

# GMS Flash Alert

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## Belgium - New Requirements Regarding Postings to Belgium and Notifications in LIMOSA

For new LIMOSA notifications starting 1 October 2017 or later in Belgium, new, additional information should be completed in the online LIMOSA application, as required by Belgian legislation.

Amongst other things, a liaison officer must be appointed through the LIMOSA declaration.

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### WHY THIS MATTERS

To prevent and sanction “social dumping”<sup>1</sup> there is a focus on surveillance and control of the posting conditions and “in country” labour conditions.

The new rules mean – focusing here on one aspect – that non-Belgian employers posting workers to Belgium have to formally appoint and register a contact person who would be the responsible point of contact in Belgium and the liaison with the Belgian authorities. The appointed contact person, at the request of the authorities, must be able to provide documents connected to the posting until one year after the end of the posting.

Companies posting employees to Belgium, prior to posting those employees, should make provisions for:

- obtaining the required additional information, and
- meeting their documentation obligations.

Responsibilities regarding the collection and provision of social documents should be made clear to the authorized liaison officer.

## Background

The Act of 11 December 2016 regarding the secondment of employees<sup>2</sup> implemented the EU's Enforcement Directive 2014/67/EU<sup>3</sup> into Belgian law.

The Act entered into force on 30 December 2016, and introduced employment measures and obligations for employers assigning employees to or from Belgium, within the European Economic Area (EEA) and Switzerland. The Act provides for various clarifications – for example, regarding the notion of “posting” and “substantial activity in the home country.” Furthermore, the Act stipulated sanctions, in cross-border situations, for cases of non-compliance with the national posting regulations in another EU member state.

Finally, the Belgian Royal Decree of 14 September 2017,<sup>4</sup> which entered into force on 1 October 2017, established new notification requirements for postings using the online LIMOSA notification tool.

## Changes Regarding the LIMOSA Notification

There are three important changes in the online LIMOSA notification tool.

(1) In order to prevent and sanction social dumping in the construction work sector, clear information delivery and control of labour conditions are necessary. In this respect, the LIMOSA notification foresees an additional information request related to the employee's salary package for posted workers in the construction work sector.

(2) Furthermore, fair competition amongst temporary work agencies is proposed. When posting workers to Belgium via a temporary work agency, the official registration number of any non-Belgian temporary work agency has to be reported via the LIMOSA notification tool.

(3) Finally, a liaison officer is to be identified who is in charge of liaising with the Belgian inspection authorities – this applies to all sectors. By introducing the requirement of the appointment of a liaison officer, the Belgian authorities now can have a single point of contact who will provide them with the requested documentation and information relating to the posted employees and their working conditions.

### Liaison Officers and Collection of Social Documents

The liaison officer is the employer's contact person with the Belgian inspection authorities. The liaison officer can be any physical person authorized by the posting company to fulfill the information obligations vis-à-vis the Belgian inspection authorities (when requested by the latter). The officer does not have to be domiciled or residing in Belgium, (this is different compared to other EU member states).

The liaison officer must be appointed through the LIMOSA notification tool. The following details about the liaison officer must be recorded in the online LIMOSA application: (i) Surname, first name, and date of birth (if the liaison officer has a Belgian identification social security number, this number suffices); (ii) the capacity in which the liaison officer operates; and (iii) the physical and electronic addresses, as well as a phone number, at which the liaison officer can be contacted by the authorities.

The responsibilities of the liaison officer are:

- to maintain the mandatory (on paper or electronic format) social documents, and
- to provide these documents on the request of the Belgian social inspection authorities in order to allow them to verify compliance with Belgian working conditions.

More specifically, the liaison officer must have the following social documents available with respect to the posted employees:

- A copy of the signed employment agreement of the posted worker or any similar documents;
- Diverse information regarding the conditions of the posting (e.g., duration of the posting, foreign salary and benefits-in-kind as paid during the posting, conditions of repatriation of the seconded employee, etc.);
- An overview of the working hours (daily/weekly working time, etc.);
- The proof of effective payment of the salaries.

The employer and liaison officer have to archive these documents until one year after the end of the posting.

On the explicit request of the Belgian inspection authorities, the employer is obliged to translate these documents into Dutch, French, German, or English.

In case no liaison officer is appointed or in case the liaison officer does not or cannot fulfill his obligations towards the Belgian inspection authorities, the non-Belgian employer posting employees to Belgium can be sanctioned with a fine ranging between EUR 200 and EUR 4,000.

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## KPMG NOTE: Action Steps to Consider

All foreign employers who are posting an employee for whom a LIMOSA declaration is required must verify whether their posting process is in line with the new legislation and may need to adjust their procedures where appropriate. Specific attention should be paid to the obligation to designate a liaison officer; foreign employers who post employees to Belgium must appoint a contact person who will be the liaison with the Belgian inspection authorities (if required) and must provide to this liaison officer any mandatory social documents.

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## FOOTNOTES:

1 Free movement of workers is a fundamental principle of the internal market of the European Union (EU). Inevitably, there are differences between member states in terms of labour and social security standards, both direct and indirect, so in cases of international employment it is important to determine which legislation is applicable. In principle, the terms and conditions of employment are those of the member state where the work is carried out. However, under certain conditions, when a worker is posted and, for a limited period, carries out his work in the territory of a member state other than the state in which he normally works, he remains subject to the legislation of the sending state (so the member state in which he normally works). In the context of posting of workers, one of the consequences of the differences in legislation between the member states is that the threat of “**social dumping**” is raised. **Social dumping** is the phenomenon where companies based in countries with comparatively lower costs intentionally abuse practices and circumvent existing European and national legislation (including laws and universally applicable collective agreements), to enable unfair competition by unlawfully minimising labour and operation costs, which leads to violations of workers' rights and exploitation of workers.

## FOOTNOTES (cont'd):

2 The act of 11 December 2016 concerning several provisions of secondment of employees (*La loi du 11 décembre 2016 portant diverses dispositions concernant le détachement de travailleurs* (Moniteur Belge, 20.12.2016)). For a 20 December 2016 news release (in French) on the website for the *Service public fédéral Emploi, Travail et Concertation sociale*, [click here](#).

3 The directive 2014/67/EU of 15 May of 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative co-operation through the Internal Market Information System ("the IMI Regulation").

4 Royal Decree of 14 September 2017 to amend the Royal Decree of 20 March 2017 in execution of Chapter 8 of Title iV of Programme Act of 27 December 2006 (*Arrêté royal modifiant l'arrêté royal du 20 mars 2007 pris en exécution du Chapitre 8 du Titre IV de la loi-programme du 27 décembre 2006*). For the text (in French) see the *Moniteur Belge* of 20 September 2017 online, [click here](#).

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## Contact us

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