

Izabela KRAŚNICKA, Magdalena PERKOWSKA, Iwona WROŃSKA

Białystok

Free movement of persons between Switzerland and the European Union and state security¹

Abstract: The paper presents the phases of introducing free movement of persons, common rules within civil aviation between the EU and Switzerland, and the Schengen Agreement. Analysing this based on the currently applicable Swiss and EU legislation, the authors present the regulations in this area. As those regulations influence migration, the paper also presents statistical data on the permanent and non-permanent foreign population in Switzerland and contains a thorough analysis of that data – as part of the paper’s empirical research. The further empirical part is an empirical analysis of data on the penalties for: 1) unlawful entry, exit, and period of stay and working without a permit, 2) encouraging unlawful entry, exit or an unlawful period of stay, 3) employment of foreign nationals without a permit, and 4) fraudulent conduct towards the authorities penalised under the Federal Act on Foreign Nationals. These crimes mostly concern illegal border crossing, encouraging and helping illegal border crossing and other illegal actions aimed at aiding the activities of illegal migrants. The crimes are strictly linked to the issue of the free movement of persons, the common rules of the EU and Switzerland within the field of civil aviation and the Schengen Agreement between Switzerland and the EU. For this reason, the paper presents statistical data on the criminality of foreigners, related to the problem of migration.

Key words: free movement of persons, migration, security, criminality

I. Introduction

Switzerland’s relationship with the European Union (EU) is similar to the Earth’s relationship with the Moon. Inevitably, the Earth, being the larger body, has more influence; yet the Moon is still a powerful presence, exerting power and influence on the natural processes of the Earth. So it is with Switzerland and the EU. The EU is obviously the larger power with more influence, but Switzerland, as we can see, has maintained, via its bilateral approach, a freedom of manoeuvre and adaptability that has kept it as one of the wealthiest places in the world and highly flexible in the global market (Ruffle, 2008, p. 5).

Switzerland is geographically an enclave in the heart of the European Union but the large majority of the population (more than 70%) does not want to join the EU yet. This is due to numerous interlinked reasons (lack of historical trauma, strong attachment to neutrality, importance of direct democracy for Swiss political identity and opposition from key economic sectors) (Schwok, 2007, p. 449).

The same is true from the EU side. The Swiss market is very close to the rest of Europe. So why not facilitate trade between the two entities? Less known is the fact that

¹ The study contains legal status as at 31 December 2013.

Switzerland is the second largest EU export market, after the US, but far ahead of Japan, China and Russia. There are all kinds of other financial, transport, personal, social and environmental interactions. For instance, 700,000 persons, mostly from the EU, enter Switzerland every day. There are therefore strong incentives to ease the lot both of the businessman and the average person (Schwok, 2007, p. 449).

Since 1972, more than 20 bilateral agreements have been concluded with the EU to promote the access of Swiss products to the EU market and to allow the country to take part in certain EU programmes, objectives or policies. Most of these agreements were signed in 1999 (a package called “Bilateral I,” composed of 7 agreements) and in 2004 (“Bilateral II”, 9 agreements), while a new set of agreements (“Bilateral III”) is now under negotiation.

Taking the above into consideration, the main aim of the paper is to answer the question of whether the opening of Switzerland to the European Union market has influenced its security, especially as the free movement of persons, civil aviation security and state security are concerned. State security here is understood as internal security. Introducing free movement of persons, and especially entering into Schengen zone and eliminating identity controls at the common borders of the Schengen member states (internal borders), is considered as limiting state security.

The paper presents the phases of introducing free movement of persons, common rules within civil aviation between the EU and Switzerland, and the Schengen Agreement. Analysing the currently applicable Swiss and EU legislation, the authors present the regulations in these areas. As those regulations influence migration, the paper also presents statistical data on the permanent and non-permanent foreign population in Switzerland and contains a thorough analysis of that data as part of the paper’s empirical research. The further empirical part is an empirical analysis of data on the penalties for: 1) unlawful entry, exit, and period of stay and work without a permit, 2) encouraging unlawful entry, exit or an unlawful period of stay, 3) employment of foreign nationals without a permit, and 4) fraudulent conduct towards the authorities penalised under the Federal Act on Foreign Nationals. These crimes mostly concern illegal border crossing, encouraging and helping illegal border crossing and other illegal actions aiming at aiding the activities of illegal migrants. The crimes are strictly linked to the problem of the free movement of persons, the common rules of the EU and Switzerland within the field of civil aviation, and the Schengen Agreement between Switzerland and the EU.

Free movement of persons

In the summer of 1999, the member states of the European Union and Switzerland signed seven bilateral agreements, including the *Agreement on the Free Movement of Persons*, which came into force on 1 June, 2002.

The first package of agreements, known as *Bilaterals I*, was composed of seven sectoral agreements covering free movement of persons (Afonso, 2009, p. 83–106; Balch, Fellini, Ferro, Fullin, Hunger, 2004, p. 179–200), transport over land, air transport, public procurement markets, and elimination of technical barriers to trade, research,

and agriculture.² The most eye-catching of these was the *Agreement on the Free Movement of Persons* as requested by the EC.³ More than one million EU citizens live in Switzerland (amid a population of slightly more than 6 million Swiss citizens) and over 200,000 EU nationals (*les frontaliers*) cross the border daily to work in Switzerland. This agreement was the sole 'mixed agreement' of the package; that is, from the EU's side, an agreement that the EC and its member states sign. As a consequence of this 'mixity', EU enlargement, after the entry into force of the *Bilaterals I*, required Swiss approval for the application of the *Agreement on the Free Movement of Persons* to the new EU member states. For the EU enlargements of 2004 and 2007, Switzerland agreed to extend the *Agreement on the Free Movement of Persons* through popular referendum. The various agreements of the *Bilaterals I* were, notwithstanding their great diversity, interconnected through the famous 'guillotine clause', which stipulated that all the agreements had to enter into force simultaneously and would collectively terminate should any individual agreement be terminated (Maresceau, 2010–2011, p. 733–734).

