

Ius Laboris Webinar

New rules for posted workers in the EU

Thursday 10 September 2020

14:00 – 15:00 CEST



SPEAKERS



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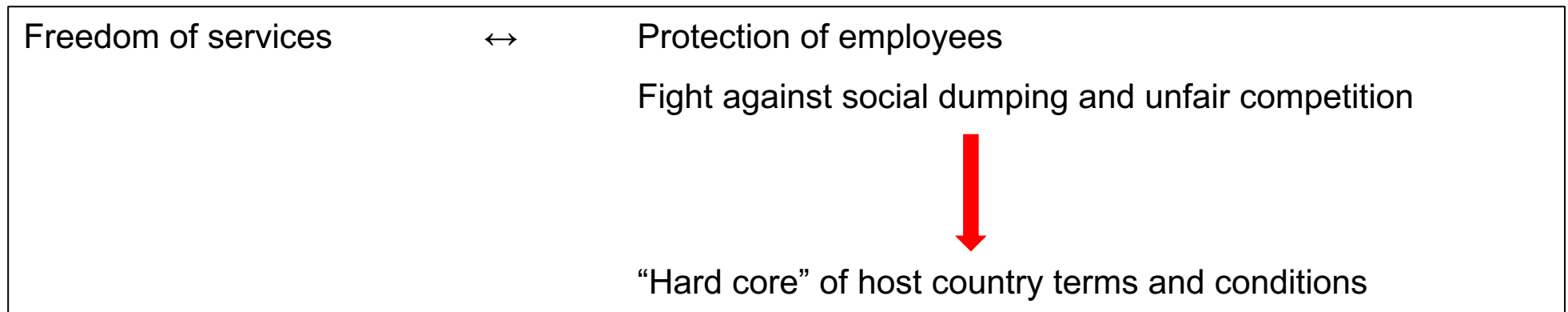
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REVISED EU POSTED WORKERS' DIRECTIVE – WHAT'S IT ALL ABOUT?

- **Posting:** where an employee is temporarily seconded to another country on behalf of his or her home country employer
- **EU Rome I Regulation:** says home country employment law continues to apply
- **Correction:** Posted Workers Directive ('PWD') of 1996



