



AD HOC QUERY ON 2020.35 Posted workers

Requested by Marie BENGTTSSON on 3 June 2020

Compilation produced on 30 September 2020

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Sweden plus Norway (23 in Total)

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1. Background information

The freedom to provide services in the internal market implies a right of a service providing company to post its workers for service provision from one Member State to other Member States, including third-country workers who are lawfully and habitually employed in a first Member State. The Vander Elst (posted worker) regime generally allows third-country workers who are legally employed by a company in one Member

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State to provide services on a temporary basis to a company in other Member State, without the need to obtain a work permit in the other Member State.

According to posted worker-case law there is a regime for a short- and long-term posting – at the beginning of posting Member States may require only a simple declaration, in case of long-term posting they can require the submission of an application for a “Vander Elst (posted-worker) residence permit”, which should be issued in a facilitated/speedy procedure.

According to Swedish Alien Ordinance third-country workers who fulfil Posted Worker (Vander Elst)-regime are exempted from requirement for work permit. If a stay in Sweden is longer than three months they need to apply for residence permit. In connection to the application we require that the applicant (third-country worker) provides information about i.a. the purpose of stay and how long the stay will last, a copy of the permit given by the first Member State, information about the address in the first Member State. Sweden does not have any national guidelines about how to define “temporary stay” but the stay close to or over one year can indicate that the stay is not temporary.

2. Questions

- 1. Does your Member State require a proof of work permit and social security cover in the Member State where third-country worker is employed to be considered “legally employed”?**
- 2. Is there any requirement of remaining length of time on the validity of the work permit issued in the first Member State in order to grant a residence permit as posted worker in your Member State?**
- 3. Is there a requirement regarding for how long the third-country worker has been residing in the Member State that issued the worker permit before being posted in the second MS?**
- 4. Does your member state have a special/fast track procedure facilitated for TCN posted workers within Vander Elst-regime?**
- 5. Does your Member State imposes any time limitation for how long temporary work can last?**



We would very much appreciate your responses by **3 July 2020**.

3. Responses

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| | | Wider Dissemination ² | |
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|  | EMN NCP Austria | No | |
|  | EMN NCP Belgium | Yes | <p>1. If the third-country posted worker from another Member State intends to work and stay in Belgium for more than 90 days, s/he needs to apply for a temporary residence permit or "A card". The residence permit will be issued if the posted worker provides all required documents, including a valid work permit in the other Member State and proof of social security cover. By contrast, this category of posted workers is exempted from the requirement to obtain a work permit. Only during controls, posted workers may be asked to produce specific documents proving that all conditions for posted work are met (e.g. valid authorisation to work in the other Member state and proof of social security cover).</p> <p>2. The work permit issued in the first Member State should be valid for the duration of the posting in Belgium.</p> <p>3. No.</p> |

¹ If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.

² A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."



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| | | | <p>4. Yes. Third-country posted workers from another Member State are exempted from the requirement to obtain a work permit or single permit. They only need to apply for a temporary residence permit (also see Q1).</p> <p>5. At present, there is no time limitation for posting in Belgium.</p> |
|  | <p>EMN NCP Bulgaria</p> | <p>Yes</p> | <p>1. There is not such a requirement according to the Labour Migration and Labour Mobility Act.</p> <p>2. There is not such a requirement according to the Labour Migration and Labour Mobility Act.</p> <p>3. There is not such a requirement according to the Labour Migration and Labour Mobility Act.</p> <p>4. No</p> <p>5. According to the Article 9, Paragraph 3 of the Labour Migration and Labour Mobility Act a third-country worker, posted or sent to the Republic of Bulgaria by his/her foreign employer for a period of up to three months within 12 months, can perform certain tasks without a work permit and on the basis of a single registration in the Employment Agency. According to the Paragraph 4 of the same article a third-country worker, posted or sent to the Republic of Bulgaria by his/her foreign employer for a period of up to 6 months within 12 months, can perform certain tasks, related to the control and coordination of the implementation of a contract for travel services between a foreign tour operator and a Bulgarian tour operator or a hotelier, without a work permit and on the basis of a single registration in the Employment Agency.</p> |


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|  | <p>EMN NCP Croatia</p> | <p>Yes</p> | <p>1. In residence permit process, which is triggered if TCN is to stay in Croatia longer than three months, no proof of work permit from the MS where TCN worker is employed is required. However, a valid work contract with an employer in Member State where third-country worker is employed is requested, as well as, among other documents, a A1 certificate issued by their home country from which they were posted to the Republic of Croatia.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. No.</p> <p>5. There is no general time limitation. Only limitation is regarding the duration of temporary residence permit, which can be issued up to one year, and can be renewed (under same conditions as first residence permit).</p> |
|  | <p>EMN NCP Cyprus</p> | <p>Yes</p> | <p>1. Yes, the worker must proof valid work and residence permit for the initial MS.</p> <p>2. Should be a reasonable time, around 6 months.</p> <p>3. There is not a specific time, though it should be a reasonable period, approximately 6 months.</p> <p>4. No</p> |