Its continuation was confirmed in a referendum on 8 February, 2009. As a result of the EU's enlargement by ten member states on 1 May, 2004, the *Agreement...* was supplemented by an additional protocol containing provisions for the gradual introduction of the free movement of persons in the new EU member states. The protocol came into force on 1 April, 2006.⁴ Following the EU accession of Bulgaria and Romania on 1 January, 2007,⁵ the *Agreement...* was supplemented by a further protocol, which came into force on 1 June, 2009 (*European*, 2011, p. 4).

For the 15 'old' EU states (EU-15) together with Malta and Cyprus, full free movement of persons has applied since 1 June, 2007; the 8 states (EU-8) that joined the EU in 2004 have been enjoying full free movement of persons since 1 May, 2011. Up until 31 May, 2014, the safeguard clause could be applied to these EU-25 states. For Bulgaria and Romania (EU-2), which joined the EU in 2007, the transitional period can run up to 31 May, 2016 at the latest. The safeguard clause's application to Bulgaria and Romania can be invoked until 31 May, 2019 (*Free movement of persons*).

The *Agreement on the Free Movement of Persons* and its additional protocols make it easier for EU nationals to take up work and settle in Switzerland (*European*, 2011, p. 4; Cremers, 2004, p. 132–133). It is interesting to note that the free movement of persons, which the Swiss corporate sector today touts as the core of bilateralism, was introduced by the EU and proved to be one of the most difficult sticking points in the negotiating process (*Switzerland*, 2008, p. 2; Peers, 2000, p. 127–142).

² For text of these agreements, see 2002 O.J. (L 114) 1 [hereinafter *Bilaterals I*].

³ Agreement between the European Community and its Member States, of the one part and the Swiss Confederation, of the other, on the free movement of persons, June 21, 1999, 2002 O.J. (L 114) 6 [hereinafter *Agreement on the Free Movement of Persons*].

⁴ The additional protocol regarding the 2004 EU enlargement was approved in September by a majority of 56%. *Swiss Confederation*, <http://www.admin.ch/ch/f/pore/va/20050925/index.html>, 22.01.2013.

⁵ On February 8, 2009, the extension of the Agreement on free movement of persons to Bulgaria and Romania was approved in a referendum by a majority of 59.6%. *Swiss Confederation*, <http://www.admin.ch/ch/f/po/re/va/20090208/index.html>, 22.01.2013.

The *Agreement...* between Switzerland and the EU provides for the progressive opening of the employment market. The *Agreement...* covers workers of all kinds, the self-employed and persons without gainful employment who have sufficient financial means of their own. On entry into force of the *Agreement on the Free Movement of Persons*, persons in gainful employment and the self-employed only benefit directly from the rights granted if at that time they are already authorised to pursue an employment activity on the territory of the contracting parties. Persons who wish to take up employment on the territory of the other contracting party will only benefit from freedom of personal movement two years after the entry into force of the *Agreement...* For employed persons from the EU, the transition to free movement will take place in several stages extending over a period of 12 years.

The *Agreement on the Freedom of Movement* is supplemented by mutual recognition of professional diplomas and coordination of social insurance. To prevent abuse of the freedom of movement of persons, the federal government and parliament have taken accompanying measures to protect Swiss employees against wage dumping. The advantages include the opportunity of living and working freely anywhere in Europe, the know-how acquired as a result of participation in European research programmes, the improvement in relations between Switzerland and the European Union, and the guarantees given by the latter for Switzerland's environment policy, all of which are factors that are of inestimable value (Keiner, 2005, p. 21–22).

The category of the residence permit is determined by the duration of employment. A short-term residence permit (Type L permit) is awarded for employment of less than a year, while a residence permit (Type B permit) is awarded for employment of one year or more (*Free movement of persons*). Citizens from EU-2 countries must have an employment contract, which their employer submits to the cantonal labour authority together with a request for a work permit. Whether a work permit is awarded depends on quotas and the local labour situation. Usually, EU-2 nationals must also already hold a residence permit when they apply for a work permit (*Free movement of persons*).

Nationals from non-EU/EFTA (European Free Trade Association) can only work in Switzerland if employers can prove that they have been unable to recruit a person from an EU/EFTA country. There are, however, some exceptions to these rules (*Free movement of persons*).

Workers receive this permit if they are EU/EFTA residents who also work in Switzerland. They must return to their non-Swiss domicile at least once a week and register their Swiss residence with the communal authorities. For EU-25/EFTA nationals, no border zone regulations apply; residence can be anywhere in the EU/EFTA and the workplace can be anywhere in Switzerland. For EU-2 nationals, residence and workplace must lie within designated border zones (the cantonal labour market authority should be contacted for details).

Civil aviation security: common rules within the EU and Switzerland

Civil aviation security constitutes another element of the overall security system in a given country. Unlawful interference with the air territory of another country is a viola-

tion of international law, namely the provisions of the 1944 Chicago Convention, to which Switzerland is a party, along with membership of the International Civil Aviation Organization (*Convention on International Civil Aviation*). Civil aviation issues became especially crucial and subject to changes in international, regional and internal regulations following the events of September 11, 2001.

