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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the application and implementation of Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

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1. Introduction

Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (the Directive) came into force on 29 July 2018 and entered into application on 30 July 2020. Member States had to adopt and publish the law, regulations and administrative provisions necessary to comply with the Directive by 30 July 2020.

The amendments introduced by the Directive aim to ensure a level playing field whilst also protecting the rights of posted workers. Those amendments include replacing the reference to 'minimum rates of pay' with a reference to 'remuneration' of posted workers; setting out an extended set of terms and conditions of employment in the receiving Member State for long-term postings; and guaranteeing to temporary posted workers the same basic terms and conditions that apply to local temporary workers hired in the receiving Member State.

This report reviews the application and implementation by Member States of Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services[1], as required by its Article 2. This report is accompanied by a staff working document containing further analysis underpinning this report[2].

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Both this report and the accompanying staff working document are sector neutral. Article 2(2)(b) of Directive (EU) 2018/957 requires the Commission to include in the report an assessment of whether further measures to ensure a level playing field and protect workers are necessary on the posting of drivers in the road transport sector. This provision was included in case of non-adoption of the specific legislation on the posting of drivers in that sector. Since Directive (EU) 2020/1057[3] was adopted in 2020, it is no longer necessary to include a specific assessment on the road transport sector as this will be evaluated in the report on the implementation of Directive (EU) 2020/1057[4].

This report and the accompanying staff working document pay particular attention to the situation of posted workers in subcontracting chains, in line with the mandate received from the co-legislators[5]. Considering the recent increase in the posting of third-country national workers and its expected expansion as an important intra-EU mobility channel, the report also focuses on their situation[6]. This report also explores whether any amendment to the Directive is necessary.

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[1] Directive (EU) 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, OJ L 173, 9.7.2018, p. 16.
[2] SWD (2024) 320.
[3] Directive (EU) 2020/1057 of the European Parliament and of the Council of 15 July 2020 laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector and amending Directive 2006/22/EC as regards enforcement requirements and Regulation (EU) No 1024/2012, OJ L 249, 31.7.2020, p. 49.
[4] Directive (EU) 2020/1057 requires the Commission to evaluate its implementation by 31 December 2025.
[5] Article 2(2) of Directive (EU) 2018/957.
[6] Report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals, Final Report ELA/2022/RS/027/ELA.306-2021/TITLE 3/2, 2 February 2023. The report is accessible via this link: ela-report-posting-third-country-nationals.pdf (europa.eu).
See also Employment and social developments in Europe (ESDE) 2023 - Publications Office of the EU (europa.eu)

This report, and the accompanying staff working document analyse the national legislation implementing the provisions of the Directive. They do not provide an exhaustive account of all national implementation measures nor prejudge any position the Commission might take in any future legal proceedings.

The information in this report and in the accompanying staff working document is based on the national measures transposing the Directive that Member States have communicated to the Commission, as required under Article 3(1) of the Directive. The Commission has also collected information on the application and implementation of the Directive through various sources, such as the MoveS network of legal experts[7], the Commission Expert Committee on Posting of Workers (the ECPW)[8] and a study supporting the monitoring of the Posting of Workers Directive (EU) 2018/957 and of the Enforcement Directive 2014/67/EU[9]. The Commission has also collected the views of Member States and social partners through a questionnaire distributed by the European Labour Authority (ELA).

2. Analysis of Member States' application and implementation of the Directive

2.1. Double or chain posting

The Directive addresses the situation where a worker is recruited by a temporary employment undertaking or placement agency (temporary employment agency) and hired out to perform work for a user undertaking. A double or chain posting occurs when the user undertaking sends the worker to temporarily carry out activities in a Member State other than the Member State where the worker normally works for the temporary employment agency or for the user undertaking to yet another Member State[10].

The Directive clarifies that in this situation the temporary employment agency is deemed to be the undertaking making the posting and therefore has to fulfil all the relevant obligations. In addition, the user undertaking is obliged to inform the temporary employment agency in due time if it is planning to send the worker posted by the temporary employment agency to carry out activities in another Member State.

Almost all Member States have included the Directive's provisions on temporary employment agencies in a double or chain posting situation in their national legislation. Some Member States (Hungary, Slovakia) do not allow user undertakings to assign temporary agency workers to another employer. Hungary does not allow double or chain posting when it is the Member State of establishment of the temporary employment agency. Slovakia only allows double or chain posting in the situations covered by Article 1(3)(a) (posting under a contract of services) and 1(3)(b) (intra-company posting) of Directive 96/71/EC.

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[7] The MoveS network of legal experts is a Commission-funded network of independent experts in the field of intra-EU mobility. MoveS stands for Free Movement of Workers and Social Security Coordination. It covers all the 27 EU Member States, as well as Iceland, Liechtenstein, Norway and Switzerland.

