



Revision of the EU Posting of Workers Directive

In our last Posting of workers alert, we discussed the latest developments with regard to the proposed revision of the EU Posting of Workers Directive (96/71/EC). On 28 February 2018 the EU Council, EU Parliament and the EU Commission agreed upon the main contours of the agreement to revise the Posting of Workers Directive.

Background of the revision

The Posting of Workers Directive and the Enforcement Directive (2014/67/EU) aim to ensure a fair level playing field between undertakings established within the EU, as well as to avoid social dumping of employees (especially in the construction industry).

In 2016 a new, third, pillar was proposed to guarantee social protection of posted workers throughout the EU: the significant revision of the Posting of Workers Directive. The EU Commission proposed this reform to address unfair practices and promote the principle of equal pay for equal work at the same work place.

Main elements of the revision

On 28 February 2018 the EU agreed on the following main elements of the revision of the Posting of Workers Directive:

1 Long-term posting

Currently, the Posting of Workers Directive and/or the Enforcement Directive do not prescribe a minimum and/or maximum posting duration. Pursuant to the new rules the host member state should ensure that postings of longer than 12 months will after that period be governed by an additional set of terms and conditions that are mandatorily applicable pursuant to the host member state's law. Hence, after the 12-month period the posted worker will be subject to a broader set of host member state terms and conditions. This 12-month period can only under strict circumstances be extended to an additional period of 6 months.

2 Equal remuneration

The remuneration of temporarily posted workers should be in accordance with host member state law and practices (including universally binding collective labor agreements), which shortly means that the posted worker should be entitled to an equal remuneration for the same work as the employees of the services recipient. This remuneration may also include allowances and/or other benefits such as overtime pay, shift allowances, a 13th month pay and/or variable (bonus) payments.

3 Universally binding collective labor agreements

Industry-wide collective labor agreements which have been declared universally applicable in the host member state will also become mandatorily applicable to the posted workers.

4 Temporary agency workers

Part of the reform of the Posting of Workers Directive is also an equal remuneration principle for posted temporary agency workers. This rule already applies for 'domestic' agency workers. Pursuant to this new principle, the services recipient should inform the temporary workers agency regarding the working conditions and remuneration applicable to its own employees. These working conditions and remuneration should, in principle, also be applied to the posted temporary agency workers.

5 Road transport sector

The road transport sector will also become subject to the revised Posting of Workers Directive once a legislative act regarding the Commission's Road Transport Strategy for Europe enters into force.

Follow-up steps

The reform of the Posting of Workers Directive should be fully implemented and effective in the member state legislation in 2020. This is two years earlier than previously proposed.

The EU agreed upon the main contours of the reform of the Posting of Workers Directive, but the details of the proposed revision should still be finalized. The EU Parliament and the Council shall still have to approve the results of the negotiations with regard to the revision proposal.

We will be following every step in the course of this legislative process. Our team is available for a call or a meeting to discuss the abovementioned revision proposal of the Posting of Workers Directive and the possible (financial) consequences for your company.

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