

Kristin Alsos

**Tools to support the
monitoring of posted workers
in the Baltic and
the Nordic countries**

Transposition of the Enforcement
Directive (2014/67/EU)

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Preface

This working paper was written as part of the Better Enforcement Through Improved Nordic–Baltic Cooperation (BETIC) project, funded by European Social Funds+. The project brings together the Labour Inspectorates in the Baltic and Nordic states, and it is coordinated by the Fafo Institute for Labour and Social Research.

In 2014, the EU's Enforcement Directive (2014/67) was adopted and was to be transposed into national law by the Member States and EEA/EFTA States by 18 June 2016. Aiming to ensure that the rules on posting apply uniformly across national borders, the Directive provides different tools to promote its purpose. Among the key national enforcement actors are the Labour Inspectorates.

The Directive aims to promote transnational cooperation and the use of the Internal Market Information System (IMI) on the enforcement of posted work regulations, and to share experiences and good practices not only within the participating countries but also with other Member States, social partners and the ELA.

In this working paper, we look into how the Enforcement Directive has been implemented in the participating countries, as well as what tools have been given to the Labour Inspectorate. We would like to thank the participants for providing us with information regarding the national implementation.

Oslo, August 2023
Anne Mette Ødegård
Project Manager

Summary

Posted workers are employees sent by their employers to temporarily work in another EU or EEA member state, and they are granted certain minimum rights regarding wages and working conditions through the Posting of Workers Directive (PWD). The number of posted workers in the EU has steadily increased, reaching over 4.5 million in 2019.

However, challenges have arisen in implementing and regulating the rights of posted workers, including wages, exploitation of regulatory loopholes, and cooperation between authorities. To address these issues, the Enforcement Directive (2014/67/EU) was adopted in 2014, aiming to ensure uniform application of posting rules across borders. This directive defines administrative requirements and control measures, protects the rights of posted workers, and facilitates the enforcement of penalties and fines across member states.

The working paper focuses on how the Enforcement Directive has been transposed into national legislation in Nordic and Baltic countries, providing a foundation for further research on labour inspectorates' work and cross-border cooperation. The Directive has been largely transposed by member states, with some receiving infringement procedures for failing to align with the directive's provisions.

In summary, the Enforcement Directive seeks to enhance the protection and regulation of posted workers in the EU and EEA, with a focus on combating fraud, ensuring fair treatment, and enabling enforcement of penalties. The working paper examines its implementation in specific countries and highlights areas where improvements are needed.

Each country has established its own national legislation to comply with the directive. There is significant variation in how these countries have implemented the directive. Most countries (excluding Norway) have established a register to which posting employers must notify the posting. These registers aid labour inspectorates in targeting their inspections. The level of public access to these registers varies, with most countries allowing public access but some information remaining undisclosed.

The countries differ in their implementation of elements for assessing worker posting and the establishment of the sending company in another country. The timing and type of information required for notification also vary, with many countries following the list of simple declarations in article 9.1 (a) of the directive. Some countries require additional information, including details about the assignor and document copies related to work permits, working conditions, service contracts, etc.

All countries, except Denmark, require posted undertakings to have certain documents available in the host country, and translations may be required. These documents can include employment contracts, working-time schedules, payslips, proof of wage payment, A1 certificates, and service contracts.

There is also variation in requirements for appointing a representative or contact person in the host country, with differing levels of competence required. In some countries, the representative can receive notifications of official decisions or summons.

Additionally, most countries have incorporated regulations concerning cross-border information sharing and cooperation among labour inspectorates, and fee collection into their national legislation.

Overall, the implementation of the Enforcement Directive exhibits considerable diversity among the Baltic and Nordic countries, reflecting the nuanced approaches taken by each nation in complying with the directive's provisions.

Introduction

The protection of posted workers in the European Union (EU) and European Economic Area (EEA, covering Norway, Iceland and Lichtenstein) has been on the agenda for many years. Workers sent by their employer to provide a service on a temporary basis in another Member State are granted minimum rights regarding wages and working conditions by the Posting of Workers Directive (PWD).

According to De Wispelaere, De Smedt and Pacolet (2022), the number of posted workers in the EU has increased steadily from around 1.3 million in 2010 to above 4.5 million in 2019 (p. 23). This number dropped during the COVID-19 pandemic, but is expected to catch up to its former heights as restrictions have been lifted.

Following the adoption of the first PWD in 1996, several challenges have been identified with the implementation, interpretation and regulation of posted workers. These are related to wage gaps and divergence in labour costs, actors exploiting loopholes in the regulations, lack of clarity and poor cooperation between authorities (EU Parliament, 2023).

