Offering handicraft services in Germany
(Status as of January 2020)

The following information applies to companies from EU countries that provide craft, assembly and other services in Germany without having a branch office in Germany.

The following steps must be taken:

1. Service notification in accordance with the Directive 2005/36/EC on the Recognition of Professional Qualifications; In the case of regulated activities, wait for authorization.

2. Check whether an authorization of performance (work contract) is required (for companies from Bosnia-Herzegovina, Macedonia, Serbia and Turkey, if they wish to send workers to Germany)

3. Reporting posted workers at the Generaldirektion Finanzkontrolle Schwarzarbeit in Cologne

4. Respecting the German minimum wages, preparation of corresponding proofs

5. Check the necessity of being registered for VAT in Germany respectively if a registration for building tax deduction, income tax is necessary and if tax liability in Germany may result.

6. Execution of construction work: Check whether the SOKA BAU holiday and pay compensation fund (ULAK) is compulsory
7. If goods/materials are brought to Germany to be used for the performance of the service: Check whether German standards have to be met.

8. Compliance with the provisions the German Posted Workers Act (AEntG); Provision of all documents which must be held in Germany.

9. Subcontractor comments:
   What does the German contractor (entrepreneur) require from the foreign subcontractor?

Supplement:
10. Basic information for the establishment of branches
Detailed descriptions of the individual points with the corresponding links:
The following remarks apply if you wish to provide a service in Germany without having a branch office.

1. **Service notification in accordance with the Directive 2005/36/EC on the Recognition of Professional Qualifications; In the case of regulated activities, wait for authorization.**

In the countries of the EU/EEA, the respective national law with regard to the exercise of commercial activities applies in principle. EU directives simplify work across borders between EU/EEA countries. Directive 2005/36/EC lays down the conditions for an EU/EEA company to carry out activities in another EU/EEA country.

Nationals of the EU/EEA as well as Switzerland who are not established in Germany, are allowed to offer cross-border services if they are entitled to pursue comparable activities in their country of origin.

a) Registration-free/non-regulated activities in Germany: no notification required
Link to non-regulated activities: Attachment B1/B2

b) Regulated activities in Germany, so-called trades according to Attachment A of the crafts code (HwO):
Link to Attachment A HwO:

For this, a written service display is required to the competent chamber of skilled crafts in the district where the place of first-time service is located in Germany.

Link to the list of all German chambers of skilled crafts:

Link to the form: [http://www.hwkno.de/artikel/einheitlicher-ansprechpartner-76,2861,2679.html](http://www.hwkno.de/artikel/einheitlicher-ansprechpartner-76,2861,2679.html)
→ Downloads → Notification of the temporary provision of services (Meldung der vorübergehenden Erbringung von Dienstleistungen)

Link to the Handwerkskammer Niederbayern-Oberpfalz:
Conditions:

- Nationality EU/EEA or Switzerland
- Temporary and occasional professional practice without establishment in Germany
- Activity in a regulated craft of Attachment A HwO (http://www.gesetze-im-internet.de/hwo/anlage_a.html)
- Applicants in the country of origin are lawfully registered for exercise (formal equivalence is required, which means the activity must be comparable)
- If the country of origin does not require a specific qualification or education for the pursuit of the activity, the activity in the country of origin must have been carried out for at least one year.
- Certificate from the national office in the country of origin, so-called EU certificate or EEA certificate.

The chamber of skilled crafts can arrange a professional examination in health care facilities according to Attachment A to HwO Nos. 33 to 37 (optician, hearing aid acoustician, orthopedic technician, orthopedic shoemaker, dental technician) and in the chimney sweep handicraft.

The chamber of skilled crafts issues a confirmation after a service display. The costs for this range from 25 EUR to 35 EUR. This is valid for 1 year throughout Germany.

If the above mentioned conditions for the provision of services are fulfilled, the activity may be carried out immediately after the notification (exception: chimney sweeping, medical services).

