

Legal Update

Labour and Employment

"Against mass immigration"- Swiss Referendum Limits the Free Movement of Persons

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In a much-discussed referendum in February of this year, the Swiss population decided to limit the influx of foreigners to Switzerland, thereby also excluding EU citizens. The referendum obliges the Swiss government to introduce annual immigration quotas within the next three years. It is currently unclear how the EU will react to the introduction of quotas of such kind.

Background to the Referendum

The basis for the vote was the popular initiative "Against mass immigration", which was proposed by the conservative-nationalist Swiss People's Party (SVP) with the aim of limiting the numbers of immigrants to Switzerland. This included, among other things, a demand to renegotiate and restrict the terms of the free movement of persons agreed with the EU.

Consequences of the Referendum

The existing free movement of workers between Switzerland and the EU is based on the Agreement on the Free Movement of Persons, which entered into force in 2002. Under the Agreement, the respective labor markets of the EU Member States and Switzerland are open to EU and Swiss citizens on a reciprocal basis. As a consequence, EU and Swiss employees and independent contractors may live and work in each other's respective sovereign territory. Since the Agreement on the Free Movement of Persons does not contain any limits on numbers, an unlimited number of EU citizens are permitted to work in Switzerland.

The implementation of the referendum calling for the introduction of limits on the maximum number of EU citizens permitted to move to Switzerland will necessarily bring with it a violation of this Agreement. From the Swiss perspective, there is thus a need to renegotiate the Agreement on the Free Movement of Persons with the EU. There are, however, clear signals coming from Brussels that the EU is not prepared to enter into new

negotiations. This means that Switzerland will have to weigh up whether it wishes to terminate the Agreement or violate it and thereby risk termination or suspension of the Agreement by the EU. A possible compromise solution is already being discussed. This would involve the EU accepting the introduction of large quotas by Switzerland which de facto did not limit the free movement of workers. If, however, it comes to the termination or suspension of the Agreement, the legality of employing Swiss citizens in Germany would come under scrutiny. In an extreme – however politically very unlikely – case, employing Swiss citizens in Germany would be illegal.

It is currently impossible to predict what effect the referendum will ultimately have in practice on free movement and thus the employment of Swiss citizens in the EU and EU citizens in Switzerland. In any event, the results of the referendum constitute a severe test of the relationship between Switzerland and the EU.

Free Movement within the EU

The free movement of workers is guaranteed between EU Member States, which is why citizens of Member States have free access to employment in the other Member States. Following the Eastern enlargements of the European Union in 2004, the Federal Republic of Germany exercised its right to temporarily restrict access to its employment market for citizens of acceding countries.

As a result, the right to complete freedom of movement for them first took effect in Germany on 1 May 2011, and in the case of Romanian and Bulgarian citizens, it did not take effect until 1 January 2014.

If you want to learn more about the free movement of employees in Europe please click on the links for more information summarized by UK law firm [Gateley](#) and French law firm [Lexcase](#).

Note

This overview is solely intended for general information purposes and may not replace legal advice on individual cases. Please contact the respective person in charge with GÖRG or respectively the author himself: Dr. Frank Wilke on +49 221 33660-534 or by email to fwilke@goerg.de. For further information about the author visit our website www.goerg.com.

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