



EUROPEAN UNION

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### Main barriers for doing business in Switzerland for companies from EU Member States

This list contains barriers which EU companies systematically raise with EU and Member States embassies as problematic for their access to the Swiss market. There are a number of other barriers which companies raise although in a less systematic way. Inclusion of a barrier in the list is without prejudice to the legal assessment of the measure.

Barrier	Short description	Comment
1. Flanking measures	<p>Following the establishment of free movement of persons between the EU and Switzerland, since 2004 a system has been set up in Switzerland to control the compliance with Swiss wage and working conditions. The rules are set out in the law on posted workers, relevant ordinances and collective labour agreements.</p> <p>The principle of strict control of the respect of wage and labour conditions is fully in line with the practice in the EU and Member States. However, a number of practical aspects of the Swiss system have given rise to concerns by EU companies, in particular:</p> <ul style="list-style-type: none"><li>• the obligation to announce the start of the provision of services 8 calendar days in advance;</li><li>• the obligation to provide a guarantee ranging from CHF 5'000 to CHF 20'000 before the provision of services;</li><li>• a complex system of control fees/charges and sanctions (of administrative and civil law nature).</li></ul>	<p>The draft Institutional Framework Agreement (IFA) includes a protocol (Protocol 1) on <i>"the rules applicable to take account of the specific features of the Swiss labour market"</i>.</p> <p>The protocol foresees inter alia the reduction of the deadline for prior notice from 8 calendar days to 4 working days <i>"in branches defined on the basis of an objective risk assessment, which will be regularly reviewed"</i>.</p> <p>Protocol 1 also stipulates that <i>"in the case of service providers who did not meet their financial obligations towards the implementation bodies within the framework of a previous provision of services, Switzerland may demand a proportionate financial guarantee to be lodged before a provision of services (in branches defined on the basis of an objective risk assessment)"</i>.</p>

<p>2. Extension of VAT liability and appointment of fiscal representative</p>	<p>Until 2017 EU businesses providing services to Switzerland had to register for VAT in Switzerland only if their annual turnover <u>in Switzerland</u> was above the threshold of CHF 100'000. New legislation entered into force on 1.1.2018 and changed the reference from turnover in Switzerland to <u>worldwide</u> turnover. As a result, most EU businesses providing cross-border services in Switzerland are required to register for and pay VAT.</p> <p>In addition, an EU based company needs a fiscal representative in Switzerland. Such a fiscal representative creates additional costs.</p> <p>At the occasion of the request for a VAT number in Switzerland, foreign companies have to pay a guarantee which will only be paid back upon deletion of the VAT number. The guarantee amounts to 3% of the expected taxable turnover in Switzerland with a minimum of CHF 2'000 and a maximum of CHF 250'000.</p>	<p>There have been useful contacts between EU and Member States embassies and the Swiss tax authorities to clarify practical aspects of the VAT reform. However, EU companies are still reporting concerns about the consequences of the new legislation and related administrative obligation in relation to the ease of doing business.</p> <p>The situation will therefore have to be monitored on the basis of feedback from EU companies.</p>
<p>3. Public procurement</p>	<p>Despite efforts to harmonize procurement legislation in Switzerland, some differences remain between federal and sub-federal procurement (regarding i.a. award and exclusion criteria and legal recourse), making it potentially harder for companies to submit bids for different contracting authorities.</p> <p>Additionally, some provisions at the federal or the cantonal level might reduce the capacity of EU companies to submit bids :</p> <ul style="list-style-type: none"> <li>• The relatively high threshold for the publication</li> </ul>	<p>The amended federal law on public procurement, adopted by the Parliament in June 2019 aims at the harmonization of federal and cantonal legislation (concerning i.a. procedural thresholds and judicial review).</p> <p>It extends the social criteria that can be taken into account for tenders below the international thresholds (workplaces for older people and long-term unemployed) and states that the contract shall be awarded to the "most advantageous" bid (instead of the "most economically advantageous</p>

	<p>of calls for tenders can limit the transparency of the procurement procedure.</p> <ul style="list-style-type: none"> <li>• Tenders below the international threshold values can entail clauses that may disadvantage EU companies (e.g. vocational training or local references).</li> <li>• Judicial review of call for tenders and awarding decisions is limited. At the federal level, legal recourse is only admitted for contracts above a certain threshold (CHF 230.000 CHF for services and public supply contracts and CHF 8,7 million for construction).</li> </ul>	<p>bid").</p> <p>The text introduces moreover the possibility for contracting authorities –taking into account international commitments – to consider the <i>"different price levels in the countries where the service is provided"</i>.</p> <p>Thresholds of judicial review are lowered to CHF 150.000 and CHF 2 million respectively, but there are still limitations on suspensive effect and compensatory damages.</p>
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