



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Concluding observations on the combined seventh to ninth periodic reports of Switzerland

Addendum

### Information received from Switzerland concerning follow-up to concluding observations\*

[Date of submission: 5 May 2015]

#### Preliminary remarks

1. On 12 March 2014, the Committee on the Elimination of Racial Discrimination issued its 26 final recommendations on the combined seventh to ninth periodic reports of Switzerland (CERD/C/CHE/CO/7-9). In paragraph 23, the Committee requests the State party to provide information, within one year of the adoption of the concluding observations, on its follow-up to the recommendations contained in paragraphs 12 (political campaigns and the media), 13 (naturalization) and 16 (restriction on persons granted temporary admission and holding “F” permits).

2. This report, which has been prepared by the relevant federal departments with the participation of the cantons, fulfils that request. Switzerland reserves the right to provide the Committee with other important information regarding these issues in its next report, due on 21 February 2017, and to inform the Committee as to whether, how and to what extent it has implemented those recommendations. It also reserves the right to report to the Committee on developments that have taken place in the interim.

#### Follow-up to the recommendations contained in paragraph 12 of the Committee’s concluding observations

##### Racism and xenophobia in politics and the media

The Committee recommends that the State party:

(a) Undertake extensive and systematic awareness-raising activities at all levels in the public and political spheres to combat stigmatization, generalization, stereotyping and prejudice against non-citizens, sending a clear message concerning the abhorrence of racial discrimination, which degrades the standing

\* The present document is being issued without formal editing.



**of individuals and groups in the estimation of society, taking into account the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens;**

3. While the number of incidents of racial discrimination has increased over the years, the number of convictions for acts that meet the criteria of article 261 bis of the Criminal Code (specifically, the condition that they must be public acts) has decreased since 2007 and has largely stabilized since 2012. However, there has been a rise in the number of racist incidents on the Internet, in particular on social media (Facebook, Twitter, YouTube, etc.), and an increase in the number of perpetrators who are minors (adolescents using the networks).<sup>1</sup>

4. In order to combat this trend, Switzerland has been participating in the Council of Europe's "No Hate Speech Movement" campaign. As mandated by the Federal Social Insurance Office, the National Youth Council of Switzerland organized various activities and awareness-raising events in 2014 and is continuing to do so in 2015. A website provides young people and youth organizations with information on hate speech. The website also gives ideas and options for action so that young people themselves can become actively involved in this area ([www.nohatespeech.ch](http://www.nohatespeech.ch)). The National Youth Council implements these activities with the support of a steering group that includes representatives of the Service for Combating Racism, the Federal Commission against Racism (since early 2015) and the non-governmental organization (NGO) Co-habiter.<sup>2</sup> The campaign ended on 28 March 2015 with a closing event at which the issue of hate speech was symbolically handed over to the Federal Commission against Racism. A group of young people also intends to continue carrying out activities under the "No Hate Speech Movement" label. During the closing event of the campaign, on 28 March 2015, workshops and debates were held on the theme of racism and discrimination on the Internet; the conclusions drawn were forwarded to the Federal Commission against Racism for its "Diverse Switzerland" campaign. The campaign, which is being run to mark 20 years since racism was made a criminal offence (Criminal Code, art. 261 bis), focuses on youth awareness of racism and protection against discrimination online. From mid-June to the end of November 2015, a dedicated website ([www.bunte.schweiz.ch/fr/](http://www.bunte.schweiz.ch/fr/)) will give classes and youth groups, as well as stakeholders from the private sector and companies with links to the State, the opportunity to take turns preparing and managing the content of the campaign's website for a day or several days in a row. The campaign will end in late November 2015 with a public conference.

5. The "Youth and Media – National programme to promote media literacy",<sup>3</sup> which is implemented under the leadership of the Federal Social Insurance Office, aims to support children and young people to ensure that they use digital media safely, responsibly and in an age-appropriate manner. In future, the Federal Commission against Racism intends to raise awareness of the issue of racism in the media and in online forums. It also supports projects to combat racism in electronic media (see list of examples in the annex).

