

Introduction

Since 1 March 2020, foreign employers (service providers) and self-employed persons from another country in the EEA or Switzerland who carry out a temporary assignment in the Netherlands have been subject to a duty to notify.

This duty arises from the Enforcement Directive of 2014. The Netherlands was one of the last Member States to transpose into national law the scope provided by this Directive to set up an online notification portal (Meldloket WagwEU). Foreign employers must notify about the arrival of their posted workers in the Netherlands in the notification portal. Self-employed persons who work in certain high-risk sectors and who come to work on assignment in the Netherlands must also notify this through the notification portal before starting work.

As the service recipient, the Dutch employer must check whether the notification is correct. This is stated in the Terms of Employment Posted Workers in the European Union Act (WagwEU), which aims to protect posted foreign workers and combat unfair competition on conditions of employment.

In the Netherlands, notifications can be made via the notification portal *postedworkers.nl*. The Ministry of Social Affairs and Employment is the commissioning body of this notification portal. The notification system is managed by the Social Insurance Bank (SVB). The SVB, in turn, hired a third party to build and manage the system. The main recipients of information from this notification system include the Employee Insurance Agency (UWV), the Tax and Customs Administration and the Netherlands Labour Authority.

As of 1 August 2020, the rules of the Implementation Act revising the Posting of Workers Directive also apply. This revision has led to amendments to the WagwEU, the Placement of Personnel by Intermediaries Act (Waadi), the Generally Binding and Declaring Non-Binding of Provisions of Collective Labour Agreements Act (AVV), the Minimum Wage and Minimum Holiday Allowance Act (WML) and the Foreign Nationals Employment Act (WAV).

The aim of the WagwEU is to strike a new and better balance between, on the one hand, promoting the freedom to provide services in the European Union and ensuring a level playing field for businesses and, on the other hand, protecting the rights of posted workers. The emphasis is on ensuring the protection of posted workers during their posting by laying down additional provisions on the conditions of employment and the working conditions of these workers, based on equal pay for the same work in the same place.

In 2021, the European Commission sent a notice of default to the Netherlands and the other Member States regarding the implementation of their notification portal. This included questions about the duty of monitoring service recipients. The Commission's underlying concern is the obstruction of the free movement of services. The Netherlands responded and is awaiting further information. In parallel with this process, the European Commission is conducting an investigation into a harmonised European notification portal. The Member States are currently being consulted on this.

Posting in context

In the 2019 State of Employment [Staat van Eerlijk Werk], mechanisms were identified that can lead to unfair work in the labour market. The Netherlands Labour Authority has derived these mechanisms from the situations it encounters almost daily in its fair work inspections. A number of these mechanisms play a role in attracting employees from outside the Netherlands through posting. It is the case that the Dutch labour market operates in an international 24-hour economy where supply and demand converge continuously. Increasing international competition leads to downward pressure on prices and therefore on wages in certain sectors. The free movement of services and persons contributes to an abundant international supply of workers.

The State of Employment [Staat van Eerlijk Werk] further indicates that 10% of all workers (employees and self-employed persons) are in a vulnerable position in the labour market. This concerns low-paid workers

with flexible contracts and low-paid self-employed persons. This group in particular has an accumulation of labour risks and livelihood security risks. They are more likely to have to deal with unfair work and exploitation, to be exposed to occupational risks such as physical overload and exposure to hazardous substances, and have an increased incidence of unemployment, welfare or disability benefits.

Workers with a vulnerable labour market position are therefore susceptible to an accumulation of risks of unfair, unhealthy and unsafe work. With regard to postings, we also see an increasing number of cross-border complex arrangements driven by cost advantages, which pose risks for Social Affairs and therefore the Labour Authority. This may include the posting of third-country nationals to the Netherlands who may or may not have been granted a temporary stay in another Member State and, from there, are posted – often directly – to the Netherlands. Shell companies can also be used for this. In a letter to the House,¹ the Secretary of State for Social Affairs and Employment explained how vulnerable the position of third-country nationals is and that sufficient attention must be paid to this when it comes to protecting this group in the Dutch labour market. It also expresses the Cabinet's position and commitment to improving the conditions under which labour migration takes place, namely equal pay for equal work in the same place and combating labour exploitation and poor working conditions.

The existence of such mechanisms underlines the importance of the proper registration of workers posted from other EU countries to the Netherlands. With the implementation of the Enforcement Directive in the WagwEU in 2016, additional options have become available for the Labour Authority to better tackle unfair and abusive practices internationally. Since then, service providers have been obliged to have information on the conditions of employment of posted workers available at the workplace in the Netherlands. In addition, a contact person must be known and accessible, and the Netherlands – like most other Member States – has set up a notification portal for posted work. All these measures will help the Labour Authority towards more targeted enforcement of cross-border arrangements for postings and the promotion of healthy, safe and fair work in cross-border postings. For example, the Labour Authority may impose a fine if the duty to notify or monitor is not complied with².

