



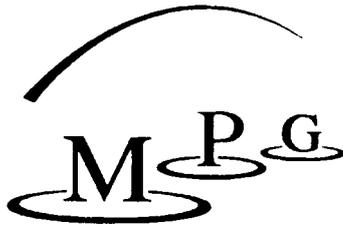
■ Current Immigration  
Debates in Europe:  
A Publication of the  
European Migration  
Dialogue

Jan Niessen, Yongmi Schibel and  
Cressida Thompson (eds.)

## Switzerland

Bülent Kaya





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**Current Immigration Debates in Europe:  
A Publication of the European Migration Dialogue**

**Switzerland**  
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for

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on migration and mobility, and diversity and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

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## **1. Making the case**

### **The Political Context**

As with any debate which deals with social issues, the debates on immigration can only be fully understood within their political and social context. This is especially the case in Switzerland, whose federal system, political administration, government structure, and the implementation of 'direct democracy' appear very complex. Generally speaking, and taking into account this document's objective of reporting on the development of the immigration debate in Switzerland, it is important to note one of the main characteristics of the Swiss political system: In Switzerland, the government's administrative autonomy and the parliament's legislative autonomy are restricted by the *instruments of direct democracy*, e.g. referendum and initiative. The latter is recognised as a political right, which gives citizens the ability to launch an initiative to propose a constitutional change. The referendum, on the other hand, permits a citizen to oppose a draft law which has been approved by the parliament (optional referendum) or it can be used as a tool with which citizens can voice their opinions on a draft law which requires a compulsory referendum before it can be implemented.

The existence of instruments of direct democracy in Switzerland has resulted in a situation in which the government must often seek a compromise with Swiss society as citizens are able to politicise any topic they choose. The immigration question has not escaped this phenomenon. The political forces known for their anti-immigration attitudes have been making use of direct democracy procedures (initiative and referendum) in an effort to put immigration at the top of the national political agenda. They have succeeded in making immigration an increasingly important political issue.

The primary reason for the institutionalisation of a system of *consultation procedures* is that the policymakers need to find a compromise, which is particularly important at the stage when political decisions are formulated and laws are drafted. The system allows the people concerned and the interested parties to influence the political decision-making process. Thus, civil society (political parties, associations, etc.) can express its point of view on the laws drafted by the Confederation in much the same way as certain political authorities (cantons) or administrative entities (federal bureaus, government departments, etc.) can. The system of *consultation procedures* allows the government to include concerned groups in the decision-making process so that a consensus can be reached. In addition, it allows the interested parties to bring problematic issues into the public eye, where the issues apply to a wider range of different political and socio-economic interests. As indicated above, this system is being used to make immigration one of the most controversial topics in Swiss society today.

In 2004, immigration was higher on the political agenda than ever before: the expansion of the EU towards the East and the free movement of people were the main topics on the agenda; the right to citizenship was put to the vote; and the revisions of the new Foreign Nationals Act (FNA) and the Asylum Law were discussed in committees and with the interested parties.

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<sup>1</sup> This report is based on information up to 22 July 2005

This report aims to explain the evolution of the debate on immigration in greater detail, taking into consideration its different dimensions within the Swiss context.

## 1.1 The immigration debate

### Immigration in Switzerland

Switzerland has one of the highest immigration rates in Europe. According to the 2000 census from a total population of 7.4 million, 22.4 per cent are foreign born and 20.5 per cent, or nearly 1.5 million, are foreigners (defined as persons with a foreign nationality). Switzerland used to be a destination country for employment-seeking French, Germans, and Italians. In the latter half of the 20th century however, it has hosted large numbers of Eastern European dissidents, Yugoslavian refugees, and asylum seekers from the Middle East, Asia, and Africa.

The distribution of the foreign population according to citizenship (see table 1) shows an increase in the number of migrants from the former Yugoslavia, Turkey, and non-European countries. Between 1970 and 2000, the number of Italian and Spanish migrants decreased whereas the number of Yugoslavians, Turks, and Portuguese increased significantly. Sri Lanka, India, and China are the main Asian countries of origin, with most Sri Lankans seeking asylum and most Indians and Chinese coming as students.

**Table 1: Evolution of the Foreign Population in Switzerland 1970-2000 by Citizenship**

	1970		1990		2000	
	Numbers	Percentage	Numbers	Percentage	Numbers	Percentage
Germany	118,289	11.0	86,197	6.9	112,348	7.5
Austria	44,734	4.1	30,172	2.4	29,849	2.0
France	55,841	5.2	52,715	4.2	62,727	4.2
Italy	583,850	54.1	383,204	30.8	322,203	21.5
Spain	121,239	11.2	124,127	10.0	84,559	5.7
Portugal	3632	0.3	110,312	8.9	142,415	9.5
Former Yugoslavia	24,971	2.3	172,777	13.9	362,403	24.2
Turkey	12,215	1.1	81,655	6.6	83,312	5.6
Other (European)	56,993	5.3	83,721	6.7	99,279	6.6
Africa	5121	0.5	24,768	2.0	49,873	3.3
America (Nth & Sth)	18,425	1.7	30,357	2.4	51,124	3.4
Asia	8327	0.8	62,937	5.1	92,145	6.2
Oceania	1063	0.1	1763	0.1	2994	0.2
Unknown	25,376	2.3	727	0.1	318	0.0
<b>Total</b>	<b>1,080,076</b>	<b>100.0</b>	<b>1,245,432</b>	<b>100.0</b>	<b>1,495,549</b>	<b>100.0</b>

