KPMG Guide to the Posting of Workers 2022

KPMG in Romania | 2022

Content

Intro

The year 2021 was like a roller coaster. It was a mix of pandemic waves, relaxation of COVID-19 control measures and the start of adaptation to the new post pandemic reality for both people and organizations.

For sure, the pandemic has created long-lasting and surprising ripple effects.

However, despite these effects on the global economy and safety concerns, one thing has remained unchanged: the need to travel is a very important consideration for many people.
In the last months of 2021 and the beginning of 2022 we have seen an increase in terms of mobility of employees, but adapted to a "new reality" – a mix of posted employees and "work from anywhere" employees, where the "new reality" isn't necessarily a world without working in an office but a world where people focus on the work instead of the office.

Consequently, organizations have also had to adapt quickly to these new methods of working.

Considering that 2021 was the first full year of the new requirements being in place for international postings as introduced by Directive 2018/957/EU, organizations had to reassess their global mobility programs, analyze potential risks and design processes and procedures to also ensure compliance with new ways of working.

Our main purpose for this year's guide is to give companies an overview of the general principles around posting of workers as well as to help employers understand whether the "work from anywhere" reality generates risks or additional obligations for organizations and their mobile employees. Also, the guide includes information on the minimum wage levels and specific registration procedures required in each of the Member States.

We hope you will derive both interest and benefit from reading this year's edition of the KPMG Guide to Posting of Workers.

General overview

This part of the KPMG Guide to Posting of Workers aims to give companies a clear view on rules on the posting of workers, as they have been revised with the adoption of Directive 2018/957/EU . This understanding is essential to ensure that the rules are correctly and consistently applied by employers throughout the EU.[1]

What is a posted worker?

A posted worker is an employee who is sent by his/her employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency.

What are the rights of a posted worker?

Directive 96/71/EC [2], as amended by Directive 2018/957/EU, lists the terms and conditions of employment of the host Member State that must be granted to posted workers:

01 maximum work periods and minimum rest periods;

02 minimum paid annual leave;

03 remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes – Directive 2018/957/EU introduced the concept of "remuneration", replacing the concept of "minimum rates of pay";

04 the conditions for hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

05 health, safety and hygiene at work;

06 protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

07 equality of treatment between men and women and other provisions on non-discrimination;

08 the conditions for workers' accommodation where provided by the employer to workers away from their regular place of work – this is a new condition introduced by Directive 2018/957/EU;

09 allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

What does "remuneration" mean?

Directive 2018/957/EU does not define "remuneration". However, it specifies that remuneration, as far as posted workers are concerned, includes "all the constituent elements of remuneration rendered mandatory by national law (…) or by collective agreements which (…) have been declared universally applicable".

Directive 2018/957/EU states that the concept of remuneration is determined at the appropriate level i.e. by the national law and/or practice of the host Member State. The Directive does not therefore attempt to determine the notion of remuneration or to define any of its constituent elements.

The remuneration, with its different elements, of a worker of the host Member State may be set by rules of a different nature: legislative and other regulatory provisions, different types of collective agreements (national, sectoral, local, and at the level of the undertaking), and the individual employment contract agreed between employer and employee.

For posted workers only the elements of remuneration mandatorily applicable to all workers in the geographical area or sector are to be considered as remuneration.

The elements which are considered mandatorily applicable are those which are stated by national law or by collective agreements made universally applicable or that otherwise apply to all local workers in the geographical area or sector concerned.

The host Member State is not required to determine the actual remuneration to be paid. Member States are required to provide the information on the terms and conditions of employment, including the constituent elements of remuneration to be applied to workers posted to their territory.

But it remains the responsibility of the employer to establish in each individual case how much a posted worker must be paid, based on this information.

Remuneration includes any allowances specific to posting unless they are paid as reimbursement or compensation of expenditure on travel, board and lodging. Reimbursement or compensation of expenditure on travel, board and lodging are not considered as remuneration and therefore not considered for the comparison.

If it does not appear clearly which elements of the posting allowance are paid as reimbursement of expenditure actually incurred because of the posting, then the entire allowance is considered to be paid as reimbursement of expenditure, not remuneration.

[1] Directive (EU) 2018/957 of the European Parliament and of the Council, of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

[2] Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

Are there any specific registration requirements in the case of posted workers?

The Host Member State is entitled to require the Home Employer to take the following administrative measures, before the posting:

01 to make a simple declaration to the appropriate national authorities at the latest at the commencement of the provision of services containing the relevant information needed to allow verification of the details of the posting at the workplace, including:

- the identity of the service provider;
- the anticipated number of clearly identifiable posted workers;
- the liaison person and the contact person;
- the anticipated duration, and envisaged beginning and end date of the posting;
- the address(es) of the workplace and
- the nature of the services justifying the posting.

Most Member States have put in place an electronic system for this declaration

02 to designate a person to liaise with the appropriate authorities in the host Member State;

03 to designate a contact person who can act as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State.

Host Member States are entitled to put in place other administrative requirements provided they are justified and proportionate.

Do the same rules apply to short term postings?

Directive 96/71/EC and Directive 2018/957/EU apply to all postings, irrespective of their duration. However, some provisions of the Directive are not applicable to a short-term posting or allow host Member States not to apply their rules to postings of short duration.

First of all, there is a mandatory exception in cases of initial assembly and/or first installation of goods when the posting does not exceed eight days. In these cases, the rules of the Directive on minimum paid annual leave and remuneration do not apply (the exception does not apply to the construction sector).

Secondly, there are options for host Member States not to apply some of the rules when the length of the posting does not exceed one month.

Also, some host Member States have exempted short-term postings or other types of postings from certain requirements that they impose, in particular from the requirement to make the declaration prior to the posting.

Do the rules apply to business travelers?

Workers who are sent temporarily to work in another Member State, but do not provide services there, are not posted workers. This is the case, for example, for workers on business trips (when no service is provided), and those attending conferences, meetings, fairs, undertaking training etc.

These workers are not covered by the Posting of Workers Directives and, therefore, the rules on minimum wages or on mandatory registration procedures do not apply to them.

What about remote employees? Do these rules apply to them?

A remote employee is someone employed in a certain country, who, by his or her own free will, requests to work from another country (other than his/her employer's) for a determined period.

Contrary to postings where a provision of services occurs as a direct consequence of a business need, remote work is based on the personal decision of the employee. In such cases, the individual does not travel to another location in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency.

As such, generally, remote workers are not considered posted workers, and thus the provisions of the Posting Directive do not apply to them. Nevertheless, the domestic legislation of the country where the work is carried out still needs to be observed as registration requirements may still apply.

Main findings

This part of the KPMG Guide to the Posting of Workers provides an overview of the requirements related to posting of workers within the European Union, European Economic Area and Switzerland (hereafter referred to as "the EU, EEA Member States and Switzerland" or "the Member States").

You will find in this section a summary of the countries which have implemented Directive 2018/957/EU to date and those which will not implement the Directive at all, for various reasons, which should help you easily assess your obligations in each host country.

In this section, we detail our main findings with respect to remuneration used across the EU and EEA Member States and Switzerland (including the UK). Even though Directive 2018/957/EU replaced the concept of "minimum rates of pay" with the concept of "remuneration", minimum wages are still relevant, because in some countries "remuneration" might end up being the equivalent of the current "minimum rates of pay".

Registration requirements are another issue that raises concerns for employers and therefore in this section you will find an overview of the methods of registration available in each of the Member States to meet this obligation. Moreover, following the implementation of Directive 2018/957/EU, registration requirements may be even more complex, as a separation is made between short term (less than 12 months) and long term (more than 12 months) assignments.

Detailed information can be found in the Country by Country section.

The information presented in this report is based upon a brief survey covering issues relating to minimum wage requirements and compliance requirements with respect to postings to 30 countries within the European Union, European Economic Area and Switzerland (including the UK), valid as at May 2022. This information is of a general nature and it is not meant to cover all situations which might occur.

It is consequently recommended that, prior to posting an employee to a Member State, the employer should cross-check the information herein with specialized consultants or lawyers in the relevant country, including making a check as to whether there have been any recent changes to the domestic legislation of the Member State concerned.

What is the current status of implementation of Directive 2018/957/EU?

Directive (EU) 2018/957 (hereafter "the Directive") aims to facilitate the transnational provision of services, while achieving better protection for mobile workers. The Directive was published in the Official Journal of the European Union on 9 July 2018 and came into effect on 29 July 2018.

Following this date, all EU member states were required to transpose the Directive into their national legislation by 30 July 2020, in order to help ensure fair competition and respect for the rights of posted workers wherever they may be in the EU.

To date, most EU countries have already transposed Directive (EU) 2018/957 into their local legislation, except for Estonia.

The UK complied with the need to implement the 2018 Directive by issuing the Posted Workers (Agency Workers) Regulations 2020 which came into force on 30 July 2020 (the date set by the Directive).

However, since the UK has left the EU and ceased to be an EU member state, the Posted Worker Directive no longer applies to the posting of EU workers to the UK or to the posting of UK workers to the EU (and therefore the employment rights of EU workers who are posted to the UK will depend on UK law).

In Norway the revised directive has not yet been implemented. However, the EEA joint committee formally decided to adopt Directive 2018/ 957 on 5 February 2022, even though Norway is not part of the EU.

In Switzerland, it is unlikely that the new provisions will be transposed. However, similar provisions have already been implemented into its domestic legislation.

Do all countries have a minimum wage?

There are numerous EU countries where the minimum wage is set both at national level and through collective bargaining agreements.

Collective bargaining agreements are set in different ways (per industry, per sector, between trade unions and employers etc.).However, these cannot be lower than the minimum wage set at national level.

If collective bargaining agreements with general applicability exist, then the minimum wage granted to an individual cannot be lower than the wage guaranteed by the agreement (irrespective of the minimum wage applicable at national level).

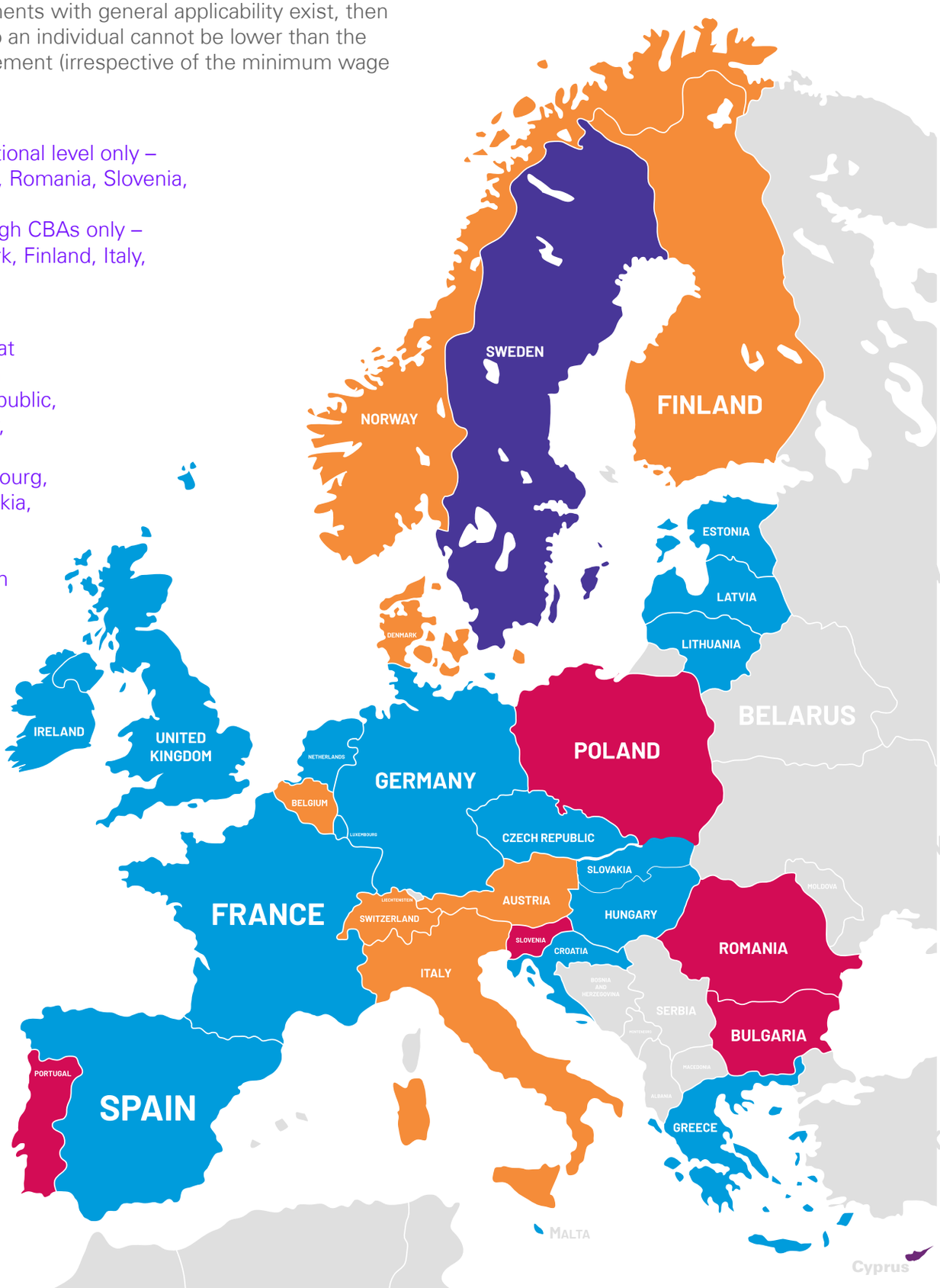
01 Minimum wage set at national level only – Bulgaria, Poland, Portugal, Romania, Slovenia,

02 Minimum wage set through CBAs only – Austria, Belgium, Denmark, Finland, Italy, Norway, Switzerland

03 Minimum wage set both at national level and through CBAs - Croatia, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovakia, Spain, UK

04 Minimum wage for certain occupations - Cyprus

05 Minimum wage not set - Sweden



- Minimum wage set at national level only
- Minimum wage set through CBAs only
- Minimum wage set both at national level and through CBAs
- Minimum wage for certain occupations
- Minimum wage not set

Registration requirements

	Posting up to 12 months	Extension of a posting	Shortening of a posting	Posting over 12 months	Business travelers	Posting from a non-EU country
Austria	Yes	Yes	Yes	Yes	Yes	No
Belgium	Yes	Yes	Yes	Yes	Depends*	Yes
Bulgaria	Yes	Yes	Yes	Yes	No	Yes
Croatia	Yes	Yes	Yes	Yes	Yes	Yes
Cyprus	Yes	Yes	Yes	Yes	Depends*	No
Czech Republic	Yes	Yes	Yes	Yes	Depends*	Yes
Denmark	Yes	Yes	Yes	Yes	Depends*	Yes
Estonia	Yes	Yes	No	Yes	No	No
Finland	Yes	Depends *	Depends *	Yes	No	Yes
France	Yes	Yes	Yes	Yes	Depends*	Yes
Germany	No	No	No	No	Depends*	Yes
Greece	Yes	Yes	No	Yes	Depends*	Yes
Hungary	Yes	Yes	Yes	Yes	Depends*	Yes
Ireland	Yes	Yes	Yes	Yes	No	No
Italy	Yes	Yes	Yes	Yes	No	Depends*
Latvia	Yes	Yes	No	Yes	Depends*	No
Lithuania	Yes	Yes	Yes	Yes	No	Yes
Luxembourg	Yes	Yes	Yes	Yes	Yes	Yes
Malta	Yes	Yes	Yes	Yes	Yes	No
Netherlands	Yes	Yes	No	Yes	Depends*	No
Norway	No	No	No	No	No	No
Poland	Yes	Yes	Yes	Yes	Depends*	Yes
Portugal	No info available	No info available	No info available	No info available	No info available	No info available
Romania	Yes	Yes	Yes	Yes	Depends*	No
Slovakia	Yes	Yes	No	Yes	No	No
Slovenia	Yes	Yes	Yes	Yes	No	Yes
Spain	Yes	Yes	Yes	Yes	Yes	No
Sweden	Yes	Yes	Yes	Yes	No	Yes
Switzerland	Yes	Yes	Yes	No	Yes	No
UK	No	No	No	No	No	No

* Please see comments in the country by country section

Do all countries require notification of postings?

Most EU countries have a similar approach and impose notification requirements in the case of postings. However, there are also exceptions, such as in the case of Germany, where the notification requirement depends on whether the posting falls within one of the relevant sectors and/or collective bargaining agreements. Norway is another example of a country where there is no registration requirement irrespective of the period.

Is the initial notification sufficient?

There are cases in practice where the posting is intended to be for a certain period, but for various reasons this period is either shortened or extended. These actions may result in new obligations for the employer in terms of notification, since what was initially declared is no longer applicable and must be updated.

For instance, most EU countries require updates in the initial notification if the posting is extended (a case by case analysis is required for Germany and Finland). A similar obligation can occur if the posting period is shortened. However, fewer countries require this - only Estonia, Germany, Greece, Latvia, the Netherlands, Norway, and Slovakia.

Do the same notification obligations also apply for business travel?

Workers who are sent temporarily to work in another Member State, but do not provide services there, are not regarded as posted workers. This is the case, for example, for workers on business trips (when no service is provided), and those attending conferences, meetings, fairs, undertaking training, etc. In these cases, in certain countries the trip does not need to be notified to the authorities.

However, there are also countries where business trips must be notified, irrespective of the purpose for which the trip occurs. For example, Luxembourg does not distinguish business travelers in its domestic law, and thus any trip is considered a posting and consequently must be notified. The same applies for business travel to Croatia, Malta or Spain. Denmark sets out clear circumstances under which notification is not necessary.

What about assignments from non-EU countries?

There are countries where national rules apply to all postings, which includes posting from a non-EU country to their territory. Examples include Belgium, Bulgaria, Croatia, France and Poland. This is also applicable in the case of Greece, based on a written reply from the Ministry of Employment to a particular query. However, where such cases occur it is recommended that they should be discussed and confirmed on a case by case basis with the relevant employment office.

On the other hand, for some countries, the notification requirement does not result as a consequence of the national rules applicable to postings, but due to immigration requirements. This is the case for Austria, Cyprus, Malta, the Netherlands and Romania.

More details of the notification requirements can be found in the country by country section.

How can the authorities be notified?

In most cases, the home country entity is legally required to inform the labor authorities in the host Member State about the employee's activity in that country. There is no unitary notification system at EU level. Instead, the requirements depend on each country's domestic legislation.

The filing deadline for the notification may differ depending on the local legislation of the host country.
The table below summarizes the practice of each country involved in the survey when it comes to notifying the posting with the relevant authorities.

Online	E-mail	By post	No notification
Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France Germany, Hungary, Italy, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spania, Sweden, Switzerland	Cyprus, Estonia, Greece, Romania	The Czech Republic, Ireland, Latvia, Lithuania	Norway, UK

In many countries, it is necessary to designate a contact person in the host country to be in connection with the authorities in the case of a labor audit. Supporting documents relating to the posting may be required.

Determining the 12-month period

Directive 2018/957/EU makes clarifications in relation to long-term postings. If the total duration of the posting exceeds 12 months (with the possibility of extension to 18 months where applicable), an additional set of terms and conditions applicable to employment relationships will have to be followed.

For those postings which started after the transposition deadline, it is clear that the additional conditions which become applicable after 12 months (18 months) are exceeded are counted from the beginning of the assignment. However, in practice there are cases where assignments were already in place by the time the revised Directive was implemented into domestic legislation.

So a question arises as to what happens in these cases. Are the 12 months calculated from the beginning of the assignment or starting from the implementation date? A correct assessment as to when the 12 months (18 months) are exceeded is extremely important, since this is the moment when the additional rights start to apply.

An overview on the approach of each country in relation to determining the 12-month period is summarized in the table below.

Beginning of assignment	Revised Directive implementation	Others
Belgium, Bulgaria, Croatia, Cyprus, France, Germany, Greece, Hungary, Malta, Netherlands, Poland, Slovenia, Sweden	Austria, Czech Republic, Denmark, Finland, Italy, Latvia, Lithuania, Luxembourg, Romania, Spain, Slovakia	Ireland

Work from anywhere

During the last few years and particularly as a result of the pandemic, a growing number of employees have started to develop a taste for remote work, not only from their homes but from other countries as well. The analysis included in this survey refers to situations where work is carried out from another jurisdiction. On the one hand this is beneficial both for employers and employees, however it also brings challenges with issues such as tax compliance.

In contrast to postings where a provision of services occurs as a direct consequence of a business need, remote work is a personal decision of the employee who will continue to work for his or her employer from a different location.

There is no specific legislation at EU level such as a Directive that regulates the applicable conditions and obligations in the case of remote workers like that for postings. Consequently, the core legislation at international level applies (e.g. double tax treaties, social security regulations, bilateral social security agreements, etc.).

Each country has its own legislation and rules, and therefore, it is important that any potential implications are checked from the perspective of the legislation of the country where remote work is carried out. Depending on the domestic requirements, both employers and employees may find themselves in the position of being liable to income tax/and or social security contributions in the location where the remote work is carried out.

Income tax

Among the countries analyzed, a tax liability may be triggered depending on the tax residence status of the individual and days of presence in that location. For most countries an income tax obligation arises from the first day of activity in the case of tax residents of that location.

However for tax non-residents the specific provisions of the applicable Double Tax Treaties must be analyzed, i.e. most treaties set a period of 183-days.

If the employee becomes liable to income tax in the country of activity, this may involve filing and payment obligations in that country for the foreign employer or the employee.

In many EU countries, if income tax is due, the obligation to declare and pay it rests with the employee him or herself through monthly filing or annual tax returns. Of course, this applies if the foreign employer does not have a PE or a corporate presence in the location where remote work is carried out.

However, there are several countries where this type of work triggers obligations for the foreign employer, even if no PE exists. Examples are Cyprus, the Czech Republic, Estonia, Malta, and Slovakia.

Social security

Work from anywhere involves applicability of European Regulations or applicable bilateral social security agreements. Generally, the social security legislation of the country where the work/activity is carried out applies.

However, certain exceptions apply according to which an individual may remain covered under the social security legislation of the country of origin for a certain period.

All countries involved in the survey agreed that the existence of a certificate of coverage can exempt the remote worker from social security contributions in the host location.

In the absence of a certificate of coverage, both the employee and employer may become liable to the social security legislation of the country where remote work is carried out. In all countries analyzed, the foreign employer is required to register for declaration and payment of social security in the country where remote work is carried out.

In some countries, the transfer of this obligation to the remote worker is not adhered to in practice even though the EU regulation allows this. Some examples of such countries are Belgium, Bulgaria, Finland, France, Ireland, Italy, Lithuania, and Luxembourg. On the other hand, in Austria, Portugal, Romania, Sweden and others, the obligation can be passed on to the employee based on a social security agreement.

More details can be found in the Country by Country section.

Country by Country report

Austria

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The latest amendments of the Posting of Workers Directive (incorporated in Directive 2018/957) were implemented in Austrian legislation.

However, the implementations of Directive 96/71/EU and its previous amending Directives that followed have been implemented several years ago.

Furthermore, the minimum salaries from Collective Bargaining Agreements are already the benchmark for the obligatory minimum salaries paid to assigned and hired-out employees (as stipulated in Directive 2018/957).

When it comes to international posting of employees to Austria, it is important to differentiate between employee assignments (Entsendung) and hiring-out of employees (Arbeitskräfteüberlassung) since different legal provisions and obligations apply depending on the type of the posting.

Remuneration of posted workers

Minimum wage at national level

Austria does not have a minimum wage set by the law, as there is no separate legislation relating to a minimum wage requirement.

Minimum wage set through collective bargaining agreements (or minimum wage scales)

If the rules of the Anti-Wage and Social Dumping Act (LSD-BG) are applicable, the Austrian minimum wage regulations must also be complied with. Collective bargaining agreements (or minimum wage scales) set a minimum standard. The minimum wage in the collective bargaining agreements changes (usually) annually.

Every year there is a percentile increase of the minimum wage. Some industries raise the minimum wage at the beginning of the year, while others change it during the year (e.g. 1 November). The minimum wage is determined based on industry (e.g. retail, construction, metal, print and paper, service industry etc.) and on the occupation of the employee (depending on the qualification of an employee, the employer has to assign a rating at the beginning of the employment).

Furthermore, foreign employees are entitled to allowances such as Christmas bonus, holiday allowance and overtime premiums. Except for overtime salary, these allowances are only granted if the collective

bargaining agreement (or the minimum wage scale) regulates it. Otherwise, the employee is not entitled to them. Generally (unless otherwise provided for by the collective bargaining agreement) these allowances are granted on the basis of the monthly wage.

For illustrative purposes, please see the remuneration applicable for the following 5 industries (amounts applicable in March 2022):

01 Automotive: Depending on position and previous years of service: between EUR 2.089,87 and EUR 7.522,70, 14 times a year.

02 Telecom: Depending on position and previous years of service: between EUR 1.622,36 and EUR 6.275,99, 14 times a year.

03 IT: Depending on position and previous years of service: between EUR 1.664,00 and EUR 5.521,00, 14 times a year.

04 Construction: Depending on position and previous years of service: between EUR 1.827,00 and EUR 6.400,00, 14 times a year.

05 Oil & Gas: Depending on position and previous years of service: between EUR 2.165,12 and EUR 8.700,26, 14 times a year.

What can be included in the remuneration

In order to avoid administrative penalties, every foreign employee working in Austria must receive the minimum remuneration (including surcharges, other surcharges and overtime pay) which is stipulated in Austrian law, the applicable collective bargaining agreement or the minimum wage scale. Expense allowances (such as lump sums, tax-free per-diems etc.) cannot be credited against the minimum wage.

If national Austrian provisions provide a title to special payments, monthly pro-rated portions must be paid out to the employee. The only exemptions from the minimum wage requirement are remuneration components, which are non-contributory according to Section 49 para 3 (e.g. expense reimbursements, tax and noncontributory daily allowances, dirt-surcharge) of the Austrian General Social Insurance Act (Allgemeines Sozialversicherungsgesetz - ASVG), as well as remuneration components which are only due according to the individual employment contract or company agreements (e.g. special payments, performance bonus).

Included in the remuneration	Not included in the remuneration
Base salary/base wage	Tax-free Per-diems
Overtime payments	Housing (if expense reimbursement)
Bonuses	Transportation costs
Surcharges (e.g. overtime surcharge (50%/100% etc.), shift bonus, hardship allowance, hazard bonus	Meal costs, dirt surcharge
Special payments (Foreign service premium, Cost of living allowance, Hardship premium, Country allowance, Assignment allowance)	Severity allowance
Idle time compensations	Performance bonus

Working hours

Workers posted to Austria benefit from a minimum break of 30 minutes if the working day exceeds 6 hours, minimum rest of 11 hours between working days and minimum weekly rest of 36 hours.

The maximum working time is 12 hours per day and 60 hours per week. Besides, within a reference period of 17 weeks, an average weekly working time of 48 hours may not be exceeded.

Mandatory registration of posted workers

Employers and temporary work agencies (Überlasser) established in an EU Member State or EEA State or the Swiss Confederation should notify the employment of employees posted or hired-out to Austria in a timely manner. A separate notification should be filed each time an employee is posted or hired-out. Changes of data required for the notification should be notified without delay (amendment notification).

The posting or hiring-out of employees should generally be notified to the Central Coordination Office (ZKO) of the Austrian Federal Ministry of Finance prior to commencement of the work in Austria (so-called "ZKO notification").

The ZKO notification should be submitted exclusively by filing the electronic forms of the Federal Ministry of Finance (ZKO 3 for posting; ZKO 4 for hiring-out of employees).

The most important exemptions are highlighted below. These exemptions are applicable for short-time assignments only (as defined), except for the last one (temporary intragroup assignments/hiring-outs) which is also applicable for the hiring-out of employees:

01 In cases involving "transit traffic," activities by mobile employees or crew-members in the cross border transport of goods or passengers (starting 1 January 2017);

02 In cases where the employee concerned receives a monthly gross remuneration of at least 120 percent of thirty-times the daily ASVG-maximum contribution basis (2022: EUR 6.804)

03 Temporary intra-group assignments or hiring out of especially qualified employees for a maximum of two months per calendar year, as long as the work in Austria is for the purposes of research and development, planning of project work, holding of a training course, or otherwise for the purposes of exchanging experiences, consulting the company, or controlling or participating in a cross-border group-department with management and planning functions or work in connection with delivery, commissioning (and related training), maintenance, service work and repair of machines, equipment and IT systems.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Yes
Posting from a non-EU country **	No, however different immigration legislation applies.

**Generally, every assignment from a business traveler needs to be registered from day one, unless an exemption applies: there is no registration obligation in the case of assignments of short duration (approx. 1-7 days) if only certain activities are performed (e.g. attending seminars and congresses without rendering any services, business meetings as long as no further services are rendered, trade fairs and events similar to trade fairs except for preparatory and concluding work). A short assessment should be carried out prior to the assignment.*

***Austria does not have a registration requirement in respect of postings from non-EU countries under the posting legislation, however immigration rules have to be complied with.*

Determining the 12-month period

The 12-month period is counted for assignments which started after 31 August 2021.

Documents and legal representation

The following documents should generally be kept readily available at the Austrian place of work during the posting period / the period the employee is hired-out or should be made accessible electronically on site and at the time of the investigation:

A Notification documents, social security documents and official permits such as:

01 documents showing the employee's registration for social insurance purposes (social security document E 101 or social security document A 1), provided that the posted / hired-out employee is not subject to mandatory social security in Austria; if, at the time of the investigation, the employer / temporary work agency furnishes evidence in German or English showing the inability to obtain these documents from the competent social security institution prior to the posting / hiring-out, equivalent documents in German or English (application for issuance of social security document E 101 or A 1 and confirmation from the competent social security institution that the employee is subject to a foreign social security scheme for the period of posting / hiring-out) should be kept readily available;

02 the ZKO 3 / ZKO 4 notification;

03 the official work permit of the posted / hired-out employee in the country where the employer / temporary work agency is established (if required, concerning third-country-nationals).

B Wage / salary documents, which generally need to be provided in German or English such as:

01 the employment contract or the statement of terms and conditions;

02 Payslips (Lohnzettel);

03 proof of wage/salary payment or bank transfer statements;

04 wage records;

05 records of hours worked; and

06 documents relating to pay categorization in order to verify the remuneration that is payable to the employee under Austrian law for the duration of the employment.

A certified translation is not required. Documents must be kept available only during the assignment.

As an alternative to the general rule, the documents can be kept readily available / made electronically accessible at the time of investigation at the following places, provided that this is specified in the ZKO notification:

01 with the contact person specified in the ZKO notification; or

02 at a branch registered in Austria where the foreign employer operates not only occasionally; or

03 at an Austrian independent subsidiary or the Austrian parent company of a group; or

04 with a professional representative located in Austria (i.e. certified accountants and tax advisors, attorneys-at-law, notaries).

Further document storage obligations may arise from other legal provisions (in particular, the Austrian Personnel Leasing Act, the Austrian Act on the Employment of Foreign Nationals, the Austrian Aliens Police Act and/or the Austrian Settlement and Residence Act).

Austrian legislation provides for the posting entity to indicate a legal representative in Austria to establish contact with the Austrian authorities.

Penalties for non-compliance

In the case of non-compliance with the above requirements, penalties vary as follows:

Offence	Penalties from 1 September 2021
Violations of notification obligations and the obligation to keep notification documents, social security documents and official permits readily available (e.g. not keeping the A1 form available, not keeping the ZKO 3/ZKO 4 form available at the working place)	Up to EUR 20,000
Not keeping the wage/salary documents available (such as wage /salary documents which are required for establishing the remuneration due to the employee under Austrian law, which should be in the German or English language and must be available during the entire period of posting to the place of work/deployment in Austria)	Up to EUR 20,000 in case of recurrence: Up to EUR 40,000
Minimum rates of pay are undercut (underpayment during several periods of salary payment, causes only one offence; payments that surmount payments according to provision, law or collective bargaining agreement are charged against underpayments in the respective period of salary payment; as concerns for special payments, an offence of underpayment only occurs if the special payment is not or not fully paid by December 31 of the respective calendar year; penalties also apply for home workers if payments do not correlate with law or provisions under consideration of applicable classification rules)	Ranging between EUR 20,000 and EUR 400,000 (depending on various factors including the amount of underpayment and the size of the company

Under certain conditions, it is possible that the employer may even be forbidden from carrying out activity in Austria for up to five years.

Work from anywhere

For individuals with an employment agreement under foreign law who choose to work in Austria (under a "work from anywhere" concept), it must be analyzed which law governs the relevant employment relationship and to which extent Austrian law must be taken into account (in particular when it comes to overriding mandatory rules). In terms of income tax, if the individual is tax resident in Austria and works remotely from Austria for his /her foreign employer, the

remuneration for this is subject to Austrian taxation from the first day.

If a tax liability is triggered in Austria, it is important to assess whether the activity of the employee creates a permanent establishment in Austria. If a permanent establishment of the employer in Austria is established, then income tax might be levied through wage tax deduction.

Otherwise, if no permanent establishment is created, the employee must pay the tax after submitting an income tax return (and by making advance income tax payments).

If a withholding obligation arises in Austria, the foreign employer must fulfil certain payroll accounting requirements:

01 Register at the Austrian tax authorities for the purposes of wage tax withholding.

02 Calculate, withhold, and transmit the Austrian wage tax to the Austrian tax authorities on a monthly basis (i.e., by the 15th day of the month following the respective wage payments).

03 Mandatory annual reporting of wages and wage tax summary ("Jahreslohnzettel" – form "L 16").

According to the guidelines of the Austrian tax authorities, it is not required for the payroll administration and the wage tax calculation to be implemented within the Austrian territory.

It is also possible to administer these obligations from abroad, but this must be done in accordance with Austrian legal requirements and, moreover the respective documentation must be transferable to Austria at any time upon request of the tax authorities.

These factors render the calculation as well as the payment of Austrian wage tax difficult for foreign companies.

Common practice is for foreign employers' to source these duties out either to an Austrian tax consultant or, if applicable, the affiliated company in Austria.

In terms of social security, the rules of the Regulation 883/2004 apply if the foreign employer is from an EU member state (i.e., the individual is exempted from social security in Austria provided an A1 certificate covering the period of remote working is available). The social security contributions encompass employee's contributions (generally 18,12% for recurring payments) and employer's contributions (generally 21,23% for recurring payments) up to a monthly contribution basis cap adjusted each year.

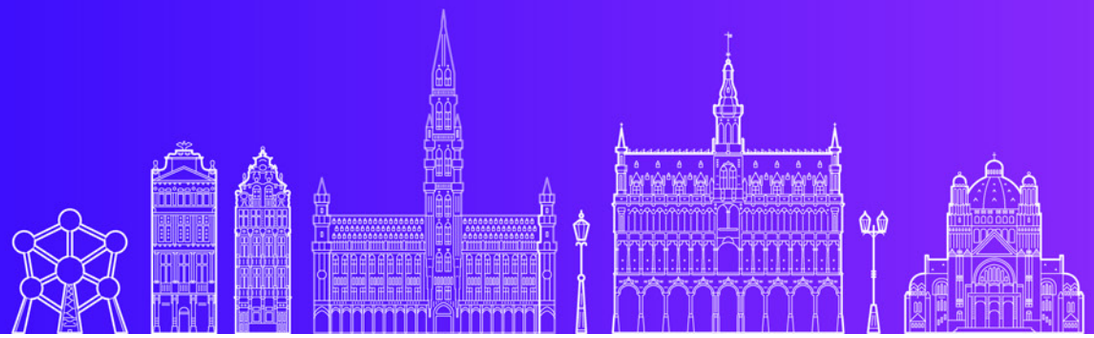
To pay the contributions the foreign employer should register with the Austrian insurance agency as well as calculate, withhold and transfer the employee's and employer's contributions on a monthly basis to the insurance authorities. Monthly reporting of the contribution base is also required.

Based on EC Regulation 987/2009, the foreign employer and the employee can agree that the employee may fulfill the payment obligations on behalf of the employer. In this case, the employer should notify the Austrian insurance agency of such an agreement. Such an agreement does not exclude the general employer's liability for correct and timely payments of employer's contribution.

Public sources of information

The link to the official website of the Austrian Federal Ministry of Labor where all important information concerning the application of minimum wage requirements and collective bargaining agreements can be accessed ***here (https://bit.ly/3tAvRvF).***

Belgium



Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The revised rules on posted workers have been implemented in Belgian legislation and entered into force on 30 July 2020.

Remuneration of posted workers

The Revised PWD introduced the principle "equal pay for equal work," which implies that the remuneration of assigned employees should be at the same level as the salary of local workers, including the additional salary elements such as bonuses or allowances. Considering that Belgium had already implemented the PWD in a very broad sense, the revision has a minimal impact.

It was already stipulated in Belgian legislation that an employer who temporarily posts its workers to Belgium is required to respect a "hard core" of minimum mandatory Belgian rules concerning working conditions, including rules on working hours, salary conditions, public holidays, etc., which implies that almost the entire Belgian labour law code was applicable to posted employees even before 30 July 2020. The revision brings, however, more clarity around the concept of remuneration.

As the Revised PWD requires that member states set out in a transparent way the different elements of remuneration in their territory, the new Belgian legislation specifies that the "hard core" provisions will now include rules on the payment of allowances or reimbursement of expenses covering travel, accommodation, and food expenses for workers who are away from home for professional purposes.

Minimum wage at national level

The national minimum wage is the absolute minimum to be respected. On 1 January 2022 the monthly gross minimum salary was EUR 1.691,40 for employees who are at least 18 years old, EUR 1.736,28 for employees who are at least 19 years old and have at least 6 months of seniority with their employer, and EUR 1.756,23 for employees who are at least 20 years old and who have at least 12 months of seniority with their employer.
However, most industries set their own minimum wages in collective bargaining agreements (see further).

Minimum wage set through collective bargaining agreements

In Belgium, minimum wages are set at industry level, and are established by various joint committees. Each joint committee (JC) applies different minimum wages, as concluded by a collective bargaining agreement (CBA). Consequently, the change of the level of the minimum wage and

the expected date for this change varies, depending on the applicable CBA . A system of automatic wage indexation also exists in Belgium, which is imposed by law, but set by CBA.

The minimum wage in Belgium is determined as a fixed gross amount, subject to occupation, seniority and industry/sector and possibly also the region where the employee works. Below, we have provided the sectorial minimum wages for starters as set by the auxiliary joint committees for blue-collar and white-collar employees.

