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GENERAL REPORT

General Reporter

Stefanie Tack, Stappers, Eliaerts & Thiers advocaten cvba, Antwerp, Belgium

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Introduction

The main purpose of the General Report is to provide you with an overview of the different aspects related to cross-border employment, such as the immigration, labour and employment law and social security law aspects.

Global mobility is on the rise. More and more companies increasingly operate on a cross-border scale. However, companies assigning their employees to other countries are often confronted with increased formalities and requirements affecting cross-border employment. At first glance, only the work place of the employee temporarily changes. However, many other legal issues come into play and employers and employees must comply with the rules and regulations governing immigration, labour and social security law of each of those countries.

To give you an overview of the different jurisdictions, I examined the National Reports and carved out the aspects which are common and those, which are different between the jurisdictions. This study resulted in the present General Report, which briefly outlines the legal aspects and issues affecting the temporary assignment of employees within and outside the European Economic Area.

Many thanks to the efforts of the following National Reporters with the help of who we were able to complete this General Report: Hans Georg Laimer for **Austria**; Tom Claeys (Labour and employment law) for **Belgium**; Sharaf Sultan and Krista Kais-Prial for **Canada**; Cyril Crugnola for **France**; .Jan-Ove Becker, Eric Kessler and Rebekka Stumpfrock for **Germany**; Camille Leung Ka Ying for **Hong Kong**; Yoav Noy for **Israel**; Emiliano Ganzarolli and Ludovica Balbo di Vinadio for **Italy**; Sanne van Ruitenbeek and Nicky de Groot for **The Netherlands**; Lill Egeland for **Norway**; Pilar Baltar Fillol for **Spain**; John Wilson and Ruwani Dantanarayana for **Sri Lanka**; Asa Gotthardsson for **Sweden**; Antje Gotschi, Marisa Bützberger, Jérôme Nicolas and Pascal Sieger for **Switzerland**; Çagri Cosar and Kim Wouda for **Turkey** and Clare Hedges, Hester Jewitt and Malini Skandachanmug Arasan for the **United Kingdom**.

The table of contents (based on the questionnaire)

1. IMMIGRATION

The first question employers should consider is whether the employee needs an authorization to work and reside in the country to which he/she is (temporarily) assigned. Within the European Union, freedom of movement of persons is one of the main fundamental principles, guaranteeing EEA nationals the right to live and work freely in another EEA member state. Non-EEA nationals in principle need an authorisation to work within the EEA. Does this obligation also apply to EEA nationals assigned by their employer outside the EEA?

1.1. Whom needs a work permit to work in your country? Are there types of employees exempted (e.g., based on their nationality or type of work performed (business trips, etc.)?

Work permits are still a national matter, meaning that each country may decide on the formalities and conditions for the granting of work permits and that a separate work permit is needed for each country where the employee will work.

All legal systems of the National Reporters foresee that foreign nationals in principle need a work permit to work in their respective territory, but that some categories of individuals are exempted from this obligation.

Particularly remarkable in this respect is **Italy**, where the government determines every year the overall number of foreign citizens allowed applying for a work permit. Another remarkable point is that Japanese nationals are allowed to work in the **Netherlands** without the restriction of a work permit based on a treaty.

All EU and EEA countries and Switzerland specify that nationals of other EU and EEA countries and Switzerland are exempted, meaning that they are free to work and travel within the entire EU and EEA and Switzerland without a work permit. However, the **Netherlands** and **Austria** have confirmed that the principle of freedom of workers within the EU does currently not apply to Croatia.

Various countries have moreover stated that some foreign non-EU and non-EEA or Swiss nationals are exempted from the obligation to obtain a work permit based on the kind of work performed or other criteria. For example, some countries provide for exemptions for short-term assignments or business travel.

In this context, the National Reporters have developed the following:

In **Austria**, the Austrian Act Governing the Employment of Foreign Nationals (*Ausländerbeschäftigungsgesetz* – AuslBG) stipulates the legal framework for the employment of foreign nationals in the federal territory of Austria. "Foreign nationals" are defined as all individuals who do not possess the Austrian citizenship. However, based on the nationality or the type of work performed exceptions from the scope of the AuslBG and, thus, of the requirement to obtain a work permit, apply. Based on their nationality nationals of the European Union (EU) and the European Economic Area (EEA) Member States and nationals of the Swiss Confederation are exempt from the scope of the AuslBG. However, this exemption does currently (until 30 June 2020 at the latest) not apply to nationals from Croatia. Thus, they still need to obtain a work permit. Based on the work performed or other criteria the following foreigners are, inter alia, exempt from the scope of the AuslBG:

- foreigners who have been admitted for asylum or a subsidiary protection status;
- foreigners who are special senior executives;

- foreigners providing scientific, educational, cultural and social work at public or private educational establishments or on the basis of intergovernmental cultural agreements or under European Union training and further training or research programmes;
- foreigners providing their pastoral work within legally recognised churches and religious communities;
- foreigners providing work as crew members of sea-going and inland waterway vessels crossing borders;
- foreigners providing work in foreign missions and intergovernmental organisations;
- foreigners providing work as reporters;
- foreign teaching stuff and
- exchange students and foreign teachers.

In **Canada**, all foreign workers who do not have Canadian citizenship or permanent residence need a work permit or a business visitor visa to carry out work activities in Canada. Certain workers who are in Canada for only a short period of time, and who are deemed not to be entering the Canadian labour market, only need an entry business visitor visa. Workers such as these can apply at the border for such a visa if they are from a visa-exempt country. Examples of these types of workers include but are not limited to athletes and coaches, clergy, convention organizers, business visitors, expert witnesses or investigators, military personnel entering Canada under the terms of the Visiting Forces Act, performing artists entering for a limited period of time, and public speakers speaking at events of no longer than five days.

Foreign workers who do need a work permit to work in Canada must require pre-approval from the Ministry of Labour in the form of a Labour Market Impact Assessment (LMIA). There are however a list of specific categories where an individual may request a work permit on the basis that they are exempt from the requirement for an LMIA.

In **France,** all non-EU and non-EEA and non-Swiss nationals need a work permit to work in France. However, if the non-EU/EEA/Swiss national is travelling to France on a business trip limited to attend occasional meetings, no work permit is required. Business visitors are only permitted to undertake very restricted and non-productive, non-billable activities in France, generally limited to:

- attending business meetings, discussions and negotiations;
- attending sales calls to potential European clients as far as the business visitor acts on behalf of a commercial entity outside France;
- attending seminars and conferences.

In **Germany**, foreign nationals other than EU, EEA and Swiss nationals (so called citizens of third countries) may reside in Germany for the purpose of taking up gainful employment if they have a residence permit, which explicitly authorizes them to do so. Australian, Israeli, Japanese, Canadian, South Korean, New Zealand and US citizens may obtain such a residence permit from the relevant office for foreign nationals, once they have arrived in Germany. However, they may not commence their intended employment until they have the work permit. All other foreign nationals on the other hand, must apply for a work visa from their local German diplomatic mission before coming to Germany.EU, EEA and Swiss nationals do not need a visa or residence permit in order to take up employment in Germany. Nationals of a country for which the European

Community has abolished the visa requirement (e.g. USA, Australia, Canada, Israel, Japan, New Zealand, South Korea) and whose visit does not exceed 90 days in an 180-day period and who will not take up employment in Germany do not require a visa to enter Germany. Therefore, employees whose business trips do not exceed 90 days are exempted from the visa and residence permit requirements. It is important to note though that during those 90 days the employee may not undertake any employment whilst in Germany. I.e. any activities should be strictly business trip related. This may include: Attend meetings, conferences and seminars; attend and conduct interviews and negotiation of deals and contracts etc.