In order to strengthen enforcement of this regulation, the Enforcement Directive (2014/67/EU) was adopted in 2014. The Directive was to be transposed into national law by the Member States by 18 June 2016. The aim of the Directive is to ensure that rules on posting apply uniformly across national borders, and the Directive provides different tools in order to do so. It provides a more detailed definition of posting and defines the Member States' responsibilities to verify compliance with the PWD. Further, it aims to achieve better cooperation between national authorities, by laying down an obligation to respond to requests for assistance and setting time limits for responses to information requests across borders. Finally, the Directive enables administrative penalties and fines imposed on service providers by one Member State to be enforced by and recovered in another Member State.

The aim of this working paper is to look into how this Directive has been transposed into national legislation in the Nordic and Baltic countries. This overview will provide the basis for further research in this project, which will study tools for Labour Inspectorates' work directed towards posted workers and cross-border cooperation. The overview focuses on the transposition of regulations that are the most important for the Labour Inspectorates' work (see chapter 2). In other words, we do not aim to give a full overview of the implementation: for instance, regulation concerning information and the lodging of complaints by posted workers.

The working paper is based on English translations of national regulations found online or provided by the Labour Inspectorates in the following participating countries: Denmark, Estonia, Finland, Iceland, Latvia, Lithuania and Norway.

1 Enforcement Directive

1.1 About the Directive – background and main regulations

The Enforcement Directive (2014/67/EU) aims to strengthen the practical application of regulations for the posting of workers by addressing issues related to fighting fraud and the circumvention of rules, access to information and administrative cooperation between EU Member States. The Directive

- defines the administrative requirements and control measures that Member States may impose to monitor compliance with the rules on the posting of workers
- defends the rights of posted workers and protects them from retaliation (unfavourable treatment by their employer in case they take legal or administrative action against the employer if their rights are not respected)
- ensures that the rights of posted workers in subcontracting situations are protected
- ensures the effective application and collection of administrative penalties and fines across EU Member States
- obliges Member States to put in place effective, proportionate and dissuasive penalties

The Directive was adopted in 2014 and Member States were to transpose the Directive into national law by 18 June 2016, at the latest. A report made by the European Commission to the European Parliament in 2019 concluded that all Member States had transposed the Directive, some in 2016 and some in 2017 (COM (2019) 426 final). Except for Germany, all countries had adopted or altered legislation as part of the transposition (*ibid*). However, the Commission found that the application of the Directive could be improved in some Member States and put forward the intention to continue working to ensure that the Directive is correctly transposed.

Infringement procedures

In July 2021, the Commission sent letters of formal notice to 24 Member States for failing to bring national regulations in line with the Directive.¹ These Member States included Denmark, Estonia, Finland, Latvia and Lithuania.

The letters of formal notice have not been made public, but according to the European Trade Union Confederation (ETUC) – quoting the press release from the Commission – the infringement proceedings concerned (some or all) of the provisions.²

In January 2023, 17 Member States received reasoned opinions from the Commission. Of the countries that are part of the BETIC project, Denmark and Finland received such opinions.³ Further, Iceland and Norway received reasoned opinions from

¹ https://ec.europa.eu/commission/presscorner/detail/en/inf_21_3440

² <https://etuclex.etuc.org/infringement-proceedings-against-24-member-states-posting-workers-enforcement-directive>

³ https://ec.europa.eu/commission/presscorner/detail/EN/inf_23_142

the EFTA Surveillance Authority (ESA).⁴ For Norway, the opinion is related to articles 7 and 10. The ESA found that the obligation to monitor, control and take necessary supervisory or enforcement measures, as well as the obligation to assist the host state, is not secured by law. Further, the ESA found that the implementation of article 10(2), which should ensure that inspections and controls are not discriminatory or disproportionate, is insufficient.

For Iceland, the reasoned opinion covers articles 4, 6, 7, 10 and 11 and chapter VI. In relation to article 4, the ESA found that the assessment to identify genuine postings and prevent abuse and circumvention is not sufficiently implemented. As regards article 6, the obligation to assist Member States (2) and to inform the requesting Member States of difficulties (5) has not been correctly implemented. Article 7 regulates administrative cooperation and the ESA found that the duty of the Member State to monitor, control and enforce (2), to assist hosting states (3), and, on its own initiative, to raise concerns to other Member States is insufficiently implemented. The requirement in article 10 that inspections should be based on risk assessment and not be discriminatory and/or disproportionate, is – as assessed by the ESA – not comprehensively implemented. This holds true for article 11's requirement to ensure the existence of effective measures for posted workers to lodge complaints against their employer, as well as to institute judicial or administrative proceedings (1) and be protected whilst doing so (5). Finally, the ESA found that the cross-border enforcement of financial administrative penalties and/or fines (chapter VI) is not being implemented correctly.

