

Magdalena PERKOWSKA

Białystok

The migration policy of Switzerland

Abstract: The main aim of the paper is to present Swiss migration policy from the second part of the 20th century till present. This policy has evolved over recent decades. It was strongly influenced by the economic need for workers on the one hand, and by xenophobic opinions that made this policy more strict. The central part of the paper concerns the popular initiative voted through on 9 February 2014, when the Swiss nation decided to limit the free movement of people between Switzerland and the European Union.

Key words: migration policy, Switzerland

1. Introduction

Migration policy is set in the political and legal system of the state, yet its normative and functional grounds are primarily influenced by the external (international) environment (Labayle, 2005, pp. 11–12; Oellers-Frahm, 2003, pp. 33–34). Nevertheless, it is the state that is the fundamental creator and executor of migration policy. The policy is treated here as a process, or as a development continuing over time which can be divided into a few basic stages: initiation, conceptualisation, implementation, and evaluation of outcomes. These stages should logically follow one another, and they frequently overlap (Lesińska, 2010, pp. 69–70). As M. Ziółkowski emphasises, migration policy is grounded in two components. The first component is interests, i.e. the aspects which seem to be beneficial to us or others. The latter one is values, defined as rules which are perceived as fair and which we are ready to protect (Duszczuk, 2009, p. 221).

Current Swiss migration policy is expected to come to terms with a wide range of issues. It deals with a Portuguese construction worker, as well as with a family of Kurdish refugees, with a top manageress from Germany and with second-generation foreign nationals born in the country – and, unfortunately, also with foreign drug dealers and illegal residents.

Swiss migration policy pursues three aims:

1. A good migration policy grants protection to people who are genuinely persecuted, and may therefore benefit from Switzerland's humanitarian tradition. People who are escaping war, persecution and torture should be able to find refuge here.
2. A good migration policy aims at a situation whereby both natives and immigrants feel safe in Switzerland. This is why everyone must accept the fundamental Swiss rules of living together.

3. A good migration policy safeguards and advances this country's prosperity. For this purpose, Switzerland needs employees from other countries.¹

In the period of the 20th and 21st centuries Switzerland has transformed from an emigrant into an immigrant state (Oellers-Frahm, 2003, p. 34), whose current population is 23% of foreign origin (*Migration*, 2014, p. 12). Such a significant change is a result of a migration policy that led to an influx of foreigners. This has had an undeniable influence upon the structure and dynamics of criminal activity in Switzerland, especially the structure and dynamics of the criminal activities of foreign nationals.

These were the reasons that laid foundations of the scientific hypothesis of this paper that the Swiss migration policy evolved through the 20th century from liberal one to the strict one in the 21st century under social influence (expressed through popular initiatives such as referendum). The research method was the dogmatic method which refers to the analysis of the legislation and academic literature, based on libraries search made in Switzerland in Bern, Zurich and Neuchatel.

2. Migration policy of Switzerland after World War II

A tight labour market is a traditional feature of the Swiss economy. For this reason, the situation in the labour market has been strongly linked with the policy on foreign nationals throughout most of the 20th century. As a result of a very liberal policy in the context of industrialisation, the share of foreigners topped 15% of the population before World War I (Liebig, 2002, p. 4). In the inter-war period, that share continuously fell as a result of a more stringent policy. In 1931, a Law on the Residence and Settlement of Foreigners² was introduced and remained in force until 2008. It can be regarded as a police law aimed at border control and the defence of national territory, profoundly inspired by the international political context of the time, the economic crisis and widespread xenophobia directed against so-called *overforeignisation* (de. *Überfremdung*, fr. *surpopulation étrangère*)³ of Swiss society (Ruspini, 2009, p. 96).

Immediately after World War II, in 1945, there arose the need to ensure the economic development of the state. The Federal Council, under pressure from entrepreneurs in need of cheap labour, introduced a control system for foreign workers based upon the statutory regulations that established contingents for specific regions or enterprises. In addition, a recruitment programme for foreign seasonal workers was also established. One of the examples of such an initiative is the agreement concluded in 1948 between the Federal Council and Italian authorities – a convention that regulated immigration of Italian workers to Switzerland (Flückiger, 2005, pp. 377–404; La Barba, Stohr, Oris, Cattacin, 2013, p. 390). The status of seasonal worker was beneficial to the authorities. Such an employee could not set-

¹ Federal Office of Migration, https://www.bfm.admin.ch/content/bfm/en/home/themen/migration_analysen/weltweite_migration/migrationspolitik.html, 18.02.2014.

² La loi fédérale du 26 mars 1931 sur le séjour et l'établissement des étrangers, RS 142.20.