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| | | | 5. No |
|  | EMN NCP Czech Republic | Yes | <p>1. The State Labour Inspection Office's controls require:</p> <ul style="list-style-type: none"> • Valid contract (form the posting subject or the receiving subject); • documents on the employment of the posted worker (if the receiving state allows to work only under the work permit it has to be also presented); • documents on existence of the legal-working relationship (the employer has to have a copy translated to national language in the office). <p>The proof of social cover is only an additional information. If it is not presented automatically the State Labour Inspection Office authenticate its existence via the Czech Social Security Administration.</p> <p>2. No, there is not any requirement of remaining length of time on the validity of the work permit.</p> <p>3. There is the condition to have the social cover in the posting state (usually at least for one month).</p> <p>4. In this moment the Czech Republic does not use a fast-track procedure for TCN posted workers which belong under the Directive 96/71/EC. Until 2019 there was the Fast Track procedure which allowed faster transfer of highly-qualified and leading employees for third countries. Currently is this project replaced by</p> |


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| | | | <p>the Programme Key and Research Staff (the Programme is not territorially limited and applies to employees from all the third-countries. In case of application for visa for a stay of over 90 days for business purpose and employee card application is set a quota by the government regulation for selected countries).</p> <p>5. The transferred worker from other EU Member State can stay and work in the Czech Republic for max. 3 months (according to the Convention on implementing the Schengen Agreement). After this period he/she has to apply for a work permit in the Czech Republic which is issued for max. 12 months. The time of transfer cannot extend 12 months. The basic time for transfer can be prolonged under certain circumstances and by fulfilling several conditions but again max. for other 12 months.</p> |
|  | <p>EMN NCP Estonia</p> | <p>Yes</p> | <p>1. The application for the temporary residence permit or short-term employment of the posted worker has to be signed by the sponsor (the employer or the company registered in Estonia to which the TCN is posted for work). The sponsor confirms that the worker has a valid residence permit/work permit in the first MS. The Police and Border Guard Board may ask for the proof of the valid residence permit/work permit in the other MS. Health insurance must be done in Estonia.</p> <p>2. No. The third-country national has to have a valid residence/work permit (if applicable) issued by the first Member State and the sponsor has to confirm the length and validity of the residence/work permit in the first MS. Issuance of a residence permit as posted worker</p> |


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| | | | <p>in Estonia beyond the period of validity of the residence/work permit in the first MS is not possible.</p> <p>3. No, there are no requirements regarding the minimum period of residing in the first MS, but the validity of the residence permit in Estonia cannot be longer than the residence permit/right to work in the first MS.</p> <p>4. No.</p> <p>5. No, but it can't be longer than the maximum validity of the residence permit.</p> |
|  | <p>EMN NCP France</p> | <p>Yes</p> | <p>1. Yes, third country nationals working for a company established in a EU Member State must submit a valid work permit issued by the competent authorities of the EU Member State in which they are employed and have social security cover.</p> <p>2. No, the work and residence permits issued by the EU Member State where the sending company is located must be valid. The work contract must also be valid and the working relationship must continue throughout the posting period (article L.1262-1 and 1262-2 of the Labour Code).</p> <p>3. No, but it is required to submit a proof of the prior activity to the fulfilment of the service in France. Furthermore, work and residence permits must be valid.</p> <p>4. Apart from the derogation of the work permit and long-stay visa requirement (short-stay visa is required for</p> |


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| | | | <p>foreign nationals of countries of origin which do not belong to the Schengen area), the procedure for a temporary residence permit request is the same as usual.</p> <p>5. It is required to provide a proof of the mission that has to be accomplished as well as its estimated duration. The temporary residence permit is valid for the duration of the mission in France not exceeding one year. However, it can be renewed for a duration corresponding to the fulfilment of the mission on presentation of supporting documents on the reasons why the mission has not been accomplished within a year.</p> |
|  | <p>EMN NCP Germany</p> | <p>Yes</p> | <p>1. Yes. Submission of appropriate proof of the residence/employment permit and proof of social security cover in the first member state is required in the visa process.</p> <p>2. Yes. The third-country national must be in possession of a valid residence and work permit issued by the first member state. Issuance of a “Vander Elst” visa beyond the period of validity of these permits is not possible.</p> <p>3. No. There are no requirements regarding any minimum period of employment in the first member state. Seasonal workers may also be posted, for example. Correct and proper employment is to be assumed, except where the posted worker has no principal activity whatsoever in the first member state. This would be the case, for example, if the period of validity of the residence and/or work permit in the first member state were to correspond precisely to the period of posting to Germany.</p> <p>4. Yes. The application procedure for “Vander Elst” visas is designed for swift and straightforward processing. It is subject to a basic plausibility and consistency check. All appropriate measures are to be undertaken to facilitate procurement of a visa by the applicant. Where possible, applications are to receive preferential treatment with regard to the allocation of appointments and visa processing.</p> |


