

The Swiss Referendum: Stoking Fires Home and Away

By Alex Lazarowicz

The Swiss announcement of a referendum on establishing immigration quotas already sent shockwaves through system of the European Union -- the blow of the narrow victory for the 'yes' campaign in the referendum on 9th February was felt even harder as the outcome jeopardised a series of agreements with the EU. A 50.3% victory with a 19,000 vote margin shows a divided Switzerland, which can also be seen in the rural-urban, west-east and French-German/Italian structure of the vote. The result is also a serious blow to the government which started this process, but backed the 'no' camp. In fact, the whole Swiss establishment backed the 'no' campaign, including Swiss employer and businesses associations which have most to lose when it comes to future imposition of quotas. Nevertheless, the real impact is both unclear and potentially wide-ranging at the same time. It can be seen through three prisms: that of EU-Swiss relations; that of the debate on freedom of movement and migration issues and that of the proliferation of referenda and the UK-EU debate.

EU-Swiss relations

The first aspect is to note the obvious impact the result will have on the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (EU-Swiss agreement). The reason the referendum result creates an immediate headache for both sides is that its implementation breaches this agreement. The establishment of quotas is not allowed for a variety of reasons, such as the concept of preferential treatment which goes against non-discrimination rules (Article 2 of the agreement), which are enshrined in EU law. Providing conditions for EU citizens who want to enter Switzerland for work is also not permitted, as this treats all EU citizens as third-country nationals.

One of the ways forward on the EU-Swiss agreement could be renegotiating, which seems unlikely as what needs to be implemented after the vote, goes against one of its core elements. Renunciation of the treaty is another path, one which would have a much bigger impact, as it involves the guillotine clause. This would occur if the Swiss government directly implemented the results of the referendum, but would only be triggered by a unanimous vote amongst EU Member States. It is a clause which would have an immediate effect on the six other agreements: air transport, carriage of passengers of goods by road and rail, trade in agricultural products, certain aspects of government procurement, mutual recognition of conformity assessment and scientific and technological cooperation. There will also be a clear impact on the Swiss population in terms of travelling, living and working in the EU.

Repercussions may also go beyond the sphere of freedom of movement and enter justice and home affairs cooperation, such as the Dublin agreement -- maintaining an agreement with Switzerland may be impossible, and this will result in additional burdens on the Swiss

asylum system. Immigration quotas would put participation in the Schengen area in jeopardy. There may also be secondary effects on the impact on family reunification rules, which would go against the European Convention on Human Rights.

Away from freedom of movement in the area of freedom, security and justice, there is also an impact on economic relations that needs to be considered. Much of this will be revealed after we see how the result of this referendum will be implemented. If it does lead to restrictions on EU citizens then the biggest impact will be on Swiss business and the labour they can access. If the quotas come to fruition, access to the Single Market in a number of areas will be affected. This will hit Switzerland hard as it has a significant manufacturing industry where access to the Single Market is very important. The worst-case scenario, the aforementioned guillotine clause, could open other tricky debates such as banking secrecy, financial relations, transport etc. This would severely hamper the potential for a quick solution, given it would be like opening the Pandora's Box on Swiss-EU relations.

From a Swiss perspective there is also the impact on the continued debate on whether bilateral agreements are the right model for Swiss-EU relations. After all, they were a substitute for the EEA model, which was not accepted by the Swiss people in a previous referendum prompted by the same right-wing Swiss People's Party lead by Christoph Blocher. However, even before the referendum, there were negotiations on how to solve the model as it was seen as dead in many quarters. The vote could put this on the back burner or bring it to the fore as an opportunity to find solutions.

What should the EU do?

Despite the shock effect of the referendum results on both sides of the EU-Swiss relations, they should not be construed as the Swiss turning their backs on the EU. The Swiss were aware that there will be consequences, but it was difficult to know during the campaign – and even now weeks later – precisely what they will be. The starting point is that the Swiss government has three years to enact the referendum results, and it will kick off negotiations with the EU with a *'tour des capitales'*.