³ This concept refers to a situation in which the society had become 'foreign' to its own members because of immigration, while establishing a causal link between the number of foreigners and the threat to Swiss identity.

tle in Switzerland, as s/he was bound to leave Swiss territory for three months in a year. The Federal Office of Industry, Art, Trade and Labour introduced recommendations to issue temporary work permits only (Cerutti, 2005, p. 92). Non-permanent immigrant status became an instrument of amortisation. In the case of an unemployment rate increase in Switzerland, such an employee could leave the country and return when an employment opportunity arose (Wicker, 2003, p. 40). This mechanism could easily lead to settlement migration, and the mobility of such employees was rather deceptive (Wicker, 2003, p. 25).

The Swiss economy began to emerge from the crisis in 1949 and the economic boom, caused by the conflict on the Korean Peninsula, resulted in the need for workers. It led to the situation where, in 1960, 9.1% of the Swiss population was of foreign origin (whereas in 1950 it was 5.8%) (Mahnig, Piguet, 2003, p. 66).

The Swiss, being aware of the strong migration pressure, the huge influx of foreign workers due to trade union protests in the '60s, and of increasing references to the *overforeignisation* policy, decided to take measures to limit the migration. It is essential to mention four decrees issued by the Federal Council which aimed at restricting migration (Cerutti, 2005, pp. 125–126).

Despite the restrictions introduced, the number of foreigners employed still rose. This led to tensions in the society, and to the introduction of a second public initiative against the excessive number of foreigners. This initiative was submitted on 20 May 1969 by the Swiss Action Committee. It is also known as the *Schwarzenbach initiative* because of its author's surname, a charismatic publisher and journalist connected to the Action, which was initially known as "Mouvement national contre la surpopulation étrangère du peuple et de la patrie". The Schwarzenbach initiative was even stricter than the previous one from 1968. It demanded that the number of foreigners not exceed 10% for each canton (except for the Canton of Geneva, where the number of foreigners allowed amounted to 25%). However, despite all those attempts, the Schwarzenbach initiative was rejected in a public vote on 7 June 1970 (Mahnig, Piguet, 2003, p. 66; Piguet, 2004, pp. 29–31).

3. Migration policy in the 1970s and '80s

In the early 1970s the population of Switzerland, for the first time in the history, had over one million foreigners, half of whom were Italians; less numerous were Germans and the French (Piguet, 2004, pp. 29–31). Under those circumstances, the *Schwarzenbach initiative* revealed a dangerous, political crisis in Switzerland that is deemed to be the most serious in the post-war history of the country. The failure of this project would not be significant, but its success would mean the expulsion of over 200,000 foreigners from the territory of the Confederation and would subject Switzerland to the allegation of a serious breach of the European Convention on Human Rights, especially regarding the right to family reunification (Cerutti, 2005, p. 132).

In those circumstances, the Federal Council undertook further actions to limit the influx of foreigners. The first was the Order⁴ of 16 March 1970, which introduced quotas

⁴ Government Order on Announcing the Departure of Foreigners.

that put an annual upper limit on the number of foreigners allowed to enter the country for the first time. A primary means of entry, the one with by far the largest quota, was the so-called seasonal permit. Seasonal permits allowed foreigners to be employed in a classified seasonal job for a maximum of nine months, after which they had to leave the country (Becker, Liebig, Souza-Poza, 2008, p. 83).

The economic crisis that reached Switzerland with some delay was the first factor that caused a significant decrease in the number of foreigners employed. In the industrial sector alone, 15.8% of employees were dismissed between 1974 and 1977. In total, the reduction of employment in all sectors amounted to 10%. However, due to restrictive provisions on legalisation of foreigner stay, Swiss workers were saved from unemployment. Dismissed foreigners were not granted renewed stay permits, thus they were forced to leave Switzerland. Therefore, unlike other European countries, Switzerland 'exported' the unemployment resulting from the economic crisis, in this way saving the workplaces for the Swiss (Mahnig, Piguet, 2003, pp. 81–82) (in this period unemployment increased from 0% to 0.7%) (Mahnig, Piguet, 2003, p. 154; Piguet, 2004, p. 39). According to the statistical data of the Federal Office of Industry, Art, Trade and Labour, 340,000 people lost employment, including 228,000 foreigners (i.e. 67%). Hence, in five years, the number of foreigners in the Swiss population decreased from 18% to less than 16% (Mahnig, Piguet, 2003, pp. 82–83). Such a policy of the country raised numerous controversies, including ethical ones from the individual's point of view, i.e. that of a foreigner who, having lost his job, could not stay in Switzerland and look for another job. Similarly, from the point of view of other countries, which, in a time of crisis, had to deal with a huge number of their own citizens returning home (Mahnig, Piguet, 2003, p. 154).

