



Secondments to and within Europe

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| Global
Human
Resources
Lawyers

Secondments to and within Europe



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In today's global marketplace, businesses increasingly operate on a regional or international scale. Companies that coordinate their employees across multiple jurisdictions must comply with the rules and regulations governing employment, labour, pensions, social security, tax and immigration law in each of those jurisdictions. As a result, retaining legal experts with knowledge and experience in both international and local Human Resources law is essential for businesses of all sizes.

Ius Laboris is an alliance of leading Human Resources law practitioners. We have more than 2,500 lawyers providing local expertise across the globe, with member firms in over 40 countries and coverage in more than 100 jurisdictions. Human Resources challenges need local expertise within a global framework. The complexities of national employment law demand it, and the Ius Laboris members supply it.

Each of our members must be a top-ranking Human Resources or Pensions law firm in their respective locality to be invited to join Ius Laboris. We welcome into our Alliance only firms that possess focused expertise in all disciplines of labour, employment and pensions law. Our lawyers understand the issues and challenges associated with managing a workforce, wherever it is located.

Contributors

The Alliance focuses on specific areas of expertise within our eight International Practice Groups (IPGs). The IPGs bring together lawyers from across the Alliance with expertise in key areas of Human Resources law including Individual Employment Rights, Discrimination, Restructuring and Labour Relations, Pensions, Employee Benefits and Tax, Data Privacy, Occupational Health & Safety and Global Mobility.

In our experience, local expertise in these areas of law is crucial to developing coherent Human Resources strategies that work within a global framework. Our IPGs meet regularly and are well placed to coordinate regional and worldwide requests, drawing on each individual lawyer's wealth of experience. Clients can access the work of our IPGs, which complement our extensive portfolio of legal services.

For additional information, please visit our website (www.iuslaboris.com) or feel free to contact us:

Ius Laboris

280 Boulevard du Souverain
1160 Brussels
Belgium
T +32 2 761 46 10
F +32 2 761 46 15
E info@iuslaboris.com

AUSTRIA

Birgit Vogt-Majarek
Monika Enser-Beer
Kunz Schima Wallentin
Porzellangasse 4
1090 Vienna
Austria
T +43 1 313 74 0
F +43 1 313 74 80
E birgit.vogt@ksw.at
monika.enser-beer@ksw.at
www.ksw.at

BELGIUM

Sophie Maes
Claeys & Engels
280 Boulevard du Souverain
1160 Brussels
Belgium
T +32 2 761 46 08
F +32 2 761 46 70
E sophie.maes@claeysengels.be
www.claeysengels.be

CYPRUS

Natasa Aplikiotou
George Z Georgiou & Associates LLC
1st Floor, 1 Eras Street
1060 Nicosia
Cyprus
T +357 22 76 33 40
F +357 22 76 33 43
E admin@gzg.com.cy
www.gzg.com.cy

CZECH REPUBLIC

Natasa Randlová
Randl Partners
City Tower
Hvezdova 1716/2b
140 78 Prague 4
Czech Republic
T +420 222 755 311
F +420 239 017 574
E randlova@randls.com
www.randls.com

DENMARK

Nicole Offendal
Norrbon Vinding
Amerikakaj
Dampfaergevej 26
2100 Copenhagen
Denmark
T +45 35 25 39 40
F +45 35 25 39 50
E no@norrbonvinding.com
www.norrbonvinding.com

ESTONIA

Sven Papp
Kadri Michelson
Raidla Lejins & Norcous
Roosikrantsi 2
10119 Tallinn
Estonia
T +372 640 7170
F +372 640 7171
E sven.papp@rln.ee
kadri.michelson@rln.ee
www.rln.ee

FINLAND

Seppo Havia
Jessica Brander
Dittmar & Indrenius
Pohjoisesplanadi 25 A
00100 Helsinki
Finland
T +358 9 681 700
F +358 9 652 406
E seppo.havia@dittmar.fi
jessica.brander@dittmar.fi
www.dittmar.fi

FRANCE

Nathalie Brachet
Capstan
83 rue La Boétie
75008 Paris
France
T +33 1 44 95 48 89
F +33 1 44 95 48 80
E nbrachet@capstan.fr
www.capstan.fr

GERMANY

Stefan Fischer
Kliemt & Vollstädt
Monbijouplatz 10A
10178 Berlin
Germany
T +49 30 887154-0
F +49 30 887154-20
E stefan.fischer@kliemt.de
www.kliemt.de

GREECE

Alexia Stratou
George Koutsoukos
Kremalis Law Firm
35 Kyrillou Loukareos
114 75 Athens
Greece
T +30 210 64 31 387
F +30 210 64 60 313
E astratou@kremalis.gr
gkoutsoukos@kremalis.gr
www.kremalis.gr

IRELAND

Jennifer O'Neill
Gillian Dully
LK Shields Solicitors
39/40 Upper Mount Street
Dublin 2
Ireland
T +353 1 661 0866
F +353 1 661 0883
E joneill@lkshields.ie
gdully@lkshields.ie
www.lkshields.ie

ITALY

Valeria Morosini
Lea Rossi
Toffoletto e Soci
Via Rovello, 12
20121 Milan
Italy
T +39 02 721 44 1
F +39 02 721 44 500
E sab@toffoletto.it
svm@toffoletto.it
www.toffoletto.it

LATVIA

Toms Sulmanis
Raidla Lejins & Norcoux
Kr. Valdemara iela 20
Riga 1010
Latvia
T +371 6724 0689
F +371 6782 1524
E toms.sulmanis@rln.lv
www.rln.lv

LITHUANIA

Zilvinas Kvietkus
Raidla Lejins & Norcoux
Lvovo 25
09320 Vilnius
Lithuania
T +370 5250 0800
F +370 5250 0802
E zilvinas.kvietkus@rln.lt
www.rln.lt

LUXEMBOURG

Ariane Claverie
Nadège Arcanger
Christophe Domingos
Castegnaro
33 Allée Scheffer
2520 Luxembourg
Luxembourg
T +352 26 86 82 1
F +352 26 86 82 82
E ariane.claverie@castegnaro.lu
nadege.arcanger@castegnaro.lu
christophe.domingos@castegnaro.lu
www.castegnaro.lu

NETHERLANDS

Hylde Wiarda
Philip Nabben
Bronsgest Deur Advocaten
De Lairessestraat 137-143
1075 HJ Amsterdam
Netherlands
T +31 20 305 33 33
F +31 20 305 33 30
E h.wiarda@bd-advocaten.nl
p.nabben@bd-advocaten.nl
www.bd-advocaten.nl

NORWAY

Therese Høyer Grimstad
Advokatfirmaet Hjort DA
Akersgaten 51
P.O.Box 471 Sentrum
0105 Oslo
Norway
T +47 22 47 18 00
F +47 22 47 18 18
E thg@hjort.no
www.hjort.no

POLAND

Grzegorz Ruszczky
Raczkowski i Wspólnicy sp.k.
ul. Ciasna 6
00-232 Warsaw
Poland
T +48 22 531 52 85
F +48 22 531 52 81
E grzegorz.ruszczky@raczkowski.eu
www.raczkowski.eu

PORTUGAL

Inês Reis

Sofia Costa Lobo

pbbr – Pedro Pinto, Bessa Monteiro,
Reis, Branco & Associados, RL
Av. da Liberdade, nº 110 – 6º
1250-146 Lisbon

Portugal

T +351 21 326 47 47

F +351 21 352 47 57

E ines.reis@pbbr.pt

sofia.clobo@pbbr.pt

www.pbbr.pt

SPAIN

Montserrat Alonso

Sagardoy Abogados
C/Tutor 27

28008 Madrid

Spain

T +34 915 429 040

F +34 915 422 657

E map@sagardoy.com

www.sagardoy.com

SWEDEN

Jenny Hellberg

Ola Lo Olsson

Elmzell Advokatbyrå AB
Gamla Brogatan 32
111 20 Stockholm

Sweden

T +46 8 21 16 04

F +46 8 21 00 03

E jenny.hellberg@elmzell.se

ola.lo.olsson@elmzell.se

www.elmzell.se

UNITED KINGDOM

Victoria Goode

Liz Kilcoyne

George Koureas

Lewis Silkin LLP

5 Chancery Lane

Clifford's Inn

London EC4A 1BL

England

T +44 20 7074 8175

F +44 20 7864 1789

E liz.kilcoyne@lewissilkin.com

victoria.goode@lewissilkin.com

george.koureas@lewissilkin.com

www.lewissilkin.com

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Introduction



This booklet briefly outlines the legal issues affecting the temporary secondment (or 'posting') of employees to or within the European Economic Area (EEA). The booklet covers the following countries: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Sweden and the United Kingdom.

Posting is a situation where an employee is temporarily assigned by his or her employer to a local subsidiary or affiliated company located in an EEA Member State.

During the posting, the employee keeps his or her employment contract with the home company and remains an employee of the home company. At first glance, only the place of work is temporarily changed. However, many other legal issues may come into play and need proper preparation and well-drafted paper work.

Another possibility, which is not covered by this booklet, is the situation where the employment contract with the home company is suspended or terminated, while the employee enters into the service of the host company. In this situation, a local employment contract with the host company is entered into, with all the consequences that that entails. This situation is not a posting, as the 'direct relationship' with the Home Country is not maintained during the expatriation period.

Warning: this booklet is intended only to give some basic guidelines which companies must consider when preparing a posting to or within the EEA. For this reason, action should not be taken on the basis of this booklet alone. Users of this booklet should always seek appropriate legal advice from a suitably qualified lawyer before taking or refraining from any action. For advice on a specific posting situation, please contact the relevant Ius Laboris member firms. For contact details please refer to the list of contributors to this booklet or contact Ius Laboris direct (info@iuslaboris.com).

Sophie Maes

(Claeys & Engels, Brussels, Belgium)

Immigration



The first question companies should consider is whether the employee needs authorisation to work and reside in the relevant EEA Member State.

European Community law contains the fundamental principle of freedom of movement of persons. This guarantees EEA nationals the right to live and work freely in another EEA Member State. However, in some countries transition measures may still impose limits on the free movement of employees from new EU Member States.

Non-EEA nationals need authorisation to work in Europe. Work permits are still a national matter, meaning that a separate work permit is needed for each country where the employee will work. Some countries may provide for exemptions for short-term assignments or business travel. Non-EEA employees who are posted by their EEA employer to another EEA Member State to provide services in that state on behalf of their EEA employer may be exempt from a work permit in the other EEA Member State if certain conditions are met (this is known as the 'Van der Elst exemption'). In addition, in some Member States special rules may apply to intra-group arrangements.

As a rule, non-EEA nationals need a Schengen visa to enter and stay in the Schengen Area for up to 90 days in any six month period. The Schengen Area includes the following countries: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Malta, Poland, Portugal, Estonia, Slovakia, Slovenia, Spain, Sweden and Switzerland. However, some nationals are exempt from a Schengen visa. As a result, they may freely enter and stay in the Schengen Area based on their national passport for a maximum of 90 days in any six month period. After 90 days, the employee will need a residence permit. In some countries no separate residence permit is needed as this is deemed to be included in the 'work visa' ('one single document'). In other countries a separate residence permit must be applied for. Non-EEA nationals holding a residence permit of another Schengen State are free to stay in other Schengen States for a maximum of 90 days in any six month period.

Currently, the following rules apply to the posting of highly educated non-EEA employees (and in some Member States equally to some new EU-nationals) in order for them to be allowed to work and reside the EEA Member State concerned:

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
AUSTRIA	Due to the fact that the transition period has been extended until 2014 a work permit is still required for Bulgarian and Romanian nationals. No other new-EU nationals still require a work permit.	<p>(All) employees posted from abroad (irrespective of their level of education) are entitled to at least the remuneration stated by law, by ordinance or by CBA that is paid to comparable employees by comparable employers.</p> <p>Work permit exemptions for (short) business meetings and conferences exist.</p> <p>The average timescale for a work permit is 6 weeks.</p>	<p>Broadly speaking, no separate residence permit is necessary.</p> <p>For non-EEA nationals the initial application for residence must be made from abroad (at the Austrian Embassy or Consulate in the foreign national's country of residence) prior to entry into Austria and must be issued before the employer can apply for a work permit.</p> <p>Depending on the duration of the posting, the foreign national must apply for a 'D' visa (for up to six months) or a residence permit.</p>
BELGIUM	<p>Bulgarian and Romanian nationals need a work permit and residence permit until 31 December 2011 (and possibly until 31 December 2013).</p> <p>Special rules exist for Bulgarian and Romanian nationals to be employed in positions in great demand.</p>	<p>A work permit exemption applies for congresses and business meetings if the stay in Belgium does not exceed:</p> <ul style="list-style-type: none"> • Business meeting: 60 days per calendar year (with a maximum of 20 consecutive days per meeting) • Congress: the duration of the congress. <p>Work permit B exists for highly educated employees (at least Bachelor degree) if the employee earns at least EUR 36,604 gross per annum (2011 amount)¹.</p> <p>Average timescale: two to four weeks.</p>	<p>Yes.</p> <p>From abroad: application should be made for a D-visa based on the approved work permit at the Belgian Embassy/Consulate. The average timescale is six weeks.</p> <p>If already in Belgium: application should be made for a change of status prior to the expiry of a short term visa (C-visa) at the town hall at the employee's place of residence in Belgium (i.e. within 90 days from arrival at the latest).</p>

1) This amount is adjusted each year.