1.2 Regulations relating to inspection and cooperation

The Directive has regulations that enable both cooperation and enforcement, as well as regulations that could be seen as limiting the approach of the Labour Inspectorates, for instance by restricting what kind of documentation must be kept on site. Of particular interest for our project is article 4, which provides lists of elements that can be used in

- a. the overall assessment of whether an undertaking performs substantial activities in the Member State of establishment
- b. assessing whether the posted worker carries out their work temporarily in the receiving Member State

Elements that can be used for undertakings cover the following:

- the place of registration and office space, where taxes and social contributions are paid, and where a professional licence or registration with chambers of commerce or professional bodies
- the place from which the posted workers are recruited
- the law applicable to employment contracts and contracts with clients
- the place where substantial business activity is performed and where administrative staff is employed
- the number of contracts performed and/or turnover realised in the Member State of where the undertaking is located (established).

⁴ <https://www.eftasurv.int/newsroom/updates/esa-urges-iceland-liechtenstein-and-norway-fully-implement-enforcement-directive:nb>

This list is not exhaustive, but should assist authorities carrying out checks and controls. Most Member States have transposed the list of elements, but not all. Some countries have also introduced other elements, but only Latvia has done so among the Nordic and the Baltic states participating in this project (see below). According to the report from the Commission, the following elements can be found:

- the duration of the actual posting (Bulgaria)
- the duration and frequency of an employer's activity in a country and whether it is performed occasional or continuously (Croatia)
- the main activity of the undertaking authorised to operate and the object of the service contract (Romania)
- the employment contracts etc. with the employees (Romania)
- whether the employer has suitable premises where the service is provided, as well as the employment of administrative staff at the head office or premises of the employer (Slovenia)
- whether the employer advertises the activity and if there have been changes related to the employer's activities in the last six months (Slovenia)
- the true economic nature of the activity, rather than the appearance of the facts (Austria)
- the posting should not require the conclusion of a service contract between an employer not established in Austria and a service recipient operating in Austria (Austria)
- the identification of the undertaking posting the workers (Spain)
- when the undertaking was established (Greece)
- what undertaking is actually paying wages (Greece)
- any other element useful for the overall assessment (Italy)

Elements that can be used to assess whether a worker is posted cover the following:

- whether the work in another member state is limited in time
- the date the posting commences
- where the worker habitually carries out their work
- whether the worker returns to work in the sending Member State after the posting ends
- the nature of the activities
- whether travel, board and lodging are provided or reimbursed by the employer and in what way
- the previous posting periods filled by this or another posted worker

As with the characteristics of the undertaking, some countries have also provided additional elements regarding the worker. These include

- the date of employment (Croatia)
- the possession of an A1 certificate, or an application for such (Croatia and Italy)
- whether the employer sent workers to the Member State in the previous 12 months, as well as what tasks were performed by the workers and where the worker performed the tasks 1 month before being posted to the Member State (Croatia)
- whether there is a genuine employment relationship that can be checked by the Labour Inspectorate prior to the posting (Latvia)

- the intention of the worker to return to the sending country (Luxembourg)
- prior periods of insurance for the posted worker on the basis of employment or self-employment (Slovenia)
- the end date of the posting and whether the employment relationship will continue after the posting
- any other element useful for the overall assessment (Italy)

Administrative cooperation

Further, articles 6 and 7 regulate the administrative cooperation between different Member States. Article 6 lays out general principles, while article 7 defines the role of the Labour Inspectorates (or similar) in the sending and hosting Member States concerning inspection.

Article 6.2

The cooperation of the Member States shall in particular consist in replying to reasoned requests for information from competent authorities and in carrying out checks, inspections and investigations with respect to the situations of posting referred to in Article 1(3) of Directive 96/71/EC, including the investigation of any non-compliance or abuse of applicable rules on the posting of workers. Requests for information include information with respect to a possible recovery of an administrative penalty and/or fine, or the notification of a decision imposing such a penalty and/or fine as referred to in Chapter VI.

Article 6 sets out deadlines for responding to requests from other countries, and these are related to the kind of information that is requested. Urgent cases requiring information from registers (e.g., VAT registration) should be supplied as soon as possible and within 2 working days, while other requirements should take a maximum of 25 working days.

Problems related to this part of the Directive identified by the Commission include a) authorities lacking the competence to respond to the request and (b) the deadline being too short to carry out an inspection.

