EUROPEAN INTEGRATION 19.07.2021 | Susanne Wixforth & Lukas Wiehler

What the EU can learn from Switzerland

Switzerland has rejected a completed framework for further integration into the EU. By doing so, it has exposed the limits of workers rights in the EU

After years of negotiations, the proposed framework for deeper Swiss integration into the European Union has collapsed – at least for the time being. Switzerland walked away from talks primarily because of the EU's insistence that the Confederation's 'additional measures' aimed at limiting clandestine employment are at odds with the rules of the single market.

This essentially means that the freedom to provide services anywhere within the EU is more important than the principle of 'equal pay for the same work in the same place' – at the expense of employees throughout the EU27. As far as the unions are concerned, a Europe-wide solution is needed – and this should be a matter of priority for the Conference on the Future of Europe, starting a year-long reform process from 9 May 2021 onwards.

While both the member states and the European Commission said they were disappointed and surprised by what they called a 'radicalisation of Bern's position', the Swiss Federal Council's scepticism had already become clear.

The question of labour justice

The EU's refusal to offer recognition to Switzerland's attempts to limit clandestine employment show that it does not consider undermining the principle of 'equal pay for the same work in the same place', anchored in the EU Posted Workers Directive, anything to be too concerned about.

This principle is, after all, at the heart of the measures Switzerland takes: it sets deadlines by which posted workers have to begin employment in Switzerland, requires the payment of a deposit from which fines (for

which it sets a scale) may be deducted, and sets the frequency of checks. These are certainly protective measures to guard against wage dumping – not just on paper, but in the real economy. As such, they are actually completely in line with the Commission's own action plan for delivering on the European Pillar of Social Rights, promising to secure fair working conditions.

At present, EU-Swiss relations are governed by a plethora of around 20 bilateral treaties and over 100 other agreements; the proposed framework was intended to weave this frayed legal tapestry altogether and determine how future changes to European law would be integrated. Instead of re-negotiating agreements between the two point by point, European law would be adopted by Switzerland dynamically.

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While, as recently as 2020, the Swiss Parliament gave it an 'overall positive' evaluation, in the end, the arguments against the proposed framework outweighed those in favour. The Swiss baulked at the prospect of a de-facto reduction in labour protection because of the way in which workers posted from countries with lower standards can be used to practice wage dumping and clandestine employment – all the more so given the current lack of ambitious, Europe-wide legislation to monitor employment and prosecute those behind illicit labour. Indeed, this lack was why Switzerland was told to reduce or even abolish its 'additional measures'.

Moreover, it would have fallen to the European Court of Justice (ECJ) to interpret the framework, and the ECJ has, in several judgements to date, confirmed the primacy of the freedom to provide services ahead of member-states' laws to prevent clandestine employment and wage dumping (for example: Čepelnik, Maksimovic, Dobersberger). In the context of the ECJ's record, disquiet began to grow both in the Swiss Parliament and among the country's unions.

A reflection on EU regulations

As such, on 26 May 2021, the Federal Council decided not to sign the framework, which had been negotiated to completion, on the grounds that there are substantial differences between how the EU and how Switzerland interpret the principle of 'equal pay for the same work'. As a statement released by the Federal Council reads: 'In Switzerland's view,

the principle is primarily a matter of protecting workers. For the EU, the primary focus is on preventing distortions in competition'. It would seem that the European Commission sees even a consistent application of and checks on compliance with the reformed Posted Workers Directive as a barrier to competition and as anti-market protectionism.

What conclusions can be drawn from the failure of these negotiations? Clearly, in order to secure fair competition within the internal market, there must be both European and member-state-level legal protections which are robust enough to act as a deterrent against undercutting minimum wages and collective bargaining agreements or using disguised or clandestine employment.

In this sense, Switzerland's decision should act as a timely reminder for the EU to actually start applying the provisions of its own Posted Workers Directive with sufficient checks and standards. After all, when wages and conditions are undermined even in one member state, this is a matter for all member states since the door to other labour markets is open. Germany has experienced this just recently in its meat processing industry, where a lack of even basic checks led to widespread abuse – with disastrous consequences in the middle of a pandemic.

How can this problem be solved?

For Europe's unions, it is crucial that those who work across borders are not discriminated against – and the undercutting of local wage levels leads to discord between workers, creating a fertile environment for xenophobia. This message has finally reached European institutions, and when the European Pillar of Social Rights was erected in 2017, 20 guiding principles were proclaimed as laying a path towards a strong, cohesive union that is fair and inclusive and provides equal opportunities to all. Now, it is a matter of implementing this charter – and doing so in such a way as to harmonise basic market freedoms with protection for mobile workers Europe-wide.

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One instance of genuine progress is the reformed Posted Workers' Directive, which now guarantees workers the right to the same wage components as are offered to domestic workers by law or through collective bargaining in the member state. Yet this right currently exists merely on paper and needs European provisions on how it is to be implemented – a post-hoc adjustment mentioned under 'fair working conditions' and 'social protection and

inclusion' in the European Pillar of Social Rights. There is no shortage of blueprints: there is the Austrian Law against wage dumping and social dumping or the French declaration of 4 June 2019 with regards to employers' duty of care when posting workers. And, of course, there are Switzerland's 'additional measures'.

Beyond this kind of regulation, there needs to be European legislation to abolish all temporary or fixed-term employment without social insurance cover and an EU-wide real-time register of social insurance status for all cross-border workers. This would allow the employment authorities to cooperate efficiently and speedily with the newly-established European Labour Authority to identify and stop disguised or clandestine employment.

This would put a stop to distortions in competition created by wage dumping, the consequences of which are borne by workers; it would also have the effect of strengthening acceptance for the free movement of persons and their freedom to offer services. Not least, it would make the protections Switzerland operates into a basic prerequisite for entering into deeper ties with the European Union, from framework agreements to applications to join. The year-long dialogue as part of the Conference on the Future of Europe, in which all European citizens may engage and contribute ideas, represents an important opportunity for unions. They can show what workers are lacking in order to secure their rights in the European Single Market.



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