serbie-et-Monténégro	181.3	...	...	...	....
Serbie	...	121.9	109.3	98.7	90.7
Turquie	71.6	71.8	71.4	70.8	70.4
Afrique	57.7	71.5	74.8	78.2	83.9
Amérique	72.7	74.5	76.6	77.7	78.4
Asie	99.3	110.5	113.6	117.2	122.9
Océanie	4.0	4.0	4.1	4.1	4.1
Apatride, nationalité inconnue	0.6	0.8	1.1	1.1	1.2

Source: PETRA, STATPOP cited by: Confédération Suisse, Office fédéral de la statistique OFS.

<sup>30</sup> Based on ([www.bfs.admin.ch/bfs/portal/fr/index/themen/01/22/publ.html?publicationID=5746](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/22/publ.html?publicationID=5746)).  
For more information see ([www.bfs.admin.ch/bfs/portal/fr/index/themen/01/07/blank/key/04.html](http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/07/blank/key/04.html)).