



GMS Flash Alert

Immigration Edition

2020-007 | January 8, 2020



Netherlands - Online Registration, Other Procedures Implemented for Posted Workers

A new Dutch decree dated 3 December 2019¹ contains the “check-points” that the authorities apply to determine if an employee is indeed temporarily assigned to work in the Netherlands. This falls under the scope of legislation governing the secondment of employees from member states in the European Union (EU) to the Netherlands. Examples of these check-points are: duration and start-date, does he/she return, does he/she normally work in the home country, etc.

On 18 June 2016, the Netherlands introduced legislation² implementing Directive 2014/67/EU³ concerning secondments of employees in the European Union. With this legislation (“*Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie*” or “*WagwEU*”) and the associated decree dated 3 December 2019, the Netherlands becomes one of the EU member states to implement EU Directive 2014/67/EU. These steps have recently been complemented by the implementation of the online registration system, which will be effective as of 1 March 2020.

WHY THIS MATTERS

The new provisions bring new responsibilities for companies (home and host) posting workers to the Netherlands. There are new notification and other administrative requirements that employers must fulfill.

Employers will need to notify the Dutch authorities by means of the online registration for new assignments. The registration should take place prior to the assignment start-date.

Non-compliance may result in penalties of EUR 12,000 for each violation (subject to increases or decreases depending on the case at hand). As per the IMI-Regulation 1024/212, penalties may be imposed across borders⁴.

Context and Process

In accordance with the EU Directive, the aim of WagwEU is to make sure that postings really are temporary and genuine and that the sending company has substance.

Posted employees are employees who temporarily provide cross-border services in the Netherlands. This covers three situations. The first is where, for the account and risk of the sending company, an employee from an EU member state is made available to the receiving company in the Netherlands. The second is where an employee is made available to a Dutch entity of the employer. The third is where the sending company, for a fee, makes the employee available to the Dutch receiving company to work under this company's supervision.

A decree dated 3 December 2019, contains the check-points which the authorities apply to determine if an employee is indeed temporarily assigned to work in the Netherlands and, in this way, falls under the scope of the WagwEU. Examples of these check-points are: duration and start-date, does he/she return, does he/she normally work in the home country, etc.

The sending company must nominate a contact person in the Netherlands. This can be the posted employee himself or herself. It is the task of the contact person to act as the liaison with the sending company and to be available for sending information to the Dutch authorities or receiving it from them.

Until the introduction of the online registration system, the sending company's only obligation was to have (either in hardcopy or electronically) certain information available at the employee's place of work. Examples thereof are the contract of employment, copy/copies of the pay-slip(s), proof of payment of social security contributions, and proof of the identity of the sending and receiving companies, amongst others. Upon the authorities' request, the sending company is responsible for providing this information after or during the assignment within a reasonable timeframe.

What has now changed is the obligation to notify the authorities, via an online registration system, of assignments to the Netherlands in advance of the assignment start-date.

Online Notification

The sending employer should give notice of the secondment to the Ministry of Social Affairs and Employment prior to the start of the posting. This notification should be done online via <https://english.postedworkers.nl/>. The notifications can be in Dutch, English, or German. The notification consists of completing the online questionnaire. There is no obligation to upload documents.

The system will become effective as of 1 March 2020. However, as of 1 February the possibility exists to register assignments starting on or after 1 March.

Exceptions

The decree of 3 December 2019, contains certain exceptions, i.e., postings for which (in principle and pending certain the fulfilment of certain conditions) no online notification is required. An important example thereof concerns business travelers: if the purpose of their trip is to attend business meetings or conclude contracts and the duration of the stay does not exceed 13 consecutive weeks within a 52 weeks' timeframe, business travelers are exempted from having to register. Another example concerns posted workers who are sent to the Netherlands to carry out urgent maintenance or repairs on machines delivered by the sending company or those who implement software systems delivered by the sending company provided that the duration of the stay does not exceed 12 consecutive weeks during a 36 weeks' timeframe.

Other Online Notification/Registration Matters

The data contained in the system should be kept for seven years, a term which concurs with the general preservation-of-data period.

Finally, specific arrangements have been made to avoid a concurrence of the registration obligations arising in connection with the WagwEU and those in connection with the immigration legislation ("*Wet arbeid vreemdelingen*").

KPMG NOTE

In principle, the registration obligation rests with the sending company. However, the (Dutch) receiving company should check that this has been properly done. If not, penalties may also be imposed on the (Dutch) receiving company. Dutch companies should therefore communicate the new procedures to the home employer and to their global mobility teams.

Because the new rules contain a number of new steps and procedures, it is recommended that employers consult with their qualified immigration and labour law professionals, as well as their global mobility advisers, to:

- assess which employees are covered by the new rules and determine appropriate steps to take, as well as
- evaluate to what extent employers' systems and procedures should be modified in order to be compliant.

FOOTNOTES:

1 See (in Dutch) [*Besluit van 3 december 2019 tot wijziging van het Besluit arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie, houdende regels over de persoonsgegevens die in verband met transnationale dienstverrichting worden verwerkt en de meldingsplicht voor dienstverrichters*](#), published in the Dutch official gazette, *Staatsblad van het Koninkrijk der Nederlanden* (12-12-2019).

2 The Dutch measures are set forth in the act dated 1 June 2016 and the legislative decree dated 3 December 2019. The penalties have been published in the policy of the Ministry of Social Affairs and Employment dated 3 October 2016, no. 2016-0000211992.

3 Directive 2014/67/EU of the European Parliament and Council of 15 May 2014 concerning the enforcement of Directive 96/71/CE regarding posted workers and presenting modifications to Regulation (EU) No. 1024/2012 of the European Parliament and of the Council of 25 October 2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC ('the IMI Regulation'). For related coverage see "European Union – EU Council Proposes Changes to Posting of Workers Directive," in GMS [*Flash Alert 2017-160*](#) (6 November 2017).

According to the [European Commission for Employment, Social Affairs & Inclusion website](#), the rules on posting of workers are defined in the EU's [Posting of Workers Directive](#) which was approved in 1996. In 2014, the Enforcement [Directive \(Directive 2014/67/EU\)](#) was approved with the aim of strengthening the practical application of that directive by addressing issues related to fraud, circumvention of rules, and exchange of information between the member states.

4 Fines may be imposed on a company located in a different member state and the new decree arranges how member states collaborate; this covers data exchange between competent authorities and can also include the request from one member state to the competent authority in another member state to actually collect the fine.

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in the Netherlands:



Luydert Smit
Tel. +31 88 909 1880
smit.luydert@kpmg.com



Heleen Snieders
Tel. +31 (0)88 90 93420
Snieders.Heleen@kpmg.com

* Please note that KPMG LLP (U.S.) does not provide immigration or labour law services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.

The information contained in this newsletter was submitted by the KPMG International member firm in the Netherlands.

© 2020 Meijburg & Co., Tax Lawyers, is an association of limited liability companies under Dutch law, registered under Chamber of Commerce registration number 53753348 and is a member of KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2020 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.