

WORKERS WITHOUT BORDERS

Commission(s) in charge of the Session/Workshop:

Labour Law and Immigration Commission

Munich, 2016

National Report of Switzerland

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4 March 2016

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INTRODUCTION

Global mobility is on the rise. More and more companies increasingly operate on a cross-border scale. However, companies assigning their employees to another or multiple countries are often confronted with an increase of formalities and requirements affecting the cross-border employment. At first glance, only the work place of the employee temporarily changes. However, many other legal issues come into play and employees must comply with the rules and regulations governing immigration, employment and labour and social security law of each of those countries.

The aim of the present questionnaire is to outlining the legal aspects and issues affecting the temporary assignments of employees within and outside the European Economic Area (EEA).

1. Immigration

The first question employers should consider is whether the employee needs an authorization to work and reside in the country to which he/she is (temporarily) assigned.

Within the European Union, freedom of movement of persons is one of the main fundamental principles, guaranteeing EEA nationals the right to live and work freely in another EEA member state.

Non-EEA nationals in principle need an authorisation to work within the EEA. Does this obligation also apply to EEA nationals assigned by their employer outside the EEA?

2. Labour and employment law

Secondly, assuming the employee is allowed to work and reside in the relevant country, it is important knowing which law is governing the employment relationship during the assignment period. Is it the law of the employer (home country) or the law of the country where the employee will be assigned (host country)?

Within the European Union, the Rome Convention and the Rome I EC Regulation are the two sources dealing with this matter. Does these sources also apply when a non-EEA national is assigned to an EEA country and when an EEA employee is assigned outside the EEA? Can the employer and employee choose the law applicable to their employment relationship? Which law applies in case no law has been chosen? Can the employee also invoke the protection of statutory provisions of the country where he/she will be assigned?

The labour and employment law part of this questionnaire also includes a part on the strict rules on the 'lease of personnel' in assignment situations. Finally, we will look into (the content of) the assignment letter and the early termination of the assignment and employment relationship.

3. Social Security

The third part of this questionnaire deals with the social security aspects linked to assignments, as it is relevant and important to know in which country the social security must be paid during the assignment.

4. Other obligations and formalities

We will look into possible other obligations and formalities to be complied with in your countries in case of assignments of employees to your countries (e.g., prior notifications, drafting and keeping of social documents, etc.).

5. Social inspection

The last part of this questionnaire is based on whether or not cross-border assignments are a priority for the social inspectorate.

QUESTIONNAIRE

1. IMMIGRATION

Switzerland is not part of the European Union, but part of Schengen and Dublin Agreement and furthermore tightly connected with the European Union and its regulations. Therefore **the legal framework** especially in terms of admission of gainfully employed foreign nationals in **Switzerland is extremely complex**. Not only because of the various legal sources but also due to the countless number of linking factors, exceptions to the rule and special regulations/agreements, the determination of the applicable legal provisions in a particular case needs a careful and diligent examination of all the given facts.

The following content neither claims to be completed nor conclusively determined. The contrary is the case: the content of this information sheet is limited to some specific regulations and special requirements which are exemplary presented.

Therefore the prior consultation of a legal advisor is highly recommended.

Legend:

EU-17 = Belgium, Denmark, Germany, Finland, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Austria, Portugal, Sweden, Spain, Great Britain, Malta, Cyprus

EU-8 = Estonia, Latvia, Lithuania, Poland, Slovakia, Slovenia, Czech Republic, Hungary

EU-2 = Bulgaria, Romania

EFTA = Iceland, Principality of Liechtenstein, Norway, Switzerland

EU-25 = EU-17 + EU-8

EU-27 = EU-25 + EU-2

EU/EFTA = EU-27 + EFTA

FMP = Agreement on the Free Movement of Persons (and its protocols)

FNA = Foreign Nationals Act and correspondent regulation

1.1. Who needs a work permit to work in your country? Are there types of employees exempted (e.g., based on their nationality or type of work performed (business trips, etc.)?)

a) Principle: Dual System

Switzerland has a **dual system** for the admission of foreign workers. Gainfully employed nationals from the **EU-27/EFTA states** can benefit from the **Agreement on the Free Movement of Persons** (FMP and its protocols).