In **Hong Kong**, unless a person has the right of abode or right to land in Hong Kong, he/she will be required to obtain a visa/entry permit to work in Hong Kong. While each application is determined on its individual merits, an applicant should meet normal immigration requirements (such as holding a valid travel document with adequate return-ability to his/her country of residence or citizenship; have no criminal record and raise no security or criminal concerns for Hong Kong and have no likelihood of becoming a burden on Hong Kong) as well as the relevant specific eligibility criteria detailed below before he/she may be considered eligible for a visa/entry permit. Nevertheless, a person permitted to enter Hong Kong as a visitor may generally engage in the following business-related activities:

- concluding contracts or submitting tenders;
- examining or supervising the installation/packaging of goods or equipment;
- participating in exhibitions or trade fairs (except selling goods or supplying services direct to the general public, or constructing exhibition booths),
- settling compensation or other civil proceedings;
- participating in product orientation; and
- attending short-term seminars or other business meetings.

In **Israel**, any foreign national who has been assigned to work in Israel must obtain a work permit and an appropriate entry visa. Israeli law generally provides for only one type of work status relating to the employment of foreign professionals and non-professionals alike: the B-1 visa category. Limited business visit are allowed. However, productive work (for example, hands on training) are prohibited without holding a valid working visa.

In **Italy**, according to the Legislative Decree n. 286 issued on July 25th 1998 all non-EU citizens need a work permit in order to stay and work in Italy. Moreover, every year the government determines the overall numbers of foreign citizens allowed to apply for a work permit (the so called "Decreto Flussi"). In principle, working permits are released by the competent offices only when the request submitted by the foreign citizen matches the offer as described in the Decreto Flussi (by way of example, in the Decreto Flussi for the year 2016 approximately 30,000 permits can be issued, of which, 13.000 for seasonal works, 1.500 for studying reasons, 2.400 for self employed workers, etc.). Some individuals are however, exempted from a work permit.

In the **Netherlands**, employers are prohibited from hiring foreign national employees without a work permit. In principle, foreign national employees need a work permit to work in the Netherlands unless they come from a country that belongs to the EU, EEA or Switzerland. The Dutch government decided that the freedom of movement of workers from Croatia is postponed until 1 July 2018. This means that employers intending to employ Croatian nationals will need a work permit until that date.

Japanese nationals are allowed to work in the Netherlands without the restriction of a work permit. The work permit exception is based upon the Dutch Japanese Treaty of Trade of 1913, with a clause on the 'most favored nation treatment' considered in conjunction with article 1 of the Treaty between the Kingdom of the Netherlands and Switzerland.

Another exception to the rule that requires foreign national employees to have a work permit is applicable for:

- all foreign nationals who have a residence permit with the note "employment permitted, work permit not required"; or
- all foreign nationals who have a sticker in their passport with the note "employment permitted". The validity of this sticker is limited and the period of validity is printed on the sticker.

Such residence permit with a note or sticker can be obtained in the following situations (non-exhaustive list):

- highly skilled migrant;
- scientific researcher;
- self-employed (including Dutch-American Friendship Treaty);
- start-up;
- investor (threshold EUR 1,25 million);
- au-pair or Young Workers Exchange Program (Working Holiday Scheme/the Working Holiday Program);
- orientation year for graduates that graduated in the Netherlands;
- orientation year highly educated persons;
- employed on a Dutch seagoing vessel or on the Dutch continental shelf for at least 7 years.

In **Spain,** all types of workers need a work and residence permit in order to be legally employed in Spain. Nevertheless, there are some exceptions. A distinction is made between self-employment and salaried employment; despite the differences between the two types, both require a work and residence permit. Once this is determined, as a rule a work permit will be needed for jobs that involve a stay of longer than three months: up to that threshold, no permit is needed, but a short stay visa will be required.

In **Sri Lanka**, the Immigrants and Emigrants Act no. 20 of 1948 grants authority to the Controller of Immigration and Emigration in Colombo to issue visas, which for certain categories of visa is in practice done through Sri Lankan diplomatic missions/consulates outside Sri Lanka which issue certain categories of visas to foreign nationals. Sri Lanka has stringent rules regulating the granting of visas to foreign nationals for the purpose of residing/employment in Sri Lanka. Overall, the policy is not very accommodating towards long-term business immigration, although visas for short-term business visits are readily granted.

In **Sweden**, in order for a citizen of a non-EU country to be able to work and reside in Sweden, a work permit and a residence permit are required. A work permit is required regardless of the position the employee is to hold.

There are, however, some exemptions. A work permit is, *e.g.* not required for a specialist who is employed by a multinational group and who will be working temporarily in Sweden or who will undergo practical training, on-the-job training or other in-service training at a company in Sweden which is part of the group (a maximum aggregate

period of three months). Further examples of individuals who may work and/or perform certain duties in Sweden without specific work permission are:

- self-employed individuals who plan to work in Sweden for less than three months;
- performers, technicians and other tour staff, provided that the performer has been invited by an established arranger for up to 14 days over a period of twelve months;
- professional athletes and functionaries who participate in international competitions for up to three months during a period of twelve months;
- railway personnel and lorry drivers in international commercial traffic;
- drivers and staff of tourist buses for work up to three months;
- individuals who have a temporary engagement for a radio or television broadcast by Sveriges Radio AB (public service), Sveriges Television AB (public service), SverigesUtbildningsradio AB (public service) or Nordisk Television AB (TV4-gruppen/TV4 AB) for up to one month after entering Sweden;
- individuals who live and work in, but are not citizens of, an EU/EEA country or Switzerland and who want to work in Sweden temporarily as a contractor or the equivalent thereof; and
- witnesses or claimants in a criminal investigation who have obtained a residence permit as a result.

An individual who falls under the exceptions above must however, apply for a residence permit if the stay in Sweden is longer than three months. In addition, certain nationalities require a visa when entering Sweden.

The National Reporters of **Switzerland** emphasize that Switzerland is not part of the European Union, but part of Schengen and Dublin Agreement and furthermore tightly connected with the European Union and its regulations. Consequently, the legal framework especially in terms of admission of gainfully employed foreign nationals in Switzerland is extremely complex, not only because of the various legal sources, but also due to the countless number of linking factors, exceptions to the rule and special regulations/agreements, the determination of the applicable legal provisions in a particular case, which needs a careful and diligent examination of all the given facts.

In **Turkey**, all foreigners, unless otherwise provided in the bilateral or multilateral agreements to which Turkey is a party, are obliged to get permission before they start to work dependently or independently in Turkey. A foreigner is considered every person that is not a Turkish citizen as per the Turkish Citizenship Law number 403.

Unless otherwise provided in the bilateral or multilateral agreements to which Turkey is a party, some types of employees may be given work permission without a work permit. These types of employees are:

- foreigners, who are married with a Turkish citizen and live in Turkey with their spouses with marriage bond, or to foreigners, who have settled in Turkey after their marriage bond has finished after at least three years, and to the children thereof from a Turkish citizen spouse,
- those who have lost their Turkish Citizenship within the framework of the 19th, 27th and 28th articles of the Turkish Citizenship Law number 403 and their subordinates,
- foreigners that were born in Turkey or have come to Turkey before reaching their majority according to their national laws, if they don't have a nation, according to

the Turkish legislation and that have graduated from vocational school, high school or university in Turkey,

- foreigners that are accepted as an emigrant, refugee or nomad according to the Residence Law number 2510,
- citizens of the countries that are a member of the European Union and to the spouses and children thereof who are not citizens of the countries that are a member of the European Union,
- To those who are working at the service of the diplomats, administrative and technical personnel that are commissioned in the foreign governments' embassies and consulates in Turkey and in the representations of the international establishments, and to the spouses and children of the diplomats and administrative and technical personnel commissioned in the embassies, consulates and representations of the international establishments in Turkey, provided that they are within the framework of the principle of reciprocity and they are restricted with the duration of the commission,
- foreigners who will temporarily come to Turkey for a period of over one month with the aim of scientific and cultural activities, and for a period of over four months with the aim of sports activities,
- foreigners at the position of key personnel to be employed in the works of goods and services purchase, having a work made or operating a facility, with contract or tendering procedures by the Ministries and public institutions and establishments authorized by law.
- foreigners and stateless persons who have applied for international protection and have been granted a conditional refugee status by the Ministry of Interior.

