

Evaluation of the residence of foreign nationals under the Agreement on the Free Movement of Persons

Summary of the report of the Parliamentary Control of the Administration for the attention of the National Council Control Committee

of 6 November 2013

Overview

The Agreement on the Free Movement of Persons (AFMP) between Switzerland and the EU has been in force for over 10 years. There has since been a sharp increase in immigration from EU/EFTA member states and, in parallel, increasing discussion on the effects of the free movement of persons and how the authorities can control immigration.

On 27 January 2012, the parliamentary Control Committees (CCs) instructed the Parliamentary Control of the Administration (PCA) to evaluate the residency of foreign nationals under the AFMP. On 18 June 2012, the FDPD/FCh sub-committee of the National Council Control Committee (CC-N) responsible for the evaluation decided that the evaluation should investigate the impact of the AFMP, as well as the role of the federal government in implementing the AFMP.

The following results are based on qualitative analysis of the legal bases and their application at the federal level. They are also based on a detailed analysis of data relating to the residency and professional activity of migrants. To this end, data was compiled from the different authorities concerned.

AFMP immigration is primarily for work purposes

People who have immigrated to Switzerland under the AFMP are primarily in work, with a large proportion of young, well qualified people. Three quarters of all AFMP immigrants are in work (57% are in steady employment, 17% with interruptions). Migration is very dynamic: many of the almost 1 000 000 people who came to Switzerland under the AFMP between mid-2002 and the end of 2011 have left Switzerland. Net AFMP immigration at the end of 2011 was around 600 000 people.

Model calculations show that immigration reacts to cyclical demand and shortages in the labour market, bringing both highly qualified personnel and less qualified short-term or seasonal workers to Switzerland.

The social security claimant rate among EU migrants is increasing and should be closely monitored

In the first few years following the entry into force of the AFMP, the social security claimant rate (unemployment benefits, welfare benefits, invalidity benefits) among EU migrants was lower than for Swiss nationals or people who immigrated before the AFMP. This rate increases with the length of stay, both for unemployment

benefits and welfare benefits. The average welfare benefit claimant rate among AFMP immigrants has been increasing steadily, but is still lower than for Swiss nationals. The unemployment benefit claimant rate among AFMP immigrants, however, was significantly higher than for Swiss nationals for the last two years of the evaluation (2009/2010). It is striking that the claimant rate and its development vary significantly depending on the immigrant's country of origin. In 2010, the claimant rate for unemployment benefits and welfare benefits for immigrants from the northern EU-17/EFTA countries was still significantly lower than the claimant rate for Swiss nationals. For immigrants from the southern EU-17 countries, however, the claimant rate for unemployment benefits has been higher than for Swiss nationals since 2006, and the claimant rate for welfare benefits was higher than for Swiss nationals in 2010. This may be because the people from these countries are more likely to work in sectors with low salaries and unstable working conditions.

0.5% of all AFMP immigrants are working poor, which means that they are employed and claim welfare benefits at the same time. The rate of working poor continued to rise, as did the welfare benefit claimant rate. In 2010, 60% of AFMP-immigrants claiming welfare benefits were also in employment.

These developments are likely to continue over the next few years because of the increasing length of stays and the associated increase in claims for eligibility. The situation is likely to be exacerbated by the increase in immigration by people from southern and eastern Europe, who often work in sectors with unstable employment conditions. If this development is to be pursued in a timely, differentiated manner, it would be advisable to extend existing monitoring (observatories) and expand evaluations by analysing available administrative and statistical data once they have been combined.

Statements made by federal authorities on the effects of the AFMP have been broadly confirmed by this investigation; however, for a long time little mention was made of the limited possibilities for exercising control

Statements issued by the federal authorities on the effects of immigration under the AFMP were broadly confirmed by the findings of this investigation. However, for a long time the authorities failed to clearly state to the public that Switzerland has very few possibilities for restricting immigration from EU and EFTA countries. For example, it was not clearly communicated that immigrants' residence rights, even if they claim benefits, can only be limited under certain relatively strict conditions.

The federal authorities only created the legal bases needed for application of the AFMP at a late stage

In order provide for an inspection of the residency conditions set out in the AFMP in the first place, a legal basis for disclosure requirements or exchange of information between authorities is needed. This was done either at a late stage or not at all: the legal basis for an exchange of information between the migration authorities and the authorities responsible for unemployment benefits and welfare benefits has only recently been put in place. There is still no legal basis for supplementary benefits.

The Federal Office for Migration (FOM) exercises its supervision over the application of the AFMP with great restraint and has insufficient information on cantonal application

The evaluation showed that the FOM takes a very restrained approach to supervising cantonal application of the AFMP. The legal basis affords the FOM greater supervisory powers, which would be appropriate. However, the FOM does not currently have the information required to monitor cantonal compliance with the legal requirements. The Central Migration Information System (ZEMIS) would theoretically be a suitable monitoring tool, but it has conceptual shortcomings and the FOM does not use it for monitoring purposes.

Relevant questions on cantonal application of the AFMP remain unanswered

The data analysis showed major discrepancies between the declared purpose of stay for employment and actual employment. Around 8% of the people who gave employment as the declared purpose of residency (in 99% of cases, employment as an employee) stay in Switzerland over a year without being employed in this time.

An explanation is also required for the significant cantonal differences in procedures for granting residency permits, particularly for extending B permits. Depending on the canton, between 15% and 65% of people directly receive a permanent C residence permit after their first B permit expires. There are also significant cantonal differences in the updating of key information in ZEMIS.

To determine the extent of these problems and seek an explanation for the detected discrepancies, additional examinations on the need to be conducted at cantonal level.

The full report is already available in German and French, and the Italian version should be ready in June 2014: <http://www.parlament.ch> > Bodies and council members > Committees > Parliamentary Control of the Administration