

Handbook

Rules on the supply of work or services
in relation to the EU freedom of services and establishment





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List of laws and legal agreements cited

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| AEntG | Arbeitnehmer-Entsendegesetz (Posting of Workers Act) |
| AO | Abgabenordnung (German Fiscal Code) |
| ASAV | Anwerbestoppausnahmeverordnung (Ordinance on exceptions to the ban on the recruitment of foreign labour) |
| ArGV | Arbeitsgenehmigungsverordnung (Ordinance on work permits) |
| AÜG | Arbeitnehmerüberlassungsgesetz (Act regulating the commercial lease of employees) |
| AufenthG | Aufenthaltsgesetz (Residence Act) |
| BGB | Bürgerliches Gesetzbuch (German Civil Code) |
| BRTV | Bundesrahmentarifvertrag für das Baugewerbe (Federal framework agreement for the construction industry) |
| ECT | Treaty establishing the European Community |
| EU/EWR-HwV | EU/EWR-Handwerk-Verordnung (EU/EEA Trade and Crafts Code) |
| FreizügG/EU | Gesetz über die allgemeine Freizügigkeit von Unionsbürgern (Freedom of Movement Act/EU) |
| GewO | Gewerbeordnung (Trade Regulation Code) |

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| GWB | Gesetz gegen Wettbewerbsbeschränkungen (Act against Restraints on Competition) |
| HwO | Handwerksordnung (Trade and Crafts Code) |
| NachwG | Nachweisgesetz (Act on proof of the existence of employment relationships) |
| SchwarzArbG | Schwarzarbeitsbekämpfungsgesetz (Law to combat illegal work) |
| SGB | Sozialgesetzbuch, verschiedene Bücher (German Social Code, various books) |
| StGB | Strafgesetzbuch (German Penal Code) |
| TVMB | Tarifvertrag zur Regelung eines Mindestlohns im Baugewerbe (Collective agreement setting out minimum wage in the construction industry in the territory of the Federal Republic of Germany) |
| TVG | Tarifvertragsgesetz (Collective Agreement Act) |
| UStG | Umsatzsteuergesetz (Turnover Tax Law) |
| UStR | Umsatzsteuer-Richtlinien (Turnover Tax Regulations) |



I. General comments

1.1 Introduction¹

Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia all became members of the European Union on 1 May 2004. This means that they are now subject to the provisions of EU law. Citizens of Malta and Cyprus have been able to enjoy the full range of fundamental freedoms enshrined in the EC Treaty (ECT) from the moment they joined. In contrast, transitional arrangements apply for the other eight new EU member states.² There will also be transitional arrangements in relation to Bulgaria and Romania when they join the EU.

1.2 Definition of the fundamental freedoms

1.2.1 Freedom of movement for workers

The freedom of movement for workers pursuant to Article 39 et seqq. of the ECT means, firstly, that workers have the right to travel to and remain in the country of employment and, secondly, that these workers must be treated equally to the national citizens, in particular as regards employment, remuneration and other conditions of work and employment.

The decisive difference to the freedom of services and establishment, which relates to independent activity, is that the worker must be subject to instruction, dependently employed and remunerated for the work.

The principle of equal treatment means that workers from other EU member states have the same right of access to the German labour market as German citizens. However, certain conditions apply for citizens of the new member states. The accession treaty was equipped with transitional arrangements under which the Federal Republic of Germany can suspend the freedom of movement of workers. This it has done, initially for two years (until 30 April 2006) and now for a further three years (until 30 April 2009).

¹To the extent that for reasons of improved legibility descriptions relating to natural persons are used in masculine form only, they apply in equal measure to men and women.

²Any mention of the new EU member states in the following is understood to refer solely to those new members in relation to which transitional arrangements apply in Germany.

Germany can further extend this period for a final two years, making seven years (until 30 April 2011) the maximum possible transition period (this is known as the 2+3+2 rule).

Because of this suspension, special provisions apply with regard to labour market access. In particular, certain workers must have a work permit. The substantive provisions on labour market access for citizens of the new member states correspond to those in force for citizens of non-EU countries. However, there are areas where citizens of the new member states are entitled to privileges not enjoyed by citizens of non-EU states. For example, citizens of the new member states are accorded priority over those from non-EU states when it comes to accessing the German labour market. Furthermore, they receive a work permit where they have been entitled to work uninterrupted in the German federal territory for at least 12 months (section 12a ArGV). Finally, there are other provisions from bilateral agreements which must be respected.

1.2.2 Free movement of services

The freedom of movement of services means that persons providing a service may, for that purpose, temporarily pursue their activities in another member state under the same conditions as apply for citizens of this other member state.

This freedom applies to the provisional exercise of self-employment in another member state. Services within the meaning of Article 49 et seqq. of the ECT are those which are provided across borders and usually for a fee. In contrast to the freedom of establishment, the freedom to provide services relates to temporary and occasional activity, i. e. for a fixed period of time and for the purpose of carrying out a specific task. The company providing the service has its registered office in its home country or maintains a branch office there.

The free movement of services allows, in addition to the performance of contracts for services (Dienstvertrag), contracts for work (Werkvertrag) within the meaning of German civil law to be performed.

- > In a contract for services, an agreement is reached to provide a certain service only, i. e. there is no obligation to achieve a specific result (for example, contract with medical doctor).
- > In contracts for work, an agreement is reached that the service provided must produce a specific outcome (e. g. cutting and packaging X tonnes of meat, constructing a specific building).

The Federal Republic of Germany has, on the basis of the accession treaty, introduced restrictions on the freedom of citizens of the new member states to provide services. Originally imposed for a transitional period of 2 years (until 30 April 2006), these have since been extended for three further years (until 30 April 2009). Germany can further extend this period for a final two years, making seven years (until 30 April 2011) the maximum possible transition period (this is known as the 2+3+2 rule).

Currently, there are transitional restrictions in force in the following industry sectors:

- > Construction, including related branches;
- > Cleaning industry for buildings, stock and modes of transport;
- > Interior decoration.

Services in these sectors may not be provided by personnel from the new member states unless work permit requirements are observed and the work is based on bilateral government agreements in which the arrangements relating to contracts for work are set out. These agreements allow a certain number of workers, agreed beforehand for the countries involved, to be posted to Germany. A work contract within the meaning of sections 631 et seqq. of the German Civil Code (*Bürgerliches Gesetzbuch, BGB*) must have been concluded between a company which is significantly active in the country of origin of the worker(s) and the German company concerned before the work can be carried out.

Citizens of the new member states are free to provide cross-border services in all other industrial sectors without having first to obtain a work permit. For information on proof of professional qualification, see 1.2.3 below. Section 2.1.4 contains information on the commercial leasing of workers.

1.2.3 The freedom of establishment

Freedom of establishment, as set out in Articles 43 et seqq. of the ECT, includes the right within the sovereign territory of one member state of a citizen of another member state to take up and pursue activities as a self-employed person and to set up and manage undertakings, branches or subsidiaries.

Thus, people involved in trades and crafts, freelancers, traders and merchants in particular can set up and operate business in Germany. However, the professional and trading regulations which apply to domestic citizens must also be observed.

These regulations include the obligation of the person concerned to provide evidence of his/her professional qualification where legal or administrative provisions so require. With regard to the exercise of a craft, proof of qualification must only be furnished when wishing to carry out the trades listed in Appendix A of the German Trade and Crafts Code (Annex B), which are subject to licence provisions. The person concerned must apply with the competent authority in Germany to have the qualification gained in the other member state recognised, which it then is pursuant to the Community provisions in force (EC Directives on recognising professional qualifications).

The European Court of Justice defines establishment as the actual pursuit of an economic activity through a fixed establishment in another member state for an indefinite period.

- > It must involve a long-term (economic) activity in another member state (in contrast to the temporary activity with respect to services). In other words, the activity must be pursued for an unlimited period of time and may not be of a temporary nature. In this regard, it is not only the duration of the activity which is important, but also the frequency, regularity or continuity.
- > The economic activity must be actually performed through a fixed establishment (e. g. production facilities, store rooms or offices). This is to make it clear that what is required is more than just the mere registration of the operations with, for example, trades organisations, crafts and trades officials, registration offices or tax offices, and premises which are more accurately described as sleeping quarters.

The freedom of establishment has applied since 1 May 2004 to citizens of the new member states, without transitional arrangements.

II. The cross-border provision of services

2.1 Legal setting

2.1.1 Social insurance law

The Federal Republic of Germany has a structured system of social security. The individual types of insurance are statutory health, old-age care, accident, unemployment and pension insurance.³

Work and employment carried on in Germany is generally subject to insurance contributions in the Federal Republic of Germany in accordance with the Social Code (principle of territoriality). In accordance with section 3 of the SGB IV, and Article 13(2) of Regulation (EEC) 1408/71, this also applies in general to workers who do not live in Germany or whose employers are resident in another state. The provisions on the effect of the regulations on Germans working abroad (*Ausstrahlung*, section 4 SGB IV) and on foreigners working in Germany (*Einstrahlung*, section 5 SGB IV) set out the exceptions to the principle of territoriality. These apply uniformly for statutory health, old-age care, accident, unemployment and pension insurance. Opposing arrangements provided for under international law take precedence (section 6 SGB IV).

