# OVERVIEW OF CROSS-BORDER SERVICE PROVISIONS IN EUROPE

Prepared by the European Member Firms of the

EMPLOYMENT LAW ALLIANCE

ELA

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# 1. AUSTRIA

## 1. Various kinds of posting[1]

Service provision can occur as secondment or personnel lease.

A secondment is given, if the foreign company must carry out specific activities for an Austrian customer (e.g. installing a machine, etc.). Personnel lease requires that the actual obligation of the foreign company is to provide personnel that can be used by an Austrian company for its own purposes.

Even if the foreign company is officially obliged to carry out own activities, personnel lease might be given if a) no separate work result is achieved, b) means of work and material are provided by the Austrian company, c) the Austrian company gives instructions to the employees or d) the foreign company is not liable for the success of the activities. If the majority of these criteria is fulfilled, personnel lease will be given.

## 2. Notification Obligation[2]

Any secondment to Austria will have to be reported by using the "ZKO 3" form. For a personnel lease, the "ZKO 4" form is relevant. Notification must be made prior to the start of work in Austria.

A correct distinction is crucial as usage of the wrong form is considered a breach of the notification obligation.

## 3. Record Keeping Obligation[3]

During the performance of services, the following must be kept at the place of work or at an Austrian attorney/tax advisor:

- Copy of the ZKO form;
- Copy of the A1 form (social security);
- Employment contract (German or English)
- Wage related documents (German): payslips, payment records, proof of payment, working time records, documents indicating criteria relevant to determine minimum remuneration entitlements (e.g. CV, certificates, etc.).

In case of personnel lease, these documents must be forwarded to the Austrian customer.

## 4. Employee Entitlements[4]

During the secondment or personnel lease, employees in particular have the following (pro rata) entitlements:

- Minimum remuneration due for comparable Austrian employees (e.g. 13th and 14th monthly salary, overtime premiums, minimum salary, etc.)
- 5 weeks of vacation per working year
- Compliance with working time limitations applicable to comparable employees

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1 Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

2 Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

3 Description of record keeping obligations that arise before or during the secondment to the jurisdiction

4 Description of minimum standards that must be complied with during the performance of services in the jurisdiction

## 5. Exemptions[5]

The restrictions outlined are basically applicable to all secondments to Austria regardless of the duration. Some important exemptions exist:

- Participation in seminars, lectures, business meetings or trade fairs, if it lasts only a couple of days and no additional services are provided.
- Secondment within a group of companies, if the employee receives a monthly salary exceeding about EUR 6.400 (2018).
- Secondment of a specialist within a group for a maximum of two months for specific purposes (e.g. joint research, exchange of experience, training, etc.).
- Secondment of a maximum of three months for the purpose of putting a machine manufactured abroad by the employer or a group company into operation and carrying out associated training courses or repairs.

## 6. Possible fines[6]

Violations against notification obligations as well as record keeping obligations can lead to fines ranging from EUR 1.000 to EUR 10.000 per employee affected and per violation.

Wage dumping can lead to fines of EUR 1.000 to EUR 10.000 per employee if a maximum of three employees is affected and EUR 2.000 to EUR 20.000 if 4 or more employees are affected.

Austrian authorities are rather strict. Plenty of inspections are carried out usually leading to fines.

## 7. Non Labour Law Requirements[7]

Prior to the first provision of services in Austria, a notification on cross-border service provision must be made. As this usually takes a couple of weeks at least, an according lead time should be respected.

## 8. Contact Details

Christopher Peitsch
christopher.peitsch@chsh.com
+43 1 514 35 191
CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte GmbH
Parkring 2
1010 Vienna
Austria

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5 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
6 Description of fines that could be imposed in case of non-compliance with the restrictions outlined
7 Description of important requirements not resulting out of labour law that must be met during the secondment

## 2. BELARUS

### 1. Various kinds of posting[8]

Service provision can occur as a secondment or an employment with a Belarusian entity.

A secondment is given, if the foreign company must carry out specific activities for the Belarusian customer for a relatively short time.

Employment may be used for different matters. The personnel of the foreign company providing services may be directly employed by the customer. Alternatively, it may be employed by outstaffing or personnel lease provider in Belarus with concluding a service agreement between the outstaffing or lease provider and the customer.

Belarusian law with respect to outstaffing and personnel lease is vague and does not provide for specific regulation of such type of agreements. However, entering into an outstaffing contract is not prohibited by Belarusian law.

### 2. Notification Obligation[9]

Secondment of the foreign citizens to Belarus is not the subject of Belarusian labour law, so there are no any notification obligations. However, such secondments are subject to the Belarusian migration regulation. The foreign company has to make sure that the seconded person has all the legal grounds to enter and stay in Belarus (e.g. visa).

In case of outstaffing or personnel lease the foreign citizen formally is an ordinary employee of the Belarusian entity, so he is subject to general labour reporting requirements in Belarus (PU-1, PU-2, PU-3 forms). The initial employment of the foreign citizen shall be accompanied by obtaining the social security certificate by the employer in respect of this foreign citizen.

In order to be entitled to work in Belarus as an employee, the foreign citizen must obtain the work permit before the employment. As a rule, the work permit shall be obtained by the employer on behalf of the foreign citizen.

### 3. Record Keeping Obligation[10]

During the performance of services as a secondment, the following must be kept by the foreign citizen:

- Copy of the service agreement;
- Migration card;
- Document on registration at the domicile (issued by the Belarusian migration authority).

During the outstaffing and personnel lease, the following must be kept by official employer of the foreign citizen:

- Employment contract;
- Order on employment;
- Personal record card;
- Labour book;
- Work permit.

During the outstaffing and personnel lease, the following must be kept by the foreign citizen:

- Social security card;
- Employment contract;

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[8] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[9] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[10] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

- Temporary residence permit.

## 4. Employee Entitlements[11]

During the secondment, the foreign citizen is not eligible to any employee's entitlements as he/she is not subject to the Belarusian labour law.

During the personnel lease, employees in particular have the following (pro rata) entitlements:

- Minimum remuneration under the Belarusian labour law (e.g. overtime premiums, minimum salary, etc.);
- 24 calendar days of vacation a year;
- Compliance with working time limits applicable to comparable employees;
- Compliance with work safety regulations.

## 5. Exemptions[12]

Foreign citizens employed by the Belarusian entities, which are residents of either, the Hi-Tech Park or Industrial Park Great Stone, do not have an obligation to obtain the work permit.

## 6. Possible fines[13]

Violations against payment of the social security contributions with respect to the employed foreign citizen may result in a fine ranging from EUR 20 to EUR 200 (on the company's officers) and up to 20 % of unpaid amount of the social security contribution (on the company).

Violations against payment of the salary with respect to the employed foreign citizen may result in a fine up to EUR 1.000 (on the company).

Belarusian authorities are very protective in respect of rights of the employees, so any violation of labour rights bears possible risks.

## 7. Non Labour Law Requirements[14]

The foreign citizen must comply with applicable migration regulations (visa, duration of stay, registration with migration authority, obtaining work and temporary residence permits, etc.)

## 8. Contact Details

Sergei Makarchuk
sergei.makarchuk@chsh.com
+375 44 7413961
Cerha Hempel Spiegelfeld Hlawati FLLC
Surganova Str. 29
BY-220012 Minsk

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[11] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[12] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[13] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[14] Description of important requirements not resulting out of labour law that must be met during the secondment

## 3. BELGIUM

### 1. Various kinds of posting[15]

Belgian law does not distinguish different types of posting. Posting or secondment of an employee generally implies the employment contract with the employer in the home country remains in place during the period of posting, which means the employer's authority over the posted employee remains with the employer in the home country.

The lending of personnel (personnel lease) is forbidden under Belgian law. Consequently, the host company can – in principle – not execute any employer's authority over the posted employee, safe for specific situations in which the lending of personnel is exceptionally allowed, provided that stringent conditions and formalities are met. It regards, for instance:

- the lending of personnel for execution of specialized work;
- the lending of personnel between companies belonging to the same financial-economic group;
- the lending of personnel in the framework of a service agreement, although in this case the actual employer's authority cannot be transferred. The host company would only be allowed to give organizational instructions;
- the lending of personnel by temporary work agencies.

### 2. Notification Obligation[16]

Prior to the employment in Belgium, the employer must submit an electronic notification to the NSSO (Limosa notification). There are several exemptions to this obligation. These depend on the reasons for coming to Belgium and the length of stay.

Foreign employers who post employees to Belgium must also appoint a so called "liaison officer" who will be the main point of contact for the Belgian inspection services. The liaison officer can be the employer himself, the employee or possibly a third party. This person does not have to be domiciled in Belgium.

Apart from this notification obligation, other formalities are important:

- The employer should make sure that an A1 certificate or other similar document such as a certificate of coverage is obtained prior to coming to Belgium;
- We recommend an assignment letter is drafted in Dutch, French or German depending on the location in Belgium the employee is posted to detailing the terms and conditions of the assignment (e.g. duration and termination of the assignment, possible tax equalization or tax protection agreements, applicable law, etc.). Moreover, this assignment letter is often useful to specify which mandatory provisions under Belgian law must be complied with during the assignment.
- In some cases the employer has to obtain a work permit or Single Permit before the employee comes to and starts work in Belgium.

### 3. Record Keeping Obligation[17]

During the performance of services, the following documents must be kept at the residence of the employer, place of employment or the residence of a natural person in Belgium who, as agent or appointee of the employer, keeps these documents. Moreover, the employer must be able to present these documents at each inspection and translate any of these documents into one of the 3 official languages in Belgium (Dutch, French, German) at the inspection's request:

- an A1 certificate or certificate of coverage;
- a copy of the Limosa notification. Note that the Limosa notification exempts foreign employers from drawing up social documents (such as Belgian pay slips, work rules, etc.)

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[15] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[16] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[17] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

for a maximum period of 12 months;

- a copy of the posted worker's employment contract or an equivalent document. The inspection services can request a translation in Dutch, French German or English;
- information relating to the foreign currency in which wages, benefits in cash or in kind linked to the employment abroad are paid, as well as information on conditions of repatriation of the posted worker;
- the working time records indicating the beginning, end and duration of the posted worker's daily working time;
- proof of payment of the posted worker's wages;
- a version of the individual account and pay slip or equivalent document in English, Dutch, French or German. These must be kept at the disposal of the inspection services for up to one year after the end of the employment. They may also be provided electronically.

## 4. Employee Entitlements[18]

Mandatory provisions under Belgian law are all provisions that are criminally sanctioned in case of non-compliance. In practice this means that the largest part of Belgian employment law must be complied with, except for instance rules relating to termination of the employment contract. In practice, however, the social inspection services are aware that the Belgian implementation of the European Posted Workers Directive is too far-reaching, which means they only check the so called "nucleus of minimum entitlements", such as:

- minimum wages, including mandatory benefits deriving from universally binding collective bargaining agreements;
- applicable working time provisions;
- health and safety at work;
- minimum vacation entitlements and vacation pay, etc.

## 5. Exemptions[19]

The requirements as mentioned above apply to all secondments to Belgium, regardless of the reason or duration of the secondment.

For the Limosa notification, however, there are some exceptions. The most important ones are:

- foreign employees assigned to Belgium by their foreign employer to attend scientific congresses or closed meetings ("business trips") provided that certain conditions are met;
- scientists if they participate in a scientific program at a university or scientific institution in Belgium provided that certain conditions are met;
- Employees sent to Belgium for the initial assembly and/or the first installation of a good provided that certain conditions are met;
- Employees in international transport, etc.

## 6. Possible fines[20]

By way of example, the most important infringements and fines are listed below, although depending on the circumstances other infringements or other sanctions (such as specific civil sanctions, company closure, etc.) might apply. The fines listed below have to be multiplied by the number of employees affected, yet capped at 100 times the maximum fine:

- Failure to complete a Limosa notification can be sanctioned with a criminal fine of

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[18] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[19] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[20] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

EUR 4.800 to EUR 48.000 or an administrative fine of EUR 2.400 to EUR 24.000. Not only the employer, but also the client of the employer risks criminal fines of EUR 800 to EUR 8.000 or administrative fines of EUR 400 to EUR 4.000 in the absence of a Limosa notification;

- Failure to appoint a liaison officer can be sanctioned with a criminal fine of EUR 400 to EUR 4.000, or an administrative fine of EUR 200 to EUR 2.000;
- Failure to draw up and keep social documents in line with legal provisions may result in fines of EUR 800 to EUR 8.000 or administrative fines of EUR 400 to EUR 4.000;
- Failure to pay the employee's salary combined with other infringements such as failure to comply with working time regulations (social dumping) can be sanctioned with criminal fines of EUR 4.800 to EUR 48.000 or administrative fines of EUR 2.400 to EUR 24.000;
- Violations of the prohibition on the lending of personnel may lead to criminal fines of EUR 800 to EUR 8.000 or administrative fines of EUR 400 to EUR 4.000.

## 7. Non Labour Law Requirements[21]

- Employer has to apply for an A1 form / certificate of coverage from the social security institution in the country of origin.
- Insofar applicable the employer must register with the tax administration to allow the payment of withholding taxes.

## 8. Contact Details

Jan Hofkens
Jan.Hofkens@lydian.be
+32 (0)2 304 90 12
Kato Aerts
Kato.Aerts@lydian.be
+32 (0)3 304 90 01
Havenlaan 86c b113
Tour & Taxis
1000 Brussels
Belgium

[21] Description of important requirements not resulting out of labour law that must be met during the secondment

## 4. BULGARIA

### 1. Various kinds of posting[22]

The hypothesis of posting workers to Bulgaria from another EU/EEA Member State and Switzerland or a third country for provision of services is differentiated as follows:

(A) Posting of workers to Bulgaria by their employers for:

1) provision of services to a receiving undertaking in Bulgaria ("host company" or "user undertaking"). In this case the employees are posted to and work in Bulgaria at the expense and under the directions of their employer only; and

2) intracompany transfer (ICT).

(B) Posting of workers hired by temporary work agencies to provide services to a user undertaking in Bulgaria (lease of personnel).

### 2. Notification Obligation[23]

The employer/temporary work agency posting workers to Bulgaria should report each posting of workers not later than the day of actual performance of the assigned work in Bulgaria. The report is made to the Bulgarian Labour Inspectorate via submission of a standard application form (currently only in hard copy, February, 2019).

The information that should be reported regards:

- company details of the posting employer and the user undertaking in Bulgaria;
- each worker's identification details;
- duration of the posting and starting and end date;
- address/es of the worker's place/s of work in Bulgaria;
- details of the services subject to the posting;
- contact persons.

Any changes to the above posting conditions must be immediately reported to the Bulgarian labour authority.

Additional requirements may apply to posted workers who are citizens of third non-EU countries (e.g. work permit).

### 3. Record Keeping Obligation[24]

During the posting, at least the following documents (Bulgarian translation is required) must be provided by the employer sending the worker/s and kept at the place of work by the user undertaking:

- Copy of the employment contract;
- Documents evidencing payment of employment remuneration (e.g. payroll payslips);
- Documents evidencing the actual worked time (working time records);
- A1.

### 4. Employee Entitlements[25]

During the posting to Bulgaria the assigned workers have the following entitlements:

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[22] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[23] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[24] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[25] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

To be provided at least with the same minimum working conditions as those applicable for comparable Bulgarian workers in respect of:

- Employment remuneration;
- Terms and conditions for overtime and night work, including compensations;
- Compliance with working time limitations (e.g. maximum duration of the working day and the working week, the minimum daily and weekly breaks, the official holidays in Bulgaria);
- 20 working days of vacation per working year;
- health and safety at work;
- the special protection of minors, pregnant women, nursing mothers and those with reduced ability to work;
- non-discrimination rules;

In case the working conditions regulated by the Bulgarian legislation are less favorable to the posted workers than those provided for by the legislation of the posting employer/ temporary work agency, the more favorable conditions to the posted workers shall apply.

