



**An Analysis: Challenges in EU Law Implementation  
After the 2014 Swiss Immigration Referendum**  
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## Introduction and Issue

Switzerland has historically maintained a unique position in Europe. Despite its central position on the continent, the nation has a political tradition of neutrality. This means that Switzerland does not take a position in international conflicts and does not align itself with any political or military union, instead preferring bilateral agreements to govern its relationships with other nations<sup>1</sup>.

An example of this would be the fact that the Swiss Federation did not join the European Union, but instead chose to align itself with the EU on several policy areas through bilateral treaties. It is these bilateral treaties that articulate the legal basis for their relationship<sup>2</sup>. These treaties cover themes like trade, research and the free movement of goods and people; it is the latter on which I will focus in this paper.

Immigration has always been a contentious issue in the Swiss Federation, the ability to govern its own immigration policies was one of the core reasons for the country not to join the EU. Besides this, Switzerland also has much higher wages than its neighbouring countries, making it an attractive place to work for EU citizens<sup>3</sup>.

Through the many bilateral treaties Switzerland made with the European Union, Switzerland has committed to harmonising its national laws on several policy areas. In exchange for access to the lucrative EU single market, Switzerland entered into an agreement with the EU for the free movement of goods and persons, allowing for more efficient trade and travel between European member States and Switzerland<sup>4</sup>.

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<sup>1</sup> Federal Department of Foreign Affairs FDFA - Swiss Federation. (2023, 02 08). Neutrality. EDA. Retrieved November 28, 2023, from

<https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/neutrality.html>

<sup>2</sup> Switzerland's European Policy - Swiss Federation. (2023, August 21). Overview bilateral path. EDA. Retrieved November 28, 2023, from <https://www.eda.admin.ch/europa/en/home/bilateraler-weg/ueberblick.html>

<sup>3</sup> Dacey, J., & Geiser, U. (2014, February 9). Swiss agree to curb immigration and rethink EU deal. Swissinfo. Retrieved November 28, 2023, from

[https://www.swissinfo.ch/eng/quotas-and-questions\\_swiss-agree-to-curb-immigration-and-rethink-eu-deal/37877780](https://www.swissinfo.ch/eng/quotas-and-questions_swiss-agree-to-curb-immigration-and-rethink-eu-deal/37877780)

<sup>4</sup> European Commission. (n.d.). Switzerland | Access2Markets. Trade - European Commission. Retrieved November 28, 2023, from <https://trade.ec.europa.eu/access-to-markets/en/content/switzerland>

The legal issue central to this paper is the dissonance between the Swiss Federation's commitment to the free movement of persons and the passing of the 2014 Swiss Immigration referendum imposing quotas on immigration<sup>5</sup>. The contents of the referendum raise challenges for the implementation of the free movement of persons and more broadly speaking<sup>6</sup>, the implementation of EU Law in Switzerland and the willingness of the Swiss Government to honour its agreements with the European Union.

In this paper I will address the legal challenges arising from the passing of the 2014 Swiss Immigration Referendum especially in relation to Switzerland's prior commitment to the free movement of persons. We will discuss the legal basis for the European Union to make bilateral agreements with nations outside the EU, delve into the content of the treaty governing the free movement of persons, the content of the 2014 Swiss Immigration Referendum and the legal ramifications of its seeming incompatibility with EU Law.

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<sup>5</sup> Dacey, J., & Geiser, U. (2014, February 9). Swiss agree to curb immigration and rethink EU deal. Swissinfo. Retrieved November 28, 2023, from [https://www.swissinfo.ch/eng/quotas-and-questions\\_swiss-agree-to-curb-immigration-and-rethink-eu-deal/37877780](https://www.swissinfo.ch/eng/quotas-and-questions_swiss-agree-to-curb-immigration-and-rethink-eu-deal/37877780)

<sup>6</sup> Bundeskanzlei BK. (2023, 11 27). Eidgenössische Volksinitiative 'Gegen Masseneinwanderung'. Bundeskanzlei. Retrieved November 28, 2023, from <https://www.bk.admin.ch/ch/d/pore/vi/vis413t.html#>

## Rule

### TFEU Article 216

Article 216 of the TFEU holds that “1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope. 2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.”<sup>7</sup>

In this Article it is stated how the procedures for negotiations and agreements between the EU and third countries or other international organisations work. This is relevant, since Switzerland in this case is not an EU member state.

