

# The Symbolic Value of Quotas in the Swiss Immigration System



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Since the 1970s, quotas have continually been used to control immigration to Switzerland. But the categories of foreigners subject to this quota system have changed over time, and the system itself has also undergone numerous modifications. Given that immigration quotas may gain more prominence in Switzerland in the coming years, it is worth taking a closer look at how this specific aspect of immigration policy is currently implemented.

Today quotas only apply to third-country nationals<sup>1</sup> who want to find employment in Switzerland and to some service providers from European Union (EU) Member States or countries signatory to the European Free Trade Agreement (EFTA).<sup>2</sup> According to the official statistics, only 4.1% of long-term immigrants to Switzerland in 2015 were subject to quotas. That corresponds to 6,140 persons.<sup>3</sup>

After the vote on mass migration in February 2014, quotas have returned to the center of public debates on immigration. The initiative, which was supported by 50.3% of voters, requested the reintroduction of quotas for all categories of foreigners and puts Switzerland in a delicate position, in particular with regard to the EU. Introducing quotas for Europeans is difficult to make compatible with the principle of the free move-

ment of persons, which underlies agreements between Switzerland and the EU.

In this paper, I describe and analyze some of the mechanisms of the current quota system based on a combination of document analysis and interviews conducted between 2014 and 2016 with cantonal officials in charge of admitting non-EU/EFTA nationals seeking employment in Switzerland.<sup>4</sup> I argue that:

**“Quotas are not only governing tools, they are also political signals to the population and indicators of power relations between governing actors.”**

## **Swiss Admission System for Foreign Workers**

According to the Swiss government, only “qualified workers from third

countries who are absolutely needed” are allowed to enter the Swiss labor market.<sup>5</sup> This fundamental principle applies to all foreign workers who are not nationals of EU or EFTA Member States. Moreover, the Swiss admission system for third-country workers is demand driven: employers must first request to hire a foreigner and prove they could not find someone in Switzerland or the EU. This restrictive admission policy contrasts with the free movement of citizens in EU/EFTA Member States.

Cantons are responsible for applying the laws that have been defined by the federal government. They are thus in charge of processing admission requests. In the case of permits for non-EU/EFTA workers, however, the State Secretariat for Migration must validate the decisions of the cantonal authorities. This restricts

# Quotas

## The Symbolic Value of Quotas in the Swiss Immigration System

the cantonal authorities' flexibility in interpreting the federal law.

The admission of non-EU/EFTA workers and some service providers from the EU is regulated on both the cantonal and federal levels with a quota system. At the beginning of each year, the Swiss government publishes the maximum quantity of permits that can be allocated to these categories of foreigners. The numbers are different for residence (B) and short-term (L) permits. For instance, in 2015, a maximum of 4,000 short-term permits (L) and 2,500 residence permits (B) could be allocated to non-EU/EFTA workers, and a maximum of 2,000 short-term permits (L) and 250 residence permits (B) could be allocated to EU/EFTA service providers assigned to Switzerland for more than 90 days.<sup>6</sup>

A further distinction exists between cantonal quotas and federal quotas for non-EU/EFTA workers: each canton is allocated a certain number of permits based on its size and needs; but a reserve of permits is also kept at the federal level for cantons that have exhausted their quotas. Cantonal authorities who apply for additional permits from this federal quota need to justify their request to the federal authorities, who then make a decision on a case-by-case basis. The federal quota consists of 2,000 L permits and 1,250 B permits, meaning that the total number of permits for non-EU/EFTA workers is cut in half between the cantonal and federal level.

### Case Studies in the Cantons of Basel-City and Vaud

An example shows how this quota system is implemented in practice. Basel-City and Vaud are among the cantons that receive the most permits for non-EU/EFTA immigrants. This is mainly due to the nature of

their economic activity since both cantons are host to multi-national companies such as Novartis, Roche, and Syngenta in Basel-City, and Nestlé, Philip Morris, and Medtronic in Vaud. Local authorities are aware of the economic importance of these companies and try to maintain good relationships with them. In an interview, an employee of the department in charge of controlling foreigners' access to the labor market in Basel-City explained that it is important to them "that the big companies stay

here, and that they can provide their services, and that they also obtain the workforce they want."<sup>7</sup>

The official maximum number of permits allocated to Vaud and Basel-City are relatively high compared to other Swiss cantons. In 2015, the canton of Vaud was allocated 158 short-term permits and 98 residence permits, which positions it just after Zurich and Bern in terms of quota number. Basel-City has the ninth largest quota out of 26 cantons,

