

# IMPORTANT NOTICE

## for Romania

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

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## Contents

Introduction.....	3
1. Registration with fiscal authorities.....	4
2. Personnel and Labor Law / Taxation formalities and obligations .....	4
2.1 Tax residence questionnaire .....	4
2.2 Tax Declarations for foreign employees.....	4
3. A1 Certificate .....	7
4. Claiming outstanding payments. Proof of payments .....	7
4.1 Claiming outstanding payments.....	7
4.2 Proof of payment of social contributions, taxes and salaries .....	7
5. Invoicing.....	8
6. Safety instructions and registration .....	9
7. Summary.....	10
8. Appendix.....	10
8.1 Declaration .....	10

## Introduction

Ladies and Gentlemen,

Please read the following information carefully and return the completed and signed declaration at the end of this Important Notice to us. We ask you to kindly bear in mind that the information contained in this Important Notice have been prepared for informative purposes only, with the aim to provide you with an overview of some of the basic legal and practical implications of sending employees to Romania. As such, this Important Notice and the information contained herein may not under any circumstances whatsoever be relied upon as legal advice and do not claim to be exhaustive, complete or specific to your particular circumstances. Full compliance with and liability for any breaches of any and all relevant legal obligations in the jurisdiction is the sole responsibility of each company sending employees to Romania and by signing the declaration at the end of this Important Notice, you agree to indemnify us from and against any and all claims of whatsoever nature that may be made against us in connection with your sending of employees to Romania.

The purely informative nature of this document can only set out a selection of requirements in general terms that you should be aware of. Please ensure that you seek independent legal and professional advice for your particular circumstances to make sure that you are fully informed of the laws and regulations applicable to you and compliant with the same at all times.

## 1. Registration with fiscal authorities

You are obliged to register your company with the Romanian fiscal authority in order to be able to pay taxes for your income obtained in Romania, depending on the specific situation of your company (company having vs. not having a permanent establishment in Romania). The above-mentioned obligation also applies to all your subcontractors and their subcontractors, including self-employed persons.

## 2. Personnel and Labor Law / Taxation formalities and obligations

We would like to point out that your seconded personnel are subject to various Romanian labour, social and tax regulations. Please inform yourself accordingly (e.g. working hours, minimum remuneration applicable on the Romanian territory – which includes the minimum salary, the overtime payment, payment for work performed on weekly rest days, payment for work performed on public holidays, payment for night work as well as any other payment and allowances compulsory under Romanian law), periodical rest, annual paid holiday, labour health security and hygiene at work, protection measures for specific employees, gender equality, non-discrimination and harassment, conditions relating to the accommodation of employees under specific conditions, allowances or reimbursement of transport, accommodation and meal expenses under certain conditions etc.) and implement these provisions. Specific regulation applies in case of staff seconded in Romania from a company established outside of EEA (such as the obligation to obtain a secondment permit).

Likewise, if you employ staff who are not nationals of an EEA country or Switzerland, special regulations apply with regard to work permits, work cards, residence permits, fiscal regime of the income tax, social security and health insurance. Please also inform yourself about all your obligations in this regard.

It is recommended to also consider the double taxation treaties and social security agreements concluded with Romania.

### 2.1 Tax residence questionnaire

It is relevant to bear in mind that, in all cases, natural persons who arrive in Romania and have a stay in Romania for a period or periods exceeding in total 183 days during any period of 12 consecutive months ending in the calendar year concerned are required to complete the tax residence forms.

The tax residence form needs to be submitted within 30 days of the end of the 183-day period of presence in Romania.

### 2.2 Tax Declarations for foreign employees

As a rule, legal persons acting as employers as well as natural persons who obtain income in Romania consisting of salaries from employers in countries that are not covered by the applicable European legislation in the field of social security or that are not a contracting party to the agreements on social security systems to which Romania is a contracting party, are obliged to submit the Declaration 112 on the payment obligations for social contributions, income tax and the nominal evidence of insured persons (**D112**) on a monthly basis, by the 25<sup>th</sup> day of the month following the month for which the income is paid.

