

GMS Flash Alert

Employment Law

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European Union – Focus on Enforcement of Rules for Posted Workers

On 30 April 2024, the European Commission published a report about the implementation of the rules for posting of workers¹ and an accompanying document.² They provide insight into the ways in which national authorities across the European Union (EU) have implemented the rules for posted workers.

The European Commission identifies several areas in respect of local implementation of the rules that need more focus, including monitoring and enforcement of the rules (e.g., inspections, campaigns, etc.).

The Rules for posting of workers will not be subject to amendments any time soon and the focus will therefore be put on improving implementation and enforcement of the current rules.

WHY THIS MATTERS

Obligations to comply with the rules for posted workers in the EU are exclusively the employer's responsibility. Employers must provide certain terms and conditions for employment according to the rules in the host country during the posting and employers must register all their posted workers in the host country before commencement of work.

Failure to comply with the rules for posted workers carries significant financial and reputational risk, and it can lead to imprisonment. The report about the implementation of the rules for posted workers shows that local and EU authorities will continue to focus on the enforcement of current rules, as the protection of rights for posted workers is at the very core of the free movement of people and freedom to provide services in the EU Single Market.

Employers and employees should become familiar with the rules and take appropriate steps to be in compliance.

Report about Implementation of Rules for Posted Workers: Highlights

Third-Country Nationals

Posting of workers within and to the EU who carry non-EU citizenship has been on a steep increase during last couple of years.³ It is expected that the increase of posted third-country nationals will continue as an important intra-EU mobility channel that is driven by labour and skills shortages across the EU.⁴

Research has shown that third-country nationals are generally more exposed to abusive practices, including fraudulent posting, labour rights violations, and lack of payment of social security contributions; in addition, they are also less inclined to report breaches of rights as they depend on the employer to renew their residence/work permits.⁵

Further, third-country nationals may not be aware of their rights due to language and cultural barriers, and employers may face difficulties finding relevant information about the rules that apply to them when they post third-country nationals to another EU member state.⁶

When a worker is posted from one EU member state to work temporarily in another EU member state, the posting is governed by the same rules irrespective of the worker's citizenship.

However, employer organisations report that it is necessary to highlight that the rules for posting also apply to third-country nationals.⁷ This observation stands in contrast to a survey done by the EU Commission in which local authorities responded that they saw no necessity to adopt specific measures related to postings of third-country nationals.⁸

In conclusion, the EU Commission calls for EU member states to provide better access to information about labour rights specifically focused on posted third-country nationals, including information on national websites, flyers in more than one language, creating a helpline, etc.

The EU Commission calls for regular exchanges of information between member states about posted third-country nationals, including information from immigration authorities.

Lastly, the EU Commission calls for more and better **enforcement of rules for posted workers** – work that is already supported by the European Labour Authority.

Posting through a Temp Agency

A “double” or “chain” posting describes a situation where a worker is recruited by a temp agency and hired out to perform work for a host company, and the host company then posts the worker temporarily to another EU member state. The temp agency and host company can be established in the same EU member state or in different EU member states. Rules that govern the posting of workers apply in both instances.

When the host company posts a worker, that host company is obliged to inform the temp agency, as the temp agency is responsible for complying with the rules on posting of workers.

Employer organisations and temp agencies point out that complexity in the legal framework for posting by temp agencies may lead to non-compliance. It was also emphasised that companies may not have resources to gain access to information about postings in the host country.⁹

In conclusion, the EU Commission highlights that even though EU member states have transposed rules on posting of workers into their national legislation, the requirements for compliance with the rules may not always be clearly communicated to the parties subject to those rules.

The EU Commission calls for the European Labour Authority and EU member states to collaborate on making rules for posting of workers through temp agencies more accessible and transparent. Such efforts should also include support to labour inspectorates in the field.

Subcontracting

The report identifies several challenges regarding posted workers in subcontracting chains. These challenges relate to insufficient transparency and liability in subcontracting chains.¹⁰

In conclusion, the EU Commission calls for further analysis regarding subcontracting liability that could lead to more stringent rules at the national level about the scope of subcontracting liability (i.e., imposing full chain liability, extending liability to other terms and conditions of employment).¹¹

Monitoring, Control, and Enforcement

Labour inspectorates play a central role in enforcing compliance with the rules for posted workers. Additionally, the European Labour Authority coordinates and supports joint inspections conducted by labour inspectorates from several countries. In 2022, 35 such joint inspections were coordinated by the European Labour Authority.¹²

Sanctions for non-compliance with the rules (terms and conditions for employment) and administrative requirements (registration) for posted workers occur according to national rules, and include the suspension or prohibition of services, suspension of payments to the posting company or temp agency, prohibition on being an active company, and closure of the company or exclusion from the award of public contracts.¹³

The amount of fines for non-compliance with the rules and requirements for posted workers differs between EU member states. Fines can range from a maximum amount of EUR 1,100 to EUR 500,000.¹⁴

In conclusion, the EU Commission finds it is not possible at this time to assess if the fines for non-compliance with the rules and requirements for posted workers are effective, proportionate, and dissuasive in every EU member state. However, the EU Commission finds that labour inspection activity should increase.¹⁵

MEIJBURG & CO. INSIGHTS

The report by the EU Commission that outlines how EU member states have implemented EU directives for the posting of workers serves as a platform to identify challenges and prioritise efforts on the local and EU levels that are aimed at improving compliance with the rules and requirements.

First, we can conclude that rules for the posting of workers, including the registration obligation, are not set to be amended any time soon. This means that efforts by local authorities and EU institutions will be focused on improving transparency and enforcement of current rules and administrative requirements for posted workers.

Second, the EU Commission emphasises third-country nationals as a particular point of attention for local authorities and EU institutions. Third-country nationals are well represented in the statistics for posted workers, a development that is expected to continue in the future, and for various reasons third-country nationals are described as a particularly vulnerable group of posted workers and authorities should prioritise protection of their rights. On the one hand, local authorities and the European Labour Authority are urged to work on providing information about postings that is aimed at third-country nationals, and on the other, authorities should strengthen their inspection of posted workers.

Further, the report has identified significant challenges with posted workers in subcontracting and it is therefore expected that this issue will be further analysed and evaluated in future. The same focus will likely be given to postings through temp agencies.

The report has also identified seemingly easily-resolved challenges such as local authorities including information about long-term postings (postings over 12 months) and information on their national websites for posted workers about postings whose terms and conditions for employment are more advantageous in the home country.

FOOTNOTES:

- 1 European Commission: [Report on the application and implementation of Directive \(EU\) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#), 30 April 2024.
- 2 European Commission: [Commission Staff Working Document Accompanying the document Report on the application and implementation of Directive \(EU\) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#), 30 April 2024.
- 3 [GMS Flash Alert 2024-062](#), 18 March 2024.
- 4 European Labour Authority: [Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals](#), February 2023.
- 5 Ibid. point 3.
- 6 Ibid.
- 7 See footnote 2, point 5.1.
- 8 Ibid., point 5.2.
- 9 Ibid., point 3.1.1.4.6.2.
- 10 Ibid., point 4.
- 11 Ibid., 6.8.
- 12 Ibid. point 3.1.1.6.
- 13 Ibid.
- 14 Ibid.
- 15 Ibid.

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