Swiss Canton	Max. number of short-term permits (L)	Max. number of residence permits (B)	Permanent resident population (in thousands) <sup>1</sup>
Zurich	403	252	1466.4
Bern	252	157	1017.5
Vaud	158	98	773.4
Aargau	136	85	653.7
St. Gallen	121	76	499.1
Geneva	133	83	484.7
Lucerne	88	55	398.8
Ticino	91	57	351.9
Valais	65	40	335.7
Fribourg	52	32	307.5
Basel-Landschaft	63	39	283.2
Thurgau	52	32	267.4
Solothurn	59	37	266.4
Graubünden	51	32	196.6
Basel-City	84	52	191.8
Neuchâtel	45	28	178.1
Schwyz	28	18	154.1
Zug	36	23	122.1
Schaffhausen	19	12	79.8
Jura	17	11	72.8
Appenzell Ausserrhoden	11	7	54.5
Nidwalden	9	6	42.4
Glarus	9	6	40
Obwalden	7	5	37.1
Uri	8	5	36
Appenzell Innerrhoden	3	2	16
<b>TOTAL</b>	<b>2,000</b>	<b>1,250</b>	<b>8,327.1</b>

Figure 1: Cantonal Quotas for Non-EU/EFTA Workers and Population Size by Canton (Year 2015);

<sup>1</sup>SFSO

# Quotas

## The Symbolic Value of Quotas in the Swiss Immigration System

with 84 short-term and 52 residence permits, which is comparatively high given that Basel-City is only the fifteenth most populous canton.

These numbers become more interesting when one knows that in 2015 Basel-City already exhausted its cantonal quota of permits in March. Similarly, in Vaud the cantonal office in charge of admitting non-EU/EFTA workers grants on average 500 to 600 residence permits per year – more than five times higher than the cantonal quota. This means that in both Vaud and Basel-City, the cantonal quota covers only a very small share of their permit needs while the federal quota covers the main share.

### Understanding the Logic of the System

In this context, it is legitimate to ask why such a large difference exists between the officially allocated numbers and the actually granted permits, especially since the number of permits granted each year appears to be relatively stable according to the interviewed cantonal administrators. It appears that the number of permits allocated to each canton is not only based on practical needs: if cantons such as Basel-City or Vaud regularly receive four to six times more permits than what is officially allocated to them based on the cantonal quotas, then other reasons must explain why cantonal quotas are set so low. I propose three possible interpretations of this phenomenon.

*First*, keeping the numbers of cantonal quotas low may help avoid the criticism that the distribution of permits is too unequal between the cantons.

**“In a context where admission numbers are restricted, cantons compete with one another for permits.”**

In that sense, the quotas officially allocated to the cantons and the distribution of the federal quota reflect two different logics. The cantonal quota is mainly symbolic and represents a fair distribution of permits among the cantons. The practice of resorting to the federal quota follows a more pragmatic approach based on the actual demands of the different cantons.

*Second*, the interplay between the relatively low cantonal quotas and the important federal quota may serve as a tool for the federal government to better control cantonal practices of issuing permits and to ensure a degree of flexibility in case of unexpected changes. Several criteria regulate the admission of non-EU/EFTA workers,<sup>8</sup> but the most important principle is that “the admission of gainfully employed foreign nationals is allowed in the interests of the economy as a whole” (art. 3). What constitutes an economic interest varies, however, over time and between cantons.<sup>9</sup>

**“In that sense, the distinction between cantonal and federal quotas constitutes a compromise between recognizing cantonal specificities and retaining the federal government’s ability to enforce its priorities with regard to economic and migration policy.”**

*Finally*, quotas may be used to signal political intentions to the population. This symbolic function of quotas became particularly apparent, for instance, in November 2014, shortly after the acceptance of the popular initiative against mass immigration, when the Swiss Federal Council decided to reduce the maximum number of permits available for non-EU/EFTA workers and service providers from EU/EFTA countries in 2015 by 3,250 permits.<sup>10</sup> This decision was not required from a legal

perspective since – at that point – no legislative change had been introduced. Yet the reduction clearly was the government’s response to the popular demand for more immigration control. In practice, however, the quota reduction did not lead to a clear decrease in admitted workers.<sup>11</sup> In fact, the reduced quota of residence permits for non-EU/EFTA workers in 2015 was exhausted before the end of the year, which was solved by resorting to remaining quotas from the previous year.<sup>12</sup>

