



Free movement of persons – family reunification

Overview

Switzerland and the EU concluded the Agreement on the Free Movement of Persons (AFMP) in 1999. The AFMP allows EU nationals and their family members to live, work and study in Switzerland under certain conditions; the same conditions apply to Swiss nationals in the EU member states. The focus here is on inward and outward migration for the purpose of working.

In the process of stabilising the bilateral path with the EU, the AFMP will be updated to take account of Directive 2004/38/EC (EU Citizens Directive). A number of questions about the changes relating to family reunification arose during the consultation on the CH-EU treaty package. This factsheet provides an overview of the changes.¹

New rules on family reunification: Changes over existing AFMP

Currently, spouses and direct descendants (under the age of 21 or dependants) and dependent direct relatives in the ascending line have a right to family reunification. With the adoption of certain aspects of Directive 2004/38/EC, this entitlement is extended to registered partners, dependent direct relatives in the ascending line of persons in a registered partnership and relatives in the descending line (under 21 years of age or dependent) of persons in a registered partnership.

Furthermore, the host state may facilitate entry and residence in accordance with its national legislation for persons who are not family members within the meaning of Directive 2004/38/EC. This 'extended family reunification' is permitted on a discretionary basis, whereby private interests are weighed against public interests on a case-by-case basis. (See table on page 2 for changes to the updated AFMP compared to the existing AFMP.)

Compatibility of new rules on family reunification with Art. 121a of the Federal Constitution

The partial adoption of Directive 2004/38/EC will lead to minor amendments to secondary legislation on family reunification and associated rights. These amendments concern a small number of additional persons and do not prevent Switzerland from autonomously controlling immigration by setting annual quantitative limits and quotas in accordance with Art. 121a of the Federal Constitution, and taking into account the criteria set out in paragraph 3 of said article. The Foreign Nationals and Integration Act (FNIA) already treats registered partnerships as equivalent to marriage. In view of the requirement not to discriminate against EU nationals (and the fact that the more favourable FNIA provisions take precedence over those of the AFMP), family reunification of registered partners within the scope of the AFMP is already regulated in practice by analogy or as subsidiary legislation.

The provisions of the Protocol of Amendment to the AFMP are therefore compatible with Art. 121a of the Federal Constitution, as according to these provisions only a small number of additional persons will be able to immigrate to Switzerland.

	Existing AFMP	Updated AFMP
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¹ For more information on the partial adoption of Directive 2004/38/EC and the associated protection mechanisms, see the factsheet entitled Agreement on the Free Movement of Persons – Immigration.

Persons entitled to family reunification	<p>Spouse, children and dependent relatives in the ascending line</p> <p>NB: In practice, registered partnerships are already treated as equivalent to marriage under the AFMP (non-discrimination analogous to the FNIA)</p>	<p>Spouse, children and dependent relatives in the ascending line</p> <p>New: Registered partners</p> <p>Relatives of registered partners</p>
Facilitated family reunification	<p>Discretionary decision</p> <p>Family members who are dependants or were members of the same household in the country of origin</p>	<p>Discretionary decision</p> <p>Family members who are dependants or were members of the same household in the country of origin</p> <p>New: Family members requiring care (the family member strictly requires personal care on serious health grounds)</p> <p>Partners in a durable relationship</p>
Suitable housing requirement	<p>Requirement under AFMP</p> <p>BUT: Cantons determine what is 'suitable', and requirements are very low (Federal Supreme Court decision)</p>	<p>No requirement</p>
Access to gainful employment	<p>Spouse and children</p>	<p>All family members</p>
Access to social assistance	<p><u>Family members of employed persons</u></p> <p>Access to social assistance may not be denied</p>	<p><u>Family members of employed persons</u></p> <p>Access to social assistance may not be denied</p>
	<p><u>Family members of persons seeking work</u></p> <p>No access to social assistance</p>	<p><u>Family members of persons seeking work</u></p> <p>No access to social assistance</p>
	<p><u>Family members of economically inactive persons</u></p> <p>Receipt of social assistance generally leads to right of stay being withdrawn</p>	<p><u>Family members of economically inactive persons</u></p> <p>No access to social assistance; cantons may make exceptions</p>