In response, the EU needs to be cool-headed and decisive at the same time, as it is important to respect what the Swiss people have decided. The EU can also afford to play the waiting game, because the ball is now in the Swiss court and the EU must not overreact as too much pressure could backfire. Nevertheless, the EU will need to spell out the potential consequences, something which the Commission has already done by recalling that the four freedoms are not separable. Already there have been signs from the EU that this will affect Swiss-EU relations: EU Ambassadors were not asked to approve a negotiating mandate for a new EU-Swiss institutional framework after the Greek Presidency took the point off the agenda; a cross-border electricity agreement has been put on ice, as have talks on Swiss participation in both the EU's Horizon 2020 research programme and its Erasmus+ educational exchange programme. Under the previous research programme, Swiss researchers benefitted to the tune of €1.8 billion. With such warning shots having been fired, the EU must now wait and see how the result of the vote will be put into action.

Notwithstanding the need to give the Swiss government space to digest this result and consider their next move, some pressure points may come earlier than expected. The EU will be extending freedom of movement to Croatia on July 1st and in normal circumstances the Swiss would have to sign up to this as well. The Swiss have already announced the difficulty they would have in doing this, but solutions could still be found, especially with the EU's postponing of talks on Erasmus+ and Horizon 2020 said to be linked, with freedom of movement for researchers integral to it.

Despite the aforementioned guillotine clause, threatening with this option would not benefit the search for a solution, something which is in the interest of both sides. The outcome is still

very uncertain, and room for renegotiation and manoeuvre very small. The *tour des capitales* will be most revealing about where this future process is going.

The wider freedom of movement/migration debate

This referendum is about much more than the need for change in the relationship between the EU and Switzerland. Although in a recent paper my colleagues and I at the EPC have highlighted the danger of EU Member States downgrading the rights of EU citizens through semantics, the line is much more blurred in the case of Switzerland. Many EU citizens (and some politicians) do not distinguish between EU workers and third-country nationals when using the term "migrant". As a non-EU country Switzerland could be more entitled to conceptualise EU workers as migrants, even though it goes against the EU-Switzerland agreement. As even the anti-quota Swiss business association made clear, there are 1% (as a percentage of total population of Switzerland) more people each year due to immigration, which results in on average 70,000 -- i.e. a town's worth -- of new people a year. Whether for the sustainability of economic prowess or social systems in a globalised world, and with European demographic decline in mind, migration is needed and has been a boon to the Swiss economy. After all Switzerland is a wealthy country with only 3% unemployment. Nevertheless, societies and public services are always playing catch-up to the economy in this regard.

Although assessing the benefits of migration for Switzerland is beyond the scope of this article, the mirroring of the Swiss debate with that of some EU countries is noteworthy. From the 'social tourism' or 'poverty migration' debates in Germany, the more profound attacks on free movement in the UK, to the rising support of anti-migrant and xenophobic parties like Front National in France, migration and free of movement are hot topics. As one of the collateral damages of the euro crisis, which has resulted in more nationalism, more xenophobia and more insularity, the upcoming European Parliament elections and the UK renegotiation debate have only served to heighten the intensity of the debates. Unfortunately this has meant mainstream parties have adopted populist positions. Nevertheless, despite extremists welcoming the Swiss result, Swiss voters would not put themselves in the same basket. Despite this caveat, one should be careful when playing with fire, as the Swiss have done.

For the EU, alarm bells should ring. Mainstream parties should defend the four freedoms, and the anti-discrimination principle, whilst taking voters' concerns into account. The Commission has been robust in this regard, providing for handbooks for practitioners dealing with free movement on the ground, protecting EU mobile workers' rights, and promising more money to deal with social issues in the upcoming European Social Fund under the new Multiannual Financial Framework. At the same time, Commissioner Andor and Vice-President Reding have been robust in their denunciations of unsubstantiated rhetoric.

In one sense the Swiss vote will add to the fears that freedom of movement is under attack. Such robust responses from the EU need to continue, as will some more sober and responsible reactions from national leaders. In Germany it is hoped that with the new coalition government, the double discourse on freedom of movement will diminish. The early signs are positive, and Germany will be in an interesting position, given that German nationals will be most affected by any restrictions imposed by the Swiss.

However, the severity of the blow for free movement should not be overestimated. Switzerland is after all not an EU Member State, so any EU country wishing to learn something from the Swiss approach, will be disappointed.