After a period of one year the notification has to be repeated (so-called follow-up). The verification procedure is free of charge. Form: http://www.hwkno.de/artikel/einheitlicher-ansprechpartner-76,2861,2679.html

→ → Downloads → Notification of the Temporary Service Delivery - Subsequent Reporting (Meldung der vorübergehenden Erbringung von Dienstleistungen – Folgemeldung) (in German)
2. Check whether an authorization of performance (work contract) is required (for companies from Bosnia-Herzegovina, Macedonia, Serbia and Turkey, if they wish to send workers to Germany)

2.1 Companies from the EU countries which joined the EU before 2013 can perform unimpeded services in Germany on the basis of the Directive 2005/36/EC on the Recognition of Professional Qualifications (or on the basis of the Posting Directive 96/71/EC or the Service Directive 2006/123/EC).

2.2 If companies from Bosnia-Herzegovina, Macedonia, Serbia, Turkey want to provide services in Germany, they need their service contract to be approved by the

Agency for work Stuttgart (Agentur für Arbeit Stuttgart)
Phone: +49 (0) 711 920-0
E-Mail: stuttgart@arbeitsagentur.de
ZAV-Stuttgart-WVV@arbeitsagentur.de
Internet: www.arbeitsagentur.de

Information can be found in the following leaflets: Leaflet 16
Or under www.arbeitsagentur.de
→ Company (Unternehmen)> Workforce demand (Arbeitskräftebedarf)> Employment (Beschäftigung)> Foreigners (Ausländer)> (in the text) Werkvertragsverfahren (in German)

3. Reporting posted workers at the Generaldirektion Finanzkontrolle Schwarzarbeit in Cologne

In the EU/EEA, the provisions of the labor and social law of the country in which an employee is employed (exceptions apply to health and pension insurance) are valid.

This means: for an employee from an EU country, German regulations on working time and leave apply for the duration of his posting to Germany, and he must receive the German minimum wages. He may
also be entitled to other social benefits, for example the SOKA BAU (see point 6).

The so-called Finanzkontrolle Schwarzarbeit („FKS“) is responsible for the control of adherence of the rules regarding social issues in Germany. The FKS is an organ belonging to the customs. The organisation is also responsible for checking whether posted workers to Germany have a health insurance and pension plans in their country of origin. In order to be able to control that, it is necessary to know the place (e.g. the construction site) in which the employee is deployed.

All employees employed in construction sites in Germany need to be registered at the Generaldirektion Finanzkontrolle Schwarzarbeit (FKS), Wörthstraße 1-3, D-50668 Cologne, Fax: +49 (0) 221 964870, before the start of the work with appropriate form.

The Employers who are based abroad and send one or more employees to work or to execute services in Germany must observe various rules concerning the reporting of their employees.

The reports have been available since 1 January 2017 due to the minimum wage reporting portal: www.meldeportal-mindestlohn.de

The electronic registration portal requires a one-time registration to create a user account.
All Changes to the original registration must be also reported there.

Changes to the original registration are also to be reported there. Form under: www.meldeportal-mindestlohn.de

Authorized representative
Within the scope of this notification, an authorized representative in Germany must also be appointed; This may also be the head of the workers posted to Germany, as far as he can be responsible for the foreign company (for example the foreman at the construction site).

Special provision for building cleaners

→ Gebäudereinigung (building cleaning) (in German)
Collective agreements and regulations on the subject of minimum wage in the sphere of building cleaning

It is also necessary to report a deployment plan which shows which employees are active at which site.
4. **Respecting the German minimum wages, preparation of corresponding proofs**

Since 1 January 2015, the minimum wage legislation has been in force in Germany. The legal minimum wage for employees employed in Germany is currently EUR 9,35 (gross). Please find more information on this subject below:

http://www.zoll.de/SharedDocs/Boxen/DE/Fragen/0079_fragen_antworten_milog_milomeldv_mobil.html;jsessionid=1EA154B1F7F5496B919F6E6BDED49E9A.intranet2?nn=30716

or


However, for certain trades workers in Germany, the higher minimum wage rates are to be paid (see also the Workers' Employment Act). Employer shares for social insurance are not included in the minimum wages. The payment must be proved by means of payroll documents (see point 8).

**There are general minimum tariffs for the following crafts:**

Construction industry, electrical trades, painting and varnishing services, roofing, facility cleaning, scaffolding, chimney sweeps, masonry and stone sculpting.

The list can be found on the website of the Federal Ministry of Labor and Social Affairs.

