



# GMS Flash Alert

Immigration Edition

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## Romania - Law on International Posting of Workers Amended

Law 172 amending Law no. 16/2017, Romania's law on the posting of employees providing transnational services, was published in the Official Journal of Romania (*Monitorul Oficial*) on 13 August 2020.<sup>1</sup> The measure adapts Romanian law to comply with the amended EU Directive on the posting of workers.<sup>2</sup>

This article briefly describes the most significant changes that employers must observe as of 16 August.

### WHY THIS MATTERS

Law 172 provides for additional rights for posted workers, in terms of remuneration and working conditions, and additional obligations for their employers, such as new administrative requirements and higher costs. Both inbound and outbound postings will be impacted.

### “Minimum Wage” Replaced by Concept of “Remuneration”

Under the law before this amendment, during the period of posting in a European Union (EU) member state or in Switzerland, workers had certain rights, such as the right to the **minimum wage** defined by the legislation and / or practice of the host member state, including compensation or payment of overtime.

Since 16 August, when Law 172 came into force, posted workers are entitled to the applicable **remuneration** as defined by law in the host state, including overtime pay, except for supplementary occupational pension schemes, in addition to the minimum wage applicable in that state.

### What is the difference between “minimum wage” and “remuneration” in the case of posted workers to / from Romania?

The remuneration applicable in Romania is the amount of money, including the minimum wage as defined by law,

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overtime rates, compensation for work during weekly rest days, compensation for work during public holiday days, compensation for night work, other compensation and allowances that are mandatory under national legislation, as well as those stipulated in collective bargaining agreements with general applicability.

The remuneration applicable in an EU member state, other than Romania or Switzerland, is the amount of money, determined by the national law and/or practice of the member state where the worker is posted representing all the constituent elements of remuneration rendered mandatory by national law regulation or administrative provision, or by collective agreements or arbitration awards which, in that member state, have been declared universally applicable or otherwise apply in accordance with the original EU posting directive.<sup>3</sup>

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## KPMG NOTE

The remuneration applicable during the international posting period may include, in addition to the minimum wage, a number of bonuses or allowances such as holiday allowances, industry-specific allowances, staff-specific allowances, etc., in accordance with the legislation of the host member state.

As a consequence, for Romanian employers who second employees to another EU member state or to Switzerland, it will be extremely important to determine, prior to the start of the secondment, what the remuneration applicable in that state is for each employee under the new law.

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## New Rights Added for Posted Workers

In addition to the rights already stipulated in Law 16/2017, posted workers providing services will also benefit from the working conditions established by the legislation of the state on whose territory the services are provided, regarding:

- the conditions relating to accommodation, when they are sent to temporarily perform job-related tasks outside their usual place of work;
- allowances or reimbursement of travel, board and lodging expenses, when they are sent to temporarily perform job-related tasks outside their usual place of work, in accordance with domestic legislation or collective bargaining agreements with general applicability.

## Additional Employer Obligations for Long-Term Assignments

When the effective duration of a posting exceeds 12 months, employers must make sure they apply, under the principle of equal treatment, all the applicable terms and conditions of employment under domestic legislation or collective bargaining agreements with general applicability, except for:

- procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses; and
- supplementary occupational retirement pension schemes.

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## KPMG NOTE

Such additional obligations may include granting certain industry-specific working conditions, sick leave entitlements, age-related leave entitlements, additional maternity rights or other similar conditions and rights, under the law of the host member state.

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The posting period may be extended by a maximum of six months provided that the posting employer submits a notification justifying the extension to the labour authorities where the posted workers carry out their activities, in accordance with the domestic legislation of the host member state.

In Romania's case, this must be done no later than one day before the 12-month period is completed. Also in Romania's case, when determining the 12-month period, the periods prior to the date when Law 172 entered into force (prior to 16 August) are not taken into consideration. (Other countries have different approaches to setting this period and therefore it is important to check the host country's approach for all postings in progress as at 30 July 2020.)

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## KPMG NOTE

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 the host country. The employee is still seconded to the host country, but has certain additional rights specific to national legislation and collective agreements with general applicability in the host country.

Most probably, the procedures for registration / notification of secondments to the authorities in the host country will also be modified to cover the situations in which the secondment is extended or is set as of the beginning for a period exceeding the 12- or 18-month threshold.

