



# Immigration and the Citizens' Rights Directive (CRD)

## Background

Switzerland and the EU concluded the Agreement on the Free Movement of Persons (AFMP) in 1999, allowing EU/EFTA nationals to live, work and study in Switzerland under certain conditions. The same conditions apply to Swiss nationals with regard to the EU/EFTA states. The focus here is on immigration for the purposes of employment.

In 2004, the EU issued the EU Citizens' Rights Directive (CRD), which extended residence rights for EU nationals within the EU. The CRD regulates the right of EU citizens to move and reside freely within the territories of the member states. However, it does not grant any political rights, in particular the right to vote or stand for election.

As part of the further development of the bilateral approach, the EU would like to supplement the AFMP with the provisions contained within the CRD. In the negotiations, the Federal Council sought to achieve the following goals: the impact on the Swiss social security system should be limited, the provisions of the Federal Constitution on expulsion under criminal law (expulsion initiative) should be complied with and Swiss levels of wage protection should be maintained (see also factsheet on wage protection). In addition, the mechanisms of the AFMP to deal with unexpected outcomes should be clearly defined (safeguard clause).

## Outcome of the negotiations

During the negotiations, solutions were found to address Swiss concerns. The CRD will be customised for Switzerland and linked to effective protective mechanisms that include exceptions and safeguards. A more specific safeguard clause will supplement the protective mechanisms.

### Exceptions:

- Expulsion: Switzerland has agreed an exception with the EU in this regard, enabling Switzerland to comply with the provisions of the Federal Constitution on expulsion under criminal law. Switzerland will not adopt any provision of the CRD that would broaden the AFMP's framework in this respect.
- Permanent residence and social welfare benefits: In Switzerland, the right to permanent residence provided for in the CRD, to which EU citizens are entitled after five years of residence, is only granted to gainfully employed persons. Periods of more than six months of being completely dependent on welfare benefits do not count towards the calculation of the five-year period.

### Safeguards:

- Withdrawal of permanent residence: Switzerland can terminate the stay of unemployed persons if they do not make an effort to integrate into the labour market and do not cooperate with the regional employment centre (RAV) to find a job.
- Wage protection: The current registration procedure in Switzerland for those starting a job on a short stay (up to three months) will be maintained. This procedure makes labour controls possible. The reporting requirement will be extended to self-employed persons. Such a requirement will prevent circumvention of the 90-day limit on the free movement of services.

### Safeguard clause:

- The safeguard clause set out in detail: Switzerland and the EU have agreed on the specific details of the safeguard clause (Art. 14 para. 2 AFMP). This newly designed safeguard clause can be triggered in the event of serious economic or social problems.
- Domestic implementation: Switzerland will specify the requirements for triggering the safeguard clause and any protective measures within the framework of the Foreign Nationals and Integration Act (FNIA). The Federal Council will submit this in a bill to Parliament along with the dispatch on the overall package.
- Triggering: The newly designed safeguard clause can be triggered independently by Switzerland.
- Joint committee/arbitration panel: If Switzerland wishes to apply the safeguard clause, it must first submit its request to the Swiss–EU joint committee (JC). If Switzerland and the EU do not reach an agreement in the JC, Switzerland can convene an arbitration panel. The arbitration panel will examine whether the requirements for protective measures are met. If the arbitration panel rules in favour, Switzerland may adopt the proposed protective measures. If the protective measures lead to an imbalance in the rights and obligations of the contracting parties under the AFMP, the EU would be permitted to take compensatory measures under the AFMP, which would have to be proportionate.
- Ordinary procedure/urgent procedure: Under the ordinary procedure, invoking the safeguard clause may be submitted to the arbitration panel after a consultation in the JC of 60 days. If the situation is urgent, the consultation in the JC may be shortened to 30 days. Under both the ordinary and urgent procedures, the arbitration panel must decide within six months whether the application of the safeguard clause is justified. In urgent cases, Switzerland can request the provisional application of protective measures during the procedure until a final decision is made. The arbitration panel must reach a decision regarding such requests for provisional application within 30 days.

### Other Swiss concerns that have been safeguarded:

- Cross-border commuters: Cross-border commuters will continue to receive a special permit, as is currently the case. The existing definition of cross-border commuters will also remain in place.
- Property acquisition: The existing exemption for the acquisition of property remains in place.
- Biometric identity cards: Swiss citizens can decide for themselves whether to apply for such a card. Non-biometric identity cards will remain valid for travel to the EU for an 11-year transition period. The use of non-biometric identity cards within Switzerland will remain possible.
- Transition period: The Federal Council has negotiated a transitional period of two years for the adoption of the CRD, which is particularly beneficial for cantonal implementation. It was also possible to ensure that periods of residence prior to the entry into force of the CRD will not count retroactively towards the acquisition of permanent residence.
- Permanent residence permit: It was also agreed that a minimum period of five years should now apply to all EU citizens before they are eligible for a permanent residence permit. Under current regulations, nationals of some EU member states have to wait five years and others ten. This would mean that the same standardised minimum duration would apply to EU citizens in Switzerland as to Swiss citizens in the EU. The additional applicable integration criteria (e.g. knowledge of a national language, observance of public order and safety, no dependence on social welfare benefits, etc.) will remain in place.

### Tuition fees

Matters relating to the admission of EU students to a Swiss university and access to scholarships will continue to fall outside the scope of the AFMP. However, Switzerland is committed to treating EU students in the same way as Swiss students regarding tuition fees at predominantly publicly funded universities and universities of applied sciences. Similarly, Swiss students in the EU will be treated in the same way as EU students. The current system governing admissions to Swiss universities and thus of admission without examination for

Swiss high school graduates and the awarding of scholarships will remain in place. EU students will remain ineligible for scholarships.

**The negotiation objectives have been achieved.**

### **Importance for Switzerland**

Switzerland will continue to rely on the immigration of EU citizens in the future in order to meet its labour and skilled worker needs. The negotiated solution provides the necessary legal framework and also allows easy access to the EU's labour force. At the same time, with the exceptions and safeguards agreed, the Federal Council was able to negotiate a full range of protective measures in the area of immigration. These protective mechanisms:

- guarantee that immigration from the EU remains labour market-oriented;
- allow Switzerland to continue to expel foreign nationals who have committed criminal offences, in accordance with existing legislation;
- prevent direct access to social welfare systems;
- protect Swiss wage levels.

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