Employees that do not fall under this agreement (**third countries**) are treated in accordance with the **Foreign National Act** (FNA) and its regulations.

Special rules apply to members of diplomatic and permanent missions, consular representations and international organizations.

b) EU / EFTA

Workers from the EU / EFTA countries in general **do require a work permit** in Switzerland. However The FMP entitles certain groups of people to work in Switzerland for max. 3 months or 90 days within a calendar year **without a work permit**. If no work permit is needed in general an online registration is required.

Whether or not a worker can benefit from this **online registration** proceedings and when the registration has to be done or whether certain additional conditions apply depends on the following criteria:

- nationality of the worker (EU2, EU-25, EFTA, Croatia)
- nationality/domicile of the employer
- type of workers (independent service providers vs. employees)
- industry sector

c) Third countries

Taking up employment of any duration in Switzerland by a third country national is subject to a work permit. The Foreign National Act (FNA) and its regulations in general grant permits only to a limited number of management level employees, specialists and other qualified employees.

Third country nationals that have been holding a work permit in an EU 27 / EFTA country for at least the past 12 months are entitled to benefit from the registration proceedings up until 3 months / 90 days.

1.2. Are there different types of work permits in your legal system? Are there work permits for highly educated/qualified employees? If so, what are the conditions and what is the procedure to be followed? Who needs to file for the application and where? Which information and documents are to be provided to the competent authorities? What is the timing? What is the duration of the work permit? Can it be renewed? Is it possible to apply for permanent status after a certain period of time under the work permit?

As already mentioned, Switzerland has a dual system for granting foreign nationals access to the Swiss labour market. **Persons from EU or EFTA member states, regardless of their qualifications,** are granted easy access to the Swiss labour market under the Agreement on the Free Movement of Persons. By decree of the Federal Council, **workers from all other states – third states,** as they are referred to – are admitted in limited numbers to the labour market in Switzerland, **if they are well qualified.**

Are there different types of work permits in your legal system?

Yes. We do distinguish:

(Registration proceedings as mentioned above up until 90 days)

- Type L, short-term residence permit
- Type B, yearly residence permit
- Type C, settlement permit
- Type G, cross-border commuter permit

Are there work permits for highly educated/qualified employees?

None of the above mentioned type of permits is limited to highly educated / qualified employees only, however being highly qualified may be one of the conditions that such a permit is granted under the FNA.

If so, what are the conditions and what is the procedure to be followed?

- a) Being well qualified as a general condition under the FNA

By decree of the Federal Council, **workers from third countries** (that are not holding a residence permit for personal reasons) **are admitted in limited numbers to the labour market in Switzerland, if they are well qualified.**

- Third country nationals may only be admitted if a person can not be recruited from the labour market of Switzerland or another EU/EFTA member state. Swiss citizens, foreign nationals with a longterm residence permit or a residence permit allowing employment, as well as all citizens from those countries with which Switzerland has concluded the Agreement on Free Movement of Persons (at present, EU and EFTA states) are given priority. Employers must prove that they have not been able to recruit a suitable employee from this **priority** category, despite intensive efforts.
- **The salary, social security contributions and the terms of employment for foreign workers must be in accordance with conditions customary to the region and the particular industries.** Some industries and trades lay down these conditions in a collective labour agreement which is legally binding either on a national or, at least, cantonal level. When applications are submitted from trades that do not have a collective labour agreement, the Swiss authorities usually request information directly from the employers' and employees' associations on the terms customary in a particular industry. By examining the salary rates and terms of employment beforehand, the authorities can ensure that foreign workers are not exploited and that Swiss workers are protected against wage dumping.
- **Cadre, specialists and other qualified employees will be admitted.** "Qualified employee" means, first and foremost, people with a degree from a university or institution of higher education as well as several years of professional experience. **Depending on the profession or field of specialisation, other people with special training and several years of professional work experience may also be admitted. Besides professional qualifications, the applicant is also required to fulfil certain other criteria,** which would facilitate his or her long-term professional and social integration. These include; professional and social adaptability, knowledge of a language (or languages) and age.
- **Exceptions to the admittance requirements** may be made in certain cases (not conclusive but represent the most frequent circumstances: Cooperation agreements/projects, Practical training and further education, Transfer of cadre or specialists, Difficult recruitment situation in the labour market, Employment following conclusion of a person's studies, Economic and other reasons with lasting effect or influence on the Swiss labour market). Family members of Swiss nationals and persons with a long-term residence permit do not require authorisation for self-employment. Family members of other foreign nationals staying in Switzerland do require a permit, however.
- Foreign nationals may only be admitted for employment **if they have suitable accommodation.**