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| | | | <p>5. No. A limit to the duration must be foreseeable, however, as the work concerns a temporary posting.</p> |
|  | <p>EMN NCP Greece</p> | <p>Yes</p> | <p>1. According to the Greek Law there are the following cases:</p> <p>a. Workers legally employed by an undertaking that is established in an Member State EU or EEA Member State, who move to Greece for the provision of a specific service, under a relevant contractual obligation between the above undertaking and the counterparty that pursues activities in Greece, provided that they procure to the relevant consular authority:</p> <p>i) Officially certified and translated solemn statement, reading the full identification and contact details of the undertaking from which the third-country national moves, which shall certify that an agreement has been made with the counterparty-recipient of the service in Greece, and demonstrate the purpose of the thirdcountry national’s movement, the intended duration of movement, and that the undertaking which employs such third-country national in the EU or EEA Member State shall pay his accommodation, healthcare and return expenses;</p> <p>ii) Copy of an attested health booklet or European health insurance card or other equivalent EU document. Visas for purposes of employment shall remain valid for a period equal to the period required for fulfilment of the contractual obligation assumed by the undertaking, and may <u>not exceed one year</u>.</p> <p>b. Workers employed as specialised technical personnel by an undertaking that is established in a third country and is engaged in the provision of specific services under a procurement agreement between the above undertaking and its counterparty in Greece, where the undertaking from which a third-country national moves has made a procurement agreement stipulating the provision of specific services exclusively relating to the installation, trial operation and maintenance of the procured items, provided that the procure to the competent consular authority:</p> <p>i) Certificate of the undertaking, reading full identification and contact details, the worker’s capacity and duties, accompanied by evidence in relation to the lawful nature of the worker’s employment;</p> |

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| | | | <p>ii) Certified copy of the procurement agreement between the undertaking that provides the service and the domestic undertaking-recipient of the service. This agreement shall stipulate the provision of specific services exclusively relating to the installation, trial operation and maintenance of the procured items, the duration of service provision, the number and speciality of persons to be engaged, and that the accommodation, full healthcare and return expenses of such persons shall be paid. Visas for purposes of employment shall remain valid for a period equal to the period required only for fulfilment of the contractual obligation assumed by the undertaking, and may <u>not exceed six months</u>.</p> <p>c. Workers who reside outside the territory of the Member States at the time of application and apply to be admitted or who have been admitted to the territory of a Member State under the terms of the Directive 2014/66, in the framework of an intra-corporate transfer as managers, specialists or trainee employees</p> <p>2. No, only those referred in the Directive 2014/66/EU.</p> <p>3. No</p> <p>4. -</p> <p>5. See above question n.1</p> |
|  | EMN NCP Hungary | Yes | <p>1. The TCN shall prove the possession of residence permit for the purpose of intra-corporate transfer issued by a Member State.</p> <p>2.</p> |


