

Summary of the Decision (December 3rd, 2019) on the Dutch transposition of the PWD and new notification date.

The provisions concretize in particular who will be subject to the notification obligation as laid down in the Dutch Act on Employment Conditions for Posted Workers in the European Union (in Dutch: 'WagwEU').

To whom the notification applies:

In principle, the notification has to be fulfilled for the following four categories:

1. Posted workers, sent by their employer to carry out a service in another EU Member State;
2. Temporary agency workers: workers being hired out through a temporary employment agency;
3. Intra-concern workers: workers being sent by their employer to provide services within the own group of companies;
4. Self-employed workers: self-employed persons who come to work in NL.

The notification obligation

As of March 1, 2020 the notification obligation will enter into force in the Netherlands. This will mean that every temporary posting which starts on or after March 1, 2020 should be reported by the service provider or self-employed worker in the online notification portal on www.postedworkers.nl.

The service recipient who contracts the foreign company or self-employed professional from the European Economic Area (EEA) of Switzerland has the duty to check the online notification.

At this moment the Sociale Verzekeringsbank (SVB) is working on the online service portal. It has been shared that:

- No deregistration will be necessary after the end date of the posting has passed;
- A technical helpdesk will be available so employers and employees will have the possibility to contact the SVB with substantive questions regarding the Dutch Posted Workers Directive (WagwEU);
- The online notification portal will be easy and customer friendly. There will be no possibility to upload documents or add texts as a motivation for changes;
- The Ministry of Social Affairs and Employment will also share information about the PWD through different channels .

Selection of specifics following the Decision highlighted:

- i. Specific sectors for self-employed workers are indicated:

The notification obligation for self-employed workers applies to the sectors agriculture, industry, construction and health and welfare care and among others, where there is a real risk of false self-employment and the prevention of unfair, or unhealthy and unsafe work.

- ii. Annual reporting

It is stipulated that some service providers and self-employed persons only need to make one notification within a calendar year for all the services they provide in the Netherlands in that calendar year, because the separate notification of each service will constitute a disproportionate (administrative) burden.

The annual notification may apply to small foreign employers who:

- employ at least 1 and no more than 9 employees;
- provide a service in the Netherlands at least three times a year; and
- are established near the Dutch border, so that it is likely that they will briefly and frequently cross the border to perform work in the Netherlands.

Sectors such as the construction industry, employment agencies, temporary employment agencies and personnel management, in which this risk of law evasion occurs, are not eligible for the annual report.

iii. Special exempted categories

It is stipulated that a number of categories of EU service providers and employees are exempt from the notification obligation in the Netherlands. These include, among others, the following categories:

- Business travelers who have business meetings or enter into agreements with companies or institutions in the Netherlands, provided that their stay does not exceed 13 consecutive weeks within a period of 52 weeks;
- Carrying out initial installations and assembly (e.g. machinery), provided that the work activities do not exceed 8 days, unless the activities are related to the construction sector;
- Carrying out urgent maintenance or repairs to tools, machines or equipment supplied by the EU service provider to a service recipient in the Netherlands provided their stay does not exceed 12 consecutive weeks within a period of 36 weeks;
- Attending scientific conferences in the Netherlands, provided that their stay does not exceed 5 days per calendar month;
- Guest lecturers working at a Dutch university and researchers employed by a university or scientific institution in the Netherlands;
- Artists, musicians and international athletes are exempt provided their stay does not exceed 6 consecutive weeks within a period of 13 weeks;
- EU service providers in the transport sector (transport by rail, road / water and aviation).

Which institutions will have access to the data?

The Dutch Ministry of Social Affairs and Employment is entitled to provide the Tax Authorities, the Social Insurance Bank, the Environmental and Transport Inspectorate and the IND (Immigration Services) with information about the posting on its own initiative and under an obligation if requested to do so. In addition, those institutions in the other Member States, by motivated request, can also obtain this data from the Dutch Ministry.

With regard to data from the notification system, a retention period of seven (7) years will apply.

Enforcement & timing

A (more concrete) Decision will follow on fines with regard to the notification system. However, please take into consideration that at this moment the other WagwEU obligations (e.g. the documentation and information obligation) are already enforceable and non-compliance can lead to fines.

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