

# A1 Payrolling



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## The essence of A1 payrolling

Beverwijk, April 17<sup>th</sup> 2014

Dear reader,

This document covers the essence of A1 Payrolling and will clarify how and when you can use the advantages of A1 Payrolling. By visiting [www.lugera.nl](http://www.lugera.nl), you can download the most underlying documents as well as take an A1 qualification test. Next to the documents on our website, we also offer more confidential pieces, which substantiate and explain even more. As soon as you qualify (by being a client of Lugera or a serious prospective client) these documents will be made available to you.

Lugera guarantees the validity of this information and you may appeal to this information in the context of which it is written and intended.

Lugera was founded in 1996 in Slovakia and mainly payrolls Romanian, Polish and Slovak temporary workers in Romania, Slovakia and Poland, and seconds these temporary workers to, among other locations, the Netherlands. Lugera holds offices in 7 countries with the main offices being located in Trencin, Slovakia and Bucharest, Romania (Lugera is the largest temporary employment agency in Romania and ranks among the top 5 agencies in Slovakia).

A1 Payrolling becomes rewarding during a hiring period of at least 3 months and a maximum of 24 months, and may be repeated after an interruption of two months minimum. In practice, A1 Payrolling is simpler and more cost-effective for both the user company, the Dutch government, the country of residence and also for the temporary worker.

Lugera holds over 14 years of experience with cross-border labour and the very first A1 payroll dates from 2005.

If you have any questions, you can send me an email at any given time. I would be glad to help.

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# A1 Payrolling

## What is A1 Payrolling?

Payrolling (employing) an employee in a random country within the EU and seconding (deploying) this person to another EU country to work.

### The main questions with A1 Payrolling are:

1. Does the foreign temporary employment agency meet all requirements and is there no undesirable structure in place?
2. Do the temporary worker, the deployment of the temporary worker and the nature of temporary staffing meet all requirements?
3. Will an indemnification for recipient's liability apply to you as a user company for A1 Payrolling with a foreign temporary employment agency?



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### Specifically this means:

1. Does the employment agency perform her core and main activities in the country of payrolling? *If yes: A1 payrolling is applied correctly,*
2. Has a Dutch employment agency opened up office abroad and does she provide A1 payrolling for her clients in the Netherlands? *A1 payrolling is not authorised because this is a structure that is not intended for A1 payrolling,*
3. Is the temporary worker, a month before seconding, tied under A1 to the social security system in the country of payrolling? *If yes: the temporary worker may be deployed with an A1 document,*
4. Is the temporary worker not used for replacement of another seconded temporary worker with the same company, under the same supply agreement and for the same job and position? *If so, the temporary worker may be deployed with an A1 form,*
5. Does the gross salary of the temporary worker comply with at least the statutory minimum wage (WML) or the applicable collective labour agreement? *If yes, the foreign temporary worker may be hired into the Netherlands with an A1 form.*
6. Are the daily reimbursement payments subject to payment of wage taxes in the Netherlands and does the salary slip hold extra benefits for travel and accommodation costs, next to the daily reimbursement payment? *If so, the daily reimbursement payment is a part of the statutory minimum wage (or the applicable labour agreement).*
7. Do you pay the foreign employment agency 20% onto her G-account and is it NEN 4400-2 certified? *Then you are 100% exempted from your recipients' liability.*

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## What are the benefits for temporary workers with A1 payrolling?

1. A higher net disposable income (with Lugera) in comparison with payrolling by a Dutch employment agency with the same job and company,
2. A stronger legal position for the temporary worker domestically,
3. No suspension of accruing pension domestically, therefore removing the risk of foreign pension funds who are no longer traceable, or do not issue payments, upon reaching the retirement age,
4. Work experience abroad increases the 'value' of the temporary worker on the job market in his/her home country upon return,
5. The temporary worker will not have his social security suspended domestically.



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## What are the benefits for a user company in the Netherlands using A1 Payrolling with Lugera?

1. Compared to a Dutch employment agency, a lower hourly rate from € 1,- to € 10,- depending on the sector/industry,
2. Lugera is an Eastern-European temporary employment agency and applies lower margins than Dutch employment agencies,
3. Lugera does not maintain expensive offices and personnel in the Netherlands, allowing for lower margins than Dutch employment agencies.





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## What are the benefits for the Dutch State?

The Dutch State only knows revenue in the form of wage taxes, and no costs (in the form of providing access to social facilities). It is estimated that the Netherlands holds some 400.000 foreigners who work in the Netherlands. All of these people, during payrolling in the Netherlands, are entitled to child benefits, unemployment benefits, allowances, etc. The social premiums these individuals pay are by no means enough to account for the social facilities they (can) claim. A1 Payrolling carries a strong, positive financial effect on the state's treasury.



## What are the benefits for the land of deployment?

The home country achieves a positive balance on her trade balance because a substantial part of the earned salaries abroad are sent back to the home country.