- **2018:** Revised Posted Workers' Directive to be implemented by 30 July 2020

REVISED POSTED WORKERS' DIRECTIVE – MAIN CHANGES

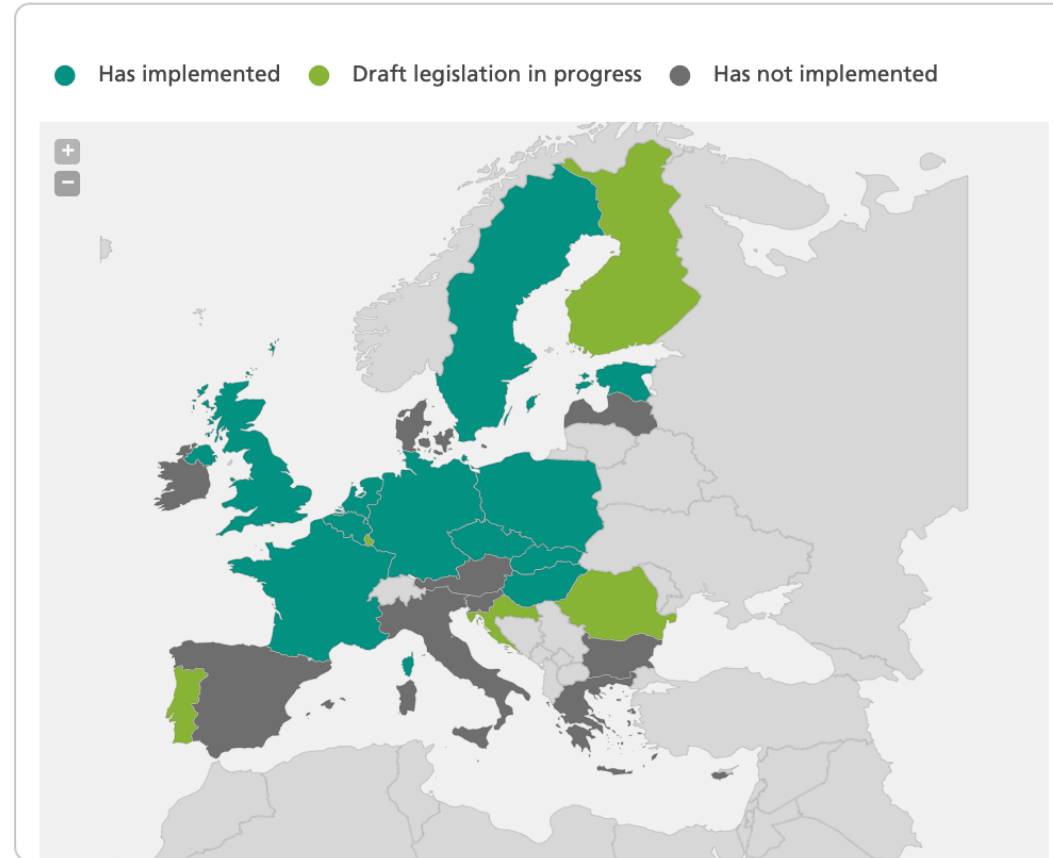
- **Extension of 'hard-core' provisions of host country**
 - Remuneration: 'Equal pay for equal work at the same place'
 - Not only minimum rates of pay but all mandatory elements of pay
 - Accommodation if provided by the employer
 - Same allowances or reimbursement of travel/board and lodging expenses as local workers
- **CBAs in all sectors**
- **Allowances:**
 - Employer must pay travel and board and lodging expenses according to applicable law
 - Presumption of reimbursement of expenses, except if proof of remuneration

REVISED POSTED WORKERS' DIRECTIVE – MAIN CHANGES

- **Long-term postings:** host country mandatory terms & conditions of employment apply if the effective duration (+ replacement) exceeds 12 months (possible extension up to 18 months based on justified reasoning), except for:
 - procedures, formalities and conditions for concluding and terminating employment contracts (dismissal rules), including non-competition rules
 - supplementary pension schemes
- **Information duty:** there is a duty on member states to provide information on this via a single official website
- **Temporary agency workers:** the 'equal treatment' principle also applies to posted temporary agency workers
- **Road haulage:** the rules do not yet apply to the road transport sector

CURRENT STATUS OF IMPLEMENTATION

Implementation of the revised Posted Workers' Directive across the EU and in the UK



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CONTACT



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The EU Posted Workers' Directive

New rules for secondees within the EU

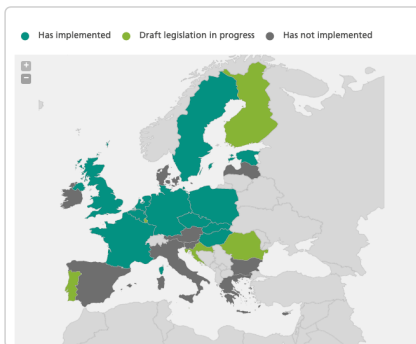
The EU rules on posted workers (secondees) were revised in June 2018 and EU Member States had until 30 July 2020 to comply with the new rules. Those new rules expand on existing law to require that workers temporarily assigned to work in a foreign country must be given terms and conditions on a par with local workers in the host country.

International employers should bear in mind that since 30 July 2020, more local legislation may apply to the secondment of employees to and within Europe and they will need to assess the impact on the terms and conditions of their current and future secondees.

As always with EU rules, the devil is in the detail of each Member State's approach to them. Click on our map to find out where each country is in terms of implementing the rules and what the implementing legislation says, as at July 2020.