Blue collar workers

JC n° 100: Auxiliary joint committee for blue-collar employees

EUR 1,709.95 gross / month

White collar workers

JC n° 200: Auxiliary joint committee for white-collar employees

Category A: EUR 1,879.34 gross / month

Category B: EUR 1,957.65 gross / month

Category C: EUR 1,985.34 gross / month

Category D: EUR 2,141.55 gross / month

If the competent industry's CLA does not mention wages or there is no agreement, the guaranteed minimum monthly income (GMMI) still has to be complied with. This basic wage also differs depending on the age and seniority of the employee.

There are 3 minimum wages (gross amounts):

01 For employees who are at least 18 years old: EUR 1,691.40 gross /month;

02 For employees who are at least 19 years old and have at least 6 months of seniority: EUR 1,736.28 gross/ month;

03 For employees who are at least 20 years old and have at least 12 months of seniority: EUR 1,756.23 gross / month.

The GMMI is not a minimum monthly income in the strict sense of the term, since it includes certain amounts such as a year end bonus or a work placement allowance.

For illustrative purposes, please see below the remuneration applicable for the following 5 industries:

Automotive

Blue collar workers

JC n° 111.01: joint committee for blue-collar employees in the metal, mechanical and electrical construction sector

Minimum hourly salary:

NATIONAL:

EUR 12.5192 gross/hour for a 38h week

White collar workers

JC n° 209: joint committee for white-collar employees in the metal fabrications sector

Minimum wages (gross/month):

ADMINISTRATIVE EMPLOYEES:

Step 1 1,820.78 gross / month
Step 2 1,990.14 gross / month
Step 3 2,193.53 gross / month
Step 4 2,346,53 gross / month

Automotive

Blue collar workers

PROVINCE OF BRABANT (EUR/HOUR):

12.51 gross/hour for 38h/week
12.19 gross/hour for 39h/week
11.88 gross/hour for 40h/week

PROVINCE OF ANTWERP (EUR/HOUR):

13.138 gross/hour for 38h/week

PROVINCE OF LIMBURG (EUR/HOUR):

12.5382 gross/hour for 38h/week

PROVINCE OF EAST FLANDERS (EUR/HOUR):

for 38h/week

Category 1: 13.3061 gross/hour
Category 2: 13.5921 gross/hour
Category 3: 13.7634 gross/hour
Category 4: 13.9921 gross/hour
Category 5: 14.2211 gross/hour
Category 6: 14.5634 gross/hour
Category 7: 14.9067 gross/hour
Category 8: 15.3645 gross/hour
Category 9: 15.7066 gross/hour
Category 10: 15.1074 gross/hour
Category 11: 16.5066 gross/hour

PROVINCE OF WEST FLANDERS (EUR/HOUR):

for 38h/week

Category 1: 13.2482 gross/hour
Category 2: 13.5332gross/hour
Category 3: 13.7031gross/hour
Category 4: 13.9307 gross/hour
Category 5: 14.1589 gross/hour
Category 6: 14.5006 gross/hour
Category 7: 14.8414 gross/hour
Category 8: 15.2965 gross/hour
Category 9: 15.6370 gross/hour
Category 10: 15.0361 gross/hour
Category 11: 16.4344 gross/hour

White collar workers

TECHNICAL EMPLOYEES (EUR/MONTH):

Step 1 1,820.78 gross / month
Step 2 1,922.26 gross / month
Step 3 1,990.14 gross / month
Step 4 2,041.19 gross / month
Step 5 2,193.53 gross / month
Step 6 2,210.96 gross / month
Step 7 2,346.53 gross / month

DRAUGHTSMEN (EUR/MONTH):

Step 1 1,922.26 gross / month
Step 2 2,041.19 gross / month
Step 3 2,346.53 gross / month
Step 4 2,482.25 gross / month
Step 5 2,787.71 gross / month

FOREMEN (EUR/MONTH):

Step 1 2,109.03 gross / month
Step 2 2,482.25 gross / month
Step 3 2,686.07 gross / month

TRACERS FOR BOILER WORK (EUR/MONTH):

Step 1 2,346.53 gross / month
Step 2 2,465.42 gross / month

GUARANTEED AVERAGE MINIMUM MONTHLY INCOME FOR EMPLOYEES WITH A MINIMUM AGE OF 18 YEARS (EUR/MONTH):

National: 1,820,78 gross/month
Provinces: 1,820,78 gross/month

Blue collar workers

PROVINCES OF LIÈGE AND LUXEMBOURG

	STARTER (EUR/HOUR)	AFTER 6 MONTHS (EUR/HOUR)
For 36 hours /week	13.4020 gross/hour	13.8335 gross/hour
For 37 hours/ week	13.0398 gross/hour	13.4596 gross/hour
For 38 hours/ week	12.6966 gross/hour	13.1054 gross/hour
For 39 hours/ week	12.3710 gross/hour	12.7694 gross/hour
For 40 hours/ week	12.0618 gross/hour	12.4501 gross/hour

PROVINCE OF NAMUR (EUR/HOUR)

12,6964 gross/hour for a 38h week

PROVINCE OF HAINAUT (EUR/HOUR)

12,6966 gross/hour for a 38h week for starters

13,1054 gross/hour for a 38h week after 6 months

Telecom

Auxiliary joint committees for blue-collar (JC 100) and white-collar employees (JC 200): see above.

IT

Auxiliary joint committees for blue-collar (JC 100) and white-collar employees (JC 200): see above.

Construction

Blue collar workers

JC n° 100: Joint committee for blue-collar employees in the construction sector

HOURLY SCHEDULE (IN EUR / ON WEEKLY BASIS) 40 HOURS/WEEK

AGE	0	6	12	24	36
18	9.8651 gross/ hour				
19	9.8651 gross/ hour	10.1269 gross/ hour			
22	9.8651 gross/ hour	10.1269 gross/ hour	10.2432 gross/ hour	10.3391 gross/ hour	10.3701 gross/ hour

White collar workers

JC n° 200: Auxiliary joint committee for white-collar employees

Category A:
EUR 1,879.34 gross / month

Category B:
EUR 1,957.65 gross / month

Category C:
EUR 1,958.34 gross / month

Category D:
EUR 2,141.55 gross / month

For 18-year olds and older, 5 different amounts (categories) have been determined:

01 Category 1: the 1st column with 0 months of seniority applies to all employees who have less than 6 months of seniority in the company and are at least 18 years old.

02 Category 2: the 2nd column with 6 months of seniority applies to all employees with between 6 and 11 months of seniority in the company and who are at least 19 years old.

03 Category 3: the 3rd column with 12 months of seniority applies to all employees who have 12 months of seniority in the company and are at least 20 years old.

04 Category 4: the 4th column with 24 months of seniority applies to all employees who already have 24 months of seniority in the company and are at least 22 years old.

05 Category 5: the 5th column with 36 months of seniority applies to all employees who already have 36 months of seniority in the company and are at least 22 years old.

Oil&Gas

Depending on the actual activities, employers and employees can belong to Joint Committee 116 or 207 (blue collar employees and white collar employees in the chemical sector), Joint Committee 117 or 211 (blue collar employees and white collar employees in the petrol sector), Joint Committee 127 (blue collar employees in the fuel trade sector), or Joint Committee 326 for gas and electricity companies.

By way of example, the following minimum monthly salaries in EUR for white collar workers of Joint Committee 207 are applicable:

Years of experience	1	2	3	4a	4b
0	2000.99	2042.94			
1	2014.07	2058.41	2088.33		
2	2026.97	2074.01	2112.33		
3	2039.98	2089.41	2136.18	2262.74	
4	2053.07	2105.05	2160.35	2290.25	2437.16
5	2066.09	2120.58	2184.34	2317.85	2468.50
6	2079.04	2136.06	2208.48	2345.54	2499.73
7	2092.02	2151.60	2232.38	2373.05	2531.06
8	2105.05	2167.35	2256.47	2400.68	2562.25
9	2118.03	2182.72	2280.55	2428.22	2593.71
10	2130.93	2198.26	2304.57	2455.82	2625.05
11	2143.99	2213.71	2328.51	2483.50	2656.16
12	2157.05	2229.35	2352.64	2511.15	2687.45
13	2170.09	2244.93	2376.57	2538.72	2718.73
14	2183.02	2260.45	2400.55	2566.41	2750.06
15	2196.04	2276.01	2424.67	2594.08	2781.19
16	2208.95	2291.63	2448.71	2621.51	2812.61
17	2222.05	2307.04	2472.81	2649.07	2843.80
18	2235.06	2322.55	2496.82	2676.83	2874.54

Years of experience	1	2	3	4a	4b
19	2247.94	2338.11	2520.78	2704.30	2906.43
20	2261.00	2353.67	2544.77	2731.98	2937.65
21		2369.23	2568.95	2759.69	2969.02
22			2592.87	2787.31	3000.33
23			2616.91	2814.85	3031.62
24			2641.08	2842.50	3062.91
25			2665.07	2869.92	3094.18
26			2689.09	2897.70	3125.49
27				2925.30	3156.56
28				2952.83	3188.03
29				3219.19	3156.56
30				2925.30	3188.03
31					2952.83
32					3219.19

What can be included in the remuneration

In Belgium, only the basic salary and certain benefits in kind are considered to be part of the minimum wage.

All other additional benefits and allowances must not be taken into account in order to calculate whether the minimum wage, as established by CBA in the applicable joint committee, has been respected.

Included in the remuneration

- Basic salary
- Benefits in kind (housing, gas, electricity, water, heating, accommodation, food, tools and/or clothes, materials) at their actual value

Not included in the remuneration

- Per-diems
- Special payments pertaining to work performed outside Belgium (Foreign service premium, Cost of living allowance, Hardship premium, Country allowance, Assignment allowance)
- Bonuses
- Transportation costs
- Meal costs
- Contributions to the group insurance scheme or hospitalization insurance

Working hours

In principle, the working hours of employees in Belgium may not exceed 8 hours per day and/or 38 hours per week.

Nonetheless, this daily and weekly limit on working time may be exceeded in a number of well-defined circumstances and subject to certain specific conditions. For example, a working week of 40 hours with the allocation of 12 compensatory days of rest over a one-year reference period.

Moreover, certain industries have explicitly reduced the maximum working hours, replacing the legal limits. Exceptions to the maximum working hours are possible if certain legal conditions are met.

Mandatory registration of posted workers

Except for certain excluded categories of posted employees, the foreign employer must, prior to the actual employment of the posted employee on Belgian territory, submit an electronic notification to the Belgian National Social Security Office (NSSO) via www.limosa.be.

It is, however, important to note that this so-called 'Limosa-notification' has nothing to do with the work and employment permits that may be required for the employment of foreign employees in Belgium.

Furthermore, if the employer does not meet its obligations in relation to the prior Limosa-notification of posted employees, the Belgian end user or principal is required to take care of this.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country	Yes

**Business travelers to Belgium are exempted from the obligation to declare if they are attending small group meetings that do not exceed 20 successive calendar days. This exemption applies to meetings with a closed attendee list (e.g. strategic negotiations, contract negotiations with clients, performance reviews which are the typical activities of a business traveller and provided that the attendance of the employee at these meetings does not exceed 60 calendar days per calendar year, with a maximum of 20 consecutive calendar days per meeting.*

Determining the 12-month period

The period from the start of the posting will be taken into account.

Documents and legal representation

A liaison officer is to be identified who is in charge of liaising with the Belgian (inspection) authorities – this applies to all sectors. The liaison officer is the employer's contact person with the Belgian inspection authorities. The liaison officer can be any individual authorized by the posting company to fulfill the information obligations in relation to the Belgian (inspection) authorities (when requested by the latter). The officer does not have to be domiciled or reside in Belgium.

The liaison officer must be appointed through the LIMOSA notification tool. The following details about the liaison officer must be registered in the online LIMOSA application:

01 Surname, first name and date of birth (if the liaison officer has a Belgian identification social security number, this number suffices);

02 The capacity in which the liaison officer operates;

03 The physical and electronic addresses, as well as a phone number, at which the liaison officer can be contacted by the authorities.

The liaison officer must have the following documents available, with respect to the posted employees, on paper or electronic format and must provide these on the request of the Belgian social inspection authorities in order to allow them to verify the compliance with the Belgian working conditions:

01 A copy of the signed employment agreement of the posted worker or any similar documents;

02 Various details in relation to the conditions of the posting (e.g. duration of the posting, foreign salary and benefits in kind as paid during the posting, conditions of repatriations of the seconded employee, etc.);

03 An overview of the working hours (daily/weekly working time, etc.);

04 The proof of effective payment of the salaries.

The employer and liaison officer must archive these documents until one year after the end of the posting.

On the explicit request of the Belgian inspection authorities, the employer is required to translate these documents into Dutch, French, German or English.

Penalties for non-compliance

Non-compliance by the employer with regard to the rules on the minimum wage, the maximum working hours, the liaison officer or the social documents is sanctioned in Belgium with a level 2 penalty, consisting of either a criminal fine of between EUR 400.00 and EUR 4,000.00 or an administrative fine of between EUR 200.00 and EUR 2,000.00.

The fine (criminal or administrative) must be multiplied by the number of employees concerned, without being able to exceed one hundred times the maximum fine.

Non-compliance by the end user or the principal with regard to the rules on the prior Limosa-notification for posted employees is sanctioned in Belgium with a level 3 penalty, consisting of either a criminal fine of between EUR 800.00 and EUR 8,000.00 or an administrative fine of between EUR 400.00 and EUR 4,000.00.

The fine (criminal or administrative) must be multiplied by the number of employees concerned, without being able to exceed one hundred times the maximum fine. The same penalties apply for an assigned self-employed worker who has not duly reported his/her activities via Limosa, if the activities are pursued in a high risk industry (construction, the meat processing industry and the cleaning industry).

Non-compliance by the employer with regard to the rules on the prior Limosa-notification for posted employees is sanctioned in Belgium with a level 4 penalty, consisting of either a prison sentence of between 6 months and 3 years and a criminal fine of between EUR 4,800.00 and EUR 48,000.00 or one of those penalties alone, or an administrative fine of between EUR 2,400.00 and EUR 24,000.00.

The fine (criminal or administrative) must be multiplied by the number of employees concerned, without being able to exceed one hundred times the maximum fine.

Work from Anywhere

From a tax perspective, the question whether an individual working remotely from Belgium will be taxable in Belgium depends on the tax residence status of the individual:

01 If the individual is considered tax resident in Belgium, he will be taxable on their worldwide income in Belgium (with a possibility to exempt income if applicable);

02 If the individual is considered tax non-resident in Belgium, he / she will in general only be taxable in Belgium if (i) he / she exceeds 183 days of presence in Belgium or (ii) the costs are recharged to an employer in Belgium or (iii) the costs are borne by a Belgian permanent establishment of the foreign employer.

To evaluate whether there is a wage withholding tax obligation in Belgium, it is important to assess if the foreign employer is liable to corporate taxes in Belgium. A wage withholding tax requirement in Belgium occurs if:

01 The employer is considered as having a permanent establishment in Belgium for corporate tax purposes based on the DTT concluded between Belgium and the other country;
OR

02 The employer is considered having an establishment in Belgium for corporate tax purposes based on Belgian internal legislation. This definition of an establishment is broader than the definition of a permanent establishment as stipulated in the double tax treaties. Due to the broad definition, it is rather "easy" to have a Belgian establishment based on Belgian legislation. Based on article 229 §2/2 of the Belgian Income Tax Code (BITC), a foreign company which performs services in Belgium, for one or for more related projects, through the presence of one or more individuals in Belgium, for a term which exceeds 30 days during any twelve-month period, is considered to have a Belgian establishment. This analysis however must be performed and confirmed by a corporate tax specialist.

To process Belgian wage taxes, a Belgian shadow payroll must be set up (with an external payroll office) and the employer should pay the wage taxes due monthly to the Belgian tax authorities, at the latest on the 15th of each month following the month in which the income has been attributed. The income will need to be reported on a Belgian wage statement 281 ('Fiche 281.10').

If it is only a Belgian establishment under Belgian local law, but not a permanent establishment according to the DTT, it should be the employee's obligations to pay Belgian taxes.

There is no general obligation under Belgian tax law to withhold taxes as an exterritorial employer in this case. However, discussion can arise if the employee does not meet his/her obligations.

Then the authorities might seek arguments. From a practical point of view, where social security needs to be withheld as well, withholding taxes are often withheld in addition on a voluntary basis.

From a social security law perspective, foreign employers must pay social security contributions if their employees work from Belgium.

The exception is an assignment or multi-state employment (in the case of a social security treaty or the EU Regulation or the TCA with the UK).

Coordination rules will then determine the applicable social security scheme. As soon as an employee is required to be part of the Belgian social security system, the employer cannot exempt itself from the registration, reporting and payment obligations to the Belgian National Social Security Office.

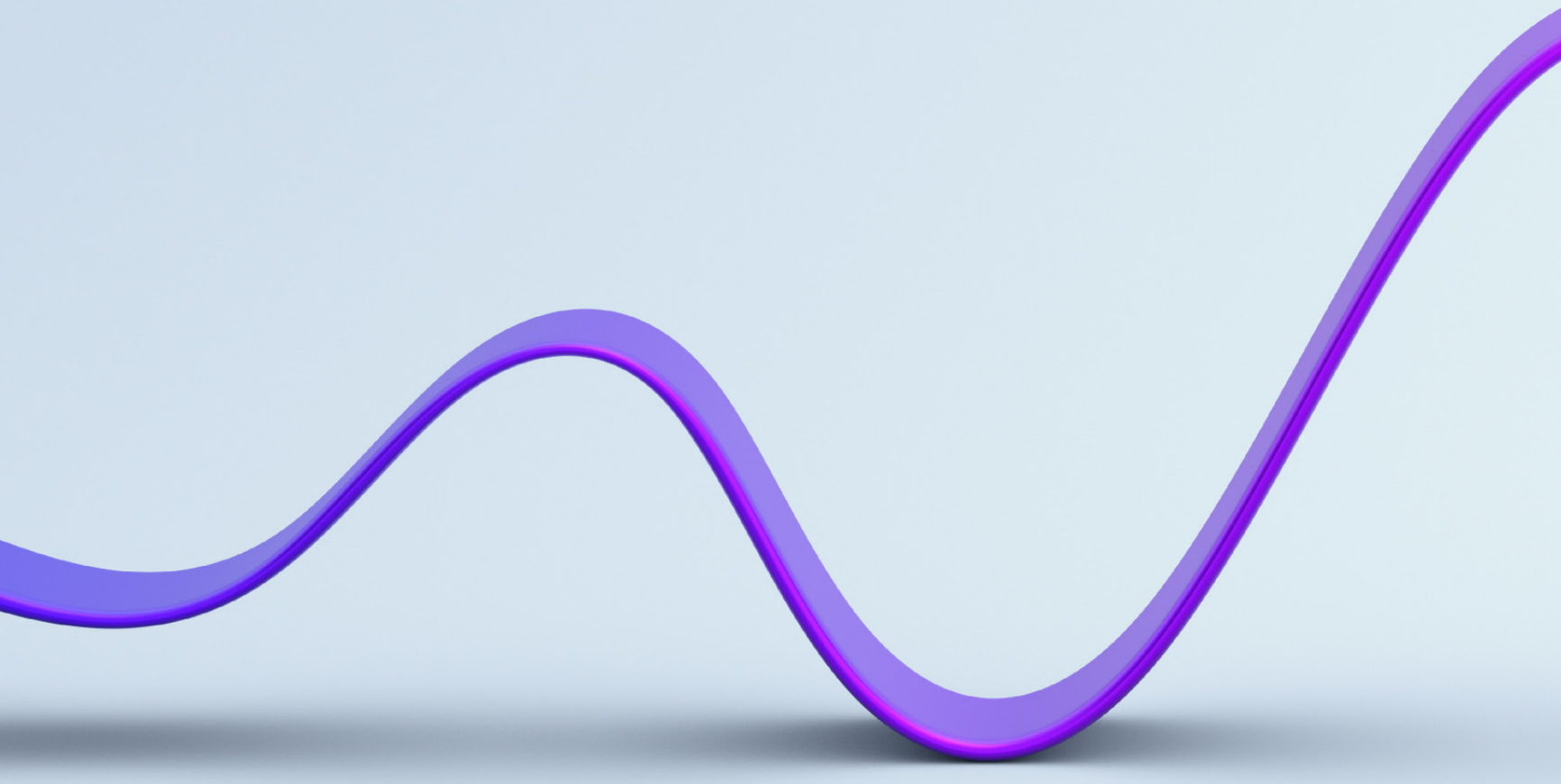
In addition, there may be additional obligations for employers such as a mandatory labor accident insurance and an affiliation with an external service for prevention and protection at work.

The employer cannot transfer these obligations to its employee. Even if the employer should fail to fulfill its obligations to the Belgian National Social Security Office, the employee may claim the fulfillment thereof as they are obligations arising from the employment agreement.

Public sources of information

https://www.employment.belgium.be/en

https://bit.ly/3nVFKkr



Bulgaria

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Ordinance for the transposition of the revised Directive 2018/957 (the "Ordinance") was adopted on 22 January 2021 in the State Journal and became effective on 25 January 2021.

Remuneration of posted workers

Minimum wage at national level

Bulgaria has a minimum gross wage set at national level. The minimum wage requirement in Bulgaria is fixed regardless of the industry, age or occupation.

The minimum gross wage for the period 1 Jan – 31 Mar 2022 is BGN 650 (approximately EUR 332). The minimum gross wage valid as from 1 Apr 2022 is BGN 710 per month (approximately EUR 363). The minimum wage is revised on an annual basis.

Minimum wage set through collective bargaining agreements

Bulgaria does not have a collective bargaining agreement with general applicability. However, there may be collective bargaining agreements in place at enterprise, branch, industry, or municipal level (with effect only for the companies which apply them or have signed such).

The minimum wage rates set out in the collective bargaining agreements cannot be lower than the national minimum wage.

However, the minimum insurable income varies depending on the occupation and is generally higher than the minimum wage. The maximum insurable income as from 1 Apr 2022 is BGN 3,400 (approximately EUR 1,738).

What can be included in the remuneration

The principle "equal pay for equal work" which implies that the remuneration of assigned employees should be at the same level as the salary of local workers performing the same or similar work should be observed from the beginning of the assignment.

Pursuant to the revised posting rules the salary structure of the posted employee should meet the elements of the gross salary as determined in the Bulgarian labor law and should include basic salary and the additional employment remunerations set forth in the table below.

Included in the remuneration	Not included in the remuneration
Base salary/base wage	Per-diems
Annual paid leave remuneration	Housing
Additional remuneration for length of service and professional experience	Transportation costs
Additional remuneration for educational and scientific degree "Doctor" or for the scientific degree "Doctor of Science", related to the work performed by the posted employee	Meal costs
Additional remuneration for on-call duty	Assignment related allowances
Increased remuneration for night work, overtime	Performance bonus
Bonuses (performance bonus, annual bonus, other premium payments)	

Working hours

In Bulgaria, the maximum legal working hours are 8 hours/day, equivalent to 40 hours/ week .

Mandatory registration of posted workers

Employers registered in a Member State of the EU/EEA, in Switzerland or a third country posting employees to Bulgaria must notify the General Labor Inspectorate for the posting by submitting an application in standard form, prior to the commencement of provision of services, i.e. before the start date of the assignment.

The applications should be submitted electronically through the single national website of the General Labor Inspectorate https://postedworkers.gli.government.bg/

The foreign employer is also required to notify immediately the Labor Inspectorate about changes in the posting conditions, such as: change of the duration of the assignment (or, early termination or extension), change of the place of posting, nature of the services rendered, etc. For this purpose, a new PWD shall be filed.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country	Yes

**The Bulgarian labor legislation does not provide for a legal definition of "Business traveler". However, there is no registration requirement in Bulgaria if the business traveler attends meetings, conferences, trainings, workshops.*

Determining the 12-month period

The 12-month period is counted from the beginning of the assignment.

Accordingly, employers who have posted employees prior to the entry into force of the Ordinance, should bring the posting into compliance with the new posting requirements within 30 days as from the effective date of the Ordinance.

If a posted worker replaces another posted worker who fulfils the same type of activity in the same place, the 12-month period is determined by totalizing the posting periods of each employee. A case-by-case assessment on the performance of the same type of activity at the same place should be made by considering the nature of the work and service provided, the user of the service and the address or addresses of the place of work.

When the duration of the posting exceeds 12 months (or 18 months if an extension for an additional 6 months is approved after filing electronically a motivated request to the General Labour Inspectorate), except for the hard core of minimum working conditions, after the twelfth month the employee should be ensured with additional working conditions, established in the Bulgarian legislation for the employees performing the same or similar work.

Some examples are: free work and uniform clothing (if applicable at the host company), statutory compensations if there are legal grounds for their payment, entitlement to free food and/or food supplements (if the host company has a specific character and organization of work), benefits as per the policy of the accepting company, free annual medical examinations, etc.

Documents and legal representation

The local undertaking which accepts the posted employee should keep at the employee's place of work for the period of the posting, in electronic format or hardcopy, a copy of the following documents provided by the foreign sending company:

01 employment contract or equivalent document evidencing the employment relations under the legislation of the home country;

02 documents evidencing the hours worked containing information for the beginning, the end and the duration of the working time;

03 pay slips or copies of equivalent documents evidencing paid salaries.

The above documents should be accompanied by translation into the Bulgarian language (a certified translation is not required).

The foreign employer should be able to provide the documents in relation to the posting in the event of inspections by the labor authorities within 1 year after expiry of the posting.

Penalties for non-compliance

For non-compliance with the provisions of labor legislation the labor authorities may impose penalties of: i) from BGN 1,500 to BGN 15,000 (approximately EUR 767 to EUR 7,669) per breach for the employer and ii) from BGN 1,000 to BGN 10,000 (approximately EUR 511 to EUR 5,113) per breach for the responsible officer.

For recurring violations, the penalties are i) from BGN 15,000 to BGN 20,000 (approximately EUR 7,669 to EUR 10,226) for the employer and ii) from BGN 5,000 to BGN 10,000 (approximately EUR 2,557 to EUR 5,113) for the responsible officer.

To a local entity which has accepted a posted employee from another Member State of the EU/EEA or Switzerland, or an employee from a third country in breach of the terms and conditions of posting within the framework of the provision of services, a fine, or, a penalty of BGN 5,000 for each employee, and for a second offense – from BGN 5,000 to BGN 10,000 is imposed.

Work from Anywhere

Assessment of personal income tax and social security implications in the case of working remotely from Bulgaria requires a detailed analysis of the individual's presence and connection with Bulgaria, taking into account various factors such as: the tax residence status of the individual, the types of income received, the specific provisions of the respective Double Tax Treaty (if any), the role and presence of the employee and respectively risk from attribution of a permanent establishment of the employer in Bulgaria.

On a general note, the Bulgarian personal income tax legislation specifies that the obligation for withholding, and remittance lies with the employer, if the company has a local presence (e.g. local PE in Bulgaria). If no presence exists, the obligation will switch to the individual who has to file an annual Bulgarian personal income tax return.

The local legislation does not have a de minimis period which does not trigger a tax liability, so all days worked in Bulgaria are taxable unless the applicable Double Tax Treaty does not provide for an exemption.
The same is the case with social security.

When work is performed in Bulgaria, social security would be due unless exemption can be sought on the basis of the EU Social Security Regulations or the Social Security Agreements concluded with other countries. If social security contributions are due in Bulgaria, the foreign employer should register in Bulgaria in this respect.

Public sources of information

https://www.mlsp.government.bg/

https://postedworkers.gli.government.bg/

Croatia

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Law on Posting of Workers to the Republic of Croatia and Cross-Border Enforcement of Monetary Fines, by which Directive 2018/957 was implemented into Croatian legislation, was published in the Official Journal No. 128/2020 on 20 November 2020, and came into effect on 1 January 2021.

The Law on Posting of Workers to the Republic of Croatia and Cross-Border Enforcement of Monetary Fines applies to all posting which are in place as at 1 January 2021, not only to those starting as of 1 January 2021.

Remuneration of posted workers

Minimum wage at national level

All employees who work in Croatia, irrespective of the industry, occupation or age, are entitled to a minimum wage in accordance with the Croatian Minimum Wage Act (Official Journal of Croatia No. 118/18, 120/21).

Under Government Decree (Official Journal No. 119/20, 117/21), the gross minimum wage in Croatia in the period between 1 January 2022 and 31 December 2022 is HRK 4,687.5 per month (the equivalent of approximately EUR 625). During 2021 the minimum wage was set at HRK 4,250 (the equivalent of approximately EUR 567). The minimum wage is updated annually.

In certain cases, the applicable wage can be lower than the minimum wage set by the Croatian Minimum Wage Act, if that wage is part of a collective bargaining agreement. However, even in such cases, the wage cannot be lower than 95% of the minimum wage set by the Croatian Minimum Wage Act - i.e. during 2022 HRK 4,453.12 (the equivalent of approximately EUR 594).

Minimum wage set through collective bargaining agreements

If there is a universally applicable collective bargaining agreement in place in Croatia, then the minimum salary payable to the posted worker cannot be lower than the salary guaranteed by the collective agreement.

Presently, only the Collective Agreement for the Construction Industry (Official Journal No. 115/15, 134/15, 26/18, 49/18, 93/20, 104/20, 115/20) is universally applicable in Croatia, to all employers doing business in the construction sector.

According to the same, the minimum salary depends on the complexity of the particular work position.The Collective Agreement for the Construction Industry includes Appendix 1 ("Tariff Rates") which deals with the complexity factors for the calculation of the basic wage for particular work positions in the construction industry. Under the Tariff Rates, work positions in the construction industry are divided into 10 different complexity groups.

As of 15 September 2020, the minimum wage for the simplest work positions in the construction industry (e.g. transport worker or cleaner) cannot be lower than HRK 4,200.00 per month (the equivalent of approximately EUR 560).

Considering that this salary is lower than 95% of the prescribed minimum wage for 2022, the wage in the construction industry must not be lower than HRK 4,453.12 (the equivalent of approximately EUR 594). On the other hand, the minimum wage for the most complex work positions in the construction industry (e.g. construction project manager) cannot be lower than HRK 11,130.00 per month (the equivalent of approximately EUR 1,484). The mentioned figures are gross.

What can be included in the remuneration

Posted workers are inter alia guaranteed the compensation for the work performed, as guaranteed at the level of the legislation and universally applicable collective agreements in Croatia, if this is more favorable for them than the terms of employment granted to them by the foreign law applicable to their employment.
In relation to those posted workers that would not be subject to a universally applicable collective agreement in Croatia, the following would apply:

Included in the remuneration	Not included in the remuneration
Minimum wage	Overtime payments
	Night work, work on Sunday and work on a holiday
	Bonuses
	Per-diems
	Housing
	Transportation costs
	Meal costs
	Special payments (Foreign service premium, Cost of living allowance, Hardship premium, Country allowance, Assignment allowance)

In relation to determining the minimum compensation for the work performed guaranteed to posted workers in the construction sector, some differences compared to the above table exist.

Working hours

The maximum legal working hours are 40 per week. Any additional work is considered overtime.

Mandatory registration of posted workers

Prior to commencement of work of posted workers in Croatia, an EEA employer has to submit a posting declaration to the Labour Inspectorate.

The posting declaration has to be submitted electronically, prior to the commencement of posting, in the form and with all mandatory information as prescribed by the By-law on the form and content of a posting declaration, rendered by the Croatian Minister of Labour.

Any changes in the posting declaration must be reported to the Croatian Labour Inspectorate within three days.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months*	Yes
Business travelers**	Yes
Posting from a non-EU country	Yes

** If the posting exceeds 12 months (or 18 months, if an extension for an additional 6 months is approved), all other terms and conditions of employment that domestic workers are entitled to as per Croatian legislation and universally applicable Croatian collective agreements (with the exception of those governing formalities concerning entering into and termination of employment, non-competition and voluntary pension insurance system), should apply to the posted worker.*

***A posting declaration must be submitted even if the travel lasts one day.*

Determining the 12-month period

In relation to those assignments which were in progress at 1 January 2021 and which up to 1 January 2021 lasted less than 18 months, the Law on Posting of Workers to the Republic of Croatia and Cross-Border Enforcement of Monetary Fines provided that there is no need to file an application for the extension of the period during which only the guaranteed minimum employment terms and conditions apply. Therefore, those posted workers falling under this category would be subject to the guaranteed minimum employment terms and conditions until the duration of their posting reaches 18 months.

For those assignments which were in progress at 1 January 2021 and which were already longer than 18 months, the foreign employer is required to apply the legislative provisions on long-term postings (i.e. guaranteed minimum employment terms and conditions, as well as other terms and conditions applicable to domestic workers) as of 1 January 2021.

Where the posted worker replaces another posted worker who performs the same task in the same place, the posting periods of each individual posted worker are cumulatively calculated in the total duration of the posting period, unless otherwise provided by a specific regulation.

Documents and legal representation

An EEA employer, as well as a non-EEA employer, has to designate a person who will keep certain documents at the place where the posted workers will work (or at another specifically indicated place in Croatia).

Specifically, this person will be required to provide the following documents to the Croatian authorities upon their request:

01 Employment contract,

02 Salary calculations which show all elements of the salary and the manner in which the salary has been determined (only for those months when the posted worker worked in Croatia),

03 Proof that the salary has been paid (only for those months when the posted worker worked in Croatia),

04 Records of working hours for the period when the posted worker worked in Croatia showing the commencement, duration and end of working hours,

05 A1 certificate (for posted workers employed in the EU), or certificate of coverage (for posted workers employed in third countries),

06 Documentation related to health and safety at work,

07 For posted workers who are third country nationals – work permit or other document showing that the worker is lawfully employed with the employer making the posting,

08 The Croatian Labor Inspectorate reserves the right to request additional documents.

These documents have to be retained for two years after the posting ends. Documents can be kept in their original language, however the authorities may require a translation.
The nominated person must be physically present in Croatia.

Penalties for non-compliance

The Law on Posting of Workers to the Republic of Croatia and Cross-Border Enforcement of Monetary Fines, provides for a fine between HRK 31,000 and HRK 50,000 (approximately EUR 4,150 to EUR 6,670) for the foreign employer posting its workers to Croatia, inter alia, if the foreign employer:

01 fails to submit a complete and accurate posting declaration prior to the commencement of posting,

02 fails to report any change of information set out in the posting declaration within three days from the change taking place,

03 fails to appoint a person in Croatia responsible for safekeeping of prescribed documents,

04 fails to appoint a contact person in Croatia for communication with the authorities,

05 fails to issue a confirmation about authorizations of the person responsible for safekeeping of prescribed documents,

06 fails to issue a confirmation about authorizations of the contact person in Croatia responsible for communication with the authorities.

Furthermore, the Law on Posting of Workers to the Republic of Croatia and Cross-Border Enforcement of Monetary Fines provides for monetary fines between HRK 10,000 and HRK 20,000 (approximately EUR 1,350 to EUR 2,700) for the responsible person of the foreign employer.

For non-compliance with the above minimum wage requirements, fines, which range from HRK 60,000 (approximately EUR 7,925) to HRK 100,000 (approximately EUR 13,210) for the employer and HRK 7,000 (EUR 925) to HRK 10,000 (approximately EUR 1,320) for the responsible person of the employer can be imposed.

Work from anywhere

In terms of income tax, Croatian legislation does not define a "de minimis period" under which a remote worker's presence in Croatia would not trigger tax liability in Croatia.

To determine whether the income of a remote worker received from a foreign company is taxable in Croatia, the relevant Double Tax Treaty Agreement should be closely examined. If a tax liability were to arise in Croatia, the responsibility to report, assess and pay taxes on income received from abroad lies with the employee (in this case the remote worker) personally.

For the year 2022, the tax rates are 20% and 30% (depending on the level of income) plus applicable surtax rate (e.g. Zagreb 18%).

Tax liability should be paid/visible on the Tax Authority's account and related reporting form submitted within 30 days of income receipt,

otherwise the Tax Authority can charge penalty interest for each day of late payment (currently approx. 5% per annum).

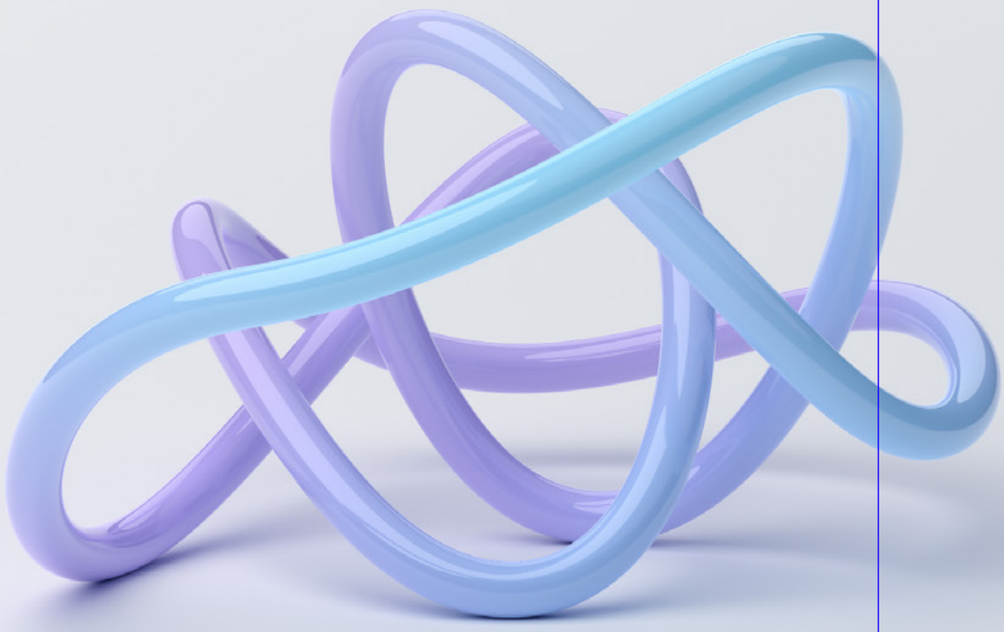
With respect to social security liability, as for tax liability, there is no de minimis period under which a remote worker's presence would not trigger any social security liability in Croatia. If based on applicable EU Regulation provisions a remote worker becomes subject to a social security liability in Croatia, the following is applicable: pension insurance contributions of 20% of gross salary (15% for the first pillar of salary and 5% for the second pillar of pension contributions) and are at the expense of the employee, whilst health insurance contributions of 16,5% of gross salary are paid by the employer (i.e. on top of the gross salary.

As opposed to the reporting of a tax liability, the responsibility to report, assess and pay a social security liability lies with the employer if the employer is situated in an EU country or Switzerland and for this purpose, the employer should register with the Croatian pension and health authorities.

