EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

2008/0080(AVC)

30.6.2008

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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 Republic of Bulgaria and Romania pursuant to their accession to the European Union (9116/2008 – COM(2008)0209 – C6-0209/2008 – 2008/0080(AVC))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Marian-Jean Marinescu

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 Republic of Bulgaria and Romania pursuant to their accession to the European Union
(9116/2008 – COM(2008)0209 – C6-0209/2008 – 2008/0080(AVC))

(Assent procedure)

The European Parliament,

– having regard to the proposal for a Council decision (COM(2008)0209),

– having regard to the 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 Republic of Bulgaria and Romania pursuant to their accession to the European Union (8689/08),

– having regard to the 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[1],

– having regard 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[2],

– having regard to the request for assent submitted by the Council pursuant to Article 310, in conjunction with the second sentence of the first subparagraph of Article 300(2) and the second subparagraph of Article 300(3) of the EC Treaty (C6-0209/2008),

– having regard to Article 6(2) of the 2005 Act of Accession[3],

– 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 (A6-0000/2008),

1. Gives its assent to the conclusion of the Protocol;

2. Instructs its President to forward its position to the Council and the Commission, and the

[1] OJ L 89/30 of 28.03.2006.
[2] OJ L 114/6 of 30.04.2002.
[3] OJ L 157/203, of 21.6.2005.

governments and parliaments of the Member States and the Swiss Confederation.

EXPLANATORY STATEMENT

I. Background

An Agreement between the European Community and its Member States (Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, Great Britain, of the one part, and Switzerland[1], of the other, on the free movement of persons, was signed on 21 June 1999 and entered into force on 1 June 2002[2].

Following the accession of the ten new EU Member States (EU 10) on 1 May 2004, the Agreement was amended through a Protocol and extended to the EU 10 (the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia). This first Protocol to the Agreement was signed on behalf of the European Community and its Member States on 26 October 2004 and, following a positive Swiss referendum on this issue on 25 September 2005, entered into force on 1 April 2006[3]. The Protocol follows the model of the Agreement with EU 15, respectively draws up quotas, labour market access arrangements, restrictions and protective clauses.

Pursuant to the accession to the European Union of Bulgaria and Romania on 1 January 2007, the Agreement needs to be amended once again, in order to allow for the participation of the new Contracting Parties to it.
On 5 May 2006, following the authorization from the Council to the Commission, negotiations were launched with the Swiss Confederation for a second Protocol to the Agreement on the free movement of persons, regarding the participation, as contracting parties, of the Republic of Bulgaria and Romania. The negotiations were concluded on 29 February 2008 with the initialling of the final draft. This second Protocol to the Agreement was signed on behalf of the European Community and its Member States on 27 May 2008.

II. The protocol to the EC/Switzerland agreement on the free movement of persons following the accession of the two new Member States, Romania and Bulgaria (EU 2), on 1 January 2007 (the present protocol)

This protocol is the "logical extension" of the Agreement with the EU 25. Using the same legal bases as the previous protocol (Protocol with the EU 10), the present protocol gives Switzerland the right to maintain quantitative limits for workers and self-employed persons from Romania and Bulgaria, in order to gradually ease access for the two nationalities to the Swiss labour market, with larger groups admitted each year, but dependent on the Swiss labour pool and employment figures.

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[1] Switzerland is one of the founding members of the European Free Trade Association (EFTA), but not a member of the European Economic Area (EEA). Its vote against accession to EEA led to a series of Agreements with the European Community and its Member States;
[2] As from 1 June 2007, workers from EU 15 and the two new small EU members Malta and Cyprus as well as three EFTA countries Iceland, Norway and Liechtenstein have had unlimited access to the Swiss labour market. If the number of immigrants exceeds the average of the past three years by 10%, Switzerland will be entitled to re-introduce quotas also for these 17 EU Member States;
[3] OJ L 89 of 28 March 2006, p. 30.

Switzerland imposes quotas for the transitional periods (total of seven years, as for EU 10), respectively:
- A two-year first transitional period starting from the date of the entry into force of the present protocol,
- A three-year second transitional period, in case that the report from Switzerland on the functioning of the first transitional period notifies Switzerland's intention to continue applying quantitative limits[1],
- An extra two-year period, only in case of experiencing "serious disturbances of its labour market or threat thereof" Switzerland can maintain the quantitative limits.

The protocol also includes a special protection clause that for ten years after the entry into force of the protocol, allows Switzerland to require quotas limiting the number of immigrants, in case that the number of the new residence permits exceeds in a given year the average for the three preceding years by more than 10%. For the following year, Switzerland may limit the number of new residence permits to the average of the three preceding years plus 5%[2]. Taking into consideration that the referendum with regard to the opening of the Swiss labour market to the two new Member States is foreseen by May 2009 and that the entry into force of the present Protocol will be applicable following this referendum, the period claimed by this special protection clause might last until 2019.

These quantitative limits in respect of access by workers employed in Switzerland and for self-employed persons who are nationals of Bulgaria and Romania are applicable for the following two categories of residence: residence for a period of more than four months and less than one year (short-term) and residence for a period equal to, or exceeding, one year (long term)[3].

Over the entire transitional period of five years, the quotas for new residence permits for Romania and Bulgaria will grow from 3.620 to 9.090 (short-term residence) and from 362 to 1.046 (long-term residence).

Transitional measures also entitles Switzerland to maintain control on the priority of workers integrated into the regular labour market, control of wages 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.