Notwithstanding the above, for the purpose of declaring and paying social security contributions, non-resident employers who do not have their registered office, permanent establishment or representative office in Romania and who owe compulsory social security contributions for their employees under the

applicable European social security legislation and the agreements on social security systems to which Romania is a contracting party, may (but are not obliged to) conclude agreements in relation to this purpose with their employees (resident or non-resident individuals who carry out their activity in Romania and obtain income from salaries).

Where applicable, such agreements, translated into Romanian by an authorized translator and certified by the same, shall be submitted to the competent fiscal authority in Romania.

Therefore, we see the following two scenarios:

**A. An agreement has been concluded between the employer and the employee:**

Residents or non-residents who earn income from abroad are obliged to register for tax purposes on the basis of the following declarations:

- Tax registration declaration / mentions for Romanian individuals (**Declaration 020**), for individuals holding a Personal Numeric Code or
- Tax registration declaration/mention for foreign individuals (**Declaration 030**), for individuals who do not have a Personal Identification Number for obtaining a fiscal identification number (NIF)

In such situation, the employee needs to submit the monthly tax declaration (**D112**) for the declaration and payment of taxes and contributions related to the salary income.

**! In this case, the employee needs to declare the tax on salary income that is due according to the law on D112. In these circumstances, Declaration 224 (D224) is not submitted.**

The reporting and payment obligations for social contributions are incumbent on the employees for the period of time stated in the agreement concluded with the employer. Upon termination of the reporting and payment obligations, Declaration 020 or Declaration 030, as the case may be, shall be submitted to the fiscal authorities in Romania in order to remove the tax vector of the reporting obligations for income tax and social contributions taxes, as indicated above.

**B. No agreement has been concluded between the employer and the employee:**

Employers are required to register themselves for tax purposes, directly or through an appointed representative, by submitting Declaration 015 to the competent fiscal authority in Romania. (An employee may also be an appointed representative of the employer)

- Employers have the obligation to pay the social contributions owed by employers, to withhold and pay the individual contributions, and to submit monthly/quarterly D112.

Upon the termination of the social contributions reporting obligation, an employer shall submit to the fiscal authorities in Romania either a mention declaration in order to eliminate the social contributions reporting obligation or a deregistration declaration to eliminate the tax registration where the employer is not subject to any other reporting obligations in Romania.

**! In this case, the employer needs to submit with the tax authority the Declaration 112 (D112) for the declaration and payment of the social security contributions, while the employee needs to submit D224 with the tax authority on a monthly basis for the declaration and payment of income tax.**

With regard to the informative Declaration 222, you should consider that such declaration is submitted to the tax authority, in practice, by those employers where individuals earning salary income from abroad are working (i.e.: Romanian representative offices of foreign companies).

From the social health insurance contributions perspective, on a case-by-case basis, you should take into account the applicable European legislation in the field of social security, the agreements on social security systems to which Romania is a signatory party as well as the possibility of submitting the following forms:

- **Form 603** - "*Affidavit for exemption of social health insurance contribution*"

Form 603 is submitted to the competent tax authority in Romania by those individuals who obtain income for which social health insurance contributions are owed and who are covered by a social health insurance policy concluded on the territory of another Member State of the European Union, the European Economic Area and the Swiss Confederation or in states with which Romania has concluded bilateral social security agreements, where this social health insurance policy includes provisions for sickness and maternity insurance under the internal legislation of the respective states and is effective in Romania.

Form 603 needs to be submitted along with supporting documentation, including supporting documents proving that the individual is not a contributor to the national social health insurance system and does not owe social health insurance contributions, such as, but not limited to a) A1 form- proving that the holder is still insured under the social security system of the State to which the issuing institution belongs, in the case of persons covered by the European regulations on the coordination of social security systems; b) TR/R1 - Form concerning the applicable legislation - in the case of persons covered by social security agreements to which Romania is a contracting party, completed by the competent institution of the State concerned; c) PM/RO101 - Certificate concerning the applicable legislation; d) MD/RO101 - Certificate concerning the applicable legislation.