Source: Wanner Philippe (2004), Migration et Intégration- la population étrangères en Suisse. Swiss Federal Statistical Office (SFSO), Censuses

### Immigration policy

The starting point for the philosophy of Swiss immigration policy is the search for a balance between the economy's foreign labour requirements and the demographic stabilisation of the foreign population in Switzerland, which relates to the fear of a *foreign overpopulation* (so called *Ueberfremdung*). Although the shifting nature of economic needs plays a decisive role in determining the category of migrants who should be admitted, the objective of stabilising the size of the migrant population is

leading to an increasingly restrictive admission policy, particularly with regard to migration from non-EU countries.

While aiming for a certain degree of continuity, the goal of the current immigration policy is to improve the structure of the labour market by admitting highly qualified migrants. The admission of unskilled migrants who are prepared to accept low-salary jobs is believed to contribute to the preservation of an outdated labour market structure and which engenders increased social costs when the economy recedes. This is due to the fact that unskilled migrants run the greatest risk of becoming jobless. The current economic situation with its global aspects is used to justify the preference for skilled rather than unskilled workers. Migration policy should therefore be based on the principle that immigration must serve the entire economy and Swiss society and not just specific interests.

Generally, economic considerations are the main reasons given to justify immigration. It is believed that immigration should benefit the target country and its workforce needs just as much as the country of origin (through the funds the workers send home). The official justification for immigration lacks demographic arguments despite the fact that demographic studies consider immigration as a partial solution to Switzerland's population problems (aging, plummeting birth rate, etc.), and despite the fact that these studies show that the main cause of Switzerland's demographic evolution remains immigration. On the contrary, it is interesting to note that the government refers to demographic arguments to reassure the people that "immigration does not affect the balance of demographic and social evolution" (Art.4 Admission para. d in the earlier version of the FNA). This statement, which was modified in the latest version of the Foreign Nationals Act was included to be taken into consideration in the interests of "Switzerland's socio-demographic development" (Art. 16 para. 3 FNA) regarding the admission of foreign nationals. It might be argued that the fear of *foreign overpopulation* plays an important role in the government's statement regarding demographic arguments in admission policy.

It is important to acknowledge, however, that the situation is different in some cantons, where domestic and foreign migration may have a greater impact on the demographic, economic and financial situations. Cantonal points of view concerning migration and population also differ.<sup>2</sup>

Within the immigration debate, arguments that link immigration to global social and economic policies, such as education and the goal of full employment are lacking. On the other hand, several other elements seem to characterise the debate on admission policy:

There are clear indications regarding the type of migrant preferred. Switzerland is counting on the admittance of highly qualified migrants, whose justification is explained by the economy's need for highly skilled employees. Further, the new Foreign Nationals Act has created a new category of migrants by admitting independent persons where they represent a public and economic interest and have a positive effect on the Swiss labour market.

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<sup>2</sup> It is interesting to note that the canton of Jura, which is a small canton on the periphery of Switzerland, suggested opening a centre for demographic promotion. The main duties of this centre would have been to design and apply a demographic marketing policy, aimed at inducing people to settle in the canton and consulting the newcomers, paying special attention to those coming from abroad. However, through a vote, the inhabitants of the Jura rejected this proposal and it is thus no longer relevant.

In addition, by opening its labour market to the free movement of people from EU countries, Switzerland is also making it clear that it prefers free movement from the EU to immigrants from other non-EU countries.<sup>3</sup> “The chances of professional and social integration are determining factors” for the admittance of migrants coming from the latter countries, aside from their higher level of qualifications (Art. 16 FNA).

One should also note the hardened tone of the official discourse, which creates an explicitly unfavourable climate for immigration. By putting forward the notion of *controlled migration*, the discussions attempt to establish links between immigration, security and crime in Switzerland.<sup>4</sup> As for the future of asylum policy, the discussions focus mainly on the fight against abuse, because according to the minister entrusted with the question of immigration and asylum, the great majority of asylum claims are false. This is a controversial position, which is not shared by other organisations or civil society or those who defend the right to asylum. Within such a context, the fight against illegal immigration becomes equally essential because, as underscored by the IMES, FOR, Federal Policy and Swiss Border Guard Corps report on illegal migration (23 June 2004, Berne), it is considered a phenomenon with harmful affects on the labour market and on the population. According to the same report (see p. 28), the affects can be summarised as follows:

- An artificial lowering of salary and social status;
- An increase in unemployment;
- Disadvantages for companies that respect the law;
- Long-term obstacles for the integration of foreigners resident in Switzerland;
- Economic loss in terms of unpaid premiums for social insurances; and
- Problems of integration linked to illegal residence.

