

GMS Flash Alert

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Italy – New EU Rules on Posting of Workers Become Part of Italian Law

Italy's government recently introduced legislation¹ implementing Directive 2014/67/EU² concerning secondments of employees in the European Union. With this legislation (in the form of a decree), and the associated administrative procedures, Italy becomes one of the 16 EU member states to implement EU Directive 2014/67/EU, albeit past the June 2016 deadline. Italy's legislation is virtually an exact transposition of the EU Directive with no substantive additions.

WHY THIS MATTERS

The new statutes bring new responsibilities for companies (home and host) posting workers to Italy. There are new notification and other administrative requirements that employers must fulfill.

For example, employers will need to notify the Italian authorities of new assignments at least 24 hours in advance. Another example is the need to translate secondment letters into Italian.

Furthermore, employers may encounter practical problems in reconciling working hours and holidays from foreign pay-slips.

Background

Italy's decree was adopted in July in order to transpose the EU Directive on posted workers into domestic law.

Foreign employers (EU and non-EU) and placement agencies that post employees to Italy are now required to send notice (more on this below) to Italy's Ministry of Labour at least 24 hours before the employee is posted and in the event of any change in the employee's status in Italy or with the company.

Besides the above notification, the decree sets up a joint liability framework so that both the home and host companies can be held liable for violations.

The above decree is applied to:

- companies in a member country that posts workers to Italy; and
- placement agencies in a member country that post workers to Italy;

The provisions clarified in Art. 3, 4, 5, 10, and 11 are also applied to:

- non-EU countries that post workers to Italy.

The Changes in Brief

This legislation and accompanying regulations strengthen checks and controls aimed at avoiding possible unlawful secondment through:

- increased powers of inspection, and
- new disclosure obligations.

The national labour inspection bodies verify the authenticity of the secondment, by checking and controlling the objectives of the secondment activity and the actual business relationship between the home and the host company. If the secondment, based on the assessment, is not genuine, the posted employees will be deemed to be employees of the host company and together with the sending company will be subjected to sanctions.

Notification to the Ministry of Labour

The sending employer must give notice of the secondment to the Ministry of Labour at least 24 hours before the secondment starts and any subsequent changes must be noted within five days of the event. The notification must be sent using a specific form (so-called MODELLO UNI_Distacco_UE) via the Web site of the Ministry of Labour.³ The portal will become operational from 26 December 2016.

Nomination of Representatives

The sending company must nominate a referee, domiciled in Italy, in charge of keeping the secondment documentation (e.g., employment contract, pay-slips, working hours details, employment offer letter, applicable social security details) and a second referee in charge of the communication with the unions, if needed. Documentation must be retained for at least two years from the end of the assignment and secondment letters must be translated into Italian.

Terms and Conditions of Employment

The host company must guarantee equal treatment to its seconded employees and to its other employees working in the same host country. There may be some practical issues in proving working hours or holidays, when these do not have to be shown on the home country pay-slip.

KPMG NOTE

Italian host employers should communicate the new procedures to the home employer and to their global mobility teams. Italian host employers should make sure that there are procedures in place for the timely notification of new assignments and exchange of documentation.

Italian employers posting workers abroad ought to be aware of how the rules apply in other member states.

Because the new rules contain a number of new steps and procedures, it is recommended that employers consult with their qualified immigration and labor law professionals, as well as their global mobility advisers, to assess which employees are covered by the new rules and determine what next steps to take, as well as evaluate to what extent employers' systems and procedures should be modified in order to be compliant.

FOOTNOTES:

1 These new measures are set forth in legislative decree no. 136/2016, published in Italy's official gazette (*Gazzetta Ufficiale*) on 21 July 2016 (and effective starting from 22 July 2016). The administrative procedures were published with a ministerial decree in the official gazette n 252 on 27 October 2016.

- [Decreto Legislativo](#) 17 luglio 2016, n. 136.
- *Decreto 10 agosto 2016 del Ministero del Lavoro e Delle Politiche Sociali Comunicazione preventiva di distacco transnazionale. (16A07698) (GU Serie Generale n.252 del 27-10-2016).*

2 Directive 2014/67/UE of the European Parliament and Council of 15 May 2014 concerning the enforcement of Directive 96/71/CE regarding posted workers and presenting modifications to regulation 1024/2012/UE regarding information exchanges and administrative cooperation on the internal market (*Direttiva 2014/67/UE del Parlamento Europeo e del Consiglio del 15 maggio 2014 concernente l'applicazione della direttiva 96/71/CE relativa al distacco dei lavoratori nell'ambito di una prestazione di servizi e recante modifica del regolamento (UE) n. 1024/2012 relativo alla cooperazione amministrativa attraverso il sistema di informazione del mercato interno («regolamento IMI»*)).

According to the [European Commission for Employment, Social Affairs & Inclusion website](#), the rules on posting of workers are defined in the EU's [Posting of Workers Directive](#) which was approved in 1996. In 2014, the [Enforcement Directive](#) (Directive 2014/67/EU) was approved with the aim of strengthening the practical application of that directive by addressing issues related to fraud, circumvention of rules, and exchange of information between the member states.

The Enforcement Directive was supposed to have been transposed by the member states by 18 June 2016.

3 See the [Ministry of Labour website](#).

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Contact us

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