## 5. Exemptions[26]

The restrictions outlined are generally applicable to all postings to Bulgaria. Only the following exemptions may apply:

- participation in seminars, lectures, business trips and meetings including trainings or trade fairs, specializations where no actual services are provided - in this case the posting related rules do not apply;
- some of the posting related rules do not apply in certain cases of installation and/or putting into operation of equipment when the worker is posted or sent for not more than 8 calendar days;

All exceptions must be interpreted rather narrowly.

## 6. Possible fines[27]

In case of established violation of the posting statutory requirements by the posting employer, the Bulgarian Labour Inspectorate shall immediately notify the competent authority of the posting employer's country of all information related to the violation.

## 7. Non Labour Law Requirements[28]

Immigration compliance might be required in case of long-term postings and/or posting of workers non-EU citizens.

Depending on the length of the posting and the country of establishment of the posting employer different tax and social security implications should be also considered.

## 8. Contact Details

Dinova Rusev & Partners Law Office
22 Emile de Laveleye Street, 1000 Sofia, Bulgaria
Tel: +359 (0)2 903 01 01
Fax: +359 (0)2 946 34 18
Mob: + 359 (0) 879 609 566
e-mail: office@drp-legal.com; vesela.kabatliyska@drp-legal.com
www.drp-legal.com

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[26] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[27] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[28] Description of important requirements not resulting out of labour law that must be met during the secondment

## 5. CROATIA

### 1. Various kinds of posting[29]

Croatian employment law differentiates between:

a) secondment; and

b) posting of employees.

Secondment is regulated in the Employment Law while provisions regulating posting of employees may be found in the Foreigners Act.

Where an employer does not have a need for employment of certain employee, it may second such an employee for a temporary period of time not exceeding 6 months to an affiliated company within the meaning of the Companies Act.

Such a secondment must be accompanied by the agreement between affiliated companies and the seconded employee's consent.

Posting shall occur when a foreign employer posts its own employee within the framework of temporary or occasional transnational provision of services, for a limited time period:

- to Croatia for its account and under its guidance, based on a contract concluded between the foreign employer assigning him to such work and the service user doing business in Croatia, provided that there is an employment relationship between the foreign employer and the employee during the period of posting or;
- to Croatia to its own branch office or a subsidiary provided there is an employment relationship between the foreign employer and the employee during the period of posting; or
- as a temporary employment agency to a user established or doing business in Croatia, provided that there is an employment relationship between the temporary employment agency and the employee during the period of posting.

### 2. Notification Obligation[30]

A foreign employer wishing to post employees to Croatia shall prior to commencement of work submit a Posting Declaration to Croatian authorities (the Labour Inspectorate – Ministry of Labour and Pension System).

The form and content of Posting Declaration is defined in the Rulebook on the Form and Content of Posting Declaration (Form 1). Where during the time of posting the circumstances of posting change, notification on change of submitted posting declaration (to be effected in Form 2) shall be submitted within 3 working days as of the changed Declaration shall be sent by electronic means to the following e-mail address: postingdeclaration.inspektorat@mrms.hr

### 3. Record Keeping Obligation[31]

In the Posting Declaration a foreign employer shall authorize and appoint a person to keep, during the period of posting, at the place of work or another clearly designated and accessible location in Croatia, and, at the request of the competent authority, provide access to, in paper or electronic form, copies of the employment contract or another act establishing employment, the work permit or some other act proving that the posted worker who is a third-country national is legally employed, the calculation of his or her salary showing all its elements and the method of determining the amount of salary, proof of payment of the salary, a record of the working hours showing the beginning, duration, and the end of the working hours, and other proof necessary for control and supervision purposes and, at the request of the competent authority, submit a translation of such documents into the Croatian language

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[29] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[30] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[31] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

as well as provide the competent authorities with all other required information.

The foreign employer shall, in the Posting Declaration appoint a contact person in Croatia to be authorized, during the period of posting on behalf and for the account of the employer, to co-operate with the competent authorities and, wherever necessary, to receive and send documents, applications, notifications and other writs.

## 4. Employee Entitlements[32]

The posted worker shall be guaranteed the following working conditions as defined by the applicable Croatian laws or collective bargaining agreements, as being in force:

- the prescribed maximum duration of working hours and the minimum duration of daily rest (as a general rule full-time working hours may not exceed 40 hours a week, while daily rest amounts minimum 30 minutes; the rest between 2 working days amounts 12 consecutive hours; weekly rest amounts at least uninterrupted period of 24 hours;
- the minimum duration of paid annual leave (4 weeks in each calendar year);
- the minimum salary, including increased salaries for overtime (during the period of posting salary may not amount less than the statutory defined minimum wage, currently amounting HRK 3.750 gross);
- measures applying to protection of health and safety at work;
- protective measures applying to work of pregnant women, women who have recently given birth or are breastfeeding and minors;
- prohibition of discrimination;
- terms of employment via employment agencies.

## 5. Exemptions[33]

An exemption is provided in respect to foreign person engaged in self-employed activity (self-employed) who is not obliged to submit a Posting Declaration before commencement of work in Croatia.

According to non-binding practice of supervising authorities a foreign person participating in e.g. seminars, lectures, and business meetings is not obliged to submit a Posting Declaration before attending such events, provided that he/she is not engaged in provision of services related to such events.

Further exemptions apply in respect to qualified workers posted by a foreign employer to Croatia for a period less than 8 days if their engagement relates to certain businesses such as it is initial set-up that is required for putting delivered goods into commerce provided such a service has been agreed as an essential part of the contract.

## 6. Possible fines[34]

Employer seconding an employee against the provision of the Employment Act may be imposed a fine up to EUR 13.500 (e.g. if an employee is seconded to a company not affiliated with an employer; if an employee is seconded for a period that is longer than 6 months; if secondment is effected without written agreement).

Further fines ranging from EUR 4.000 up to EUR 6.750 may be imposed against:

- a foreign employer if it fails to submit Posting Declaration on the prescribed form before the commencement of posting or where it fails to register any change of data included the declaration within the prescribed time limit;
- a Croatian employer – a service recipient (as per each foreign employee) if it knows or

[32] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[33] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[34] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

could have known that they were using the work of a posted employee who is not legally employed with the foreign employer;

- a foreign employer where it fails to authorize and appoint a person who is to keep, during the period of posting, at the place of work or another clearly designated or accessible location in the Republic of Croatia and, at the request of the competent authority, provide access to, in paper or electronic form, copies of the employment contract or another act establishing employment, the work permit or some other act proving that the posted worker is legally employed, the calculation of his or her salary showing all its elements and the method of determining the amount of salary, proof of payment of the salary, a record of the working hours showing the beginning, duration, and the end of the working hours, and other proof necessary for control and supervision purposes, or where it fails to submit a translation of such documents into the Croatian language at the request of the competent authority and fails to provide all other required information to the competent authorities;
- a foreign employer where it fails to authorize and appoint a contact person to co-operate with the competent authorities on behalf and in the name of the employer during the posting and, wherever necessary, receive and send documents, requests/applications, notifications and other writs;
- a foreign employer where it at the request of the competent authorities of the Republic of Croatia, fails to submit the documents for a period of 5 years from the date on which the posting was completed.

## 7. Non Labour Law Requirements[35]

N/A

## 8. Contact Details

Hrvoje Vidan
hrvoje.vidan@vidan-law.hr
+385 1 485 40 70
Odvjetnički ured Vidan
Preradovićeva 10
10000 Zagreb
Croatia

[35] Description of important requirements not resulting out of labour law that must be met during the secondment

## 6. CYPRUS

### 1. Various kinds of posting[36]

Law 63(I)/2017 defines a posted worker as an employee who usually works in the territory of a member state and which is temporarily posted to the Republic, in accordance with the provisions of subsection 2 of Article 4 of this Law, in order to carry out his work for a limited period of time. This Law applies to undertakings which are established in a Member State and who, in the context of a transnational provision of services, post workers in accordance with the provisions of subsection (2) of this Article to the territory of the Republic, when the undertakings referred to in subsection (1) of this Article take one of the following transnational measures: (a) Post one (1) or more worker(s) on their behalf and under their direction to the territory of the Republic for the purpose of performing a contract concluded between the undertaking which posts the worker and the recipient of the services who carries on business in the Republic, provided there is an employment relationship between the sending undertaking and the worker at the time of secondment; or (b) Post one (1) or more worker(s) to the territory of the Republic, to an establishment or an enterprise of the group of which the posting undertaking is a member, provided there is an employment relationship between the sending undertaking and the worker(s) at the time of secondment, or (c) a temporary employment agency or an undertaking providing workers, posts a worker(s) to a user undertaking established or operating in the territory of the Republic, provided that during the posting, an employment relationship exists between the temporary employment agency or the undertaking employing the worker(s) and the employee.

### 2. Notification Obligation[37]

According to the Law, the business which posts employees within the territory of the Republic is obliged to submit in writing to the relevant authority (Ministry of Labour) the following documents, prior to the commencement of the services. 1) Written declaration including the following: (i) the name or business name of the undertaking, its registered office, its address and its legal form; (ii) the details of the legal representative of the undertaking and the details of the representative of the undertaking in the Republic, if such a representative exists, during the provision of the services; (iii) the address of the place(s) where the posted workers will provide their work and the name or business name, head office, address and legal form of the undertaking or undertakings to which the posted workers will be provide their work; (iv) the commencement date of the services and the posting of the workers and the likely duration thereof; and (v) the nature of the activity being pursued; and 2) a list of posted workers with information determined by the Competent Authority for each of them. In the event of a change in the above, undertakings are required to submit a supplementary statement, as appropriate, within 15 days of the change. The employment of posted employees is forbidden without previous notification of these documents.

### 3. Record Keeping Obligation[38]

There are no specific record-keeping requirements or obligations arising before or during the secondment to Cyprus under Cyprus law. However, it is advisable for undertakings to keep a copy of any documents and relevant information submitted to the authorities as well as any other relevant information which may be requested from them in the context of an inspection.

### 4. Employee Entitlements[39]

The minimum standards that need to be complied with during the performance of services in

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[36] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[37] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[38] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[39] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

the Republic are the following:

- maximum working periods and minimum rest periods;
- minimum paid annual leave;
- minimum wage rates, including compensation for overtime work;
- the protection of health, safety and hygiene of employees during their employment;
- the protection of women who are pregnant or breastfeeding during their employment;
- the protection of children and young people at work;
- equal treatment of men and women;
- non-discrimination at work;

## 5. Exemptions[40]

This Law does not apply to merchant shipping companies as regards workers on seagoing ships (seafaring personnel). Furthermore, the minimum duration of annual paid leave and minimum wage rates are not applicable in the event of an initial assembly and/or initial installation of goods, where such work is provided for in the contract of the supply of goods, they are necessary for the commissioning of the goods supplied, and are carried out by employees with specialized skills and/or specialized workers of the undertaking providing the goods and the duration of the secondment does not exceed 8 days.

## 6. Possible fines[41]

Preventing an Inspector of the relevant authority from exercising any of his powers can lead to fines up to EUR 3.000 and/ or three months imprisonment.

For violations of the provisions of this Law, the relevant authority can impose an administrative fine not exceeding EUR 10.000. In the event of repeating a violation the relevant authority may impose an administrative fine not exceeding EUR 20.000. Furthermore, any person who acts in violation or fails to comply with any provision of this Law is guilty of an offense and, if convicted, is subject to imprisonment of up to 2 years and/ or to a fine up to EUR 50.000.

## 7. Non Labour Law Requirements[42]

Any interested employees who will execute any building and civil engineering projects need to submit their notification form concerning the provision of cross border services in Cyprus, either through the PSC website (http://www.businessincyprus.gov.cy/mcit/psc/psc.nsf/All/4A90C6BD18AC1B8BC2257A62003ADEF8?OpenDocument) or by contacting directly the Council for the Registration and Control of Building and Civil Engineering Contractors.

## 8. Contact Details

Nicholas Ktenas
nicholas.ktenas@neo.law
+357 22110324
Elias Neocleous & Co. LLC
5 Lemesou Avenue
26821Nicosia
Cyprus

[40] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[41] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[42] Description of important requirements not resulting out of labour law that must be met during the secondment

## 7. CZECH REPUBLIC

### 1. Various kinds of posting[43]

Service provision can occur as performance of work for a foreign employer on Czech territory or as performance of work for another employer(s). The latter may take two forms - temporary assignment (it is a word-to-word translation of Czech respective provisions), or personnel lease (agency employment).

A temporary assignment is given, if an employer concludes a contract on temporary assignment with an employee pursuant to which that employee carries out work for another natural person or company. In practice, however, the receiving employer must agree to such assignment. Personnel lease is given, if an employer concludes with another employer a contract on personnel lease subject of which is the obligation to provide personnel to that other employer.

The most important difference between assignment and personnel lease is that temporary assignment cannot be carried out as a gainful activity of the sending employer, whereas personnel lease can be done as a gainful activity. However, the sending employer must have a license to carry out personnel lease.

### 2. Notification Obligation[44]

Any temporary assignment or a personal lease must be notified by the receiving employer to the Labour Office prior to the start of work in the Czech Republic (at the latest on the first day of work of the employee in question).

Regarding personal lease, a sending employer (an employment agency), established on the territory of the Czech Republic, must have a respective license issued by the Czech Authorities (namely General Directorate of the Labour Office) in order to provide personal lease of foreign employees, unless the employment agency has based its business activity on the exception clause, which is set forth in EU Law.

Apart from other notification duties (such as pre-entry and assignment termination notification duties), an employment agency established on the territory of the Czech Republic must notify, before January 31, the data for the previous calendar year indicating (i) number of free positions for which agency employment is sought; (ii) number of employees being provided by the employment agency; and (iii) number of employees who have been actually provided to another employer. The Ministry of Labour and Social Affairs of the Czech Republic runs a public registry of employment agencies.

### 3. Record Keeping Obligation[45]

During the performance of services, an agency employment, a relocating employer, and a receiving employer must keep standard employment documentation and, in addition, records as follows:

- records of foreign employees working at the Czech employer;
- certificates A1 concerning the social security legislation, which applies to holders;
- documents proving the right to residence (residence permits, visas) if required;
- documents proving the right to work in the Czech Republic (work permits) if required;
- employment contracts.

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[43] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[44] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[45] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[46]

During the secondment or personnel lease, foreign employees are entitled to the same working and wage conditions as comparable domestic employees.

Employees from other EU countries and EEA countries working in the Czech Republic are generally entitled to the same conditions (with certain exemptions) when it comes to:

- work time limitations;
- vacation;
- minimal wage requirements;
- health and safety at work conditions;
- working conditions of pregnant employees;
- equal treatment and prohibition of discrimination;

unless any from the above-mentioned conditions is more favourable to the employee in question. The state, which shall be used as a comparator is not so clear. In some cases, it is the country of origin. The most advantageous provisions applicable to any work condition shall prevail.

## 5. Exemptions[47]

The restrictions outlined are applicable to all secondments to the Czech Republic regardless of the duration. Special regime is applicable to wage conditions and to annual leave benefits.

Important exemptions are:

- temporary assignment regulations are not applicable to increasing and deepening of qualification of an employee.

## 6. Possible fines[48]

Violations against notification obligations as well as record keeping obligations can lead to a fine of up to CZK 100.000 per violation (approx. EUR 3.800).

Wage dumping and other discrimination against foreign employees can lead to a fine of up to CZK 1,000.000 per violation and affected employee (approx. EUR 38.500).