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CYPRUS	No.	<p>Most work permits are granted through the temporary residence permits ('TRE') system. Depending on the TRE category, the permit can enable the foreign national to reside and work in the Republic of Cyprus. It has duration of up to five years and is renewable.</p> <p>For non EU-nationals a valid work permit is a prerequisite to commencing work in the Republic of Cyprus.</p> <p>For Executive Staff members a gross salary between EUR 25,000 and EUR 49,999 or over EUR 50,000 is required in order to obtain a work permit.</p> <p>The average timescale for obtaining a work permit is two to four months.</p>	<p>No.</p> <p>As work permits are granted through the TRE system a separate residence permit is not required.</p>
CZECH REPUBLIC	No.	<p>Highly educated employees may apply for a blue card, which is a permit for long-term residence for employment purposes if they fulfil the following conditions:</p> <ul style="list-style-type: none"> • Completion of university education, or higher specialised education where the studies lasted for at least three years 	<p>No, this is included in the 'blue card'.</p>

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CZECH REPUBLIC		<ul style="list-style-type: none"> Job was listed in the central register of job vacancies available to blue card holders Employment contract for at least one year for the statutory weekly work hours A gross annual salary of at least CZK 287,412 (EUR 11,730) during the period from 1 May 2011 to 30 April 2012² <p>The blue card is valid for the term of employment set in the employment contract plus three months, but to a maximum of two years.</p> <p>The average timescale: two to three months.</p>	
DENMARK	No.	<p>Employees with an annual salary exceeding EUR 50,000 qualify for a work permit under the Job Scheme.</p> <p>Highly educated employees or persons with specific skills may qualify for a work permit under the Positive List. The list contains a wide variety of education and is altered continuously.</p> <p>Average timescale: approximately 30 days.</p>	<p>This depends on the nature of the work permit. As a general rule, if the work permit is issued under the Job Scheme or the Positive List, a separate residence permit is not required. However, if the permit is issued under the Green Card Scheme (for highly educated individuals) a residence permit is required. The same applies if the employee under the Job Scheme or the Positive List loses the job for which the work permit was issued.</p> <p>Where to apply: The Danish Foreign Service.</p> <p>Average timescale: approximately 30 days.</p>

2) This amount is adjusted each year and amounts to a 1.5 multiple of the gross annual salary in the Czech Republic announced in a Ministry of Labour and Social Affairs communication.

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ESTONIA	No.	<p>As a rule non-EEA nationals need a work permit to work in Estonia. They also need a residence permit for lawful stay and employment. It is possible to apply for a residence permit for work, which covers both permits. A foreign national may not work on a visa or if he or she is visa-free. The law does not distinguish between different types of employees. All employees need work permits for work.</p> <p>Average timescale: 30 days.</p> <p>Special rules apply for members of the management of a company, who may work in Estonia for up to six months without a work permit (under a long term visa).</p> <p>In addition, certain groups of employees engaged in a specific field of work (teachers, au-pairs, scientists or experts) may work without a work permit for up to six months for a one year period.</p>	<p>Yes.</p> <p>Average timescale: 30 days.</p> <p>A residence permit and residence permit for work may both be applied for from the foreigner's country of residence (i.e. at the Estonian foreign representation).</p>

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FINLAND	No.	<p>A limited right to work for non-EU/EEA nationals without a residence permit exists within certain professions for a maximum period of three months (e.g. if the foreign national arrives in Finland on the basis of an invitation or agreement to work as an interpreter, teacher, expert or umpire).</p> <p>Highly-skilled employees ('special experts') are subject to a special application procedure. Special experts are required to have a master's degree or equivalent qualification and they must have experience in their field of expertise. The special expert's salary must be higher than the average wage in Finland (approximately EUR 3,000 gross per month). Special experts include, for example, consultants, trainers, teachers and members of corporate middle or senior management.</p> <p>The average processing time for a worker's residence permit application was 65 days (in 2010).</p>	No. The relevant residence permit is a worker's residence permit (i.e. a residence permit for an employed person).

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	<p>There is restricted access to the French labour market for nationals of Bulgaria and Romania.</p> <p>Accordingly, Bulgarian and Romanian nationals will continue to require an employment permit to take up employment in France and the job will continue to be subject to the state of the job market.</p> <p>The job market test does not apply to specific fields of work where there is a shortage of qualified workers.</p> <p>Special rules exist for Bulgarian and Romanian nationals who have graduated from a French third level institution, and have obtained relevant qualifications.</p>	<p>As a rule non-EEA nationals need a work permit to work in France. There are no specific requirements that need to be met to obtain a work permit (e.g. no salary threshold applies, apart from the minimum wage).</p> <p>The permit must be obtained by the future employer of the non-EEA national.</p> <p>Processing the application generally does not take more than two months.</p> <p>Upon arrival, a medical check-up may be required.</p> <p>For temporary business trips of up to three months, a short-term visa (valid in the Schengen area) is sufficient.</p>	<p>Depending on the nationality of the worker, a work permit which is valid for up to one year (renewable) may include a residence permit.</p> <p>If not, the non-EEA national must apply for an entry visa (unless he or she is exempt) and then apply for a residence permit upon arrival.</p>
GERMANY	<p>Bulgarian and Romanian nationals still need a work permit until 31 December 2011 (and possibly until 31 December 2013). However, under certain conditions, highly qualified Bulgarian and Romanian nationals are exempt.</p>	<p>In some circumstances, highly educated employees (such as scientists, certain kinds of teaching staff and executive staff with professional experience with an annual salary of at least the pension insurance contribution ceiling – at present EUR 66,000) do not need a work permit.</p> <p>In addition, certain groups of employees (such as students, assemblers and employees engaged at trade fairs) do not need a work permit if their stay is limited to three months.</p>	<p>Yes, for all non-EEA employees.</p> <p>Non-EEA employees need to apply for their residence permit at the Aliens' Authority, which will request the consent of the Federal Employment Agency. Average time scale: four to six weeks.</p> <p>Bulgarian and Romanian nationals do not need a separate residence permit.</p>

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GERMANY		<p>Trainees may work up to six months without a work permit.</p> <p>If a work permit is required the employer must apply for the consent of the Federal Employment Agency (Zentrale Auslands- und Fachvermittlung der Bundesagentur für Arbeit, 'ZAV') by placing a detailed job advert. The ZAV will consent if no national employee can be identified for the job (Vorrangprüfung). Prior to this, the employee must apply for a visa at the German Aliens Department or the relevant agency abroad. The timing depends on the kind of job and the regional agency involved, but it can take up to several months.</p> <p>There is a privileged procedure for personnel turnover and project work in international corporate groups whereby the employer can apply for the consent of the ZAV and the agency will pass its decision to the Aliens Department for the issue of residence status for specific purposes.</p> <p>For further details and standard forms visit: www.zav.de</p>	

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	No.	<p>The employer must apply for a work permit in collaboration with several Ministries (Labour, Foreign Affairs and Public Order). There is no salary requirement.</p> <p>Average timescale: one to two months.</p>	<p>Yes.</p> <p>Average timescale: six weeks.</p> <p>Applications need to be made to the competent regional Agency for Aliens and Migration.</p>
	<p>There is restricted access to the Irish labour market for nationals of Bulgaria and Romania.</p> <p>Accordingly, Bulgarian and Romanian nationals will continue to require an employment permit to take up employment in Ireland and the job will continue to be subject to the current requirement for a labour market test. However, such requirements apply only to the first continuous twelve months of employment and thereafter a Bulgarian or Romanian national will be free to work in Ireland without any further need for an employment permit.</p> <p>Special rules exist for Bulgarian and Romanian nationals who have graduated from an Irish third level institution, have obtained relevant qualifications and have worked for twelve months or more.</p>	<p>If the annual salary for the position is EUR 60,000 or more, a green card will generally be available unless the position is deemed to be contrary to public interest.</p> <p>Where the salary is between EUR 30,000 and EUR 59,999, green cards are limited to certain occupations.</p> <p>Average timescale: three to four weeks.</p> <p>Special rules exist for certain medical professionals.</p> <p>Intra-company transfer permits may be available to senior management, key personnel or those undergoing a training programme earning a minimum annual salary of EUR 40,000 (subject to satisfying relevant conditions). The intra-company transfer scheme facilitates the transfer of qualifying foreign nationals from an overseas branch of a multi-national corporation to its Irish branch.</p>	<p>IRELAND</p> <p>No, this is included in the 'green card' and intra company transfer permit (i.e. the 'work visa'). However, registration with the National Garda Registration Office is required for certain foreign nationals upon arrival.</p>

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ITALY	<p>Bulgarian and Romanian nationals still need a work permit to work in Italy until 31 December 2011. Exemptions exist for the following sectors: agriculture, hotel, tourism, domestic work and care services, construction, engineering, managerial and highly skilled work and seasonal work. There are no restrictions on self-employed workers.</p> <p>The transition measures could be extended for two more years (until the end of December 2013).</p>	<p>No work permit is required for business trips up to a maximum of three months.</p> <p>A work permit is required by law for work activities over three months.</p> <p>Each year, the Immigration Authorities determine a specific number of non-EEA nationals, categorised by citizenship and profession, who can enter Italy for employment reasons, in line with a quota system.</p> <p>However, highly educated or skilled non-EEA employees may be temporarily assigned to Italy in accordance with a special procedure which exists outside the quota system. In this case the employee must fulfil specific conditions regarding skills and education. There is no particular economic threshold for this.</p> <p>Once the request has been filed, the work permit will be issued within a maximum of 40 days.</p>	<p>Yes. Within eight days of entry into Italy, an application must be filed with Questura, which is an office of the police.</p>

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	<p>No special rules exist for new EU nationals. All EU citizens are free to work in Latvia without a work permit.</p>	<p>Whether a seconded non-EEA national is highly educated matters only when he or she applies for an EU blue card. The EU blue card is available to highly educated non-EEA nationals who will be employed full time by a Latvian employer.</p> <p>Seconded non-EEA nationals need a work permit to work in Latvia, unless they already hold a work permit issued by another EU-state or if they come to Latvia only for a business trip.</p> <p>The salary of a non-EEA employee must not be less than 1.5 average months' salaries in Latvia (approximately EUR 1,000).</p> <p>Average timescale: one to two months.</p>	<p>Yes, a residence permit should be requested at the same time as the work permit.</p>
LITHUANIA	<p>No.</p> <p>Non-EEA nationals need a work permit to work in Lithuania, unless an exemption applies.</p> <p>For example a non-EEA national is exempt from obtaining a work permit if he or she holds a temporary residence permit (in the cases provided by law) or a permanent residence permit.</p>	<p>Yes, and this may be issued together with the work permit.</p> <p>The application for the residence permit may be submitted either in Lithuania or abroad.</p> <p>From abroad: the application must be submitted to a diplomatic mission or a consular post of the Republic of Lithuania abroad.</p>	

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
LITHUANIA		<p>If the salary of an employee is not less than three average months' salary (approximately EUR 1,840), the employee is recognised as a highly educated employee.</p> <p>Average timeline:</p> <ul style="list-style-type: none"> for highly educated employees, up to 24 days for other employees, up to 41 days. 	<p>In Lithuania: the application must be submitted by a non-EEA national who is lawfully staying in Lithuania to a migration office of a territorial police agency in the territory where he or she intends to reside.</p> <p>Timescale: six months (or for an extension, two months). If a non-EEA national has a permanent residence permit issued by another EU Member State: four months.</p>
LUXEMBOURG	<p>Bulgarian and Romanian nationals will still need a work permit until 31 December 2011 to work in Luxembourg.</p>	<p>There is a Residence Authorisation exemption for business trips of up to three months (maximum) per calendar year (and a work permit exemption for Bulgarian and Romanian nationals).</p> <p>A Residence Authorisation (allowing for work) for highly qualified workers may be issued to third country nationals having a higher education degree or at least five years' professional experience if they receive remuneration equal to at least three times the minimum reference social wage granted to unqualified workers in Luxembourg (at 1 October 2011: EUR 5,404.47, index 737.83 gross per month).</p> <p>Average timescale for obtaining a Residence Authorisation for a highly qualified worker: one week.</p>	<p>No. The Residence Authorisation granted for a worker authorises the third country national to reside in Luxembourg. (Pursuant to Luxembourg law, the Residence Authorisation serves as both a work permit and a residence permit. Third country nationals may or may not have the right to work in Luxembourg depending on the type of Residence Authorisation granted.</p>

