



GMS Flash Alert

Employment Law

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European Union – Strategy for Economy Sparks New Methods Around Posted Workers

Feedback has been provided by public stakeholders concerning the European Union’s efforts – as outlined in a European Commission report – to orient Europe’s economy to a green and digital future.

In May 2021, the European Commission updated its communication about the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery.¹ The communication lays out a plan for how the EU’s world-leading industry can lead the transition into a green and digital future.

On the road to achieving such a transition, the Commission has been analysing economic developments and competitiveness, among other things. In this context, the Commission received feedback from public stakeholders about the current state of affairs and what can be achieved, and how, in terms of promoting green and digital efforts now and in the future. According to the Commission, the feedback from stakeholders has stressed, amongst other things, administrative difficulties regarding compliance in the field of posted workers.

Among one of the solutions intended to address such difficulties, the Commission is planning to work with the EU member states to produce a common electronic form for the notification of posted workers. The form is expected to be devised in the first quarter of 2022 and it will be voluntary.² In this situation, “voluntary” means the EU member states can choose to replace their registration with the common EU form or keep their current registration form as is.

WHY THIS MATTERS

A common set of minimal standard data applied across the EU presented in the same format would considerably ease the administrative burdens experienced by companies registering posted workers in the host country. If EU member states adopt a common format for the registration of posted workers, companies registering posted workers would be able to more easily attain full compliance and do so with greater efficiency, which is of the utmost importance because

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WHY THIS MATTERS continued

workers must be registered before their commencement of work in the host country. However, it should be noted that at this stage, even if a common form is developed, the requirements for registration will still vary according to the policies in each member state. Having said that, if the member states use a common form, as indicated above, this would have the effect of setting a minimum common standard for information required that would be presented in the same order in every member state, plus it would introduce a level of familiarity/recognition so that the users can recognise the form regardless of which member states they are registering in.

Background – Diversity of Practices and Policies Across the EU

When an employer posts a worker to another EU member state to deliver services there temporarily, the employer must register the posted worker in the host country in addition to complying with employment law. It is a requirement that posted workers be registered and also that registration be completed before the commencement of work in the host country – the aforementioned requirements derive from an EU Directive.³

Every EU member state has implemented its own registration system and this has resulted in significant variations in how user-friendly each system is and how much information and documentation are required for each registration.

Some systems are fully digital, and they are connected to databases, which make the registration process less burdensome as compared with systems that operate manually, e.g., with forms in pdf. format that must be filed through an e-mail.

In addition to technical differences between the registration systems, the “lining up” of the data fields varies too. For instance, standard information about employer, employee, and host company is presented in various combinations, in various detail, and at different times in the registration process. This can create disruptions for the registering party that may have to sort through different documents repeatedly in order to find the requested information.

Furthermore, the registration obligation has a strict deadline; it must be completed before the commencement of work in the host country.

Sanctions for non-compliance with the registration obligation include financial fines. Reputational damage is also a risk. Each EU member state is responsible for setting and enforcing its own sanctions for non-compliance. So different non-compliance outcomes are met with different sanctions depending on the member state.

KPMG NOTE

To be compliant with the EU directives on posting of workers, employers must:

- fulfill their obligations under the employment law in effect in the competent country, e.g., working hours, remuneration, cost of travel and lodging, and
- carry out their registration obligation.

If the employer duly registers a posted worker in the host country but does not complying with remuneration requirements in the host country, the employer is not compliant with the rules on posting of workers and, consequently, can be sanctioned.

If (most) EU member states build their systems for registration of posted workers according to a similar set of

KPMG NOTE continued

minimal standards, it could possibly diminish the current level of complexity and risks around non-compliance.

However, something to take on board regarding the willingness of EU member states to alter their systems might be the costs associated with such alteration and how each country would react to those costs. Also, something to consider is whether some countries – but not others – are already in the process of updating their systems. For example, it can be expected that member states that are currently working on digitising or in any way upgrading their registration systems, would be more open to opting for a common electronic form for the notification of posted workers, while countries that do not have any current plans on changing the system might be less likely to opt for a common form. Regardless of how many member states opt for a common form, with a common set of data, national variations in the registration system will remain – but at least one step forward would be taken towards reducing administrative burdens.

Lastly, it should be noted that if this or any other complexity is to be simplified or modernised it is important that companies engage in a dialogue with their unions, national authorities, and the EU Commission. If you are in doubt how best to contribute to solving or changing a compliance procedure you can reach out to your adviser and outline your options for action.

FOOTNOTES:

- 1 European Commission: Updating the 2020 New Industrial Strategy: [Building a Stronger Single Market for Europe's Recovery](#), Brussels, 5 May 2021, COM (2021) 350 final.
- 2 European Commission: Updating the 2020 New Industrial Strategy: [Building a Stronger Single Market for Europe's Recovery](#), Brussels, 5 May 2021, COM (2021) 350 final, pp. 8-10.
- 3 The European Parliament and the Council of the European Union: [Directive 2014/67/EU 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 cooperation through the IMI Regulation](#), 15 May 2014.

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Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or the following professional with the KPMG International member firm in The Netherlands:



Daida Hadzic
EMA Head of Quality
Tel. +31 6 532 54 599 (m)
Hadzic.daida@kpmg.com

* Please note that KPMG LLP (U.S.) does not offer legal services.

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