



Freedom of Services in the European Union

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Community law applies in all the member states of the European Union (EU) which as its basis consists of four basic freedoms – the free movement of services, the free movement of individuals, the free movement of goods and the free movement of capital. The free movement of services allows any company in the EU to temporarily offer and to provide services at the same conditions as domestic companies without the requirement to establish a branch business.

Exceptions:

The free movement of services as well as the free movement of workers currently applies to all EU nations – only Germany and Austria are making use of the **transitional agreement** for the countries that joined in 2007, **Romania** and **Bulgaria** and **Croatia** which entered in 2013. This means that up until 31.12.2013 (Romania and Bulgaria) and at least until 30.06.2015 (Croatia), Germany has restricted free movement of labour in the following economic areas:

- The building trade including related economic sectors
- The cleaning of buildings, fixtures and methods of transport
- Interior decoration

Companies from these two countries which would like to join the above sectors with their own workers may only send employees to Germany who have the **permission to work in the EU**. This is issued by the German Federal Employment Agency (*Agentur für Arbeit*) on the basis of contractual contract for services agreements – for the exact procedural regulation, please refer to **Leaflet 16a from the German Federal Employment Agency (Merkblatt 16a der Agentur für Arbeit)**.

Conversely, no such restrictions exist for German companies in Romania or Bulgaria.

If **foreign companies want to provide services in Germany**, both they, and on the basis of the so-called 'Bürgenhaftung' (*liability as a guarantor*), their German contractors must comply with the following guidelines:

1. For the exercising of the manual trades **that require approval** pursuant to appendix A of the manual trades code, on the occasion of the first exercising in Germany, it is necessary to apply, **once**, for an **exemption approval in accordance with § 8 of the EU/EEA Skilled Trades Act**.
2. The minimum provisions that apply in Germany on the following points must be complied with by the dispatched employee under all circumstances:
 - Minimum wages
 - Minimum annual holiday
 - Maximum working hours and minimum rest periods
 - Payment for overtime
 - Provisions concerning the assignment of staff
 - Health and safety at work, etc.

At the moment, the following wage agreements apply for the following sectors in the Free State of Saxony:

Where minimum wages apply:

- The building trade
- The roofing trade
- The electrician trade
- The hairdressing trade
- The painting and decorating trade
- Persons employed as cleaners in buildings

Where minimum wages do not apply:

- The scaffolding trade
- The stone mason and stone sculpting trade
- The baking trade

3. Employers must comply with inspections by the Financial Control of Undeclared Employment (*Finanzkontrolle Schwarzarbeit*) – this includes maintaining working time sheets and keeping key documents at hand in the German language.

4. On the basis of the existing inter-governmental regulations that Germany has with all EU countries, with secondments of up to 24 months, the **social insurance obligation** of a seconded employee remain with the seconding nation – this must be proven for every seconded employee (including sole traders) with the help of the **A1 certification**.

! The following additional provisions apply to foreign companies in the construction sector:

5. One day prior to the beginning of the work at the latest, notification must be made to the **Federal Finance Office West** (http://www.zoll.de/DE/Fachthemen/Arbeit/Mindestarbeitsbedingungen/Meldung-der-entsandten-Arbeitnehmer/meldung-der-entsandten-arbeitnehmer_node.html, form 033036:) and a working time planning must also be submitted if required. Subsequent changes to notified information regarding working times, employees or places of work must also be provided. If you have any questions, please contact the Customs Office in Dresden: 0351/44834520, info.gewerblich@zoll.de.

6. **Obligation to provide notification** on the part of the seconded employee to the Leave and Wage Equalization Fund of the German Building Industry (*Urlaubs- und Lohnausgleichskasse der Bauwirtschaft*).

7. Periods of work or building sites that have a duration of over four weeks or which are regularly exercised must be notified to the local **Trades Office**.

Personal contacts at Dresden Chamber of Trades and Crafts (*Handwerkskammer Dresden*)

Issuing of exceptional approvals
according to § 9 HWO:
Stefan Lehmann, Legal Department
Telephone: 0351 46 40 455
Email: stefan.lehmann@hwk-dresden.de

Freedom of services
Katja Schleicher, foreign trade advice
Telephone: 0351/46 40 943
Email: katja.schleicher@hwk-dresden.de

