Switzerland: Vulnerable Groups and Multiple Solidarities in a Composite State

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Introduction

This chapter analyses how social policies aimed at reducing social risks translate into an institutional imperative to support and protect vulnerable groups in Switzerland. More precisely, we perform a legal and policy analysis to assess, first the impact of the country's internal diversity (internal factor) and second the European economic crisis (external factor) on coverage of the institutional solidarity schemes. We argue that within highly contested fields like migration, unemployment and disability, social protection schemes are dependent on the political salience which shapes a particular solidaristic logic and reframes the social safety net.

Swiss Solidarity in the Context of the EU Financial and Economic Crisis

The European financial and economic crisis has long extended beyond the Eurozone. Switzerland has been affected as its major trading partner is the European Union. Germany, France and Italy purchase roughly 30% of all Swiss merchandise exports. Still in contrast to the EU countries the effects of the crisis have not disturbed the positive slope of the Swiss Gross Domestic Product (GDP) trend. It has increased from 551,547 to 650,250,556 Swiss francs (International Monetary Fund – PGI 2008 – 2016). Switzerland is the 15th largest export economy in the world and the second most complex economy according to the Economic Complexity Index (ECI). In 2015, Switzerland countered with a positive balance of trade despite the sensitivity of the Franc to the Euro nominal exchange rate. Some of the

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reasons for this resilience can be found in bilateral trade agreements and a «debt brake» legislation[1] established in 2000 (Schwok 2012, 79-84).

However, the Swiss economy faced some challenges during the hardest period of the economic crisis, namely:

- The euro-franc currency fluctuations. The rise of the Swiss franc against the euro during the crisis was only stopped by the introduction of a minimum exchange rate of 1.20 francs to the euro by the Swiss National Bank (SNB). Still the Swiss franc was overvalued[2].
- A Swiss banking industry without banking secrecy: the negotiations and approval by the Swiss Parliament of the automatic exchange of tax information which ended a long-standing conflict between the EU and Switzerland.
- The initiative against mass immigration launched by the conservative right Swiss People's Party which compromised bilateral relations with the EU. As a consequence, the nature of the EU debate in Switzerland changed and the bilateral treaty strategy has been impacted by new economic and institutional core issues in the Swiss debate on policy vis-à-vis Europe.

Switzerland has more than 120 bilateral agreements with the EU, which are routinised within the domestic framework. Still since the mass immigration initiative, the renegotiation and implementation of these agreements is on the table, and more conservative positions are pulling toward restrictive labour market measures to protect border regions to the EU, in particular.

In general and despite these challenges, the economic situation in Switzerland was prosperous and unparalleled compared to the situation in most European countries at the time. Switzerland therefore represents an outlier case from the rest of the European countries, which faced serious

1 For an in-depth discussion on the Swiss Sanderfall, 'Swiss particularity' and a critical assessment of the bilateral agreements (Switzerland-EU) through the lenses of Swiss neutrality, territory security and popular voting (SCHWOK 2012).

2 In January 2015, the Swiss National Bank removed a three-year-old 1.20 franc per euro cap, described as 'unsustainable'. Today many experts are predicting that the cap removal will impact companies creating pressure on wages, relocation and job loss. However, this assumption about the Swiss economy is stuttering and the consumption decline has been receiving a fairer assessment since the second semester of 2016 and onwards. Prof. Sergio Rossi, Economics – University of Fribourg. Interview – 6 January 2016 – www.swissinfo.ch.

economic recession and adopted severe austerity measures during the crisis period. The crisis impact in terms of economic numbers may not be so dramatic for the Swiss case but when analysing solidarity in action it is not only an issue of economic assessment, but a general assessment of the legal framework and crisis-driven legislation.

During the crisis period, key issues remained tangent to the economic challenges. Immigration became a hot topic in the public debate. During 2010-2014, EU-28/EFTA immigration increased by about 17% while the Swiss migratory balance was negative (State Secretariat for Migration – SEM). In addition, the characterisation of the immigrant population in Switzerland changed: immigrants are now more qualified. Currently, sixty percent of immigrants (aged 25-64 years old) hold a tertiary degree and thus enhance the so-called «brain gain» for the country which contrasts with the popular plea for more restrictive immigration policies (Church 2016). In addition to immigration, unemployment and disability were as well strategically linked to the changes within the social legislation. As a result of economic and debt pressures on social policies, the social policies targeting these groups were strongly redefined under the employability criteria and individual responsibility discourses. As a consequence, it can be rightly argued that the situation of these three vulnerable groups is of particular interest when considering solidarityin action in Switzerland. Besides, to analyse solidarity in action, it has to be pointed out that the country is extremely liberal with a moderate decommodification but a high generosity index (Scruggs and Allan 2006, 67). The Swiss social legislation has been deeply shaped by the strong federalism and decentralization of the State power. Within a twofold perspective the chapter first unveils the legal mechanisms sustaining the solidaristic safety net of the country, and secondly reveals the triggers of change in the social schemes during the crisis period. Further, three traversal issues are addressed all through the analysis: the political and territorial complexity of the Swiss Federal State, the social-liberal welfare model and the crisis' impact in the social schemes focused on unemployed people, people with disability, migrants and asylum seekers in Switzerland.

Disability

As part of the constitutional fundamental rights, Article 8 'Equality before the law', expresses a general principle against discrimination on the

grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of a physical, mental or psychological disability[3]. Additionally, the article strategically focuses on the equality of rights between men and women and the elimination of inequalities affecting people with disabilities (Art. 8, para. 3-4, Cst.). These strategic priorities have been reflected in the development of two federal laws – the Equality Federal Act between Men and Women (*Loi fédérale* sur l'*égalité* entre *femmes* et *hommes* – LEg) and the Equality Federal Act for People with Disability (*Loi sur l'égalité pour les handicapés* – LHand)[4]. Nevertheless, it was only in 2014 that Switzerland ratified the UN Convention on the Rights of Persons with Disabilities (CRPD – 2006). Its ratification represents a supplementary legislative step forward in the overall legal framework concerning disability, due to the monism of the Swiss legal system according to which any international treaty ratified by Switzerland directly becomes part of the Swiss legal order and is readily implemented with no special procedure being requested[5]. Thus, the CRPD has the same status as federal law. Both nationally and internationally, the disability policy framework has evolved toward a more holistic approach. With this regard the Swiss legislation and more precisely the LHand has integrated a broadening of the disability paradigm by conceiving disability not only as a physical, psychological or mental individual difficulty but also as an environmentally conditioned one, which impedes the everyday inclusion of the people living with disability (Art. 2 LHand; Federal Social Insurance Office FSIO 2014). As a result,

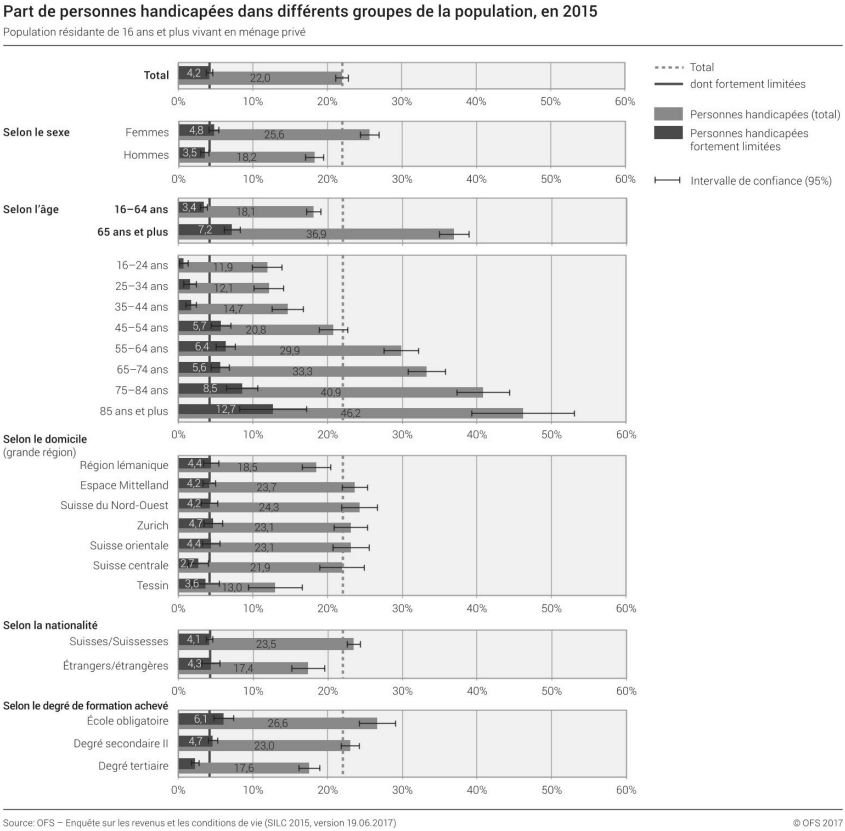
3 Remarkably on 21 March 2017, the Cantonal Tribunal of Appenzell Rhodes-Extérieures has, for the first time in Switzerland, recognised a case of discrimination based on disability. In the case at stake a spa was condemned for having refused access to some students with disabilities. https://www.inclusion-handicap.ch/fr/aktuelles/news/wegweisend-erstmals-urteil-wegen-diskriminierung-von-menschen-mit-behinderungen-205.html (accessed on 5 May 2017).

4 Ordinance du 19 novembre 2003 sur l'élimination des inégalités frappant les personnes handicapées (Ordinance sur l'égalité pour les handicapés, OHand), Ordinance du 12 novembre 2003 sur les aménagements visant à assurer l'accès des personnes handicapées aux transports publics (OTHand), and Ordinance du DETEC du 23 mars 2016 concernant les exigences techniques sur les aménagements visant à assurer l'accès des personnes handicapées aux transports publics (OETHand).

5 Federal Department of Foreign Affairs, Relationship between international and domestic law, https://www.eda.admin.ch/eda/fr/home/aussenpolitik/voelkerrecht/einhaltung-foerderung/voelkerrecht-landesrecht.html (last access 3 April 2017).

the disability legislation in Switzerland is complemented by inclusive policies which primarily foresee the provision of individual services and the support by specialised institutions such as schools, labour markets and specialised shelters, with the major aim of adapting and including the vulnerable group demands in the public and private environments.