In the **UK**, all non-EEA nationals who wish to work in the UK must obtain the relevant permission to enable them to work. Individuals may come to the UK for a business trip however; non-EEA nationals who are visa nationals must obtain immigration permission as a visitor before coming to the UK. Non-visa nationals must still obtain the correct immigration permission as a visitor, but can do so on arrival to the UK. Provided the business activities the individual plans to undertake whilst in the UK do not amount to productive work and meet one of the specified business activities (which can include but are not limited to conferences, meetings and training) under the Immigration Rules the individual may come to the UK as a business visitor. Therefore, employees coming to the UK on a business trip are not exempt from obtaining immigration permission.

1.2. Are there different types of work permits in your legal system? Are there work permits for highly educated/qualified employees? If so, what are the conditions and what is the procedure to be followed? Who needs to file for the application and where? Which information and documents are to be provided to the competent authorities? What is the timing? What is the duration of the work permit? Can it be renewed? Is it possible to apply for permanent status after a certain period under the work permit?

Most National Reporters have stated that there are different types of work permits, depending on the type of work, the period, the integration of the work permit in a residence permit, etc. Most countries have a specific work permit for highly qualified/ highly educated employees. Only **Sweden** has declared that there is only one type of work permit.

Each country foresees a specific procedure and a list of documents and information for the application of a work permit. Some countries, such as **Belgium**, **Canada** and

Sweden foresee moreover in an obligation of a labour market assessment, meaning that the employer must demonstrate that there is no suitable candidate on the local labour market of the specific position.

In this context, the National Reporters have developed the following:

In **Austria**, employers are only allowed to employ foreign nationals in Austria if one of the following (1) work permits or (2) residence titles including a work permit are obtained or held by the foreigner:

- Employment permit (Beschäftigungsbewilligung)
- Posting permit (Entsendebewilligung)
- Confirmation of notification (*Anzeigebestätigung*)
- Red-White-Red Card (*Rot-Weiß-Rot – Karte*)
- Blue Card EU (*Blaue Karte EU*)
- Residence Permit – Artist (Aufenthaltsbewilligung – Künstler)
- Red-White-Red Card plus (*Rot-Weiß-Rot – Karte plus*)
- Residence Entitlement plus (*Aufenthaltsberechtigung plus*)
- Exemption certificate (*Befreiungsschein*)
- Residence title – "family member" (*Familienangehöriger*)
- Residence title – "permanent residence – EU" (*Daueraufenthalt – EU*)

The National Reporters of Austria specify that the Red-White-Red Card is the preferred work permit for highly qualified employees: this immigration scheme attracts highly skilled foreign nationals and allows them to assess the chances for their successful immigration to Austria already in their home country. The Red-White-Red Card entitles the foreign national to residence and employment with a certain employer in Austria. After ten months of employment in Austria within the last twelve months, the Red-White-Red Card holder may apply for a Red-White-Red Card-plus, which grants unlimited access to the Austrian labour market.

In **Canada**, the foreign nationals who wish to come to Canada to work are categorized by skill level, from Skill Level 0 (management level jobs), Skill Level A (professional level jobs), Skill Level B (technical jobs and skilled trades), Skill Level C (intermediate jobs), and Skill Level D (labour jobs). Skill Level A workers usually need a degree from a university for these jobs, and include professions such as doctors, dentists and architects.

In addition, **France** has various types of work permits, depending on whether the employee will be (1) on local hire in France or (2) seconded or depending on whether this is an intra-company mobility or a service to be provided to a client based on a service agreement, etc. In addition, some of these work permits are dedicated to highly educated/qualified employees: mainly, the skills & talent card, the EU Blue card or the Inter-Company Transferee card.

In **Germany,** there are four types of residence permits including a work permit:

- Residence permit (Aufenthaltserlaubnis)
- The EU Blue Card (Blaue Karte-EU)
- Settlement Permit (Niederlassungserlaubnis)
- Permanent EU residence permit (Erlaubnis zum Daueraufenthalt EU)

Foreign nationals with a recognized university degree have easier access to the German labour market under the EU Blue Card system. In order to obtain the Blue Card, they must simply provide proof of their qualifications and a concrete job offer that would

provide annual gross earnings of at least 49,600 EUR (2016). In the case of highly qualified foreign nationals with a background in mathematics, IT, in natural sciences or technology as well as medical doctors, the EU Blue Card conditions still apply, provided they are offered the same salaries as comparable German employees and their annual gross earnings would be at least 38,688 Euros (2016).

In **Hong Kong**, a distinction is made between the following work permit schemes, depending on the education, experience or type of work performed and or nationality of the applicant:

- General Employment Policy, which is a non-sector specific work permit, but applicants must possess special skills, knowledge or experience of value to and not readily available in Hong Kong;
- Scheme for Mainland Talents and Professionals;
- Immigration Arrangements for non-local graduates for applicants who are/were non-local students and have obtained an undergraduate degree or higher qualification in a full-time and locally accredited local programme in Hong Kong;
- Entry for Investment (to establish/join in business) in Hong Kong for applicants being in a position to make a substantial contribution to the economy of Hong Kong.

In **Israel**, there are several types of work permits:

- B-1 Work Visa for the Nursing field
- B-1 Expert / Manager Visa
- B-1 Work Visa for a senior staff member of an airline company or a shipping company
- B-1 Work Visa for academic research conductors
- B-1 Work Visa for a Medical employee or Medical expert in a hospital
- B-1 Work Visa for a foreign artist

The Ministry of Interior has published in December 2015 the regulation for foreign experts. The regulation distinguishes between expert professions that requires academic qualifications (e.g. Engineers for Research and Development Teams, Auditors, Senior Executives, and other Senior Supervisors), and those that do not (e.g. Technicians). In the absence of an academic degree, the employer is required to submit additional documentation and fulfil additional requirements.

In the **Netherlands**, the employer is responsible for the work permit of the foreign national employee and there are two types of work permit, depending on whether the permit combines a residence permit and a work permit in one single document:

- A Single Permit, is a combined permit for a definite period compromises a work permit for work performed for a specific employer and a residence permit and will be requested from one authority, the Immigration and Naturalization Service (IND);
- A Work Permit is issued in certain situations where no Single Permit can be issued. In that event, a work permit will be requested from one authority, Netherlands Employees Insurance Agency (UWV), and the residence permit will be requested by another authority (IND).

Many exceptions exist though to the standard procedure, including for highly skilled migrants (*Kennismigrantenregeling*). If the highly skilled migrants' procedure applies, the employer in the Netherlands does not need to obtain a work permit. However, the

employer should be admitted to the highly skilled migrants' procedure as recognised sponsor and should therefore file an application to the IND. This procedure takes four weeks with a maximum of three months. Furthermore, the highly skilled migrant requires a Dutch residence permit. The procedure to obtain the Dutch residence permit for highly skilled migrants is an accelerated procedure and might take only a couple of weeks.

In **Spain,** there are the following types of work permits, with each their specific procedure and required documents:

- Work permits for high skilled workers
- Work permits for seasonal work
- Work permits for highly skilled workers of Peru and Chile
- Temporary work and residence permit for research
- Mobility for foreign researchers admitted to other EU states
- Temporary work and residence permit involving a transnational provision of services

In **Sri Lanka**, there are many types of categories for Residence Visas with work permits including:

- Project Professional personnel whose services are required for projects approved by the state and expatriate personnel employed in projects under Board of investment (BOI) of Sri Lanka and their dependents
- Personnel employed at banks and their dependants
- Volunteers
- Personnel attached to Non-Governmental organisations
- Personnel employed in a project, Institution or organisation under diplomatic missions in Sri Lanka
- Personnel employed in a private company and their dependants

The category under which a given employee will fall depends on the type of work that he or she will undertake, and takes into consideration factors such as: whether the company is incorporated as a subsidiary in Sri Lanka, whether the employee is to be employed at the subsidiary, and whether or not that subsidiary has section 16 or section 17 BOI status; or, if not a subsidiary, whether the company operates through a branch office in Sri Lanka and the nature of the company's relationships with the Sri Lankan business entity/entities with which it is doing business.

In **Sweden**, there is only one type of work permit. In order to obtain a work permit, the employee must have a valid passport and be able to earn his or her own living and work to such an extent that the gross salary is at least SEK 13,000 per month. In addition, the employer must have advertised the post in Sweden and the EU for at least ten days (only applies to any new recruitment) in order to comply with the EU rules.

