

GMS Flash Alert

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Switzerland – Immigration Rights for Romanians, Bulgarians; Social Security for Croatians

There have been a few recent developments in Switzerland that concern foreign nationals from Croatia, Romania, and Bulgaria, three countries that joined the European Union (EU) a few years ago. The changes pertain to immigration restrictions and the application of social security regulations.

WHY THIS MATTERS

New rules concerning immigration rights for Switzerland-inbound Bulgarian and Romanian nationals will affect employers that are bringing such nationals into Switzerland for work purposes or considering recruiting them for work in Switzerland for periods of 12 months or more (whether defined or undefined). The restrictions will create challenges, but these are not surmountable. From a contractual perspective, employers, for instance, might wish to assess whether an employment contract for a definite *maximum* period of 12 months would suffice in light of their staffing needs – for such situations, L permits are granted without restrictions. In any case, employers should take care to properly manage expectations and foster awareness in their business and amongst the concerned employees that a permit might be refused or not extended.

The social security rules impacting Croatian nationals in Switzerland should protect Swiss and Croatian cross-border workers from double social security taxation and serve to protect social security benefit accruals and entitlements for Croatian and Swiss nationals spending time working in the other country.

Under the new rules, employers with Croatian workers in Switzerland and Swiss workers in Croatia, generally are able to avoid dual payment of social security costs. In turn, they should see international assignment-related costs for such workers fall. If they haven't done so already, employers should also modify their international assignment policies in respect of such assignments and communicate clearly the changes to affected employees.

Romanian, Bulgarian Nationals and Rights to Emigrate to Switzerland

Recently, the Swiss Federal Council announced the reintroduction¹ of immigration restrictions on Bulgarian and Romanian citizens who intend to take up work in Switzerland as local hires for a definite period of more than 12 months or for an indefinite period of time.

Background

As per 1 June 2016, all Swiss labor market restrictions imposed on Bulgarian and Romanian local hires were eliminated. Thus, citizens from these countries benefited from the full free movement rights. However, according to the bilateral agreement on the free movement of persons with the EU/EFTA, Switzerland has the right until 31 May 2019 to unilaterally invoke a so-called “safeguard clause” (in German: “Ventilklausel”) if a certain threshold of immigrating workers from Bulgaria and Romania was met within a year’s time. (For prior coverage, see GMS [Flash Alert 2014-060](#), 3 June 2014.)

As the relevant threshold was met, the Federal Council invoked this right recently. The restrictions will be in effect for the period 1 June 2017 to 31 May 2018.

Consequences

As a consequence, effective 1 June 2017, Bulgarian and Romanian citizens wishing to take up work in Switzerland as local hires for an indefinite period of time (or a definite period of more than 12 months) will be subject to a quota and subject to approval of a formal application in the next 12 months.

Bulgarian and Romanian nationals who seek to take up work in Switzerland for a definite maximum period of 12 months will not be affected by the restrictions and should continue to be entitled to a short-term residence and work permit type L.

Moreover, those Bulgarian and Romanian nationals who already hold a valid Swiss work permit are only affected if they hold an L permit and are about to get it converted into a B permit (e.g., when an employment contract for a definite maximum period of 12 months is being extended or converted into an unlimited contract).

KPMG NOTE

Finally, if not hired locally but assigned to Switzerland, Bulgarian and Romanian nationals are not affected by the Federal Council’s decision. Rather, assignees remain subject to the restrictions applicable to all EU/EFTA assignees (qualified staff only, tight quarterly quotas, Swiss customary terms and conditions, as well as salary band requirements, etc.).

For more details, read “[Bulgarian and Romanian workers in Switzerland – restrictions reintroduced!](#)” a blog authored by Adrian Tüscher (Director, Attorney-at-Law, Head Employment & Immigration with the KPMG International member firm in Switzerland), published on the Web site of the KPMG International member firm in Switzerland.

Application of EU Social Security Rules to Croatian Nationals in Switzerland

Starting on 1 January 2017, the social security rules applicable in the EU and Switzerland under Regulations (EC) No 883/2004 and 987/2009, took effect between Switzerland and Croatia.² In connection with European social security coordination rules Croatia and Switzerland will apply Regulations No 883/2004 and 987/2009.

Croatia became a member of the EU on 1 July 2013. In some EU/EEA member states there were transitional measures that delayed the full implementation of some EU law between that member state and Croatia. In accordance with the Swiss Federal Council Decree of 16 December 2016³, the Agreement between Switzerland and the European Community and its member states on the free movement of persons, was extended to the EU member state of Croatia.⁴ Consequently, Regulations (EC) No 883/2004 and 987/2009 are applicable in the relationship between Switzerland and Croatia from 1 January 2017 onwards.

Croatian residents are no longer eligible to contribute to the Swiss voluntary social insurance scheme from 1 January 2017. However, there is a transitional arrangement, so those who already participate in the Swiss voluntary social insurance scheme retain this right until 31 December 2022 at the latest. Persons who per 1 January 2017, have reached the age of 50 and over may continue this insurance until they reach the ordinary retirement age.

KPMG NOTE

The application of the EU social security regulations between Switzerland and Croatia helps to simplify the social security treatment of cross-border workers and the administrative processes around social security for workers from the two countries.

FOOTNOTES:

1 See the news release "[Bundesrat ruft Ventilklausel an für Erwerbstätige aus Bulgarien und Rumänien](#)," on the Web site of the Eidgenössisches Justiz- und Polizeidepartement EJPD (Federal Department of Justice and Police EJPD).

2 See the announcement (in German), "[Ausdehnung des Freizügigkeitsabkommens auf Kroatien am 01.01.2017](#)," and further details on the Web page for the Bundesamt für Sozialversicherungen BSV (Federal Social Insurance Office).

3 See the 16 December 2016 announcement (in French) "[La Suisse ratifie le protocole relatif à la Croatie](#)," on the Web page for the Conseil Federal (Federal Council).

4 For related coverage, see GMS [Flash Alert 2014-060](#), 3 June 2016.

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The information contained in this newsletter was submitted by the KPMG International member firm in the Switzerland.

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