The last phase of this period was characterised by numerous initiatives of the people aimed at further implementation of the policy against *overforeignisation*, however, those initiatives turned out to be ineffective and were rejected by the society.

It may be concluded that until the mid-eighties a *status quo* of Swiss migration policy formed in the era of crisis was maintained (Mahnig, Piguet, 2003, pp. 158–159). In the aforesaid period there was a decrease in the number of foreigners in the population of Switzerland, i.e. slightly below 15%.⁵

4. Migration policy at the end of the 1980s and the '90s

The second half of the 1980s brought significant political changes in Europe that affected the shape of new migration policy at that time. This was a period of significant influx of people applying for refugee status who, however, were not treated properly by the authorities, which aroused negative attitudes in the society. Despite the fact that the authorities continued the restrictive migration policy, the issue of refugees becomes a political issue again as far as the problem of migration is concerned in Switzerland. Moreover, Switzerland remained outside the integration process in Europe and therefore beyond the

⁵ Statistic data from Swiss Federal Statistic Office, 20.02.2014, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/07/blank/key/01/01.html>.

regulations on free movement of people. The development of international law on asylum and counteracting racism (inter alia the International Convention on the Elimination of All Forms of Racial Discrimination) was regarded the last factor which would significantly affect the modifications in Swiss migration policy (Mahnig, Piguet, 2003, p. 160).

In the course of the '80s, the traditional emigration countries of Southern Europe experienced marked economic growth, which reduced the number of emigrants from them. In a good position to negotiate with the competing immigration countries, they managed to substantially improve the situation of their nationals abroad.⁶

A second change linked to the international context is the growing isolation of Switzerland with regards to the European integration process. This situation is starting to be perceived as a major mistake in the Swiss political arena. As H. Mahnig claims, many authors reject this last hypothesis, but it heavily influences the political and popular debates and gives a new strength to xenophobic and national movements. The relationship with the EU thus became one of the most polarising questions of Swiss national policy during the '90s. Immigration is central in a debate that does not follow the traditional divisions of past. For the first time the society appears split between those who favour more openness toward Europe and those who prefer to keep the flexibility offered by the guest-worker system (Mahnig, Piguet, 2003, pp. 160–161).

A third change has to do with the influence of international law on the margin for action by the Swiss government regarding migration. This factor only played a minor role in the past. However, it is becoming more and more important as shown by three examples:

1. Free internal movement: the Fourth Protocol to the European Convention of Human Rights allows every legal immigrant to choose his/her place of residence in his immigration country. Such liberty was not granted by Switzerland to seasonal and annual workers, which put the country in the difficult situation of being one of the few countries not able to sign the protocol.
2. National preference: the UN International Convention on the Elimination of All Forms of Racial Discrimination, ratified by Switzerland in 1994, gives more strength to claims concerning the selectivity of Swiss immigration policy.
3. Asylum: international norms concerning asylum and especially the *non-refoulement* provision embodied in many declarations ratified by Switzerland compel the country to accept a new form of immigration whose economic advantages appears weak, namely, asylum seekers.

Because of the evolving international context, Swiss immigration policy has lost a lot of the flexibility it had in the past. It is also losing its specificity and has to adapt its choices to common international norms.

Not only the international context, but also the evolution of immigration motives has affected the Swiss migration policy. It has to be remembered that the annual immigration quotas refer only to workers and have no direct influence on other forms of immigration (Piguet, 2013, pp. 78–79).

⁶ *Population résidante permanente selon la catégorie de nationalité et le sexe, à la fin de l'année*, Federal Statistical Office, <http://www.bfs.admin.ch/bfs/portal/fr/index/themen/01/02/blank/data/01.html>, 27.04.2014.

The third evolution, which tends to alter the context of development of the immigration policy, is the growing impression of an 'integration problem' among the foreign population. This perception does not stand on very solid empirical ground and is mainly disseminated by popular media and opportunistic political movements. One of the few empirically documented aspects of the phenomenon is the growing difficulty faced by several foreign groups on the labour market. The unemployment rate for foreigners grew rapidly during the economic downturn in the mid-nineties (Piguet, 2006, p. 81; Giugni, Passy, 2001, p. 6). This situation reinforced the growing sentiment of dissatisfaction towards immigration policy.