- b) Transfer of senior management and essential specialists within internationally active companies

In order to simplify the **transfer of senior management staff and essential specialists within internationally active companies**, the Foreign Nationals Act facilitates the issue of short-term residence permits and residence permits given the following requirements: a. the interest of the economy at large, b. request of the employer, c. contingents are respected (Art. 20 FNA), d. salary and working conditions are respected (Art. 22 FNA) and e. suitable accommodation (Art. 24 FNA) is available for the foreign national (Art. 46 VZAE). The correspondent documents of the request have to prove that the requirements are met and therefore a **derogation of the principle of priority** (Art. 21 FNA) may be justified.

What is the procedure, who needs to file for the application and where?

Whereas there is a unified federal procedure for the registration proceedings, work permits are granted on cantonal level.

It is in general the employer who submits the relevant application documents to the cantonal authorities. There are 26 cantons. Each of them has its own cantonal employment service and migration agency. It is either or that will be receiving the application. Therefore answering the question regarding the procedure in detail would go far beyond the scope of this information sheet.

Which information and documents are to be provided to the competent authorities?

In general there are several **forms** provided by the relevant authorities that have been completed by the employer as well as by the employee. These forms have to be submitted together with required documents.

Which **documents** are required depends on the nationality of the employee (resp. if the case is covered by FMP or FNA) and whether he is posted by a company, is an independent service provider or takes up an employment in Switzerland (with a Swiss employer), but also on other aspects regarding the employee and the employer (e.g. domicile), the work location resp. canton. In general we are talking about work contract, deployment letter, CV, proof of qualification, proof of intensive efforts to find a Swiss and / or EU candidate etc.

What is the timing?

The **timing of the registration proceedings** depends on the relevant industry sector. Whereas certain registrations have to be done 8 days prior to entering the Swiss labour market (for example in the construction industry) there are other sectors where a registration has only to take place after or within the first 8 working days.

The **timing to apply for a work permit** depends on the type of permit required, the nationalities involved (i.e. whether the FNA or the FMP is applicable) and the competent authority. Permits with regard to deployment of workers are in general treated within a few weeks.

What is the duration of the work permit? Can it be renewed?

As mentioned above there are different types of permits. Requirements are higher the longer the permit.

As mentioned EU / EFTA nationals may use the registration proceedings up until 90 days and will easily receive an extension up until 120 days.

- **L permits** are issued for a period up until one year and can be extended to two years.
- **B permits** in general last one year (or 5 years in case of EU / EFTA nationals) and can be renewed until a C permit is granted.
- **C permits** are unlimited even though they have to be confirmed every five years.

Is it possible to apply for permanent status after a certain period of time under the work permit?

Yes. C-permits are issued after five years for most of the EU / EFTA nationals (according to special agreements with the respective states) and after 10 years for all other nationalities.

1.3. Is a separate residence permit required/ granted via the work permit? Please explain.

With the exception of the registration proceedings that are handled by the employment authorities only, there are always two authorities involved and a **residence permit will be granted via the work permit.**

It is the cantonal legislation that determines depending on the nationalities involved and the permits required whether the application has to be submitted to the migration authorities or the employment authorities first.

1.4. Who can be sanctioned in case of illegal employment in your country (e.g., the employer, the employee, the host company, etc.)? What are the sanctions (civil and/or criminal) in case of illegal employment?

