



Legea nr. 172/2020 pentru modificarea si completarea Legii nr. 16/2017 privind detasarea salariatilor in cadrul prestarii de servicii transnationale

In vigoare de la 16 august 2020

Publicata in Monitorul Oficial, Partea I nr. 736 din 13 august 2020. **Forma aplicabila la 21 septembrie 2020.**

Prevederile prezentei legi faciliteaza exercitarea libertatii de a presta servicii pentru prestatorii de servicii, pentru promovarea unui climat de concurenta loiala intre acestia si pentru sprijinirea functionarii pietei interne.

Prin salariat detasat de pe teritoriul Romaniei se intelege salariatul unui angajator stabilit pe teritoriul Romaniei, care, pe o perioada limitata de timp, dar nu mai mult de 24 de luni, desfasoara munca pe teritoriul unui stat membru, altul decat cel in care isi are sediul angajatorul sau pe teritoriul Confederatiei Elvetiene, pe perioada executarii contractului incheiat cu angajatorul din celalalt stat membru, in cadrul prestarii de servicii transnationale.

Prin indemnizatie specifica detasarii transnationale se intelege indemnizatia destinata sa asigure protectia sociala a salariatilor acordata in vederea compensarii inconvenientelor cauzate de detasare, care constau in indepartarea salariatului de mediul sau obisnuit, fiindu-i aplicabil regimul fiscal prevazut la art. 76 alin. (2) lit. k) din Legea nr. 227/2015 privind Codul fiscal.

Law no. 172/2020 for the amendment and completion of Law no. 16/2017 regarding the secondment of employees within the provision of transnational services

In force since August 16th , 2020

Published in the Official Gazette, Part I no. 736 of August 13th, 2020. **Form applicable on September 21st, 2020.**

The provisions of this law facilitate the exercise of the freedom to provide services for service providers, to promote a climate of fair competition between them and to support the functioning of the internal market.

An employee seconded from the territory of Romania means the employee of an employer established in the territory of Romania, who, for a limited period of time, but not more than 24 months, carries out work on the territory of a Member State other than the one in which he has the employer's registered office or in the territory of the Swiss Confederation, during the performance of the contract concluded with the employer from the other Member State, within the framework of the provision of transnational services.

The indemnity specific to the transnational secondment means the indemnity destined to ensure the social protection of the employees granted in order to compensate the inconveniences caused by the secondment, which consist in removing the employee from his usual environment, being applicable the tax regime provided in art. 76 para. (2) lit. k) of Law no. 227/2015 regarding the Tax Code.

Prin sanctiune financiara administrativa se intelege orice sanctiune pecuniara cu caracter administrativ, inclusiv taxe si suprataxe aplicate unei intreprinderi stabilite pe teritoriul Romaniei care, in cadrul prestarii de servicii transnationale, detaseaza, pe teritoriul unui stat membru, altul decat Romania, sau pe teritoriul Confederatiei Elvetiene, salariati cu care au stabilite raporturi de munca.

Prin intreprindere utilizatoare se intelege orice persoana fizica sau juridica pentru care si sub supravegherea si conducerea careia munceste, o perioada de timp limitata, un salariat pus la dispozitie de un agent de munca temporara.

Prin cooperare administrativa se intelege activitatea in colaborare a autoritatilor competente ale statelor membre sau a autoritatilor competente ale statelor membre si a Comisiei Europene, prin schimbul si prelucrarea de informatii, inclusiv prin notificari si alerte ori prin furnizarea de asistenta reciproca, inclusiv pentru rezolvarea problemelor, care au caracter administrativ si nu au o natura penala.

Remuneratia aplicabila pe teritoriul Romaniei reprezinta suma de bani care cuprinde salariul minim sporul pentru munca suplimentara, sporul pentru munca in zilele de repaus saptamanal, sporul pentru munca in zilele de sarbatoare legala, sporul pentru munca prestata in timpul noptii, alte sporuri si indemnizatii care sunt obligatorii conform legislatiei nationale, precum si cele prevazute in contractele colective de munca cu aplicabilitate generala.