These three evolutions have sent Swiss immigration policy into turmoil. The annual quota set every year seems unable to offer a suitable compromise any more between the aim of containing the foreign population and giving enough flexibility to the economy. The interests of the economy, clearly oriented in the past toward an open-door policy, are becoming more complex. Several branches still ask for the immigration of lowly qualified and lowly paid foreign workers, but these workers meet growing difficulties on the labour market as soon as they try to change their activities or region of work. The growing share of the foreign population entitled to long term residence permits has the consequence of increasing the welfare and unemployment costs of immigration for the whole economy. Numerous enterprises would therefore prefer to target highly qualified immigration (Mahnig, Piguet, 2003, p. 184; Porebski, 2009, pp. 84–85).

Trying to answer to these new needs, the Swiss government explored three directions of reform, two of which were experimented with and then partially abandoned, and a third chosen for the future immigration policy.

5. Migration policy at the end of the 20th century

Since the mid-nineties, in reaction to the growing flow of asylum requests, several actors have proposed merging the traditionally distinct asylum and immigration policies. In January 1989, a governmental working group already suggested that proposal under the title *Strategy toward a refugee and asylum policy for the nineties*.⁷ Their central argument is that the reasons for migration are nowadays too complex to distinguish between the motives of economic and political migration. Predicting that migration toward Europe is bound to increase in the future, they proposed setting once and for all the total number of foreigners who should live in Switzerland. On that basis, the migration balance would be calculated every two years. In case of an influx of refugees, or an upsurge in family reunification, the number of workers admitted would be decreased and *vice versa*.

This proposal, which failed, can be seen as an attempt to generalise the old model of a global ceiling by applying it not only to foreign workers, but to the whole foreign population. It gives more weight to the objective of fighting *overforeignisation* against economic aims.

The Swiss authorities quickly realised that the implementation of a global migration balance was impossible. In another report, titled the *Report on policy towards foreigners*

⁷ See: *Rapport pour une stratégie pour la politique des années 90 en matière d'asile et de réfugiés, Groupe de réflexion interdépartemental, DFJP, DFAE, DFEP Berne 1989.*

and refugees, published in 1991, representatives of the federal administration attempted once more to conciliate two contradictory aims: liberalising migration within the EU, while at the same time paying attention to the fear of *overforeignisation* expressed by a large share of the population. Their proposal was called the *three circles model*. The first geographical circle includes the EU and the European Free Trade Association countries and should benefit from a free circulation model with Switzerland. The middle circle includes the United States, Canada and Eastern European countries. These countries are considered 'culturally close' and should benefit from immigration opportunities according to the needs of economy. Finally, the citizens of the *external circle*, including all other states, should not be able to migrate to Switzerland except in very specific cases. This proposal is based on the idea that the number of immigrants alone does not lead to xenophobic sentiment among the national population, but that the 'cultural distance' between immigrants and the native population does. It is, therefore, possible to admit more EU nationals, provided that the number of people coming from more distant regions is strictly limited (Piguet, 2013, pp. 78–79; Amarelle, 2010, p. 127).

The three circles model operated for several years but quickly came under attack from two new fronts. The first criticism came from multinational corporations, industry, and the high tech branch of the economy. These highly internationalised activities wished to recruit their highly qualified manpower worldwide, without circles of geographical limitations. A second criticism came in 1996 from the Federal Commission against racism, created after the ratification by Switzerland of the UN Convention on the Elimination of Racial Discrimination in 1994 (Piguet, 2013, p. 87). The report *New concept of migration policy* of 1997 was based on the future implementation of the free movement of people between Switzerland and the EU. It was recommended therein to withdraw the three circles concept and to grant immigrants points depending on their level of education, professional experience, age, language knowledge, and ability to adjust professionally (point system)⁸ (Fibbi, Cattacin, 2000, pp. 125–146). In 1998, the government accepted the recommendations of the experts' commission, accepting the two circles model, resigning from the point system. This was the basis for integration with the European Union (Mahnig, Piguet, 2003, p. 185).

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 the *Bilaterals 1*, was composed of seven sectoral agreements covering the free movement of persons (Afonso, 2009, pp. 83–106; Balch, Fellini, Ferro, Fullin, Hunger, 2004, pp. 179–200), transport over land, air transport, public procurement markets, elimination of technical barriers to trade, research, and agriculture. The eye-catcher was the Agreement on the Free Movement of Persons as requested by the EC.⁹ More than one million EU citizens live in Switzerland (amid a popu-

⁸ *Une nouvelle conception de la politique en matière de migration*, Commission d'experts en migration, Berne 1997.

⁹ 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 AFMP*].

lation 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; i.e., from the EU's side, an agreement that the EC and its member states sign. As a consequence of this 'mix' 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 Free Movement of Persons Agreement through a common 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, pp. 733–734; Tomczyk, 2013, p. 157, 165 ff.).

