

A photograph of a warehouse worker operating a forklift in a large industrial facility. The worker is positioned in the center of a long aisle, surrounded by tall metal shelving units filled with blue plastic bins. The lighting is bright, and the perspective is from a low angle, looking down the aisle.

# Posting of workers: penalty overview

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The posting of workers has become a key element of the organizational structure of many international companies. By making use of the free movement of services within the internal market in the EU, companies can ensure that the most suitable employees are in the right place, at the right time, anywhere in the EU. This allows companies to be agile and to provide cross-border services.

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However, it is of the utmost importance to be aware of the applicable rules and regulations with regard to the posting of workers within the EU. The following roundup provides you with an overview of: the directives in this respect, the obligations pursuant to these directives and the penalties in the event of non-compliance.

## 1. Regulatory landscape

The posting of workers is, amongst others, regulated by the Posting of Workers Directive and the Enforcement Directive. Generally speaking the Posting of Workers Directive and the Enforcement Directive apply to three categories of posting:

- i. contracting;
- ii. intercompany assignments; and
- iii. hiring out of workers by temporary work agencies.

## 2. Obligations

Based on the local implementation of these directives, there are basically two sets of obligations with regard to the posting: (i) obligations with regard to employment terms and conditions of the posted workers, and (ii) administrative obligations.

- i. Employment terms and conditions

Posted workers are entitled to the so-called 'hard core of employment conditions' in the host state. The hard core of employment terms and conditions depends per country, but generally consists of the rules and regulations with regard to minimum wage, holiday, working hours and rest periods, working conditions and equal treatment. Furthermore, these hard core employment terms and conditions could also be mandatorily applicable as stipulated in a mandatory collective labor agreement in the host country.

- ii. Administrative obligations

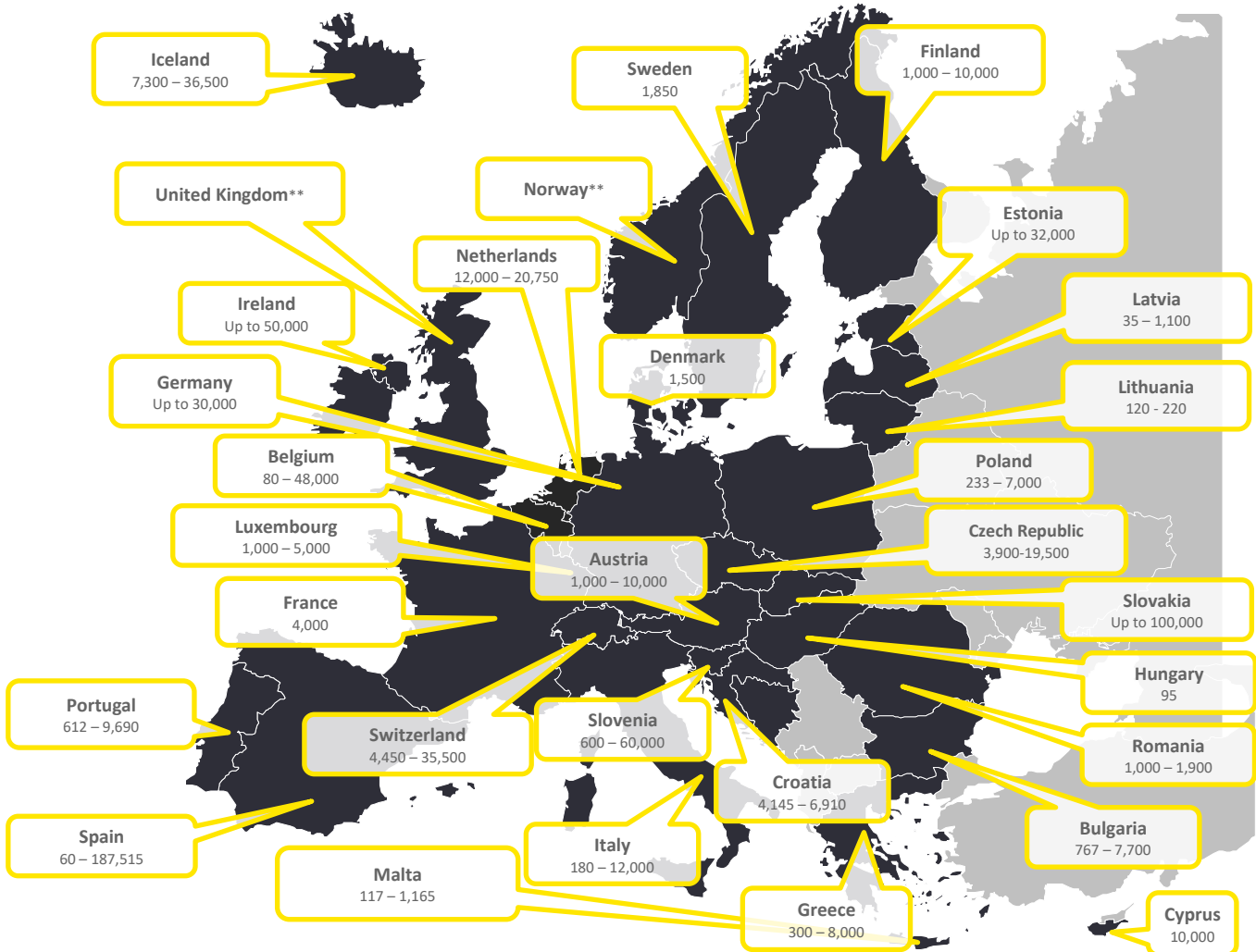
The administrative obligations can generally be divided in four separate obligations: (i) an information obligation towards the local authorities, (ii) a reporting obligation towards the local authorities, (iii) the obligation to appoint a contact person for the local authorities, and (iv) a record keeping obligation with regard to certain documents, e.g. employment contracts, assignment contracts, overview of work hours, pay slips.

## 3. Penalties

Non-compliance with the abovementioned obligations may lead to serious fines, services bans and/or imprisonment. The fines differ from country to country and may increase in the event of repeated violations. Many companies are not aware that these fines can cumulate per violation and per posted worker, and that these fines also apply in the event of a violation of the aforementioned administrative obligations. Please find below an overview of the fines per country (last updated on 20 May 2019).

## 4. Our Services

In our experience leading companies are seeking guidance with regard to, amongst others, the possible qualification of business travelers as posted workers, local exceptions for intercompany postings and determining the specific administrative obligations in each country. We are happy to assist you in this regard and to help you ensure that your company is compliant with all the applicable rules and regulations with respect to the posting of workers. In the end: it has already been proven that it is not a question whether, but when your company will be audited by local authorities.



\* per posted worker or per obligation in EUR

\*\* depends on various factors not clearly defined by the authorities

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