### TFEU Article 114

Article 114 provides a legal basis for the harmonisation of national laws, which should remove obstacles to the free movement of goods, persons, services and capital within the EU. In this case this Article is relevant, since there may be a conflict between the Swiss Immigration Referendum<sup>8</sup> and the principle of free movement.

### TFEU Articles 45 and 48

Article 45 of the TFEU consolidates the principle of free movement of workers between different EU states. It also disapproves of any type of discrimination based on

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<sup>7</sup> European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, available at: <https://www.refworld.org/docid/4b17a07e2.html> [accessed 1 December 2023]

<sup>8</sup> De Micco, P. (2014). DIRECTORATE-GENERAL FOR EXTERNAL POLICIES POLICY DEPARTMENT Switzerland votes “against mass immigration”: How can the EU respond? [https://www.europarl.europa.eu/RegData/etudes/briefing\\_note/join/2014/522327/EXPO-AFET\\_SP\(2014\)522327\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522327/EXPO-AFET_SP(2014)522327_EN.pdf)

nationality between these workers. Article 48 complements Article 45 of the TFEU, by expanding on the rights and obligations of workers. These rights include the right of workers from Member States to accept offers of employment, to move freely within the territory of Member States for employment purposes and to stay in these Member States for the sake of this employment. It also includes the right of workers to stay in the State after the employment is terminated.

### **The 2014 Swiss Immigration Referendum**

On the 9th of February 2014 the Swiss people voted in favour of a referendum that would make the Swiss authorities put annual quotas on foreign workers and also put limits on immigration.<sup>9</sup>

These restrictions on the free movement of workers were supported in the referendum by a slight majority of 50.4 percent of voters.<sup>10</sup> While the people in favour of quotas claim that the free movement of workers has caused issues in the areas of housing, health, education and transport, people in support of the free movement of workers think this freedom is crucial for Switzerland to be financially successful.<sup>11</sup>

### **Agreement Between the EU and Switzerland On the Free Movement of Persons**

The aim of this Agreement, which came into force on 1 June 2002, is to provide nationals of the EU and Switzerland with several rights, including entry, residence, and employment for both employed and self-employed individuals. It also aims to facilitate

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<sup>9</sup> De Micco, P. (2014). *DIRECTORATE-GENERAL FOR EXTERNAL POLICIES POLICY DEPARTMENT Switzerland votes "against mass immigration": How can the EU respond?* [https://www.europarl.europa.eu/RegData/etudes/briefing\\_note/join/2014/522327/EXPO-AFET\\_SP\(2014\)522327\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522327/EXPO-AFET_SP(2014)522327_EN.pdf)

<sup>10</sup> Traynor, I. (2014, February 10). *Switzerland backs immigration quotas by slim margin*. The Guardian; The Guardian. <https://www.theguardian.com/world/2014/feb/09/swiss-referendum-immigration-quotas>

<sup>11</sup> Swiss immigration: 50.3% back quotas, final results show. (2014, February 9). *BBC News*. <https://www.bbc.com/news/world-europe-26108597>

services, especially the relaxation of short-term offerings; furthermore, it extends entry and residence rights to economically inactive persons. These provisions articulate the commitment to ensuring equal living and working conditions for EU nationals living and or working in Switzerland and vice versa<sup>12</sup>.

Article 2 of the Agreement centres around non-discrimination, it stipulates that residents from one Contracting Party in the territory of another Contracting Party, who are legally residing in either party's territory, should not face any discrimination based on nationality<sup>13</sup>.