Share of people with disability by degree of disability, gender, age, nationality and education



Source: OFS – SILC 2015 survey data reported in 2017.

Currently in Switzerland, about 1.6 million people have some degree of disability corresponding approximately to one fifth of the total population (8 million). Within this figure, only 29% of people have serious disabilities, which strongly limit ordinary daily activities. More specifically, the

disability-vulnerability in Switzerland is related to age, gender and social stratification. As shown in Figure 1 below, women are subject to a higher proportion of disability and strongly limited handicap. Similarly, elderly people are more often affected by functional limitations or health conditions which come with age. Additionally, within this vulnerability matrix, we observe that social stratification plays an important role too; within the educational distribution, people with a tertiary education degree suffer less from health conditions or impairments.

Framework Law

The Helvetic legal framework on disability is mainly defined by the Law on Disability Insurance (DI) adopted in 1959, – and its subsequent amendments- and by the Federal Law on the Elimination of Discrimination against People Living with Disability (LHand). The LHand entered into force in 2004 and its legal implementation was developed through three major ordinances[6] which quickly established the Swiss welfare state policy on disability and inclusion[7].

These two legal frameworks complement each other and express the conception and evolution of disability over time. The legal concept of disability embedded in the confederation legislation first targets the individual situation of the beneficiary as described in the DI. Secondly, it strategically focuses on the elimination of inequalities, as foreseen in the LHand,

6 Ordinance on equality for people living with disability (OHand, RS 151.31), Ordinance on adjustments to ensure access for people living with disability to public transport (OTHand, RS 151.34), Ordinance on technical requirements for the adjustments to ensure access for people living with disability to public transport (OETHand, SR 151,342).

7 Legal provisions concerning disabled people are also contained in other legislations, namely: Law on Telecommunications (Art. 16 al. 1a bed a-c), Ordinance on telecommunication Services (Art. 33), Federal Law on Vocational Training (Art. 3 bed c; Art. 18 al. 1; Art. 21 al. c; Art. 55 para. 1), Ordinance on vocational training (Art. 35 al. 3, Art. 57 al. 2), Ordinance on Confederation staff (Art. 8), Federal Law on Direct Federal Tax (Art. 33 al. 1), Federal Law on the Harmonisation of Direct Taxes of Cantons and Communes (Art. 9 al. 2), Federal Law on Radio and Television (Art. 7 al. 3; Art. 24 al. 3), Ordinance on Radio and Television (Art. 7 and 8), Federal Law on Cableway Installations Designed to Carry Persons (Art. 9 al. 4.), Ordinance on cableway installations designed to carry persons (Art. 11 bed b), Regulations concerning air travel, Federal Law on Copyright and Related Rights.

and further, on welfare state policies. Remarkably, neither the DI nor the LHand make explicit reference to the term 'solidarity', however it is implicitly framed through other key concepts as shown in chapter 9 of Part I.

The DI defines disability as «the diminution of earning capacity presumed to be permanent or long-term, resulting from an impairment of physical or mental health from a congenital infirmity, illness or accident» (Art. 4 DI); and provides for an insurance which ensures a basic living rent in the event of disability, by means of rehabilitation measures or cash benefits. The DI ensures individual decommodification by tackling and reducing inequalities' triggered by loss of income due to disability. In other words, it foresees to guarantee a decent standard of living for people with disabilities and it addresses the need for social justice. It aims at preventing, reducing and addressing the economic effects of the person's health condition by supporting vocational rehabilitation, providing financial services (insured annuities) and the professional integration of people living with disability. However, after various law revisions, particularly reflected within the fourth (2003) and fifth (2008) revisions of the DI, the current legislation accords a keen importance to autonomy and individual responsibility. Within this new perspective, the weight falls mainly on the obligation of the insured person to participate in the economic life – labour reinsertion.

The Lhand complements the legal framework on disability by implementing the principle of non-discrimination enshrined in the Constitution (Art. 8 para 4 Cst). The law defines disability as any form of physical or psychiatric impairment that hinders everyday life and limits the possibilities of working and training (Art. 2 LHand). It provides for the right to appeal in case of discrimination due to a disability (Art. 8 LHand). Moreover, it aims at facilitating the participation of people living with disability, by breaching the major environmental obstacles to their autonomous participation in society through the establishment of adequate facilities (Art. 15 LHand). In addition, it contains provisions to encourage the adoption of specific programmes for the inclusion of persons living with disability in the areas of education, work, housing, public transport, culture and sport (Art. 16 LHand). Remarkably the LHand foresees also the creation of the Office for the Equality of People with Disability (Art. 19 LHand), which in fact has been established since 2004.

The assessment of LHand carried out by the Federal Department of Internal Affairs in 2015 has pointed out that the legislation has improved the situation of the people with disability especially with regard to public

transport and access to services[8]. Moreover, some other developments have been identified, special measures for the reintegration of people with disability into the labour market and the introduction of an assistance allowance. These measures are part of the sixth revision to the DI adopted in 2012 which aims at allowing people with disability to live on their own by financing as well home-based services (Egger et al. 2015, 11).

However, the evaluation has also pointed out the existence of further margins of improvement and the lack of a general disability mainstreaming policy at cantonal level. It is worth reiterating that the LHand, as other federal laws, has to be implemented at cantonal level and the Federal Supreme Court has pointed out that the provisions contained in the LHand constitute only guidelines for the establishment of cantonal legal frameworks for the elimination of discrimination based on disability (TF 134 II 249 E-2.2: 251, 4 décembre 2014). In addition, a major shortcoming of the law, it is the insurance of the equality of chances on the labour market for the people with disability. As a result, the evaluation report points out this aspect as a strategic priority for the following years. Furthermore, the LHand has not been able to improve the situation of social stigmatization related to the disability condition. Finally, the Federal Department of Internal Affairs in its evaluation has highlighted the paucity of data available about the implementation of LHand.

The Right to Education

Art. 62 para. 3 of the Swiss Constitution states that "The Cantons shall ensure that adequate special needs education is provided to all children and young people with disabilities up to the age of 20".

Until the end of 2007, the Federal Disability Insurance Law was the only legislation concerning the federal aspect of special needs education. It regulated the identification and co-financing of special needs education

8 The LHand provides that all infrastructures are open to the public, similarly all buildings composed of more than 8 houses and all places of employment with more than 50 employees have to be accessible to the public (Art. 3 letter a together with art. 7 LHand); furthermore, the LHand obliges public and private actors to prevent, reduce and eliminate inequality in accessing services (Art. 3 letter together with Arts. 8 and 12 para. 3 LHand) and foresees the elimination of all barriers in public transport by 2030 (Art. 22 para 1 LHand).

services for children and young people with more severe disabilities. However in 2008, with the entry into force of the new division of competencies between the confederation and the cantons, responsibility for funding special schools was transferred entirely to the cantons.

According to Article 20 para. 1 LHand, in fact, "The cantons ensure that children and young people receive obligatory education, which is adapted to their special needs" and it also encourages the integration of disabled children within ordinary schools.

In Switzerland, there are special schools for pupils with intellectual disabilities, pupils with physical disabilities, pupils with severe behavioural disorders, pupils with hearing, speech or visual impairments, and chronically ill pupils (hospital schools). The classes are in the same building as mainstream classes and under the same administration.

Children and young people with special needs who are integrated into mainstream schooling are supervised by a support teacher, who is involved in the class for a certain number of hours, depending on a pupil's needs.

With a judgement issued on 4 December 2014 (2C_590/2014), the Federal Supreme Court has decided that the additional costs of assistance requested for the integration into an ordinary school cannot be borne by parents. The community must cover these additional costs as regular assistance costs. The case concerned a cantonal legislation that provided for the integration of people with disabilities in ordinary schools with a maximum of 18 hours of assistance covered by the cantons, while the rest of the assistance needed had to be covered by the family. The Tribunal declared the cantonal legislation contrary to Art. 19 (Right to basic education) and Art. 62 (School education) of the Federal constitution, concerning school education. The judgment made reference to the principle of non-discrimination (Art. 8 para 2) and to the principle of academic freedom (Art. 20 para 2).

This case application can be considered as solidarity in action, since it orders the community to cover the costs for the integration of people into ordinary schools. According to the Tribunal, the principle of free compulsory education prevails over other considerations, including financial constraints (2C_590/2014).

Generally, less densely populated areas (e.g. the canton of Valais) due to their geographical situation, benefit from more integrative and inclusive offers than in others Swiss Cantons. In addition, the cantonal autonomy also encourages a distinctive range of programmes. For instance, the can-

ton of Ticino follows to some extent the Italian model of integration: the so-called "sostegno pedagogico", a model of teaching support to accompany pupils with disability in mainstream schools limiting the possible segregation for the less severe forms of special needs.

The Right to Work

Work represents a fundamental element for the integration of disabled people into society and the Swiss Constitution asks the Confederation "to encourage the rehabilitation of people eligible for invalidity benefits through contributions to the construction and running of institutions that provide accommodation and work" (Art. 112.b para. 2. Cst.). In line with this constitutional provision, the LHand aims at promoting the integration of people suffering from disability into society by supporting their reinsertion into the labour market (Art. 1 para 2 LHand), while DI deals specifically with promoting the reintegration of people with disability into the labour market (Arts. 7a, 14a, 15-18d)[9]. It is relevant to note that within the frame of the amendments to the DI which have gone hand in hand with a budgetary stabilisation policy, the disability allowance is allocated only in situations of impossibility of reintegration in the labour market.

With specific regard to the labour market, several challenges remain since people with disability continue to face difficulties in integration. Remarkably, the LHand evaluation states « Le monde du travail reste lui un casse-tête, les dispositions de la LHand ne portant que sur la Confédération en tant qu'employeur » (Département fédéral de l'intérieur 2017, 13). Furthermore, the measures adopted to promote the (re)integration of people with disability within the labour market have been judged insufficient and not in line with Article 27 of the CRPD (*ibid.* 2017, 11). Consequently, the evaluation report recommends assessing and encouraging the application of the legislation to private employers and to the cantonal and municipal administrations (*ibid.* 2017, 16).

