



# GMS Flash Alert

## Employment Law

2021-080 | March 11, 2021



# European Union – Registration Obligation of Workers Posted to the EU

We are seeing an increasing number of U.S. companies – and those from other non-European Union (EU) countries – not in compliance with the registration rules emanating from the EU's Posted Worker Directive.

EU member states require a mandatory registration of posted workers in their respective national registration systems. The registration obligation for posted workers applies to the EU companies posting workers to another EU country, but most EU member states similarly oblige companies established outside the EU when posting employees to their country.

This *GMS Flash Alert* aims to raise awareness of the obligations for U.S. companies and other non-EU companies to fulfill this registration requirement and how they can fulfil it.

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## WHY THIS MATTERS

Many companies established in non-EU countries are not aware of the requirement to register workers posted to an EU country. The requirement to register posted workers is not an integral part of the immigration/visa process because the requirement to register posted workers stems from employment law and not from immigration law.

Any failure to comply with the registration obligation of posted workers can lead to sanctions, substantial financial fines, and reputational damage. Each EU member state sets its own sanctions and financial fines for non-compliance with the registration obligation.

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## Context

The EU has adopted different legislative instruments in order to protect posted workers and promote a level

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playing field between the EU member states regarding the conditions and rights for employment.

One such instrument implemented in each EU member state is the mandatory registration of posted workers in the host EU member state.<sup>1</sup> Even though the system for the mandatory registration of posted workers stems from EU legislation<sup>2</sup>, the majority of EU member states have the same requirement to register posted workers when companies in a non-EU country send their workers on a temporary assignment to their country<sup>3</sup>.

This means that if, for example, a U.S. company sends a worker to Sweden for one year, this posting must be registered in the local registration system for posted workers.

## **Worth Knowing about Registration of Workers Posted to EU<sup>4</sup>**

As earlier noted, the process for registration of posted workers is not a part of the immigration process. The registration of posted workers is linked to employment law and the EU's legislation for conditions and rights for employment of posted workers who provide services in other EU member states. The registration applies across business sectors.

### *Highlights*

- A posted worker is a person who is temporarily sent to an EU member state to deliver services.
- Registration must be completed before the work in the host EU member state is commenced.
- Registration requires, typically, information about the home and host companies, the person him-/herself, duration of work, a point of contact in the host EU member state, etc.
- Registration requires collation and retention of documentation, for example, the employment contract, assignment letter, pay-slips, certificate of social security coverage, etc.

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## **KPMG NOTE**

Companies established outside the 27 EU member states should note that when they send people to work in the EU, an immigration/visa process and a certificate for social security coverage are not enough to complete their compliance requirement. Most of the EU member states require that workers posted to their respective countries from a non-EU country register in the same system as the workers posted from other EU member states.

Some non-EU companies have encountered a recommendation to register in countries that are not listed as countries that require a registration for workers posted from a non-EU country.<sup>5</sup> In such case, companies are advised to seek a second opinion.

If a worker posted from a non-EU country is registered in a country that is not listed as one requiring a registration, such registration will not be sanctioned or fined. However, if a worker is posted from a non-EU country to one of the countries that requires a registration of any workers posted from a non-EU country, and that worker is not registered, such non-compliance can be sanctioned and fined.

Regardless of whether the employee compliance is handled internally in the company or with assistance from external advisers, it is important that companies posting from outside the EU to the EU make sure that they take all relevant aspects of employee compliance into account.

## FOOTNOTES:

1 EU Commission's website that contains links to the sites in each of the 27 EU member states: [National Websites on Posting](#).

2 Full text: [Directive 2014/67/EU on the enforcement of the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#).

3 Various KPMG International member firms have obtained information from local administrations (at the end of 2020) by means of surveys, emails, and phone calls with public officials in those administrations and determined that the following countries require registration of workers posted from a non-EU country: Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Poland, and Sweden. (This step was highlighted in our 21 October 2020 Tax Watch webcast referred to in footnote 4.)

Companies posting workers from Norway, Iceland, Liechtenstein, and Switzerland to Austria should be aware that they are treated equally to an EU company and must register posted workers there.

4 The second half of the KPMG Tax Watch recording of 21 October 2020 deals with the registration obligation for companies posting from a non-EU country to an EU member state: "[European legislative updates and the global mobility considerations for companies outside the EU](#)."

5 See footnote 3.

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## Contact us

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