

IMPORTANT NOTICE

for Netherlands!

for contractors on construction site of BERTSCH Energy GmbH & Co KG

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Contents

Introduction.....	3
1.Posting to the Netherlands	3
1.1 Posted Workers	3
2.Terms and conditions of employment	4
2.1 Collective Labour Agreement Construction	4
2.2 No disadvantage principle	5
2.3 Revision of the Posting of Workers Directive	5
3.Administrative obligations	6
3.1 Information obligation.....	6
3.2 Obligation to appoint a contact person	6
3.3 Duty of administration	6
3.4 Reporting obligation	7
4.Labor Market Fraud Act	7
5.Social security interest	7
6.Immigration and Naturalisation Service (IND)	8
6.1 Third-country workers	8
7.Excursus:.....	9
7.1 Liability for subcontractors.....	10
7.2 Purchase of leasing personnel.....	10
8.Safety instructions and registration	11
9.Summary	12
10.Appendix.....	12
10.1 Declaration	12

Introduction

Ladies and Gentlemen,

Please read the following information carefully and return the completed and signed declaration to us. We ask you to bear in mind, that the points mentioned have the sole purpose to inform you and have no claim to completeness. Compliance with the legal obligations in the Netherlands, is in the sole responsibility of each company sending employees to Netherlands. This document therefore can only illustrate the requirements in general terms.

1. Posting to the Netherlands

Foreign workers who are not employed by a Dutch employer but who are posted to the Netherlands are covered by the Posting of Workers Directive ("Detacheringsrichtlijn") and the Enforcement Directive ("Handhavingsrichtlijn"). These (European) Directives apply to EU companies and third companies that post workers to the territory of another EU country that is not the country where the worker normally works.

Posting (subcontracting): A service provider from another EU country posts an employee to the Netherlands and the employee works under the direction and supervision of the service provider.

The Posting of Workers Directive is implemented in the Posted Workers Act in the European Union (Workings Conditions) Act ("WagwEU"). Based on the Posting Directive and the WagwEU, a number of minimum provisions of Dutch labour law apply if the secondment falls within the scope of the Directive. The WagwEU also implements the European Enforcement Directive. It contains measures to monitor whether employees actually receive the employment conditions to which they are entitled.

Posting (secondment) has to be temporary, for a specified period. It is important that there is a 'normal country of employment', where the employee is expected to return to after the secondment has ended.

The WagwEU applies (in part) to self-employed persons (independent contractors) who, whether or not via an intermediary, work in the Netherlands from abroad in high-risk sectors designated by the Dutch government. The construction/building industry is a so called high-risk sector. The WagwEU provides rules for independent contractors regarding the nature and probable duration of the work, the identity of the person responsible for payment of the wage and the identity of the independent contractors.

1.1 Posted Workers

From 01.03.2020, a declaration must be submitted before a temporary service is provided in the Netherlands.

The notification must be submitted electronically via the Posted Worker website, which is also partly available in German. Assignments that started before 01.03.2020 do not have to be reported subsequently.

2. Terms and conditions of employment

Under the Posting Directive and the WagwEU, in the event of transnational posting within the EU, the employer must apply the core working conditions ("kernarbeidsvoorwaarden") of the host country to its posted workers.

Under the Posting of Workers Directive employees are entitled to certain mandatory working conditions (the 'hard core' minimum terms of employment and working conditions) as they apply in the Netherlands:

- Maximum work periods and minimum rest periods;
- Minimum paid annual holidays (20 statutory holidays, based on full-time employment);
- Minimum rates of pay, including overtime;
- Conditions for the posting of workers;
- Health, safety and hygiene at work;
- Protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, children and young people;
- Equal treatment for men and women and other provisions regarding non- discrimination.

