



GMS Flash Alert

Immigration Edition

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Germany - Revised Posting of Workers Directive 2018/957/EU Implemented

The draft law¹ submitted by the German federal government on the transposition of the revised Posting of Workers Directive (EU) 2018/957² was approved by the German parliament ("Bundestag") and will come into force no later than 30 July 2020. The new law will extend the catalogue of applicable working conditions to posted workers.

In 2018, the revised Posting of Workers Directive 2018/957/EU was adopted. The aim is to help ensure that posted workers are granted the same working conditions as local employees.³

The new corresponding bill to amend the German Act on the Posting of Workers ("AEntG") adopted by the federal government, was approved by parliament on 18 June 2020. As noted, it will come into force no later than 30 July 2020.

WHY THIS MATTERS

The existing Posting of Workers Directive (EC) 96/71 is no longer adequate for the new realities within the European market. For example, the growth in wages over the 20-year period since the original Posting of Workers 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.

Key Aspects of New German Law

- The AEntG extends the array of Germany's applicable working conditions to posted workers. Of special importance is the extension related to remuneration terms. In future, not only minimum wage rates need to be observed, but so does total remuneration, which consists of the following components:
 - Base salary,
 - Any remuneration components, which are granted depending on the performance of work duties, qualification, and/or the professional expertise of the employees,
 - Any other allowances such as overtime allowance and benefits-in-kind.

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

- The extended working conditions must be, however, 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 will that trigger the compliance requirements of the revised PWD, i.e., extended working conditions, also known as Equal Pay Principle of the revised PWD.
- Under certain conditions, posted workers will be entitled to reimbursement of costs incurred pursuant to the German rules as long as they are more beneficial.
- Should the postings last longer than 12 months (with a one-time extension possibility of six months), all other terms and conditions of employment under German law – in addition to remuneration and minimum working conditions – must be applied with few exceptions such as termination law, company pension scheme law, as well as laws related to fixed-term employment. The additional working terms and conditions for long-term postings need to be observed as of 30 July 2020. If the posting has started before 30 July 2020, the additional working terms and conditions need to be observed as soon as the posting exceeds 18 months.
- Certain activities are exempt from the new rules if they are only performed to a minor extent. The rules will not apply to the road transport sector.
- The German Customs ("Zoll") will remain the competent monitoring authority.

KPMG NOTE

Considerations for Employers

- ✓ Identify risk countries and risk employee groups and assess whether employees could fall within the scope of Equal Pay requirements;
- ✓ If Equal Pay applies, review and adjust remuneration and other mandatory working conditions (e.g., by introducing a type of equal pay allowance);
- ✓ Make sure that relevant documentation for the posting (e.g., assignment contracts, assignment policies, working time sheets etc.) is compliant;

KPMG NOTE (continued)

- ✓ Submit PWD registration notification only upon fulfilling Equal Pay requirements;
- ✓ Incorporate Equal Pay compliance into the overall travel process;
- ✓ Align Equal Pay with A1 compliance requirements.

Please find further information on our Equal Pay Hub at: <https://kpmg-law.de/rechtsgebiete/eu-entsenderichtlinie/> .

FOOTNOTES:

1 See the law (in German) at: <https://dip21.bundestag.de/dip21/btd/19/193/1919371.pdf>

2 See [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.

Also, for the New Directive on the EUR-Lex website, click [here](#).

3 For coverage of the revised directive, as well as what other countries are doing to transpose the directive into national law, see the following issues of *GMS Flash Alert*: [2020-329](#) (27 July 2020), [2020-327](#) (23 July 2020), [2020-292](#) (23 June 2020), [2018-111](#) (24 August 2018), and [2017-160](#) (6 November 2017).

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