Security standards for Swiss civil aviation derive from the mechanism operating within the International Civil Aviation Organization. They include international standards and recommended practices (SARPS) grouped in the Annexes to the Chicago Convention. Annex 17 is dedicated to Security – Safeguarding International Civil Aviation against Acts of Unlawful Interference. These standards and practices are, however, not obligatory. Member States of the ICAO are to “collaborate in the highest practicable degree of uniformity” to implement those mechanisms into internal laws, but there is no obligation to comply with SARPS (*Convention on International Civil Aviation...*, art. 37; Milde, 2008, p. 159). In addition, according to the provisions of Annex 17, each state is to establish its own civil aviation security programme with additional security measures and a relevant aviation authority to administer, implement and maintain such a programme.⁶

Another source of aviation security in Switzerland comes from the European Union’s regulations. Aviation agreements between EU and non-EU countries can be concluded where it is recognised that the security standards applied in the non-EU country are equivalent to the EU’s common basic standards. EU countries must inform the Commission when measures required by a non-EU country differ from the common basic standards with regard to flights from an airport in an EU country to, or over, that non-EU country. The EU regulation dating back to 2002 was repealed by Regulation (EC) No 300/2008 on common rules in the field of civil aviation security with the aim of simplifying, harmonising, and clarifying the existing rules on civil aviation security (*Summaries of EU legislation*).

The preamble to the 300/2008 Regulation clearly links its provisions with the ICAO’s standards and practices, stating that “[i]t is desirable, in the interests of civil aviation security generally, to provide the basis for a common interpretation of Annex 17 to the Chicago Convention on International Civil Aviation of 7 December 1944.” It is also one of the objectives listed in art. 1 of the Regulation (*the Regulation (EC) No 300/2008 of the European Parliament...*, Preamble to and art. 1).

Further articles list common basic standards aimed at protecting civil aviation, which include: airport security, demarcated areas of airports, aircraft security, passengers and cabin baggage, hold baggage, cargo and mail, air carrier mail and air carrier materials, in-flight and airport supplies, in-flight security measures, staff recruitment and training, and security equipment. The Regulation includes a list of general measures that provide the criteria and conditions for the common, basic standards, to be used to amend the non-essential elements of those standards. The regulation also lists detailed measures that provide the requirements and procedures for the implementation of the common, basic standards (*Summaries of EU legislation*).

⁶ Standard 3.1.2 of the Annex 17, ICAO Doc AN 17. See also: *International and EU Aviation Law: Selected Issues*, eds. E. M. Giumulla, L. Weber, The Netherlands 2011, p. 294.

According to provisions of art. 9 of the Regulation, each state is to “designate a single authority [...] to be responsible for the coordination and monitoring of the implementation of the common, basic standards.” Addressees of the Regulation are also obliged to establish a national civil aviation security programme, national quality control programme, airport security programme, air carrier security programme as well as an entity security programme (*the Regulation (EC) No 300/2008 of the European Parliament...*, art. 10–14).

The European Commission is entitled to conduct inspections to monitor the application of the Regulation. It acts in cooperation with the appropriate authority of the state concerned (*the Regulation (EC) No 300/2008 of the European Parliament...*, art. 15).

In Switzerland the Federal Office of Civil Aviation (FOCA) is responsible for the development of civil aviation and maintenance of safety and security standards, along with implementation of the required programmes and cooperation with the Commission (*Duties of the Federal Office of Civil Aviation*).

Schengen Agreement

Switzerland has close relations with the European Union on the political, economic and cultural levels. The bilateral *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* (OJ L 53 from 27.2.2008, p. 52–79) was signed on 26 October, 2004 in Luxembourg within the framework of the *Bilateral Agreements II*.⁷ The Agreement was approved by the Federal Assembly on 17 December, 2004, and approved by the people in the referendum on 5 June, 2005 (54.6% of Swiss citizens voted in favour). The Agreement finally entered into force on 1 March, 2008. However, it operationally entered into force on 12 December, 2008, and a few months later at Swiss airports (29 March, 2009).

According to this Agreement, the Swiss Confederation is associated on an equal footing with Iceland and Norway in the implementation, application and development of the Schengen *acquis*.

As Switzerland is not a member state of the EU, on the basis of article 3 of the Agreement, a Mixed Committee was established, consisting of representatives of the Swiss Government, members of the Council of the European Union and members of the Commission of the European Communities. Its main aim is to explain the problems that may occur while implementing the Agreement and express an opinion on any questions concerning the drawing up of provisions of concern to them, or the implementation thereof.

Switzerland participates in the development of the legal acts of the Schengen *acquis*, but it has no formal decisive right. Switzerland has a right to determine if a new legal act concerning Schengen adopted by the EU will also be adopted by Switzerland. A positive

⁷ There were nine bilateral agreements of 2004 which strengthen cooperation in the economic sphere and extend cooperation: Schengen/Dublin, Taxation of savings, Processed agricultural products, MEDIA, Environment, Statistics, Fight against fraud, Pension, Education, vocational training and youth.

decision must be communicated to EU in the written form of an exchange of letters. Such a decision from the Swiss point of view constitutes an international agreement/treaty and is taken according to Swiss law by the Federal Council or Parliament. If the decision is taken by Parliament, it can be also be voted on by the population in a referendum. The lack of a positive Swiss decision can even cause termination of the agreement.

The Schengen Association Agreement of 2004 facilitates travel between Switzerland and the EU by eliminating identity controls at the common borders of the Schengen member states (internal borders). At the same time, a number of measures have been introduced to improve international justice and police cooperation in the fight against crime. These include security measures such as tighter controls at the Schengen external borders and increased cross-border police cooperation, provided for example by the Europe-wide computer information system SIS, and more efficient cooperation between judicial authorities (*Schengen/Dublin*).

The introduction of Schengen meant simplifying travelling, especially for tourists, visitors and business travellers from third countries who needed a specific visa to enter Switzerland and now only need a Schengen visa which is valid also for Switzerland following 12 December, 2008. Switzerland has been issuing Schengen visas since the Schengen Agreement entered into force. Travelling in the Schengen area has also become easier for foreigners from non-EU/EFTA states who live in Switzerland: since 12 December, 2008 foreigners holding a Swiss B, C or L permit have not needed a Schengen visa any more as long as they carry with them a valid travel document and their residence permit. Moreover, since the entry into force of Schengen, Switzerland has been required to comply with the Schengen visa policy.