Freedom of movement of employed persons was introduced in a *stepwise manner* with continuing liberalisation. In particular, five years after the agreement came in force, Switzerland abolished all quotas for EU nationals. In case of a massive influx of EU nationals, safeguard clauses do not allow Switzerland the unilateral cancellation of the treaty, but to introduce migration quotas for no longer than two years (Tomczyk, 2013, pp. 169–170; Liebig, 2002, p. 14; Koch, Lavenex, 2007, pp. 155–157).

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 2006.¹⁰ Following the EU accession of Bulgaria and Romania on 1 January 2007, the agreement was supplemented by a further protocol, which came into force on 1 June 2009 (*European*, 2011, p. 4; Tomczyk, 2013, p. 149).

The beginning of the 21st century was an important period from the point of view of migration policy, regarding that a new foreign nationals act came into force.¹¹ The three main reasons for the adoption of a new legal act were as follows. First, the previous Federal Act on the Residence and Permanent Settlement of Foreign Nationals of 1931 was obsolete, together with over 70 amendments adopted in the meantime. The Act only provided for the general framework of the law on foreigners, whereas the specific provisions were secured by the regulations. Moreover, the new Federal Constitution of the Swiss Confederation¹² in Art. 164(1) (b) and (c) states that “[a]ll significant provisions that establish binding legal rules must be enacted in the form of a federal act. These include in particular fundamental provisions on: [...] the restriction of constitutional rights, [...] the rights and obligations of persons.” Therefore, the binding law in terms of the law on foreigners *sensu largo* does not satisfy the constitutional requirement being a federal act.

The initiative of the Federal Council was another reason in this matter. It aimed at undertaking legislative steps which would regulate the issues of migration comprehensively in Switzerland. Finally, however, no uniform legislative act was adopted on it.

¹⁰ 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.

¹¹ Federal Act on Foreign Nationals (Foreign Nationals Act, FNA) of 16 December 2005, RO 142.20.

¹² Federal Constitution of the Swiss Confederation of April 18, 1999, SR 101.

The actions of the Federal Council against the initiative of 2000 *For a regulation of immigration* assuming a reduction in the immigrant population in Switzerland by 18% was the third reason for enacting a new legislative act (Malinverni, 2000, pp. 410–412).

On 16 December 2005 the Federal Act on Foreign Nationals¹³ was adopted and it came into force on 1 January 2008. The act mainly regulated the entry and stay of citizens of non-EU and non-EFTA states. It also introduced new solutions in three areas. Free movement of persons between Switzerland and EU and EFTA member states was introduced in 2002 by the admission system. The citizens of the remaining states may be permitted to work only if it is proven that no suitable domestic employees or citizens of states with which an agreement on the free movement of workers has been concluded can be found for the job. In the area of integration, the FNA assumes the improvement of the situation of foreigners staying legally for a longer period. The possibility to change profession or place of residence was made easier. At the same time, this mitigated the conditions for family reunification. The possibility of obtaining a permit to stay after a period of five years (instead of ten) was introduced if the foreigner has made an effort to integrate and has a good knowledge of a Swiss national language.

The last area concerns the legal solutions aiming at the protection of public order. Provisions aimed at combating crimes against, and abuse of the FNA have been introduced, including severe penalties for trafficking persons, illegal employment and marriages of convenience.¹⁴

6. Migration policy at the beginning of the 21st century

The constellation of factors which characterise Swiss immigration policy at the beginning of the twenty-first century is quite different from the past century. From the clear opposition between the interests of the economy as a whole and the popular fear of *overforeignisation*, the situation has shifted toward a new alliance. The dominant fraction of the society, as well as the majority of the population that is hostile to large scale immigration, have agreed to a new policy of free circulation in Europe, but to the strict selection of highly qualified immigration from the rest of the world. This compromise should allow most of the economic needs to be met, while protecting against uncontrolled flows of non-European immigrants. Several sectors of the economy and the extreme wing of anti-immigration groups have been left out of that compromise, but they lack the strength to counteract it (Piguet, 2004, pp. 70–71).

It is on the international scene that antagonistic forces can now be found that could put the new policy in danger. The evolution of international law imposes, to a growing extent, policies which neither the national economy nor a majority of the population would choose. Anti-immigration groups have been quick to realise the new threat. More than immigration policies *per se*, it is nowadays Switzerland's participation in the international system that is their target (Piguet, 2006, p. 87).

¹³ Federal Act on Foreign Nationals (Foreign Nationals Act, FNA) of 16 December 2005, RO 142.20.

¹⁴ https://www.bfm.admin.ch/bfm/fr/home/dokumentation/rechtsgrundlagen/abgeschl_gesetzgebungsprojekte/auslaendergesetz.html, 01.05.2014.

