

BULLETIN APRIL 2021

# The Brexit and its consequences in Switzerland

## I. INTRODUCTION

As of January 1st, 2021 Switzerland's relation with the United Kingdom (UK) are governed by new bilateral agreements.

Indeed, since the end of the transition period, which occurred on December 31, 2020, the bilateral agreements between Switzerland and the EU do not apply anymore to the UK. This is a consequence of the British people vote to leave the European Union (EU) on June 23, 2016 and of the implementation of the withdrawal agreement which established the terms of the United Kingdom's orderly withdrawal from the EU entered into between the UK and the EU on January 31, 2020.

After Brexit, the Federal Council has developed a so-called "Mind the Gap" strategy to re-duce the consequences of Brexit. Such strategy has been implemented to avoid legal gaps and preserve reciprocal rights and obligations between Switzerland and the UK. In the last few years, Switzerland concluded seven agreements with the UK. The two countries have also agreed to develop their relations. For example, they issued a joint statement on closer cooperation in the area of financial services.

In this publication, we will analyze the situation regarding Citizens' acquired rights, the right for service providers to perform their prestation in the other country as well as the impact of the Brexit on the financial relation between Switzerland and UK.

## II. CITIZENS' ACQUIRED RIGHTS

### **British nationals who were in Switzerland prior to January 1st, 2021**

Thanks to the Citizens' Acquired Rights Agreement the rights of British nationals in Switzerland under the Agreement on the Free Movement of Persons (AFMP) are safeguarded. Reciprocal terms apply to Swiss nationals in the UK.

The Citizen's Acquired Rights Agreement only applies to British nationals who lived in Switzerland prior to December 31, 2020 and reciprocally to Swiss nationals who lived in the UK prior to December 31, 2020.

The following acquired rights under the AFMP are maintained provided that their prerequisites are still met:

- Residence rights;
- Right to family reunification;
- Right of the cross-border workers;
- Rights of service providers;
- Social security;
- Property and
- Recognition of professional qualifications.

Regarding property, the Citizen's acquired rights has the following impact:

- Any acquisition made by a British citizen before January 1, 2021 in Switzerland is not affected by the Brexit;

- The Federal Act on the Acquisition of Real Estate by Persons Abroad does not apply to British nationals who were already established even temporarily (e.g. B Permit) in Switzerland before January 1, 2021. For this exception to apply, residence in Switzerland must be uninterrupted.

Regarding social security, the same system shall continue to apply to (i) nationals of Switzerland and EU member states who are resident and working in the UK on December 31, 2020, (ii) British nationals residing and working in Switzerland on December 31, 2020, (iii) Swiss and EU nationals resident in Switzerland and working in the UK on December 31, 2020, (iv) nationals of the UK and EU member states who are resident in the UK and working in Switzerland on December 31, 2020, (v) other cross-border situations in which there is also a link with EU states, and (vi) residents who are not or no longer in a cross-border situation, as long as they have the right to work or reside in the other state. (e.g. Swiss nationals who give up employment in the UK but continue to reside there). This means that the same State remains competent for social security without discrimination. All forms concerning the applicable social security legislation for assignments started before January 1, 2021 remain valid for the duration of the cross-border situation or until the expiry date indicated on the document.

#### **British nationals relocating to Switzerland as of January 1, 2021**

Subject to a bilateral agreement between Switzerland and the United Kingdom, Swiss laws will apply to British citizens from January 1, 2021.

As of January 1, 2021, British citizens who have the intention to relocate to Switzerland in order to begin a gainful employment in Switzerland shall obtain a work permit under the same conditions as those applicable for other thirdcountry nationals. (i.e. outside EU-EFTA). Each UK nationals will be subject to a working permit quota. The Swiss Federal Council has created special quotas for the year 2021 (i. e. 2,100 B-Permits and 1,400 L-Permits) which are going to be distributed quarterly to the cantonal authorities. Unless a migration agreement is entered into between the UK and Switzerland in the next months, the UK quotas might be integrated in the general non-EU/EFTA quotas as of 2022. Employers who intend to hire some British nationals shall demonstrate that they were not able to hire Swiss nationals or EU-EFTA nationals to fill the offered

position. British citizen who would like to relocate to Switzerland after January 1st, 2021 without gainful employment are also subject to the rules applying to third-country nationals.

The Federal Act on the Acquisition of Real Estate by Persons Abroad applies to British nationals who want to acquire real estate in Switzerland unless they benefit from some acquired rights as mentioned above. Only British nationals holding a permanent residence permit (C-permit) and having their main residence in Switzerland are not subject to the requirements of this law.