Following the model of the previous protocol (Protocol with the EU 10), the present protocol introduces a number of adaptations concerning transitional measures on the purchase of agricultural land, forests and forestry land by Swiss nationals and companies, as well as of secondary residence. Furthermore, there are technical adaptations, in particular with respect to social security schemes. The necessary adaptations on the mutual recognition of professional qualifications shall be adopted by the Joint Committee of the Agreement.

[1] In the absence of such notification, the transitional period shall expire at the end of the two-year period;
[2] Provisions established the Article 10(4) of the original Agreement;
[3] The holders of valid residence permits shall be entitled to have their permits renewed; the exhaustion of quantitative limits may not be invoked against them.

III. The opening of the Swiss labour market to the two new Member States

According to latest inquiry of Swiss Economical Organisations[1] the extension of the Agreement on the Free Movement of Persons to the two new Member States has a crucial importance for the Swiss economy.

In order to avoid economic and social destabilisation[2], the Swiss authorities reassured the population that their labour market will be opened gradually and that pressure on wages, as a consequence of the market liberalisation, will be limited. Subsequently, there is a possibility of reintroducing quotas on the basis of the protection clause which might remain open until 2019.

However, if the Swiss Parliament and the Electorate reject the extension of the free movement of persons to the new EU countries, there will be a danger of the EU terminating the agreement. This would mean that the so-called guillotine clause would become applicable, and the six other Bilateral Agreements I of 1999 would consequently be void[3].
According to the Agreement, its extension is subject to optional referendums that would assess the position of Swiss citizens in this matter.

On 25 September 2005 a referendum on this issue took place in order to validate the entry into force of the Protocol to the Agreement with the EU 10[4].

Moreover, as a consequence of the end of the seven year transitional period imposed to the EU 25, and the beginning of a new phase, another referendum is likely to take place in May 2009[5].

IV. Rapporteur's position

Economic benefits

The extension of the Agreement on the Free Movement of Persons between Switzerland and the EU to the ten new member countries opened up the opportunities on the labour market and the increase in volume of the trade with those countries had an impact on the Swiss economic growth.

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[1] See http://www.accords-bilateraux.ch/fileadmin/user_upload/bilaterale/pdf/fr/2008-06-16_Exp_Europe_Staempfli.pdf

[2] The negotiations with Switzerland foresaw the upholding of labour market restrictions such as national priority, wage control and quotas;

[3] Bilateral Agreements I 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. Bilateral Agreements II have been negotiated since June 2002 and contains 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;

[4] 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;

[5] The Swiss House of Representatives decided that the referendum on prolonging the agreement with the EU 25 should be separated from the first referendum for the EU 2 regarding the entry into force of the Protocol to the Agreement pursuing the Romania and Bulgaria accession to the EU.

According to a report published by the State Secretariat for Economic Affairs, the immigration had been adjusted to Switzerland's needs on the labour market based on the cyclical developments and had favourable results on the domestic economy.

It is expected that the extension of this Agreement to Romania and Bulgaria will intensify competition on the Swiss labour market, it will make it easier to send Swiss employees to these two countries, it will improve the possibilities of recruiting Romanian and Bulgarian personnel and it will also open future markets for the Swiss export. Statistics show that Switzerland's labour market requires particularly highly qualified personnel, especially in management, academics and the technical area.

Some sectors of the Swiss economy such as tourism, the hospitality industry, agriculture and the health sector hope that the opening will also provide them with advantages when it comes to filling vacancies with lower qualification requirements.

Challenges raised by this Protocol

The rapporteur welcomes the extension of the agreement because he believes both Romania and Bulgaria, on one side, and the Swiss Confederation, on the other side, would have much to gain in the context of an enlarged Europe promoting economic policies that aim at growth and employment, not only inside EU but also in the neighbouring countries.

However, comparing the Protocol following the accession of the EU 10 to the one following the accession of Romania and Bulgaria, the rapporteur notices that in spite of the same total transitional period imposed by Switzerland for EU 10 and EU 2, there is a difference in the timeframe.

This difference is due to the different entry basis of the applicability of the Protocols[1], which adds at least two more years to all transitional periods imposed to Romania and Bulgaria[2]. The entry basis relies on an inconsistent way of establishing the beginning of these transitional periods: starting with the date of their accession for the EU 10 (01.04.2004) and the date of the entry into force of the Protocol for the
EU 2 (respectively, after the Swiss referendum foreseen in May 2009).

Therefore, taking into consideration the two-year late start for Romania and Bulgaria, the rapporteur asks the European Commission to exercise due diligence to ensure the speeding-up of this process and to make sure that the Swiss Confederation will not postpone their ratification, in order for the present Protocol to enter into force immediately upon completion of the foreseen referendum on this matter.

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[1]The protocol to the EC/Switzerland agreement on the free movement of persons following the accession of the ten new EU Member States (EU 10) on 1 May 2004 foresees the following transitional periods: a three-year first transitional period until 31 May 2007, a two-year second transitional period until 31 May 2009, an extra two-year period, until 2011; the special protection clause for Switzerland is foreseen until 2014;

[2] The special protection clause for Switzerland is as well two years longer for EU 2 in comparison to EU 10. This is because this clause is foreseen until 2014 for EU 10, respectively twelve years after the entry into force of the original Agreement, in 2002 and, consequently, for ten years after the accession to the EU, and until 2019 for EU 2, which means for ten years after the entry into force of the present protocol foreseen in 2009, and, consequently, for twelve years after their accession to the EU.

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