

## **Obligation to report foreign employees 1 March 2020**

The Working Conditions Posted Workers Act in the European Union (WagwEU in Dutch) has been in force since 1 June 2016. The Act governs the employment conditions to which employees of European companies are entitled when they temporarily work in the Netherlands providing transnational services. This law has created various obligations that make it possible to monitor compliance by European companies with these employment conditions, including information, administration and notification obligations.

Under the WagwEU, EU-based companies established outside the Netherlands that temporarily post employees to the Netherlands will be subject to an obligation to report as of 1 March 2020. These employees must be registered online via [www.postedworkers.nl](http://www.postedworkers.nl). On this website you will find detailed information in Dutch, English and German about this legislation and the registration.

Below is a concise summary of the most relevant information.

For more information, the Dutch Ministry of Social Affairs and Employment explicitly requests that contact be made with central government.

For the Netherlands, the number is: 1400.

For calls from abroad, the number is: +31 70 214 0214.

### **Scope of application**

The provisions of the law apply to EU-based transport companies and their drivers carrying out cabotage or international transport (loading or unloading) in the Netherlands. These provisions are binding on both employees and self-employed persons.

Transit transport is excluded and does **not** need to be reported.

### **Requirements**

In the case of secondment to the Netherlands, the following obligations will have to be met:

- Compliance with the Dutch minimum wage.
- Compliance with the collective labour agreement (CAO) if the collective labour agreement (CAO) for the transport of professional goods has been declared generally applicable.
- Reporting the employees.
- Keeping documents available (in writing or electronically) for inspection purposes (for further information see documentation obligation).
- Providing a contact person in the Netherlands.

### **Compliance with the Dutch minimum wage**

Foreign companies must demonstrate that wages are paid to seconded employees in accordance with the Dutch statutory minimum wage for the period worked in the Netherlands.

### **What is the level of the Dutch minimum wage?**

Appendix I contains information on which minimum wage should be applied.

### When does the collective labour agreement (CAO) for the transport of professional goods apply?

If the CAO has been declared generally applicable by the Minister of Social Affairs and Employment, then the amount of the CAO wage for international drivers applies to drivers and self-employed persons seconded to the Netherlands.

### Notification obligation

The notification obligation applies as of 1 March 2020. The reporting desk has been open from 10 February 2020 and the order/project can be reported.

For the transport sector, there is provision for an annual report (not a calendar year). No specific service provider/client needs to be reported. You also do not have to provide a specific work address.

Instead of the work address, a license plate needs to be specified for transport. When the (foreign) employer fills in the data, only one license plate needs to be filled in, even if you have more vehicles at your disposal.

### Documentation obligation

The following documents must be at the Dutch workplace pursuant to Article 9 of the WagwEU, see: <https://www.postedworkers.nl/faq/vraag-en-antwoord/welke-administratieve-verplichtingen-kent-de-wagweu>:

- Employment contract.
- Pay slips: must be available for the period of posting.
- Schedules of working hours: Article 7:655 of the Dutch Civil Code contains the information that the employer must communicate in writing to the employee. In addition, the number of hours worked in the Netherlands must be traceable.
- A1 form.
- Proof of payment of wages (bank statement).

These documents do not have to be physically present with the employee; they may be electronic. In the event of an inspection, the driver must be able to show these documents. The driver does not need to have proof of the report with him/herself.

### Contact person

The law requires a foreign service provider to have a contact person available in the Netherlands during the period of performance of a service. For goods transport by road, this can (for example) also be the driver who performs a service. If you produce an annual report, and in transport this will almost always be the case, then you can also report the transport manager of the foreign company or director/owner. The driver in question can then refer to this contact person during roadside checks. Having an address in the Netherlands is not mandatory. It is not (anymore) necessary to enter a Dutch address when registering. In practice this caused so many problems that registration could not take place. This has now been solved. However, it is important that it is possible to communicate well and that the contact person acts as the actual contact person. The contact person does not necessarily have to have a command of Dutch, but he/she does need to have a sufficient command of English, French or German. The contact person must also be a natural person, not a company. The contact person must have immediate access to the requested documents.

Nevertheless, this is a complicated issue for the transport sector. In theory it is possible to appoint a driver, but he or she will not be authorised by the company to have this information at his or her

disposal (with the exception of self-employed drivers). Moreover, a company employs several drivers, so who will be the contact person, since almost always a yearly notification will be made?

TLN has already discussed this with the Ministry several times and has put forward a pragmatic solution by making the transport manager the de facto contact person when registering. To date, there has been no formal confirmation by the Ministry that they will take adopt this proposal.

### **Self-employed persons**

The WagwEU also applies to freelancers. They also have an obligation to report. Self-employed drivers have the duty to submit all necessary documents to prove that they are genuinely self-employed. These documents only have to be submitted at the request of the enforcement services and can also be sent electronically.

### **Controls of annual report**

The registration itself is the responsibility of the foreign transport company. The Ministry of Social Affairs has confirmed to TLN that the service recipient is not obliged to check whether the transport company has registered its drivers. Nevertheless, TLN deems it advisable to point out to foreign transporters/charters that registration is mandatory as of 1 March 2020 and checks will be made and fines imposed as of 1 September 2020.

The enforcement of the duty to report is the responsibility of the Inspectorate of Social Affairs and Employment. Although registration has been mandatory since 1 March 2020, a moratorium of six months applies. This means that there will be no fine imposed for commitment before 1 September 2020 of a breach of Article 8, first, third or sixth paragraph of the Working Conditions Posted Workers Act in the European Union.

Fines will be imposed from 1 September 2020. These fines are substantial: EUR 1500 for failure to report by a small company that seconds less than 10 drivers. The amount for a company seconding 10 to 19 drivers is EUR 3,000 and EUR 4,500 for a company that seconds 20 or more. Via this link you can view the amounts of the penalties imposed for non-compliance with WagwEU: <https://wetten.overheid.nl/BWBR0043172/2020-03-01/>

### **Third country drivers and/or companies**

This six-month period does not apply to the obligation to report third-country nationals (non-EU nationals working for an EU-based company), as this obligation already applies. However, third-country drivers employed by companies from third countries do not need to register.

## **Appendix 1**

### **Appendix I – Collective labour agreement for the Netherlands**

Polish:

<https://www.fnv.nl/getmedia/b15ec631-cf19-4cbd-864d-c2624530e8e8/498-tln-beroepsgoederenvervoer-cao-pools-2017-2020.pdf>

English:

<https://www.fnv.nl/getmedia/75fcb1da-9177-47a3-9072-633ae4e34cf3/498-tln->

[beroepsgoederenvervoer-cao-engels-2017-2020.pdf](#)

Dutch:

<https://www.fnv.nl/getmedia/03b6814b-8591-4883-8527-6c8483811262/498->

[beroepsgoederenvervoer-over-de-weg-en-verhuur-van-mobiele-kranen-cao-2020-2021-v060720.pdf](#)

Information can be found on wages on pages 28-35.

**Source: TLN**