¹ Parliamentary Papers II 2020-21, 29861, No 75.

² The first six months after the notification requirement came into effect, a moratorium was in force due to the fact that the service providers and service recipients were not yet sufficiently aware of the relevant regulations.

Labour Authority's task

With regard to the WagwEU, the Labour Authority initially focused on increasing awareness of the laws and regulations, providing proposals and suggestions to improve notifications in the notification system and increase compliance with the duty to notify. When checking compliance with the duty to notify, a distinction must be made between the group that does notify, but does not do so correctly or not fully, and the group that does not notify at all. In the first period, the years 2020 and 2021, the emphasis was on checks on the former group.

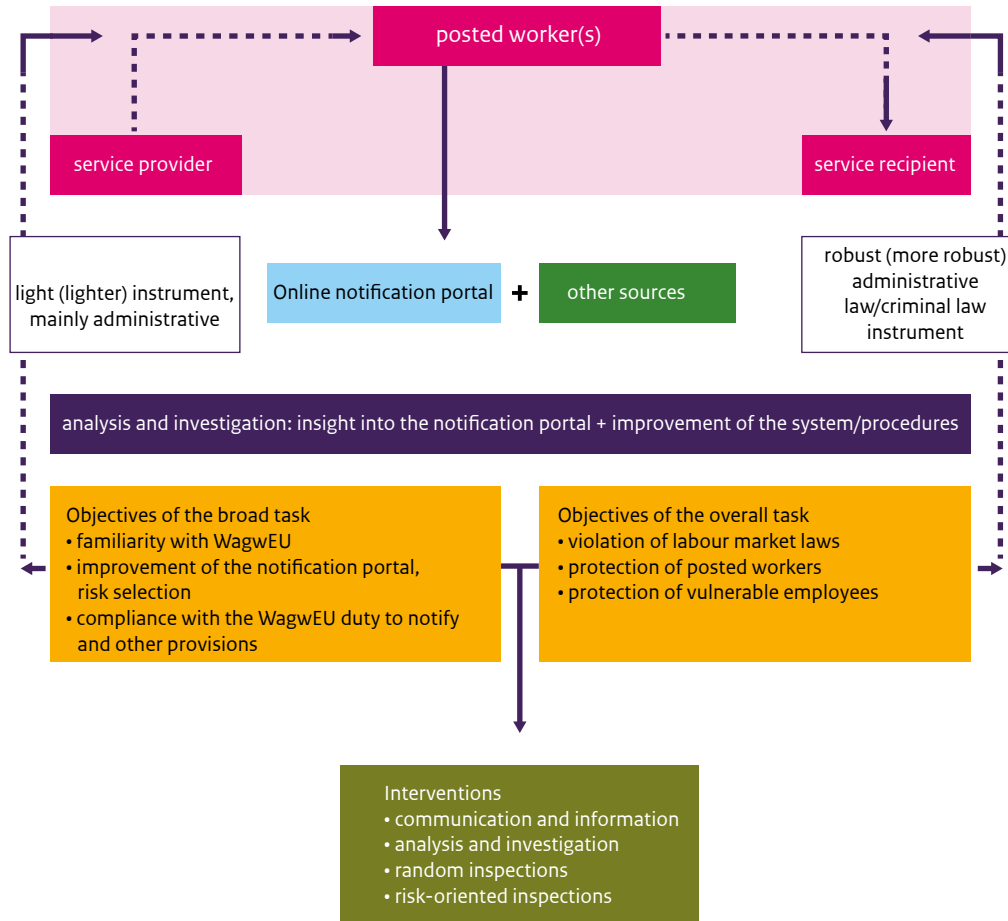
In addition to this task, which focuses on familiarity with the laws and regulations, particularly those relating to the duty to notify and comply with it, the Labour Authority also has another, broader task. This broad task consists of using the data from the duty to notify to better tackle violations of labour market laws (WAV, WML, ATW). The additional data obtained from the notification system increases the possibilities of the Labour Authority to gain more insight into the offenders.

Posted workers from other EU countries are a vulnerable group. The duty to notify gives the Authority a better picture of this group. Given the fact that this group of posted workers faces additional labour risks, it is important to use the data from the notification system, possibly in combination with other available sources, to reach precisely those high-risk companies where labour law violation(s) are most likely to occur.