To implement the Posting of Workers Directive, Section 2 of the WagwEU stipulates that a number of employment law provisions of Book 7, Title 10 of the Dutch Civil Code ("DCC") are applicable to employees posted to the Netherlands. These are Articles 626 (provide payslip), 634 to 642, 645 (holidays and leave), 646, 647, 648 (equal treatment), 658 (safety at work / liability for accidents at work) and 670 paragraph 2 (prohibition of termination during pregnancy). Additionally, Articles 7:681 paragraph 1 c of the DCC (annulment of termination on the grounds of breach of equal treatment) and 7:616a through 616f of the DCC, which regulate the chain liability for the salary owed to the employee, also apply. Furthermore, the Minimum Wage and Minimum Holiday Allowance Act (WML), the Working Hours Act (ATW), the Working Conditions Act, the Work Allocation Act by Intermediaries Act (WAADI) and the General Equal Treatment Act (AWGB) also apply to posted workers in the Netherlands.

2.1 Collective Labour Agreement Construction

If a generally binding collective labour agreement applies to work performed in the Netherlands, employees with a foreign employment contract who are temporarily posted to the Netherlands are also entitled to the Labour CLA provisions relating to the hard core of working conditions.

The scope clause of the CLA Construction & Infra reads as follows.

"The provisions of this collective agreement apply to companies, employers and employees from whom the company concentrates on the production (or services) for or to third parties in the construction sector.

- a) Carrying out (in whole or in part) construction work or activities;
- b) The execution of parts of works on site; the manufacture of those parts elsewhere shall be considered equivalent if the undertaking which manufactures the parts also ensures that they are included in the works;
- c) The execution of conversions and/or maintenance work on (parts of) construction work;
- d) The provision of services on construction sites;
- e) Site preparation work other than that carried out on the construction site, if carried out by the undertaking carrying out the construction work on the construction site;

- f) The hiring out of machinery with operators for the purpose of carrying out the work referred to in points (a) to (e).

All the provisions of this collective agreement also apply to temporary employment agencies."

Assuming that the CLA Construction & Infra will apply to the contractors and subcontractors activities in the Netherlands, the following provisions of the collective labour agreement must be followed:

- Maximum working hours and minimum travel times; minimum number of holidays and additional (holiday) payments;
- Minimum wage
- Article 7 of the CLA collective agreement for the secondment of staff;
 - Maximum working time and minimum rest periods;
 - The minimum number of days of leave during which the employer is obliged to pay wages and additional allowances linked to the leave;
 - Minimum wage
 - Conditions for the recruitment of workers;
 - Health, safety and hygiene in the workplace;
 - Protective measures with regard to the working conditions of children, young people and pregnant or recently born workers;
 - Equal treatment for men and women and other provisions on non-discrimination
- The articles from the collective agreement CLA according to CLA
- Provisions on health, safety and hygiene at work;
- Protective measures with regard to the terms and conditions of employment of children, young people and pregnant or recently born workers;
- Provisions on equal treatment between men and women and other provisions on non-discrimination.

2.2 No disadvantage principle

An important exception to the mandatory application of core minimum terms of employment and working conditions is the no detriment principle ("gunstigheidsbeginsel"): if the working conditions of the employees in their home country (country of employment) are more favourable than the Dutch core working conditions, the conditions of the home country employment agreement can remain intact.

2.3 Revision of the Posting of Workers Directive

The EU bodies agreed on a revision of the Posting of Workers Directive. Relevant is that if the expected or actual duration of the posting exceeds 12 months, almost the entire labour law of the host country applies (this period can be extended by six months). In addition, the term "minimum wage" is changed to "remuneration", which generally ensures equal pay for equal work. The amended Posting of Workers Directive must be implemented by the Netherlands by mid-2020.

3. Administrative obligations

3.1 Information obligation

Upon request, a service provider must provide all data and information, so that the Inspectorate SZW (Social Affairs and Employment) can determine whether there is real posting. In general, this is the case when substantial activities are carried out on a temporary basis. Elements for assessing this are set out in the Working Conditions of Seconded Employees in the EU Decree.

3.2 Obligation to appoint a contact person

A service provider who employs an employee in the Netherlands must appoint a contact person in the Netherlands. The contact person is the contact point on behalf of the service provider and must be available to answer questions about the secondment and to receive and send relevant information. This may be more than one person and may also be the employee himself. The WagwEU does not set any specific requirements regarding this obligation.

