



# EU Posted Workers Directive Quarterly Review

2022-03 Winter



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## Administration News

### European Union

Registration systems for posted workers are not compliant with the EU law

**October 2022:** KPMG has inquired with the European Commission (EC) regarding the infringement procedure initiated in July 2021 against 24 European Union (EU) member states concerning the compliance of their registration systems with EU law. The EC is still conducting dialogues with each member state in an attempt to get the member states to correct their systems as much as possible before referring unresolved matters to the European Court of Justice.

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### European Union

EU authorities target labour exploitation in the fields

**October 14, 2022:** The European Labour Authority (ELA) and Europol supported coordinated action in September 2022 to fight human trafficking and exploitation of labour in agriculture. The operation was led by France and 17 arrests were made in France, Spain, the United Kingdom, and Ukraine among others. Initiation of 36 new investigations and a record of 192 suspected violations took place.

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### European Union

Inspectors from EU Member States meet and discuss joint labour inspections

**September 24, 2022:** The ELA and the National Training Center of Spanish Labour Inspectorate organized a workshop for discussing cross-border irregularities and ways to deal with them through cross-border inspections. The workshop was guided by various EU labour mobility experts specialized in the fields of road transport, construction, and seasonal work.

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## European Union

ELA's national events to increase knowledge and raise awareness on EU labour mobility and the role of the ELA

**September 23, 2022:** The ELA organized a national event in Helsinki, Finland, for enhancing the flow of information and coordination between various authorities involved in labour mobility, along with the social partners. The focus of the event was on ways to assist Member states in enforcing the rules pertaining to labour mobility. A similar event was organized in Stockholm, Sweden, with the Swedish Work Environment Authority, which focused on practical and awareness raising matters.

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## European Union

ELA promotes exchange of information on seasonal work in Europe

**September 14, 2022:** The ELA launched mutual learning events providing information regarding seasonal work, in Autumn 2022. The first edition comprises of three workshops, taking place on 18 October 2022 in Venice, 8 November 2022 in Sofia, and 30 November 2022 in Bratislava.

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## Case Law and Legislation

### Croatia/Cyprus/Italy/Luxembourg/Malta/Netherlands/Portugal/Slovenia

European Commission urges countries to implement rules on posting of drivers

**September 29, 2022:** The EC sent reasoned opinions to Croatia, Cyprus, Italy, Luxembourg, Malta, Portugal, Slovenia, and the Netherlands for failing to communicate to the Commission the national measures taken to transpose EU Directive 2020/1057 on the posting of road transport drivers. The Directive provides rules to ensure that posted drivers receive appropriate remuneration for the period they are posted in the Member State. It also provides the list of administrative requirements for companies posting drivers to another Member State.

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## European Union

Questions and Answers: Towards an asbestos-free future

**September 28, 2022:** The EC communicated its approach to achieve an asbestos-free Europe for current and future generations. The measure aims, among others, to create fairer conditions for posted, cross-border and mobile workers exposed to asbestos in the construction sector.

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## France

New Directive for providing additional information at the start of employment

**September 30, 2022:** The provisions of the French Labour Code must be interpreted as taking into account the EU Directive on transparent and predictable working conditions. This means that from 1 August 2022, employers must provide additional information pertaining to duration of the trial period of an employment and its conditions (if any), the right to training, the procedure

for termination of the contractual relationship, the identity of the social security bodies collecting the social security contributions and security protection provided by the employer and expected working hours for temporary contracts.

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## Germany

[Ruling on transfer of temporary agency worker to Germany without permission](#)

**September 30, 2022:** The Federal Labour Court rules that no further employment relationship of the temporary agency worker with the user undertaking in Germany is established when a temporary worker is transferred by a temp agency to Germany without permission. The ruling excludes coexistence of an employment contract and fictitious employment relationship.

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## Ireland

[EU Directive on posting of drivers in the road transport sector](#)

**September 30, 2022:** Ireland transposed the EU Directive on posting of drivers in the road transport sector. The rules impose obligations to make available relevant records during roadside checks and to specify the powers of “control officers”.

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## Lithuania

[Court rules on calculation of damages in case of work injury for a posted worker](#)

**September 30, 2022:** A Lithuanian Court ruled on a case concerning a Lithuanian employee who entered into a temporary employment contract with a Lithuanian enterprise and was posted at a construction site in Germany, where he was injured. Since there was no written contract between the German and the Lithuanian company, the court held that the employee was posted by an employer in Lithuania and the Court thereby exempted the German company from the obligation of the compensation for material damages. Further, the Court ruled that per diem allowances should not constitute a part of the monthly salary while calculating the compensation of material damages.

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## Luxembourg

[Court Decision on payment for overtime](#)

**September 30, 2022:** A Luxembourg Court ruled that an employee who requests payment for overtime must establish that the overtime work was done with the employer’s consent. The Court stated that an employer must maintain and monitor a system that registers working time and must intervene in case they disagree with the registered working time. If the employer does not intervene within a reasonable time, the employer has accepted registered overtime and must pay for it.

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## PWD Registration / Notifications - Top Tips

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### Denmark & Luxembourg

#### Confirmation of A1 required for notification

Various confirmations are required to be made in the specific online notification forms submitted to national labour authorities in terms of the Posted Workers Directive. For Denmark and Luxembourg, the sending employer must confirm that a social security certificate of coverage (A1) has been obtained, or at least applied for.

### Ireland

#### Fines of up to EUR 50 000 and prosecution for failure to register postings

Ireland is among the countries with the most severe potential sanctions for non-compliance with the requirement to register postings. On conviction or indictment, a fine of up to EUR 50 000 can be imposed for failure to notify the Workplace Relations Commission (WRC) of postings. Furthermore, office holders of a corporation can be prosecuted personally for such offences.

### Spain

#### Each region has separate notification requirements

Spain is the only country in the EU that requires postings to be notified to regional rather than national authorities. Consequently, service providers will need to make the necessary registration of a Spanish posting to the local authority portal in the specific region where the worker is posted. The registration process will be slightly different depending on whether it is a posting to Catalonia, Madrid, Andalusia or Valencia, etc.



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