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## New Administrative Requirements for Employers

Employers located in a member state, other than Romania or Switzerland, who **post workers to Romania**, are required to make available to the labour authorities, at their request, documents demonstrating the following:

- a) The total remuneration that the posted worker will benefit from throughout the posting, showing separately the allowance specific to the posting.
- b) Expenditures incurred for the posting, such as travel, board and lodging and the method for granting or reimbursing this expenditure, as well as the method for helping ensure travel, board and lodging as appropriate, together with the applicable working terms and conditions

Employers located in Romania **posting workers to a member state**, other than Romania or Switzerland, are required to notify in writing the posted worker, prior to the posting, of the following:

- a) Constituent elements of the remuneration the posted worker is entitled to, under the local legislation in the host member state and the corresponding amounts;
- b) The total remuneration granted to the posted worker throughout the posting, demonstrating separately the allowance specific to the posting when granted;

- c) Expenditure incurred for the posting, such as travel, board and lodging and the method for granting or reimbursing such expenditure, as well as the method for helping ensure travel, board and lodging as appropriate.
- d) Details of the single official national website created by the host member state under EU Directive 2014/6.<sup>4</sup>

## Definition of Employee Posted from Romania Is Correlated with Social Security Regulation

An employee seconded from Romania is the employee of an employer established in Romania, who, for a limited period of time, but not more than 24 months, according to Regulation (EC) no. 883/2004, carries out work in another member state or in the Swiss Confederation, during the execution of the contract concluded with the employer from the other member state.<sup>5</sup>

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### KPMG NOTE

This limitation is not provided for in the original EU posting directive. Also, the social security regulation does not limit the duration of a posting; its purpose is to determine the applicable social security legislation.

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## Definition of Assignment Allowance Is Correlated with Fiscal Code

An assignment allowance is the allowance meant to foster the social protection of employees and is granted in order to compensate for the inconveniences caused by the secondment – consisting, for example, of removing the employee from his or her usual environment – to which the favourable tax treatment provided by the Romanian Fiscal Code applies.<sup>6</sup>

## Clarifications for Employees Hired Out by Temporary Work Agents

When a foreign work agent hires out personnel to a company in Romania and the company decides that the activity is to be carried out in a member state other than that where the worker normally works, the employee is considered to be posted to that member state by the work agent with which he or she is in a contractual relationship. In this case, the company in Romania is required to notify the temporary work agent that hired out the employee, at least 30 days prior to the employee's start of activity in the other state.

Similarly, when a Romanian work agent hires out personnel to a company in another member state and the company decides that the activity is to be carried out in a member state other than that where the worker normally works, in the framework of the transnational provision of services, the employee is considered to be posted by the work agent with which he or she is in a contractual relationship. The Romanian work agent is required to notify the employee about the changes related to the place of work, following the provisions of the Labour Code.

## FOOTNOTES:

1 Law 172 amends Law no. 16/2017, which transposes Directive 96/71/EC concerning the posting of workers providing services transnationally. Directive 96/71 / EC was amended by Directive (EU) 2018/957. As a result, member states had to implement the Directive (EU) 2018/957 into their national legislation by 30 July 2020. For the published laws and other statutory instruments of Romania (in Romanian), see the Web site for *Monitorul Oficial* at:

<http://www.monitoruloficial.ro/>.

2 See the full text of the [Directive 2018/957/EU](#) on posting of workers. For related coverage of the directive, see GMS [Flash Alert 2020-329](#) (27 July 2020) and [Flash Alert 2020-292](#) (23 June 2020). 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*: [2020-356](#) (14 August 2020), [2020-334](#) (29 July 2020), [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).

2 Article 3 paragraph 8 of Directive 96/71/EC.

3 Article 5, paragraph (2) of EU Directive 2014/6.

5 According to Art. 12 of Regulation (EC) no. 883/2004 of 29 April 2004 on the coordination of social security systems, a person who pursues an activity as an employed person in a member state on behalf of an employer which normally carries out its activities there and who is posted by that employer to another member state to perform work on that employer's behalf will continue to be subject to the legislation of the first member state, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another person.

6 According to art. 76 para. (2) lit. k) of the Fiscal Code (Law no. 227/2015), the tax treatment applicable to salary income also applies to allowances and any other amounts of the same nature, other than those granted to cover transportation and accommodation expenses, received by employees, according to the law, during the delegation / assignment, as appropriate, abroad, for business purposes, for the part exceeding the non-taxable ceiling (2.5 times the legal level established for per diems by the Government Decision for Romanian personnel sent abroad for temporary missions).

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