- **Form E 106/S1** - Certificate of entitlement to health care if an individual does not live in the country where the individual is being insured. Such is useful for posted workers (up to 24 months) as well as for cross-border workers.

The E106/S1 form evidences the social security rights of employees when commuting to another EU country, i.e. their right to health care in both countries.

The E106/S1 form is requested from the health insurance institution in the origin country (sending country) and it is to be registered in Romania with the competent health insurance institution.

The obligation to register with the Romanian General Inspectorate for Immigration (IGI) and to obtain the registration certificate, if applicable, needs to be properly observed. Where a non-resident worker is employed on Romanian territory by a Romanian employer, registration with IGI is required. In such case, the Romanian employer will undertake the obligation to pay the wage and to declare and pay the related social contributions and wage taxes by withholding such from the gross wage (**D112**).

In the case of the non-residents performing employed work on Romanian territory (seconded workers) and obtaining wage from abroad, such must be also fiscally registered with the Romanian fiscal authority, as per the above provisions.

The provisions set out in this Important Notice need to be properly included in your contracts with your direct and indirect subcontractors to the same extent.

### 3. A1 Certificate

In order to comply with the Romanian legislation and also in order to avoid fines, we instruct you to comply with all legal obligations regarding secondment into Romania and to report all postings (secondments) to the competent territorial labour inspectorate in Romania (ITM) prior to the effective commencement of the secondment, but in any case at least one working day before commencement of activity.

Every posted employee must have an A1 certificate (proof of the social security obligation in the country of posting) and be able to present it on site at all times. The A1 Certificate must be issued in English and must be presented to our site management on site at the start of work.

Moreover, please be informed that in case of an inspection, it is your obligation and responsibility to provide the relevant labour authorities with the A1 certificate and the services agreement concluded between the company posting the employees to Romania and the beneficiary of such services.

### 4. Claiming outstanding payments. Proof of payments

#### 4.1 Claiming outstanding payments

To the extent the contractor fails to make payments due to persons for the rendering of services or the execution of works based on an agreement, the respective persons have a right for direct action against the beneficiary of the project, up to the amount due by the respective beneficiary to the contractor.

According to settled case-law, the above-mentioned measure is a tool designed especially for natural persons who render services or execute works pursuant to an agreement concluded with the contractor. Legal persons acting as subcontractors can also bring a claim against the beneficiary of the project in consideration of the subcontracting agreement concluded between the contractor and the respective subcontractor.

#### 4.2 Proof of payment of social contributions, taxes and salaries

Companies shall ensure that their contractors/subcontractors have no income tax and/or social contributions debts (debts to the Romanian state budget) in Romania before paying any amounts due to them for the rendering of services.

Proof of monthly salary payments shall also be provided by the contractors/subcontractors to the Companies.

It is recommended to include specific clauses to this effect under the service agreements concluded by Companies with contractors/subcontractors.

Please be informed that Companies are jointly liable with their direct subcontractors for the payment of the minimum wage according to Romanian law and also for all social contributions due.

## 5. Invoicing

For EU located companies, the invoice to us has to be issued net, addressed to us with our correct company name, cite our Romanian VAT number, and include the note *"The VAT liability shifts to the client according to Article 319 paragraph 20 letter m) of the Romanian Fiscal Code, related to the reverse charge rule."*

Before we pay your bills, please provide written confirmation and relevant proof that you have no tax or social security debts in Romania on the day of payment.

If you do not have a Romanian company number, you must apply to the Romanian fiscal authority for a proper fiscal registration.



## 6. Safety instructions and registration

You are responsible for your own as well as our safety on site. In order to perform your work and services smoothly on site, you are required to inform 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 every one 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 will be issued with a personal badge. This badge will allow your employees to enter and exit our site for the pre-determined time period for performing works and services.

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 all consequences of pushbacks and delays in schedules will be borne by you.