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[46] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[47] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[48] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

## 7. Non Labour Law Requirements[49]

Employees sent on business trip ("assigned", "posted" or "seconded") to the Czech entity based on a contract between the third-country entity (i.e., outside EU and EEA) and the Czech entity solely for the purposes of improving their skills and qualification will not need to obtain a work permit before commencement of work. However, under the Employment Act there would be an obligation again to notify the Labour Office of the relocation, but this time not only upon commencement of work, but also prior this type of assignment of employees is realized.

Whether a foreign employee (not EU citizen – simplified) to be sent to perform a work in the Czech Republic will or will not need a work permit needs to be reviewed with respect to circumstances on particular case. The Employment Act provides for, among others, an exemption from such obligation for certain types of work or professions (such as artists, scientists, students, persons arranging a supply of goods, carrying out assembly work under a commercial contract or, where appropriate, warranty work and repair work) in case such work on Czech territory is time limited (does not exceed 7 consecutive calendar days or a total of 30 days within a calendar year). In addition to that work permit is not needed in case of certain time limited intra-group assignments, in case the employees concerned holds a residence permit issued for this purpose by another EU member state.

## 8. Contact Details

Václav Rovenský
vrovensky@ksb.cz
+420 224 103 316
Kocián Šolc Balaštík, advokátní kancelář, s.r.o.
Jungmannova 745/24
110 00 Prague
Czech Republic

[49] Description of important requirements not resulting out of labour law that must be met during the secondment

## 8. DENMARK

### 1. Various kinds of posting[50]

Pursuant to Article 1 of the Posting of Workers Directive, there are 3 types of transnational measures for which the directive applies:

a) Post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided that an employment relationship exists between the undertaking making the posting and the worker during the posting period; or

b) Post workers to an establishment or an undertaking owned by the group in the territory of a Member State, provided that an employment relationship exists between the undertaking making the posting and the worker during the posting period; or

c) Being a temporary employment undertaking or placement agency, hiring out a worker to a user undertaking established or operating in the territory of a Member State, provided that an employment relationship exists between the temporary employment undertaking or placement agency and the worker during the posting period.

a)-c) presuppose that the worker in question is posted for a temporary period of time.

### 2. Notification Obligation[51]

Pursuant to Section 7 a of the Danish Act on Posting of Workers, a foreign company carrying out temporary services in Denmark is obliged to be registered with Register of Foreign Service Providers ("RUT"). The registration must be completed before the service is provided in Denmark in order for the foreign company to avoid a fine. The information to be provided in the registration is the name of the foreign company, address, date etc.

Pursuant to Section 7 d (1) of the Danish Act on Posting of Workers, and if the service concerns construction, agriculture, forestry or gardening, the foreign company has to document to the assignor that the registration has been completed before the start of the service. Pursuant to Section 7 d (2), and if the assignor does not receive documentation of registration from the foreign company, the assignor has to contact the Danish Working Environment Authority ("WEA") 3 days after the start of the service at the latest.

Posted workers from EU, EEA or Switzerland will have to apply for a Danish CPR number at the Danish National Register if the posted workers intend to stay in Denmark for longer than 3 months.

### 3. Record Keeping Obligation[52]

Pursuant to Section 7 e of the Danish Act on Posting of Workers, a foreign company must be able to provide documentation that can identify the service provider, i.e. providing the information as required in Section 7 a (name of the foreign company, address, date etc.). The documentation has to be provided to the aforementioned WEA. Upon request of the WEA, the posted workers can be obliged to provide information regarding the name of the individual and the employer in accordance with Section 7 e of the Danish Act on Posting of Workers.

### 4. Employee Entitlements[53]

Pursuant to Section 5 of the Danish Act on Posting of Workers, the employment relationship

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[50] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[51] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[52] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[53] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

will be governed by the following mandatory minimum requirements irrespective that the worker is comprised by foreign legislation:

- The Danish Working Environment Act
- The Danish Act on Equal Treatment of Men and Women as regards Access to Employment and Maternity Leave, etc. (with a few exceptions)
- The Danish Act on Equal Pay to Men and Women
- The rules on maternity leave as set out in the Danish Salaried Employees Act
- The Danish Act on Prohibition against Discrimination in respect of Employment
- The Danish Act on Implementation of the Working Time Directive (the employee may at a maximum work an average of 48 hours, incl. overtime, per week)
- The Danish Holiday Act to the extent that the legislation governing the employment relationship is to the detriment of the employee. With respect to the length of holiday and holiday pay pursuant to the Danish Holiday Act (25 days each year), the employer must ensure that the employee receives compensation for holiday as well as payment for missing holiday in order to provide the employee with the same holiday rights as set out in the Danish Holiday Act.
- The Danish Act on Agency Workers in its entirety (only applies to posted workers pursuant to Article 1 (3) (c) of the Posting of Workers Directive).

As a starting point, Danish employment legislation does not fix a minimum pay. However, if the work is comprised by a collective bargaining agreement, restrictions may apply in this respect.

## 5. Exemptions[54]

Pursuant to Section 7b (1) of the Danish Act on Posting of Workers, a foreign company is exempt from the obligation to register with RUT, provided that all the following criteria are met:

1. The delivery of the service does not exceed 8 days.
2. The delivery of the service takes place in connection with the delivery of technical facilities or technical installations.
3. The employee or the foreign company is engaged in and is specialized in or qualified for assembling, installing, overhauling, repairing or informing about technical facilities or technical installations in Denmark.

Furthermore, the Danish Executive Order on Exemptions to the Obligation to Register with The Register of Foreign Service Providers (RUT) contains further, however very specific, exemptions to the duty to register with RUT pursuant to Section 7 a of the Danish Act on Posting of Workers. Pursuant to Section 1 of the aforementioned Executive Order, a foreign company does not have to register with RUT in, inter alia, the following situations:

1. Participation in seminars and conferences, including researchers, lecturers and others who have been invited to teach or give a speech etc.
2. Participation in business trips for foreign firms or companies which do not have a permanent place of business in Denmark.
3. Supply of consultancy services within accounting and auditing for up to 8 days.
4. Posting within a group by a company for up to 8 days. However, this does not apply if the service involves construction work, agriculture, forestry and nursery work, cleaning, including window cleaning, as well as hotel and restaurant work.

[54] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

## 6. Possible fines[55]

A violation of the obligation to provide correct information for the registration in Denmark may result in a fine. The fine ranges between DKK 10.000 and DKK 20.000, depending on the specific circumstances. Further, and pursuant to Section 9 a of the Danish Act on Posting of Workers, any employee who has been dismissed or has not been treated equally according to the mandatory Danish legislation comprised by the Act, see "Employee entitlements", and who has raised such claim against the employer is entitled to compensation.

## 7. Non Labour Law Requirements[56]

Other important requirements arise from various Danish mandatory law including but not limited to tax-law, laws on social security etc. The foreign company should be aware of these different requirements prior to the posting of workers.

## 8. Contact Details

Rasmus Høj Christensen
rhc@plesner.com
M + 45 30 93 71 45
T + 45 36 94 11 45
Plesner Advokatpartnerselskab
Amerika Plads 37
2100 København Ø
Denmark

[55] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[56] Description of important requirements not resulting out of labour law that must be met during the secondment

## 9. FINLAND

### 1. Various kinds of posting[57]

Service provision can occur as subcontracted work, as an internal transfer or as personnel lease.

In personnel lease situation the right to direct and supervise work shifts from the lessor company to the lessee (=user) company, whereas with subcontracted work it remains with the original employer.

Internal transfer means posting workers to a company of the same group located in another country and such arrangements.

Concerning construction work, there are also several more specific and stricter provisions.

### 2. Notification Obligation[58]

A notification to the occupational safety and health authority about the posting is required prior to the start of work in Finland.

Such notification is:

- not required if an internal transfer within a group of companies lasts no more than 5 working days.
- always required in building work and it must also be sent to the builder and the general contractor.

The posting company must appoint a representative in Finland that can be contacted at all times during the posting. The representative is only required if posting for over 10 working days.

### 3. Record Keeping Obligation[59]

Obligation to keep certain information available in written form during the entire duration of the posting (e.g. information on the principal terms of the work).

The obligation is more extensive, if posting last for over 10 working days (includes e.g. timesheets).

The contractor must be notified where the information is kept before the work in Finland starts.

The information shall be kept for 2 years after the end of the worker's posting.

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[57] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[58] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[59] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[60]

Certain minimum provisions on working hours, annual holidays and family leaves apply.

It is important to establish, whether a collective bargaining agreement applies, as collective bargaining agreements proved the principal terms of work in further detail.

Minimum remuneration according to generally binding collective bargaining agreement (CBA) must be paid, or if one is not applicable at least a reasonable normal remuneration.

Specific provisions for establishing the applicable CBA in case of personnel lease (e.g. the CBA of the user company can apply). If a CBA is not applicable, working time, annual holiday and occupational safety must be in compliance with the employees of the user company.

## 5. Exemptions[61]

The legal provisions set a minimum level and the parties may agree on more favorable provisions for the employee.

Provisions on minimum wage and annual holidays are not applied to certain stints not exceeding 8 days, if:

- the work is initial assembly or first installation of goods performed by a skilled or specialist worker,
- the work forms an integral part of the contract of the supply of goods and
- the work is necessary for taking the supplied goods into use.

The exception does not apply to construction work.

## 6. Possible fines[62]

A negligence fee of a minimum EUR 1.000 and a maximum of EUR 10.000 for neglecting the notification obligation, appointing a representative or record keeping obligation.

If a negligence fee is imposed on 2 or more acts of negligence, a joint amount of a maximum of EUR 10.000 may be imposed.

## 7. Non Labour Law Requirements[63]

The posting company must take out accident insurances and organize mandatory occupational health care.

The receiving company must confirm that their contracting partners have complied with their statutory obligations as contracting partners and employers (e.g. tax payment status and employer contributions). This would however not be required in case of minor subcontracts (under EUR 9.000) and short-term personnel lease (max. 10 days).

Nevertheless, in construction work such confirmation is always required.

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60 Description of minimum standards that must be complied with during the performance of services in the jurisdiction

61 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

62 Description of fines that could be imposed in case of non-compliance with the restrictions outlined

63 Description of important requirements not resulting out of labour law that must be met during the secondment

## 8. Contact Details

Tomi Kemppainen
Partner, Head of Employment, Member of the Finnish Bar
tomi.kemppainen@castren.fi
Tel. +358 (0)20 7765 222 | Mobile +358 (0)40 354 2204
Mats Forsius
Senior Associate, Member of the Finnish Bar
Tel. +358 (0)20 7765 223 | Mobile +358 (0)50 357 1726 |
Castrén & Snellman Attorneys Ltd
PO Box 233 (Eteläesplanadi 14)
00131 Helsinki
Finland
www.castren.fi

## 10. FRANCE

### 1. Various kinds of posting[64]

If an employer established outside France wishes to have employees temporarily work on the French territory, and as long as an employment contract is effective between this employer and the employee and their employment relationship continues during this period, French law then considers this is a secondment.

This qualification covers several legal situations (i) the provision of services to a client, (ii) intra-group mobility, (iii) any operations carried out in France for a foreign employer's own interests and (iv) temporary work.

Under French labour law, operations that involve the provision of staff are subject to particular regulations. In principle, any profit-making operation having as its exclusive purpose the providing of staff is prohibited.

### 2. Notification Obligation[65]

Prior to any secondment, the foreign employer must:

- Appoint a representative in France;
- Make a prior declaration to inform the local administration through the following website: www.sipsi.travail.gouv.fr;
- Concerning formalities relating to European social security law, foreign employees seconded to France do not have most of the time to be subject to the French social security system during the secondment period and remain subject to the social security system of the State of the company that usually employs them, if they meet certain conditions relating to (i) the employee himself/herself and (ii) to the employment carried out in France. Thus, in these cases, the employer must submit a request for secondment to the competent institution in the state, which will provide an A1 Form ("formulaire A1").

Transport companies established outside France that post "driving" employees to France for one or more journeys are not subject to the obligation to submit a declaration of posting but must draw up a certificate of posting on the SIPSI teleservice.

### 3. Record Keeping Obligation[66]

Foreign employers must make the following documents available to local French authorities during the period of secondment:

- If any, the work authorization allowing the non-EU citizen to pursue an activity as an employed person;
- If any, the document certifying a medical examination in the country of origin;
- If the duration of posting is less than a month, any document proving that the employee's compensation complies with the French minimum rates of pay;
- If the duration of posting is higher than a month, payslips;
- Any document proving that the employee's compensation has been effectively paid;
- A document indicating the starting time and the ending time of working and the daily duration of work in France;
- A copy of the appointment of the employer's representative in France,
- The employment contract proving the employee's hiring location (foreign location),
- Any document establishing (i) the revenue generated, & (ii) the number of prior commercial contracts performed, respectively in the home country and also in France (to

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64 Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

65 Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

66 Description of record keeping obligations that arise before or during the secondment to the jurisdiction

demonstrate that the foreign company does carry out its main business out of France);

- Copy of the A1 form (social security) if any.

In addition, for temporary employment agencies: a document certifying that a financial guarantee has been obtained or proof of compliance with the equivalent guarantee-provisions in the country of origin.

All these documents must be translated into French.

If it is in practice impossible to make available all the listed documents on the employees' working place, these documents can be made available through the representative in France or through an e-platform.

## 4. Employee Entitlements[67]

Employers temporarily posting employees to the French territory are subject to the legal provisions and contractual stipulations applicable to employees employed by companies in the same branch of activity established in France, with regard to labour legislation, with regard to the following matters:

- Individual and collective freedoms in the employment relationship;
- Discrimination and professional equality between women and men;
- Maternity protection, maternity and paternity leave and childcare, leave for family events;
- Conditions of availability and guarantees due to employees by companies carrying out temporary work activities;
- Right to strike;
- Working hours, compensatory rest, public holidays, paid annual leave, working hours and night work for young workers;
- Specific rules regarding paid holidays in certain industries (construction/building);
- Minimum wage and payment of wages, including overtime increases, as well as wage accessories legally or contractually fixed;
- Rules relating to health and safety at work, age of admission to work, employment of children;
- Illegal work.

## 5. Exemptions[68]

A French legislative reform dated 5 September 2018 introduced an exception for short-term secondments for certain activities. The legal effectiveness of this exception is still subject to the adoption of implementing provisions that will define the exact scope of the exception.

The same legislative reform introduced the possibility of requesting adjustments to these obligations (i.e. appoint a representative in France, inform the local administration and make available the documentation legally required) for employers who regularly post employees in France in the context of either the provision of services for a specific customer or intra-group mobility. The legal effectiveness of this exception is also still subject to the adoption of implementing provisions.

An exception is worth mentioning for employers established outside France who, for their own interests, post employees to the French territory without having concluded a contract with a client: they must neither appoint a representative in France nor make a prior declaration.

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[67] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[68] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

## 6. Possible fines[69]

Non-compliance with the obligation to appoint a local representative or to make a prior declaration can lead to a fine of EUR 4.000 maximum per posted employee (EUR 8.000 in the event of a repeated offence within 2 years of the first fine).

Non-compliance with the obligation to make available all listed documents can lead to:

- Criminal fine – EUR 450 maximum fine;
- Administrative fine – EUR 4.000 maximum fine per posted employee (EUR 8.000 in the event of a repeated offence within 2 years of the first fine).

Failure to produce the A1 form (for social security purposes) shall result in the application of a penalty fixed, for each worker concerned, up to the monthly social security ceiling in force i.e. EUR 3.377 (for 2019).

## 7. Non Labour Law Requirements[70]

N/A

## 8. Contact Details

Philippe Durand
PDurand@august-debouzy.com
+33145617964
August Debouzy
6-8 avenue de Messine
75008 Paris
France

[69] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[70] Description of important requirements not resulting out of labour law that must be met during the secondment

## 11. GERMANY

### 1. Various kinds of posting[71]

Employers domiciled in countries outside Germany, companies that send leased/temporary employees to Germany and companies that lease employees from temporary employment agencies domiciled abroad are required to register these employees with German Customs and to confirm that the terms of employment applicable in Germany are being complied with.