Switzerland has different types of work permits, but none of these is limited to highly educated employees only. However, being highly qualified may be one of the conditions that a work permit is granted:

- Type L, short-term residence permit
- Type B, yearly residence permit
- Type C, settlement permit
- Type G, cross-border commuter permit

In **Turkey**, there are four main types of work permits; there is however no separate work permit for highly qualified employees:

- Work permits for a definite period of time
- Work permits for an indefinite period of time
- Independent work permit
- Exceptional cases, whereby a foreigner is automatically eligible for a work permit. There are over ten exceptional circumstances.

In the **UK**, there are different types of immigration permission which allow a non-EEA national to work in the UK. Under the current Immigration Rules, a non-EEA national may most commonly work in one of the relevant categories of the Points Based System (PBS), which was originally implemented in 2008. The system consists of four tiers (with further subdivisions) comprising:

- Tier 1: High value migrants
- Tier 2: Skilled workers
- (Tier 3: Low skilled - not implemented)
- Tier 4: Students
- Tier 5: Temporary workers and youth mobility

Tier 1 – High value migrants, these immigration routes are targeted at exceptionally talented and highly skilled workers, investors and entrepreneurs. The Post Study Worker and General sub-categories have closed to new applicants. The categories available to new applicants under Tier 1 are as follows: Tier 1 (Exceptional Talent), Tier 1 (Investor), Tier 1 (Entrepreneur), Tier 1 (Graduate Entrepreneur)

Tier 2 - Skilled workers is intended for highly skilled workers with a specific job offer in the UK with a licensed sponsor. The non-EEA national is only able to work for the sponsoring company and in the specific job s/he is sponsored to do. Although there are various sub-categories including Tier 2 (Minister of Religion) and Tier (Sportsperson) which relate specifically to specialised work in the Religious and Sporting sectors in the UK, the two main categories under Tier 2 are Tier 2 (General), Tier 2 (Intra Company Transfer) and Tier 2 (Intra Company Transfer (ICT)).

1.3. Is a separate residence permit required/ granted via the work permit? Please explain.

Most National Reporters have confirmed that the work permit is part of the residence permit (or vice versa) and therefore, no separate residence permit is required when a work permit is granted. Only in **Austria**, **Canada**, **France** and the **Netherlands**, depending on the type of work permit granted, a separate residence permit is needed.

1.4. Who can be sanctioned in case of illegal employment in your country (e.g., the employer, the employee, the host company, etc.)? What are the sanctions (civil and/or criminal) in case of illegal employment?

All National Reporters have stated that their country foresees a large number of sanctions in case of illegal employment. In most cases, both the employer and the employee are sanctioned.

1.5. Did your country implement the European Blue Card Directive 2009/50/EC? If so, please explain the scope, conditions, application process and validity of the blue card?

On 25 May 2009, a European Directive was adopted with the aim of harmonizing the conditions of admission into the EU labour market for non-EU employees (i.e. the so-called "Blue Card Directive" 2009/50/EC). The European Blue Card is a new "unique" residence permit exempting certain highly skilled, non-EEA employees from the obligation to have a work permit in order to work in an EU country.

The EU Blue Card Directive applies in 24 of the 27 EU countries. It does not apply in Denmark, Ireland and the United Kingdom, neither in Switzerland.

Each of the National Reporters of the countries, which have implemented the European Blue Card Directive, has specified the specific local rules. Most countries have also confirmed that European Blue Card holders qualify after a specific period for a long-term or permanent residence permit.

In **Austria**, the European Blue Card Directive 2009/50/EC was implemented under Austrian law especially in the AuslBG and the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz* –NAG).

Graduates of a foreign university who have a binding employment offer with an annual gross salary of at least 150 % of the average yearly gross salary of full-time employees in Austria (2016: EUR 58,434 gross which is around EUR 4,174 gross monthly income plus special payments) may apply for a Blue Card – EU. The Blue Card – EU is valid for a period of two years and entitles its holder to residence and employment with a certain employer in Austria.

After 21 months of employment in the last 24 months the Blue Card – EU holder can apply for a Red-White-Red Card – plus.

In **France**, the French Blue card is a residence permit for highly skilled employees who meet a certain number of eligibility criteria, such as providing a degree certifying at least 3 years of higher education or having at least 5 years of equivalent professional experience in the same occupational filed, a certain minimum annual gross salary of 1.5 times the average salary of reference determined by French authorities on an annual basis and which is currently EUR 53,331, etc.

Holders of French Blue card permit and their dependents will qualify for EU long-term residence permits after living in the EU for 5 years of which the last two must be in France.

In **Germany**, the European Blue Card Directive 2009/50/EC has been implemented through Section 19a of the German Residence Act.

Owners of the EU blue card get permission to stay after 33 months if their contract is still valid. If the owner of the EU blue card can prove German language skills at a certain level, permanent resident status can be granted after just 21 months (Section 19a(6) Residence Act).

In **Italy**, the Legislative Decree n. 108/2012, implementing the EU Directive 2009/50/CE, has introduced a "simplified" and "special" procedure that applies to the so called"*qualified employees*".Qualified employees are referred to as those workers (i) with high professional qualifications; or (ii) exercising in Italy a regulated profession meeting the requirements provided for by the EU Directive 2005/36, related to the mutual recognition among EU countries.

In the **Netherlands**, as of June 19, 2011, EU-Blue Card Directive 2009/50/EC277 was implemented in Dutch immigration legislation. The rules to obtain an EU-Blue Card in the Netherlands are however more stringent than the requirements regarding the 'normal' highly skilled migrants exception (lower wage criterion and no training requirement).

In **Spain**, the Directive 2009/50/CE has been implemented into Spanish legislation by means of Articles 38 and 84 to 93 of Spanish Law 4/2000 concerning Foreign Workers' Rights and Freedoms. According to the legislation, foreign workers can obtain both a temporary residence permit and a work permit if they are highly skilled and skilled for performing superior education tasks. The possibility of obtaining the permanent residence permit arises between 2 and 5 years after obtaining the blue card.

In **Sweden**, the European Blue Card has also been implemented and entitles the individual to live and work in Sweden for an employer and within the occupation that has been entered on the application. For the first 24 months, the EU Blue Card is only valid for the employer and the occupation specified in the specific decision. When the individual has worked for 24 months and has extended the blue card, the individual can change employers without submitting a fresh application, provided that the work is being conducting within the same occupation. If the occupation is planning to be changed or the period is, planning to be longer than the permit is valid for, an extension is needed. If the Swedish Migration Agency is not notified of changes in the employment, the application to have the EU Blue Card extend may be rejected, or the present EU Blue Card may be withdrawn. When an individual has had an EU Blue Card in Sweden or other countries within the EU for five years, he or she can apply for permanent resident status, provided that the individual has lived in Sweden for the last two years.

1.6. Did your country implement the European Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer? If so, please briefly describe and explain importance and impact?

The European parliament and the Council of the EU adopted the Directive 2014/66, which provides for an EU wide immigration status suited to assigning of employees from affiliates located outside the EU to affiliates within EU. The directive provides for simplified and transparent processing for assignees and their family members, and facilitates intra-EU mobility. The EU member states (except UK, Ireland and Denmark who opted out) must transpose this directive into national law by 29 November 2016.

From the National Reports it appears that **Spain** is the only country so far having implemented this EU Directive 2014/66/EU by means of Law 25/2015. As the Directive has been implemented in its entirety, the effects are the same as the measures established in the European legal text.

2. LABOUR AND EMPLOYMENT LAW

Secondly, assuming the employee is allowed to work and reside in the relevant country, it is important knowing which law is governing the employment relationship during the assignment period. Is it the law of the employer (home country) or the law of the country where the employee will be assigned (host country)?

The labour and employment law part also includes a part on the strict rules on the 'lease of personnel' in assignment situations. Finally, the national reporters look into (the content of) the assignment letter and the early termination of the assignment and employment relationship.

2.1. In your country, how is the applicable law governing the employment contract during the assignment period determined?