Link:

5. Taxes

5.1 Checking whether a VAT registration is required in Germany; registration if applicable

The uniform EU regulations apply to pure *goods deliveries*.

**Services provided to private individuals in Germany** are subject to German VAT; it is necessary to register with the permanent German Foreign Office. Link: [http://www.ofd.niedersachsen.de/portal/live.php?navigation_id=17533&article_id=67782&_psmand=110](http://www.ofd.niedersachsen.de/portal/live.php?navigation_id=17533&article_id=67782&_psmand=110)

**Construction works on a property** in Germany are also subject to the German VAT. If the service is related to a contractor with a Value added tax identification number (USt-IdNr), the tax liability is passed onto the beneficiary (customer).

**Building tax deduction**

If a person in Germany provides a construction service (lender) to an entrepreneur or a legal person under public law (customer), the recipient of the service is obligated to deduct 15% of the consideration (including value-added tax) (§ 48 Einkommensteuer (EStG)).

Construction services are all services which are used for the production, repair, maintenance, modification or removal of buildings.

In order to prevent this deduction, the foreign (sub) company must submit a valid exemption certificate pursuant to section 48b (1) sentence 1 to the client.

The exemption may be order-related or deferred for a certain period, maximum for a period of three years.
How and where can an exemption for or extended for remuneration for construction work be applied?
Companies with seat or permanent residency and management abroad apply for the exemption certificate informally at a German tax authority that is responsible for the respective country.

E.g.
Czech Republic, Slovak Republic, Romania: Finanzamt Chemnitz - South
Republic of Hungary: Zentralfinanzamt Nuremberg
Republic of Austria: Finanzamt München II
Republic of Poland: Finanzamt Oranienburg
Republic of Bulgaria: Finanzamt Neuwied

Link to the application:
http://www.finanzamt.bayern.de/Informationen/Formulare/Weitere_Themen_A_bis_Z/Bauleistungen/Musterantrag-Freistellungsbescheinigung.php

An application or extension is not possible online!
Information is provided by the tax return form (in German)
http://www.steuerportal-mv.de/static/Regierungsportal/Finanzministerium/Steuerportal/Inhalte/merkblBAU_eng.pdf

5.2 Income tax:
Normally, the 183-day rule applies: If an employee is staying in Germany for more than 183 days a year, he is liable to pay tax; the details are set out in the respective double taxation agreements of the Federal Republic of Germany with the country of origin of the foreign company. Cross-border workers (they live in an area up to 30 km from the German border and return to their home country on working days) from Austria and Switzerland always remain liable to payable taxes in the country of origin.

5.3 Check whether income tax liability can arise in Germany
Persons who are staying in Germany for more than 183 days may incur an obligation to pay income tax; this also applies in principle to entrepreneurs. Again, the details in the respective double tax treaties of the Federal Republic of Germany are regulated with the country of origin of the foreign company.
6. **Execution of construction work: Check whether the SOKA BAU holiday and pay compensation fund (ULAK) is compulsory**

When carrying out construction work: check whether there is an obligatory contribution to the holiday and pay compensation fund (ULAK) SOKA BAU.

The **holiday and wage compensation fund (ULAK)** of the German construction industry is a facility that takes payments from companies for social services for their construction workers and manages them centrally. These are special social benefits, which are not covered by health and pension insurance, which are paid in the country of origin of the employees posted to Germany.

The ULAK receives information from the "Finanzkontrolle Schwarzarbeit" (FKS, "German Customs Administration", see item 3) that you have registered the posting of employees. However, this does not absolve you of the obligation to make a notification to the ULAK.

If the sending company provides services which fall within the scope of the German collective agreement for construction, contributions are made to the ULAK (currently 15.4% of the gross salary) see also [https://www.soka-bau.de/fileadmin/user_upload/2016_ULAK_web.pdf](https://www.soka-bau.de/fileadmin/user_upload/2016_ULAK_web.pdf)

or


Further information can be found at [www.soka-bau.de](http://www.soka-bau.de),

**SOKA BAU**
- Urlaubs- und Lohnausgleichskasse der Bauwirtschaft (ULAK) -
- Zusatzversorgungskasse des Baugewerbes AG (ZVK) -
  Wettinerstraße 7
  D-65189 Wiesbaden
  Telefon: +49 (0)800 1200 111
  E-Mail: service@soka-bau.de

The SOKA BAU provides the information for the employees in the most EU-Languages: [https://www.soka-bau.de/europa/](https://www.soka-bau.de/europa/)
If comparable contributions are already made to posted workers in their country of origin and a recognition agreement with ULAK exists, the exemption from the ULAK obligation in Germany is possible. It is necessary to examine whether the activity pursued in Germany falls within the scope of the German collective agreement for the construction industry. Is the construction work performed in more than 50% of the working time in the sending company?