³The competent social insurance providers are the health insurance institutions (sections 21, 21a, 21b SGB I), the accident insurance institutions (section 22), the Bundesagentur für Arbeit (Federal Employment Agency, sections 19, 19a, 19b) and the pension insurance institutions (section 23).

The employer must register workers subject to insurance contributions with the health insurance institutions, as these are the collecting bodies. He must then also pay the overall social insurance contribution over to these bodies (sections 28a, 28e, 28h and 28i SGB IV). He must generate notifications and evidence of payments using his fully-automated system-proofed remuneration programme or using an automated support programme.⁴

Where an employee is posted to Germany by his permanent employer, who is resident in another member state, for the purpose of carrying out work for the account of the latter, the employee continues to remain subject to social insurance provisions of the other member state where the expected duration of this work does not exceed 12 months and where he does not replace another employee whose posting has come to an end (posting within the meaning of social insurance legislation).

⁴See www.itsg.de/svnet.

In its Decision No 181 of 13 December 2000, the European Commission's Administrative Commission on the Social Security of Migrant Workers set out a binding interpretation of Article 14 of Regulation (EEC) No 1408/71 and drew up a practical guide in this regard.⁵

According to the guide, the following must be observed:

a. Characteristics for a posting:

> Worker is normally attached to the sending employer before or after the posting;

It is immaterial if someone is recruited for the purposes of being posted (without have been employed at the company before) where the company habitually carries on significant activity in the territory of the state from which the posting occurs (posting state).

The criteria to determine whether a posting company carries on significant activity include:

- That the registered office and the administrative office of the posting company are in the posting state. The presence of administrative staff only in the posting state rules out a posting.

- That the posted worker was recruited in the posting state.

- The number of contracts with clients concluded by the posting company in the posting state.

- The law on which the contracts are based. Where German law is applicable to the contracts, this would indicate that there is no posting.

- Turnover:

It can be assumed that significant activities are carried on where 25% of total turnover is generated in the posting state. Where this share lies below 25%, each case must be looked at on its own merits.

- Genuine business activity in the posting state, generally for at least four months.

The service provider must remain associated with the economy of its state of origin. The purpose of the company cannot be solely to provide services in a member state other than its own. "Letterbox companies", i. e. those which carry on no entrepreneurial activity at their (would-be) registered office in the posting state and which are very often merely temporary employment offices cannot provide cross-border services and therefore cannot post workers.

> Limitations on the posting:

Generally no longer than 12 months, with a possible extension of a further 12 months.

> Must not represent a replacement for a worker whose posting is at an end.

⁵See No. 10 of Decision No. 181 of 13 December 2000 by the Administrative Commission of the European Communities on Social Security for Migrant Workers; for the guide please visit: [www.europa.eu.int/en > Institutions > European Commission > Employment and social affairs > Coordination of social security schemes > Key Documents > Posting Guide \(en\)](http://www.europa.eu.int/en/Institutions/EuropeanCommission/EmploymentandSocialAffairs/Coordinationofsocialsecurityschemes/KeyDocuments/PostingGuide(en)).

> A direct relationship must continue to exist between the posted worker and the posting company:

- *Employment contract with the posting company;*
- *Posting company must retain the power to determine the nature of the activity to be carried out by the posted worker;*
- *The posting company must be responsible for remuneration, irrespective of who actually (technically) carries out the payment.*

b. The posting provisions do not apply in the following cases:

> Chain hire:

Company X posts the worker to company Y, which in turn places the worker at company Z's disposal; the member state in which Z has its registered office is immaterial.

> Recruitment from a third country:

The worker is recruited in member state A, in order to be posted by a company with registered office in member state B to a company in member state C.

> Employment of local staff:

The worker is recruited in member state A by a company, whose registered office is in member state B, to carry on activity in member state A.

c. Documents relating to the posting:

The E 101 form, declaring that the social security provisions of the posting state will continue to apply throughout the duration of the posting of the worker to Germany, thereby excluding the application of German social security provisions on the principle of avoiding double insurance, should generally be filled out ahead of the posting period. A sample E 101 form can be found in Annex A, Appendix 1 to this handbook.

The social security institutions of the posting state are obliged to check whether the conditions for issuing an E 101 are met.

Where an E 101 has been issued, the worker is not obliged to pay social insurance in Germany. By the same token, he is not entitled to claim German social insurance benefits.

The situation of workers from other member states and who are not in possession of an E101 must be assessed under the German provisions governing social insurance.

2.1.2 The right of residence

Section 2(4) of the German Freedom of Movement Act/EU (*Gesetz über die allgemeine Freizügigkeit von Unionsbürgern, FreizügG/EU*) stipulates that citizens of the European Union require no residence permits for their entry and stay in Germany. This also applies unconditionally for citizens of the new member states.

There is an obligation for citizens of the Union to register with the authorities, just as there is for German citizens under state laws. The registration authorities send the details filled in when registering on the persons right to move freely to the authority responsible for the affairs of non-nationals⁶, which then officially issues a certificate on Community residency provisions, section 5(1) FreizügG/EU. When issued to a citizen of the “new” member states, this certificate draws reference to the need for a work permit. Citizens of the “old” states receive the certification without any such reference. Annex A contains a sample residence permit (EU) (Appendix 2), which since 1 January 2005 is issued only to family members of Union citizens who themselves are not Union citizens. The documents issued before this time to citizens of the Union remain valid (residence permit (EC)).

2.1.3 The law relating to work permits

As a result of the freedom of movement for workers, workers from EU member states do not generally need work permits. However, certain conditions do apply for citizens of the new member states during the transitional period. In principle, these may only exercise employment with a work permit (EU) issued by the *Bundesagentur für Arbeit* (Federal Employment Agency), and may only be employed by employers when they possess such certification (section 284 SGB III). The Ordinance on work permits (*Arbeitsgenehmigungsverordnung, ArGV*) and the Ordinance on exceptions to the ban on the recruitment of foreign labour (*Anwerbestoppausnahmereverordnung, ASAV*) thus continue to apply to the extent that the Residence Act (*Aufenthaltsgesetz, AufenthG*) and the corresponding statutory instruments do not contain more favourable provisions. The recruitment ban on citizens of the new member states has been suspended since 1 January 2005 for activities which require specialised professional qualification (AufenthG, section 39(6)). Such workers as issued with authorisation in the form of the work permit (EU) (section 284(2) SGB III).

⁶These are the local offices for the affairs of non-nationals, generally at the level of rural or urban district.

Work permits are also required for workers posted to branches in which the freedom to provide services of citizens of the new member states is restricted (see 1.2.2 above). This work may only be performed on the basis of the bilateral agreements signed by Germany on work contracts.⁷ In contrast, no work permit is required for workers posted to a branch in which no restrictions apply.

In the field of transport, companies from Slovenia have (along with those from Malta and Cyprus) been entitled to the freedom of *cabotage* in the road haulage sector from the very beginning of its membership. This means that Slovenian drivers of Slovenian HGVs employed by Slovenian companies need no work permit even for trips starting and ending within Germany (cabotage).

The authority is generally granted by the employment offices in the form of a work permit (EU) on yellow paper.⁸ Annex A contains a sample application form as well as the permit itself (Appendix 3).

The agreements on work contracts continue to apply even after the new member states have joined the Union, although some changes have been made, for example with regard to the amount of workers, to bring them in line with the accession treaty. The Bundesagentur für Arbeit is responsible for the process of granting permission to and licensing workers under contracts for work.⁹ It should be noted that the assurance granted to the foreign company which is party to the work contract merely covers the basic right to post workers to Germany and to deploy these for the purposes of executing the contract for work signed with the client. In order to actually take up the work, citizens of the new member states also need the work permit (EU) mentioned above.

⁷For a more precise definition of activity subject and not subject to work permit obligations please see the *Bundesagentur für Arbeit's* fact sheet entitled "Beschäftigung ausländischer Arbeitnehmer im Rahmen von Werkverträgen – EU-Dienstleistungsfreiheit ab Mai 2004". This may be called up by visiting www.arbeitsagentur.de > Informationen für Arbeitgeber > Internationales > Ausländerbeschäftigung > Werkvertragsarbeitnehmer > Links und Dateiliste.

⁸Further information on employing foreign workers may be found in Merkblatt 7 of the *Bundesagentur für Arbeit* by visiting: www.arbeitsagentur.de > Service von A-Z > Vermittlung > Ausländerbeschäftigung > Link und Dateiliste. The link also contains information on further important groups of foreign workers.

⁹For more information on the process regarding contracts for work, in particular on the competent offices of the *Bundesagentur für Arbeit*, please consult (in German only): www.arbeitsagentur.de > Service von A-Z > Vermittlung > Werkverträge > Link und Dateiliste > Merkblatt 16a.

2.1.4 The legal leasing of employees

Under section 1(1), first sentence of the Act regulating the commercial lease of employees (*Arbeitnehmerüberlassungsgesetz, AÜG*), the leasing of an employee is where an employer (lessor) leases an employee (leased worker) to a third party (lessee) on a commercial basis for the purposes of carrying out work.