Remuneratia aplicabila pe teritoriul unui stat membru al Uniunii Europene, altul decat Romania sau pe teritoriul Confederatiei Elvetiene reprezinta

Administrative financial sanction means any administrative pecuniary sanction, including taxes and surcharges applied to an enterprise established in Romania which, in the framework of the provision of transnational services, second, on the territory of a Member State other than Romania, or on the territory of the Swiss Confederation, employees with whom they have established employment relationships.

User enterprise is means any natural or legal person for whom and under the supervision and management of which he works, for a limited period of time, an employee provided by a temporary work agent.

Administrative cooperation means the activity in collaboration of the competent authorities of the Member States or of the competent authorities of the Member States and of the European Commission, by the exchange and processing of information, including notifications and alerts or by the provision of mutual assistance, including problem solving, which have an administrative character and do not have a criminal nature.

The remuneration applicable in Romania represents the amount of money that includes the minimum wage, the increase for additional work, the increase for work on weekly rest days, the increase for work on public holidays, the increase for work performed during the night, other bonuses and allowances that are mandatory according to the national legislation, as well as those provided in the collective labor contracts with general applicability.

The remuneration applicable on the territory of a Member State of the European Union, other than Romania or on the territory of the Swiss



suma de bani stabilita de dreptul intern si/sau practicile nationale ale statului membru pe teritoriul caruia este detasat lucratorul, reprezentand toate elementele constitutive ale remuneratiei care sunt obligatorii conform dreptului intern, actelor cu putere de lege si actelor administrative sau conventiilor colective sau sentintelor arbitrale, care au fost declarate cu aplicabilitate generala sau care se aplica in conformitate cu art. 3 alin. (8) din Directiva 96/71/CE in statul membru respectiv.

In cazul in care salariatul care a fost pus la dispozitia intreprinderii utilizatoare trebuie sa isi desfasoare activitatea pe teritoriul unui alt stat membru, altul decat Romania, in contextul prestarii transnationale de servicii, salariatul este considerat a fi detasat pe teritoriul respectivului stat membru de catre agentul de munca temporara cu care acesta se afla intr-un raport de munca. In acest caz intreprinderea utilizatoare stabilita sau care isi desfasoara activitatea pe teritoriul Romaniei are obligatia de a informa agentul de munca temporara care a pus la dispozitie salariatul, cu cel putin 30 de zile inainte de inceperea activitatii pe teritoriul respectivului stat.

Salariatii detasati pe teritoriul Romaniei in cadrul prestarii de servicii transnationale beneficiaza de conditiile de munca prevazute de legislatia romana si/sau de contractul colectiv de munca incheiat la nivel sectorial si cu privire la:

- remuneratia aplicabila pe teritoriul Romaniei, inclusiv plata orelor suplimentare, cu exceptia contributiilor prevazute de Legea nr. 1/2020 privind pensiile ocupationale;
- sanatatea, securitatea si igiena in munca;
- conditiile privind cazarea salariatilor, atunci cand sunt oferite de angajator salariatilor trimisi sa exercite temporar lucrari sau sarcini corespunzatoare atributiilor de

Confederation represents the amount of money established by the national law and/or national practices of the Member State on whose territory the worker is posted, representing all constituent elements of remuneration that are mandatory according to the internal law, the acts with the force of law and the administrative acts or the collective agreements or the arbitral awards, which have been declared with general applicability or which are applied in accordance with art. 3 para. (8) of Directive 96/71/EC in the Member State concerned.

If the employee who has been made available to the user undertaking must carry out his activity on the territory of another Member State, other than Romania, in the context of transnational provision of services, the employee is considered to be seconded to the territory of that Member State by the temporary work agent with which he is in an employment relationship. In this case, the user enterprise established or operating in Romania has the obligation to inform the temporary work agent who provided the employee, at least 30 days before starting the activity in that state.

The employees seconded on the Romanian territory within the provision of transnational services benefit from the working conditions provided by the Romanian legislation and/or by the collective labor contract concluded at sectorial level and regarding:

- the remuneration applicable on the Romanian territory, including the payment of overtime, except for the contributions provided by Law no. 1/2020 on occupational pensions;
- health, safety and hygiene at work;
- the conditions regarding the accommodation of the employees, when they are offered by the employer to the employees sent to temporarily perform works or tasks corresponding to the

serviciu la un alt loc de munca decat locul lor de munca obisnuit;

- indemnizatiile sau rambursarea cheltuielilor de transport, cazare si masa pentru salariatii obligati din ratiuni profesionale sa calatoreasca catre si de la locul lor de munca obisnuit din Romania sau in cazul in care acestia sunt trimisi temporar de angajatorul lor de la locul lor de munca obisnuit din Romania la un alt loc de munca, in conformitate cu legislatia nationala sau contractul colectiv de munca aplicabil.

