



Wage protection

What is wage protection?

The Swiss–EU negotiations on wage protection concerned posted workers, i.e. people sent to work in Switzerland on a temporary basis by their EU-based employer. Workers from Switzerland can also be posted to an EU member state.

To ensure that postings do not unfairly undercut Swiss wage-related and working conditions, and that both domestic and foreign companies are given a level playing field, a number of accompanying measures were introduced in 2004. These measures are anchored in Switzerland's Posted Workers Act, which contains provisions on:

- the registration procedure for postings;
- the wage-related and working conditions of posted workers;
- how compliance with these conditions is monitored;
- and sanctions for violations.

The conditions for postings within the EU are also regulated. With the further development of Swiss–EU relations, Switzerland will adopt the posting-related directives of the EU.

Outcome of the negotiations

Switzerland conducted the negotiations to align Swiss posting law with that of the EU on the condition that the current level of protection of the wage-related and working conditions of posted workers be preserved permanently and that companies not be exposed to unfair competition. A solution was also sought regarding expenses. The goal was to guarantee respect for the principle of 'same pay for the same work in the same place', prevent unfair competition and ensure legal equality between gainfully employed persons.

During the negotiations, Switzerland and the EU agreed on a threefold safeguard concept that includes principles, exceptions and a *non-regression clause*:

- **Principles:** Switzerland and the EU will implement a 'same pay for the same work in the same place' principle. This means that companies posting workers from the EU to Switzerland will have to pay their employees the same wages that are paid in Switzerland. It was also agreed that compliance with wage-related and working conditions in Switzerland will continue to be monitored by the joint commissions (trade unions and employers) and the cantons (dual monitoring system). The joint commissions will still be allowed to impose sanctions against posting companies as foreseen in their collective employment contracts.
- **Exceptions:** There are some exceptions that will safeguard Swiss specificities. One of them is the **prior notice period** for foreign companies seeking to provide services in Switzerland. This period will be shortened from eight calendar days to four working days, and applied in high-risk sectors. For the other sectors, EU and Swiss law already require employers to notify the authorities of the taking up of employment before the worker(s) concerned start their posting. Switzerland will continue to determine the **number of checks** autonomously in the future. When there is a repeat offence (a posting company has not met its financial obligations to the joint commissions as

regards past postings), putting up a **surety bond** will be mandatory. Failure to do so may result in sanctions up to and including a ban on the provision of services. The **obligation for self-employed service providers to provide documentation** as a measure to combat fictitious self-employment was also secured.

Any future changes in these areas of EU law on the posting of workers will not affect **these exceptions, as they are not subject to the dynamic adoption of EU law developments.**

- Non-regression clause: Under the *non-regression clause* agreed to, Switzerland will not be obliged to adopt future modifications or new developments of EU law on the posting of workers that would lower the level of protection in Switzerland with respect to wage-related and working conditions. This clause will ensure that there is no erosion of Swiss wage protection.

During the negotiations, Switzerland also ensured that it would retain its role at the European Labour Authority (ELA) as an observer.

Rules on expenses also fall under the category of wage protection. The rules that are applied for companies in Switzerland and neighbouring countries are similar; however, some EU member states have lower allowances. If posted workers have to be reimbursed for fewer expenses than national employees, risks of unfair competition arise. This issue was discussed at length during the negotiations with the EU. When implementing the expenses rules at national level, Switzerland will take full advantage of the leeway available under the EU's Posting of Workers Directive in order to minimise the risk of unfair competition.

The negotiation objectives have been achieved.

Importance for Switzerland

The Federal Council is of the opinion that the safeguard concept agreed with the EU protects Swiss wage levels on the basis of the accompanying measures. The national accompanying measures currently being drafted will further strengthen this protection.