UK comparisons and the proliferation of referenda

Nevertheless, the way the Swiss vote was welcomed in the UK says something about where the British are right now in terms of their place in the EU. A UK government spokesman

announced that it was proof that there are problems related to freedom of movement. Although localised issues do occur, the UK government has been unable to shed the accusation that its approach to freedom of movement has been anything but a political game, pandering to their own backbenchers and UKIP. In spring 2013 the Interior Ministers of Germany, Austria, the Netherlands and the UK claimed in a letter that there was widespread fraudulent uptake of social benefits by mobile EU citizens. The lack of statistics supporting the claims in this letter has not helped the issue of benefit fraud be taken seriously. In a sign that the UK was going too far, Home Secretary Theresa May was left isolated by her Prime Minister's call in an article to make "free movement more free" in last December's Justice and Home Affairs Council. Angela Merkel's speech in Westminster last week was also poignantly cautious using the word "if" in relation to *potential* evidence of widespread abuse of the freedom of movement.

More precisely, the UK has had an interest in the Swiss referendum for two other reasons. Firstly, it is coming close to what has been the Holy Grail for some in the media and some politicians: an "in/out EU referendum". In many ways the Swiss system of direct democracy that allows up to four referenda per year, is very commendable. However, elsewhere it has become fashionable in modern politics to try to win votes and solve tricky political issues by promising referendums. In this sense, what the UK could learn from the Swiss case is: be careful what you wish for. If Cameron is still in power in 2017 and has deemed the UK's relationship with the EU adequately renegotiated, he will find himself fighting for the UK to stay in the EU, with widespread political and media forces intent on getting the UK out.

More generally, this highlights how many of today's leaders are not showing enough leadership and are using referenda as vote-winning tools. Ironically, referenda often end up being a way of showing displeasure with an incumbent government. Surely, a party's attitude towards Europe can be expressed via elections in which case leaders should be expected to take their responsibility and lead.

Secondly, with Switzerland – as well as Norway or Turkey – having been mentioned as a 'model' in relation to renegotiating or being outside the EU, the model's development will be followed closely in the UK in the coming years. Many Swiss already deem their bilateral agreements to be a non-model, which was why the Swiss had a mandate to negotiate a new institutional framework with the EU. Will there be talk of a new Swiss model? Regardless, the impact on the UK debate will be felt and the Swiss model will be exposed, warts and all.

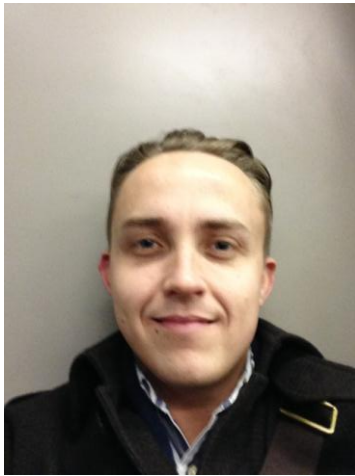
That debate will be one for the future, depending on the outcome of Swiss-EU negotiations. However, it is these very negotiations that may be seen as a test case for some in the UK. How far can a country take renegotiation when it comes to one of the four fundamental EU freedoms? How far can the Single Market be undermined in such a renegotiation? The Swiss case will depend on the political will of EU Member States and how far they are willing to go with this.

European Parliament elections and populism

Notwithstanding the dovetailing with the UK-EU context, other EU Member States must also be wary. How sure are they that their citizens would vote against quotas if given a chance? A German survey found 48% would support such quotas. That is why those leaders need to be as robust as the Commission has been in recent months with the upcoming European Parliament elections in mind. Anti-parties, both on the left and right, have long been predicted to be those that will gain ground in May's elections, despite a recent lull according to the EPC's compilation of surveys.

The pandering to the far right by many sitting governments is not only disappointing, but a strategic error. The Swiss vote should be a wake-up call in order to understand what is at stake. Adopting the rhetoric of extremists only feeds their electoral success as voters will

always vote for the real thing. Maybe by strongly defending the freedom of movement, the fundamental freedom most cherished by EU citizens, combined with an understanding of voter concerns, politicians will be able to gain the citizens' trust and help remind them of what they could lose.



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