6. Informing the public and raising awareness are important objectives of the cantonal integration programmes. In terms of providing advice, the Confederation and the cantons have set the following objectives with a view to combating discrimination, which are relevant to recommendation 12 (a):

<sup>1</sup> For more detailed information, see "*Discrimination raciale en Suisse*" (Racial discrimination in Switzerland). Report of the Service for Combating Racism, chapter 5, ([www.edi.admin.ch/frb/02015/index.html?lang=fr](http://www.edi.admin.ch/frb/02015/index.html?lang=fr)).

<sup>2</sup> <http://nohate.ext.coe.int/The-Campaign>.

<sup>3</sup> [www.junesetmedias.ch/fr](http://www.junesetmedias.ch/fr)> Programme national.

- The public is informed about the particular situation of foreign citizens, the objectives and basic principles of integration policy and the promotion of integration;
- Public institutions and interested parties are informed and provided advice on ways to combat discrimination;
- Persons who have been the victims of discrimination based on their origin or race receive professional counselling and support.

7. Since the introduction of the cantonal integration programmes in January 2014, various measures have been developed and implemented in the cantons to achieve these goals. An initial report on these measures will be made available by the end of April 2015. The results will be presented in the next periodic report of Switzerland. The following are two examples of successful measures already implemented:

- The cantons of Lucerne and Zug, in cooperation with the cities of Bern and Winterthur, have produced a guide and a short animated film dealing with the issue of non-discrimination in communication with the public and the media. The canton of Zug has also developed a strategy to ensure that the guide is used by the cantonal authorities. Since November 2014, posters have been displayed in all the offices of the cantonal authorities publicizing the guide, postcards have been distributed to all of the authorities' employees and the guide has been submitted to government agencies;<sup>4</sup>
- In response to a resurgence of xenophobic and Islamophobic demonstrations, statements, blogs, readers' letters and comments on the Internet, the canton of Basel Stadt launched the "Basel zeigt Haltung: Für Offenheit und Fairness, gegen Fremdenfeindlichkeit" (Basel takes a stand for openness and fairness and against xenophobia) campaign in the summer of 2014, with the participation of NGOs, federations and religious communities. The canton has taken a clear stand through print adverts and a poster campaign against the rise in intolerance against certain religious communities and population groups, emphasizing that respect for immigrants is essential if we are to live together in harmony. The campaign, which is constantly being expanded, will continue with other activities.

**(b) Take appropriate measures towards ensuring that media representations of ethnic groups are based on the principles of respect, fairness and the avoidance of stereotyping, and that the media avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance;**

8. Various media institutions have adopted codes of conduct to ensure that they provide independent and critical information in a manner consistent with human dignity and the prohibition of all forms of discrimination. The Swiss Press Council, established in 1977 by the Swiss Media federation, is available to receive complaints from the public and journalists concerning media ethics. It receives complaints on issues related to human dignity and the prohibition of all forms of discrimination. The Independent Complaints Authority for Radio and Television, a quasi-judicial body, handles complaints against radio and television programmes carried by Swiss broadcasters.<sup>5</sup> It considers the cases that the Radio Télévision Suisse (RTS) mediation body, as first authority, has deemed to be well-founded. The two bodies are regulated by the Federal Act of 24 March 2006 on Radio and Television (SR 784.40). The Independent Complaints Authority's jurisprudence relating to the variety obligation (Federal Act on Radio and Television, art. 4, para. 4) and respect for human dignity

<sup>4</sup> The guide and the short film are available at: [www.zg.ch](http://www.zg.ch) > Behörden > Direktion des Innern > Kantonales Sozialamt > Generationen und Gesellschaft > Integration von Zugewanderten.

<sup>5</sup> The Authority's activities are based on article 93, paragraph 5, of the Federal Constitution and articles 58 ff. of the Act on Radio and Television. In carrying out its functions, it is not bound by any instructions from the parliament, the Government or the federal administration. See, in this regard, [www.ubi.admin.ch/fr/](http://www.ubi.admin.ch/fr/).

and non-discrimination (art. 4, para. 1) is particularly important in combating racial discrimination and racism.