Section 1 AÜG also states that such activity requires permission. The lessor can claim a right to be issued with permission if he is reliable. The regional offices of the Bundesagentur für Arbeit are responsible for issuing leasing permissions. Annex A contains a sample permit to lease employees on a commercial basis (Appendix 4).

The leasing of workers is a service within the meaning of Article 49 of the ECT. The leasing of workers by employers with a registered office in another member state to companies in Germany is thus permissible in principle. This also applies to providers from the new member states. These also require permission, even where they are authorised in their state of domicile and only provide services within the context of the freedom of cross-border services.

A further condition must be met if the leasing of workers is to be legal, namely that the workers are deployed in a manner commensurate with work permit rules. Citizens of an "old" member state can be employed without any further requirements as leased workers (Article 39 et seqq. of the ECT in conjunction with the provisions of the FreizügG/EU). The restrictions imposed under section 6(1)(2) ArGV continue to apply during the transitional period for citizens of the new member states. These cannot receive work permits to perform activity as leased workers. Leasing is allowed in individual cases only, where the workers from the new member states are also citizens of an old member state (dual-citizenship) or have otherwise gained the right to work in Germany (e. g. by way of a work permit (EU)). Furthermore, in order for the leasing of workers to be legal, section 7(1)(4) of the German Posting of Workers Act (*Arbeitnehmer-Entsendegesetz, AEntG*) states that the working conditions for leased workers must be those stipulated in the AÜG, in other words, for example, the principle of equal treatment under section 3(1)(3) AÜG applies.

Whereas the conditions described above apply with respect to the cross-border leasing of workers, a prior leasing in the state of origin may be arranged without any of these requirements. Thus, a provider of services may deploy across borders not only its own staff but also that which it itself has leased earlier in its own country. These cases do not invoke the transitional rules on the free movement of workers as the posted workers can be attributed to the German partner neither by way of a work relationship nor by way of a lease.

2.1.5 Ensuring minimum working standards as set out in the Posting of Workers Act (Arbeitnehmer-Entsendegesetz, AEntG) are met

2.1.5.1 Adhering to the working conditions collectively agreed in the construction industry¹⁰

Where an employer with registered office abroad uses with his employees chiefly to provide construction services within the meaning of section 211(1) SGB III in Germany, he must guarantee these employees the working standards defined in the AEntG and set out in the collective bargaining agreements of the building industry proper and its ancillary branches.¹¹ This means paying the minimum gross wage (including overtime), adhering to holiday provisions and paying into the holiday fund system.

Whether the criteria relating to mainly providing construction services are met is decided by looking at what most of the time was spent doing. In contrast, economic considerations such as turnover or profit, or criteria under trade and crafts legislation are wholly irrelevant.

Where businesses involved in the building trade proper are concerned, the entirety of the workers posted to a project is decisive, as these represent an independent business division (see section 1(VI), second and third sentences of the BRTV). The fact, for example, that the majority of working hours at the registered office abroad are spent carrying on other activities and construction services is thus immaterial.

The employer need only meet those working standards of collective agreements which also apply to those not signed up to a collective agreement, either through by having been declared universally binding under section 5 of the Collective Agreement Act (*Tarifvertragsgesetz, TVG*) or through the statutory instrument provided for in section 1(3a) AEntG. Furthermore, the collective agreements must obey the so-called workplace principle. This means, where the collective agreement does not already prescribe uniform working standards to be applied across the federation as a whole, that the working conditions of the place where the work is carried out are decisive. The registered office of the employer is irrelevant in this regard.

a. Minimum wage

The following applies in calculating the minimum wage:

Wage allowances or supplements paid by the employer are to be regarded as part of the minimum wage where their payment is not contingent upon the worker providing a service not covered in the collective agreement.

¹⁰Currently, that part of the AEntG which relates to collectively agreed working standards is restricted to the construction industry and shipping assistance. A government bill on a first amending act to the AEntG is currently making its way through parliament and provides for the extension of the Act to the building cleaning trade.

¹¹Sections 1 and 2 of the Ordinance on construction businesses (Baubetriebsverordnung).

Consequently, those allowances or supplements paid to compensate for particular difficulties and burdens associated with performing certain work and provided for in the collective agreements as additional payments to the actual hourly rate are not considered part of the minimum wage.

Thus, the following payments cannot be included for minimum wage purposes:

- > Allowances for carrying out work at certain times
(e. g. night shift allowance, allowances for working on Sundays and public holidays);
- > Allowances for performing work under difficult or dangerous conditions
(e. g. dirt money, danger money, working under high temperatures, in tight passages or in tunnel, wearing protective clothing);
- > Piece-work bonuses (more work per unit of time) and quality bonuses (above average quality results);
- > General one-off payments such as holiday allowances, Christmas bonus, special annual bonus, loyalty bonus. However, these payments are considered part of the minimum wage when the employee does not receive them once a year, but rather receives an actual and irreversible payment each month in addition to his normal wage, representing a proportionate amount of these one-off payments divided for each of the months of his posting.

Thus, overtime is subject to special rules. Allowances paid here must be treated as bonuses for carrying out work at certain times and are therefore part of the minimum wage if the employer is obliged to remunerate overtime at the place of work.

The following must always be included in calculating minimum wage:

- > Construction supplement: Section 2(1) of the TVMB expressly states that this is a constituent element of the minimum wage. This supplement is a generalised part of the overall contractual wage. It must be paid to every worker covered by the collective agreement, irrespective of whether this worker is actually subject to the burdens named in section 2(1) of the TVMB.
- > The so-called posting allowances where these represent an allowance paid to the worker to make up the difference between the wage that he can earn in the posting state and the wage that he is entitled to under section 1(1) of the AEntG together with the respective collective agreement.

In terms of allowances paid to workers for sustenance and lodging, the following are not considered part of the minimum wage:

- > The value of reimbursements of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging (see Article 3(7)(2) of Directive 96/71/EC on the posting of workers in the framework of the provision of services, otherwise known as the posting of workers directive);
- > The monetary value of benefits in kind granted by the employer in addition to the wage (provision of board, sustenance).

Furthermore:

Where the employer pays the employee a total amount which includes amounts with which the employee is to cover his costs for lodging and/or sustenance, this total amount must be reduced by the lowest amount quoted in the Ordinance on remuneration in kind¹² for lodging and sustenance payments, respectively. Where the employer only pays a wage net of the benefits he provides (e. g. board, sustenance), only this wage actually paid is taken into account for minimum wage purposes.

Minimum wage collective agreements pursuant to the AEntG exist for the:¹³

- > Construction industry (proper)
- > Roofing trade
- > Painting and varnishing trade
- > Demolition trade.

b. Obligatory participation in the holiday fund system

Under section 1(3) AEntG, a foreign employer active in the construction industry is obliged, just like his domestic counterpart, to pay contributions into the ULAK, the construction industry's fund for pooling and settling wage and holiday claims.¹⁴

¹²This is known in German as the *Sachbezugsverordnung*. Remunerations in kind are benefits with a monetary value provided by the employer to the employee in addition to or in the place of a cash wage. These generally include the rent-free or low-rent provision of a place to stay or of goods. Remuneration in kind is seen as income for wage tax purpose and must be included in social insurance. The Ordinance gives the value of remunerations in kind for tax purposes and may be downloaded at www.bmas.bund.de > Service > Gesetze > Sachbezugsverordnung.

¹³The constantly updated minimum wage collective agreements can be downloaded at www.zoll.de > Entsendung von Arbeitnehmern > Arbeitgeber > Gesetzliche Regelungen und Tarifverträge.

¹⁴The holiday fund system was established in light of the following: Some 40% of construction workers work for more than one company over an entire year. Without the holiday fund system, these workers would not be entitled to a vacation, since this only arises once a person has worked six months with a single employer. To this end, the ULAK maintains for each construction worker an employee account in which holiday and remuneration credits can be accumulated. The worker applies for leave with his current employer, who then approves the application and disburses the holiday pay. This employer then receives a refund for this money from the ULAK. Because the collective pay agreements in the construction industry have been declared universally applicable, German employers are obliged to participate in the holiday fund system.

For further information please see www.soka-bau.de > Urlaubskassenverfahren. SOKA-BAU is the joint name for the Zusatzversorgungskasse des Baugewerbes (ZVK), a supplementary pension scheme for the construction industry in the form of a mutual insurance company, and the Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (ULAK), which together operate as a single undertaking.

In order to avoid a foreign employer having to pay twice, this provision does not apply when he pays his contributions to a similar institution in his home state, including for the duration of the posting. To this end, the ULAK and the respective competent German ministries have signed framework agreements with their foreign counterparts on the mutual exemption of employers who are based in other countries. To date, such agreements have been concluded with Austria, Belgium, Denmark, France, Netherlands and Switzerland. The holiday fund can also provide information as to whether or not the employer is obliged to pay contributions.

