



Which professionals are considered “service providers” under Directive 2005/36/EC?

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I. Introduction

EU/EFTA citizens who work in Switzerland for a maximum of 90 working days per calendar year are considered service providers. If the professional activity is regulated¹ in Switzerland, then the EU/EFTA service providers are required to submit a declaration to SERI (www.sbf.admin.ch/edeclaration). This declaration is required by law under DRPA² and is based on EU legislation that is applicable to Switzerland, namely Annex III of the Agreement on the Free Movement of Persons (AFMP³) and Directive 2005/36/EC⁴.

II. Categories of authorised professionals (Title II of Directive 2005/36/EC and DRPA)⁵

Under European law and the EU-Swiss Agreement on the Free Movement of Persons (AFMP), the concept of provision of services is open to interpretation, depending on the circumstances of each particular case. However, the declaration procedure provided for under DRPA is mainly intended for two categories of persons: **self-employed service providers** and **posted workers** who have been sent on temporary assignment to Switzerland by their employers.

Self-employed service providers:

Self-employed service providers carry out a remunerated but non-salaried economic activity in Switzerland but remain established in an EU/EFTA member state. They do not hold a residence or cross-border commuter permit and do not have to apply for such a permit in order to work in Switzerland for up to 90 working days per calendar year.

¹ 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

² Federal Act of 14 December 2012 on the Declaration Requirement and the Verification of Service Provider Qualifications in Regulated Professions, SR 935.01.

³ 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.

⁴ 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.

⁵ 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).

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 citizenship.

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

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 2021 and continue until the end of March 2022, which effectively means 180 consecutive days. However, by doing so, the right to provide services in 2022 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 2023.

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 (e.g. personal or economic reasons, 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 to better illustrate the difference between the provision of service and establishment under Directive 2005/36/EC and DRPA. If a given professional does not satisfy the above-mentioned criteria to be considered as a service provider, he/she will not be recognised as a service provider but can still seek recognition of his/her professional qualifications and is authorised to work in Switzerland. The difference is that the person will not be subject to the declaration procedure set forth 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 physiotherapist from Germany contacts a cantonal health department to obtain an authorisation to work in this capacity.	<p>The cantonal authority proactively clarifies the situation:</p> <ul style="list-style-type: none">• If the applicant wishes to establish himself/herself permanently in Switzerland, the corresponding cantonal health department will refer the individual to the Swiss Red Cross for recognition of the foreign professional qualification. → <i>The DRPA is not applicable in this case.</i>• If the applicant is only interested in working for max. 90 days per calendar year in Switzerland, while keeping his/her professional domicile in Germany, he/she must submit a declaration to SERI. → <i>The DRPA is applicable in this case.</i>

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

	Situation	Analysis
2	Same situation as in example 1 above, but the physiotherapist already holds a cross-border commuter permit (G permit)	Cross-border commuters are not service providers. The individual must therefore contact the Swiss Red Cross directly in order to obtain recognition of his/her foreign professional qualification and cannot benefit from SERI's fast-track recognition procedure. → The <i>DRPA</i> is not applicable in this case.
3	A doctor established in France temporarily replaces another doctor in Switzerland, and works entirely under his own professional discretion, without receiving instructions from the person he/she is temporarily replacing. A doctor from Austria is temporarily placed on furlough from the hospital where she works. She decides to work on a self-employed basis at a Swiss hospital without being subject to managerial supervision. This doctor has been brought in, for example, for the purpose of training local staff in new techniques.	These are typical service provider situations. The individuals concerned must therefore submit a declaration to SERI. → The <i>DRPA</i> is applicable in these cases.
4	The owner of an electrical installation company based in Poland sends a few of its employed technicians to Switzerland to perform electrical installation work for a period of ten days.	This is a typical service provider situation. Both the owner of the electrical installation company and the posted workers must therefore submit a declaration to SERI. → The <i>DRPA</i> is applicable in this case.
5	An Italian construction company wishes to post a civil engineer to Switzerland to work for no more than 90 working days per calendar year. This posted worker continues to receive instructions from his/her Italian employer.	This is a typical service provider situation. The civil engineer must therefore submit a declaration to SERI. → The <i>DRPA</i> is applicable in this case.
6	A snowsports instructor from France signs a limited term employment contract to work with a skiing school in Verbier for a period of three months.	<ul style="list-style-type: none"> This is not a service provider situation because a Swiss employment contract has been signed. The snowsports instructor must contact SERI to obtain recognition of his/her foreign professional qualification (www.sbf.admin.ch/becc). → The <i>DRPA</i> is not applicable in this case.

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 show proof of his/her self-employed status in an EU/EFTA country before coming to Switzerland. However, if there is reasonable doubt, and only in such cases, the competent Swiss authority may ask the EU/EFTA citizen to demonstrate that he/she is indeed self-employed in the EU/EFTA country. This will prevent EU/EFTA citizen from attempting to circumvent the normal recognition procedure by seeking the DRPA's simplified recognition procedure instead.

Generally speaking it should in this respect be kept in mind that the legal attestation of establishment⁸ showing that the individual is authorised to carry out the given professional activity in the EU/EFTA member state is sufficient proof that the applicant is a service provider within the meaning of the DRPA.

The competent authority must inform the service provider within 30 days of SERI's receipt of the declaration that he/she may begin providing the services. If there are no reasons against authorisation, it is important that the authority's formal decision (for example in the form of a letter) is **limited to the current calendar year** and that it mentions **the obligation to renew the declaration every year**. (www.sbf.admin.ch/edeclaration > Procedure and Duration).

⁸ Art. 3 para. 1 let. b of Ordinance of 26 June 2013 on the Declaration Requirement and the Verification of Service Provide Qualifications in Regulated Professions (VMD, SR 935.011)