9. As the independence of the media is essential for the country's democracy, the federal, cantonal and municipal authorities do not have direct powers of intervention (Constitution, art. 17: Freedom of the media). They can, however, support the efforts of stakeholders in the media (including the Internet), for example through grants awarded by the Service for Combating Racism. The Federal Commission against Racism, an extra-parliamentary commission, also runs and supports projects in the area of the media. In 2013, it called on the media to show greater restraint in dealing with information on the Roma, arguing that the manner in which the mainstream Swiss media reported on the Roma had a significant impact on the perception of minorities in the country.<sup>6</sup> The Commission is also in contact with the Centre de formation au journalisme et aux médias (Journalism and Media Training Centre) and the Medienausbildungszentrum (Media Training Centre). The latter already runs a three-day module on media ethics, fair journalism and its limitations, in which aspiring journalists are sensitized to racist representations and racial discrimination in the media. As for the Journalism and Media Training Centre, it runs a one-day course on the legal framework and conditions applicable to journalism. The importance of the prohibition of racial discrimination (Criminal Code, art. 261 bis) for the work of journalists is mentioned during that course.

10. The objectives and actions of the cantonal integration programmes are described above, under recommendation 12 (a).

**(c) Sensitize legal personnel, including the judiciary, to international norms protecting freedom of opinion and expression and norms against racist hate speech, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech;**

11. On the whole, personnel responsible for criminal proceedings are sensitized on this subject, which is dealt with regularly both in university training and basic and ongoing training for members of the police. Several federal agencies requested the Swiss Competence Centre for Human Rights to conduct a study on the mechanisms that facilitate or hinder access to justice for victims of discrimination. The study analyses current jurisprudence on article 261 bis of the Criminal Code and judicial practice with regard to incidents of discrimination between individuals, in particular in labour law and tenancy law. The central question is whether the current legal provisions protect victims of discrimination or whether there are any legal gaps. In addition to the analysis of court decisions, the study is based on a comprehensive survey of the Swiss courts and interviews with experts, which add depth to the study. The study, which is expected to be completed by mid-2015, will, for the first time, provide well-supported empirical data on Swiss jurisprudence.

12. Based on the results of the study, the relevant federal agencies will conduct an analysis of the situation and develop, as appropriate, information and awareness-raising measures, for example for the criminal prosecution authorities, and specifically for prosecutors and judges of courts of first and second instance. In this context, it will be necessary to respect the separation of powers between the judiciary and the Government.

**(d) Take swift measures, in addition to prosecution, to respond to instances of racist remarks or acts, including formal rejection by high-level public officials**

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<sup>6</sup> The appeal to the media was based on a study commissioned by the Federal Commission against Racism: Ettinger, Patrik, Quality of information on the Roma in the major Swiss media, University of Zurich, 2013 (available in German).

**and condemnation of hateful ideas expressed, as set out in the Committee's general recommendation No. 35 (2013) on combating racist hate speech.**

13. The Federal Council condemns any form of racist hostility towards particular population groups. On 25 February 2015, the Council addressed the increasing number of incidents of hostility towards persons of Muslim and Jewish faith in Europe. On 2 March 2015, at a meeting with the Swiss Council of Religions, (which is made up of leaders from the three Christian churches in Switzerland, the Jewish community, the Orthodox church and Muslim organizations), Federal Councillor Alain Berset stated that, in Switzerland, where multiculturalism is a defining characteristic, it is the role of each individual to guarantee peaceful coexistence on a daily basis. In a press release following this statement, he expressed his concern about the growing tendency towards cultural isolationism and called for greater social cohesion. Addressing the Council of Religions, the President of the Council of States, Claude Hêche, stressed the importance of engagement and dialogue between religious communities for social development and peaceful coexistence in Switzerland. A few months earlier, members of the Federal Council had responded to a resurgence of anti-Semitic and Islamophobic incidents in the summer of 2014, particularly on social media. On 21 September 2014, in his statement commemorating the 1,500th anniversary of St. Maurice's Abbey, Federal Councillor Alain Berset stressed the responsibility of the State and religions in combating hatred and ensuring respect for human rights. In his opening statement to the International Conference on Anti-Semitism organized by the Organization for Security and Cooperation in Europe in Berlin in November 2014 under the chairmanship of Switzerland, the President of the Swiss Confederation, Didier Burkhalter, urged the participating States to systematically take action against anti-Semitism.

