

BACKGROUND

EUROPE

EU ENFORCEMENT DIRECTIVE ON POSTED WORKERS 2014/67/EU

As EU member states implement a 2014 directive on posted workers, companies are facing new compliance challenges when sending workers on temporary assignments throughout Europe. New regulations require companies to provide notice to host countries before an assignment begins and impose new document-retention requirements. The regulations can be particularly difficult to fulfill when companies do not have a human resources presence in the host country.

BAL is working to make the process as easy as possible and has developed this BAL Backgrounder to provide an overview of the EU directive, identify considerations companies must make when sending employees on temporary assignment and examine some of the variances in how the directive has been implemented in different EU member states.

EU ENFORCEMENT DIRECTIVE ON POSTED WORKERS

Background

The EU's regulatory framework for "posted workers" allows service workers to move within Europe to complete temporary assignments without having to obtain work authorization—while remaining on the payroll of the company in the sending country. The EU defines a posted worker as "an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis."

EU law establishes rules for posted workers that are aimed at (1) guaranteeing that baseline working conditions are maintained throughout the EU and (2) preventing "social dumping," where foreign workers undercut a host country's workforce because they have lower working standards. The Posting of Workers Directive, approved in 1996, is the primary directive establishing the regulatory framework for posted workers in Europe.

In 2014, however, the EU adopted an Enforcement Directive on Posted Workers, aimed at helping prevent fraud and circumvention of established rules and at facilitating communication between host and sending countries.

This directive is distinct from the EU's Intra Corporate Transfer (ICT) Directive, which has also been implemented by many EU countries recently. While ICT transfers will often require declaration under the posted workers directive, not all posted workers will hold ICT permits. The posted worker directive, with some exceptions, generally applies to all activities carried out by posted workers or workers on assignment, whether or not they hold an ICT permit. It also applies to both EU/EEA nationals and non-EU/EEA nationals, unlike the ICT directive.

Requirements

The EU required member states to implement the Enforcement Directive by June of 2016 and most have either adopted new regulations or are in the process of doing so.

The directive establishes a framework for member states to adopt procedures for companies to provide notice that they are sending posted workers on temporary assignment. In most countries (though not all), notification is required for companies both inside and outside the EU. Notification procedures vary from country to country, as detailed below and in Appendix 1.

The directive also provides for member states to set up document-retention requirements, including requirements that host companies retain copies of the employment contract and, in many cases, payslips, time sheets and other documents. Countries are also requiring companies to appoint a representative in the host country who can make documents available for inspection by authorities.

What Employers Should Know

Employers must be sure they are complying with regulations promulgated by member states under the EU directive.

This means identifying notification and documentation requirements and, in most cases, appointing a representative in the host country to act as a liaison between the company and local authorities, a

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requirement that can be cumbersome for companies without a human resource presence in the host country. It may also mean providing notification and meeting documentation requirements not only for new postings, but also for workers on assignment as of the date on which new regulations take effect.

While the new regulations may be burdensome, the consequences of noncompliance may include fines and other administrative penalties. Companies should be sure to comply with the new regulations in order to avoid adverse immigration consequences down the line.

MEMBER STATE IMPLEMENTATION

The regulations that member states have adopted are not completely uniform, making compliance all the more complicated. Implementation dates vary. New regulations took effect in late 2016 or early 2017 in many countries (e.g., Belgium, France, the Netherlands), but have yet to take effect in others (e.g., Finland, Portugal, Slovenia). In some countries, notice of a posted worker's assignment must be submitted online; in other countries, submission is completed in-person or through the mail.

Most countries require that notice of a posted worker's assignment be provided no later than the day before he or she starts work in the host country. Some countries have adopted tighter rules, however. France and the Netherlands require notification at least two days before the employee start date, for example, and Austria requires notice before the posted worker enters the country.

There are some areas of uniformity. The regulations apply to EU and non-EU nationals alike (and in many cases even to nationals of the host country, e.g., a Polish national being posted to work in Poland). Most countries also require that companies must identify a representative to make documents available for inspection. The document-retention requirements usually include requiring the retention of contracts, paystips and time sheets in the host country. Some countries also require the retention of documents verifying the actual payment of wages, confirming social security coverage or establishing that the employee has undergone a recent health examination.

When planning to send a worker on assignment, it is important to consider the regulations on a country-by-country basis. Some countries have carved out exemptions to their posted worker regulations. Austria has exemptions for a number of activities and exemptions are expected to be announced soon in Belgium.

Employers should work with their BAL professional not only to make sure they are in compliance with all posted worker regulations, but also to make sure that the posted worker route is the best route available and that there is no applicable exemption.

Appendix 1 – Enforcement Directive on Posted Workers: Country-by-Country Breakdown

Country	Effective Date	Timing of Notice	Method of Notice	Application and Exemptions
Austria	Jan. 1, 2015	Prior to arriving in Austria.	Online.	Exemptions may apply for highly qualified employees. Consult with BAL.
Belgium	Dec. 30, 2016	Prior to first day of work.	A “Limosa declaration” can be filed online.	An implementing decree that has not yet been issued may grant some exemptions.
Bulgaria	Feb. 10, 2017	Prior to first day of work.	In-person. Online system is expected soon.	Applies to activities carried out by posted workers or workers on assignment.
France	Oct. 1, 2016	Two days before first day of work.	Online.	Applies to activities that require work authorization and activities that are work-permit exempt.
Finland	Fall 2017	To be determined.	To be determined.	Will apply to service providers, ICTs and temporary agency workers. Exemption may apply if in country for less than five days.
Germany	Jan. 1, 2017.	Prior to first day of work.	When required, notification must be submitted on Germany’s minimum wage registration website.	Requirement only applies to certain, mostly low-skilled positions. Does not apply to employees earning more than €2,958/month.

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Hungary	Sept. 1, 2016	Prior to first day of work.	Online.	Applies to activities carried out by posted workers or workers on assignment.
Ireland	July 27, 2016	Prior to first day of work.	Form must be sent by email or post to Workplace Relations Commission.	Applies to activities carried out by posted workers or workers on assignment.
Italy	July 22, 2016	Midnight before first day of work.	Online.	Applies to activities carried out by posted workers or workers on assignment.
Netherlands	Nov. 29, 2016	Two days before first day of work.	Hard-copy form must be completed and posted.	Applies to intra-EU services, trainees and ICTs in country for under 90 days.
Poland	June 16, 2016	Prior to first day of work.	Online or in-person.	Applies to employees on secondment or ICTs. Applies to activities that require work authorization and activities that are work-permit exempt.
Slovakia	June 18, 2016	On or before first day of work.	Notice can be completed on the National Labor Inspectorate website or by completing a hard copy form.	Applies to activities carried out by posted workers or workers on assignment.