



Meijburg & Co
Tax & Legal

Country report - Netherlands with regards to the enforcement directive 2014/67

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Author:
Luydert Smit

Effective 18 June 2016, the Directive's rules were taken over in the act "Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie" or WagwEU. In accordance with the Directive, the aim of WagwEU is to ensure that assignments really are temporary, that self-employment is not fake and that the sending company has substance. On 1 March 2020 it is expected that the corresponding decree as well as the authorities' guidelines will also be formalized.

Who is covered?

Seconded employees fall under the scope of WagwEU (as well as self-employed persons working in certain industries but this group is not discussed here any further). Seconded employees are employees who temporarily provide cross-border services in the Netherlands. "Cross-border services" covers three situations. The first is where, for the account and risk of the sending company, an employee is made available to the receiving company in another member state. The second is where an employee is made available to another entity of the employer or another entity belonging to the same group of companies. The third is where the sending company, for a fee (i.e. a temping company), makes the employee available to the receiving company to work under this company's supervision. The subsequent decree issued on 3 December 2019 (to be formalized on 1 March 2020) contains the checkpoints which the authorities should apply to determine if an employee is temporarily assigned to work in the Netherlands and, in this way, falls under the scope of the act. Examples of these checkpoints are: duration and start-date, does he/she return, does he/she normally work in the home country, the nature of the activities performed in the host country, whether or not the sending company pays for the host country housing, earlier time spent in the Netherlands, proof of continuation of the home country social security, from where and how regularly the services are managed, who pays etc. As per the decree, business travelers are exempted from having to register when they travel to the Netherlands for the purpose of attending business meetings or taking out contracts provided that the duration of their stay does not exceed 13 consecutive weeks within a 52 weeks' timeframe (note that they still should apply for a social security certificate of coverage). Certain other exemptions are also mentioned.

Information at the employee's place of work

WagwEU obliges the sending company to have (either in hardcopy or electronically) the following information available at the employee's place of work: the contract of employment, documents showing the number of hours worked, copy/copies of the payslip(s), proof of payment of the social security contributions, proof of the identity of the sending and receiving companies, copies of

payslips and information showing about who pays the assignee's salary. Upon the authorities' request, the sending company is responsible for providing this information after or during the assignment within a reasonable timeframe.

Registration requirements

As of 1 March 2020, the sending company should notify the assignment prior to the start-date via the central website (in English, German & Dutch). As of 1 February, the possibility exists to register assignments starting on or after 1 March. The receiving company should verify if the sending company has complied with its reporting obligation and confirm this. If the sending company has not / not fully met its obligations, the receiving company should report this to the authorities prior to the start of the work. Assignments already in place before 1 March 2020 do not have to be registered unless their duration is extended. WagwEU provides for the sending company to appoint a contact person in the Netherlands to act as a liaison for the authorities. The assignee may act as the contactperson.

Penalties

Non-compliance may result in penalties, where the amount depends on the frequency of the violation, the severity etc. Penalties may be de- or increased. In general, the amount of the penalty is EUR 12,000 for each violation. Penalties are imposed by the labor inspection ("Inspectie SWV"). More details on the precise penalties will be published on short notice. During the first six months following 1 March 2020, the notification obligation must be complied with and may be checked by the authorities but penalties will not be imposed.


Miscellaneous

WagwEU does not apply to merchant sailors as another treaty applies to these employees (the "Maritiem Arbeidsverdrag"). Other transportation sectors (e.g. road transport) can be covered (contrary to what was announced earlier) unless it merely consists of transits (i.e. no loading or off-loading in the Netherlands). Possible WagwEU's consequences for this transportation sector should therefore be considered on a case-by case basis.

How can we help?

Meijburg & Co can assist in a number of ways: first of all, our immigration practice can ensure that the registration which may already be required under the immigration law (“Wet Arbeid Vreemdelingen”) concurs with that required by WagwEU (one only has to register once). Secondly, we can take care of registrations on behalf of our clients. Thirdly, we can provide more-detailed information on the precise requirements that have to be complied with. Finally, with the help of KPMG’s network, we can advise about the registration requirements in other countries.

Contact

 088 909 1000

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