14. It is equally important that civil society take action. Jewish organizations, the Jewish-Roman Catholic Dialogue Commission, the Commission for Jewish-Protestant Dialogue and organizations such as the Society for Minorities in Switzerland and the GRA Foundation against racism and anti-Semitism have spoken out publicly to denounce anti-Semitic incidents. Jewish and Muslim umbrella associations in Switzerland have also taken a joint stand against racism, anti-Semitism and Islamophobia. On 18 July 2014, the Swiss Council of Religions called on all of the country's political, religious and social leaders to assume their responsibility to ensure interfaith peace and condemn hate speech and any other threats to the peace. In a press release dated 21 August 2014, the Federal Commission against Racism denounced hate speech and incitement to violence on social media and reminded social networks of their responsibilities.

15. In response to such incidents, a large number of parliamentary procedural requests were filed during the autumn 2014 and winter 2015 sessions.<sup>7</sup> Over and above

<sup>7</sup> Motion by Nadine Masshardt, "Develop a monitoring mechanism for racism, anti-Semitism and Islamophobia" (Mo. 14.3968), of 26 September 2014; motion by Mathias Reynard, "Build the capacity of the Federal Commission against Racism" (Mo. 14.3980), of 26 September 2014; interpellation by Cesla Amarelle, "Towards a national campaign against racism and anti-Semitism?" (Ip. 14.3985), of 26 September 2014 (dealt with in the National Council on 12 December 2014 and settled); interpellation by Aline Trede, "Fifth report of the European Commission against Racism and Intolerance on Switzerland: measures to combat racism and anti-Gypsyism" (Ip. 14.3877), of 25 September 2014 (dealt with in the National Council on 12 December 2014 and settled); interpellation by Luc Recordon, "The situation in relation to anti-Semitism and racism" (Ip. 14.3921), of 25 September 2014 (dealt with in the National Council on 11 December 2014 and settled); interpellation by Ada Marra, "Knowledge of religions as a means of combating racism and xenophobia" (Ip. 14.3783), of 24 September 2014; parliamentary procedural request (postulate) by Christophe Darbellay, "Strengthening preventive measures against violent extremism" (Po. 14.3710), of 11 September 2014. The following were submitted for the first session of 2015: postulate by Ada Marra, "Combating

the general awareness-raising and monitoring measures to combat racism, anti-Semitism, Islamophobia and extremism, these requests called for the extension of the mandate of the Federal Commission against Racism during legal proceedings based on article 261 bis of the Criminal Code, an increase in the resources of the Federal Commission against Racism and the Service for Combating Racism, measures aimed at specific population groups (particularly the Yenish/Travellers and black people) and measures to enhance knowledge of religions. The parliamentary procedural requests refer to briefings by the parliamentary group against racism and xenophobia and the socialist group of the Federal Assembly, held with representatives of the scientific and political communities as well as with the Federal Commission against Racism and the Service for Combating Racism. As these activities show, those working to combat racism know how to make themselves heard when politicians and the public engage in heated debates on this subject.

16. In February 2015, the Service for Combating Racism published a report on the survey entitled “Living together in Switzerland”. The report tracks racist, anti-Semitic, Islamophobic and xenophobic trends among the population and describes the public’s views on how to combat them. The press conference provoked lively debate in newspaper opinion and editorial pages and encouraged a culture of open and critical debate on the issue in the online media.

### **Follow-up to the recommendations contained in paragraph 13 of the Committee’s concluding observations**

**Naturalization. The Committee recommends that the State party ensure that any revision of the Swiss Citizenship Act does not have a disproportionate and discriminatory impact on certain groups. It also reiterates its previous recommendation that the State party adopt uniform standards on integration for the naturalization process, in conformity with the Convention, and take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party, including by establishing an independent and uniform appeals procedure in all cantons.**

17. In accordance with the Federal Act of 29 September 1952 on the Acquisition and Loss of Swiss Citizenship (the Citizenship Act, SR 141.0), Swiss nationality can be acquired by operation of law only (filialion, adoption) or naturalization. Under the Act there are three types of naturalization: ordinary naturalization, facilitated naturalization and reintegration. Ordinary naturalization is the rule and therefore the most common type of naturalization. In accordance with the country’s federalist structure, the ordinary naturalization procedure involves three levels: all Swiss citizens are entitled to citizenship of a canton and of a municipality as well as Swiss citizenship. This three-tiered nationality structure is reflected in the structure of responsibility for regular naturalization, in which the federal, cantonal and municipal authorities are involved.