The Labour Authority formulated the following objectives for the WagwEU:

- increasing awareness of the WagwEU legislation and regulations, including through the targeted deployment of communication and information and partly also through inspections;
- increasing compliance with the duty to notify (Article 8), whereby a distinction can be made between the group that currently notifies, but does not do so fully or correctly, and the group that does not notify;
- increasing compliance with the other WagwEU articles (Articles 6 and 9);
- gaining insight into notifications in the notification portal through analysis and research and thus contribute to an improved notification system;
- using data from the notification system, possibly in combination with other available sources. This not only provides a better understanding of the nature and extent of posted labour in the Netherlands, but also contributes to the better identification of high-risk companies that may violate labour laws.

Figure 1: Schematic representation of the broad task and the overall task of WagwEU



Supervision of key articles in WagwEU

Articles 6 and 9 entered into force in 2016. At that time, this was already enforced by the Labour Authority. These articles provide that a service recipient is obliged to provide information to the Labour Authority on request so that it can determine whether the service provider engages in substantial activities to post workers in the context of a cross-border service provision and whether they are in fact temporary postings. In the Netherlands, the service recipient must have the required documents available at the workplace, in paper or electronic form, such as a contract between the service provider and the service recipient, copies of identity documents of the posted workers and financial records concerning the posting.

Whereas in the initial phase of the notification portal (in the years 2020-2021), the Labour Authority mainly focused on awareness and compliance with the duty to notify that came into force on 1 March 2020 (WagwEU Article 8), the focus from 2022 will be on compliance with the entire WagwEU, i.e. including WagwEU Articles 6 and 9.

Figures from the notification system

The notification portal manager draws up a monthly report for the supervisory organisations based on the (throughput) figures from the notification portal. In addition to an overview of the monthly figures, the cumulative state of affairs is also reported.

Below is an overview of the key data from the notification portal for a period of two years, from the start of the notification portal in March 2020.

Number of notifications

Table 1 shows that, over a period of two years, a total of 660,911 notifications were made on the notification portal. These notifications come from a total of 53,378 employers and 15,792 self-employed persons, with 17,806 companies (excluding natural persons) referred to in the notifications as service recipients.³ Just over three-quarters (77%) of the notifications are annual notifications. The vast majority of annual notifications (96%) relate to the road haulage sector, which can easily be explained by the fact that the road haulage sector is designated as a sector for which companies and the self-employed may make an annual notification. Of the regular notifications, over a third (35%) relate to the road haulage sector.

Service providers abroad may make an annual notification under certain conditions.

The main conditions for this are where a company employs at least one and at most nine employees, is located within a radius of 100 kilometres of the Dutch border and is registered in the trade register or a similar register in neighbouring countries. A self-employed person can also make an annual notification under certain conditions. In addition, the self-employed person must be employed in one of the sectors to which the duty to notify applies. Both the company and the self-employed person cannot make use of the annual notification if they are employed in the construction sector, job placement services, the temporary employment sector, or in human resources.

Service provider by country of origin and sector

More than half (56%) of all notifications, namely 370,109, are from Poland and Lithuania. Excluding the road haulage sector, almost three-quarters (71%) of notifications are made by service providers from Poland (30,107), Germany (23,201) and Belgium (12,624). The top three sectors for service providers from these countries are the Construction, Industry and Transport and Storage sectors (excluding road haulage).

³ Calculated over the regular notifications, a service recipient receives four to five notifications.

Table 1: Number of notifications (Mar 2020-Feb 2022), broken down by companies and self-employed persons and by regular and annual notifications (total, road haulage sector, other sectors)⁴

Online notification portal notifications, two-year overview (March 2020 - Feb. 2022)	All sectors (incl. road haulage)	Road haulage sector	Other sectors (excl. road haulage)
Company notifications			
number of regular notifications	124,367	49,490	74,877
number of annual notifications	499,846	482,314	17,532
total number of notifications	624,213	531,804	92,409
number of employers that have notified	53,378		
number of posted workers of which third-country nationals	765,830	604,928	160,902
Notifications made by self-employed persons			
number of regular notifications	27,478	3,503	23,975
number of annual notifications	9,218	3,503	23,975
total number of notifications	36,696	10,902	25,794
number of self-employed persons who have made notifications	15,792		
Total number of notifications (self-employed persons + companies)	660,909	542,706	118,203

Number of posted workers

The 624,213 notifications from companies (excl. self-employed persons) relate to a total of 765,830 posted workers, of which 234,855 are third-country nationals, corresponding to almost a third (31%) of the total number of posted workers (excl. self-employed persons).