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| | | | <p>The application for permit for long-term mobility must be submitted at the latest 20 days before the long-term mobility starts, or 20 days before the end of lawful residence, in possession of valid residence permit issued by a Member State of the European Union and a valid travel document.</p> <p>3. The TCN shall provide evidence of employment within the same company or group of companies, at least three uninterrupted months immediately preceding the date of the intra-corporate transfer in the case of executive employees and specialists provided for in other legislation, and at least three uninterrupted months in the case of trainee employees.</p> <p>4. The competent authority shall examine the application for residence permit for the purpose of intra-corporate transfer and permit for long-term mobility in a single application procedure, and the decision on the merits will be adopted within twenty-one, at most sixty days from the date of submission of the application.</p> <p>5. A third-country national who has a valid residence permit issued by another Member State of the European Union for the purpose of an intra-corporate transfer and holds a valid travel document, and whose entry or residence does not represent a threat affecting public policy, public security or national security, or public health of Hungary, shall have the right to work in the framework of an intra-corporate transfer without a special permit at a host entity in Hungary.</p> |
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|  | <p>EMN NCP Ireland</p> | <p>Yes</p> | <p>1. No a work permit is not required, however at the port of entry, the documents which all persons wishing to enter the State on the basis of the Van der Elst ruling must have available for inspection include: A passport (which should be valid for at least six months following the stated departure date from the State); the Residence/ID card issued by the sending EU country and evidence of comprehensive medical insurance;a letter from the sending company confirming the contract won and that the person is legally resident and employed by them in the country where the employer is based and will be returning there on the expiry of the contract being undertaken; details of the Irish based host company and confirmation of the contract offered. These documents are also required in support of a visa application for nationals of countries where an entry visa is required for Ireland.</p> <p>2. Yes - Permission to work in the State under the Van der Elst ruling will be granted for the duration of temporary/short term contracts up to a maximum of 12 consecutive months. Duration of permission to remain in the State in order to provide a service will never exceed the expiry date of the lawful residence of the employee in the sending EU country or the expiry date of the employee's passport, whichever is the earlier - see 1 above.</p> <p>3. No. The requirements are that the employee must be: a) lawfully resident in the EU country in which the employer is established; b) lawfully employed by the employer in the sending EU country; c) on the payroll of the employer in the sending EU country.</p> <p>4. No. Applications are assessed on a case-by-case basis, and those persons who are visa required nationals should apply for the visa in the normal manner.</p> <p>5. Permission to work in the State under the Van der Elst ruling will be granted for the duration of temporary/short term contracts up to a maximum of 12 consecutive months or shorter if the employees residence permit for the sending country has less than 12 months before expiry. In addition, any person resident in the State for more than 90 days is required to register their permission with their local immigration office and pay the appropriate fee, currently €300.</p> |
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|  | EMN NCP Italy | Yes | <p>1.</p> <p>According to the Italian Immigration Law (Legislative Decree n. 286/98), a third-country worker legally employed by a company in one Member State, which has branches and offices in Italy, can be temporary transferred to an Italian company (article 27). As mentioned in the article, there is a procedural difference between entry for self-employment (i.e. ingresso per lavoro autonomo) and entry for employment (i.e. ingresso per lavoro subordinato).</p> <p>In the first case, as soon as the work contract is entered into force with the posting company and the required documents are checked, self-employment workers will receive a self-employment visa from the competent offices.</p> <p>As for the second case, the detaching company shall submit a work authorization (i.e. nulla osta al lavoro) to the competent Italian immigration authorities (i.e. Sportello Unico per l'Immigrazione) prior to the start of the secondment period. In connection to the work authorization, the company shall provide to the competent authorities a letter of detachment, a declaration of the company's intention to post the worker to Italy, a certificate of social security cover issued by the first Member State, information about the detaching company, the Italian company and the posted workers (including their generality, the duration of their posting, date of first hiring (abroad), qualification, job title, sector and educational qualification).</p> <p>As reported by the Italian Law (Legislative Decree n. 136/2016), the detaching company has also the obligation to communicate the secondment to the Ministry of Labour and Social Policy within twenty-four hours of the day before the start of the posting, by notifying all the required documents of the job secondment, and to communicate all subsequent changes within five days.</p> <p>Therefore, the work authorization is the necessary condition for the worker's entry and it must be used within 120 days to apply for an employment visa. Once obtained the visa, within eight working days from his/her entry in Italy, the posted worker must go to competent Italian immigration authorities (i.e. Sportello Unico per l'Immigrazione) for signing the residence contract and for filling the residence permit.</p> <p>2.</p> |
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| | | | <p>N/A</p> <p>3. N/A</p> <p>4. According to the Circular of the Ministry of the Interior of 27 July 2010, no. 484, there is also another way to temporary transfer workers to an Italian company used as an alternative to the abovementioned ordinary procedure, namely the simplified procedure. It is available only for those employers who have submitted with the Italian Ministry of Interior a specific Memorandum of Understanding (i.e. Protocollo D'Intesa) or adhered to a Protocol signed by an organization with which the same employer is associated. The simplified procedure implies the replacement of the release of work authorization (i.e. nulla osta al lavoro) with a communication of the proposal for a residence permit to the competent Italian immigration authorities (i.e. Sportello Unico per l'Immigrazione) prior to the commencement of the secondment period. The proposal must be sent telematically by the posting company, through the portal of the Ministry of the Interior, and as soon as the status of the application indicates that the worker is "waiting for a visa from the Consular Authority", the applicant must go to the competent diplomatic authorities to apply for the entry visa.</p> <p>5. The duration of the secondment must be defined and properly commensurate with the actual needs of the company. Nevertheless, it may not exceed five years. Another relevant aspect concerns the required posted worker's experience within the same sector that should be at least six months. Furthermore, at the end of the temporary posting it is possible for posted workers to be hired on a temporary or permanent basis at the Italian company.</p> |
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|  | EMN NCP Latvia | Yes | <ol style="list-style-type: none"> 1. Latvia requires a proof of work permit in the Member State where third-country worker is employed only in case if there is an inspection on the site and the fact of existence of work permit cannot be established while checking third-country citizen's visa or residence permit. Social security is not checked. 2. There is not a requirement of remaining length of time on the validity of the work permit issued in the first Member State. 3. There is not a requirement regarding for how long the third-country worker has been residing in the Member State that issued the worker permit before being posted in Latvia. 4. No. 5. Persons are allowed to work for three months without any notifications or permits issued by Latvia. If the posting is planned for a longer period, a temporary residence is issued. Latvia has not imposed any time limitation for how long temporary work can last. |
|  | EMN NCP Luxembourg | Yes | <ol style="list-style-type: none"> 1. Yes. In accordance with article 49 (1) of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration law) a company established in another EU Member State or a country treated as such may freely post its workers, whatever their nationality, to Luxembourg, provided the posted workers have, for the duration of their posting, the right to work and stay in the country where the posting business is established. According to articles L-142-2 et L.142-3 of the Labour Code the service providing company has to make a posted work declaration on the electronic platform e-detachment to the Labour and Mines Inspectorate (ITM), and communicate to the ITM, at least at the date of the beginning of the posting activities on the territory, several informations and documents such as : information on the identity of workers to be posted, the nature and duration of the work to be done according to the contract of service provision, copy of the working contract, copy of the authorisation of stay or the |