3.3 Duty of administration

During the period of secondment, a service provider must have the following documents present, digitally or in writing, at the address of the workplace:

- The employment contract of the posted worker;
- A statement as referred to in Section 7:626 of the DCC. This Section stipulates that (and how) the employer must provide a written specification of paid wages;
- A specification of the components referred to in Section 7:655 of the DCC. This concerns information that the employer must provide to the employee about the essential elements of his employment contract;
- Documents showing the number of hours worked by the seconded employee;
- An A1 certificate or other evidence showing contribution to social security schemes and the identity of the service provider, the service recipient, the seconded employee and the person responsible for payment of the wage;
- Evidence showing clearly what salary the posted worker has received.
- It must be possible to provide all these documents within a reasonable period of time, in case of a request of the SZW Inspectorate.

3.4 Reporting obligation

The reporting obligation is expected to enter into force in the course of 2019. The aim is to give the SZW Inspectorate more insight into the number of posted employees in the Netherlands, for purposes of improving enforcement. The report must contain the following information:

- The identity of the service provider (name and number Chamber of Commerce);
- The identity of the service recipient and the seconded employee;
- The contact person from Section 7 of the WagwEU;
- The identity of the person responsible for the payment of the salary;
- The nature and estimated duration of the work (start and end date). If the duration of the work is extended, this must also be reported;
- The address of the workplace;
- The contribution to social security schemes. This could include the A1 certificate.

At the moment, the obligation to report does not yet apply and it is not clear when this obligation will be introduced in the Netherlands.

The reporting obligation does not currently apply and it is not clear when this obligation will be introduced. **Note: It is the subcontractor's duty to monitor the implementation of the reporting obligation and react to the changes in law.**

4. Labor Market Fraud Act

The Labour Market Fraud Act came into force on 1 July 2015 (In particular Section 7:616a - 616f of the DCC). The act implements vicarious liability in respect of the wages due and payable to the employee, to make it possible for clients on whose behalf work is being performed as part of a chain to ensure that the appropriate wages are being paid within the chain.

If your company subcontracts, you will be jointly liable for the payment of the wages.

5. Social security interest

In principle, seconded employees continue to pay contributions to employee insurance schemes in their own country. The Regulation on the coordination of social security systems (No 883/2004) stipulates that in the event of cross-border secondment, the social security system of the sending country applies.

In order to prevent your company from having to pay social security contributions (workers' insurance) in the Netherlands, an A1 form must be requested in your home country before posting. This A1 form serves as proof that the posted worker pays social security contributions in an EU country other than the host country. This A1 certificate has to be created in English language.

Different requirements apply to self-employed persons (freelancers).

6. Immigration and Naturalisation Service (IND)

Employees with the nationality of an EU/EEA member state or Switzerland do not need a residence permit to live in the Netherlands. They also do not need a residence permit to work in the Netherlands and do not need to report at the IND. A valid passport or identity card issued by an EU/EEA member state or Switzerland is sufficient to demonstrate that the employee resides lawfully in the Netherlands and may work there.

After arrival in the Netherlands, employees must do the following:

- Register in the Basic Registration of Persons (BRP) where they will be living, in case they will be staying in the Netherlands for more than four months.
- Register as a temporary resident of the Netherlands if they stay here for less than four months. Only a valid identity document is required.
- Register for health insurance if they will stay in the Netherlands for more than four months. Health insurance must be requested within four months after arrival in the Netherlands.
- A BSN number (citizen service number) is also required to be able to work in the Netherlands. This number is obtained upon registration.

The following obligation applies to foreign employers:

- The payment of payroll taxes for employees to the Tax and Customs Administration. If not, the employee is not entitled to WW (unemployment benefits) if he becomes unemployed, or to sickness benefits in case he becomes ill. This is settled by an A1 registration.

This is not necessary for the self-employed person the employer hires. Self-employed persons have to register with the Chamber of Commerce and the Tax and Customs Administration themselves, between one week before the start of their business (and one week after that). When registering, the self-employed person immediately receives a VAT number. As a self-employed person, he must pay his own wage tax.