Of the 765,830 posted workers (excl. self-employed persons), 604,928 (79%) are employed in the road haulage sector, corresponding to over three-quarters (79%) of the total number of posted workers (excl. self-employed persons). The remaining posted workers are mainly employed in the Construction, Industry and Agriculture sectors.

More than a third (34%) of all posted workers employed in the Netherlands through the WagwEU (259,912) come from service providers from Poland.

Approximately 85% of third-country nationals posted in the Netherlands through the WagwEU (234,855) are on loan from service providers in Poland (110,202) and Lithuania (88,800). As of 1 March 2020, from the third-country nationals notified from these countries as posted workers in the notification portal, the top three nationalities are Ukraine (112,147), Belarus (57,352) and Bosnia-Herzegovina (7,041).

⁴ Ministry of Social Affairs and Employment | Online notification portal annual report for 2020, 2021 and monthly reports for 2022.

Overview of activities per objective

Objective 1: creating preconditions: transfer of knowledge to inspectors

For the purpose of knowledge transfer to inspectors, a videodisc has been created that includes all the information and knowledge about WagwEU, WagwEU webinars that were organised, and a WagwEU app will be further developed in 2022.

Objective 2: raising awareness of the rules

The Ministry of Social Affairs and Employment organised various communication campaigns both at home and abroad focusing specifically on the WagwEU duty to notify and related obligations. These campaigns explicitly referred to the Posted Workers website (www.postedworkers.nl), which was specially set up to serve as a source of information for anyone who uses the WagwEU, or has questions about it. After and following on from these communication campaigns, in cooperation with the relevant policy management of the Ministry of Social Affairs and Employment and the Labour Authority's own Communications department, work has focused on drafting and supplementing the communication strategy with WagwEU information.

Just before the start of the implementation of the duty to notify, a company survey was carried out by the Labour Authority in 2020. This survey has provided more insight into the extent to which companies are familiar with the WagwEU rules. More than 11,000 companies received this survey. The group concerned companies that were expected to use posted workers from another EU country. With a response from about a quarter of the companies, the picture is that about 14% of companies were well informed, 43% had some information, and 43% were not or only slightly aware of the new obligations in the WagwEU.

In addition, approximately 90 checks were carried out in 2020 on companies that have experience of posted workers from another EU Member State in the period 2015 to 2020. Due to the outbreak of the first coronavirus wave, inspectors carried out the checks largely by phone in the form of an interview. All these companies were checked against the WagwEU as far as possible and were informed about this by the inspectors. The results largely matched the results of the survey.

Objective 3: improving the quality of notifications in the notification portal

The notifications in the notification portal were analysed in more detail. This was done in the first place to get an impression of the quality of the data registered in the notification portal. The insights gained from this analysis contributed to an improvement in the quality of the notifications in the notification portal and were also used to shape the activities of the Labour Authority with regard to the WagwEU.

In the regular cooperation consultations that take place between the Labour Authority, the SVB and the Tax and Customs Administration, quality improvement was (and is) a fixed item on the agenda. The focus on quality improvement has resulted in a number of changes being made to the notification portal. The starting point when the notification portal was launched was to enable low-threshold data entry. This would increase the motivation for service providers to use the notification portal. However, this low threshold meant that it was possible to enter data in the notification that are not correct or not necessary, with the direct consequence of adding junk data to the database. This is pollution that limits the ability to use the database for analysis and risk selection. For example, self-employed persons can make notifications in sectors where this is not necessary, there are annual notifications for which the duration of the work

varies between 1.5 and 20 years, there are notifications linked to non-existent or expired Chamber of Commerce numbers, there are notifications of service providers not established in one of the Member States, there are notifications containing invented text (QWERTY), and there are notifications linked to addresses of service recipients where properties are for sale, or where there is no economic activity. At the end of 2021, various changes to the notification portal were therefore implemented in consultation with the Social Insurance Bank and the policy management of the Ministry of Social Affairs and Employment, partly at the request of the Labour Authority.

Objective 4: identifying the details found in the notification portal

Analysis of the data in the notification system revealed a number of details.

Both the service provider and the service recipient are located abroad

This concerns situations in which the service recipient abroad does work in the Netherlands. By hiring staff through a temporary employment agency located outside the Netherlands and posting these persons to the Netherlands, the service provider also becomes a service recipient at the same time. This situation is allowed, but means that the Labour Authority must also obtain supplementary information from the service recipient abroad.

Non-compliance with the duty to monitor the service recipient

An initial analysis of the notifications in the notification portal revealed that almost three-quarters (72%) of regular notifications in the period from March 2020 to November 2021 were not checked by the service recipient. This equates to an average of 23,000 notifications annually. Follow-up analyses showed that the percentage of notifications that were not checked remained the same over time. For example, this percentage is 74% for the period from July 2021 to January 2022.