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| | | | <p>residence permit of the third country national posted worker; precise indication on social security organizations with which they are affiliated, during their stay on Luxembourg territory</p> <p>2. No, however, in order to lawfully enter and work as posted worker in Luxembourg, third-country nationals must have a valid passport and a residence permit (or work permit where applicable) issued by the EU Member State where they usually reside (or work). If their passport is due to expire in less than 6 months, they are advised to renew it before coming to Luxembourg.</p> <p>3. No. See answer to questions 1 and 2.</p> <p>4. Yes, the procedure is straight forward. If the posted work declaration with the communication of the informations and documents on the electronic platform has been made, the posted work can begin at the foreseen date of commencement of the posting. A residence permit is granted automatically to the third country national posted worker for a service delivery of more than three months (article 49(3) of the Immigration Law).</p> <p>5. Yes, according to Article L.141-1 (2) et (3) of the Labour Code, the posting work has to be executed within the framework on the contract of service provision which has to precise the time-bound activity. The limited duration is considered, depending on the duration, frequency, periodicity and the continuity of the service delivery and in relation with the nature of the activity that is the object of the posting work.</p> |
|  | <p>EMN NCP Malta</p> | <p>Yes</p> | <p>1. No</p> <p>2. In principle yes, but no explicit proof is required.</p> <p>3. No</p> |


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| | | | <p>4. No</p> <p>5. No</p> |
|  | <p>EMN NCP Netherlands</p> | <p>Yes</p> | <p>1. Yes, the following conditions apply:</p> <ul style="list-style-type: none"> • The service provider has to comply with all regulations regarding residence, work permit and social security to work as an employee of the employer in the country where the employer is established, • The service provider has a residence permit and a work permit, as well as a labour contract with the employer inside the other EU/EER Member State or Switzerland that shows that he/she has the right of residence in the country of their employer and that he/she may carry out work there as an employee of the employer. • The wage he/she receives has to be at least the minimum wage and, in case of generally binding collective agreements, the Collective Labour Agreement wage. • The service provider has to continue to work for the same EU, EEA or Switzerland-based employer and has to provide cross-border services to the Netherlands (contracted work in the Netherlands is not allowed). The services provided in the Netherlands have to be similar to the work that was provided in the country of residence. • The work has to be notified two days before the work starts to the Dutch government via the online notification portal (www.postedworkers.nl). Details that they have to provide include information about employer in the other EU/EER Member State or Switzerland, information about the client in the Netherlands, the identity of the posted worker, a contact person in the Netherlands, the period of the service provision, the period the posted worker will work, the presence of an A1 statement/declaration or other evidence that shows where the social contributions are paid for the employee and more. <p>Sources: https://business.gov.nl/running-your-business/staff/checklists-for-hirin...</p> |