According to the **FNA** everyone who facilitates illegal employment in Switzerland can be sanctioned, i.e. sanctions may be imposed on the employer, the employee, the host company and any other person assisting a foreign national to find employment in Switzerland or to work without permit.

Further sanctions can be imposed by the **Posted Workers Act**. Subject to sanctions under this act are not only the direct employers but also general contractors that have to assume responsibility for the compliance of their subcontractors with the laws.

There are different kinds of sanctions that could be imposed:

- **Penal sanctions:** Depending on the regulation that is violated the penalty can be a custodial sentence in general not exceeding five years, a monetary penalty or a fine up to CHF 1'000'000 in the worst cases.
- **Administrative sanctions:** warning, fine or suspension of professional activity in Switzerland up to 5 years. Serious breaches of provisions are published in a public register and every breach can lead to the imposition of costs (Art. 9 Posted Workers Act).
- **Civil sanctions:** based on a collective agreement that has been declared to be generally binding, e.g. contractual penalties.

1.5. Did your country implement the European Blue Card Directive 2009/50/EC? If so, please explain the scope, conditions, application process and validity of the blue card?

No.

1.6. Did your country implement the European Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer? If so, please briefly describe and explain importance and impact?

No. However in order to simplify the transfer of senior management staff and essential specialists within internationally active companies, the **Foreign Nationals Act (FNA)** permits derogations from the admission requirements (Art. 30

Abs. 1 lit. h FNA). For more information see question 1.2. b) Transfer of senior management and essential specialists within internationally active companies.

2. LABOUR AND EMPLOYMENT LAW

2.1. In your country, how is the applicable law governing the employment contract during the assignment period determined?

According to art. 121 of the Swiss Federal Act on Private International Law:

“1. Employment contracts shall be subject to the law of the state in which the employee has his ordinary place of work.

2. If the employee ordinarily works in several states, the employment contract shall be subject to the law of the state in which the employer’s business establishment or, in the absence of such establishment, his domicile or ordinary residence is located.

3. The parties may subject the employment contract to the law of the state in which the employee has his ordinary residence, or in which the employer has his business establishment, domicile, or ordinary residence”

In principle, the law applicable to the employment contract remains the law of the state of origin during the assignment in Switzerland.

The parties are however relatively free to adapt such original contract to the new Swiss environment of the posted worker by concluding a secondment agreement.

2.2. Which local employment laws of your country are determined as mandatory minimum laws/ minimum hardcore protective rules and working conditions? Please explain. Is there relevant case law?

Art. 2 of the Posted Workers Act (also sometimes referred to as the Employee Assignment Act or the Act on Assignments) provides for the minimum employment and salary conditions as follows:

“1. Employers shall guarantee posted employees at least the employment and salary conditions as laid down in the federal acts and ordinances, collective employment agreements and standard model employment contracts stated to be generally applicable in accordance with Art. 360a of the Code of Obligations in the following areas:

- 1. Minimum pay*
- 2. Working hours and rest periods*
- 3. Minimum allocation of leave*
- 4. Health, safety and hygiene at work*
- 5. Protection of pregnant women, women who have recently given birth, children and young people*
- 6. Non-discrimination, in particular equal treatment of men and women.*

2. If collective employment agreements that have been declared generally binding provide for salary guarantees such as leave, public holidays or child allowances, contributions to compensation funds or similar institutions, such provisions also apply to employers who post workers to Switzerland. This provision is not applicable if the employer can prove that he is paying, for the same period, contributions into such an institution in the state where he is based.

2bis. If a collective employment agreement that has been declared generally binding provides for a compulsory contribution towards advanced training expenses, these provisions also apply to employers who post employees to Switzerland if the posting lasts longer than 90 days.

2ter. If a collective employment agreement that has been declared generally binding provides for cover payment by the employer of a financial guarantee, these provisions also apply to employers who post employees to Switzerland.

2quater. If a collective employment agreement that has been declared generally binding stipulates that co-managed bodies responsible for ensuring the application of the agreement may impose a contractual penalty under the agreement, these provisions also apply to employers who have posted employees to Switzerland that are in breach of Article 2.