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
	<p>Bulgarian and Romanian nationals still require a work permit and residence permit until 1 January 2012, but this may be extended until 1 January 2014.</p> <p>Special rules exist in relation to Bulgarian and Romanian nationals who are to be employed in positions in high demand.</p>	<p>Admission as a highly skilled migrant:</p> <ul style="list-style-type: none"> employees younger than 30 years must earn at least EUR 36,801 gross per year employees who are 30 years or older must earn at least EUR 50,183 gross per year. <p>Average timescale: two weeks.</p>	<p>Yes.</p> <p>As soon as the highly skilled migrant arrives in the Netherlands, he or she must apply for a residence permit at the Immigration and Naturalisation Service Office for labour and highly skilled migrants.</p>
	<p>Bulgarian and Romanian nationals still require a residence permit (which includes a work permit) until 31 December 2011.</p> <p>Employees from Bulgaria and Romania who have not had residence permits in Norway in the last 12 months need a residence permit (which includes a work permit).</p> <p>Bulgarian and Romanian nationals may stay in Norway for three months before they need to apply for a permit, or six months if they are seeking employment.</p>	<p>A residence permit, which includes a work permit, is required for skilled employees if the employee earns at least EUR 63,494 gross per year.</p> <p>The pay and working conditions for skilled employees may not be lower than those provided in the applicable collective bargaining agreements or pay scales for the industry concerned. If no such collective bargaining agreement or pay scale exists, the pay and working conditions may not be lower than what is normal for the occupation and place of work concerned.</p> <p>Average timescale: two to four months.</p>	<p>Norwegian Immigration law provides only residence permits, and these may include permission to work.</p> <p>An application form for non-EEA citizens must be completed. The application can be submitted to the nearest Norwegian foreign service mission in the Home Country, or in another country in which they have legally resided for a minimum of six months. Applications may also be submitted to the police in Norway or to the service centre for foreign workers ('SUA').</p> <p>Foreign workers can start working once they have submitted a complete application for a residence permit in Norway.</p>

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
POLAND	There are no transition measures for new EU nationals. All EU nationals are exempt.	<p>There are no special rules for highly educated employees. In accordance with the regulation of the Minister of Labour and Social Policy of 20 July 2011 on cases in which entrusting performance of work to a foreigner in the territory of Poland is admissible without the need for a work permit (this entered into force on 28 July 2011), there are several categories of non-EEA nationals who do not need a work permit, including:</p> <ul style="list-style-type: none"> • certain categories of non-EEA language teachers • certain categories of accredited foreign non-EEA media correspondents • non-EEA nationals giving occasional lectures up to 30 days per year provided they retain permanent residence abroad. <p>Salary may not be lower than the statutory minimum wage for work, which, in 2011, is PLN 1,386 (approximately EUR 366) per month. The minimum in 2012 will be PLN 1,500, or approximately EUR 375 per month. It should be also comparable to wages of employees for the same work or work of the same value.</p>	<p>Yes, a residence permit is also required. However, it may be replaced by an appropriate visa. A work permit does not authorise a non-EEA national to stay in Poland.</p> <p>The residence permit is issued for a period of up to two years. Applications should be submitted to the regional governor's office responsible for the place of stay of non-EEA nationals in Poland, or if the non-EEA national resides abroad, for the intended place of stay in Poland. It may also be submitted to a Polish Consulate abroad. Depending on the particular case the procedure may take up to several months.</p> <p>In general, visas are issued for a period of stay that corresponds with the period indicated in the work permit, but no longer than one year.</p> <p>A non-EEA national should apply for a visa to the Polish Consulate in the country where he or she is permanently resident (if a non-EEA national lawfully resides in an EU country, it may be done at the Polish Consulate located in that country). It takes about seven days for a visa to be granted.</p>

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
POLAND		If a non-EEA national is not exempt from a work permit, the work permit should be issued within one month (in especially complicated cases, within two months). Since there are several types of work permit the terms and conditions for granting each of them differ significantly.	Depending on the relevant Polish Consulate's procedure, this may be shorter or longer and may even take more than a few weeks.
PORTUGAL	No transition measures apply to EU nationals.	<p>There are no special rules applicable to highly educated employees.</p> <p>However, a foreign national who intends to work in Portugal will require either a temporary stay visa (not exceeding six months) or a residence permit.</p> <p>The application must be made at the Portuguese Consulate of the foreign national's country of residence, and exceptionally at the Immigration Services (Serviço de Estrangeiros e Fronteiras, 'SEF'), upon presentation of the required documents.</p> <p>For temporary stay visas, the requirements are as follows:</p> <p>i) An employment or promissory employment contract for a temporary professional activity;</p>	<p>No, foreign nationals (other than those from EU or EEA Member States) require a temporary residence permit, if they wish to stay in Portugal for a maximum of one year. This permit is renewable for consecutive periods of two years and there is no limit to the number of times it can be renewed.</p> <p>Foreign nationals, other than those from EU and EEA Member States, require a permanent residence permit if they wish to stay in Portugal for an unlimited period of time. Although referred to as a 'permanent residence permit', the validity of this permit does not extend beyond five years and it must therefore be renewed every five years.</p>

PORTUGAL

TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
	<p>ii) where particular qualifications are required, a statement issued by the competent Authority declaring that the employee is qualified for the job applied for; iii) a statement issued by the Employment and Professional Vocational Training Institute, the 'IEFP', confirming that the employment or promissory employment contract refers to an available offer made to a foreign national.</p> <p>The requirements for a residence permit for the execution of employment are as follows:</p> <p>i) An employment contract, promissory employment contract or offer letter; ii) a statement issued by the IEFP confirming the existence of a job offer not filled by a priority employee; and iii) proof that the applicant is qualified for the job applied for.</p> <p>A temporary stay visa will take 30 days to obtain after all documents have been presented at the Consulate.</p> <p>A residence visa should take 60 days after all documents have been presented to the Consulate. However, note that in practice these matters may take longer.</p>	

SPAIN


TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
<p>Owing to high unemployment, Spain has recently decided to reactivate the transitional arrangements relating to Romanian nationals.</p> <p>Thus, since 22 July 2010, a work permit has been required for Romanians wishing to work in Spain as local hires and falling within either of the following two categories:</p> <ul style="list-style-type: none"> • Romanians entering Spain from 22 July 2011 • Romanians already in Spain but not registered for social security or at the job centre. 	<p>a) Non-EEA posted workers coming from non-EEA countries require a prior work and residence permit before taking up an assignment in Spain.</p> <p>From 30 June 2011 the host entity has been required to check the labour market for posted workers, unless, in the case of an assignment between companies of the same group, it can prove that the employee has knowledge that is essential to it.</p> <p>No specific salary is stated in law for posted workers but, as general rule, salary and all other employment conditions must be in accordance with Law 45/99 (based on EU directive 96/71), which sets out the minimum employment conditions for workers posted to Spain.</p> <p>Average time is three to ten weeks, depending on the immigration office.</p> <p>b) Non-EEA employees, locally hired in another EEA country and under the Van der Elst ruling, need only obtain a residence visa if the stay exceeds three months.</p> <p>The average time for a Van der Elst visa depends</p>	<p>a) Non-EEA employees coming from a non-EEA country.</p> <p>If the stay exceeds six months, the posted employee will need to apply for the relevant foreign identity residence card via the local immigration police corresponding to the individual's place of residence. This must be done within one month of entry into Spain.</p> <p>The average time for a foreign identity residence card is approximately 45 days.</p> <p>b) A non-EEA employee coming from an EEA country who is granted a residence visa for three months linked to a one year authorisation, will also need to apply for a foreign identity residence card when entering Spain.</p> <p>The average time for a foreign identity residence card is approximately 45 days.</p>

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
SPAIN		<p>on the individual consulate, but may take approximately eight weeks.</p> <p>c) The General Immigration Department located in Madrid applies a fast-track for large businesses needing to bring highly qualified employees to Spain either as posted workers or local hires. Average time: three to four weeks.</p>	
SWEDEN	<p>There are no transition measures in force for new EU-nationals. Thus, all new EU-nationals are eligible to work in Sweden without a work and residence permit.</p>	<p>A condition for obtaining a work permit is that the employee's monthly salary exceeds SEK 13,000 per month (approximately EUR 1,300).</p> <p>Average timescale: four to eight weeks (often faster).</p>	<p>Yes, if the work period is expected to exceed three months.</p> <p>Applications for work/residence permits may be made on the Swedish Migrations Board's website at www.migrationsverket.se or at a Swedish mission abroad.</p> <p>Average timescale: four to eight weeks.</p>
UNITED KINGDOM	<p>Bulgarian and Romanian nationals still need a work permit and a residence permit (also known as an Accession Worker Card).</p> <p>Nationals from the A8 countries, which joined the EU in 2004, must have registered their employment with the UK Border Agency where that employment commenced prior to 30 April 2011.</p>	<p>The requirement became obsolete from 1 May 2011 as the scheme was closed on 30 April 2011. The Tier 1 (General) category for the highly skilled has been abolished by the UK Border Agency. A new 'Exceptional Talent' category has been introduced but only applies to those from the fields of Science and Arts.</p>	<p>Yes, for Bulgarian and Romanian nationals.</p> <p>Application should be made to the UK Border Agency within the UK or via the British Diplomatic Post in the country of origin, depending on current immigration status.</p>

	TRANSITION MEASURES FOR NEW-EU NATIONALS	SALARY REQUIREMENTS AND TIMING FOR WORK PERMIT FOR NON-EEA HIGHLY EDUCATED EMPLOYEES	SEPARATE RESIDENCE PERMIT REQUIRED?
UNITED KINGDOM		<p>Transitional arrangements exist for those already in the UK under Tier 1 (General).</p> <p>The Tier 2 work category is for skilled migrants sponsored by a UK based employer. The employer must first obtain a sponsor licence from the UK Border Agency.</p> <p>A minimum salary of GBP 24,000 is required, but the salary must also meet or exceed those rates stipulated by the UK Border Agency's Codes Of Practice. The timescale where the employer has a licence is approximately one to two months, depending on whether advertising is required. 'New hires' from outside the UK have also been subject to an immigration cap since 6 April 2011, although exceptions do apply to those to be paid in excess of GBP 150,000 per annum.</p>	<p>Timescales vary depending on the method used to apply from within the UK (where possible) or depending on the British diplomatic post from which the visa application is submitted.</p>

For more details regarding the immigration requirements, please also see the Ius Laboris Immigration Handbook at <http://iuslaboris.com/Publications/index.php>

Law governing the employment contract during posting



Assuming the employee is allowed to work and reside in the relevant EEA Member State, the question becomes which law will govern the employment contract during the posting period: that of the country of the employer (the Home Country) or that of the country where the employee will be posted (the Host Country)? Typically, the parties will opt for the law of the Home Country, as this is the law governing the continuing employment relationship. However, companies should be aware that the employee might also be able to invoke some statutory provisions of the Host Country in accordance with international private law.

Within the EEA, the two relevant sources of international private law are the Rome Convention and its (partial) replacement, the Rome I – EC Regulation. These apply in all cases where an EEA court or tribunal has jurisdiction. As a general rule, an EEA court or tribunal has jurisdiction if the defendant has his or her domicile in the relevant EEA Member State³. In employment matters the employee may also sue the employer before the courts of the EEA Member State where he or she habitually works, or the place of business in which the employee is located if he or she does not habitually work in any one country. In the case of posting, this means that the employee may be able to sue the employer (even if not domiciled in the EEA) before the courts of the EEA Member State of employment if he or she is considered to be habitually working in that EEA Member State.

The Rome Convention (19 June 1980)

The Rome Convention (Convention) entered into force on 1 April 1991. Ten new EU Member States acceded to the Rome convention on 14 April 2005, with Romania and Bulgaria similarly acceding on 15 January 2008. The Rome convention applies to employment contracts executed before 17 December 2009.

The Rome I – EC Regulation (17 June 2008)

The Rome Convention has been replaced by the Rome I – EC Regulation (17 June 2008). The Rome I – EC Regulation applies to employment contracts executed after 17 December 2009. In addition, Denmark opted out of the Rome I – EC Regulation. So, for Denmark, employment contracts executed after 17 December 2009 are governed by the Rome Convention.

³) Matters on which courts in the EU have jurisdiction for disputes arising within the EC are governed by EC Regulation 44/2001 (of 22 December 2000). This regulation came into force on 1 March 2002 and replaced the old 1968 Brussels Convention. It applies to all EU countries covered by this booklet, except Denmark (where the 1968 Brussels Convention still applies). Similar rules are provided for in the Lugano Convention for Norway, Iceland, Liechtenstein and Switzerland.

GENERAL PRINCIPLES UNDER THE ROME CONVENTION AND THE ROME I – EC REGULATION

The rules on applicable laws set forth in the Rome Convention have largely been copied into the Rome I – EC Regulation. They can be summarised as follows. The rules proper to the Rome I – EC Regulation are marked with an asterisk and **drafted in red**.

As a general rule, an employment contract is governed by the law that the parties choose. In the case of posting, the parties will typically choose to (continue to) apply the Home Country law. As a result, this law will also govern the employment relationship during the posting period.