State security

Introducing free movement of persons, but especially entering into the Schengen zone and eliminating identity controls at the common borders of the Schengen member states (internal borders), is considered as limiting state security. 'Open borders' are extremely at risk of border criminality, especially illegal border crossing, but also human trafficking, and smuggling. Easier access to a state's territory encourages migration, both legal and illegal (irregular).

According to the Federal Office of Police, Switzerland is a transit and target country for migrant smugglers. Illegal migration and criminal activity of transit migrants remains an important challenge for the Swiss security bodies (*Lutte*, 2012, p. 25). The country is still severely affected by migration flow via Greece and Turkey. Also, between February and September 2011 there was a significant flow of migrants from Africa to Europe across the Mediterranean Sea. There was also an increase in 2011 in illegal migration by air. According to the Federal Criminal Police's files, those smuggled into Switzerland mostly originated from Kosovo, Afghanistan, Pakistan, Somalia, Iraq, Syria, Iran and Sri Lanka. Perpetrators range from individuals who bring their relatives over the border, to large, criminal organisations (smuggling on a commercial scale). Police investigations usually reveal that smuggling networks operating abroad also have branches in Switzerland (*Lutte*, 2012, p. 77).

Referring to the activity of organised criminal groups, for example, members of the Italian-Calabrian group who have permanent residence in Switzerland often provide a hiding place and financial assistance to members of the group seeking refuge in Switzerland. The Ndrangheta uses cultural organisations and immigrant organisations as a cover for its criminal activities. Since 2005, members of the group have invested in real estate in Switzerland, in particular in the cantons close to the Italian border, namely Tessin and Valais. In 2008, the group made investments in the construction, real estate, and restaurant sector (*Rapport sur la sécurité*, 2008, p. 28).

Of the different forms of crime that are characteristic of Chinese groups, only two are present in Switzerland, namely illegal migration and credit card fraud. Switzerland, in particular Geneva International Airport, is an important European transit centre for Chinese airlines and for migrants trying to enter the Schengen zone. Switzerland is not the destination for them and only constitutes a transit area where illegal Chinese immigrants stop to work off the books, mostly in restaurants (*Rapport sur la sécurité*, 2008, p. 30).

The range of criminal activities of African groups is very broad. In Switzerland, West- and Central-African groups focus on drug dealing (mostly cocaine). However, this is not their only field of activities, as African groups are also involved in trade in people, smuggling of migrants, counterfeiting documents, and fraud (*Rapport sur la sécurité*, 2008, p. 63).

Albanian groups became active at the time refugees from the former Yugoslavia appeared. Throughout Europe, the groups controlled the refugee transfer routes in cooperation with Montenegrin, Croatian, Turkish, and Greek groups. Initially, their activities consisted of smuggling people into Switzerland and other European states, with simultaneous smuggling of drugs and weapons (*Rapport sur la protection*, 2000, p. 95). Most members of the groups come from the south-eastern part of the Balkans. The groups have the characteristics of clans, and most were established by connecting criminal groups and extremist groups, and maintain strong ties with the world of politics and business. The operational work of the police has demonstrated that the key areas of their criminal activities are the drug trade (heroin and cocaine), smuggling of immigrants, and trade in people. The groups are also active in money laundering, through travel offices owned by Albanians (*Rapport sur la protection*, 2000, p. 95).

Smaller criminal organised groups also operate in Switzerland. They include groups from Lebanon, Maghreb, Turkey and the Dominican Republic, active primarily in drug trafficking, and groups from China involved in human trafficking, migrant smuggling and credit card fraud (*Lutte*, 2012, p. 89).

For the above mentioned reasons, it is important to analyse if and how introducing the free movement of persons and the Schengen Agreement by Switzerland influenced the country's security.

The permanent and non-permanent foreign population in December 2011 was 1,827,000 persons. 1,132,000 of those (62%) were from EU-17, 60,000 persons (3%) were from EU-8+2 and 628,000 persons (35%) were from third countries. Italians and Germans were the largest groups of foreign nationals in Switzerland (both 16%), the third largest group was the Portuguese (13%).

Table 1

**Size of permanent and non-permanent foreign population in Switzerland
by nationality 1991–2011 (in thousands)**

	Before FMoP											1991– 2001
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	
UE-17/EFTA	823	827	832	841	841	833	822	812	810	812	821	–0.2
UE-8	10	10	9	9	15	15	15	15	16	16	17	0.7
UE-2	3	3	3	3	3	3	3	4	4	4	5	0.2
Third countries	338	386	433	466	487	500	512	526	549	564	591	25.3
Total	1174	1225	1277	1320	1347	1351	1353	1357	1379	1397	1434	26.0
Germany	86	87	88	90	92	94	96	99	104	111	119	3.3
Portugal	105	117	127	136	141	143	142	140	139	140	142	3.7
France	51	52	53	54	55	55	56	57	59	61	63	1.1
Great Britain	17	18	18	18	19	18	18	19	20	21	22	0.5
Austria	29	29	29	29	29	29	29	29	29	30	31	0.1
Spain	116	110	107	105	102	98	95	91	87	84	82	–3.4
Italy	378	373	369	366	361	352	344	336	329	322	316	–6.2

	Transition regime of FMoP						FMoP				2001 –2011
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	
UE-17/EFTA	857	881	900	923	948	978	1030	1060	1092	1132	31.1
UE-8	19	20	20	21	25	29	33	36	40	47	3.0
UE-2	6	6	6	6	6	7	7	9	11	13	0.8
Third countries	613	623	628	626	619	619	622	623	628	635	4.4
Total	1495	1529	1554	1577	1598	1632	1692	1728	1771	1827	39.3
Germany	138	150	163	180	200	223	250	265	277	291	17,2
Portugal	151	164	173	180	186	193	205	212	220	232	9,0
France	67	70	72	74	78	81	88	93	98	102	3,9
Great Britain	24	25	26	27	29	31	34	36	38	41	1,8
Austria	34	34	35	35	35	36	37	38	39	40	0,9
Spain	80	78	75	72	69	66	65	65	65	68	–1,4
Italy	314	310	306	302	297	294	293	292	293	294	–2,2