The ULAK maintains for each construction worker an employee account in which holiday and remuneration credits can be accumulated. The employer who has granted the holiday receives a refund from the ULAK of the holiday pay disbursed to the employer.

c. Ensuring at least minimum work standards

Section 2(1) AEntG states that the authorities of the customs administration (*Hauptzollämter*) are responsible for verifying that the work standards set out in section 1 of this law are being met. Section 3(1) obliges the foreign employer to register every worker intended for employment on a building site in the Federal Republic of Germany before the employment period has begun. This registration must be submitted in writing and in German to the Regional Finance Office of Cologne's specialist department for the financial investigation of illegal work (*Abteilung Finanzkontrolle Schwarzarbeit bei der Oberfinanzdirektion Köln*), and must contain the details set out in section 3(1) AEntG.

In addition, the employer must attach a pledge that he adheres to the agreed work conditions, section 3(3).

As soon as the financial investigation department has received such notification, it forwards a copy to the *Hauptzollamt* responsible, to the ULAK and to the tax office responsible for VAT.

Furthermore, the employer must ensure that he has in store the documents in German needed to verify that he is adhering to his statutory obligations (section 2(3) AEntG). These include in general: the employment contract or a document pursuant to section 2 of the Act on proof of an employment relationship (*Nachweisgesetz, NachwG*) or a similar foreign statute, proof of time worked, proof of wage, and receipts for the wage payments. The employer is also obliged to submit other documents which may be needed to establish whether the agreed work conditions are being adhered to should the authority charged with such verification so require. The obligation to maintain documents in German extends beyond the actual duration of the individual worker's stay in Germany and applies for at least as long as the construction work is being carried out but for no longer than two years.

Moreover, the employer is obliged to record when work starts and ends, and the duration of the work, for each employee on a daily basis and to retain these records for at least two years, section 2(2a) of the AEntG.

2.1.5.2 Minimum work standards for all branches

Section 7(1) AEntG obliges employers with registered office abroad to adhere to certain work standards set out in German legal and administrative statutes. In contrast to section 1 AEntG, this provision is not restricted to the construction industry, but applies instead to all branches. In contrast to the case with social insurance, it makes no difference here whether these employees have been posted; all that counts is that they are employed in Germany. The provision applies to all legal rules, statutory instruments and administrative provisions, but generally not to collective agreements – even where these are universally binding – and works agreements.¹⁵

The competent authorities are responsible for ensuring that at least the minimum standards listed in section 7(1) are implemented and adhered to. Their supervisory competence is based on the specific laws concerned. For example, the competent regional authorities (e. g. factory inspectorates, occupational health and safety offices) are responsible for ensuring that legal provisions relating to security and safety in the workplace – including provisions relating to working hours – are adhered to.

2.1.5.3 International cooperation between the respective liaisons offices and monitoring authorities

The AEntG is designed to implement Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. In order to ensure that it is actually implemented, Article 4 of the Directive provides for cooperation between member states in terms of the exchange of information. To this end, the member states have designated liaison offices and competent national monitoring bodies. These are to act as points of contact and information for the authorities of the other member states as well as for undertakings posting employees and for posted employees.¹⁶

Cooperation standards which are meant to ensure that the liaison offices reply to requests from other member states within a four week period have been in force since April 2005.

¹⁵A list of the legal and administrative provisions to which section 7(1) applies can be found by consulting www.zoll.de > Entsendung von Arbeitnehmern > Arbeitgeber > Gesetzliche Regelungen und Tarifverträge > Auflistung der nach § 7 Abs. 1 AEntG in Entsendefällen Anwendung findenden Rechts- und Verwaltungsvorschriften.

¹⁶A list of the liaison offices and monitoring bodies may be had by following www.zoll.de > Entsendung von Arbeitnehmern > Richtlinie über die Entsendung von Arbeitnehmern im Rahmen der Erbringung von Dienstleistungen > Verbindungsbüros.

2.1.6 Tax legislation

2.1.6.1 The obligation to pay wages tax in Germany

Generally, every working wage paid by a German employer for activity carried out on the basis of an employment arrangement is subject in Germany to wages tax (income from dependent employment). A domestic employer as defined by tax legislation is anyone who has a domicile, habitual abode, place of management, registered office, permanent establishment or permanent representative in Germany.

Where workers have been posted, the company resident in Germany accepting the workers and bearing the economic burden of the wages paid for work done for it is a domestic employer. This must be assumed in particular if the wage bill paid by the other company is passed on to the Germany company, e. g. a foreign parent company posts a worker to a subsidiary in Germany in return for having the wages it pays refunded. It does not require in order for employer obligations to be met that the German company pays out the wage in its own name and for its own account. The wages tax liability arises as soon as the worker is paid his wage where the agreement is such that the German company can expect to be billed for this wage; the German company must impose the wage tax at this instant.

From the perspective of tax legislation, a domestic employer is also anyone who leases a worker to a third party (lessee) on a commercial basis for the purposes of carrying out work in Germany, without actually being a domestic employer (foreign lessor). The classification as employer does not require the existence of the legal leasing of workers pursuant to the AÜG. The leasing of workers is deemed commercial where the company (lessor) leases workers out on a continual basis for commercial gain. Workers transferred as an ancillary service to another service e. g. where, when equipment is hired and operators leased out, the economic value of the equipment hire is greater, does not constitute a case of leasing workers. The AÜG also does not apply where the conditions listed under the second sentence of section 1(1) and section 1(3) AÜG are met.

In order to determine from a legal perspective whether a situation constitutes the leasing of workers or whether it is a case of a contract for work, the overall context must be looked at. The term given to the actual legal transaction is not decisive.

Possible signs indicating the leasing of workers include:

- > The owner of the third party company (lessee company) essentially exercises an employer's right of instruction.
- > The tools to be used are supplied chiefly by the third party company.

- > The liability risks associated with other types of contracts, especially with contracts for work, are excluded or limited.
- > The workers are remunerated on the basis of units of time for the work they carry out for the lessee employer.

2.1.6.2 Wages tax and liability for wages tax

Wage tax liability arises as soon as the wage is paid to the worker. In this regard, the form of wage or the frequency of its payment is immaterial. Wages tax must also be deducted from wages paid by a third party as part of the employment relationship where the employer is aware of and can validate the payment of such remuneration.

The wages tax is owed by the worker, even where net wages have been agreed. The employer is generally obliged to withhold the wages tax irrespective of whether or not the worker is assessed from income tax. The worker's citizenship is unimportant. The employer bears the liability for the wages tax which he has to withhold and pay on and for income tax (wages tax) underpaid as a result of incorrect entries in the wage account or the certificate of wage tax deduction.

Where labour is leased, the lessee and the employer both bear liability for the tax, except where labour has been leased under the conditions described in section 1(3) AÜG. Furthermore, the lessee is also exempt from liability when, through no fault of his own, he has been mistaken with respect to the existence of the leasing of workers. Liability is limited to wages tax for the period in which the worker was leased to him.

2.1.6.3 The obligations of the employee and his employer

In order to enable wages tax to be deducted, the worker subject to unlimited income tax liability must submit to his employer a wages tax card either before the beginning of the calendar year or before his employment commences. Where the worker is subject to limited income tax liability, he must for the purposes of wage tax deduction present to his employer certification by the tax office responsible for his employer's permanent establishment. The employer must store the wages tax card or the certification.

The employer must maintain a wage account at the permanent establishment for every worker and for every calendar year. The wages account must display the details necessary for the deduction of wages tax. These details can be taken from the wages tax card or from the certification issued by the tax office in whose district the permanent establishment is located. The wage account must record the type and amount of each wage payment including the tax-free payments and the wages tax withheld or assumed.

The employer must no later than the tenth day of every wages tax declaration period submit to the tax office of the permanent establishment a tax return showing the amount of wages tax to be withheld and assumed during the period and to pay over to the tax office the wages tax actually withheld and assumed. The period for declaring wages tax is generally each calendar month; it can however be each quarter or each calendar year.

2.1.6.4 VAT

All entrepreneurs resident and generating turnover in Germany irrespective of citizenship must register for the purposes of VAT with their competent tax office and submit provisional VAT returns or VAT declarations for the calendar year.

An entrepreneur is deemed resident in Germany when he maintains in Germany, on the island of Heligoland, or in any other the territories listed in section 1(3) of the Turnover Tax Law (*Umsatzsteuergesetz, UStG*) a domicile, registered office, place of management or branch office.

All entrepreneurs resident abroad and generating turnover in Germany for which they owe VAT must register with the central tax office responsible for them and submit provisional VAT returns or VAT declarations for the calendar year there.

2.1.6.5 Registration for tax purposes

The following reporting obligations must be observed where companies with registered office in a member state provide work or services in Germany:

- > Taxpayers who are not natural persons are obliged under section 137 of the German Fiscal Code (*Abgabenordnung, AO*) to notify the competent tax office and the local authorities responsible for collecting impersonal taxes of any circumstances of relevance with respect to registration for tax purposes. This includes, in particular, the setting-up of a company, the attainment of legal capacity, any changes to the legal form of the company, the transfer of the place of management or registered office and the winding up of the company. Notice of these events must be given within one month of their occurrence. The tax office in whose jurisdiction the company's place of management is located is responsible. Where the place of management is located in an area not covered by the scope of the law or where the location of the place of management cannot be determined, the tax office in whose jurisdiction the taxpayer has its registered office is responsible.
- > Anyone who opens a commercial undertaking or a permanent establishment must under section 138 AO notify the local authority in which this undertaking or permanent establishment is located of such by way of an officially prescribed form. The local authority will then immediately inform the competent tax office of the content of the notification.