18. The Act on the Acquisition and Loss of Swiss Citizenship was partially amended on 21 December 2007 in order to ensure that the naturalization procedure is non-discriminatory and non-arbitrary; the new provisions have been in force since 1 January 2009. Procedures regarding the obligation to justify any rejection of an application for naturalization and the right to appeal against the refusal of naturalization have been assigned to the cantonal level. The cantons have thus

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Islamophobia and anti-Semitism through prevention measures in addition to sanctions for xenophobia or racism” (Po. 14.4127), of 10 December 2014.

amended their legislation so that it is possible to appeal a rejection of an application for naturalization before their courts.

19. On 4 March 2011, the Federal Council adopted a dispatch on the complete revision of the Federal Act on the Acquisition and Loss of Swiss Citizenship (Federal Gazette 2011 2639) for consideration by the parliament. The parliament adopted the new Citizenship Act on 20 June 2014, following much controversy and a procedure for the resolution of differences between the two chambers. In order to be able to apply for naturalization, foreign nationals must now be well integrated, hold a permanent residence permit (C permit) and have lived in Switzerland for at least 10 years. In calculating the length of stay, time spent in Switzerland by applicants between the ages of 8 and 18 counts double and time spent under temporary admission counts for half. The cantons for their part may impose a minimum stay in the canton of between two and five years. In addition to respect for public order and safety, respect for the values of the Federal Constitution, a willingness to participate in economic life or undergo training, and the ability to communicate orally and in writing in one of the national languages are now among the criteria for successful integration. Persons who apply for naturalization are also expected to encourage their families to integrate. Before the final vote, the opponents of the proposed revision condemned the text, which, in their view, created an additional barrier to the integration of young people and citizens of countries outside the European Union and persons temporarily admitted to Switzerland. The bill was nonetheless adopted by the parliament.

20. In the dispatch concerning the complete revision of the Citizenship Act, the Federal Council announced that an implementing provision should be drafted as part of the revision (to date, only the Ordinance on Fees under the Nationality Act has been enacted; SR 141.21). The aim of this implementing provision will be to harmonize naturalization criteria and procedures and to specify the level of language skill required, the procedures and certain concepts of law which require clarification. In parallel with the conditions laid down by the Confederation, the cantons and the municipalities can always set out their own naturalization criteria and, for example, establish more stringent requirements in terms of integration. They must, however, comply with the prohibition against discrimination and arbitrary treatment and respect the principle of proportionality. A new ordinance on the Naturalization Act, which is currently being drafted, will be submitted for consultation this year; the final draft will be included in the next periodic report of Switzerland.

21. In January 2015, the Federal Council adopted an opinion on the report of the National Council's Political Institutions Committee of 30 October 2014 on parliamentary initiative 08.432 entitled "Switzerland must recognize its children" and known as the Marra initiative.<sup>8</sup> It expressed its support for the goal of facilitated naturalization for third-generation foreigners and stressed that the harmonization of the conditions for naturalization would eliminate the inequalities between the laws of the cantons. On 11 March 2015, the National Council endorsed this position; the matter will now be reviewed by the second Council.

22. The Federal Commission on Migration recognizes that the entry into force of the amended Citizenship Act in 2009 already made the naturalization procedure "more objective". However, it regrets that, under the current three-tiered system, the professionalism of the naturalization procedure is not guaranteed everywhere, and it argues for a radical change in the system. According to the Commission, it must be ensured, within the framework of existing legislation, that persons applying for naturalization are aware of the criteria to ensure the professionalism of the procedures, that the naturalization authorities regularly participate in training and that there are

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<sup>8</sup> [www.dfpj.admin.ch/Actualité/News/Communiqué du 21.01.2015](http://www.dfpj.admin.ch/Actualité/News/Communiqué%20du%2021.01.2015/>%20«Pour%20une%20naturalisation%20facilitée%20des%20jeunes%20étrangers%20de%20la%20troisième%20génération») > «Pour une naturalisation facilitée des jeunes étrangers de la troisième génération».

regular exchanges between naturalization authorities to promote a more harmonized procedure.

