



Free Movement of Persons - Immigration

Overview

Switzerland and the EU concluded the Agreement on the Free Movement of Persons (AFMP) in 1999. The AFMP allows EU nationals and their family members to live, work and study in Switzerland under certain conditions; the same conditions apply to Swiss nationals in the EU member states. The focus here is on inward and outward migration for the purpose of working.

In 2004, the EU issued Directive 2004/38/EC (known as the EU Citizens' Rights Directive). This directive regulates the right of EU nationals to move and reside freely within the territory of the member states. However, it does not grant any political rights, in particular the right to vote or stand for election.

The AFMP is to be updated as part of the stabilisation of the bilateral approach. With regard to the free movement of persons to and from the EU, Switzerland will adopt part of Directive 2004/38/EC. Migration under the AFMP remains focused on persons who are seeking employment. This form of migration strengthens the Swiss economy by providing the required skilled labour, while at the same time protecting the Swiss social security system. Furthermore, the provisions of the Swiss Federal Constitution will be respected in relation to the rules on judicial expulsion under criminal law. In addition, the notification procedure for work-related short stays will be retained.

Key features

Directive 2004/38/EC will be adopted in a customised manner for Switzerland and linked to an effective three-tier protection mechanism that includes exceptions and safeguards. The exceptions are deliberate and explicit derogations from the rules that would in fact be intended under Directive 2004/38/EC; safeguards, on the other hand, are measures within the existing legal framework of the Directive. A more specific safeguard clause supplements the protective mechanism.

Exceptions:

- Judicial expulsion: Thanks to an exception, Switzerland will continue to comply with the provisions of the Federal Constitution on expulsion under criminal law. Switzerland has therefore not adopted any provision that goes beyond the existing AFMP with regard to expulsion. There is no need to amend the Federal Constitution (Cst.) or the Swiss Criminal Code (SCC). The judicial expulsion of foreign nationals who have committed criminal offences continues to be carried out according to the existing legislation (Art. 121 Cst., Art. 66a ff. SCC).
- Permanent residence and social assistance: The right of permanent residence provided for in Directive 2004/38/EC, to which EU nationals and their family members are entitled after five years of residence, is only available in Switzerland to persons in employment and their family members. Periods of total dependency on welfare benefits of six months or more do not count when calculating the five-year period.

Safeguards:

- Withdrawal of the right of residence: Where a person has become unemployed, even if it is through no fault of their own, Switzerland can terminate their stay as an employed person and that of their family members if the person concerned does not make an effort to find another job and does not cooperate with the authorities such as the regional job centres

(RAV). Fraudulent claims for state benefits, such as social assistance or unemployment benefits, can, as before, lead to the withdrawal of the right of residence.

- Notification requirement: The current notification procedure in Switzerland for workers on short-stay contracts (up to three months) will be retained, allowing labour market checks to be carried out. The requirement to notify the authorities will be extended to include self-employed persons. This prevents the freedom to provide services, which is limited to 90 days, from being circumvented.

Safeguard clause:

- More specific regulation: Switzerland and the EU have agreed to introduce a new article to cover the existing safeguard clause (Art. 14 para. 2 AFMP) in more specific terms. The contracting parties may trigger the new safeguard clause in the event of serious economic or social problems arising from the free movement of persons.
- Joint Committee / Arbitration tribunal: If Switzerland wishes to invoke the safeguard clause and the associated safeguard measures, it must first apply to the Joint Committee (JC) of the AFMP. If Switzerland and the EU do not reach an agreement in the JC, Switzerland can have recourse to an arbitration tribunal, which examines whether the requirements for safeguard measures are met. If the tribunal finds in its favour, Switzerland can take safeguard measures on its own. If the safeguard measures lead to an imbalance in the rights and obligations of the contracting parties under the AFMP, the EU has the right to respond by taking countervailing measures under the AFMP, which must be proportionate. In the event of a negative decision by the arbitration tribunal, Switzerland can still take safeguard measures. However, if the EU believes that these measures violate the AFMP, it has the option of seeking a dispute resolution process and taking rebalancing measures in relation to all internal market agreements (with the exception of agriculture).
- Ordinary procedure / Procedure in cases of urgency: Under the ordinary procedure, notice that the safeguard clause is being invoked may be submitted to the arbitration tribunal after consultations have been held in the JC for 60 days. If the situation is urgent, the consultations in the JC may be shortened to 30 days. In both ordinary and urgent proceedings, the arbitration tribunal must decide within six months of its being set up whether applying the safeguard clause is justified. In urgent proceedings, Switzerland can request the provisional application of safeguard measures until the final decision is made. The arbitration tribunal must decide on a request of this type within 30 days.

