

GMS Flash Alert

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European Union - Round-up of Significant Developments Affecting Global Mobility

Over the course of the last 12 months, there have been several important developments at the European Union (EU) level that will affect corporate global mobility programs and cross-border workers. In this *GMS Flash Alert*, we provide a summary of some of the relevant developments.

- Revision of the Regulation (EC) for coordination of social security 883/2004
- Directive for Posted Workers
- European Labour Authority
- Directive for Predictable Working Conditions
- Directive for Paternity Leave
- European Passenger Registration System (ETIAS)
- Directive for the Protection of Whistleblowers
- Mandatory Disclosure Rules (“DAC6”).

WHY THIS MATTERS

The developments described in this newsletter will impact global mobility programs and cross-border workers, requiring adjustments to policies formulated and communicated by global mobility professionals. In addition, changes should be considered in terms of practices and procedures, due to the imposition of new information and reporting requirements and the introduction of new rights and obligations for mobile employees.

Proposed Revision of Regulation (EC) for Coordination of Social Security 883/2004

The proposal for a revision of the EU rules on the coordination of social security¹ was not approved before the European Parliament elections held on 22 May 2019.

The same proposal has since been revised and the negotiating parties in the EU have agreed that only those proposal chapters that did not have majority support will be negotiated again. Further, the negotiations will include only those parts of the relevant chapters that could not gain majority support. This means that relevant parts of the chapter on unemployment benefits and the chapter on applicable legislation will be negotiated respectively.

The proposed revision, if adopted in its current draft, will significantly change the applicable legislation for posted workers and employees working in two or more EU countries.

Selected Highlights for Posted Workers

- Posting period of maximum 18 months (currently posting period is 24 months).
- Social security coverage in the posting state at least three months prior to the posting (currently prior coverage is set at minimum one month).
- Application for an A1 certificate must be filed before the posting begins.
- Host country can claim contributions in case of a disagreement with the validity of an A1 certificate.

Selected Highlights for Multi-State Workers

- If an employee does not work for a substantial part in the country of residence, social security in the country where the largest share of work activities are performed will apply (currently in such a scenario, the legislation in the country where the employer is located applies).
- Business travels during which an employee does not provide service(s) would not require an A1 certificate. (However, there is no clarification as to what this means and during which travels an employee would be required to have an A1 certificate and during which travels there would be no such requirement.)

For more information, read our earlier report, GMS [Flash Alert 2019-081](#) (25 April 2019).

Posting of Workers Directive

The EU Commission adopted a proposal for a revision of the Posting of Workers Directive on 28 June 2018.²

Selected Highlights

- All relevant elements of remuneration will apply to the posted worker (currently minimum rates of pay are covered in the Directive).
- Rules of the host country will apply for accommodations and allowances or reimbursement of expenses during a posting.
- Posting is limited to 12 months (possible extension up to six months).

- Conditions of employment in the host country will apply to postings that last longer than 12 (or 18 months).

The registration obligation is expected to receive increased focus in future with the establishment of the European Labour Authority.

The Directive must be transposed into national law by 30 July 2020.

European Labour Authority

The European Labour Authority³ (ELA) has officially begun operation. The ELA is meant to enforce compliance with the Posting of Workers Directive, including a correct application of working conditions and registration of posted workers in the host country, and compliance with social security, namely the A1 certificate.

For more details, please see our GMS [Flash Alert 2019-105](#) (18 June 2019).

Directive for Predictable Working Conditions

The EU's Directive on transparent and predictable working conditions⁴ mandates minimum rights for workers in the 'gig economy' and includes workers' rights to certain information, the right to take up other employment, the right to request a transfer to another more secure job, free vocational training, etc.

The Directive must be transposed into national law by 31 July 2022.

For more details, see GMS [Flash Alert 2019-111](#) (3 July 2019).

Directive for Paternity Leave⁵

This Directive introduces four months of parental leave to each parent of which two months cannot be transferred to the other parent or care-giver. This means that minimal paid paternity leave is set for two months. Further, the Directive introduces paternity leave of at least 10 days after the birth of the child, compensated at least at the level of sick pay in that EU member state.

This is an important step forward in persuading more fathers to spend time with their new-born children, as well as promoting equality between men and women in the roles at home and in the work-place.

The Directive must be transposed into national law by 2 August 2022.

For additional details, please read GMS [Flash Alert 2018-089](#) (26 June 2018).

European Passenger Registration System⁶

Third-country nationals who travel to the EU and who are today exempt from a visa requirement will have to apply for an authorization in the European Travel Information and Authorisation System (ETIAS) prior to their travel to the EU.

ETIAS is expected to be operational from January 2021. The application system will be an online system and applications will be charged.

For more details on ETIAS, see GMS [Flash Alert 2018-146](#) (8 November 2018).

Directive for Protection of Whistleblowers⁷

This Directive introduces minimum standards for the protection of persons (commonly referred to as “whistleblowers”) who report breaches of EU law, including procurement, compliance, product safety, protection of personal data, etc.

The protection extends to all reporting persons who acquire information in a work-related context and persons who in any way may suffer retaliation in a work-related context, e.g., a person assisting the reporting person with reporting.

After entry into force – expected by the end of 2021 – the Directive must be transposed in national law within two years.

To learn more, see GMS [Flash Alert 2019-169](#) (13 November 2019).

Mandatory Disclosure Rules (Directive for Administrative Cooperation 6, “DAC 6”)⁸

Mandatory Disclosure Rules (MDR) introduce mandatory reporting of cross-border tax arrangements between intermediaries to tax authorities in the EU.

The EU member states have until the end of 2019 to implement MDR into their national law and it is expected that the scope of the reporting requirements will vary from country to country.

MDR affects cross-border tax arrangements in global mobility too. However, the full scope of these effects will be known once there is more clarity on how each member state intends to implement MDR into its national law.

It needs to be noted that MDR is effective from 25 June 2018. All cross-border tax arrangements that (will) fall in the scope of the MDR and that date back to 25 June 2018, will have to be reported from July 2020 and until end July 2021.

We are following the developments in the MDR and expect to provide more news on this topic in 2020.

KPMG NOTE

International assignment program managers, HR departments, and cross-border workers in the EU should stay abreast of developments in the areas noted above and to the extent that they believe their programs or the workers themselves may have issues that need to be addressed or are otherwise concerned, should be speaking with their global mobility advisers and immigration counsel.

FOOTNOTES:

- 1 For the proposal (and related texts and documents) on the website of the European Parliament, click [here](#).
- 2 For the proposal, click [here](#).
- 3 See the ELA [website](#).

FOOTNOTES (cont'd)

4 For the Directive, click [here](#).

5 For the Directive, click [here](#).

6 For more information, click [here](#).

7 See the [Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law](#).

8 See the [Council Directive \(EU\) 2018/822 of 25 May 2018 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements](#).

FOOTNOTES (cont'd)

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Contact us

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