The effect of these unfavourable circumstances is obvious regarding the manner with which undocumented immigrants (the so-called *sans papiers*) are dealt; a topic of increasing importance in 2004. Federal policy concerning the regularisation of undocumented immigrants works on a case-by-case basis and refuses to broach the subject of regularising the entire group collectively. A different approach can be observed at the local level. The canton of Geneva, among others, has boldly stated its willingness to create a collective solution for the 5,000 clandestine domestic workers on its territory, but this digression cannot be generalised. The canton of Zurich, for example, completely rejects a collective solution and insists on the expulsion of undocumented immigrants. Although the arguments against comprehensive regularisation rests on the fact that this could make Switzerland more attractive and increase criminal activity, those who are in favour of a comprehensive solution emphasise the economic contribution of paperless people, namely in the area of domestic work, etc.

Supported by the trade unions, the argument for regularisation is received positively by some local authorities, as for instance in the canton of Geneva. Although the

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<sup>3</sup> Nationals from EU Member States enjoy free movement due to bilateral agreements. This geographical preference is obvious in the argument that it is necessary to restrict the admittance conditions for non-EU migrants to prevent endangering the extension of free movement to the ‘new’ EU Member States, which will be submitted to public vote on 25 September 2005.

<sup>4</sup> Along with the harsher tone in these discussions and the deterioration of the general mood, the fact that the Federal Councillor in charge of the immigration and asylum question represents the right-wing party (Swiss People’s Party) within the government, which is known for its anti-immigration policy, plays a considerable role here.

economic contribution of undocumented migrants is not questioned, the federal authorities do not view it as a strong enough argument to favor a collective regularisation at the national level. Interestingly, employers remain in a veil of silence on this issue.

It is important to draw attention to the fact that the admission policy is becoming increasingly restrictive, particularly regarding family reunification. According to the new draft Foreign Nationals Act, children of migrants with a permanent residence permit who are under 14 years of age will obtain a residence permit and those up to 18 years will get only a renewable one-year residence permit.

The right to family reunification of third-country nationals is regulated in the Law on the Entry and Stay of Foreigners (ANAG), as well as the Decree on the Limitation of the Number of Aliens (OLE). As a general rule, the right of third-country nationals to immigrate depends on the residence status of the person requesting family reunification. Under Swiss law, unmarried partners do not qualify for family reunification (Art. 17 ANAG). However in June 2005, Switzerland did adopt a new law allowing homosexual partnership, which extends family reunification to partners of the same sex.

#### **Spouses of Swiss citizens:**

Spouses of Swiss citizens have a right of residence, provided the marriage is not fraudulent and the foreign spouse respects Swiss law. A right to permanent residence independent from the marital status is granted after five years of uninterrupted residence in Switzerland. Children of Swiss citizens who are residents in Switzerland are entitled to a facilitated naturalisation procedure. With the activation of a Bilateral Agreement with the EU, the rights of Swiss citizens have been harmonised with those granted to EU/European Free Trade Area nationals. As a consequence, family reunification is also possible for relatives in the ascending line (grandparents), as well as for dependent children over 21 years of age. These persons have the right to take up an economic activity within their canton of residence.

#### **Spouses of permanent residence aliens:**

Spouses and single children (up to 18 years of age) of permanent residence aliens receive a residence permit, provided the marriage is not fraudulent, the foreign spouse respects Swiss law and does not require sustained and considerable public assistance. The couple is obliged to live together. A right to permanent residence independent from the marital status is granted after five years of uninterrupted residence in Switzerland. The prolongation of a residence permit in case of separation/divorce for spouses who have been staying in Switzerland for less than five years, occurs only on an exceptional basis, depending on the degree of integration in the country.

#### **Spouses of aliens with limited permits:**

Spouses of aliens with limited permits are accepted on a discretionary basis. The law stipulates that the cantonal foreigner-police may allow the reunification of the spouse and single children of foreigners with limited permits under the following conditions: the centre of family life must be in Switzerland, there must be appropriate housing and the financial situation must be sound (no risk of protracted dependence on public assistance).

Foreigners staying only temporarily in Switzerland (Status L, Students etc.) have no right to family reunification (temporary stays are visits for maximum of three consecutive months and less than six months a year in total).

The restrictions in the area of asylum are even more striking. Within the framework of the current revision of the asylum law, the parliamentary debates confirm the harder line being taken regarding asylum policy. The debates focus on three main topics:

The first concerns suppression or reduction of social aid to all rejected asylum claimants<sup>5</sup> and not only to those people who have had their applications rejected.<sup>6</sup> Asylum seekers who have been rejected (estimated at 12,000), cannot object to the decision taken by the appeals commission, which is the last authority regarding asylum issues. Nevertheless, in exceptional cases, they can demand a revision of their situation.

In addition, the Preparatory Committee of the Council of States intends to allow the cantons to reduce or cease emergency aid, which is currently guaranteed by the Swiss constitution to all people residing in Switzerland, independent of their residency status. The main reason for this proposal seems to be financial. As of 1 April 2004, officially rejected asylum seekers who have been deprived of social support can request emergency aid, which is essentially the responsibility of the local institutions. Renowned experts in constitutional law have intervened in the debates and have voiced weighty objections denouncing this proposal as unconstitutional.

The second topic is the proposal to expand the reasons for the non-assessment of a case to include any asylum seekers who do not submit their travel papers or other documents by which they can be identified. According to renowned lawyers, this proposal would violate the Geneva Convention of 1951 on refugees, as it would prevent people who are truly being persecuted and who are not always able to obtain official travel or identity documents from seeking protection.