### 2. Notification Obligation[72]

Since January 1, 2017 when the new Ordinance on Minimum Wage Reporting Obligations (*Mindestlohnmeldeverordnung*) has entered into force, employers domiciled outside Germany are required to submit notifications of workers posted to Germany online using the Minimum Wage Notification Portal. The same applies to businesses that use workers leased from an agency domiciled outside Germany. The notification portal can be accessed at www.meldeportal-mindestlohn.de. Sending notifications by fax is no longer possible.

Pursuant to the Minimum Wage Act (*Mindestlohngesetz* - MiLoG), the Posted Workers Act (*Arbeitnehmer-Entsendegesetz* - AEntG), or the Act on the Provision of Temporary Workers (*Arbeitnehmerüberlassungsgesetz* - AÜG) it is important to distinguish between different sets of rules, and consequently, different notifications. Also, the notification shall be accompanied by an assurance by the employer and the supplier. They have to declare that they are complying with the minimum conditions of employment as laid down in the MiLoG, the AEntG and the AÜG.

Where changes occur, a notification of the changes must be given by the employer and the user.

### 3. Record Keeping Obligation[73]

In derogation of regular notification rules, employers domiciled outside Germany and users of temporary workers can submit an operational schedule if workers are deployed as follows:

1. At a single place of employment
   a) before 6 a.m. or after 10 p.m., at least in part
   b) in shift work
2. At several places of employment on the same day
3. Exclusively for mobile activities

In the case of changing places of employment and shift work, it is sufficient for employers to submit an operational schedule for a period of up to3 months instead of having to file individual notifications. Notifications of changes to such operational schedules are necessary only if deployment is rescheduled by at least 8 hours.

In the case of exclusively mobile activities, operational schedules can cover periods of up to 6 months, depending on order book predictability. Notifications of changes are not required. If the relevant documents are kept outside Germany, the operational schedule must be accompanied by a declaration confirming that the documents will be made available in the German language upon request by the customs administration.

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[71] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[72] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[73] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[74]

The provisions contained in laws, regulations or administrative provisions concerning

- minimum wage rates and overtime rates,
- annual leave entitlement,
- maximum working time limits and minimum rest periods/breaks,
- conditions for temporary agency work,
- safety, health and hygiene at work,
- protection of pregnant women and women who have recently given birth, young people and children and
- equal treatment for men and women and other non-discrimination provisions.

Also, workers posted to Germany to work in certain sectors are also covered by the terms of generally applicable collective bargaining agreements concerning the above-mentioned issues, if these agreements cover the whole territory of Germany. Specific legally binding minimum wage rates, set out in the law on the posting of workers set by decree (based in most cases on collective bargaining agreements), apply to posted workers, and all other employees, in these sectors.

## 5. Exemptions[75]

Notifications pursuant to the Minimum Wage Act (MiLoG) are not required with regard to

- employees whose sustained pay exceeds a gross EUR 2.958 a month,
- or whose sustained regular monthly pay exceeds a gross EUR 2.000 provided that the employer can submit evidence of such payment for the past full 12 months

This exemption does not apply in the case of notifications pursuant to the Posted Workers Act (AEntG) and/or the Act on the Provision of Temporary Workers (AÜG).

Notifications under both MiLoG and AEntG legislation may also be dispensed with where an employer's spouse, registered life partner, child(ren) and/or parent(s) work in that employer's operation. Where the employer is a legal person or a partnership with capacity to act in its own right, they are relieved from the notification obligation only in cases where the above family relationship exists with the organ (or a member of such organ) entitled to represent the legal person, or with an authorized partner in the partnership. Family members who are not under an employment contract and who engage in the operation's affairs by virtue of their family relationship only, are not deemed to be employees and therefore not subject to the reporting obligations regulated by the MiLoG and AEntG legislation.

## 6. Possible fines[76]

Violations against notification obligations as well as record keeping obligations can lead to fines up to EUR 30.000.

If a working condition specified in an applicable collective bargaining agreement or minimum wage is not granted or is not granted on time, or if equivalence of the working conditions of posted workers with those in the user's establishment is not achieved, fines up to EUR 500.000 are possible.

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[74] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[75] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[76] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

## 7. Non Labour Law Requirements[77]

Prior to the first provision of services in Germany, a notification on cross boarder service provision must be made. The notification shall be accompanied by the assurance.

## 8. Contact Details

Dr: Jan Tibor Lelley
lelley@buse.de
+49 201 1758-202
Buse Heberer Fromm
Rechtsanwälte Steuerberater PartG mbB
Huyssenallee 86-88
45128 Essen
Germany

[77] Description of important requirements not resulting out of labour law that must be met during the secondment

## 12. GREECE

### 1. Various kinds of posting[78]

The secondment legislation is applicable either (a) in the case the employee shall provide his/her services to an affiliate company of his/her initial employer (i.e. secondment to a Group company) or (b) in case the employee shall be employed by another company through a temporary employment agency, (c) or in case an employee is provided through his/her employer company to another company for the fulfilment of the contractual obligations between these companies.

### 2. Notification Obligation[79]

Before the seconded employees start to provide their services, the original employer is obliged to submit to the competent labour inspection office a notification letter, including a personnel table with the employees' data. The notification is required to be submitted in two copies. One is kept by the labour inspection office and the other is duly stamped and returned to the Company. The returned copy has to be placed at the Host employer's premises, in order to be available to the labour inspectors in case of an audit.

As the notification also includes an estimation of the secondment period, in case the employees are required to extent their stay in Greece further to the period already notified to the authorities, a new notification has to be submitted.

### 3. Record Keeping Obligation[80]

During the performance of services, the following must be kept at the company's premises in order to be provided to the labour inspectors in case of an audit:

- the employment –secondment agreement (bilingual or entirely in Greek)
- the seconded employee's pay slips (accompanied by the copy of the A1 form with regard to the employee's duly exemption of the social security contributions payment)
- the company's personnel list (E4 form)

### 4. Employee Entitlements[81]

During the secondment agreement, employees are entitled to the following:

- the maximum and minimum resting periods
- the minimum duration of the annual holiday entitlement
- the statutory minimum salary (which is paid in 14 monthly installments corresponding to Christmas-Easter-Holidays allowances)
- the protection of young/underage employees
- the protection of the pregnant employees
- the compliance with the health and safety regulations
- the equal treatment between men and women
- the no-discrimination based on racial or ethnic origin, religion, disability, age or sexual orientation
- the rules concerning hiring-out of workers and terms and conditions which apply to temporary employees

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78 Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

79 Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

80 Description of record keeping obligations that arise before or during the secondment to the jurisdiction

81 Description of minimum standards that must be complied with during the performance of services in the jurisdiction

## 5. Exemptions[82]

The restrictions outlined are basically applicable to all secondments to Greece regardless of the duration, as long as, a provision of services (employment) takes place. Therefore, in case of seminars, business meetings, and job interviews no legal requirement exists. Express exemption exists in case of the shipping enterprises regarding the shipping personnel (i.e. the office personnel of said companies is not excluded).

## 6. Possible fines[83]

Violations of labour law can incur administrative/criminal/civil sanctions such as

- monetary fines ranging from EUR 300 up to EUR 50.000/per violation/per employee
- temporarily/permanent closure of the business
- exclusion from public tenders
- criminal charges
- personal liability of the legal representatives

## 7. Non Labour Law Requirements[84]

N/A

## 8. Contact Details

Effie Mitsopoulou
e.mitsopoulou@kglawfirm.gr
+30 210 817 1541

Ioanna Chanoumi
i.chanoumi@kglawfirm.gr
+30 210 817 1503

Kyriakides Georgopoulos Law Firm
28, Dimitriou Soutsou Str.,
115 21 Athens
Greece

[82] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[83] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[84] Description of important requirements not resulting out of labour law that must be met during the secondment

## 13. HUNGARY

### 1. Various kinds of posting[85]

Posting may have basically 2 major categories: secondment and temporary agency work.

The secondment is when the employee is employed on a temporary basis in another position, at another place of work or at another employer as specified in the employment agreement.

If the duration of the secondment does not exceed 44 working days or 352 hours of working per calendar year, then the secondment may be unilaterally ordered by the employer. These figures shall proportionately apply if the employment relationship was established during the year, is concluded for a definite term or full time work deviating from the general working hours or for part-time work.

Parties may agree on a longer secondment than mentioned above by mutually amending the employment contract.

The employer shall inform the employee on the expected length of the secondment. If the employee is pregnant or has a child younger than 3 years, or he/she takes care alone of his/her child younger than 16 years, or takes care personally of his/her family member, or he/she has a health incapacity of at least 50%, then the employee may not be obliged to carry out work at another location without his/her consent.

Temporary agency work is given, when an employee is hired out by a temporary-work agency to a user enterprise (any employer under whose supervision the employee performs temporary work) for remunerated temporary work, provided there is an employment relationship between the employee and the temporary-work agency. The duration of assignment may not exceed 5 years, including any period of extended assignment and re-assignment within a period of 6 months from the time of termination of his/her previous employment, irrespective of whether the assignment was made by the same or by a different temporary-work agency.

### 2. Notification Obligation[86]

When sending employees to Hungary (in case of non EEA countries, a work permit is also required), foreign employers shall notify the labour authority in advance (at the beginning of the service provision at the latest) electronically. The notification shall be made with the data specified in Annex 2 of the Act LXXV of 1996 on Labour Control.

### 3. Record Keeping Obligation[87]

The beneficiary (who receives the employees - not necessary the employer) shall ensure that:

a) the employment contract or equivalent other document of posted workers,

b) the time sheets of posted workers, and

c) proof of payment of the wages of posted workers on paper or in electronic format,

are available during the whole duration of posting, at the place where the work is carried out, and for a period of 3 years after the end thereof at the employer's registered office or fixed establishment.

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[85] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[86] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[87] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[88]

During the secondment, if ordered unilaterally by the employer, the employee is entitled to the remuneration of the position he/she holds temporarily, but at least for the remuneration of his/her original position.

If a foreign employer employs an employee in Hungary - under an agreement concluded with a third party - in an employment relationship that is not covered by the Hungarian Labour Code, Hungarian law shall apply to such employment relationships in terms of:

a) maximum working time and minimum rest periods;

b) minimum duration of annual paid leave;

c) the amount of minimum wages;

d) the conditions for temporary agency work;

e) occupational safety;

f) the conditions of employment or work by pregnant women or women who have recently given birth, and of young people; furthermore

g) the principle of equal treatment;

including the provisions of a collective bargaining agreement with extended scope as pertaining to the employment relationship in question. These provisions shall also apply where employment is provided at the Hungarian branch of a foreign employer, or of an employer that belongs to the same group of companies as the foreign employer.

## 5. Exemptions[89]

The provisions specified in column “E” do not apply if the law governing the employment relationship contains more favourable rules for the employee in contrast of those specified by the Hungarian Labour Code.

## 6. Possible fines[90]

Violations against certain obligations leads to and in certain cases may lead to a fine ranging from HUF 30.000 (app. EUR 95) to HUF 10,000.000 (app. EUR 31.500). If the employer employs less than 20 employees, the maximum amount of the fine is HUF 5,000.000 (app. EUR 15.750). The amount of the fine may be up to twice the upper limit if at least one infringement of the same obligation has been established within 3 years from the date on which the final and binding decision imposing the fine was made as a result of the previous labour inspection.

Violation against notification obligation or record keeping obligation may result in a fine amounting to HUF 30.000 (app. EUR 95). The fine may be imposed multiple times.

## 7. Non Labour Law Requirements[91]

N/A

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88 Description of minimum standards that must be complied with during the performance of services in the jurisdiction

89 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

90 Description of fines that could be imposed in case of non-compliance with the restrictions outlined

91 Description of important requirements not resulting out of labour law that must be met during the secondment

## 8. Contact Details

Tamás Polauf
tamas.polauf@chsh.hu
+36/1 457 8040
Tamás Novák
tamas.novak@chsh.hu
+36/1 457 8040
CHSH Dezső és Társai Ügyvédi Iroda
Fő utca 14-18.
1011 Budapest
Hungary

## 14. IRELAND

### 1. Various kinds of posting[92]

There is no legal concept of "personnel lease" in Irish labour law.

Cross-border service provision occurs by means of a secondment arrangement. For EU workers, Council Directive 96/71/EC concerning the posting of workers and EU Directive 2014/67/EU covers all such arrangements. The directives have been transposed into Irish law in the Protection of Employees (Part-time Work) Act 2001 and S.I. No. 412/2016 - European Union (Posting of Workers) Regulations 2016 respectively (the Irish Posted Workers Regulations).

Different arrangements apply for non-EEA national workers, who may require a work permit and/or visa.

Staff deployments to Ireland may take the form of a secondment whereby an employee remains employed by a foreign employing entity at all times, but performs duties for the benefit of a second host company in Ireland on a day-to-day basis.

For the duration of the secondment, the employee remains the ultimate responsibility of the foreign employer in terms of overall performance management and liability, except where otherwise agreed.

The relationship between the foreign employer, the seconded employee and the host company in Ireland is determined by the terms of the secondment agreement. However, seconded employees in Ireland can avail of all mandatory Irish laws including employment legislation relating to minimum wage and unfair dismissals.

### 2. Notification Obligation[93]

Mandatory notification of Posted Workers to the Workplace Relations Commission (WRC).

A service provider established in a Member State other than Ireland who temporarily posts workers to Ireland (Foreign Service Provider) is required to notify the WRC when posting workers to Ireland in advance of the worker commencing employment in Ireland. The Foreign Service Provider must provide certain information (using a prescribed Form of Declaration) to enable the WRC to monitor posting activity and ensure compliance with posting rules.

The information required includes the name, address, DOB, nationality, start and end date, gross weekly pay, hours of work in relation to each posted worker, as well as details on the reasons they are being posted. The Foreign Service Providers must provide the Form of Declaration to the WRC on the date(s) they post their first (and any subsequent) worker to Ireland.

All nationals of the European Economic Area and Switzerland have the right to work in Ireland without a work permit. However, all non-EEA nationals require a work permit from the Irish Department of Business, Enterprise and Innovation (the “DBEI”) before commencing employment in Ireland. This is unless the individual can demonstrate another entitlement to lawfully work in Ireland (for example, if married to an EU national, or has attained Irish citizenship through naturalization, etc.)

There are a number of different types of work permits available and the employer or employee can apply for such a work permit when the employee has received a job offer in Ireland. The Critical Skills and Intra-Company Transfer permits are popular with foreign entities relocating senior or highly skilled staff to Ireland. The issuing and administration of a work permit on behalf of the State is handled by the Employment Permits Section of the DBEI.

Work permit holders can only work for the employer and in the occupation named on the

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92 Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

93 Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

permit.

In addition to the requirement to hold a work permit, certain non-EEA nationals may also require an entry visa before entering Ireland.

**3. Record Keeping Obligation**[94]

The Foreign Service Provider must maintain copies of the posted workers' employment contracts, their payslips or equivalent documents, time sheets or equivalent documents where relevant, proof of payment of wages, and other relevant documentation for inspection at a place identified to the WRC. The Foreign Service Provider must also designate a contact person in Ireland to liaise with the WRC on their behalf, and to send out and receive documents and notices as necessary.

**4. Employee Entitlements**[95]

A posted worker in Ireland is entitled to the full range of Irish employment legislation, including but not limited to, a minimum wage rate (currently EUR 9.80 per hour), an average working week of no more than 48 hours, breaks during the working day, paid annual leave, 9 public holidays, statutory protective leave (such as maternity leave, paternity leave, parental leave, adoptive leave and career's leave), equal treatment in the workplace, safety in the workplace (e.g. protection from harassment, bullying and violence at work), privacy and data protection and minimum notice periods.

