

# DEALING WITH EUROPE

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Once established in the EU as a foreign entrepreneur, does the EU single market, with its free movement of labor, work for you too? Of course, EU citizens are free to live and work in any EU Member State. However, non-EU citizens often require a residence and work permit to be allowed to work in the EU legally. Besides, most residence permits are valid in one EU Member State only. In this article I will deal with the permits required by entrepreneurs and their employees to stay and work in the EU.

As a preliminary remark, I would like to say that as a Dutch lawyer I can only advise on European and Dutch migration law and on entry of foreign nationals to the Netherlands. The same goes for migration lawyers in other EU Member States. Thus the international network of Primerus Lawyers is ideally suited to advise Brazilian and other non-European companies that intend to expand across the continent.

## EUROPEAN UNION/EUROPEAN ECONOMIC AREA AND SWISS NATIONALS

Nationals of EU/EEA Member States and Switzerland as well as their family members (regardless of their nationality), in principle, only need a valid passport to enter and reside in any other Member State, provided that they do not constitute a danger to public order, public security or public health, and are able to support themselves. To do so, they are free to work in the Netherlands. They have lawful residence on the basis of the treaties concerned. Those who want to stay for more than three months must register their domicile with the municipal personal records database. After five

years of continuous stay in another Member State, EU/EEA/Swiss nationals can apply for a document certifying "permanent residence as an EU/EEA/Swiss national".

## NON-EU/EEA/SWISS NATIONALS

Non-EU/EEA/Swiss nationals (in the following referred to as 'foreigners') who wish to stay in the Netherlands for more than three months need a Dutch residence permit. In principle, they will also have to obtain a Provisional Residence Permit (MVV; Machtiging Voorlopig Verblijf) in their country of origin before they are allowed to enter the Netherlands. The MVV must be utilized within six months after the date of issue. Nationals of Australia, Canada, Japan, Monaco, New Zealand, South Korea, the United States of America or the Vatican do not need an MVV, but only a residence permit.

The Dutch Migration Authority (IND) will assess the application for the requested specific purpose of stay and verify the documents. If the application is rejected, the foreigner can lodge an objection in writing, appeal to the District Court and further appeal to the Administrative Law Division of the Council of State.

## PURPOSES OF RESIDENCE

A residence permit is related to a certain purpose of stay. There are different requirements for each purpose. If foreigners wish to reside in the Netherlands for work, they must produce an employment contract. If they wish to live with their family, birth and/or marriage certificates are required. These documents usually need to be authenticated or legalized. The means of legalization and acceptance of legalized documents varies from country to country.

## WORK-RELATED PURPOSES OF STAY

The Netherlands has several work-related

purposes of stay, e.g. as:

- Employees
- Highly skilled migrants or EU blue card holders
- Intra-corporate transferees or
- Self-employed persons

## EMPLOYEES

Employers need a work permit to employ non-EU/EEA/Swiss nationals. A work permit will only be issued if no job applicants from within the EU/EEA/Switzerland (that do not require a work permit either) are available to fulfil the position within a reasonable period of time. The Netherlands Employee Insurance Agency (UWV) advises the IND whether the work permit should be granted. Employers who employ migrants without a work permit risk a fine of EUR 24,000 for every migrant for each violation.

## HIGHLY SKILLED MIGRANTS AND EU BLUE CARD

There are special streamlined procedures for obtaining a permit for highly skilled migrants and for an EU blue card. Whether or not a such residence permits will be granted depends on income levels and agreements between the IND and the employers. These employers assume responsibility that their foreign workers meet the applicable specific requirements. Employers do not require a work permit for highly skilled migrants or EU blue card holders.

In order to qualify for this permit, a highly skilled migrant should earn a minimum gross monthly income of EUR 4,404 (or EUR 3,229 if they under 30 years old). Migrants qualify for an EU blue card if they earn at least EUR 5,160 per month, regardless of age, and they have completed a higher education program of at least 3 years. The employer, in turn, has to prove that

he will be able to pay the wage.

Strangely a Dutch EU blue card is not valid as a residence or work permit in other EU Member States. The only advantage is that an EU blue card obtained in one Member State may simplify the procedures in another EU Member State should the holder of the EU blue card move. In that case an MVV is not required for the second application.

## INTRA-CORPORATE TRANSFeree

The only truly European residence permit is the residence permit for intra-corporate transferees. Foreign managers, key personnel at higher professional level, who have an employment contract with an undertaking established outside the EU and who will temporarily be transferred to one or more branches of this undertaking within one or more Member States in the EU, can obtain a residence permit for intra-corporate transferees. The application is to be submitted in the Member State where the transferee will work and stay most of the time, but it will entitle him to work for branches in other Member States and stay there as well. The main drawback is that this permit expires after a maximum of 3 years and cannot be extended.

## SELF-EMPLOYED PERSONS

Self-employed foreigners in the Netherlands do not need a work permit (it is only required for the persons or companies that hires them), but they have to meet strict requirements, e.g.:

The self-employed foreigner's business has to serve an essential Dutch (economic) interest by being innovative for the Netherlands.

The foreigner should have the qualifications and licenses that are required for his or her profession in the Netherlands.

The foreigners have to prove by means of a business plan and financial data

that their business will provide them with sufficient means of support.

Thanks to bilateral treaties it is a lot easier for American and Japanese citizens to obtain a residence permit on a self-employed basis in the Netherlands, provided that they do business between their country of origin and the Netherlands or develop and lead the general business of an American or Japanese company in the Netherlands.

The business of these American and Japanese nationals is not required to serve an essential Dutch (economic) interest.

## CONCLUSION

Apart from the permit for intra-corporate transferees, Dutch residence permits are only valid as a residence permit in the Netherlands. Even migrants in possession of a Dutch EU Blue Card that want to live and work in other EU countries are obliged to apply for a residence permit (and sometimes a work permit) if they move to these countries. Brazilian and other non-European companies that want to expand their business across Europe and bring their own personnel can contact Russell Advocaten. Through our network of Primerus (migration) Lawyers, we can advise the entrepreneur on the specific requirements for obtaining a work or residence permit in The Netherlands and any other EU Member State.

## BIO

Ynze Kliphuis is a senior lawyer at the Dutch law firm Russell Advocaten B.V. He is an experienced lawyer who serves as outside corporate counsel to Brazilian and other foreign and domestic businesses. He deals with all aspects pertaining to international business immigration, real estate and rent.