It is important to note that in 2004, Switzerland registered 14,248 asylum claims. When compared to the preceding year, this means a reduction of 6,789 claims (a decrease of 32.3 per cent). This confirms a downward trend, which has been evident for several years.

The NGOs are taking action against this move to further restrict asylum laws. Some organisations, such as Amnesty International or the Swiss Refugee Council, are concentrating on lobbying members of parliament. Others, such as SOS-racism, churches and trade unions try to influence public opinion, using declarations and petitions etc. Their arguments are based on the humanitarian aspect of the right to asylum. At the political level, the Social Democrats (PS) suggest a referendum if the hardening of the asylum law is actually persevered. Employer's associations not particularly involved in discussions on asylum legislation.

The enforcement of repressive measures forms a large part of the debate on asylum policy. Different types of detention (detention preparatory to *refoulement*, for example) are being proposed in order to supplement the deterrents used against

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<sup>5</sup> i.e. claimants with a final rejection of their asylum claim, even after an appeal against first instance decision.

<sup>6</sup> Not all requests were assessed. This is a peculiarity of Swiss law contrary to the European directives which permit a swifter procedure and which include an in-depth examination of the case. Appeal against the decision is possible in five days.

people seeking asylum. These measures would make it possible to imprison people who refuse to cooperate (for example by not providing identity papers) for up to two years.

Even if these proposed restrictions aim to deter asylum seekers, it nevertheless remains a fact that they clash with fundamental principles of human dignity, prohibition of discrimination and protection against arbitrary treatment. Moreover, they risk stigmatising asylum seekers within Swiss society even further.

One should note that, in the discussion on the tightening of asylum legislation, security is becoming an increasingly important issue. The debate often alludes to a number of asylum seekers who are involved in drug trafficking. The official reasoning strengthens this point of view by considering illegal immigration as a danger to national security.

## **1.2 The integration debate**

Local entities (cantons) are responsible for integration, therefore most of the discussion on integration has been at this level. The federal government has only limited responsibilities and does not intervene except to stimulate the local institutions' commitment to integration. However, since the introduction in 2000 of an article on integration into the national Swiss Residency Law, the integration debate has also been extended to the national level leading to more intervention from the federal government. The federal government has formally decreed that integration is a priority for the state. It takes into account the changes to migration policy and the need for the government's participation in the implementation of integration programmes.

In 2004, the concrete steps taken toward integration concentrated on the conditions for acquiring Swiss nationality and on the new Foreign Nationals Act, as well as on a partial revision of the regulations on the integration of foreigners.

As far as the naturalisation process is concerned, the Swiss procedure is long and complicated. However, the federal government is trying to simplify it. The federal government has proposed two constitutional modifications, which require the approval of both the people and the cantons. The extensive reforms of the citizenship law indicate that this is a major element of the integration policy. Most notably, the reform included easier naturalisation for young second and third generation foreign nationals<sup>7</sup>.

People who are naturalised in Switzerland by means of a 'regular proceeding' must first obtain a naturalisation permit from the Confederation. To do so, applicants have to meet the following requirements:

- A total of 12-year residence in Switzerland (any year spent in Switzerland between the age of ten and 20 are counted double);
- Integration in Swiss culture;
- Familiarity with Swiss habits, customs and traditions;
- Compliance with Swiss law; and

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<sup>7</sup>There are around 400,000 second- or third-generation immigrants living in Switzerland, making up about six per cent of the population.

- They should not pose a threat to Switzerland's internal or external security.

The federal naturalisation permit is a prerequisite for the applicant's subsequent naturalisation in municipality and canton.

Municipalities and cantons have their own, additional naturalisation requirements, for instance with regard to residence, finances and fees. Naturalisation fees vary significantly, but in general amount to about one month's salary (to be paid in a three-stage procedure Confederation/canton/municipality), which creates a large variety of policies and practices in the domain of naturalisation at the local level.

The objective of the reform was to harmonise local variations to the procedure (and to allow the third generation to acquire Swiss citizenship at birth). Effectively, the reform relates to domicile, the situation of youth of foreign origin the right to acquire Swiss citizenship at birth.

The applicant must have an eight-year residence in Switzerland, instead of the current 12-year residence. It also stipulates that youth of foreign origin aged between 15 and 24 may appeal for a facilitated naturalisation procedure if they meet the following requirements:

- Five years of mandatory education in Switzerland;
- Domicile in Switzerland between the end of the mandatory education and the application; and
- One parent in possession of a residence permit (C-permit) or a permit, which is valuable for a longer period.

The legislation addresses the naturalisation of the third generation as well. A person can automatically obtain Swiss nationality at birth if one of his/her parents has completed a minimum of five years of mandatory education in Switzerland and has residency in Switzerland for at least five years with a residence permit or C- permit (at time of birth of the child).

The government's proposals were voted on in September 2004 and were rejected by the people.<sup>8</sup> Explaining this popular no-vote, experts on migration issues emphasise the success of the aggressive campaign of the right-wing party against the liberalisation of the legislation. In addition, it is said that the resolved reform would result in an automatic acquisition of the Swiss nationality and that it would diminish the popular sovereignty.