Within the EEA, the Rome Convention and the Rome I EC Regulation are the two sources dealing with this matter. Do these sources also apply when a non-EEA national is assigned to an EEA country and when an EEA employee is assigned outside the EEA? Can the employer and employee choose the law applicable to their employment relationship? Which law applies in case no law has been chosen? Can the employee also invoke the protection of statutory provisions of the country where he/she will be assigned?

The Rome Convention has been replaced by the Rome I EC Regulation. The Rome I EC Regulation applies to employment contracts executed after 17 December 2009.

The rules on applicable laws set forth in the Rome Convention have largely been copied into the Rome I EC Regulation. They can be summarized as follows.

Following article 2 of Rome I Regulation, the Regulation has a universal scope. This means that the Regulation is applicable when a non-EEA national is assigned to an EEA country as well as when an EEA employee is assigned outside of the EEA.

As a rule, an employment contract is governed by the law that the parties choose. The choice of law can be made explicitly or implicitly, through the terms of the contract and the circumstances of the case. In addition, the choice of law can be made before or during the conclusion of the contract, as well as afterwards and can be changed later. Moreover, the chosen law can apply to the whole contract or only to certain parts of it.

In the case of assignment, the parties typically choose to continue to apply the law of the home country. Consequently, this law of the home country will also govern the employment relationship during the assignment period.

However, the choice of law may not deprive the employee of the protection of mandatory rules of the law that would be applicable in the absence of a choice of law. In the absence of choice, the employment contract is governed by:

- the law of the country where or from where the employee habitually carries out his/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/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. These circumstances include e.g., the place where the employment contract was signed, the

language used in the contract, the parties' nationalities, reference to the legal provisions of a country, etc.

In conclusion, assuming that the assignment letter refers to the law of the home country, the employment contract will continue to be governed by the law of that country. However, the employee might also invoke certain mandatory rules of the law of the country where or from where he/she habitually work 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 the employee performs the essential parts of his/her work. This is crucial, as all mandatory rules of the law of the host country become applicable as soon as the employee habitually works in or from that country. This matter will be judged on a case-by-case basis: all depends on the circumstances of the case and a global assessment will be made.

The National Reporters of the non-EEA Countries have each also indicated how the applicable labour law is determined in their country.

2.2. Which local employment laws of your country are determined as mandatory minimum laws/ minimum hardcore protective rules and working conditions? Please explain. Is there relevant case law?

Under the Directive on Posted Workers, employees assigned temporarily by their employer from their home country to the host country within the EEA must benefit from the protection of a minimum hard core of mandatory protective rules. Meaning that employees assigned to an EEA country may invoke as from the beginning of the assignment the legal mandatory protective rules of the host country, even if the employment contract is governed by another law under the Rome I EC Regulation.

In addition, non-EEA countries have a specific set of minimum hard-core protective rules.

The National Reporters have enlisted the mandatory rules of their country (see chart below).

AU	CA	BE	FR	GE	HK	IS	IT	NL	NO	SP	SR	SW	SWI	TU	UK	
X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	Minimum Wages
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	Holidays
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	Discrimination
X		X	X	X		X	X	X	X		X	X	X		X	Maternity Leave
	X			X		X			X		X				X	Dismissal Rules
X		X	X	X					X						X	Social Documents
X	X	X	X	X	X		X	X	X			X	X	X	X	Health & Safety
		X	X	X				X								Lease of personnel

2.3. Does your country foresee specific rules on the 'lease of personnel'? Is there a principle prohibition of 'lease of personnel'? Please explain and provide examples. What are the sanctions and penalties? Is there a possibility to reduce the risk? Please explain. Is there relevant case law dealing with this matter?

In some countries, the 'lease of personnel' is strictly regulated. This may be a matter of concern in assignment situations, as the 'leased' employee remains in an 'organic link' with the original employer in the home country while possibly receiving instructions from the company in the host country. In some countries, such a situation is already regarded as a 'prohibited lease of personnel'.

The National Reporters have explained this legal question as follows:

In **Austria**, "lease of personnel" is generally permitted. However, an employee-leasing agency is obligated to have a business licence. When no exception applies, operating an employee-leasing agency without a business licence may result in an administrative fine of up to the amount of EUR 3,600 for every infringement. Additionally, the competent authority is authorised to shut down the business. Moreover, since leased employees are not excluded from the scope of mandatory provisions under employment law, all these provisions apply to leased employees. Furthermore, in the event of a lease of personnel, both the employee leasing agency and the user enterprise are subject to the duty of due care towards the employee. Consequently, the user enterprise is to abide by the equal treatment requirements toward the leased employees in the same way as towards the non-leased employees.

In **France**, except for temporary employment agencies, umbrella companies ("portage salarial"), services to individuals companies or association, services agreements, the lease of personnel (on an exclusive basis) is allowed only on a non-profit basis. Is considered as a non-profit lease of personnel, the operation in which the lending company only invoices the user company of the compensation, social security contributions and professional expenses effectively paid.

There are some specific sanctions or penalties in case of illegal lease of personnel ("*prêt de main d'oeuvre illicite*"): imprisonment of up to 2 years and criminal fine of 30.000 € increased at 5 years and 75.000 € if notably more than one person is concerned or if it deals with particular vulnerable people and to 10 years and 100.000 € in case the infringement is done by an organized group. In addition, some specific administrative penalties (2.000 € per employee, 4.000 € in case of subsequent offence, up to 500.000 €) may also apply in case of secondment of employees to France by foreign companies and infringement of some mandatory rules (prior declaration of secondment, documents in French language to be presented to the labour inspector in order to prove the compliance of the employees to the French employment legislation). The operation may also be suspended by the administrative authority.

In **Germany, t**he commercial lease of personnel is regulated in the Temporary Employment Act. In recent years, the Temporary Employment Act was consistently subject to substantial changes. While 15 years ago temporary employment was still a flexible instrument for the reduction of the unemployment data, temporary employment came more and more under criticism within the last years. In November 2015, the government published the latest draft for a reformation of the Temporary Employment Act. Since temporary employment came, more and more into the focus of the public over the past years, in the meantime an extensive legislation exists in the field of

"temporary employment". Beside disputes on the compliance of the provisions of the Temporary Employment Act, the courts often deal with the delimitation of real temporary employment from other contract forms. In addition, the situation of the temporary employees in a company and their rights after a transfer to a permanent employment keep the courts occupied.

In **Italy, t**he lease of personnel is generally prohibited. However, in years that are more recent the Legislative Decree n. 276/2003, and – lately – Legislative Decree n. 81/2015 ruled specific cases of legal leases. Lease of personnel can be carried out only by Agencies duly authorized by the Government, which can enter both open-ended agreements and fixed-term agreements. It is to remark that specific limits are provided for by the Laws and by the National Collective Agreements in relation to the maximum number of employees the user can lease. Sanctions are also expressly foreseen by the law.

In the **Netherlands** there is no principle prohibition for the lease of personnel. However, the obligations under the work allocation through agencies act should be taken into account.

In Norway, a distinction is made between the lease of personnel from temporary work agencies and lease of personnel from other companies. Lease of personnel from temporary work agencies_are only allowed in those circumstances where the company could have employed the leased worker directly on a fixed term basis. In addition, Norway has implemented Directive 2008/104/EEC and has provision on equal treatment of temporary agency workers. Lease of personnel from other companies than temporary agencies is not subject to the same strict requirements as lease of personnel from temporary work agencies. Lease of personnel from other companies than temporary agencies is allowed if the employee is permanently employed with the company that leases him or her out, provided that the lease takes place within the main areas of activity of the company leasing out and not more than 50 per cent of the permanent employees of the company that leases out must be engaged in the leasing activity.

Sweden has specific rules covering temporary agency work, but no prohibition of 'lease of personnel' in general.

Switzerland foresees specific rules on the lease of personnel in the Federal Act on Employment Services and the Hiring of Services. Specific conditions must be met. However, it is important to note that the hiring of services from abroad to Switzerland by a foreign business offering services for hire is not allowed. A violation of the Federal Act on Employment Services and the Hiring of Services is considered as a criminal act and can lead to a fine up to CHF 100'000.

