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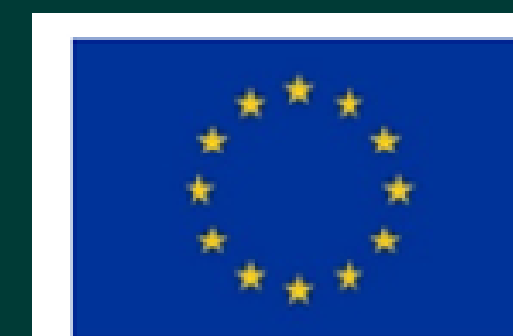


Posting of Third Country Nationals in Nordic and Baltic States

Enforcement, challenges and possible improvements

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Introduction



- A posted worker is an employee that is employed in one EU/EEA country and sent by their employer to work temporarily in another EU/EEA state.
- This is done as part of the employer providing a service in the receiving state.
- A third country-national that is lawfully and habitually employed in one Member State can be posted under the same rules as EU/EEA citizens.

Introduction



- Posted workers are more exposed to unfair practices and remuneration than other workers.
- Posted third country nationals (TCN) are often seen as more vulnerable than other posted workers
 - Their right to residence in the EU/EEA is connected to the employment contract
 - Speaking up if their rights are infringed, could make them lose their job and their right to stay in the EU.

Regulatory framework



- The right to post a TCN within the EU/EEA depends on the worker being lawfully and habitually employed in the sending country (*Vander Elst* C-43/93)
 - If so, the receiving country cannot require a work permit for these workers
- What is considered as “habitually”?
 - The workers should be carrying out their main activity in the country where the employer is established
 - Does not require a permanent employment contract
 - Requirements regarding the length of the employment unclear – cannot require one year employment before the posting

Regulatory framework

- While immigration law is mostly harmonized across the EU, parts of it is still the domain of the national states
 - Conditions for entry, residence and work can be decided by the Member States in some areas
- As such conditions vary, this has created ‘posting corridors’ for TCN posting (ELA, 2023).
 - From Bosnia Herzegovina and Serbia through Slovenia
 - From Moldova, Georgia and Armenia through Poland



Posting corridors (2020)

Sending member state	Share of TNCs in total outgoing/ incoming posted workers (2020)	Main nationalities concerned	Main flows	Main sectors of activity
Slovenia	60%	Bosnia and Herzegovina	TNCs from Bosnia and Herzegovina being posted from Slovenia to Austria	Construction
Poland	17%	Ukraine	Ukrainian workers being posted from Poland to Germany, France, Austria, Belgium and the Netherlands	Road freight transport, construction (live-in care)
Spain	11%	Morocco and Ecuador	Moroccan workers being posted from Spain to France	Agriculture

TCNs in the Baltic and Nordic states

Country	Corridors of receiving posted TCNs
Denmark	Ukraine and Belarus Poland, Romania, Bulgaria and Germany as transit countries
Estonia	Ukraine, Moldova and Belarus Poland most used as transit country
Finland	Ukraine, Belarus, Russia Poland, Estonia, Latvia or Lithuania as transit countries
Iceland	Ukraine and Belarus Poland, Lithuania and Latvia as transit countries
Latvia	Few TCN posted workers, but from Russia and China France and Portugal as transit countries
Lithuania	Belarus and Ukrainians, "Stan-countries" Poland as transit country
Norway	"Stan-countries" Baltic states as transit countries Serbia, Bosnia H, Albania, Moldova, Montenegro and North Macedonia Croatia, Slovenia and Slovakia as transit countries

Inspection of posted TCN in the Baltics and the Nordics

- The number of posted TCN to the Baltic and the Nordic states is unknown.
- None of the Baltic or Nordic labour inspectorates do targeted inspections of these workers.
 - But where nationality is notified, they can know before they do their inspections