However, the choice of law may not deprive the employee of the protection of mandatory rules of law that would apply had this choice of law not been made. In the absence of choice, the contract is governed by:

- the law of the country where **[or from where]*** the employee habitually carries out his or her work, even if the employee is temporarily employed in another country; or
- the law of the country in which the place of business through which the employee was engaged is situated, if the employee does not habitually carry out his or her work in any one country;

unless it appears from the circumstances, that the contract is **[manifestly]*** more closely connected to another country, in which case the law of that country will apply. The circumstances referred to can include the place where the employment contract was signed, the language used in the contract, the parties' nationalities, the currency and the place of salary payment, reference to the legal provisions of a country, the holiday scheme and the employee's domicile.

In conclusion, assuming that the assignment letter offers the choice of the Home Country law, the employment contract will continue to be governed by the law of that country. However, the employee might be able to invoke certain mandatory rules of the law of the country where **[or from where]*** he or she habitually works or the law of another country to which the contract is more closely connected.

According to the case law of the European Court of Justice, the place where the employee habitually works is the place where, or from where, taking into account all circumstances of the case, the employee performs the essential part of his or her duties vis-à-vis his or her employer.

Therefore, a crucial test in the case of posting is: when does the work in the Host Country become 'habitual'? Another test is: which country is the contract **[manifestly]*** most closely connected to?

These tests are crucial, as all mandatory rules of the Host Country law will apply as soon as the employee habitually works in **[or from]*** that country. A posting period might be as short as a couple of weeks, but it could also last for five years or even more. Therefore, how the matter is judged will depend on the circumstances of each case.

Based on local case law, our experience shows that there are important differences between the various countries as to when work becomes 'habitual' in the Host Country, as follows:

WORK BECOMES HABITUAL WHEN ...

AUSTRIA

According to case law and leading doctrine the habitual place of work generally remains the Home Country during a posting, provided that the posting is only temporary (i.e. if there is a strong labour relationship between the posted employee and the employer) and that the date of return to the Home Country can be defined ('intention of return').

BELGIUM

According to traditional case law, an employee is regarded as habitually working in Belgium when his or her period of employment in Belgium exceeds 12 months. However, some recent case law considers that the Host Country does not become the habitual place of work even after 12 months if the posting is genuine and temporary and the link with the Home Country is maintained.

CYPRUS

There are no requirements or limitations to determine whether an employee is habitually working in the Republic and therefore he may be considered to be providing habitual work from the first day of his employment. However, this will depend on the nature of the work provided and its duration. The work of an employee is considered as habitual with regards to its duration (which may be, e.g. one month or one year) provided that the employee pays social insurance contributions either in the Host Country or the Home Country.

CZECH REPUBLIC

There is no Czech law or case law addressing the issue of when work becomes habitual.

DENMARK

Danish case law regarding the habitual place of work is very limited. Thus, each case will be assessed on its merits. Factors relevant to the analysis include the expected duration of posting, whether the connection to the Home Country is maintained, where the employee has his or her centre of interests, and whether he or she is intending to return to the Home Country. Depending on the situation, postings of up to three years may be accepted without the employee being considered to be habitually working in Denmark.

ESTONIA

There is no case law concerning when the workplace becomes habitual. There is also no legal test to establish when a certain period of work becomes habitual. The only criterion for secondment is that both parties, the employer and the employee, acknowledge that the employee is sent abroad to perform his or her duties temporarily and will ultimately return to the Home Country. However, tax law (especially Double Tax Treaties) may provide for more concrete conditions and if so, these should be taken into account.

FINLAND

The case law on this is limited and there are no consistent guidelines. A case-by-case assessment should be made, based on Rome I.

FRANCE

There is no statutory rule defining the notion of 'habitual work'. Whether the employee habitually works in one country is therefore assessed on a case-by-case basis. The French courts tend to treat the place where the posted employee has established the effective centre of his or her employment, or where the employee performs the essential part of his or her duties as the habitual place of work, unless the employment relationship has substantial links with another country (based on, for example, the nationality of the employer or the employee, the salary currency or the duration of the posting).

GERMANY

The centre of contractual relations must move to Germany. This is assumed if the essential duties of the contract performed by the employee (i.e. economical, technical, and organisational) move to Germany on a non-temporary basis. The Federal Labour Court has refrained from imposing a general time limit in case law. The evaluation is strictly left to each individual case. If a posting is systematically performed not only in Germany, but also in a third or fourth country under one contract, work will generally not become habitual in Germany.

GREECE

It is mainly a matter of de facto judgement by the Greek Courts as to whether work is habitual. According to a recent decision of the Greek Supreme Court concerning the implementation of the Brussels Convention, the place where the employee habitually works is considered to be the place where he or she has established the centre of his or her professional activities.

IRELAND

There is no explicit legal rule or test in Ireland. Factors relevant to the analysis include where the employee lives, where the employee has his or her base or principle place of work from which he or she prepares for trips and returns after the performance of duties, where the employee pays tax and social security, the country in which the employee is paid his or her salary, the country where the employee or entity to which he or she reports is based, or whether or not he or she is a director of other entities in other jurisdictions.

ITALY

If the posting is genuine and the organic link with the Home Country is maintained, the Host Country will not become the habitual place of work.

LATVIA

So far there is no case law determining when work becomes 'habitual' based on timelines or otherwise. Presumably, the Latvian courts would adhere to the position taken in some other countries that if the posting is genuine and the organic link with the Home Country is maintained, the Host Country will not become the habitual place of work.

LITHUANIA

There is no definition of 'habitual' in either Lithuanian law or case law. Whether or not a posting is performed habitually in Lithuania must be assessed on a case-by-case basis. Factors relevant to the analysis include (i) the posting period should be for more than 24 months; (ii) the 'direct link' between the employer and the employee should cease to exist. The direct link can be understood to include the employer's right to terminate the contract of employment and the right to define the 'nature' of the work (i.e. the general defining features of the final product). However, it will depend on the circumstances of each case and the courts usually make a general assessment of the circumstances as whole.

LUXEMBOURG

The criteria taken into consideration to determine when work becomes 'habitual' in the Host Country can be deduced from the definition of 'posting' and 'posted worker' provided by the Labour Code. *'Posting should take place within the framework of a contract for the provision of services covering an object or a specific activity limited in time and ending with the execution of the object of the contract. Posted worker means any employee who regularly works abroad and who carries out his work in the Grand Duchy of Luxembourg, during the limited period determined by the specific provision of services for which the contract for the provision of services was concluded. The limited period is assessed in terms of duration, frequency, periodicity and continuity of the provision of services and in relation to the nature of the activity that is subject to the posting⁴.* If it appears from the analysis of these last criteria that the posting is not limited in time, then the work will be considered as 'habitual' in Luxembourg. The Labour courts have not yet had the occasion to rule on the application of these new criteria.

4) Article L.141-1 (1) of the Labour Code, introduced by the Law of 11 April 2010 on Posting.

NETHERLANDS

The country where the employee performs the most important part of his or her activities will be regarded as the country where the employee habitually works. According to case law, it is reasonable to assume that after one or two years (depending on the total duration of the employment) work becomes habitual in the Netherlands. With regard to this, important factors are the country in which the employee receives instructions from the employer and the country in which the salary is paid. However, case law can vary and there is no general rule.

NORWAY

Norwegian law and case law provide no definition of 'habitual'. Whether or not a posting is performed habitually in Norway must be assessed on a case-by-case basis. Factors relevant to the analysis include the duration of the stay; whether the employee performs the essential part of his or her work in Norway, the place of control and the currency of payment.

POLAND

There are no statutory rules or case law about this. The assessment must be done on a case-by-case basis.

PORTUGAL

There is no case law establishing criteria for habitual work and so this should be assessed on a case-by-case basis. It may be helpful to consider tax law, although the labour and employment perspective may be somewhat different (tax law considers as a resident someone who stays in Portugal for more than 183 days, whether consecutive or not). The terms of the assignment and the whether the individual returns home promptly at the end of the secondment may also be useful matters to consider.

SPAIN

There is no general statutory labour rule regarding the definition of 'habitual' in Spain. Whether the employee habitually works in Spain is assessed on a case-by-case basis. However, work generally becomes habitual in Spain when the posted employee performs the greatest and most essential part of his or her duties in Spain and makes social security contributions in Spain.

SWEDEN

There is no statutory rule or relevant case law regarding the definition of ‘habitual’ in Sweden. Whether the employee habitually works in Sweden is assessed on a case-by-case basis. However, work generally becomes habitual in Sweden when the posted employee has established his or her effective centre of employment in Sweden, or if the employee performs the essential part of his or her duties in Sweden.

UNITED KINGDOM

There is no set test in the UK. An analogy can be drawn with the approach of the courts as to when an employee is treated as employed in the UK for the purposes of protection under the Employment Rights Act 1996. Factors to consider include establishing where the employee has his or her headquarters or where his or her travel begins and ends, the employee’s place of residence, where he or she is paid, the currency of payment and where the employee is subject to National Insurance.

In conclusion, there is no single test that applies when an employee is considered to be working habitually in the Host Country. All depends on the circumstances of the case and the courts usually make a global assessment. Hence the importance of maintaining as many links as possible with the Home Country during the posting, for example by having an express repatriation clause in the assignment letter, a place of control and reporting in the Home Country, using the home currency and the Home as the place of payment of benefits, having a Home Country pension scheme and having the parties sign a well-drafted assignment letter – all to reduce as far as possible the risk of the Host Country being considered as the place of habitual work.

There are also significant differences in the types of mandatory rules of the Host Country that take effect when work in the Host Country becomes habitual. The following is an outline of the main rules that are regarded in the different countries as mandatory for this purpose, but note that these are not exhaustive:

	AUSTRIA	BELGIUM	CYPRUS	CZECH REPUBLIC	DENMARK	ESTONIA	FINLAND	FRANCE	GERMANY	GREECE	IRELAND	ITALY	LATVIA	LITHUANIA	LUXEMBOURG	NETHERLANDS	NORWAY	POLAND	PORTUGAL	SPAIN	SWEDEN	UNITED KINGDOM
Minimum wages	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Working time	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Holidays	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Public holidays	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x			
Discrimination	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x
Maternity leave	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x
Dismissal rules	x	x	x	x	x	x	x	x	x	x	x ⁵	x	x	x	x	x	x	x	x			x
Special rules for sales people	x	x						x	x		x ⁶	x			x			n/a ⁷				
Health & Safety	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x
Parental leave	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x
Other leave	x	x	x		x	x	x	x	x	x	x	x			x		x	x	x			x
Lease of employees	x	x	x	x			x	x	x	x		x		x	x	x		x	x			x
Mandatory documents	x	x	x	x	x	x	x	x	x	x	x ⁸	x			x	x	x	x	x		x	x
Local language requirements		x ⁹																x ¹⁰				

5) The Unfair Dismissals Acts 1977 to 2007 does not apply to the dismissal of an employee who ordinarily works outside Ireland unless he or she was ordinarily resident in Ireland during the term of the contract, or was domiciled in Ireland for the entirety of the term of the contract.

6) Certain individuals working within certain sales industries are covered by collective agreements by virtue of which they are entitled to additional rights relating to their employment.

7) There are no special rules for sales people in Poland.

8) The terms of employment (Information) Act 1994 provides that an employer must issue its employees with a written statement of terms and conditions relating to their employment within two months of commencing employment.

9) However, the scope of the application should be checked.

10) Foreign nationals may ask to draft the employment contract in a foreign language and they should be informed about their right to draft it in Polish.

Mandatory minimum local employment laws



Under the Posted Workers Directive (16 December 1996), employees seconded temporarily by their employer from the Home Country to a Host Country within the EEA, must benefit from the protection of a minimum 'hardcore of protective rules', which are mandatory in the Host Country.

The Directive provides for a very limited exemption, namely the case of the initial assembly or first installation of goods where this is an integral part of a contract for the supply of goods, for a period of secondment not exceeding eight days (but this does not apply to building activities). Other very limited exemptions can be found in the various national laws implementing the Directive.

Apart from these limited exemptions, employees posted to an EEA Member State may invoke, as from the beginning of the posting period, the legal provisions of the Host Country's law that are regarded in the Host Country as the minimum 'hardcore of working conditions', even if the employment contract is governed by another law under the Rome Convention or the Rome – 1 EC Regulation.