The paid amounts that are not retrieved by the companies can be compensated for the benefit of the employee!
Info: https://www.soka-bau.de/europa/de/leistungen/abgeltung-fuer-arbeitnehmer/
and

If your company has paid ULAK contributions for employees posted to Germany and these were not called up by the company as holiday allowances, you should inform your posted employees of the possibility of reimbursement in January of the following year; they can then get money from the SOKA.

7. **If goods/materials are brought to Germany for the performance of the service: Check whether German standards have to be met**

For all goods (eg materials, construction products, technical components) for which no harmonized EU standard exists, the German national standards apply in Germany.
Information: LGA/TÜVRheinland een, Tillystrasse 2, 90431 Nuremberg, Phone +49 (0) 911 655-49 33 Fax +49 (0) 911 655-49 35, E-Mail: lga@lga.de
http://www.tuv.com/de/deutschland/gk/consulting_de/patente_normen_fordermittel/ce_beratung/ce-beratung.html
8. **Compliance with the provisions of the German Employees’ Employment Act the German Posted Workers Act (AEntG); Provision of all documents which must be held in Germany.**

The Posted Workers Act applies to construction and assembly activities in the widest sense, as well as in the gardening and landscaping industry and in the building cleaning trade for the employment of employees:

http://www.zoll.de/DE/Unternehmen/Arbeit/Arbeitgeber-mit-Sitz-ausserhalb-Deutschlands/Pflichten-bei-Pruefungen/pflichten-bei-pruefungen_node.html

**Management of working hours:**
Employers are obliged to note the

- Beginning (to be noted right at the beginning of work)
- Breaks
- End and duration

of the daily working hours of employees and to keep these records for at least two years. The records must always be kept on the construction site. Please note, that here are special regulations for building cleaners.

**Provision of documents:**
Employers who are based in Germany or abroad must provide the necessary documents **in Germany and in the German language** for the purpose of verifying the observance of the working conditions in accordance with the German Posted Workers Act.

- employment contract + supplements which show that workers receive German minimum wages (in German); for example, an additional contract (in German and in the language of the country of origin) that the employee (the precise activity indicated) receives the wage of EUR ... during the period of his employment in Germany, signed by employer and employee
- Payroll accounting
- Proof of payment of wages (from 15th of the following month).
- Evidence that the employee/entrepreneur is covered by health and pension insurance in the country of origin: health insurance card (chip card), pension insurance: A 1 (formerly E 101).

In case of flexible working hours in addition the following documents need to be at hand:
- Written agreement on working time flexibility
- Compensation account (for each employee), if necessary separate hourly records new federal states/old federal states
- Evidence for an equalization account (e.g. bank guarantee, blocked account).

False-self-employment:

In social insurance, a (foreign) worker is either self-employed or an employee.
If he is an employee, he enjoys all the rights attached to it, and the employer has the obligation to register him and his contributions to payroll and health and pension insurance. He has the right to give him instructions and thereby integrate him into the regular operation.
The term "subcontractor" means that the "subcontractor" has a formal job-processing or building/construction contract\(^1\) with a contracting authority, that is to say he performs his work in the form of a "trade", that is, by creating a "self-contained technical unit". This concrete trade union is transferred to him for independent execution in his own corporate responsibility. Although the commissioning German company can supervise the executed works respectively construction works, it cannot interfere with the execution (e.g. by direct instructions to foreign employees or by the provision of own staff).
The following criteria are checked:

- Is the agreed service a craft/ work, i.e. a "self-contained technical unit"?
- Is the subcontractor able to do this work self-employed and on its own responsibility?
- Is the client regularly submitting to the subcontractor how and when he has something to do?
- Are the subcontractor and his employees involved in the contractor's operational process and are the employees of the subcontractor and his client working together on the same work ("mixing of staff")?