## Where do I read about applicable legislation on A1 payrolling?

1. At [www.lugera.nl](http://www.lugera.nl) you can take the A1 qualification test. The 40 questions and their answers will clarify what requirements must be met to guarantee a more than 100% qualification.
2. At [www.lugera.nl](http://www.lugera.nl) you can download the 'Practical guide: the legislation applicable for employees in the European Union (EU), the European Economic Area (EEA) and in Switzerland'. This document goes in-depth about cross-border labor,
3. At [www.lugera.nl](http://www.lugera.nl) you can also download EU regulations on which the practical guide is based: 'EU Regulation concerning the coordination of social security systems 833-2004' and 'EU Regulation for detailed rules of 833-2004 (987-2009)',
4. If you qualify for sending, you can request the following documents with us: 'Our Advisors' about A1 Payrolling and Lugera & Makler Temps SRO', 'Daily reimbursement payment Lugera is part of the statutory minimum wage (WML) by 'Our Advisors', 'Answer Our Advisors about A1 withdrawal March 2014',
5. At [www.lugera.nl](http://www.lugera.nl) you can download 'Indemnification recipients' liability per July 1<sup>st</sup> 2012', published by the Normering Arbeid Foundation ([www.normeringarbeid.nl](http://www.normeringarbeid.nl)).



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## Key points of A1 Payrolling explained

Lugera keeps track of all possible legislation in the countries relevant to Lugera (Netherlands, Slovakia, Poland and Romania) and publishes all new developments on her website. Lugera has performed A1 payrolling and cross-border labor mediation since 2000. Lugera is assisted by renowned advisors, lawyers and international accountant organisations. Lugera also regularly consults the SVB and her foreign colleagues, tax authorities, unions and labour inspections. Next to that, Lugera is NEN 4400-2, ISO 9001 and VCU certified, with all the necessary posting licenses in her home countries as well.

**Summary of the most important points from 'Practical guide: the legislation applicable for employees in the European Union (EU), the European Economic Area (EEA) and in Switzerland' (download at [www.lugera.nl](http://www.lugera.nl)):**

### Main requirements A1 payrolling:

1. The expected duration of the activities do not exceed more than twenty-four months.
2. The involved worker is not deployed as replacement for another.

### Main requirement for employer:

1. The employer must normally perform his activities in a seconding state.

### In-depth requirements the employer must adhere to:

An employer who "normally performs his activities there" infers an employer who normally performs **substantial activities** within the territory of the member wherein the employer is located:

1. The place where the seconding company has her registered and main office;

2. the number of administrative personnel of the seconding company active in a state of seconding and a state of employment; the presence of solely administrative personnel in the seconding state excludes the applicability on the company of the regulations which govern seconding, without question;
3. the place where the seconded employee is recruited;
4. the place where the majority of the company's contracts with her clients are closed;
5. the legislation applicable to the contracts of the seconding company with her clients and employees;
6. the number of contracts having been served in the seconding state and the employment state;
7. the revenue gained during a sufficiently representative period by the seconding company in the seconding state and the employment state (revenue of roughly 25% of total revenue in the seconding state may be classed as sufficient evidence, while instances where the revenue sits below 25% might warrant a more detailed investigation);
8. the length of period a company has been located in the seconding member state.

***Lugera:*** this means that only those employment agencies which carry their origin and a large part of their activities in the country of employment may partake in A1 payrolling. A Dutch employment agency which opens up an office abroad to perform A1 payrolling for her clients in the Netherlands can explicitly not do so.



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There needs to be a direct connection between the seconding company and the seconded employee.

1. responsibility regarding recruitment;
2. it needs to be clear that the employment contract throughout the entire period of secondment was and is binding for the parties involved in the drafting of it and that the contract is a product stemming from negotiations which led to the recruitment;
3. the authority to end the employment contract (dismissal) must remain solely with the seconding company;
4. the seconding company must retain the authority to determine the 'nature' of the activities which are performed by the seconded employee, not in the sense that they must determine the specifics of the task and the manner in which it must be performed, but in a more common sense that the company determines the end product of the task or the base level of service to be performed;
5. the obligation with regards to the employee's wage rests with the company that has closed the employment contract, notwithstanding possible agreements between the employer in a seconding state and the company in an employment state about the manner in which the payments to employee are issued;
6. the authority to take disciplinary measures towards the employee remains with the seconding company.

**Lugera:** *the temporary employment agency must have taken the initiative to recruit and select the temporary worker and must have closed an employment contract with the temporary worker which covers at least the period of secondment to the Netherlands, wherein the employment agency pays the salary and must maintain relations with the employee from the point of view of labor law.*



**The rules for employees who are recruited in one member state, to then be seconded to another**

In compliance with the regulations, an employee who is seconded to another member state is to be connected to the social security system of the state in which his employer is located, immediately before the commencement of his work activities. An employee who has been connected to this system for at least **one month** is deemed to have met this condition.