**5. Exemptions**[96]

The Irish Posted Workers Regulations do not specify a minimum period of time the worker must be working in Ireland in order to be categorized as a "Posted Worker". They define a "Posted Worker" as a worker, who normally works in another Member State but, for a limited period, carries out his or her work in Ireland. Although, it could technically be argued that a worker attending a business meeting in Ireland could be considered a "Posted Worker", we do not believe that such an argument would succeed. Such individuals were not the intended target of the Irish Posted Workers Regulations. Additionally, such a strict interpretation of the Regulations could prove to be administratively cumbersome for Foreign Service Providers, and for the WRC.

**6. Possible fines**[97]

Where a Foreign Service Provider does not comply with the administrative requirements and the specific control measures in relation to posted workers, they will be guilty of a criminal offence and may be subject to a fine of up to EUR 50.000.

Separately, it is an offence for (i) an employer to employ a person who does not have authorization to work in Ireland (i.e. a valid work permit where one is required); and (ii) for an employee to work in Ireland without the appropriate work permit. Both may be liable to a fine of up to EUR 250.000 and/or imprisonment.

**7. Non Labour Law Requirements**[98]

Employer obligation to operate Irish payroll taxes - income tax is deducted at source from salary in Ireland under the Pay As You Earn (PAYE) system. Also obligated to deduct Social Insurance (PRSI) at source from salary.

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94 Description of record keeping obligations that arise before or during the secondment to the jurisdiction

95 Description of minimum standards that must be complied with during the performance of services in the jurisdiction

96 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

97 Description of fines that could be imposed in case of non-compliance with the restrictions outlined

98 Description of important requirements not resulting out of labour law that must be met during the secondment

## 8. Contact Details

Ciarán Lyng
clyng@algoodbody.com
+353 1 649 2108
A&L Goodbody Solicitors

## 15. ITALY

### 1. Various kinds of posting[99]

Service provision can occur as secondment or personnel lease.

A secondment is given, if a foreign Company sends an employee to an Italian customer that exercises the managerial and executive power on him/her.

The secondment is performed for the provider's own interest, for a specific period of time and to execute prescribed services.

The interest must not be identified in the “providing personnel lease”.

Personnel lease requires that the actual interest and obligation of the foreign company is to provide personnel that can be used by an Italian company for its own purposes.

Foreign agencies that provide personnel leasing services must be authorized by Italian Ministry of Labour and Social Policies pursuant to the art. 4 D. Lgs. 276/2003 only if it is required for the same activity equivalent administrative provision or authorization issued by the Public Authority in the country where the registered office is located.

The authorization is not necessary if these agencies prove that they already hold the above document in their country, if it is required.

If the personnel lease contract is regulated under the Italian Law, pursuant to Regulation EC n. 593/2008, the document must be in written and must include the following requirements:

- details of the authorization issued by the relevant Public Authority;
- number of the relevant employees;
- information relating to any risk for the health and safety of the employee and any prevention and safety measures adopted;
- starting date and the foreseeable length of the lease;
- tasks and duties and the contractual job-level of the employee;
- workplace, time schedules and economic and regulatory conditions;

The above list and furthermore information relating to the starting date and the foreseeable length of the «mission» (in the case of sequence of several lease) must be given in written to the employee by the lessor at the signing of the employment contract or at the date of the provider's decision.

### 2. Notification Obligation[100]

Any secondment and personnel lease to Italy will have to be preceded by the communication to the Ministry of Labour and Social Policies by using the "UNI_Distacco_Ue" form.

The communication must be served within the 12.00 p.m. of the day before the starting of the secondment or the beginning of the personnel lease.

Any amendment or variation of the conditions that occur during the performance of the services must be served to the Authority within 5 days.

The provider must also appoint:

- A Legal Representative domiciled in Italy in order to receive and send correspondence and documents. If the representative is not appointed, the provider's registered office is considered the costumer's residing/registered address.
- Only if required, a Legal Representative with the power to entertain relationships with the social unions and to negotiate the second level of collective bargaining agreements.

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[99] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[100] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

## 3. Record Keeping Obligation[101]

During the performance of services and for the following 2 years, the hereunder documents must be issued in Italian language and kept and stored by the provider (foreign Company):

- Employment contract or any other document that included the necessary information pursuant to the art. 1 and 2 of D.Lgs. 152/1997;
- Paychecks;
- Relevant documents that can summarize the beginning, the end and the daily working schedule;
- Wages' proof of payment (or any corresponding document);
- Communications to the Public Authorities of the establishment of the employment relationship;
- Certification of the relevant public security legislation.

## 4. Employee Entitlements[102]

During the secondment employees have the right to obtain the same conditions of work and employment of the other employees who carry out comparable ("analogue") duties in the same workplace (i.e. at lessee's premises).

During the personnel lease, for the length of the performance, the lessor's employees have the right to obtain the same economic and regulatory conditions as whole not lower than those applied to the lessee's employees.

Summarizing, during the secondment and personnel lease, employees have the following entitlements (non-exhaustive list):

- Minimum remuneration due for comparable Italian employees (e.g. 13$^{th}$ and 14$^{th}$ monthly salary, overtime premiums, minimum salary, etc.);
- Not less than 4 weeks of paid vacation per working year;
- Compliance with working daily and weekly time limitations applicable to comparable employees;
- Provisions on health and safety at the workplace.

[101] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[102] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

## 5. Exemptions[103]

The restrictions to the secondments outlined are basically applicable in Italy regardless of the duration of the services. The regulation doesn't apply at the sailing personnel of the merchant marine enterprises.

The regulatory provisions and the conditions pursuant of collective bargaining agreements relating to:

- the minimum annual vacation period;
- minimum remuneration (also for overtime work);

do not apply to the employees, with duties of initial assembly or first installation enclosed in a goods supplying contract and essential in order to start up the supplied good, if works are executed by the supplier's qualified and specialized employees and the duration of the works, that have brought to the secondment, is no longer than 8 days.

The above exemption does not apply to the hereunder activities of the building sector included in the "attachments A" of D.Lgs. 136/2016, as:

- excavation;
- adjustment
- fabrication
- assembly and disassembly of prefabricated elements;
- trim or equipment;
- processing;
- renewal;
- repair;
- dismantling;
- demolition;
- maintenance;
- maintenance of painting and cleaning works;
- remediation.

## 6. Possible fines[104]

In the case of not genuine secondment or personnel lease, any violation leads to fines of EUR 50 per employee and for each working day.

In the case of not genuine secondment or personnel lease relating to minor employees, any violation leads to the arrest and to a penalty of EUR 50 per employee and per working day that can be increased up to 6 times.

Violations against the serving/notification obligations can lead to fines of EUR 150 to EUR 500 per employee and per violation.

However fines cannot be higher than EUR 150.000.

Violations against the appointing of the legal representative domiciled in Italy to receive and send correspondence and documents can lead to fines of EUR 500 to EUR 3.000 per employee.

However fines cannot be higher than EUR 150.000.

Violations against the appointing of the required legal representative to entertain relationship with the social unions to negotiate a second level collective bargaining agreements can lead to fines of EUR 2.000 to EUR 6.000 per employee.

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[103] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[104] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

If the personnel lease contract is regulated under the Italian Law, pursuant to Regulation EC n. 593/2008, any violations against the lessor's information duty relating to the requirements of the personnel lease contract, the starting date and the foreseeable length of the «mission» (in the case of sequence of lease) and the written communication of the above information to the employee, can lead to fines of EUR 250 to EUR 1.250.

## 7. Non Labour Law Requirements[105]

A business which is lawfully established in a Member State of the European Union can provide its services in others Member States on a temporary or occasional basis with no restriction other than the requirements set in the country of establishment.

In Italy, for cross-border provision of services there are no others provider's obligations other than the ones already listed.

## 8. Contact Details

Grimaldi Studio Legale
Corso Europa 12
Milan 20122
Italy
+39 02 3030 9330

Angelo Zambelli
azambelli@grimaldilex.com

Alberto Testi
atesti@grimaldilex.com

[105] Description of important requirements not resulting out of labour law that must be met during the secondment

## 16. LUXEMBOURG

### 1. Various kinds of posting[106]

Luxembourg recognizes posted work as that carried out by an employee who has an employment contract with an employer established outside of Luxembourg, and who usually works abroad, and who carries out work in Luxembourg for a limited period of time within the framework of a services agreement signed between the employer established abroad and a business in Luxembourg.

### 2. Notification Obligation[107]

Any secondment to Luxembourg must be preceded by an online declaration of posted work to the Labour Inspectorate (ITM) and the following elements must be provided in order to receive the social identification badge:

- the posting employer's details and those of its representative;
- the appointed reference person for the ITM and the competent authorities in matters of respect of posting conditions;
- the start date and the planned duration of the posting, in accordance with the terms in the service agreement;
- the place(s) of work in Luxembourg and the expected duration of the work;
- the names, first names, dates of birth, nationalities and professions of the worker(s);
- the status under which the workers are employed in the company, the occupation which they usually have and the activity which they will be carrying out during their posting to Luxembourg;
- official documents attesting the professional qualifications of the workers (diplomas for skilled workers/list with their identities, the role and length of service of unskilled workers);
- where applicable, a copy of the labour supply contract;
- proof of social security coverage;
- a copy of the VAT certificate of the receiving entity;
- a copy of the employment contract or certificate of conformity with Directive 91/533/EEC of October 14, 1991 on an employer's obligations to inform employees of the conditions applicable to the contract or employment relationship;

in the case of part-time work or a fixed-term employment contract, a certificate of conformity issued by the competent control authority in the country in which the posting undertaking has its registered office or usual place of operation;

a copy of the temporary authorization to stay or the residence permit for each third-country worker posted to Luxembourg;

All documents have to be translated into French or German (English may be acceptable in practice).

### 3. Record Keeping Obligation[108]

During the performance of services, the following must be available at all times:

- Copy of the social identification badge;
- Copy of the proof of social security coverage;
- Employment contract ;

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[106] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[107] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[108] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

- Immigration related-documentation (if relevant);
- Wage, leave and working time related documents: payslips, payment records, proof of payment, working time records).

During the posting, employers must update the information on a continuous basis by communicating to the ITM online :

- the salary statements and the related proofs of payment for the full duration of the posting;
- the clock in sheets indicating the beginning and end of each working day.

## 4. Employee Entitlements[109]

During the secondment, employees are entitled to benefit from (at least) Luxembourg minimum requirements, including:

- social minimum wage
- duration of work, rest breaks, daily and weekly rest hours;
- paid leave (and collective leave where applicable);
- public holidays;
- regulations regarding interim work and labour leasing;
- provisions on part-time work and fixed term contracts;
- non-discrimination provisions;

## 5. Exemptions[110]

Provisions for posted work do not apply to self-employed workers nor to commercial maritime companies. The minimum conditions relating to social minimum wage and leave must be complied with unless the posting is for work during the initial setup or first installation phase within the framework of a supply contract. To qualify for an exemption, such work:

- must be essential for the proper functioning of the good supplied;
- must be carried out by qualified or specialized staff;
- cannot exceed 8 calendar days over a period of 12 months; and
- must not be in relation with construction work.

Any such installation work will nonetheless remain subject to a posting declaration.

## 6. Possible fines[111]

Violations against notification obligations as well as violations of Luxembourg labour law can lead to administrative, financial and/or criminal fines and penalties.

Employers who illegally employ one or more posted workers from third countries with no valid authorization to stay may additionally face administrative and/or criminal sanctions.

## 7. Non Labour Law Requirements[112]

Prior to the first provision of services, a notification on cross-border service provision must be made.

## 8. Contact Details

Louisa Silcox

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[109] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[110] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[111] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

[112] Description of important requirements not resulting out of labour law that must be met during the secondment

louisa.silcox@arendt.com
+352 40 78 78 24 24
Arendt & Medernach S.A.
41A, avenue JF Kennedy
L-2082 Luxembourg

## 17. MACEDONIA

### 1. Various kinds of posting[113]

Persons employed at foreign employers may provide services by posting in Macedonia in the following situations:

1. On the basis of registration of the work and without requirement for obtaining of work and residence permit, in the cases of:

- providing of short-term services by foreign to local entities, such as installation, maintenance and repair of equipment;

- providing services by foreign to local entities for fairs;

- providing of services by foreign to local entities in urgent situations, for prevention/recovery of accidents and disasters;

- providing of services on the basis of services agreement between a foreign and local entity for a period not exceeding 60 days per foreign citizen in the calendar year.

2. In case foreign citizens are engaged pursuant to a services agreement between a foreign and local entity for a period exceeding 60 days per foreign citizen in the calendar year, work and residence permits need to be obtained for those individuals.

The local laws do not prescribe option for engagement of foreign employees by posting for the purpose of performance of the regular business activities of the local employers i.e. activities that are not based on service agreement between the foreign and local entity. For such engagement, an employment contract must be entered between the foreign employee and the local employer, which further serves as basis for obtaining of work and residence permit for the individual.

### 2. Notification Obligation[114]

For the cases of engagement of foreign employees for short-term services i.e. for a period up to 60 days, the work is registered at the Employment Agency, on the basis of a form (registration of work) provided by the Agency. The form is submitted by the local entity to which the services are provided.

For the cases when issuance of regular work and residence permit is required (one document is issued regulating the right to work and residence), application is submitted by the foreign employee (individual) to the Ministry of Internal Affairs on a form for issuance of residence permit provided by the Ministry. The permit is issued upon provided positive opinion by the Employment Agency to the Ministry of Internal Affairs, which is obtained ex-officio.

### 3. Record Keeping Obligation[115]

The foreign employee and the local entity are obliged to keep at workplace the entire documentation related to the engagement of the foreign citizen, including the certificate for registration of work/ work and residence permit, as well as the documents that served as basis for obtaining of the certificate or the permit. Each of them has legal obligation to cooperate with the competent authorities and present the required documents upon their request. The obligation for keeping of such documentation by the local entities is applicable for a period of 5 years upon the completion of the engagement.

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[113] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[114] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[115] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[116]

The minimal standards set out by the Law on Labor Relations would be also applicable to the engagement of foreign employees in local entities, including rules regarding the working hours (40 hours per week), daily break (30 minutes), break between two working days (12 hours), weekly brake (24 hours), annual leave (20 working days), right to remuneration etc.

## 5. Exemptions[117]

A procedure for registration of work/ obtaining of permit work and residence permit is not required to be completed in a very limited number of situations provided that no actual working activities are performed, such as:

- Participation on business meetings, congresses, seminars, trade fairs and similar events;

- Visits by foreign citizens that are founders of representatives of founders of local legal entities;

- Participations at courses and trainings organized by educational institutions, for a period of up to three months.

## 6. Possible fines[118]

Monetary fines at the amount of EUR 1.500 can be imposed in case a local entity provides, encourages or participates in activities for unlawful engagement of foreign individuals in Macedonia. In case it is determined that the documentation regarding the engagement of the foreign employee is not kept at the workplace, fine can be imposed at the amount of EUR 1.200. Fine at the amount of 30% of the fine imposed to the legal entity shall be also imposed to the authorized person of such entity.

In case a foreign individual performs working activities in Macedonia opposite to the applicable regulations, he/she can be fined with a monetary fine at the amount of EUR 800-1000. The measure “Expulsion of a foreigner from the country” could also be imposed in such situations.

## 7. Non Labour Law Requirements[119]

As soon as the foreign employees arrive in Macedonia, they are obliged to report their arrival and place of residence to the Ministry of Internal Affairs. As soon as the activities within their engagement are completed, the Ministry of Internal Affairs must be notified on the departure of each of the individuals.

