



GMS Flash Alert

Employment Law

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European Union - Registration of Posting: 17 Countries Urged to Comply with Rules

Seventeen European Union (EU) member countries have two months to take action with respect to reasoned opinions sent them by the EU Commission in January 2023 about a lack of compliance regarding the registration systems for posted workers under EU law. Otherwise, the Commission will open a proceeding against each country before the Court of Justice of the European Union (CJEU).

In 2021, the European Commission (hereinafter “EU Commission”) called on 24¹ of in total 27 EU member states to adjust their individual systems for mandatory registration of posted workers so that they comply with the relevant EU legislation.²

Since then, the EU Commission has tried to urge the member states in question to comply. However, in January 2023, the EU Commission sent a reasoned opinion to each of the 17 countries³ that are still not complying with the requirements for changes in their registration systems.

WHY THIS MATTERS

There is not yet a final decision concerning whether the registration systems in the 17 countries are compliant with the EU legislation. It is therefore important that employers continue to duly register posted workers in all EU countries, irrespective of this procedure underway between the EU Commission and the 17 countries in question.

If the countries choose to comply with the EU Commission’s requirements within the next two months, this will eventually result in changes in the registration systems themselves. If the matters are not resolved, the cases will go before the CJEU and if the Court rules against the countries in question, the changes to their registration systems will also take place following such decision.

It is very important that employers do not stop duly registering posted workers at any point, because regardless of the outcome in this matter, the registration obligation will not be suspended and non-compliance from employers will result in fines and sanctions.

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Context

The requirement for mandatory registration of posted workers derives from EU legislation (see footnote 2). However, the implementation of this legislation is at the discretion of each EU member state. Each one has devised its own system for registration, which has resulted in significant variations in requirements for registration of posted workers from country to country. This can be confusing and challenging; especially for employers that post workers to several EU countries, it brings additional costs and burdens.

Despite this procedure, the obligation to duly register posted workers persists and it is not suspended. If the EU Commission is successful in its claims of non-compliance, the registration systems would be obligated to undergo changes. It should be clearly understood that even if the mandatory registration of posted workers under the new EU rules is not adhered to, the registration obligation still stands.

KPMG INSIGHTS

According to informal and unconfirmed information, the claims about non-compliance appear to vary in their character and substance from country to country. In general, the objections appear to centre around the assertion that some registration systems are too extensive in their requirements for information and documentation – requirements that go beyond what is sufficient to establish compliance with the rules on posted workers. On the other side of the spectrum, it appears that some objections concern wording in certain fields in a registration system that is not aligned with the relevant legal text. For example, in the EU legislation it is described that one must complete a registration for a posted worker at the commencement of the posting, but in some registration systems this is worded in a way that one must complete the registration before the posting is commenced. This discrepancy can create situations where an employer becomes non-compliant.

It is important that employers understand that these procedures are not aimed at, nor can they result in, the suspension of the rules for posted workers, including the mandatory registration, which must be duly completed.

Failing a satisfactory response to the reasoned opinions sent, if the EU Commission is successful in its pursuit now or before the CJEU should these cases go further, the result will be changes to the existing (currently non-compliant) systems. Nonetheless, the systems for registration of posted workers will continue to exist.

FOOTNOTES:

1 See [GMS Flash Alert 2021-227](#) (1 September 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 European Commission, [January Infringements package: key decisions](#), chapter 10, 26 January 2023. The 17 EU member states that have received reasoned opinions from the EU Commission are: Belgium, Bulgaria, Czechia, Denmark, Germany, Ireland, France, Italy, Hungary, Malta, Netherlands, Austria, Poland, Romania, Slovenia, Slovakia, and Finland.

Contact us

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