There is no specific prohibition on lease of personnel in the **UK**; however, the leasing of personnel is subject to specific rules, which will depend on the model of leasing used. There are a number of different ways to structure an international lease of personnel including broadly:

- An internal or external assignment from a home employer to a host employer where employment stays with the home employer and a charge for the assignment is made to the host employer for the employee's services.
- As above but the contract with the home employer is suspended and a local contract signed with the host employer.

- As above but the contract with the home employer is terminated and a local contract signed with or without a commitment for the home employer to reengage at the end of the assignment.
- Agency assignment- where a worker is engaged or employed by an employment business and is then leased to work for one of the business' clients.
- An assignment through an intermediary company – either a Personal Service Company or a Managed Services Company.

2.4. If you were asked by one of your clients to draft an assignment letter (secondment agreement between the original employer in the home country and the employee), which clauses would you include? What should the assignment letter cover? Is this foreseen by a specific law or based on case law? Please explain.

All National Reporters have declared that there is no specific law or case law specifying which clauses must be included in an assignment letter. Consequently, the parties are free to determine its content. The following clauses should however at least be included based on the specific situation of a temporary assignment to another country:

- Place of work/host company;
- Term of the assignment abroad;
- Additional salary or benefits;
- Tax and social security aspects;
- Effects of the assignment on the existing employment contract with the home company;
- Termination of the assignment, conditions of return to the home company, relocation and repatriation;
- Assignment does not create an employment relationship between the employee and the host company;
- Choice of law and competent jurisdiction

3. SOCIAL SECURITY

The third part deals with the social security aspects linked to assignments, as it is relevant and important to know in which country the social security must be paid during the assignment.

3.1. Provide a short overview of the level of social security charges in your country. What are the employer social security contributions? What are the employee social security contributions? Is there a cap/ maximum? Please briefly explain.

The social security systems are based on national law. When reviewing the different National Reports, it can be concluded that there are very important differences in the level of social security charges between the different countries.

Given these significant differences in the level of social security charges, it is very important to determine the applicable social security law in case of an assignment.

For assignments within the EEA and Switzerland, the applicable social security law is determined by the EC Regulation 883/2004 on the coordination of social security systems. Generally, employees are subject to the social security law of only one country. This is in principle the law of the country where the work is performed, even if the employee or the employer has his/her residence in another country.

As an exception to this, an employee assigned to another EEA country may remain subject to the social security law of the home country where he/she normally performs his/her work. This is the so-called 'posting exception' and a number of conditions must apply:

- The employee must be insured in the social security scheme of the home country for at least 1 month prior to the assignment;
- A direct relationship must continue to exist between the employee and the employer by which he/she is normally employed in the home country during the assignment;
- The expected duration of the work carried out on the basis of the assignment/posting may not exceed 24 months. However, most countries grant an extension up to 5 years based on an agreement between the competent authorities of each country;
- The employee is not assigned to replace another assigned employee;
- The employer must normally carry out significant economic activities in the home country.

3.2. In case of assignments from outside the EEA to your country or from your country to non-EEA countries, with what countries has your country signed a social security agreement?

In the case of an assignment from outside the EEA and Switzerland or to a country outside the EEA and Switzerland, it is important to verify whether the concerned countries have signed a bilateral Social Security Agreement. If so, and if the assignment/posting conditions are complied with, the employee may continue to be subject to the social security law of the home country and be exempted from the social security law of the host country. If not, the local rules of the host country will apply and potentially also the rules of the home country.

The National Reporters have provided an overview of the countries with which their country has signed a Social Security Agreement (see chart below).

Country	Overview of the level of social security charges	Bi-lateral social security agreements
AUSTRIA	Calculated proportionate to the salary of the employee, with a maximum basis of 4,860 EUR gross per month: • Health insurance: 3.87% (employee) and 3.87% (employer) • Accident insurance: none (employee) and 1.30% (employer) • Pension insurance: 10.25% (employee) and 12.55% (employer) • Unemployment ins.: 3.00% (employee) and 3.00% (employer)	Australia, Bosnia and Herzegovina, Chile, Israel, Canada including Quebec, Macedonia, Montenegro, Philippines, Serbia, Tunisia, Turkey and United States of America.
BELGIUM		Albania, Algeria, Argentina, Australia, Bosnia and Herzegovina, Brazil, Canada and Quebec, Chile, DR Congo, Philippines, India, Israel, Japan, Kosovo, Macedonia, Morocco, Moldavia, San Marino, Montenegro, Serbia, Tunisia, Turkey, Uruguay, United States of America and South Korea.
CANADA	A premium rate of 2.632 CAD per 100$ of each employee's earnings, up to the annual maximum insurable earnings of 49,500 CAD for each employee. The maximum contribution amount of each employee is 1,302.84 CAD. Employee and employer contribution rates towards the Canadian Pension Plan is 4.95%, with a maximum annual pensionable earnings at 54,900 CAD.	Austria, Belgium, France, Germany, Israel, Italy, Netherlands, Norway, Spain, Sweden, Switzerland, Turkey and United Kingdom.

FRANCE	The total charges on the employee side are approximately 15% to 24% (depending on the retirement fund contributions and the level of compensation) of gross salary and 35% to 47% for employers. Some of the contributions are levied on wages, up to a ceiling of 38,040 EUR, 152,160 EUR, 304,320 EUR or on the employees' total compensation.	Algeria, Andorra, Argentina, Benin, Bosnia and Herzegovina, Brazil, Cameroon, Canada, Cape Verde, Chile, Congo, French Polynesia, Gabon, Guernsey, India, Israel, Ivory Coast, Japan, Jersey, Korea (south), Kosovo, Macedonia, Madagascar, Mali, Mauritania, Monaco, Montenegro, Morocco, New Caledonia, Niger, Philippines, Quebec, San Marino, St Pierre and Miquelon, Senegal, Serbia, Togo, Tunesia, Turkey, Uruguay, U**SA**.
GERMANY	The statutory health insurance contribution rate is 14.6 % of the employee's assessable income up to the applicable income threshold for the contribution assessment *(Beitragsbemessungsgrenze)*. Once this income threshold is reached, the contributions do not raise any longer. Since the contributions are shared equally the employer and the employee have to contribute 7.3% each. The actual income threshold (which raises from year to year) is an income of 50,850 € gross per year. The statutory long-term care insurance contribution rate is 2.235 %. Generally, contributions are equally shared between employer and employees at a rate of 1.175%. However, this applies only for the state of Saxony due to historical particularities. I all other states the employers pay higher contributions of 1.675%, leaving the employees paying only the remaining 0.675%. The statutory pension insurance contribution rate is 18.7 %. Accordingly, the employer and the employee each have to contribute 9.35% of the employee's monthly gross income. The actual income threshold of the statutory pension insurance is 74,400 € per year in western Germany and	Australia, Bosnia and Herzegovina, Brazil, Chile, India, Israel, Japan, Canada and Quebec, Kosovo, Morocco, Macedonia, Montenegro, Philippines, Republic of Albania, Republic of Korea, Serbia, Tunisia, Turkey, Uruguay, United States of America, India and People's Republic of China.

64,800 € per year in eastern Germany.

The statutory unemployment insurance contribution rate is 3.0%, so both employer and employee have to contribute 1.5%. The income threshold is the same as for the pension insurance.

The statutory accident insurance contributions vary not only according to the income of the employees but also according to a "danger rating" of the respective employer.

HONG KONG

Monthly Relevant Income	Amount of Mandatory Contributions Payable by Employer	Amount of Mandatory Contributions Payable by Employee
Less than HK$7,100	Relevant income x 5%	No contributions required
HK$7,100 to HK$30,000	Relevant income x 5%	Relevant income x 5%
More than HK$30,000	HK$1,500	HK$1,500

Netherlands.

ISRAEL

	For the share of income which is up to 60% of the average wage – NIS 5,678 – (reduced rate)			For the share of income which exceeds 60% of the average wage, up to the maximum level of income for which national and health insurance contributions must be paid – NIS 43,240 – (full rate)		
	employer	employee	total	employer	employee	total
National insurance contributions	3.45 %	0.40 %	3.85 %	7.50 %	7.00 %	14.50 %
Health insurance contributions	-	3.10 %	3.10 %	-	5.00 %	5.00 %
Total	3.45 %	3.50 %	6.95 %	7.50 %	12.00 %	19.50 %

Austria, Uruguay, Italy, Bulgaria, Belgium, Canada, UK, Germany, Denmark, Netherlands, Slovakia, Norway, Finland, Czech Republic, France, Romania, Switzerland, Sweden.