## 8. Contact Details

Jane Ilijeski
ilijeskij@dimitrov.com.mk
+389 70 369 321

Georgi Dimitrov Attorneys
Ivo Lola Ribar str. no. 57/1-6
Skopje, Macedonia

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[116] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[117] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[118] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[119] Description of important requirements not resulting out of labour law that must be met during the secondment

## 18. MALTA

### 1. Various kinds of posting[120]

No there is only one type of posting of workers in Malta.

### 2. Notification Obligation[121]

There has to be the submission of the posting of workers form, prior to the commencement of the posting. This can be done electronically or physically.

### 3. Record Keeping Obligation[122]

During the performance of the services the undertaking making use of the posted worker is obliged to keep a copy of the notification form at the place of work.

### 4. Employee Entitlements[123]

During the secondment the employees must have the same conditions of work that are applicable by virtue of law, to a comparable employee employed in the same place of work.

Including: same work/rest periods; same annual holidays; equality of all treatment.

### 5. Exemptions[124]

There are no exemptions in Malta.

### 6. Possible fines[125]

The fine imposed would be of not more than EUR 1.165 for every offence.

### 7. Non Labour Law Requirements[126]

Prior to the first provision of services in Malta, a notification must be made. This generally takes a few days for processing.

### 8. Contact Details

Karl Briffa/Partner
karl.briffa@gvzh.com.mt
GVZH Advocates
192, Old Bakery Street
Valletta VLT1455
Malta

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[120] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)
[121] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction
[122] Description of record keeping obligations that arise before or during the secondment to the jurisdiction
[123] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[124] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[125] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[126] Description of important requirements not resulting out of labour law that must be met during the secondment

## 19. MOLDOVA

### 1. Various kinds of posting[127]

Service provision can occur as secondment.

Personnel lease is not regulated in Republic of Moldova.

A secondment is given, if the foreign company must perform services for a Moldavian beneficiary (e.g. installing a machine etc.).

### 2. Notification Obligation[128]

There is no obligation to report secondment to Republic of Moldova.

### 3. Record Keeping Obligation[129]

During the performance of services, the following must be kept at a place in Republic of Moldova clearly identifiable (e.g. at a tax advisor, a Moldavian attorney):

- Copy of employment contract and if case, other evidences with respect to duration of employment, the currency in which the salary is paid, benefits in kind or in cash the employee is entitled to, conditions of employee's repatriation;
- Wage related documents (payslips, payment records, proof of payment, working time records);
- Documents proving the observance of the health and safety at work conditions;
- Documents providing the observance of annual vacation (e.g. employee application, working time records);
- Services agreement;
- Employee's passport with valid visa for the duration of secondment;

### 4. Employee Entitlements[130]

During the secondment, employees in particular have the following (pro rata) entitlements:

- Compensation of transport costs and lodging, also special compensation in accordance with legislation in force, collective/individual contract of employment
- Minimum remuneration (e.g. minimum salary applicable in Moldova, overtime premiums);
- 28 calendar vacation days per year;
- Compliance with working time limitations applicable to Moldavian employees;

### 5. Exemptions[131]

Not regulated by the law.

### 6. Possible fines[132]

Not regulated by the law.

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[127] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)
[128] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction
[129] Description of record keeping obligations that arise before or during the secondment to the jurisdiction
[130] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[131] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[132] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

## 7. Non Labour Law Requirements[133]

Foreign employees must obtain a work permit from Migration & Asylum Office.

## 8. Contact Details

Iuliana Dinu
iuliana.dinu@gp-chsh.com
+40 / 723 545 573
GILESCU, VALEANU, NATHANZON & PARTENERII
Cerha Hempel Spiegelfeld Hlawati Bucharest
68-72 Polona Street, 1st floor, Sector 1
010505 Bucuresti
Romania

[133] Description of important requirements not resulting out of labour law that must be met during the secondment

## 20. NETHERLANDS

### 1. Various kinds of posting[134]

In the Netherlands, the Posting of workers Directive (96/71/EC) and the Enforcement Directive (2014/67/EU), hereinafter jointly referred to as the Directives are jointly implemented in the Terms of Employment Posted Workers in the European Union Act (hereinafter: the WagwEU).

Under the WagwEU 3 categories of posting can be distinguished:

- Posting based on a contract between a service provider and a service recipient, the service provider not being a temporary work agency. The service is provided under management and supervision of the service provider.
- Posting within multinational groups.
- Temporary agency work. The management and supervision is with the service recipient.

All aforementioned categories involve cross-border service provision.

### 2. Notification Obligation[135]

Under the WagwEU, the following notification obligations apply:

1. A duty to report applies. This means that foreign service providers must report in advance about where and when and with which employees work will be performed in the Netherlands. The service recipient in the Netherlands has to check whether the report has been made and whether it is correct. Please note: that the duty to report has been suspended until the digital system is ready to submit the required information. It was envisaged for January 1, 2019, but is postponed until further notice. This means that in the Netherlands currently no obligation to report applies.
2. Appoint a contact person who will serve as the point of contact and must be available in the Netherlands to send and receive information concerning the transnational services provided.

### 3. Record Keeping Obligation[136]

During the performance of services, the following must be kept at the place of work:

- Copy of the A1 form (social security);
- Employment contract;
- Wage related documents: payslips, payment records, proof of payment, working time records, documents indicating criteria relevant to determine minimum remuneration entitlements.

[134] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)
[135] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction
[136] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[137]

Under the WagwEU, employers are obliged to assign certain minimum terms of employment to personnel that come to the Netherlands to work temporarily, being:

- the Minimum Wage and Minimum Holiday Allowance Act;
- the Working Hours Act;
- the Working Conditions Act;
- the Placement of Personnel by Intermediaries Act (Waadi); and
- the Equal Treatment Act.

Also the following additional provisions are declared to apply: provisions relating to holiday and leaves (art. 7:634 - 642, 645 DCC), equal treatment (art. 7:646 - 648 DCC), workplace safety / liability workplace accidents (7:658 DCC), ban on termination in case of pregnancy (art. 7:670, para. 2 DCC), pay slip (art. 7:626 DCC), nullification termination on grounds of conflict with equal treatment (art. 7:681 para. 1 sub c DCC) and vicarious tax liability (art. 7:616a - 616f DCC).

Moreover, the hard core of the terms of a universally binding collective bargaining agreement, which applies to employee, applies.

## 5. Exemptions[138]

The obligations and restrictions as laid down in the WagwEU are in principle applicable to any cross border service provision that falls within one of the 3 aforementioned categories of posting. However, the WagwEU is not applicable to seafarer on merchant ships.

## 6. Possible fines[139]

A maximum penalty of EUR 20.500 per offence will apply in case of breach of the (i) reporting requirement; (ii) the record-keeping requirement; (iii) the information requirement or if the service recipient fails to check service recipient in the Netherlands has to check whether the report has been made and whether it is correct. The fine will be doubled in the event of a repeated or serious infringement, and tripled upon further repetition.

## 7. Non Labour Law Requirements[140]

It is important to note that the obligations under the WagwEU do not only apply to inbound" but also to "outbound" posting.

## 8. Contact Details

Stéphanie Spoelder
spoelder@boontjeadvocaten.nl
+31 20 572 71 90
Boontje Advocaten
De Boelelaan 28
1083 HJ Amsterdam
The Netherlands

[137] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[138] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[139] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[140] Description of important requirements not resulting out of labour law that must be met during the secondment

## 21. NORTHERN IRELAND

### 1. Various kinds of posting[141]

N/A

### 2. Notification Obligation[142]

There is no requirement to notify any authority in Northern Ireland of a secondment agreement.

### 3. Record Keeping Obligation[143]

Prior to commencing secondment, the NI employer must carry out appropriate right to work checks with the secondee and keep these on file.

If the secondee is coming from outside the European Economic Area or Switzerland, they are likely to need prior approval to work in the UK during the secondment, which should be kept on file.

If the secondee performs duties for a UK host, but is paid by a foreign seconder, the UK host will be treated as the employer for tax and NICs purposes and will be required to account to HMRC for tax and NICs under PAYE.

### 4. Employee Entitlements[144]

A secondee generally remains employed by their original employer during the secondment to the host company. They may acquire various statutory employment rights, including those under the Employment Rights (Northern Ireland) Order 1996,such as:

- the right to present a complaint of unfair dismissal,
- certain maternity/adoptive/parental rights,
- statutory redundancy rights,
- minimum notice requirements,
- whistleblowing protection

and protection from discrimination under the applicable legislation in Northern Ireland, regardless of whether their employer is the seconder or the host.

"Worker" status is a separate category of employment status in NI, and entitles individuals to different rights. Even if the secondee remains an employee of the seconder, they may be a worker of the host and entitled to enforce certain rights against the host including protection against less favourable treatment, rest breaks and protection from discrimination etc.

### 5. Exemptions[145]

N/A

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[141] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[142] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[143] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[144] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[145] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

## 6. Possible fines[146]

If a company takes on a secondee and fails to carry out appropriate right to work checks, or it is subsequently found that an individual does not have leave (permission) to enter or remain in the UK, they may face a civil penalty (fine) of up to £ 20.000 for each illegal worker.

In NI businesses who do not comply with the requirements may have their details published by Immigration Enforcement as a warning to other businesses not to employ illegal workers.

## 7. Non Labour Law Requirements[147]

N/A

## 8. Contact Details

Gareth Walls
gwalls@algoodbody.com
+44 0 2890 314 466
A&L Goodbody Northern Ireland
42-46 Fountain Street
Belfast
BT1 5EF
Northern Ireland

[146] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[147] Description of important requirements not resulting out of labour law that must be met during the secondment

## 22. NORWAY

### 1. Various kinds of posting[148]

There are different regulations depending upon the nature and the length of the work to be provided in Norway, as well as for different kinds of postings. If the enterprise chooses to bring its own employees to Norway to complete a contract, the employees are defined as "posted workers". A separate regulation concerning posted workers applies.

Service provision can also occur through personnel lease. The requirements differ depending on whether or not the personnel lease occurs through a staff agency. For instance if the personnel lease occurs through a staff agency, specific registration requirements will apply for the foreign staff agency.

### 2. Notification Obligation[149]

Everyone engaged in business activities in Norway, temporarily or permanently, must be registered in the Central Coordinating Register for Legal Entities (*Enhetsregisteret*) and, if applicable, the Register of Business Enterprises (*Foretaksregisteret*).

The EE-register (Register of Employers and Employees) is a register that records the relationship between employers and employees and is used among others by NAV (Norwegian Labour and Welfare Administration) and the Norwegian Tax Administration. If a foreign country have employees who do not live in or pay tax to Norway, it must notify the Central Office Foreign Tax Affairs.

### 3. Record Keeping Obligation[150]

When a foreign employer brings employees to work in Norway, the employer will generally be obliged to report salaries, payroll withholding tax and employer's National Insurance contributions to the Norwegian Tax Administration. This applies regardless of whether or not any tax is payable in Norway. The tax liability will depend on how long the employee will be in Norway and what tax treaties apply between the employee's home country and Norway.

All employees must be registered with NAV via the a-melding, unless the business is obliged to report the assignment to the Central Tax Office - Foreign Tax Affairs (SFU). The employer must then report employees via form 'RF - 1199 Information about contracts, contractors and employees', within 14 days after the work has started.

Foreign workers must report to their local tax office (ID office) for an identity check.

The employer must also keep a copy of the employee's employment contract that must meet certain minimum requirements.

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[148] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[149] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[150] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[151]

Posted workers are entitled to a minimum wage (in certain sectors), holiday (5 weeks) and holiday pay, working hours and overtime pay in accordance with Norwegian rules, board and lodging paid for by the employer (in certain sectors), a written employment contract and a safe and sound working environment. Posted workers from countries with which Norway has a bilateral agreement on social security will be exempt from paying social security contributions to Norway. They will continue to pay social insurance contributions to the country from which they have been posted.

Thus, they are not entitled to a Norwegian pension, but continue to earn pension benefits' in their home country.

The authorities in the employee's home country should be contacted regarding whether there is a bilateral agreement on social security with Norway, and whether the conditions to remain covered by the social security system in the home country is met. This must be documented to NAV International in Norway.

## 5. Exemptions[152]

Most of the restrictions and requirements outlined are applicable to all postings in Norway.

There are some exceptions for postings that last less than 1 month, e.g. with regard to the requirements to the written employment contract.

Travel to Norway for the participation in seminars, lectures etc. are exempt.

## 6. Possible fines[153]

Violations against notification obligations and record keeping obligations can lead to daily penalties per violation per employee as well as other penalties. The Norwegian Labour Inspection Authority conducts regular checks.

## 7. Non Labour Law Requirements[154]

Employees from EU/EEA countries must register before they begin working in Norway. There are special provisions for posted workers. To live in Norway a Norwegian personal identification number or a D number is required.

## 8. Contact Details

Nicolay Skarning
ns@kvale.no
+47 22479794 / + 47 90664191
Kvale Advokatfirma DA
Håkon VIIs gate 10, PB 1752 Vika
0122 Oslo
Norway

[151] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[152] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[153] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[154] Description of important requirements not resulting out of labour law that must be met during the secondment

## 23. POLAND

### 1. Various kinds of posting[155]

Polish law does not define different types of posting. However, it provides that posting of workers occurs when an employer having his registered office and running significant business in another country posts a worker to work in Poland:

a) in connection with the implementation of an agreement entered into by the employer with an entity conducting business activity in the Poland, or

b) at a branch or enterprise belonging to a group of enterprises to which the employer belongs, or conducting business activity in Poland,

c) as a temporary work agency.

### 2. Notification Obligation[156]

Any employer posting employees to Poland must submit a statement on the posting of a worker to the territory of Poland to the National Labour Inspectorate, containing the information useful in case of control.

The statement must be submitted in Polish or English language, at the latest on the date of starting the provision of services in Poland.

An employer who posts employees to work in Poland is also obliged to designate a person staying in the territory of Poland:

a) authorized to act as an intermediary of an employer for contact with the National Labour Inspectorate - if the employer is established in a Member State, or

b) authorized to act on behalf of an employer to represent him towards the National Labour - if the employer is established in a non-Member State.

Contact details of this person must be included in the above-mentioned statement and submitted to the National Labour Inspectorate.

### 3. Record Keeping Obligation[157]

During the period of posting of a worker an employer is obliged to keep in the territory of Poland in a paper or electronic form:

a) a copy of the employment contract of a worker posted to the territory of Poland or any other equivalent document certifying the conditions of employment that has been established in the framework of an employment relationship,

b) records of the working time of the worker posted to the territory of Poland, for the starting and finishing work and the number of hours worked on a given day or copies thereof,

c) documents indicating the amount of the worker's salary in Poland together with the amount of deductions made and proof of payment of wages to this person or copies of them.

After the period of posting end, The National Labour Inspectorate can request these documents during the subsequent 2 years and an employer has 15 days to provide them.

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[155] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[156] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[157] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[158]

An employer posting a worker to Poland shall ensure to such a worker employment conditions not less favourable than stemming from the provisions of the Polish Labour Code concerning:

1) work time standards and amount as well as periods of daily and weekly rest;
2) annual leave amount;
3) minimum salary;
4) amount of salary and overtime supplement;
5) occupational health and safety;
6) protection of workers in the period of pregnancy and in the period of maternity leave;
7) employment of adolescents and the performance of work or other gainful activities by a child;
8) principles of equal treatment and prohibition of discrimination in employment ;
9) performance of work in accordance with the provisions on the employment of temporary workers.

The above is not applicable to a worker who carries out in a given position work connected with construction operations or maintenance of a construction work.

Points (2) to (4) above are not applicable to workers posted to Poland if in accordance with the qualifications held by them they carry out in a given position — for a period not longer than 8 days in a year, as of the day of starting the work in a given position — preliminary assembly or installation works provided for in an agreement entered into by an employer with a Polish entity, which have to be carried out to enable the use of the delivered products.

