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The Swiss Abroad Act sets out the duties of all parties concerned

The Swiss Abroad Act (SAA) entered into force at the beginning of November. This Act is important to Swiss citizens living abroad because it clearly defines federal government's obligations towards the Swiss Abroad but also their rights and duties.

The Swiss Abroad Act (SAA) resulted from a parliamentary initiative put forward by Filippo Lombardi, the Ticino Council of States member. He spent years fighting for this Act together with Rudolf Wyder, the former Director of the OSA.

The SAA is not actually a new law but instead the unification of all the provisions concerning the Swiss Abroad which were previously distributed across various laws, ordinances and regulations. These include matters such as political rights, welfare benefits, consular protection as well as information and institutional support for the Swiss Abroad. The Act sets out the rights and obligations as well as services and support in a general overview but does not, however,

centralise and unify all aspects. The SAA aims to foster communication between the various authorities as well as between the public and private persons. One example is the Consular Directorate at the Federal Department of Foreign Affairs (FDFA). Together with the Swiss representations abroad, it will act as a single point of contact for all matters concerning the Swiss Abroad in future.

The SAA applies to both legal entities and individual persons and concerns all Swiss citizens who are outside the country – i.e. not just those who reside abroad but also those staying abroad for a short period, such as on holiday. The principles of subsidiarity and individual responsibility (see box bottom right) are key and expressly mentioned in the Act.

The Swiss Abroad Act in brief

SCOPE OF VALIDITY

The SAA governs the rights and obligations of Swiss citizens abroad, the support of the institutions of the Swiss Abroad, support for all Swiss citizens if they face emergency situations while staying abroad and consular protection for legal entities.

INDIVIDUAL RESPONSIBILITY

The SAA declares that individual responsibility is a fundamental principle. Federal government expects all citizens to assume personal responsibility when preparing and undertaking stays abroad or working abroad, to conduct themselves in a risk-appropriate way and to attempt to overcome any difficulties that may arise by their own means.

SINGLE POINT OF CONTACT

The FDFA is the point of contact which Swiss citizens can turn to with questions on issues concerning the Swiss Abroad. This single point of contact notably consists of the FDFA helpline (tel. +41 800 24-7-365) and the Swiss network of representations.

DUTY OF REGISTRATION

It is mandatory for Swiss citizens living abroad to register with the representation re-

sponsible for them (consulate or embassy). Registration is required for the exercising of political rights and now in order to receive welfare benefits.

NOTIFICATION OF CHANGES

The Swiss Abroad must update the personal information provided with their registration at their own initiative. This obligation applies to changes in civil status irrespective of the SAA, pursuant to the Swiss Civil Code. The SAA simplifies the procedure for registering a change of address. Anyone living abroad who takes up a new place of residence in a different consular district only has to register the change of address with one of the two representations which will update the Swiss Abroad register.

POLITICAL RIGHTS

The exercising of political rights by the Swiss Abroad is being simplified, on the one hand: Those eligible to vote no longer have to renew their registration in the electoral roll every four years. On the other hand, persons will be removed from the electoral roll if the voting papers are returned three times consecutively because the recipient could not be reached at the address indicated. Swiss Abroad eligible to vote can now notify their electoral commune of their relin-

quishment of the exercising of political rights. This decision can be revoked at any time. Those newly registering on the electoral roll exercise their right to vote in their last Swiss commune of residence. Nothing changes for persons already registered on an electoral roll. They can also vote in their commune of origin.

WELFARE BENEFITS

The previous provisions governing welfare benefits for the Swiss Abroad have largely been transferred to the SAA. Only those Swiss citizens who are entered in the Swiss Abroad register are eligible to apply. An exception can temporarily be made in urgent cases.

CONSULAR PROTECTION AND TRAVEL ADVICE

The travel advice enshrined in federal law through the SAA is aimed at all Swiss travellers including the Swiss Abroad. When calculating the charges and reimbursement of costs for consular protection support, whether the person concerned has adhered to the recommendations published in the FDFA's travel advice is taken into account. According to the SAA, federal government can now also grant entitlement to consular protection to Swiss citizens abroad during travel outside their country of residence.