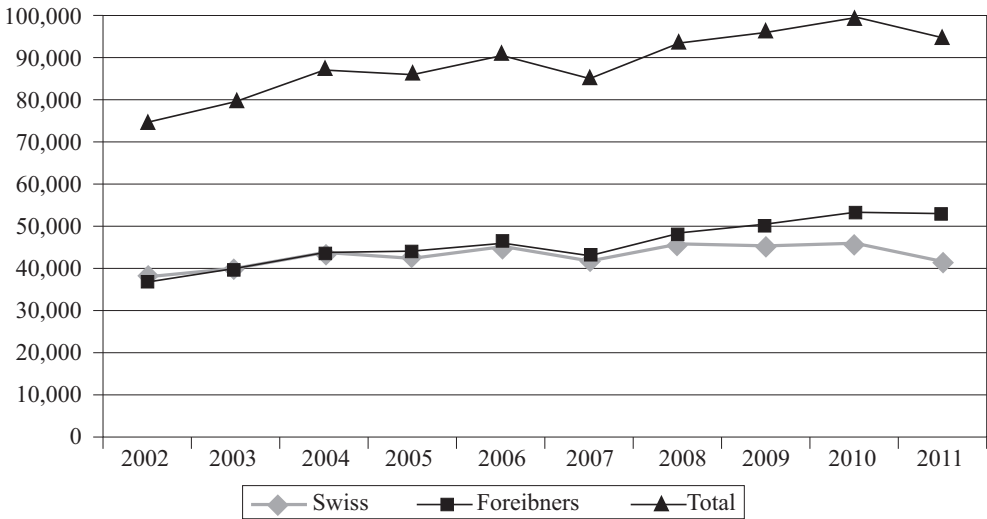
Source: Federal Office for Migration, *Répercussions de la libre circulation des personnes sur le marché suisse du travail, Huitième rapport de l'Observatoire sur la libre circulation des personnes entre la Suisse et l'UE*, Bern 2012, p. 21.

If we compare this with ten years preceding the entry into force of the *Agreement on free Movement of Persons (AFMP)* we must state that the permanent and non-permanent foreign population in Switzerland grew by an amount ranging from +26,000 to +39,300 per year. Before the entry into force of the AFMP, the foreign population consisted mostly of citizens of non-EU countries. Since then, citizens of EU-27 have represented 89% of the increase in the foreign population in Switzerland: Germans 44%, Portuguese 23%, French 10%, and British 5%. The remaining 10% of the growth is represented by citizens of EU-8, strong growth being observed from 1 May, 2011 (from full free move-

ment of persons for EU-8). This is significant immigration by workers with residence permits coming from Eastern and Central European countries and EU member states (*Répercussions*, 2012, p. 21–22).

As we have seen, the number of legal migrants has grown quite rapidly since introducing free movement of persons between Switzerland and the EU, especially after full implementation of the AFMP for the entire EU-27. The consequences of immigration for state security are actually difficult to verify in a credible way. The numbers of crimes committed need to be analysed carefully. However, it is important to verify if the increase in migrants influenced levels of criminality in Switzerland, as well as what kinds of crimes are committed by foreigners.

Graph 1. Convictions in Switzerland 2002–2011



Source: Swiss Federal Statistical Office.

As is presented on the graph above, starting from 2002 the number of convicted foreigners increases slightly until 2006. Only in 2007 is there a slight decrease, then in 2008, when the Schengen Agreement entered into force, this number starts growing again until 2010. In 2011 the number of foreign criminals decreased by 5% compared to 2010. Significantly, since 2004 the number of convicted foreigners has exceeded the number of convicted Swiss citizens. According to these statistics, it is possible to state that foreigners commit more crimes than nationals in Switzerland.

However, we need to remember that this statistical data is general, and a more detailed analysis is needed based on more specific data (*Rapport sur la migration*, 2004, p. 93).

According to public opinion, the problem of trans-border criminality is related with the free movement of persons between Switzerland and the EU. Meanwhile, migration does not have any measurable consequences on trans-border criminality. Tourist criminality is not a consequence of the Schengen Agreement. Trans-border criminality results rather from adaptation to actual conditions. It is not possible to establish a correlation

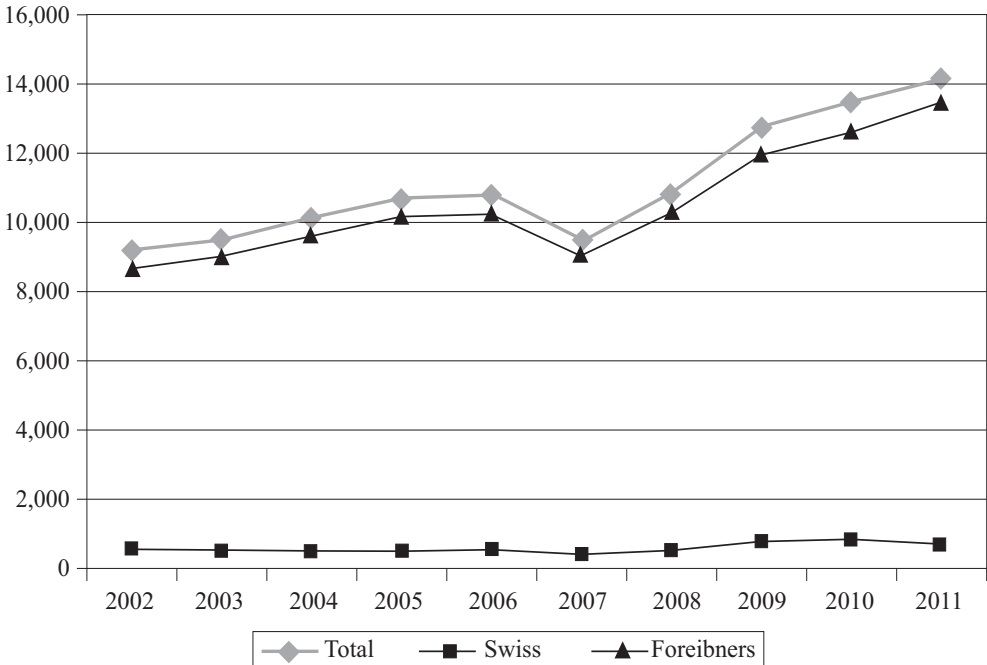
between Switzerland’s access to the Schengen zone and the growth in criminality (*Rapport du Conseil*, 2012, p. 51).