According to the estimates of the Swiss Federal Statistical office, in 2014, three out of four people with disability in active age (16-64) were engaged in the labour market: 71% were employed and 4% were unem-

9 Moreover, it is worth pointing out that at federal level some other legislations deal with topics related to access to the labour market for people affected by disability such as the law on professional and continuous training.

ployed, representing the 75% of the total population with disability considered to be active (standard definition of International Labour Office – ILO). However, the main share of people with disability participates in the 'primary labour market' but mostly under protected structures adapted to the capacities of people with disability, the 'so-called secondary market'. This is particularly the case for people living in institutions and participating in protected workshops, which provide predominantly occupational gain coupled with some productivity gain. The 2014 occupational rate showed that almost half of the people who have a health condition or impairment, work on a part-time basis. The largest share of part-time work activities is developed by people suffering from severe handicap and women. In the particular case of women, the part-time activity is highly predominant across all groups (with or without health conditions or physical disability).

These particular facts were considered and addressed by a recent judgment of the European Court of Human Rights (ECHR), which in the case di Tizio v. Switzerland[10], condemned Switzerland for assessing disability benefits in a manner that disproportionately penalised women.

In the case at stake, the Swiss authorities had used a combined method of assessing disability benefits, which assumed that even without a disability the applicant would not have been employed full-time in order to tend to her household and children. This method was not considered discriminatory and unlawful by the Swiss Federal Tribunal in 2008[11]. The Tribunal issued a judgment determining that disability insurance is not intended to provide compensation for work that would not have been possible even without a disability but rather to compensate for activities that they would have been otherwise carried out (Arrêt 9C_49/2008).

On the contrary, the ECHR found that the "combined method" constitutes an indirect discrimination and impedes progress towards gender equality, and recommended increasing support for the development of a disability assessment method more favourable to persons who work part-time and that better protects women from disproportionate hardship with respect to both their paid work and domestic duties. Although the ECHR

10 *di Trizio v. Switzerland*, no. 7186/09, Judgement of 2 February 2016 (in French only).

11 The Swiss Federal Tribunal is the highest appellate court in all fields except social insurance. It is not empowered to rule on whether federal legislation is in conflict with the Swiss Constitution.

did not make an explicit reference to 'solidarity', it based its legal reasoning on the principle of equality and non-discrimination, guaranteed by Art. 8 of the Swiss Constitution and Art. 14 of the European Convention on Human Rights: this judicial stance assesses the link between the solidarity principle and the equality one, which allows the courts to rely on the latter for turning down some measures.

These figures and case law suggest that, despite the progressive legal framework concerning disability, people with disabilities still face difficulties entering the labour market. When they participate, they are often subject to poorer work quality conditions compared to non-health afflicted workers. In particular, they are more often subject to discrimination and violence at work. According to a survey carried out in 2016, roughly 5% of the interviewees said that they have suffered from discrimination because of their disability condition during the 12 months prior to the survey (Federal Statistical Office 2016).

Public Assistance

The provision of minimum subsistence and other forms of support to people with disability is a condition that ensures that they can effectively enjoy their rights. The Swiss Constitution states that "the Confederation and cantons shall endeavour to ensure that every person is protected against the economic consequences of old-age, invalidity, illness, accident, unemployment, maternity, being orphaned and being widowed" (Art. 41 para 2, Cst.). Moreover, "the Confederation shall take measures to ensure adequate financial provision for the elderly, surviving spouses and children, and persons with disabilities" (Art. 111ss Cst.). In line with the principle of Swiss executive federalism "the cantons shall provide for assistance and care in the home for elderly people and people with disabilities" (Art. 112c para. 1. Cst.). Quite remarkably, these provisions make explicit reference to solidarity between the confederation and cantons since Art. 112c para 2 provides that "The Confederation shall support national efforts for the benefit of elderly people and people with disabilities. For this purpose, it may use resources from the Old-age, Survivors and Invalidity Insurance". Some cantons and regions have proposed innovative policies. The social policy implemented by the canton of Bern for example is inspired by the principle of self-determination and provides for an employment relationship between the person with disabilities and the rela-

tives for their support (Politique du handicap du canton de Berne 2016 Rapport du Conseil-exécutif au Grand Conseil: 49).

Revisions to the Legal Framework on Disability and the 2008 EU Economic Crisis

Since 1990, the DI law has been at stake and strongly redefined. The major transformations of the law were crafted within the fourth (2003), fifth (2008) and sixth (2012) revisions of the law. These changes were the result of economic and debt pressures accumulated by the disability insurance scheme. The new definition of disability conceals a perception of disability as 'objectively measurable', so the disability could be considered as a feasible reversible state, surmountable. As a result, the Law on Social Insurance of 2000 states that «there is no incapacity for gain unless [the harm to health] is not objectively surmountable» (LPGA Art. 7 para. 2). Currently, people who cannot prove their «objective» disability are required to fit back into the world of work. This particularly sounds out people with 'non-objectifiable' health conditions or impairments, and it mainly affects psychiatric patients (Tabin 2009). The disability legal framework has shifted toward a criterion of employability. It has strengthened the focus on the rehabilitation and the reintegration of the people living with disability. The measures provided within the implementation of the fourth and fifth revisions of the DI focused on the reintegration and maintenance of the work activity. While the latter revision (6th revision) foresaw the reinsertion to the labour market of all pensioners with a professional potential (CHSS 2/2011; Probst et al. 2015).

These revisions are framed within the disability management approach. The fifth modification of the DI provides prevention and support to people suffering from disability in order to prevent additional psychological risk factors linked to the disability (Geisen et al. 2008; Guggisberg et al. 2008). The sixth modification appends a periodic review of rents, including previous permanent rents under the argument of 'poorly used working capacity' of people living with disability (Bieri and Gysin 2011; Probst et al. 2015).

More specifically, the latest revision of the DI has been built into two major pieces of legislation, the revision 6a of the DI and the revision 6b of the DI. The first step of the sixth revision is to improve the financial situation of the DI. The revision 6a currently implemented intends to reduce

the annuities of nearly 18,000 people over six years. The article 8a of the DI law establishes the concept of new rehabilitation pensioners, by which pensioners are subject to new rehabilitation measures listed in the legal framework and to the monitoring of their rents. Also, within the law Art. 7a and 7b enforce sanctions on the pensioners when not following the new rehabilitation measures. Finally and until the end of 2014, through the enforcement of the 6a revision current allowances based on "syndrome without clear aetiology and pathogenesis" will be revised (Spagnol 2010; OFS Centre d'information AVS/AI en collaboration avec l'Office fédéral des assurances sociales, 2011). In respect to the second piece of legislation of the sixth revision, its two major objectives are to particularly rehabilitate people living with mental disability and to introduce a linear pension system in which complete pensions would be given only to people living with 70% or more degree of disability. Also the 6b revision will reduce by 30% the allocation given to the people living with disability who are in charge of an infant (Agile 2009). As observed, the main target of the DI revisions is to reduce costs through the rehabilitation of pensioners and their reincorporation into the labour market. This philosophy was already introduced within the fourth and fifth revisions of the law but translated into enforcement acts within the sixth revision (Agile 2012).

Consequently, the disability legal framework shifted from targeting «compensation rents» to working «readaptation rents» within the scope to restore or improve earning capacity (Probst et al. 2015, 112). The repercussion of the revisions prioritises rehabilitation; the insurance is now organised around the employability criteria (Probst et al. 2015, 112-113). More generally, the modifications of the disability legal framework in Switzerland assert the importance of the rehabilitation measures and activation policies as fundamental to the development of a social and professional identity of the people with disability. These will enable the full participation of the people with disability in Swiss society where the social roles of adults are largely organised around productive and paid work. The implicit solidarity expressed within the current disability legal framework defines solidarity as a goal of social cohesion based on individual responsibility and autonomy.

In the Swiss context, the main concerns within the disability field do not lie with the lack of legislation but with the implementation and the effective financing of measures (funds, services) which have been subject to strategic budget reductions or reallocation. Still these are not the result of the EU economic crisis but a product of the disability management ap-

proach. Indeed, this was highlighted in the vast majority of interviews[12] carried out in September and October 2016 with disability associations in Switzerland[13]. These tend to denounce the technocratic drift imposed by public authorities, which does not ease the inclusion of people with disabilities into the job market and into society: "There is a strong will to better control and regulate public subsidies. That is a good thing because money comes from every citizen but the State is also reducing our manoeuvrability and flexibility, […] it's a real burden for us which takes away a lot of resources"[14]. Likewise, these associations also raised the challenges for inter-cantonal partnerships triggered by the federal structure of the country, which in some way allows for a discrete length of time in implementing the disability insurance federal law at the cantonal level. Lastly and unlike the unemployment and migration fields within the disability field, interviewees clearly expressed the necessity to go beyond the direct beneficiaries of the programmes. Inclusion is embedded in their discourse as equality. As a result, most of the organisations also cover side groups like the relatives of the beneficiaries, experts and companies: "We shall make progress in the mental illness field, and for that we need to mobilise every actor of our society, not only people with a mental health conditions but we also need to involve and increase the awareness of their relatives, public institutions, companies, researchers and other associations"[15]. Their target population definition embraces an inclusive conception toward the people with disability. It seeks solidarityon different

12 According to the TransSol research project's tasks, we carried out 30 in-depth interviews with representatives/participants of Transnational SolidarityOrganisations (TSOs) in Switzerland, from the two main linguistic regions, ten for each of TransSol targeted issues (disability unemployment, and migrants/refugees).

13 The sample selection criteria prioritised a bottom-up approach, focusing on informal, non-professional groups and organisations, including activist groups, umbrella organisations, networks, help groups and service-oriented organisations. Concerning the interviewees' profiles, these were mostly highly qualified workers who occupied a relevant position within the association. For disability The interviewed TSOs were mostly NGOs, professional associations and non-profit associations. Only one of the TSOs could be considered as predominantly protest oriented. The interviewed TSOs were all well-established and highly professionalised. Furthermore, due to the transnational focus of our inquiry within the sample universe, the selected disability TSOs were strongly represented by organisations that implement as well as cooperation and development projects abroad.

14 Interview realised between September and October 2016.

15 Ibid.

scales and between groups on the grounds of equality as in the LHand strategic goals.

Unemployment

Generally, studies describe the Swiss model of unemployment insurance as a liberal model that has evolved towards a social-liberal model since the adoption of a common unemployment insurance system and some essential protection measures for vulnerable groups on the labour market (Schmidt 1995). The institutionalisation of the Swiss social security system has been strongly conceived within a labour-contribution insurance base scheme. The benefits and losses of income insurance are dependent on contributions and oriented towards a family recipient model led by a male bread-winner (Bertozzi and Bonoli 2003; Armingeon 2001).

