EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

PROVISIONAL
2004/0201(AVC)

7.2.2005

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DRAFT RECOMMENDATION

on the proposal for a Council decision on the conclusion, on behalf of the European Community and its Member States, of a Protocol to the 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, regarding the participation, as contracting parties, of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, pursuant to their accession to the European Union
(12585/2004 – COM(2004)0596 – C6-0247/2004 – 2004/0201(AVC))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Timothy Kirkhope

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council decision on the conclusion, on behalf of the European Community and its Member States, of a Protocol to the 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, regarding the participation, as contracting parties, of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, pursuant to their accession to the European Union (12585/2004 – COM(2004)0596 – C6-0247/2004 – 2004/0201(AVC))

(Assent procedure)

The European Parliament,

– having regard to the proposal for a Council decision (COM(2004)0596),

– having regard to the cooperation agreement between the European Community and the Swiss Confederation (12585/2004)[1],

– having regard to the request for assent submitted by the Council pursuant to Article 300(3), second subparagraph, in conjunction with Article 300(2), first subparagraph, second sentence and Article 310 of the EC Treaty (C6-0247/2004),

– having regard to Rules 75 and 83(7) of its Rules of Procedure,

– having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Foreign Affairs (A6-0000/2005),

1. Gives its assent to conclusion of the agreement;

2. Instructs its President to forward its position to the Council and Commission, and the governments and parliaments of the Member States and the Swiss Confederation.

[1] Not yet published in OJ.

EXPLANATORY STATEMENT

I. Background

Relations between Switzerland and the European Union (EU) are particularly close as is partly demonstrated by the large number of agreements which are in place between them.[1]

Following Switzerland's rejection of accession to the European Economic Area (EEA) Agreement in 1992, a series of bilateral agreements (the so called Bilateral Agreements I) were negotiated in order to minimise any negative consequences of that rejection. They covered free movement of persons, overland transport, air transport, agriculture, research, as well as technical barriers to trade and public procurement, and entered into force on 1 June 2002.

A second package of agreements (Bilateral Agreements II) have been negotiated since June 2002. This package contains nine different agreements which concern the taxation of savings; the co-operation in the fight against fraud; the association of Switzerland with the Schengen acquis; participation of Switzerland in the "Dublin" and "Eurodac" regulations; trade in processed agricultural products; Swiss participation in the European Environment Agency and European Environment Information & Observation Network (EIONET); statistical co-operation; the Swiss participation in the Media plus and Media training programs, and for the avoidance of double taxation for pensioners of Community institutions.

There were nine agreements signed on 26 October 2004. The Parliament is now being consulted on the conclusions.

II. The present protocol

The first package of bilateral agreements signed with Switzerland included an agreement on the free movement of persons.[2] This agreement, which entered into force on 1 June 2002, established free movement for persons between the EU and Switzerland subject to certain transitional provisions. Until 31 May 2007, it contains a quota for EU citizens who would like to obtain a long-term residence permit (valid for one year or more) in Switzerland. This quota of 15.000 persons annually was fully met in the first two years. Switzerland explains this by referring to the high number of people who lived previously in the border regions close to its territory but were working in Switzerland who have now moved to live inside its borders. At the same time, the quota of 115.000 residence permits for periods between four and twelve months has in each year only been 50 % filled. This agreement, in general, functions in a satisfactory manner and without any particular problems.

The agreement on free movement is the only one which did not automatically extend to the new Member States following the enlargement of the EU in May 2004. Consequently, Switzerland and the EU have had to enter into negotiations to conclude a protocol to the agreement which extends its application to the new Member States of the European Union.