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| | | | <p>https://www.postedworkers.nl/online-melden, article 3.31a Vreemdelingenbesluit (Vb), article 1e Besluit uitvoering Wet arbeid Vreemdelingen (BuWav), paragraph B5/3 Vreemdelingencirculaire (Vc), article 3a Regeling melding Wet arbeid vreemdelingen and articles 8 and 9 Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie (WagwEU).</p> <p>2. The work permit of the third country posted worker issued in the sending Member State, has to be valid during the whole period of posting in the Netherlands.</p> <p>3. NO</p> <p>4. NO</p> <p>5. If a TCN posted worker wants to work in the Netherlands for a period of more than three months, they need to apply for a residence permit. The residence permit can be issued for a period of maximum 2 years and can not be extended after 2 years.</p> |
|  | <p>EMN NCP Poland</p> | <p>Yes</p> | <p>1.</p> <p>1) Exemption from the requirement to obtain a work permit under the Article 87 par. 2 point 8 of the Act of 20 April 2004 on ‘employment promotion and labour market institutions’ (Journal of Laws of 2019, item 1482, as amended), means that the provisions of this Act do not provide for verification of the status of posted worker. Such verification can only take place during control activities regarding the legality of employment of a foreigner, conducted by National Labour Inspectorate (PIP) and Border Guard Service (SG) officers in accordance with applicable regulations.</p> <p>2) According to art. 24 par. 3 of the Act of June 10, 2016 on ‘posting of employees in the framework of the provision of services’, employer posting an employee to the territory of</p> |

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| | | | <p>the Republic of Poland (i.e. an employer having its registered office and conducting significant business activity in another EU Member State from whose territory (s)he temporarily directs the employee to work in the territory of the Republic of Poland), is obliged to submit to the National Labour Inspectorate, at the latest on the date of commencement of the service, a statement on the posting of an employee to the territory of the Republic of Poland. The statement provides information necessary to carry out the actual check at the workplace, including, among others, the expected number of employees posted to the territory of the Republic of Poland together with data including their name, date of birth and citizenship. Such a declaration must be made by the posting employer regardless of whether posted workers have the nationality of an EU Member State or a third country.</p> <p>It should also be borne in mind that pursuant to art. 14 of the Act, the National Labour Inspectorate controls the correctness of posting employees to the territory of the Republic of Poland, when there are doubts whether a given employee can be considered a posted employee on the territory of the Republic of Poland. The control concerns in particular the determination of the nature of the posting employer's activity and whether the posted worker performs work on the territory of the Republic of Poland only temporarily. In order to determine the nature of the posting employer's activity, the Inspection assesses all the necessary circumstances that characterize this activity, which may include in particular place where the entrepreneur is subject to social security obligations.</p> <p>3) Complementing the answer to issues in the area of coordination of social security systems, it should be noted that the legal basis for applying the provisions of the EU coordination of social security systems to third-country nationals is Article 1 of Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to third-country nationals. It provides that Regulation (EC) No 883/2004 and Regulation (EC) No</p> |
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| | | | <p>987/2009 apply to third-country nationals who are not yet covered by those Regulations exclusively because of their nationality, as well as to their family members living after their death, provided that they are legally resident in the territory of a Member State and are in a situation that affects more than one Member State in every respect (Official Journal EU L 344 of 29.12.2010, pp. 1).</p> <p>In addition, another absolutely mandatory criterion for recognizing a foreigner's stay on the territory of the Republic of Poland as legal is holding a tax residence by a given person on the territory of Poland (place of residence for tax purposes). In practice, this is manifested by the issue of a tax residence certificate (CFR-1) by the relevant tax authority.</p> <p>2. Office for Foreigners is competent whether the proof may be required in the case when a posted worker crosses the border from another EU Member State, or when issuing a visa or temporary residence permit.</p> <p>3. Article 87 par. 2 point 8 of the Act of 20 April 2004 on ‘employment promotion and labour market institutions’ does not include the exemption of the requirement to obtain a work permit for a posted worker from another EU Member State dependent on that a certain period of time should remain at the end of the period of validity of the work permit issued by that country, nor that the period for which the posted worker was employed by the posting employer. As with the second question, the Office for Foreigners is competent for the conditions of crossing the border, issuing a visa or granting a temporary residence permit.</p> <p>4. N/A</p> <p>5.</p> |
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| | | | <p>1) The provisions of the Act of 20 April 2004 on 'employment promotion and labour market institutions' do not specify a maximum period of exemption from the requirement to obtain a work permit for a posted worker from another Member State.</p> <p>2) The Act of 10 June 2016 on 'posting of employees in the framework of the provision of services' does not specify a maximum period of posting. However, it indicates, in accordance with Directive 96/71/WE concerning the posting of workers in the framework of the provision of services, that the posting of an employee to the territory of the Republic of Poland involves the temporary referral of that employee to work in that territory.</p> |
|  | EMN NCP Portugal | Yes | <p>1. No. However, according to Law of Law No. 23/2007, of 4 July (last version dated 31 March 2020), Article 124-B (1), the applicant must:</p> <p>a) «Prove that the host company and the company established in a third State belong to the same company or group of companies;</p> <p>b) Demonstrate that s/he worked in the same company or in the same group of companies for a minimum of three to twelve uninterrupted months as a manager or specialist, or three to six uninterrupted months as a trainee employee, immediately prior to the transfer date;</p> <p>c) Hold an employment contract signed with the company or group of companies to which the host company belongs, and his/her condition as manager, specialist or trainee employee is specified;</p> <p>d) Present a document issued by the employer containing the identification of the host company, remuneration and other working conditions during the transfer period;</p> <p>e) Verify that s/he has the professional qualifications and experience compatible with the duties of manager or specialist to exercise in the host company or the appropriate higher education diploma if s/he is an intern employee;</p> <p>f) In the case of a regulated profession, prove that s/he fulfills the conditions laid down in national legislation for the respective exercise;</p> <p>g) Holds a valid travel document, the validity of which covers the duration of the transfer within the company;</p> |