The current Swiss legal framework concerning unemployment comprises Art. 114 of the Constitution, which provides for unemployment allowance and prescribes the legislation necessary to legislate on it. The main legislation in unemployment is the Federal Law on Compulsory Unemployment Insurance and the Insolvency Allowance (Loi sur l'assurance-chômage, LACI) of 1982. Its creation and application was the result of a constitutional amendment and an urgent federal decree adopted in 1976. The amendment preluded in June 1977 the introduction of a new constitutional article imposing a transitional regime to a common federal mandatory unemployment insurance (Article 34 novies of the 1874 Constitution). This major revision of the unemployment social scheme was at first sight conceived as a crisis-driven legislation due to the 1970s world economic-recession and energy crisis, and not dependent to the labour market's structural factors. However, during the 1990s, both structural factors (an increase in computer technologies, development of means of communication) and short-term factors (the Gulf War consequences) preluded the first (1990) and second (1997) revision of LACI (Rubin 2006, 77).

The LACI encompasses two kind of political tools in order to tackle unemployment. The first type – passive policies – were mainly used before 1996 and consist of compensating for loss of wage of unemployed people. The second type – activation policies – have been the most common since 1996. Activation policies foresee several political and legal provisions to reduce unemployment: wage subsidies (Art. 65 LACI), vocational training (Art. 60 ff LACI), and actions to increase the entry into the labour market

(in particular with the implementation of the regional employment offices (ORP) (Art. 76c, LACI).

The LACI does not make explicit reference to the concept of solidarity. However, within the framework of the fourth revision (2012), we see an outright expression of solidarity: it introduces the so-called temporal solidarity-based contribution of 1% for the wages between 126,000 CHF per year (corresponding to about 107,000 euros) and 315,000 CHF (corresponding to about 290,000 euros) for restoring the economic balance of the scheme. Remarkably, in 2014 the higher threshold was removed by the Federal Council[16].

Along general lines, the current unemployment scheme continues to cover only paid work, excluding any consideration of the self-employed, domestic and care-aid. This mainly affects women and migrants namely those carrying out these professional activities. In addition, the payment of the contributions does not guarantee entitlement to compensation in the event of unemployment. In fact, LACI requires a minimum of months of contributions to qualify for insurance benefits (6-month in 1982, 12-month since 2012 after the 4th revision of the law).

This compulsory labour scheme is financed by equal contributions between the employer and the employee (Article 2, LACI). In addition, the unemployment scheme is partially financed by the Confederation which covers costs of employment services and labour market measures, and cantons, which cover some of the complementary measures' costs.

LACI provides benefits equivalent to 80% of the income for workers with children, with 40% or more disability or with low income, and 70% for the rest.

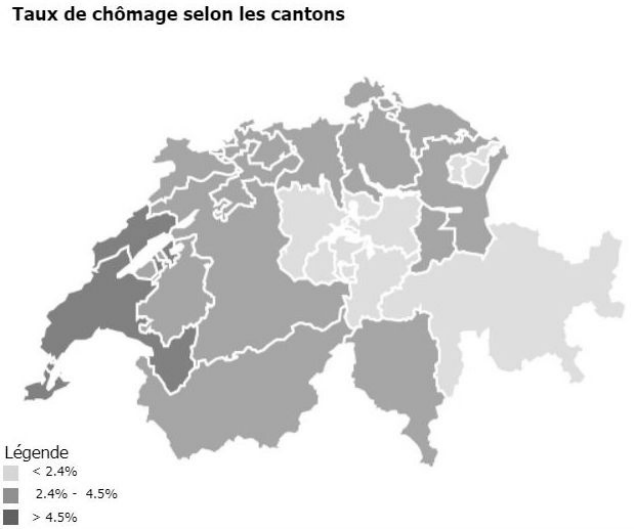
Unemployment in Figures

Since the mid-1990s, the unemployment rate in Switzerland has fluctuated between 3.5 and 4%, with the exception of the years 1999-2002 when the rate fell to 2.5%. Compared to other western European countries, the rate of unemployment in Switzerland is low. However unemployment rates vary between cantons and linguistic regions. The canton of Zurich togeth-

16 https://www.admin.ch/gov/fr/start/dokumentation/medienmitteilungen.msg-id-50526.html.

er with French and Italian-speaking cantons have the highest unemployment rates (see the figure 4 below).

Figure 4: Unemployment rate in Switzerland in 2016



SECO (2017)

Some sociodemographic facts about the distribution of unemployment in Switzerland extracted from the SECO's 2017 monthly assessments showed that more than half of the unemployed rate share correspond to Swiss nationals. Women compared to men have a lower unemployment rate about 15% points in mean difference (41% against 57%). The largest share of unemployed people corresponds to full-time jobseekers (87%) and the highest share of unemployed people (62%) are to be found between the group of people of 24-49 years. More specifically, the rate of *structural unemployment*[17] and *long duration*[18] unemployment in Switzerland is about 17% while the highest rate of the duration of unemployment

17 Structural unemployment is a longer-lasting form of unemployment caused by fundamental shifts in an economy and exacerbated by extraneous factors such as technology, competition and government policy.

18 Long duration unemployment is defined as the share of active people who have been unemployed for than a year.

correspond to a period of one to six months. In fact during all of 2015 the average benefit receipt period of unemployed daily allowances corresponded to 93 working days.

As observed through these sociodemographic facts, we could argue that solidarity defined as some kind of membership to the same community which enhances a strong cohesive identity of a group or collectively, is hard to develop within the Swiss unemployed population; this is because it is changing constantly and the unemployment rate is low. This conjecture is in line with the scarce political participation and mobilisation resulting from the empirical analysis performed by scholarship (Giugni et al. 2014).

Three main particularities differentiate the unemployment insurance scheme from other Swiss social insurance schemes. First, the unemployment insurance does not depend on the individual conditions but on the labour market conditions. Second, the unemployment insurance system is subject to the supervision of the State Secretariat for Economic Affairs (SECO) and not of the Federal Social Insurance Office (FSIO). Finally, the insurance legal framework on compensation assumes that insured people are suitable to work, while in other social insurances compensation is usually related to a diminishment of the working capacity (Rubin 2006,12). However, as shown in the previous section, the latter revisions of the disability insurance have also shifted the scheme conception of risk toward a logic of employability as in the LACI. However, the employability criteria introduced in the LACI foresees measures to ensure individual decommodification and to enhance and to ease faster labour reintegration, but not the creation of jobs: the law defines as employable «who is ready, able and qualified to accept reasonable work and to participate in integration measures» (Art. 15, LACI). However, the law discriminates within the unemployed population based on age criteria. As a matter of fact, every person over 30 years old has to «immediately accept any job that corresponds to their experience and education, while unemployed persons below the age of 30 are required to accept any job irrespective of suitability to their competences and experiences» (Art. 16, LACI). This differentiation embraces a logic of young people's working capacities as a learning process within enterprises, boosted by the flexibility of the job market that enhances a sequence of changing working environments. This concept has been clarified by the Federal Supreme Court in a judgment issued in 2013 about denial of cantonal social assistance after refusal to accept "suitable work" proposed by the city of Bern (8C_962/2012, 29 July 2013). The Federal Supreme Court argued that the right to enjoy social assistance is

subordinated to the condition that the person is notable to provide for himself/herself; the refusal of the proposed work which could have enabled to provide for himself/herself autonomously, prevents any claim to social assistance (para. 3.3). This right is in fact subsidiary to one's own capability to work (para. 3.5). Based on these considerations the Tribunal suspended the allocation of social benefit.

This decision is not so surprising since the courts have ruled on many occasions about the possibility of the legislator to stop social aid in cases of abuse of social insurance rights by the beneficiary (8C_500 / 2012, 22 November 2012), or non-compliance with the subsidiarity principle – i.e. unemployed people can benefit from social aid as long as they are not earning a salary from an undisclosed job (8C_962/2012, 29 July 2013).

Limits of the Unemployment Legislation and its Implementation at Cantonal Level

Some legal experts have highlighted that as most EU unemployment schemes, the Swiss unemployment scheme reveals an important sensitivity to the labour market conditions (Rubin 2006). The social scheme presents two major lacks: first, the financing of the LACI is dependent upon the share of the employee payroll, which is subject to contributions (art. 90 LACI); thus, when contributors of LACI are fewer (employers and employees), unemployment benefits decrease while total unemployment costs increase. Second, the so-called principle of 'causality' of the law – the compensation depends on the risk, not on the status of the person at the time of the contingency- which enhances two unfortunate consequences, overcompensation of some risks and poor compensation of cumulative risks (Rubin 2006, 12).

In addition, the federal structure of the country has also deeply challenged the overall uniformity of the unemployment scheme. As a matter of fact, the law implementation takes place at the cantonal level and according to numerous studies, the administrative capacity of the cantons and the local political tradition – public interventionism, subsidiarity, cantonal centralisation or cantonal decentralisation and corporatism – have favoured 26 different cantonal enactments of the unemployment assistance scheme (Giraud et al. 2007; Germann 1999 and 1986; Kissling-Näf and Knoepfel 1992). Moreover, the context of "executive federalism"– as a steering and implementation system of the law – has an important and

complex role in influencing the implementation of the law at each political-administrative level (Giraud et al. 2007, 21).

For many observers the main factor that explains differences in the LACI's implementation across cantons is inherent to the two objectives of the LACI: fostering social reintegration of unemployed people and combating the abuse of insured people. These two goals are incorporated in two different policy traditions. The first one comes from a tradition of policies focused on human resources which try to preserve human capital from deskilling workers – due to the long-term exclusion of workers from the labour market. These policies contain actions such as improving labour placement for unemployed people, reabsorbing the gaps in qualifications of workers, decreasing the negative impact of unemployment on social and professional domains. The second aim of the LACI – combating the abuse of insured people – comes from a tradition of policies focused on production. These policies avoid influencing the labour market and encourage workers to accept the realities of the labour market in order to provide the economy with the necessary labour force (Giraud et al. 2007, 40-41[19]).

The following table establishes a classification of the Swiss cantons based on the implementation of the LACI in terms of balance between the two traditions developed by Giraud and others. Policies focused on human resources (reintegration) and policies focused on production (control).

