

EU/Switzerland

Dialogue of deaf on free movement of persons

By Tanguy Verhoosel | Thursday 28 June 2012

The Union failed to convince Switzerland, on 27 June, to refrain from limiting access to its labour market for nationals of eight Eastern and Central European states that joined the Union in 2004. There is a dialogue of the deaf between Berne and the EU.

The joint committee in charge of managing the 1999 EU-Switzerland agreement on free movement of persons, which entered into force in 2002, met on 27 June. The main item on the agenda of this annual meeting was the Swiss decision of 18 April to restore quotas on issuing long-term residence permits (over a year) to nationals of Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Estonia, Lithuania and Latvia.

The head of the Swiss delegation, Mario Gattiker, director of the Swiss Federal Migration Office, said after the meeting that the Union had “insisted that the Swiss government cancel the measure with immediate effect”. The EU considers the measure incompatible with the agreement on free movement of persons. According to the European External Action Service, the European Parliament and the 27 member states, Switzerland is not entitled to “discriminate” between EU citizens.

Berne turned down the request point blank. It argued that the safeguard clause in the agreement allows “differentiated” treatment of EU citizens and that its activation is justified because the opening of the Swiss labour market to nationals of these eight EU member states has led to a sharp increase in immigration from these states. In short, Switzerland “is not prepared to give in to the EU’s demands,” said Gattiker. This refusal is dictated by domestic policy considerations as the EU’s image continues to decline in Switzerland.

This meeting was closely followed in the EU (the Union delegation had 32 members, including ten representatives from six of the eight countries penalised by Berne’s decision). The same evening, in an unusual move, the Union put out a statement expressing extreme irritation over the stalemate and other “persistent disagreements” on the functioning of the agreement on free movement – Switzerland has unilaterally introduced flanking measures, such as the so-called ‘eight-day rule’ meant to prevent social and wage dumping, the lawfulness of which has been disputed by the EU for years. These disagreements “show the limits of the joint committee as a mechanism for the settlement of disputes”.

Many observers – Swiss nationals among them – agree that Switzerland has shot itself in the foot with its reintroduction of quotas at a time when the Union is increasingly dissatisfied with the institutional shortcomings of bilateralism, the only form of European integration foreseeable in Switzerland. In addition to an effective dispute resolution procedure, the EU wishes to set up mechanisms for the “dynamic” adaptation of its many agreements with Switzerland to EU legislative developments and its evolving case law, and “independent” monitoring of correct implementation of these agreements.

The 27 foreign ministers are preparing to adopt stringent conclusions on this subject in the event there should be no change by December 2012. Switzerland presented proposals, in early June, but they are seen as inadequate in Brussels.

This is not the only subject causing increasing annoyance in the EU. The initiative on the expulsion of foreign criminals, adopted by Swiss voters in November 2010, is also considered incompatible with the agreement on free movement of persons with the EU.

The Union is not considering retaliation measures against Berne (yet?), however. "It is too soon to tell what the direct and indirect effects of the decision to reintroduce quotas may be," said Gattiker. For now, in any case, Berne has "no indication that the Union plans to follow up in a negative way".

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