A social security liability reporting form must be submitted by the employer within 30 days from payment of the employment income to the employee. The employee can assume social security payment obligations if both the employer and the employee sign and submit a specific form to the tax authority.

Public sources of information

The link to the web page of the Croatian Ministry of Labor and Pension System which provides a detailed overview in English of the Croatian minimum wage legislation and obligations of foreign entities assigning personnel to Croatia can be accessed here (https://mrosp.gov.hr/information-for-service-providers-performing-temporary-services-in-croatia-posted-workers-and-service-users-7189/7189)



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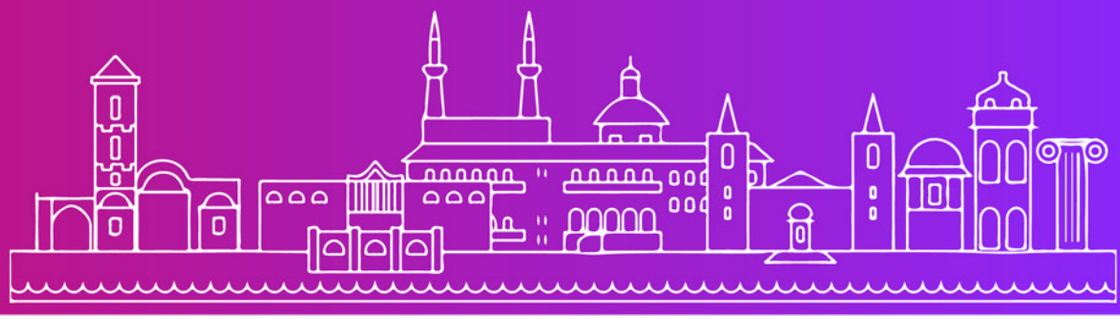


Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Implementing Directive 2018/957 was enacted into Cyprus legislation on 27 November 2020, through the provisions of the Posting of Workers in the Framework of the Provisions of Services Law of 2020 (N.158(I)/2020).

The new legislation applies to all postings which were in place at the time of the introduction of the new legislation (i.e., 27/11/2020).

Remuneration of posted workers

Minimum wage at national level

Currently there is no minimum wage at a national level. However, there is a minimum wage applied only to certain occupations and this is determined as a fixed amount or as an hourly rate.

Currently, there are discussions between the various stakeholders for the introduction of a national minimum wage.

What can be included in the remuneration

Assignment allowances such as per diems, cost of living allowances, foreign services premiums, and bonuses are not included in the minimum wage.

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	Per-diems
Overtime payments	Housing
	Transportation costs
	Meal costs
	Special payments (Foreign Service premium, Cost of Living allowance, Hardship premium, Country allowance, Assignment allowance)
	Bonuses
	Commissions

Working hours

The maximum legal working hours are 40 per week. Any additional work is considered overtime.

Mandatory registration of posted workers

Relevant approval is required prior to the commencement of the posting and therefore a notification should be submitted to the Department of Labour before the planned posting commences. The notification can be submitted either in person, by regular mail or e-mail.

The address of the Department of Labour in Cyprus is: 9 Clementos street, 1061 Nicosia, Cyprus and the postal address is: Department of Labour, 1480 Nicosia, Cyprus. Please refer to relevant link (http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/contact_en/contact_en?OpenDocument).

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	No

** In the relevant legislation there is no definition for business travelers. Depending on the purpose of the travel and nature of the activities performed in Cyprus, such individuals may not qualify as posted workers within the meaning of the Cypriot legislation and thus they may not be subject to the registration requirements applicable to posted workers.*

*** Cyprus does not have a registration requirement in respect of postings from non-EU countries under the relevant legislation, however the normal immigration procedures and requirements will be applicable.*

Determining the 12-month period

For assignments which were in progress on the date of enactment of the legislation, the 12-month period is counted from the date of the commencement of the assignment.

It is noted that in cases where an individual replaces another posted worker, for the exact same activity, the 12-month period should be counted cumulatively, i.e. taking into consideration the duration of activity for both posted workers.

Documents and legal representation

Every employer or their representative and any seconded worker to that employer must, when requested by the Cyprus Labour Department, provide any information, books, records, certificates or other documents or any other information relating to the employment relationship, posting terms, and the nature of services provided, as regulated in Laws 63(I)/2017 and 158(I)/2020.

The receiving company in Cyprus to which the employees have been assigned must hold and make available to the Cyprus Labour Department, upon request, the following:

01 the employment contract (terms and conditions of the assignment), details of hours worked;

02 the length of time an undertaking is established in the host Member State as well as the address where the host employer has its registered office or place of business;

03 the place where posted workers are recruited and from which they are posted;

04 the nature of the services provided, the number of clearly identifiable posted workers and the anticipated duration.

In addition, the below documents must be submitted to the Department of Labour prior to each posting:

01 Written statement with the following information:

(i) Name of the undertaking, its head office address and its legal status;
(ii) Name of the legal representative and the representative in the territory of Cyprus if such a representative exists;
(iii) Address where posted workers will provide services and name, address and legal status of the undertakings receiving the services;
(iv) Date of commencement of the posting and the possible duration;
(v) Nature of economic activity.

02 List of Posted Workers (full name, passport no, occupation);

03 Name of the liaison person with the competent authorities in the Republic of Cyprus.

The relevant documents must be kept during the period of posting and they must be available in Greek or English language in order to be presented to the Department of Labour in case of an audit. A certified translation must be made only upon request from the authorities.

The Cyprus Labour Department should make an overall assessment of all factual elements whether an undertaking genuinely performs substantial activities, other than purely internal management and/or administrative activities.

The law provides that a representative may be appointed by the employer to provide the relevant details to the authorities upon a request.

Penalties for non-compliance

Non-compliance with the provisions of Law. 63(I)/2017 and 158(I)/2020 may result in imprisonment for up to 2 years or to a fine not exceeding fifty thousand euros (EUR 50,000) or both, depending on the situation.

Public sources of information

Official Labor Department link can be accessed here (http://www.mlsi.gov.cy/mlsi/dl/dl.nsf/index_en/index_en?OpenDocument).

Work from Anywhere

Tax considerations

The Cyprus tax legislation states a tax-free threshold of EUR 19,500. After that amount, there are progressive income tax brackets up to 35%.

Where the taxable income of the employee for a specific tax year (1 January – 31 December) is below the tax-free threshold, there will be no income tax withholding obligations for the employer.

Otherwise, the employer will have an obligation to withhold the relevant tax on the employment income and remit it to the Cyprus Tax Department, through the Pay-As-You-Earn System. The foreign employer needs to register as "employer for wage tax purposes" using a specific form. Based thereon, the tax authorities will issue a tax number under which wage taxes have to be declared and paid.

Cypriot (shadow) payroll needs to be set up and operated for the employees monthly. Wage taxes must be declared and paid to the Cypriot tax authorities by the end of the month following the month in which the withholding was made.

Social Insurance considerations

As per the Cypriot social insurance legislation, any person who is physically undertaking employment activities in Cyprus should be subject to social insurance contributions in Cyprus.

However, if the employee has a valid A1 certificate for the relevant period in Cyprus, the employee and the employer will not be subject to social insurance contributions in Cyprus.

If social security contributions are due, the employee and the employer will be subject to social insurance contributions in Cyprus from the first day that the employee will be physically undertaking employment activities in Cyprus.

The employer is required to register with the Cyprus Social Insurance Authorities and withhold from the employee's remuneration the relevant (employee) contributions and remit them to the Cyprus Social Insurance Authorities, together with the employer's contributions.

A shadow payroll needs to be operated to calculate the monthly social security and NHIS contributions to be withheld from the employee's salary. The announcement and payment of social security and NHIS contributions to the relevant funds need to be processed by the end of the month following the month in which the withholding was made.

The employer needs to withhold the employee's part from the employee's salary and will have to remit the total social security and NHIS amount (employer's and employee's portion) monthly. The employer is also liable to make contributions to other Funds such as: contributions to the Redundancy Fund, the Training and Development Fund and the Social Cohesion Fund in Cyprus, as well as Holiday Fund - if no exemption is claimed from the Cypriot Social Insurance Authorities).

According to the EU Regulation, the obligation can be transferred to the employee, however this is not a common practice in Cyprus. Assuming that this is the case, the employer will still be held liable for unpaid social security and NHIS contributions.

National Health Insurance System (NHIS) considerations

The National Health Insurance System Law (NHIS) came into effect from March 2019. The employer and the employee should contribute to the NHIS up to a maximum amount of annual earnings of EUR 180,000.

The social insurance and NHIS contributions (both the employee's and the employer's portion) in respect of the employment income should be remitted simultaneously to the Cyprus Social Insurance Authorities by the employer.

If the employee has a valid A1 certificate for the relevant period in Cyprus, the employee and the employer will not be subject to NHIS contributions in Cyprus.

he Czech Republic

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Czech legislation has been modified to comply with an amendment to the EU Directive on the Posting of Workers.

This new package of measures entered into effect on 30 July 2020 as a part of an amendment to the Czech Labour Code.

Remuneration of posted workers

Minimum and guaranteed wage at national level

The Czech Republic has a minimum and also guaranteed wage requirement set by law. The minimum and the guaranteed wage is determined as a monthly amount and as an hourly rate.

The minimum and the guaranteed wage is revised by the Government generally every year, with effect as from 1 January.
The current level of the minimum wage is applicable as from 1 January 2022.

The minimum wage per hour is CZK 96,40 (approx. EUR 3,8), while the minimum wage per month is CZK 16.200 (approx. EUR 642,5), which is applicable to all employees.

In 2021, the minimum wage per hour was CZK 90,5 (approx. EUR 3,6), while the minimum wage per month was CZK 15.200 (approx. EUR 585).

Apart from the minimum wage, Czech labor law also includes minimum levels of wage in relation to the difficulty and responsibility of the relevant work, which is called a "guaranteed wage".

Based on the Government regulation there are 8 levels for the guaranteed wage. The levels of guaranteed wage for the year 2022 vary between CZK 16.200 per month or CZK 96,40 per hour for the jobs of the lowest complexity, responsibility and difficulty (which is the minimum wage) to CZK 32.400 per month or CZK 192,80 per hour for the jobs of the highest complexity, responsibility and difficulty.

Both the minimum and guaranteed wage requirements apply only if the employee is posted to the Czech Republic for more than 30 days in a calendar year (unless it is an agency employment).

Minimum and guaranteed wage set through collective bargaining agreements

The levels of the minimum and guaranteed wage may also be set through collective bargaining agreements at a higher-level, which may be concluded for individual branches of business. The existence of a collective bargaining agreement at a higher-level for the relevant branch of business, and the question whether such an agreement sets the level of minimum / guaranteed wage at different levels from that in legislation has to be assessed individually. However, the levels of minimum and guaranteed wage set forth in the collective agreement cannot be lower than the minimum and guaranteed wage at national level.

What can be included in the remuneration

Generally, the wage and all bonuses provided in consideration for performance of work are considered a wage for the purposes of the minimum and guaranteed wage.

However, wages and surcharges for overtime work, extra pay for work on public holidays, night work or weekends or payment for work in an unfavorable working environment cannot be considered part of the minimum wage.

The minimum wage also does not include benefits that are not provided in consideration for the performance of work, especially wage compensation, severance pay, travel expenses, loyalty benefits or remuneration for carrying out on-call duty.

Included in the remuneration	Not included in the remuneration
Base salary/base wage	Per-diems
Bonuses provided in consideration for the performance of work	Housing (if expense reimbursement)
	Transportation costs
	Meal costs
	Travel allowances in general
	Special payments (Foreign Service premium, Cost of Living allowance, Hardship premium, Country allowance, Assignment allowance)
	Severance payments
	Overtime payments
	Payments for work during nights, weekends and/or public holidays, for the performance of work in an unfavorable working environment
	Remuneration for performing on-call duty
	Bonuses and benefits provided not in consideration for the performance of work (e.g. loyalty benefits)

Working hours

The maximum number of legal working hours in the Czech Republic is generally 40 per week (plus possible overtime to the extent permitted by law).

Mandatory registration of posted workers

Under Czech laws, both the sending employer and the accepting employer must fulfil certain statutory requirements when an employee is posted for the performance of work which involves the transnational provision of services in the Czech Republic.

As regards the minimum standards of working conditions and remuneration that must be guaranteed to the assigned employees, some of these minimum standards apply only when the employee is posted for more than 30 days in aggregate within a calendar year.

The conditions may also differ if an employee is posted for the performance of work within the transnational provision of services by an employment agency.

According to the Employment Act, the foreign (sending) employer who posted the foreign employee to perform work in the Czech Republic is required to inform the Czech Labor Office in writing about certain information, e.g. identification details of the employee, address, travel document (passport) details, type and place of work, timeframe etc., on the day of commencement of work at the latest.

Once notified, the information must be kept updated - any change or termination of posting in the Czech Republic must be notified within 10 calendar days.

The notification of the authorities must be performed in writing.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	Yes

** Czech legislation does not provide any definition of business travelers. Depending on the purpose of the travel and nature of the activities performed in the Czech Republic, such individuals may not qualify as posted workers within the meaning of the Czech legislation. (e.g. employees present in the Czech Republic for training purposes) and thus they may not be subject to the registration requirements applicable to posted workers.*

*** Registration requirement in respect of postings from non-EU countries applies in the Czech Republic.*

Determining the 12-month period

To assess whether a posting is short-term or long-term, posting periods of workers replaced in the performance of the same job at the same place are added together. Under the transitory provisions, a posting commenced before the effective date of the amendment is regarded as a posting commenced on the effective date (i.e., 30 July 2020).

Documents and legal representation

The sending employer is required to have a copy of documents proving the existence of the employment law relationship at the employee's place of work.

The documents must be translated into the Czech language and must be kept 3 years after termination of the assignment.

A translation must be certified only upon request of the authorities. Depending on the subject matter of the labour audit, the Labour Inspection may ask the employer to provide supplementary documentation (e.g., internal regulations, salary statement, CBA, etc.).

In the case of a labor audit, it is not mandatory to appoint a legal representative under the Czech legislation.

The employer may be represented by his /her usual representative, e.g., statutory representative or HR manager. As regards responsibility, it is the employer who bears the responsibility in the case of a labor audit.

Penalties for non-compliance

Penalties for non-compliance with the minimum wage requirement can be up to CZK 2 mil. (approx. EUR 74,000).

Penalties for non-compliance with the requirement to provide the documentation proving the existence of the employment relationship between the foreign employer and the assigned employee together with translation into Czech available at the workplace in the Czech Republic can be up to CZK 500,000 (approx. EUR 20,000).

Non-compliance with the registration and other consequent requirements may result in penalties, where the amount depends on the severity, whether it was a repeated breach etc.

In general, the penalties that can be imposed on the employer differ depending on whether the employer is an individual or a legal entity. The amount of the penalty can be up to CZK 500,000 (app. EUR 20,000) for certain violations.

Penalties are imposed by the Czech Labor Inspectorate. It is generally the employer who is liable for fines under Czech legislation.

Work from Anywhere

From an income tax perspective, to be considered tax non-resident an individual must spend more than 183 days in a calendar year/12 months period in the Czech Republic (depending on the wording of relevant DTT) and the remuneration is not paid to the employee by/on behalf of the Czech entity. In this case, no taxation arises in the Czech Republic provided that the remuneration is not attributable to the PE of the foreign employer in the Czech Republic.

Payroll agent duties

A company with a registered seat outside the Czech Republic would generally qualify as a payroll agent which is required to make monthly wage tax withholdings in the Czech Republic if it employs its employees in the Czech Republic for a period exceeding 183 days – regardless of whether the employee performs activities in the Czech Republic through a home office or a standard office.

Also a company with a registered seat outside the Czech Republic which has a permanent establishment in the Czech Republic due to fixed place of business would qualify as a Czech payroll agent which is required to make monthly wage tax withholdings in the CR in respect of the employees working in the CR.

The requirement for the employee to file Czech personal income tax return would depend on whether the individual is a Czech tax resident or not and whether he/she has any other income from the Czech sources/ worldwide sources in addition to the income from the Czech employment.

If conditions defined in the Czech Income Tax legislation are met, the employee may not be required to file a Czech personal income tax return and he/she may ask the employer (payroll agent) to prepare on his/her behalf a so called "Annual settlement of wage tax prepayments".

In terms of social security contributions, there is no "de minimis" period. An employee working in the Czech territory should have an A1 certificate of coverage valid from the first day of remote working.

If such certificate is not available, the employer needs to be registered with the relevant Czech social and health insurance authorities using a specific form.

If the foreign employer is located within the EU, an agreement between this foreign employer and the employee can ben be concluded based on which the employee will make social security contribution payments and fulfill reporting requirement on behalf of the employer in the CR, but the registration obligations remain with the foreign employer and the Czech authorities need to be informed about this agreement.

Public sources of information

https://www.mpsv.cz/web/en - Official website of the Czech Ministry of Labor and Social Affairs

https://www.uradprace.cz/web/en - website of the Czech Labour Office

Denmark

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

On 1 January 2021, the Danish Posting Act ("the Act") implementing the Posting of Workers Directive 2018/957 ("PWD") in Denmark entered into force and contains significant changes to posted employees' working conditions in Denmark. The key measures focus on remuneration of posted workers and long-term postings.

As an exception to this new main rule in the Act, the employee is not entitled to be covered be Danish legislation relating to procedures, formalities and conditions when entering into and terminating employment contracts, including regulation of non-competition clauses, and contributions to supplementary pension schemes, after 12/(18) months.

Remuneration of posted workers

The term "minimum wage" is changed to "remuneration" to enhance equality by making sure posted employees have the same remuneration as locally-hired employees. No mandatory minimum wage exists in Denmark, and the Act did not introduce this.

This obligation for equal treatment in relation to wages therefore still only applies in relation to collective bargaining agreements that the company may have signed up to. Companies without collective bargaining agreements will consequently not be required to apply payment terms in collective bargaining agreements

Minimum wage at national level

In Denmark there is no statutory minimum wage, and no provision on minimum wages is included in the Act, which implements the EU Posting of Workers Directive. Generally, this means that if an employee is posted by the home-country employer, to deliver services to a Danish company in Denmark, no minimum wage will apply.

Minimum wage set through collective bargaining agreements

In Denmark, pay and working conditions are typically laid down by collective bargaining agreements concluded between trade unions and employers' organizations.

This system of labor market regulation is referred to as the Danish Model.

The collective bargaining agreements include provisions on the minimum wage and other working conditions.

These Danish collective bargaining agreements are not of general application and will generally not apply if an employee is seconded to Denmark as mentioned above. However, the Danish company receiving the services from the foreign employee may – if the company is subject to any collective agreements – be required to ensure or be encouraged to ensure that the minimum wage and working conditions

are provided to posted employees as well. This will depend on the collective agreement in question.
If any collective bargaining agreements apply or must be followed, these are typically renegotiated every third year and this may involve a change in the minimum salary. The minimum wage set by the collective agreements may vary depending on occupation, industry, length of service, education, skills, experience, age, etc.

What can be included in the remuneration

The remuneration includes the base salary and any mandatory allowances and fees stated in the relevant collective bargaining agreement. However, it will depend on the content of the specific collective bargaining agreement.

Working hours

In relation to the maximum legal working time, Danish legislation includes different mandatory provisions. The legislation states that the number of working hours must not exceed 48 per week on average (including overtime) within a period of 4 months. Moreover, employees are entitled to a break if the number of daily working hours exceeds six.

With regard to night work, employees may only work 8 hours per day on average in a period of 4 months. As a general rule in Danish legislation, the working hours must be arranged in such a way that the employees have a period of rest of at least 11 continuous hours within each period of 24 hours.

Danish collective bargaining agreements also include different provisions relating to working hours. Collective bargaining agreements typically state that the normal working hours are 37 per week.

Mandatory registration of posted workers

For employers to comply with the Directive, they are required to register in RUT. RUT is an online register and the website offers information in both Danish, English, German and Polish. The posting company has to set up an account before they can register. The posting company is responsible for correct information about the workplace, period and the person(s) performing the work.
The registration in RUT on the Danish Business Authority's site must be concluded before the work is carried out or no later than at the beginning of the activity. Any changes must be notified in RUT no later than the first working day after the change has entered into force. Changes which must be notified include a new workplace, new posted workers or a longer time period.

The RUT registration obligation is applicable to all services provided in Denmark. A service is basically any activity normally provided for a fee. Please note, that making employees available is also defined as a service according to Danish legislation.

If the employer registers the required information in RUT, the 12 months-period will be extended to 18 months and the effective date of the posted employee's entitlement to the mandatory employment set of terms and conditions in Denmark will be 31 December 2021 at the earliest.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country	Yes

** According to the Act, the posting company is not required to register the posting in RUT if:*

01 *Participation in seminars and conferences, including researchers, lecturers and the like, invited to teach or give presentations.*

02 *Participation of professional artists in standalone artistic events.*

03 *Participation in business trips for foreign companies or companies that do not have a permanent establishment in Denmark.*

04 *Participation of professional athletes and coaches in individual major sporting events or trial training in a Danish sports club.*

05 *Provision of consultancy services in accounting and auditing for up to 8 days.*

06 *Intra-company posting for up to 8 days. However, this does not apply to the service in the areas of construction, agriculture, forestry and horticulture, cleaning, including window cleaning and hospitality.*

07 *Cabotage*

The Danish Labour Market Fund for Posted Workers is a jointly and severally funded scheme to ensure that employees posted to Denmark receive the wages to which they are entitled.

If a posted employee is not paid the wage to which he/she is entitled by the foreign employer, the Danish Labour Market Fund for Posted Workers can pay out the wages if the conditions for payment are met. The foreign employer is subsequently included in a public list of employers who have not paid the correct wages to their employees.

The Danish Labour Market Fund for Posted Workers is notified when a posted worker is registered in RUT. Based on the registration in RUT the foreign employer is charged a quarterly fee based on the presence of posted employees in Denmark. In 2022 is the yearly fee for a full time employee is DKK 7.

Determining the 12-month period

Although the Act entered into force on 1 January 2021, it has retroactive effect from 30 July 2020.

If the assignment was in place on 30 July 2020 or earlier, the 12-month period will run from 30 July 2020 at the earliest. Thus, the period prior to 30 July 2020 does not count in the 12-month period.

If an employee is posted for the purpose of replacing another posted worker and does the same work at the same workplace, the total period of posting is the combination of the two posting periods, from 30 July 2020 at the earliest.

Documents and legal representation

The law requires the sending company to register a contact person at the place of work in Denmark. The contact person has to be a person staying in Denmark during the delivery of the service or while the work is carried out that the authorities can contact. A permanent representative is not required.

The sending company is required to provide the assignor with the documentation for the registration in RUT. The receipt the sending company receives when notifying RUT is adequate as documentation to notify the assignor.

The labor audit is managed by the Danish Working Environment Authority ("the DWEA").

The DWEA can request documentation for the sending company's registration in RUT and documents identifying the sending company, the posted employees and the workplace.

The sending company is required by law to provide the DWEA with the necessary documentation, and it is their responsibility in the case of a labor audit.

Furthermore, proof of the registration in RUT should be kept available at the worksite. The form of the documentation can be in paper of online.

Penalties for non-compliance

Non-compliance may result in penalties issued by the DWEA, which can impose fines of DKK 10,000. In particularly serious cases the fine is DKK 20,000.

Penalties are levied in the following cases:

01 Failure to register on time or registration of incorrect information

02 Failure to grant the employee holiday despite demand and without reasonable cause

03 Failure to provide documentation when required by the authorities

04 Failure to provide documentation to the assignor for timely and accurate notification in RUT

In the case of non-compliance with the remuneration requirements, the penalties will depend on the relevant collective bargaining agreement.

Public Sources of Information

Public source of information can be accessed at this link (https://workplacedenmark.dk/).

Work from Anywhere

In terms of income tax, the implications depend on the tax residence status of the individual while working remotely from Denmark.

If the remote worker is not considered tax resident in Denmark, he/she would not trigger any Danish tax liability provided the stay in Denmark is less than 183 days within a 12 months period.

If the remote worker becomes tax resident in Denmark based on local legislation (due to taking up residency or acquiring housing in Denmark, presence in Denmark for a period of up to 3 months or more than 180 days within a period of 12 months), the individual is exempted during the 183 day period if he/she still considered tax resident in their home country based on the Double Tax Treaty. Otherwise the remote worker will be liable to Danish taxation from the first day of activity.

The employer will have no tax reporting or withholding obligation in Denmark as long as the employer has no PE in Denmark. The remote worker must report the salary by himself/herself to the Danish tax authorities as the salary triggers Danish tax.

From a social security perspective, if the employee is a Danish resident according to EU regulation, then an application for appliable social security will

have to be filed to determine the applicable social security legislation, if the employee regularly performs work in two or more countries, or is assigned to Denmark for a certain period. If the employee has moved to Denmark for a limited period, it will be necessary to evaluate whether Denmark can in fact collect Danish social security according to internal social security legislation. If Danish social security is applicable, then there is payment from the first day of work in Denmark.

If Danish social security contributions are due, then it is the non-Danish employer who has the obligation to register in Denmark and pay/withhold Danish social security contributions.

At the time of registration, it is important for the non-Danish employer to consider a potential PE risk, since this may also be evaluated simultaneously by the Danish authorities.

The EU regulation provides that the practical implementation (transmission of data to the collection agency, transfer of contributions) may be transferred to the employee on behalf of the employer.

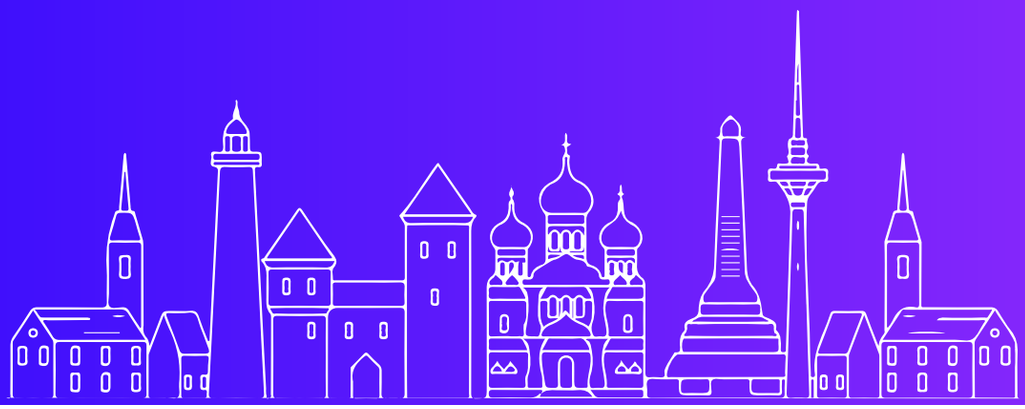
However, this is not adhered to in practice. If this is the case, the obligation itself remains with the foreign employer, i.e., the employer must register and remains liable.

The employee contributes to the labor market supplementary pension (ATP) payments of DKK 1,135.8 per year (in the case of full-time employment).

In general employers in Denmark pay a number of minor contributions (ATP, AER, AES, LG etc.,) amounting to approximately DKK 8,000 -10,000 per employee per year, excl. of mandatory industrial injury insurance. The rates for 2022 are as follows:

	2022 (DKK)
ATP – Employee	1,135.8
ATP (Net) – Employer	2,272.2
AUB– Employer	3,213
FIB – Employer	571
Maternity Equalization Fund – Employer	1,350
AES – Employer	314 – 6,950
AFU – Employer	7
Salaried Employees Vacation fund (admin fee) – Employer	19
Vacation Account (Admin fee)	122,4

stonia



Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Revised Directive 2018/957 was not transposed into Estonian legislation yet.

Remuneration of posted workers

Minimum wage at national level

Estonia has a national minimum gross wage requirement. From 2022 the level of the minimum gross wage applicable to blue collar workers and other EU nationals for full time employment is set at EUR 654 per month. This represents an increase from EUR 584 per month which was the level during 2021.

The current minimum gross wage for highly skilled workers, whether they are EU nationals or non-EU citizens who are holders of the European Union (EU) blue card, is currently EUR 2,172 per month. However, the employer is required to pay remuneration to an alien during the period of validity of an EU Blue Card the amount of which is at least equal to 1.5 times the annual average gross monthly salary, as last published by Statistics Estonia (the new annual average gross monthly salary was published in March 2021).

In the following cases, the minimum gross wage for an EU Blue Card holder is currently EUR 1,795. However, the employer is required to pay remuneration to a foreigner of at least the equivalent of 1.24 times the annual average gross monthly salary, as last published by Statistics Estonia (the new annual average gross monthly salary was published in March 2021).

01 Employment as a top specialist or a junior administrator

02 Employment as a top specialist in natural or technical science.

03 Employment as a top specialist in the health service.

04 Employment as a specialist in pedagogics.

05 Employment as a specialist in business or administration.

06 Employment as a specialist in information or communication, or

07 Employment as a specialist in the legal, cultural or social sphere.

The current minimum gross wage for a foreigner working as a top specialist, with appropriate professional training or experience for employment in the field, is EUR 2,896 per month. However, the employer is required to pay remuneration to a foreigner working as a top specialist of at least the equivalent of 2 times the annual average gross monthly salary, as last published by Statistics Estonia (the new annual average gross monthly salary was published in March 2021).

The minimum gross wage for a foreigner working as an expert, adviser, consultant or skilled worker is EUR 1,448 per month. However, the employer is required to pay remuneration to a foreigner of at least the equivalent of the annual average gross monthly salary, as last published by Statistics Estonia (the new annual average gross monthly salary was published in March 2021).

Minimum wage set through collective bargaining agreements

The national minimum gross wage is agreed between the Estonian Trade Union Confederation and Estonian Employers' Confederation and agreed by the government. Besides that, collective bargaining agreements are not very common in Estonia. However, there are some agreements that could be highlighted:

01 Estonian Healthcare Professionals' Association:

Profession	Hourly rate (EUR)
Doctors	14.90
Specialist doctors	16.20
Nurses, midwives and health care professionals	9.05
Ambulance technicians	7.60
Emergency medical technicians	8.05
Clinical psychologist	11.50
Care workers	5.70

02 Estonian Educational Personnel Union

The minimum wage for a school teacher in 2022 is EUR 1,412 per month;

03 Transport and Road Workers' Union:

From 01.04.2022, the gross wage of full-time bus, trolleybus and tram drivers licensed under the Community license, route authorization and public service contract must be at least EUR 1,250 per month.

For illustrative purposes, please see below the remuneration applicable for the following industries[1]:

01 Automotive N/A

02 ITC EUR 2,945

03 Construction EUR 1,526

04 Oil & Gas N/A

[1] *https://andmed.stat.ee/en/stat/majandus__palk-ja-toojeukulu__palk__aastastatistika/PA001*

What can be included in the remuneration

Included in the remuneration

- Basic salary/basic wage
- Overtime payments
- Vacation payments
- Study leave

Not included in the remuneration

- Per-diems
- Housing
- Transportation costs
- Meal costs
- Special payments (Foreign service premium, Cost of living allowance, Hardship premium, Country allowance, Assignment allowance)
- Bonuses

Working hours

The maximum legal working hours in Estonia are 8 hours per day and 40 hours per week.

Mandatory registration of posted workers

The employer of a posted employee is required to provide the Labor Inspectorate with information concerning the posting no later than on the day the posted employee commences the performance of work in Estonia.

The registration application is available on the Labor Inspectorate's web page. The application is downloaded from the website and subsequently should be sent to the following e-mail address: posting@ti.ee.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	No
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country **	No

** A person is considered to be an employee on a business trip if the employer sends the employee to Estonia from the place of employment they have agreed on to perform work duties. This generally lasts for no more than 30 consecutive calendar days. The employee and the employer may also agree upon a longer time period for the business trip.*

*** No, with the exception of EEA member states and Switzerland*

Documents and legal representation

The employer of a posted employee should provide the Labor Inspectorate with the following data concerning the posting:

01 the name, personal identification code or registry code, area of activity, and details of the residence or location and means of communication of the employer of the posted employee;

02 the name and details of the means of communication of the contact person who represents the employer of the posted employee;

03 the number of posted employees, their names and personal identification codes or dates of birth;

04 the expected duration of the posting and the scheduled start date and end date;

05 the name, personal identification code or registry code, area of activity, and details of the residence or location and means of communication of the contracting entity for whom the posted employee works in Estonia;

06 the name and details of the means of communication of the contact person who represents the contracting entity;

07 information regarding in which area of activity the posted employee will be working in Estonia, and the address of the place of performance of work of the posted employee.

In addition to the above, the Labor Inspectorate may also demand additional documents from the employer of the posted worker.

For example, such documents may be a contract of employment, working time schedule, statement on payment of wages etc. The Labor Inspectorate may request documents up to three years after the end of the employee's posting period (§ 12 (1) of the Accounting Act).

Documents in the Estonian language are not mandatory, however translations may be required by the authorities.

A certified translation must be provided only upon request from the authorities.
If the employer does not pay the employee wages, the wages should be paid by the person who ordered the service from the employer of the posted employee.

The obligation should be fulfilled by the person who ordered the service from the employer of the posted employee if it is not possible to collect the wages from the employer within six months after the enforcement of the decision.

The person who ordered the service from the employer's obligation is limited to the minimum monthly wage. If in everyday economic activities the person who ordered a service from the employer of a posted employee has exercised due diligence in their relationship with the employer of the posted employee, the person does not have the obligation to pay the minimum wage.

Penalties for non-compliance

The Estonian Employment Contracts Act states that wages falling below the minimum wage established by the Government of the Republic may not be paid to an employee.

If the person providing work has not registered the commencement of employment of a worker by the deadline specified in the Estonian Taxation Act or has failed to register the termination of employment, the tax authority may set an additional deadline for registration and issue a warning to the effect that a penalty payment may be applied upon failure to register the obligation.

If a person providing work has not complied with the obligation imposed by an administrative act by the deadline stated in the warning, the penalty payment set out in the warning must be paid.

A penalty payment to enforce the performance of the obligation to register commencement and termination of employment totals 3,300 euros, i.e. 1,300 euros for the first missed deadline and 2,000 euros for the second.

Work from Anywhere

In terms of taxation of employment income, foreign employers are required to withhold wage taxes for their taxable employees in Estonia for resident employees as of the first day and for non-resident employees if they spend more than 183 days within 12 consecutive months in Estonia.

The employer should first be registered as a non-resident employer. Secondly, the employee should be registered in the employment register held by tax authorities. Payslips should be prepared and provided to the employee.

Finally, by the 10th of the month following the month when the net salary was paid to employee, an employer should file a monthly tax return, declare the amount of gross salary, fringe benefits and respective taxes and transfer the total amount of payroll taxes to tax authorities' bank account.

Although the foreign employer remains responsible and needs to register, it is possible to grant access to the tax portal to third parties, such as the employee based on a notarized power of attorney. This would enable the employee to file the monthly tax returns.

Similar obligations apply in the case of social security unless the employee holds a valid A1 certificate of coverage valid during the period of remote working. Although foreign employer remains responsible and needs to register, it is possible to grant access to the tax portal to third parties, such as the employee.

This would enable the employee to file the monthly tax returns.

Public sources of information

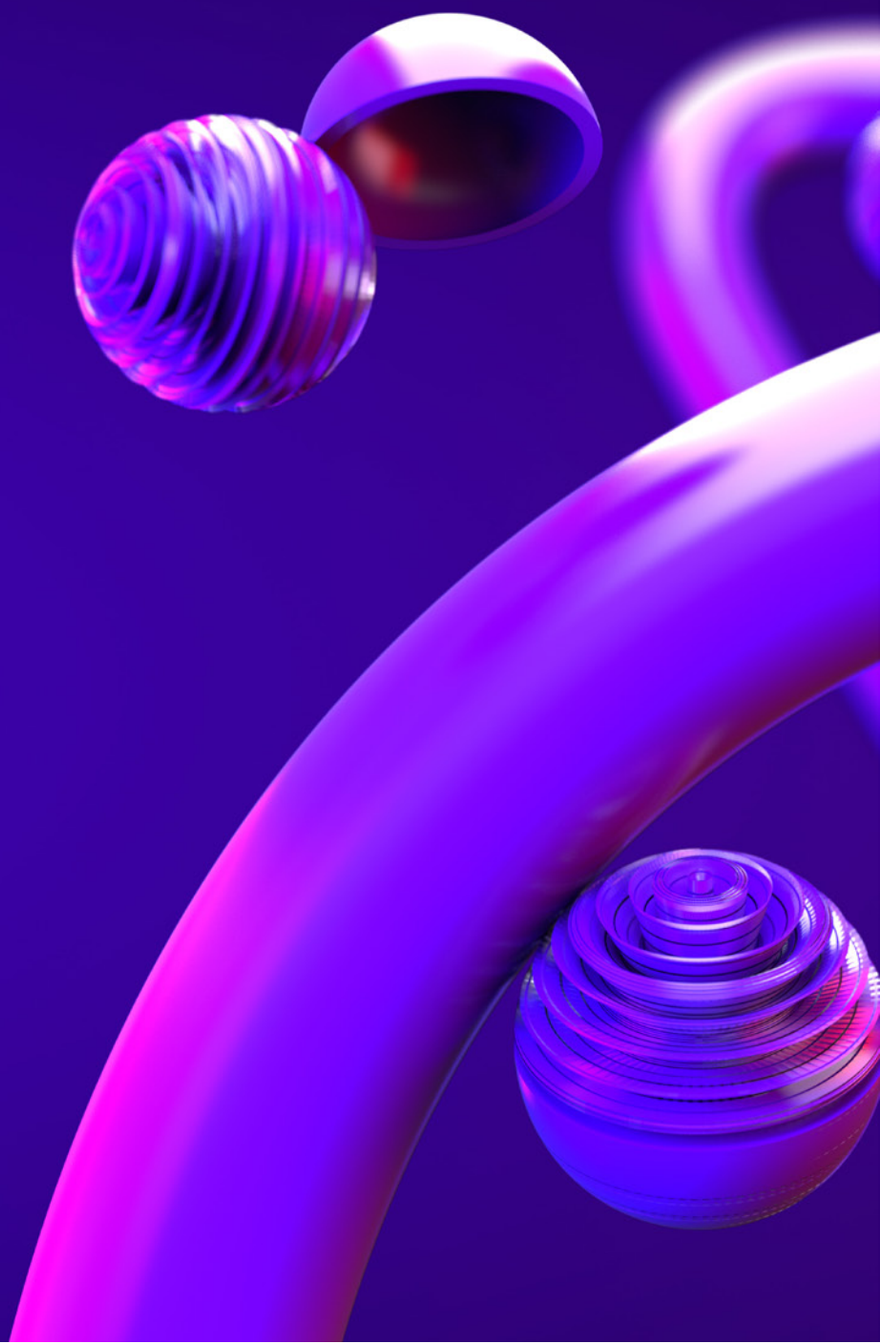
Labor Inspectorate - https://www.ti.ee/en

Police and Border Guard Board - https://www2.politsei.ee/en/

Estonian Tax and Customs Board - https://www.emta.ee/eng

Social Insurance Board - https://www.sotsiaalkindlustusamet.ee/en

Working Conditions of Employees Posted to Estonia Act - https://www.riigiteataja.ee/en/eli/ee/502072018002/consolide/current



inland

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The revised Posting of Workers Directive has been implemented in Finland by amending the Act on Posting Workers.