## 5. Exemptions[159]

Presented regulations are in principle applicable to all postings to Poland regardless of duration, except maritime workers and international transport workers.

However, they will not apply if the employee's presence in Poland can be classified solely as a business trip. In accordance with provisions of the Polish Labour Code the business trip occurs when an employee performs work assigned by the employer, away from the location of the employer's registered office, or away from his permanent workplace. It follows from the case law that the difference between posting and a business trip is such that during business trip the employee remains under the direction of his employer and his main place of work does not change. Consequently, participating in trade fairs, conferences, business meetings, lectures; etc., should not qualify as posting.

## 6. Possible fines[160]

Violation of regulations on posting of workers in the framework of the provision of services is subject to a fine from PLN 1.000 to PLN 30.000 (approx. EUR 230 to EUR 7.000).

## 7. Non Labour Law Requirements[161]

In the case of employees from outside the EU it may also be necessary to obtain a proper work permit for them. The employer should also ensure that they have a residence permit or

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158 Description of minimum standards that must be complied with during the performance of services in the jurisdiction

159 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

160 Description of fines that could be imposed in case of non-compliance with the restrictions outlined

161 Description of important requirements not resulting out of labour law that must be met during the secondment

visa (whichever is appropriate) and analyze whether they will be subject to taxation in Poland.

## 8. Contact Details

Wojciech Babicki
babicki@MillerCanfield.com
Andrzej Czopski
czopski@millercanfield.com
Miller Canfield
Tel. (+ 48) 58 782 00 50
ul. Batorego 28-32
81-366 Gdynia
Poland

## 24. ROMANIA

### 1. Various kinds of posting[162]

Service provision can occur as secondment or personnel lease.

A secondment is given, if the foreign company must perform services for a Romanian beneficiary (e.g. installing a machine, etc.).

Personnel lease requires that the actual obligation of the foreign company is to provide personnel that can be used by a Romanian company for its own purposes.

In case of personnel lease, as a rule (i) leased personnel perform work under the supervision and control of the Romanian company, (ii) the Romanian company gives instructions to the employees and provides individual work and protection equipment and (iii) the personnel benefit of all the services and facilities granted by the Romanian company to its own employees.

### 2. Notification Obligation[163]

Any secondment and personnel lease to Romania will have to be reported to the local labour authorities before starting the activity.

Notification must be made in Romanian language prior to start of work in Romania. A copy of such notification must be also sent to the beneficiary of the service.

### 3. Record Keeping Obligation[164]

During the performance of services, the following must be kept at a place in Romania clearly identifiable (e.g. at a tax advisor, a Romanian attorney):

- Copy of employment contract and if necessary, other evidences with respect to duration of employment, the currency in which the salary is paid, benefits in kind or in cash the employee is entitled to, conditions of employee's repatriation;
- Copy of the A1 form (social security);
- Wage related documents (payslips, payment records, proof of payment, working time records);
- Documents proving the observance of the health and safety at work conditions;
- Documents providing the observance of annual vacation (e.g. employee application, working time records).
- Services agreement/employees lease agreement;

Upon request, the documents referred above must be provided to the Romanian authorities for a period of 3 years as of completion of secondment, as copies and translated into Romanian.

A contact person in relation with the Romanian authorities must be appointed.

### 4. Employee Entitlements[165]

During the secondment or personnel lease, employees in particular have the following (pro rata) entitlements:

- Minimum remuneration (e.g. minimum salary applicable in Romania, overtime premi-

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[162] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[163] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[164] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[165] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

ums);

- 20 working vacation days per year;
- Compliance with working time limitations applicable to Romanian employees.

## 5. Exemptions[166]

The restrictions outlined are applicable to all secondments to Romania regardless of the duration. However, some exemptions exist:

- Participation in seminars, lectures, business meetings if it lasts only couple of days;
- Initial assembly and/or first installation of a good where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and carried out by the skilled and/or specialist workers of the supplying undertaking, in which case the vacation days per year, minimum salary and overtime premiums are not applicable, if the period of posting does not exceed 8 days;
- Merchant navy undertakings as regards seagoing personnel;

## 6. Possible fines[167]

Violations against notification obligations, record keeping obligations as well as failure to appoint a contact person in relation with the Romanian authorities can lead to fines ranging from RON 5.000 (approx. EUR 1.000) to RON 9.000 (approx. EUR 1.900);

Incomplete or erroneous reporting to Romanian labour authorities can lead to fines ranging from RON 3.000 (approx. EUR 600) to RON 5.000 (approx. EUR 1.000).

## 7. Non Labour Law Requirements[168]

A notification on cross border service provision must be made within maximum 30 days as of the date the service agreement is concluded.

## 8. Contact Details

Iuliana Dinu
iuliana.dinu@gp-chsh.com
+40 / 723 545 573
GILESCU, VALEANU, NATHANZON & PARTENERII
Cerha Hempel Spiegelfeld Hlawati Bucharest
68-72 Polona Street, 1st floor, Sector 1
010505 Bucuresti
Romania

[166] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[167] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[168] Description of important requirements not resulting out of labour law that must be met during the secondment

## 25. RUSSIA

### 1. Various kinds of posting[169]

Cross-border service provision in Russia can be done by staff leasing.

Staff leasing may be performed only by independent employment agencies registered on the territory of the Russian Federation and accredited for this activity, and only within the limits provided by law (please see "Exemptions"). In this case, a civil law contract for the provision of agency labour shall be concluded between the agency and the actual employer, while an employment agency concludes an employment agreement with an employee on its behalf, and thereafter sends the employee to a company for a period of not more than 9 months.

Currently a draft law is working out whereunder staff leasing may also be applied when employees are sent to provide temporarily services to the affiliated company of the employer. Such personnel shall be leased solely for some short-term projects.

### 2. Notification Obligation[170]

No special notifications are required. Compliance with obligatory migration and employment requirements applies.

### 3. Record Keeping Obligation[171]

In case of a staff leasing the employment agency/the affiliated company will be mostly responsible for receiving all documents necessary for compliance with migration/employment formalities and will keep some of them.

### 4. Employee Entitlements[172]

In case of a staff leasing, an employee's remuneration must not be less than the remuneration of employees of a receiving company with the same qualification and performing the same job functions. Employment agreements with independent employment agencies shall contain all entitlements provided for by the Russian labour law (e.g. 28 days of annual vacation, medical insurance, working time limitations, etc.).

### 5. Exemptions[173]

Staff leasing is prohibited in the following cases:

1) for replacement of the employees on strike;
2) fulfillment of job in case of idle time;
3) insolvency of the receiving company;
4) part time working regime is established in the receiving company in order to avoid mass lay-offs;
5) replacement of employees who stopped working in cases provided by law in particular, due to non-payment of salary for a period exceeding 15 days.

Also there are limitations for staff leasing by the employment agency. They can provide per-

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169 Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)
170 Description of notification obligations towards authorities in relation to sending employees to the jurisdiction
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172 Description of minimum standards that must be complied with during the performance of services in the jurisdiction
173 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

sonnel to the receiving party for the following purposes only:

1) to fill positions left open by employees who are absent temporarily;

2) to assist with an increased workload related to an expansion of production or of the scope of services, which is known to be temporary (for a period of up to 9 months).

## 6. Possible fines[174]

Violation of staff leasing procedures and requirements can lead to fines ranging from RUB 30.000 to RUB 100.000 (approx. from EUR 400 to EUR 1.400).

It should be noted that heavy fines may be imposed for violations of migration rules and rules that regulate employment of foreign citizens.

## 7. Non Labour Law Requirements[175]

Compliance with obligatory employment related migration formalities applicable to engagement of foreign citizens.

## 8. Contact Details

Olga Anisimova
olga.anisimova@castren.ru
+ 7 495 799 56 84
Castrén & Snellman
Stoleshnikov per. 14
1st entrance, 5th floor
107031 Moscow
Russia
www.castren.fi

[174] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[175] Description of important requirements not resulting out of labour law that must be met during the secondment

## 26. SERBIA

### 1. Various kinds of posting[176]

Generally, cross-border service provision in Serbia may take place through:

1. Secondment of staff - when a foreign company must carry out specific activities for a Serbian customer (e.g. installing a machine, etc.), or
2. Personnel assignment - when foreign company assigns personnel to a Serbian employer, which can then use them for its own purposes.

Since Serbia is not yet EU member state, any work of foreigners in Serbia generally requires prior obtaining of residence and work permits. However, there are some limited exceptions to that rule - e.g. if a foreigner's stay in Serbia shall not be longer than 90 days within a 6 months' period provided that the foreigner is seconded to Serbia to carry out works on the basis of agreement on delivery of goods, machines, equipment, etc. or for the installment, testing, repair or service thereof, or for training of Serbian company staff to work with such delivered items.

### 2. Notification Obligation[177]

A foreigner must register a place of his/her temporary residence with the competent police department within 24 hours of entry into Serbia. If he/she will stay in hotel, that duty should be done by the hotel.

Generally, a foreigner is obliged to obtain temporary residence permit in Serbia when he / she intends to reside in Serbia for more than 90 days. Also, a foreigner should apply for temporary residence permit if he /she plans to reside in Serbia for less than 90 days and for the respective work he/she intends to do in Serbia is required a work permit under the Law on Employment of Foreigners.

When work permit is required it must be obtained before start of the work in Serbia. There are several types of the work permit:

- Employment work permit;
- Work permit for special cases of employment, such as (i) seconded persons, (ii) relocations within a company, (iii) independent professionals, and (iv) training and improvement;
- A work permit for self-employment.

### 3. Record Keeping Obligation[178]

According to Serbian Labour Law, an employer is obliged to keep certain documents regarding its employees' in its business premises, including employment agreement along with all its annexes, application forms for compulsory social insurance, etc.

Additionally, in case of work of foreigners in Serbia, all documents evidencing fulfilment of conditions for work of a foreigner in Serbia must be kept in employer's business premises or at employee's place of work - including valid work permit (if required), temporary residence permit (if required), copy of valid passport, documents evidencing grounds and reasons for employee's secondment to Serbia, assignment / secondment letter, etc.

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[176] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[177] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[178] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[179]

A foreigner working in Serbia is subject to Serbian Labour Law and has equal rights and obligations in relation to work as a domestic citizen. Rights and obligations of employees in Serbia are mainly prescribed in the Labour Law and are, inter alia, the following:

- Minimum salary, increased salary for overtime work, night work etc.;
- Minimum 20 working days of annual leave per working year;
- Compliance with working time limitations,
- Rules regarding health and safety at work, etc.

## 5. Exemptions[180]

Since Serbia is not yet EU member state, any work of foreigners in Serbia generally requires prior obtaining of residence and work permits. However, there are some limited exceptions to that rule - e.g. if a foreigner's stay in Serbia shall not be longer than 90 days within a 6 months' period provided that the foreigner is seconded to Serbia to carry out works on the basis of agreement on delivery of goods, machines, equipment, etc. or for the installment, testing, repair or service thereof, or for training of Serbian company staff to work with such delivered items.

## 6. Possible fines[181]

Employment of a foreigner who does not have a valid work permit and/or a temporary residence permit represents a misdemeanor punishable by a fine up to approx. EUR 8.300 for employer and up to approx. EUR 1.200 for employee.

Violation of record keeping obligation shall also represent a misdemeanor of an employer punishable by a fine up to approx. EUR 8.300.

Moreover, employer who violates some of guaranteed employee's rights under the Labour Law may be fined up to approx. EUR 16.600 for a misdemeanor.

## 7. Non Labour Law Requirements[182]

Prior to the start of work in Serbia (e.g. provision of services) temporary residence permit and work permit have to be obtained, if that is required under the applicable regulations (e.g. the Law on Employment of Foreigners).

## 8. Contact Details

Ljubinka Pljevaljcic
ljubinka.vaskovic@doklestic.law
+381695040351
Doklestic, Repic & Gajin Law Office
Bulevar oslobodjenja no. 203
11000 Belgrade
Serbia

[179] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[180] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[181] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[182] Description of important requirements not resulting out of labour law that must be met during the secondment

## 27. SPAIN

### 1. Various kinds of posting[183]

Spanish law does not distinguish between different types of posting. In this regard, according to the regulation set forth in Article 2 of Law 45/1999 of 29 November, posting in the framework of the transnational provision of services shall be understood as a posting to Spain carried out for a limited period of time (provided that there is an employment relationship between such companies and the employee during the period of displacement) in any of the following cases:

(i) The displacement of an employee at the expense and under the direction of his company in the execution of a contract entered into between the company and the recipient of the provision of services, which is established or which exercises an activity in Spain.

(ii) The displacement of an employee to a work center of the company itself or of another company of the group.

(iii) The displacement of an employee by a temporary employment agency - for the purposes of assigning an employee to the company which has contracted the services of the temporary employment agency and that is established or that operates in Spain.

In this respect, although the provisions establish that the period of displacement cannot exceed 24 months, article 16 of Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems allows the competent authorities of two or more Member States to provide by mutual agreement an extension to said period.

### 2. Notification Obligation[184]

Employees who move to Spain in the framework of a transnational provision of services must be provided with the document named A-1/certificate of coverage.

Once in Spain, the employee must present this certificate A-1 in the General Treasury of the Social Security, where the employee must also complete the certificate named E-104 (certificate issued by the Spanish Social Security that proves that the employee is insured in Spain).

### 3. Record Keeping Obligation[185]

Posting employees must be provided during the period of provision of their services of personal and employment documentation and with the document named A-1.

Although the aim of producing this Memo is to create an easy reference guide of the main aspects of the cross-border service provision in Europe, please note that non-EU employees must be provided with the work and residence permit, requesting the certificate named EX-08 - application for temporary residence and work authorization in the framework of transnational services.

### 4. Employee Entitlements[186]

Companies that post their employees to Spain within the framework of the transnational provision of services, included in the scope of application of Law 45/1999, must guarantee these employees the working conditions set out under Spanish employment legislation, irrespective of the legislation applicable to the employment contract, such as, amongst others: working

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[183] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[184] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[185] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[186] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

time; minimum base salary; non-discrimination of temporary and part-time workers; and health and safety. All this without prejudice to the application of more favourable working conditions derived from the provisions of the legislation applicable to their employment contract.

## 5. Exemptions[187]

Law 45/1999 of November 29, on the posting of employees in the framework of the transnational provision of services shall apply to companies established (i) in an EU Member State; or (ii) in a state that is a signatory to the EEA Agreement, that temporarily post their employees to Spain in the framework of the transnational provision of services (bearing in mind that this regulation excludes (i) merchant navy undertakings as regards seagoing personnel; and (ii) posting carried out for the performance of training activities that cannot be classified as a transnational provision of services).

## 6. Possible fines[188]

Failure to comply with the regulations related to absence of communication of displacement, as well as the falsification or concealment of the data contained therein constitutes a very serious infringement which could be sanctioned by a fine ranging between EUR 6.251 and EUR 187.515.

## 7. Non Labour Law Requirements[189]

Employees who are not taxpayers of Personal Income Tax (IRPF), but who will acquire such status as a result of their movement to Spanish territory, may notify the Tax Administration of such circumstance by submitting the model 147.

## 8. Contact Details

Ignacio Campos Tarancón
icampos@ga-p.com
Gómez-Acebo & Pombo, S.L.P.
Paseo de la Castellana 216
28046 Madrid (Spain)
Main: (34) 91 582 91 00
Facsimile: (34) 91 582 91 85

[187] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[188] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[189] Description of important requirements not resulting out of labour law that must be met during the secondment

## 28. SWEDEN

### 1. Various kinds of posting[190]

According to Swedish legislation a posted worker is a worker who normally works in another country but carries out work in Sweden for a limited period. Posting of workers means any of the following transnational measures:

a) when an employer on its own account and under its own discretion sends workers to Sweden in accordance with a contract that the employer has entered into with the recipient of the services that is active in Sweden;

b) when an employer sends workers to Sweden to an establishment or

c) to an undertaking owned by the group; or when an employer that hires out workers or is a placement agency sends workers to a user undertaking established in Sweden or operating in Sweden.