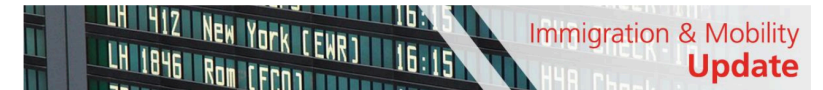
Select Countries

Implementation of the revised Posted Workers' Directive across the EU and in the UK



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August 2020

See below our Immigration and Global Mobility Update, which shows the changes in global mobility and immigration from around the world over the past two months. We hope you find this information useful and we aim to continue to update you regularly.

Argentina
Austria
Belgium
Brazil
Canada

Europe
Finland
Hungary
Italy
Luxembourg

Russia
Serbia
UK



SUMMARY OF MAIN CHANGES

FRANCE – MAIN CHANGES

Extension of core French rules to be complied with:

- **Wider definition of equal pay:** equal treatment should be guaranteed by the employer to each posted employee in relation to any kind of employee compensation (fixed, variable, in cash or in kind..)
- **Wider definition of business expenses:** equal treatment also applies to “transport, meals and accommodation expenses” borne by the posted employee to perform his or her duties

Extension of rules applicable to long term posting in France:

- After 12 months of secondment, all French Labour Code provisions apply (apart from: hiring, changes on economic grounds, transfer or termination of employment contract, the secured voluntary mobility scheme and provisions relating to fixed-term contracts)
- Replacing the same work in the same place is included in the 12-month calculation

Extension to 18 months of posting is possible, based on a statement with reasons made to the French Labour Inspection

GERMANY – MAIN CHANGES

- **The following rules in law now apply to posted workers:**
 - rules on pay, including overtime rates, but excluding company pension schemes
 - requirements on accommodation, when provided by the employer
 - rules on allowances and reimbursement of travel, accommodation and subsistence costs
- **Reimbursement:** of posting costs (e.g. travel, accommodation and subsistence costs) cannot be offset against remuneration
- **Over 12 months:** all working conditions applicable in law and generally binding collective agreements apply
 - Exception: procedural or formal requirements and conditions for concluding and terminating the employment, including post-contractual non-competition clauses and company pension schemes
- **Extension to 18 months:** notification to customs administration in 'text form' (e.g. email) in German:
 - personal details of the posted worker, place of employment in Germany, reasons for and probable duration of the posting
- **Replacement of same work at the same place:** included in 12-month calculation
- **New information obligations** for the lease of personnel
- **Some groups of posted workers are exempt** from the new rules

THE NETHERLANDS – MAIN CHANGES

- **Extension of the ‘hard core’ provisions:**
 - rehousing of posted workers
 - travel, board and lodging expenses
- **Replacement of the same work at the same place:** is considered the same posting and included in 12-month calculation
- **Allowances:** presumption of reimbursement of costs
- **Additional provisions apply after 12 months:** except dismissal, pension and non-compete clauses
- **Posted temporary workers:** are entitled to the same pay as Dutch temporary workers from day one
- **Extension to 18 months possible:**
 - only if original posting was not intended to be for more than 12 months
 - only if valid reasons exist for extension
 - total duration may not be over 18 months

SWEDEN – MAIN CHANGES

- **Trade unions:** the extension of the ‘hard core’ will result in an increased possibility that the Swedish trade unions will take industrial action to force the employer of the posted workers to enter into a collective bargaining agreement
- **Allowances may not be included as part of ‘salary’:** presumption of reimbursement of expenses except where it is proved to be remuneration
- **Must report postings to the Swedish Work Environment Authority:** no later than the date the posting begins. Previously, employers did not need to register postings that lasted less than five days
- **Must appoint a contact person in Sweden:** throughout the entire period

CZECH REPUBLIC – MAIN CHANGES

- **Posted workers are now entitled to:**
 - Minimum salary, guaranteed salary and obligatory salary components (i.e. overtime pay, night work, work during weekends and state holidays, and difficult work)A
 - Accommodation costs (if provided by employer) and travel expenses (when travelling outside regular workplace in the Czech Republic) as under Czech law
- **After 12 months** – Czech labour law applies in its entirety (with the exception of provisions on commencement, change, and termination of employment)
- **Extension to 18 months** – possible, based on notification ‘with reasons’ addressed to the Labour Office before end of the 12-month period (admissible reasons NOT specified by law)
- **Same work at the same place performed by replaced posted worker** is included in calculating how long the posting lasts - but periods before 31 July 2020 are NOT included in the calculation!
- **Administrative sanctions** for non-compliance with new obligations
- **User businesses must inform temporary work agencies** when posting workers

