

Frontier workers and consumers

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Employment contracts with frontier workers combine the questions of governing law, mandatory law and language. Before a Swiss court, Article 121 of the Private International Law Act provides that the employment contract is governed by the law of the state in which the employee habitually performs the work. The parties may choose the law of the state in which the employee has habitual residence or in which the employer has its establishment, domicile or habitual residence. A frontier worker living in Alsace and working in Basel may therefore agree with the employer that French law governs, although this is rare in practice. Before a French or German court, Article 8 of the Rome I Regulation allows a choice of law but provides that the choice may not deprive the employee of the protection of the mandatory rules of the law that would apply in its absence, normally the law of the place of work.¹

Swiss employment law does not prescribe a language for the employment contract. Article 330b of the Code of Obligations requires the employer to inform the employee in writing of the essential terms of the employment relationship, such as the names of the parties, the start date, the function, the salary and the weekly working hours, where the relationship has been entered into for an indefinite period or for more than one month. The information should be given in a language the employee understands, since a document the employee cannot read hardly fulfils its informational purpose. Employers in Basel usually issue contracts to frontier workers in German. Many add French versions for employees from Alsace, especially where the employees' German is limited, a situation that chapter II of this Part described when it discussed the decline of German skills among younger Alsatians.²

Germany's Evidence of Conditions of Employment Act, the *Nachweisgesetz*, implements the European Directive on transparent and predictable working conditions and requires the employer to provide the employee

with written evidence of the essential terms. Since its amendment in 2022, the Act has expanded the information required and introduced fines for non-compliance. A further amendment allowed text form in many cases from 2025, subject to exceptions. The Act applies to employment relationships governed by German law, which includes employees of Basel companies working in Germany and employees of German employers who work across the border. The Act does not expressly require German, yet the purpose of the Directive suggests that the information must be given in a language the employee understands.³

Consumer contracts follow special rules on both sides of the border. Before a Swiss court, Article 120 of the Private International Law Act provides that contracts concerning goods or services of ordinary consumption intended for personal or family use are governed by the law of the consumer's habitual residence if certain conditions are met. A choice of law is excluded in such contracts. Article 6 of the Rome I Regulation reaches a similar result for consumers resident in the European Union. Swiss banks and insurers that serve clients in Baden and Alsace must therefore reckon with the consumer protection law and the language rules of the client's state of residence, including the Toubon law where French consumers are concerned. The cross-border banking chapters of Part E described the regulatory side of this question.⁴

1 Notes

1. Art. 121 PILA; Art. 8 of the Rome I Regulation. To be verified. ↩
2. Art. 330b CO, in force since 1 April 2006. On language skills in Alsace, see chapter II of this Part. To be verified. ↩
3. Nachweisgesetz as amended with effect from 1 August 2022, implementing Directive (EU) 2019/1152 on transparent and predictable working conditions; on the admission of text form from 1 January 2025, see the Bürokratieentlastungsgesetz IV. Status to be verified. ↩
4. Art. 120 PILA; Art. 6 of the Rome I Regulation. On cross-border financial services to clients in Germany and France, see Part E of this book. To be verified. ↩

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