Additional agreements

- Cross-border commuters: Cross-border commuters will continue to receive a special permit, as is currently the case. The current definition of cross-border commuters will also continue to apply.
- Purchasing real estate: The previous exception continues to apply. The acquisition of real estate by foreign nationals for speculative or investment purposes remains prohibited.
- Biometric identity cards: Swiss citizens can decide for themselves whether to apply for a biometric identity card. Non-biometric identity cards will lose their validity for travelling to the EU after an eleven-year transition period. The use of non-biometric identity cards in Switzerland remains possible.
- Transitional period: With regard to the adoption of Directive 2004/38/EC, the Federal Council has negotiated a transitional period of two years, which may prove particularly beneficial for implementation in the cantons. It was also agreed that periods of residence prior to the updated agreement coming into force will not be counted retroactively towards the acquisition of permanent residence rights by persons in employment.
- Settlement permit: The settlement permit (C permit) will not be replaced by the new permanent right of residence. The settlement permit is linked to integration criteria (e.g. knowledge of a national language) and is a prerequisite for acquiring Swiss citizenship. It was agreed with the EU that all EU nationals will now have to be resident in Switzerland for a minimum of five years before they are eligible for a settlement permit. Today, five years apply for some EU member states and ten years for others. This would mean that

the same standardised minimum duration would apply to EU nationals in Switzerland as to Swiss nationals in the EU.

- Tuition fees: Issues relating to the access of EU students to Swiss universities and to scholarships are still not covered by the AFMP. EU students are therefore still not entitled to access to a Swiss university or to scholarships in Switzerland. However, Switzerland has undertaken to treat EU students the same as Swiss students when it comes to tuition fees at predominantly publicly funded universities and universities of applied sciences. In future, Swiss students will also pay the same tuition fees as EU students throughout the EU. This also applies to any support mechanisms for tuition fees. With regard to the overall numbers of EU students in Switzerland, the agreement states that this should not be reduced. However, this does not mean that Swiss universities have to adapt their admission system. Exam-free access to universities in Switzerland for Swiss baccalaureate school graduates remains unaffected.

Implementation in Switzerland

The protective mechanism which was negotiated in connection with the customised adoption of Directive 2004/38/EC and other EU legislation into the AFMP is supplemented by domestic implementing and accompanying measures.

- Permanent residence and social assistance: The right of permanent residence for persons in employment and their family members is only considered and, if necessary, granted if it is applied for. It is revoked if it has been claimed in an improper or fraudulent manner. Cross-border commuters, students and economically inactive persons from the EU cannot claim a right of permanent residence and are not entitled to social assistance. This will require more precise provisions to be introduced in the Foreign Nationals and Integration Act (FNIA).
- Withdrawal of the right of residence: EU nationals who become involuntarily unemployed must register with their regional job centre. If the agreed strategy for finding a new job is not adhered to, the job centre will report this to the migration authorities. If EU nationals have not found a new job six months after expiry of their entitlement to unemployment benefit, their right of residence as an employed person expires unless they can prove that they have prospects of finding a new job within a reasonable period of time. This will require more precise provisions to be introduced in the FNIA and the Employment Recruitment Act.
- Obligation of notification for short-term employment: The obligation to use the online notification procedure is now laid down in the Posted Workers Act. This ensures that notification is given of all persons from the EU who intend to work in Switzerland for a maximum of three months, regardless of whether they are employees or self-employed. Notification allows salary and working conditions to be monitored and prevents the freedom to provide services, which is limited to 90 days, from being circumvented.
- Safeguard clause: The requirements for triggering the safeguard clause, taking safeguard measures, and the responsibilities and procedures are specified in the Foreign Nationals and Integration Act (FNIA).