E. Piguet's thesis, that governments trying to formulate an immigration policy are caught between economic demands and the fear of popular xenophobia (Mahnig, Wimmer, 2000, pp. 198–199) is confirmed by the Swiss case. The evolving economic interests remain dominant, although somewhat losing strength during the period. The old antagonism between these two dimensions has been narrowing constantly and a new important determinant of the Swiss policy is now the international context. It imposes a margin of autonomy on the country that, although still substantial, is getting smaller. His hypothesis is that these main features and trends are common to many other countries which are the target of immigration. In that sense, Switzerland, contrary to its frequent auto-definition, is not a *Sonderfall*¹⁵ any longer (Piguet, 2004, p. 71).

The Swiss nation took a very important decision on 9 February 2014. The Swiss population adopted a popular initiative aimed at stopping mass immigration. It thereby expressed its support for a change of system in Switzerland's immigration policy. The new constitutional provisions stated that immigration should be restricted by means of quantitative limits and quotas (Piguet, Mahnig, 2000, pp. 1–42; Hurst, 2014, pp. 7–9). The Federal Council will set to work on implementing these without delay. Until the relevant implementing legislation comes into force, the free movement of persons between EU and EFTA member states and Switzerland applies as before.¹⁶

As we look back at this history of Swiss migration policy, the popular initiative is not surprising. This was the 9th anti-immigration popular initiative since 1968:

- 1) 1968: Initiative "Anti-foreign penetration" – abandoned;
- 2) 1970: Initiative "Anti-foreign empire (Schwarzenbach)" – rejected by 54%;
- 3) 1974: Initiative "Anti-foreign empire and Switzerland overpopulation" – rejected by 65.8%;
- 4) 1977: Initiative "To protect Switzerland" – rejected by 70.5%;
- 5) 1977: Initiative "To limit the number of naturalisation" – rejected by 66.2%;
- 6) 1988: Initiative "Against overforeignisation" – rejected by 67.3%;
- 7) 2000: Initiative "For a regulation of immigration" – rejected by 63.8% (Piguet, 2006, p. 78; Windisch, 2002, pp. 125–141);
- 8) 2010: Initiative "For expulsion of foreign criminals" – accepted by 52.9%;
- 9) 2014: Initiative "Stop mass immigration" – accepted by 50.3%;
- 10) 2014: Initiative "Stop overpopulation. Yes to the sustainable conservation of natural resource" – rejected by 74.1%.

A few months later, on 30 November 2014, the new Initiative "Stop overpopulation. Yes to the sustainable conservation of natural resource" was rejected by 74.1%. The initiative aimed to conserve natural resources. To this end, any increase in Switzerland's permanent resident population growth attributable to migration should be limited to 0.2% (of the permanent resident population) per year and voluntary family planning should be encouraged as part of international development cooperation programmes.¹⁷

¹⁵ German term frequently used in Swiss political discourse to designate a special case.

¹⁶ <http://www.admin.ch/aktuell/00726/00727/index.html?lang=en>, 01.05.2014.

¹⁷ See <http://www.parlament.ch/f/wahlen-abstimmungen/volksabstimmungen/volksabstimmungen-2014/2014-11-30/ecopop/Pages/default.aspx>, 16.02.2015.

On 11 February 2015, the Federal Council took various decisions on the implementation of the new constitutional provisions accepted on 9 February 2014. It approved the draft of the new legislation on foreign nationals and additional measures to make better use of the potential workforce within Switzerland. It also made a final decision on the negotiating mandate with the EU on the Agreement on the Free Movement of Persons.

The new article 121a of the Federal Constitution sets out two goals: introducing a new immigration system, and negotiating with the EU on an amendment to the Agreement on Free Movement of Persons (AFMP). These two goals must be completed by February 2017 (Rapport explicatif. Projet, 2015, p. 6).

The immigration system that the Federal Council has devised contains annual quantitative limits and quotas for all foreign nationals and provides that Swiss residents should be given priority when recruiting new staff. The admission of EU citizens will be regulated by the AFMP as before, but the Agreement will have to be amended in line with the constitutional requirements. The results of the negotiations being sought with the EU are therefore key to the draft legislation. For citizens of third countries, the draft legislation being submitted for consultation provides for quotas and the prioritisation of existing Swiss residents, as was previously the case.

Under the Federal Council proposals, quantitative limits will apply to any persons staying in Switzerland for a period of four months or more in order to work, i.e. to both standard residence permits and to short-term residence permits. Cross-border commuters, family members, persons who are not working, refugees and temporarily admitted persons are also subject to the quantitative limits. The draft legislation requires the Federal Council to stipulate the quantitative limits and quotas. In the general economic interest, no rigid advance target for reducing immigration will be set. The Federal Council has based its decision on a survey of cantonal needs and on the recommendations of an immigration commission.