SLOVAKIA – MAIN CHANGES

- **‘All mandatory elements of pay’ means:**
 - minimum wage, overtime pay, work on holidays, weekend work, night work, allowances for high risk work, vacation pay
- **Calculation method:**
 - starts 30 July 2020
- **Information requirement:**
 - a service provider posting employees to Slovakia must be informed by the Slovak user company about the working conditions – therefore, include them in the contract and provide them to the posted worker

BELGIUM – MAIN CHANGES

- **Additional provisions apply after 12 months:** .e.g. guaranteed sick pay, rules concerning suspension of employment contracts
- **Calculation of 12-month periods:** periods before 30 July 2020 + replacements are considered!
- **Extension to 18 months:** notification with reasons before end of 12-month period to the Social Inspectorate:
 - in electronic form (website of FPS Employment), if Limosa declaration
 - by email, if Limosa exemption
- **Allowances:** presumption of reimbursement of costs
- **New information obligations:** in case of cross-border temporary agency work and the permitted lease of personnel
- **Criminal penalties:** in cases of non-compliance with the new information obligations
- **Mitigating circumstances:** if posting conditions not on FPS Employment website



KEY CONSIDERATIONS FOR POSTING WORKERS

FRANCE – KEY CONSIDERATIONS

- **For calculation of 12 and 18 month periods:** time worked before 30 July 2020 does count.
- **For extension:** a declaration must be made on the SIPSi online service, before end of 12 months
- **Temporary work agencies:**
 - **User companies outside of France and using posted employees from a foreign temporary employment agency to France** must inform the temporary agency before the posting starts of the 'core' rules of French law as it applies to them
 - **User companies in France** have a new obligation to inform temporary work agencies established outside France of the salary conditions applicable to employees postings in France
- **Criminal penalties:** no mitigating circumstances, but the employer's good faith will be taken into consideration by the administrative authority

GERMANY – KEY CONSIDERATIONS

- **Carefully check applicable mandatory working conditions:** e.g. sectoral wages
- **Pre-check:** whether posted workers are exempt from any mandatory rules?
- **Calculation of 12- and 18-month periods:**
 - additional working conditions for long-term posting applicable from 30 July 2020 at the earliest
 - time worked before 30 July 2020 does count, but:
 - existing postings prior to 30 July 2020: an extension notification is deemed as given, i.e. automatically extended to 18 months
- **We recommend posting allowances be expressly dealt with in the contract:**
 - reimbursement or remuneration?
 - otherwise considered reimbursement
- **A1 Certificate:** highly recommended
- **COVID-19:**
 - expanded duty of care of employer, e.g. regarding protection of workers
 - additional checks especially in the meat industry
 - immigration and quarantine restrictions
 - rules vary locally based on federal state law

THE NETHERLANDS – KEY CONSIDERATIONS

- **Supplementary conditions include payment during illness:** maximum of 104 weeks!
- **Existing postings prior to 30 July 2020:** automatically extended to 18 months
- **Carefully consider allowances:** and specify purpose on payslip
- **Notification obligation** (Dutch '*Limosa*') applicable since 1 March 2020!
- **Non compliance with obligations:** penalty of EUR 12,000 per violation
- **Covid-19 impact:** travel restrictions, home working rules, social security and tax

SWEDEN – KEY CONSIDERATIONS IN CASE OF POSTING

- **Collective bargaining agreements:** assess which collective bargaining agreement applies to your business
- **Be prepared for increased trade union activity:** and be aware that it is hard to avoid entering into a collective bargaining agreement in Sweden
- **A special collective bargaining agreement for posting is expected:** although not yet in place
- **Consider working hours for workers travelling back home occasionally**
- **Report the posting to the Swedish Work Environment Authority:** and make sure to let the recipient of the services know you have done it