In the notification portal, a notification is automatically processed administratively, i.e. without the intervention of the service recipient, if the service recipient has not checked it in a period of two months after the start date of the work or two months from the date on which the notification was submitted. Failure to check the notification by the service recipient is a violation of Article 8, paragraph 3. In relation to the finding that service recipients do not check a significant proportion of notifications, the Labour Authority has proposed adjusting the text of the email sent from the notification portal that the service recipient always receives automatically after a notification. The adjusted text explicitly states that the service recipient is subject to a duty of monitoring and that a fine may be imposed in the event of non-compliance. In order to prevent notifications from being closed automatically without intervention by the service recipient, the Labour Authority has decided to send a letter about this to service recipients who have not checked a notification within five working days of the start of the work. In this letter, they are reminded that the Labour Authority will impose a fine if, during a follow-up inspection, it is found that the company has again failed to comply. These companies can be selected for an inspection of compliance with the duty to monitor (Article 8, paragraph 3).⁵ As from autumn 2022, the plan includes carrying out targeted inspections of service recipients who have failed to check the notification and have received a letter from the Labour Authority about this in which they are made aware of their negligence in not complying with the duty to monitor (WagvEU, Article 8) and the consequences this has for them. With this approach, the Authority aims to improve the service recipient's compliance with the duty to monitor. This also encourages the chain of employers to take responsibility for good and fair conditions of employment and working conditions.

Long (or longer) duration of work

Posted workers are entitled to additional conditions of employment and working conditions after a posting period of 12 or 18 months. During the 12-month period, the hard-core conditions of employment apply, and after 12 months – or after a one-off extension of 18 months – the extended hard-core conditions of employment and almost all the Dutch statutory conditions of employment and rules on working conditions apply. The period of 12 months can be extended to 18 months. It is precisely notifications with a long

⁵ Annex 2 provides an overview of the standard fines for related violations.

(or longer) duration that are therefore worth investigating further. Analyses of the notification portal show that 7% of the notifications have a duration of 12 to 18 months and 2% of the notifications have a duration longer than 18 months, some of which have a very long duration of up to 20 years.⁶ Investigations of such notifications have revealed inappropriate application of the WagwEU. It emerges that temporary workers have been sent out for long-term postings and not for temporary postings. The scope of the WagwEU is in fact the temporary posting of employees from a country other than the Netherlands.

The sectors concerned are Industry (mechanical manufacture of products and meat processing), Transport and storage and Wholesale and retail trade. Moreover, in many of these cases, it appears that no A1 declaration has been issued for these posted workers, which implies that the service provider falls under the Dutch system of payment of social contributions and taxes and is a reason to look at wage payments.

In all these specific sectors, if there is a CLA that has been declared generally binding by the Minister for Social Affairs and Employment, the CLA salary must also be paid from the first day. The aim of interventions in these sectors is to combat and potentially prevent unfair competition by service providers in terms of working conditions.

Withdrawn notifications

The withdrawn notifications were examined and subsequently resubmitted under the same conditions. In total, this was the case for 103,694 notifications.⁷

What was particularly noticeable about these notifications was the 11-month period after which a large number of notifications was withdrawn. In a specific case, the reason for this was checked during a visit to the company. It turned out that this company had made an administrative error. Further investigation also shows that this is mostly the case for incorrect entries, which are mainly found in notifications related to road haulage.

Objective 5: increasing the completeness of the notification system (under-notifying by non-notifiers)

From a supervisory perspective, the category of non-notifiers may be even more relevant than the category that does notify but does not do so correctly or not fully.

In 2021, a total of 312 checks were carried out in the Construction and Industry sectors. The Construction and Industry sectors have been chosen because they make extensive use of posted workers from outside the Netherlands. These were companies that were randomly selected from the notification portal or companies that were already scheduled to be inspected. A total of 349 employers were checked during these inspections. The picture that emerges from these inspections confirms an earlier conclusion that the duty of inspection by service recipients established in the Netherlands is not properly observed. Posted workers and self-employed persons were also found who had not been notified in the notification portal.

Besides not checking, not notifying is also a point for attention.

There are several ways to estimate under-notifying, i.e. non-notifiers. Comparison with figures from other countries is flawed due to definition and registration differences. An additional complication is that the coronavirus crisis clouds the picture.

One possibility that does help to get a better picture of non-notifiers is by using information from other organisations, such as the Tax and Customs Administration (VAT recovery by companies that use foreign services) and the Social Insurance Bank (A-1 declarations). The Labour Authority cannot access the data of the Tax and Customs Administration at the present time. The Social Insurance Bank compared files between A-1 declarations and the notification portal. This analysis will be further incorporated into the risk model of the Labour Authority.

