



EU/EFTA service providers in Switzerland

Which professionals are regarded as “service providers” within the meaning of Directive 2005/36/EC?

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I. Introduction

Annex III of the Agreement on the Free Movement of Persons (AFMP¹) provides for the application, in Switzerland, of Directive 2005/36/EC². Title II of this Directive provides for an accelerated procedure for verifying the professional qualifications of individuals who come to Switzerland for the purpose of providing services. In Switzerland, this procedure is governed by the DRPA³. Under the procedure, persons intending to carry out a regulated activity⁴ for a maximum of 90 working days per calendar year are required to submit a declaration to SERI, which makes a faster and more direct check on the provider's professional qualifications⁵.

In order to determine who may submit a declaration and have his/her professional qualifications verified under the terms of the DRPA, it is necessary to define the categories of professionals who may come to Switzerland for the purpose of providing services within the meaning of the AFMP.

The categories of professionals who are not covered by the definitions below still benefit from the free movement of persons and recognition of their professional qualifications. However, since they do not enter the country as a service provider, they are not eligible for consideration under the DRPA or Title II of Directive 2005/36/EC (Free Provision of Services). Instead, they must request normal recognition of their professional qualifications under Title III of Directive 2005/36/EC (Freedom of Establishment).

¹ Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, RS 0.142.112.681.

² Directive 2005/36/EC of the European Parliament and the Council of 7 September 2005 on the recognition of professional qualifications, OJ L 255 of 30 September 2005, p. 22, in the version in effect under the Agreement on Free Movement and the revised EFTA Convention.

³ Federal Act of 14 December 2012 on the Declaration Requirement and the Verification of Service Provider Qualifications in Regulated Professions, SR 935.01.

⁴ A regulated profession is any professional activity the access to which, the pursuit of which or one of the modes of pursuit of which is directly or indirectly subject to the possession of specific professional qualifications.

List of the professions subject to declaration requirement in Switzerland: www.sbf.admin.ch/edeclaration

⁵ This check is only possible for professions that have an impact on public health or safety.

II. Categories of beneficiaries (Title II of Directive 2005/36/EC and DRPA)

Under European law and the AFMP, the concept of provision of services is open to interpretation, depending on the circumstances of each particular case. However, the procedure is mainly intended for two categories of persons: self-employed service providers and, through them, posted workers.

Self-employed service providers: self-employed service providers carry out a remunerated but non-salaried economic activity in Switzerland but remain established in a country that is a member of the European Union or the European Free Trade Association (EFTA). They do not hold a residence permit and do not have to apply for one to work in Switzerland for up to 90 working days per calendar year.

The following criteria are decisive:

- Non-salaried activity: The service provider is self-employed. There is therefore no relationship of subordination with an employer as understood in employment legislation. He/she does not receive instructions, as understood in employment legislation, on how to carry out his/her activity.
- Remunerated activity: The service provider receives money by virtue of a service or contractor agreement, but not a Swiss employment contract. Voluntary activities do not fall within the scope of the AFMP. Remuneration cannot be limited to merely covering the costs of the person carrying out the activity.

Posted worker⁶: one speaks of posted workers whenever a service provider in his/her capacity as employer, acting in his/her own name and on his/her own behalf, is accompanied by or sends some or all of his/her salaried workers to a country other than where the registered office is located and where professional activities are habitually carried out. The posted worker falls within the scope of the AFMP, regardless of his/her nationality.

The following criteria are decisive:

- Link with foreign employer: The posted worker remains linked to his/her employer through an employment contract. He/she has not signed an employment contract with a Swiss employer.
- Instructions: The posted worker receives instructions from his/her employer in the country of establishment. He/she does not receive any instructions or orders from a Swiss employer.
- No integration in Swiss labour market: The posted worker is not integrated in the Swiss labour market. He/she comes to Switzerland with the intention of leaving Swiss territory once his/her work is complete.

⁶ Art. 1 of the Federal Act of 8 October 1999 on the minimum employment and salary conditions for workers posted to Switzerland and accompanying measures (Federal Act on Workers posted to Switzerland, PWA, RS 823.30).

III. Time limit

In addition to the criteria above, the provision of services (whether handled by the self-employed service providers themselves or by a posted worker) is subject to a time limit.