The draft further provides that the decision to prioritise existing residents must be assessed in each individual case. However, exceptions will be made in professions where there is a proven shortage of qualified workers: in such cases, a detailed assessment is not required. This solution takes account of differences in the job markets in the various sectors (Rapport explicatif. Adaptation, 2015, p. 28).

The Federal Council also approved the mandate to negotiate with the EU on amendments to the AFMP. The mandate assigns the task of adapting the Agreement so that Switzerland will be able to control immigration levels autonomously, and limit immigration while safeguarding general economic interests. At the same time, Switzerland will maintain the bilateral path as the basis for its relations with the EU. Under the mandate, both objectives must be pursued equally.

The mandate was welcomed in the consultations by the foreign affairs and political institutions committees of the Federal Assembly and by the Conference of the Cantonal Governments, employers' associations and trade unions. The FDP and FDFA will conduct detailed consultations with the EU over the coming weeks and months. The agreement of the EU and its member states is required before negotiations can begin (Rapport explicatif. Projet, 2015, p. 43).

7. Conclusions

The fear of foreign *overpopulation* is a constant of Swiss immigration policy, and constitutes probably its most specific feature. Direct democracy gives it a concrete impact, as populist parties have at all times the opportunity to try to block government action by putting to the vote a maximum ceiling of foreign population, or any other policy measure. Such attempts have been made seven times and the 8th attempt was successful. It is therefore clear that grassroots movements and xenophobia had a major influence on the formulation of Swiss political discourse in general, and that immigration would have been stronger if the government had not constantly monitored the level of xenophobia and simply followed the open-door policy in response to the economy (Piguet, 2006, pp. 85–86).

The implementation of the results of popular initiative from 9 February 2014 will have the strongest consequences. First of all there is the need to maintain economic relations with the EU, highly influenced by the AFMP, which facilitates the employment of *les frontaliers*. Their employment is highly needed by the labour market and necessary to maintain economic growth. There are also several political consequences, as the EU has frozen some initiatives based on AFMP that Switzerland has participated in, such as the student exchange programme Erasmus+ (and other similar ones) and Horizon 2020.

It is very important to remember that this vote revealed a difficult dilemma – how to find a balance between the opinion of society (expressed in a popular vote) and the international obligations (enclosed in the *Bilaterals*) of the country.

Bibliography

- 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.
- Amarelle C. (2010), *Les migrations économique sans statut légal: l'environnement normatif des sans-papiers*, in: *Migration et économie. L'accès des étrangers à la vie économique: les normes et leur application*, eds. C. Amarelle, M. Son Nguyen, Pratiques en droit des migrations, Berne.
- Balch A., Fellini I., Ferro A., Fullin G., Hunger U. (2004), *The political economy of labour migration in the European construction sector*, "IMIS-Beiträge", no. 24.
- La Barba M., Stohr C., Oris M., Cattacin S. (2013), *La migration italienne dans la Suisse d'après-guerre*, Lausanne.
- Becker L., Liebig T., Souza-Poza A. (2008), *Migration Policy and Industrial Structure: The case of Switzerland*, "Migration", vol. 46 (2).
- Cerutti M. (2005), *La politique migratoire de la Suisse 1945–1970*, in: *Histoire de la politique de la migration, d'asile et d'intégration en Suisse depuis 1948*, ed. H. Magnig, Zurich.
- Duszczyk M. (2009), *Dokąd zmierzają migracje? Debata na temat polskiej polityki migracyjnej (skrót z panelu dyskusyjnego)*, in: *Współczesne migracje: dylematy Europy i Polski*, eds. M. Duszczyk, M. Lesińska, Warszawa.
- Fibbi R., Cattacin S. (2000), *Vers une internationalisation de la politique migratoire suisse?*, "Revue européenne des migrations internationales", no. 16.

