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## Intra-Group Hiring of Services: Licensing Requirements

The Swiss State Secretariat for Economic Affairs SECO has issued a new guideline with regard to the licensing requirements for intra-group hiring of services ("2017 Guideline").<sup>1</sup> In this guideline, SECO clarifies its guideline regarding the Federal Act on Employment Services and the Hiring of Services issued in 2003 ("2003 Guideline")<sup>2</sup>.

### 1. Introduction

Hiring of services (*Personalverleih*) on a professional basis within Switzerland requires a cantonal license issued by the competent Cantonal Labour Authority. Businesses providing staff from Switzerland for hire abroad further require a federal license issued by SECO. Non-compliance with such licensing requirements is punishable with a monetary fine of up to CHF 100,000.

To date, it has been unclear whether intra-group hiring of services may be exempt from the licensing requirement. While the Federal Act on Employment Services and the Hiring of Services (*AVG, Arbeitsvermittlungsgesetz*) and the Ordinance on Employment Services and the Hiring of Services (*AVV, Arbeitsvermittlungsverordnung*) never provided for such exemption, SECO's 2003 Guideline explicitly stated that the licensing requirements do not apply in an intra-group situation.

### 2. Key Points

#### ■ Principle: Intra-Group Hiring of Services Requires a License

SECO's 2017 Guideline states that the Federal Act on Employment Services and the Hiring of Services does not contain any special rules regarding intra-group hiring of services, and that – notwithstanding the position taken in the 2003 Guideline – intra-group hiring of services is subject to the general licensing requirements.

This applies in particular if intra-group hiring of services is provided professionally by a group company, and if companies within a group of companies are specifically set up to provide other companies with employees (so-called "staffing firms"). In such situation, the hiring of services is done on a professional basis as per the statute, and the employees must be granted the protection awarded to them by law.

#### ■ Exception: No Licensing Requirement in Exceptional Circumstances

An exception from the licensing requirement may apply if intra-group hiring of services is (1) limited to individual cases and (2) done solely in order to (i) allow employees to gain professional experience abroad, (ii) assist with a know-how transfer, or (iii) occasionally as per the definition of the law.

<sup>1</sup> Konzerninterner Personalverleih – Beurteilung der Bewilligungspflicht / Weisung 2017; Präzisierung der Weisungen und Erläuterungen zum AVG, 20. Juni 2017.

<sup>2</sup> Weisungen und Erläuterungen zum Arbeitsvermittlungsgesetz (AVG), zur Arbeitsvermittlungsverordnung (AVV) und der Gebührenverordnung zum Arbeitsvermittlungsgesetz (Geb-AVG), 2003.

SECO's 2017 Guideline sets forth the following criteria that might serve as an indication that no license is required:

- The employee is primarily employed in order to perform his work with his employer. Hiring of services to another group company is not intended and is limited to individual cases only.
- Hiring of services is not the main purpose of the company offering services for hire.
- Hiring of services is limited in time.
- Hiring of services to another group company is offered on an occasional basis, e.g. to reduce overcapacities or bridge a short-term need for additional personnel.
- Hiring of services is done in order to allow the employee to gain professional or international experience, or to transfer specific know-how (e.g. group-wide implementation of software, training for new machinery).

In those circumstances, intra-group hiring of services shall be exempted from the licensing requirements so as to allow the employer to transfer employees quickly and without bureaucratic hindrances. Any hiring of services that goes beyond this limited scope and exceptional situations always requires a license.

### 3. Conclusion

In the new 2017 Guideline, SECO clarifies its position with regard to intra-group hiring of services and instructs the cantonal authorities to comply. We expect that the Cantonal Labour Authorities will take a stricter approach to intra-group hiring of services going forward. Companies offering or receiving intra-group hiring of services should assess the licensing requirements set out in SECO's new guideline in order to ensure full compliance with the law.

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