Prevederile privind rambursarea cheltuielilor de transport se aplica exclusiv cheltuielilor de transport, cazare si masa suportate de salariatii detasati pe teritoriul Romaniei atunci cand acestia sunt obligati sa calatoreasca catre si de la locul lor de munca obisnuit sau in cazul in care acestia sunt trimisi temporar de angajatorul lor de la locul lor de munca obisnuit la un alt loc de munca pe teritoriul Romaniei, in conformitate cu legislatia nationala si/sau contractul colectiv de munca aplicabil.

In cazul in care durata efectiva a detasarii depaseste 12 luni, intreprinderile garanteaza salariatilor detasati pe teritoriul Romaniei, cu respectarea principiului egalitatii de tratament, toate conditiile de munca si de incadrare in munca aplicabile acestora potrivit legislatiei nationale si contractelor colective de munca aplicabile.

In cazul in care durata efectiva a detasarii depaseste 12 luni, intreprinderile **nu pot sa intervina asupra:**

- a) conditiilor de incheiere si de incetare a contractului individual de munca, inclusiv a clauzelor de neconcurenta;
- b) contributiilor prevazute de Legea nr. 1/2020.

Perioada de de 12 luni poate fi prelungita pana la 18 luni, cu conditia transmiterii de catre intreprindere

service attributions at a different job than their usual place of work;

- allowances or reimbursement of transport, accommodation and meals for employees obliged for professional reasons to travel to and from their usual place of work in Romania or if they are temporarily sent by their employer from their usual place of work in Romania to another job, in accordance with the national legislation or the applicable collective labor agreement.

The provisions regarding the reimbursement of transport expenses apply exclusively to the expenses of transport, accommodation and meals borne by employees seconded to the Romanian territory when they are obliged to travel to and from their usual place of work or if they are temporarily sent by the employer from their usual place of work to another place of work in Romania, in accordance with the national legislation and/or the applicable collective labor agreement.

If the effective duration of the secondment exceeds 12 months, the companies guarantee to the seconded employees on the Romanian territory, respecting the principle of equal treatment, all the working conditions and employment applicable to them according to the national legislation and the applicable collective labor agreements.

If the effective duration of the secondment exceeds 12 months, **the enterprises cannot intervene on:**

- a) the conditions for concluding and terminating the individual employment contract, including the non-compete clauses;
- b) the contributions provided by Law no. 1/2020.

The 12-month period may be extended up to 18 months, provided that the company sends a

a unei notificari motivate la inspectoratul teritorial de munca in a carui raza teritoriala presteaza activitatea salariatii detasati, cel tarziu in ziua anterioara implinirii termenului de 12 luni.

Durata detasarii transnationale se calculeaza pe baza unei perioade de referinta de un an de la data inceperii acesteia. La calculul acestei durate se iau in considerare inclusiv perioadele in care postul a fost anterior ocupat de un alt salariat detasat in cadrul prestarii de servicii transnationale.

In cazul in care intreprinderile inlocuiesc un salariat detasat cu un alt salariat detasat care indeplineste aceeasi sarcina in acelasi loc de munca, durata detasarii se calculeaza prin cumularea perioadelor de detasare a fiecaruia dintre salariatii in cauza.

Intreprinderea utilizatoare care isi desfasoara activitatea pe teritoriul Romaniei informeaza, in scris, agentul de munca temporara cu privire la remuneratie, conditiile de munca, incadrare in munca pe care le aplica la nivelul intreprinderii.

Daca inspectorii de munca constata neindeplinirea conditiilor privind detasarea transnationala, acestia sesizeaza, prin Inspectoria Muncii, autoritatile competente din statul de origine al prestatorului de servicii si/sau, dupa caz, aplica beneficiarului din Romania prevederile art. 260 alin. (1) lit. e) si e¹) din Legea nr. 53/2003.

