

# GMS Flash Alert

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## European Union – EU Council Proposes Changes to Posting of Workers Directive

On 23 October 2017, the European Union (EU) Council reached an agreement revising the Posting of Workers Directive.<sup>1</sup> This new proposal adapts certain elements of the original 1996 Directive to foster fair remuneration and a level playing field between posting and local companies in the host country. With this agreement, the Council can start negotiations with the European Parliament.

If the Directive is adopted in its revised form, the labor conditions of the host country will apply to postings longer than 12 months. Further, the term “remuneration” is introduced in the new Directive. Remuneration covers the obligation of the employer to make sure that the employee receives not only the minimum pay of the host country, but additional elements such as supplementary allowances and bonuses.

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### WHY THIS MATTERS

The revised Posting of Workers Directive aims to make further progress in the facilitation of services provision across the EU while respecting fair competition as well as the rights of workers who are employed in one member state and sent by their employer to work temporarily in another (posted workers). The revised Directive will help foster fairer remuneration for posted workers (vis-à-vis their local counterparts) and a more level playing field – e.g., with respect to pay, long-term postings, the application of collective agreements, and the treatment of temporary agency workers – between posting and local companies in the host country.

Posting companies and the “receiving” host companies may need to revise their policies and procedures in light of the changes – when they are finally enacted – to the rules under the Directive.

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## Posting of Workers Directive in Brief

The revised Directive provides for:

- The remuneration of posted workers in accordance with the law and practices of the host member state.
  - The concept of remuneration should include, and not be limited to, all the elements of minimum rates of pay developed by the Court of Justice of the European Union. This includes not only the minimum rates of pay, but also other elements such as reimbursement of travel and accommodation costs, bonuses, or allowances. All of the host country's rules on remuneration, set by law or collective agreements, should apply to posted workers.
- Long-term posting of 12 months that can be extended by six months (18 months in total) on the basis of a "motivated notification" by the service provider.
  - If the posting is longer than 12 months, or is extended to 18 months, all of the host country's labor conditions would apply to posted workers.
- Application of universally applicable collective agreements to posted workers across all sectors.
- Equal treatment of temporary agency workers and local workers.
  - To prevent "chain postings," aimed at circumventing obligations, the new rules would also apply to posted workers sent by a temporary agency from another member state.
- For the transport sector, the revised Directive will apply from the date of entry into force of the forthcoming sector-specific legislation.
- Three years "transposition period" plus one more year before the Directive applies.

## Where Things Stand

The Danish Parliamentary Chamber issued a Reasoned Opinion, stating that the EU Commission proposal for a new Posting of Workers Directive did not comply with the EU principle of subsidiarity. Other EU parliaments followed the same approach, resulting in a "Yellow Card" procedure for the EU Commission, which chose to put forward the proposal as is.

The Directive does not influence the duration of posting in respect of the social security rules laid out in the Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009.

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## KPMG NOTE

Even though the revised Directive has additional hurdles to jump before it becomes EU-wide applicable law and has approximately four years before it must be fully implemented, it is expected that the Directive will significantly change the playing field for businesses in the internal EU market. The revised Directive is expected to reduce the competition from companies from low-pay countries (those individuals who go to work in high-wage countries), among other things. This effect on competition corresponds with the political agendas in some EU countries that are hosting a considerable number of posted workers.

## KPMG NOTE (con'td)

However, the effect of the revised Directive on workers from high-pay countries posted to low-pay countries and from countries with more beneficial labor conditions to countries with less beneficial labor conditions seemingly remains unaddressed.

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## FOOTNOTE:

1 1 Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services.

See the [publication of the proposal](#) by General Secretariat of the Council and [press release from the EU Council](#).

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## Contact us

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