The table below shows the minimum 'hardcore of working conditions' which will always apply in the various jurisdictions from the beginning of the posting period, i.e. even if the Host Country has not (yet) become the habitual place of work:

	AUSTRIA	BELGIUM	CYPRUS	CZECH REPUBLIC	DENMARK	ESTONIA	FINLAND	FRANCE	GERMANY	GREECE	IRELAND	ITALY	LATVIA	LITHUANIA	LUXEMBOURG	NETHERLANDS	NORWAY	POLAND	PORTUGAL	SPAIN	SWEDEN	UNITED KINGDOM	
Minimum wages	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x ¹¹	x	x	x	x	x		x	
Working time	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x ¹²	x	x	x	x	x	x	x	x
Holidays	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Public holidays	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x	x	x				
Discrimination	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			x	x
Maternity leave	x	x	x		x	x	x	x	x	x	x	x	x	x	x		x	x	x			x	x
Dismissal rules						x			x	x	x ¹³						x	x	x				x
Social documents	x	x					x	x	x	x	x ¹⁴				x ¹⁵		x	x					x
Health & Safety	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			x	x
Lease of employees	x	x	x	x				x	x	x			x	x	x			x	x			x	
Local language requirements																							x ¹⁶

11) Minimum wages' rules apply to posted workers, with the following limit: the salary index is applicable only to the wage of posted workers corresponding to the legal minimum wage. The index does not apply to higher wages of posted workers.

12) Working time rules apply to posted workers with the following limit: Luxembourg law on part-time work and employment contracts of definite duration do not apply to posted workers.


13) The Unfair Dismissals Acts 1977 to 2007 do not apply to the dismissal of an employee who ordinarily works outside Ireland unless he or she was ordinarily resident in Ireland during the term of the contract, or was domiciled in Ireland for the entirety of the term of the contract.

14) Provided this includes employment contracts.

15) The rules on social documents apply to posted workers with the following limit: Luxembourg law on the drafting of employment contracts does not apply to posted workers.

16) Please compare with footnote 10.

National rules prohibiting the lease of employees



In some countries, the lease of personnel is strictly regulated. This may be a matter of concern in posting situations, as the leased employee remains in an 'organic link' with the original employer in the Home Country while possibly receiving instructions from the affiliate or subsidiary in the Host Country. In some countries, such a situation is already regarded as a prohibited lease of personnel.

PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
<p>The explicit prior permission of the authority is required. However, this does not apply to intra-group secondments if both companies have their seats (and their business) within the EEA and the lease of personnel is not within the scope of the employer's business.</p> <p>The secondment of personnel within the EEA need only be notified to the respective trade authority (but note that for Bulgarian and Romanian nationals the regulations for non-EEA nationals apply for the duration of the transition period).</p>	<p>For having no permit, administrative fines of up to EUR 3,600 may be imposed and in the case of recurrence, a fine of up to EUR 7,260 may be payable.</p>	

AUSTRIA

¹⁷) This activity is mostly carried out by temporary staffing agencies which are in most countries subject to special terms and conditions.

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
BELGIUM	Yes.	<p>Criminal offences: administrative fines.</p> <p>Civil penalties: the employee is deemed to have an employment contract for an indefinite period of time with the host company. In addition, the host company becomes jointly liable for all salary, benefits, social security contributions, etc. resulting from that employment contract.</p>	<p>(1) SLA</p> <p>Execute a service level agreement ('SLA') between the home company and the host company. Instructions given by the host company do not constitute a prohibited lease of employees if these are necessary for the execution of the agreed services.</p> <p>(2) 'Permitted' lease of employees</p> <p>Enter into a three-party secondment agreement between the home company, the host company and the employee and notify the secondment to the Social Inspectorate 24 hours in advance. Note however that this solution is only feasible for intra-group postings and provided the postings are exceptional and for a limited period of time. If not, the Social Inspectorate's prior approval is needed. In any event, the employee must receive the same remuneration and benefits as comparable employees of the 'user' host company.</p>
CYPRUS	No.	N/A.	N/A.

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
CZECH REPUBLIC	No, but a work agency permit is required even for the occasional lease of personnel.	A fine of up to CZK 2,000,000 (EUR 81,630) may be imposed by the Labour Office in the case of lease of personnel without a permit.	<p>(1) Non-profit posting</p> <p>If the aim of the posting company is not to achieve profit, i.e. if the contract between the posting and receiving company provides only for reimbursement of costs incurred in relation to the posted employee and no additional fees, such a situation is not considered as a lease of personnel and a work agency permit is not required. This includes situations where the posting is within a group of companies.</p> <p>(2) Obtaining a permit</p> <p>If the above conditions are not met, the posting employer must request a work agency permit at the Ministry of Labour and Social Affairs. The procedure for licence issuance is very time consuming (two to three months) and there is an issuing fee.</p>
DENMARK	No.	N/A.	N/A.

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
ESTONIA	No.	N/A.	N/A.
FINLAND	No.	N/A.	N/A.
FRANCE	Yes.	<p>Criminal penalties: up to three years' imprisonment and a EUR 45,000 fine if the employee is prosecuted in person or a EUR 225,000 fine if the company is prosecuted.</p> <p>Civil penalties: there is joint liability between the home company and the host company for all employment and labour obligations. The employee may be deemed to have an employment contract for an indefinite period of time with the host company.</p>	The host company and the home company must enter into a service agreement providing that the home company will charge only the employee's remuneration, including social security contributions, to the host company and that the employee will remain subordinate to the home company.
GERMANY	No, but a permit is required if the lease does not take place within a group of related companies.	A fine of up to EUR 25,000 may be imposed if the lease of personnel has been done without permission (and if the lease does not take place within a group of related companies).	

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
GREECE	<p>No, there is no prohibition but there is an obligation to submit certain documents to the competent services of the Labour Inspectorate Body ('SEPE') in the territory where the services will be delivered.</p> <p>The maximum period of posting is one year.</p>	<p>Administrative fines: Fine of EUR 500 to 50,000 depending on the number of employees.</p> <p>Penal sanctions: Imprisonment for at least three months.</p>	
IRELAND	No. Hiring out may be carried out as a special business activity only, with a licence granted by the Minister for Jobs, Enterprise & Innovation.	N/A.	N/A.
ITALY	Yes. This activity is only permitted to temporary agencies.	<p>Administrative fines may apply according to each violation for each employee employed and the employee will be deemed to have an employment contract for an indefinite period of time with the host company.</p> <p>Criminal offence (i.e. fines and imprisonment in some specific cases).</p>	If the posting is temporary, provided that there is a genuine interest from the Home Country in the secondment of the employee; that an organic link is kept between them; and that the employee remains on the payroll of the home company, the latter is permitted to post the employee to another country/company. A written secondment agreement can be helpful in providing evidence of the requirements.
LATVIA	No.	N/A.	N/A.

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
LITHUANIA	No.	N/A.	N/A.
LUXEMBOURG	Yes.	This is a criminal offence (the user and the employer face a penalty of between EUR 500 and EUR 10,000 and in the case of re-offending, imprisonment from two to six months and a penalty of between EUR 1,250 and EUR 12,500, or either of these sanctions. The penalty is applied in respect of each unlawfully seconded employee). Civil penalties: the employee is deemed to have an employment contract for an indefinite period of time with the host company.	The prior authorisation of the Minister of Employment is required in four cases. The secondment of personnel is permitted where there is a threat of dismissal or underemployment; for the execution of casual work where the user company cannot hire permanent staff, provided both companies belong to the same industry; in the case of restructuring within a group; and within the framework of a 'plan for the safeguarding of employment'. In these cases, the authorisation of the Minister of Employment must be obtained and an agreement on the lease of personnel between the social partners who have the right to make collective bargaining agreements must be obtained. However, as a rule, posted employees are posted within the framework of a service level agreement ('SLA') between the host company and the home company. In such cases, there is no special procedure, but it is important that the posted employee keeps a direct relationship ('organic link') with his or her employer.

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
NETHERLANDS	No.	N/A.	N/A.
NORWAY	No.	N/A.	N/A.
POLAND	Yes. Only temporary work agencies may direct their employees to work for third parties.	Administrative fines (not lower than PLN 3,000 or approximately EUR 750 and up to PLN 30,000, or EUR 7,500). The employee may claim to have an employment contract for an indefinite period of time with the host company. Possible criminal offence (if the breach of employee's rights is malicious and persistent. For this the penalty could even be imprisonment for up to two years).	A solution would be to execute a service level agreement ('SLA') between the home company and the host company. The services covered by the agreement could then be performed by the employees at the host company. Note however, also in that case, the employees may only receive instructions from the home company.

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
PORTUGAL	Yes.	<p>Administrative fines: the amount will depend on the company's turnover during the previous year.</p> <p>Labour penalties: the employee may opt to have an employment contract for an indefinite period with the host company.</p>	<p>Possible solutions are:</p> <p>(1) to execute a service level agreement between the home company and the host company. Note that instructions given by the host company will not indicate a prohibited lease of employees if these are necessary for the execution of the agreed services</p> <p>or</p> <p>(2) to enter into a three-way written agreement between the home company, the host company and the employee. This kind of agreement can only be executed for intra-group postings and provided the posting is exceptional and for a limited period of time.</p>
SPAIN	Yes.	<p>Criminal penalties are possible. In terms of civil penalties, there is joint liability between the home company and the host company in respect of all employment and labour obligations. The employee has a discretionary right to become a permanent employee of either the home company or the host company. Administrative fines of between EUR 6,251 and 187,515 may be payable for breach.</p>	<p>The home company must maintain the employees within its control and organisation. That is to say, the employees maintain a strong, direct relationship ('organic link') with the home company.</p> <p>Usually, a service level agreement or tripartite agreement will be concluded.</p>

	PROHIBITION OF LEASE OF EMPLOYEES (OCCASIONALLY, I.E. WHEN IT IS NOT THE COMPANY'S MAIN BUSINESS ACTIVITY ¹⁷)	PENALTIES	POSSIBLE SOLUTION TO REDUCE THE RISK
SWEDEN	No.	N/A.	N/A.
UNITED KINGDOM	No.	N/A.	N/A.

Social security



The social security systems are based on national law. There are very important differences in the level of social security charges between the different Member States.

In order to give a general idea of the level of social security charges, we have calculated the employer's and the employee's social security charges (in EUR) payable on an annual gross salary of EUR 100,000:

	EMPLOYER CONTRIBUTION	EMPLOYEE CONTRIBUTION	TOTAL CHARGES
Austria	22,224.16	10,541.16	32,765.32 ¹⁸
Belgium	35,000	13,070	48,070
Cyprus	10,800	6,800	17,600
Czech Republic ¹⁹	24,720	8,000	32,720
Denmark	300	8,300 ²⁰	8,600
Estonia	34,400	2,800 ²¹	37,200
Finland	20,020 ²²	7,310	27,330
France ²³	45,810	20,439	66,249
Germany ²⁴	11,644.44	11,243.52	22,887.96
Greece ²⁵	28.06	16,000	44.06 ²⁶
Ireland	10,750.00	3,735.84 ²⁷	14,485.84
Italy	33,000	9,190	42,190
Latvia	24,090	11,000	33,090
Lithuania	30,980	9,000	39,980
Luxembourg ²⁸	13,790	12,374	26,166
Netherlands ²⁹	7,320	13,006	20,326
Norway	14,100	7,800	21,900
Poland	18,480	13,710	32,190
Portugal	23,750	11,000	34,750
Spain	12,792	2,461.33	15,252.25
Sweden	31,420	N/A	31,420
United Kingdom	12,670	5,930	18,600 ³⁰

18) The basis for the calculation of social security contributions is capped at a certain maximum amount (2011: EUR 4,200 per month for regular payments and EUR 8,400 per annum for special payments).

19) For social security and health insurance contributions, the maximum basis for calculation of contributions in 2011 is CZK 1,781,280 (EUR 72,705), leading to a maximum contribution of CZK 801,576 (EUR 32,720) per year.

20) Social security is financed via taxes withheld from the employee's salary. The employer must take out mandatory health insurance.

21) The employee's contribution is EUR 4,800 if the employee has joined a voluntary pension scheme (II pillar) and makes relevant contributions.

22) The abovementioned amount is based on the aggregate of the employer's social security contributions (2.12%), average employment pension insurance contributions (17.1%) and the employer's unemployment insurance contribution (0.80% up to an employer payroll of EUR 1,879,500). In addition, the employer must pay accident insurance premiums (of between 0.3% and 8% of the total payroll) and a group life assurance premium (on average 0.071% of the payroll).

23) A ceiling applies, calculated on a computational basis.

Given the large differences in the level of social security charges between the different Member States, it is very important to determine the applicable social security law in the case of posting.

POSTINGS WITHIN THE EEA AND SWITZERLAND

Since 1 May 2010, the applicable law is determined by the EC Regulation 883/2004 on the coordination of social security systems (29 April 2004). However, in relation to Switzerland, Norway, Liechtenstein and Iceland, the applicable law is still determined by the previous EEC Regulation 1408/71 (14 June 1971) on the application of social security schemes to salaried persons and self-employed persons. In the United Kingdom, EEC Regulation 1408/71 also still applies to nationals of third countries. In Denmark, neither regulation applies to nationals of third countries. Transitional measures apply until 2020.

Generally, employees are subject to the social security law of one Member State only. This is normally the law of the Member State where the activity is performed, even if the employee or the employer has his or her residence in another country.

