

## KPMG: Penalties for non-compliance with posted employee reporting obligations

**Fines, other penalties for non-compliance, bans on participation in public tenders or even imprisonment. These are just some of the penalties that companies risk if they post employees to European Union member states and fail to comply with reporting requirements.**

Romania imposes fines of RON 5,000 to RON 9,000 for not submitting the informative form or the documents certifying the total remuneration or even a translation of relevant documents. If the informative form is incomplete, or there is inaccurate information in the statement, the authorities may impose fines of between RON 3.000 and RON 5.000. Additional fines of between RON 10.000 and RON 20.000 may be imposed on Romanian employers for not fulfilling the requirement to inform the posted employee in writing with respect to certain information required by legislation. A further risk is that the authorities could rule that Romanian social security is payable (in the absence of appropriate documentation to demonstrate exemption).

"As everyone can see, the penalties for non-compliance with reporting obligations differ greatly from country to country. We recommend that companies which intend to second their employees should carefully analyze the requirements imposed by each country and comply with them", says **Daniel Jinga**, *Associate Director, KPMG in Romania*.

For example, if we analyze the legislation in Germany, we find that the penalties for non-compliance with the requirement to notify the posting may be a fine of up to EUR 30,000 and prohibition from participation in public tenders.

In Belgium, non-compliance by the employer with certain rules – either failure to pay the minimum wage, which varies according to the sector, industry or the employee's level of experience, or failure to respect the maximum working hours means that the employer or its liaison officer can face a criminal fine of between EUR 400 and EUR 4,000 or an administrative fine of between EUR 200 and EUR 2,000, depending on the seriousness of the violations of the legal provisions. Non-compliance with the rules on prior notification with Limosa (a platform used by the Belgian state to manage cross-border activities) for posted employees is penalized in Belgium with the highest level of penalty, which can consist of imprisonment from six months to three years, plus a criminal fine of between EUR 4,800 and EUR 48,000. Moreover, in Belgium, the fine (criminal or administrative) is multiplied by the number of employees for which non-compliance offenses have been committed, up to a maximum of one hundred times the maximum fine per employee.

Italy penalizes lack of notification or the transmission of wrong information with fines of between EUR 180 and EUR 3,600, for each employee for whom the legal requirements were not respected. Failure to appoint a liaison officer or recordkeeper can be penalized with amounts of between EUR 2,400 and EUR 7,200. Where a secondment is considered artificial, the fines can range from EUR 50 for every employee involved per day, subject to a minimum of EUR 5,000 and maximum of EUR 50,000. In the case of non-compliance with equal pay legislation, employers need to pay the difference. The host company and home company have joint liability.

In Spain, serious offenses (such as lack of a posting communication or falsehood or concealment of posting data) are penalized by fines from EUR 7,501 to EUR 222,018.

It is consequently important for employers to prepare carefully if they plan to post their employees to another country, particularly since authorities in each country have an increasing range of tools at their disposal to verify compliance with legislative requirements. Moreover, while in the past, authorities tended to emphasize formal compliance (for example by checking on the submission of documents) now they also frequently focus on the substance (if it is a real or artificial secondment, if the hiring of the employee is in accordance with his/her

qualifications and expertise, etc.). So, it is likely that we will see audits taking place more frequently from this perspective too, and companies should be prepared to deal with complex verification processes.

"We would recommend all companies should ensure that postings they initiate to other EU member states have substance, and are based on real business decisions and not on artificial structures. We also recommend constantly checking the legislation in each EU Member State, because even though Directive 2018/957/EU provides the general framework for the posting of workers in the provision of services, it is up to each Member State to develop its own laws to determine how these rules are applied", concludes **Madalina Racovițan**, *Partner and Head of People Services at KPMG in Romania*.