ITALY

In general, the employer shall pay approximately 33% of the gross salary of the employees, while the employee's contribution is approximately 10% of the gross salary.

Argentina, Australia, Brazil, Canada and Quebec, Capo Verde, Korea, Israel, Jersey and Channel Islands, Serbia, Kosovo, Montenegro, Bosnia and Herzegovina, Macedonia, Monaco, San Marino, Santa Sede, United States of America, Tunisia, Turkey, Uruguay, Venezuela, Mexico.

NL

The social security contributions for employers consist of:

Unemployment insurance:

- A percentage of the gross earnings between a threshold and a ceiling for the general unemployment fund:
- 2.44 % of gross earnings below EUR 52,763 in 2016.
- A percentage of the gross earnings below a ceiling for the industrial insurance associations' redundancy payments fund:
- 2.13% of gross earnings below EUR 52,763 in 2016.
- Invalidity:
- A percentage of gross earnings below a ceiling:
- 5.88% below EUR 52,763 in 2016.

Argentina, Australia, Belize, Bosnia and Herzegovina, Canada and Quebec, Chile, Ecuador, Egypt, Philippines, Hong Kong, India, Indonesia, Israel (except for the Gaza Strip, West Bank, East Jerusalem and Golan), Japan, Jordan, Cape Verde, Channel Islands, Kosovo, Macedonia, Man, Morocco (except for Western Sahara), Monaco, Montenegro, New Zealand, Panama, Paraguay, Serbia, Suriname, Thailand, Tunisia, Turkey, Uruguay, United States of America, South Africa and South Korea.

Insurance for medical care:

- The medical care system has been reformed in 2006. All individuals above the age of 18 years are obliged to privately insure themselves at a health insurer. Employees pay a nominal premium to a private health insurer for the basic health insurance of on average EUR 1,174 (in year 2015).
- Employers pay a percentage (6.75 % in 2016) of gross income net of employees' pension premiums and unemployment social security contribution with a cap of EUR 52,763.

The social security contributions paid by employees consist of:

- general old age pension,
- pension for widows and orphans,
- exceptional medical expenses and disability.

Insurance	Percentage
general old age pension	17.9%
pension for widows and orphans	0.6%
exceptional health care	9.65%
total	28.15%
total for taxpayers with the state pension age and older	10.25%

	The premiums are levied from taxable income up to a ceiling (percentages 2016): The ceiling of taxable income for these premiums is EUR 33,715 (2016). It is adapted partly to inflation (75% of correction factor since tax plan 2011) every year. The maximum amount to be paid is EUR 9,490 (2016). Taxpayers, with the state pension age and older do not pay premiums for general old age pension in 2016. In 2016, the state pension age is 65 years and 6 months. From 2016, the state pension age will increase every year with three months and from 2019 with four months. From 2022, the state pension age will be linked to the average life expectancy.	
NORWAY	Employer's social security charges are: • Holiday pay (10.2% if salary by law; 12% as a practical mean rule) • Pension (minimum 2% of salary) • Employer's liability (14.1% of salary, holiday pay and pension. Less percentage in Northern part of Norway)	All Nordic countries, Belgium, Bosnia and Herzegovina, Canada, Chile, France, Greece, India, Israel, Italy, Croatia, Luxembourg, Montenegro, Netherlands, Portugal, Quebec, Serbia, Slovenia, Great Britain and Northern Ireland, Switzerland, Turkey, Hungary, United States of America and Austria.
SPAIN	Social security contributions are paid at various rates, depending on the different contingencies that are covered under the system. For common contingencies, the employer pays 23.60% of the employee's net taxable income and the employee pays 4.70%. There is a minimum and a maximum contribution for all employees depending on its category within a range of 764.34 EUR and 3,642 EUR.	Andorra, Argentina, Australia, Brazil, Cape Verde, Canada, Chile, Colombia, Korea, Ecuador, United States of America, Philippines, Japan, Morocco, Mexico, Paraguay, Peru, Republic of the Dominicans, Russia, Tunisia, Ukraine, Uruguay, Venezuela.

SRI LANKA	Social security provisions for employees in the private sector are provided for in the following Statutes: the Employees' Trust Fund Act (ETF), the Employees' Provident Fund Act (EPF) and the Payment of Gratuity Act. Every employer to whom the ETF applies must make a contribution on a monthly basis of 3% of the total earnings of the employee. The EPF requires the employer to deduct 8% from the earnings of the employee and contribute 12% to the EPF account of the employee.	N/A
SWEDEN	The social security contribution amount to 31.42% of the salary and benefits for employees who were born between 1951 and 1990. For younger employees (born 1991 and later), the social security contributions have been lowered for several years in order to decrease unemployment among young adults. For employees who were born between 1938 and 1950, the social security contributions amount to 16.36% of the salary and for employees who were born 1937 or earlier, 6.15% of the salary.	Chile, Israel, Serbia, Montenegro, Bosnia and Herzegovina, Canada, Cape Verde, Morocco, Quebec, Switzerland, Turkey and United States of America.
SWITZERL.	The Swiss social security system is divided into five areas: • Old-age, survivors' and invalidity insurance: 9.4% of the gross salary of which employer and employee each pay half of the total contribution. No cap/maximum. • Protection against the consequences of accident: the premiums are levied according to accident risk of the employee. The employer is obliged to pay all of the premiums for the occupational accident insurance,	Australia, Bosnia and Herzegovina, Canada, Channel Islands and Isle of Man, Chile, Croatia, India, Israel, Japan, Macedonia, Montenegro, Philippines, San Marino, Serbia, South Korea, Turkey, Uruguay, United States of America.

whereas it is usually the employee who assumes the premiums for the non-occupational accident insurance.

- Protection against the consequences of illness: In case an employee becomes sick, his employer is obliged to continue to pay his salary for a certain period. The duration of the statutory salary payment depends on the employee's years of service. The employer either takes out an insurance in order to cover for the period in which the employee is sick or pays for such duration himself.
- Income compensation allowances in case of service and in case of maternity: 0.45% of the gross salary of which each employee pay half of the total contribution. No cap/maximum.
- Unemployment insurance: 2.2% of the gross salary of up to CHF 148'200 of which employer and employee each pay half of the total contribution. For salaries of above CHF 148'200, the contribution is 1% of which the employer and employee each pay half of the total contribution.
- Family allowance: 1.1% of the gross salary, entirely paid by the employer.

<table>
<tr>
<td>TURKEY</td>
<td>Social security contributions are calculated based on the income of the employee, but there are lower and upper limits, which are regulated by legislation. For 2015 these limits were;
<table>
<tr><th rowspan="2">Period</th><th colspan="2">Lower limits</th><th colspan="2">Upper limits</th></tr>
<tr><th>Daily</th><th>Monthly</th><th>Daily</th><th>Monthly</th></tr>
<tr><td>01.01.2015-30.06.2015</td><td>40,05 TL</td><td>1.201,50 TL</td><td>260,33 TL</td><td>7.809,75 TL</td></tr>
<tr><td>01.07.2015-31.12.2015</td><td>42,45 TL</td><td>1.273,50 TL</td><td>275,93 TL</td><td>8.277,75 TL</td></tr>
</table>
</td>
<td>England, Germany, Netherlands, Belgium, Austria, Switzerland, France, Libya, Denmark, Sweden, Norway, T.R.N.C., Macedonia, Azerbaijan, Romania, Georgia, Bosnia and Herzegovina, Canada, Quebec, Czech Republic, Albania, Luxembourg and Croatia.</td>
</tr>
<tr>
<td>UNITED KINGDOM</td>
<td>Employees pay ‘primary’ Class 1 NICs. The employer is responsible for collecting payment through the Pay As You Earn system (PAYE). Under PAYE the employer deducts income tax and NICs from the employee’s wages and accounts for them to Her Majesty’s Revenue and Customs (HMRC).