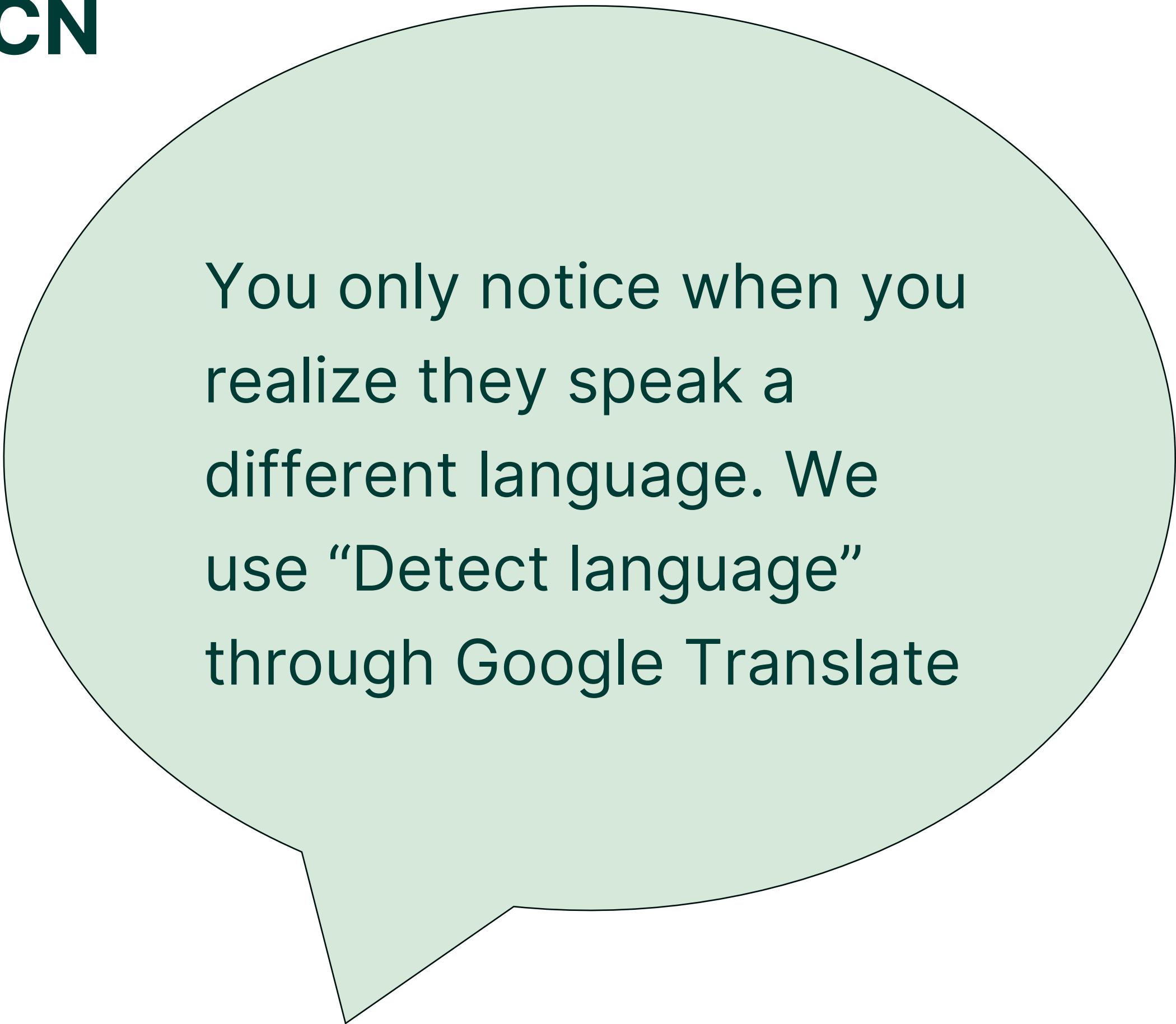
Inspection of posted TCN in the Baltics and Nordics

- In some countries labour inspectorates are not given the competence to check whether TCNs are lawfully posted
 - This is the role of other authorities
 - Joint inspections with the police, border guards or immigration authorities
- In other countries labour inspectorates can check
 - Whether the TCN has a valid work permit, for how long they have been working in the country and/or whether a notification is made
 - Whether the conditions of habitual work in the sending country is fulfilled is often not part of the inspection



Challenges in inspecting posted TCN

- Complex legal framework
 - Legally and habitually employed
 - Requires an understanding of immigration law in the sending country
 - Conditions are unclear – habitually
- Locating and identifying posted TCN
 - Norway: lacking notification system
 - Unclear whether the Enforcement Directive allows the receiving state to ask for the nationality of the workers



You only notice when you realize they speak a different language. We use “Detect language” through Google Translate

Inspector, Norway

Sometimes we meet workers who say they are from Romania. And we get a Romanian translator, and then they cannot understand each other. Typically, [they are] from Moldova or Belarus and then we need to get another interpreter (inspector, Finland).

Identifying genuine posting

- A problem related to posting of worker in general
- Special problems related to TCN posting
 - Whether the work permit is valid and whether a residence permit is required
 - Whether the worker has worked in the sending country before being posted
 - Information through the Internal Market Information System (IMI) takes too long – then the worker has disappeared
- Why should labour inspectors care?
 - Other issues are of greater importance



Suggestions for improvement



- Notification systems
 - Establish, if such systems do not exist
 - Explore possibilities for requiring more information and documentation
- Regulations requiring documents to be stored
 - E.g., France: the employer must keep documents related to the exercise of a real and substantive activity in the sending state, including the employer contract
- Training of inspectors
- Cooperation with other authorities

Suggestions for improvement



- Inspections
 - Use targeted inspections as in Belgium and Germany
 - Develop questions to be used during inspections to determine
 - The identity of the worker
 - Whether the worker has a home address in the sending country
 - What kind of work the posted worker did in the sending country before the posting and for how long
 - Better access to online databases during inspections
 - Provide inspectors with tablets that can be used to access information

Suggestion for improvements



- Giving more responsibility to the assignor
 - Make the assignor responsible for ensuring valid work permits
- Improving the Internal Market Information System (IMI)
 - Many relevant questions are already included, but a need for clarifying how these are understood and add new questions
 - Ensure that inspectors have access to the IMI
 - But still limitations as regards the response time
- Support from ELA
 - Information
 - Inspector exchange to create networks

