

# GMS Flash Alert



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## Romania - Revised Legislation to Reinforce Rights of Posted Workers

Following its publication on 9 July 2018 in the Official Journal of the European Union (EU), amendments to the Posting of Workers Directive came into effect on 29 July 2018.

The Directive (EU) 2018/957 (hereafter referred to as “the New Directive”) amending Directive 96/71/EC concerning the posting of workers within the framework of the provision of services (hereinafter, “Posting Directive”) is aimed at facilitating the transnational provision of services, while achieving better protections.<sup>1</sup>

As noted, the New Directive entered into effect on 29 July 2018. Following this date, all EU member states will need to introduce the revised provisions 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 maybe be in the EU. During this timeframe, the current Posting Directive will remain applicable.

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### WHY THIS MATTERS

The existing Posting Directive is no longer adequate for the new realities within the European market.<sup>2</sup> For example, the growth in wages over the 20-year period since the original Posting Directive was introduced has resulted in significant differences in the remuneration paid to local and posted workers, especially in those member states with relatively high wage levels.

As a result, the new rules should help foster a level playing field such that for the same work in the same place, those workers who are employed in one member state and sent to work for a limited period in another member state will receive the same remuneration as local employees doing the same job.

## Highlights of Changes under the New Directive

The New Directive introduces changes in three main areas: remuneration of posted workers, rules on temporary agency workers and long-term postings.

The New Directive sets out that posted workers will benefit from the same treatment in terms of remuneration and work conditions as local workers. According to the current Directive, posted workers are already treated based on the same conditions applicable to local employees in certain areas. However, employers are free to pay posted workers the minimum wage, as set by the national legislation of the host country. In many cases, this practice leads to lower remuneration for posted workers than that granted to local employees for the same job.

Based on the New Directive, all the rules on remuneration applying to local workers will also have to apply to posted workers. The posted worker must also benefit from the conditions applicable in the host country for workers' accommodation and allowances or reimbursement of expenditure to cover travel, board, and lodging expenses.

All member states will be required to specify (in a way that is transparent and publicly-available) the terms and conditions of employment, as well as the elements comprising the posted employee's remuneration in accordance with the terms of their own national legislation.

Under the New Directive, the rules applicable to posted workers will also apply to temporary workers hired out by temporary work agencies. Employers using temporary work agencies should inform them about the working conditions and remuneration that apply to its workers.

The New Directive also clarifies aspects related to long-term posting of workers. In this respect, if the total duration of the posting exceeds 12 months (or 18 months where applicable), an additional set of terms and conditions applicable to employment relationships will have to be followed.

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### KPMG NOTE

The New Directive brings clarifications to the posting of workers across the EU. It makes the process stricter yet clearer at the same time. The new provisions aim to improve posted workers' conditions and also give financial security for these workers during the posting period. Consequently, the responsibility for the costs of posting are to a large degree borne by the employer.

However, once the New Directive is implemented into national legislation, EU member states will have the freedom to add their own rules, though within the scope of the New Directive's provisions. This could lead to difficulties for companies in complying. Therefore, companies will have to analyze each posting situation and check the rules applicable in each specific host country – consultation with professional global mobility advisers is recommended, as the rules can be varied and complex.

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### FOOTNOTES:

- 1 For the New Directive on the EUR-Lex Web site, see: <https://eur-lex.europa.eu/eli/dir/2018/957/oj>.
- 2 For related coverage, see GMS [Flash Alert 2017-160](#), 6 November 2017.

## Contact us

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