19 For an in-depth discussion on the unemployment social scheme legislation and federalism: Giraud et al. 2007.

Classification of the Swiss cantons within the implementation of the LACI by policy traditions

Control	reintegration			
High	High			Low
	Maximalist implementation			Partial implementation focused on control
	Basel-Stadt, Lucerne, Soleure	Berne, Grisons, Schwyz	Argovie, Bâle-Campagne, Glaris, Saint-Gall	Obwald, Nidwald, Uri
	Partial implementation focused on reintegration			Minimalist implementation
Low	Fribourg, Jura, Tessin, Valais, Vaud	Genève, Neuchâtel, Zoug, Zürich		Appenzell Rhodes-Extérieures, Appenzell Rhodes-Intérieures

Source: Giraud et al. 2007, 46.

An example of variations at the cantonal level is the implementation of the LACI in the City-canton of Geneva which stands as more generous than the general federal framework of the law. In 2012, the canton voted for an amendment that extends the access to the reinsertion measures for independent unemployed people. The canton also provides access to allocations of return to employment measures (ARE) and solidarityemployment (Eds) for particularly vulnerable categories of citizens, when their unemployment daily allowance is exhausted. In particular, the Eds are open-ended contracts created by non-profit organisations and associations active in the social and solidarity-based economy of the canton. These employments ensure fair pay and are subject to social security contributions. Moreover, they aim at avoiding the risk of loss of social bonds, in order to maintain and develop social networks (Prestations cantonales (GE); 7.4 Programme d'emplois de solidarité sur le marché complémentaire de l'emploi). This measure highlights therefore a conception of solidarity as a collective need to assist the most vulnerable[20].

20 "A Genève, le tissu associatif apporte des réponses à de nombreux besoins sociaux. En tant qu'association ou fondation, acteur de l'économie sociale et solidaire,

Changes to the Federal Law on Compulsory Unemployment Insurance and the Crisis

The first revision of the unemployment insurance law adopted in 1990 lightly introduced activation polices, but it still maintained a large share of passive measures: it reduced the compensation contribution of the employers in case of reduction of working hours to encourage the reduction of working hours instead of the workers' dismissal and extended the maximum job training allocations (Rubin 2006). In addition, it abolished progressive reduction to income daily allowances based on the duration of unemployment, which penalised the long-term unemployed. However, during the debate of the fourth LACI revision in 2010, the progressive reduction was strongly discussed, although it was not re-introduced into the final draft of the law[21].

The first revision of the LACI was not sufficient to reduce unemployment and it was not robust enough to protect vulnerable populations from unemployment. For these reasons, in June 1994 a second partial revision of the LACI was proposed and introduced in 1996. This reform crafted the foundations of the current law by introducing measures focused on a human resources approach (reintegration) and measures focused on production approach (control). Three major aims were defined within the law: first, to develop labour market regulation measures through new active reintegration dispositions in order to help unemployed people's labour market reintegration; second, to establish Regional Employment Offices (ORP) (Art. 85b LACI); and finally, to introduce a new system of specific daily allowances (Rubin 2006, 86). Between the second and the third revision of the LACI, other minor revisions entered into force. One of the most technical reviews of the LACI took place in 2000. It granted more autonomy to the cantons in the implementation of their tasks, facilitating the use of services introduced by the second revision of the law such as ORP and unemployment funds and it also reduced the daily allowances (Département fédéral de l'économie, de la formation et de la recherché,

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vos actions sont dirigées vers les plus défavorisés. Aujourd'hui, par la création d'emplois de solidarité, la possibilité vous est offerte d'agir en faveur de l'insertion professionnelle des demandeurs d'emploi en fin de droit les plus fragiles." François Longchamp Conseiller d'Etat.

21 History of the Swiss Social Security; version 2013. Office fédéral des assurances sociales OFAS. Available at: http://www.histoiredelasecuritesociale.ch/.

Secrétariat d'Etat à l'économie 2013; Artias 2010). Various scholars have stressed that the third revision of the law in Switzerland coincided with the bilateral negotiations between Switzerland and the EU, which impacted the political discourse about insurance scheme access and benefits.

As within the creation of the LACI and its first reform, the latest revision of the unemployment scheme had also taken place during a period of economic crisis and increasing unemployment, even though the impact of the current crisis on Switzerland, as discussed before, has been less severe than in other EU countries. However, from the qualitative data analysis of the interviews to stakeholders, grassroots movements and associations, it emerges that despite the limited impact of the 2008 crisis in Switzerland, these actors were confronted with the need to provide support to higher numbers of unemployed people with the same resources: "Today, we help a higher number of people […] more and more workers, as well migrants from Portugal and Spain due to the economic crisis"[22].

The fourth revision of the LACI entered force April 2011. Its main objective was the consolidation of the financial equilibrium to assure the continuity of unemployment insurance. In pursuance of this goal, LACI funds increased while reducing costs. The mandatory contribution rate raised from 2% to 2.2% of the wage. Some specific benefits were reduced but not the basic ones. It has also strengthened the link between the number of months of contribution and the duration of the compensation: in order to qualify for 400 daily subsistence allowances, it is now necessary to have contributed for at least 18 months. The fourth revision introduced: one percent point solidarity contribution to fund the unemployment insurance upon wages equivalent to CHF 126,000 or more (ibid. 2013).

To sum up, it can be pointed out that, since the 1990s, the unemployment scheme in Switzerland experienced first an expansion of benefits and measures, then a continual re-categorisation of subjects entitled to benefits and an increasing rigidity of social policies. With regard to this process the associations interviewed during our qualitative organisational research highlighted changes within their target populations, the enlargement of the vulnerable groups and the enforcement of more restrictive laws. Job insecurity was translated into more precarious working conditions; impacting a higher number of families as well, more people were to be found in vulnerable situations: "My associative engagement came before my profes-

22 Interview realised between September and October 2016.

sional life [...] and then one day I became a precarious worker, like the people I helped"[23]. In addition, some of the associations commented that the politicisation of migration issues and the EU crisis have enhanced competition for social aid, competition against the latest comers within a logic of deservedness: "Currently, a very violent discourse exists between the social recipients, against migrants […] it's terrible because it's like a competition between vulnerable groups"[24]. The majority of the interviewed associations, however, had no system or indicators in place to assess the direct impact of the crisis on their daily activities. The changes in the policy domain were framed within a larger welfare state retrenchment in matters related to workfare, activation policies and job market reintegration. All the connections to the crisis were mainly indirect and strongly linked to migration.

Immigration/Asylum

Switzerland is widely recognised as a country of immigration. Historically immigration has been an important component of the Swiss economy. According to recent data, one fourth of the Swiss population was born abroad (OFS 2015). Economic reasons are the main ones given for immigration. Switzerland is in fact a country «which has successfully implemented guest worker initiatives with active economic recruitment policies alongside restrictive integration and naturalisation policies» (Klöti et al. 2007, 622). However, these economic policies are nowadays confronted by a hostile public opinion towards immigration and asylum, which the statistics do not sustain (OFS, Enquête sur le vivre ensemble en Suisse 2016).

In fact, with regard to asylum figures, the number of asylum seekers had already reached a record level (over 40,000 people) in 1991, 1998 and 1999. Remarkably, against the trend of other European countries, since 2013, net foreign immigration to Switzerland has continued to decrease: according to the figures of the State Secretariat for Migration (SEM), the net migration rate was 60,262 people, thus 15% less than in 2015. Nevertheless, in 2016, 2,029,527 foreign people were living in Switzerland, 70% of whom come from the European Union or European Free Trade Associ-

23 Interview realised between September and October 2016.
24 Ibid.

ation (EFTA)[25]. Similarly, a decrease in the number of lodged asylum applications has been registered. In 2016, 27,207 asylum applications were filled in representing a decrease of 31.2% with regard to 2015[26]. This decrease is mainly due to geo-political reasons such as the closure of the Balkans route in 2016. In general, variations in the numbers of asylum seekers coming from specific regions occurs very often (Church 2016, 131). In 2016, the majority of asylum seekers in Switzerland came from Eritrea, followed by Afghanistan, Syria, Somalia, Sri Lanka and Iraq. The arrival of asylum seekers from specific countries made it more likely immigrants to become targets of hostility for the populist parties. This was the case in the summer of 2015. Eritreans were the object of discussions between the right-wing party Swiss People's Party (SVP) and the cantonal authorities of Lucerne, who called the government to refuse the recognition of asylum applications coming from citizens of some specific countries (Church 2016, 136).

Indeed, migration has become a matter of political dispute in Switzerland. On the one hand populist parties pledge for more restrictive policies and promote controversial initiatives such as the the 2014 popular initiative against mass immigration and the 2009 referendum against the construction of minarets on mosques in the Swiss territory. On the other hand the Swiss national Government tries to foster more integration of migrants. Constitutionally, Article 121 assigns to the Confederation exclusive competence to legislate on the entry, exit, residence, establishment and the granting of asylum to foreigners, while cantons are responsible for executing policies.

However, at the national level a part of the population seems to be hostile to less restrictive immigration laws (Freitag and Rapp 2013). This attitude finds an explanation in the long tradition of '*Überfremdung'*, i.e. «the idea of a foreign overpopulation threatening Swiss identity» (Riaño and Wastl-Walter 2006, 1) which has inspired previous federal policy toward immigration. Already in the 90s, the Federal Council launched the «three circles» policy which identified three groups of immigrants on the basis of their feasible integration into Swiss society. The first circle composed by European Union nationals was defined as culturally close and took precedence vis-à-vis other migrant groups. The middle circle was reserved for

25 https://www.sem.admin.ch/sem/fr/home/aktuell/news/2017/2017-01-26.html.
26 https://www.sem.admin.ch/sem/fr/home/aktuell/news/2017/2017-01-23.html.

nationals from the USA and Canada, which were categorised 'half-way' culturally distant to the Swiss and had secondary priority with respect to Europeans. The third circle was composed of 'all other states' which were defined as ‘culturally distant’ to the Swiss and who were allowed to enter the country under exceptional circumstances (D’Amato 2010).

