



# Why Should Non-European Union-Based Multinational Employers Care about the EU's Posting of Workers Directive?

September 2025 | By Daida Hadzic and Rob Fagan,  
Washington National Tax practice, KPMG LLP (U.S.)



In a globalized world, the movement of employees across borders has become commonplace for many multinational corporations, including those based in the United States. In addition to complying with U.S. rules, U.S.-based employers that send employees overseas are often subject to a variety of administrative requirements in the host country. Similarly, companies based in other countries – Australia, Brazil, India, United Arab Emirates, Morocco, Japan, etc. – will have certain administrative requirements to fulfil vis-a-vis their employees that are posted abroad. And if a host state is part of the European Union (EU), and non-EU workers are posted there, there are particular rules and procedures that apply – indeed, it is generally more complex given that it is a bloc of 27 member countries.

U.S. employers – and other non-EU-based employers – that send employees to temporarily work in EU member states must navigate the EU's Posted Worker Directive, entailing compliance with host country laws and steering clear of undesirable sanctions and penalties.

This article provides an overview of the EU's Posted Worker Directive and examines how it applies to U.S. and other non-EU employers that send employees to work in EU member states. (This article will focus on the obligations to be met by U.S.-based employers; but, in general, similar concepts, obligations, and practices apply to other non-EU-based employers. Please note, this article does not address the directive for posted workers in international road transport (Directive (EU) 2020/1057).)



## What Is the EU's Posted Worker Directive?

The EU's Posted Worker Directive (PWD)<sup>1</sup> serves as a legislative framework to foster fair treatment for employees temporarily sent by their employers to provide services in another EU member state (posted workers). The principle governing the status of posted workers is "equal pay for the same work in the same place," which is reflected in the Directive by granting posted workers rights comparable to local workers. These rights encompass aspects such as remuneration, working time, and health and safety standards.

The Directive aims to protect posted workers who come from countries with lower levels of protection compared to the host country, such as lower remuneration or longer working hours. By doing so, it creates a level playing field between foreign and local service providers, preventing unfair competition based on lower labor standards and costs.

However, when a posted worker comes from a country with higher levels of protection, such as higher remuneration, shorter working hours, and/or better insurance against work-related injuries, the PWD does not require adjustments to those working conditions. In such cases, the Directive is not triggered because its objective is to safeguard posted workers who are sent to countries with higher levels of protection than those provided in their country of origin.

The PWD does not aim to diminish the working conditions of posted workers; rather, it aims to protect them from being disadvantaged when working in a host country with lower standards. Therefore, no changes are needed if the posted worker's conditions are already superior to those in the host country.



By impacting working conditions for posted workers in this manner, the Directive reduces the competitive advantage that an employer from a country with lower working standards might have when delivering services in a country

with higher standards for working conditions, ultimately creating a more level playing field for competition between foreign and local service providers.



## What Is the EU's Enforcement Directive?

Over the years, the PWD has encountered various enforcement challenges and created legal uncertainty for both employers and posted workers. To address these issues, the Enforcement Directive (ED)<sup>2</sup> was introduced to establish an administrative framework aimed at enhancing the enforcement of the PWD and facilitating the exchange of information between relevant authorities across the EU. While the PWD focuses on working conditions and labor law aspects, the ED addresses administrative requirements, with prior notification about posting being a central element.

Each EU member state maintains a dedicated website for posted workers, where employers are required to register all posted workers before they commence work in that member state.<sup>3</sup> This system fosters better oversight and compliance with the regulations governing posted workers.





## Is the Application of the PWD and the ED Universal?

The PWD governs the working conditions of posted workers and is applicable exclusively to postings between EU member states. Employers from non-EU countries, such as those from the United States, must adhere to the national labor laws of the EU member state to which the workers are posted, often as part of the immigration process.

While the PWD focuses on labor conditions, the ED addresses administrative requirements. EU member states have the discretion to extend these administrative requirements beyond the scope of the PWD, a practice that many have adopted.

Although mandatory prior notification is primarily intended for intra-EU postings, more than half of the EU-27 member states have expanded the prior notification requirements to include companies established outside the EU, including those from the United States. This extension underscores the principle that non-EU employers not be given more advantageous treatment as compared to the EU employers regarding the administrative burden of a posting declaration prior to the commencement of work in the host country.