2.1.7 Trading legislation

The provision of cross-border services has no implications in trading legislation, and thus must not be notified to the authorities where it is merely a one-off service of limited duration. However, section 14 of the German Trade Regulation Code (*Gewerbeordnung, GewO*) states that it may be necessary to notify the authorities of such activity where services are provided, albeit for a short period of time, on a repeated basis and concentrated in one location or various locations.

Permission is needed to provide cross-border services where the services are those of a trade or craft which require a licence. Permission from the state of origin is also recognised where it provides a similar level of protection.

The competent authorities are those in whose jurisdictions the transaction (whether subject to notification or licence requirements) is carried out. The actual authority responsible is determined by the legislation of the individual federal states. This can be a local authority, administrative district, trades offices, office for public order, town hall, etc.

2.1.8 Trades and crafts legislation

In addition to the requirements under trading law, special conditions stipulated by trades and crafts legislation must be met where the service is to be carried out across borders from a fixed place of business in a particular trade or craft which is subject to licensing provisions. The trades and crafts which require a licence are listed in Appendix A to the German Trades and Crafts Code (*Handwerksordnung, HwO*), which is included as Annex B to this guide.

2.1.8.1 The cross-border provision of services by a trades and crafts business

Any citizen of the EU or EEA wishing to exercise across the border a trade or craft listed in Appendix A to the HwO will not be entered into the German register of craftsmen and tradesmen (*Handwerksrolle*). Nevertheless, section 9(2) HwO together with section 4 of the German Trades and Crafts Code for the EU/EEA (*EU/EWR-Handwerk-Verordnung, EU/EWR-HwV*) states that he needs certification from the relevant authority confirming that he meets the conditions that apply in Germany before such a trade or craft may be exercised.

In contrast, anyone wishing to set up an establishment in Germany to exercise such craft or trade will require special dispensation to have their name entered in the aforementioned register (section 9(1) HwO together with EU/EWR-HwV - see 3.1.3).

Important:

Any doubts as to whether a particular case constitutes employment subject to social insurance and taxation obligations, whether a trade needs to be registered, etc. may be clarified by contacting the competent authority. Legal advice may only be provided by public authorities permitted to do so. This equally applies to the federal ministries. Advice relating to legal affairs and tax matters is available in individual cases from professional consultants (in particular solicitors and tax advisors). Furthermore, the German Act on legal advice and representation (Beratungshilfegesetz) allows legal advice and representation to be sought from an attorney, legal advisor or consultancy set up by an individual federal state of Germany; however, entitlement is dependent upon the existence of restricted financial means.

Annexes

Annex A

Sample documents

- Appendix 1: E 101 certificate
- Appendix 2: Residence permit (EU)
- Appendix 3: Application for work permit (EU)
- Appendix 4: Permit to commercially lease workers
- Appendix 5: Registration of trade
- Appendix 6: Application to determine social insurance status

Annex B

Appendix A to the Handwerksordnung

INSTRUCTIONS

The designated institution of the Member State to whose legislation the worker is subject should fill in the form at the request of the worker or his employer and return it to the applicant. If the worker is posted to Belgium, Denmark, Germany, France, the Netherlands, Austria, Finland, Sweden, or Iceland, the institution should also send a copy to: in Belgium, in the case of employed persons to the 'Office national de sécurité sociale/Rijksdienst voor Sociale Zekerheid' (National Social Security Office), Brussels; in the case of self-employed persons to the 'Institut national d'assurances sociales pour travailleurs indépendants/ Rijksinstituut voor sociale verzekering der zelfstandigen' (National Social Insurance Institute for the Self-Employed), Brussels; in the case of seamen, to the 'Caisse de secours et de prévoyance en faveur des marins: de Hulp- en Voorzorgskas voor Zeevarenden' (Relief and Welfare Fund for Mariners), Antwerp; or, in the case of civil servants, to the 'Service des Relations internationales du S.P.F. Sécurité sociale' (International Relations Department, Social Affairs Ministry); in Denmark, to 'Den Sociale Sikringsstyrelse' (The National Social Security Agency); in Germany, to the Deutsche Rentenversicherung-Bund (German Federal Pension Insurance), 97041 Würzburg; in France, to the 'Centre des liaisons européennes et internationales de sécurité sociale (Cleiss)' (Centre for European and International Liaison on Social Security), Paris; in the Netherlands, to the 'Sociale Verzekeringsbank' (Social Insurance Bank), Amstelveen; in Austria, to the 'Hauptverband der österreichischen Sozialversicherungsträger' (Main Association of Austrian Social Insurance Institutions); in Finland, to the 'Eläketurvakeskus' (Finnish centre for Pensions), Helsinki; in Sweden, to Försäkringskassan, Huvudkontoret (Swedish Social Insurance Agency, Head Office), Stockholm; in Iceland, to the 'Tryggingastofnun ríkisins' (The State Social Security Institute), Reykjavik.

Information for the insured person

Before you leave the country where you are insured to go to another Member State to work, make sure you have the document which entitles you to receive the necessary benefits in kind (e.g. medical care, medication, treatment in hospital, etc.) in the country where you are working. If you are going to be living in the country in which you are working, ask your sickness insurance institution for an E 106 form and submit it as soon as possible to the competent sickness insurance institution of the place where you are going to work. If you are staying temporarily in the country in which you are going to work, ask your sickness insurance institution for the European health insurance card. You must show this card to your care provider if you need benefits in kind during your stay.

Information for employers

A Member State which receives a request for the application of the aforementioned Article 14(1), Article 14b(1) or Article 17 of Regulation (EEC) No 1408/71 shall duly inform the employer and the worker concerned of the conditions under which the posted worker may continue to be subject to its legislation.

The employer shall be informed of the possibility of checks throughout the period of posting so as to ascertain that this period has not come to an end. Such checks may relate, in particular, to the payment of contributions and the maintenance of the direct relationship. Moreover, the employer of the posted worker shall inform the competent institution of the sending State of any change that has occurred during the period of posting, in particular:

- if the posting applied for has not taken place or if the extension of the posting applied for has not taken place,
- if the posting has been interrupted, unless this interruption of the worker's activities on behalf of the undertaking in the country of employment is of a purely temporary nature,
- if the posted worker has been assigned by his employer to another undertaking in the State of employment.

In the first two cases, he/she shall return this form to the competent institution of the sending State.

Information for the institution of the place of stay

If the person involved produces the proper document (European health insurance card or form E 106), the insurance institution in the country of stay will also provide him provisionally with benefits in the event of an accident at work or an occupational disease. If in such a case the institution requires form E 123, it should apply as soon as possible:

in **Belgium**, for employed persons and as regards an occupational disease, to the 'Fonds des maladies professionnelles/Fonds voor Beroepsziekten' (Occupational Diseases Fund), Brussels, and, as regards accidents at work, to the insurance company designated by the employer;

in the **Czech Republic**, to the sickness insurance fund with which the person concerned is insured;

in **Denmark**, to 'Arbejdsskadestyrelsen' (National Board of Industrial Injuries), Copenhagen;

in **Germany**, to the competent 'Berufsgenossenschaft' (Accident Insurance Institution);

in **Estonia**, to the 'Sotsiaalkindlustusamet' (Social Insurance Board), Tallinn;

in **Spain**, to the 'Dirección Provincial del Instituto Nacional de Seguridad Social' (Provincial Directorate of the National Social Security Institution);

in **Ireland**, to the Department of Health, Planning Unit, Dublin 2;

in **Italy**, to the competent provincial office of the 'Istituto nazionale per l'assicurazione contro gli infortuni sul lavoro' (INAIL) (National Institute for Insurance against Accidents at Work);

in **Latvia**, to the 'Valsts sociālās apdrošināšanas aģentūra' (State Social Insurance Agency), Riga;

in **Lithuania**, to the 'Teritorinė ligonių kasa' (Regional Sickness Insurance Fund);

in **Luxembourg**, to the 'Association d'assurance contre les accidents' (Accident Insurance Association);

in **Malta**, to the 'Diviżjoni tas-Saħa', Triq il-Merkanti, Valletta CMR 01;

in the **Netherlands**, to the competent sickness insurance institution;

in **Austria**, to the competent accident insurance institution;

in **Poland**, to the regional branch of the 'Narodowy Fundusz Zdrowia' (National Health Fund);

in **Portugal**, to the 'Centro Nacional de Protecção contra os Riscos Profissionais' (National Centre for Protection against Occupational Risks), Lisbon;

in **Slovakia**, to the health insurance company of the insured person or the Social Insurance agency, Bratislava;

in **Finland**, to the 'Tapaturmavakuutuslaitosten Liitto' (Federation of Accident Insurance Institutions), Bulevardi 28, 00120 Helsinki;

in **Sweden**, to the 'Försäkringskassan' (Local Social Insurance Office);

in **all other Member States**, to the competent sickness insurance institution;

in **Iceland**, to the 'Tryggingastofnun ríkisins' (The State Social Security Institute), Reykjavik;

in **Liechtenstein**, to the 'Amt für Volkswirtschaft' (Office of National Economy), Vaduz;

in **Norway**, to the 'Folketrygdkontoret for Utenlandssaker' (National Office for Social Insurance Abroad), Oslo;

in **Switzerland**, for employed persons, to the employer's accident insurance institution; for self-employed persons, to the accident insurance institution of the person concerned.