Requirements and control

Article 9 addresses administrative requirements and control measures, and it sets limitations on what kinds of measures Member States might impose. Administrative requirements and control measures necessary to ensure the effective monitoring of compliance can be imposed as long as they are justified and proportionate (Article 9.1). A list of measures is provided, but others can be used. The list includes the following:

- a. a simple declaration regarding the service provider, with information about the service provider, number of workers, contact person, duration of the posting, workplace and nature of the service provided
- b. documentation requirements – to keep or make available within a reasonable time and/or retain copies of the employment contract, payslips, time sheets and proof of payment of wages
- c. language and translation requirements

- d. an obligation to designate a person to liaise with the authorities and a contact person who can act as a representative in relation to collective bargaining; the representative does not have to be present in the host country
- e. other administrative requirements and control measures if the existing are not sufficient or efficient

Also, in relation to article 9, some Member States have implemented additional requirements in their national legislation. The following are mentioned in the report by the European Commission:

- information required of the undertaking – name, address, contact data, VAT number, business registration number, legal form and type of business
- information required about the workers – number of posted workers, their name and address, birth date, nationality, personal and professional details/occupation, passport or identification number, gender, social security number or status, address in host country and work/resident permit of third-country nationals
- the location of the documentation that must be kept, as well as information on working time and wages, work schedules, whether contracts are temporary, and other guarantees for instance health and safety issues
- information about the service recipient – name, address and contact information, type of business and the applicable collective agreement, VAT number, trade licence or registration code and legal representatives; it differs whether this obligation is placed on the service recipient or the posting undertaking
- in addition to the documents mentioned in the Directive, some Member States require copies of identification documents, A1 certificates and work/resident permits for third-country nationals, medical certificates of fitness for work, certificates of confirmation of part-time or fixed-term employment contracts (or necessary evidence); timeframe for when such documents must be available after the end of the posting period varies, up to seven years (in Estonia)
- some Member States have put in place measures for the identification of the posted workers, like a construction card or social identification badge

Inspections

Article 10 prescribes that inspections should be risk assessed and not discriminatory or disproportionate.

Cross-border enforcement and financial administrative penalties and/or fines

If an authority in one Member State imposes a penalty on a service provider, the competent authority in the state where this provider is located should notify decisions to employers and recover the fine. The regulation securing this is set out in articles 13-19.

Penalties

Article 20 stipulates that Member States are obliged to set penalties in the event of infringements of national provisions adopted pursuant to this Directive, and to take measures to ensure that they are implemented and applied. The Directive does not regulate this in detail, but sets out that the penalties should be effective, proportionate and dissuasive.

This is done in different ways in the Member States, including

- the setting of a range of financial sanctions per worker or employer
- the setting of a higher range of financial sanctions for repeated violations
- the suspension of activities
- applying sanctions to the individual management
- imprisonment
- freezing security deposits and payments when a breach is suspected

Internal Market Information System

Article 21 stipulates that cooperation and assistance should be implemented through the IMI system. Bilateral agreements and arrangements can also be applied, and most Member States have at least one agreement. Many of these countries seem to use these agreements instead of or in addition to the IMI.

2 National transposition

2.1 Overview

In this chapter, we give an overview of the national legislation implementing the Enforcement Directive in the Baltic and the Nordic countries (except Sweden). In this part, we summarise the regulation and then provide a more detailed overview for each country.

Tabel 1 Transposition in the different countries and other regulations of importance

Country	Main national legislation
Denmark	Act on Posting of Workers etc., i.e. Consolidation Act No.1144 of 13 December 2021 and subsequent amendments
Estonia	Working Conditions of Employees Posted to Estonia Act, passed on 17.03.2004
Finland	Act on Posting Workers (447/2016, amendments up to 62/2022 included)
Iceland	Act on Posted Workers and the Obligations of Foreign Service-Providers] 1) No. 45/2007
Latvia	Labour Code of 2001, chapter 3
Lithuania	Labour Code of 2016 art 108 and 109
Norway	Working Environment Act of 2005, section 1–7 and administrative regulation 16.12.2005 no. 1566

There is great variation as regards how the countries have implemented the Directive. All countries except Norway, as part of the implementation, have established a register to which the posting employers must notify the posting. These registers give Inspectorates a tool to target their inspections, as they know where the posted workers can be found. In Norway, companies must notify the tax authorities, but this duty is not part of the transposition of the Directive. In all countries except for Norway, this register can be accessed by the public, although some of the information may be undisclosed.

It seems less common to have implemented by law the elements that can be used to assess whether or not a worker is posted, and whether the sending company is established in another country.

The time of notification and type of information required varies, and it seems most common to follow the list of simple declarations given in article 9.1 (a). Some countries also require additional information, including information about the assignor, and some copies of documents, for instance concerning work permits, working conditions, the service contract etc.

Further, all countries (except Denmark) require the posting undertaking to have some documents available in the host country, and a translation of these documents may be required. There is variation regarding the type of documentation required and how long it should be provided after the posting ends. Employment contracts, working-time schedules, payslips and proof of the wages having been paid are required in

one or more countries, and some countries also require A1 certificates and service contracts.