CZECH REPUBLIC – KEY CONSIDERATIONS

- **Czech provisions on minimum pay and annual leave do not apply to postings not exceeding 30 days:** unless employee is posted by a temporary work agency – regardless of the service provided!
- **Extra payment:** for overtime, work at night, during weekends and state holidays, and difficult work – the Czech average earning is applicable here – and it is a complex calculation
- **Administrative obligations:** must be fulfilled regardless of the length of the posting:
 - **report posting** (as well as its changes and end) to the Labour Office (including information required by law) within 10 days
 - **keep records** (e.g. information about posted employees, type and place of work, commencement of work and expected end of posting)
 - **keep documents evidencing employment in the workplace** (must be translated into Czech, with an exemption for the Slovak language)
- **No sanctions:** for not having a PD A1

SLOVAKIA – KEY CONSIDERATIONS

- **Choose the correct contractual arrangements:** for posting versus business travel
- **Remuneration:**
 - respect Minimum Wage Act and wage benefits; and
 - Collective Agreements and Sectoral Collective Agreements
- **Working time:** under Slovak law plus tracking (*CCOO vs Deutsche Bank SAE*)
- **A1 Certificate:** is a must
- **Notification duty:** to National Labour Inspectorate
- **Visas and permits:** okay for under 90 days
- **Document retention:** even after posting is over – and be ready to translate them if requested:
 - employment contract
 - working time records
 - proof of wage payment
- **COVID-19 restrictions:** always changing, so check each time you arrange a posting

BELGIUM – KEY CONSIDERATIONS

- **Watch out for the prohibited postings:** and ensure to have the appropriate contractual structure in place
- **Pay:**
 - which sector CBA?
 - sector wage scales are often very complex
 - what is included versus what is not included → ‘per diem’
- **Working time:**
 - very complex
 - overtime = overtime pay + compensatory rest
- **‘Limosa’:** is watching you
- **Social documents**
- **COVID-19:** note additional obligations for Belgian users in construction, cleaning, agriculture, horticulture and meat processing

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Questions and comments also welcome: anni.laakso@iuslaboris.com

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WEBINARS

We bring together the best international employment lawyers to discuss the issues shaping the future of the working world.

New rules on posted workers in the EU



Sophie Maes, Anne-Laure Périès, Nataša Randlová, Hylda Wiarda, Petter Wenehult, Julia Uznanski, Danica Valentová

10 September 2020
14:00 – 15:00 CEST

EU Member States had until 30 July to comply with the revised rules on temporary secondees. The new rules ensure that people temporarily seconded to an EU member state are offered terms and conditions more like those of local workers in the member state they now work in. But, as is often the case in the EU, each Member State has its own variations - and some countries have so far failed to implement the new rules at all. So what does all this mean for international employers wanting to second employees abroad? We find out in this very focussed and practical webinar, involving lawyers from a range of EU countries.

This session will be moderated by Sophie Maes of Claeys & Engels (Belgium) and she will be joined by lawyers from France, Czech Republic, the Netherlands, Sweden, Germany and Slovakia.

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PAST WEBINARS



Speed dating seminar: employee access to personal data in the EU

Alexander Milner-Smith, Jessica Jacobi, Marco Sideri, Linda Hynes, Wouter Van Loon, Ilse Baijens, Søren Terp Kristophersen, Sean Illing

July 16 2020 | [Download the slides](#)



Restructuring across the APAC region following COVID-19

Kathryn Weaver, Vijay Ravi, Nobuhito Sawasaki, Heidi Fairhall

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Coronavirus: Getting back to the new normal

Colin Leckey, Inês Reis, Linda Hynes, José Miguel Mestre Vázquez

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Orly Gerbi, Dimitrios Kremalis, Nicos Panayiotou, Batuhan Sahmay

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