Where the worker is covered by the French social security scheme, the fund which is competent to recognise entitlement to benefits is his insurance fund, which may not be the one appearing on form E 101. It will be necessary, where appropriate, to request the European health insurance card or form E 123 from the fund of the worker's place of habitual residence.

Where a self-employed person is covered by a Finnish or Icelandic social security scheme it will always be necessary to request form E 123.

Where a worker covered by an Icelandic social security scheme suffers an accident at work or contracts an occupational disease, the employer must always duly notify the competent institution.

NOTES

- (1) Symbol of the country to which the institution completing the form belongs: BE = Belgium; CZ = Czech Republic; DK = Denmark; DE = Germany; EE = Estonia; GR = Greece; ES = Spain; FR = France; IE = Ireland; IT = Italy; CY = Cyprus; LV = Latvia; LT = Lithuania; LU = Luxembourg; HU = Hungary; MT = Malta; NL = Netherlands; AT = Austria; PL = Poland; PT = Portugal; SI = Slovenia; SK = Slovakia; FI = Finland; SE = Sweden; UK = United Kingdom; IS = Iceland; LI = Liechtenstein; NO = Norway; CH = Switzerland.
- (2) Give all surnames in the order of civil status.
- (3) Give all forenames in the order of civil status.
- (4) For workers subject to Spanish law, indicate the social security number. For the purpose of Maltese institutions, give the Identity Card number in case of Maltese nationals, or the Maltese Social security number in case of a non-Maltese national. In the case of persons being subject to Polish legislation, please indicate the PESEL and NIP numbers or, failing that, the series and the number of the identity card or passport. For the purpose of Slovak institutions, give the Slovak birth number if applicable.
- (5) Please give as much information as possible to facilitate identification of the employer or the firm of the self-employed person. In the case of a ship, indicate its name and its registration number.
- Belgium:** indicate, in the case of employed persons, the business number (numéro d'entreprise/ondernemingsnummer/Unternehmensnummer) and, in the case of self-employed persons, the VAT number.
- Czech Republic:** indicate the identification number (IČ).
- Denmark:** indicate the CVR number.
- Germany:** indicate the 'Betriebsnummer des Arbeitgebers'.
- Spain:** indicate the 'Código de Cuenta de Cotización del Empresario CCC' (employer's contribution account number).
- France:** indicate the SIRET number.
- Italy:** indicate the company's registration number where possible.
- Luxembourg:** indicate the employer's social security registration number and, for self-employed persons, the social security number (CCSS).
- Hungary:** indicate the employer's social security registration number or, for self-employed persons, the identification number of the private company.
- Poland:** indicate the NUSP number, where there is one, or the NIP and REGON numbers.
- Slovakia:** indicate the identification number (IČO).
- Slovenia:** indicate the registration number of the employer or self-employed person.
- For workers subject to **Finnish** legislation on occupational accidents, please indicate the name of the competent accident insurance institution.
- Norway:** indicate the organisation number.

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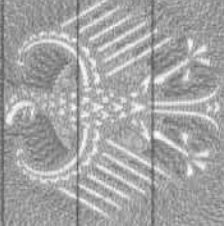
Geburtsdatum _____

Geburtsort _____

Staatsangehörigkeit _____

Unterschrift der Inhabern bzw. des Inhabers _____

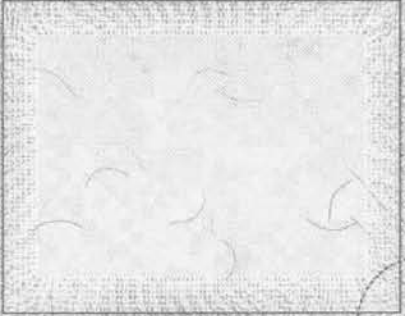
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Bei Auswahlkästchen Zutreffendes bitte ankreuzen

| | |
|--|--|
| Antrag auf Arbeitserlaubnis-EU für Werkvertragsarbeitnehmer der neuen EU-Mitgliedstaaten | |
| Angaben zum ausländischen Arbeitnehmer: | |
| 1 Name | 2 ggf. Geburtsname |
| Vorname | 4 Staatsangehörigkeit |
| 3 Geburtsdatum: | 5 Geschlecht <input type="checkbox"/> männlich <input type="checkbox"/> weiblich |
| 6 Name und Anschrift des entsendenden Unternehmens bzw. der Niederlassung im Bundesgebiet: | 7 Wohnung im Bundesgebiet - soweit nicht nebenstehend - |
| 8 Pass/Personalausweis gültig bis: | |
| Arbeitserlaubnis - EU wird beantragt | |
| 9 von _____ bis _____ | 10 als (Art der auszubehenden Beschäftigung) |
| 11 Im Rahmen des Werkvertrages vom: | 12 Auftragsnummer |
| 13 ausländisches Unternehmen | 14 deutsches Unternehmen |
| 15 Betriebsstätte/Baustelle (Anschrift: Straße, Nr., PLZ, Ort). | |
| 16 Es wird bestätigt, dass der Arbeitnehmer entsprechend dem Antrag beschäftigt werden soll Stempel und Unterschrift des Arbeitgebers | 17 Unterschrift des Arbeitnehmers Datum |

Wird von der Agentur für Arbeit ausgefüllt

| | | | |
|--|-----------------------------|----------------------------|-----|
|  | Bundesagentur für Arbeit | Arbeitserlaubnis-EU | |
| Dem oben genannten Arbeitnehmer, der auf der Grundlage einer zwischenstaatlichen Vereinbarung über die Entsendung und Beschäftigung von Werkvertragsarbeitnehmern entsandt wurde, wird gemäß § 284 Drittes Buch Sozialgesetzbuch (SGB III), in Verbindung mit § 3 Auswärtiges Beschäftigungsgesetz eine Arbeitserlaubnis-EU erteilt. | | | |
| Diese Arbeitserlaubnis-EU gilt für eine berufliche Tätigkeit nach Ziffer 10 nur bei dem unter Ziffer 13 genannten Unternehmen und nur für die unter Ziffer 15 genannte Betriebsstätte/Baustelle. | | | |
| Geltungsdauer | | von | bis |
| | | | |
| Agentur für Arbeit | Im Auftrag | Dienststempel | |
| | Datum | | |

BA-Ausl.Nr. 1. W-EU 1.05

Ausfertigung für den Arbeitnehmer



Bundesagentur für Arbeit

Regionaldirektion Nord

Hamburg • Mecklenburg-Vorpommern • Schleswig-Holstein

Kiel, 18.10.2006

ERLAUBNIS

zur gewerbsmäßigen Arbeitnehmerüberlassung

Nach den §§ 1 und 2 des Gesetzes zur Regelung der gewerbsmäßigen Arbeitnehmerüberlassung (AÜG) vom 7. August 1972 - BGBl. I S. 1393 - wird der Firma

**Zeitarbeit GmbH
Bahnhofstr. 15**

19225 Musterstadt

vertreten durch den Geschäftsführer

Klaus Mustermann

die Erlaubnis zur gewerbsmäßigen Überlassung von Arbeitnehmern vom **19.10.2006** bis zum **18.10.2007** erteilt.

Im Auftrag

(Unterschrift)

Gewerbsmäßige Arbeitnehmerüberlassung in Betriebe des Baugewerbes für Arbeiten, die üblicherweise von Arbeitern verrichtet werden, ist unzulässig. Sie ist zwischen Betrieben des Baugewerbes gestattet, wenn der verleihende Betrieb nachweislich seit mindestens drei Jahren von denselben Rahmen- und Sozialkassentarifverträgen oder von deren Allgemeinverbindlichkeit erfasst wird (§ 1 b AÜG). Dieser Nachweis ist mit Beginn des Verleihs vom Verleiher in geeigneter Weise vorzuhalten.

Diese Erlaubnisurkunde ist Eigentum der Bundesagentur für Arbeit und auf Verlangen zurückzugeben.

