

## New European Directive on the Posting of Workers

A posted worker is defined as a person who, for a limited period of time, carries out his or her work in the territory of an EU Member State other than the state in which he or she normally works.

In future, all foreign employers will have to display a sense of fair play when they post their employees in the European Union. In fact, the principle of equal pay for the same work performed in the same place has been enshrined since July 2018 in the latest European posting directive.

### I. Why a European directive?

The principle of “free movement of services” entails that companies can provide a service in another Member State without having to be established there. Such companies are authorized to send their employees to another country so that the latter can carry out the required tasks.

At the European level, the working conditions of these workers were regulated up to that time by a directive adopted in 1996. In order to guarantee **minimal protection** for such posted workers, this directive stipulated that even though they continued to be employed by the company which posted them and consequently fell under the legislation of the Member State of origin, they enjoyed a “hard core” of legal rights in force in the host Member State where the task is accomplished.

This “**hard core**” of protection rules concerns:

- Minimum wage rates;
- Maximum work periods and minimum rest periods;
- Minimum paid annual leave;
- The conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- Health, safety and hygiene at work;
- Equal treatment between men and women.

**Example:** A Romanian company posts employee to work in Luxembourg. Although posted temporarily, the Romanian workers working in Luxembourg have to be paid the Luxembourgish statutory minimum wage.

The economic environment and the situation of the labour market have changed considerably since them. The single market has expanded in the last twenty years and the pay gap has widened. The



unfortunate upshot of these turns of events has been that companies have been induced to resort to posting so as to benefit from such gaps. The new Directive (EU) 2018/957 therefore aims to fight against such unfair practices in order to guarantee the proper functioning of the single market.

## II. What the new Directive (EU) 2018/957 says

This directive does **not** pertain to **social security** aspects. The latter are addressed by Regulation (EC) 883/2004 on the coordination of social security systems. In this matter, the principle remains the following: under certain conditions, the employee posted by his or her employer to the territory of another Member State continues to fall under the social security system of the country where he or she normally works.

**Example:** A Luxembourgish company dispatches a (salaried) IT consultant on a two-month assignment for a customer established in France. This employee who normally works in Luxembourg continues to fall under the Luxembourgish social security system for the term of the posting.

### 1. “Equal pay for equal work”

It is no secret that social dumping undermines fair competition between companies, especially in certain sectors. The new directive is intended to remedy this situation by enshrining the principle according to which workers who perform the same work in the same place must receive equal pay, **irrespective of the country in which they normally work.**

Under the old directive, which provided for the application of minimum protection, posting companies were required to comply **only with the minimum wage rates** in force in the host Member States. Sizeable wage gaps consequently exist between posted and local workers, especially in Member States where wages are relatively high (as is the case in Luxembourg).

The new directive provides that posted and local workers shall be subject to the **same pay rules and will no longer be limited to the minimum wage requirements.** All the pay rules in force in the host Member State will have to be complied with, in accordance with the relevant legislation or collective bargaining agreements generally applicable in that country. The directive moreover stipulates that equal treatment shall also apply as regards the conditions of accommodation and reimbursement of travel expenses.

**Example:** A Luxembourgish bank plays host to a colleague from a Spanish subsidiary in its premises for a year. The latter should be granted the 13th month provided by the Luxembourgish collective bargaining agreement applicable in the banking sector.

The posted worker will nonetheless continue to fall under the social security system of his or her State of origin. Consequently, despite the fact that the gross salaries will be identical, the **wage cost for the employer will not be.** The employer contribution rates vary from one Member State to the other in fact.



## 2. Period of posting: 12 months, renewable for 6 months

As explained above, the issue here is **not** the length of posting as regards social security. The rules of the game do not change on that front. The new directive deals only with labour law aspects regarding temporary assignments in the European Union, and therefore working conditions.

Up to now, the 1996 directive provided that the posting was carried out for a “*limited period*” but without fixing any maximum period.

The new text has limited the period of posting to **12 months, with the possibility of extending that period for an additional 6 months** subject to reasoned notification by the service provider to the host State. This period is therefore less long than that of the posting in terms of social security, which can be extended up to 24 months and even more in certain cases.

Beyond this period of 12 (or 18) months, Directive (EU) 2018/957 provides that **all the rules of the host State apply to the posted worker** with the exception of provisions concerning the conclusion and termination of the employment contract.

In the event of long-term posting, the employer can therefore no longer hide behind the application of the labour law of the State where the employee normally works (i.e. that of the State of origin of the posted worker). **The place where the employee normally works will then become the host State.** Workers on a long-term posting will be treated exactly like local workers of the host Member State as regards most aspects of labour law.

## III. Next step: transposition by the Member States

For Directive 2018/957 to enter really into force at national level, the EU Member States are required to transpose it (by legislative act) in their internal law by 30 July 2020 at the latest.

Whereas Belgium had already taken the initiative for most of the measures provided by the new directive, France has done what is necessary by adopting the ordinance of 20 February 2019.

No bill has yet been introduced to that effect in the Grand Duchy of Luxembourg.

## IV. Road transport sector not concerned

The transport sector, which has also become a victim of social dumping, is not covered by the directive. A specific regulation still has to be prepared. This is the famous “mobility package.” Stay tuned for more information...

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