

# Exchanging Data How It Impacts Your Business Travellers And Posted Workers...

I recently returned from a business trip to London and immigration controls in Ireland scanned my passport card. This isn't the first time this happened, but got me thinking who is accessing it and why. Technology can play a key role in improving and reinforcing external borders. Over the past years, the EU has been developing large-scale IT systems for collecting, processing and sharing information relevant to external border management. We are also observing the effects of exchange of information regimes between different government departments, such as tax, social security and immigration.

## Europe Exchange Systems

The Visa Information System, which supports the implementation of the common EU visa policy, is one of the EU tools. The Visa Information System (VIS) allows Schengen States to exchange visa data. It consists of a central IT system and a communication infrastructure that links this central system to national systems. VIS connects consulates in non-EU countries and all external border crossing points of Schengen States. It processes data and decisions relating to applications for short-stay visas to visit, or to transit through, the Schengen Area. The system can perform biometric matching, primarily of fingerprints, for identification and verification purposes.

Working in tandem with the Visa Information System is the Schengen Information System (SIS). This is the most widely used and largest information sharing system for security and border management in Europe. SIS enables competent national authorities, police and border guards, to enter and consult alerts on persons or objects. An SIS alert does not only contain information about a particular person or object but also instructions for the authorities on what to do when the person or object has been found. Specialised

national SIRENE Bureaux located in each Member State serve as single points of contact for the exchange of supplementary information and coordination of activities related to SIS alerts. At the end of 2017, SIS contained approximately 76.5 million records, it was accessed 5.2 billion times and secured 243,818 hits (when a search leads to an alert and the authorities confirm it). The main purpose of SIS is to make Europe safer. The system assists the competent authorities in Europe to preserve internal security in the absence of internal border checks.

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- **Bulgaria, Romania** and **Croatia** are not yet part of the area without internal border checks (the 'Schengen area'). Since August 2018, Bulgaria and Romania started using fully SIS. A Council Decision is still required for the lifting of checks at the internal borders of these two Member States. In the case of Croatia, there are still some restrictions regarding its use of Schengen-wide SIS alerts for the purposes of refusing entry into or stay in the Schengen area. Those restrictions will be lifted as soon as Croatia has become a part of the area without internal border checks
- The **United Kingdom** operates SIS but, as it has chosen not to join the Schengen area, it cannot issue or access Schengen-wide alerts for refusing entry and stay into the Schengen area
- **Ireland** and **Cyprus** are not yet connected to SIS. Ireland is carrying out preparatory activities to connect to SIS, but, as is the case for the UK, it will not be able to issue or access Schengen-wide alerts for refusing entry or stay. Cyprus has a temporary derogation from joining the Schengen area and is not yet connected to SIS.

So how does this effect my business travellers/posted workers? It illustrates that data is being collected and shared either when applying for a visa and/or entering Europe in any capacity. If the government departments have this data, shouldn't you also have this data? Are you ready for a HRMC audit of your Appendix IV waiver, or a Labour authority inspection to produce the required documents for your Posted Workers?

## We All Know What A Business Traveller Is, But What Is A Posted Worker?

A Posted Worker as defined by the Posted Worker Directive is "a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works."

Thus, a "posting" occurs whenever a worker employed by a company in one EU country, is assigned to temporarily work at a location in another EU country such as an intra-company transfer assignment. While the definition in the Directives is limited to workers posted from other EU nations, some countries such as Belgium, Spain, Italy and

Poland have decided to implement provisions not only to posting of workers between Member States but also to workers coming from non-EU countries. There is no de minimis threshold. This means as little as one day can trigger a Posted worker notification. This notification also needs to be done in advance of the employee's arrival. **(Failure on the part of either the sending company or host company to comply with any aspect of the host nation's Posted Worker Rules (including notification and document retention) can result in significant financial penalties and debarment from future postings).**

being exchanged between authorities. You should have a system in place to collect data and analyse it to ensure compliance. Being compliant with the Posted Worker Directive and submitting your notification and having the documentation available will not defend you against a tax/immigration inspection. It is therefore prudent you also share your information with your colleagues and have the posting assessed for payroll withholding tax obligations. A further risk to be analysed is if a permanent establishment is building and there is an economic employer in the host country. Consider the situation where on the same business trip or posting there are multiple government departments looking at the same travel event – for different outcomes. The Labour authorities are looking at administrative regulations while the Revenue authorities have different thresholds for withholding and social security obligations.

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**Records To Retain**

Companies are also required to retain specific records regarding their posted workers. While details may differ by individual country, the documents must be retained – either in paper or electronic form – and be produced if requested by authorities for at least one year after the end of the posting. The documents that are generally required to be retained include:

- Employment Contracts and Assignment Letters
- Time Sheets – of actual hours worked
- Salary Slips – must show wages paid and deductions
- Proof of Actual Payment of Wages; and
- Proof of Social Security and Health Insurance Coverage.

While the Posted Workers Directives do not change the existing social security laws and requirements applicable to temporary assignments in the EU, the increased emphasis on the conditions of employment of posted workers and the communication of such conditions (including social security coverage) to labour authorities makes compliance with social security laws even more imperative – including obtaining proper AI Certificates confirming the employee's enrolment in a national social security system.

As mentioned above, information is



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