23. There are already close exchanges of views and experiences between the State Secretariat for Migration (the naturalization authority of the Confederation) and the cantons. These exchanges take place in the context of the annual conference of cantonal authorities monitoring civil status registration. The State Secretariat for Migration also regularly organizes conferences and working meetings with the cantonal naturalization authorities. These exchanges ensure that, in practice, the naturalization procedure is non-discriminatory. The Confederation and the cantons also strive to ensure a transparent process; they already provide applicants with detailed information on naturalization. Information on the relevant legal basis, guidelines, jurisprudence and other elements, such as the stages of the procedure and dual citizenship, is publicly available and can be obtained online.

24. Some cantons have taken additional steps: in order to foster a non-discriminatory and fair evaluation of the level of integration of naturalization applicants, the canton of Aargau has offered members of the municipal naturalization committees training on the subject of discrimination, moderated by a specialist and supported by the Service for Combating Racism; the canton of Lucerne has drawn up guidelines for the municipalities, based on cantonal jurisprudence, to guarantee non-discriminatory procedures; in collaboration with the municipal naturalization authorities, the canton of Appenzell Ausserrhoden in 2004 developed a guide to the ordinary procedure; in addition, the Cantonal Office of Social Affairs regularly organizes high-level conferences during municipal meetings on naturalization to help harmonize practice at the municipal level.

### **Follow-up to the recommendations contained in paragraph 16 of the Committee's concluding observations**

**The Committee urges the State party to eliminate any indirect discrimination and undue obstacles for persons granted provisional admission status to enjoy their basic human rights. In this regard, the Committee reminds the State party that differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim and are not proportional to the achievement of that aim, as set out in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens. The Committee recommends that the State party eliminate disproportionate restrictions on the rights of provisionally admitted persons, in particular those who have been in the State party for a long time, by enabling them to move freely within the State party and by facilitating the process of family unification and access to employment, educational opportunities and health care.**

25. The legal situation of persons temporarily admitted into Switzerland greatly improved following the entry into force on 1 January 2008 of the Federal Act of 6 December 2005 on Foreign Nationals (SR 142.20). Under the Act, persons admitted temporarily can have members of their family join them in Switzerland and can exercise gainful activity regardless of the situation in the labour market and the economic situation. Each canton receives an integration allowance for every person temporarily admitted to its territory. Persons temporarily admitted into Switzerland have the opportunity to apply for a residence permit after a stay of five years.

26. *Regulation of temporary admission:* Under article 44 of the Asylum Act of 26 June 1998 (SR 142.31), as a general rule, the State Secretariat for Migration issues a

removal order and orders the enforcement of the decision when it rejects an asylum application or refuses to consider the application. It automatically must consider whether enforcement be blocked (see article 83 of the Act on Foreign Nationals). If the enforcement of removal is not lawful (because it is contrary to the obligations of Switzerland under international law), cannot be reasonably required (because it would specifically endanger the person) or is not possible (for technical reasons), the State Secretariat for Migration orders the temporary admission of the person, subject to article 83, paragraph 7, of the Act on Foreign Nationals. In accordance with that article, temporary admission is a substitute measure invoked in cases in which it is not possible to enforce removal. In 70 per cent of cases, temporary admission is ordered because removal cannot be enforced. This is the case for persons from countries affected by civil war or widespread violence, primarily Somalia (2,609 temporary admissions because removal orders could not be enforced), followed by Afghanistan (1,826), Sri Lanka (1,307) and Iraq (1,160).<sup>9</sup>

27. *Arrangement, duration and termination of temporary admission*: The canton of residence issues temporarily admitted persons with an F permit. This permit is valid for a maximum of one year and is extended by the cantonal migration authorities. The State Secretariat for Migration periodically checks that the conditions for temporary admission are still being met. If they are no longer met, it revokes the temporary admission and orders the enforcement of removal (see article 84 of the Act on Foreign Nationals). Persons admitted temporarily into Switzerland who have stayed for more than five years can obtain a residence permit based on their level of integration, family situation and the enforceability of a return to their country of origin (see article 84, paragraph 5, of the Act on Foreign Nationals). Such applications are carefully examined based on the aforementioned criteria. Statistics on residence permits for hardship cases between 2009 and 2013 indicate that between 2,000 and 3,000 such permits were issued annually. Approximately 84 per cent of them were issued to persons who had already been temporarily admitted into Switzerland.<sup>10</sup>