⁶ Annual notifications and notifications with a specified project duration of more than 18 months were not included in this analysis. Of these regular notifications, 76% have a duration of up to six months, 14% have a duration of six to 12 months, and 9% have a duration longer than 12 months, 2% of which are longer than 18 months.

⁷ This happened 36,000 times for one company. This is not included in the figure of 103,694.

For example, the risk model described later in this report will include a risk indicator to locate service recipients or workplaces for which the service provider has not submitted a notification. This risk indicator is based on information from A-1 declarations requested by service providers in the country of origin for workers to be posted to the Netherlands.⁸

Hundreds of inspections in the Construction and Industry sectors are planned for 2022. These inspections are intended to identify whether there are companies that use posted workers without registering them in the notification portal (under-notifying). This concerns a random sample of companies in high-risk sectors for which no notification was found in the notification portal.

The schedule also includes a few dozen inspections of the so-called top 100 companies. These concern companies in those (sub)sectors where posted workers are often used. The companies are ranked according to the size of turnover in the Netherlands. Previous signals or relevant observations, supplemented with data on the (sub)sector in which these companies operate, are taken into account. Large companies in these (sub)sectors that are missing from the notification system are thus eligible for selection. This is based on the assumption that larger companies will make relatively more use of posted workers and that if there is no notification, this is a reason to start monitoring.

The aim of inspecting (some of) these top 100 companies is to check whether these companies comply with the duty to notify and the other provisions in the WagwEU. This extension to the other provisions in the WagwEU has already been mentioned in the introduction to this report.

Objective 6: posting data as an indicator/risk model for violating other labour laws

The purpose of the Labour Authority goes beyond simply identifying and tackling WagwEU infringements. The aim of the Labour Authority is ultimately to crack down on companies that break labour laws. A risk model can help in this regard to achieve a good risk selection of companies.

Article 10 of the Enforcement Directive 2014/67 EU states that the Member States must ensure adequate and effective inspections on their territory. A risk assessment is carried out prior to this. Factors such as the realisation of large infrastructure projects, the existence of long subcontracting chains, geographical proximity, special problems and needs of certain sectors, past infringements and the vulnerability of certain groups of workers can be taken into account when determining risk sectors.

A prerequisite for good risk analysis is the availability of adequate and reliable data. The improved quality of the data in the notification portal makes it possible to use these data for risk analysis. The risk model developed within the Labour Authority, which is nearing the end of its experimental phase, will be evaluated in 2022 and will be further tested on a small scale in practice if the evaluation turns out well. For the time being, the risk model focuses on notifications that have already been entered in the notification portal.

The ultimate goal is to use inspections to prevent Dutch clients from hiring foreign workers through posting as a revenue model, without the rights of those workers being adequately guaranteed and protected.

⁸ The A1 form is a declaration based on the EU Social Security Regulation. This EU Regulation lays down mandatory rules governing the social security of employed or self-employed persons if they work in several EU countries or are temporarily sent to another EU country. The basic principle here is that a person can only be subject to one social security system.

Conclusions

The aim of the WagwEU law is to improve the circumstances of posted workers. In recent years, the Labour Authority has carried out various interventions related to the WagwEU with the aim of increasing awareness and knowledge of the law among companies, improving the quality of notifications in the notification portal and promoting compliance with the WagwEU and other labour market laws.

As a result of the communication campaigns and inspections carried out, progress has been made in terms of awareness of the rules on the WagwEU duty to notify. The Labour Authority has informed employers using posted workers and contributed to improving the general communication to service recipients.

In the coming period, the Labour Authority will extend the focus to other provisions of the WagwEU (Articles 6 and 9) and pay specific attention to the category of non-notifiers. The data from the notification portal, supplemented with data from other sources, help the Labour Authority to form a better picture of the group of non-notifiers, which is expected to be more high-risk than the group of notifiers. Research based on, among other things, international comparisons and comparative sector analyses is used in this regard. Inspections of the group of non-notifiers are the logical follow-up to these analyses.

The notification system has improved considerably, reducing the risk of input errors and improving the quality of notifications in the notification portal. The potential of the available data must be explored further to identify the companies most likely to be affected by labour market law violations. The underlying aim of doing this is to improve the circumstances of posted workers. The risk analysis experiment is to be assessed before moving to the next (pilot) phase.

