

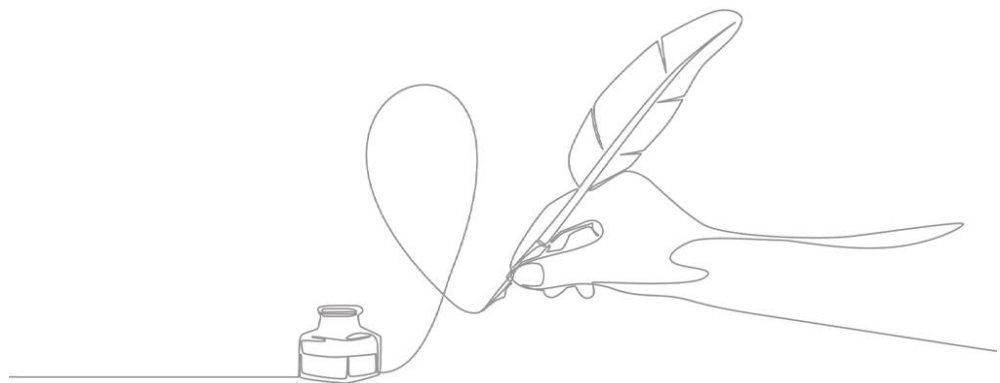
Dear Readers,

In this issue of *HR Perspectives*, we discuss:

- a) **the framework agreement on cross-border remote working** – making it easier for employers interested in hiring employees from other EU Member States. We briefly describe the key features below;
- b) **new ESG reporting obligations** - until now, the ESG reporting requirement applied only to a narrow group of organisations. Soon, the reporting duty will cover a wider group with new reporting standards;
- c) **new regulations for improving working conditions through online platforms.**

Enjoy your reading!

Robert Stępień
Agnieszka Nicińska-Chudy



Cross-border remote working – even those working mostly abroad can be insured in Poland

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On 1 July 2023, Poland acceded to the framework agreement on cross-border remote working.

The agreement introduces an exception to the general rules for determining the applicable law for social insurance covering persons who carry out cross-border remote work. Under the agreement, it will be possible for such workers to be subject to the legislation of the country where their employer is based, even though they carry out most of their work from another country. This is clearly aimed at making it easier for employers interested in hiring employees from other EU Member States. This way, they will not have to comply with the host country's social insurance regulations, including not having to register with a foreign social insurance institution.

Who may be covered by the agreement, then? An employee who:

- works across different Member States
- has an employer in a Member State other than the employee's place of residence
- works at their place of residence in the form of cross-border remote working for at least 25% but less than 50% of their total working time.

For the purposes of the agreement, cross-border remote work is considered work that:

- can be performed from any location,
- is performed in a Member State other than the State where the employer's registered office is located,
- is carried out using online connection to maintain contact with the employer or the workplace.

In contrast, the agreement will not apply to people who:

- carry out a regular paid activity other than cross-border remote working in their place of residence (for example, on-site work in that country),
- carry out a regular paid activity in a country other than their country of residence and the country where their employer is based, which means they also work in another country or countries, or
- are self-employed.

The above-mentioned requirement that cross-border remote working cannot exceed 50% of the total working time is a key derogation from the general rules. Until now, working at the country of residence which was not the same as the employer's place of business for more than 25% of the total working time meant that the employee carried out a substantial part of work at their place of residence. Consequently, this resulted in the obligation to comply with the legislation of the country of residence. Now, if an employee is covered by the agreement, the legislation of the employer's seat will be applicable.

An eligible employee may be covered by the agreement if an application is submitted to a social insurance institution, which in the case of Polish employers will be ZUS. The application may be submitted either by an employer or an employee. After receiving confirmation, it is necessary to apply for an A1 certificate confirming the application of Polish legislation.

An employee may be covered by the agreement if the employer's registered office and their place of residence are in a member state that is a party to the framework agreement. Currently, 18 countries have signed the agreement, including Austria, Belgium, Croatia, Czechia, Finland, France, Germany, Liechtenstein, Luxembourg, Malta, Norway, Portugal, Spain, Sweden, Switzerland, the Netherlands, Slovakia and Poland.

ESG | New sustainable development reporting obligations

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New ESG reporting obligations will apply as early as 2024. The new EU regulations will not only significantly expand the number of organisations that will have to prepare an ESG report in the near future, but also introduce new reporting standards.

This is a great opportunity to increase competitive advantage and adapt your business not only to the changing regulations but also, most importantly, to the expectations of your customers, business partners and employees.

When will the first ESG reporting under the new rules take place and who will be affected?

The first organisations that will have to report ESG under the new rules (in 2025 for 2024) will be those subject to such obligations so far, namely listed companies with at least 500 employees and more than PLN 85 million in total balance sheet assets at the end of the financial year or PLN 170 million in net revenue from the sale of goods and products for the financial year.

In later years, the group of organisations covered by reporting duty will expand significantly to include all large businesses and some of the SMEs.