Variation can also be seen in the requirements to have a representative or a contact person present in the host country. While all countries require such a person to be appointed, the demands regarding the competences varies. In some countries, the representative is empowered to receive notifications of official decisions or summons.

Finally, most countries have incorporated regulations concerning cross-border information, cooperation and collection of fees etc. into their legislation.

2.2 Denmark

Duty to notify

Denmark has set up a Register of Foreign Service Providers (RUT), and regulations concerning this can be found in the Act on Posting of Workers etc. of 2018, chapter 3a. There is a duty for foreign undertakings posting workers to Denmark to give information upon the commencement of work (if not before). The company is not obligated to register if the working period is under eight days, if it is part of a delivery, repair etc. of a technical plant or installation, and if the worker or independent undertaking is tasked with (and is a specialist in or qualified for) fitting, installing, inspecting, repairing or providing information about a technical plant or a technical installation. The notification is given to the Danish Business Authority, responsible for the RUT. A failure to notify may result in a fine.

According to section 7a, the notification covers the following:

- the name, business address and contact information
- the start and end dates of the service
- the location where the service is performed
- the contact person for the undertaking – this should be one of the persons posted to Denmark in connection with the performance of the service
- the industry code
- the identity of the posted workers and the duration of their posting
- the VAT registration in the country of establishment
- the workers' social security information
- information about the Danish assignor

If the posted workers are to perform work in construction, agriculture, forestry or market gardening, the undertaking is obliged to give documentation to the assignor showing that the RUT has been notified about the service. If the undertaking fails to do so, the assignor has a duty to inform the Danish Labour Inspectorate (the Danish Working Environment Authority) of this, no later than three days after the start of the service.

The information provided can be made available to the public (except the identity of the workers, their social security information, the location of the work, information about the contact person and the Danish assignor). Further, a trade union that has entered into a collective agreement with a foreign undertaking may be given information about the workers and the assignor, if there is a dispute regarding the

interpretation of the agreement or a breach of the agreement (see section 7c of the Act on Posting of Workers etc.).

The Act has regulations concerning non-compliance with this duty to notify, including the Working Environment Authority's right to give orders, impose daily fines, disclose information to other public authorities, trade union and employer organisations, and take action before the courts (see section 7f).

Cross-country cooperation

In part 4 of the Act, regulations regarding information and administrative cooperation with other EU and EEA Member States are given. The competent authority must provide information under the IMI system to authorities in other countries. Such information can also be forwarded as part of bilateral agreements. Here, it is also stated that they may obtain information to be used in the enforcement of the rules on the posting of workers in Denmark. More detailed regulations can be found in an administrative regulation.

2.3 Estonia

Duty to register

According to the Working Conditions of Employees Posted to Estonia Act, chapter 5, the undertaking that is posting workers to Estonia must provide information to the Labour Inspectorate. Registration requires the submission of a posting notice in the self-service website of the Labour Inspectorate at iseteenindus.ti.ee. The data should be provided on the day that the work commences, at the latest.

The duty covers the following information:

- the name of the undertaking, register code, area of activity, location and means of communication
- the contact person
- the number of posted workers, as well as their names and identification codes or dates of birth
- the duration of the posting and start/end date
- information about the assignor and its contact person
- the type of work and location of the posting'

Any changes must also be reported before they take effect. The previously submitted posting notice can be changed in the self-service website before the changes enter into force. The registrations are made publicly available on the home page of the Labour Inspectorate, and an undertaking failing to register could face a penalty of a maximum of EUR 32,000 (for legal persons).

Documents

The Labour Inspectorate may request the undertaking of documents necessary for administrative supervision (i.e., employment contracts, working-time schedules, payslips, A1 certificates or other documents), in order to prove compliance with regulation on working conditions. Such documentation is to be provided 'immediately'. The Labour Inspectorate can require the documentation to be submitted in a version translated to Estonian, but they usually accept documents in English and Russian.

The right to request documents is valid for a period of three years after the end of the posting period.

Any questions regarding the registration of or working conditions for employees posted to Estonia can be directed to a counselling lawyer or work environment consultant of the Labour Inspectorate via phone and e-mail, free of charge.

The Labour Inspectorate has the right to disclose personal data submitted to the Labour Inspectorate, to ensure the performance of tasks assigned to the Tax and Customs Board by tax laws.

Cross-border cooperation

The Act also sets out how the cooperation with authorities in other states should take place. According to section 6, the Labour Inspectorate must

- give information and respond to the requests of acts, legislation and extended collective agreements that apply to posted workers
- reply to requests concerning self-employed and legal persons that serve as employment intermediaries regarding offences in connection with the posting of employees

This section also stipulates the time limits within which the Labour Inspectorate must respond to these requests, following the Enforcement Directive.

Further, the Labour Inspectorate is responsible for notifying and collecting administrative fees imposed by other states, as well as for providing information about the result of these actions.