Article 10 of the Agreement articulates transitory measures. It specifies that for the first five years of the Agreement, Switzerland may impose quotas, although the EU does specify a minimum of residence permits for EU citizens, 15000 for a year or longer and 115500 of a duration between four and twelve months. After five years, all quantitative limitations on EU nationals are abolished, but Switzerland is provided with the possibility to limit EU residence permits for a period of up to 12 years after entry into force. Switzerland may limit residence permits to the average of the three preceding years plus 5% if the average of a given year exceeds the average of the three preceding years by 10%, it may impose these limitations two years in a row<sup>14</sup>.

The Article further stipulates that people already legally residing in either of the contracting party's territory are exempt from the limitations provided for in this Agreement, Switzerland needs to provide the EU with relevant statistics on immigration and there may be no quantitative limits applied to frontier workers<sup>15</sup>.

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<sup>12</sup> EUR-Lex. (2021, 01 01). Agreement on the free movement of persons, Article 1, EUR-Lex. Retrieved December 8, 2023, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22002A0430%2801%29>

<sup>13</sup> ^ Article 2

<sup>14</sup> EUR-Lex. (2021, 01 01). Agreement on the free movement of persons, Article 10.1-4, EUR-Lex. Retrieved December 8, 2023, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22002A0430%2801%29>

<sup>15</sup> ^ Article 10.7

## Application

In order for us to assess the legal implications of the 2014 Swiss immigration referendum, it is imperative that we look at the extent to which the free movement of people has been effectively infringed upon. I will, therefore, look into which elements of the free movement of persons conflict with the immigration referendum and investigate whether there already are repercussions outlined were the agreement to be breached. I will then also have to assess whether these repercussions have been put in place and how this has affected the relationship between the EU and Switzerland.

Firstly, it would be necessary to briefly explain the legal implications of such a referendum in Switzerland and its contents in this particular case.

The 2014 Swiss immigration referendum was a so-called 'popular initiative' which is a means through which the Swiss population can vote on changing its constitution. In order for an initiative to be put to a vote, the organisers need to collect one hundred thousand signatures, after which the referendum must take place within 18 months. There are two criteria that influence the contents of these referenda: a referendum must deal with one topic and cannot contradict fundamental human rights, *jus cogens*<sup>16</sup>.

The 2014 referendum was such an initiative, which means its approval warrants a change of the Swiss Constitution accordingly. The referendum contains provisions that Switzerland decides their immigration policies independently and will impose limitations on residence permits for any foreigners, including EU citizens, asylum seekers, and cross border workers. The referendum further establishes that there will be no international agreements that will contradict the contents of the referendum<sup>17</sup>.

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<sup>16</sup> Cormon, P. (2015). *Swiss Politics for Complete Beginners*:- How things work in this strange country where you can happily survive without knowing the name of the president, but where you vote on everything. Éditions Slatkine.

<sup>17</sup> Bundeskanzlei BK. (2023, 11 27). Eidgenössische Volksinitiative 'Gegen Masseneinwanderung'. Bundeskanzlei. Retrieved November 28, 2023, from <https://www.bk.admin.ch/ch/d/pore/vi/vis413t.html#>

The referendum has been fully enacted, citizens of EU/EFTA Member States require a quota-limited permit once they stay in the country for more than 90 days. L-Permits, which are based on the duration of a contract and usually are no longer than one year, have been limited to 3000 for 2023. B-Permits, which are more long-term and not connected to employment status have been limited to 500 for 2023<sup>18</sup>. This is in conflict with Article 45 and 48 of the TFEU, which consolidates the free movement of workers and includes the right to stay in a contracting State in the event of employment being terminated<sup>19</sup>, the nature of the L-permit is that it is dependent on an active employment status, thus contradicting the free movement of persons<sup>20</sup>.

The Agreement on the Free Movement of Persons also provided Switzerland with the ability to limit its immigration for the first five years and under several conditions<sup>21</sup>. The imposed quotas are much lower than the minimum given in the Agreement and Switzerland had only been provided the ability to impose these quotas twelve years after the Agreement had come into force, the current quotas are therefore in gross violation of Article 10 of the Agreement on the Free Movement of Persons.