Trans-border criminality is a broad criminological phenomenon. In general, we can state that it comprises all the crimes related to the illegal movement of goods and persons through state borders, for example: smuggling, human trafficking, illegal border crossing, crimes against border officers, and so on.

As it is not possible to make at this moment a detailed analysis of trans-border criminality in Switzerland because of the lack of detailed data, the authors would like to limit their analysis to that of criminal convictions made on the basis of the Foreign Nationals Act (*Federal Act on Foreign Nationals from 16 December 2005*, RO 142.20).

The Federal Act on Foreign Nationals penalises 1) unlawful entry, exit, and period of stay and work without a permit, 2) encouraging unlawful entry, exit or an unlawful period of stay, 3) employment of foreign nationals without a permit, and 4) fraudulent conduct towards the authorities. These crimes mostly concern illegal border crossing, encouraging and helping in illegal border crossing and other illegal actions aimed at facilitating the activities of illegal migrants.

Graph 2. Convictions on the basis of the Federal Act on Foreign Nationals



Source: Swiss Federal Statistical Office.

Graph 2 shows clearly that the crimes enumerated in the Federal Act on Foreign Nationals are mostly committed by foreigners. In the period of 2002–2011 about 94% of persons convicted on the basis of the Federal Act on Foreign Nationals were foreigners. Their number is constantly growing, with only a slight decrease in 2007. The question

that arises is whether introducing the free movement of persons and entering the Schengen zone influenced that growth? If we look only at Graph 2, the answer would be positive. However, illegal migration is not only stimulated by the border regime but also by push factors in the sending countries. It is clear that the border crossing regime is a key factor that stimulates this kind of criminality.

A consequence of introducing free movement of persons and entering the Schengen zone is the growth of immigration into Switzerland. This immigration, which is mostly legal, also contains illegal behaviour. Easier ways of entering state territory encourage those who do not have legal permission for crossing the border and those who do not have work permits.

We can clearly see from Graph 2 that the persons convicted on the basis of the Federal Act on Foreign Nationals were foreigners. In the context of this analysis an important question arises: who are these foreigners? Are they new illegal immigrants (attracted by the easier rules of border crossing), or are they permanent residents?

Table 2

Number of accused persons on the basis of the Federal Act on Foreign Nationals 2009–2011 (population with permanent residence permits)

Year	2009			2010			2011		
	Swiss	Foreign	Total	Swiss	Foreign	Total	Swiss	Foreign	Total
Unlawful entry, exit, stay	17	334	351	81	362	443	4	255	259
Assistance to unlawful entry, exit, stay	498	649	1147	573	796	1369	334	495	829
Unlawful assistance	650	826	1476	658	726	1384	561	766	1327
Fraudulent conduct towards the authorities	67	147	214	65	131	196	31	149	180
Other crimes on Federal Act on Foreign Nationals	59	587	646	40	408	448	63	483	546
Total crimes on Federal Act on Foreign Nationals	1130	2244	3374	1197	2073	3270	888	1929	2817

Source: Swiss Federal Statistical Office.

The answer to that question is presented in Table 2: Number of accused persons on the basis of the Federal Act on Foreign Nationals 2009–2011 (which contains only the population with permanent residence permits). This data shows clearly that, again, most of the crimes against the Federal Act on Foreign Nationals are committed by foreigners. As those foreigners are those who have permanent residence permits, it is possible to state that the criminals are ‘newly arriving’ foreigners. This confirms again that crimes against the Federal Act on Foreign Nationals are mostly committed by those who came to Switzerland attracted by the new, easier ways of crossing the borders and legalising the stay.

However, referring to the previous considerations on border criminality, the data presented in Table 1 shows that illegal border crossing (unlawful entry, exit or stay) is not the

dominant crime. Most offenders were accused of assistance to unlawful entry, exit, stay or other unlawful assistance. This shows that it is easier for a resident population to help, to create from inside a country conditions that facilitate committing crimes by those who want to come to Switzerland. Such assistance is often the criminal activity of organised criminal groups (Perkowska, 2012, p. 499–513; Perkowska, 2014, p. 219–240).

If we compare the data from Table 1 and the data from Graph 2 we need to state that most crimes against the Federal Act on Foreign Nationals are committed by foreigners, and among them 'newly arriving' foreigners. For example, in 2011 there were 13,404 foreigners who committed crimes against the Federal Act on Foreign Nationals, but only 1,929 of them had a permanent residence permit (about 14%).