Conservative Swiss attitude towards immigrants emerged for example in the 1992 popular vote when Switzerland refused to participate in the European Economic Area (EEA) and in the 2014 popular initiative against mass immigration[27]. In particular, a hostile public opinion against more flexible immigration policies in Switzerland, has been reinforced by the population's perception of the limited use of direct democratic tools in this domain. Since 1931 and in contrast to other issues, migration policies have been mainly regulated through ordinances, outside the direct democratic process (Klöti et al. 2007, 627). This modality of decision-making has attracted criticism and it has boosted general hostility towards immigration policies upon the basis of tradition and attachment to direct democracy. In addition, it is evident that the European Union does not directly impose its reforms on countries that are not members. However, European policies affect and influence Swiss immigration policies indirectly (Goetz 2002). For instance, despite refusals by popular vote of the1992 to the EEA, a bilateral Agreement on the Free Movement of Persons (AFMP) was negotiated between the Swiss Confederation and the 15 old members of the EU in 2002. Since then the Swiss immigration policy has been mainly characterised by a binary system: first reserved to immigrants from EU / EFTA countries, and secondly to all third countries.

27 There have been eight popular initiatives for a more restrictive immigration policy since 1970 and this was the only successfully accepted by the ballot box. Previous initiatives were: the 1970 Popular initiative “Popular initiative against foreign infiltration”; the 1974 popular initiative "against foreign ascendancy and overcrowding of Switzerland"; the 1977 Popular initiative “for the protection of Switzerland” (fourth initiative against foreign ascendancy); the 1977 People's initiative “for limiting the annual number of naturalisations” (fifth initiative against foreign influence); 1988 popular initiative "for limiting immigration"; 1996 federal Decree concerning the popular initiative "against illegal immigration" and 2000 popular initiative "for the regulation of immigration".

Switzerland within the European Law System

Although Switzerland has not adhered to the EU and the European Economic Area (EEA), it is a member of the Council of Europe and of the EFTA. In respect to the European Convention on Human Rights (ECHR), Switzerland has abstained from ratifying the 1st (right to peaceful enjoyment of property, right to education and right to free elections by secret ballot), 4th (no deprivation of liberty for non-fulfilment of contractual obligations, right to liberty of movement and freedom to choose one's residence, prohibition of a State's expulsion of a national, prohibition of collective expulsion of aliens) and 12th (general prohibition of discrimination) additional protocols of the ECHR. In the field of migration law, these abstentions are particularly important with regard to the prohibition of collective expulsions and general prohibition against discrimination (SCHR 2015). Similarly, it has not adhered to the Charter of Fundamental Rights of the European Union which enshrines the prohibition against torture and inhuman or degrading treatment or punishment (art. 4), the right to asylum (art. 18) and the protection to immigrants in the event of removal, expulsion or extradition (art. 19).

However, the adherence to the Council of Europe has not be underestimated, since it entails the competence of the European Court of Human Rights to judge on the merit of alleged violation of the ECHR. As a matter of fact, the Strasburg Court has issued a series of judgments on the matter of immigration concerning Switzerland (e.g. Tarakhel v. Switzerland of 4 Nov. 2014, X c. Suisse of 26 Jan. 2017).

With regard to the relations between Switzerland and the EU, these are governed via a bilateral system of treaties that allows the country to participate in the European internal market. The Agreement on the Free Movement of Persons confers upon the citizens of Switzerland and of the member states of the EU the right to freely choose their place of employment and residence within the national territories of the contracting parties (to individuals with valid employment contract, self-employed, or in the case of no gainful employment their proven financial independence and full health insurance coverage). It is worth pointing out that the Agreement is subject to a guillotine clause: any termination of an agreement results in the cancellation of all other agreements of the package, which concerns the coordination of social security systems, the mutual recognition of professional qualifications, and transitional periods with regard to new EU members.

Another relevant pillar of the treaty system that governs the relations between Switzerland and EU is the adherence, since 29 March 2009, to the Schengen agreement that allows transiting from one country to another within the Schengen area without border control. Moreover, Switzerland has adhered to the Dublin Regulation (No. 2013/604) and to Eurodac Regulation (No. 2013/603) which regulate jurisdiction of processing asylum requests. However, when these regulations are modified, Switzerland will enjoy a period of two years to implement the corresponding changes in its domestic law.

In conclusion, it can be argued that Switzerland although not being a State member to the EU entails strong relationships with the European legal framework, which have deep implication with regard to immigration and asylum.

The Immigration Legislation for Third Countries Citizens

The Federal Act on Foreign Nationals (*Loi fédérale sur les étrangers*, 16 Decembre 2005, hereinafter LEtr) outlines the main features of the immigration and integration policies carried out by the Confederation, cantons and communes. The law regulates the conditions of admission, entry, residence, family reunification, and integration, including criminal provisions, end of stay and the temporary admission of immigrants into the Swiss territory. The law governs in particular the entry and stay of non-EU/EFTA country nationals and it is only applicable for some particular asylum domains. The LEtr improves the situation of foreigners staying legally and permanently in Switzerland, promoting their integration on the basis of constitutional values and mutual respect (Art. 4), while at the same time toughening sanctions against abuse like "fictitious weddings" (Art. 118). The reference to constitutional values indirectly includes the principle of solidarity– otherwise not explicitly mentioned in the LEtr. Moreover, the reference to mutual assistance between authorities in the execution of the legislation expressed in Art. 97 of the legislation is another expression of solidarity.

Remarkably, the immigration legal framework provides for a centralisation of power at the federal level: in fact, while the federal level is in charge of framing the policies and competences distribution, through the integration ordinance, cantons are responsible for all the institutional arrangements, programmes and social policies that concern the immigrants'

integration. Communes have the mandate to communicate to the immigrant population about the conditions of living and working in Switzerland and especially, on their rights and duties, and to provide them with public information on policy changes. Even the local asylum centres (State registration and processing centres) are directly dependent on the federal authority via the State Secretariat for Migration (SEM) (Art. 26, LAsi). The main flexibility toward cantons concerns the basic social aid which is delivered by the cantons (Art. 80, 82, 82a, LAsi) in line with article 12 (right to emergency assistance) of the Federal Constitution.

The legal anchor of the integration policies defined by the LEtr differs from canton to canton (Achermann and Künzli 2011, 45). Some cantons refer to the law as part of their own constitution (BL, BS, FR, SO, SZ, VD, ZH) but only six cantons have their own immigration and integration laws (AI, BL, BS, GE, NE, VD). Other cantons have integrated the regulations of the LEtr into their social policies or as legal dispositions. However, all cantons have established solid relations between immigration policies and integration policies, in which integration policies have shaped the bulk of the social advantages shared by immigrants within cantons (D'Amato et al. 2013).

Remarkably, on 1 October 2016, relevant changes to the Federal Act on Foreign Nationals and to the Criminal Code came into force[28]. Those implement the so-called 'deportation initiative' launched by the right-wing SVP party and adopted by the people in a referendum on 28 November 2010. According to this initiative, foreigners who commit criminal acts (of different nature, including social welfare frauds) can more easily be expelled. However, this rule does not apply for refugees or persons who risk facing inhuman and degrading treatment according to Article 3 ECHR (Hertig Randall 2017, 135-140).

It is worth to highlight that this initiative has prompted a harsh constitutional issue, involving the Swiss Federal Supreme Court and the Legislator. As a matter of fact, the Swiss Federal Supreme Court refused to apply the constitutional amendment accepted through referendum in a landmark decision issued in 2012 (BGE 139 I 16) arguing that the provision was not directly applicable and cautioning that in enacting the legislation. The

28 Federal Council, Neues Ausschaffungsrecht tritt am 1. Oktober 2016 in Kraft, 4 March 2016, available in German at: http://bit.ly/2kmXnuV.

Swiss parliament needs to be attentive to the ECHR and Swiss constitutional law.

The Legislator was confronted with the challenge of implementing the initiative while at the same time respecting human rights and more specifically the proportionality principle. In the meantime, however, the SVP-party proposed another referendum initiative (so-called the "Implementation Initiative") aimed at ensuring that the "Expulsion Initiative" would be implemented as originally intended. Under the Damocles sword of a second referendum on deportation the Parliament adopted the implementation provisions as part of the Criminal Code including a safeguard clause. The so-called "hardship clause" enables the authorities to refrain from removal in cases of serious personal hardship.

The Asylum Legislation

The Swiss Constitution provides for the right to asylum (Art. 25 para. 2-3 Const.) and sets out the provisions advocated by the EHCR (Articles 2-3), concerning the prohibition against the *refoulement* of refugees and its protection against their expulsion. Like most European countries, in Switzerland asylum is granted to refugees upon request, in accordance with a criterion provided within the Asylum Act (LAsi, 26 June 1998)[29], and « [it] includes the right to reside in Switzerland » (Art. 2, para 2, LAsi). People who initiate an application for asylum have to be in Switzerland or at the border (Art. 19, para 1 bis, LAsi). Moreover, some additional dispositions are stipulated if the asylum application is initiated at the airport (Art. 22-23, LAsi), particularly the possibility of interrogating the asylum seeker (Art. 22) and their temporary detention for a maximum of 60 days (Art. 22). The LAsi is tightly linked to the LEtr which specify the particular status of persons admitted temporarily into Switzerland[30] (Art. 80a para 6, Art. 86, para 2, Art. 88, Art. 126a), the measures about the right to fami-

29 The legislation is implemented through several ordinances, such as the ordinance on procedure (OA 1), the ordinance concerning housing and financial issues (OA 2) and the ordinance concerning protection of personal data (OA 3).

30 Provisionally admitted foreigners are persons who have been ordered to return to their native countries but in whose cases the enforcement has proven inadmissible because of violation of international law, unreasonable for endangerment of the foreigner or impossible for technical reasons. They are granted 12 months that can be extended of another year. (Art. 83, para. 3 and 4 LEtr).

ly reunification (Art. 3, para 2, Art. 47) and the departure from the country (Art. 76).

It is important to note that the Swiss asylum law has undergone a series of amendments in the last few years and further modifications are foreseen in the near future. In particular a process of restructuring the entire asylum system is under way, following the approval of an amendment proposal through a popular referendum held on 5 June 2016[31].

Contrary to the Member States of the European Union which are subject to European regulations concerning asylum, Switzerland's peculiar status makes the country not subject to most European directives concerning asylum. In this regard, Switzerland is not subject to either the Directive 2013/33 "Procedures", or the Directive 2011/95 "Qualification". This however does not mean that the country adopts a completely different legal framework. The federal legislation provides for similar provisions to those within the EU framework. In fact, the LAsi provides for procedural guarantees and the status of 'temporary admittance' that provides for situations which under EU law would be framed with the status of 'subsidiary protection'.

