



GMS Flash Alert

Employment Law

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European Union – Call to 24 Countries to Comply with Rules on Posting

The European Commission sent letters of formal notice to 24 EU member states¹ on 15 July 2021, requesting that they comply with the EU Directive on the enforcement of the rules in the EU Directive for posting of workers (“Enforcement Directive”).² The Enforcement Directive aims to strengthen the practical application of the rules on posting of workers through administrative requirements such as the registration obligation of posted workers, the setting of proportionate fines and sanctions for non-compliance, giving access to information, cooperation between member states, and more.

WHY THIS MATTERS

The implementation and enforcement of rules on posting of workers vary from country. At the end of the EU Commission’s procedure, it is reasonable to expect that the EU member states will implement changes to their measures regulating the rules on posting, introduce new requirements and, in general, step up the enforcement, auditing, and monitoring of the rules for posted workers.

Letters of Formal Notice

The Enforcement Directive was due to be transposed by the EU member states into national legislation by 18 June 2016. Only three EU member states appear to have done it as required: Spain, Portugal, and Sweden.³ The rest of the EU member states have in some way failed to implement and enforce the rules on posting of workers.

The letters of formal notice are the second stage of the official infringement procedure outlined in article 258 of the Treaty on the Functioning of the European Union. This means that after the first stage of informal discussions, the EU Commission found that 24 member states are breaching the rules and that there is sufficient evidence to back that up.

Now, the member states that have received the letters of formal notice have two months to make necessary improvements and corrections. Should any of the member states fail to make necessary improvements, the EU Commission will issue reasoned opinions and, following that, can eventually refer the cases to the European Court of Justice.

KPMG NOTE

The EU Commission pointed out in its report from 2019 that member states should be supported in the implementation of the rules for posted workers, especially in connection to administration, control measures, and subcontracting liability.⁴ There have been cases before the European Court of Justice revealing how some countries found that a prison sentence for non-compliance was a proportionate sanction.⁵ These experiences testify that many member states struggle to implement the rules appropriately, only adding to an already heavy burden that employers carry having to comply with such a complex set of rules.

It is not expected that all 24 member states will end up before the European Court of Justice; but it is reasonable to expect that some – if not all – member states will invest more resources in this directive and its implementation, and, consequently, why employers should stay apprised and compliant.

The protection of posted workers is a priority on the political agenda in many EU countries and non-compliance with the rules on posted workers continues to present a high financial risk as well as potential reputational damage to employers.

The newly-established European Labour Authority (ELA) is focused on the enforcement of the EU rules on labour mobility. ELA's activities and the letters of formal notice will undoubtedly put focus on (i) the enforcement of and (ii) compliance with the rules on posting of workers (and social security) nationally and on the EU level. (For prior coverage, see [GMS Flash Alert 2019-105](#), 18 June 2019.)

FOOTNOTES:

1 EU Commission, "[July infringements package: key decisions](#)," (15 July 2021).

2 Full text [EU Directive 2014/67 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#), (15 May 2014).

3 See footnote 1.

4 European Commission, "[Report on the application and implementation of Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers](#)," (25 September 2019). For prior coverage of posted workers directive matters, see [GMS Flash Alert 2020-329](#) (27 July 2020).

5 See [GMS Flash Alert 2019-150](#) (1 October 2019).

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