The newest legislation entered into force on February 1, 2022. In terms of ongoing postings, a 12-months' transition period applies

Remuneration of posted workers

The revised directive provides that the terms and conditions of universally applicable collective agreements must be guaranteed in all sectors, not solely in the construction sector. In Finland posting employers were already before the amendment required to pay the posted worker the remuneration set in the universally applicable collective agreements in all sectors.

Under original Directive 96/71/EC, the employer was required to guarantee the posted worker the host country's minimum rates of pay. Under the revised directive, the posted worker will receive remuneration paid to a local worker following the principle of equal treatment.

The same remuneration principle of the revised directive was de facto already applied in Finland before the amendment, was required that the posted workers were be paid according to the pay scales of the universally applicable collective agreements.

Minimum wage at national level

There is no statutory minimum wage in Finland.

Collective bargaining agreements

Wages are set in the generally applicable collective agreements concluded between the Finnish employers' unions and trade unions.

Wages are determined for different industry/occupational sectors based on employees' professional skills, experience or other types of information such as the geographical position of the workplace.

There are also some industry/occupational sectors without a binding collective agreement, which in practice means that there are no minimum wage rules applicable. When there is no generally applicable collective agreement on the sector the posted worker should be paid at least a reasonable normal remuneration if the remuneration agreed between the employer and worker is significantly lower than this. The average salary of the occupational sector in question or non-generally applicable

collective agreement can be used to determine the reasonable normal remuneration.

For illustrative purposes, please see the remuneration applicable for the following 5 industries (the salaries above are only for illustrative purposes, the scope of application of the collective agreements varies and the agreements include multiple rules concerning compensation):

01 Automotive (Collective Agreement between Technology Industries of Finland and the Industrial Union): EUR 9,30 - EUR 13,74 (hourly rates) / EUR 1 621 – EUR 2 395 (monthly salary) (depending on the job requirement category)

02 Telecom (Collective agreement of the ICT sector, salaried employees) EUR 1 472 – EUR 4 590 (monthly salary) (depending on the competence and the work requirements)

03 IT (Collective agreement of the IT service sector) EUR 1 661 - EUR 4 084 (monthly salary depending on task category and competence classification)

04 Construction (Collective agreement of the building construction) EUR 10,90 – EUR 17,24 (hourly rates) (depending on the competence of the employee)

05 Oil&Gas (Collective agreement of oil, gas and petrochemical products industry) EUR 1 859 – EUR 2 314 (monthly salary) (depending on the work requirements)

What can be included in the remuneration

Included in the remuneration

Base salary based on categorization of employees into pay groups as provided for by the relevant Finnish collective agreements

Overtime payments

The pay which the posted workers must receive for paid annual holidays corresponding to the wage to which those workers are entitled during the reference period

The travel, accommodation and board costs when a posted worker is temporarily posted from his or her regular place of work in Finland to another workplace or worksite in Finland or abroad (intra-posting travel expenses)

When comparing the amount paid to the posted worker and the required remuneration in Finland special compensations and allowances payable due to the worker's posting are considered part of the worker's pay unless they are paid in reimbursement of actual costs incurred because of the posting.

Simultaneously with the implementation of the revised directive, Finland introduced a new protective provision concerning travel and accommodation costs arising from a worker’s posting to Finland. It has been stated in the directive that the employer should reimburse these costs in accordance with the national law and/or practice applicable to the employment relationship (usually the law of the home country). However, in accordance with the new provision in Finland if the posted worker is not entitled to protection on the basis of the home country’s rules, or the protection would be substantially below what is considered normal and reasonable in Finland, the provisions of the applicable Finnish collective agreement apply, i.e. the cost must be covered in accordance with the Finnish rules.

Working hours

Under the general provision of the Working Hours Act regular working hours should not exceed eight hours a day or 40 hours a week.

Averaging working hours over a longer period is allowed under the act.

There may be stricter limits on the maximum regular working hours set in universally applicable collective agreements.

Mandatory registration of posted workers

The posting undertaking is required to submit an online a notification to the occupational health and safety authority before the work begins. Notification is not required if the undertaking is posting workers in an internal transfer within a group of undertakings for no more than five working days[3], except when the undertaking operates in the construction sector. In the construction

sector the notification must always be given.
If the information that has been notified changes significantly, a requirement for the work to continue is that the posting company submits a supplementary notification as soon as such changes occur. Supplementary notification is always needed when the representative, the contact details, or the place of work changes.

Long-term posting means work lasting for a minimum of 12 months.[4]

Long-term postings are subject not only to mandatory employment conditions as defined in the Act on Posting Workers, but also to additional employment conditions. The 12-month time limit may be extended to a maximum of 18 months.

The additional notification must be made by the employer before the 12-month limit is reached, if the posting company wants to extend the period after which the more extensive set of terms apply.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting*	Depends
Shortening of a posting*	Depends
Posting over 12 months	Yes
Business travelers**	No
Posting from a non-EU country	Yes

**It has not been specified in the Act on Posting Workers which changes should be considered significant and when a supplementary notification is required.*

***Business travelers do not have to register. Business travelers in this context are defined as individuals who do not provide services in Finland and are not subcontracted, internally transferred nor temporary sent as temporarily agency workers to Finland (e.g. those attending conferences, meetings, fairs and following training courses can be considered business travelers).*

In accordance with the decision of the Finnish Parliament, section 7 (1) of the Act on Posting Workers (447/2016) was amended in February 2022 and a new section 7 b was added to the Act.

According to section 7 (1) before work is commenced, the posting undertaking should notify the occupational health and safety authority about the posting of a worker or workers to Finland under an agreement on cross-border service provision. Road transport service subcontracting is governed by the provisions of section 7 b (62/2022).

Section 7 b concerns the notice of posting of workers based on a subcontract for road transport. According to it, prior to commencing the work, a posting undertaking established in a Member State should submit a notification of the posting of an employee or employees to Finland based on a subcontract for the provision of cross-border road transport services to the information system established under Regulation (EU)

[3] When determining the duration of the posting period should all the previous posting periods for the last four months during which workers of the same posting undertaking have been working in Finland be taken into account.

[4] When determining the fulfillment of the long-term posting time limit of at least 12 months, the durations of several posting periods should be added together if the posting employer replaces the posted worker with another posted worker performing the same work in the same place of work. In other words, long-term posting will not be assessed on an employee-by-employee basis. The posting undertaking is obliged to inform the worker whom it has posted if the same work has been performed by a worker who has previously been posted to the same workplace. The employer must also notify how long the posting period of the previous employee or employees has lasted.

No.1024/2012 on administrative cooperation through the Internal Market Information System and repealing Commission Decision 2008/49/EC (the IMI Regulation), hereinafter referred to as the IMI system. The notification should include:

01 the number of the Community license issued to the transport operator;

02 the contact details of the competent transport manager or other contact person in the Member State of establishment who is responsible for responding to inquiries from the authorities and receiving documents or notifications;

03 the personal data necessary to identify the driver, personal identification number, address of residence and driving license number;

04 the date of commencement of the driver's employment contract and the legislation governing the contract;

05 the planned starting and ending dates of the shipment;

06 details of the registration numbers of the motor vehicles used;

07 details of whether the service is transport of goods or passengers, international transport or cabotage.

Determining the 12-month period

Concerning ongoing postings, there is a transition period of 12 months before the amended Posted Workers Act is applied, e.g. new provision on long-term postings, etc.

The application of the additional employment conditions in relation to long-term postings will take place in February 2023 at the earliest, as the calculation of the minimum time of 12 months began on 1 February 2022, when the amendment entered into force.

Documents and legal representation

The posting undertaking must have a representative in Finland whom the posted worker and the authorities can always contact during the posting. The representative may be a legal entity or an individual. A representative need not be selected if the posting of the worker is no more than 10 days in duration.[5]

Posting undertakings should keep certain information available in written form in Finland for the entire duration of the posting:

01 identifying details of the posting undertaking;

02 identifying details of the posted worker;

03 explanation of the posted workers right to work and

04 information on the posted worker's terms and conditions of employment.

If the posting of a worker is more than ten days, the posting undertaking should have available also:

01 a record of working hours;

02 payslip and

03 document issued by a financial institution of the wages paid.

The information may be kept in electronic form, but it must be available for immediate use. The posting undertaking must notify the contractor before the work begins in Finland who is in possession of the aforementioned information during the posted worker´s posting.

Penalties for non-compliance

The information must be kept available two years after the posted worker's work in Finland has ended. The information can be stored abroad, but it must be forwarded to the authorities if requested.

[5] When determining the duration the posting period and all previous posting periods for the last four months during which workers of the same posting company have been working in Finland should be taken into account.

A negligence fee may be imposed on the posting company if the posting company fails to report the posting of workers, performs the notification late or if the notification is inadequate. A negligence fee may also be imposed if the posting company fails to provide a supplementary notification on significant changes, fails to ensure the selecting of a representative in Finland or if the representative does not have the required right to act on behalf of the company or cannot be reached by the authorities. Furthermore, a negligence fee may be imposed if the posting company fails to keep the required information available for the authorities.

In addition to the posting company a negligence fee may also be imposed to the contractor or in the construction sector on the builder and the main contractor if they fail comply with their obligations.
The amount of the negligence fee ranges from EUR 1 000 to EUR 10 000 and is imposed by the occupational health and safety authority. When determining the amount of the negligence fee the nature of negligence, its extent and frequency are considered.

The negligence fee is imposed on a legal entity. The negligence fee can be imposed on an individual only if he or she has neglected the obligations on purpose or out of carelessness.

If the posting undertaking does not comply with the minimum wage requirement, i.e., does not pay the minimum wage set in the generally applicable collective agreement, the posted workers may claim the unpaid wages.

The penalties for employment offences, violation of working hour regulations and violation of annual holiday regulations are laid down in the Criminal Code and in other relevant acts.

Work from Anywhere

A foreign citizen coming to Finland to stay temporarily to conduct remote work will remain a tax non-resident in Finland if the individual's continuous stay in Finland does not exceed 6 months and his/her permanent home is not located in Finland. Under these conditions, he/she is liable to pay tax in Finland on Finnish-sourced income only. Salary paid by a foreign entity with no PE in Finland is not Finnish-sourced, thus no individual income tax liability is triggered.

The remote worker's foreign employer has no reporting or withholding obligations in Finland, if the individual remains tax non-resident, is not covered by the Finnish social security system, the salary is paid from abroad and the employer has no PE in Finland.

If the remote worker's continuous stay in Finland exceeds 6 months, he/she would be considered a tax resident and generally liable to pay tax in Finland in accordance with the domestic legislation. If his/her stay also exceeds 183 days in a period determined in the applicable double-tax treaty, Finland would have the right to tax the salary he/she derives from work conducted in Finland.

Tax residents employed outside of Finland by a foreign employer which does not have a PE in Finland should apply for prepayment of taxes in Finland. They also have the obligation to file annual tax return in Finland.

In terms of social security, if no A1 certificate is available, then the remote worker will be subject to Finnish legislation on social security, in accordance with the principal rule laid out by EU legislation.

A foreign employer with employee(s) covered by the Finnish social security system must take out the compulsory insurances in Finland, report the salaries paid to the insured employees and pay (employer's contributions) / withhold and remit (employee's contributions) to the insurance companies. Handling the duties related to insurance payments is a sole responsibility of the employer and it cannot be delegated to the employee.

A foreign employer with employee(s) working in Finland must be mindful of the obligation to arrange occupational health care for the employees, regardless of whether or not they hold A1 certificates from another member state.

The normative basis for this is the Occupational Health Care Act article 4 which states that the employer must, at their expense, arrange occupational health care for their employees, by means stipulated in this law.

Public sources of information

Ministry of Economic Affairs and Employment of Finland https://tem.fi/en/posted-workers
Ministry of Social Affairs and Health https://stm.fi/en/posted-workers
Occupational Health and Safety Administration https://www.tyosuojelu.fi/web/en/employment-relationship/posted-worker
Act on Posting Workers 447/2016 https://www.finlex.fi/en/laki/kaannokset/2016/en20160447.pdf (Translated into English, legally binding only in Finnish and Swedish)
Act on Posting Workers (447/2016, amendments up to 62/2022 included)
https://www.finlex.fi/en/laki/kaannokset/2016/en20160447.pdf

France

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The revised directive was transposed into French legislation and applies as of 30 July 2020.

Remuneration of posted workers

The foreign company must comply with the minimum legal and collective agreement's provisions. For instance, foreign employers who posted workers to France must respect French employment and labor legislation concerning the right to strike, and the fight against undeclared work.

Moreover, "Minimum wages" includes the legal minimum wage and any other minimum wage provided in a Collective Bargaining Agreement (bonus, indemnities, allowances or compensations, salary increase, etc.)

Minimum wage at national level

From January 2022 the legal minimum wage is EUR 1.603,1 EUR gross per month for a full-time employee working 35 hours per week. Hours worked above 35 per week are regarded as overtime and should lead to additional compensation.

Minimum wage set through collective bargaining agreements

There are various CBAs, usually one per industry. A CBA applies mandatorily to a company falling within its scope. The CBA defines the minimum wages according to the employee's position within the company.
For illustrative purposes, please see below the remuneration applicable for the following 5 industries :

01 Automotive : 18.816 EUR / 19.008 EUR / 19.212 EUR / 19.464 EUR annually depending on the level applied

02 Telecom : 20.620 EUR / 21.298 EUR / 21.184 EUR annually depending on the level applied

03 IT : 20.492 EUR / 21.503 EUR / 22.606 EUR annually depending on the level applied

04 Construction 27.274 EUR / 35.352,38EUR / 36.804,35EUR / 37.690,84EUR annually depending on the level applied

What can be included in the remuneration

According to French regulations, assignment related allowances can be part of the minimum wage (i.e. COLA, foreign service premiums, and bonuses). However, amounts paid to the assignee to compensate for professional expenses actually borne by the employee, as well as expenses directly borne by the employer like travel expenses, accommodation or meals where provided for by the relevant collective bargaining agreement, are not taken into account in determining the minimum wage.

Working hours

The legal working time in France is generally 35 hours/week. The maximum daily legal working time is 10 hours. The maximum working time/week is 48 hours.

However, the average weekly working time cannot exceed 44 hours over any period of 12 consecutive weeks.

Mandatory registration of posted workers

Prior to the beginning of a temporary assignment to France, a specific declaration (déclaration préalable de détachement) should be sent by the home-country employer to the French labor inspectorate.

The declaration can only be completed on the "SIPSI" online portal (https://www.sipsi.travail.gouv.fr).

The French purchaser or contractor must ensure that the foreign service provider has fulfilled the obligation. Failing this, the end-user or the client must itself submit a declaration within 48 hours of the beginning of the assignment.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	Yes

**Business travel involving certain specific activities or an activity on behalf of the employer (e.g. participating in a business meeting, mentoring seminars, meetings with clients outside the context of service agreement, training courses in another of the group's establishments) do not require any prior declaration, nor the appointment of a representative. This also applies for postings which are not considered "business trips".*

***All foreign employers (both from EU and non-EU countries) planning to send employees to France must complete an online Prior Declaration of posting of workers before the start of the service and to appoint a representative who must be present on French territory for the duration of the posting.*

Determining the 12month period

The period from the start of the posting will be taken into account even for periods prior to the implementation of the directive into the local legislation.

Documents and legal representation

In addition to the Prior Declaration, the foreign company must appoint a representative who is present on French territory. This representative will need to communicate with the authorities on behalf of the employer and hold a copy of all the documents that the authorities could ask for. Most documents must be translated into French and should be kept 5 years after termination of the assignment.
This translation obligation applies to several documents.

These requirements also apply to documents attesting that the social and economic situation of the employer is compliant with the law, as well as to documents attesting that the minimum requirements are fulfilled concerning the employees' work conditions.

Employers must be aware that documents such as work permits, contract of employment or payslips must be

translated in French. In the case of a control, the Labor inspector must be able to identify in particular the employee's minimum wages, supplementary remuneration for overtime, working days, working hours, and annual leave. Proof of payment of the salary can also be required.

For activities in the building and public works sector, a professional identification card is required for all posted employees.

Penalties for non-compliance

In the case of non-compliance with the above requirements, French regulations provide for different penalties depending of the type of noncompliance. They range from administrative fines to criminal prosecution.

If the service provider fails to declare the posted worker, if the information transmitted is incorrect and/or incomplete, or if the purchaser and the contractor fail to make the necessary checks on the foreign service provider, they are subject to an administrative fine of maximum EUR 4,000 per posted worker (EUR 8,000 in the case of repeat offenses) up to a maximum of EUR 500 000.

Furthermore, failure to comply with the posting of workers obligations, can lead to penalties such as administrative fines, the obligation for the contractor and the purchaser to provide the posted workers with decent accommodation, or financial solidarity for the payment of the minimum wages, social charges and/or French taxes and/or the suspension of the contract for services or temporary closure of the establishment, exclusion from public markets and reimbursement of public and governmental aid.

Work from Anywhere

The tax position should be reviewed on a case by case basis to determine the tax residence status of the remote worker under both domestic rules and treaty provisions.

Specific criteria will need to be taken into account, depending on the situation of the remote worker (i.e. the main place of abode, the main professional activity and the individual's center of economic interests), but also the provisions under bilateral tax treaties/ agreements on the taxation of cross-border workers signed with France. A French tax resident is subject to income taxation in France on their worldwide income.

The employer will need to calculate French "pay as you earn (PAYE)" each month from the employee's compensation. The employer will have to register with the French social authorities and implement a shadow payroll in France to pay both the French social security contributions and withholding tax. The withholding tax obligation is only applicable to French sourced income (i.e., for the compensation which is related to the French working days).

If the remote worker becomes a French tax resident, the employer will need to register for the withholding system (called Prélèvement A la Source or PAS) and withhold taxes from the employee's compensation monthly. If the employee is considered a non-resident taxpayer and does not meet the DTT exemption criteria, there is no registration to be done.

A form must be submitted by the (foreign) employer with the calculation of the withholding tax (that applies to each payment made), which needs to be filed and payment remitted on a quarterly basis, by the 15th of the month following the end of the quarter in which payment occurred.

The employer is required to have a B2B SEPA account (European account) to enable the tax authorities to withhold the French income tax on the bank account once calculated. An EU employer is not required to appoint a tax representative in France.

It is not possible to delegate the responsibility to the employee.

In the case of non-compliance, penalties can apply ranging from administrative fines to criminal prosecution. The risk of creating a PE for the foreign entity in France should also be considered and reviewed.

From a social security perspective, French social security rules are territorial: employees and employers are liable for French social security contributions when employees work in France subject to the provisions of bilateral social security agreements or EU regulation 883/2004.

If the legislation of another country applies, it will be important to obtain the relevant Certificate of Coverage / A1 certificate as these are the only documents that will attest to which legislation applies.

If the employee cannot remain insured in another social security system, the foreign employer will have to register for French social security purposes and pay both employer and employee social contributions in France.

The employee will need to be affiliated to the French social security system and pay social security contributions for the period he/she works in France.

French mandatory social security contributions for both employee and employer are due on the employee's entire remuneration for the period worked in France. There is no de minimis period before the obligation arises.

There are no concessions available in France to exempt the Employer and the Employee from the above social security compliance obligations, thus contributions to all schemes will be due.

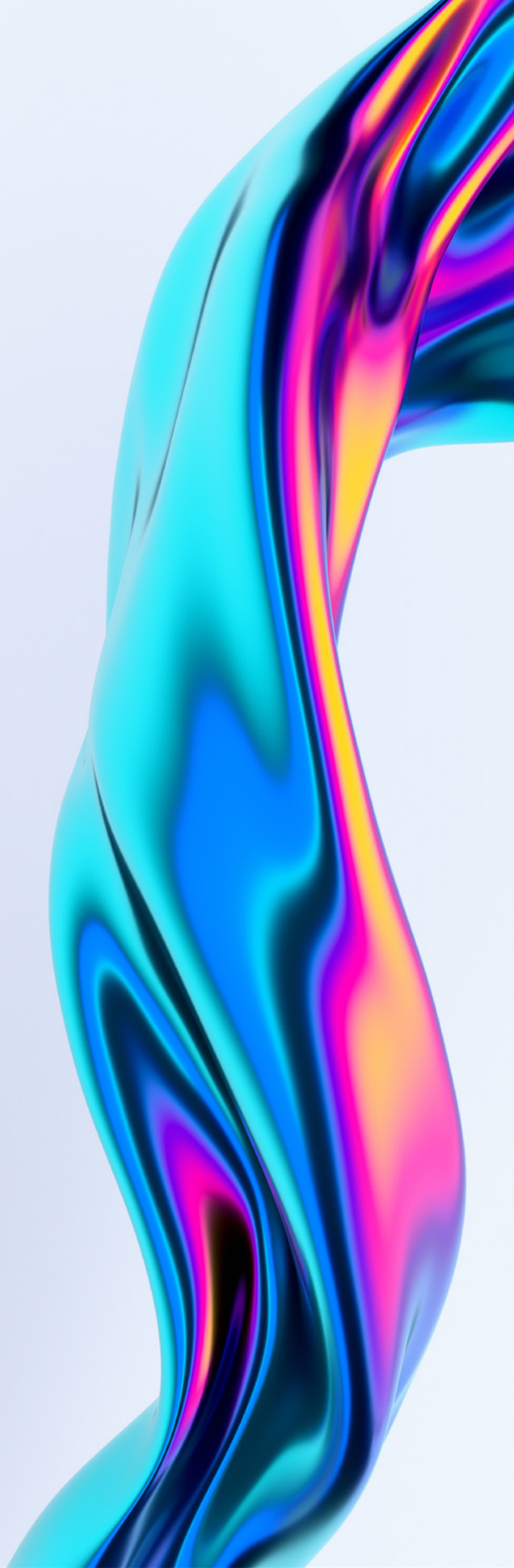
There is an exemption, under strict criteria, from the French mandatory pension arrangements provided a minimum contribution of EUR 20.000 to a qualifying pension product is made.
It is the foreign employer's responsibility to register.

However, the employer can appoint a representative residing in France to be responsible for the company's declarations and payment of amounts due which can be a group company, but the foreign employer must be registered, and contributions are made in the name of the foreign employer.

Thus, it is not possible to simply use the French entity's payroll to comply with the social security reporting and payment obligations. Thus, the obligation itself is not transferable but only its practical administration.

Public sources of information

www.travail.gouv.fr
www.legifrance.gouv.fr
www.service-public.fr



Germany

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The new corresponding bill to amend the German Act on the Posting of Workers ("Arbeitnehmerentsendeges etz" or "AEntG") adopted by the federal government, was passed by parliament on 18 June 2020. It then came into force on 30 July 2020. The new rules apply to all postings, even if they started prior to 30 July 2020.

Remuneration of posted workers

The relevant criteria in this regard are the total remuneration and not only minimum wages. The total remuneration consists of the following components:

01 Base salary

02 Any remuneration components, which are granted depending on the performance of work duties, qualification, and/or the professional expertise of the employees

03 Any other allowances such as overtime allowance and benefits-in-kind.

Any further applicable working conditions must be laid down in generally binding collective bargaining agreements (hereinafter, "CBAs").

Only if the sending company falls within the scope of a generally binding CBA in Germany, it will be subject to the compliance requirements of the revised PWD.

Under certain conditions, posted workers will be entitled to a reimbursement of costs incurred pursuant to the German rules, if the German rules are more advantageous.

Certain activities are exempt from the new rules if they are only performed to a minor extent. The rules also apply to the road transport sector.

Statutory minimum wage at national level

Germany has a national minimum wage requirement.

On 1 January 2015, Germany's Minimum Wage Law became effective. It introduced a general minimum wage requirement applicable to all occupations and to all individuals working in Germany regardless of their nationality and the location of their employer.

The current statutory minimum wage as of 1 July 2021 is as follows:

01 EUR 9.60 gross/working hour (1 July - 31 Dec 2021);

02 EUR 9.82 gross/working hour (1 January - 30 June 2022);

03 EUR 10.45 gross/working hour (1 July 2022 - 30 September 2022);

04 EUR 12.00 gross/working hour (from 1 October 2022 - onwards).

Since 2017 the minimum wage has applied to all working sectors, even if a bargaining agreement set a lower wage amount. In addition, the following minimum wages apply to agency workers:

01 In Western states: as of 1 September 2020 EUR 10.15 gross/working hour

02 In Eastern states: as of 1 October 2020 EUR 10.10 gross/working hour

03 All over Germany it increased on 1 April 2021 to EUR 10.45 gross/working hour and as of 1 April 2022 to EUR 10.88 (gross)/working hour.

Minimum wage set through collective bargaining agreements

In addition, there are minimum wage requirements pursuant to generally binding collective bargaining agreements (these may be found at this link: https://bit.ly/3xYFkOK) that are often higher than the nationwide statutory minimum wage. Yet, they only apply to certain industries and occupational groups.

The following sectors are covered by federal generally binding collective bargaining agreements:

- Construction industry
- Waste industry including road cleaning and winter services/road clearance
- Training services pursuant to Social Security Act
- Roofing trade
- Electrical trade
- Facility cleaning services
- Scaffolding trade
- Painting and varnishing trade
- Nursing care sector
- Meat sector
- Chimney sweep trade
- Stonemasons and stone sculptor's trade
- Security staff at commercial airports

As an example, please see below the remuneration applicable for the following 5 industries:

01 Construction - Only this industry is covered by a generally binding collective bargaining agreement. The applicable remuneration for construction activities is EUR 12.85 per hour (lowest tariff group).

02 Automotive, telecom, IT, Oil&Gas - Posted workers in these industries are subject to a statutory minimum wage which is currently EUR 9.82 per hour.

Independent operational units of companies belonging to other industries (e.g. Oil&Gas) may fall within the scope of a generally binding collective bargaining agreement of a different sector (e.g. construction) depending on predominant performed activities.

Long-term postings that last longer than 12 (or 18) months may be subject to local generally binding collective bargaining agreements.

What can be included in the remuneration

Besides the regular salary received during an assignment, any payment which is perceived as an equivalent for the regular performance of services, as opposed to a reward for special purposes, can be considered as part of the minimum wage.

Consequently, if bonus payments fulfil this criterion, they can only be considered in the month in which they are paid out.

The AEntG prevents the offsetting of payments received for board, lodging, travel, or accommodation against the remuneration granted to posted workers.

Please note that if the terms and conditions of employment do not specify which components of a posting allowance are paid as reimbursement of posting costs and which components of the posting allowance are part of the remuneration, it will be irrefutably presumed that the entire posting allowance is paid as reimbursement of posting costs.

Included in the remuneration	Not included in the remuneration
Base salary/base wage	Per-diems
Standby times, as long as they are paid for the performance of the work owed	Housing
Posting allowances if not paid to reimburse costs actually incurred as a result of the posting	Transportation costs
	Meal costs
	Special payments (Foreign Service premium, Cost of living allowance, Hardship premium, Country allowance, posting allowance if purpose not specified)
	Overtime payments
	Bonuses

Work hours

In Germany, the standard workday is comprised of hours 8 hours, or the equivalent of 48 hours/six days per work week

(Sec. 3 Arbeitszeitgesetz - https://www.gesetze-im-internet.de/arbzg/).

Mandatory registration of posted workers

In terms of administrative requirements, a formal notification (hereafter "PWD registration") has to be submitted to the German Customs Authority ("Zoll") for assignments to Germany, in certain industries, as well as in the case of temporary agency work. This PWD registration must be submitted prior to the performance of work. In the case of temporary agency work from foreign lessors, the obligation falls upon the lessee of leased employees.

In general, foreign-domiciled employers, who post workers to Germany to carry out work or to provide services, are required to register the posting.

However, based on a Power of Attorney ("PoA") also a third-party (e.g. attorney) can submit the PWD registrations on behalf of the home company. In Germany, different types of registration obligations apply depending on the industry or branch of the posting employer.

A registration is only required if a generally binding collective bargain agreement applies or if the foreign employer works within an industry that is considered especially susceptible to illegal employment. Sec. 2a of the Act to Combat Illegal Employment (Schwarzarbeitsbekämpfungsgesetz) contains a conclusive list of said industries.

They are: (re-) construction, the Waste industry including road cleaning and winter services/road clearance, training services pursuant to the Social Security Act, the roofing trade, the electrical trade, the scaffolding trade, painting and varnishing trade, the nursing care sector, the chimney sweep trade, the stonemasons and the stone sculptors trade, catering and hotels, personal transportation, logistics and transportation of commercial goods, the exhibitor trade, the forestry, cleaning and the facility management industry, fair construction, the meat industry, prostitution and the guard and security trades.

The registration needs to be submitted at least the day before the employee starts performing work in Germany. As the competent authority, the Zoll uses an online tool to process registration applications. It is possible to register several employees within one notification. Moreover, the employer needs to ensure and guarantee compliance with the rules of applicable generally binding bargaining agreements.

Substantial changes (e.g., change of the commencement of the services, work address, place of storage of documents or change of contact person) should be communicated to the same authority, preferably without delay. Registration is only required for posting to certain industry branches (always for the construction industry and transport).

However, please note that the applicable industry depends on the activity of the employer. If the employer is for instance a construction company, the employee should always register (even if the employee is an IT specialist).

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months*	Depends
Extension of a posting*	Depends
Shortening of a posting	No
Posting over 12 months**	No
Business travelers***	Depends
Posting from a non-EU country****	Yes

** Depends on whether the posting falls within one of the relevant sectors and/or collective bargaining agreements apply. Exemptions may apply for specific industries if the employee's monthly income is higher than 2.958 EUR.*

*** If the posting unexpectedly lasts longer than 12 months, an extension of another 6 months is possible that allows for an exemption from additionally applicable German working conditions.*

**** German law does not differentiate between posted workers and business travelers.*

Therefore, any employee performing work or providing services in Germany – even if only for a day – could be considered as a posted worker subject to registration obligations. However, if the employee does not perform actual work or services, but rather merely enters Germany for business reasons only, he/she does not have to comply with any registration requirements. The registration requirement depends on whether the posting falls within one of the relevant sectors and/or collective bargaining agreements. Exemptions may apply for specific industries if the employee's monthly income is higher than 2.958 EUR.

***** Postings from non-EU countries are subject to the same registration requirements that are applicable to postings from EU countries. The German Posted Workers Act (AEntG) the Minimum Wage Act (MiLoG) and the Temporary Work Act apply to both EU/EEA and non-EU/EEA nationals.*

Determining the 12month period

The period from the start of the posting will be considered for periods prior to the implementation of the posting directive into German legislation.

Documents and legal representation

The home company is required to appoint a German address for formal deliveries. The German authority reserves the right to request further documents, if necessary.

A contact person in Germany must be indicated on the registration form. This person should be able to receive documents and notes, as well as communicate with the authorities, if required. This person must be in Germany during the posting and after its termination, and therefore have a German address.

Information on the legal representative of the company does not need to be added to the registration form.

In the case of several work addresses, a separate registration must be filled-out for each work address.

The home company is subject to various documents retention and storage obligations. In particular, the home company is required to keep and store document related to the posting such as the employment contract, payslips, proof of payment, timesheets, the proof of compliance with the CBA (if applicable) and the proof that the employer pays social security contributions correctly.

The documents must be stored/retained in paper form or electronically in Germany. Upon request of the Authorities, the retention place could be also the place of work in Germany or in the case of construction work the construction site.

Documents must be retained for 2 years after the termination of the assignment at the indicated storage place. In general, these should be available in German.

Documents are usually accepted in English, however whether they are accepted or not is at the discretion authority as the law specifically requires that documents are kept in German.

A certified translation is not required. The employee must have the following documents during the posting: identification document (e.g., passport) and A1 certificate (not mandatory but recommended).

Penalties for non-compliance

In the case of non-compliance with the minimum wage or notification requirements, certain penalties apply:

01 For non-payment or delayed payment of the minimum wage – up to EUR 500,000

02 For non-compliance with the notification obligations – up to EUR 30,000

Further penalties such as withdrawal of business license or exclusion from public procurement are possible depending on the degree of severity of the non-compliance.

Work from Anywhere

From an income tax perspective, the employee becomes liable to German taxes only through exceeding a presence of 183 days in Germany (provisions of the applicable double tax treaty should be considered) or if the employee is a German resident with a foreign employer, who is working from a German home office.

If the activity performed by the remote worker does not create a permanent establishment of the foreign employer in Germany, taxes are settled by the employee through filing a German income tax return.

A wage tax withholding obligation for the foreign employer arises if a permanent establishment is created. The foreign employer needs to register as "employer for wage tax purposes" using a specific form.

Based thereon, the tax authorities will issue a tax number under which wage

taxes have to be announces and paid. A German (shadow) payroll needs to be set up and operated for the employees monthly.

Wage taxes must be announced and paid to the German tax authorities by the 10th of the following month.

The monthly wage tax return needs to be submitted to the competent tax office electronically. The German wage tax needs to be calculated based on the employees' German wage tax characteristics ("Elektronische LohnSteuerAbzugsMerkmale (ELStAM)").

For non-resident employees (not registered with the German registry office), a tax-ID should be applied for as otherwise tax withholdings have to be operated with tax bracket VI (most unfavorable tax rate with no consideration of lump-sum tax-free allowance).

In terms of social security, no social security contributions are due provided an A1 certificate is available (although an A1 only has a declaratory nature, it should be applied for since it is also used to combat illegal employment and failing to apply is a misdemeanor punishable by a fine).

If no A1 certificate is available, the employee becomes subject to social security in Germany and the employer is obliged to fund employer's contributions irrespective of whether it is a German domestic or foreign employer.

In practice, transfer of obligation is not very common as it would imply a very trustful relationship between the employee and the employer (e.g., the employee needs to submit all payments while the employer remains liable for the employer's contributions).

Public sources of information

https://www.zoll.de/DE/Fachthemen/Arbeit/Meldungen-bei-Entsendung/Anmeldung/anmeldung_node.html

Greece

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Directive 2018/957 has been implemented in Greek legislation by virtue of Presidential Decree 30/2021 effective as of 11 May 2021.

Remuneration of posted workers

Minimum wage at national level

The national minimum full time employment monthly salary currently applicable in Greece is EUR 663 gross, and the national minimum daily wage is currently EUR 29.62 gross. The above minimum salaries/wages apply irrespective of the employee's/worker's age, and increases are provided on the basis of the prior term of service.

Further, married employees employed by employers who are members of trade unions participating in the conclusion of the National General Collective Labor Agreement are also entitled to a marriage allowance (which is equal to 10% of the minimum basic salary).

Minimum wage set through collective bargaining agreements

Except for the above minimum national salary/wage, for certain occupations, there are Sectorial Collective Labor Agreements providing for the minimum wages of covered personnel (it is noted however that the number of Sectoral Collective Labor Agreements is currently limited). If the personnel do not fall within any Sectoral Collective Labor Agreements, the national minimum salaries/wages above apply.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Base salary/base wage	Per-diems
	Housing
	Bonuses
	Meal costs
	Special payments (Foreign Service premium, Cost of Living allowance, Hardship premium, Country allowance, Assignment allowance, Cost of living allowances)
	Transportation costs
	Overtime payments

Working hours

The minimum salary for employees is determined as a fixed amount on a monthly basis, while the minimum wage for workers is determined on a daily basis. The maximum legal working hours in Greece are 8 hours per day, or the equivalent of 40 hours per week.

Mandatory registration of posted workers

The sending company must file with the employment authorities of the place of provision of the assignee's services, at the latest by the commencement of the assignment and irrespective of the latter's duration:

01 A written declaration setting out certain details (for instance, details of the sending company, including details of its legal representative and representative in Greece during the assignment period, address/addresses where the seconded employees will provide their services, details of the receiving company etc.).

02 A list of seconded employees setting out certain details (personal details of the seconded employees, daily and weekly working hours, remuneration etc.).

The above documents can also be maintained, filed and forwarded electronically, but an electronic filing system is not yet in place in Greece. Thus, the submission is done either in person, by regular mail, facsimile or e-mail.

In the case of change of any of the details set out above to be included in the list of seconded employees, an amending list must be filed within fifteen days from the date the change becomes effective. Further, in the case of change or amendment of the working hours or of the organization of the working schedule, an amending list must be filed at the latest before the change/amendment comes into force and in any case before the commencement of the seconded employees' work.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	No
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	Yes

**A definition of the term „business traveler" does not exist but the term generally covers employees travelling for business purposes. Registration requirements arise if combined with secondment.*

*** Based on a written reply of the Ministry of Employment to a particular query. The issue should be discussed and confirmed on a case by case basis with the competent employment office.*

Determination of the 12-month period

The period of assignments already in force at the time of incorporation of Directive 2018/957 into Greek legislation is considered for the determination of the 12-month period. Similarly to the previous Greek legislation introduced for the incorporation of EU assignment related Directives in Greek legislation, Presidential Decree 30/2021 does not restrict secondments in replacement of other posted workers.

Documents and legal representation

Presidential Decree 101/2016 applies to seconded employees (e.g. employees assigned to Greece by employers registered in the European Union or in the European Economic Area to work locally within the context of cross border provision of services). This legislation does not apply to merchant sailors.

Presidential Decree 101/2016 provides that the sending company must appoint a representative in Greece during the secondment period, who will act as the liaison between the sending company and the authorities. The representative should be a Greek resident (i.e. a person permanently residing in Greece).

Presidential Decree 101/2016 requires the sending company to have (either in hardcopy or electronically) the following information available at the employee's place of work:

01 employment agreement or any other equivalent document,

02 payslips or other documents evidencing payment of salary,

03 documents evidencing the employee's presence at work setting out the time of commencement and end and the duration of the daily working hours.

The above obligation is set to apply for a period of up to two years following the end of the assignment (or more in the case of other reasons such as lawsuits), whereas the sending company must forward to the authorities, upon the latter's request, copies of the above documents (in either English or Greek) within fifteen days from the receipt of the related request.

