

The Enforcement and the Posted Workers Directive

What are these directives about and what actions do you need to take? Is there a risk of penalties?

A pillar of the Treaty of Rome, which, in March 1957, led to the establishment of the EU, is the freedom of movement for employees. This treaty was followed, on 16 December 1996, by the Directive concerning the posting of workers (96/71/EG, the “Detacheringsrichtlijn”). Its purpose was to mitigate some of the undesired effects arising in connection with the differences in employment conditions applicable to international assignees versus those of local employees. As such, despite the “home country” approach for assignments, certain host country rules nevertheless had to be observed by assignees as well. These rules were restricted to what can be labelled as “core employment conditions” e.g. safety at work, holiday & leave entitlements etc. Furthermore, as regards the Netherlands, the application of these rules was limited to the construction industry and only later expanded to include other industries falling under a compulsory, collective labor agreements (“AVV CAO”).

Over time, with the expansion of the EU, it was felt that the initial Posted Workers Directive did not yield the desired effects; a restriction to the core conditions was believed to be insufficient. Furthermore, to allow a better enforcement of the Posted Workers Directive, the Enforcement Directive was introduced (2014/67; “Handhavingsrichtlijn”).

Being directives means that its rules, to become effective, have to be implemented in local legislation. For the Netherlands, both the Posted Workers and the Enforcement Directive were implemented in a new act “WAGWEU” or the “Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie”.

In line with the underlying directives, WAGWEU aims to ensure that assignments really are temporary, that self-employment is not fake and that the sending company has substance. To allow employers to comply with WAGWEU, there will be one central website (in English & Dutch) which shows all the relevant information / conditions which companies have to abide with. Furthermore, to assist with the enforcement of these employment provisions, a registration obligation was introduced. For this the same website (www.postedworkers.nl) should be used.

Finally, an EU-wide system (Regulation 1024/2012 (“IMI” or “Informatiesysteem Interne Markt”) was introduced on May 15th, 2014. Its purpose is to facilitate the international exchange of information and the mutual support between the various EU authorities (in the Netherlands the “Inspectie SWV”) when endorsing compliance and imposing cross-border penalties.

As per the Enforcement Directive, the WAGWEU makes the upfront registration, by the sending company, of the following information compulsory:

- The sending company’s identity;
- The receiving company and the assignee’s identity;
- The receiving company’s contact person;
- The identity of the person responsible for paying the assignee’s salary;
- The nature and duration of the stay and the type of work;
- The address of the assignee’s place of work; and
- The assignee’s social security position.

The receiving company (i.e. the company to which the assignee is sent) should verify if the sending company has complied with its reporting obligations. The Netherlands is the only country requiring this check by the receiving company. 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 assignment.

WAGWEU also obliges the sending company to have certain information available at the employee’s place of work, e.g. a copy of the contract of employment, a payslip etc. In addition, WAGWEU requires the sending company to appoint a central contact person who is available in the Netherlands for sending and receiving information.

Penalties can be imposed on the receiving and/or the sending company, depending on the offence. The penalties can be up to Euro 12,000 or even higher (e.g. if a breach is recurring).

WAGWEU does not apply to merchant sailors as another treaty applies to these employees (the “Maritiem Arbeidsverdrag”). Other transportation sectors (e.g. road transport) are dealt with separately.

WAGWEU has comparable implications for self-employed person, something which is not discussed here any further.



Insofar as the implementation of the Posted Workers Directive is concerned, the obligation to observe the core conditions has not changed and continues to apply to all industries. However, in addition, the “equal pay” notion was introduced for companies falling under the scope of a compulsory collective labor agreement. Simply put, an assignee should receive the same net as a local employee in a similar job position. When comparing the gross to gross, certain net allowances paid to an assignee may be taken into account (this is a complicated topic). Furthermore, if the assignment lasts / is expected to last for more than 12 months (or, if an exception is granted, 18 months), additional employment conditions (i.e. over and above the core ones) also become applicable (namely those defined in the designated, compulsory collective labor agreement). Having said that, rules concerning dismissal, non-compete and/or company pension plans will never apply to assignees.

Checking the compliance with the above Posted Workers’ requirements is left to the parties involved with agreeing and executing the compulsory collective labor agreement.

How can Meijburg & Co help you?

We 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 need not register twice). Secondly, we can provide more-detailed information on the precise requirements that have to be complied with for both the registration and the posted workers conditions.



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