\(^1\) On 01.01.2018 the reform of the building contract law came into force, which brought far reaching changes with it. In addition to the job-processing contract, there was also implemented a construction contract. Detailed information on the job-processing and construction contracts can be found on our website (www.hwkno.de → Operation Management → Law → VOB and work contracts). If you have any questions about the new regulations in building contract law, please contact our Legal Department.
The decision whether a job-processing contract, construction contract or a dependent employment relationship ("false-self-employment") exist can be particularly difficult if the subcontractor is a "one-person enterprise", i.e. works alone and does not employ any staff.

The following aspects are then considered:
Does the activity of the subcontractor (or of the individual members of the work group) recognize typical characteristics of entrepreneurial activity, for example, does he carry an entrepreneurial risk for a contractual execution? Does he use his own equipment or machines? Does he have an office in his home country? Does he have a liability insurance?

If there is any doubt whether a dependent employment relationship exists, or if all involved parties are legally obliged to insure themselves, they can apply to the German Pension Insurance Association (DRV Bund) in Berlin to determine the status of the employer (§ 7a SGB IV).

Link to the page of the Deutsche Rentenversicherung Bund with further references to the status check, requests, explanations:
http://www.deutsche-rentenversicherung.de/Allgemein/de/Inhalt/5_Services/04_formulare_und_antraege/formulare_und_antraege_index.html

**Note:** The client has to check whether a contractor is employed or self-employed. If, in the case of an audit carried out by the pension scheme, the "subcontractor" was or still has a legal status in a dependent employment relationship, this would lead to additional contributions which the employer alone has to bear.

It is customary for the German client to submit to the foreign subcontractor a list of names (with pictures) of the foreign deployed employees, as well as proof that they have a health and pension insurance (health insurance ID + A1). In some case proof is required that the subcontractor pays income tax for his company in his home country.

**Employee assignment:**
Employee assignment occurs when an entrepreneur lends his/her own employee to another employer (i.e. they are not employed in a posting contract). Employee assignment requires a permit in Germany. It is not possible in the key construction industry.
Information at: http://www.arbeitsagentur.de → Unternehmen → in the upper right corner at „Suche“ enter the word „Arbeitnehmerüberlassung“ → „Informationen, Formulare und Merkblätter zum Gesetz zur Regelung
der Arbeitnehmerüberlassung (Arbeitnehmerüberlassungsgesetz – AüG)“
or
http://www.arbeitsagentur.de/web/content/DE/Unternehmen/Rechtsgrundlagen/Arbeitnehmerueberlassung/index.html

Social insurance
In principle, the social insurance law of the sending EU state is valid;
Proof by EU form A 1 (formerly E 101), issued by the insurer in the country of origin.
For employees who are working continuously in Germany for more than 24 months, the obligation to take insurance is changing to Germany.

For the entrepreneur, there is no social insurance obligation in Germany, as long as he is insured accordingly in his country of origin (proof by health insurance card and A 1).

If a company from EU/EEA countries sends employees to Germany for the provision of services (job-processing or construction contract), the following applies:

Workers from the EU/EEA area need no residence or work permits.

Workers from third countries can be sent to Germany if they have a long-term residence permit in the sending country (country of the sending company) (long-term-resident-EU, www.anerkennung-in-deutschland.de/images/content/daueraufenthalt_iq-neu.pdf) and the temporary service in Germany does not exceed 3 months within 12 months. If the posting to Germany is expected to last longer than 3 months within 12 months, a visa application must be submitted to the German Embassy in the sending country (“Vander-Elst-Visum”). We strongly urge you to take this visa in time.
9. **Subcontractor comments: What does the German contractor (entrepreneur) require from the foreign subcontractor?**

In practice, the German customer will require the subcontractor to provide information and documents to keep his own risk low.

He initially asked the following questions:

- **Is the "subcontractor" legally viewed as a company with which a job-processing or construction contract can be concluded?** Behind this is the fear of the subcontractor's "pseudo-self-employment". The client usually requires a commercial register extract or comparable documents and/or proof of a trade registration (with information on the trade + date of registration). The subcontractor can also proof his entrepreneurial characteristics with the proof that he pays income taxes in his country of origin.

