



# GMS Flash Alert

## Employment Law

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# Poland – Posted Employees’ Remuneration and Documentation Obligations for Lorry Drivers

On 1 August 2023, Poland’s Supreme Administrative Court delivered judgment in the case II FSK 270/21 relating to a company posting employees in other European Union (EU) countries under memoranda of understanding (annexes) to employment contracts, which temporarily changed the employees’ place of work.<sup>1</sup>

Also, in a separate matter, on 31 July 2023, Poland’s president signed the Act of 28 July 2023 on posting drivers in road transport into the law.<sup>2</sup> The provisions brought by the Act are in line with Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector, and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012.

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### WHY THIS MATTERS

Employers should have greater clarity about how remuneration – particularly costs of travel and accommodation – of employees being posted for short periods of time in the EU by Polish companies should be treated and aligned with EU directives.

With respect to the new Act, employers that send lorry drivers to work in Poland need to adhere to the documentation requirements so as to be timely and compliant.

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## Personal Income Tax (PIT) on Travel and Accommodation Provided to Posted Workers in Light of EU Law

According to the Court, employees subject to short-time posting by the Polish company should be treated, in principle, in line with the provisions of Directive 96/71/EC and Directive 2014/67/EC concerning the method of reimbursements for posted workers. The aforementioned Directives clearly indicate that the costs of travel and accommodation cannot be treated as constituent parts of the employee's remuneration. This results from the provisions of existing EU regulations, which in the hierarchy of sources of law take precedence over national provisions.

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### KPMG INSIGHTS

Since EU law clearly provides that such costs of travel and accommodation cannot be viewed as components of remuneration, they cannot be charged to the employee and – indirectly – to the company as the remitter under the tax law.

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## Act on Posting of Drivers in Road Transport Signed by President into Law

According to the Act, the key requirement for road transport operators posting drivers to Poland, apart from making sure proper conditions of employment are adhered to, is to submit a posting declaration to the competent authorities at the latest upon the commencement of the posting and to help ensure that the driver has at his or her disposal all the relevant documents in paper or electronic form.

For prior coverage of EU moves regarding road transport workers, see the following issues of *GMS Flash Alert*: [2023-053](#) (10 March 2023) and [2021-076](#) (8 March 2021).

The essential part of the new provisions is to enter into force 14 days after publication of the act in the Polish Journal of Laws (*Dziennik Ustaw*).

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### KPMG INSIGHTS

Drivers working in international road transport are subject to the EU Directive on posting of workers. This new Polish Act follows on moves in the EU to set and clarify rules concerning lorry drivers in international transport and the concept of posted workers.

Failure to comply with these requirements is a failure to comply with labour law and can lead to sanctions and financial fines.

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## FOOTNOTES:

1 *Naczelny Sąd Administracyjny, akt: II FSK 270/21, 1 sierpnia 2023.*

2 Text of the legislation is available on the website of the Polish Sejm, *Ustawa, z dnia 28 lipca 2023 r.o delegowaniu kierowców w transporcie drogowym* at: [https://orka.sejm.gov.pl/proc9.nsf/ustawy/3320\\_u.htm](https://orka.sejm.gov.pl/proc9.nsf/ustawy/3320_u.htm) .

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## RELATED RESOURCE:

This article is excerpted, with permission, from "[KPMG Weekly Tax Review](#)" (31 JUL - 07 AUG 2023), an online publication of the KPMG International member firm in Poland.

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