Directive	Purpose	Application
<b>Posted Worker Directive (PWD)</b>	Establishes core working conditions for posted workers in accordance with the standards of the host country	Applies within EU member states, <sup>4</sup> aligning labor law requirements to prevent “social dumping” <sup>5</sup> of posted workers
<b>Enforcement Directive (ED)</b>	Sets out administrative requirements for the implementation of the PWD, including mandatory prior notification about posting	Applies within EU member states, <sup>6</sup> and more than half of the EU-27 member states require notification about posting to postings originating from non-EU member states

The ED is particularly relevant for U.S. employers because it imposes administrative obligations that must be fulfilled **before** workers begin working in the EU member states.

- **Register posted workers:** Most EU member states require non-EU companies, including those from the U.S., to submit a mandatory prior notification about posting in the host country. In this notification, the employer must register details such as the identity of the employer, information about the posted worker(s), the address of the workplace in the host country, and the type of service provided. As part of the registration process, the posting employer must also appoint a contact person to liaise with local authorities if necessary. Relevant documentation, including employment or assignment contracts, A1 certificates for social security coverage or Certificates of Coverage, and pay-slips, must be made available in the host country upon request by the authorities.

- **Sanctions of non-compliance:** Non-compliance with the working conditions outlined in the PWD can result in a range of sanctions, including criminal prosecution, significant financial penalties, cessation of working activities, and a ban on the provision of services in the host country.

Also, failure to comply with the ED’s prior notification requirement about posting can lead to substantial penalties, including fines, cessation of business activities, and reputational damage. Often, host companies refuse to accept posted workers on their premises without confirmation that the prior notification has been submitted as they are co-liable along with the employer posting the workers and their compliance with the rules. U.S. employers must make sure that the notification about posting is submitted in a timely manner and that all necessary documentation, such as employment or assignment contracts, pay-slips, and certificates of social security coverage, are maintained and accessible in the host country.





## Who Is a Posted Worker?

The registration and documentation requirements imposed by the ED only apply to U.S. employers who send employees to work in the EU to the extent:

1. the employee is considered a posted worker, and
2. the employee is posted in an EU member state that extends the registration and documentation requirements to postings by U.S. employers.

Thus, when a U.S. employer sends an employee to work in an EU member state that imposes the registration requirement on U.S. employers, the threshold question is whether the employee meets the definition of a posted worker.

A posted worker is temporarily sent by his/her employer to carry out services in an EU member state. The service recipient in the host EU member state may be a private individual, company, public organization, governmental institution, or similar entity. Posting can occur within a contract for services, as an intra-group posting, or through a worker being posted by a temporary work agency.

The definition of a posted worker is intentionally broad, as a narrow interpretation could undermine the overall objectives of the rules and requirements for posted workers.

Employers sending workers to work abroad should have clarity on whether those workers are considered posted in the context of the PWD.

Here are some perhaps less obvious examples to illustrate whether a worker is considered a posted worker:

Example	Description	Posted worker in the context of Posting of Workers
<b>Remote worker</b>	An individual works remotely for his/her employer in another EU country from a home, hotel, or another residential establishment.	This is not a posted worker. The worker does not deliver a service to a service recipient in the host country. However, Belgium is the only EU member state that requires the registration of remote workers, even though they are not posted workers in the context of the PWD.
<b>Conference</b>	A worker travels from abroad to attend the annual KPMG conference on Global Mobility.	Regardless of whether the person is presenting or participating at the conference, this is not a "posting." No service is being provided to a local service recipient.
<b>Conference venue</b>	A worker is sent from another country to set up the stage at the annual KPMG conference on Global Mobility.	This is a posted worker. The service is delivered to the venue or organizer in the host country.
<b>Audit</b>	A worker is sent from abroad to perform audit activities at a client's subsidiary company premises.	This is a posted worker. The service is delivered to the subsidiary company in the host country.
<b>IT consultant</b>	A worker is sent from abroad to a data center to provide expert advice and strategic guidance about IT infrastructure to a company within the same corporate group, under a service agreement between the two companies.	This is a posted worker. The service is delivered to the company in the same group in the host country.
<b>Business meeting</b>	A worker is sent from abroad to a meeting with a potential customer to present goods and services the customer can consider buying.	This is not a posted worker. The meeting does not concern services delivered to a service recipient in the host country.
<b>Governmental contractor</b>	A private company is sending a worker from abroad to deliver IT-support to the Ministry for Health.	This is a posted worker, as the service is delivered to the service recipient in the host country. Public institutions are exempt from the Posted Workers Directive, meaning that when they post workers, the Directive does not apply to them. However, when public institutions receive services from private companies, the Directive applies to those private companies.