3. Payments made in connection with the posting are considered to be part of the salary provided they are not paid as a reimbursement of expenses directly linked to the posting, such as travel expenses, accommodation or meals.

4. Minimum employment and salary conditions must be complied with throughout the duration of the assignment.

5. The Federal Council may enact provisions under which the employer must prove that he is paying social contributions.”

In addition, Art. 3 of the Posted Workers Act provides for the accommodation conditions as follows:

“The employer must ensure posted workers have accommodation which meets the normal standards of hygiene and comfort. Deductions for accommodation and food expenses should not exceed the standard rates for the area.”

Except in some specific fields or industries, there is no minimum salary in Switzerland.

The minimum salary to be paid to a posted worker must therefore be determined on a case-by-case basis, depending on criteria such as place of work, position, age, seniority, level of specialization, etc.

If the base salary paid in the home country is lower than the minimum Swiss salary applicable, the employer will have to pay an assignment allowance corresponding at least to the difference during the period of the assignment in Switzerland.

In addition to the base salary and the assignment allowance, the employer (or the host company) typically bear the accommodation, meal and travel costs during the period of the assignment in Switzerland.

2.3. Does your country foresee specific rules on the ‘lease of personnel’? Is there a principle prohibition of ‘lease of personnel’? Please explain and provide examples. What are the sanctions and penalties? Is there a possibility to reduce the risk? Please explain. Is there relevant case law dealing with this matter?

Switzerland foresees specific rules on the lease of personnel in the Federal Act on Employment Services and the Hiring of Services.

Employers are deemed to be offering services for hire if they make available their employees' services to another firm unconnected with them and if they transfer to the hirer substantial rights to give instructions to the worker.

Licences are required for the professional hiring of services in the form of temporary work or work on contract within Switzerland or between Switzerland and abroad, but not for occasional hiring.

It is important to note that the hiring of services from abroad to Switzerland by a foreign business offering services for hire is not allowed.

A violation of the Federal Act on Employment Services and the Hiring of Services is considered as a criminal act and can lead to a fine up to CHF 100'000.-

2.4. If you were asked by one of your clients to draft an assignment letter (secondment agreement between the original employer in the home country and the employee), which clauses would you include? What should the assignment letter cover? Is this foreseen by a specific law or based on case law? Please explain.

The assignment letter (or secondment agreement) may sometimes be a useful document in the permit request, as it may evidence, like a motivation letter, the reasons and the conditions of the assignment.

It is however not always necessary to draft a detailed assignment letter, especially when most of the original employment contract remains applicable during the assignment.

Some cantons provide for standard forms of assignment letter which typically contain the following information:

- Details on the assignee (surname, given name, nationality, date of birth, Seniority with the foreign Employer)
- Addresses of the foreign employer and of the Swiss company
- Duration of the assignment
- Number of days of presence per week
- Exact task(s) of the assignee during the assignment
- Place of assignment
- Details of the salary (salary paid abroad, assignment allowance, additional allowances for health insurance premiums, taxes, social deductions etc)
- Confirmation by the foreign employer that the expenses for travelling, board and lodging are covered and not deducted from the gross salary
- Confirmation by the foreign employer of the existence of a health and an accident insurance

In addition to the above information, one should check that the minimum employment and salary conditions (see above question 2.2) are met and, as the case may be, add clauses in this respect to clarify any uncertain situation.

A clause indicating that the assignment is for a maximum duration and that the foreign employer remains free to decide at any time to repatriate the posted worker to its original place of work at the original conditions of work is useful to ensure that such worker does not raise a claim to stay in Switzerland until the end of the originally planned assignment period.

It is important to bear in mind that a salary paid in Euro (or in another foreign currency) may comply with the minimum salary in Switzerland (see question 2.2 above) at the beginning of the assignment, but may not comply with it anymore at a later stage, due to fluctuations of the currency exchange rate.