- Flückiger Y. (2005), *Le changement du contexte économique international et les transformations du marché du travail*, in: *Histoire de la politique de la migration, d'asile et d'intégration en Suisse depuis 1948*, ed. H. Mahnig, Zurich.
- Hurst S. (2014), *Comment définir des chiffres maximaux admissibles*, in: *Immigration sous contrôle*, ed. C. H. Cluve, Avenir Suisse – Avenir spécial 2014.
- Koch P., Lavenex S. (2007), *The (contentious) human face of Europeanisation. Free movement and immigration*, in: *Switzerland and the European Union*, London and New York.
- Labayle H. (2005), *Vers une politique commune de l'asile et de l'immigration dans l'Union Européenne*, in: *La politique européenne d'immigration et d'asile: bilan critique Cinq ans après le traité d'Amsterdam*, eds. F. Julien-Laferrrière, H. Labayle, Ö. Edström, Bruxelles.
- Le chômage en Suisse dans les années nonante* (2001), eds. M. Giugni, F. Passy, "Thème du mois 9 La Vie économique Revue de politique économique", no. 6.
- Lesińska M. (2010), *Polityka migracyjna jako przedmiot analizy – uwagi wstępne*, in: *Transformacja nieoczywista. Polska jako kraj imigracji*, eds. A. Górny, I. Grabowska-Lusińska, M. Lesińska, M. Okólski, Warszawa.
- Liebig T. (2002), *Switzerland's Immigration Policy: Lessons for Germany?*, "Reihe Diskussionspapiere des Forschungsinstituts für Arbeit und Arbeitsrecht an der Universität St. Gallen", no. 76.
- Mahnig H., Wimmer A. (2000), *Country-Specific or Convergent? A Typology of Immigrant Policies in Western Europe*, "Journal of International Migration and Integration", vol. 1, no. 2.
- Mahnig H., Piguet E. (2003), *La politique d'immigration de 1948 à 1998: évolution et effets*, in: *Les migrations et la Suisse*, eds. H.-R. Wicker, R. Fibbi, W. Haugh, Zurich.
- Malinverni G. (2000), *Le projet de loi fédérale sur les étrangers*, "Semaine judiciaire", no. 12.
- Maresceau M. (2010–2011), *EU – Switzerland: QUO VADIS?*, "Georgia Journal of International and Comparative Law", vol. 39:727.
- Migration Report 2013* (2014), Federal Office of Migration, Bern.
- Oellers-Frahm K. (2003), *National immigration policies in comparative perspective*, in: *Towards a Common European Immigration Policy*, ed. B. Von Hoffmann, Frankfurt am Main.
- Piguet E. (2004), *L'immigration en Suisse. Cinquant ans d'entrouverture*, Lausanne.
- Piguet E. (2006), *Economy versus the people? Swiss immigration policy between economic demand, xenophobia and international constraint*, in: *Dialogues on Migration Policy*, Oxford.
- Piguet E. (2013), *L'immigration en Suisse. Soixante ans d'entrouverture*, Lausanne.
- Piguet E., Mahnig H. (2000), *Quotas d'immigration: l'expérience Suisse*, "Cahiers de Migrations Internationales", no. 37.
- Porębski A. (2009), *Wielokulturowość Szwajcarii na rozdrożu*, Kraków.
- Rapport explicatif Adaptation du projet de modification de la loi fédérale sur les étrangers (Intégration; 13.030) à l'art. 121a Cst. et à cinq initiatives parlementaires* (2014), Département fédéral de justice et police.
- Rapport explicatif Projet de modification de la loi fédérale sur les étrangers. Mise en œuvre de l'art. 121a Cst.* (2015), Département fédéral de l'économie, de la formation et de la recherche DEFR Février.
- Rapport pour une stratégie pour la politique des années 90 en matière d'asile et de réfugiés, Groupe de réflexion interdépartemental* (1989), DFJP, DFAE, DFEP Berne.
- Ruspini P. (2009), *Switzerland*, in: *REGINE Regularisations in Europe Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU*, eds. M. Baldwin-Edwards, A. Kraler, Vienna.
- Tomczyk M. (2013), *Polityka Szwajcarii wobec Unii Europejskiej*, Łódź.

Une nouvelle conception de la politique en matière de migration (1997), Commission d'experts en migration, Berne.

Wicker H.-R. (2003), *Introduction: migration, politique, de migration et recherche sur la migration*, in: *Les migrations et la Suisse*, eds. H.-R. Wicker, R. Fibbi. W. Haugh, Zurich.

Polityka migracyjna Szwajcarii

Streszczenie

Celem artykułu jest przybliżenie polityki migracyjnej Szwajcarii od II połowy XX wieku aż do czasów współczesnych. Polityka migracyjna Szwajcarii ewoluowała przez ostatnie dziesięciolecia uwarunkowana z jednej strony dużym zapotrzebowaniem na siłę roboczą z drugiej jednak silnymi poglądami ksenofobicznymi wpływającymi m.in. na zaostrzenie polityki migracyjnej. Szczególna uwaga zostanie poświęcona referendum z lutego 2014 r., w którym naród szwajcarski opowiedział się za ograniczeniem swobodnego przepływu osób między Szwajcarią a Unią Europejską.

Słowa kluczowe: polityka migracyjna, Szwajcaria