## Are There Applicable Thresholds for Posting?

In principle, there is no minimum or maximum duration for a posting for the rules and requirements to apply.

**PWD:** The PWD specifies which working conditions are governed by the labor laws of the home country and which are governed by those of the host country during a posting, and it applies to intra-EU postings.<sup>7</sup>

The PWD differentiates between short-term postings, which last up to 12 months with the possibility of extension up to six months, and long-term postings, which exceed 12 (18 (12 + 6)) months.

Short-term postings are subject to host-country rules for only certain working conditions, whereas long-term postings are subject to host-country rules for all working conditions except those related to dismissal and occupational pensions.

There is one mandatory exception to the PWD, which concerns cases of initial assembly and/or first installation of goods when the posting does not exceed eight days, commonly referred to as “the fitter exemption.”

**ED:** The ED requires employers posting workers to submit a mandatory prior notification about the posting. This requirement applies to intra-EU postings,<sup>8</sup> and most EU member states extend this requirement to employers posting workers from non-EU countries, including the United States.

EU member states have discretion in this area, which also includes exemptions from mandatory prior notification. For instance, athletes, artists, and participants in short-term scientific programs are often exempt from prior notification. Other exemptions may include intra-group postings lasting only a couple of days and urgent maintenance work that lasts

only a few days. In Germany, notifications are required only for certain business sectors. Such exemptions can be found on national websites dedicated to posting.

The key take-away is that whether the PWD applies does not necessarily dictate whether there is an obligation to submit a prior notification about posting and vice versa.

### Administrative Burden

The requirement for notification about posting varies from country to country, significantly increasing the complexity and administrative burden for employers trying to comply. The necessity to submit the notification before the commencement of work adds pressure and makes compliance challenging.

The European Commission has launched a legislative proposal currently under negotiation for a central e-Declaration system for posting. If adopted and implemented, EU member states will have the option to opt-in for the e-Declaration, as the proposal does not make it mandatory for member states to use this system. A central e-Declaration for posted workers in road transport already exists, suggesting that, if adopted, a central e-Declaration system for all postings could be on the horizon within a foreseeable timeframe.







### Social Security

Providing for proper social security coverage from the home country is crucial when employees are posted abroad. This coverage is documented with an A1 certificate or a Certificate of Coverage (CoC). The A1 certificate is issued by EU member states, as well as Norway, Iceland, Liechtenstein, Switzerland, and the U.K., for workers posted to and from these countries. CoCs are issued under totalization agreements for social security; for instance, the U.S. has numerous totalization agreements and issues tens of thousands of CoCs annually to workers temporarily posted to other countries.

These certificates are mandatory components of the documentation required during a posting. In some countries, it is necessary to provide the certificate – or a confirmation of application if the certificate is pending – with the prior notification about the posting.

If social security contributions are not made in the host country during the posting, failing to document coverage under the home country's social security scheme can result in penalties. These penalties may pertain to the employer's failure to provide adequate protection and appropriate compensation for the posted worker.

When posting a worker, employers should strive to comply with social security requirements, as the consequences of non-compliance can extend beyond social security and affect labor laws and the protection of mobile workers in general.

### Transparent and Predictable Working Conditions

The EU Directive on Transparent and Predictable Working Conditions<sup>9</sup> (DTPWC) outlines the information that must be included in employment contracts when employment lasts at least four consecutive weeks.

The DTPWC also mandates that posted workers receive written information about their terms of employment when they are posted for at least four consecutive weeks. This includes details such as the destination and expected duration of the posting, the currency for remuneration, repatriation terms, and more.

It is important to note that while the DTPWC sets the requirement for written notice to employees at a minimum of four consecutive weeks, EU member states have the discretion to lower this threshold, and some have already done so.

Under any circumstance, companies sending workers abroad should have a clear policy in writing outlining when and what information they provide to employees in writing regarding their activities abroad. This policy fosters transparency and compliance with relevant regulations, safeguarding both the company and its employees during international assignments.