The FNIA defines threshold values in relation to the following: net immigration, cross-border employment, unemployment and claims for social assistance. If a threshold value is exceeded, the Federal Council must consider triggering the safeguard clause. Indicators are defined in the following areas: immigration, jobs market, social security, housing and transport. If an indicator is active, the Federal Council can also consider triggering the safeguard clause. The threshold values are defined in the ordinance. The cantons have the option of requesting the Federal Council to consider triggering the safeguard clause and to propose suitable regional or cantonal safeguard measures.

Before activating the safeguard clause procedure and before taking safeguard measures, the Federal Council has to consult the parliamentary commissions, the cantons, and the

employers and unions. Measures that comply with the AFMP have priority. However, if it is necessary to remedy the issue, the Federal Council may also introduce safeguard measures that derogate from the AFMP (such as maximum numbers for certain categories of residence, priority for persons already settled in Switzerland, or the prior inspection of wage and working conditions). If the measures already provided for in the FNIA are not sufficient or if other safeguard measures are required to respond to a certain situation, the Federal Council will submit a related bill to Parliament.

- Implementation and accompanying measures for tuition fees: In order to implement future non-discrimination regarding tuition fees between EU and Swiss students, the ETH Act must be amended. As far as the cantonal universities and the cantonal universities of applied sciences are concerned, amendments to the relevant legislation will be necessary in various cantons.

Non-discrimination in tuition fees will result in a loss of income for certain universities, which will be compensated for by an accompanying measure. This will require an amendment to the Higher Education Act requiring the federal government to cover 50 per cent of the shortfall in income from cantonal universities for four years.

Importance for Switzerland

Switzerland will continue to rely on the immigration of EU nationals in order to meet its need for workers, particularly those with specialist skills. The updated AFMP defines the required legal framework and allows uncomplicated access to the EU's workforce. At the same time, it guarantees comprehensive protection in relation to immigration, in that:

- immigration from the EU remains based on employment market requirements;
- the expulsion of foreign nationals who have committed crimes is still possible on the terms provided by the current legislation;
- negative consequences for the Swiss social security systems are averted and measures can be taken to deal with abuses.

The newly designed safeguard clause also provides the Swiss protective mechanism with an additional instrument in the event that immigration leads to serious economic or social problems.

Specifically

- **Safeguard clause:** The number of cross-border commuters in Ticino is rising steadily. At the same time, Ticino is experiencing more traffic congestion, overcrowding on public transport and rising unemployment, particularly in the retail and construction sectors. The canton of Ticino can request the Federal Council to consider activating the safeguard clause and proposing limited safeguard measures for the region. If the threshold for cross-border employment is reached throughout Switzerland, the Federal Council *must* consider whether the safeguard clause should be activated. If the Federal Council decides that the application of the AFMP is causing serious economic and social problems, it may submit a request to the JC to take safeguard measures. If the JC fails to reach a decision within three months, the Federal Council may refer the matter to the Arbitration Tribunal. This tribunal examines whether there are actually serious economic problems. If the decision of the Arbitration Tribunal is favourable, Switzerland can take certain safeguard measures (e.g. quotas for EU cross-border commuters in the retail and construction sectors) and the EU can decide on appropriate rebalancing measures if necessary.
- **The advantage of the free movement of persons for Swiss nationals in the EU:** A graphic designer from Zurich has been offered a job in Munich. Thanks to the AFMP, she can move to Germany, and the process is not especially complicated. She does not need to apply for a visa or a work permit. She has the same rights and working conditions as her German colleagues. Her boyfriend has been offered a place at a university in Munich and

wants to accompany her. Thanks to the updated AFMP, he is not discriminated against when it comes to tuition fees and pays the same fees as German students.

- **No immigration to claim social assistance benefits:** A trained nurse from Lyon starts working at the university hospital in Lausanne. If he loses his job and becomes unemployed, he is required to register with the regional job centre and cooperate with the authorities with a view to quickly finding a new job. If he does not cooperate, he may lose his status as a person in employment. The updated AFMP allows him to stay in Switzerland permanently after he has lived and worked here for five years, unless he has been fully dependent on social assistance for six months or more.

Further information: [Free movement of persons – family reunification](#) (FDJP/SEM)