**“Thus, parallel to the political decision to reduce quotas, administrative solutions were found to satisfy employers’ actual needs for permits.”**

This case study shows that quotas are not only controlling tools, they also serve as signals of the government’s power. By providing an impression of measurability and control, quotas strengthen the public perception that the Swiss government is in charge of its migration management. In practice, however, quotas are difficult to administer because they lack flexibility and require a lot of bureaucracy.<sup>13</sup>

### The Limits of State Sovereignty

The current Swiss quota system exemplifies the paradoxes of migration management. On the one hand, an important dimension of state sovereignty necessitates that states have the ability to control the admission and residence of foreigners in a given territory. On the other hand, performing this task is becoming increasingly difficult in a context in which immigration is largely driven by the economy and in which local governments have significant power, as in Switzerland. Moreover, the development of supranational regulations, such as the free movement of persons within the EU and EFTA,

# Quotas

and the enforcement of human rights further restrict the power of states to control the entry and residence of foreigners in their territories.

**“The Swiss government has extremely limited possibilities for reducing immigration without inhibiting its economic dynamism, its internal cohesion, its bilateral relations, or its moral legitimacy.”**

In the current Swiss immigration system, non-EU/EFTA workers are one of the few categories of people that the government has full authority to accept or refuse admission to. But this category corresponds to a very small share of all the immigrants entering Switzerland (about 4%). Reducing the number further would directly affect the interests of major economic actors who want to be able to attract specialists from all over the world.

One of the main goals of the initiative against mass immigration was to extend the use of quotas to all categories of immigrants, enabling the Swiss government to regain a better control over its borders. In practice, however, what is at stake is not so much winning back state sovereignty, but rather a series of compromises between various local, national, and international interests.

Since the 1990s, both globalization and European integration have encouraged many Swiss institutions to internationalize their strategies.<sup>14</sup> Cooperation between states has increased in importance and economic actors have also become more competitive at the international level. This state of affairs is difficult to reconcile with a strict quota system that would jeopardize the interests of the main economic actors and – by extension – the regions that largely depend on these actors.

**“A strict quota system would also**

## The Symbolic Value of Quotas in the Swiss Immigration System

**be incompatible with the Agreement on the Free Movement of Persons between Switzerland and the EU, and would therefore force the Swiss government to renegotiate the advantages associated with it.”**

Finally, a strict quota system would challenge a number of humanitarian principles that the Swiss government has to respect in order to maintain its legitimacy.

In this context, the Swiss government is left with little choice but to find a compromise that will both satisfy a sufficient number of voters, who requested more control over immigration on 9 February 2014, and also protect the economic and political interests at stake. The solution recently adopted by the National Council – which consists in a safeguard clause and a “light” system of national preference – constitutes such a compromise, even though its compatibility with both the Agreement on the Free Movement of Persons and the new constitutional article approved by the vote against mass immigration is questionable.<sup>15</sup> The perfect solution has not yet been found, and there is still much room for debate and negotiation. But given the complexity of the current situation, I anticipate that the solution will in any case require enough flexibility for local authorities to adapt the new policy to their practical needs.

- 1 In Switzerland, third countries are countries that do not belong to the European Union (EU) or the European Free Trade Association (EFTA).
- 2 See art. 19a and 20a of the Verordnung über Zulassung, Aufenthalt und Erwerbstätigkeit (VZAE).
- 3 SEM, 2016.
- 4 I conducted the research used in this article with Metka Hercog for the project “The Mobility of the Highly Skilled towards Switzerland”, which is part of the nccr – on the move and is funded by the Swiss National Science Foundation. We have composed a more detailed paper based on this research; it will be published under the title “Selecting the Highly Skilled: Norms and Practices in the Swiss Admission Regime for Non-EU Immigrants”.
- 5 Swiss Federal Council, 2002, p. 3473.
- 6 See the VZAE appendixes 1 and 2.
- 7 Q: “Was sind die Prioritäten, die Ihre Arbeit beeinflussen?” A: “Jetzt also halt, dass die großen Firmen hier bleiben und dass die ihre Dienstleistungen erbringen können und dass sie die nötigen Fachkräfte auch bekommen, die sie möchten.”
- 8 See art. 18-26 of the Federal Act on Foreign Nationals.
- 9 Afonso, 2004; Amarelle and Nguyen, 2010; Piguet, 2006.
- 10 The total number of quotas available in 2014 was 12,000, compared to 8,750 in 2015.
- 11 Statistics of the State Secretariat for Migration indicate that in 2014, 5,827 workers were admitted through the quota system and 68,953 were admitted independently of the quota system. In 2015, these numbers were 6,140 and 64,843 respectively.
- 12 This is indicated in a footnote on page 13 of the 2015 SEM report on immigration statistics: “Vollständige Ausschöpfung; der über die Höchstzahl (2500) hinausgehende Bedarf hat der Bund mit Kontingenten aus der Vorjahresreserve gedeckt.” [My translation: “Complete exhaustion: the Confederation has covered the demand that exceeds the maximum number (2,500) with quotas from last year’s reserve.”]
- 13 For an analysis of the previous Swiss quota system, see Cattacin, 1987; Dhima, 1991.
- 14 Afonso, 2004; Mach et al., 2011; Piguet, 2006, 2009.
- 15 Boillet, 2016.