Furthermore, since the decision by the Federal Supreme Court of 9 July 2003 (reference: 1P.228-2000), which declared the public votes on naturalisation as unconstitutional,<sup>9</sup> a new debate has emerged on the role of judicial authority in naturalisation matters. Opinions differ as to whether naturalisation is an administrative or a political matter. Within the framework of the revision of the naturalisation law which is in progress, the Committee of the political institutions of the Council of States (upper house of Parliament), recognised the right of

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<sup>8</sup> The new Councillor in charge of immigration and asylum, whose predecessor was the author of the proposed modifications, did not defend the government's arguments during the voting campaign. He even hinted that saying yes to easier naturalisation for young foreigners would mean that exacting and individual inquiries would no longer be made, but that instead a single set of criteria would be applied globally to the persons concerned.

<sup>9</sup> It is common practice in several municipalities to submit decisions on naturalisation to the citizens for approval. Because of this, persons originating from certain countries are systematically turned down.

municipalities to submit the requests of candidates for naturalisation to the people in order to respect the autonomy of cantons and municipalities, as recognised in the Federal Constitution. However, it emphasises that the refusal of naturalisation must be clearly justified, even when the decision is taken by ballot. Again it is important to remember that in Switzerland municipalities and cantons have their own naturalisation requirements and practices. Some municipalities submit the decision on naturalisation to popular vote. In these cases, assemblies of citizens make the final decision.

A brief discussion also took place on the subject of dual nationality, formally recognised in Switzerland since 1992. The Federal Department of Justice and Police has asked the Federal Office for Migration to prepare a report on naturalisation, which is to be published by mid-2005. Aside from certain questions regarding the naturalisation procedure, such as the formal deadline, the report will also examine the question of no longer permitting dual nationality.

As far as the article on the integration of foreigners is concerned, it regulates the allocation of federal subsidies and defines the goals of integration, which are to primarily focus on the following issues:

- Encouraging foreigners to become familiar with the organisation of the Swiss state and society;
- Facilitating coexistence based on a set of basic common values and behaviour;
- Creating favourable conditions for equal opportunities and the participation of foreigners in social life; and
- Regulating the allocation of government subsidies for integration.

These objectives have been included in the second programme within the framework of the subsidies granted by the federal government, which aims to encourage integration from 2004 to 2007. The five main points of integration promotion during 2004-2007 ([www.eka-cfe.ch](http://www.eka-cfe.ch)) are:

- Promoting linguistic comprehension through language courses which focus on daily usage;
- Supporting projects that try to open public institutions to all sub-groups in society;
- Facilitating mutual understanding and tolerance through initiatives and projects aimed at active involvement of Swiss nationals and immigrants in society, with a view to facilitate cohabitation (with an emphasis on a common future);
- Developing competency centres in cooperation with the responsible political authorities - this programme promotes the development of specialised services in different regions. The programme envisages the provision of services that assist foreigners through integration initiatives; and
- Favouring innovation and best practice - this programme supports several selected projects, which aim to guarantee 'quality norms' and the exchange of experiences. The programme could identify integration issues or serve as a pilot project.

A key element of the debate on integration focuses on promoting language acquisition from the time of arrival. The policy of linguistic promotion is aimed at a

group of immigrants who are deemed as having 'access difficulties'. However, this group will often have difficulties taking advantage of the existing services due to their irregular working hours or domestic responsibilities (mainly women with children of pre-school age). The idea of focusing on a particular group is justified by the fact that these people generally have a greater integration deficit, despite their long residence in Switzerland. This is chiefly linked to their lack of skills in the local language, which in turn reinforces the negative perceptions held by the indigenous population on immigrants' will to integrate.

At the local level, linguistic integration programmes seem to be based on the acquisition of the local language with the goal of initiating their socio-economic integration as quickly as possible. It is important to note that the acquisition of the local language is also considered an important element in the naturalisation process. Aside from the tendency to make the local language acquisition mandatory for new arrivals by proposing a so-called 'integration contract',<sup>10</sup> certain municipalities also require the immigrant candidates to pass a language test in order to obtain municipality citizenship, which is the first step in obtaining Swiss citizenship.

In principle, the Swiss federal system delegates the principal responsibility for the actual integration process to local authorities. The cantons are able to adjust their political and practical decisions in the domains of social and political integration to their different situations. In the framework of the federal integration programme, the confederation is entitled to grant subsidy to local authorities, provided they present a project on integration.

Another point often mentioned in the debate is the concern about the integration of immigrants' children within the framework of family reunification. It is often pointed out that due to the difficulties of integration, the age limit for entry into Switzerland should be reduced from 18 to 14 years of age, in order to ensure integration through the mandatory education system. In its ruling limiting the number of foreigners, the Federal Council will permit children to enter Switzerland in the first five years of the sponsors residence. This modification aims to guarantee access to vocational training for adolescents who have come to Switzerland as part of a family reunification. The proponents of this measure think that family reunification should as much as possible permit children to arrive in Switzerland at an age when they can still receive the benefit of a basic Swiss education. In their opinion, integration is very difficult for adolescents who come to Switzerland just before 18 years of age. At this age, they will no longer go to school, they generally do not participate in an apprenticeship and they therefore have difficulties becoming integrated. By contrast, those who oppose this proposal advocate the idea that family reunification should not be refused to children who are no longer minors at the time of their arrival in Switzerland. If, for example, the parents are nationals of other countries who have the necessary job skills urgently needed in Switzerland, setting an age limit for their children could deter these immigrants and therefore harm Switzerland's economy.

