

Switzerland and the EU: Many a Slip Between Swiss Cup and Lip

Written by Clive H Church

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CLIVE H CHURCH, APR 11 2014

Many observers saluted the Swiss popular decision on 9th February to take over control of migration, despite the existence of treaties with the European Union [EU] which extended free movement of labour to Switzerland. They saw it as a major turning point in Swiss relations with the EU. And, they assumed that it was unique, unanimous, unchallengeable, immediate, and clear cut. As such, they believed it had a broader significance, encouraging other anti-Europeans to do the same.

This is too hasty a view. It is based not just on shared anti-European ideas but on an all too common ignorance of the realities of Swiss domestic politics. Yet it is these realities which are often the determinant of Swiss foreign policy. A closer acquaintance with Swiss politics shows that, to begin with, the votation was merely one point in a long drawn out evolution of European policy, an evolution explained by the fact that, for over 30 years, the country has been deeply divided over relations with the EU.

Hence the vote was anything but unanimous. Moreover, it is already being challenged. And the successful text required not a simple breaking off of relations with Brussels. Rather, it enacted a complicated constitutional amendment which requires both contentious legislative procedures in Switzerland, which are likely to be long-drawn-out and uncertain negotiations with the EU. So its application is likely to be anything but immediate. Indeed the outcome is likely to be complex and unclear. In other words, the present stasis could well continue. If this is so, its relevance to other Europhobic movements may be limited.

The Context of the 9th February

Far from being a one-off event, the 9th February votation was the latest stage in an on-going battle over Swiss relations with the European Community and Union. (Church, in Church (ed) 2007; 186-201) This started in the 1980s when the golden age of relations based on EFTA and the 1972 Free Trade Agreement began to peter out. By then the Swiss authorities felt they needed a more developed relationship to take account of the way the European Community was expanding, deepening, and becoming less open to third parties. So, when the so-called Luxembourg Process, set up in 1984, failed to deliver, the Swiss welcomed the talks which eventually led to the creation of the European Economic Area [EEA] in 1991. Unfortunately, these proved very difficult and the outcome was described by ministerial negotiators as unacceptable to a sovereign state, save a transitional state. So, in May 1992, Switzerland followed the other EFTANs in applying for membership. It believed that this was the only way to preserve sovereignty in the modern world.

By then, however, internal political dynamics were changing. Out of the unsuccessful attempt to join the United Nations in 1986 had come the Action for an Independent and Neutral Switzerland [AUNS/ASIN], led by Christoph Blocher, a millionaire industrialist and MP for the Swiss Peoples Party [SVP/UDC]. This took the lead in opposing EEA entry, exploiting the fact that the authorities had proclaimed the EEA to be incompatible with national independence. Profiting from this and an inept campaign by government and business, the No campaign blocked EEA entry by 50.3% to 49.7% on a massive 78.3% turnout.

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Since then the government has always been under pressure from the anti-Europeans as it slowly set about filling the gaps which non-membership in the EEA had left in the country's economic relations with the EU. This eventually led to the signing, and popular approval, of two sets of bilateral agreements, including on free movement, in 2000 and 2005. (Vahl & Grolimund, 2006) And throughout this period, pragmatic Euro-scepticism usually blocked the attempts of increasingly strong forces, like the SVP, to push things in a more Europhobic direction. (Church, 2008) Nonetheless, the government had to downgrade the idea of entry from being its main political aim to being merely one of several possibilities.

More recently, while the Swiss began to hanker after a new Bilateral 3 agreement, the EU became increasingly dissatisfied with the status quo. It found it limiting, relating only to the way EU law had been when it was signed and not as it had become. It was also difficult to manage and was not always legally certain. Hence it was not prepared to move on new agreements unless there was an institutional deal. As a result, there has been virtually no movement since 2009. An initial Swiss proposal was unceremoniously dismissed. A second scheme emerged in 2013 which showed a partial willingness to involve the ECJ in the process of Swiss application of new laws. So far there has been no formal response to this, although there were talks on an electricity agreement. Unsurprisingly, all these things were opposed by the SVP and its allies. However, they seemed to have been relatively popular with the Swiss population, 75% of which is said to support the bilateral approach and hence to accept the maintenance of profitable relations with the Union.

Here Schwok is probably right to say that the closer the bilateral ties, the less likely the Swiss are to want to join the EU. (Schwok, 2009: 120)

The Fault Lines of the 9th February Votation

Nonetheless, despite this, such accommodation with Brussels was anathema to the anti-Europeans who wished to roll back the tide of Europeanization. However, given this popular addiction to bilateralism, the SVP knew it would not succeed with a head-on challenge to the bilateral deals. So its February 2012 initiative against mass migration was partly designed as a way of undermining the bilateral relationship and blocking any resolution of the institutional impasse with Brussels by invoking the emotive subject of foreigners. As elsewhere in Europe, there was growing unease in Switzerland about the number of foreigners in the country, something which has roots going back to the 1890s. This has been a potent element in Swiss politics, so it is not surprising that the SVP used it.