**Lugera:** *this explicitly means that a temporary worker is not required to have been under contract with the foreign temporary employment agency prior to the secondment abroad.*

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**Conclusions and statements of Our Advisor, the Slovak 'SVB' and the SVB in the Netherlands about replacement** (SVB = Sociale Verzekeringsbank, the state social insurance institution)

**SVB in the Netherlands about replacement:**

*'the term 'replacement' doesn't actually enter the picture in this scenario, as the interruptions (of 2 months minimum) keep leading to a new seconding period and the maximum period of 24 months is never reached.'*

**The Slovak 'SVB' Sociálna poisťovňa about replacement:**

*1) o nahradenie vyslaného zamestnanca ide, ak zamestnávateľ na základe pokračujúcej obchodnej zmluvy opakovane vysielá iného zamestnanca na tú istú pozíciu a na ten istý účel.*

*1) replacement of a seconded employee is seen as the scenario where the employer, based on the current contract, repeatedly sends a different employee for the same position and the same task.*



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**Can the Dutch authorities annul A1 forms as provided by Slovakia?**

*Quote Our Advisor: 'No, based on the Fitzwilliam judgment of the year 2000, the European Court of Justice ruled that the A1-form as issued by the seconding country binds the social security authorities of the hiring country. In other words, the A1 form as given out by the Slovak social security authorities binds the tax authorities/SVB in the Netherlands. The SVB can therefore not annul the Slovak A1 form, but can file a request with the Slovak authorities to re-consider the issuance when there is serious doubt. The Slovaks must then investigate if the A1 has been issued correctly based on the right facts and if necessary, they may withdraw it. As long as the A1 has not been withdrawn or annulled, it is legally valid and the SVB remains tied to this form. Even a Dutch judge may not assess the validity of how the A1 form was issued in Slovakia (Herbosch Kiere judgment of 2006). The SVB will initially pose questions to the Slovak authorities and where need be, request for withdrawal of the A1. When both authorities fail to agree on the facts and/or the re-consideration, the case may be transferred to the Administrative Commission of the European Commission. This party will attempt to find a solution within 6 months. Eventually, legal action may be taken at the European Court of Justice.'*

You can request the entire document with us: 'Answer Our Advisor about A1 withdrawal March 2014'

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## **When are the daily reimbursement payments in Eastern Europe part of the Dutch statutory minimum wage (WML)?**

Do you wish to read the entire document and do you qualify for sending? Then request:

'Daily reimbursement payment Lugera is part of the WML by Our Advisor'

Quote Our Advisor from 'Daily reimbursement payment Lugera is part of the WML by Our Advisor'

*'Lugera has indicated she pays for accommodation of her temporary workers, closes a travel and accident insurance, distributes food packages and covers travel costs. Next to that, she issues a daily reimbursement payment. To answer whether or not the reimbursement payment adheres to the WML, it is important to note if it is issued as a compensation of actual costs tied to the posting, such as travel costs, accommodation costs and food expenses. Now that Lugera has indicated they compensate such costs separately, it is plausible to pose that the daily reimbursement payment covers other costs than the travel, accommodation and food costs. In that case, the daily reimbursement payment is a part of the statutory minimum wage (WML).'*

## **Does the Indemnification Recipients' Liability also apply to A1 payrolling with a foreign temporary employment agency?**

Per 1<sup>st</sup> of July, 2012, it is possible that a user company is exempted from liability for wage taxes and social premiums that are owed by the employment agency. The main conditions here are:

1. The temporary employment agency is NEN4400-1 and/or NEN4400-2 certified; and
2. The user company deposits at least 25% (or 20% if VAT was shifted) of the invoice amount onto the G-account of the employment agency.

The aforementioned makes it clear that in case a user company using the above indemnification scheme bears no financial risk, an A1 form would be withdrawn retroactively afterwards.



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## **From Indemnification Recipients' Liability per July 1st 2012 (Normering Arbeid Foundation)**

**'Indemnification for recipients' liability per the 1<sup>st</sup> of July 2012 with employment agencies bearing the SNA accreditation.**

*The Ministry of Finance, representatives of the temporary employment sector, SNA and various other parties such as VNO-NCW have reached an agreement on the conditions that allow for hirers of temporary workers to be exempted from their recipients' liability. This measure is to be implemented as of July 1<sup>st</sup> forthcoming and allows the market to perform mutual business in an even more reliable and secure manner. This underlines once more the importance of the SNA accreditation.*

*The exemption ensures that a user company of temporary workforce can no longer be held liable for payments of due wage and trade taxes, as long as the following conditions are met:*

- 1. the employment agency must possess the SNA accreditation;*
- 2. the user company is to deposit 25% of the invoice (including VAT) onto the employment agency's G-account. When shifting VAT, this amounts to 20%;*

- 3. the administration of the user company is organised in such a way that data pertaining to the agreement, the size of the liability (man-hour administration) and the payments can be traced back immediately;*
- 4. the user company must be able to demonstrate the seconded employee's identity and, if applicable, demonstrate the employee possesses a valid work or residence permit.'*

A1 Payrolling is not an issue for Lugera clients, as the client will never notice the A1 payrolling. The only specific difference is that the temporary worker receives 2 salary slips. One from the country of payrolling and a Dutch one. The client simply pays her invoices on the Dutch bank account and the Dutch G-account.

# We are Lugera

**Homeland of Talent**

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