28. It is true that, under the law in force, restrictions are imposed on temporarily admitted persons who wish to travel abroad. Between March 2010 and December 2012, they could travel without any restriction. However, this freedom of movement was criticized in a number of political initiatives after it was found that temporarily admitted persons were increasingly also travelling to their countries of origin. That is why, since December 2012, the Ordinance on the Issue of Travel Documents for Foreign Nationals (SR 143.5) has set out the permitted reasons for travel of persons admitted temporarily. Travel abroad is authorized for humanitarian reasons or for other reasons such as death or illness of a family member, or for school and sporting events. Travel to the country of origin or departure is allowed only in exceptional circumstances (see arts. 7 and 9, of the Ordinance). Three years after temporary admission is granted, travel abroad for other reasons, such as professional reasons and family visits, is permitted if the person admitted temporarily is integrated in Switzerland (see article 9, paragraph 4 (b), of the Ordinance).

29. At the earliest, three years after temporary admission is granted, spouses and unmarried children under 18 years of age can benefit from family reunification (see article 85, paragraph 7, of the Act on Foreign Nationals). Family reunification is authorized if the temporarily admitted person has appropriate accommodation, if the family is not dependent on social assistance and if the family members live in the

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<sup>9</sup> For additional information, see the report of the Federal Council in response to the parliamentary procedural request (postulate) submitted by the radical-liberal group of 24 September 2013. Asylum. Statistics on residence permits for hardship cases. Bern, 30 June 2014.

<sup>10</sup> Ibid.

same household. The decision to allow entry to the family members of a temporarily admitted person must take account of the criteria for the protection of families.

30. Temporarily admitted persons can freely choose their place of residence in the canton to which they have been assigned. The cantonal authorities may, however, assign a place of residence or accommodation in the canton to temporarily admitted persons who have not been recognized as refugees and who are receiving social assistance benefits (see article 85, paragraph 5 of the Act on Foreign Nationals). Temporarily admitted persons who wish to reside in another canton may submit a request to change cantons to the State Secretariat for Migration (see article 85, paragraphs 3 and 4 of the Act on Foreign Nationals). After consulting the cantons concerned, a change of canton is granted if the principle of family unity prevails or when the person faces a serious threat. The agreement of the cantons concerned is required in all other cases.

31. Article 19 of the Federal Constitution of the Swiss Confederation of 18 April 1999 (SR 101) guarantees the right to adequate and free basic education, irrespective of the status of persons subject to compulsory education if they are foreign nationals. This fundamental right is also provided for in various international conventions. As a result, the children of temporarily admitted persons have the right to attend school. Under article 62 of the Constitution, public education is the responsibility of the cantons. They provide for adequate basic education that is accessible to all children. This education is compulsory and subject to administration and supervision by the public authorities.

32. Temporarily admitted persons are covered by health insurance, since any persons domiciled in Switzerland must take out health insurance covering illness, or be ensured by their legal representatives, within three months of establishing their domicile or being born in Switzerland (Federal Act of 18 March 1994 on Health Insurance, SR 832.10, art. 3, para. 1).<sup>11</sup> Insurance coverage takes effect on submission of the asylum application, the order for temporary admission or for granting of interim or temporary protection (Ordinance of 27 June 1995 on Health Insurance; SR 832.102, art. 7, para. 5). Temporarily admitted persons are thus entitled to all benefits provided under the basic insurance.

33. The cantons provide social assistance to temporarily admitted persons in need. Social assistance for temporarily admitted refugees is the same as for refugees who have been granted asylum.

34. The cantonal authorities may grant temporarily admitted persons permission to engage in gainful activity regardless of the situation in the labour market and economic conditions (Act on Foreign Nationals, art. 85, para. 6). With regard to labour market regulations, refugees admitted temporarily receive the same treatment as other refugees (Asylum Act, art. 61) and can therefore receive permission to engage in gainful activity regardless of the economic situation in Switzerland.