By virtue of Art. 5 AFMP, the provision of services in Switzerland is limited to 90 days per calendar year. While this 90-day period may be broken down into several stays, the total duration of these stays may not exceed the 90-day per calendar year threshold. It is also possible for the activity to begin in early October 2013 and continue until the end of March 2014, which effectively means 180 consecutive days. However, by doing so, the right to provide services in 2014 will be used up; the service provider will no longer be able to come to Switzerland for the purpose of providing services until 1 January 2015.

As indicated above, duration is only one of several criteria. A person who comes to Switzerland for a period of 60 days with the intention of moving here and entering the labour market, but who later returns to his/her country of origin for various reasons (personal reasons, non-viable economic activity, etc.) does not fall within the scope of the provision of services but rather within the scope of establishment because of the intention to establish oneself in Switzerland.

The facilities criterion is not a decisive one. The provision of services may require the service provider to have access to facilities in Switzerland, even rented for the entire year. This would be the case, for instance, of storage space for equipment and materials. The existence of facilities alone cannot be considered as adequate proof that the person concerned is not acting in a service provider capacity.

IV. Specific examples

The following cases provide typical examples that can help the authorities and individuals to better understand who is entitled to invoke Title II of Directive 2005/36/EC and DRPA and who, in contrast, is subject to Title III of the same Directive. When considering all of the circumstances of the specific case, it is important to remember that while the person concerned may not be a service provider, he/she is nevertheless authorised to work in Switzerland. The only difference is that the person in question cannot benefit from the fast-track procedure for verifying the professional qualifications of service providers, which is set out in Title II of Directive 2005/36/EC and in the DRPA. Instead, the person must request normal recognition of his/her professional qualifications (Title III of Directive 2005/36/EC) by contacting the [competent Swiss authority](#)⁷ directly.

	Situation	Analysis
1	A job seeker contacts the cantonal physician's office to apply for work as a physiotherapist.	The cantonal authority proactively clarifies the situation: if the applicant wants to settle permanently in Switzerland, he/she is sent to the Swiss Red Cross. If the applicant is only interested in working for max. 90 days per calendar year in Switzerland, while keeping his/her place of establishment abroad, he/she must submit a declaration to SERI.
2	Same situation as above, but the job seeker already holds a G permit (cross-border commuter permit)	Cross-border commuters are not service providers. They must therefore contact the Swiss Red Cross directly, and cannot benefit from SERI's accelerated procedure.

⁷ www.sbfi.admin.ch/diploma > Recognition procedure on establishment > Recognition bodies

3	<p>A doctor established in the EU/EFTA replaces another doctor in Switzerland, and works completely independently, without receiving instructions from the person he/she is replacing;</p> <p>An EU/EFTA surgeon is temporarily discharged from his obligations by the hospital outside of Switzerland that employs him; he works on a self-employed basis in a Swiss hospital without being subject to orders from management. He may, for example, train local staff in new techniques.</p>	<p>The people in these situations are service providers; they must therefore submit a declaration to SERI.</p>
4	<p>Employees of an independent service provider who accompany their employer to provide services, such as crane operators who accompany their boss.</p>	<p>Posted workers who accompany a service provider must also declare their activity if it is regulated.</p>
5	<p>A person under a contract of employment in his/her country of establishment, who comes to Switzerland for a maximum period of 90 working days per calendar year, and who continues to receive instructions from his/her employer in his/her country of establishment: an Italian engineer posted by his/her employer to provide services in Switzerland.</p>	<p>This is a case of providing services. The engineer must make a declaration to SERI, and can therefore benefit from an accelerated procedure for checking professional qualifications.</p>

V. Role of the competent authorities

When a competent (cantonal or federal) authority receives a declaration from SERI, it may **assume that the applicant is a service provider**. Accordingly, the foreign professional has to know and determine the capacity in which he/she plans on coming to Switzerland. Directive 2005/36/CE does not require the competent authority to ask the service provider to justify *a priori* his/her self-employed status; however, in the event of justified doubt, and in such cases only, the Swiss competent authority may ask the provider to demonstrate that he/she is indeed a service provider. It may also inform the provider not to attempt to circumvent the recognition procedure which would apply to him/her in the case of establishment in an attempt to benefit from the DRPA's simplified procedure.

It should in this respect be kept in mind that the legal certificate of establishment, which must be submitted with any declaration, is sufficient proof that the applicant is a service provider within the meaning of the DRPA.

The competent authority must inform the provider within 30 days of SERI's receipt of the declaration that he/she may begin providing the services. It is important that this information (whatever its form: authorisation, letter, decision, etc.) be **limited to the current calendar year** and that it mention **the obligation to renew the declaration every year**.