Switzerland and UK contemplate to enter into an agreement coordinating the rules of their social security systems. As of today, we do not know if such agreement is being discussed between the two countries. In the meantime, the bilateral agreement entered into on 1968 between Switzerland and UK applies.

#### **III. SERVICE MOBILITY AGREEMENT**

Prior to January 1, 2021, British nationals were allowed to come to work in Switzerland as a posted worker according to the registration procedure for a maximum period of 90 days. No authorization was required. On the other hand, a Swiss employee could work in the UK for two years. In 2019, 3,800 UK service providers were registered in Switzerland.

On December 14, 2020, UK and Switzerland signed the Service mobility agreement. This agreement governs shortterm crossborder supply of services by natural persons. The Service mobility agreement is applied provisionally since January 1, 2021. It will be officially submitted to the Parliament and confirmed by the end of June 2021. It shall remain into force for two years unless the contracting parties decide to extend its application.

Pursuant to this agreement, service providers from the UK remain authorized to come in Switzerland, under the notification procedure, to perform their activity for a period up to 90 days per calendar year. Such authorization applies to nationals of the UK who are established in the territory of the UK and seeks to provide a service in the territory of Switzerland as well as all employees, irrespective of their nationality, who are integrated into the regular labour market of the United Kingdom and are posted for the provision of a service in the territory of Switzerland by their

employer established in the UK. This allows Swiss businesses to continue using the services of UK companies as they used to.

In 30 sectors (by instance advertising services, or translation and interpretation services) Swiss nationals and Swiss residents are also authorized to perform their services in the UK for a period up to 12 months in any 24 months period. Swiss service providers shall however have a university degree or a qualification demonstrating knowledge of an equivalent level. Swiss service suppliers will not be subject to any economic needs test for access to these sectors.

UK and Switzerland also reaffirmed their intent to continue working on the development of the recognition of professional qualifications with a future comprehensive agreement.

#### IV. COOPERATION IN THE ECONOMIC AREA

##### Joint Statement

With the Brexit, UK lost its European passport for banks which allowed companies licensed in the UK to trade freely in any other state, with a minimum of additional authorizations. Switzerland does not benefit from this European passport as well. Both countries must therefore obtain specific authorizations/equivalences to trade in any European state.

UK and Switzerland have agreed to conclude an international agreement that will enhance the cross-border market for financial services between Switzerland and the UK. They signed a joint statement on June 30, 2020 to affirm their shared ambition.

Their mutual objective is to improve the cross-border market for financial services between Switzerland and the UK by working towards mutual recognition of each other's regulatory and supervisory regimes in the fields of insurance, banking, asset management and capital markets (including market infrastructure). On the basis of recognition, reciprocity and enhanced regulatory and supervisory cooperation, both countries will seek to improve access for the cross-border provision of financial services for wholesale and sophisticated clients as well as to reduce or remove on-going frictions applying to crossborder activities between the two jurisdictions.

Their intent is to conclude a legally binding international agreement that will (i) establish outcomes-based mutual recognition, providing rights for the provision of relevant financial services from one jurisdiction into the other, and reducing regulatory frictions for cross-border activities, (ii) establish structures and appropriate safeguards to underpin these rights, including provisions for regulatory and supervisory cooperation; and (iii) create a clear, transparent and managed process in the event that recognition is withdrawn in the future or re-established after a withdrawal.

On January 27, 2021, the two countries agreed on the following steps to implement this agreement.

##### UK trading platforms

Since January 1st, 2019, foreign trading venues where Swiss equity securities are traded or that facilitate trading in such equity securities have to obtain prior recognition from FINMA. Since July 2019, trading platforms based in the EU (UK included) are not authorized to trade Swiss equities. The purpose of this prohibition is to prevent European trading platforms from trading equity securities of Swiss issuers whose securities were admitted to trading in Switzerland.

On February 3, 2021 UK recognized the equivalence of Swiss stock exchange regulations.

As a consequence, Switzerland inactivated the stock exchange protective measures in relation to the UK.

Since February 3, 2021, this prohibition does not apply anymore to trading platforms based in the UK at which to FINMA's knowledge Swiss equity securities have already been traded in the past or which have admitted such securities to trading.

#### V. CONCLUSION

Switzerland and UK intend to strengthen their ties and to establish a strong relationship in the future. They concluded new bilateral agreements prior to the end of the transition period and are still negotiating other agreements to strengthen their relation, notably in the financial area.

The agreements concluded before the end of the transition period were aimed at defusing the consequences of Brexit on relations between the two countries. Despite those

agreements, some rules will however be more restrictive for English nationals. In particular, Swiss human resources will have more work to do in order to recruit an English candidate than they used to prior to Brexit.

On the other hand, for certain aspects, notably financial, it seems that future agreements could strengthen the ties of both countries.

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