The act does not contain anything revolutionary

Individual responsibility

The principle of individual responsibility is a key element of the Swiss Abroad Act. Article 5 stipulates: "Responsibility lies with each person in preparing and undertaking trips abroad or in working abroad." In practice, this means there is no absolute right to consular protection from 1 November. The state will only act in a subsidiary capacity, such as by granting welfare benefits, for example.

If someone acts negligently when preparing or undertaking a journey, a charge will be incurred for consular protection services in future. An example of negligent behaviour is disregarding FDFA travel advice. However, not taking out travel insurance also constitutes negligent behaviour.

Swiss citizens sent abroad by a company must also pay particular attention to this provision. They should check with their employer beforehand whether an insurance policy has been taken out covering staff during stays abroad.

In any case, it is essential that the travel advice on the FDFA website or its helpline is consulted before a journey or stay abroad. (BE)

FURTHER CONSULAR SERVICES

The SAA does not result in any changes with regard to administrative services or other consular services, such as civil status, Swiss citizenship, identity documents, Swiss old-age and survivors' insurance/invalidity insurance and the military registration system.

"Swiss Review": What in your view are the most significant changes involved in the Swiss Abroad Act (SAA)?

Hans Stöckli: One extremely important aspect is that it's now much easier to find out what provisions apply to the Swiss Abroad. Before you had to read countless laws and ordinances whereas today you only have to take a look at the SAA. There's nothing revolutionary about the act but there are nevertheless a few significant changes.

What are they?

They concern political rights in particular. The electoral roll entry no longer has to be updated every four years. However, the option of choosing between the last place of residence and the place of origin for the electoral commune has been eliminated. The reason for this change is that voters residing in Switzerland do not have this choice.

Are there provisions that require particular attention to avoid problems?

Yes, there are. These include provisions on individual responsibility and subsidiarity in particular. Anyone who acts negligently will have to reimburse costs to federal government if he or she requires assistance abroad.

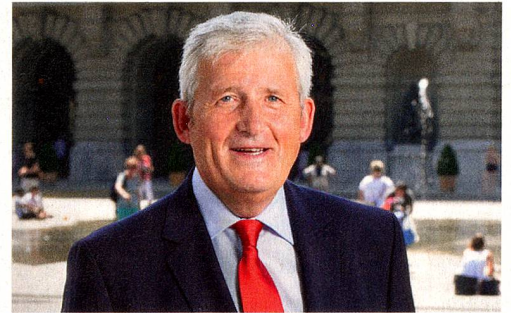
Is negligent conduct defined?

No, it isn't, so we will have to see what happens in practice. Negligence is a complex area of law, and I'm sure there will be court cases sooner or later.

The registration obligation for Swiss citizens living abroad has been contentious for some time.

Why is that?

The Federal Council wanted to abolish the registration obligation – which was previously known as matriculation – because there are no sanctions that can be applied against people failing to comply. It was argued that it is not legally tenable to provide for obligations in a law without stipulating a punishment for violation of the



Hans Stöckli is a member of the Swiss Social Democratic Party (SP). He was mayor of Biel from 1990 to 2010. He has been a Council of States member for the canton of Berne since 2011 and previously spent eight years in the National Council. He was heavily involved in the drafting of the SAA as a lawyer and as a member of the Political Institutions Committee and President of the "Neue Helvetische Gesellschaft" (New Helvetic Society).

law. I believe registration abroad is important because Switzerland should know how many of its citizens live abroad and where.

One of the major problems facing the Swiss Abroad at the moment is their relationship with the banks in Switzerland. Why does the SAA not contain any obligation for Swiss banks to make their services available to Swiss citizens abroad?

That point was discussed. However, the problem is that federal government cannot oblige any bank to maintain a relationship with someone. Banks are private enterprises and can choose their business partners freely. A possibility might be to oblige Postfinance, which is under federal government ownership, to accept Swiss Abroad as customers. However – and this is where the problem starts – Postfinance would argue that relationships with the Swiss Abroad are not simply business as they would entail significant costs for which Postfinance would have to receive compensation. The question as to whether providing ordinary banking relationships for the Swiss Abroad in their home country is part of public service will be discussed in Parliament shortly as relevant proposals are pending.

INTERVIEW: BARBARA ENGEL