2.4 Finland

The Directive is transposed by the Act on Posting Workers (447/2016), last amended in 2022 (62/2022).

Duty to register

Section 7 of the act requires posting undertakings to notify the Labour Inspectorate (the OSH authority) about the posting of a worker to Finland before the commencement of the work. This section further lists the information to be included in this notification:

- for the undertaking – contact information, foreign tax ID, responsible person (representative) in Finland and responsible person in country of establishment
- identification details and contact information in Finland for the representative of the posting undertaking
- for the assignor – identification details and contact information
- for construction work – identification details and contact information of the builder and the general (main) contractor, as well as the tax number of the posted worker issued by the Finnish Tax Administration
- for workers – personal data necessary for the identification of each posted worker, their personal identification number and the tax identification number in their state of residence, as well as the start date and end date (or anticipated end date) of the posting
- the location or locations where the work will be performed
- the sector/industry

If this information changes significantly, a supplementary notification must be submitted immediately. Regarding the posting of construction workers, the same information must be given to the builder and the main contractor. There are also special regulations concerning road transport.

According to chapter 4, the assignor is to ensure that the posting undertaking submits a notification and has a representative in Finland. The assignor can also be asked by the Labour Inspectorate to obtain information from the posting undertaking on where and how its representative may be reached. Further, if the contract covers temporary agency work, the user undertaking must notify the posting undertaking of its obligations concerning this type of work.

Representative

The requirement to have a representative in Finland is further regulated in section 8. The representative may be a legal or natural person, and should be authorised to receive and submit official documents etc. on behalf of the undertaking. Both posted workers and authorities should have the possibility to contact this representative at all times during the posting period.

Documents

Section 9 states that the posting undertaking must comply with some provisions in the Working Hours Act: for example, to keep records of working hours and holidays. Further obligations regarding information can be found in the subsequent section (section 10) and includes

- identification details of the undertaking and person responsible in the sending country
- identification of the posted worker
- written information about the contractual employment conditions
- information about the basis of the posted worker's right to work (work permit etc.)

If the posting of a worker lasts for more than 10 working days, the posting undertaking must keep time sheets and payslips, as well as a financial institution's verification that the wages were paid for the work performed by the posted worker in Finland; these documents must be available in written form for the entire period of the posting. The information should be kept for two years, and the contractor should be notified about where the information is kept during the posting. The OSH authority can require that documents be translated into Finnish, Swedish or English (see section 17).

If acceptable to the posted worker, the undertaking should also give information to the shop stewards about the applicable employment conditions.

The Labour Inspectorate (the OSH authority) has the right to obtain 'all the information and documents that a posting undertaking, contractor, builder or general (main) contractor is required, under this Act, to prepare, keep or submit' without delay (section 17). Other documents can also be obtained from the posting undertaking if this is necessary, in order to monitor compliance with the regulations covering posting. Such documents can also be obtained from undertakings with which the posting undertaking has had a contractual relationship in the last 12 months, or undertakings that have operated at the same site and at the same time.

Cross-border cooperation and enforcement

In chapter 6, there are regulations concerning administrative cooperation across countries, while chapter 7 provides regulations on cross-border enforcement of penalties and fines.

Cooperation can both take place through the IMI system and on the basis of bilateral agreements. Chapter 6 transposes the regulations in the Enforcement Directive as regards the IMI system and covers both the situation where a request is received from another state and when a request is sent. Chapter 6 sets out the time limits for replies and that assistance should be made free of charge. Further, it is stated that information can be given even if it is confidential.

If a Finnish authority discovers that an undertaking established in Finland is posting workers abroad, and has information that suggests that the undertaking is not complying with legislation, the authority must notify the competent authority of the receiving state (section 21).

Section 23 regulates what documents can be sent to another state. The Finnish authority may request that a competent authority of another EU Member State provide documents if this is permitted by the law of the Member State in question.

The cross-border enforcement of administrative penalties and fines follows regulations in the Enforcement Directive. The IMI system is to be used, and section 25 sets out how this should be done, what information is needed, when this should be done timing and how. Requests for recovery of fines by authorities in other states are to be made to the Finnish Legal Register Centre.

Finally, chapter 8 sets out the provisions aimed at the efficient enforcement of the obligations placed on the posting undertaking. A negligence fee is applicable if the undertaking has not fulfilled its obligation to notify, appoint a representative, keep information and documents available, and provide information to the Labour Inspectorate. Within construction, if the main contractor has not fulfilled their obligation to require a report from the posting undertaking and given this to the posted workers, or has not given the report to the Labour Inspectorate, the negligence fee should be between EU 1,000 and 10,000.

