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Corporate Immigration and Global Mobility: EU Directive 96/71 on the posting of workers within the European Union – news



The European Parliament finally approved, on May 29, 2018, after almost 27 months of tense negotiations, **the proposal for the amending of the EU Directive 96/71 and the Enforcement Directive 2014/67**, concerning the posting of workers within the European Union in the framework of the provision of services.

The posting of workers within the member States of the European Union has notably increased in the last years, becoming a valid instrument for European companies but, on the other hand, has shown practical problems that had to be dealt with urgently.

The reform was proposed to guarantee fair employment conditions and protection for the posted workers, and to address and tackle unfair practices and unfair competition of workers that are employed in countries where labour costs are usually lower.

The main issue that had to be faced and that resulted in **difficult negotiations** among the member States is the one related to the practice which allowed workers from another EU country to temporarily move to and work in the territory of another member State while still being covered by their home country's social security and tax law.

The difference among member States as to the levels of salaries and, in general, the costs of labour have in fact led to unfair competition between posted workers and national workers, often resulting in the so called "social dumping."

The most remarkable amendment to the text of the EU Directive 96/71 concerns **Article 3** and, in particular, the maximum duration of the posting of workers to another member State and the applicable law.

According to the original version of the Directive, which will continue to be applicable until at least 2020, no time limits were prescribed for the duration of a posting.

Pursuant to the new wording of Article 3 of the EU Directive, in the case in which the effective duration of a posting is longer than 12 months, for the following period the host entity shall guarantee to the posted workers all the applicable terms and conditions of employment which are laid down by the law, regulations and administrative provisions of the country where the work is carried out.

Said 12-month period can be extended, under strict circumstances provided by the host country's law, for a further period of 6 months.

After 12 months, therefore, the posting will be governed by a mandatory additional set of rules provided for by the host member State's law. This does not mean that after the expiration of the 12-month period the posting shall come to an end.

The worker is in fact allowed to continue to perform his/her duties in the member State in which s/he is posted, but working conditions will be subject to local labour rules.



This novelty will grant fairer conditions of employment and better rights for posted workers and will prevent the employers based in the host country from taking advantage of those workers coming from countries that are “cheaper”, in terms of labour and social security costs.

The amended text of the EU directive also strengthens the right of posted workers to receive the **same remuneration** that local employees of the host entity receive, for carrying out similar activities. It is in fact prescribed that all the relevant elements provided by the law, regulations and collective labour agreements to establish remuneration levels shall now be published by State Authorities by means of official websites.

EU members States are requested to take all necessary steps to implement in their local legal systems the reform of the Directive on the posting of workers, in order for it to be fully valid and effective by 2020.

LCA Corporate Immigration team will keep you posted on any news regarding the implementation of the changes described and remains available for any clarification in relation to the content of this alert and, in general, to the transfer of people, of any nationality, from Italy to the different countries of the world and *viceversa*.

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