In addition, Switzerland can take a decision of «non-consideration» (*Non entrée en matière* – NEM) with regard to a request of international protection. This decision stems from the Swiss acceptance of the Dublin Regulation (Regulation 604/2013) and it is based on Art. 31a of LAsi which points out the reasons for dismissal of an application. These concern the return: 1) to a safe third country; 2) to a responsible country under an international agreement; 3) to the country of previous residence; 4) to the country from which the applicant holds a valid visa; 5) to the country in which relatives or people who have a close relationship with the applicant live; 6) to his/her native country or country of origin.

Although the NEM makes reference to a procedural decision, it also gives birth to a status which concerns «asylum applicants whose refugee status is denied when formal legal administrative requirements are incomplete» (Matthey 2012, 11). Persons subject to NEM must leave the country but generally do not do so – due to the lack of economic resources and they disappear from official records, leaving a legal vacuum (Matthey 2012, 11).

31 https://www.admin.ch/gov/en/start/documentation/votes/20160605/Asylum-Act%20.html.

The Social Legislation on Immigration/Asylum

The constitutional bulk of the principle of solidarity concerning immigration and asylum is represented by Arts. 12 and 19 of the Federal Constitution. The former provision entails a minimum support to preserve the person's existence from mendacity, and concerns any person in the country. The second provision guarantees free access to basic education.

In line with these constitutional dispositions, LAsi provides for social assistance and emergency aid (Chapter 5, Arts. 80-84): in particular, it sets out that "the Confederation shall work with the canton concerned to ensure that health-care and primary education are provided" (Art. 80), and that "Persons who are staying in Switzerland on the basis of this Act and who are unable to maintain themselves from their own resources shall receive the necessary social assistance benefits unless third parties are required to support them on the basis of a statutory or contractual obligation, or may request emergency aid" (Art. 81).

Remarkably, the legislation explicitly states that, for asylum seekers and persons in need of protection who do not hold a residence permit, the level of support has to be inferior to that given to the residents in Switzerland (Art. 82 para 3 and 4). This reference to different levels of benefits has been introduced with the LAsi revision adopted in 2012 and entered into force on 1 February 2014.

The people who have received a NEM decision can benefit only from emergency aid and not from further forms of social aid (Art. 83 para 1). Emergency aid however cannot be limited (ATF 131 I 166, para. 3.1.) and its amount varies from canton to canton. As a matter of fact, in 2015 the rate of social assistance (corresponding to the proportion of refugees and temporarily admitted persons benefitting from social aid with respect to the Swiss population) was 80.8% (SEM), while 4,967 persons benefited from emergency aid (corresponding to 46% of potential beneficiaries) with a diminution of 6% in comparison to 2014 (SEM, Rapport de suivi de la suppression de l'aide sociale 2015).

Bénéficiaires de l'aide sciale selon le statut de séjour, 2015

Statut de séjour[32]	Total	
	Nombre	Prop.en %
Total	20.036	100
Réfugiés reconnus B (- 5 ans)	13.812	68,9
Réfugiés admis provisoirement F (- 7 ans)	5.258	26,2
Permis de séjour annuel B	137	0,7
Permis d'établissement C	417	2,1
Autorisation de courte durée L	0	0,0
Réfugiés admis provisoirement F (+ 7 ans)	18	0,1
Personnes admises provisoirement F (+ 7 ans)	18	0,1
Sans autorisation	23	0,1
Autres statuts de séjour	352	1,8
Nationalité suisse	12	0,1
Ne sait pas	1	0,0
Non répondu	81	0,4
N	20.130	

Source : Office fédéral de la statistique OFS 2015

Swiss legislation provides the reimbursement of social assistance, departure and enforcement costs as well as the costs of the appeal procedure "*as far as it is reasonable" (*Italics added) (Art. 85). The reimbursement requirements apply to the persons in need of protection who become successfully employed, and it is justified by the need to cover the overall costs generated by their social assistance.

Similarly, the LAsi provides for the confiscation of assets to asylum seekers and persons in need of protection without a residence permit for the purposes of reimbursing the costs of his/her assistance in case they cannot prove the origin of the assets (Art. 87). However, "confiscated as-

32 Remarques: – Dossiers ayant reçu une prestation durant la période d'enquête, sans les doubles comptages.
- L'attribution des dossiers à FlüStat s'effectue d'après le statut de séjour du demandeur. La personne demandant l'aide sociale doit indiquer son statut de séjour qui peut être «Réfugié reconnu B (jusqu'à 5 ans)» ou «Réfugié admis provisoirement F (jusqu'à 7 ans)». Les autres membres de l'unité d'assistance peuvent par contre avoir un autre statut de séjour (permis de séjour B, C, L, AP7+ ou F7+) ou peuvent être de nationalité suisse. – Permis de séjour annuel (B): sans les réfugiés reconnus B. – Permis d'établissement (C): avec les réfugiés reconnus C.

sets shall be reimbursed in full on request if the asylum seeker or person in need of protection leaves the country under supervision within seven months of filing the application for asylum or the application for temporary protection" (Art. 87.5).

In 2015 the Swiss authorities confiscated assets in 112 cases, out of around 45,000 persons who in theory were subject to this regulation. This was a case of disconnection between law in the book and law in practice.

As far as the LEtr is concerned, the Act stresses the importance of integration (Chapter 8) and in particular provides that the Confederation shall grant financial contributions to promote integration (Art. 55). Moreover, the Act allows foreign nationals to work, provided that some conditions are met, such as being in the interests of the economy as a whole, and it has been proven that no suitable domestic employees or citizens of the state with which an agreement on the free movement of workers has been concluded can be found for the job (Arts. 18-25). These restrictions are in line with the Constitution, which does not guarantee access to the economic market rights to all foreigners, but «only to those who are admitted without restrictions in the domestic market or who have a right to obtain a residence permit» (Art. 27 Cost). In general terms, EU/EFTA citizens can benefit from agreements on the free movement of people that were put into force in 2002 which allow those citizens the right to enter, reside and look for work or to establish themselves as self-employed. On the contrary, citizens from all other countries (so-called third country nationals) must have a guaranteed work contract from an employer as well as the appropriate work visa before entering the country. Refugees, people who have been admitted provisionally and asylum seekers are allowed to take up gainful employment after the first three months post submission of their application. Beneficiaries of protection with income from employment have to pay 10% of their income to contribute to reception costs for 10 ten years (Art. 86 para 2 LASI). Remarkably, however, a proposition of modification of this requirement is under discussion[33].

As a matter of fact, the admission to the labour market is restricted to qualified persons. The Federal Council each year establishes a maximum

33 *Loi federal sur les étrangers (integration.).*

quota for short-term and long-term residence permits[34]. Remarkably, in this regard, in 2014 the majority of the population approved by referendum the popular initiative "against mass immigration which aimed at limiting immigration through quotas, also for European citizens. The initiative had to be implemented by legislation within three years, and in December 2016 Parliament found a solution of compromise in order not to break the bilateral agreements with the EU: it proposed a revision to the LEtr that gives preference to local people in the labour market but it does not introduce quotas. Art. 21a sets out that employers in sectors or regions with above-average unemployment have to advertise vacancies at job centres and give locals priority before recruiting from abroad. The violation of this provision is sanctioned with a fee of up to 40,000 CHF (equivalent to about 37,000 euro). The revisions, moreover, entail a novelty as far as social aid is concerned: the people who are in Switzerland looking for employment will not be entitled to social assistance, and their families neither (Art. 29a). This provision strengthens a reduction already in force: Art. 18 para 2 of OLCP sets out that if the job search lasts more than three months[35], the renewal of the short-term residence permit is conditional upon the disposal of adequate financial means. This reduction of social benefit is also in line with a previous amendment to the LEtr adopted in 2015 about revocation of residence permit: the competent authority may revoke permits, with the exception of the permanent residence permits, "if the foreign national or a person they must care for is dependent on social assistance" (Art. 62, letter e and 63, paragraph 1 letter c, LEtr).

The restriction on the status because of benefiting from social assistance is reflected also by the naturalisation legislation which was revised in 2014 and implemented through ordinance in 2016[36]. The legislation sets out a series of requisites for the naturalisation, such as the familiarity with Swiss living conditions, the participation in the Swiss social and cultural

34 In October 2016, the Swiss government announced the following quotas for 2017:

- 4500 "L" short term permits for non-EU/EFTA nationals
- 3000 "B" long term permits for non-EU/EFTA nationals
- 2000 "L" short term permits for EU/EFTA nationals on assignment/secondment
- 250 "B" long term permits for EU/EFTA nationals on assignment/secondment.

35 Currently, Art. 10 of LEtr provides that foreign nationals do not require a permit for any period of stay without gainful employment of up to three months.

36 *Ordinance révision de la loi sur la nationalité 17 June 2016.*

life, contact with locals, the sharing of local traditions; among them, it is remarkable to point out the requisite regarding the participation in economic life (Art. 12 para 1 letter d) legislation and Art. 4 para 2 letter a) and b) Ordinance), which means that the naturalisation is precluded to foreigners who have received social aid in the three years before the application. This qualification has been criticised as being discriminatory and detrimental to the social integration of foreigners, since it can be argued that naturalisation can enhance the capabilities of the individuals to integrate better into the community, finding more opportunities to provide for themselves economically (Hainmueller et al. 2015).

As already stressed, the cantons are responsible for the implementation of the Federal principles and therefore differences from canton to canton occur, with some cantons, such as the canton of Neuchâtel and Bern characterised by liberal migration policy, and others, such as the canton of Ticino, characterised by more restrictive migration policy (Marks-Sultan et al. 2016, 11).

The table below is a synthesis produced by the Swiss Centre of Expertise in Human Rights (2015) in respect to the general laws enhancing access to socio-economic rights to foreigners in Switzerland.

