

ProSME's Newsletter (#4) – The enforcement of the flanking measures is disputed in Switzerland

October 2022

1 – The Swiss Federal Audit Office criticizes the enforcement of the flanking measures

The Swiss Federal Audit Office has published on April 2022 a report analysing the efficiency of the so called “flanking measures” (FlaM) (in French “*mesures d’accompagnement*”) that have been introduced by Switzerland in 2004, when the agreement on the free movement of persons signed with the EU entered into force.

These measures aim at fighting social dumping and guarantee fair competition between local and foreign companies. The enforcement of FlaM is in the hands of the cantons and the joint committees. The Confederation plays a supervisory role in this task. In 2019 it allocated CHF 15,3 million to the total budget of the control operations.

The Audit Office points out that the FlaM have a preventive effect on fraud and the controls are efficient in professional branches for which a minimum salary exists. In other branches controls are less efficient because observed abusive dumping practices cannot be sanctioned.

In its report, the Audit Office considers that the proportion of posted workers to be controlled as per the recommendations of the Federal joint committee (30% to 50%) is too high with respect to the risk represented by foreign companies for the Swiss labour market and generates an efficiency issue. It also points out that the cost of controls are much higher than the amount of the corrected salaries and that 8% of the companies have been controlled several times by several control bodies. This is partly due to the decentralized approach of the FlaM and the lack of coordination between the different control bodies.

The Audit Office regrets that it is not easy for foreign companies to understand the FlaM organisation and the Swiss remuneration system, despite the information efforts invested by the State Secretariat for Economic Affairs. Specifically, the announcement obligation is perceived as not efficient enough, creating late announcement or announcement to the wrong entities.

Further information is available on the website of the Swiss Federal Audit Office : <https://www.efk.admin.ch/en/publications/economy-and-administration/economy-and-agriculture/implementation-of-the-accompanying-measures-for-the-free-movement-of-persons-state-secretariat-for-economic-affairs.html>

2 – Swiss social partners firmly disagree with the conclusions of the audit report

As an answer to the report of the Swiss Federal Audit Office, the Federal joint committee (social partners) has published a press release in which it underlines the fact that the structure



of the FlaM was designed on purpose by the legislators for a decentralised use, in line with local and branch's needs.

It also notes that posted workers originate from countries where the salary level is lower than in Switzerland. It therefore considers that the efforts of control must be made where the risk for the Swiss labour market is high, i. e. on foreign companies executing service contracts in Switzerland.

The Federal joint committee does not understand the recommendations of the Audit Office and therefore cannot support them, especially when it comes to reducing the controls on foreign companies working on the Swiss territory.

The full press release can be found on the website of the Swiss Employer's Union (in French or German): <https://www.arbeitgeber.ch/fr/general/les-partenaires-sociaux-ne-soutiennent-pas-la-recommandation-du-cdf/>

3 - UKRAINE CRISIS : Federal Council imposes public procurement bans

The Purchasing Conference of the Swiss Confederation (PC) informs about the latest news regarding the crisis in Ukraine.

On 31 August 2022, the Federal Council adjusted the sanctions due to the situation in Ukraine. On the same day, the Federal Council also decided on and implemented bans on the awarding of public contracts to Russian nationals or to entities or organisations established in Russia. Russian nationals residing in Switzerland as well as companies established in Switzerland and majority owned by Russian persons are not affected by these measures. The sanctions include a ban on awarding public contracts to the above-mentioned persons, companies and organisations above the relevant threshold values (award ban) and, consequently, a ban on concluding the corresponding contracts. Contracts for current public contracts will have to be terminated by 28 February 2023 at the latest.

This prohibition also applies to tenderers and subcontractors who participate in public procurement contracts for more than 10% of the contract value.

In order to implement this measure, public contracting authorities have a declaration form, which bidders must fill in when participating in public contracts.

Press release : <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-90165.html>

SECO information on the measures taken and the tenderer declaration form : https://www.seco.admin.ch/seco/fr/home/Aussenwirtschaftspolitik_Wirtschaftliche_Zusammenarbeit/Wirtschaftsbeziehungen/exportkontrollen-und-sanktionen/sanktionen-embargos/sanktionsmassnahmen/massnahmen-zur-vermeidung-der-umgehung-internationaler-sanktionen.html

The tenderer declaration form can be found at the bottom of the SECO information page, under "Additional information".



Ordinance imposing measures in relation to the situation in Ukraine (see Article 29c) :
<https://www.fedlex.admin.ch/eli/cc/2022/151/fr>

If you have any questions or comments, please contact SECO by e-mail at sanctions@seco.admin.ch or by telephone on +41 (0)58 464 08 12.

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Source : <https://www.bkb.admin.ch/bkb/fr/home.html>

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