Finally: as Figure 1 (on p. 4) shows, the Labour Authority makes a distinction between objectives arising from the broad task of awareness of and compliance with WagwEU, and objectives arising from the overall task concerning compliance with labour market laws in the broad sense and the protection of posted workers and vulnerable workers. The WagwEU, and in particular the data from the notification portal, provide the Labour Authority with more opportunities to give substance to this overall task. A group that deserves special attention in this regard is posted third-country nationals, which was highlighted specifically in the letter to the Parliament of November 2021.

In this letter to Parliament, the Minister of Social Affairs and Employment explains in more detail the actions the Cabinet is taking on the issue of third-country nationals who are employed in one or more other EU Member States (also called posting of third-country nationals), using the right to the cross-border provision of services (free movement of services) from one Member State.⁹ In the letter to Parliament, the Minister sets out the opportunities and downsides of the European internal market, the (im)possibility of regulating labour migration within the EU, the access and posting of third-country nationals, and identifies a number of actions.¹⁰ The Minister concludes that although the posting of third-country nationals falls within the legal frameworks, the issue is a cause of concern. The grip on (labour) migration from third countries is limited. It can concern people in a vulnerable position. In the debate on the revision of Act Foreign Nationals Employment Act, the Minister already indicated that there is no scope for regulating the issue. This Parliamentary letter indicates that the Cabinet is taking a broad approach to this issue. In doing so, it would seem obvious to first strengthen the existing enforcement practices and seek international cooperation. According to the Minister, the European Labour Authority (ELA) identifies this as

⁹ Source: Parliamentary Paper II/ 2021/ 22, 29861, No 75 (Regulation of labour migration and posting of third-country nationals).

¹⁰ One of the actions mentioned in this letter to Parliament concerns a study that the European Commission will publish in 2022, partly at the request of the Netherlands, on posting in the context of the free movement of services in a broad sense, including third-country nationals. This research has been prepared by the University of Leuven (Belgium) in cooperation with research institutes from a number of Member States that are mapping out the issue of posting for those Member States. The results of this research can provide input for further policy-making and a targeted European commitment to tackling abuses.

an explicit and important task. The current minister of Social Affairs and Employment is also focused on this issue and has announced measures to counter the downsides of labour migration.

The cross-border nature of the WagwEU makes effective enforcement of laws and regulations difficult. An important target group is the non-notifiers who continue to post staff here to the Netherlands. This issue is driven by the current labour market shortage in the Netherlands, which will increase the supply of 'cheap' labour. Discovery and enforcement will certainly be difficult when it comes to short-term operations. To deal effectively with this issue, which is international in nature, international cooperation between the Member States is also necessary, and a national approach will not suffice. The policy within Europe to encourage labour migration between Member States also means that improper use and abuse of the laws and regulations will increase.

For the Labour Authority, this is therefore expressly a task to examine the WagwEU in relation to other labour market laws and to use the insights and information that the WagwEU provides even more strategically in the current enforcement practice. Having access to reliable data in combination with the developed risk model offers opportunities to eventually provide more and better solutions. The necessary steps still need to be taken regarding the notification system (the notification process).

The employment section will continue to work with the other partners in the coming period to achieve the stated objectives.

Annexes

1. Definitions

service recipient:

The natural person whose place of residence or habitual residence is in the Netherlands, or the undertaking or legal person established in the Netherlands, or the undertaking that operates in the Netherlands or has work carried out there but is not established in the Netherlands, for which a posted worker or self-employed person performs work in the context of the transnational provision of services.

Service provider:

a person who makes his or her employee available from another Member State in the context of the transnational provision of services to perform temporary work in the Netherlands.

Posting of Workers Directive:

[Directive 96/71/EC](#) of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJEC 1997, L018).

Posted worker:

an employee who temporarily performs work in the Netherlands in the context of the transnational provision of services on the basis of an employment contract and does not normally perform work in or from the Netherlands.

Internal Market Information System (IMI)

The IMI is a digital question-and-answer system set up by the European Commission, whereby national authorities of the Member States can contact authorities in other EU Member States in their own language.

Member State:

A State within the European Union or another State that is a party to the Agreement on the European Economic Area or Switzerland.

Self-employed person:

a person from another Member State who temporarily performs work in the Netherlands in the exercise of a profession or business, but whose place of residence or habitual residence is not in the Netherlands or who does not normally perform work in or from the Netherlands.