In the event, fears of immigration did, for once, overcome traditional pragmatism and enabled the votation to pass. But it only passed very narrowly: 50.3% against 49.7%, a difference of some 19,000 votes in just over 2.9 million. Sixteen and a half cantons voted for it; eight and a half, either big cities or French speaking, against. Turnout was 55.8%.

But to what had the 19,000 committed Switzerland? Not to a simple motion but to a complicated amendment to the Constitution. In fact, the new Article 121a states initially that the country autonomously manages the immigration of foreigners. This is to be done via ceilings and quotas, plus restrictions on rights to welfare and family reconstitution. These, in turn, must be based on the twin principles of Swiss global economic interests and economic preference for Swiss. Significantly, point 4 of the Article states that no treaties incompatible with the law and its principles shall be negotiated. The initiative also adds two elements to the Transitional Chapter of the Constitution. One calls for existing treaties incompatible with the new Article to be renegotiated within three years. The other states that, should the enabling law not be concluded within that time, the Federal Council is authorised to issue implementing regulations. In other words, the Swiss approved a complex and incomplete act, directed both at EU relations and at curtailing the number of foreigners. Completing it and making it effective means overcoming a range of political and procedural problems.

One of these was the fact that it showed how divided the country was, which means that all attempts to implement are likely to be resisted. As well as the language divide between French speakers and the rest, which was exacerbated by ill-chosen words of Christoph Blocher, the votes showed up a deeper divide between outward looking cities and inward looking villages and small towns. The opposition of the Italian speaking frontier canton of

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Ticino is due to special problems of its own. And running through this was a deep political divide over the nature and implications of the 9th February text. In fact, far from accepting the verdict, as is normally the Swiss way, the losing side has maintained its opposition to the popular proposal. In other words, the vote was anything but unanimous and settled. In fact, it is bound to be challenged. This has showed up in the initial responses to the votation.

Initial Reactions

Perhaps optimistically, the authors of the 9th February votation seem to have hoped that quotas would be brought in rapidly and also that the EU would help them by reacting harshly. They were to be disappointed on both counts. Implementing the initiative proved to be anything but clear cut or immediate. And, although there were wild calls for the SVP to sort out the mess it had created, tradition and the constitution meant that the government had to do this. However, the uncertainties in the initiative's drafting and the way it went about things meant that the process of implementation itself became a further source of discord and division, even though the government committed itself to respecting the people's decision.

The Federal Council set itself a threefold timetable involving a draft implementing bill published by June, with parliamentary approval being obtained by the end of the year, and a deal with the EU by early 2015. This was far too slow and too emollient for the SVP. Domestically it wanted quotas in place by the summer and disliked government emphasis on the fact that the text allowed Switzerland three years to implement the Article. It was also greatly offended by being excluded from a proposed expert commission to be set up to advise the government, even though it was allowed to present its ideas to a preliminary meeting. No clear strategy emerged from this. In any case, the SVP believed that the text could be implemented more or less as it stood, whereas everybody else accepted that it needed much more work. As a result, it began to talk about another initiative to enforce a strict interpretation of the 9th February text.

The SVP was also unhappy that the government's first idea was to try and find a way of reconciling quotas with free movement, unlikely though this might be. It was no doubt also unhappy about the way the Federal Council tried to reassure neighbouring capitals, who were visited by the Foreign Minister, and Brussels, which was visited by the permanent head of the Foreign Ministry, Yves Rossier. He was also active in trying to fix relations with Croatia as a first step to sorting out the crisis. However, the SVP wanted a much more robust approach, reminding the EU that Switzerland was a sovereign state and not a colony. It assumed that the EU needed Switzerland more than Switzerland needed the EU.

The fact that the Union was surprisingly guarded in its response was also a puzzle and a disappointment to supporters of the initiative, such as Christoph Blocher. Generally, EU spokesmen, like the General Affairs Council, regretted the decision as it was contrary to the idea of free movement. However, dealing with the decision was seen as something wholly in the hands of the Swiss, a people described as being part of the EU family. Hence there was never any talk of punishing the Swiss. Indeed on two occasions after 9th February, the EU has sought to involve Switzerland in new ventures on Libyan security and asylum which did not rest on free movement.

However, the EU recognized that there was a changed legal situation after the 9th February vote. And, when Minister Sommaruga wrote to say that Switzerland could not now sign the agreement extending free movement to Croatia, the EU suspended talks with Switzerland on its participation in the Horizon 2030 and ERASMUS Plus programmes, since these are posited on free movement. The long expected response to the Swiss institutional proposals was also withdrawn and talks on an electricity deal were adjourned. Nonetheless, the EU made it clear that it wished to develop relations with Switzerland once the present crisis was resolved. In other words, while the SVP failed to provoke the EU as much as it had hoped, there is still much to be done to restore full Swiss relations with the EU.

Prospects and Problems

So how might the external and domestic problems created by the initiative be resolved? Economics Minister Schneider-Amman has said that he is sure a pragmatic solution will be found. He may be right, but there is no certainty as yet. The political divisions again revealed on 9th February have not gone away. The losing side is just as

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active as the SVP in bringing pressure on the government. And the latter is itself divided. Hence domestic progress has been very slow and this has worsened tensions. And rebuilding bridges with Europe still has some way to go. Hence the prospects for a clear cut solution are still limited.

