NOTICES FROM MEMBER STATES


(2009/C 50/09)


Point III. Article 21(d) — Obligation on third-country nationals to report their presence on the territory of any Member State is replaced by the following:

The Swiss Confederation hereby notifies the Commission, pursuant to Article 37, taken in conjunction with Article 21(d), of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), that foreign nationals are generally required to report their presence on Swiss territory pursuant to Articles 12 to 14 of the Federal Aliens Act of 16 December 2005 (LEtr; RS 142.20).

Irrespective of any obligation to obtain a permit, the following are exempt from the above requirement:

— foreign nationals not engaging in gainful employment and residing in Switzerland for no more than three months (Article 9 of the Ordinance on admission, residence and gainful employment (OASA); RS 142.201). However, pursuant to Article 16 LEtr, persons providing such persons with accommodation for profit must report them to the competent cantonal authority,

— foreign nationals who have been authorised to enter Switzerland to engage in gainful employment or provide a cross-border service there for no more than four months in total over a twelve-month period, except cabaret artistes and other artistes in the fields of music, literature, performing arts, plastic arts, circus or variety (Article 12(1) and (3), OASA),

— foreign nationals who were not required to obtain an entry permit because they provide a cross-border service or engage in gainful employment in Switzerland on the orders of a foreign employer for no more than eight days per calendar year; however, it transpires that if the activity will last longer than expected, a report (notification) must be made before the eight-day period expires with a view to obtaining authorisation (Article 14(2) OASA). However, persons engaged in the following sectors, regardless of the length of employment, are required in all cases to obtain a permit and notify their arrival: construction, civil engineering and the finishing industries, catering, the hotel industry, industrial or domestic cleaning, guard and security services, itinerant trades and the sex industry.

The national legislation relating to Article 21(d) of the Schengen Borders Code is as follows:

Federal Aliens Act of 16 December 2005 (LEtr; RS 142.20)

Article 12

Obligation to notify arrival

1. All foreign nationals required to obtain a short-term residence or establishment permit must notify the authority competent for their place of residence or work in Switzerland of their arrival before the end of the period of residence for which authorisation is not required or before the start of the gainful employment.

2. They are required to notify the authority competent for the new place of residence of their arrival if they move to a new canton or municipality.

3. The Federal Council shall lay down the period within which arrival must be notified.
Article 13

Procedures for authorising and notifying arrival

1. All foreign nationals must produce valid identity papers when notifying their arrival. The Federal Council shall lay down exceptions and the recognised types of identity document.

2. The competent authority may require an extract from the judicial record in the country of origin or provenance or other documents needed for the procedure.

3. Foreign nationals may not notify their arrival until they are in possession of all the documents required by the authority competent for issuing the permit.

Article 14

Derogations

The Federal Council may adopt more favourable provisions relating to the obligation to obtain a permit or notify arrival, in particular in order to facilitate temporary cross-border services.

Article 16

Obligation of the provider of accommodation

Persons who provide accommodation to foreign nationals for profit must notify the competent cantonal authority accordingly.

Ordinance on admission, residence and gainful employment (OASA; 142.201)

Article 9

Residence without notification of arrival

(Article 10 LEtr)

1. Foreign nationals not engaging in gainful employment in Switzerland are not required to hold a permit or notify their arrival provided that they stay for no longer than three months over a six-month period from their entry into Switzerland (residence not subject to authorisation). If necessary, the person concerned must provide supporting documents to prove their date of entry.

2. The entry conditions stipulated in Article 5 LEtr must be met for the whole duration of residence not subject to authorisation.

Article 12

Short-term gainful employment

(Articles 12(3) and 4 LEtr)

1. Foreign nationals in possession of an entry permit (Article 5) authorising them to engage in gainful employment or to provide a cross-border service in Switzerland for no more than four months in total over a twelve-month period (Article 19(4)(a)) are not required to notify their arrival. Cabaret artistes within the meaning of Article 34 are an exception to this rule.

2. Persons in possession of an entry permit (Article 5) authorising them to engage in gainful employment in Switzerland for more than four months in total over a twelve-month period may engage in that activity as soon as they have notified their arrival provided that no decision to the contrary has been taken.

3. Cabaret artistes (Article 34) and other artistes (Article 19(4)(b)) must notify their arrival in Switzerland regardless of their length of stay.

Article 14

Cross-border gainful employment of not more than eight days

1. Foreign nationals who provide a cross-border service (Article 3) or engage in gainful employment in Switzerland on the orders of a foreign employer must possess a permit if they engage in the activity for more than eight days per calendar year.
2. If the activity lasts for longer than expected, notification is required before the eight-day period expires. Once notification has been made, the gainful employment may be pursued until the permit is issued unless the competent authority decides otherwise.

3. Regardless of their length of stay, foreign nationals must possess a permit if they engage in cross-border gainful employment in one of the following sectors:
   (a) construction, civil engineering and finishing industries;
   (b) catering, hotel industry and industrial or domestic cleaning;
   (c) guard and security services;
   (d) itinerant trade within the meaning of Article 2(1)(a) and (b) of the Federal Act of 23 March 2001 on itinerant trade;
   (e) the sex industry.