The importance of ESG in an organisation and the special role of the 'S' for social issues

ESG is not only about the environment. We cannot forget about the 'S' which stands for social issues, where the engagement of HR departments is essential. This part of the ESG report will have a profound and far-reaching impact so it needs to be well thought-out. Showing strong performance in the 'S' area will not only improve an organisation's standing in the eyes of investors or financial institutions but will also send a clear signal to employees and job candidates that it is a good place to work.

A properly looked-after social area helps companies build a strong position in the battle for the best talent and competitive edge. To achieve that, it will be necessary to develop and comply with appropriate company policies and procedures. Equal pay, employee care, ethics and other challenging areas form the basis of well-reported social issues.

The European Sustainability Reporting Standards (ESRS) adopted by the European Commission significantly raise the bar in ESG reporting. It will pay off to prepare compliance, legal and HR teams for the new reporting rules in advance.

People working for online service providers should be considered employed, not self-employed. What about B2B?

Author: **Jakub Grabowski**, trainee-attorney at law, lawyer, jakub.grabowski@pcslegal.pl

A new EU directive has been proposed to improve working conditions offered by app-based service providers (platforms). The key point of the directive is to establish a legal presumption that a person working for such a platform is employed and not self-employed.

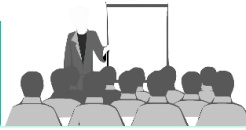
This presumption is to apply in all administrative and court proceedings, and any public authority enforcing legal obligations on employers will be able to rely solely on this presumption.

Should the directive be adopted and incorporated into the Polish legal system, it would completely upend the existing state of affairs. Now, it was up to the contractor/ZUS/tax office/labour inspectorate to prove that a B2B relationship was, in fact, a miscategorized employment relationship. Once the changes come into force, the service provider will become a presumed employee by law and only then will it be possible to rebut this presumption.

The directive was aimed at app-based service providers (platforms) such as Uber, pyszne.pl or Bolt, who act as intermediaries between the client and the person providing the service (contractor). Under this business model, all tax and social insurance payments are on the contractor, who is not covered and protected by employment law, while the platform bears no legal liability. On the other hand, it gives the contractors flexibility in the service provision (they can decide to not provide services on any given day) and allows for tax optimisation, not available to regular employees. The proposed changes would not only bring a major revamp of the employment model but, at the end of the day, may also do a disservice to the contractors. The automatic reclassification to an employment relationship will increase tax and social insurance payments which, in turn, will reduce their remuneration.

Another controversial issue is the proposed application scope of the directive. The provisions defining who will be subject to the new regulations are worded in such a way that enables the Polish legislator to consider virtually all contractors working with computers and the Internet as employees. It cannot be ruled out that the implementation of the directive will affect not only the intended subjects (such as Uber) but also other businesses using B2B contracts (e.g. IT companies).

Here is a list of upcoming events which we hope you will be able to attend.



Webinar: How to protect your company from confidential information leaks?

Date: 29 August 2023, 11:00-11:45, online.

Organised by: British-Polish Chamber of Commerce, PCS Paruch Chruściel Schiffter Stępień Kanclerz | Littler.

Speakers: Sławomir Paruch, Bartosz Wszeborowski, Anna Kencel.

Registration form: [here](#).

#HR_Valve: Polish labour law as a source of misunderstandings with employees from abroad

Date: 30 August 2023, 13:30-15:50, hybrid.

Organised by: Invest in Pomerania.

Speaker: Bartosz Tomanek.

Registration and detailed agenda: [here](#).

Webinar: Labour law in the age of artificial intelligence - challenges for HR departments

Date: 5 September 2023, 14:00-15:00, online.

Organised by: Polskie Stowarzyszenie Zarządzania Kadrami (Polish Human Resources Management Association).

Speakers: Bartosz Tomanek, Mateusz Krajewski.

Registration and detailed agenda: [here](#).

No, because of GDPR: Diversity & inclusion - is GDPR an obstacle?

Date: 7 September 2023, 11:00-11:45, online.

Speakers: Paweł Sych, Robert Stępień.

Registration form: [here](#).

Online workshop: New Labour Code in practice: employer duties and employee rights

Date: 11-12 September 2023, 9:00-2:45, online.

Organised by: MMC Poland.

Speakers: Marcin Szlasa-Rokicki, Piotr Kozłowski.

Registration and detailed agenda: [here](#).

10 rules for changing terms and conditions of employment

Date: 12 September 2023, 11:00-12:00, online.

Speakers: Sławomir Paruch, Katarzyna Witkowska-Pertkiewicz.

Registration form: [here](#).

Springboard to ESG: ESG - a new challenge for almost all employers

Date: 18 September 2023, 11:00-11:45, online.

Speakers: Bartosz Tomanek, Mateusz Krajewski and Michalina Lewandowska-Alama.

Registration form: [here](#).

Conference: Diversity is our strength!

Date: 27 September 2023, 9:30-16:15.

Organised by: Razem dla Różnorodności w Biznesie Foundation.

Registration and detailed agenda: [here](#).



2023 European Employer Survey

We invite you to participate in 2023 European Employer Survey.

The survey, which should only take 5-7 minutes to complete, can be accessed: [here](#).

More: [here](#).