Annex A Appendix 5

| | | | | | |
|--|--|---|---|--|---|
| Name der entgegennehmenden Gemeinde | | Gemeindekennzahl Betriebsstätte (Sitz) | | GewA 1 | |
| Gewerbe-Anmeldung nach § 14 GewO oder § 55 c GewO | | Bitte vollständig und gut lesbar ausfüllen sowie die zutreffenden Kästchen ankreuzen | | | |
| Angaben zum Betriebsinhaber Bei Personengesellschaften (z.B. OHG) ist für jeden geschäftsführenden Gesellschafter ein eigener Vordruck auszufüllen. Bei juristischen Personen ist bei Feld Nr. 3 bis 9 und Feld Nr. 30 und 31 der gesetzliche Vertreter anzugeben (bei inländischer AG wird auf diese Angaben verzichtet). Die Angaben für weitere gesetzliche Vertreter zu diesen Nummern sind ggf. auf Beiblättern zu ergänzen. | | | | | |
| 1 | Im Handels-, Genossenschafts- oder Vereinsregister eingetragener Name mit Rechtsform (ggf. bei GbR: Angabe der weiteren Gesellschafter) | | 2 | Ort und Nr. des Registereintrages | |
| Angaben zur Person | | | | | |
| 3 | Name | | 4 | Vornamen | |
| | | | | 4a | Geschlecht männl. <input type="checkbox"/> weibl. <input type="checkbox"/> |
| 5 | Geburtsname (nur bei Abweichung vom Namen) | | | | |
| 6 | Geburtsdatum | | 7 | Geburtsort und – land | |
| 8 | Staatsangehörigkeit (en) deutsch <input type="checkbox"/> andere: _____ | | | | |
| 9 | Anschrift der Wohnung (Straße, Haus-Nr., PLZ, Ort; freiwillig: e-mail/web) | | | Telefon-Nr. _____ Telefax-Nr. _____ | |
| Angaben zum Betrieb | | | 10 | Zahl der geschäftsführenden Gesellschafter (nur bei Personengesellschaften) Zahl der gesetzlichen Vertreter (nur bei juristischen Personen) | |
| 11 | Vertretungsberechtigte Person/Betriebsleiter (nur bei inländischen Aktiengesellschaften, Zweigniederlassungen und unselbständigen Zweigstellen) Name _____ Vornamen _____ | | | | |
| Anschriften (Straße, Haus-Nr., Plz, Ort) | | | | | |
| 12 | Betriebsstätte | | | Telefon-Nr. _____ Telefax-Nr. _____ freiwillig: e-mail/web _____ | |
| 13 | Hauptniederlassung (falls Betriebsstätte lediglich Zweigstelle ist) | | | Telefon-Nr. _____ Telefax-Nr. _____ freiwillig: e-mail/web _____ | |
| 14 | Frühere Betriebsstätte | | | Telefon-Nr. _____ Telefax-Nr. _____ | |
| 15 | Angemeldete Tätigkeit - ggf. ein Beiblatt verwenden (genau angeben: z. B. Herstellung von Möbeln, Elektroinstallationen und Elektroeinzelhandel, Großhandel mit Lebensmitteln usw.; bei mehreren Tätigkeiten bitte Schwerpunkt unterstreichen) | | | | |
| 16 | Wird die Tätigkeit (vorerst) im Nebenerwerb betrieben? Ja <input type="checkbox"/> Nein <input type="checkbox"/> | | 17 | Datum des Beginns der angemeldeten Tätigkeit | |
| 18 | Art des angemeldeten Betriebes Industrie <input type="checkbox"/> Handwerk <input type="checkbox"/> Handel <input type="checkbox"/> Sonstiges <input type="checkbox"/> | | | | |
| 19 | Zahl der bei Geschäftsaufnahme tätigen Personen (ohne Inhaber) Vollzeit <input type="checkbox"/> Teilzeit <input type="checkbox"/> Keine <input type="checkbox"/> | | | | |
| Die Anmeldung wird erstattet für | 20 | Eine Hauptniederlassung <input type="checkbox"/> | | eine Zweigniederlassung <input type="checkbox"/> | |
| | 21 | ein Automatenaufstellungsgewerbe <input type="checkbox"/> | | ein Reisegewerbe <input type="checkbox"/> | |
| Grund | 23 | Neuerrichtung/Übernahme Neugründung <input type="checkbox"/> Wiedereröffnung nach Verlegung aus einem anderen Meldebezirk <input type="checkbox"/> | | Gründung nach Umwandlungsgesetz (z.B. Verschmelzung, Spaltung) <input type="checkbox"/> | |
| | 24 | Wechsel der Rechtsform <input type="checkbox"/> Gesellschaftereintritt <input type="checkbox"/> Erbfolge/Kauf/Pacht <input type="checkbox"/> | | | |
| 26 | Name des früheren Gewerbetreibenden oder früherer Firmenname | | | | |
| Falls der Betriebsinhaber für die angemeldete Tätigkeit eine Erlaubnis benötigt, in die Handwerksrolle einzutragen oder Ausländer ist: | | | | | |
| 28 | Liegt eine Erlaubnis vor? Ja <input type="checkbox"/> Nein <input type="checkbox"/> | | Wenn Ja, Ausstellungsdatum und erteilende Behörde: | | |
| 29 | Nur für Handwerksbetriebe Liegt eine Handwerkskarte vor? Ja <input type="checkbox"/> Nein <input type="checkbox"/> | | Wenn Ja, Ausstellungsdatum und Name der Handwerkskammer: | | |
| 30 | Liegt eine Aufenthaltsgenehmigung vor? Ja <input type="checkbox"/> Nein <input type="checkbox"/> | | Wenn Ja, Ausstellungsdatum und erteilende Behörde: | | |
| 31 | Enthält die Aufenthaltsgenehmigung eine Auflage oder Beschränkung? Ja <input type="checkbox"/> Nein <input type="checkbox"/> | | Wenn Ja, sie enthält folgende Auflagen bzw. Beschränkungen: | | |
| Hinweis: Diese Anzeige berechtigt nicht zum Beginn des Gewerbebetriebes, wenn noch eine Erlaubnis oder eine Eintragung in die Handwerksrolle notwendig ist. Zuwiderhandlungen können mit Geldbuße oder Geldstrafe oder Freiheitsstrafe geahndet werden. Diese Anzeige ist keine Genehmigung zur Errichtung einer Betriebsstätte entsprechend dem Planungs- und Baurecht. | | | | | |
| 32 | | | 33 | | |
| | | (Datum) | | (Unterschrift) | |

| |
|---------------------|
| Versicherungsnummer |
|---------------------|

| |
|---------------------------------|
| Kennzeichen (soweit bekannt) |
|---------------------------------|

V027

Antrag auf Feststellung des sozialversicherungsrechtlichen Status

Hinweis: Das Statusfeststellungsverfahren dient der Klärung der Frage, ob ein Auftragnehmer seine Tätigkeit für einen Auftraggeber im Einzelfall selbständig oder als abhängig Beschäftigter ausübt. Bei Vertragsverhältnissen, die im Zeitpunkt der Antragstellung bereits beendet sind, ist ein Statusfeststellungsverfahren ausgeschlossen. Um über diese Frage entscheiden zu können, benötigen wir aufgrund des Vierten Buches des Sozialgesetzbuches - Gemeinsame Vorschriften für die Sozialversicherung (SGB IV) - von Ihnen einige wichtige Informationen und Unterlagen. Wir möchten Sie deshalb bitten, die gestellten Fragen vollständig zu beantworten und uns die erbetenen Unterlagen möglichst umgehend zu überlassen. Ihre Mithilfe erleichtert uns eine rasche Erledigung Ihrer Angelegenheiten. In welchem Umfang Ihre Mithilfe benötigt wird, ergibt sich aus § 28o Abs. 2 SGB IV, § 196 Abs. 1 SGB VI und § 98 Abs. 1 SGB X. Danach sind Sie verpflichtet, alle Tatsachen anzugeben und uns die notwendigen Urkunden und sonstigen Beweismittel zur Verfügung zu stellen. Weitere Informationen können Sie den Erläuterungen zum Antrag auf Feststellung des sozialversicherungsrechtlichen Status entnehmen.

| |
|-----------------|
| Eingangsstempel |
|-----------------|

1 Angaben zur Person des Auftragnehmers und zur letzten Beitragszahlung

| | | | |
|--|--|---|--|
| 1.1 Name, Vorname, ggf. Geburtsname (Rufname bitte unterstreichen) | | Geburtsdatum | |
| Frühere Namen | | Geburtsort (Kreis, Land) | |
| Staatsangehörigkeit (ggf. frühere Staatsangehörigkeit bis) | | Geschlecht <input type="checkbox"/> weiblich <input type="checkbox"/> männlich | |
| Derzeitige Adresse (Straße, Hausnummer, PLZ, Wohnort) | | Telefonisch tagsüber zu erreichen Telefax | |

1.2 Wurden für Sie bereits Beiträge zur gesetzlichen Rentenversicherung gezahlt?

| | | |
|--|-------|------|
| <input type="checkbox"/> nein <input type="checkbox"/> ja, letzter Beitrag wurde gezahlt für | Monat | Jahr |
|--|-------|------|

1.3 Bei welcher Krankenkasse sind Sie zurzeit versichert?

| |
|--|
| Bitte Namen und Anschrift der Krankenkasse angeben |
|--|

1.4 Sofern Sie zurzeit nicht gesetzlich krankenversichert sind: Bei welcher gesetzlichen Krankenkasse hat zuletzt eine Krankenversicherung bestanden?

| |
|--|
| Bitte Namen und Anschrift der Krankenkasse angeben |
|--|

2 Angaben zur Tätigkeit des Auftragnehmers, für die der sozialversicherungsrechtliche Status festgestellt werden soll

2.1 Ausgeübte Tätigkeit

| | |
|---|--------|
| Bezeichnung der Tätigkeit für den Auftraggeber, für den ein Statusfeststellungsverfahren durchgeführt werden soll | Beginn |
|---|--------|

