

GLOBAL **IMMIGRATION** CONFERENCE

2018
BANGALORE



Stay Global or go Local in the EU

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INTRODUCTION EU LAW

Sources of European Union law

1. Primary law – based on Treaties establishing the European Union
2. Secondary law - legal instruments based on Treaties. Include unilateral secondary law and conventions and agreements
3. Supplementary sources - elements of law not provided for by the Treaties. Include EU case law, international law and general principles of law

Supremacy of EU law:

EU law has priority over national law both at the European and national Levels

One of the most fundamental principles of EU law

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Sources of primary law

- **Mainly founding Treaties, (i.e. Treaty on the EU and Treaty on the Functioning of the EU)**
- **Establish competences between the Union and Member States and establishes the powers of European institutions**

Sources of secondary law

Comprises of unilateral acts, conventions and agreements

Unilateral acts:

- **regular acts: regulations, directives, decisions, opinions and recommendations**
- **"atypical" acts: e.g. communications, recommendations, white and green papers**

Conventions and Agreements:

- **international agreements, between EU and other states or institutions**
- **agreements between Member States**

Sources of supplementary law

- **EU case law - Bridge gaps left between primary and secondary law**
- **International law - Source of inspiration for the ECJ when developing case law. Includes written law, custom and usage**

Direct applicability

Whether EU law needs a national parliament to enact legislation to make it law in the Member State

EU treaties and EU regulations: directly applicable. No need for national parliament; instantly becomes applicable in member state.

EU directives: **not** directly applicable. Often requires piece of national legislation to implement into national law.

Direct effect

Whether individuals can rely on EU law in domestic courts:

- **Vertical direct effect:** EU legislation against a Member State
- **Horizontal direct effect:** EU legislation against individual

Treaties and regulations are vertically *and* horizontally directly effective. Can be used as a piece of law in a member state court against state or individual.

Directives are *not* directly effective and cannot be used in court until they have been enacted by national legislation.

EU ICT Directives - Introduction

- **EU ICT Permit: Directive 2014/66/EU**
 - Denmark opted out of this Directive
- **Posted Workers Directive 96/71/EC**
 - Enforcement Directive 2014/67/EU
 - Directive (UE) 2018/957 - revision of Directive 96/71/EC to be implemented by EU Member States by 30 July 2020



EU ICT Permit

- Main benefit: permit allows to stay and work in other EU countries (subject to certain conditions) for up to 90 days without the need to apply for another permit
 - a notification might be required
- Only for managers, specialists or trainees
- between 3 and 12 months uninterrupted, immediately preceding employment with home entity outside of EU required
- other conditions also apply, e.g. local salary

Implementation

	France	Netherlands	Poland	Spain
Source of payroll	N/A	Payroll must be maintained outside the Netherlands	Only non-Polish payroll	Payroll must be maintained outside of Spain
Minimum seniority	3 months before March 2019 and 6 months afterwards	3 months for all positions	6 months for trainees, 12 months for managers and specialists	3 months for all positions
Validity of ICT permit	1 day – 3 years	3 months – 3 years	3 months – 3 years	1 day – 3 years
Dependant permit	Yes	Yes	Yes	Yes
Social security taxes	Yes (only for healthcare insurance, not for pension)	Yes, if applicable	No	Yes, contributions are required locally for all coverages

Minimum salary for EU ICT permit

Country	Minimum gross salary for EU ICT application	Minimum gross salary for employee having an EU ICT permit in another country
France	At least the minimum provided by the applicable CBA (2400 – 2600)	SAME
Netherlands	In 2018, at least €:3229,- for Trainees and/or employees under the age of 30 years, and € 4404,- for 30 years or older. OR Market Salary	SAME
Poland	PLN 2450-3500 (depending on region)	PLN 2100
Spain	Approximately €40,000, depending on Company's collective bargaining agreement	SAME

EU ICT PERMIT: SUCCESS OR FAILURE?

- Statistics
- Challenges and administrative burdens
- Best practice – practical recommendations
 - EU ICT Permit or local hire scheme ?
 - EU ICT Permit or ICT permit outside of the EU Directive framework ?

Minimum terms and conditions in host country

- max. work periods
 - min. paid annual holidays
 - min. rates of pay, including overtime rates (excl. suppl. pensions)
 - hiring out workers, temporary agency work
 - OHS
 - pregnant employees/young employees
 - non-discrimination
- From 2020 also: leave remuneration, accommodation conditions, allowances or reimbursement of travel/board and lodging expenses as local workers

RISK MANAGEMENT IN A MULTINATIONAL MATRIX ORGANISATION?

- How does a company actually manage multiple postings in the EU?
- Which division has ownership: HR / Immigration / Legal / Business, who tracks travelling, social security, tax etc.
- How should one implement country specifics?
- Immigration pre-audits

RISK MANAGEMENT IN A MULTINATIONAL MATRIX ORGANISATION?

- Heavy consequences of violations in many members states – even for minor ones
 - Entry ban
 - Significant fines
- Consider immigration compliance pre-audits



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2018 12th NOV'18 | 8:30am-5:30pm
ITC Windsor, Bangalore



*Thank
you*