There is no express rule stipulating the maximum length of a posting period. However, pending legislation suggest that a maximum of 12 months posting shall apply. Thus, our recommendation is to post employees for a maximum period of 12 months despite not being adopted as legislation yet.

### 2. Notification Obligation[191]

If the posting is for a longer period than 5 days, the posting must be registered with the Swedish Work Environment Authority (SWEA). The notification must be made on the first day of posting, at the latest.

Information that needs to be registered is for example: employer's name, address and principal place of business, contact information to an authorized person, what services to be performed, time period, name and identification of the posted employees.

Further, the employer shall also notify SWEA if the activities of the posted workers change in a way that is relevant to the notified information, i.e. in cases of prolongation of the time of the posting.

If the employee is going to stay in Sweden for more than 3 months he or she must register their immigration to Sweden at the Swedish Tax Agency after entering the country.

EU citizens are entitled to work in Sweden without any kind of permit. However, most citizens of non-EU countries need to apply for a work and residence permit in order to work and reside in Sweden.

### 3. Record Keeping Obligation[192]

Save for what has been stated and what otherwise applies in relation to all employees, there is no specific record keeping obligation for posted employees.

### 4. Employee Entitlements[193]

A posting company must apply certain minimum terms and conditions of employment during the period when the employees are posted to Sweden. These minimum terms and conditions are often referred to as the “hard core”. The hard core includes regulations on among others,

a) maximum work periods and minimum rest periods,

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[190] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[191] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[192] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

[193] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

b) minimum paid annual holidays,

c) conditions of hiring-out of workers,

d) health, safety and hygiene at work,

e) protective measures with regard to the terms and conditions of employment of pregnant

f) women, women who have recently given birth, and

g) equality of treatment between men and women and other provisions on non-discrimination.

There are no express statutory regulations governing minimum rates of pay in Swedish legislation. Instead, the minimum rates of pay may be governed by the relevant CBAs for each sector. When posting employees to Sweden within a certain sector, the CBA for that sector should be used as a benchmark whether or not a posting company risks being subject to lawful industrial actions to agree to a Swedish CBA which includes regulations on minimum wages.

## 5. Exemptions[194]

The restrictions outlined are applicable to all postings to Sweden as described in column B if the posting is for a longer period of 5 days.

## 6. Possible fines[195]

The sanction fee for not registering a posting to the SWEA is SEK 20.000, regardless whether the non-compliance was intentionally or by negligence.

## 7. Non Labour Law Requirements[196]

N/A

## 8. Contact Details

Fredrik Dahl
fredrik.dahl@vinge.se
+46-70-7143027
Advokatfirman Vinge KB
Box 1703
111 87 Stockholm
Sweden

[194] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[195] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[196] Description of important requirements not resulting out of labour law that must be met during the secondment

## 29. SWITZERLAND

### 1. Various kinds of posting[197]

The provision of cross-border services can only occur as secondment.

Secondment is given where an employer abroad posts an employee to Switzerland in order to

a) provide a service at the expense of and under the direction of the employer within the scope of a service contract between the employer and the recipient of the service in Switzerland;

b) work in a subsidiary or a business belonging to the employer's group.

The provision of cross-border services between Switzerland and EU/EFTA member states is regulated by the Agreement on the free movement of persons. According to the Agreement, a service provider from an EU/EFTA member state has the right to provide services in Switzerland without any restrictions and second employees to Switzerland provided the provision of services does not exceed 90 days per calendar year.

Employers from EU/EFTA member states who contemplate to second workers to Switzerland for more than 90 days per calendar year as well as employers with headquarter in a non EU/EFTA state are subject to a work permit procedure; they are not concerned by the notification/registration obligations.

### 2. Notification Obligation[198]

The duty to notify applies to employers with headquarters in EU/EFTA member states who post employees to Switzerland to provide services for a period of maximum 90 days of actual work within a calendar year.

The registration of the posted employees is made by the employer by completing an official form available on-line. On-line registration is the rule. Registration must be made at the latest 8 days before the beginning of the assignment in Switzerland. In exceptional cases (emergencies) registration may be made at shorter notice.

The registration is compulsory if the secondment in Switzerland lasts for more than 8 days of actual work within a calendar year. However, in some industries such as building and hotel industry, the registration must be made from the first day of providing service.

### 3. Record Keeping Obligation[199]

The employer to his representative in Switzerland must keep all relevant documents (work schedule, pay slips etc.) evidencing that he has complied with all applicable working and salary requirements including proof that he has duly paid contributions to social security institutions.

In particular, the employer or his representative must keep the following documents:

- copy of the registration form;
- copy of the A1 form (social security);
- copy of the contract between the employer and the recipient of the service in Switzerland;

The controllers must be granted free access to the place where the employees are posted.

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[197] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[198] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[199] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[200]

During the secondment, employees in particular have the following (pro rata) minimum entitlements:

- remuneration according to applicable collective bargaining agreement or Swiss standards (e.g. 13th and 14th monthly salary, overtime premiums, etc.)
- minimum 4 weeks of vacation per working year or according to applicable collective bargaining agreement;
- Compliance with working time limitations and safe and security regulations.

## 5. Exemptions[201]

The provisions regarding minimum salary and vacation do not apply to

- work representing no more than 15 days of work per calendar year.
- installation work if the work represents less than 8 days and form integral part of contract of supply of goods.

As a general rule, the exemptions do not apply to the building, engineering and hotel industry

## 6. Possible fines[202]

During the assignment, the Swiss authorities conduct routine checks. Violations of the notification obligations and non-compliance with other legal requirements including wage dumping are sanctioned by an administrative fine of up to

- CHF 5.000 if the violation is qualified as minor;
- CHF 30.000 in case of a major violation.
- In addition, the employer may be sanctioned by a prohibition to offer his services in Switzerland for a period of up to 5 years.

Routine checks are regularly carried out.

## 7. Non Labour Law Requirements[203]

N/A

## 8. Contact Details

Vibeke Jaggi
vjaggi@froriep.ch
+41 22 839 63 00
Froriep Legal SA
4, rue Charles-Bonnet
1211 Geneva 12
Switzerland

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200 Description of minimum standards that must be complied with during the performance of services in the jurisdiction
201 Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
202 Description of fines that could be imposed in case of non-compliance with the restrictions outlined
203 Description of important requirements not resulting out of labour law that must be met during the secondment

## 30. UK

### 1. Various kinds of posting[204]

A worker can be posted to work temporarily in the UK in one of 3 ways:

- where an undertaking established in one Member State has a contract to provide services to an undertaking in the UK and, pursuant to that contract, posts workers to the UK;
- where an intra-company transfer takes place i.e. an undertaking located in one Member State posts a worker to an undertaking within the same group of companies located in the UK (typically, this would cover an intra-group international secondment); or
- where an employment business or employment agency located in one Member State posts workers under a hiring or agency agreement to an undertaking or user established or operating in the UK.

Posted workers are entitled to the same rights in the UK regardless of how the posting originates.

If the posted worker also satisfies the UK definition of "worker" or "employee" status they may be entitled to additional employment rights. If they do not, then they will be confined to the rights available to them by virtue of being a posted worker.

### 2. Notification Obligation[205]

Unlike many EEA countries, the UK does not impose licensing and authorization requirements regarding posted workers within its territory, with the sole exception of transitional work authorization arrangements in respect of Croatian nationals following the admission of Croatia to EU membership in July 2013. These are governed by Part 3 of the Accession of Croatia (Immigration and Worker Authorization) Regulations 2013.

Authorities in other Member States can request the UK authorities to enforce financial administrative penalties and fines against employers established in the UK that relate to failures to comply with the posted worker legislation. UK authorities may enforce those penalties and fines on behalf of the requesting authority.

Her Majesty's Revenue and Customs may provide information in accordance with the UK's obligations under the posted worker legislation to reply to reasoned requests for information made by a competent authority in another Member State.

### 3. Record Keeping Obligation[206]

If the posted worker satisfies the definition of "worker" status in the UK then s/he will be entitled to receive a statement of the core particulars of the engagement and an itemized pay slip.

Records of certain aspects of working time will also need to be kept to comply with the Working Time Regulations 1998.

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[204] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[205] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[206] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[207]

Workers posted into the UK are entitled to equality with local employees in terms of certain employment rights. These are:

- maximum work periods, minimum rest periods and minimum paid holidays* as provided for in the Working Time Regulations 1998;
- minimum rates of pay*, including overtime rates, as provided for in the National Minimum Wage Act 1998;
- the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings as provided for in the Agency Workers Regulations 2010;
- health and safety at work as provided for in the Health and Safety at Work Act 1974;
- protective measures regarding terms and conditions of employment of women who are pregnant or recently given birth and children and your people as provided for in the Employment Rights Act 1996 and the Management of Health and Safety at Work Regulations 1999; and
- equality and anti-discrimination rights as provided for in the Equality Act 2010.

In addition, workers operating in the construction sector are entitled to equal terms and conditions of employment which are set out in relevant collective bargaining agreements or arbitration awards.

## 5. Exemptions[208]

A worker posted into the UK will not be entitled to minimum paid annual holidays or minimum rates of pay if s/he is:

- a skilled and/or specialist worker;
- employed to carry out initial assembly and/or first installation of goods in certain specified circumstances; and
- is employed by the undertaking which supplies the goods.

In addition, seagoing personnel employed by the merchant navy are not protected by the posted workers legislation.

## 6. Possible fines[209]

In the UK, the core rights of posted workers are enforced in the same way as for other workers. Some rights, such as the national minimum wage and health and safety compliance are enforced by Government agencies. The individual worker can also enforce their rights directly through the Employment Tribunal system seeking compensation for their losses and, in some circumstances, injury to feelings. There is no maximum cap on the compensation that can be awarded for breaches of the Equality Act 2010.

The Posted Workers (Enforcement of Employment Rights) Regulations 2016 also provides for specific protection for posted workers operating in the construction sector. In summary, if such a worker is paid less than the national minimum wage, then the contractor by whom he is engaged will be treated as having made an unlawful deduction from his wages. The worker will be entitled to bring a claim in the Employment Tribunal against the contractor (unless s/he has already brought an unlawful deductions or contractual claim against his or her direct employer for the same sum). If a claim against a contractor is successful the Employment Tribunal must make a declaration and order the contractor to pay the relevant sum due, as well as a sum for any other relevant financial loss.

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[207] Description of minimum standards that must be complied with during the performance of services in the jurisdiction

[208] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)

[209] Description of fines that could be imposed in case of non-compliance with the restrictions outlined

## 7. Non Labour Law Requirements[210]

N/A

## 8. Contact Details

Michael Leftley
michael.leftley@addleshawgoddard.com
+ 44 (0)20 7788 5079
Addleshaw Goddard LLP
Milton Gate
60 Chiswell Street
London EC1Y 4AG

[210] Description of important requirements not resulting out of labour law that must be met during the secondment

## 31. UKRAINE

### 1. Various kinds of posting[211]

Sending employees to Ukraine from another jurisdiction is possible, as well as employment of foreigners in Ukrainian companies. Legal basis: Labour Code of Ukraine, the Law of Ukraine "On Employment", and the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine to Remove Barriers for Foreign Investments Attraction". Position may be titled as follows: 1) foreign hired employee; 2) seconded foreign employee; 3) intra-corporate cessionary; 4) foreign highly paid professional; 5) founder and / or participant and / or beneficiary of legal entity established in Ukraine; 6) foreign employee of creative profession; 7) a foreigner or stateless person in respect of whom decision to issue documents for resolving the issue of recognition as a refugee or a person who needs additional protection has been made; 8) foreign IT professional; 9) graduate of one of the top 100 higher educational institutions.

### 2. Notification Obligation[212]

Secondment of the foreign employee as well as employment of a foreigner in Ukraine requires obtainment of permission. The Law “On Amending Certain Legislative Acts of Ukraine to Remove Barriers for Foreign Investments Attraction” of 23 May 2017, No. 2058-VIII (the “Law”), effective since September 27, 2017 simplified existing system of the foreign workforce legalization.

The Law shortened the list of documents required for the work permit obtainment (the vacancy report (3-on form), medical certificate, non-conviction certificate, an apostilled copy of university diploma will no more be filed by the employers to the State Employment Service of Ukraine).

Additionally, it established a special minimum wages for foreign employees, bringing more barriers for foreign investments attraction. For those foreigners, who will work in NGOs, charity organizations and educational establishments the minimum wage is established at UAH 16.000 (approx. EUR 550), which is 5 times higher than the minimum salary for Ukrainian employees. This discriminatory norm went even further with all other categories of foreigners, including those employed by private businesses, where the minimum wage shall be UAH 32.000 (approx. EUR 1.100), or 10 times higher than the minimum salary for Ukrainian employees.

Furthermore, the Law highlighted several categories of prioritized foreign employees: highly paid professionals (with a salary exceeding UAH 160.000 or EUR 5.500); shareholders or ultimate beneficiaries of employing companies; top-100 world universities graduates; creative workers, and; IT specialists. These categories will benefit from 3 years-long work permits, instead of ordinary ones with a 1-year duration. In addition, the requirements to the minimum wage will not be applied to prioritized foreign employees.

### 3. Record Keeping Obligation[213]

In case of secondment the previously mentioned work permission is kept by the employee. In case of employment, Ukrainian employer adds the work permission to the standard set of documents, necessary for employment of any other person (i.e. copy of passport, copy of diploma, medical certificate if necessary etc.)

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[211] Indication whether the jurisdiction differs between several kinds of postings (e.g. secondment and personnel lease)

[212] Description of notification obligations towards authorities in relation to sending employees to the jurisdiction

[213] Description of record keeping obligations that arise before or during the secondment to the jurisdiction

## 4. Employee Entitlements[214]

The Law "On Amending Certain Legislative Acts of Ukraine to Remove Barriers for Foreign Investments Attraction" sets the minimal wages for foreign employees as it was mentioned before. The majority of labour law provisions apply equally to Ukrainian and foreign nationals. Thus, foreign employees enjoy the same benefits, guarantees and protections available for Ukrainian employees under Ukrainian labour laws and the employer's internal labour rules, policies and procedures. However, special procedures exist for hiring foreign nationals that must be followed to avoid administrative liability or even deportation of a foreign national.

## 5. Exemptions[215]

N/A

## 6. Possible fines[216]

According to Ukrainian immigration laws, foreign nationals employed in Ukraine, in particular on the basis of a working permit, are not subject to the general regulation of a foreign national's stay in Ukraine. Such foreign employees are deemed to be lawfully staying in Ukraine after receiving a temporary residence permit, regardless of the duration of their stay. Violation of the working permit and immigration regulations may result in liability for the employer, its executives and the foreign employee (up to his or her deportation from Ukraine). Actual admission of an employee to work without employment contract, the registration of an employee for part-time work in the case of actual performance as the full-time worker and remuneration without accrual and payment of a single tax lead to the fine in amount of thirty minimum wages (UAH 125.190, which is equivalent of approximately EUR 4.200).

## 7. Non Labour Law Requirements[217]

N/A

## 8. Contact Details

Andriy Tsvyekov
tsvyetkov@gestors.com.ua
+38 044 234 04 58
AA "Gestors"
7-B, Nazarivska str., office 4
01032, Kyiv
Ukraine

[214] Description of minimum standards that must be complied with during the performance of services in the jurisdiction
[215] Description of the most common services to which the restrictions outlined are not applicable (non-exhaustive list)
[216] Description of fines that could be imposed in case of non-compliance with the restrictions outlined
[217] Description of important requirements not resulting out of labour law that must be met during the secondment

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