Another problem related to migration is human trafficking. Switzerland is affected primarily by the trafficking in women for the purpose of sexual exploitation. Human trafficking is therefore closely linked to prostitution. Victims originate predominantly from Eastern Europe (Hungary, Romania, Bulgaria), Asia (Thailand), South America (Brazil) and West Africa. In 2011, there was a noticeable increase in the number of Romanian and Bulgarian sex workers, some of whom are likely to have been human trafficking victims. The police also exposed a network operating in Switzerland and abroad trafficking in Thai women. Also, several convictions were secured for human trafficking: for example, one Swiss national was sentenced to four and a half years in prison, following investigations by the federal authorities that revealed he had trafficked in at least 40 Brazilian women (Lutte, 2012, p. 90).

Introduction of free movement of persons between Switzerland and the EU created the possibility of legal prostitution for a limited time for citizens from the new EU member states. This is possible within the framework of the registration and authorisation procedure for self-employed service providers. In consequence, this has caused a growth in the number of prostitutes from Eastern Europe. This shows that in Switzerland the lack of regulation concerning prostitution facilitates the development of an environment favourable for sexual exploitation and human trafficking. For example, Zurich is especially touched by human trafficking from Hungary during the last few years. The number of prostitutes from Hungary has grown. It is estimated that in 2009 and 2010 there were more than 1,500 Hungarian prostitutes on Zurich streets. Their number is stable but at a high level. According to the police, most of them could be victims of human trafficking. As Switzerland is attractive for prostitutes, it is also attractive for human traffickers (*Rapport du Conseil*, 2012, p. 52; Lutte, 2012, p. 21).

Another negative phenomenon is the growth of organised begging from Eastern Europe and petty theft related to this activity. Whole groups of beggars are transported to Swiss cities. The beggars, who are mostly minors, are recruited in their home countries. First they are trained how to steal and beg, and then sent to Western Europe. They are forced to reach certain levels of turnover determined for theft or begging. If they do not reach them, they are punished. This is also a part of human trafficking (*Rapport du Conseil*, 2012, p. 24).

The association of Switzerland with the EU allowed the Schengen Information System (SIS) to be established at the end of 2008. This is the largest information system for public security in Europe. By enabling easy information exchange between national border controls, customs and police authorities, it ensures that the free movement of people

within the EU can take place in a safe environment. SIRENE⁸ Switzerland is part of the Operations Centre at the Federal Office of Police (fedpol). It serves as a single point of contact for all authorities with access to the SIS database, such as the cantonal police forces, the Border Guard Corps, the Federal Office of Justice, the Federal Office for Migration, visa-issuing embassies and consulates abroad, cantonal migration offices and other authorities.

SIRENE Switzerland is comprised of police specialists assisted at present by temporary staff. The office co-ordinates and processes all incoming and outgoing SIS alerts. If the system scores a hit, the office is responsible for handling the entire case. Only SIRENE staff have direct access to SIS data and are authorised to enter, process and delete information in the database. The head of fedpol's Operations Centre is also head of SIRENE Switzerland and represents Switzerland in the appropriate EU working groups in Brussels.

Table 3

Hits in the Schengen Information System in Switzerland 2009–2011

Search category	2011		2010		2009	
	Swiss	Foreign	Swiss	Foreign	Swiss	Foreign
Persons wanted for arrest for extradition purposes art. 95 CISA	185	107	216	95	199	112
Entry refuse art. 96 CISA	3690	1850	2907	1960	2999	1860
Missing persons art. 97 CISA	213	20	235	18	191	16
Persons summoned to appear before the judicial authorities art. 98 CISA	1082	3	952	5	986	1
Discreet surveillance art. 99 CISA	1044	20	766	1	626	0
Data on objects art. 100 CISA	1304	273	1246	286	1476	166

Source: *Lutte de la Confédération contre la criminalité. Situation, mesures et moyens. Rapport Annuel 2011*, Office fédéral de la police fedpol, Bern 2012, p. 89.

SIS made possible an average 27 searches each day in 2011. There is a growth of 19% of foreign hits in Switzerland if we compare them with previous years. However, there is a decrease of 4% of Swiss hits abroad. This shows a positive aspect of integration with the EU. It influences state security by allowing for more efficient searches for criminals, stolen objects and missing persons.

Another important aspect of the cooperation between Switzerland and the EU is the 2004 cooperation agreement between Switzerland and the Police Office (Europol) of the European Union which improves cooperation between police authorities in cases of serious international crime. The agreement facilitates in particular the secure and rapid exchange of strategic and operational information and cooperation in the field of analysis. It enables Switzerland and Europol to share specialist knowledge, to participate in training activities, and to consult and to provide mutual support in specific investigations. Switzerland has seconded two liaison officers at Europol in The Hague to coordinate and fa-

⁸ "SIRENE" stands for "Supplementary Information Request at the National Entry".

cilitate this cooperation. The Federal Council has enlarged the scope of cooperation, which up to now has been a success, from originally eight to 25 areas of cross-border criminal activities.

There is a high level of information exchanged between Switzerland and Europol. There were 3,860 communications exchanged in 2011. This strengthening of cooperation was made possible thanks to numerous training sessions held by fedpol for the Swiss cantonal and federal investigation officers. These helped to raise the effectiveness of actions against trans-border criminality (Lutte, 2012, p. 63).

Conclusion

Population movements always have positive and negative consequences. Migrant criminality is a natural consequence of migration. Among those who change the country of residence are mostly those who seek legal opportunities for border crossing, legal employment and a legal stay. However, migration is not always legal, or those who come legally do not always follow the law. The more migrants come, the more crimes they commit. This is a natural consequence.

Therefore, countries should take all necessary legal and organisational measures to prevent criminality related to migrant criminality. Opening borders under the *Free Movement of Persons and Schengen Agreements* goes hand in hand with actions on preventing illegal migration and migrant criminality, so the unquestionable benefits of the borderless area can be securely used by people on both sides.

The presented example of Switzerland shows that growth in population movements between the EU and Switzerland caused a growth of criminality of foreigners in this country – especially where it concerns criminality related to border crossing or employment of foreigners.