Salariatii detasati de pe teritoriul Romaniei in cadrul prestarii de servicii transnationale beneficiaza de conditii, stabilite prin lege, privind:

- cazarea atunci cand sunt oferite de angajator salariatilor trimisi sa exercite temporar lucrari sau sarcini corespunzatoare atributiilor de serviciu la un alt loc de munca decat locul lor de munca obisnuit;

reasoned notification to the territorial labor inspectorate in whose territorial area the seconded employees perform the activity, at the latest the day before the 12-month deadline.

The duration of the transnational secondment shall be calculated on the basis of a reference period of one year from the date of its commencement. When calculating this duration, the periods in which the position was previously occupied by another employee seconded within the provision of transnational services are also taken into account.

If the enterprises replace a seconded employee with another seconded employee who performs the same task in the same job, the duration of the secondment is calculated by cumulating the periods of secondment of each of the employees in question.

The user enterprise that carries out its activity on the Romanian territory informs, in writing, the temporary work agent regarding the remuneration, the working conditions, the employment that they apply at the level of the enterprise.

If the labor inspectors find the non-fulfillment of the conditions regarding the transnational posting, they notify, through the Labor Inspection, the competent authorities from the state of origin of the service provider and / or, as the case may be, apply to the beneficiary from Romania the provisions of art. 260 para. (1) lit. e) and e1) of Law no. 53/2003.

Employees seconded from the Romanian territory within the provision of transnational services benefit from conditions, established by law, regarding:

- accommodation when they are offered by the employer to the employees sent to temporarily perform works or tasks corresponding to the service attributions at a different job than their usual place of work;



- indemnizatiile sau rambursarea cheltuielilor de transport, cazare si masa pentru salariatii obligati din ratiuni profesionale sa calatoreasca catre si de la locul lor de munca obisnuit in statul membru pe teritoriul caruia sunt detasati sau in cazul in care acestia sunt trimisi temporar de angajatorul lor de la locul lor de munca obisnuit la un alt loc de munca, in conformitate cu legislatia sau contractul colectiv de munca cu aplicabilitate generala din statul gazda.

Indemnizatia specifica detasarii transnationale este considerata parte a remuneratiei, cu exceptia cheltuielilor generate de detasare.

Angajatorul ramburseaza salariatilor detasati cheltuielile generate de detasare.

Intreprinderile **au obligatia de a informa, in scris, salariatul detasat de pe teritoriul Romaniei, anterior detasarii, cu privire la:**

- a)** elementele constitutive ale remuneratiei la care are dreptul lucratorul, in conformitate cu legislatia aplicabila in statul membru gazda, si nivelul acestora;
- b)** cuantumul total al remuneratiei acordate salariatului pe perioada detasarii, cu evidentierea distincta a indemnizatiei specifice detasarii, atunci cand aceasta este acordata;
- c)** cheltuielile efectiv generate de detasare, precum transportul, cazarea si masa, precum si modalitatea de acordare sau de rambursare a acestora, respectiv modalitatea de asigurare a transportului, cazarii sau mesei, dupa caz;
- d)** linkul catre site-ul oficial national unic creat de statul membru gazda;
- e)** durata perioadei de munca ce urmeaza sa fie prestata in strainatate;
- f)** moneda in care vor fi platite drepturile salariale, precum si modalitatile de plata;
- g)** prestatiile in bani si/sau in natura aferente desfasurarii activitatii in strainatate;
- h)** conditiile de clima;

- allowances or reimbursement of expenses for transport, accommodation and meals for employees obliged for professional reasons to travel to and from their usual place of work in the Member State in whose territory they are seconded or if they are temporarily sent by their employer from their usual place of work at another place of employment, in accordance with the legislation or collective labor agreement of general application in the host State.

The allowance specific to transnational secondment is considered part of the remuneration, except for the expenses generated by secondment.

The employer reimburses the seconded employees the expenses generated by the secondment.