6.1 Third-country workers

For workers who are third-country nationals, a declaration must be submitted to the Dutch Employment Agency two days before they are posted to the Netherlands.

Inform us about all directly or indirectly commissioned subcontractors and self-employed persons **at the latest 3 week before** the start of the activities to the following e-mail address: (meldewesen@bertsch.at), stating the type of activity and duration (from...to...)

7. Excursus

Special scheme for construction works under Dutch law

A special feature must be taken into account when handling construction work. The reverse charge procedure for works is applicable where works are carried out for contractors who are themselves contracted to carry out works (general contractors). This simplification rule can also be applied by domestic service providers in the case of construction works (VAT registration of the service recipient is sufficient). Basically this provision can be interpreted broadly and, in addition to the construction of large immovable installations, may also include repair and maintenance services if these relate to immovable property.

The following table shows the differences in application criteria between General Reverse Charge and Construction Performance Reverse Charge in the Netherlands.

	Performance company	beneficiary
General Reverse Charge (all deliveries incl. works deliveries and services)	No registered office, domicile or fixed establishment in the Netherlands; VAT registration is not harmful	Resident entrepreneur
Construction services reverse charge (services in the areas of construction, steelconstruction, shipbuilding or the clothing industry; excluding pure delivery)	Registration required only if subcontractors are themselves engaged, so that taxliability can be assumed	Value added tax registration of the recipient sufficient

7.1 Liability for subcontractors

In order to safeguard Dutch tax revenues, the so-called chain liability was introduced in the Netherlands. The respective general contractor (but not the end customer is jointly and severally liable for the wage related taxes (wage tax and social insurance) of the subcontractors (or their subcontractors).

7.2 Purchase of leasing personnel

If you are planning to use leasing personnel for your activities in the Netherlands, please note the following:

When providing personnel, the Dutch tax authorities follow the principle of the economic employer, which is why Bertsch is to be regarded as the economic employer of the leasing personnel for tax purposes. Since BERTSCHenergy establishes a permanent establishment for income tax purposes in the Netherlands and the personnel costs of the leasing personnel are passed on accordingly, the leasing personnel is also subject to Dutch income tax liability from the first day of employment.

When providing personnel, the Dutch tax authorities follow the principle of the economic employer in the Netherlands, please note the following:

BERTSCHenergy is to be regarded as the economic employer of the leasing personnel for tax purposes. Since BERTSCHenergy establishes a permanent establishment for income tax purposes in the Netherlands and the personnel are passed on accordingly, the leasing personnel is also subject to Dutch income tax liability. If the tax is not properly paid by the leasing company BERTSCHenergy can be used for social security debts.

8. Safety instructions and registration

As a supplier of BERTSCHenergy you are responsible for your own as well as our safety on site. In order to integrate your services frictionless, you are required to educate yourself about applicable regulations and rules on our construction sites. This includes the online safety instructions, which are to be completed at least 2 weeks before your employees' arrival on site. These instructions have to be completed by everyone of your employees as well as any sub-suppliers you work with that will enter our site. Upon successful completion you will be issued a certificate. The certificate is to be printed and presented at our construction site, upon which each of your employees you will be issued a personal badge. This badge will allow your employees to enter and exit our site for pre-determined time period.

Please bear in mind: Without a valid certificate your employees will not be allowed to enter the construction site! Any additional costs or claims as well as push-backs in schedules will be borne by you.

You can access the safety instructions with the following link:

<https://www.bertsch.at/de/384-bertschenergy-kompetenz-in-energie#widget-390>

Login Password:

JxxxxxxS	- example	_ eng
(project id)	(project name)	(language de or eng)

BAUSTELLENSICHERHEIT

Als Partnerunternehmen oder Besucher unserer Baustelle, sind Sie mitverantwortlich für Ihre und unsere Sicherheit und unseren gemeinsamen Erfolg. Damit Ihre Dienstleistung reibungslos in unsere Prozesse integriert werden, sind bestimmte Regeln einzuhalten.