- **Can the subcontractor perform the transferred trade?** At the same time, the trade law concern is usually relatively unimportant; the liable, legal or technical issues are mainly important, especially in the area of regulated professions. In most cases, confirmation of the recognition by the competent chamber of skilled crafts is required. In the case of specific trades, however, other evidence is often required that the subcontractor has already carried out work of the required type (e.g. in his country of origin).

- **Do the appointed employees have a proper health insurance and pension plan?** This is a very sensitive point, because for the client can incur substantial financial and criminal risks if this is not the case. We advise our companies to ask the subcontractor
  - to submit the pension insurance A1 for each employee employed,
  - to request a list of the names and images (and, if applicable, the date of birth) of the employees employed and
  - to control their health insurance cards (Chip card EHIC) at the beginning of the work.

- **Besides, companies are increasingly asking their subcontractors for a proof of liability insurance before issuing the order.** They are often held to do so by their own contractors or insurance companies. In the case of larger orders in the areas of heating-gas-water or electricity, the sum total of EUR 5 million is quite common. If the subcontractor cannot provide sufficient insurance of his own, then his client must
close this gap at his own risk and expense. Usually special reporting requirements or a special construction supervision must be agreed in the contract.

According to our experience, medium-sized clients do not treat these questions excessively pedantically; Large companies, however, often require very extensive documentation from their subcontractors on the basis of internal regulations, up to a disclosure of all subcontractors, which might be deployed and with the names of the employees employed.

10. **Supplement: Basic information for the establishment of branches**

Nationals of the EU / EEA as well as Switzerland can make use of their freedom of establishment: they can establish companies / branches in Germany. These branches are subject to German law; Consequently these branches are subject to taxation and accounting in Germany. Employees are contracted accord to the applicable German regulations.

Anyone wishing to establish a branch in Germany or to operate as a company manager of a company domiciled in Germany must prove the required professional qualification if he wishes to pursue a regulated trade.

A profession in a regulated craft of Annex A of the Handwerksordnung (HwO) ([http://www.gesetze-im-internet.de/hwo/anlage_a.html](http://www.gesetze-im-internet.de/hwo/anlage_a.html)) requires an entry into the craft trade (directory at the local chamber of skilled crafts).

**Conditions for the registration:**

a) *Foreign Higher Education:*
A foreign diploma (after a minimum of three years of study) at a technical university, university or comparable institution of the EU / EEA / Switzerland usually entitles you for the registration.

b) *Equality of foreign titles of master craftsmen:*
Equalization agreements exist for the following countries:

- Austria (26 Handicrafts)

Link to the agreement Germany / Austria:
http://www.gesetze-im-internet.de/meistpr_glv/anlage.html

- France (10 Handicrafts)

Link to the agreement Germany / France:
http://www.gesetze-im-internet.de/meistprfrglv/anlage.html

c) Recognition of professional experience:
The professional experience can also be used to decide whether it is possible to register in the handicraft role.

d) Recognition of foreign training and proficiency certificates
(Information: chamber of skilled crafts,
http://www.hwkno.de/76,2496,4273.html)
Note:

This guide was written with the best of our knowledge based on all material and documents available. The content in this guide is constantly maintained. The last updated version, which is on our homepage, is valid.

We cannot accept liability for the following:

- the correctness, timeliness and completeness of the information provided there
- the wording and validity of the mentioned legislation. The current official version is always valid the way as it is published by the official publication organ
- for the correctness and legality of the contents of the websites linked in the guide. The content of these websites is dynamic and can change at any time; we do not expressly take it as our own.

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For further information, please contact: +49 (0) 851 5301-129, e-mail: eap@hwkno.de, Internet: [http://www.hwkno.de/76,2184,2679.html](http://www.hwkno.de/76,2184,2679.html).

Without the written permission of the Handwerkskammer Niederbayern-Oberpfalz, this manual or parts thereof may not be copied, processed, duplicated or distributed.

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Einheitlicher Ansprechpartner (Single point of contact) der Handwerkskammer Niederbayern-Oberpfalz