35. *Legal measures planned to promote the inclusion in the labour market of persons who are in the asylum system:* As a general rule, temporarily admitted persons reside in Switzerland for several years or stay permanently. However, they are often not well integrated in the labour market: the participation rate among persons of working age (between the ages of 16 and 65 years old) has been between 35 and 40 per cent in recent years. This low rate is due to a lack of professional skills, the situation in the labour market and restrictive administrative rules (see above, the obligation to receive permission to change canton and engage in gainful activity). In addition, employers are required to withhold a special tax on income from gainful employment (see article 88 of the Act on Foreign Nationals, as read with article 86 of the Asylum Act). In view

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<sup>11</sup> Federal Act of 18 March 1994 on Health Insurance (SR 832.10).

of the relatively low income of temporarily admitted persons, this withholding of 10 per cent of their salaries, in addition to tax at source of 10 per cent, discourages them from exercising a gainful activity. The Federal Council is of the view that the integration of temporarily admitted persons in the labour market can be fostered through incentives and the withdrawal of administrative barriers for employers. In order to be better integrated in the labour market, temporarily admitted persons must be considered an integral part of the “local potential”. For this reason, a bill on the implementation of article 121 (a) of the Constitution provides for the abolition of the special withholding tax on income from gainful activities and the need for this group of persons to obtain permission to work. These proposals are in line with a report prepared by the cantonal labour and migration authorities.<sup>12</sup> The bill was submitted for consultation from 11 February to 28 May 2015.

36. *Report in response to parliamentary procedural request (postulate) 14.3008 of the National Council's Political Institutions Committee of 14 February 2014*: This postulate tasks the Federal Council with examining how to improve the status of temporarily admitted foreign nationals through the Asylum Act and the Act on Foreign Nationals or through new regulations. On 28 May 2014, the Federal Council proposed that the postulate should be accepted, and the National Council did so on 12 June 2014. The report, which should be available later in 2015, also responds to the postulates of Hodgers of 29 September 2011 (11.3954 “Restriction of temporary admission”, known as the Hodgers postulate) and of 26 September 2013 (13.3844 “Temporary admission. New regulations for greater transparency and fairness”, the Romano postulate).

37. Other measures taken by the Confederation, the cantons and the municipalities also focus on the situation of foreign nationals temporarily admitted to Switzerland. The cantonal integration programmes, for example, include measures to enhance the employability of this category of foreign nationals (and of refugees). On 26 January 2015, in its dialogue on integration, the Tripartite Conference on Urban Areas (a political platform of the Confederation, the cantons, cities and municipalities) established the objective, together with the social partners involved, of integrating more recognized refugees and temporarily admitted foreign nationals into the labour market. In addition to the Swiss Contractors' Association and the Swiss Federation of the Hotel and Restaurant Industry (GastroSuisse), the industry organizations Allpura, hotelleriesuisse (the Swiss Hotel Association) and swissstaffing are now also engaged in the dialogue on integration.

38. In 2014, the Federal Commission on Migration prepared papers on the issue of the protection of displaced persons and protection mechanisms: a benchmark study focused on the protection needs of different groups of displaced persons and on the current and future challenges to the granting of protection. An analysis of the SYMIC<sup>13</sup> data of 133,000 temporarily admitted foreign nationals was carried out to assess the stays of these persons. According to the analysis, over the past 20 years, the proportion of temporarily admitted persons who retain that status for a long period has continued to rise (the proportion of those who have this status for 16 years or more has grown continuously since 1994 and accounts for roughly 12 per cent of temporarily admitted persons). On the basis of these results, the Federal Commission on Migration made four recommendations on the current and future granting of protection. In particular, it recommends the introduction of a supplementary protection status, which would be granted in the asylum procedure when persons who do not meet the

<sup>12</sup> Association of Swiss Labour Offices (AOST), Association of Cantonal Migration Services (ASM). Integration of temporarily admitted persons and recognized refugees. Bern, November 2014.

<sup>13</sup> SYMIC: Central Migration Information System of the State Secretariat for Migration.

requirements for refugee status would be at risk of ill-treatment if returned to their country of origin. The status would give them the same rights as recognized refugees, without any cantonal differences (in relation to permission to work, for example), and, after a period of six years at most, such persons could obtain a regular residence permit. The Federal Commission on Migration also recommends the introduction of transitional regulations for the 24,000 temporarily admitted foreign nationals currently residing in Switzerland. These recommendations will now contribute to the public debate.

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