[1] See http://www.europa.eu.int/comm/external_relations/switzerland/doc/bilat.htm
[2] OJ L 114, 30.4.2002, p.6

The protocol gives Switzerland the right to maintain quantitative limits for workers and self-employed persons from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and the Slovak Republic looking for residence of more than one year and residence for periods between four months and one year.[1] Initially, these quotas will last for three years (until 31 May 2007) but they can be prolonged for an additional two years (until 31 May 2009). In case of "serious disturbances of its labour market or threat thereof" quotas to restrict access can be maintained until 30 April 2011. Over the entire period 2005 - 2011, the quotas for new residence permits will grow (from 900 to 3.000 long-term and from 9.000 to 29.000 short-term).[2]

The protocol therefore follows the model of the formula between old and new EU Member States.[3] By using a system of quotas, however, Switzerland grants immediate access within the yearly quotas.

The protocol also contains the right for Switzerland to maintain in the transitory period controls on the priority of workers integrated into the regular labour market and wage and working conditions applicable to nationals of any other Contracting Party. The same controls may be maintained for persons providing services in the following four sectors: Horticultural service activities; Construction, including related branches; Security activities; and Industrial cleaning.

Annex I contains transitional measures on the purchase of land and secondary residence which are essentially those also contained in the acts of accession. Annexes II (Coordination of Social Security Schemes) and III (Mutual Recognition of Professional Qualifications) foresee technical adaptations.

The present agreement on free movement requires, like the first bilateral proposals, the assent of Parliament.

III. The discussion in Switzerland

As with other pre-enlargement Member States, Switzerland has debated whether the extension of the right of free movement to the citizens from the new Member States would lead to distortions in the labour market and, in particular, wage dumping. To address these concerns a law with accompanying measures was passed.

Nevertheless, it is likely that a referendum will take place on the matter in Switzerland. In

[1] No restrictions apply to nationals from Malta and Cyprus.
[2] For the period of 2011 until 2014, the safeguard clause of the existing agreement could be applied (Article 10.4).
[3] Following enlargement of the European Union to 25 members on 1 May 2004, there are transitional periods which will limit the free movement of workers from new Member States, as set out in the Accession Treaty. Until May 2006, each of the previous 15 Member States can decide whether to open their labour market fully to workers from the new Member States or put restrictive measures in place. After those two years, these Member States must notify the European Commission of whether they intend to continue with their restrictive measures for a maximum of another three years or apply the 'free movement of people' law regime. The transitional measures should, in principle, end five years after accession but these Member States have the option to ask the European commission for a two-year extension if they experience serious disturbances on their labour market.

such a case this would be held on 25 September 2005.[1] An opinion poll published in January 2005 showed that 52% of the electorate said that they would be in favour of extending the agreement on free movement while 30% were against and 18% undecided.[2]

The consequences if the protocol does not receive the support of the majority will be serious. For the EU a situation would develop in which its citizens are treated in two different ways: the citizens of the pre-enlargement states would benefit from free movement while the citizens from new Member States would not. This situation would produce complications. Consequently, the EU could, for instance, withdraw from the original agreement on free movement and due to a special clause inserted in the Bilateral Agreements I they would cease to apply.

IV. Rapporteur's position

The rapporteur welcomes the extension of the agreement because he believes both sides would have much to gain.

Switzerland benefits like the EU Member States from the recent enlargement. Politically, it gains from increased democratic stability in its geographical neighbourhood. Economically, it profits from a larger internal market and in these respects free movement is a very important element.

This agreement will make it much easier to send Swiss staff to the new Member States where already many Swiss based companies are active. At the same time citizens from new Member States can now be more easily recruited by Swiss companies. From the Swiss point of view, representatives of business associations note that there is a demand for labour, notably in tourism, agriculture and in the health-care system. In addition, it is estimated that, at the time of the expiry of the transitional provisions, demographic change in Switzerland will lead to a decline in their active labour force.

EU Member States gain from the protocol because citizens from the new Member States can immediately apply for residence permits within the yearly quota. In the long-term, all citizens of the EU and Switzerland will enjoy the possibility of free movement.

For all these reasons, the rapporteur supports the agreement and recommends it be given assent.

[1] A referendum on Schengen / Dublin would take place on 5 June 2005.
[2] The survey of 1,005 people was conducted by the Isopublic research institute and published in the SonntagsBlick newspaper.