As an exception to this, an employee posted to another Member State may remain exclusively subject to the social security law of the Home Country where he or she normally performs the activity. This 'posting rule' is subject to certain conditions, all of which must apply:

- The employee must be insured in the social security scheme of the Home Country for at least one month prior to the posting.
- A direct relationship must continue to exist between the employee and the company by which he or she is normally employed in the Home Country during the posting.
- The expected duration of the work carried out on the basis of the posting may not exceed 24 months. However, for most countries an extension of up to five years may be granted based on an agreement between the relevant authorities.
- The employee is not posted to replace another posted employee.
- The employer must normally carry out significant economic activities in the Home Country.

The employer must apply for an A1 form (which is a type of certificate, previously called an E-101 form) to the relevant authorities of the Home Country. The employee must have the A1 form with him or her at all times during the posting to prove continued adherence to the social security law of the Home Country.

24) Health insurance is now subject to a standard calculation. The employee contributes 8.2% and the employer 7.3%. Furthermore, a contribution ceiling applies in the different branches of social security, which results in the current maximum contribution of EUR 22,887.98 per annum (2011 amount).

25) The calculation is based on the percentage of general average contributions for employees and can vary depending on the employee's sector of employment.

26) The contributions mentioned are capped. The maximum contribution that may be due is 50.66% (employer 31.21% and employee 19.45%), if the employment is of a hazardous or heavy nature or if the employer's enterprise is situated in certain rural areas.

27) Employee contribution is inclusive of Universal Social Charge. 28) In this example, the worker is a white-collar worker and the employer is classified in class 2 by the Employer's Mutuality. The minimum monthly social contribution base is EUR 1,801.49 (1 x monthly minimum salary for unskilled workers) and the maximum yearly social contribution base is EUR 108,089.40 (5 x yearly minimum salary for unskilled workers).

29) A ceiling applies based on a maximum wage of EUR 49,297 in 2011 for the employer's contribution. The employee's contribution includes the 'volksverzekering'.

30) These figures are calculated on the basis of GBP 1: EUR 1.628.

Postings from outside the EU and Switzerland



In the case of a posting from outside the EEA and Switzerland, whether the relevant EEA Member State has signed a Totalisation Agreement, including posting provisions, with the country from where the employee is posted and whether the employee is covered by the Totalisation Agreement (as some agreements still include nationality conditions) will need to be checked.

If so, and if the posting conditions are complied with, the employee may continue to be subject to the social security law of the Home Country and be exempt from the social security law of the Host Country.

If not, local Member State social security rules will apply (and potentially also the social security rules of the Home Country). This should be checked against the national rules of both the Home Country and the Host Country.

Below you will find an overview of the countries with which the EEA Member States covered by this booklet have executed a Totalisation Agreement:

TOTALISATION AGREEMENTS ON SOCIAL SECURITY

Australia (*although still to be signed by Australia, this should occur in the near future*)
Bosnia-Herzegovina – Chile – Israel – Canada (and Quebec) – Croatia – Korea – Macedonia – Montenegro – the Philippines – Serbia – Tunisia – Turkey – the United States

AUSTRIA

Algeria – Australia – Bosnia-Herzegovina – Canada (excluding Quebec) – Chile – the Congo – Croatia – India – Israel – Japan – Kosovo – Macedonia – Montenegro – Morocco – the Philippines – Quebec – San Marino – Serbia – South Korea – Tunisia – Turkey – the United States – Uruguay

BELGIUM

[The Scope of application of the Totalisation Agreement should be verified as some Agreements have nationality conditions.]

Australia – Austria – Canada – the Czech Republic – Greece – Egypt – the Netherlands – Northern Ireland – Quebec – Slovakia – Switzerland – the United Kingdom

CYPRUS

CZECH REPUBLIC Bosnia-Herzegovina – Canada (including Quebec) – Chile – Croatia – Israel (only applicable to Czech and Israeli citizens) – Japan – Macedonia – Montenegro – Serbia – South Korea – Turkey – Ukraine (only applicable to Czech and Ukrainian citizens) – the United States

DENMARK Australia – Bosnia-Herzegovina – Canada (excluding Quebec) – Chile – Croatia – India – Israel – Macedonia – Montenegro – Morocco – New Zealand – Pakistan – Quebec – Serbia – Turkey – the United States

[Note that the content of the Totalisation Agreement in question varies as Denmark has entered into various types of agreement on social security.]

ESTONIA Canada – Russia – Ukraine

FINLAND Australia – Canada (including Quebec) – Chile – Israel – the Nordic Countries (Sweden, Denmark, Norway and Iceland) – the United States

FRANCE Algeria – Andorra – Benin – Bosnia-Herzegovina – Cameroon – Canada – Cape Verde – Chile – Congo – Croatia – French Polynesia – Gabon – India – Israel – Ivory Coast – Japan – Jersey – Macedonia – Madagascar – Mali – Mauritania – Morocco – Monaco – Montenegro – New Caledonia – Niger – the Philippines – Senegal – Serbia – South Korea – Togo – Tunisia – Turkey – the United States

GERMANY Australia – Bosnia-Herzegovina – Brazil (not yet in force) – Canada (including Quebec) – Chile – China – Croatia – India – Israel – Japan – Kosovo – Macedonia – Montenegro – Morocco – Serbia – South Korea – Tunisia – Turkey – the United States

GREECE Argentina – Australia – Brazil – Canada (including Quebec) – Cyprus – New Zealand – Switzerland – the United States – Uruguay – Venezuela

Ireland is a party to a number of totalisation agreements.

ITALY Argentina – Australia – Bosnia-Herzegovina – Brazil – Canada (including Quebec) – Croatia – Ex-Yugoslavia – Israel – Jersey and the Channel Islands – Macedonia – Mexico – Monaco – Cape Verde – Korea – Croatia – San Marino – the Vatican – Tunisia – Turkey – the United States – Uruguay

LATVIA Belarus – Canada – Russia – Ukraine

LITHUANIA Belarus – Canada – Russia – Ukraine – the United States

LUXEMBOURG Bosnia-Herzegovina – Brazil – Canada (including Quebec) – Cape Verde – Chile – Croatia – Macedonia – Montenegro – Serbia – Slovenia – Tunisia – Turkey – the United States

NETHERLANDS Argentina – Australia – Bosnia – Brazil – Canada – Chile – Ecuador – Indonesia – Israel – Cape Verde – Monaco – Morocco – the Philippines – Surinam – South Africa – South Korea – Thailand – Tunisia – Turkey – the United States

NORWAY

Canada – Chile (not in force) – Iceland – Liechtenstein – Morocco (not in force) – Quebec – Turkey – the United States

POLAND

Australia – Canada – Macedonia – South Korea – the United States

PORTUGAL

Andorra – Argentina – Australia – Brazil – Cape Verde – Canada (excluding Quebec) – Chile – Quebec – Morocco – Tunisia – the UK (including the Channel Islands: Jersey, Guernsey, Herm and Jethou, and the Isle of Man) – Uruguay – the United States – Venezuela

SPAIN

Andorra – Argentina – Australia – Brazil – Canada – Chile – Colombia – the Dominican Republic – Ecuador – Japan – Mexico – Morocco – Paraguay – Peru – the Philippines – Russia – Tunisia – Ukraine – the United States – Uruguay – Venezuela

SWEDEN

Bosnia-Herzegovina – Canada – Chile – Croatia – Cape Verde – Israel – Montenegro – Morocco – Serbia – Turkey – the United States

[Note that the content and scope of the Totalisation Agreements may vary.]

UNITED KINGDOM

Barbados – Bermuda – Bosnia-Herzegovina – Canada – Croatia – Guernsey – Israel – Jamaica – Japan – Jersey – Macedonia – Mauritius – New Zealand – the Philippines – the Republic of Korea – Serbia and Montenegro – Switzerland – Turkey – the United States

Tax aspects



INCOME TAX

The income tax systems are based on national law. There are significant differences in the level of income tax on salaries and wages amongst the different Member States.

In order to give a rough idea of the level of income tax payable, we have calculated the income tax (in EUR) due by a resident who is married (with the spouse having no professional income) and has two dependent children. The annual gross income is EUR 100,000:

AUSTRIA	BELGIUM	CYPRUS	CZECH REPUBLIC	DENMARK	ESTONIA
28,162 ³¹	33,954	20,160	15,827	52,000	19,940
FINLAND ³²	FRANCE ³³	GERMANY	GREECE	IRELAND	ITALY
43,500	11,200	22,728 ³⁴	32,290	26,462 ³⁵	36,170
LATVIA	LITHUANIA	LUXEMBOURG	NETHERLANDS	NORWAY	POLAND
22,159.29	14,922	16,191	35,679	34,108 ³⁶	16,559
PORTUGAL	SPAIN	SWEDEN	UNITED KINGDOM		
36,057	32,721	41,000 ³⁷	24,410 ³⁸		

31) Provided that the spouse is also an Austrian resident and they have been married for more than six months in the calendar year and do not live permanently separated. In addition, the taxpayer must have been entitled to 'child allowance' for more than seven months.

32) The amount in question includes an average communal tax, average church tax, sickness insurance premium, employee's unemployment insurance premium and the employee's employment pension contribution.

33) The net taxable income is EUR 90,000 on a salaried income of EUR 100,000 (on which a 10% deduction applies).

34) A solidarity contribution of EUR 961.95 will be added to the tax. A Church tax is not included (EUR 1,574.10 per annum for Catholics and Protestants).

35) This assumes that both spouses are resident in Ireland. A Universal Social Charge of EUR 6,318.80 is also payable.

36) The amount includes social security of EUR 7,800. A stipulated deduction of NOK 50,000 is made, without which the tax would be EUR 1,750 higher.

37) The level of income tax could vary between approximately EUR 39,000 and EUR 45,000 depending on, for example, place of residence.

38) These figures are calculated on the basis of EUR 1.628. Please note that the tax rates increase significantly for those with an annual income of at least GBP 100,000 (EUR 112,800). Such individuals progressively lose their personal tax-free allowance (for tax year 2011-12, GBP 7,475) and when income exceeds GBP 150,000 (approximately EUR 174,000) the tax rate is 50% on the excess.

When an employee is on a cross-border secondment, the tax law of at least two states is involved, i.e. the tax law of the state of residence and the tax law of the work state (also known as the 'state of source'). Therefore, it is important to verify whether a bilateral tax treaty exists between the two countries to avoid double taxation. For the purpose of this booklet, we will use the OECD Model Tax Treaty, as this OECD Treaty was used as a model for all tax treaties concluded between the countries covered by this booklet. It remains, however, of the utmost importance to consider each relevant treaty separately as the wording may differ from the OECD Model Tax treaty, as well as from treaty to treaty.

RESIDENCE

Fiscal residence is the key factor when determining the legal consequences of taxation in a cross-border situation. The distinction between a resident and non-resident of a state is of crucial importance both for the application of domestic and international tax regulations.

Residents are in most countries taxable on their worldwide income. However, when a resident has foreign source income that is also taxable abroad, this will often be exempt in the state of residence pursuant to a Double Tax Relief Treaty concluded by the state of residence with the state of source.

Non-residents, on the other hand, are in most countries, taxable only on their 'foreign' source income.

Article 4 of the OECD Model Tax Treaty helps to determine the state of residence where an individual is a resident of both states, based on their domestic law. The question of residence is determined in accordance with the following rules (the so-called 'Tie-Breaker Rules'):

- The individual is deemed to be a resident of the state in which he or she has a permanent home available.
- If he or she has a permanent home available in both states or in neither of them, he or she will be deemed to be a resident of the state with which his personal and economic relations are closer ('centre of vital interests').
- If the state of his or her centre of vital interests cannot be determined, he or she will be deemed to be a resident of the state in which he or she has an habitual abode.
- If he or she has an habitual abode in both states or in neither of them, he or she will be deemed to be a resident of the state of which he or she is a national.
- If he or she is a national of both states or of neither of them, the competent authorities of the contracting state must settle the question by mutual agreement.

TAXATION – GENERAL

On the one hand, if the individual is considered to be a resident of the country where he or she works, he or she will be taxable in that country following the applicable domestic regulations. This will be the case if a seconded employee becomes a tax resident in the state of source (or Host Country). The seconded employee will then be taxable in the Host Country as a resident of that country.

Conversely, if the individual works and resides in different countries, in order to avoid double taxation, he or she will need to check whether a bilateral tax treaty exists. If so, the question becomes whether the seconded employee keeps his or her residence in the state of residence (or Home Country). The tax treaty between the Home Country and the Host Country will then determine in which country the employee will be taxable.

According to Article 15 of the OECD Model Tax Treaty, remuneration is taxable in the country where the activity is exercised. As a general rule, a seconded employee will be taxable in the Host Country. However, the remuneration earned by a resident of one state in respect of employment exercised in the other state is taxable only in the first state (the state of residence) if the following conditions are simultaneously fulfilled:

- The employee is present in the other State (the Host Country) for a period or periods not exceeding an aggregate of 183 days in any 12-month period commencing or ending in the relevant fiscal year.
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state (the Host Country).
- The remuneration is not ultimately borne by a permanent establishment or a fixed base of the employer in the other State (Host Country).