So far there has been no catastrophic bust-up with the EU, but there are no clear signs of where the Swiss will go. On the one hand, opponents of the 9th February initiative have, like the Social Democrats, renewed their enthusiasm for a closer relationship with Brussels. Others have floated the idea of a new initiative enshrining the bilateral approach in the Constitution and hence trumping the 9th February article, calling for a countervailing initiative to block the new Article 121a by enshrining bilateralism in the Constitution. There have also been calls for the SVP, not the government, to implement it and for the new rules to apply only to those areas which voted for it. And, more generally, there are more realistic pressures to revivify the bilateral approach.

On the other hand, supporters of the 9th February text are worried by this because it means yet another compromise, whereas they want *alleingang*, that is to say *going it alone*, and having no direct relations with the EU. So, if there are to be negotiations, they want in your face talks, inflexible on independence and making it clear that Switzerland is not a 'colony'. For the SVP, the EU remains a threat, and one the 9th February has yet to block. For although it has claimed that the 9th February vote would help to force Switzerland away from the EU, pushing EU entry to the far horizons, this has clearly not happened. It is likely to be vociferous in opposing any moves towards the EU.

Such pressures will make it hard for the government to achieve one of its two aims, remedying the difficulties with the EU caused by the 9th February. There are two other procedural problems here. One is that the 9th February text does not specify what is to happen if, after three years is up, treaties incompatible with quotas have not been renegotiated. The SVP view will certainly be that Switzerland should just resile from them, thereby potentially ending most of the existing bilateral agreements. However, much business and moderate opinion would not want this. So there is a potential impasse ahead. Another problem is that, having seen public opinion ignore government and business advice and pass a damaging initiative, Swiss credibility as a negotiator must have been questioned. It is not inconceivable that the EU might have to ask for guarantees – for example, a confirmatory referendum – before accepting any new deal. In the meantime, the EU will sit back and wait on the Swiss.

This, of course, presupposes that the government can achieve its other main aim, that of finding a formula for reconciling the 9th February text with EU free movement rules. Here progress has been very slow. The Government has promised a new law by the end of the year, although it has also made much of the fact that it has three years to sort things out, so there is no need to panic. It has created a committee of experts – excluding SVP representatives – to advise it. However, although there has been much talk about how to make quotas incompatible with free movement, no clear strategy has yet emerged. All this is far too slow for the SVP, which wanted to see quotas in place by this summer and has threatened another initiative to insist on strict application of the text, something it has done previously with ideas of deporting foreign criminals. It has made it clear that it wants strict application of the text, even (or especially) if this means losing the bilateral deals.

In other words, the divisions revealed by the 9th February votation remain undimmed. Indeed they may have intensified since then. Given the resulting impasse, it may be that Freiburghaus is right and that the initiative may never be implemented. He believes the only implementation text likely to get through would be one which defines quotas so widely that they would have no effect on the EU. This would be unacceptable to many at home. And, if there was a tighter text, the EU will behave as it did after 1992 and go very slowly and be very hardnosed. After all, Switzerland is not at the top of the EU agenda, especially after Ukraine. And, if the EU chooses not to negotiate, there will be no negotiations, whatever the Swiss decide. So all in all, then, the realities of the Swiss situation prove to be somewhat different from the tabula rasa imagined by Eurosceptics on 10 February.

Lessons for Eurosceptics?

Unfortunately for the SVP, the vote has not led to the unanimous, unchallenged, immediate, and clear cut shift in policy they imagined. In fact, it has opened what is likely to be a long period of introspective argumentation, the outcome of which is doubly uncertain, both where immigration is concerned and where Swiss relations with the EU

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are involved. Intense domestic divisions mean that the 9th February is still being challenged and no immediate resolution is in sight. So Switzerland is less a model than was initially assumed by many. Moreover, by querying the existing bilateral arrangements, the 9th February seems also to have destroyed the image of Switzerland as a third way between membership and isolation, admired by many British Eurosceptics over the years.

All this goes to show that, despite the SVP victory on 9th February, Switzerland's underlying problems with the EU continue. So far there is no sign that the vote has shifted the country on to a new and cooler relationship with Brussels, despite the initiative having apparently been planned to do just that. It has merely opened up a new front in the ongoing battle over Europe between those who seek autonomy and those who seek influence. And where this will end is still far from clear. It is quite possible that the present stasis will continue.

And the reason for all this lies in divided Swiss politics, not in simple realist international relations. Observers need to look more closely at the realities of Swiss politics because the evolution of foreign policy is so closely rooted in them. (Goetschel et al, 2006: 76-77) Hopefully this more detailed look at the Swiss situation shows that its politics has too many veto players for swift decisions. It is out of the interplay of these contending forces that any change in foreign policy will come. As a Luxembourg Minister recently said, we should not dramatize adjustments in Switzerland. In other words there is many a slip between the 9th February cup and the ultimate Swiss lip...

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