Employees’ Class 1 NICs are charged at 12% on earnings between the primary threshold of £155 per week and the upper earnings limit of £815 per week. Earnings above £815 per week incur a further 2% charge. There is no cap or maximum.

Employers pay ‘secondary’ Class 1 NICs on their employees’ earnings. The standard rate is 13.8% on all earnings above the threshold of £155 per week. However, employers pay 0% for employees under the age of 21 and</td>
<td>Barbados, Bermuda, Bosnia and Herzegovina, Canada, Chile, Croatia, Guernsey, Israel, Jamaica, Japan, Jersey, the Former Yugoslav Republic of Macedonia, Mauritius, Montenegro, New Zealand, Philippines, Republic of Korea, Serbia, Turkey and United States of America.</td>
</tr>
</table>

	who are earning between £155 to £185 per week. There has historically been a possibility of contracting out of the UK state second pension if the employer is providing separate top-up benefits. In such cases a reduced rate of primary and secondary Class 1 NICs would apply. This possibility is being removed from April 2016. Class 3 NICs are paid on a voluntary basis by an individual who wishes to protect their entitlement to certain contributory benefits. They are paid at a flate rate of £14.10 /w.	

4. OTHER OBLIGATIONS AND FORMALITIES

This General Reports also looks into possible other obligations and formalities to be complied in case of assignments of employees to the different countries (e.g., prior notifications, drafting and keeping of social documents, etc.).

4.1. Are there other relevant formalities and obligations in your country in case of assignments to your country (e.g., prior notification to the authorities, drafting and keeping social documents, etc.)?

Various National Reporters have confirmed that a prior notification to the competent authorities is required when a foreign national is coming to work in their country. In addition, most National Reporters have also confirmed that a certain number of social documents, such as the employment contract, assignment letter, salary slips, etc. need to be kept at the work place. Some countries also foresee additional obligations, both for the employer and the employee. The **UK** also foresees for a certain number of individuals to provide proof of testing for tuberculosis.

4.2. What are the penalties and sanctions in case these formalities and obligations are not complied with? Who can be sanctioned? Is there relevant case law?

Most countries foresee specific sanctions in case the additional obligations and formalities are not complied with for both the employer and the employee. Most countries foresee administrative fines, however, some countries also foresee criminal fines and even imprisonment. Particularly remarkable is that in Israel there is a sanction of "deportation" (see chart below).

Country	Other relevant formalities and obligations	Penalties and sanctions in case of non-compliance
AUSTRIA	• Prior notification to the competent authorities • Posting permit for assignments outside EU, EEA and Switzerland • Keeping social documents	• Notification: fines between 500 – 5,000 EUR (in case of recurrence 1,000 – 10,000 EUR) • Posting permit: different sanctions foreseen in AusIBG • Social documents: fines between 1,000 – 10,000 EUR (in case of recurrence 2,000 – 20,000 EUR)
BELGIUM	• Prior notification to the competent authorities • Keeping social documents	• Administrative and criminal sanctions, multiplied by the number of employees involved.
CANADA	N/A	N/A
FRANCE	• Prior notification to the competent authorities	• Administrative penalties: 2,000 EUR/employee (4,000 EUR in case of recurrence, up to 500,000 EUR) • Illegal work: damages for the employee + criminal liability
GERMANY	• Prior notification to the competent authorities • Keeping social documents	• Fine up to 30,000 EUR • An exclusion from public procurement • Fines towards the employee
HONG KONG	N/A	N/A
ISRAEL	• Keeping social documents	• Criminal penalties and fines • Deportation without being able to return for a period of 10 years
ITALY	• Notification to the local competent offices	• Different sanctions, including fines.
NETHERLANDS	• Identification of the foreign national • Health insurance	• Identification: fine of 90 EUR (false identification: 370 EUR) for the employee and administrative penalty for the employer

	• Personal public service number for foreign nationals staying in the Netherlands for more than 4 months Notification of modifications of the assignment to the Dutch social insurance bank • Prior notification to Employees Insurance Agency	• Health insurance: fined and billed retroactively for the months not covered • Notification to Dutch social insurance bank: fines for the employer • Prior notification: fines for the employer
NORWAY	N/A	N/A
SPAIN	N/A	N/A
SRI LANKA	N/A	N/A
SWEDEN	• Notification to the Work Environment Authority	• Penalty's between 1,000 SEK and 100,000 SEK
SWITZERLAND	N/A	N/A
TURKEY	• Registration of the workplace to the social security institution	• Administrative fine, which is up to 5 times the minimum wage
UNITED KINGDOM	• For individuals coming from a certain number of countries, a certificate showing they have been tested for tuberculosis must be produced • Nationals coming from a certain number of countries must register with the police upon arrival in the UK • Certain migrant workers need to apply for a NI Number • UK employers have a statutory obligation to operate PAYE on earning paid to employees and this applies to those assigned from another country.	• Registration with police: fine up to 5,000 £ and/or 6 months in prison • Tax and NI: NICs will be deducted from salary through PAYE at an emergency rate of 20% on all earnings + fines from the employer starting at 100£ for employers with 1-9 employees and increases to 400£ for those with 250 employees or more • HRMC can also charge late penalties for outstanding NICs and tax

5. SOCIAL INSPECTION

The final part of this General Report is to know whether cross-border assignments are a priority for the social inspectorate in each of the different countries.

5.1. Are cross-border assignments a priority in your country for the social inspection? Please explain.

Despite some exceptions, most National Reporters confirm that cross-border assignments have recently become priority of the social inspection authorities and that different measures are taken by the government to fight against illegal work, social dumping, etc. Some National Reporters have indicated that the social inspection focuses on some specific sectors.

Country	Are cross-border assignments a priority in your country for the social inspectorate?
AUSTRIA	Yes, assignments recently became a higher priority for administrative and social inspections in Austria.
BELGIUM	Yes, the fight against social fraud has been integrated as a high priority in the yearly action plan of the Minister of Labour Law and the State Secretary of fight against fraud. The Belgian social inspections received a wide range of powers to fight against social fraud, including cross-border assignments. Some specific sectors, such as the construction sector, are a specific focus of the social inspection.
CANADA	Yes, the Canadian government is focused on ensuring that companies comply with both the provisions of the Immigration and Refugee Protection Act and employment standard as they relate to each individual foreign worker and the Canadian labour market in general. The governmental agencies have broad powers to issue orders to employers and to apply penalties and sanctions as deemed appropriate.
FRANCE	Yes, recent law has increased the penalties applicable to illegal work or regarding any infringement to the work legislation. Social inspections are very frequent in some sectors of activity such as construction, public works, etc.
GERMANY	Although recently prosecution against illegal employment has increased, there is no special focus on employees with cross-border assignments.
HONG KONG	N/A
ISRAEL	No.
ITALY	No, cross-border assignments are not considered a priority for the social inspection authorities.
NETHERLANDS	Yes, the social inspection focuses its attention on illegal work and different legal schemes to circumvent the protection of workers, bogus cross-border assignment being one of them.
NORWAY	Yes, in areas where low-income employees are seconded to Norway, cross-border assignments are a priority for the social inspection. In particular, social inspection has a special focus on construction sites, including frequent inspections to ensure that foreign employees have valid employment contracts and receive the minimum pay they are entitled to.

SPAIN	No.
SRI LANKA	N/A
SWEDEN	No.
SWITZERLAND	Yes, Parallel with the introduction of the free movement of persons, flanking measures against wage and social welfare dumping came into force. The authorities in particular tend to focus on the catering industry, construction industry, staff leasing, surveillance industry, the gardening, as well as the cleaning industry.
TURKEY	No. Although there is a growing recognition in Turkey for cross-border assignments, they are not the highest priority for the social inspection.
UNITED KINGDOM	Yes. The maintenance of immigration control and the prevention of illegal working is a very high priority for the UK government. Moreover, the government is prioritising labour market enforcement and there are several relevant provisions in the Immigration Bill, which is currently making its way through Parliament. HMRC has recently begun to prioritise inspections in respect of short-term business visitors.

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