References

- Afonso A. (2009), *The Domestic Regulation of Transnational Labour Markets: EU Enlargement and the Politics of Labour Migration in Switzerland and Ireland*, in: *The Transnationalization of Economies, States and Civil Societies: New Challenges for Governance in Europe*, eds. L. Bruszt, R. Holzhaecker, New York.
- Balch A., Fellini I., Ferro A., Fullin G., Hunger U. (2004), *The political economy of labour migration in the European construction sector*, IMIS-Beiträge 25.
- Convention on International Civil Aviation signed in Chicago on December 7, 1944*, ICAO Doc 7300/9.
- Cremers J. (2004), *Switzerland*, in: *The free movement of workers in the European Union*, eds. J. Cremers, P. Donders, CLR Studies 4.
- Duties of the Federal Office of Civil Aviation, FOCA website, <http://www.bazl.admin.ch/org/aufgaben/index.html?lang=en>, 6.04.2013.
- Federal Act on Foreign Nationals from 16 December 2005, RO 142.20.
- Rapport sur la migration illégale*, IMES, ODR, fedpol et Corps des gardes-frontière (2001). Département fédéral de justice et police, Groupe de travail Criminalité des étrangers (AGAK), Berne.

- European Nationals in Switzerland. Information on the Free Movement of Persons* (2011), Federal Department of Foreign Affairs FDFA, Federal Department of Economic Affairs FDEA, Integration Office FDFA/FDEA, Integration Office FDFA/FDEA, Berne.
- Free movement of persons*, <http://www.europa.admin.ch/themen/00500/00506/00519/index.html?lang=en>, 10.01.2013.
- Répercussions de la libre circulation des personnes sur le marché suisse du travail, Huitième rapport de l'Observatoire sur la libre circulation des personnes entre la Suisse et l'UE* (2012), Federal Office for Migration, Bern.
- Giemulla E. M., Weber L. (2011), (eds.), *International and EU Aviation Law: Selected Issues*, The Netherlands.
- Keiner M. (2005), *Switzerland in Europe policy options toward EU*, Swiss Federal Institute of Technology Zurich, Zürich.
- Lutte de la Confédération contre la criminalité. Situation, mesures et moyens. Rapport Annuel 2011* (2012), Office fédéral de la police fedpol, Bern.
- Maresceau M. (2010–2011), *EU-Switzerland: QUO VADIS?*, "Georgia Journal of International and Comparative Law", vol. 39.
- Milde M. (2008), *International air law and ICAO*, The Netherlands.
- Peers S. (2000), *The EC-Switzerland Agreement on Free Movement of Persons: Overview and Analysis*, "European Journal of Migration and Law", no. 2.
- Perkowska M. (2012), *Activities of foreign organized criminal groups in Switzerland*, in: *Current problems of the penal law and criminology*, ed. E. W. Plywaczewski, Warszawa.
- Perkowska M. (2014), *Przestępczość zorganizowana w Szwajcarii – fenomen zjawiska*, in: *Współczesne oblicza przestępczości zorganizowanej*, ed. K. Laskowska, Białystok.
- Rapport du Conseil fédéral sur la libre circulation des personnes et l'immigration en Suisse du 04.07.2012* (2012), RO 08.000.
- Rapport sur la protection de l'État 1999* (2000), Département fédéral de justice et police.
- Rapport sur la sécurité intérieure de la Suisse* (2008), l'Office fédéral de la police, Berne.
- Ruffle G. (2008), *Switzerland and the European Union: A model for Britain*, <http://www.global-vision.net/files/downloads/download544.pdf>, 23.01.2013.
- Schengen/Dublin*, <http://www.europa.admin.ch/themen/00500/00506/00510/index.html?lang=en>, 24.03.2013.
- Schwok R. (2008), *Switzerland's Approximation of its Legislation to the EU Acquis: Specificities, Lessons and Paradoxes*, 9 Eur. J.L. Reform 449 2007.
- Summaries of EU legislation*: http://europa.eu/legislation_summaries/transport/air_transport/tr0028_en.htm, 6.04.2013.
- Switzerland and the EU: the prospects of bilateralism* (2008), CSS Analyses in Security Policy, Center for Security Studies (CSS), Zurich.
- The Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security*.

Swobodny przepływ osób pomiędzy Szwajcarią i Unią Europejską a bezpieczeństwo państwowe

Streszczenie

W artykule przedstawiono etapy wprowadzenia swobodnego przepływu osób, wspólnych zasad lotnictwa cywilnego oraz układu Schengen pomiędzy UE a Szwajcarią. Posługując się metodą analityczną autorki przedstawiły podstawowe regulacje we wskazanym zakresie. Wymienione przepisy mają

niewątpliwie wpływ na migrację pomiędzy UE a Szwajcarią. Dlatego też dokonano analizy danych statystycznych dotyczących dynamiki migracji stałych i tymczasowych – jak element badań empirycznych. Kolejna część poświęcona została analizie przestępczości związanej z migracjami tj. 1) nielegalne przekroczenie granicy, nielegalny pobyt, nielegalne zatrudnienie; 2) podżeganie do nielegalnego przekroczenia granicy, nielegalnego pobytu; 3) zatrudnienie cudzoziemców bez zezwolenia; 4) sprzeczne z prawem postępowanie wobec osób pełniących funkcję publiczną wskazane w ustawie o cudzoziemcach. Wskazane czyny zabronione są ściśle powiązane ze zjawiskiem swobodnego przepływu osób, regulacjami Schengen oraz zasadami lotnictwa cywilnego pomiędzy UE i Szwajcarią. Mają również wpływ na dynamikę przestępczości cudzoziemców w Szwajcarii, co również poddano analizie.

Słowa kluczowe: swobodny przepływ osób, migracja, bezpieczeństwo, przestępczość