# Quotas

## The Symbolic Value of Quotas in the Swiss Immigration System

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### Further Reading

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# Quotas

## The Symbolic Value of Quotas in the Swiss Immigration System

### Zusammenfassung

#### Der symbolische Wert von Quoten im Schweizer Einwanderungssystem

Die Annahme der Volksinitiative gegen Masseneinwanderung hat die Frage der Einwanderungskontingente erneut in den Fokus der öffentlichen Debatte gerückt. Der vorliegende Artikel setzt sich mit diesem Thema auseinander und analysiert das Kontingentsystem, das gegenwärtig auf Menschen aus Drittstaaten, die in der Schweiz arbeiten möchten, angewandt wird. Obwohl nur sehr wenige Einwanderinnen und Einwanderer von diesem System betroffen sind, wirft es mehrere Fragen auf: einerseits zu den Instrumenten, über welche die Schweiz zur Kontrolle der Immigration verfügt, und andererseits zu den Umsetzungsmöglichkeiten der Initiative. Im Artikel wird argumentiert, dass Kontingente im aktuellen System vor allem eine symbolische Funktion im Sinne eines politischen Zeichens an die Bevölkerung haben. In der Praxis sind diese Kontingente allerdings schwierig durchsetzbar und erfordern im Spannungsfeld zwischen Theorie und Praxis nicht selten ein gewisses Mass an Flexibilität. Obwohl die Initiative vom 9. Februar 2014 die Wiedereinführung von Kontingenten für alle Kategorien von Ausländerinnen und Ausländern fordert, die in der Schweiz leben möchten, kann sie gegenwärtig nicht strikte angewandt werden, ohne sich nachteilig auf mehrere Hauptinteressen des Landes auszuwirken. Die aktuelle Herausforderung besteht deshalb darin, einen Kompromiss zu finden, der auf der einen Seite diejenigen Wählerinnen und Wähler beruhigt, die bei der Immigration verschärfte Kontrollen fordern, und auf der anderen Seite genügend flexibel ist, um die auf dem Spiel stehenden Interessen zu wahren.

### Résumé

#### La valeur symbolique des contingents d'immigration dans le système suisse

L'approbation de l'initiative populaire contre l'immigration de masse a replacé le thème des contingents d'immigration au centre du débat public. Le présent article se penche sur cette question en analysant le système de contingents actuellement appliqué aux ressortissant-e-s d'états tiers souhaitant venir travailler en Suisse. Bien que ce système ne concerne qu'une très faible proportion d'immigré-e-s, il soulève plusieurs questions concernant les outils dont dispose l'Etat suisse pour contrôler son immigration et les possibles applications de l'initiative. L'article argumente que, dans le système actuel, les contingents jouent un rôle avant tout symbolique de signal politique à la population. En pratique, ils sont cependant difficiles à administrer et nécessitent souvent une marge de flexibilité entre théorie et pratique. Bien que l'initiative du 9 février 2014 demande un retour des contingents pour toutes les catégories d'étrangers souhaitant séjourner en Suisse, cette initiative ne peut actuellement être appliquée de manière stricte sans péjorer plusieurs intérêts nationaux majeurs. L'enjeu actuel est donc la recherche d'un compromis qui, d'un côté, rassure les électeur-trice-s souhaitant d'avantage de contrôle sur l'immigration et, d'autre part, soit suffisamment flexible pour préserver les intérêts en jeu.