The reduction of the time requirements for the automatic granting of a permanent residency permit (C permit) to immigrants is also a subject of the integration debate. The residency permit formally grants immigrants conditions, which are equal to those of Swiss citizens in practically all areas (with the exception of political rights). The current regulation has different policies depending on the country of origin. According the various bilateral agreements with the sending countries, minimal time requirements vary from five to ten years (today's norm for EU nationals is five years).

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<sup>10</sup> Some cantons such as Basel intend to introduce the type of practice similar to the French model known as the 'integration contract'.

Those who oppose this fact feel that the granting of the permit should, on the contrary, not be automatic and that a merit system should be created for non-EU immigrants, who they feel have great integration deficiencies and show no wish to integrate into Swiss society.

Furthermore, the federal authorities' discussions indicate that, even at the risk of stigmatising a social group, the integration of certain groups of younger immigrants is especially difficult and requires the adoption of specific integration measures. The Federal Office for Migration (FOM) finds these to be mainly young people from Balkan countries. As the director of the FOM has explicitly stated: "We still have problems of integration with a number of youngsters from the Balkans. The facts are: [integration problems in] school, [and high levels of youth] crime... This behaviour can be explained by the fact that they come from an area which has been through a war, that many parents lack professional qualifications, and that the family reunification has been delayed or has taken place belatedly. In such cases, we must provide targeted integration measures" (interview published in *Le Temps* on 22 December 2004). At present, the government has not yet made any statements indicating the measures to be taken. Nevertheless, the promotion programme for the integration of foreigners in 2004, which was coordinated by the Federal Committee for Aliens, plans to finance activities for these young people.

The financial resources made available for integration efforts at the national level are strongly influenced by the Confederation's financial revision programme. If the budget of the integration promotion programme is not reduced for the period 2004-2007, the financial stabilisation programme will lead to an increase from 12.5 million to 14 million Swiss francs per year. The Confederation's 'timid' commitment is not only due to limited financial resources. One could also assume that the idea that immigrants themselves should show more effort and determination to integrate also plays an important role. The revision of the Foreign Nationals Act explicitly emphasises the foreigners' responsibility for their integration, particularly as to learning the national language. It also acknowledges that those who agree to integration actions should be rewarded for their efforts. When integration efforts are proven, for example, the competent authorities are able to issue a residency permit after a much shorter period than normally stipulated. Regarding this point, one could say that Switzerland is also inclined to defend the system of incentives and sanctions in its efforts to integrate foreigners.

The debate on the integration of foreigners concentrates on the premise that the foreigners' integration is lacking and that integration measures should serve to overcome this deficiency. In addition, one must also emphasise that the idea that the insufficient integration of foreigners' is contributing to an increase in crime rates.

To conclude this section, it would not be an exaggeration to say that the debates which took place in 2004 remain limited to certain sectors, and that they both weaken as well as neglect deeper reflection on integration as a societal goal.

### **1.3 The brain drain debate**

In Switzerland, the migration debate is dominated by the question of the economic need for skills. This approach is clearly present in Switzerland's attitude toward the 'brain drain' phenomenon.

The debate on the new Foreign Nationals Act, which deals only with migration from non-EU countries<sup>11</sup>, testifies to the absence of a 'reciprocally constructive' approach to the migration issue. The new draft law on foreigners, which was a key issue in parliamentary debates in the Spring 2005 session, is based on the selective recruitment of people who have superior professional skills.<sup>12</sup> It explicitly states the links between labour market demands and admission criteria. The new 'dual' admittance system creates a distinction between migrants from EU and non-EU countries - a system which, according to the critics of the draft law - could encourage a 'brain drain' from the countries concerned, as non-EU immigration would be restricted to highly skilled migrants only. Switzerland's migration policy would thus fall in line with a number of other European countries that pursue a selective admittance policy - accelerating this brain drain.

It is important to emphasise that paradoxically, and despite the fear of foreign overpopulation, which is an historical element still taken into consideration by the admission policy and within anti-migration circles, the phenomenon of this exodus from non-EU countries and its consequences on the countries of origin is not being used as an argument to justify immigration restriction.

At the same time, despite their absence in parliamentary and public debates, topics such as the need for an immigration policy which is coordinated with a sustained development policy, the defence of human rights, and the promotion of peace in countries of origin; are points which are being deliberated upon in inter-departmental working groups.

For some pro-immigration circles, the logic of the debate rests on an economic approach, which is obviously utilitarian and instrumental in propagating a biased view of immigration. It is utilitarian because it takes advantage of immigration purely for its usefulness and its economic benefit. It is instrumental because it considers immigration as a means to satisfy only the economic objective, which can be identified with the economic circumstances and does not take into account the requirements of other areas such as demography, for example. The debate on the introduction of a short-term residency permit which, according to some, would mean a return to the (abolished) seasonal worker's statute, is another discussion topic connected to brain drain. The reason given for the introduction of a short-term residency permit is that high-tech companies and multinationals often resort to requesting short-term six-month or one-year visas for their employees. This could be understood as a means to make Switzerland more attractive for highly skilled migrants by offering them the possibility of a custom-made stay, which would match current job flexibility and the rules of economic globalisation.