In order to avoid such risk, it is advisable to provide in the contract that the salary shall always comply with the minimum salary in Switzerland and that if necessary (for instance due to the fluctuations of the currency exchange rate) it will be increased correspondingly. If such a case arises, it is advisable at the time of the increase to get an additional written acknowledgment from the assignee that such increase of salary is only temporary and due to the fluctuations of the currency exchange rate, as depending on the circumstances, it may be difficult to reduce the salary to the original level after the currency exchange rate comes back to its previous level or when the assignment is finished.

2.5. Please explain the applicable and most relevant rules of your country in case the employer wishes (1) to early terminate the assignment and (2) to terminate the employment relationship (e.g., is there a right to return? Should the assignment allowances be included in the calculation of the notice indemnity? Etc.). Is there relevant case law?

As indicated above (see question 2.1), the law applicable to the employment contract remains in principle the law of the state of origin during the assignment in Switzerland.

An early termination of the assignment will therefore not be considered as a termination of the employment relationship and will not entitle the posted worker to any kind of compensation or indemnity (unless provided for by the applicable foreign law), especially if the employer has carefully drafted the secondment agreement as suggested above (see question 2.4).

If the foreign employer terminates the assignment, the posted employee has an obligation to return to its original place of work.

If the foreign employer terminates not only the assignment but also the employment relationship, the question of the right of the posted employee to return to its original place of work shall be decided in application of the applicable foreign law. Swiss law does not provide for such right to return.

As relevant case law, one can mention the judgment of the Swiss federal court of 3 January 2012 (4A_422/2011) regarding a worker posted from France to Geneva. This judgment analyses and interprets the notion of “secondment contrat”.

3. SOCIAL SECURITY

3.1. Provide a short overview of the level of social security charges in your country. What are the employer social security contributions? What are the employee social security contributions? Is there a cap/ maximum? Please briefly explain.

The Swiss social security system is divided into five areas:

- (i) Old-age, survivors' and invalidity insurance: 9.4% of the gross salary of which employer and employee each pay half of the total contribution. No cap/maximum.
- (ii) Protection against the consequences of accident: the premiums are levied according to accident risk of the employee. The employer is obliged to pay all of the premiums for the occupational accident insurance, whereas it is usually the employee who assumes the premiums for the non-occupational accident insurance.
- (iii) Protection against the consequences of illness: In case an employee becomes sick, his employer is obliged to continue to pay his salary for a certain period of time. The duration of the statutory salary payment depends on the employee's years of service. The employer either takes out an insurance in order to cover for the period in which the employee is sick or pays for such duration himself.
- (iv) Income compensation allowances in case of service and in case of maternity: 0.45% of the gross salary of which each employee pay half of the total contribution. No cap/maximum.
- (v) Unemployment insurance: 2.2% of the gross salary of up to CHF 148'200 of which employer and employee each pay half of the total contribution. For salaries of above CHF 148'200, the contribution is 1% of which the employer and employee each pay half of the total contribution.

- (vi) Family allowance: 1.1% of the gross salary, entirely paid by the employer.

Please note however, that in case an employee is being assigned from **an EU-EEA** country to Switzerland, she or he remains covered by the social security laws of his or her home state (i.e. the social security laws of the sending state) in accordance with the EC regulations Nr. 883/2004 and Nr. 987/2009. Therefore, the assigned employee (as well as his or her employer) are exempt from paying contributions to the Swiss social security schemes (i.e. old-age, survivors' and invalidity insurance, accident insurance, unemployment insurance, family allowance etc.). In addition, assigned employees are also exempt from the compulsory sickness insurance scheme in Switzerland.

3.2. In case of assignments from outside the EEA to your country or from your country to non-EEA countries, with what countries has your country signed a social security agreement?

Switzerland has signed social security agreements with the following states:

Australia, Bosnia and Herzegovina, Canada, Channel Island and Isle of Man, Chile, Croatia, India, Israel, Japan, Macedonia, Montenegro, Philippines, San Marino, Serbia, South Korea, Turkey, Uruguay, USA.

4. OTHER OBLIGATIONS AND FORMALITIES

4.1. Are there other relevant formalities and obligations in your country in case of assignments to your country (e.g., prior notification to the authorities, drafting and keeping social documents, etc.)?