2.5 Iceland

The Icelandic Act on Posted Workers and Obligations of Foreign Service Providers (45/2007) transposes the Enforcement Directive into Icelandic law. The aim of the act is

- to ensure that the wages and working conditions for posted workers are in line with the regulations and collective agreements that apply in the Icelandic labour market
- to obtain an overview of the nature and scale of the activities of foreign service providers in Iceland and, as appropriate, in their home states, to ensure that foreign service providers operate lawfully in Iceland (section 1a)

Duty to register

Both self-employed workers and undertakings are obliged to provide information to the Directorate of Labour on the day the work starts, at the latest (or to provide information about changes without reasonable delay); see articles 7 and 8. Part of this information can be accessed in a register that is accessible for the public.

This information should include the following:

- for the undertaking – name, address and e-mail address
- for the representative – name, address and e-mail address
- proof that the undertaking is established in its home state, in the occupation which covers the services it provides in Iceland, and that it operates lawfully there; this information could include documents from the tax authorities or comparable authorities in its home state, including its VAT number, operating licence, and volume of turnover in its home state
- for the assignor – name, VAT number or other identification
- for workers – names, dates of birth, addresses in their home country, nationality, whether covered by social security, dwelling place, intended working time, occupational qualification (if appropriate)
- for third-country nationals – the validity of work permits
- the type and duration of the service
- a copy of service contract
- a copy of employment contracts
- any other information that the Directorate of Labour may request for the purpose of monitoring (section 12), to establish that the undertaking demonstrably provides a service under the EEA agreement etc. and that the workers are employees of the undertaking

The Directorate of Labour must confirm that it has received the materials. The undertaking is then obliged to give this confirmation to the user undertaking no later than two working days after receiving the confirmation. This confirmation can be handed over to the shop steward if requested (art 11). If the user undertaking does not receive this confirmation, it is obliged to report this to the Directorate (see art 11). The user undertaking should also report suspected violations of the Act to the Directorate. Upon commencement of work in Iceland, information on how these documents can be obtained must be given to the Directorate.

Documentation

The service provider must give the Directorate of Labour a copy of the service contract and the employment contracts of the posted workers. For the duration of the service, and one month afterwards, other types of documentation should be available: e.g., payslips and confirmation that the wages have been paid in accordance with these, including the wage figure, and copies of working-time records showing each worker's working time. These documents should be handed to the Directorate of Labour upon request, within two working days.

The Directorate – if it is of use of other agencies (e.g. for monitoring) – can hand over this documentation to these agencies, which include the police, tax, customs and immigration agencies, the social security administration and the Labour Inspectorate (the OSH administration).

Representative

Undertakings providing services for a total of more than 4 weeks in any 12 months and having 6 workers or more in Iceland must have a representative in Iceland (see section 10). Each worker's name, identification number or date of birth, address in

Iceland and e-mail address must be provided to the Directorate of Labour when the work starts. The undertaking's representative is responsible for providing the authorities with information under the Act and section 2 of the Working Terms and Pension Rights Insurance Act, No. 55/1980. In addition, the representative is empowered to receive notifications about official decisions or summons.

Inspections, fines and penalties

The right to undertake inspections and require documentation is regulated in Section V. The Directorate may undertake inspections and can be assisted by the police if they find it necessary. If the Directorate receives information indicating that an undertaking is violating the Act, they are obliged to investigate the matter.

Undertakings are obliged to give the Directorate information and materials that the Directorate considers necessary for monitoring the Act. This material should be in writing and, if it is not in Icelandic or English, be accompanied by a translation into one of these languages.

If the Directorate of Labour receives information that indicates that provisions of Icelandic laws or regulations are being violated, it is obliged to deliver this information to the appropriate government authority without unreasonable delay.

Further, if the Directorate does not have the information they consider necessary in order to monitor the Act, they are obliged to request such information from government authorities or social partners. This could include the names and identification numbers of undertakings, user undertakings and self-employed individuals, as well as information on wage payments to workers. These authorities/organisations are obliged to give the Directorate such information if they have it. The Directorate may also ask the social partners whether the substance of an employment contract or the information regarding wages stated on a worker's payslip, are in conformity with the provisions of the applicable collective agreement.

The Directorate of Labour can ask the police to stop work or close down the operation temporarily until the situation has been rectified, if this has not been done within the time limits set. Per diem fines can also be imposed, of a maximum of ISK 1 million (EUR 6,700) for each day. When deciding the size of a fine, factors such as the number of persons working and the scope of the business operations in question should be taken into account.

The Directorate may also impose administrative fines on a self-employed worker or an undertaking that fails to provide the Directorate with information and/or access to materials. Administrative fines may amount to ISK 5 million (EUR 33,000): the amount is based, in part, on the seriousness and duration of the violation, whether it is a repeated violation and whether the party committing the violation has shown a willingness to collaborate with the investigation.