As a matter of fact, the brain drain phenomenon has not yet provoked more profound debates on the true issues at stake, such as loss of human capital in the countries of origin, the need for negotiations with developing countries in order to make migration beneficial to them as well, or even the development of political processes for a more efficient transfer of migrants' funds to their country of origin. The Swiss Agency for

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<sup>11</sup> Nationals from EU Member States can from now on enjoy free movement due to bilateral agreements.

<sup>12</sup> The draft law restricts entry into Switzerland to highly skilled migrants, as specified in Art. 23: "only cadres, specialists and other qualified employees can obtain the authorisation for a brief stay (...) The persons who can be admitted on special authorisation are investors and CEOs of companies, (...) persons who are renowned in the fields of science, culture or sports, persons who have special knowledge or professional capabilities (...), senior managers who have been transferred by their companies on the international level, persons who are active in international affairs with significant economic importance (...)."

Development and Cooperation and the final report of an inter-departmental working group (IDAG migration 2004) emphasise the need to consider the problems of repatriation in a systematic way and draw attention to the importance of the transfers of migrants' revenue amongst other development measures.

Current practice consists mainly of the repatriation of rejected applicants to their country of origin, for which Switzerland has signed almost 40 re-admittance agreements. However, Switzerland is paradoxically tending to reassess the development aid it gives to countries who are not prepared to satisfy the exigencies of their citizens' re-admittance. Within this context, realistic reflection on the possibility of setting up development tools to make the migrants' return to their countries beneficial to their country of origin's development is missing in the immigration debate.

This absence of a fundamental debate is equally visible among those who defend a more equitable migration policy. Pro-immigrant groups condemn the idea of a hierarchy of migrants according to their qualifications, and they demand that the admittance of non-EU migrants is not limited to only those migrants with higher professional qualifications, but also extended to those who are less skilled. They justify their argument with the fact that as long as unskilled manual labour is needed, people will come to fill the positions. With no hope of obtaining a residency permit, illegal immigration will increase.

## **2. Basing Policies on evidence and consultation**

### **2.1 Making use of knowledge**

Although Switzerland has conducted scientific studies on migration, it does not have a long tradition of using these findings to formulate policies and programmes. On the contrary, according to hypotheses derived from studies based on the history of migration policy, the determining factor is mainly political pressure, exercised by anti-immigration groups making use of the instruments of direct democracy. Over the last decade, the different federal offices charged with the immigration question or dealing with different aspects of the migration problem have shown an interest in carrying out and making use of scientific research in these areas.<sup>13</sup> Several research projects and evaluations have been carried out for these offices during the last few years. The results obtained have had considerable impact and have even been partially voiced or considered in the search for solutions to the problems linked to migration. Different themes have been examined in depth, such as the integration of asylum seekers, social aid, help for migrants returning to their countries, as well as evaluations made of different government programmes such as repatriation aid and programmes for migration and health.

In the past, research was frequently used to support the argument for a more liberal immigration policy. Reference was made to demographic issues and to the difficulties that the social security system is facing. It was argued that emigration of retired migrants would relieve the social security system. This argument is however no longer of relevance.

The Federal Aliens Commission (FAC), which is in charge of carrying out the integration programme for the Confederation, has evaluated the objectives and the expected effects, as well as evaluating the establishment of an integration programme. The results and the recommendations supplied by the evaluators were taken into consideration when a new programme for the 2004-2007 period was being formulated. People in the domain of health have long been interested in a research-orientated approach for policymaking. The Federal Office for Public Health commissions research on various aspects of health, namely the improvement of migrants' access to health care and the quality of the health care services for immigrant communities. The question of communication with the migrant patients and the opening of the health care system to migrants are among the topics being researched.

As far as migration is concerned, the Swiss government tries to align itself with the EU policy, primarily with the aid of bilateral agreements. Regarding asylum, Switzerland has realised that it will not be capable of contributing solutions to an international problem if it does not have a national vision. In the light of this new awareness, the contributions of research projects are considerable and they provided scientific justifications for Switzerland's reasons to adhere to the Schengen and Dublin agreements. The EU is a platform where Switzerland can exchange practical experiences as well as cooperate in the areas of mobility and migration. Switzerland is facing a vote to expand the right of free movement to new EU Member States, a right which already exists between Switzerland and the EU.

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<sup>13</sup> This primarily concerns the Federal Office for Refugees (FOR), the Federal Bureau of Integration, the Swiss Federal Statistical Office, the Federal Office for Social Security, and the Federal Office of Health (FOH). The first office mentioned and the Immigration and Emigration Office were amalgamated into one entity, the Federal Office for Migration, from 1 January 2005.

Nevertheless, for a few years, a reduced willingness to use scientific information as well as other countries' experiences in connection with the migration question has become apparent. It seems that one prefers to minimise or even exclude information gained from scientific findings and knowledge contributed by other players in civil society, both for reviews of as well as the formulation of policies. There are indications which point to a return to partisan politics instead of a continuation of scientifically founded political action. The interpretations and quotes of the scientific data and information are used superficially and inaccurately in some home-grown reports.