The enterprises **have the obligation to inform, in writing, the employee seconded from the Romanian territory, prior to the secondment, regarding:**

- a)** the constituent elements of the remuneration to which the worker is entitled, in accordance with the legislation applicable in the host Member State, and their level;
- b)** the total amount of the remuneration granted to the employee during the secondment, with the distinct highlighting of the specific allowance of the secondment, when it is granted;
- c)** the expenses actually generated by the secondment, such as the transport, accommodation and meals, as well as the manner of granting or reimbursing them, respectively the manner of ensuring the transport, accommodation or meals, as the case may be;
- d)** the link to the single official national website created by the host Member State;
- e)** the duration of the work period to be performed abroad;
- f)** the currency in which the salary rights will be paid, as well as the payment methods;

- i) reglementarile principale din legislatia muncii din acea tara;
- j) obiceiurile locului a caror nerespectare i-ar pune in pericol viata, libertatea sau siguranta personala;
- k) conditiile de repatriere a lucratorului, dupa caz.

In situatia in care legislatia sau/si contractele colective aplicabile salariatilor detasati in statul membru sau Confederatia Elvetiana, in care este stabilita intreprinderea prevede conditii de munca mai favorabile, se aplica reglementarile respective.

In situatia in care legislatia si contractele colective de munca aplicabile din Romania prevad conditii de munca mai favorabile decat conditiile prevazute in legislatia sau practica statului membru sau a Confederatiei Elvetiene, pe teritoriul caruia/careia sunt detasati lucratorii romani, are prioritate legislatia romana.

Cerintele administrative si masurile de control impuse de Inspectoria Muncii cuprind si obligatia de a transmite inspectoratului teritorial de munca in a carui raza teritoriala urmeaza sa se desfasoare activitatea o declaratie in limba romana privind detasarea salariatilor proprii, cel tarziu anterior inceperii activitatii salariatilor detasati, care sa contina informatiile relevante necesare pentru a permite controale faptice la locul de munca.

Nerespectarea conditiilor de munca se sanctioneaza cu amenda contraventionala.

Conducatorii auto detasati **pe teritoriul Romaniei** in cadrul prestarii de servicii transnationale beneficiaza, indiferent de legea aplicabila raportului de munca, de salariul minim aplicabil pe teritoriul Romaniei, inclusiv plata orelor suplimentare. Cei

- g) benefits in cash and/or in kind related to the activity abroad;
- h) climatic conditions;
- i) the main regulations of the labor legislation of that country;
- j) the customs of the place whose non-observance would endanger his life, freedom or personal safety;
- k) the conditions for repatriation of the worker, as the case may be.

If the legislation and/or collective agreements applicable to posted employees in the Member State or the Swiss Confederation, in which the company is established, provide for more favorable working conditions, the respective regulations shall apply.

If the legislation and collective labor agreements applicable in Romania provide for more favorable working conditions than the conditions provided in the legislation or practice of the Member State or of the Swiss Confederation, on whose territory the Romanian workers are posted, Romanian legislation has priority.

The administrative requirements and control measures imposed by the Labor Inspectorate also include the obligation to send to the territorial labor inspectorate in whose territorial area the activity is to be carried out a declaration in Romanian regarding the secondment of own employees, at the latest before starting the activity of seconded employees contains the relevant information necessary to allow factual checks at work.

Failure to comply with working conditions is sanctioned with a contravention fine.

Drivers posted **on the territory of Romania** within the provision of transnational services benefit, regardless of the law applicable to the employment relationship, from the minimum salary applicable on the territory of Romania, including the payment

detasati **de pe teritoriul Romaniei**, beneficiaza, indiferent de legea aplicabila raportului de munca, de salariul minim aplicabil pe teritoriul unui stat membru sau pe teritoriul Confederatiei Elvetiene, inclusiv plata orelor suplimentare.

La stabilirea duratei detasarii transnationale ce depaseste 12 luni, nu se iau in considerare perioadele anterioare datei intrarii in vigoare a prezentei legi.

Contact:**Florentina Susnea**

Managing Partner

florentina.susnea@pkffinconta.ro

of overtime. Those seconded **from the territory of Romania** benefit, regardless of the law applicable to the employment relationship, from the minimum wage applicable on the territory of a Member State or on the territory of the Swiss Confederation, including the payment of overtime.

When determining the duration of transnational posting exceeding 12 months, periods prior to the date of entry into force of this law shall not be taken into account.

Maria Popa

Tax Manager

maria.popa@pkffinconta.ro