In the case of temporary agency workers who are posted, the Directorate of Labour – if requested – must submit copies of the worker's employment contract, payslips and working-time reports, as well as documentation showing that the worker's wages have been paid to the social partners. However, this request can only be made if there is a suspicion that the collective agreement has been violated.

Cross-border cooperation

Section 2 stipulates the obligation for the Directorate of Labour to assist foreign authorities receiving Icelandic undertakings, as regards information, communication with the undertaking and the collection of fines.

Article 13 regulates when the Directorate may request information from other states. If they find it necessary, they can request assistance from authorities in the home state.

2.6 Latvia

Duty of notification

Employers that post workers to Latvia have a duty to notify the Labour Inspectorate prior to the posting. The notification should cover the following:

- for the undertaking – name, registration number, address, contact information
- for the worker – name
- the posting period
- the location where the work is to be performed
- for the representative – name and contact information; must be able to represent the undertaking in courts of law and other institutions
- a representative who could negotiate with trade unions regarding collective agreements; does not have to be present in Latvia
- for the assignor – name and what service is to be performed
- certification for third-country nationals showing that they legally work for an employer in the EU/EEA area

Documentation

The employer has a duty to store documents for the duration of the posting and can be asked to provide these for up to two years after the posting ends. This documentation includes employment contracts, payslips, time sheets and documents proving the payment of wages. Such documentation should be kept by the representative in Latvia, who is authorised to represent the employer in front of Latvian authorities and in a court of law. Such documents must be translated into Latvian, if necessary.

Fines and administrative penalties

Fines can be imposed and recovered in accordance with the Latvian Administrative Violations Code, Civil Procedure Law and Law on Bailiffs.

2.7 Lithuania

Duty of notification

The Labour Code section 2 gives regulations concerning the posting of workers. In article 109, it is stated that an employer posting workers to Lithuania for more than 30 days – or less, if it is to perform construction work – must notify the Labour Inspectorate. According to the Labour Code and the administrative procedures, the notification must be made no less than one day prior to the work starting. Furthermore, the following information must be provided:

- the name of employer
- the name of posted worker
- the assignor
- the posting period
- the place of posting
- the working conditions – limited to the list of conditions in the posting directive, transposed by Labour Code article 108 (2)

Documentation

Further, employers need to have documentation related to the posted worker, at the place where the work is performed during the posting period. Such documentation must be provided without delay, if requested by the authorities.

Cross-border cooperation

The Labour Code article 109 (3) stipulates that the Inspectorate must provide information to and cooperate with authorities in other countries: ‘The State Labour Inspectorate must provide information immediately and free of charge to, or otherwise cooperate with, competent authorities of other European Union Member States regarding the application of terms and conditions specified herein to posted workers, as well as violations of posted worker guarantees.’ Lithuania also has regulations allowing inspectors from other EU/EFTA states to participate in inspections conducted by the Lithuanian Labour Inspectorate.⁵

2.8 Norway

Regulations regarding the posting of workers can be found in the administrative regulation FOR-2005-12-16-1566 on posted workers, based in the Working Environment Act section 1-7.

Section 2 of the administrative regulations mentions the criteria that can be used in order to assess whether there is a genuine posting and whether the undertaking is established in the sending country.

Documents

In section 4, employers posting workers to Norway should have available all employment contracts, time sheets and payslips for the posted workers. These documents should be in place for the duration of the posting period. The employer should also be able to provide information on the posting period, the expected number of posted workers and their identities. The documentation should be available in one of the Scandinavian languages or in English.

Cross-border cooperation

Further, this regulation specifies the obligation for the Labour Inspectorate to provide information to and cooperate with authorities in other member states, including assisting in relation to administrative decisions and penalties.

⁵ See Law on State Labour Inspectorate

Assignors' responsibility to register

Although the Norwegian implementation of the Directive did not include a duty for the employer posting workers to Norway to register, the assignor is obliged to do so to the tax authorities. The assignor must inform the Norwegian Tax Administration about all assignments and sub-assignments given to a company that is domiciled abroad, or to a person who is resident abroad, when the value of the assignment exceeds NOK 20,000 (EUR 1,700). As part of this notification, the assignor must provide information about all employees who will work on the assignment.

Literature

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Tools to support the monitoring of posted workers in the Baltic and the Nordic countries

In 2014, the Enforcement Directive (2014/67) was adopted, and the Directive was to be transposed into national law by the Member States and EEA/EFTA States by 18 June 2016. Aiming to ensure that rules on posting apply uniformly across national borders, the Directive provides different tools to promote its purpose. Among the key national enforcement actors are the Labour Inspectorates. In this working paper, we look into how the Enforcement Directive has been implemented in the Nordic and Baltic States, and what tools that have been given to the national Labour Inspectorates.



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