2. Abbreviations:

- ATW: Working Hours Act
- AVV: Generally Binding and Declaring Non-Binding of Provisions of Collective Labour Agreements Act
- ELA: European Labour Authority
- UWV: Employee Insurance Agency
- WAADI: Placement of Personnel by Intermediaries Act
- WagwEU: Terms of Employment Posted Workers in the European Union Act
- WAV: Foreign Nationals Employment Act
- WML: Minimum Wage and Minimum Holiday Allowance Act

3. Relevant references to WagwEU legislation and regulations:

- [Staatsblad \(Official Gazette\) 2016, 219 | Overheid.nl > Officiële bekendmakingen \(officielebekendmakingen.nl\)](#)
- [Employment conditions for posted workers in the EU | Foreign citizens working in the Netherlands | Government.nl](#)
- [Duty to notify under the Employment Conditions \(Posted Workers in the European Union\) Act: Foreign employers and self-employed persons with a temporary assignment in the Netherlands | Foreign employees | Government.nl](#)
- [I work in the transport sector. Do I have to provide notification in the Netherlands through the online notification portal? | Government.nl](#)
- [Posted Workers | Posted Workers](#)

4. WagwEU Fine amounts

Pertaining to Article 1 of the Policy Rule on the Imposition of Fines for the Terms of Employment Posted Workers in the European Union Act 2020

List of amounts of standard fines for administrative violations as referred to in Article 6, paragraphs 1 and 2, Article 8, paragraphs 1, 3 and 6, and Article 9, paragraphs 1 to 3 inclusive, of the Terms of Employment Posted Workers in the European Union Act.

Article	Member	Violation	amounts of standard fines
6	1	If requested, the service provider will provide Our Minister and the officials designated by Our Minister, as referred to in Article 5, with all data and information necessary for the implementation of this Law.	EUR 6,000
6	2	Paragraph 1 applies mutatis mutandis to self-employed persons subject to the obligation referred to in Article 8, paragraph 6.	EUR 3,000
8	1	The service provider who posts a worker to the Netherlands is obliged to notify this in writing or electronically to Our Minister at a time before the work commences, stating: <ol style="list-style-type: none"> their identity; the identity of the service recipient and of the posted worker; the contact person referred to in Article 7; the identity of the natural or legal person responsible for the payment of the wages; the nature and likely duration of the work; the address of the workplace; and the contribution to applicable social security schemes. 	less than 10 posted workers: EUR 1,500 10 up to (and including) 19 posted workers: EUR 3,000 20 or more posted workers: EUR 4,500
8	3	The service recipient checks whether the copy of the notification referred to in paragraph 2 states the information referred to in paragraph 2 and reports inaccuracies or whether it has not received the copy, at the latest five working days after the start of the work, in writing or electronically to Our Minister.	EUR 1,500 if the service recipient is a natural person: EUR 750
8	6	The obligation in paragraph 1 regarding the notification of the nature and probable duration of the work, the identity of the person responsible for paying the salary and the identity of the person performing the work, and the obligation in paragraph 2 will apply mutatis mutandis to self-employed persons working in sectors of professional or business activity designated by general administrative measures.	EUR 750

Article	Member	Violation	amounts of standard fines
9	1	<p>During the period of posting, the service provider will ensure that at the workplace referred to in Article 8, paragraph 1, section f, the following are available in writing or electronically:*</p> <ul style="list-style-type: none"> a. the employment contract with the posted worker; b. a statement as referred to in Article 626 of Book 7 of the Civil Code; c. a statement as referred to in Article 655 of Book 7 of the Civil Code; d. documents showing the number of hours the posted worker has worked; e. supporting documents showing the social security contributions and the identity of the service provider, the service recipient, the posted worker and the person responsible for the payment of the wages; and f. proof of the wages paid to the posted worker. <p>* The documents must be available in one of the languages referred to in Article 2b of the Terms of Employment Posted Workers in the European Union Act.</p>	EUR 8,000 (in total; no accumulation per employee)
9	2	<p>The self-employed person to whom the obligation referred to in Article 8, paragraph 6 applies will ensure that, during the period in which he or she performs work at the workplace referred to in Article 8, paragraph 1, section f, there is documentary evidence* showing his or her identity, the identity of the service recipient and the identity of the person responsible for paying the salary.</p> <p>* The documents must be available in one of the languages referred to in Article 2b of the Terms of Employment Posted Workers in the European Union Act.</p>	EUR 4,000
9	3	<p>The service provider and the self-employed person will ensure that the documents referred to in paragraphs 1 and 2 are provided on request to the designated officials referred to in Article 5 within a reasonable time after the period of posting or the period during which the work is performed.*</p> <p>* For the purposes of this paragraph of this article, the periods referred to in Article 2a of the Terms of Employment Posted Workers in the European Union Act apply. Furthermore, the documents must also be provided in one of the languages referred to in Article 2b of that Act.</p>	<p>If the offender is a service provider: EUR 8,000 (in total; no accumulation per employee); if the offender is a self-employed person: EUR 4,000</p>

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