Finally, a copy of the list of seconded employees (to be filed with the competent employment office by the sending company and authenticated by the employment authorities of the place of provision of the seconded employees) must be posted in a prominent space at the receiving company's premises.

Documents are only filed in Greek. Supporting documents can be maintained in other languages, but an official translation into Greek is most likely to be requested in case of an audit. A certified translation is normally required.

Upon the authorities' request, the receiving company is also required to provide them with any information and reply to any request from the authorities aiming to assist them to assess compliance with the provisions of the Decree, otherwise sanctions are imposed.

Penalties for non-compliance

For non-compliance with the notification and minimum wage requirements the employer could face temporary cessation of operations, monetary penalties or even imprisonment in serious cases.
Compliance with the obligations set out above is assessed by the employment authorities ("Σώμα Επιθεώρησης Εργασίας" – "Σ.ΕΠ.Ε.") which, if deemed necessary, can also cooperate with other authorities (including the social security authorities).

Non-compliance with the obligations entails administrative penalties which can be imposed on the sending company and/or the receiving company (i.e. a penalty of EUR 2.000 per secondee, with the exact amount depending on various factors, such as the severity and frequency of violation, whether any similar violations have also been assessed, number of employees and size of the company, degree of fault etc.).

These penalties are imposed by the employment authorities ("Σώμα Επιθεώρησης Εργασίας" – "Σ.ΕΠ.Ε.").

Work from Anywhere

In principle, employment income for services provided in Greece (i.e. Greek source income) is taxable from first day worked in Greece.

However, the applicable Double Tax Treaty (if any) should be also considered when assessing whether the employment income is subject to income tax. If all the conditions as per the relevant article in the Double Tax Treaty applicable to

employment income are cumulatively met, then the employment income may be considered as tax exempted for income tax purposes.

Even if the income for the services provided in Greece can be considered as tax exempt as per the DTT, there is a personal reporting obligation (i.e. filing of annual Greek income tax return) for the remote worker for informational purposes.

In such a case, the foreign employer should provide him/her with a salary letter mentioning only his/her Greek source income (i.e. employment income relating to the Greek working days) for fulfilling the respective reporting obligation.

In case of tax exempted employment income, the foreign employer has no withholding and reporting obligations in Greece.

On the contrary, if the income for the services provided in Greece (Greek source income) cannot be considered as tax exempt according to the DTT provisions, the foreign employer should register with the Greek tax authorities (even if no PE is acquired) for payroll withholding / remittance purposes.

According to the Greek tax legislation, in principle it is the employer's obligation to withhold and remit the corresponding income tax via payroll in the case of taxable Greek source income.

The employer also reports electronically the amounts of employment income and income tax withholdings, which are pre-completed in the annual personal income tax return of the remote worker (employee). The latter should also file his/her annual Greek income tax return based on the amounts pre-completed by the employer.

Regarding social security liabilities to arise in Greece in case of remote work, these liabilities arise from the first day of remote work unless an exemption is feasible based on either EU legislation or a Totalization Agreement (for instance, in case of secondment to a Greek Employer by another EU Employer provided that the assignee continues to be subject to the home country's social security law, etc.).

If social security obligations arise in Greece the employer must be registered locally with the Greek social security authorities based on a special procedure applying to foreign companies without any establishment in Greece (limited scope social security registration) to enable them to withhold and/or attribute the applicable social security contributions in accordance with Greek legislation.

Under this structure, the employee is appointed as representative of the employer before the competent social security office and a separate social security registration is required per employee.

Public sources of information

Information on the above issues can be found (in Greek) on the official website of the Ministry of Labor.

Further, the applicable laws (and other source of legislation, such as Ministerial Decisions) can also be found on the Official Government Journal's website and other legal databases (all in Greek).

Hungary

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The rules of Directive 2018/957 have been implemented in Hungary as of 30 July 2020 in Act I of 2012 on the Labor Code in Sections 295-297.
The new legislation only applies for assignments starting as of that date (Directive 96/71/EU is applicable for postings which were in place before 30 July 2020).

Remuneration of posted workers

Minimum wage at national level

The minimum wage in Hungary normally changes on an annual basis, in January each year. This year the minimum wage was announced only at the end of January and applicable as of February 2021. Based on the government's current plans the below indicated amounts might be revised during the year.

The minimum wage is determined on a monthly, weekly, daily and hourly basis.

As from January 2022 the minimum wage is HUF 200,000 (approximately EUR 556).

In addition, an increased minimum wage applies to employees with at least secondary school education level or working in a position requiring intermediate professional qualifications, which is HUF 260,000 in 2022 (approximately EUR 731).

Minimum wage set through collective bargaining agreements

There are only very few public collective bargaining agreements, extended nationally to a whole sector. The majority of such agreements (if any) are kept private within the respective industry or companies. CBAs can define higher base salary than the minimum wage, however, only nation-wide CBAs are publicly available here. (http://www.mkir.gov.hu/kiterjesztett.php)

What can be included in the remuneration

Included in the remuneration		Not included in the remuneration
Basic salary/basic wage	Housing	Per-diems
Overtime payments	Meal costs	Special payments (Foreign Service premium, Cost of Living allowance, Hardship premium, Country allowance, Assignment allowance, Special Pension Allowances)
Bonuses	Transportation costs	

Work hours

As a general rule the maximum legal working time in Hungary is 12 hours per day and 48 hours per week.

Mandatory registration of posted workers

If a foreign employer temporarily posts its employees to Hungary to carry out work within the framework of an assignment agreement and a transnational agreement between the home and the host company, both the host and home companies have different registration and documentation liabilities.

The Hungarian host company is liable to complete and file the so called '22T104' form with the Hungarian tax authority within a maximum of 30 calendar days from the start of the assignment. This document serves for the registration of a foreign individual posted to Hungary and the (posting) foreign employer as well. It has to be submitted with a registration to the Hungarian Government Portal to the Hungarian Tax Authority within a special software developed by them, therefore no website is available for this purpose.

The obligations should be fulfilled electronically (in Hungarian or English) via the labor inspectorate website of the Hungarian Ministry of National Economy.

The following information is required to fulfil the registration:

01 The foreign company's information (e.g. official name, headquarters);

02 Contact details of the foreign company's representative. (The representative should be an individual who is able to represent the foreign company in front of the Hungarian Authorities any time upon request).

03 Personal information of the individual (name, start and end date of assignment etc).

04 Information relating to the activity of the assigned employee.

The registration should be filed by the foreign (posting) company by no later than the first Hungarian workday of the employee (the Hungarian company may also file the registration on the foreign company's behalf by this deadline). Prior to the start of the posting, the Hungarian company should inform the foreign company about the relevant Hungarian labor law requirements.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	Yes

**Business travelers are not required to register if they only attend meetings and visit facilities, etc. However, if they perform actual working activity in Hungary, registration is necessary.*

*** Assignment from non-EEA countries should also be reported to the Hungarian Ministry of National Economy in an e-mail format, providing the information listed above.*

Determining the 12 month period

The period of assignments which were in place before the Directive was transposed into local legislation counts when determining the 12 month period.

The periods are cumulated if an individual is posted for the purpose of replacing another posted worker.

Documents and legal representation

It is also a requirement to keep and upon request of the Hungarian tax authority disclose documentation concerning the assignee during the period of the employee's Hungarian assignment and for a further 3 years following the end of the assignment:

01 employment contract,

02 timesheets,

03 proof of payment of the employment income.

The competent authorities also retain the completed registration form for 3 years after the submission thereof. Documents should be available in the Hungarian or English language. A certified translation is not required. The indicated documents should be available in the case of a labor audit until 3 years following the end of assignment.

Appointing a legal representative is not mandatory in the process.

If the employer cannot produce the documents at the request of the authority, it may cause the termination of the attachment by the authority within at most 5 business days.

The same legal consequence applies even if the authority is not able to make a copy of the documents and records at the place of inspection, so it is necessary that the originals are physically available at the place of work.

Penalties for non-compliance

For failure to file the form T104, the Hungarian tax authority may impose a fine of up to HUF 500,000. Bearing responsibilities are shared (but not jointly and severally) between the home and host company.

For failure to fulfil the posting registration liability for the moment no special penalty exists. However, in case of a labor inspection the relevant authority may require the fulfillment to fulfil the above obligations and may levy penalties for non-compliance (including missing the registration deadline, missing documents or minimum standard requirements).

In case of non-compliance the authority may impose a penalty fee that would be at least HUF 30,000 up to HUF 10,000,000. The amount of the penalty depends completely on the Authority's discretionary decision (however, the number of employees at the host company and repeated infringement can affect the decision).

Work from Anywhere

A distinction should be made between individuals that work remotely from Hungary under a contract that expressively specifies the place of work as such (remote workers) from individuals that spend significant working days in Hungary despite having a local contract and place of work elsewhere.

As to the first category – according to the Hungarian legislation – the provisions of the Labour Code apply irrespective of the country the contract was concluded in if the work is carried out regularly in Hungary.

For the second category, these individuals are not regular assignees or remote workers either. Since the application of PWD rules requires an agreement with a host entity, these individuals will most likely not fall under the PWD requirements.

On the other hand, this situation may entail adverse tax, social security and labour law implications if the contractual background remains unsettled for a long time. Therefore, either an assignment structure or a remote contract are advised.

Where the individual becomes liable to tax in Hungary, the employee is required to calculate the Hungarian tax liability and pay tax advances on a quarterly basis. The foreign employer does not have any withholding obligations in Hungary (this only applies for Hungarian employers).

In terms of social security, if social security contributions are due in Hungary there are several obligations that need to be fulfilled such as:

employer and employee registration, monthly filing of social security returns, and transfer of payments.

If the foreign employer has a financial representative in Hungary the latter has to operate the whole process.

If the foreign employer has no financial representative in Hungary and fails to carry out the above obligations, the employee has to fulfill the registration, file the social security returns and pay both the employee and employer social security charges.

Public sources of information

Information about collective bargaining agreements:

http://www.ommf.gov.hu/index.php?akt_menu=551

Although it is mandatory to report the conclusion of a collective bargaining agreement in Hungary several parties (employer and trade union) do not comply with this obligation.

The datasheet filled out by the employer and the content of the collective bargaining agreement applicable to more than one employer may only be disclosed to others if the contracting parties have previously consented thereto.

Information about the current Hungarian law in connection with posting:

http://www.ommf.gov.hu/index.php?akt_menu=551

Home page of posting registration

http://www.ommf.gov.hu/?akt_menu=547&set_lang=123

reland

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Directive 2018/957 was transposed into Irish law in the form of S.I. 374 of 2020 European Union (Posting of Workers) (Amendment) Regulations 2020 which came into operation on 1 October 2020 (the 'Regulations').

Remuneration of posted workers

In accordance with posted worker legislation in Ireland, an employee posted to Ireland should receive the benefit of all Irish employment legislation as would apply to an Irish national or an employee permanently based in Ireland, including the remuneration as rendered mandatory by law or collective agreement which has been declared as universally applicable.

Minimum wage at national level

Ireland's minimum wage requirement applicable from 1 January 2022 is EUR 10.50 per hour, a rise from EUR 10.20 applicable during 2021.
The minimum wage is stipulated in the National Minimum Wage Act 2000 (as amended). The minimum wage is determined as an hourly rate and it depends on the age of the employee as follows:

Age	Minimum wage applicable (EUR per hour)
Under 18 years old	7.35 (70% of the minimum wage)
18 years old	8.40 (80% of the minimum wage)
19 years old	9.45 (90% of the minimum wage)
20+ years old	10.50 (the current minimum wage)

Minimum wage set through collective bargaining agreements

Certain employees are covered by collective bargaining agreements that deal with the pay and working conditions of the employees concerned, as follows:

01 Sectoral Employment Order ("SEO")

An SEO is made by the Minister for Enterprise, Trade and Employment following a recommendation from the Labour Court on matters such as remuneration, pensions and sick pay for employees in a particular economic sector and the SEO is binding on that sector. There are currently two SEOs in place covering the construction sector and the mechanical engineering sector.

02 Employment Regulation Order ("ERO")

An ERO sets the minimum rates of pay and conditions of employment for employees in a specified business sector. It is an agreement drawn up by a Joint Labour Committee (JLC), adopted by the Labour Court and signed into legislation by the Minister for Enterprise, Trade and Employment. There are currently three EROs in force, two in the contract cleaning industry and one in the security industry.

03 Registered Employment Agreement ("REA")

An REA is a collective agreement between a trade union or unions and an employer or employers dealing with the pay and/or conditions of employment of specified workers, which is registered with the Labour Court and is only binding on the parties that subscribe to it.

What can be included in the remuneration

Please see below some examples of what can be included and what cannot be included in the remuneration (this is not an exhaustive list):

Included in the remuneration	Not included in the remuneration
Basic pay	Payment of expenses
Piece and incentive rates, commission and bonuses which are productivity related	Payment by way of a pension, allowance or gratuity in connection with the death, retirement or resignation of the employee or as compensation for loss of office
Zero hour protection payments	Payment relating to redundancy
Shift allowances	Payment in kind or benefit in kind
A certain monetary value of board and/or lodgings	Holiday pay, sick pay, maternity pay
	Overtime premium

Working hours

The general maximum average legal working hours in Ireland is 48 hours per week.

Mandatory registration of posted workers

For each individual posting from the same employer, it is necessary to complete the prescribed Form of Declaration.

This form must be submitted to the Workplace Relations Commission (WRC) no later than the date on which the employee commences work in Ireland with the following details:

- Name and address of service provider
- Name and address of contact person
- Name and personal details for each seconded worker (name, address, date and place of birth, nationality, social security number (PPSN))
- The expected start and end date of posting
- Location of work
- The nature of the services – job descriptions/job title
- Contact details
- Gross weekly pay
- Total of weekly hours worked
- Gross hourly rate of pay
- Whether a non-EEA national holds an employment permit

Once the Form of Declaration is successfully submitted, the WRC will provide an acknowledgement to the service provider.

**A business traveler is an individual who travels to Ireland for a period not exceeding 90 days in a 12-month period to attend meetings, negotiate or sign agreements/-contracts and who does not carry out any 'hands-on' work.*

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country	No

Determining the 12-month period

Directive 2018/957 provides for additional protections to posted workers who are the subject of a 'long term posting' (i.e. a posting for a period of 12-18 months).

Under Directive 2018/957, such posted workers must be guaranteed the same terms and conditions of employment mandatorily applicable to workers of the host Member State.

Ireland's transposition of the original Directive provided more than the required minimum protections for posted workers regardless of the length of the posting.

Accordingly, the Regulations only needed to provide some minor additions/clarifications to posted worker legislation.

Documents and legal representation

Foreign employers posting employees to Ireland for the provision of transnational services, are required to hold and keep (during the whole period of assignment and following the end of assignment) copies (in electronic format or hardcopy) in an accessible place of the following documentation:

01 The employment contract of a posted employee or the written statement of terms of employment (within the meaning of s3 of the Terms of Employment (Information) Act 1994) or other equivalent document certifying employment terms.

02 Where relevant, timesheets or equivalent documents indicating the working time of a posted worker including the commencement and termination of work and the number of hours worked on a given day.

03 Payslips or equivalent documents specifying the remuneration of a posted worker along with the amount of deductions made in accordance with the applicable law and proof of transferring the remuneration to the employee i.e. proof of wages.

During the period of assignment and after this period, the employer posting an employee to Ireland is required to make the above documentation available at the request of the WRC, together with the appropriate translation into the English language (if necessary), no later than one month from the date of receiving the request.

The Regulations impose the obligation on foreign employers to designate a person to liaise with the WRC and to send out and receive documents and notices as necessary. The Regulations do not expressly dictate that this should be an Irish resident person but this approach would appear the most practical i.e. a person within the host company or within KPMG as their agent.

Penalties for non-compliance

Failure to pay the national minimum hourly rate of pay is a criminal offence, punishable upon summary conviction by a fine not exceeding EUR 2,500 or imprisonment not exceeding 6 months or both.

Breaches of posted worker administrative requirements and control measures are an offence and hence the service provider may be liable:

01 On summary conviction, to a class A fine (currently EUR 5,000), or

02 On conviction or indictment, to a fine not exceeding EUR 50,000.

If such an offence is committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a person who is a director, manager, secretary or other similar officer of the body, or is a person who was purporting to act in any such capacity, that person as well as the body corporate commits an offence and is liable to be prosecuted and punished as if that person had committed the first-mentioned offence.

If the affairs of a body corporate are managed by its members, the above paragraph applies in relation to the acts and omissions of a member of the body corporate in connection with the member's functions of management as if the member were a director or manager of it.

Penalties for breach of general employment legislation (which posted workers may get the benefit of) can include orders of compensation of up to two years' pay, re-engagement or re-instatement of the claimant employee.

Work from Anywhere

From an income tax perspective, an individual's exposure to Irish tax is dependent on their tax residence position (under both domestic Irish legislation and the residency provisions in the relevant Double Taxation Agreement (DTA)), and the source of the income.

At a high level, under domestic Irish legislation, tax residents and domiciled individuals are subject to income tax on their worldwide income in Ireland and tax residents and non-domiciled individuals are subject to income tax in Ireland on their Irish source income, and any foreign (non-Irish) income that is remitted into Ireland.

Employment income earned in respect of Irish workdays is considered Irish sourced, and therefore, irrespective of Irish residence status, is subject to Irish income tax and social security (and the associated employer withholding obligations) unless:

01 An automatic release from the operation of Irish payroll withholding applies, or

02 Pay as you earn (PAYE) clearance is obtained from Irish Revenue, confirming the employer does not have an Irish payroll withholding obligation.

Scenarios 1. and 2. above are not contained in Irish tax legislation but are provided for in guidance issued by Irish Revenue.

The below table summarizes the current Irish Revenue guidance with respect to employees performing the duties of non-Irish employments in Ireland:

Category	Irish payroll withholding obligation
Not more than 30 Irish workdays in the tax year	An automatic exemption from the operation of Irish payroll withholdings applies, irrespective of whether the employee is resident in a country with which Ireland has a Double Taxation Agreement (DTA). Such workdays are considered "incidental".
More than 30, but not more than 60 Irish workdays in the tax year	An automatic exemption from the operation of Irish payroll withholdings applies provided the conditions of the employment income article of the relevant DTA are met.
More than 60 Irish workdays in the tax year	An Irish payroll withholding obligation arises unless the conditions of the employment income article of the relevant DTA are met and PAYE Clearance is applied for and obtained issued by Irish Revenue. PAYE Clearance must be applied for within 30 days of the employee's arrival in Ireland. This is a strict deadline enforced by Irish Revenue.

An individual is considered to have a foreign employment where the following applies:

01 The employing entity is a non-Irish resident company,

02 The employment contract is governed under foreign employment law and executed outside of Ireland, and

03 The employee is paid directly from the overseas employing entity (i.e. a non-Irish "pay point").

To the extent that there is a wage withholding requirement in Ireland in respect of a non-Irish contract of employment being exercised in Ireland, the exposure to Irish wage withholding taxes is limited to their Irish workdays. Note however that where Irish social security applies (see below), then social security applies to all employment income (and wage withholding taxes remain limited to Irish workdays).

From a social security perspective, Irish Social security known as Pay Related Social Insurance "PRSI" will be due in Ireland unless an A1 Certificate, Certificate of Coverage (CoC) or a 52 Week Exemption Certificate is in place.

A1 Certificates are issued from EU/EEA countries and the UK, where an employee is temporarily working in Ireland. CoCs are issued where an individual is employed in a country with which Ireland has a bilateral social security agreement and is working temporarily in Ireland.

A 52 Week Exemption Certificate may be issued in the case of employees coming to work in Ireland temporarily from non-agreement countries i.e., countries outside the EU, EEA, and UK, and not a country with which Ireland has a bilateral social security agreement.

Note that officially, an A1, CoC, 52-week exemption certificate should be in place from the first Irish workday), but in practice, most employers will apply a 30 workday threshold when administering PRSI, and we have not seen this approach queried in practice (it aligns with the income tax guidance r.e "incidental").

If social security is payable in Ireland, the payment of the employee and employer social security contributions due must be paid over via the operation of an Irish payroll. The EU regulation provides that the practical implementation (transmission of data to the collection agency, transfer of contributions) is possible also for affiliated companies or the respective employee on behalf of the employer. However, this is not adhered to in practice.

Public sources of information

Sectorial specific agreements (Sectorial Employment Orders and Employment Regulation Orders) can be accessed here (www.workplacerelations.ie).

Obligations as per the Directive can also be found at this link. (www.workplacerelations.ie)

taly

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Law 122/2020 amending Law 136/2016, concerning the posting to Italian territory of employees providing transnational services, was aimed at implementing and transposing Directive 2018/957 into Italian legislation.

Law 122/2020 was published in the Official Journal of Italy on 15 September 2020 and its provisions are applicable as of 30 September 2020.

Remuneration of posted workers

Minimum wage set at national level

Italy does not have a minimum wage set at national level. The minimum wage is generally established by collective bargaining agreements, according to the sector, employees' level, etc.

Minimum wage set through collective bargaining agreements

Considering that in Italy there are no specific law provisions defining the minimum base salary, the observance of CBAs is a standard practice. The minimum wage is determined by negotiation between employers and different unions and it depends on the sector, employees' level, etc. For this reason, a minimum wage has to be defined on a case by case basis according to the related details.

What can be included in the remuneration

Generally speaking in Italy, the remuneration includes all items of the pay-slip, which usually consists of basic salary, items provided by each CBA (i.e. overtime extra pay, seniority payments, paid holiday, fringe benefits, etc.) and all components granted in return for the performed work.

Travel expenses and housing allowances/reimbursement are generally not included in the remuneration. Only payments that are paid for the work performed but not for cost incurred in connection to the posting should be considered as part of the remuneration.

Working hours

A maximum legal working hours limit exists, however this may vary according to the applicable CBAs. In general, overtime should be paid according to the provision of the law and the collective agreements.

Mandatory registration of posted workers

Since 2016, foreign employers (EU and non -EU) and placement agencies who post employees to Italy have been required to notify the Ministry of Labor, 24 hours before the assignment starts and, in the event of any changes to the conditions of the assignment, a notification has to be submitted to the Authority within 5 days.

The online registration form is available in Italian or English and the home company needs to be duly registered in order to proceed with the submission of the communication of assignment.

Before the beginning of the assignment the home company must identify for each assignment a referent person in charge of keeping the record of the relevant documentation, send and receive documents and communication as well as a referent person for contacts with unions. Italian provisions require that the elected record keeper is domiciled in Italy.

The access to the official website of the Authority (Cliclavoro) is possible via specific credentials to be provided by the Italian authority. After the registration of the home company profile, it is possible to set up the assignment details.

The assignment's information that needs to be gathered and notified to the authority are the following:

01 The home employer's details (legal name, VAT number and registered office, phone and email contacts);

02 Details of the legal representative of the home country employer, who can also be non-resident in Italy;

03 The host country employer's details (legal name, VAT number and registered office);

04 Details of the Legal Representative of the host company to include as mandatory information for the communication.

05 Name and details of the record keeper;

06 Name and details of the liaison person;

07 Personal details for each seconded worker (name, date and place of birth, citizenship);

08 Start and end date of posting;

09 Location of work;

10 Contact details.

Once the online registration is successfully submitted, a single consecutive protocol number is issued and it is possible to download a PDF copy of the protocol and registration details.
A separate procedure has now been instituted for cabotage operations.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country**	Depends

**Business travelers are not included in the definition of posted workers according to Italian provisions as the assumption is that business activities may not be identified as transnational services. According to the clarification provided by the Authority on this regard, activities related to business travel may be identified as meetings, conferences, reunions etc.*

*** Italian law requires that the communication of assignment is sent to the Italian Labor Authority if a company based in another EU country posts a worker to Italy, this requirement is extended also to a home company based in a non-EU country, but this option opens a grey area. In case of workers with European citizenship posted to Italy from a non-EU country the communication of assignment is mandatory. In case of non-EU citizens posted to Italy by a company based in a non-EU country, from an immigration point of view further entry and work authorizations need to be provided to the Italian authorities. In this last case, as it represents a grey area an assignment communication may be advisable in order to avoid possible fines.*

Determining the 12month period

For postings already in place before the implementation of the Directive, the notification for long-term (more than 12 months) must be made within 30 days from the date of implementation. The 12-month period is calculated as of July 30, 2020.

This does not mean that the posting is limited to a period of 12 or 18 months or that after this period a local employment contract must be concluded in Italy. The posted worker will still be seconded to Italy but will be subject to certain additional requirements according to the applied CBAs of the host company in Italy.

If posted worker replaces another posted worker who fulfils the same type of activity in the same place, the 12 month period is determined by totalizing the posting periods of each employee.

Documents and legal representation

Italian law requires that employers posting employees to Italy are required to hold and keep for the whole assignment and a further two years after the end of assignment, copies of the:

01 Employment contract of a posted employee or other equivalent document certifying employment conditions;

02 Working time of a posted worker indicating the commencement and termination of work and the number of hours worked on a given day;

03 Documents specifying the remuneration of a posted worker (payslips);

04 Secondment letter;

05 A1 Certificate (if applicable);

The employer must have the above documents translated into Italian and available in case Italian Labor Inspectors request them.

The legal responsibility for registration and compliance rests with the foreign employer (seconding employer), although they will need to identify representatives in Italy responsible for record keeping and liaison with the social parties.

It is, of course, possible to appoint either a representative of the host company or an external third party to carry out these roles.

Legislative Decree no. 136 and the Decree of the Ministry of Labor impose the obligation on foreign employers to appoint a person domiciled in Italy authorized to represent the foreign company in:

01 Maintaining records and liaison with the competent Italian authorities, and

02 Acting as legal representative of the home company for putting the social parties in contact with the employer for possible collective negotiations. This person does not have to be present at the workplace but available as required.

The same or different people can fulfill the record keeping and liaison roles and an external consultant, such as a registered Labor Consultant can fulfill one or both the roles.

Since the name and details of the record keeper are required as part of the online registration process, the identities should be established before the first secondment takes place

Penalties for non-compliance

Legislative Decree n. 136 introduces a penalty regime for discrepancies committed by an employer posting an employee to Italy as follows:

01 An administrative penalty of between EUR 180 and EUR 600 for failure to register a new secondment on time (this includes late registration and incorrect data);

02 A penalty for violations of record keeping requirements from EUR 600 to EUR 3,600 per individual employee involved

03 A penalty for failure to appoint a liaison or recordkeeper of EUR 2,400 to EUR 7,200.

The total of all penalties cannot exceed EUR 180,000.

Where a secondment is not considered authentic, the fines could range from EUR 50 for every employee involved per day, subject to a minimum of EUR 5,000 and maximum of EUR 50,000.

In the case of non-compliance with Equal Pay, employers need to pay the difference gap. The host company and home company has joint liability.

Work from Anywhere

From a tax perspective, there are no specific tax implications/obligations if the employee does not exceed 183 days in Italy. If obligations arise, these fall on the employee. Foreign employers are not required to withhold wage taxes for their tax liable employees in Italy as long as they do not have the effective place of management, a registered office or a PE in Italy. So for example, an employee working from an Italian home office does not cause a withholding obligation for the foreign employer assuming the home office does not create a PE.

From a social security perspective, the obligation to pay social security contribution arises from the first day of work in Italy with no specific exemptions (unless the individual is covered by a certificate of coverage) and the employer is subject to formal social security obligations.

In such a case, opening of a representative social security position for a foreign entity not having a branch or PE in Italy represents an administrative obligation of the foreign employer.

The EU regulation provides that the practical implementation (transmission of data to the collection agency, transfer of contributions) is possible for the respective employee on behalf of the employer, however this is not adhered to in practice.

Public sources of information

A full list of all current National Collective Agreements is available at this link (https://bit.ly/3bXQD2s).These are in the Italian language

An ad hoc portal and online registration form has been set up, allowing speedy and efficient online registration. This can be accessed here (www.cliclavoro.it)).

More information on the regulations and mandatory fulfilments in English are available at this link (https://bit.ly/3ca49A4).

atvia

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services has been implemented into Latvian Labor Law as of 05.01.2021. The new requirements are applicable to postings starting as of the date the requirements came in force.

Remuneration of posted workers

Minimum wage set at national level

Latvia has a minimum wage requirement in place. The Latvian Government reviews the general minimum wage level each year. The Latvian minimum wage in 2022 is a fixed amount of EUR 500 per month gross. There are no other minimum wages set at a national level, except for the construction industry as provided in the next paragraph.

Minimum wage set through collective bargaining agreements

A collective bargaining agreement is concluded within the construction industry. It is in force as of 3 November 2019. It stipulates that the minimum wage in this industry is EUR 780 per month.

The minimum wage set through collective bargaining agreements cannot be contrary to laws and regulations in Latvia. However, the Latvian Labor Law states that if there is collective bargaining with respect to the higher minimum wage in an industry (as with the construction industry) the employer is entitled to pay a lower amount of overtime pay, but not less than 50% of the standard hourly rate.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration e.g.
Basic salary	Compensation of business trip advances
Vacation pay	Per-diems
Bonuses	At the discretion of the employer
Overtime payments	

Working hours

The maximum regular working time in Latvia is 8 hours per day or 40 hours per week.

Mandatory registration of posted workers

According to the Labor Law an employer which posts an employee to perform work in Latvia is required, prior to posting the employee, to inform in writing (in the Latvian language) the Latvian State Labor Inspectorate about the posted employee, indicating:

01 The given name, surname, ID document number and address of an individual who is the employer, or the name (business name) of the legal entity (company), its registration number, address and the name and surname of the person(s) on the executive body with signing rights, as well as their contact details: address, e-mail, and telephone number.

02 The given name and surname of the employee, as well as their ID document number.

03 The anticipated duration of the posting, as well as the date of commencement and completion of work.

04 The address of performing the work or several addresses if the performance of work duties is not intended to be in a certain place.

05 A representative of the employer in Latvia, including the given name, surname and contact information.

06 A person for whose benefit the work will be performed (recipient of a service) as well as the nature of the services justifying the posting.

07 A certification that a posted employee who is a third-country national legally works for an employer in a European Union Member State, a European Economic Area State or the Swiss Confederation.

08 Information on A1 certificate issued to the employee.

The provisions of the Labor Law do not apply to ships' crews of merchant shipping companies.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting*	No
Posting over 12 months	Yes
Business travelers**	Depends
Posting from a non-EU country**	No

**Not mandatory, but advisable.*

***A business traveler is an employee who is sent on a business trip - an official work trip to another area in Latvia or abroad approved by the employer for a certain period to perform work (service) or to supplement knowledge and improve qualification (study visit).*

Determining the 12 month period

The requirements deriving from Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services are not applicable to the registered postings which were in place before the transposition of the directive.

If an individual is posted for the purpose of replacing another posted worker, his / her case must be regarded as separate. Thus, the registration obligations must be fulfilled, and his posting period will start from the first day of posting.

Documents and legal representation

The employer should ensure the storage of the concluded employment contracts, assignment agreements, pay-slips, timesheets, and documents which prove the payment of wages by its representative in Latvia, who is authorized to represent the employer in relations with Latvian state institutions and in court. This information should be presented to the supervisory and

controlling authorities, and, if required by such authorities, translation of such documents into the official (Latvian) language should be ensured. The appointment of a representative in Latvia is a mandatory requirement.

This representative can be any person with the capacity to act. In case of a labor audit the employer bears the responsibility for compliance with the Labor Law.

The storage and presentation period of all the previously mentioned documents expires two years after the completion of the posting.

An employer, if necessary, is required to also appoint a representative to whom the parties of the collective agreement may refer in order to launch negotiations on entering into a collective agreement in accordance with the provisions of the Labor Law.

The employer may also assign two different persons – each for one of the above cases.

Penalties for non-compliance

An employer who fails to comply with the regulations for posting an employee to carry out work in Latvia will be subject to administrative penalties in accordance with the Latvian Labor Law.

The amount of the penalty depends on the nature of the violation, frequency of the violation, severity etc. The fine for non-compliance in general with Latvian Labor Law, including registration requirements for posting of workers, may range between EUR 70 – EUR 7.100 per case.

For failure to ensure the minimum monthly salary if the person is employed for a regular working time, or for failure to ensure the minimum hourly salary rate, a fine from EUR 430 to EUR 570 will be imposed on the employer if it is an individual but a fine from EUR 850 to EUR 7.100 - if it is a legal entity.

The Latvian Labor Law also lists other specific employment related violations for which the penalties may reach EUR 14.000.

Work from Anywhere

A remote worker would not trigger tax or social security liability in Latvia if their presence in Latvia does not exceed 183 days in any 12-month period.

If the 183-day period is exceeded, generally, it is the employer's responsibility to register, run a shadow payroll, report, and pay the tax and social security contributions to the tax authority, however, in certain cases it can also be done by the employee.

For example, from a tax perspective the employment income becomes subject to tax in Latvia if the employee performs work physically in Latvia.

If as per DTT (Article 15) the employment income is not subject to tax in Latvia, no reporting responsibility arises. However, if tax is due there are 2 options on how to pay tax in Latvia in the situation:

01 The foreign employer registers as a taxpayer in Latvia (effectively registers a shadow payroll and thus the withholding obligation to the foreign employer arises);

02 The employee himself may register as a taxpayer (in this case the employee himself is responsible for reporting and paying the tax in Latvia, and the employer has no tax withholding obligation).

The above is also applicable from a social security perspective.

Public sources of information

For public information about obligations of foreign entities which post employees to perform work in Latvia, you may access the Ministry of Welfare of the Republic of Latvia webpage: https://bit.ly/3c8Xoyq

ithuania

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Directive 2018/957 has been implemented in Lithuania through the amendment of the Labour Code of Lithuania. The amendments came into force as of 30 July 2020.

Remuneration of posted workers

Minimum wage set at national level

Lithuania has a minimum wage set at national level.

Starting January 2022, the gross minimum wage is EUR 730 per month (equivalent of EUR 4.47 per hour).

In accordance with the new Labor Code, as of July 2017 the minimum monthly wage can only be paid for unqualified work. Work is unqualified if no specific qualifications or skills are required from the employee.

Level of the employee	Monthly amount EUR	Hourly amount EUR
Blue collar	730	4.47
Highly skilled (blue card)	>730	>4.47

There are no general rules established in Lithuania to change or review the minimum wage regularly (e.g. annually or in January each year). This is a political issue; thus it is difficult to predict the particular upcoming changes in the future.

Minimum wage set through collective bargaining agreements

The minimum wage is set by the Lithuanian Government at national level. It is also permissible to set a higher minimum wage in collective agreements at company level.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Base salary/base wage	Housing
Bonuses (depending on the type of bonus)	Transportation costs
Special payments (E.g. Foreign service premium, Hardship premium, Country allowance, Assignment allowance, Cost of living allowance – depending on the type of payment)	Meal costs
Per-diems	Bonuses (depending on the type of bonus)
	Overtime payments

Working hours

Standard working hours in Lithuania are 8 hours per day or the equivalent of 40 hours per week.

Various exceptions may be applicable in accordance with specific laws, government resolutions and collective agreements. According to the Labor Code, maximum working hours, including overtime but excluding work under an agreement on additional work, must not exceed 48 hours in any 7 calendar days.

Maximum working hours, including overtime and work under an agreement on additional work, must not exceed 12 hours per day and 60 hours in any 7 calendar days.

Mandatory registration of posted workers

In terms of administrative requirements, a foreign employer who posts employees to Lithuania is required to notify the Lithuanian labor authorities with respect to these postings. The notification must be submitted prior the start of the activity of the assignees.
Non-compliance with the above mentioned requirement can lead to various penalties for the posting employer.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers	No
Posting from a non-EU country*	Yes

** Registration obligation is applicable. In certain cases a posted employee must obtain a visa and/ or a work permit too.*

Determining the 12 month period

If an assignment was in place when the Directive was transposed the Lithuanian legislation, the periods prior to the implementation of the Directive date are not considered.

If an individual is posted for the purpose of replacing another posted worker, the State Labor Inspectorate should be notified as such by providing the information on the individual to be replaced in the posting registration form.

Documents and legal representation

In case of a labor audit, the following documents must be available to the Lithuanian authorities:

01 employment contract;

02 documents confirming information on the amount of salary, its calculation and payment;

03 copies of timesheets.

The authorities are entitled to request any other documents as well.

Documents must be kept 10 years after the termination of the assignment. Documents must be available in Lithuanian upon request of the authorities. A certified translation is not required.

It is mandatory for the home company to appoint a contact person (any third person authorized by the home company) in Lithuania. He is responsible for communication with the Lithuanian authorities, providing requested documents etc.

Penalties for non-compliance

Assignments of foreign employees to Lithuania, irrespective of the time spent in the country, may trigger certain tax obligations for the assignee and/ or for the host company. Certain assignments to Lithuania must also be reported for tax purposes by Lithuanian companies.

Therefore, in general, international assignments can be tracked by the authorities and this is one of the areas they monitor.

Non-compliance with the registration requirements may result in a penalty. The amount thereof depends on the frequency of the violation, and it may be up to EUR 1,320.

Non-compliance with equal pay or not granting the posted worker with assignment expenses may result in a penalty as well. The amount thereof depends on the frequency of the violation, and it may be up to EUR 1,680.

These penalties are imposed on the employers of the posted employees.

Work from Anywhere

According to Lithuanian legislation there is no de minimis period under which a remote worker would not trigger any tax liability in Lithuania. In general employment related income received for work in Lithuania is taxable in Lithuania (specific country DTT provisions need to be considered).

If tax liability is triggered, provided the employer is a foreign entity which does not have a permanent establishment in Lithuania, it would be the obligation of an employee to report this income in Lithuania and pay the tax due (for a tax resident – on annual basis, while for a non-resident – when income is received).

From a social security perspective, according to the Lithuanian legislation there is no de minimis period under which a remote worker would not trigger any social security liability in Lithuania. Lithuania as an EU country is subject to Regulation No. 883/2004 (with relevant amendments). Therefore, a valid Certificate of Coverage would exempt the employee from social security while working temporarily in Lithuania.

If social security liability is triggered, it would be the obligation of an employer to register for social security purposes and carry out the compliance. The EU regulation provides that the practical implementation (transmission of data to the collection agency, transfer of contributions) is possible also for the respective employee on behalf of the employer, however this is not adhered to in practice.

Public sources of information

The list of collective agreements can be found here (https://socmin.lrv.lt/lt/paslaugos/administracines-paslaugos/kolektyviniu-sutarciuregistras).