You can access the safety instructions via 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

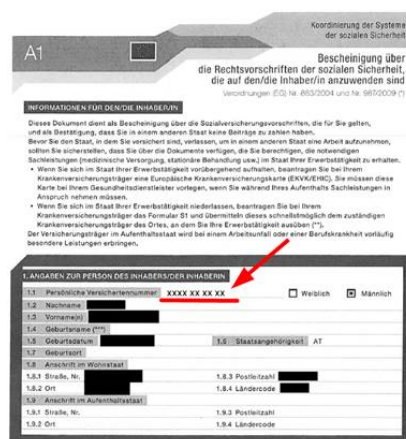
Bitte geben Sie das Passwort für die Sicherheitsschulung ein:

START

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



The image shows a sample A1 certificate. At the top left, the number 'A1' is marked. The certificate is titled 'Bescheinigung über die Rechtsvorschriften der sozialen Sicherheit, die auf den/die Inhaber/in anzuwenden sind'. Below this, there is a section 'INFORMATIONEN FÜR DEN/DE INHABER/IN' with explanatory text. The main section is '1. ANGABEN ZUR PERSON DES INHABERS/DER INHABERIN', which contains fields for personal data: 1.1. Persönliche Versicherungsnummer (marked with a red arrow), 1.2. Name (Vorname, Nachname), 1.3. Geburtsdatum, 1.4. Staatsangehörigkeit, 1.5. Wohnort (Straße, Nr., Ort, PLZ, Land), and 1.6. Arbeitsort (Straße, Nr., Ort, PLZ, Land). The 'Persönliche Versicherungsnummer' field is highlighted with a red box and a red arrow pointing to it.

Image 2: A1- Certificate example with A1 number marked

## 7. Summary

- Send us the legally required documents, being:
  - A1 Certificates in English language
  - Copy of any ITM Registration
  - Information about legal representative
  - Proof of monthly salary payments (to be provided every 6 months)
  - Proof of payment of social contributions (a clearance certificate) or in Romania, a tax certificate (to be provided every 6 months and with invoicing).
  - Any other documents/information, upon request.
- ➔ Inform us about all directly or indirectly commissioned subcontractors and self-employed persons **at the latest 2 weeks before** the start of the respective activities to the following e-mail address: [[meldewesen@bertsch.at](mailto:meldewesen@bertsch.at)], stating the type of activity and duration (from... to...).
- Register with the IGI, if applicable, and the Romanian fiscal authorities.
- Inform your direct and indirect subcontractors about these Important Notice obligations.
- Fill out the following attached declaration form and send it signed back to us.
- Find out about various Romanian regulations concerning working hours, minimum wages, overtime, etc. and comply with them strictly.

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

For avoidance of any doubt, delivering the information and documents referred to above is without prejudicing the provisions of this Important Notice and shall not be interpreted in any way as you being thereby exonerated of any obligations and/or liability according to the relevant legal obligations in the jurisdiction, as it is your sole responsibility to observe and comply with the legal provisions in force and consequently bear any responsibility.

## 8. Appendix

### 8.1 Declaration

**DECLARATION**

The undersigned

acting as:

for the company:

Street + No.:

Postcode + City:

Email:

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hereby undertakes to comply with all obligations regarding the points mentioned in the document "Important Notice" and to indemnify Bertsch Energy GmbH & Co KG with regard to any Loss it may suffer as a result of our failure to comply with any statute, legislation, directive or regulation of any kind whatsoever (including but not limited to those referenced in the "Important Notice") applicable to us in Romania. Loss means any form of loss, liability, damage, expense, claim 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 Romanian minimum wage requirements.

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 any Loss that Bertsch Energy GmbH & Co KG could suffer as a result of non-compliance with the obligations described herein and/or other statutory obligations by us or our subcontractors.

Should Bertsch Energy GmbH & Co KG determine that we have not complied with our obligations, Bertsch reserves the right to take contractual and/or legal action for any Loss. We acknowledge and agree that Bertsch Energy GmbH & Co KG will have the right to suspend payment of our invoices until any failure to comply with our obligations has been remedied or it has been determined by the relevant authority or an unappealable judgement of a court of competent jurisdiction that no failure to comply has occurred. Any amounts so withheld will not yield any interest.

Created in \_\_\_\_\_, on \_\_\_\_\_

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(Signature and/or stamp)