## U.K. Post-Brexit and the PWD

The U.K.'s departure from the EU (commonly known as "Brexit") has fundamentally altered its relationship with EU labor laws, including the PWD. As the U.K. is no longer an EU member state and U.K. nationals are no longer EU nationals enjoying all the freedoms of movement that entails, the PWD no longer applies to postings between the U.K. and EU member states. Consequently, U.K. companies posting workers to EU countries are positioned similarly to U.S. employers.

When posting workers to EU member states, U.K. employers must observe local labor laws independently of the PWD and submit prior notifications about posting in member states that extend this obligation to postings from non-European Economic Area countries or Switzerland.

This also means that U.S. employers sending workers to the U.K. must adhere to U.K.-specific labor laws and administrative requirements, which differ from the EU framework. For postings to EU member states, U.S. employers must continue to comply with local labor laws and submit prior notifications about posting where applicable.

## European Free Trade Association (EFTA)

Countries in close cooperation with the EU—Norway, Switzerland, Liechtenstein, and Iceland—have implemented obligations that resemble the PWD and the ED, but these requirements rely solely on the national legislation of each country.







## Conclusion

While globalization has seen increased cross-border movements of workers, countries and supra-national institutions (like the EU, OECD, etc.) have been challenged to track and control in-flows and out-flows of labor, provide for a level playing field in terms of employment, and reinforce their competitive edge. Compliance with both the Posted Workers Directive (PWD) and the Enforcement Directive (ED) is crucial for maintaining the integrity of the EU's internal market, fostering fair competition between foreign and local service providers, and safeguarding the rights of workers. The rules, and obligations imposed thereunder, should not be overlooked or treated casually, as penalties, reputational risk, and negative impact to the achievement of business objectives can result.

These directives establish a framework that balances the freedom of movement and service provision with the protection of labor standards, preventing social dumping,

and correcting for unfair competitive advantages based on lower labor costs and less stringent regulations and standards.

The authorities are actively exploring opportunities to utilize technology and facilitate data exchange on mobile workers to strengthen the enforcement of rules and requirements for posted workers and address existing compliance gaps.<sup>10</sup> Therefore, employers are strongly encouraged to inform themselves of applicable requirements and procedures in the countries to which they post workers – and working with their professional services advisers may be helpful in this regard – and be proactive about complying with the PWD and the ED so that they may avoid potentially harmful consequences that could adversely affect their operations and reputation.

To learn more about the KPMG Global Mobility Services practice, please visit: [read.kpmg.us/GlobalMobilityServices](https://read.kpmg.us/GlobalMobilityServices).

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### Footnotes:

- <sup>1</sup> For a link to the Directive and additional information on the posting of workers, see the website for the European Commission's Directorate on Employment, Social Affairs and Inclusion at: [https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/working-another-eu-country/posted-workers\\_en](https://employment-social-affairs.ec.europa.eu/policies-and-activities/moving-working-europe/working-another-eu-country/posted-workers_en).
- <sup>2</sup> Ibid. for the link to the ED.
- <sup>3</sup> For example, the main website for posted workers in Denmark is [Workplacedenmark.dk](https://workplacedenmark.dk) (offered in several languages).
- <sup>4</sup> Most EU member states treat Norway, Iceland, Liechtenstein, and Switzerland as equivalent to EU member states with regard to posting.
- <sup>5</sup> Social dumping is a phenomenon that takes place when companies employ strategies availing of – or pushing the envelope regarding – existing law and/or practices to exploit differences in environmental, occupational safety and labor costs, and social rights/protections between countries or regions, for example, to control their employment-related expenses and administrative requirements, and gain a competitive advantage.
- <sup>6</sup> Ibid.
- <sup>7</sup> Most EU member states treat Norway, Iceland, Liechtenstein, and Switzerland as equivalent to EU member states with regard to posting.
- <sup>8</sup> Ibid.
- <sup>9</sup> For a link to the Directive and additional information on workers' rights and secure employment, see the "Transparent and predictable working conditions" webpage for the European Commission's Directorate on Employment, Social Affairs and Inclusion at: [https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/labour-law/working-conditions/transparent-and-predictable-working-conditions\\_en](https://employment-social-affairs.ec.europa.eu/policies-and-activities/rights-work/labour-law/working-conditions/transparent-and-predictable-working-conditions_en).
- <sup>10</sup> European Labour Authority, "Bilateral and multilateral agreements in the area of EU labour mobility" (March 2025).

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