Publicly available information on obligations of foreign entities assigning personnel to Lithuania can be accessed at this link (http://www.vdi.lt/Forms/Tekstas1.aspx?Tekstai_ID=775).

uxembourg

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Law of 15 December 2020 amending art. L. 141-1 to L.144.10 of the Luxembourg Code of Labor, transposes Directive 2018/957 into Luxembourg legislation and is applicable as of 22 December 2020.

Law of 15 December 2020 should apply to all postings which were still in place on 22 December 2020, not only to those starting as of 22 December 2020.

Remuneration of posted workers

Minimum wage set at national level

Luxembourg legislation provides for a minimum wage requirement.

As from October 2021, the minimum wage applicable was set at EUR 2,256.95 per month. However, this is updated periodically, with no specific rule as to how often the update takes place. The minimum wage is determined as a fixed amount, and it depends on the worker's age and skills.

Age	Skill	Minimum wage (EUR)
15-16	Blue collar	1,692.72 (75% of the standard minimum wage)
17-18	Blue collar	1,805.56 (80% of the standard minimum wage)
Over 18	Blue collar	2,256.95 (100% of the standard minimum wage)
Over 18	Highly skilled	2,708.35 (120% of the standard minimum wage)

Minimum wage set at collective bargaining agreement level

Luxembourg has collective bargaining agreements which could either be applicable at unit level (for the companies who have signed the agreement) or with general obligation (i.e. applicable for all employees and employers of the industry concerned). Minimum wage rates can be established by the applicable collective agreements however these amounts cannot be lower than the national minimum gross wage.

What can be included in the remuneration

Included in the remuneration

Basic salary/basic wage

Not included in the remuneration

Reimbursement of professional expenses

Housing

Meal costs

Overtime payments

Bonus

Special payments (Foreign service premium, Hardship premium, Country allowance, Assignment allowance, Cost of living allowance)

Per-diems

Mandatory registration of posted workers

Prior to the employee's start-date in Luxembourg, the following essential information for obtaining the social badge should be reported via the online platform e-Détachement:

01 Details of the posting employer and its effective representative

02 Details of the legal entity or individual, present in Luxembourg, who will be the contact for the ITM and other authorities

03 The start date and the expected duration of the posting, in accordance with the service contract

04 The place(s) of work in Luxembourg and the foreseeable duration of work

05 The surnames, first names, dates of birth, nationalities, and professions of the employee

06 The capacity in which the employee is engaged in the company and the profession or occupation which he/she usually has, as well as the activity to be performed during the posting to Luxembourg

07 A copy of the contract for the provision of services

08 A copy of the accommodation register

09 A copy of the document showing how the employer will cover travel, accommodation or food expenses

10 A copy of the document showing the amounts of the above expenses

To substantiate the information above, the following documents are required:

01 A copy of the labor supply contract, where applicable

02 The certificate of prior declaration (certificat de déclaration préalable) or the certificate replacing it issued by the Ministry of the Middle Class (Ministerie des classes Moyennes)

03 The original or certified copy of the A1 certificate

04 The VAT certificate issued by the VAT administration (Administration de l'enregistrement et des domaines)

05 A copy of the employment contract or a certificate of compliance with Directive 91/553 of 14 October 1991 on an employer's obligations to inform employees of the conditions applicable to the contract or employment relationship

06 In the case of a 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

07 The official documents attesting the professional qualifications of the workers

08 Payslips and proof of payment for the duration of the posting

09 A register indicating the beginning, end, and duration of each workday for the whole duration of posting

10 A copy of the stay permits or residence permit for each third-country worker posted to Luxembourg

11 A copy of the pre-employment medical certificate

Any subsequent changes, including the location or purpose of the work, should be reported to the ITM. The registration should be completed prior to the first workday in Luxembourg.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Yes
Posting from a non-EU country **	Yes

Luxembourg does not distinguish business travelers in its domestic law

Determining the 12month period

The 12 month period defined by Directive 2018/957 is counted as of December 22nd,2020. For assignments which were in progress on the implementation date of the Directive, the 12 months period should be counted starting with this date, the previous period should not be considered.

If the posting exceeds the 12 months or 18 months, the posted worker would be subject to all the Luxembourg rules on working conditions (including those laid down in collective agreements) and not only the core rules.

Where the posted worker replaces another posted who fulfils the same type of activity in the same place, the 12 months period is determined by totalizing the posting periods of each employee.

Documents and legal representation

To allow employers to comply with the new law, the existing electronic platform (https://guichet.itm.lu/edetach/) has been improved and extended. This website is available in French, German, and English. The registration should be completed prior to the first workday in Luxembourg.

Luxembourg law provides for the posting entity to indicate a legal representative in Luxembourg to establish contact with the Luxembourg authorities. According to the law, if this entity has no legal representative in Luxembourg, one of the employees posted to Luxembourg should be designated as a contact person with the Luxembourg authorities.

Appointing a representative is mandatory however this representative is only a reference for the authorities in order to collect information. The representative could be anyone in Luxembourg during the period of the posting.

In the case of a audit, the responsibility is borne both by the posting company and the receiving company as the receiving company has an obligation to communicate and inform while the posting company has the obligation of complying with all the provisions.

Documents have to be retained up to 10 years due to Labor Audits. All documents must be translated into French or German.

Penalties for non-compliance

According to the law, the Luxembourg authorities may issue fines of between EUR 1,000 and EUR 5,000 for infringements of the provisions related to the posting of workers (including those related to the core rules).

The fine may be doubled if repeated offences are committed within a period of two years following the date of notification of the first fine. The fine applies per posted worker, with a cap of EUR 50,000.
The legal representative cannot be fined as he/she is only an intermediary. The fine is either payable by the sending company or to the receiving company.

Work from Anywhere

From an income tax perspective, the taxability in Luxemburg of an individual who works remotely from Luxembourg for his/her foreign employer starts with an analysis of the Double Tax Treaty concluded between Luxemburg and the home country of the worker.

A foreign employer has only the obligation to process a Luxembourg payroll only if a PE exists in Luxembourg. If no PE exist, there are two possibilities:

01 The due income tax is paid through the filing of the individual annual income tax return by the employee (form 100); or

02 The foreign employer opts on a voluntary basis to withhold the tax and pay it to the Luxembourg tax authorities while the employee will file the individual annual tax return (form 100).

If voluntary wage tax is withheld, the employer has the obligation to register in Luxembourg with the relevant authorities, prepare Luxembourg pay slips with withholding tax, and process monthly withholding payment.

From a social security perspective, if the employee becomes liable to social security contributions in Luxembourg (e.g. no certificate of coverage is available) the foreign employer will have to register with the Luxembourg social security authorities.

A Luxembourg shadow payroll needs to be operated to calculate the monthly social security contributions to be withheld from the employee's salary.

All employers must submit a monthly declaration of the gross salaries paid to their employees, and the exact number of hours worked, to the social security authorities. Every month, based on these salaries, the social security authorities calculate the social contributions due for each employee, and informs the employer of the total amount of social contributions to be paid. This amount includes both the employees' share of the social contributions and the employer's share of the social contributions.

The social contributions owed by employees are directly deducted from their wages by the employer, who is responsible for paying the entire social contributions bill in settlement of the monthly invoice received from the social security authorities.

The EU regulation provides that the practical implementation (transmission of data to the collection agency, transfer of contributions) is possible also for affiliated companies or the respective employee on behalf of the employer. However, this is not adhered to in practice.

Exceptional provisions concerning the Covid-19 crisis:

Luxembourg has signed agreements with the border countries specifying the tax treatment of cross-border workers in the context of the fight against the pandemic. These agreements provide that the days during which cross-border workers are required to work from home because of the health crisis are not considered as days worked in the country of residence.

It should be noted that the agreements between Luxembourg and France, Belgium and Germany respectively have been extended until 31 March 2022 (and will be automatically renewed until 30 June 2022 if neither party denounces the agreement).

Luxembourg has also agreed since the beginning of the health crisis with France, Belgium and Germany on exceptional arrangements not to take into account teleworking days related to the Covid-19 crisis in the determination of the social security legislation applicable to frontier workers. This agreement on social security affiliation has since been extended until 30 June 2022. Until that date the mandatory 25% threshold is suspended

Public sources of information

For public information on obligations of foreign entities assigning personnel to Luxembourg, you can visit this website (http://itm.lu/en/home.htmls.).

To allow employers to comply with the new law, the existing electronic platform (https://guichet.itm.lu/edetach/) has been improved and extended. This website is available in French, German, and English.

Malta

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Revised Directive 2018/957 was transposed into the Laws of Malta by means of Legal Notice 262 of 2020 which came into effect on 30 July 2020.

The aforementioned legal notice is also applicable with respect to existing postings which commenced prior to the 30 of July 2020.

Remuneration of posted workers

Minimum wage set at national level

Malta has a minimum wage set at national level; however, the minimum wage requirement is determined by the economic activity of the enterprise as stipulated in the applicable Wage Regulation Order and by the age of the employee.

Where no Wage Regulation Order applies, the level of the minimum wage effective as of January 2022 is as follows:

	2022
UNDER 17 YEARS	EUR 173.21 per week
AGED 17 YEARS	EUR 176.05 per week
AGED 18 AND OVER	EUR 182.83 per week

The minimum wage increases annually and is expected to change starting from 1 January of each year.

Minimum wage set through collective bargaining agreements

The Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta) provides for the possibility of collective bargaining agreements to be negotiated between an employer and one or more organizations of employees about conditions of employment.

These collective agreements include a wide range of matters including the possibility of negotiations in relation to salary scales and annual increments higher than those provided for by the national minimum wage.

Sectoral Wage Regulation Orders

Wage Regulation Orders regulate certain conditions of employment with respect to employees employed in certain specific industry sectors.

For illustrative purposes please see below the remuneration applicable for the following 5 industries:

01 Automotive, Telecom, IT, Oil&Gas – No specific Wage Regulation Order applies and therefore the minimum wage is as per the table above.

02 Construction:

	2022
UNDER 17 YEARS	EUR 174.10 per week
AGED 17 YEARS	EUR 176.68 per week
AGED 18 AND OVER	EUR 187.49 per week

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	Housing
	Transportation costs
	Meal costs
	Statutory bonuses
	Weekly allowances
	Cost of Living Adjustment

Working hours

In terms of legal working hours, the general rule is that the average working time, including overtime, must not exceed 48 hours for each seven-day period, spread over a reference period of seventeen weeks.

It is, however, possible to exceed this average provided that the employee consents in writing. Exceptions also apply in relation to certain types of employment covered by a particular Wage Regulation Order.

Mandatory registration of posted workers

In terms of administrative requirements, in the case of assignments to Malta, it is the responsibility of the employer posting the worker to Malta to notify the Department of Industrial and Employment Relations of the intention to post a worker to Malta, prior to the date of posting.

While carrying out work in Malta an employee who is posted from an EU/EEA country is not required to apply for a working license in Malta. In the case of a third country national (TCN) an employee who is employed by a posting undertaking that is established in an EU/EEA country, does not need to go through a working license procedure in Malta if the posted worker already holds a working license issued in the country where the posting undertaking is established.

However, the employee is still required to transfer the permit by liaising with the employment agency.

In any case of a posting to Malta, the undertaking posting the worker is required to notify the Director of Industrial and Employment Relations (DIER) of its intention to post a worker to Malta. A 'Notification of a Posted Worker to Malta' form must be prepared for this purpose.

The Notification Form should be accompanied by supporting documentation including a copy of the employee's passport bio page, a copy of the principal employment contract, a copy of the contract of posting and, in the case of a TCN posted employee from an EU/EEA country, also with a copy of his/her existing working license, and it should reach the Department of Industrial and Employment Relations prior to the commencement of the posting.

The undertaking making use of the services of the posted worker is required to keep a copy of this Notification Form and the requisite supporting documentation at the place of work for monitoring purposes by the DIER inspectors.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Yes
Posting from a non-EU country* *	No

**No definition available under the local legislation*
***Immigration registration requirements would be applicable.*

Determining the 12month period

As from 30 July 2020, where the effective duration of posting exceeds 12 months (or 18 months in cases where a motivated notification is submitted), all the applicable terms and conditions of employment of Malta, as the host Member State would apply.

The only two exceptions are dismissal and supplementary occupational retirement pension schemes. The aforementioned 12-month period is determined from the commencement of posting in Malta, including postings which commenced prior to 30 July 2020.

Where a foreign service provider replaces a posted worker by another posted worker, performing the same task at the same place, then the duration of the posting will be the cumulative duration of the posting periods of the concerned individual posted workers.

Documents and legal representation

Documents have to be retained throughout the period of posting, no statutory requirement exists for retention beyond this in terms of employment law, however insofar as the documents concerned would constitute supporting documents for the purpose of ascertaining deductible expenses claimed for Maltese tax purposes these would be required to be retained for 10 years (i.e., contracts of posting).

Penalties for non-compliance

For breaching the provisions of the Posting Workers in Malta regulations, a fine of between EUR 117 and EUR 1,165 may be imposed.

In the case of non-compliance with the minimum wage requirement, penalties between EUR 232.94 and EUR 2,329.37 may apply. In addition, the employer may be liable to pay the employee the amount due.

In cases of criminal conviction for certain offenses, the employer is subject to penalties as well as being required to pay the posted employee the amounts due to him/her. These offenses are:

01 Failing to pay the posted worker the minimum rates of pay, including overtime rates as applied to various classes of employees.

02 Unduly withholding back-payments, or refund of taxes or social security contributions from the posted worker's salary.

03 Withholding or deducting excessive costs for accommodation from the posted worker's salary.

Work from Anywhere

From a tax perspective, an individual is taxable in Malta from the first day of remote working as regards the employment income derived from the employment activity physically carried out in Malta, unless Malta's taxing rights are restricted under any applicable Double Taxation Treaty.

If tax liability is triggered, the payer is required to operate the payroll withholdings for tax and/or social security contributions and remit the same by statutory deadlines to the Commissioner for Revenue (CfR) in terms of the Final Settlement System (FSS) Rules. Penalties apply for failing to comply with the FSS Rules.

When it comes to the employee's annual tax compliance obligations, the individual may be tagged as "filer" or "non-filer" by the CfR. Should the individual be tagged as a filer, he/she is required to file the annual tax return and pay any outstanding tax liability

resulting therefrom by 30 June following the tax year end. Should the individual be tagged as "non-filer", there is no need for the employee to file the tax return by the statutory deadline, as the CfR will issue a tax statement evidencing the total income declared to the CfR through the tax withholding mechanisms, i.e., FSS. In such a case the employee would only be required to file a tax return should the information contained in such a tax statement be in any way incorrect or incomplete.

If an employee pursues an activity as an employed person in Malta in respect of an insurable employment, social security liability is triggered in Malta, unless the social security contributions are not due in Malta based on specific agreements that Malta has with the other Country (e.g., A1 certificate).

The Employer is required to register for both tax and social security payments by obtaining the relevant Private Employer (PE) number to comply with the FSS Rules. The transfer of this obligation to the employee is not generally possible, unless an exemption from the obligation under the FSS Rules has to be approved by the Commissioner for Revenue in Malta - this is rarely granted in practice.

Public sources of information

Please refer to the following wage regulations (https://dier.gov.mt/en/Legislation/Pages/Wage-Regualtion-Orders.aspx)orders which are applicable to particular industries.

For information regarding obligations of foreign entities assigning personnel to Malta please visit this website (https://dier.gov.mt/en/Employment-Conditions/Posting%20of%20Workers%20in%20Malta/Pages/Information.aspx).

The Netherlands

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Both the Enforcement Directive and the PWD were transposed into the Netherlands legislation through the law "Wet arbeidsvoorwaarden gedetacheerde werknemers in de Europese Unie" or "WagwEU" and became effective as of 30 July 2020. A separate law deals with the mandatory minimum wage. On top of that, Collective Bargaining Agreements (BGA) may also contain minimum wage requirements. This survey discusses the headlines.

For the Netherlands, at least for the time being, the PWD provisions only apply if the posted worker's activity falls under the scope of a collectively binding CBA. If so, during the first 12 months only (or if extended up to 18 months) the "equal pay principle" applies (simply put: the same gross as that for a local employee) and, pending extensions, after that period the entire set of local employment provisions become applicable to the posted worker (with the exception of the company pension plan, the rules concerning dismissal and/or the rules concerning non-competition).

Remuneration of posted workers

Minimum wage at national level

The Netherlands has a gross minimum wage set at national level. The minimum wage is indexed every 6 months, on 1 January and 1 July. The minimum wage is determined based on the age of the employee. With effect from 1 July 2019 the age barrier for entitlement to the full minimum wage has been set at 21 years.

The level of the minimum wage is determined monthly, weekly and daily as per the table below. Amounts are excluding the statutory holiday allowance of 8% of the gross wage. As of March 2022, the levels are as follows:

Period	Employees aged 21 or over
Daily	EUR 79.62
Monthly	EUR 1,725.00
Hourly:	Depending on the regular hours worked in the applicable branch a different hourly wage applies:
36 hours	EUR 11.06
38 hours	EUR 10.48
40 hours	EUR 9.96

** Employees under the age of 21 are entitled to a lower minimum wage.*

A new provision applies starting January 2016 according to which the minimum wage should be paid to a bank account.

Blue collar workers can only work in the Netherlands for the minimum wage mentioned above if they are EU/EEA or Swiss nationals. In general, special salaries, much higher than the minimum wage, apply to non-EU/ EEA highly skilled migrants who apply for residence work authorizations and for blue card holders.

Effective 1 January 2018 the minimum wage also applies to any work hours in addition to the regular working hours in the profession or industry unless

this work is paid as compensatory time-off.

Another important change effective since 1 January 2018 is that independent contractors or freelancers are covered by the scope of the law and should thus also be paid at least the minimum wage applying at national level.

Minimum wage set through collective bargaining agreements

The applicable number of working hours can also be determined in a collective bargaining agreement (if applicable). CBAs may apply to certain industries and sometimes have been made collectively binding, meaning that if a company was not a formal party to such a CBA, its conditions nevertheless apply.

Finding out if and precisely which CBA applies can often be difficult. CBA's can also contain different agreements with respect to the applicable minimum wage where this may never be less than the statutory minimum wage as per the above table.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	Per-diems
	Housing
Compensation for overtime	Transportation costs
	Bonuses
Additional payments for e.g. irregular working hours, night shifts	Holiday allowances
Structural (weekly or monthly) payments based on the employee's turnover (so the amount can vary but the payments themselves should not be incidental)	Payments for special events, entitlements to receive payments in the future, reimbursements which are supposed to cover necessary expenses as a result of the employment, special reimbursements for wage-earners and heads of families, year-end payments, employer's contributions to health insurance
	Profit sharing payments
	Meal costs

Working hours

The law does not lay down how many hours there are in a full working week. There are usually 36, 38 or 40 hours in a full week, depending on the normal work hours in the profession. Therefore, the hourly minimum wage varies.

The maximum legal working schedule in the Netherlands is 12 hours per day or 60 hours per week.

Mandatory registration of posted workers

Further to the EU Enforcement Directive, the WagwEU contains the checks which the authorities may apply to determine if an employee is temporarily assigned to work in the Netherlands and, in this way, falls under the scope of this act.

Examples of these checks are: the duration and start-date, whether the employee will return, whether he/she normally works in the home country, the nature of the activities performed in the host country, whether or not the sending company pays for housing in the host country, earlier time spent in the Netherlands, proof of continuation of the home country social security, from where and how regularly the services are managed, who pays etc. To allow the authorities to carry out these checks, assignments should be registered prior to their start.

To help employers comply with the legislation a central website (https://english.postedworkers.nl/) has been launched in English, German and Dutch, via which the sending company should register the assignee, and which shows all the relevant conditions for the sending company to register.

The website also links to the online reporting tool through which the information should be submitted by the sending company. While the sending company must submit the notification, the receiving company should in turn verify if the sending company has complied with its reporting obligation. This official check must be made by the receiving company within five days of the start of the work using the same online reporting tool.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	No
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	No

** Business travellers – Business travellers are exempted from having to register when they travel to the Netherlands for the purpose of attending business meetings or taking out contracts provided that the duration of their stay does not exceed 13 weeks within a 52 week timeframe. Other exemptions are also provided by the Dutch legislation.*

*** The Netherlands does not have a registration requirement in respect of postings from non-EU countries under the posting legislation, however immigration registration requirements apply. Individuals subject to immigration requirements will be automatically registered for the Directive as well.*

Determining the 12 month period

The 12 months' period during which only the equal pay principle applies (provided that the assignee's work falls under the scope of a collectively binding CBA), is calculated as the difference between the assignment start- and end-date.

This applies for both full- and part-time assignments. In other words, for instance commuters (who are not 100% assigned to the Netherlands and who return frequently), the 12 month period is not calculated based on their Dutch working days but instead by simply looking at their assignment start- and end-date.

The 12 months' period can easily be extended to 18 months unless it was known right from the start that the assignment would last more than 12 months anyhow.

Documents and legal representation

WagwEU requires the sending company to have (either in hardcopy or electronically) the following information available at the employee's place of work:

- the contract of employment,
- documents showing the number of hours worked,
- copy/ copies of payslip(s),

- proof of payment of social security contributions (the A1 social security certificate of coverage),
- proof of the identity of the sending and receiving companies,
- the assignee and the person responsible for paying the assignee's wage and proof showing that the assignee's salary has been paid.

Upon the authorities' request, the sending company is responsible for providing this information after or during the assignment within a reasonable timeframe. Documents should be in Dutch, English, French or German, however depending on the case a sworn translation may be asked for

Documents need to be kept stored for five years after termination of the assignment. As part of WagwEU the sending company is required to appoint a contact person in the Netherlands to act as a liaison with the authorities. The assignee can act as the contact person as well.

Penalties for non-compliance

The penalties for registering/ not registering on time an assignment are linked to the number of workers and vary from EUR 1,500 if there are less than 10 posted workers up to EUR 4,500 in the case of 20 posted workers or more. These penalties can be imposed on both the sending and the receiving company. Failing to check the notification by the receiving company may lead to a EUR 1,500 fine. Furthermore, fines may be lowered or raised depending on the frequency of the violation and its severity.

The Dutch authorities are very strict in enforcing the employer's obligation to pay staff according to the Minimum Wage Act. This is audited in several ways, for instance by the authorities checking the central payment system (SUWI-net) or by inspections on site by the Labor Inspectorate.

Furthermore, construction sites must maintain a strict gate administration which is very often checked as well.

The authorities do not impose penalties when a company violates the PWD-provisions. Instead this is left for the company's & trade unions to resolve (remember that for the Netherlands the PWD provisions only apply for collectively binding CBAs so there are always unions involved).

Work from Anywhere

In principle there is no "de minimis" period under which a remote worker would not trigger any tax liability. However if a double tax treaty is applicable, the 183 days rule for non-resident taxpayers may avoid taxation of employment income in the Netherlands (provided all other conditions are cumulatively met). Residence is determined based on facts and circumstances in the Netherlands.

The responsibility regarding who has the obligation to declare and pay the tax depends. In practice, a lot of foreign employers choose to operate a Dutch payroll to withhold wage tax (and/or Dutch social security), even if there is no formal obligation in this regard.
In terms of social security, there is no "de minimis" period under which a remote worker would not trigger any social security liability. However, if an A1/certificate of coverage can be made available, no Dutch social security is applicable.

The responsibility for declaring the social security contributions depends. In practice a lot of foreign employers choose to operate a Dutch payroll to withhold and pay Dutch social security (and or Dutch wage tax), even in cases where there is formally no obligation. In practice, it is not very common for the employee himself/ herself to register as it would imply a very trustful relationship between the employee and the employer given that the employee needs to submit all payments while the employer remains liable for the employer's contributions. Usually, a payroll is set up and run.

Public sources of information

There are many different collective labor agreements in the Netherlands. The following website has a collective labor agreement search function, which might be useful. This can be accessed here (https://www.fnv.nl/sector-en-cao/alle-caos/).

The posted worker information webpage with link to the online reporting tool can be accessed here (https://english.postedworkers.nl/).

Norway

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The Enforcement Directive was implemented in the Norwegian Working Environment Act and the regulation concerning posted workers as of 1 July 2017.

Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers has not yet been implemented in Norway. The EEA joint committee formally decided to adopt Directive 2018/957 on 5 February 2022, making it also applicable to the EFTA states. The legislative process is however ongoing on a national level and is currently pending implementation into Norwegian law by the Parliament.

The Norwegian government published a hearing in July 2021 regarding what legislative measures the revised Directive will have in Norway, and even though there are some significate changes, some of the more important aspects are already in effect in Norway. This includes among other things that the Norwegian Government does not plan to implement any other reporting requirements following the revised PWD, since there are already similar registration obligations with the tax authorities.

Remuneration of posted workers

Minimum wage at national level

Norway is one of the Nordic countries which does not have a statutory fixed minimum wage requirement in place.

Minimum wage set through collective bargaining agreements

Generally, remuneration is negotiated between the parties, either individually or collectively.

However, in certain industries or business sectors there are generally applicable collective bargaining agreements in place, which provides mandatory minimum wages for certain groups of employees. The following sectors have currently generally applicable CBAs and minimum wage requirements:

01 Construction

02 The maritime construction industry

03 Agriculture and horticulture

04 Cleaning workers

05 Fish processing enterprises

06 Electricians

07 Freight transport by road

08 Passenger transport by tour bus

09 Hotel, Restaurant and Catering.

The minimum wage can change at different times for different industries. However, generally, it changes annually, during spring. The minimum wage depends on education, experience etc.

Below you can find some examples of the current mandatory minimum pay in certain industries:

Industry	Qualifications	Mandatory minimum wage per hour
Building sites *	Skilled employees	NOK 220,00
	Unskilled employees	NOK 198,30
	Unskilled, min. 1 year work experience	NOK 206,50
Maritime construction/shipbuilding industry *	Skilled workers	NOK 189,39
	Semi-skilled worker	NOK 180,87
	Unskilled worker	NOK 172,44
	In addition various increments to wages apply	NOK 172,44
Agriculture and horticulture*	Unskilled employees	NOK 149,30
	Skilled worker	NOK 149,30 + NOK 13,00
	In addition various increments to wages apply	NOK 149,30
Cleaner*		NOK 196,04

**the employer should also pay 14.1 % in pension contribution. In addition to the salary, the employer has to offer an obligatory private pension scheme (special rules concerning this apply) to employees who are members of the Norwegian social security scheme. The contribution paid by the employer is tax free for the employee, but employer social security contributions are calculated on the pension contribution paid.*

In addition, most generally applicable collective bargaining agreements require the employer to cover expenses related to travel, board and lodging for travels within Norway.

Currently, in addition to the industries mentioned above, there are generally applicable collective bargaining agreements in place in the following industries: electro, fish processing enterprises, hotels, restaurants and catering, and the transport industry (both transport of freight and of persons).

It is important to determine whether the work is covered by an agreement which contains provisions on a minimum wage. Moreover, enterprises participating in public procurement will have a contractual obligation to apply minimum pay according to either a national applicable collective bargaining agreement or a generally applicable collective bargaining agreement. This should be assessed prior to submitting a tender.

What can be included in the remuneration

In terms of how the minimum wage is determined, wages is remuneration for labor. Allowances comes in addition to wages and should not be included in remuneration, but there may be exceptions.

Included in the remuneration

- Basic salary/basic wage per hour
- Some premiums may, subject to further assessment on a case-by-case basis, be included in the minimum wage if they are not meant to cover the employee's expenses. For instance, there are examples of cases where an assignment allowance has been accepted by the Norwegian Labour Inspectorate as included in the minimum wage, provided the allowance was not meant to cover the employee's expenses while posted.*
- Individual bonuses (e.g. based upon individual efforts)

Not included in the remuneration

- Per-diems
- Housing
- Transportation costs
- Meal costs
- Insurance and pensions schemes
- Generally applicable bonuses (e.g. to all employees)
- Overtime supplement and (if applicable) shift premiums are not included in the minimum wage and should be paid out in addition to the basic hourly wage.

** Please note that the regulatory/compliance risk with such arrangements is high. Before concluding that a premium may be included in the minimum wage following the Norwegian regulations, we recommend seeking legal assistance.*

Working hours

Mandatory normal working hours are maximum 9 hours a day and maximum 40 hours a week. Thus, most employees work 8 hours a day Monday-Friday. Shorter working hours may apply according to a generally applicable collective bargaining agreement or a national applicable collective bargaining agreement.

The working hours should be stated in the employment contract.

If the conditions are fulfilled the employer may apply average calculation of normal working hours. Average calculation of normal working hours means that the employees may work longer hours per day and week for a specific period, provided the extra hours put in are taken out in free time.

On average, the employee must not work more than the maximum normal working hours according to the legislation or the applicable collective bargaining agreement.

Before average calculation of working hours can be adopted, certain mandatory requirements must be followed in order for it to be valid. In some cases, average calculation of working hours may require consent from the Norwegian Labor Inspection Authority.

In addition, the Norwegian Annual Holiday Act applies.

Mandatory registration of posted workers

There is currently no registration requirement with the labor authorities or obligation to appoint a contact representative in Norway as a consequence of the Enforcement Directive. The Ministry of Labour and Social Affairs did not want to implement such arrangements at the time the Enforcement Directive was implemented, without conducting a more thorough assessment of the consequences of imposing such obligations. The Revised Posted Worker Directive has not yet been implemented in Norway, but the Ministry, in a public hearing, announced that they do not plan to implement additional registration schemes.

However, in terms of tax and administrative requirements, in the case of assignments to Norway, the employee must be registered with the Norwegian tax authorities on a specific form (RF-1198).

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends on the activity and if actual work is performed
Posting from a non-EU country**	Yes

Upon arrival in Norway, the foreign employees must attend an ID-check at a local office to be granted a Norwegian ID-number.

Documents and legal representation

Documentation such as overview of working hours and payslips must be available at the workplace and must be kept only during the period of posting. Such documentation must be available in either Norwegian, Swedish, Danish, or English. There is no legal requirement for the translation to be certified, however the authorities may request it.

Penalties for non-compliance

Breach of the mandatory provisions concerning the minimum wage in the industry sectors with generally applicable collective bargaining agreements may entail compliance/regulatory risk in relation to the Labor Authorities.

The Norwegian Labor Inspection Authority may impose sanctions in the form of administrative orders, enforcement fines or non-compliance penalties for severe breaches. The same applies for breaches of mandatory working hour provisions.

The maximum non-compliance penalty that may be issued by the Labor Inspection is 15 times the basic national insurance amount (15 G), currently approximately NOK 1500000.

Non-compliance with reporting employees on the form RF-1198 may entail a penalty of NOK 2300 for each employee.

Work from Anywhere

There is no minimum period under which a remote worker would trigger tax liability in Norway, and normally if the activity is considered as tax liable according to the Norwegian domestic tax act, the activity would be considered tax liable from first day of work.

For all tax liable activities, the foreign employer must register in Norway, report salary monthly to the Norwegian tax authorities, perform withholdings based on the employee's tax card, establish a withholding account used to carry the withholdings, pay withholdings to the tax authorities bi-monthly and produce monthly pay slips and a yearly overview of payments.

Regarding social security contributions, no minimum period under which a remote worker would trigger social security liability in Norway applies. To be exempt from Norwegian employer and employee social security contributions, an A1/ Certificate of Coverage must be obtained and submitted to the Norwegian social security authorities (NAV).

The obligation to register and pay the social security contributions belongs to the employer. This obligation is not transferable to the employee.

Public sources of information

Several government agencies have cooperated to launch a website called https://www.workinnorway.no/en/Home. This website contains some relevant information with regard to working and/or doing business in Norway.

The Ministry of Labour and Social Affairs can be accessed at this webpage. (https://www.regjeringen.no/en/dep/asd/id165/)

The Norwegian Labour Inspection Authority also has a website (https://arbeidstilsynet.no/en/) which contains relevant information regarding minimum wage requirements in various industries, working hour regulations and safety and health issues at the workplace.

Poland

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

On 20 August 2020, the Act of 24 July 2020, amending the Act on the posting of workers in the framework of the provision of services and certain other acts incorporating into the Polish law the provisions of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, was published in the Polish Journal of Laws (Dziennik Ustaw).

Most of the provisions entered into force 14 days after the Act's publication and apply to the postings that started before it was implemented (e.g. when calculating the 12 or 18 month period for changing the labor code provisions).

Remuneration of posted workers

A posted worker should be remunerated on the same terms as the comparable permanent workers in the host state ("equal pay for equal work").

The requirement of “equal pay for equal work” is associated with the obligation on the member states to provide information on remuneration as laid down by laws, industry, and regional collective agreements, and with the possibility of verifying market benchmarks by employers.

Poland has only set a minimum wage therefore salary levels that would be in line with the equal pay principle need to be established based on relevant benchmarks.

Minimum wage set at national level

Poland has a minimum wage set at national level.

The level of the minimum wage is usually published in September and is applicable from 1 January of the following year. The minimum wage is a fixed amount determined based on the increase in the price of goods.

As from January 2022 the level of the minimum wage is PLN 3,010 (approximately EUR 660) fixed for both blue collar workers and highly skilled workers, corresponding to full time employment, based on an employment contract only. For civil law-based contracts the minimum wage equals PLN 19.60 per working hour (approximately EUR 4.29).

Minimum wage set through collective bargaining agreements

Poland does not have collective bargaining agreements with general applicability.

Given the above, in Poland the minimum wage is set on a national level and does not differ from industry to industry. Setting a remuneration level for a certain industry will not be precise as the remuneration levels will vary depending on the position of the employee – e.g. blue vs white collar workers. Thus, the remuneration applicable for all industries is the minimum wage set at national level.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	Overtime payments
Seniority allowance	Housing
Bonuses	Transportation costs
Holiday payments	Meal costs
Special payments (Foreign service premium, Hardship premium, Country allowance, Assignment allowance, Cost of Living allowance)	Per-diems, severance payment, night shift payment, social funds payments

Working hours

The maximum legal working hours in Poland are 8 hours per day, or the equivalent of 40 hours per week.

Mandatory registration of posted workers

The Polish Seconded Persons Act sets a requirement for foreign employers to appoint a person (who should stay in Poland during the employees' posting period) authorized to represent the foreign company in contacts with the Polish Labor Inspectorate.

An employer posting an employee to Poland, must submit to the Polish Labor Inspectorate a statement containing the information necessary to check the actual situation at the workplace. The foreign employer is required to meet these obligations (filing the declaration and nominating a contact person) on the first day the employee works in Poland at the latest.

The Polish Labor Inspectorate should be notified of any change to the information contained in the statement no later than within 7 working days of the date of the change.
Statements and information on procedures can be found on the website (https://bit.ly/3A94zRi)of the Polish Labor Inspectorate.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers	Depends. As a rule, there is no obligation to register business travelers. However, in the case of intra-company postings, even for short periods of time or in cases when the individual provides services based on a service agreements concluded between companies, they might be required to register, even if they will spend only a few days in Poland. In general, a business trip is based on the fact that it takes place: 1) outside the regular place where the employer is located or outside the place of work, 2) at the employer's request, 3) in order to perform specific tasks set by the employer. All of the above features must be fulfilled jointly, the absence of one of them excludes categorizing the work performed by the employee as a business trip.
Posting from a non-EU country*	Yes

**Same as for EU postings*

Determining the 12 month period

The period from the start of the posting will be considered even if prior to 30 July 2020. The duration of the posting will also cover the period for which the posted worker is replaced by another posted worker performing the same task at the same place.

Documents and legal representation

Foreign employers posting employees to Poland in the framework of the provision of transnational services, are required to hold and keep (during the whole period of assignment) copies (in electronic format or hardcopy) in an accessible and easy to identify place in Poland, of the following documentation:

01 The employment contract of a posted employee or other equivalent document certifying employment conditions,

02 The working time of a posted worker indicating the commencement and termination of work and the number of hours worked on a given day,

03 Documents specifying the remuneration of a posted worker along with the amount of deductions made in accordance with the applicable law and proof of transferring the remuneration to the employee.

During the period of assignment, the employer posting an employee to Poland is required to make the above documentation available at the request of the Polish Labor Inspectorate, together with the appropriate translation into Polish, no later than within 5 working days from the date of receiving the request.

The Polish Seconded Persons Act imposes the requirement on foreign employers to appoint a legal representative (who should stay in Poland during the employees' posting period) authorized to represent the foreign company in contacts with the Polish Labor Inspectorate. The legal representative bears the full responsibility in case of a labor audit.

Such person is authorized to:

01 represent the foreign company in contacts with the Polish Labor Inspectorate,

02 send and receive documents or notifications.

The employer must be able to provide the documents upon a request of the Authorities within 2 years after the termination of the assignment. Within 2 years after the end of assignment, the deadline for providing the documentation at the request of the Polish Labor Inspectorate, is 15 working days from the date of the request.

The documents should be available in the original language accompanied by a Polish translation. A certified translation may be requested by the authorities.

Penalties for non-compliance

Penalties of between PLN 1,000 and PLN 30,000 (approx. 200 – 6,500 EUR) can be imposed for multiple offenses against the regulations, including:

01 Not appointing a legal representative,

02 Not registering or late registration of posted workers,

03 Not informing the Polish Labor Inspectorate about any changes that may occur concerning the posting of workers,

04 Not keeping the documents for the required period in case of inspection,

05 Not sharing the documents with the Polish Labor Inspectorate when requested,

06 Not providing the Polish Labor Inspectorate with the required documents within two years after the end date of the assignment.

The penalties are imposed on the employer and there are no specific fines for each of the offenses listed above.

Work from Anywhere

From a tax perspective, an individual who is working in Poland based on a foreign employment contract he may be subject to taxation in Poland if:

01 He/she is a Polish tax resident – in this case taxation starts from the first day of his/her work in Poland and taxes are due from his Polish and third country working days, or

02 Once he/she loses treaty protection (in the majority of the cases after 183 days, nevertheless the specific tax treaty should be analyzed).

The obligation to calculate and pay monthly tax prepayments, as well as to file annual tax declaration to reconcile monthly tax prepayments is the obligation of the individual rather than of the foreign employer.

