



Update Employment Law

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Tightening of the Posted Workers Directive

On 16 October 2017, the Committee on Employment and Social Affairs of the EU Parliament decided by a large majority to support a proposal by the EU Commission, made in March 2016, aimed at tightening the EU Posted Workers Directive. The Committee on Employment and Social Affairs accepted the main features of the initiative by the EU Commission. A week later, the Council of Ministers also reached an agreement on the legal basis.

Regina Glaser, LL.M. (Düsseldorf)
Torsten Groß, LL.M. (Düsseldorf)

The intention is to tighten the 1996 EU Posted Workers Directive (Directive 96/71/EC). The scope of the Directive covers workers posted to another member state for a limited period to provide services there. This applies in particular to building contractors and the manufacturing industry. Germany is affected to a major extent by this, as it is among the largest recipient and posting countries. Posting to Germany is legally regulated in the Law on the Posting of Workers (AEntG).

Principle of worker posting

The principle of worker posting is based on the free movement of services. This allows companies to provide the most varying services without having to open a branch in the other member state. At the same time, the workers posted are not integrated into the labour market of the host state, and therefore remain in the social security system of the country of origin.¹

According to the EU Commission, the revised Directive is a response to the increasing cross-border demand for qualified workers.

¹Publication by the European Parliament:
<http://www.europarl.europa.eu/austria/de/aktuell-presse/meldungen/meldungen-2017/oktober-2017/pr-2017-oktober-7.html> (called up on 18/10/2017).

The revision of the EU Posted Workers Directive essentially covers the following points.²

1. Posted workers should be subject to the same remuneration principles as local workers. Under Article 3 (1) of the previous Directives, only the minimum wage rates were covered, including overtime rates. The same is also true of the AEntG (Law on the Posting of Workers) that implements the 1996 Directive.

However, the revised Directive talks of "remuneration" instead of minimum wage rates. This term is intended to cover all remuneration components, envisaged on the basis of national legal regulations or for collective agreements declared as generally binding. As a result, posted workers can now also benefit from specific supplements, daily allowances or special payments. The respective member state must publish the individual wage components on an official national website.

With regard to remuneration, the Committee on Employment and Social Affairs also discussed clarification to the effect that travel expenses, accommodation costs etc. of the posted workers must not be deducted from their wages.³ As yet, no such clarification can be found in the Commission's original proposal.

2. Upwards of a specific posting duration, all labour-law regulations for local workers should also apply to the posted workers. At the same time, the labour-law regulations of the host state should only apply if the rules are more favourable for the workers. These regulations are intended to prevent mandatory worker-protection rights of one country being circumvented via the construction of a posting model.

If the foreseeable or actual duration of the posting exceeds 24 months, the national law of the host state should apply. After two years, the host member state will be regarded as the state in which the work is normally performed. The law of the host state should apply from the start of the posting if this is intended to last for more than 24 months from the outset, or from the first day following the passing of 24 months given actual exceeding of this period.

²EU Commission, Proposal for a Directive COM (2016), 128 final dated 8/3/2016.

³Briefing of the Committee on Employment and Social Affairs, available for call-up at: [www.europarl.europa.eu/RegData/etudes/BRIE/2017/607346/IPOL_BRI\(2017\)607346_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607346/IPOL_BRI(2017)607346_EN.pdf).

Application of the same remuneration principles

Application of the national labour law of the host state

Circumvention of this rule should be excluded through a ruling to the effect that the 24-month period will not end or be interrupted if one worker is replaced by another worker performing the same work. In this case, the individual posting periods will be added together. However, this shall only apply to workers posted for at least 6 months.

At the same time, companies can of course continue to invoke freedom of services within the EU even after the 24-month period. Exclusively the labour law of the host state will then apply.

The 24-month period remains highly controversial. Some countries, including Germany, are asking for this to be shortened to just 12 months. The EU Council of Ministers has now agreed on the shorter period. However, an extension to 18 months should be possible in individual cases on the basis of an exemption ruling.

3. The principle of equal treatment should also apply to posted temporary workers. This means that workers posted by temporary work agencies established in another country, will be governed by the regulations on temporary work applicable in the host country. This was not the case in the past.
4. The proposal also concerns itself with possible subcontracting chains. Under the proposal, member states can oblige companies to subcontract only to companies that grant workers specific remuneration conditions that also apply to the contractor itself. This can include conditions resulting from collective agreements that are not generally binding.

Both the EU Commission and the Committee on Employment and Social Affairs hope that this will create improved worker protection for posted workers, and also more transparency through greater legal clarity. Overall, it is hoped that improved competitive conditions will be created for companies in the single market. If no objections are raised, initial dialogue negotiations could soon begin on the proposal. Companies that post workers to other EU countries should certainly keep an eye on this interesting development. The EU Commission wishes to set up a labour agency by the end of 2018, to monitor compliance with the rules and to facilitate data exchange between the states.

Temporary workers

Rules for subcontracting chains



Lawyer
Regina Glaser, LL.M.
T +49 211 600 55-276
F +49 211 600 55-260
r.glaser@heuking.de



Lawyer
Torsten Groß, LL.M.
T +49 211 600 55-259
F +49 211 600 55-278
t.gross@heuking.de

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