The Free Movement of Persons is part of Bilateral Agreements I, a set of seven bilateral agreements that all entered into force in June 2002. Switzerland is given preferential access to the European single market on the condition it adheres to these

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<sup>18</sup> Canton of Zurich. (01,01,2023). Quotas 2022. Kanton Zürich. Retrieved December 8, 2023, from <https://www.zh.ch/en/wirtschaft-arbeit/erwerbstaetigkeit-auslaender/kontingente.html>

<sup>19</sup> European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, available at: <https://www.refworld.org/docid/4b17a07e2.html> [accessed 1 December 2023]

<sup>20</sup> Swiss Federation. (2023). Swiss residence permits: application and renewal. ch.ch. Retrieved December 8, 2023, from <https://www.ch.ch/en/documents-and-register-extracts/permits-for-living-in-switzerland/>

<sup>21</sup> EUR-Lex. (2021, 01 01). Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons. EUR-Lex. Retrieved December 8, 2023, from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A22002A0430%2801%29>

treaties. Characterised as ‘bilateral ties’, if Switzerland fails to uphold any of these treaties, all seven of them fall<sup>22</sup>.

Following the vote, the relationship between Switzerland and the EU has become much less fraternal. Switzerland was excluded from the Erasmus+ program, a multi-billion euro program promoting academic research, providing students with mobility grants<sup>23</sup>. The EU has also not updated its Mutual Recognition Agreement on Swiss medical technology, which means the lucrative sector loses barrier-free access to EU markets, downgrading its recognition of Swiss medical technology to the ‘third-country’ level, possibly costing the industry 114 Million CHF in revenue<sup>24</sup>.

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<sup>22</sup> Abu-Hayyeh, R., Murray, G., & Fekete, L. (2014). Swiss referendum: Flying the flag for nativism. *Race & Class*, 56(1), 89-94. <https://journals.sagepub.com/doi/pdf/10.1177/0306396814531706>

<sup>23</sup> Bradley, S. (2023, November 27). Explainer: Can Switzerland rejoin Horizon Europe and Erasmus+ in 2024? Swissinfo. Retrieved December 8, 2023, from <https://www.swissinfo.ch/eng/sci-tech/explainer--can-switzerland-rejoin-horizon-europe-and-erasmus--in-2024-/49011354>

<sup>24</sup> Holler, A. (2021, May 26). Swiss medtech downgraded to «third country» status. Swiss Medtech. Retrieved December 8, 2023, from <https://www.swiss-medtech.ch/en/news/swiss-medtech-downgraded-third-country-status-today>

## Conclusion

All in all, the legal challenges following the 2014 Swiss Immigration Referendum have posed a threat to the implementation of EU law, as I have demonstrated. Specifically the free movement of persons has been put under pressure due to this friction between national sovereignty, in the form of Switzerland's ability to legislate independently from the EU and international agreements, like the Agreement on the Free Movement of Persons.

In the legal analysis it became apparent that there is a dissonance between the implementation of immigration quotas, and the bilateral treaty that the Swiss Federation agreed on concerning the free movement of persons. The TFEU Articles 45, 48, 114 and 216 provide the legal framework that is necessary for the making and upholding of bilateral agreements.

The Agreement on the Free Movement of Persons is a key bilateral treaty, which outlines the rights and obligations Switzerland has in regards to its access to the European single market. When comparing these legal principles to the 2014 Swiss Immigration Referendum, it becomes apparent that Switzerland is in violation of this treaty by imposing quotas.

While Switzerland has faced repercussions, such as exclusion from the Erasmus+ programme, these repercussions do not align with the scope that the 'bilateral ties' would otherwise call for. Switzerland still appears to enjoy preferential access to the single market. While the EU might refrain from imposing harsh punishments in order not to alienate Switzerland. It does, however, appear that this mild approach does not encourage Switzerland to alter its policies.

In order to uphold the bilateral agreements, it remains vital to negotiate and discuss important matters. To do this, the EU should leverage Switzerland's access to the single market to uphold the bilateral agreements. In conclusion, a functional balance between

national autonomy and international cooperation should be strived for, to make sure that both parties uphold their commitments for the mutual benefit of their citizens.

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