2.2 Beschreiben Sie bitte die von Ihnen ausgeübte Tätigkeit.

| |
|--|
| |
|--|

2.3 Für welche Auftraggeber sind Sie tätig?

| |
|---|
| Bitte Namen, Adressen der Auftraggeber angeben, den Auftraggeber unterstreichen, für den ein Statusfeststellungsverfahren durchgeführt werden soll, und die aktuellen Verträge beifügen |
| |

2.4 Handelt es sich bei einem Auftraggeber um einen Angehörigen von Ihnen: Ehegattin / Ehegatte, Verlobte / Verlobter, Lebenspartnerin / Lebenspartner, Lebensgefährtin / Lebensgefährte, geschiedene Ehegattin / geschiedener Ehegatte, Verwandte / Verwandter, Verschwägerter / Verschwägerter, sonstige Familienangehörige?

| |
|---|
| Wenn ja: Bitte Beziehung und Auftraggeber angeben. |
| <input type="checkbox"/> nein <input type="checkbox"/> ja |

2.5 Sofern Sie für mehrere Auftraggeber tätig sind: Erhalten Sie mindestens fünf Sechstel Ihrer gesamten Einkünfte aus dieser Tätigkeit von einem dieser Auftraggeber?

| |
|---|
| Wenn ja: Bitte Auftraggeber angeben. |
| <input type="checkbox"/> nein <input type="checkbox"/> ja |

2.6 Wurde bereits durch eine Krankenkasse / einen Rentenversicherungsträger oder die Künstlersozialkasse für diese Tätigkeit festgestellt, dass Sie selbständig sind bzw. in einem abhängigen Beschäftigungsverhältnis zu Ihrem Auftraggeber stehen?

| |
|---|
| <input type="checkbox"/> nein <input type="checkbox"/> ja Bitte Bescheid der Krankenkasse / des Rentenversicherungsträgers bzw. der Künstlersozialkasse beifügen. |
|---|

2.7 Beziehen Sie für diese Tätigkeit Überbrückungsgeld / einen Existenzgründungszuschuss von der Agentur für Arbeit oder haben Sie dieses / diesen bezogen?

| | |
|---|------|
| <input type="checkbox"/> nein <input type="checkbox"/> ja Bitte Bescheid der Agentur für Arbeit beifügen und ggf. Ende des Bezuges angeben. | Ende |
|---|------|

Versicherungsnummer

Kennzeichen
(soweit bekannt)

2.8 Waren Sie vor Ihrer jetzigen Tätigkeit für einen der unter Ziffer 2.3 angegebenen Auftraggeber als Arbeitnehmer tätig?

nein ja Bitte den Unterschied zur vorherigen Tätigkeit auf einem gesonderten Blatt beschreiben.

Wird Ihr Unternehmen in der Rechtsform einer Gesellschaft (z. B. GmbH, Limited, KG, Praxisgemeinschaft, Partnerschaftsgesellschaft, GbR) geführt?

2.9

Wenn ja: Bitte Namen und Art der Gesellschaft angeben und Gesellschaftsvertrag in Kopie beifügen.

nein ja

2.10 Beschäftigen Sie mindestens einen Arbeitnehmer / Auszubildenden mit einem monatlichen Arbeitsentgelt von mehr als 400,- EUR?

nein ja

3 Grundlagen und Ausgestaltung der Tätigkeit des Auftragnehmers

3.1 Arbeiten Sie am Betriebssitz Ihres Auftraggebers?

nein ja

3.2 Haben Sie regelmäßige Arbeits- oder Anwesenheitszeiten einzuhalten?

Wenn ja: Bitte Anzahl der Stunden angeben.

nein ja Std. tgl. wö. mtl.

3.3 Werden Ihnen Weisungen hinsichtlich der Ausführung (Art und Weise) Ihrer Tätigkeit erteilt?

nein ja

3.4 Kann Ihr Auftraggeber Ihr Einsatzgebiet auch ohne Ihre Zustimmung verändern?

nein ja

3.5 Ist die Einstellung von Vertretern bzw. Hilfskräften durch Sie von der Zustimmung Ihres Auftraggebers abhängig?

nein ja

Beschreiben Sie bitte Ihr unternehmerisches Handeln bezüglich eigenen Kapitaleinsatzes, eigener Kalkulation, Preisgestaltung, Werbung und Ablehnung von Aufträgen.

3.6

4 Antrag / Erklärung des Auftragnehmers

Hiermit beantrage ich nach § 7a Abs. 1 SGB IV festzustellen, dass ein nicht vorliegt vorliegt
versicherungspflichtiges Beschäftigungsverhältnis nach § 7 Abs. 1 SGB IV

Ich versichere, dass meine Angaben der Wahrheit und die Vereinbarungen in den übersandten Verträgen den tatsächlichen Verhältnissen entsprechen.

Für den Fall, dass Krankenversicherungspflicht als Arbeitnehmer festgestellt wird, wähle ich folgende gesetzl. Krankenkasse:

Bitte Namen und Anschrift der Krankenkasse angeben

(Eine Krankenkassenwahl ist nur möglich, wenn in den letzten 18 Monaten keine Mitgliedschaft bei einer gesetzlichen Krankenkasse bestanden hat.)

Ort, Datum

Unterschrift der Auftragnehmerin / des Auftragnehmers

5 Antrag / Erklärung des Auftraggebers

Hiermit beantrage ich nach § 7a Abs. 1 SGB IV festzustellen, dass ein nicht vorliegt vorliegt
versicherungspflichtiges Beschäftigungsverhältnis nach § 7 Abs. 1 SGB IV

Ich versichere, dass die Angaben der Wahrheit und die Vereinbarungen in den übersandten Verträgen den tatsächlichen Verhältnissen entsprechen.

Wenn der Auftragnehmer nicht krankenversicherungspflichtig ist und keine letzte Krankenkasse vorhanden ist:

Welche gesetzliche Krankenkasse wählen Sie als Einzugsstelle?

Bitte Namen und Anschrift der Krankenkasse angeben

Ort, Datum

Betriebs-Nr. der Auftraggeberin / des Auftraggebers

Unterschrift, Firmenstempel der Auftraggeberin / des Auftraggebers

Anlagen

Annex B

Appendix A

of the *Handwerksordnung*

“List of trades which require permission (section 1(2))

No:

- 1 Bricklayer and concrete worker (*Maurer und Betonbauer*)
- 2 Stove and air-heating constructor (*Ofen- und Luftheizungsbauer*)
- 3 Carpenter (*Zimmerer*)
- 4 Roofer (*Dachdecker*)
- 5 Road builder (*Straßenbauer*)
- 6 Thermal and noise insulation fitter (*Wärme-, Kälte- und Schallschutzisolierer*)
- 7 Well builder (*Brunnenbauer*)
- 8 Stonemason and sculptor (*Steinmetzen und Steinbildhauer*)
- 9 Stuccoist (*Stukkateure*)
- 10 Painter and varnisher (*Maler und Lackierer*)
- 11 Scaffolder (*Gerüstbauer*)
- 12 Chimney sweep (*Schornsteinfeger*)
- 13 Metalworker (*Metallbauer*)
- 14 Maker of surgical instruments (*Chirurgiemechaniker*)
- 15 Motor vehicle and body constructor (*Karosserie- und Fahrzeugbauer*)
- 16 Precision machinist (*Feinwerkmechaniker*)
- 17 Cycle mechanic (*Zweiradmechaniker*)
- 18 Refrigeration engineer (*Kälteanlagenbauer*)
- 19 IT engineer (*Informationstechniker*)
- 20 Automotive engineer (*Kraftfahrzeugtechniker*)
- 21 Mechanic for agricultural equipment (*Landmaschinenmechaniker*)
- 22 Gunsmith (*Büchsenmacher*)
- 23 Plumber (*Klempner*)
- 24 Installation and heating engineer (*Installateur und Heizungsbauer*)
- 25 Electrical technician (*Elektrotechniker*)
- 26 Electronic mechanical technician (*Elektromaschinenbauer*)
- 27 Joiner (*Tischler*)
- 28 Boat and ship builder (*Boots- und Schiffsbauer*)
- 29 Ropemaker (*Seiler*)
- 30 Baker (*Bäcker*)
- 31 Pastry cook (*Konditoren*)
- 32 Butcher (*Fleischer*)
- 33 Optician (*Augenoptiker*)
- 34 Hearing aid audiologist (*Hörgeräteakustiker*)
- 35 Orthopaedic technician (*Orthopädietechniker*)
- 36 Maker of orthopaedic shoes (*Orthopädienschuhmacher*)
- 37 Dental technician (*Zahntechniker*)
- 38 Hairdresser (*Friseure*)
- 39 Glazier (*Glaser*)
- 40 Glass blower and maker of glass apparatus (*Glasbläser und Glasapparatebauer*)
- 41 Vulcaniser and tyre mechanic (*Vulkaniseure und Reifenmechaniker*).“

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