Table 5: Socio-economic rights entitlement to immigrant population

Socio-Economic Rights	Laws
Economic Rights	Swiss Constitution, art. 27 (only Swiss citizens or persons entitled to a residence permit benefit from this fundamental right) Access to labour market through the Agreement on the Free Movement of Persons (ALCP) or LEtr
Right to Education	Swiss Constitution, art. 19 Ordinance OASA (RS 142.201) which allows to follow a professional diploma even in irregular situation Agreement on the Free Movement of Persons (ALCP)
Right to Housing	Swiss Constitution: art. 8 (discrimination prohibition), art. 12 (right to get help in situations of distress) art. 13 (protection of the private sphere) Agreement on the Free Movement of Persons (ALCP)
Right to Health Insurance	Federal Law on Health Insurance (LAMal; art. 3: obligation to ensure all the persons domiciled in Switzerland)
Right to Social Security and Assistance	Agreement on the Free Movement of Persons (ALCP): Annexe II LEtr, LAsi, LAS (Federal Law on Aid to People in Distress) and ordinances (OLCP) RS 142.20

Source: Swiss Centre of Expertise in Human Rights, Manuel de droit Suisse des Migrations (2015)

Law's Enforcement and Jurisprudence

Although the number of immigrants and asylum-seekers in Switzerland is modest in total number if compared with other European countries, the recent 'refugee crisis' in Europe seems to have further triggered hostile opposition to migration that has been present in Switzerland for many decades.

The new emphasis on the issue has found expression especially with regard to Muslim communities, as assessed by: the prohibition of the construction of minarets introduced to the Swiss Constitution by popular vote in 2009 (Art. 72.3), the banning of wearing the burka in Ticino in November 2015 and the proposal of introducing a nation-wide ban.

The Judiciary, however, has partially lightened this restriction: in a recent judgement, the Federal Supreme Court had in fact ruled that wearing a headscarf is not a ground for exclusion from school because of the principle of neutrality of public schools (BGer 2C_121/2015, 11 December 2015).

Moreover, on 8 September 2016, the District Court of Bern-Mittelland issued a remarkable decision on the unlawful dismissal of a female employee because she started wearing a hijab to work (Urteil Regionalgericht Bern-Mittelland, 8. September 2016)[37].

Moving from the jurisprudence of the Swiss Federal Supreme Court concerning specifically the Muslim community to the jurisprudence regarding asylum-seekers and foreigners more in general, it is possible to argue that it has not changed considerably in the last years. In fact the Federal Court has continued to swing from considering minimum social benefits for immigrants as not in contrast with the Constitution (20 March 2009, ATF 135 I 119) to grant the same social benefits to refuges as to Swiss citizens (16 December 2008, ATF 135 V 94). With regard to foreigners coming from the EU, the Swiss Federal Supreme Court has on several occasions decided on the exclusion of social assistance to persons who come to Switzerland looking for jobs (2C-195/2014, 8C-395/2014).

The only relevant innovation in the jurisprudence concerns the recognition of cantons entitlements to provide basic aid for asylum seekers. Significant in this regard, is the judgement of the 11 June 2011 concerning ur-

37 See also: http://www.humanrights.ch/en/switzerland/internal-affairs/groups/cultural/wearing-a-hijab-grounds-dismissal.

gent social assistance for foreigners in the Vaud canton, where the Tribunal stated without making reference to solidarity, that even in the absence of a deportation order, Vaud authorities were committed to continuing the provision of relief benefits to a foreigner without a residence permit, even when the regularisation procedure was pending (ATF 136 I 254).

Besides the jurisprudential responses, some legislative initiatives with regard to immigration have to be mentioned, such as the popular referendum held in February 2016 regarding whether foreign citizens who commit minor offences, like traffic violations, in the space of ten years should be automatically deported. The proposal was rejected, but underscores the high tones of the political debate about migrants.

Looking at the law's implementation, it has to be highlighted that although the Swiss federal law concerning immigration (LEtr) forbids immigration detention of children under the age of 15 (Art. 80 para 4), the detention of minors has been denounced by some human rights organisations (Terre des hommes 2016). This aspect has to be considered in relation with the fact that according to the Swiss Federal Migration Office between 20% to 40% of migrants hosted in Swiss reception centres waiting for the asylum application processing flee the centre shortly after arriving[38].

As far as the confiscation of asylum-seekers' assets is concerned, this power of requisition seems to be used in a limited manner (0,25% of cases in 2015) (Church 2016, 135). However, the announcement of a similar policy in Denmark raised the debate on the legitimacy of the measure in Switzerland.

As already stressed, cantons are responsible for granting social assistance to persons with refugee status, asylum seekers and provisionally admitted persons, and half of the cantons have charged relief organisations with the management of social services for refugees. In the remaining cantons, either the communal social services are responsible or special cantonal welfare services for refugees. The Confederation compensates cantons for the assistance costs, and this represents a concrete application of the principle of solidarity in the Swiss context. Social assistance for asylum seekers includes coverage of basic needs such as food, clothes, transportation and general living costs, in the form of an allowance or non-cash

38 State Secretariat for Migration (SEM) – spokeswoman Chloe Kohlprath in reponse to the reported information of the journal SonntagsZeitung – reported by the Local journal "'Disappearing' migrants on the rise in Switzerland" (https://www.thelocal.ch/).

benefits, accommodation, health care and other benefits related to the specific needs of the person.

The granting and the amount of financial allowance depends on whether the person is entitled to full, partial or no social benefits according to their income. According to national statistics on social assistance, 94% of all asylum seekers received social benefits on 30 June 2015, and same percentage of asylum seekers and temporarily admitted persons who got social benefits on 30 June 2015 received social assistance as their only support (Federal Statistical Office 2016, 23). This high percentage derives from the prohibition of work during the first three to six months of the asylum procedure. However, there are also employed persons who continue to rely on social assistance for everyday life.

Persons targeted by a removal order with a fixed departure deadline are not eligible for social assistance. The same applies for those who are waiting for re-examination or revision of their case. These persons are granted emergency aid whenever they find themselves in a situation of distress according to Article 12 of the Federal Constitution. This aid only consists of minimal cantonal benefits for those who are unable to provide for themselves. The Federal Supreme Court has made some general guidelines clear regarding what can be considered respectful of human dignity, with regards to emergency aid (Trummer 2012, 24ff). The actual amount and supply of emergency aid is however a matter of cantonal law, and is therefore subject to remarkable regional differences.

Like social assistance emergency aid usually takes the form of non-cash benefits. This generally includes accommodation in specific shelters (often underground bunkers or containers, with access sometimes restricted to night time only), where living conditions are reduced to a minimum and are known to be quite rough (Bolliger et al. 2010).

The Crisis and the Solidarity toward Migrants

Within the field of migration and asylum, where people have suffered from the rigidity of the legal framework, the Swiss organisational fabric has demonstrated strong robustness against the hardness of the domestic legislation. In respect to the innovative actions performed by the associations to confront social cuts and hostilities, associations stressed the creation of networks as a means of extensive engagement, enhancing visibility and the coordination of common programmes. Also, they referred to

the creation of customised language and citizenship classes, in addition to the given support to migrants with a long migratory trajectory in Switzerland. Through these means, they seek to actively respond to the challenges enhanced by the recent changes in the migratory legal framework and media portrait of migrants: "People are afraid of losing their jobs, they think migrants could steal their work"[39]. Likewise, several associations do not share the public opinion usage of the term migrant crisis or refugee crisis: "It's not a migrant crisis but the crisis of the European Union which does not successfully help migrants"[40]. So, the crisis has helped to raise awareness of the issue but at the same time Switzerland's extreme right-wing parties have used anti-migrants discourse to the detriment of migrants' rights. The hostile portrayal of refugees/migrants has created tensions and misconceptions within the settled migrant communities of the country, as well as on second generation/naturalised migrants. However, most of the associations were keen to point out that solidarity from below is strong; it brings the community together and eases the welcoming of refugees. One association defined transnational solidarity "as a place of cultural exchange, where people of different nationalities meet and create transnational bonds of friendship and mutual support" [41].

Conclusions

In respect to the policy analysis with emphasis on the crisis-driven legislation, the Swiss case could be considered impervious to the latest European economic crisis. However, when the analysis is examined within a wider period of time, the latent shift of the social system becomes obvious. Since 1990, the Swiss welfare state has shown a pragmatic and fragmented shift towards a social-liberal welfare state characterised by the selective criteria of employability, rehabilitation/potential work capacity and integration as part of economic autonomy.

Besides this development of the social legislation, another observed trend is the politicisation of migration. A deeper analysis of the social perception of immigration among the Swiss population points to the rise of a new immigration regime, which is premised on restrictive attitudes toward

39 Interview realised between September and October 2016.
40 Interview realised between September and October 2016.
41 Interview realised between September and October 2016.

foreigners but especially in German speaking cantons and in the Ticino (Wichmann et al. 2011; D'Amato and Ruedin 2015).

In this respect, the referendum banning the construction of minarets on mosques in the country held in 2009 is paradigmatic and it is contrary to the principle of equality, since it results in the discrimination of a specific group by diminishing their presence in the public sphere. The initiative expresses the willingness to defend a presumed idea of homogeneity and coherence of the Swiss community. It exposes the tensions and the fragile equilibrium between the shared-rule and self-rule when accommodating external migration pressures beyond the cantonal diversity (Fleiner 2009). It also exposes the tensions between individual and collective rights, which may often be translated into equality between communities (within diversity) to the detriment of equality between individual and external communities (migrants' groups).

Furthermore, the effective enforcement of regulation and legislation on solidarityunveils the existence of fundamental cantonal differences in terms of guaranteeing the rights of vulnerable groups. Despite the increasing power of the central structure, federalism and direct democracy have enhanced a complex social-liberal model at different paces. Indeed, the Swiss social schemes are probably among the most fractious and diverse in Europe.

The legal and social analysis of solidarityin action with regard to people with disabilities, unemployed persons and immigrants shows some differences: as far as the protection of people with disabilities is concerned, a general tendency to promote equality of chances and non-discrimination can be noticed. On the contrary the same centrality given to the principle of equality within each group (immigrants and unemployed persons), is less obvious. In this respect, fragmentation of benefits within unemployed groups is based on age, the time-frame of work and type of employment (employed/self-employed). Whereas in the case of migration, the fragmentation of benefits is evident between EU/ALECA citizens and citizens of other countries, as well as between locals and foreigners. The existence of these differences exposes the challenges to the solidarity principle in Switzerland, thus confirming that despite the moderate impact of the Eurozone crisis on the country, this principle is under pressure.

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