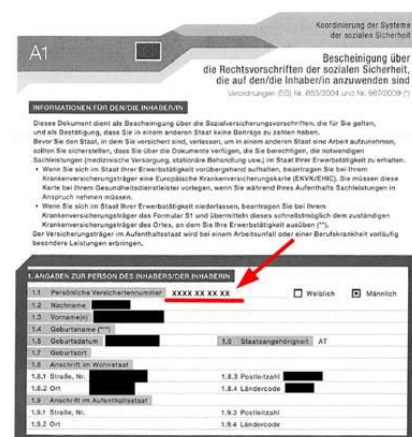
ZUGANG SICHERHEITSTEST

Bitte geben Sie das Passwort für die Sicherheitsschulung ein:

Image 1: Login mask for password input

For online registration and access to the safety instructions including the safety test, the following personal information is necessary:

- Name – und last name
- Date of birth
- Job title / function
- Passport photo
- Company name of employer (acc. to company register)
- A1-Form Number



The image shows a sample of the A1 form, which is a certificate of social security coverage. It is titled 'Bescheinigung über die Rechtsvorschriften der sozialen Sicherheit, die auf den/die Inhaber/in anzuwenden sind'. The form contains fields for personal data (1.1-1.4) and company data (1.5-1.8). A red arrow points to the 'A1' number in the top right corner of the form.

Image 2: A1- Form example with A1 number marked

9. Summary

- The WagwEU has four administrative duties: the duty to provide information, the duty to appoint a contact person, the duty to keep accounts and reporting duty
- EU workers do not need a work or residence permit to work and live in the Netherlands.
- However, register with the BRP and (in principle) health insurance. BSN number is needed to work;
- Independent contractors must register with the Chamber of Commerce and the Tax Customs Administration. For employees who work on the basis of an employment contract, this is the employer's obligation.
- Find out about various dutch regulations concerning working hours, minimum wages, overtime, etc. and implement them strictly.

Deliver the following documents and information, latest at the mentioned time to Bertsch Energy GmbH & Co KG via E-Mail (meldewesen@bertsch.at)

- Send the legally required documents, these are:
 - A1 Certificate in English language for each posted worker (2 weeks before start of activities on site)
 - List of names of posted employees (2 weeks before the start of the activities)
 - Fill out the following form and send it signed back to us (1 week after order confirmation)
 - IN CASE of not Eu and 3rd Country residents – Working Permit for the Netherlands for each worker (3 weeks before appearance on site)
 - Appendix

10. Appendix

10.1 Declaration

DECLARATION for THE NETHERLANDS

The undersigned

acting as:

for the company:

Street + No.:

Postcode + City:

Email:

hereby declares to comply with all obligations regarding the points mentioned in the document "Important Notice" and to indemnify "Bertsch Energy GmbH & Co KG" completely. This applies to any form of loss, liability, damage or expense, claims of third parties, etc., which "Bertsch Energy GmbH & Co KG" could suffer as a result of an infringement.

We hereby confirm that we do not and will not illegally employ any personnel. We also confirm that we will pay and remunerate our staff on time and in accordance with the Dutch minimum wage.

We undertake to impose the obligations contained in this document, including the Important Notice, on our subcontractors.

Failure on our part to fully comply with obligations of the country and/or to provide "Bertsch Energy GmbH & Co KG" with the information/documents necessary for the various reports/obligations gives "Bertsch Energy GmbH & Co KG" the right to terminate the contract with immediate effect. In the event of an immediate termination of the contract, "Bertsch Energy GmbH & Co KG" reserves the right to claim damages for damages that "Bertsch Energy GmbH & Co KG" could suffer as a result of non-compliance with the obligations described here and/or other statutory obligations by us or our subcontractors.

Should "Bertsch Energy GmbH & Co KG" determine that we do not comply with the various regulations, "Bertsch GmbH & Co KG" reserves the right to take contractual and/or legal action for any damages. "Bertsch Energy GmbH & Co KG" will suspend payment of our invoices until clarified with the Dutch authorities. The amounts withheld will not yield any interest.

We shall deliver this document, latest one week after order confirmation to "Bertsch Energy GmbH & Co KG" via E-Mail (meldewesen@bertsch.at).

Created in _____, on _____

(Signature and/or stamp)