- (i) Employees who have been assigned to Switzerland from enterprises or corporations who have their legal domicile in an **EU/EFTA- member state** for a period of less than 90 days do not need a work permit, but need to submit a notification to the authorities. However, such notification to the authorities is only necessary, in case the assignment last more than 8 days per calendar year. It also does not matter if the work is non-continuous or if the employee only works by the day.

For certain industries however, the authorities need to be informed from day one: catering industry, construction industry, staff leasing, surveillance industry, the gardening as well as the cleaning industry.

Employees who have been assigned to Switzerland from enterprises or corporations who have their legal domicile in an EU/EFTA- member state for a period of more than 90 days always need a work permit.

- (ii) Employees who have been assigned to Switzerland from **outside of the EU/EFTA**, need a work permit from day one for the catering industry, construction industry, staff leasing, surveillance industry, the gardening as well as the cleaning industry. For other industries a work permit is needed, in case the work last more than 8 days per calendar year.

As set out above in clause 3.1, should an assigned employee remain covered by the social security provisions of his or her home state, his or her foreign employer must request a so-called “A1 attestation” from the competent institution in the given EU member state. The applicant then transmits a copy of the issued attestation to the assigned employee. The assigned employee must keep the A1 attestation at the disposal of the old-age, survivors’ and invalidity insurance fund (which would be competent if Swiss social security legislation were applicable). As assigned employees must be in possession of an A1 attestation for the entire duration of their temporary employment, it is recommended that an application for such attestation is submitted as early as possible.

4.2. What are the penalties and sanctions in case these formalities and obligations are not complied with? Who can be sanctioned? Is there relevant case law?

Employers who infringe provisions of the “*Employee Assignment Act*” will face (i) civil, (ii) administrative as well as (iii) criminal sanctions in order to enforce compliance with working and wage conditions in Switzerland.

- The civil sanctions stem from the applicable bargaining agreements.
- The administrative sanctions can be the following: (i) warnings, (ii) fines up to CHF 5’000.-, (iii) barring of employers of offering their services (between 1 and 5 years) as well as (iv) imposition of the control costs.
- In case a party infringes the obligation to give information, resists the control of the competent authorities or does not abide by the barring of offering their services, it can be criminally sanctioned with a fine of up to CHF 40’000.-. Should a party systematically and with malicious intent ignore the minimal work and wage conditions is liable to a fine of up to CHF 1 million. In addition to the fines can the competent authorities seize the assets.

Those employers who have been barred from offering their services for a certain period of time are all registered in a publicly available list online which is updated regularly by the State Secretariat for Economic Affairs.

5. SOCIAL INSPECTION

5.1. Are cross-border assignments a priority in your country for the social inspection? Please explain.

Yes they are. Parallel with the introduction of the free movement of persons, flanking measures against wage and social welfare dumping came into force. They are designed to protect employees against unfair undercutting of the wage and social welfare standards existing in Switzerland.

Several actors have been entrusted with the implementation of these flanking measures. On a federal and cantonal level so-called *tripartite commissions* (consisting of representatives of authorities, employers and labour unions) observe the job market and report infringements of the applicable rules and regulations to the cantonal law enforcement authorities.

The so-called *parity commissions*, who are responsible to enforce the collective bargaining agreement, control the adherence to such collective bargaining agreement in Swiss undertakings.

The “*Ordinance regarding the Assignment of Employees*” states, that the authorities must conduct a minimum of 27’000 controls per year (in reality, more than 43’000 controls are conducted each year). The allocation of these controls over the different categories are based on certain risk factors. Roughly 50% of the assigned employees should be controlled (in addition to 50% of the self-employed employees). Assigned employees are deemed to be the most vulnerable group, as the risk of wage undercutting is considerable if one takes into account the disparity between the wages in Switzerland and the countries of origin of foreign employees.

The authorities in particular tend to focus on the catering industry, construction industry, staff leasing, surveillance industry, the gardening as well as the cleaning industry.