Regarding the social security contributions, taking into consideration both international and internal Polish provisions three scenarios should be considered:

01 An individual employed by an employer from the EU, EEA or Switzerland - generally exempted from Polish social security provided that they can be seen by their home country social security system as "posted" employees

02 An individual employed by an employer from a country with which Poland has concluded a totalization agreement (e.g. USA, Canada, Australia or Ukraine)

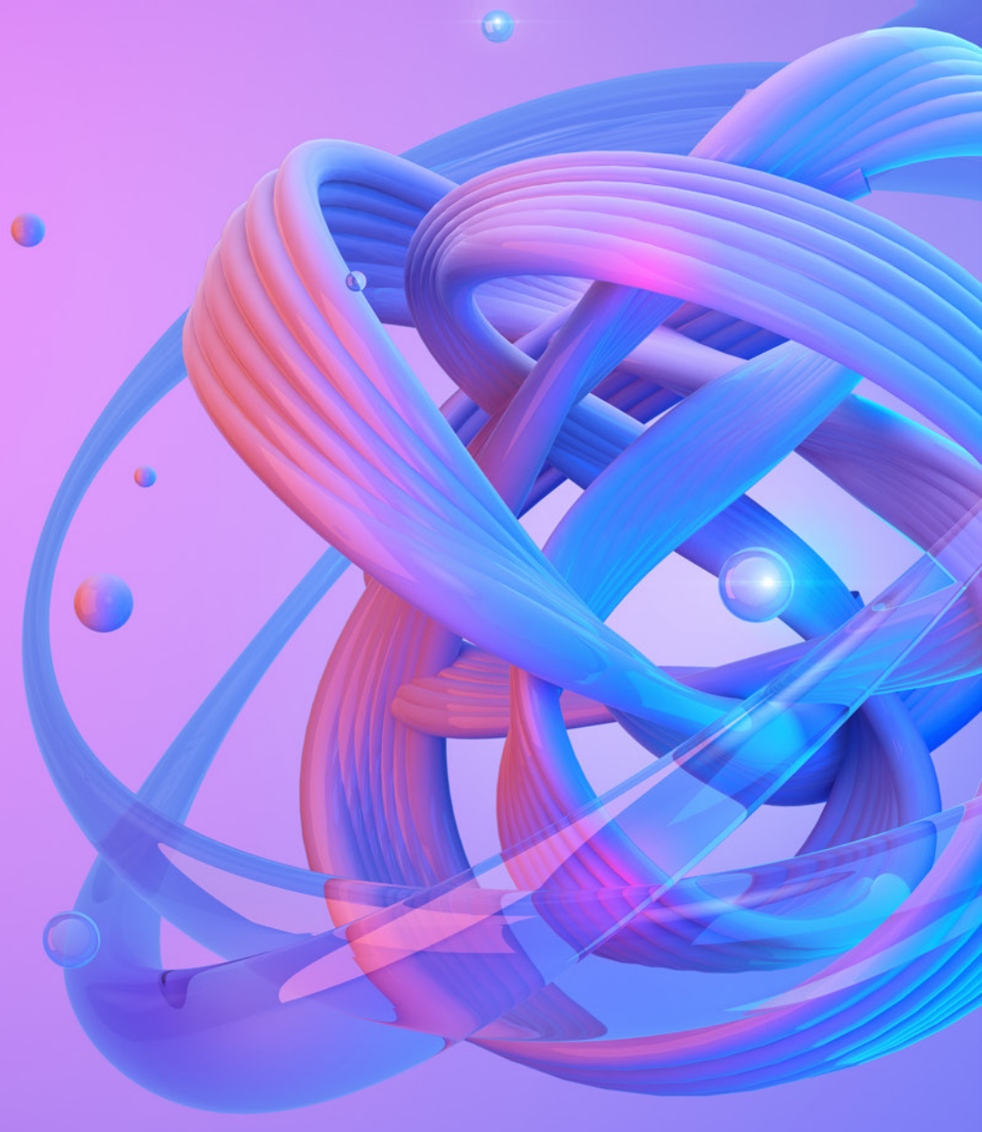
03 An individual employed by an employer from a third country - If individuals are employed by a third country employer, then based on the interpretation of the Polish social security authority, they do not have a social security obligation in Poland.

If in a given scenario the individual cannot be exempt from social security contributions in Poland, the employer has the obligation to register with the Polish social security system, calculate and pay monthly social security contributions starting from day one of the work performed by the employee in Poland.

EU, EEA, or Swiss employers may transfer compliance obligations to the employee based on a mutual agreement. Such arrangements are however not possible if the employer is in a bilateral agreement country.

Public sources of information

The official legislation regulating minimum wage requirements plus implementing acts that are being issued each year (this can be accessed here: Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę (Dz. U. z 2018 r. poz. 2177 oraz z 2019 r. poz. 1564).



Portugal

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Decree Law no. 101-E/2020 of 7 December transposed Directive 2018/957 concerning the posting of workers into Portuguese legislation.

This legislation was published in the Portuguese Official Journal on December 7, 2020, entering in force as of 8 December 2020.

Remuneration of posted workers

Minimum wage at national level

Portugal has a minimum wage requirement which is updated as needed by the economic environment, with no specific timetable.

The current level of the minimum wage, applicable from January 2022, is EUR 705 per month. Previously, as from January 2021, the minimum wage was set at EUR 665 per month.

The minimum wage does not depend on occupation, industry, or age. The minimum wage is also applicable to all employees irrespective of their professional background (e.g., blue collar workers, highly skilled workers or other categories).

Minimum wage set through collective bargaining agreements

CBAs are admitted in Portugal, which may make specific provisions applicable for a sector/company.

Portugal does not have collective bargaining agreements with general applicability.

Given the above, in Portugal the minimum wage is set on a national level and does not differ from industry to industry, thus the remuneration applicable for all industries is the minimum wage set at national level.

What can be included in the remuneration

Included in the remuneration

Base salary/base wage

Not included in the remuneration

Per-diems
Overtime payments
Housing
Transportation costs
Bonuses
Special payments (Foreign Service premium, Hardship premium, Country allowance, Assignment allowance, Cost of Living allowance)
Any other items that are deemed as employment income, and not included above

Working hours

The maximum legal working time in Portugal is 8 hours per day and 40 hours per week.

Mandatory registration of posted workers

The employer is required to communicate the posting to the Authority for Working Conditions (ACT) with certain particulars, i.e. the identity of the service provider, the number and identification of the workers to be highlighted, identification of the liaison person, the estimated duration and estimated dates for the start and end of the posting, the address of the place of work, as well as the nature of the services justifying the posting. To do this, the employer must use the form available at this link (http://www.act.gov.pt/(pt-PT)/CentroInformacao/DestacamentoTrabalhadores/Destacamentodetrabalhadores/Documents/Formulario_destacamentoV2.pdf.).

The communication should be sent to the email: destacamento@act.gov.pt

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Please see the note below
Extension of a posting	Please see the note below
Shortening of a posting	Please see the note below
Posting over 12 months	Please see the note below
Business travelers*	Please see the note below
Posting from a non-EU country	Please see the note below

** In Portugal, there is no legal definition of "Business travelers". A Business Traveler is understood as being an individual that performs his activity in a foreign country for a short period of time (for example, a couple of days) to attend to temporary situations (e.g. meetings, conventions, etc.).*

Note: Due to regulatory provisions, KPMG Portugal cannot provide any legal/labor/immigration services. Therefore, the issues related to the PWD cannot be addressed by KPMG Portugal.

Documents and legal representation

The employer is required to keep copies, on paper or in electronic form of: the employment contract, or written document with information on the relevant aspects of the employment contract provided for in the Labor Code; receipts of remuneration; records of working times indicating the start, end and duration of daily working time and proof of the payment of the remuneration.

The employer is required to submit, up to one year after the end of the secondment, the documents referred to in the previous paragraph when notified by the competent authority.

The foreign company must appoint a person to liaise with the competent authority and to send and receive documents and information and, where appropriate, to liaise with the social partners on collective bargaining.

The declaration and the copies, when requested by the authorities, should be presented in Portuguese, or accompanied by a certified translation in accordance with the law.

The copies should be kept for the entire period of secondment and be available in an accessible and clearly identified place on Portuguese territory, i.e: at the place of employment indicated in the declaration, at the construction site where operations are carried out in the vehicle with which the service is provided.

Documents must be kept 1 year after the termination of the assignment.

Penalties for non-compliance

If the service provider fails to declare the posted worker, if the information transmitted is incorrect and/ or incomplete, or if the purchaser and the contractor fail to carry out the appropriate checks on the foreign service provider, they are subject to an administrative fine of maximum 9.690 EUR per posted worker.

If the declaration does not comply with the form and is not sent to the email above, the service provider is subject to an administrative fine of maximum 1.530 EUR per posted worker. Failure to comply with the posting of workers obligations, can also lead to penalties such as administrative fines.

The contractor and the employer are jointly responsible for any net remuneration in arrears corresponding to the minimum legal, conventional, or guaranteed labor contract remuneration, due to the posted employee.

Work from Anywhere

From a tax perspective, under the Portuguese internal rules, no minimum period under which a "remote" worker would not trigger any tax liability exists.

Assuming that the employee will be deemed as tax non-resident in Portugal and Portugal has the right to tax the income received for the activity performed under the applicable DTT, the employment income for the activity performed will be deemed as a Portuguese sourced income, thus Portuguese income tax will be due for such income. In this respect, a Portuguese income tax return will need to be submitted.

As a general rule, companies in Portugal are required to comply with several registry, withholding and reporting obligations. However, when it comes to foreign entities with no presence or permanent establishment in Portugal, such obligations are not required. Even if the tax liability from the employee's perspective exists, this will be assessed in final terms further to the annual tax return filed by the individual.

From a social security perspective, provided a Certificate of Coverage (A1) is obtained from the departure country, no social security contributions will be due in Portugal.

Otherwise, contributions for Portuguese Social Security will be due. For this purpose, the employer will need to proceed with its registration for Portuguese social security purposes, as well as with the individual's registration as an employee of a foreign company.

Under the rules within the EU agreements, if the employer does not have an entity or PE in Portugal, both the employer and the employee may agree that the latter complies, on the employer's behalf, with the respective monthly obligations related to the reporting for social security purposes, and to the payment of the social security contributions due.

Public sources of information

From a tax perspective, the following websites can be useful:
Portuguese Tax authorities (Portuguese tax system):
http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Pages/portuguese-tax-system.aspx
Social Security Authorities website:
http://www.seg-social.pt/inicio

Romania

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Law 172/2020 amending Law no. 16/2017, Romania's law on the posting of employees providing transnational services, transposes Directive 2018/957 into Romanian legislation.

Law 172/2020 was published in the Official Journal of Romania on 13 August 2020 and its provisions are applicable as of 16 August 2020.

Law 172/2020 applies to all postings which were still in place as 16 August 2020, not only to those starting as from 16 August 2020.

Remuneration of posted workers

Minimum wage at national level

Starting from 1 January 2022, there are two levels of minimum wage in Romania:

01 2,550 RON per month – standard minimum wage;

02 3,000 RON per month – minimum wage for the construction sector.

Minimum wage set through collective bargaining agreements

Romania does not have a collective bargaining agreement with general applicability, however there may be collective bargaining agreements in place at unit level (having effect only for the companies which apply them). Minimum wage rates are also established by the applicable collective agreements. However these amounts cannot be lower than the national minimum gross wage.

Given the above the remuneration applicable for all industries is RON 2.550 depending on education and experience, except for the construction industry where the applicable remuneration is RON 3.000.

What can be included in the remuneration

Under the Romanian labor code, wages are defined as basic wages, allowances, benefits as well as other additional payments.

At the same time the base wages cannot be lower than the national minimum wage. It is thus considered, that the Romanian minimum wage cannot include cost of living allowances, Foreign Service premiums, bonuses or per – diems.

Included in the remuneration	Not included in the remuneration
Basic salary/ basic wage	Per-diems
Overtime payments	Housing
Bonuses	Transportation costs
	Meal costs
	Special payments (Foreign service premium, Hardship premium, Country allowance, Assignment allowance)

Working hours

In Romania the standard working hours are 8 hours per day and 40 hours per week.

Mandatory registration of posted workers

Undertakings established in a Member State other than Romania or in the Swiss Confederation which post employees to Romania are required to send a declaration on the assignment of employees to the local labor inspectorate in whose area the activity is to be carried out, the day before commencing the activity, at the latest.

Any change in the initial notification should be notified to the Romanian labor authorities through filing an updated notification at the latest in the day the change occurred.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	Depends
Posting from a non-EU country**	No

** Romanian legislation does not provide a definition of business travelers. Depending on the purpose of the travel and nature of the activities performed in Romania, such individuals may not qualify as posted workers within the meaning of the Romanian legislation. (e.g. employees present in Romania for training purposes) and thus they may not be subject to the registration requirements applicable to posted workers.*

*** Romania does not have a registration requirement in respect of postings from non-EU countries under the posting legislation, however immigration registration requirements may be necessary under the immigration legislation*

Determining the 12 month period

The 12 month period defined by Directive 2018/957 is counted as of 16 August 2020. For assignments which were in progress on the implementation date of the Directive, the 12 month period is counted starting with this date, the previous period is not considered.

This does not mean that the posting is limited to a period of 12 or 18 months or that after this period a local employment contract must be concluded in Romania. The posted worker will still be seconded to Romania, but will have certain additional rights specific to national legislation in Romania.

Where the posted worker replaces another posted worker who fulfils the same type of activity in the same place, the 12 month period is determined by totalizing the posting periods of each employee.

The form of the notification through which the 12-month period can be extended to 18 months was published by the Romanian authorities in June 2021.

Documents and legal representation

In case of a labor audit, the home company has to make available the following documents, (and possibly others beside):

01 documents evidencing the total remuneration granted to the posted worker, evidencing separately the posting allowance;

02 assignment related expenses and details of how these are reimbursed;

03 employment contract;

04 proof of payment of the salary income;

05 A1 contract;

06 Intercompany agreement;

A translation into the Romanian language has to be available. The home company is required to keep the documents 3 years after termination of the posting.

Romanian law provides for the posting entity to indicate a legal representative in Romania to establish contact with the Romanian authorities. According to the law, if this entity has no legal representative in Romania, one of the employees seconded to Romania should be designated as a contact person with the Romanian authorities.

Penalties for non-compliance

According to the law, the Romanian authorities may impose fines (i.e. RON 5,000 – RON 9,000:

01 Not submitting the informative form.

02 Not holding and making available to labor inspectors at their request legally required documents.

03 Not presenting a translation into Romanian of the documents requested.

04 Not fulfilling the requirement to designate a person to liaise with the appropriate national authorities and to send and receive documents and / or opinions, if appropriate.

05 Not presenting the documents required by the authorities after the termination of the secondment period, at the request of the Labor Inspectorate or of the local labor inspectorates, within a maximum of 20 working days from receipt of the request.

If the informative form is incomplete or has inaccurate information in the statement the authorities might assess fines between RON 3.000 – RON 5.000.

Additional fines between RON 10.000 – RON 20.000 may be imposed on Romanian employers for not fulfilling the obligation to inform the posted employee in writing with respect to certain information required by the legislation.

Also the authorities may change the social security law applicable and ultimately to suspend the seconding company's activity in Romania.

Work from Anywhere

An individual may become liable to Romanian income tax depending on his tax residence status the period of remote working.

Tax non-residents may be exempted from income tax in Romania if the conditions under the tax treaty concluded between Romania and the home country of the individual are fulfilled.

Most treaties define 3 conditions which must be met simultaneously: the individual spends less than 183 days in Romania during the period defined by the treaty, the salary income is not paid by/on behalf of a Romanian employer and the salary income is not borne by a permanent establishment or a fixed base which the employer has in Romania.

If one of these conditions is not met or if the individual is deemed a Romanian tax resident, he/she is liable to Romanian income tax as of

the beginning of remote working in Romania.

If the individual becomes liable to tax on the employment income received from abroad for activity performed in Romania, he will have the personal obligation to declare and pay the income tax monthly, by 25th of the month for the previous month. The foreign employer does not have any responsibility in Romania.

From a social security perspective, the remote worker may be exempt from Romanian social security contributions if the individual has an A1 certificate/certificate of coverage valid during the period of remote working from Romania.

Otherwise, an individual employed in another EU country/country with which Romania has a social security agreement is liable to Romanian social security contributions.

The obligation to declare employee and employer social security contributions rests with the foreign employer who must register in this respect with the Romanian authorities.

An alternative is for the remote worker to take over the obligation to declare and pay the social security contributions, provided an agreement is concluded between the individual and his employer.

A remote worker employed in a third country is liable to Romanian social security contributions if is considered taxpayer based on the Romanian legislation. In this case, it is the personal obligation of the individual to register, declare and pay social security contributions in Romania, including the contribution due by the employer (the foreign employer does not have any obligation in this respect).
In either case, social security contributions are declared monthly, by 25th of the month for the previous month.

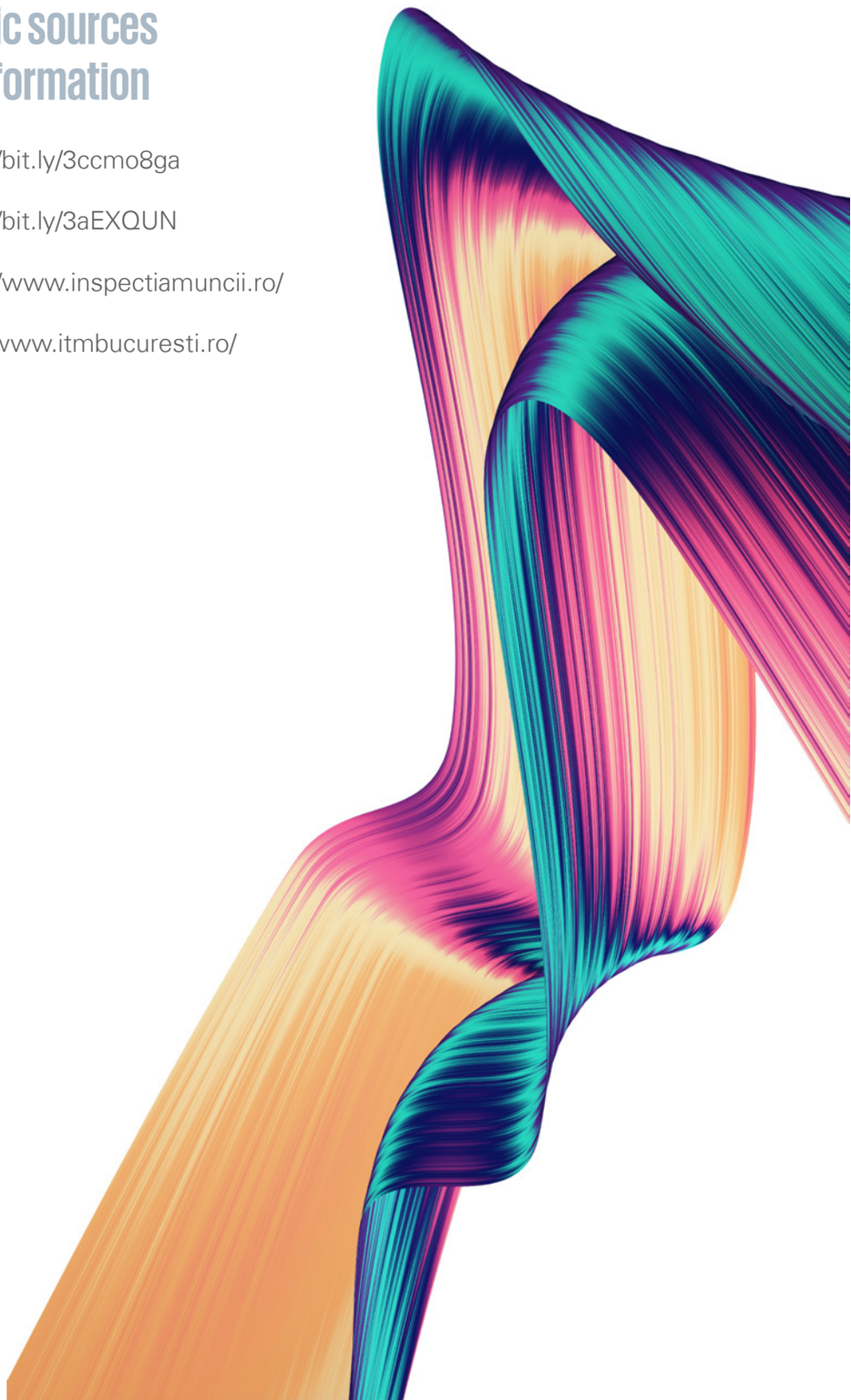
Public sources of information

https://bit.ly/3ccmo8ga

https://bit.ly/3aEXQUN

https://www.inspectiamuncii.ro/

http://www.itmbucuresti.ro/



Slovakia

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The National Council of the Slovak Republic approved an amendment to the Labor Code effective as of 30 July 2020.

Under the transitional provisions, the duration of postings started before 30 July 2020 will be considered as having started on 30 July 2020.

Remuneration of posted workers

Minimum wage set at national level

Slovakia's minimum wage is determined annually through government regulation. The Slovak government passes the regulation in October each year and it enters into force starting from 1 January of the following year.

The minimum wage is determined as a fixed, monthly amount, for employees who are paid monthly and have a regular weekly working time. The minimum wage must be paid out to every employee in an employment relationship.
The lowest minimum monthly wage in Slovakia in 2022 is EUR 646 and for employees where an hourly rate is applicable, the minimum hourly wage was EUR 3.71 in 2021. The minimum wage increases depending on the difficulty and work position, as described below.

Minimum wage set through collective bargaining agreements

Employees whose remuneration terms are not regulated in a collective bargaining agreement are eligible to receive at least the minimum wage.
Sector wide, so called higher level collective bargaining agreements can be accessed on the webpage of the Ministry of Labor of the Slovak Republic via the following link (in Slovak only):

https://www.employment.gov.sk/sk/praca-zamestnanost/vztah-zamestnanca-zamestnavatela/kolektivne-pracovnopravne-vztahy/kolektivne-zmluvy/zoznam-kolektivnych-zmluv-vyssieho-stupna/

Higher level collective bargaining agreements are concluded between country-wide representative(s) of employees and representative(s) of employers for a specific sector or sectors.

These collective agreements should guarantee more favourable or comparable rights of employees than the statutory minimum set out in the Labour Code.

Additionally, there are also collective bargaining agreements concluded between the employers and trade unions, which apply only to the specific company.

Minimum wages, however, do not apply to certain categories, e.g. public servants, civil servants, members of the armed forces, customs officers, fire fighters, judges, and prosecutors.

The level of the minimum wage does not depend on the occupation, but on the type of work (i.e. complexity, responsibility and level of work difficulty). Each position must be classified in one of the six levels of work difficulty.

The minimum wage for each level of work difficulty is determined by multiplying the minimum wage by the index stated for the relevant level of work difficulty. Below you can find the six levels of work difficulty:

1. EUR 646per month / EUR 3,713 per hour:

Preparatory or handling works according to exact procedures and instructions, assistance, etc.

2. EUR 762 per month / EUR 4,379 per hour:

- Purposeful service repetitive work or professional repetitive controllable work according to set procedures or operating regimes or work connected with material responsibility;
- Performance of simple craft work; performance of sanitation work in health care;
- Performance of repeated, controllable work of an administrative, economic administrative nature.

3. EUR 878 per month / EUR 5,046 per hour:

- Professional work or independent execution of less complicated tasks;
- Independent performance of individual creative craft work;
- Management or operative execution of the work of equipment or operating processes connected with higher intellectual exertion with possible responsibility for health and safety of other persons or for damage recoverable only with difficulty, etc.

4. EUR 994 per month / EUR 5,713 per hour:

- Independent execution of professional agendas or the performance of partial conceptual, systematic and methodical work connected with higher intellectual exertion;
- Provision of health care, expert activities in health care with responsibility for health of people;
- Management, organization or the coordination of processes or an extensive range of very complicated equipment with possible responsibility for lives and health of other persons, etc.

5. EUR 1 110 per month / EUR 6,379 per hour

- Performance of specialized systematic, conceptual, creative or methodical work with high intellectual exertion;
- Complete organization of the most complicated sections and agendas with determination of new procedures within the system; performance of expert and specialized activity in the relevant area of health care with responsibility for the health of people;
- Management, organization and coordination of very complicated processes and systems including selection and optimization of procedures, etc.

6. EUR 1 226 per month / EUR 7,046 per hour:

- Solution of creative tasks in an unusual way with unspecified outputs with a high rate of responsibility for damage with the broadest social consequences;
- Provision of specialized and certified activities in health care with responsibility for people's health and lives;
- Management, organization, and coordination of the most complicated systems with responsibility for unrecoverable material and moral damage with considerable demands on the capacity to solve complicated and conflictive situations usually connected with a general threat to the broadest group of persons.

As the minimum wage level depends on the level of work difficulty, the type of work must be taken into consideration. Highly skilled workers are generally classified in the fifth and sixth level of work difficulty.

For example, for blue collar workers the minimum wage is at least EUR 646 (EUR 623 during 2021) per month, while for highly skilled workers in the sixth level of work difficulty (e.g. workers with a blue card), the minimum wage is at least EUR 1 226 (EUR 1.203 during 2021) per month.

Given the above, considering that the minimum wage does not depend on the industry, but on the job position of the employee, there can be different minimum wage levels for blue collar workers and white-collar workers in the same industry.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Basic salary/ basic wage	Per-diems
Paid Holiday	Housing
Food allowance	Transportation costs
	Discharge benefit
	Contributions from a social fund
	Contributions to an employee´s life insurance
	Compensation for work standby and other

Working hours

In general, the maximum legal working time in Slovakia is 8 hours per day or 40 hours per week. Special rules apply for working hours of youth workers (under 18 years old), workers performing work in a high cancer risk environment and healthcare workers as well as for employees working in shifts.

Mandatory registration of posted workers

The notification obligation of the Assigning Employer should be fulfilled on the first day of assignment, at the latest. It can be submitted electronically (https://bit.ly/3IzmEdl) or in hardcopies.

Apart from the notification requirement, the commencement and termination of an assignment must be notified to the appropriate Labor Office through delivery of the Information Card by the recipient of services. The posted worker should also comply with residence obligations (Notification of stay and registration of residence, if applicable) to the Slovak Foreign Police. However, the extent of these obligations depends on the length of the assignment.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	No
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country**	No

** There is no strict definition of a business traveler in Slovak legislation. Generally, a business traveler exercises work on behalf of the employer and for its benefit, and work performance on the business trip is not the provision of service, but it is just a performance of duties according to the employment contract.*

*** Provided that an EU national employee is posted from a non-EU based company, there is no registration requirement. The case of a non-EU employee posted from a non-EU based company is generally not possible due to legislation limitations in Slovakia. In any case, posted worker registration by a non-EU company is not required.*

Determining the 12 month period

The First 12/18 months may be treated as a posting. Postings which started prior to 30 July 2020 will be treated as having started on 30 July 2020.

If an individual is posted for the purpose of replacing another posted worker, their joint length of assignment is considered as one assignment, i.e. after 12/18 months the Slovak legislation conditions must be applied.

Documents and legal representation

The Assigning Employer is required to notify the Slovak National Inspectorate on assignment of its employees to Slovakia.

Within the notification obligation, the Assigning Employee must provide the inspectorate in particular with its identification data, number of assigned employees, scope of services to be provided, duration of the assignment (commencement and termination), and place of performance of work by the Posted Employee. The same information can also be required from the Slovak employer as a recipient of services.

Apart from the notification obligation, the Assigning Employer is required to arrange for deposition of certain documentation (employment contract, evidence of work, time and salary paid) at the workplace and release them to the inspectorate upon its request.

Documents have to be kept for 2 years after the termination of the assignment. The employment contract and Letter of Assignment must be accompanied by at least an unofficial Slovak translation. Notification by the sending company and the A1 form can be in English.

The Assigning Employer must appoint its representative for delivery of documents. Such a person has to be present in Slovakia during the whole period of assignment. It is not mandatory to appoint a legal representative for a labor audit; however, it is strongly recommended. The employer bears responsibility in case of a labor audit.

Penalties for non-compliance

Penalties for employers for breaching the obligations related to the Labor Office and the National Labor Inspectorate can be up to EUR 200 000.

Amounts of penalties vary depending on the severity of the breach, which is considered individually within each case. Penalties can be imposed on leading employees, statutory representatives or companies, again depending on the severity of the breach.

Penalties for foreigners for breaching the obligations related to the Foreigners' Police can be as follows:

01 Financial penalty up to EUR 1 600; and/or

02 Penalty of administrative expulsion.

Public sources of information

Ministry of Labor, Social Affairs and Family
https://www.employment.gov.sk/en/
Central Office of Labor, Social Affairs and Family
https://www.upsvr.gov.sk/
National Labor Inspectorate
https://www.ip.gov.sk/home/
Ministry of Interior of the Slovak Republic
http://www.minv.sk/?residence-of-an-foreigner

Work from anywhere

A foreign employer is inter alia a legal entity with its headquarters outside Slovakia, which employs employees (including remote working) in Slovakia for more than 183 days during any twelve month period.

If an income tax liability occurs, the obligations of the foreign employer include primarily to run a shadow payroll in Slovakia (this includes registration obligation for payroll tax purposes, monthly and annual reporting obligations, and monthly settlement of the tax prepayments). The tax prepayments are due within 5 days from paying the remuneration to the employee.

From a social security perspective, an exemption applies if an A1 certificate of coverage is available. Otherwise, if the employee is subject to social security in Slovakia, the foreign employer is required to fund the employer's contributions. The EU regulation provides that the practical implementation (transmission of data to the collection agency, transfer of contributions) is possible also for the respective employee on behalf of the employer. However, this is not adhered to in practice.

Slovenia

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services was implemented into Slovene local legislation in 2021 with the acceptance of Act Amending the Transnational Provision of Services Act ("Zakon o spremembah in dopolnitvah Zakona o čezmejnem izvajanju storitev; Official Journal of the Republic of Slovenia No. 119/2021 – hereinafter referred to as "ZČmIS-A").

Based on this Act not only the Transnational Provision of Services Act was amended, but also the Employment Relationships Act ("Zakon o delovnih razmerjih; Official Journal of the Republic of Slovenia, No 21/13, as amended – hereinafter referred to as "ZDR-1").

The foreign employer must, for the time of posting of a foreign worker to Slovenia, guarantee rights under the regulations of Slovenia and under the provisions of the collective agreement at the level of activities governing working time, breaks and rest periods, night work, minimum annual leave, remuneration for work, employment contract between the worker and the employer who carries out the activity of providing workers to another user, safety and health at work, special protection of workers and ensuring equality, if this is more favorable to the foreign worker.

Remuneration of posted workers

Minimum wage set at national level

Slovenia has a minimum wage requirement. A worker employed full time by an employer in Slovenia has the right to be paid at least the minimum wage determined according to the Minimum Wage Act ("Zakon o minimalni plači"; Official Journal of the Republic of Slovenia No. 13/10, as amended – hereinafter referred to as "ZMinP") for work performed, except when the minimum wage under the collective agreement is higher.

In such case the worker receives the higher wage under the collective agreement. Starting 1 January 2022, the level of the minimum wage has been set at EUR 1.074,43 gross per month. The minimum wage is the monthly wage for work performed on a full-time basis (36-40 hours per week).

However, a worker working part time will be entitled to a proportionate share of the minimum wage.

Irrespective of the worker's professional expertise (e.g., blue-collar workers, highly skilled workers, or others), the worker who works full time for an employer in Slovenia is entitled to remuneration for work performed at least equal to the minimum wage (determined according to ZMinP or the collective agreement). The latter is determined as a statutory amount based on economic factors, such as growth of retail prices, change in salaries, economic growth, and changes in employment.

According ZDR-1, the worker who is assigned for a period shorter than one month, does not need to be provided with a salary according to the regulations of the Republic of Slovenia, even if it would be more favorable for the worker.

The amount of the minimum wage is determined by the Minister for Labor and published in the Official Journal of the Republic of Slovenia no later than three months after the change in the amount of the minimum cost of living.

The amount of the minimum wage should apply to remuneration for work performed from 1 January of each year.

Minimum wage set through collective bargaining agreements.

Since January 2020 the minimum wage does not include any allowances determined by laws or other regulations and collective agreements, as part of the salary for work performance and payment for business performance agreed in the collective agreement or employment contract.

The same minimum wage applies to all workers in Slovenia, regardless of industry.

What can be included in the remuneration

The minimum wage requirement covers the following remuneration components:

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	All wage supplements (e.g. for years of service, for night work, for work in shifts, for work on Sundays, for work on public holidays and work-free days determined by law, for overtime work)
	Performance bonuses (whether based on individual or company performance success), Holiday allowance, severance payments, jubilee awards
	Transportation costs i.e. commuting expenses for travel to and from work Meal allowances Housing Business trip expenses Per-diems
	Special payments (Foreign Service premium, Hardship premium, Country allowance, Assignment allowance, Cost of living allowance)

The amount of the minimum wage is determined in the range between 120% and 140% of the minimum costs of living ased on the growth of consumer prices, wage developments, economic conditions or economic growth and employment movement and considering tax regulations that allow determining the gross amount of the minimum wage. The amount of the minimum wage is every year published in the Official Journal of the Republic of Slovenia by the end of January.

Working hours

The maximum legal working time in Slovenia is 40 hours per week.

Mandatory registration of posted workers

A foreign employer may provide transnational services in the Republic of Slovenia under the following conditions:

01 The foreign employer normally carries out such activities in the country of employment.

02 The posted worker does not normally carry out work in the Republic of Slovenia.

03 The foreign employer does not violate the most important provisions of labour law relating to the rights of the posted worker.

04 The service is provided in the context of activities for which the foreign employer is registered in the country of employment, except in case of posting a worker to an affiliated commercial company ("povezana gospodarska družba").

05 The service is provided in one of the permitted ways.

The conditions stated under points (i) and (ii) are deemed to be met if the foreign employer has a valid A1 certificate for the posted worker.

Posting of the foreign worker to Slovenia and its transnational provision of services should be notified to the Employment Service of Slovenia. The notification should be submitted through the web portal (https://bit.ly/2pKuhcT) of the Employment Service of the Republic of Slovenia, which can be accessed on this web address. ZČmIS stipulates details which must be included in the registration application, namely:

- the name and registered office of the foreign employer,
- the personal name, date of birth and nationality of the posted worker and the address of temporary residence in the Republic of Slovenia,
- the personal name and date of birth of the person authorized by the foreign employer to communicate with the supervisory authorities, including the sending and receiving of documents and notices and service of process, in accordance with the provisions of the law governing general administrative procedure,
- the type of service,
- the job title of the posted worker,
- the estimated date of commencement and end of the service - period of secondment,
- the address or, if the service is to be provided at a location without an address, the place where the service is to be provided.

After the registration of a posted worker and the envisaged transnational provision of services the Employment Service of Slovenia should issue a certificate of registration.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country **	Yes

** Slovene legislation does not provide a definition of a business traveler.*

Determination of the 12-month period

ZČmIS-A is valid starting 4 August 2021. Assignments that were in place at that time are not affected by the change in Slovene tax legislation.

Based on ZČmIS-A, if during the period of assignment circumstances arise due to which the transnational service cannot be provided in 12 months, the foreign employer can prolong the transnational provision of services to 18 months based on the explanation filed with the Employment Service of the Republic of Slovenia.

The duration of the posting is the sum of the posting periods if the foreign employer replaces one posted worker with another posted worker, considering the same nature of the service and the job title.

Documents and legal representation

Documents musts be kept 24 months after the termination of the assignment. In addition to the original language, a translation into the Slovenian language must be available.

The foreign employer should made available at the request of the supervisory body the following documentation:

01 a copy of the act of posting or a copy of the contract between the client and the foreign employer with a translation into Slovenian,

02 a certificate of submitted registration of the provision of services,

03 certificate of completed application, in accordance with the law governing craft activities,

04 extract from the relevant register for performing activities with translation into Slovenian,

05 a certificate of establishment in the country of employment with translation into Slovenian,

06 copies of employment contracts with translation into Slovenian,

07 copies of pay slips with translation into Slovenian,

08 register of presence with translation into Slovenian,

09 documents in relation to health and safety at work with translation into Slovenian,

10 proof of paid salaries or copies of equivalent documents for all posted workers with a translation into Slovenian, and

11 A1 certificate or other appropriate certificate issued in accordance with valid international agreements on social insurance, which are binding in the Republic of Slovenia.

This documentation should be available during the period of transnational provision of service at the place where the service is performed.

Penalties for non-compliance

A fine between EUR 6,000 and EUR 60,000 is imposed on a foreign employer, that performs services abroad without fulfilling the conditions (as stipulated in the Article 12 of the Transnational Provision of Services Act, i.e. employer normally pursues an activity in the country of employment, the posted worker does not normally perform work in the country, does not infringe important employment law

provisions relating to posted workers). A fine between EUR 600 and EUR 6,000 is imposed on the responsible person of the employer.

If an employer does not comply with the registration requirement or the service is not performed according to the service registered, or the documentation is not kept for the supervisory body review, a fine between EUR 2,000 and 20,000 on the foreign employer and a fine on the responsible person of the employer between EUR 200 and 2,000 shall be imposed.

A fine, that is lower from prescribed penalties, can be imposed in rapid procedure.

According to the Employment Relationships Act, a fine for non-compliance is the minimum employment standards (working hours, breaks and rest, night work, minimum salary, holiday allowance) between EUR 3,000 and EUR 20,000 on the employer, between EUR 1.500 and EUR 8.000 on a minor employer, between EUR 450 and EUR 1.200 on an individual employer and between EUR 1.500 and EUR 8.000 on a responsible person of the employer or the responsible person employed by the state authority.

According to the Labor Market Regulation Act, a fine between EUR 10,000 to EUR 30,000 is imposed on an employer who carries out the activity of providing work for workers to the user, if the employer does not guarantee the posted worker all the rights arising from the employment relationship during the period of employment, restricts the posted worker from the possibility of concluding an employment relationship with the user after the expiry of the time of providing work, requires the posted worker to perform work in the framework of other activities for which he is registered or demands payment or other reimbursement from the posted worker, etc.

A fine from the previous paragraph between EUR 5,000 and EUR 10,000 is imposed on an employer, that employs less than 10 workers and a fine of EUR 4,000 is imposed on the responsible person of the employer.

A fine between EUR 10,000 and EUR 30,000 euros is imposed on a user if at the time of posting it does not act in accordance with the regulations governing employment relationships, does not enable the posted worker to become acquainted with vacancies or types of work at the user, does not provide the posted worker with the same opportunities for employment for an indefinite period with the user as is already possible for already employed workers with the user or accepts a posted worker from an employer who performs an activity and does not have a permit to perform the activity and is not entered in the register or records.

A fine from the previous paragraph between EUR 5,000 and EUR 10,000 is imposed on the user, that employs less than 10 workers and a fine of EUR 4,000 is imposed to the responsible person of the user.

Work From Anywhere

In terms of income tax, there is not a de minimis period under which a remote worker would not trigger a tax liability or a social security liability in Slovenia.