As mentioned, in each situation the Double Tax Treaty concerned must be considered, as the conditions may not exactly match those described above. Moreover, some double tax treaties provide special rules for 'frontier workers'.

However, employees who are posted for more than 183 days will most likely be taxable on their remuneration in the Host Country, or at least on their Host Country-sourced salary.

Some countries also have special tax regimes for expatriates:

	SPECIAL REGIME	SHORT DESCRIPTION
AUSTRIA	No.	N/A.
BELGIUM	Yes.	If certain conditions are met, expatriates may apply for a so-called 'special tax status' pursuant to which they are considered as fictitious non-residents, even if they live in Belgium during their assignment. Such status must be requested within a period of six months following the month of employment in Belgium. If they obtain this status, part of their salary is treated as a tax-exempt reimbursement of expatriation expenses (to a limited amount). In addition, the income corresponding to work performed abroad is tax-exempt ('travel exclusion').
CYPRUS	Yes.	According to the Income Tax Law of 2002, as amended, any person who, prior to the commencement of his employment in the Republic of Cyprus, was residing outside Cyprus (interpreted as residing in another country for more than 183 days), is exempt from taxation up to an amount of 20% of his salary (the maximum amount for this exemption being EUR 8,550) for three years, starting from 1 January of the year following the year in which the employment commenced.

	SPECIAL REGIME	SHORT DESCRIPTION
CZECH REPUBLIC	Yes.	Non-residents for tax do not qualify for tax deductions and discounts automatically. Only the basic tax discount per taxpayer is available. Other deductions and discounts are provided only if 90% of the worldwide income of a tax non-resident is sourced from the territory of the Czech Republic. The tax base for income from employment is generally a so-called super-gross wage which is a gross wage increased by the amount corresponding to obligatory social insurance and general health insurance paid by the employer (amounting to 34%). This percentage is used also for tax non-residents who are paying their social and health insurance abroad and are exempt from paying contributions to the Czech social security system.
DENMARK	Yes.	If certain conditions are met, the expatriate can choose to pay gross tax at the rate of 25% for three years or 33% for five years exclusive of AM-contributions of approximately 8% of the salary. However, the expatriate will not be able to benefit from any deductions from income or personal relief.
ESTONIA	No.	N/A.
FINLAND	Yes.	If certain conditions are met, expatriates who are regarded as key personnel (executives and experts) may choose to pay a withholding tax of 35% instead of the usual progressive tax for the first four years of their assignment. A taxpayer is deemed to be a foreign employee for a maximum of 24 months calculated from the beginning of the employment and as long as the employment is not interrupted.

	SPECIAL REGIME	SHORT DESCRIPTION
FINLAND		Key personnel are also exempt from the employee's health insurance contribution. These key employees must have a minimum monthly salary of EUR 5,800 during the whole period of employment and their working period in Finland must last more than six months. The minimum salary requirement does not apply to university teachers and researchers.
FRANCE	Yes.	French tax residents who engage in frequent business travel may benefit from a personal income tax exemption (expatriation or 'travel' premium). This premium is an additional salary, paid to compensate the employee because he or she is away from home for long periods of time. To benefit from the personal income tax exemption, the premium must be provided for in the employment contract or an addendum to such contract, and must be strictly proportional to the time spent abroad by the employee. According to French case law, the amount of the premium should not exceed, as an absolute maximum, 30% of annual gross salary. The premium is subject to social security contributions.
GERMANY	No.	N/A.
GREECE	No.	Expatriates are subject to the same rules as Greek employees.

	SPECIAL REGIME	SHORT DESCRIPTION
IRELAND	Yes.	In respect of employment earnings, where a person is resident in Ireland for a tax year and was not resident in the preceding year, and can demonstrate that he or she is in Ireland with the intention of residing there and that he or she will be resident for the following year, he or she will be deemed to be resident for that year only from the date of arrival. There are similar rules for the year of departure whereby the person will be considered resident up to the date of departure if the person can demonstrate that he or she is leaving Ireland other than for a temporary purpose with the intention of leaving, and in such circumstances that he or she will not be resident for the following year, he or she will be regarded as resident up to the date of departure. Where the person is treated as resident for part of the year, the employment income that arises will be treated as income arising for a year in which he or she is resident. Income arising in the remaining part of the year will be treated as arising in a year in which the person is not resident.
ITALY	Yes.	Income from employment produced by an Italian tax resident employed by Italian companies working abroad on a continuous and exclusive basis for more than 183 days in a 12-month period is subject to Italian personal income tax. The taxable base, however, is restricted to notional compensation that is determined by taking into account the employee's level, the sector of activity and the base compensation prior to the foreign assignment, and is capped without regard to the actual income received by the employee. The cap is set each year by a Decree of the Italian Ministers of Labour, Treasury and Finance.

	SPECIAL REGIME	SHORT DESCRIPTION
LATVIA	No.	Expatriates may be regarded as 'residents' or 'non-residents'. An expatriate is regarded as a non-resident if he or she does not have a permanent residence in the territory of Latvia and he or she does not stay in Latvia for 183 or more days in any 12 months period. The income of non-residents from employment activities in Latvia and income from employment activities carried on outside Latvia for the benefit of Latvian employers is subject to income tax in Latvia, unless more favourable treatment is available under the respective double tax treaty.
LITHUANIA	No, unless more favourable treatment is available under the respective double tax treaty.	N/A.
LUXEMBOURG	Yes.	Since 1 January 2011, a particular tax regime exists for highly-skilled employees, which covers expenses in relation to the hiring or secondment within an international group of international employees. Under very strict conditions, the new regulation provides a tax exemption for part of the relocation expenses. At the level of the Luxembourg company, the expenses listed by the tax regulation are considered tax deductible. At the level of the employee, the expenses borne by the employer are not regarded as 'income from employment' and are therefore not subject to tax income. The benefit of this regime is limited to five years.

	SPECIAL REGIME	SHORT DESCRIPTION
NETHERLANDS	Yes.	According to the so-called '30% ruling' an employer may grant an expatriate a maximum tax-free payment of 30% of the employee's salary, including that payment. The 30% ruling may be used, provided that the employee has certain specific skills that cannot be found in the Netherlands.
NORWAY	No.	N/A.
POLAND	No.	N/A.
PORTUGAL	Yes.	The expatriate may be regarded as a 'non-resident', in which case a special income tax will be withheld (21.5%), which is lower than the general tax rate.
SPAIN	Yes.	A non-resident taxpayer will only be subject to income tax on specific sources of Spanish income. If certain conditions are met, the expatriate can choose to pay gross tax at the rate of 24%. There is an exemption (with a limit of EUR 60,101.21 per annum) for employment earnings obtained abroad. To benefit from this exemption, the expatriate must provide services to a company not resident in Spain and the country where the services are performed must have an income tax system similar to the Spanish system. Residents in the EU who obtain 75% of their employment earnings in Spain, can choose to pay Spanish income tax.

	SPECIAL REGIME	SHORT DESCRIPTION
SWEDEN	Yes.	The expatriate may be regarded as a 'non-resident'. A special income tax will be withheld (25%), which is lower than the general tax rate. Certain expenses, paid by the employer, are excluded from tax. In specific cases key foreign personnel (executives and experts) may qualify for tax relief of 25% of taxable income when working in Sweden for a limited period of time. This means that a key foreign individual's tax will be based on only 75% of his or her income. The employer's social security contributions will also only be based on 75%.
UNITED KINGDOM	Yes.	<p>Provided the expatriate is 'assigned' and intends to work in the UK for a period of two years or less, (i.e. is not ordinarily resident in the UK) employment income for duties performed overseas (i.e. not in the UK) are not taxable in the UK provided this income is both paid and kept offshore and he or she makes a claim to be taxed on the 'remittance basis'. The expatriate may also take a tax deduction for 'temporary away from home' costs incurred during the period of assignment. Examples include accommodation, meal expenses, utility expenses and travel to and from the temporary location of work. To be eligible to claim this deduction, the expatriate must remain employed by the home employer.</p> <p>Expatriates who become ordinarily resident in the UK but remain domiciled outside the UK may not be subject to UK income tax on 'foreign' employment earnings provided the employment is carried on wholly abroad for a non-UK employer, the income is both paid and kept offshore and the employee makes a claim to be taxed on the 'remittance basis'.</p> <p>Depending on the circumstances an individual may have to pay a charge of up to GBP 30,000 per year for each year he or she wishes to claim the remittance basis.</p>

PERMANENT ESTABLISHMENT ISSUES

Depending on the situation, the presence of the employee may, under certain conditions, be considered as permanent establishment of the home company in the Host Country. This may give rise to additional (corporate tax) obligations for the home company in the Host Country.

Occupational pension schemes



Occupational pension schemes often have an important role in cases of international postings. Posted employees typically ask to remain affiliated to the pension scheme of their Home Country, knowing that this will facilitate retirement in their Home Country. In the EEA, this has been considered as important in facilitating the free movement of employees.

By EC Directive 98/49 (29 June 1998) each Member State must take appropriate measures to enable posted employees to remain affiliated to the pension scheme of their Home Country, without having to be affiliated to the pension scheme of the Host Country.

This principle facilitates the posting of employees abroad and the Directive has, at the time of writing, been implemented in all Member States. However, there remain significant differences between the Member States as regards statutory pension levels and the prevalence of occupational pension systems. Difficulties are therefore bound to arise when employees stay in the Host Country beyond the maximum possible duration for a posting and/or retire in a country other than the Home Country. These difficulties are compounded by the fact that Directive 98/49 does not govern the tax aspects of trans-border payment of pension contributions or pension benefits.

In a posting situation, these difficulties will normally not (yet) arise. Occupational pension schemes should therefore not be a barrier to postings.

In practice, one particular difficulty in relation to postings is where the Home Country pension plan is managed by a pension fund in the Home Country and pension contributions would be paid by the affiliate or subsidiary in the Host Country. In such a scenario, the Home Country pension fund may be considered as a European pension fund pursuant to EU Directive 2003/41, resulting in registration and additional funding requirements.

Other formalities



FORMALITIES

Employers with a presence in the EEA must notify the Central Coordination Office for the Control of Illegal Employment of employees who will be posted to Austria to perform continued work one week before the start of the work at the latest.

AUSTRIA

Posted employees must notify their residence to the Authorities (the municipal office) within three days ('registration obligation').

In addition, EEA nationals must report their right of residence within four months of the date of entry by applying to the authorities for a 'Registration Certificate' if they intend to stay for more than three months in Austria.

The employer must declare employees who are posted from abroad (including EEA nationals) for more than 20 consecutive days or a maximum of 60 days per year to the Belgian Authorities (a 'Limosa-declaration') at www.limosa.be before they start to work in Belgium. The notification must include information on the employer, the employee, the type of services to be rendered, the place where the services will be rendered, identification data of the Belgian company ('customer, principal'), the anticipated duration of the posting and the employee's weekly working time and working schedule. After the declaration is made, an acknowledgement of receipt will be provided, known as 'Limosa-1 form'. The employee must have the 'Limosa-1 form' with him or her at all times while working in Belgium. The Belgian company must verify prior to the start of the activities if the employee has a valid 'Limosa-1 form'. Criminal penalties may be imposed on both the employer and the Belgian company for non-compliance.

BELGIUM

An employer posting employees to Belgium and making the Limosa declaration is exempt for a maximum of 12 months from the obligation to:

- comply with the publicity measures for part-time employees in accordance with Belgian law;
- draw up work regulations and a personnel register in accordance with Belgian law;
- draw up an individual account and pay slips under Belgian law provided the employer draws up similar documents in accordance with Home Country legislation and keeps them available for the Social Inspectorate (until two years after the end of the assignment in Belgium).

Once the maximum period of 12 months has expired, the employer must draw up Belgian social documents. This maximum period of 12 months applies separately for each declaration.

EEA nationals who are not staying in a hotel or pension must register within 10 working days from arrival at their commune in Belgium. In addition, if they stay for more than three months in Belgium they must apply for an 'Electronic Identity Card E' within three months of arrival.

CYPRUS

According to the Posting of Workers within the Framework of Provision of Services Law 137(I)/2002, businesses falling within its scope which intend to post employees in Cyprus, must submit to the competent authority, either in Greek or English, the following information, prior to the commencement of the provision of services:

- a written declaration including: (a) the name of the business, its registered office, its address and its legal form; (b) the contact and personal details of its legal representative along with information concerning its representative in the Republic of Cyprus; (c) the address at which the posted employees will provide their services in addition to the name, registered office, address, legal form of the business for which the posted employees will be assigned; (d) the commencement date for the provision of services and the employees' posting along with the duration of the posting; (e) the nature of the services provided; and (f) a table including all the personal information of all posted employees;
- if any of the aforementioned elements are subject to change, businesses are obliged to submit a complementary declaration with the new information within fifteen days starting from the date on which the changes took place.

The competent authority for the supervision of the above is the Ministry of Labour and Social Insurances of the Republic of Cyprus.