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| | | | <p>h) Prove that s/he has requested health insurance, under the conditions applicable to national citizens, when it is shown that there are periods when s/he does not benefit from coverage of this type, nor from the corresponding benefits related to the exercise or as a result of the work to be performed;</p> <p>i) Provide a guarantee, by the host company, of compliance during the transfer, of the legislation in terms of working conditions and payment of wages not less than that paid to national workers with identical functions.»</p> <p>2. NA</p> <p>3. According to Law No. 23/2007, of 4 July (last version dated 31 March 2020), Article 124-B (1) b), the applicant must «have worked in the same company or in the same group of companies for a minimum of three to twelve uninterrupted months as a manager or specialist, or three to six uninterrupted months as a trainee employee, immediately prior to the transfer date».</p> <p>4. Yes. According to Law No. 23/2007, of 4 July (last version dated 31 March 2020), Article 124-B (3), (4), (5), (6) and (8):</p> <p>« 2 - The applicant is not required to have a residence visa (...), however, he must have entered the national territory legally.</p> <p>3 - Workers transferred within a company to a host company belonging to the same company or group of companies certified under the ordinance of the members of the Government responsible for the areas of home administration and the economy for the purposes of applying this law, are exempt from present documents proving the conditions established in paragraphs b), c), e), h) and i) of paragraph 1, and the issuance of a visa that makes it possible to enter national territory is also facilitated.</p> <p>4 - The certification referred to in the preceding paragraph is valid for a period of 5 years and may be canceled if one of the situations referred to in paragraph 1 occurs or the host company does not comply with the legislation on working conditions and payment less favorable remuneration than that paid to national workers with identical functions.</p> |
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| | | | <p>5 - The host company informs the Ministry responsible for the economy, within a maximum period of 30 days, of any change in the certification conditions, under penalty of its revocation.</p> <p>6 - The ministry responsible for the area of economics maintains with the SEF and the Directorate-General for Consular Affairs and Portuguese Communities an updated list of companies certified under paragraph 3.</p> <p>(...)</p> <p>8 - The holder of a residence permit for a worker transferred within the company is issued with a residence permit in accordance with the uniform model of residence permit for third-country nationals provided for in Regulation (EC) No. 1030/2002, of the Council, of 13 June 2002, and in national legislation, the name 'ICT' [intracorporate transfer] should be entered under the heading 'type of document'.»</p> <p>5. Although not mentioning that the work will be temporary, Law No. 23/2007, of 4 July (last version dated 31 March 2020), Article 124-B (7), states that «the residence permit for a worker transferred within the company is valid for one year or valid for the duration of the transfer to the national territory, which can be renewed for equal periods, up to a limit of three years, in the case of managers and specialists, or one year, in the case of trainee employees, as long as the conditions of their concession are maintained.»</p> |
|  | <p>EMN NCP Slovakia</p> | <p>Yes</p> | <p>1. In order to control the illegal employment ban and following the Act No. 82/2005 Coll. on Illegal Work and Illegal Employment as amended, Art. 2, Par. 2 the controlling authority requires the third country national to prove that he/she has a permit to legally stay and work in the Slovak Republic. In case of third country national's posting to the Slovak</p> |