It would not be an exaggeration to say that the new minister displays a consistent tendency to reserve policymaking only for the politicians and political parties whose migration policies reflect the ideological consensus between the parties rather than a solution, which is based on evidence and the contributions of the players within civil society. By aligning himself totally with the ideological and political line of his own party, which has never shown any great interest in scientifically founded politics and has often used arguments based on common sense, the minister seems to prefer using his own party's preconceived ideas. The party is known for its anti-migration position as a source of inspiration for the solutions it proposes on migration. With his reservations toward Switzerland's adherence to the Schengen and Dublin agreements as well as to the extension of free movement to 'new' EU Member States, the new minister also shows he is sceptical of the fact that Switzerland is aligning itself with the European network in the area of migration management.

## **2.2 Including stakeholders**

The peculiarities of the political culture and the structure of the state of Switzerland reflect the great impact of civil society and political entities (cantons) on the formulation and implementation of public policies.

The institutionalised quest for consensus allows the players within civil society to participate in the political decision-making process through the use of the instruments of direct democracy (referendum and initiative) and consultation. The latter is the phase during the preparation of legislation when draft legislation at Confederation level is evaluated by the cantons, parties, associations and sometimes also by other interested circles throughout Switzerland, in order to ascertain the likelihood of its acceptance and implementation. People who are not invited to take part in the consultation procedure can also state their views on a proposal. All these views and possible objections of the cantons, parties and associations are evaluated. The Federal Council then passes the main points of its proposal on to the Parliament. The Federal Council debates the draft legislation in the light of the outcome of this consultation.

Due to the federal structure of the Swiss state, the cantons are very influential in the formulation of government policies. The cantons' area of authority concerning policies on foreigners comprises the alien police and the determination of the needs of the labour market. Furthermore, they are responsible for the implementation of integration measures. As the Confederation does not have a federal police, the cantons are responsible for maintaining public order and enforcing removal decisions. Due to their competence and experience in implementing measures concerning asylum seekers, they contribute prominently to the formulation of Swiss policy in this area. The *Conference of Cantonal Ministers of Justice and Police*

(CCMJP) is increasingly stating its position on questions of domestic security (crimes committed by foreigners) and asylum.

On the governmental level, two committees - the Federal Committee on Foreigners (FCF) and the Federal Committee on Refugees (FCR) - advise the federal government on migration policy. The former is also in charge of implementing federal integration policy, whereas the latter has only a consultative function. These committees are formally consulted by the government on matters which pertain to their area of responsibility.

Nonetheless, the FCR does not hide its dissatisfaction with the revision of the asylum law and mainly denounces the precipitated manner in which the Federal Department of Justice and Police has proceeded with the partial revision of this law (see FOM press communiqué of March 2005). It emphasises that the hardened measures, such as the absence of identity papers as a reason for not entering into the substance of a case, the increased ability to deny social aid or the refusal to grant emergency aid, have never been the subject of a formal consultation. Despite its standing as a consultative committee to the Federal Council, the FCR has never been involved in drafting proposals, although this type of commitment is part of its mandate. According to the Committee, groups outside of the administration have hardly been heard regarding the partial revision, and the Federal Department of Justice and Police should wait for the results of the monitoring report on decisions of non-entry into the substance of a case in order to be able to adequately evaluate the consequences.

Moreover, certain NGOs play a part in the implementation of the Swiss asylum policy. They offer social counselling and legal advice to asylum seekers. The *Swiss Refugee Aid*, an umbrella organisation of Swiss asylum organisations, seeks to exert influence on political decision-making by publishing position papers on various questions relating to asylum. Other NGOs in the asylum field include the charity organisations Caritas and HEKS, and the Swiss Red Cross.

As to the partial revision of the asylum law, *Swiss Refugee Aid* echoes the FCR's criticism of the government's manner of action. It denounces the 'hasty procedure' which has obstructed a serious evaluation of the consequences of new, harsher measures and criticises the government for not having taken into consideration the expert opinions in constitutional and international law who have challenged the key points of the asylum law revision. The UNHCR is worried by the turn taken in the asylum debate in Switzerland; it also regards this as a problem and regrets that their reservations have not been taken into consideration.

As mentioned in the previous section, the new minister's anti-immigration and anti-migrant orientation as well as his determination to harden migration policy at any cost also has negative consequences on the work with the stakeholders. The latter, who play a very important role in the consultation procedure for draft legislation and lobbying during parliamentary debates, are not satisfied with the new minister's way of doing things, as he shows a tendency to exclude the stakeholders.

Before concluding this section, it is important to mention that the year 2004 was a very significant year for the white-collar unions and employer's associations, in as much as the topic of extending free movement to new EU member countries was at the top of their agendas. The employer's associations unconditionally agree with the government's plans concerning the Schengen agreement and the expansion of the free movement of people. They campaigned very actively in favor of these objectives. On the other hand, the Swiss Trade Union (STU), the Swiss white-collar

union, does not support the extension unless the government takes accompanying measures to prevent the undercutting of salaries. We emphasise that the agreement with the EU on free movement constitutes one of the major strands of Switzerland's migration policy. The STU, for example, organised a national conference on migration in 2004, which introduced migration strategies which the STU could develop. The unions have had great influence on the question of free movement, and thus on migration policy, due to their extensive efforts in educating citizens' opinions during the voting campaigns. We note that the agreement on the extension of free movement is the subject of a referendum which will take place in September 2005. The unions are seeking to exert their influence on the campaign in several ways (debates, publications, publicity, etc.) in order to steer the results of the vote in their favour.

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