In the event that any employer (an individual), director or representative, falling within the scope of the Law does not comply with the information requirements that individual may be subject to imprisonment for up to three months or a fine of up to EUR 3,417.20 or both.

The Cypriot Employment Law may separately establish different penalties.

A Certificate of Registration ('ACR') is required for all EU-nationals who intend to stay and work in the Republic of Cyprus for over three months. EU-nationals can however, start or continue working during the application process.

CZECH REPUBLIC

A company to which an EEA employee is posted must notify the Labour Office of the posting on a special form on the day he or she starts to perform work in the Czech Republic at the latest. This notification includes information on the employee, the Czech company, the performed work and the length of posting. The Czech company must keep a file on all employees posted to it including the same information.

Posted EEA nationals who are not staying in a hotel or pension must notify the Foreigners' Police of their stay within 30 calendar days of arrival in the Czech Republic.

DENMARK

When posting employees to Denmark employers must notify the posting to the Danish Commerce and Companies Agency. The registration must be completed upon commencement of the posting and includes information on the employer, the employees, the anticipated duration of the posting and the place of work.

EU and EEA nationals, including citizens from Switzerland, posted from abroad for more than three months must register with the Regional State Administration in order to obtain a Registration Certificate. Nationals from the Nordic countries may work in Denmark for an indefinite period without registering.

ESTONIA

As a general rule, all non-EU and EEA nationals must have a residence permit to work in Estonia. A citizen of the EU/EEU has the right to work in Estonia initially for three months from entering the country and, if a right of residence is granted a work permit is not needed. In order to obtain the right to temporary residence an EU citizen must contact the local government authority nearest to his or her place of residence and register his or her residence within three months from the date of entering Estonia. The right of temporary residence is granted for a period of five years.

FINLAND

EU and EEA-nationals working in Finland for more than three months must register with the local police (this does not apply to citizens of the other Nordic countries).

If an employer that posts workers temporarily to Finland does not have a business location in Finland, it must have a representative in Finland who is authorised to act for the company in court and to receive official documents on its behalf. The representative must be selected no later than the date when the posted worker starts working. The authorisation must be valid for a minimum of 12 months after the date when the posted worker ceases to work in Finland. The representative must have all necessary documentation concerning the posting (e.g. details of the posting company, the workers and their working conditions). A representative need not be selected in case the posting of the worker is no more than 14 days in duration.

FRANCE

In the event of a temporary secondment to France, the company is required to declare it to the labour inspectorate of the place where the secondment is to take place. In addition, the following documents must be held at the labour inspectorate's disposal at all times: an E101 for EEA employees; a work permit for each employee (other than EEA nationals); a document attesting to a medical examination in the home country or, failing that, a certificate of health clearance for the work, issued by an occupational health professional before the employee begins the work; pay slips when secondment exceeds one month.

GERMANY

Employers must notify the posting of employees to the customs authority (Finanzkontrolle Schwarzarbeit der Zollverwaltung) if they are obliged to grant the minimum working conditions in accordance with the German Law on the Posting of Workers (AEntG). This notification must be made before the start of the employment and must be written in German. A standard form can be downloaded from the homepage of the customs authority at www.zoll.de. If the employee is being hired out, the hirer is responsible for the notification. Note that these rules apply equally to EEA nationals.

There is a general obligation for all foreign employees to register at the registry office (Einwohnermeldeamt). EEA nationals must also apply for a certificate of freedom of movement at the registry office. In the case of Bulgarians and Romanians this certificate refers to the duty to apply for a work permit.

GREECE

Before the beginning of the posting and independently of its duration, the companies which intend to post employees to Greece must submit to the competent services of the Labour Inspection a list of documents in Greek (language). The posting of the employees without submission of those documents is not permitted.

GREECE

EU/EEA citizens may enter Greece to seek employment and stay for six months (three months and a further three if they are looking for work). If they wish to stay in the country for more than three months, they must report to the police station in the area in which they are residing. The residence permit confirms their right to stay in the country as an employed person with EU/EEA nationality. They must have employment or possess sufficient resources to stay in Greece. If those conditions are met, a residence permit may be issued for five years and can be renewed.

IRELAND

Registration requirements apply to certain non-nationals.

ITALY

Employees posted from non-EU countries (and for some Italian regions also employees posted from EU countries) must declare their presence to the Italian Authorities within eight days of their entry into the country.

Workers posted within EU territory must file the appropriate form with the Italian Social Security Institution (the 'INPS').

EEA nationals who stay in Italy for a period of less than three months must register at a police station in Italy upon arrival. If the period of stay is longer than three months they must register with the National Registration Office ('anagrafe') declaring the activities to be performed in Italy and/or their financial means to enable them to live in Italy.

LATVIA

An employer sending an employee to perform work in Latvia (including EEA employees) has a duty, prior to posting the employee, to inform the State Labour Inspection in writing regarding the posted employee, indicating:

- name and surname of the employee
- date of commencement of work
- intended length of employment
- where work will be performed
- representative of the employer in Latvia
- person for whom the work will be performed (customer)
- certification that the employee, if he or she is a citizen of a third country may lawfully work for an employer in any EU Member State, EEA country or Switzerland.

EU nationals residing in Latvia are required to register with the Office of Migration and Citizenship Affairs within 90 days of their stay in Latvia.

LITHUANIA

A foreign employer posting an employee (including EEA employees) to perform temporary work in the territory of the Republic of Lithuania for a period exceeding 30 days or to perform construction work (irrespective of the period) must notify the territorial division of the State Labour Inspectorate at the posted employee's place of employment. A notice of an approved form must be posted or faxed five days in advance of the posting to the Republic of Lithuania.

LITHUANIA

Note that the Law on the Declaration of Place of Residence determines that citizens of an EU Member State or an EFTA Member State who have come to live in the Republic of Lithuania for a period longer than three months in half a year and who have acquired the right to reside in the Republic of Lithuania in accordance with the procedure established in the Republic of Lithuanian Law on the Legal Status of Aliens, must declare their place of residence.

LUXEMBOURG

All employees posted from abroad (even for one day only) must be declared to the Luxembourg Labour Inspectorate ('Posted Work Information declaration' available at www.itm.lu) before starting to work in Luxembourg.

A temporary holding person (who may be the employee concerned or any other person) must hold the documents listed in the Posted Work Information declaration, in order to be able to communicate them to the Labour Inspectorate without delay, upon request.

EEA nationals as well as EU and Swiss citizens must register their arrival within eight days at the town administration of their chosen place of residence in Luxembourg. In addition, if they stay for more than three months in Luxembourg they must, within three months of their arrival, make a request for delivery of a registration certificate to the town administration of their chosen place of residence.

NETHERLANDS

Posting employees to the Netherlands:

EU and EEA nationals posted from abroad are permitted, based on EU Directive 98/49, to continue their foreign pension plan whilst posted in the Netherlands. As the Directive does not cover tax issues, the following (tax) formalities apply in the Netherlands to EU and EEA nationals:

The foreign pension plan must be designated by the Dutch ministry of finance as being a qualifying foreign pension plan under Dutch tax law. This designation applies for a maximum of five years and will only be issued if:

- the duration of the posting to the Netherlands is limited
- the foreign pension plan is being continued for a limited period of time
- the employee was already participating in a relevant pension plan prior to being posted to the Netherlands.

Dutch tax regulations further require that:

- The request to continue the foreign pension plan must be issued in writing and signed by the withholding company and the employee.
- The foreign pension plan is considered to be a 'common pension plan' in the country of origin. The applicable tax laws in the foreign Member State must be generally comparable to the Dutch wage and income tax rules and foreign tax facilities must be available in the Netherlands for the pension plan.
- The pension plan must be administered by a recognised foreign pension insurer or pension fund. The employer itself may be allowed to administer the pension plan if the employer is subject to governmental supervision of some kind in respect of its administration.

NETHERLANDS

The employee is not permitted to participate in the Dutch pension plan and should check the regulations in both countries to avoid double participation.

Personal data of the withholding company and the employee (name, address, etc.) is to be provided.

The tax formalities for non-EU/EEA nationals are largely comparable to the formalities for EU/EEA nationals.

Posting from the Netherlands to another EU Member State:

If a Dutch national is posted abroad (in the EU and EEA), the employee is permitted under EU Directive 98/49 to continue the Dutch pension plan. If the Home Country pension plan is managed by a Dutch pension fund and pension contributions are paid by the affiliate of subsidiary in the Host Country, the Dutch Home Country pension fund is not considered to be a European pension fund under EU Directive 2003/41. No registration and additional funding requirements apply in this situation. Whether the pension fund is considered to be a European pension fund under EU Directive 2003/41 depends on the origin of the pension scheme and not the nationality of the sponsoring company.

If the employee migrates to the Host Country for tax purposes, the Dutch tax authority will conduct a protective assessment of the market value of the pensions.

EU and EEA nationals posted to the Netherlands for more than three months must report their stay and the purpose of their stay to the Immigration and Nationalisation Service ('IND'). Following this they will receive a certificate of registration (a sticker) in their passports that confirms their legitimate stay in the Netherlands. The certificate is valid for an indefinite period of time.

NORWAY

EU and EEA-nationals posted from abroad for more than three months must register with the Norwegian Police. Nationals from the Nordic countries may work in Norway for an indefinite period of time without registering.

Nationals from Romania and Bulgaria who have not had a residence permit in Norway for the last 12 months, need a residence permit.

POLAND

After three months' stay in Poland, EU and EEA-nationals must register their stay on a special register of stay for EU and EEA nationals maintained by the regional governor, and obtain a certificate of stay. The application must be submitted no later than one day after the lapse of the initial three month stay.

Depending on type of the work permit (there are several types) the home company may be required to comply with additional formal requirements, such as an obligation to authorise its representative in Poland to act on its behalf in respect of the Polish authorities if the stay of a non-EEA national exceeds 30 days in a calendar year.

PORTUGAL

EEA and Swiss nationals who are in Portugal for more than three months must register in the Municipality where they reside to enable them to maintain their right of residence after this period has elapsed.

SPAIN

In accordance with Directive 96/71, the EEA employer must also send a copy of a prior communication detailing the conditions of the assignment to the Spanish labour authorities before the assignment takes place.

EEA employees posted from another EEA country must be registered with the local immigration police if they stay for more than three months.

SWEDEN

EU and EEA nationals posted from abroad for more than three months must register with the Swedish Migration Board. Nationals from the Nordic countries may work in Sweden for an indefinite period of time without registering with the Swedish Migration Board.

Nationals from Switzerland need a residence permit in order to be eligible to work in Sweden.

UNITED KINGDOM

If an employee seconded overseas wishes to remain in the UK scheme, this should be achievable but a number of considerations apply. First the rules of the scheme will need to permit this. Second, if contributions are to be accepted from an EEA employer, care must be taken to ensure that the stringent regulatory and funding requirements of the cross-border legislation (enacted in the Pensions Act 2004) do not apply. The key question in determining this is whether the individual's employment is subject to the 'social and labour law relevant to the field of occupational pension schemes' of another Member State. Seconded employees are generally not caught by the cross-border requirements but it is the trustees of the pension scheme who will need to assess whether someone is a 'seconded worker' and, therefore, whether or not to apply to the Regulator for authorisation and approval. The trustees should generally be able to rely on information from the employer regarding the circumstances of an individual's working arrangements. An individual will be a seconded worker if all the following three conditions are met:

- The individual is (or was, immediately before the secondment) employed by a UK employer with a habitual place of work located in the UK.
- He or she is posted to a non-UK Member State to work for his employer for a 'limited period'.
- He or she:
 - either, at the start of the posting, expects to return to the UK after its expiry to work for the same employer that he or she worked for before the secondment or
 - expects to retire at the end of the secondment.

Third, the normal tax benefits enjoyed by members of a registered pension scheme who are resident in the UK may not be available unless the seconded employee is a 'relevant UK individual' during the tax year in which the contributions are made. Broadly speaking, seconded employees should qualify if they were UK resident both when they became a member of the scheme and also at some time in the five tax years immediately before the relevant tax year.

The question as to whether employees seconded to the UK from another EU Member State are able to continue accruing benefits in their existing scheme in their Home Country depends on the laws in that Home Country and the governing documentation of the relevant scheme.

However, from the UK perspective, there is no legal obstacle to prevent continued membership. An individual who is a member of an overseas pension scheme before moving to the UK may claim UK tax relief if he or she continues to contribute to that overseas pension scheme, provided the necessary conditions for the relief are met. An employer may also claim relief on contributions made in respect of such members.

Relief for the member can only be obtained by making a claim, as it cannot be claimed at source. Broadly, the member must be resident in the UK when contributions are paid, must have relevant UK earnings chargeable to income tax for that tax year and must have notified the scheme that he or she intends to claim relief. In addition the overseas scheme must have completed certain notification requirements to the UK tax authorities for relief to be provided.



**Ius
Laboris**

Global
Human
Resources
Lawyers

Ius Laboris

280 Boulevard du Souverain

B-1160 Brussels, Belgium

T +32 2 761 46 10

F +32 2 761 46 15

E info@iuslaboris.com