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| | | | <p>Republic from another EU Member State the National Labour Inspectorate requires the third country national to submit his/her work permit in another EU Members State from which he/she was posted to the Slovak Republic (this is to asses if the posting is not fictitious). To control the illegal employment during the work stay in the Slovak Republic it is also required to submit the document proving social insurance of the posted third country national (e.g. PD A1 form).</p> <p>2. No.</p> <p>3. No.</p> <p>4. Following the Act No. 404/2011 Coll. On Residence of Foreigners, Art. 23, Par. 6, letter b): Temporary residence for the purpose of employment is not required from a third country national who has been sent by his/her employer based in a Member State to the Slovak Republic territory within the services provided by this employer up to 90 days from the beginning of the residence in the Slovak Republic territory, if a third country national fulfils the conditions for residence according to a special regulation (EU Regulation 2016/399) and if he/she has fulfilled the obligation according to Art.111 par. 2(a) of this Act (obligation to report to the police department within three working days of the date of entry the beginning, place and anticipated length of the residence).</p> <p>5. The Slovak legislation – Act No. 311/2001 Coll. Labour Code - sets for posted workers limits for the performance of their work and provision of services only in case of posting in the form of cross-border temporary assignment (as of 30 July 2020 one of the hard core conditions will be also a condition under which the employee can be temporarily assigned – Art. 5, Par. 2, letter g) of the Labour Code).</p> |
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| | | | <p>Following the Labour Code, Art. 58, Par. 6, the temporary assignment can be agreed to maximum of 24 month. Temporary assignment of the employee to the same employer can be renewed or repeatedly agreed maximum 4 times within 24 month, this concerns also temporary assignment of the employee by another employer or another agency to the same employer.</p> |
|  | <p>EMN NCP Slovenia</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. Third-country worker has to provide inter alia a proof that he/she has been employed for at least nine months by a foreign employer which is posting him/her and a proof of social insurance in the country from which he/she is posted which covers at least urgent health care services in the territory of the Republic of Slovenia or adequate health insurance in the Republic of Slovenia. 2. No specific requirement, but in practice the residence permit will be issued for the period of the contracted work in Republic of Slovenia, which can be carried out only until the posted worker has a valid residence/work permit in the first Member State. 3. Yes, a third-country worker who wants to be posted by his or her employer established outside the Republic of Slovenia to the Republic of Slovenia for a limited period of time in order to provide cross-border services, has to provide a proof that he/she has been employed for at least nine months by a foreign employer which is posting him/her. 4. No. 5. A first single permit for posted workers shall be issued for the period of the contracted work or the training programme, but for not more than one year. If, for justified reasons, the contract on the basis of which a foreigner is posted or the training cannot be implemented within the time limit, the single permit for posted workers shall be extended on the basis of the prior consent of the Employment Service in accordance with the Act governing the employment and work of foreigners. |

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|  | <p>EMN NCP Sweden</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. In Sweden the applicant for residence permit (third-country worker) must provide information about i.a. the purpose of stay and how long the stay will last, a copy of the permit given by the first Member State must be submitted. 2. The permit in Sweden will not be given for a time longer than a residence/work permit in the first Member State is valid. 3. Sweden has not any requirement according how long the applicant has been residing in the Member State that issued the permit. 4. Sweden has no a special procedure for applications based Vander Elst-regime, but handling time for those cases is short. 5. There is no any given time limitation in Sweden, but the longer the stay is, the more indicates that is not a temporary stay (guideline one year but it depends on circumstances in every single case). |
|  | <p>EMN NCP Norway</p> | <p>Yes</p> | <ol style="list-style-type: none"> 1. Please note: The Norwegian Immigration Act <u>exempts</u> third country nationals (TCN) who are employed by a <u>service providing company</u>, in order to execute a service provision (work) in Norway, from applying for a residence/work permit. However, the Norwegian Immigration Act requires that if the TCN posted worker is to stay in Norway for more than three months they must apply for a residence card. The TCN must provide the following documentation: |

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| | | | <ul style="list-style-type: none">• valid passport,• evidence of legal residence in the Member State of the EU/EEA service provider,• the employment contract with the EU/EEA company,• documentation that the EU/EEA company has a temporary assignment to provide services in Norway and it must also provide• information of expected length of the assignment. <p>The residence card will be issued for a maximum of one year and if the assignment is for a longer period the TCN must apply for a renewal of the residence card. There is no application fee for a residence card for TCN posted workers.</p> <p>Q1. Yes, Norway requires a third-country national (TCN) to have a work permit in the Member State in order to be considered within the scope of posted worker.</p> <p>2. If the TCN's residence permit in the MS is shorter than the length of the assignment, the residence card in Norway will be given validity in compliance with the length of that residence permit. The expiration date of the residence card will be that of the residence permit in the MS.</p> <p>3. No, Norway has no requirements in regards to the length of residence for the TCN in the MS where the work permit/residence permit is issued before the service provider posts the TCN to Norway.</p> <p>4. Yes and no. The police authorities receive the initial application and assess if the conditions are met. If it is a positive evaluation the residence card will be granted within weeks. If the police find that there are doubts about whether the conditions are met the application is forwarded to the Norwegian Directorate of Immigration. The Directorate will evaluate the case within six months.</p> |
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| | | | <p>5. Norway does not have any time limitation for the “temporary work” condition. We have a circular that provides guidelines as to the understanding of “temporary work”. It says: The assignment shall be temporary. Whether the service is temporary or permanent must be specifically assessed. (Unauthorized translation from Norwegian to English.)</p> |
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