If a foreign employer is not considered a payer of tax in Slovenia (i.e., a Slovene non-resident with no PE or branch office in Slovenia), a reporting of employment income from abroad must be carried out by the employee himself/herself monthly within specified deadlines and personal income tax is assessed based on a tax assessment issued by the Slovene tax authority.

If the employee is a Slovene tax resident for personal income tax purposes,[6] the tax paid on a monthly basis is considered as advance payment which is offset against the annual tax liability.

If the employee is a Slovene non residen, the tax paid on a monthly basis is considered as a final tax paid.

No personal income tax obligation occurs based on the assumption that the remote worker is not a tax resident in Slovenia and that the criteria from the DTT applicable to employment income are met. The reporting obligation still applies and the confirmation on the exemption from taxation in Slovenia is only granted based of the tax return filed.

From a social security perspective, if the employee becomes liable to social security contributions in Slovenia (e.g. no certificate of coverage is available), the employee himself/herself is responsible for reporting and paying social security contributions for both, employer's, and employee's part. The foreign employer must be registered to obtain a registration number.

Once the individual is enrolled into the Slovene social security system, the Health Insurance Institute issues an A1 form to the employee (one copy is issued to the employee and another sent to the employer to exempt the employee from the foreign social security system).

If reported by the employee, the calculation of SSC from the employment income received in the previous month should be submitted to the competent authority on the prescribed form no later than by the 15th day of the month for the previous month and paid no

Public sources of information

Information about collective bargaining agreements and/or other industry specific agreements can be found on the Ministry of Labour, Family, Social Affairs and Equal Opportunities web page as well as on the web page of the Association of Employers of Slovenia.

Public information sources on the obligations of foreign entities assigning personnel to Slovenia can be found on the Financial Administration of the Republic of Slovenia web page or on the Health Insurance Institute of Slovenia web page.

[6] According to Article 6 of the Slovene Personal Income Tax Act, an individual is considered a Slovene resident for tax purposes if any of the following criteria is met:

1. presence in Slovenia for more than 183 days in a calendar year,
2. habitual abode in Slovenia,
3. centre of personal and economic interests in Slovenia.

Spain

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

On 28 April 2021, Royal Decree 7/2021 was published, and it entered into force on the day following its publication, amending Law 45/1999, 29 November, on the movement of workers in the context of the provision of transnational services, as well as other labor laws, for the transposition of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018.

The purpose of this rule is to supplement the transposition of Directive (EU) 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC adopted to move towards more equitable treatment between displaced persons and workers in the State of destination.

Remuneration of posted workers

Minimum wage at national level

There is a minimum wage requirement in Spain, which is set by the government. For 2022, the minimum wage is EUR 1,000 /month for fourteen payments (EUR 33,33 per day). Thus, the 12-month pro rata would result in a minimum wage of EUR 1,166,66 per month.

The minimum wage set by the government is applicable as from 1 January and it is updated every year. It is a fixed amount.

The minimum wage does not depend on the occupation, industry, or the age of the employee, it is set depending on the agreement between the government, the most representative unions and the management. The minimum wage does not distinguish between blue collar, highly skilled or other type pf workers, as it is a fixed amount.

Minimum wage set through collective bargaining agreements

Collective bargaining agreements (national, regional, or sectional), usually set another minimum wage requirement, depending on the activity or professional category, which is always higher than the one set by the government.

Collective bargaining agreements set the minimum wage for a fixed period as well, generally for one year. Collective bargaining agreements can determine other remuneration systems. Generally, collective bargaining agreements set a fixed amount and, in addition, set out other amounts that depend on productivity, seniority, etc.

The minimum wage set by collective bargaining agreements can be based on other criteria such as occupation or position in the company, as it depends on the sector.

Collective bargaining agreements usually set a level of minimum wage depending on the category of the employee.
Given the above, to establish a general remuneration for each industry various factors should be considered: the territorial scope of the company, the functions carried out by the worker, the professional category according to the collective agreement, etc.

What can be included in the remuneration

The minimum wage requirement covers especially the following remuneration components:

Included in the remuneration	Not included in the remuneration
Basic salary/ basic wage	Per-diems Housing Transportation costs Meal costs
Overtime payments	Special payments (Foreign service premium, Hardship premium, Country allowance, Assignment allowance, cost of living allowance)

Working hours

The Spanish Workers Statute establishes a maximum of 9h per day and 40h per week. However, the duration of the working day or week, may be different, depending on the applicable collective bargaining agreement.

On the other hand, note that the Workers' Statute sets minimum periods of rest. In this sense, if the working day exceeds 6 hours, the employee benefit from a minimum rest period of 15 minutes, the employees are entitled to enjoy one and a half uninterrupted days as minimum weekly rest, and there must be a rest period of at least 12 hours between the end and the beginning of a new working shift.

Finally, the employment contract or the applicable collective bargaining agreement may provide better conditions.

Mandatory registration of posted workers

The employer is required to communicate the posting electronically to the corresponding authority according to the area of the country where the services are provided. This communication must be made by the Spanish company in Spain before the displacement is effective.

The communication will be established electronically, in the way that it is determined by the Spanish regulation. In relation to the above, the Ministry of Labor, Employment and Social Security established, according to the Autonomous Communities, one electronic central registry.

The displacement communication will contain the following data and information:

01 The Identification and fiscal domicile of the Company which sends the employee.

02 The personal and professional data of the posted employee.

03 The identification of the Company that posts the employee.

04 The start date and duration of the posting.

05 The tasks of the service of the posted employee.

06 The identification data and contract of the person who will be designated, as the contact with the Spanish competent authority.

07 The identification data of a person that can act in Spain in relation to a process of information that affects posted employees.

If the Company which posts the employee to Spain is a Temporary Employee Agency (TEA), it will also be included as an employer of a posted employee and will need to file the following documents:

01 Accreditation document of Temporary Employee Agency (TEA).

02 Justification of the temporary needs of the user undertaking, which will be

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers	Yes
Posting from a non-EU country*	No

**Citizens of non-EU countries wishing to stay in Spain for more than three months must apply for a Residency Permit/Card (Tarjeta de Residencia) within 30 days of arriving in the country. The application must be made at the Foreigner's Office (Oficina de Extranjeros) or local police station in the province of intended residence*

The following documentation is required when applying for a Tarjeta de Residencia:

01 Valid passport and photocopy.

02 Three passport-size colour photographs.

03 Completed application three copies.

04 Proof of address in Spain.

05 Receipt for payment of an administration fee, stamped by bank.

Determining the 12 month period

According to Art 3.6 Law 45/1999, the duration of posting should be calculated in a reference period of one year from the outset, including, the duration of posting of another previously posted worker to which he/she has replaced.

Law 45/1999 provides the application of the Spanish legislation to long-term movements of more than 12 months, which can be extended to 18 in the event of a reasoned notification to the competent labour authority. Note that the calculation of the effective duration of the assignment will not be interrupted as a result of the enjoyment of vacation days or other brief interruptions (such as paid leave).

Documents and legal representation

According to Article 6 Law 45/1999, employers must have available, the following documents:

01 The employment contracts

02 Each worker's salary receipts and proof of payment of wages to every worker.

03 The time records that have been made, with the indication of the beginning, the end and duration of the daily working day.

04 The document attesting to the authorization to work for nationals of countries in accordance with the laws of the State of establishment.

Employers should notify the Labor Authority of any harm to posted workers' health that occurs on the occasion or because of the work carried out in Spain.

According to the Article 5 Law 45/1999, the travel communication should contain detailed information, such as:

01 The identifying and contract details of an indiviudal or legal entity present in Spain who is designated by the company as its representative to serve as a liaison with the Spanish competent authorities and for the sending and receiving of documents or notifications if it is necessary.

02 The identifying and contract details of a person who can act in Spain on behalf of the service provider in the procedures for informing and processing workers, and negotiation, affecting the workers concerned.

According to the Article 10.2. of the Royal Legislative Decree 5/2000 of 4 August, which approves the Revised Text of the Law on Offences and Sanctions in the Social Order, it is considered a serious offense the presentation of the communication of posting after its beginning or without designating the representative of the company that serves as a liaison with the Spanish competent authorities.

There must be a person who can act in Spain on behalf of the company, as well as who can give explanations to the competent authorities of the reasons for the extension of posting.

These documents must be delivered in Spanish or others official languages upon request of the authorities.

These documents must be retained up to up to 4 years after the termination of assignment.

Penalties for non-compliance

According to the provisions of the Royal Decree-Law, compliance is enforced by the inspectorate of Work and Social Security. Breaches are penalized according to the Act of Criminal Offenses against the Social Order and Penalties as follows:

Serious offenses: (fines of between EUR 751 and EUR 7,500):

01 The presentation of the communication of the posting after the effective date or without designating the company's representative who will serve as a contact with the appropriate Spanish authorities, or a person who can act in Spain, to provide information and consultation for employees and negotiations on behalf of posted employees in Spain.

02 Failure to hold the posting documentation according to Spanish legal provisions

03 Failure to inform the labor authorities on time or in the correct format of serious accidents which result in death or injury.

04 Failure to present the documentation required by the Inspectorate of Work and Social Security or to present any document without a translation.

Very serious offenses: (fines of between EUR 7,501 and EUR 225,018):

01 Lack of a posting communication

02 Falsehood or concealment of posting data

The level of the fines is based on different criteria (number of employees affected, whether it is a repeat offense etc.)
A liaison person/ representative in relations with the relevant labor authorities may act with a power of attorney issued by a notary.

Work from Anywhere

From an income tax perspective, foreign individuals who become Spanish residents are subject to Spanish Personal Income Tax (PIT) on a worldwide basis, whereas non-residents for Spanish tax purposes should be subject to Non-Residents Income Tax (NRIT) only on income arising and capital gains obtained from Spanish sources.

Individuals are considered Spanish resident for tax purposes under the following considerations and if they meet any of the following requirements:

01 They remain in Spain for more than 183 days in a given calendar year. Sporadic absences are considered days of presence in Spain unless the individuals can prove their tax residence status in another country/jurisdiction (if a tax haven, the individual can be required to have spent at least 183 days during the calendar year in that country/jurisdiction);

02 Their business or economic interests are directly or indirectly located within Spanish territory.

It is presumed, unless the contrary is proved, that an individual is a tax resident in Spain if his/her spouse and underage dependent children are Spanish tax residents.

Considering the above, if a remote worker spends more than 183 days during the calendar year in Spain, he/she will become Spanish tax resident according to Spanish domestic regulations and should generally be subject to taxation in Spain on a worldwide basis for any income obtained along the calendar year.

However, it will be necessary to check provisions in the Tax Treaty concluded between Spain and the

other jurisdiction in which the individual keeps interests, in order to determine if the individual should be taxed as non-resident (in the event of dual residence and if his/her prevailing tax residence was not the Spanish one) or how to avoid any dual taxation if the individual obtains income for work performed out of Spain along the calendar year, in addition to his/her income for work performed in Spain.

If the individual does not meet the requirements to be considered as resident for Spanish tax purposes, he/she may be exempted from taxation if the conditions in the Double Tax Treaty between Spain and the home state (if applicable) are fulfilled.

According to a draft Law which might enter in force next year, remote workers might apply for a Special tax regime for inbound expatriates if it is more favorable for them than the regular regime for tax residents in Spain. Therefore, if this draft Law is passed, it will be necessary to check if the remote worker meets all requirements to apply for it and if it advantages for him/her to be covered by it.

In the event the remote workers have Spanish tax obligations, the foreign employer should register for Spanish tax withholding purposes even if no permanent establishment in Spain exists, if the foreign employer operates in Spain.

The foreign employer does not operate in Spain, then the Spanish tax should be fully settled by the individuals through their personal tax returns.

Spanish tax residents will generally need to file an annual personal tax return in any case whereas non-residents with Spanish tax obligations would only need to file personal Spanish tax returns if the tax withholdings processed in Spain do not equal their final Spanish tax as non-resident.

In terms of social security, an exemption applies if a certificate of coverage is available. Otherwise, the foreign employer needs to register in Spain, calculate and pay social security contributions by the last day of the following month. In general terms, the obligation is not transferable to the employee.

However, potentially, according to article 21 of Regulation (EC) 987/2009 an employer who does not have a place of business in the Member State whose legislation is applicable, and the employee may agree that the latter may fulfil the employer's obligations on its behalf as regards the payment of contributions without prejudice to the employer's underlying obligations.

The employer should send notice of such an arrangement to the competent institution of that Member State. This approach is not frequently seen.

Public sources of information

https://bit.ly/3O4hozw

APL transposición Directiva 2018-957 30.11.2020.docx (mites.gob.es)

MAIN APL transposición Directiva 2018-957 30.11.2020.docx (mites.gob.es)

Sweden

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Directive 2018/957 was implemented into local legislation by amendments of the Swedish law Posting of Workers Act (SFS 1999:678) (Sw. Lag (1999:678) om utstationering av arbetstagare), and it is applicable as of 30 July 2020. Note however that the period from the start of the posting will be considered even if prior to 30 July 2020.

Remuneration of posted workers

Applicable remuneration will no longer be limited to minimum salary, a posted worker should be entitled to the same salary level as a Swedish worker.

Minimum wage set at national level

In Sweden, there is no minimum remuneration set by law.

Minimum wage set through collective bargaining agreements

Remuneration may be stipulated in Swedish collective bargaining agreements concluded between employer organizations and trade unions. The collective bargaining agreements applies to employers which have entered into such agreements. The contents of the agreements vary from industry to industry. There are no collective bargaining agreements with general applicability in Sweden.

If further information about what remuneration level or holiday etc. applies for posted workers or the content of a specific collective agreement, the organizations listed below may provide such information. It shall be noted that additional and/or other collective bargaining agreements may be applicable.

Industry	Employer organisations	Trade unions
Automotive/Engineering sector companies	Association of Swedish Engineering Industries (Teknikföretagen) https://www.teknikforetagen.se/	Unionen https://www.unionen.se/ The Swedish Association of Graduate Engineers (Sveriges ingenjörer) https://www.sverigesingenjorer.se/
Telecom/IT	TechSverige https://techsverige.se	Unionen https://www.unionen.se/ The Swedish Association of Graduate Engineers (Sveriges ingenjörer) https://www.sverigesingenjorer.se/ Akavia https://www.akavia.se/
Construction	The Swedish Construction Federation (Byggföretagen) https://byggforetagen.se/	Swedish Construction Workers' Union (Byggnads) https://www.byggnads.se/
Oil & gas	Energigas Sverige https://www.energigas.se/	IF Metall https://www.ifmetall.se/ Unionen https://www.unionen.se/ The Swedish Association of Graduate Engineers (Sveriges ingenjörer) https://www.sverigesingenjorer.se/

What can be included in the remuneration

Posting-related compensation for travel, accommodation, and meals should not be counted when assessing the required remuneration.

Working hours

The working hours in accordance with the Swedish Working Hours Act are 8 hours per day or 40 hours per week. Overtime and standby time may be allowed within certain limits. Deviations from the regulations stipulated by law are possible through collective bargaining agreements.

Mandatory registration of posted workers

Foreign employers must report every posting to the Swedish Work Environment Authority and appoint a contact person in Sweden no later than the date the posting begins. The earlier stated 5-day limit is now removed.

The foreign employers must provide documentation to the recipient of services in Sweden that the posting has been reported no later than the day the posted worker starts the work.

Recipients of services in Sweden must notify the Swedish Work Environment Authority, no later than three days after the work has begun, if they do not receive documentation from the employer that the posting was reported.

The notification can be filed online on the Swedish Work Environment Authority's website (https://www.av.se/en/report-a-posting).

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months	Yes
Extension of a posting	Yes
Shortening of a posting	Yes
Posting over 12 months	Yes
Business travelers*	No
Posting from a non-EU country**	Yes

** From a Swedish perspective, a business traveler is defined as a person who is visiting Sweden on behalf of the home country employer, without delivering a service to a Swedish recipient. If there is no service recipient in Sweden, no PWD registration is required. The Swedish posting of workers rules do not cover a definition of a business traveler. There is neither a general exemption for business travelers as such, hence the general criteria should apply.*

*** The Swedish rules are not limited to the EU, all nationalities are covered. All foreign employees who are posted to Sweden must be registered with the Swedish Work Environment Authority. Non-EU nationals are not exempted from this requirement.*

Determining the 12month period

The period from the start of the posting will be considered even if prior to 30 July 2020.

Documents and legal representation

If bound by a collective bargaining agreement that regulates the conditions for posted workers, the employer should at the request of the employee organization, provide the following:

01 Documents in the form of employment contracts, salary specifications, time reports and certificates of salary payments made.

02 Translation of the documents into Swedish, or English if the employer prefers, in cases where the documents are written in another language.

The documents and the translations should be provided to the extent necessary for the employee organization to be able to assess whether the collective bargaining agreement has been complied with. The obligations to provide the documents be fulfilled within three weeks of the request and apply during the time that the posted worker is posted in Sweden and four months thereafter.

Penalties for non-compliance

If the employer or the recipient of the services does not comply with the notification requirements, a penalty fine of SEK 20,000 per posted worker can be imposed.

The punitive fine will be levied irrespective of whether the breach was intentional or negligent. If the report is incorrect or incomplete the Swedish Work Environment Authority may decide upon an injunction which is an order for the employer to correct the deficiencies.

The same applies if the reported information is not updated. The employer may also have an injunction if the contact person does not perform his or her tasks according to the regulations.

Furthermore, a breach of a collective bargaining agreement may in some cases result in an obligation to pay compensation for the losses incurred.

Work from Anywhere

From a tax perspective, if there is a PE in Sweden and/or the employee is a tax resident according to Swedish domestic legislation, then there is a Swedish tax withholding obligation for the foreign employer. Also, non-tax residents could create a tax liability depending on the work performed (typically, in economic employer cases and/or if they exceed a 183-days stay in Sweden).

A foreign employer without a permanent establishment in Sweden that has employees who are performing work in Sweden and who are subject to tax in Sweden, is obliged to report and withhold tax in Sweden. The foreign employer must register as an employer in Sweden.

An exemption from income tax can apply due to for example tax treaties. However, an exemption from tax withholding strictly speaking would require a decision from the Swedish Tax Agency.

In terms of social security, an exemption applies if an A1 certificate of coverage is available. Otherwise, If the employee belongs to the social security system in Sweden, the foreign employer is obliged to fund employer's contributions. An employer registration must be made with the Swedish Tax Agency (same as for tax withholding purposes).

If the foreign employer does not have a permanent establishment in Sweden, the parties can enter into a social security agreement, transferring the obligation to pay social security contributions to the employee.

Public sources of information

More information in English can be accessed here (https://www.av.se/en/).

Switzerland

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

Directive 2018/957 itself is not implemented in Switzerland, but similar regulations have been in place for many years.

Remuneration of posted workers

Minimum wage set at national level

Switzerland does not have a minimum wage set at national level. However, a few cantons have lately introduced minimum wages (e.g. Basel-City, Ticino and Geneva), which should be complied with.

Minimum wage set through generally binding collective bargaining agreements

Minimum wage requirements are set out for specific industries in hundreds of collective labor schemes (some of which are generally binding and therefore mandatorily apply to all employees working in Switzerland whether or not the employer or its Swiss host group company is a party to the scheme).

In Switzerland, there are currently over 70 generally binding collective bargaining agreements in place. In order to assess whether a collective bargaining agreement is applicable to the work performed in Switzerland, a case by case assessment will always be required.
The most important generally binding collective bargaining agreements are for staff leasing, construction and hotels/restaurants.

Swiss reference salary

Apart from the above and regardless of the type of industry and work performed in Switzerland, the following applies without exception: Employees who are employed outside Switzerland and are supposed to work in Switzerland as assignees must be paid a salary for the time in Switzerland which is in line with the customs in the relevant Swiss canton, industry and profession (so-called Swiss reference salary).

In this respect, the Swiss immigration authorities always check on the salary requirements when processing a work permit application.

In addition, in the event of labor inspections in Switzerland on site, the employer may be required to provide evidence to the authorities that the salary (plus expenses) outlined in the work permit application and supporting documents is actually being paid (by providing pay slips, records of expense compensation payment, etc.).

While for certain cantons, where existing, minimum wages apply, all 26 Swiss cantons apply their own standard salary levels, meaning that when determining a relevant reference salary every case is analyzed individually (taking into account any minimum wages regulations). All cantons, however, base their assessment on their statistical reference salaries for comparable Swiss employees in their geographical area. This means that for all sorts of activities and groups of employees they apply a statistical reference salary range and usually request the assigning employer to pay the average of the statistical salary range to the employee.

If a salary turns out not to be sufficient during the work application process, time consuming negotiations with the authorities on the adjustment payments and drafting and signing of new supporting documents are required.

The minimum wage is determined either (i) based on the provisions of potentially applicable collective labor scheme(s), (ii) statutory minimum wages of certain cantons or (iii) in the case of assignees for whom no collective labor scheme applies, individually on a case by case basis (but considering applicable minimum wages, if any).

For assignees for whom no collective labor scheme and/or statutory minimum wages apply, the following main criteria must be taken into consideration:

01 Specific role/activities/ responsibilities when working in Switzerland;

02 Age.

03 Job grade.

04 Overall level of occupation (e.g. 50%, 80%, 100%).

05 Weekly hours of work as per employment/assignment contract.

06 Qualification level (highest educational and professional certificate).

07 Overall professional experience.

08 Service for the applying employer.

09 Number of employees employed by the Swiss group entity.

10 Work location, since the reference salary differs from canton to canton.

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	
Per-diems (to the extent not compensating for the assignment related expenses)	Per-diems (to the extent compensating for the assignment related expenses)
Overtime payments	Housing
Bonuses may only be included in the minimum wage, if it is a fixed amount that is guaranteed / a non-variable part of the salary.	Transportation costs
Special payments (Foreign Service premium, Hardship premium, Country allowance, Assignment allowance, Cost of Living allowance)	Meal costs

Working hours

In Switzerland, the maximum legal working hours per day/week depends on the specific activity and industry. If no generally binding collective bargaining agreement applies, the maximum weekly working hours for office staff is 45 hours and for all other staff 50 hours.

Mandatory registration of posted workers

According to the Agreement on the Free Movement of Persons between the EU and Switzerland (FMAP) employees to be temporarily assigned to a group company or client in Switzerland are basically entitled to perform work in Switzerland if:

01 the assigning home company is located in an EU/EFTA state,

02 the employee is an EU/EFTA national or a non-EU/EFTA national who has been legally admitted to the EU/EFTA labour market for at least the past 12 months and

03 there are sufficient online notification days left (90 working days per assigning home company, employee and calendar year).

In such cases, the rather simple, fast and government fee free online notification process replaces the formal work permit application process. In all other cases of assignments into Switzerland, however, there is no entitlement to perform an assignment in Switzerland.

In other words, a formal application procedure applies and the grant of the required permits remains at the sole discretion of the involved cantonal and federal immigration authorities.

Undertakings established in an EU/EFTA state, which can make use of the online notification procedure, need to submit the notification at least 8 days prior to commencement of the activity in Switzerland. The online notification can be completed in German, French, Italian or English and can be submitted here (https://www.sem.admin.ch/sem/en/home/themen/fza_schweiz-eu-efta/meldeverfahren.html) .

The table below evidences an overview of the notification system in Switzerland, however this does not really match the system for the online notification in Switzerland given that the PWD is not applicable.

Posted workers	Registration (Yes/No/Depends)
Posting up to 12 months*	Yes
Extension of a posting	Yes
Shortening of a posting**	Yes
Posting over 12 months***	No
Business travelers*	Yes
Posting from a non-EU country**	No

** Yes, but only up to 90 days per calendar year per employer and employee. After 90 days a formal work permit will be required.*

*** Recommended, as registration days from the 90 days quota will otherwise be lost.*

**** No. A formal work permit will be required.*

*****Yes, but only up to 90 days per calendar year per employer and employee. After 90 days a formal work permit will be required. In principle, every activity performed in Switzerland that is usually performed against salary, qualifies as gainful employment and must be notified.*

***** No, a formal work permit will most likely need to be applied for.*

Documents and legal representation

If a labor audit, the employer must generally prove that the Swiss minimum work- and salary conditions were met during the posting.

For this purpose, the employer will most likely have to submit the wage and expense statements as well as the time sheets of the posted employees. Further documents will be requested depending on the inspecting authority.

It is not necessary to appoint a legal representative in Switzerland, but a contact person at the place of work in Switzerland must be indicated in the online notification.

Penalties for non-compliance

Failing to comply with Swiss immigration rules (e.g. Swiss reference salary, assignment expenses, working conditions, notification or work permit requirement) may lead to fines, criminal sanctions, assignment bans, black listing on official publicly accessible authority websites, reputational damage, loss of employer attractiveness and employee/client trust. The employer may be liable to the following:

01 Subsequent payment of the salary gap claimed.

02 Obligation to pay the cost of enforcement proceedings

03 Administrative penalties:

- in less serious cases, a fine up to CHF 5,000;
- in serious cases of breach or non-payment of the above-mentioned fine, the employer may be forbidden to offer his services in Switzerland for a period of 1 to 5 years.

04 Criminal penalties:

- In the form of a fine of a maximum amount of CHF 40,000;
- In the form of a fine of a maximum amount of CHF 1 million, if the employer, in serious and systematic cases and with the intention of self-enrichment, has not guaranteed to the employee the minimum conditions set out by law.

05 Penalties set out in a generally binding collective bargaining agreement.

In less serious cases, the authorities may decide not to undertake criminal proceedings.

Criminal sanctions may further be ordered against an individual who enters, stays or works in Switzerland without a valid visa or work and residence permit. Depending on the seriousness of the case, the sanctions can range from fines to imprisonment.

In practice, labor inspections on site may be carried out. Minor violations of the immigration regulations are usually punished with a fine (or in case of a first-time violation of minor seriousness, a warning may be given). In the case of major violations, the above-mentioned more serious sanctions may be imposed.

Work from Anywhere

For remote working in Switzerland, generally no de minimis period exists under which no tax liability would be triggered in Switzerland. Taxation basically starts with day one of working remotely in Switzerland. However, this national regulation can be overruled by existing double taxation treaties. If a national employer (entity/permanent establishment, economic employer) exists, it has an obligation to run shadow payroll for tax purposes.

Without a national employer, all tax compliance obligations lie with the employee working remotely in Switzerland.
Similarly, for remote working in Switzerland, generally no de minimis period exists under which no social security liability would be triggered in Switzerland. Social security insurance obligations essentially follow taxation rules and basically start with day one of working remotely in Switzerland. Nevertheless, this national regulation can be overruled by existing totalization agreements.

If a national employer (entity/ permanent establishment, economic employer) exists, it has an obligation to run shadow payroll for social security purposes as well. Without a national employer, all social security insurance compliance obligations lie with the employee.

Nonetheless, under certain circumstances a foreign employer may directly register with the Swiss social security authorities, wherefore it will be treated as a national employer for social security purposes (including duty to deliver and pay social security contributions respectively).

Public sources of information

The links regarding generally binding collective bargaining agreements in Switzerland can be accessed at:

https://bit.ly/3O48rGH

https://bit.ly/3Po3zx3

United Kingdom

Implementation of Directive 2018/957 amending Directive 96/71/EU concerning the posting of workers in the framework of the provision of services

The UK has complied with the need to implement the 2018 Directive by issuing the Posted Workers (Agency Workers) Regulations 2020 which came into force on 30 July 2020 (the date set by the Directive). The regulations state that:

01 a hirer that proposes to post an agency worker for a limited period to a Member State should inform the temporary work agency of the location and proposed start date of the posting a reasonable time before the posting is due to commence

02 a temporary work agency is allowed to bring a claim in the Employment Tribunal against the hirer to recover any losses the agency may suffer as a result of a penalty imposed by a Member State for failure to comply with the provisions of Directive (EU) 2018/957 or the Posted Workers Directive;

03 the temporary work agency is prevented from bringing such a claim if it is pursuing such losses through other civil proceedings.

Since the UK has left the EU and ceased to be an EU member state, the Posted Worker Directive no longer applies to the posting of EU workers to the UK or to the posting of UK workers to the EU. The employment rights of EU workers who are posted to the UK will depend on UK law. In relation to the employment rights of UK workers who are posted to an EU member state, the UK will be classed as a "third country".

Remuneration of posted workers

Minimum wage set at national level

The United Kingdom has a National Minimum Wage ('NMW'). Historically, NMW rates used to change annually on 1 October. However, in April 2016, the Government introduced the National Living Wage ('NLW') which applies to workers aged 23 and over. Since April 2017, NLW and NMW rates have been reviewed and increased at the same time and are both determined as an hourly rate of pay. The NMW applies for workers aged 21 -22 and under. For NMW purposes, the pay allocated to a pay reference period in the UK is any pay which is:

01 Received during that period,

02 Earned in that period but not received until the next pay reference period.

The pay in the period will consist of the total eligible earnings for NMW purposes and it is not limited to the hourly rate received by the individual.

The NMW is calculated by dividing pay by the number of actual hours worked in the relevant pay reference period.

The legislation in relation to the minimum wage is extremely complex. The calculation of the NMW/NLW may be further affected by the worker type (as determined by their contract of employment e.g. hourly paid or salaried worker), the working practices in operation and how working time is identified and captured for payroll purposes.

The level of the minimum wage is determined based on the age of the worker and whether the individual is employed as an apprentice.

Year	Apprentice	Under 18	18 -20	21 to 22	NLW 23 and over
April 2021 (current rate)	£4.30	£4.62	£6.56	£8.36	**£8.91**
Rate from April 2022	£4.81	£4.81	£6.83	£9.18	**£9.50**

Apprentices are entitled to the apprentice rate if they are either:

01 Apprentices under 19 years of age

02 19 and above and in the first year of their apprenticeship

Apprentices aged 19 or above who have completed the first year of their apprenticeship are entitled to the minimum wage rate for their age.

Work experience

Refers to a specified period of time that a person spends in a business, during which they have an opportunity to learn directly about working life and the working environment.

The nature and arrangements for work experience vary and an individual's entitlement to the NMW will depend on whether the work experience offered makes the individual a worker for NMW purposes.

Circumstances in which minimum wage is not applicable:

01 Government training schemes or European Union Programmes: if a person is doing work experience as part of a government scheme to provide training, work experience or temporary work.

02 Work experience as part of an education course – a person doing work experience which is a requirement of a higher or further education course for less than one year is not eligible for the minimum wage.

03 Volunteers.

Minimum wage set through collective bargaining agreements

Collective bargaining agreements are relatively rare in the UK except in certain sectors. Consequently, most employers will be unaffected by collective bargaining agreements. Where they do exist, collective bargaining agreements are generally agreed on an employer by employer basis (rather than a sector basis).

What can be included in the remuneration

Included in the remuneration	Not included in the remuneration
Basic salary/basic wage	Per-diems
Overtime payments (in some circumstances only the basic rate is included)	Benefits in kind (other than provision of accommodation in some cases)
Bonuses	Travelling expenses
	Allowances which are not consolidated into the worker's standard pay (Foreign service premium, Hardship premium, Country allowance, Assignment allowance, cost of living allowance, meal allowances)
	Advances of wages
	Tips and gratuities

**this is not an exhaustive list*

Working Hours

In general, workers cannot be made to work more than 48 hours per week on average or more than 6 hours without a rest break. In most cases, workers are also entitled to an 11 hour gap between shifts.

In the UK, workers can consent to opt out of the 48 hour maximum working week. An employee can withdraw their consent to opt out at any time by giving notice to their employer. The required notice period cannot be longer than 3 months.

It is important to be aware that working time for NMW purposes may not always be defined in the same way as working time for the purposes of the Working Time Regulations 1998.

Mandatory registration of posted workers

There are no labour registration requirements in the UK, unless the posted worker is directly employed by an employment agency.

Workers will still be required to be registered with the tax authorities and (if applicable) the immigration authorities.

Every employer in the UK has an obligation to ensure that their workers/employees have the right to work in the UK. There is a requirement to retain employment/assignment related documentation for the duration of the employee working arrangements and copies must also be stored on the posted worker's file, in particular:

01 Passport (front cover and photo page);

02 Visa (vignette page in passport stating entry clearance & expiry dates) and supporting documents;

03 Contract of employment;

04 Most recent P.60 and/or detail of salary/stipend provided;

05 Accurate contact details including migrant name, address and telephone numbers;

06 National insurance details (photocopy of NI card)

Posted workers	Labour Law Registration
Posting up to 12 months	No
Extension of a posting	No
Shortening of a posting	No
Posting over 12 months	No
Business travelers	No
Posting from a non-EU country	No

Documents and legal representation

Not applicable.

Penalties for non-compliance

In the case of non-compliance with the minimum wage requirements and enforcement by the regulator (HMRC) the employer might be required to:

01 Repay arrears of the minimum wage (going back up to 6 years) to each worker, to be paid at the current minimum wage rate

02 Pay a penalty.

Work from Anywhere

The extent of the UK tax liability on earnings depends upon the individual's tax residence position in the United Kingdom. Generally, if an individual spends more than 183 days at midnight in the UK in a relevant tax year, the individual will be considered as a UK tax resident.

An individual can still be considered as a UK resident even if he/she spends less than 183 days depending on other factors (such as a UK home, working sufficient hours in the UK) and the ties the individual has in the UK. The domicile status of the individual can also affect the tax liability and this is particularly relevant as many cross border inbounds are likely to be foreign domiciled.

A UK domiciled resident is taxable on the worldwide income whereas a UK non-domiciled resident is only taxable on the UK sourced income and incomes that is remitted into the UK whilst the individual is a UK resident. A UK non-resident is only taxable on UK sourced income and gains.

If there is a double taxation agreement in place, then the individual may be exempt from income tax if certain conditions are satisfied. If the individual is present for less than 183 days in the UK, there is no cross charge of the individual's employment income to the UK entity and the foreign employer does not have a permanent establishment (PE) of the business in the UK or a branch in the UK, then the income for the days the individual spends working in the UK can be treated as foreign for UK tax purposes and will be exempt from UK income tax. If the presence is over 183 days in a 12-month rolling period, then the income for the UK days is subject to income tax in the UK.

If the foreign employer does not have a place of business in the UK, then strictly speaking there is no requirement for the foreign employer to operate a UK payroll for income tax withholding purposes. However, if a foreign employer has a permanent establishment (PE) of the business in the UK or a branch in the UK, then the PE or branch will be responsible for operating tax withholding in the UK. The foreign employer can voluntarily operate UK tax withholding for the individual should they wish.

Where UK tax withholding is not operated by the foreign employer, then the onus falls on the individual to either operate a UK tax withholding himself/herself to remit the UK taxes due to the UK tax authorities or can simply report the UK taxable employment income on the UK tax return and pay the income tax in two instalments, during and after the end of the tax year.

Currently there is no specific legislation which provides for exemption from a social security liability for remote workers.

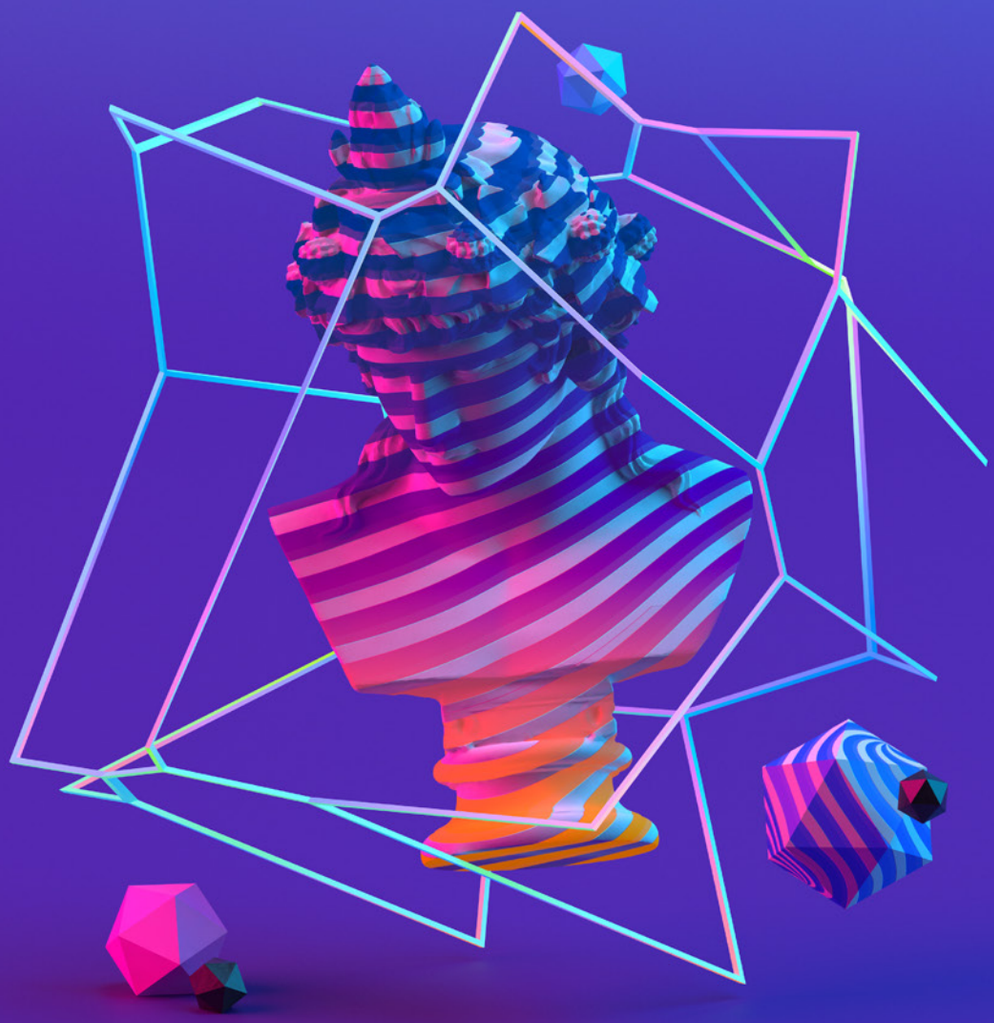
Therefore, strictly speaking there is a social security liability for remote work as from the first day. However, depending on the remote worker's country of employment and personal circumstances, an exemption might apply under a social security agreement or UK domestic legislation.

If a remote worker is liable to UK social security, there may be either:

- an employee and employer obligation - the contributions must be made via a payroll, shadow or actual. Such a payroll may be for the purposes of remitting social security only, i.e. it does not necessarily create a tax withholding obligation; or
- an employee only obligation - the employee must make remittance of the relevant contributions together with the required reporting. The contributions cannot be paid via the UK tax return (for an employed individual).

Public sources of information

Please see this link for further information about NMW and NLW rates. (https://www.gov.uk/national-minimum-wage-rates)



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