[8] Report of the subgroup on the transposition of Directive (EU) 2018/957, Report to the Committee of Experts on Posting of Workers (ECPW). https://ec.europa.eu/social/BlobServlet?docId=22913&langId=en

[9] Study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU. This study was prepared for the Commission. It reflects the views only of the authors, and the Commission is not liable for any consequence stemming from the reuse of this publication. https://op.europa.eu/en/web/general-publications

[10] See subpoint 3.1.1.3 of the report of the subgroup on the transposition of Directive (EU) 2018/957, Report to the Committee of Experts on Posting of Workers (ECPW).

A large majority of Member States identify temporary employment agencies as the undertaking that make the posting, explicitly or implicitly[11]. Most Member States[12] explicitly refer to the user undertaking's obligation to inform the temporary employment agency of the double or chain posting. Ireland, Croatia, Hungary and Slovenia have not included this provision of information requirement in their legislation.

The timeframe for the user undertaking to inform the temporary employment agency of the double or chain posting situation (as reflected in the concept 'in due time' in the Directive) varies between Member States. Some Member States require such information to be provided before commencement of the work[13], within a reasonable time before the posting[14] or without delay[15].

2.2. Terms and conditions of employment

The Directive introduces the following changes to Article 3(1) of Directive 96/71/EC regarding the terms and conditions of employment applicable to posted workers:

- the application in all sectors of the terms and conditions of employment from universally applicable collective agreements or arbitration awards or which apply according to Article 3(8) of Directive 96/71/EC;
- the concept of 'remuneration' replaces the concept of 'minimum rates of pay';
- two new elements are added to the terms and conditions of employment: conditions of workers' accommodation, where provided by the employers to workers away from their regular place of work, and allowances or reimbursement of expenditure for workers away from home for professional reasons;
- the information obligations are reinforced.

2.2.1. Application of universally applicable collective agreements to all sectors

The Directive extends the scope of application of collective agreements which have been declared universally applicable in any sector (and not only in the construction sector). Within the scope of the Directive, 18 Member States[16] apply terms and conditions of employment that stem from universally applicable collective agreements in all sectors. Nine Member States[17] do not have universally applicable collective agreements but do apply sectoral collective agreements and/or national collective agreements.

2.2.2. Remuneration

The Directive replaces the concept of 'minimum rates of pay' with 'remuneration'. The concept of 'remuneration' includes but goes beyond the concept of 'minimum rates of pay'.

Member States must therefore ensure that workers posted to their territory benefit from 'remuneration', which is defined as all the elements of remuneration rendered mandatory by national law or collective agreements which have been declared universally applicable or

[11] See subpoint 3.1.1.3 of the accompanying staff working document.
[12] Belgium, Bulgaria, Czechia, Denmark, Germany, Estonia, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovakia, Finland and Sweden.
[13] Belgium, Germany, Lithuania, Luxembourg, Malta, the Netherlands, Austria and Portugal.
[14] Denmark, Estonia, Greece, France and Cyprus.
[15] Italy.
[16] Belgium, Bulgaria, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Latvia, Luxembourg, Hungary, the Netherlands, Austria, Portugal, Romania, Slovenia and Finland.
[17] Czechia, Denmark, Italy, Cyprus, Lithuania, Malta, Poland, Slovakia and Sweden.

which apply according to Article 3(8) of Directive 96/71/EC.

Almost all Member States have included the provision on remuneration established by the Directive in their national legislation. Some Member States have opted for what can be considered as a general or broad definition of remuneration[18], whilst other Member States enumerate the mandatory elements of remuneration[19]. Two Member States (Ireland and Portugal) have not replaced the concept of 'minimum rates of pay' with 'remuneration'.

In general terms, the majority of Member States consider that the change from 'minimum rates of pay' to 'remuneration' has improved the rights of posted workers[20]. The Commission however notes that social partners and in particular employers point out difficulties in determining the remuneration applicable to posted workers with all its mandatory elements[21]. These difficulties are mainly related to the complexity of determining the remuneration in practice, for instance regarding collective agreements (particularly remuneration and its mandatory elements[22]). Employersstruggle to understand which mandatory elements of remuneration they have to take into account.

2.2.3. New elements of the terms and conditions of employment of the host Member State

The Directive adds two new elements to the list of core terms and conditions of employment of the receiving Member State that are to be granted to a worker posted to that Member State: the conditions of workers' accommodation, where provided by the employer to workers away from their regular place of work; and the allowances or reimbursement of expenditure to cover travel, board and lodging for workers' away from home for professional reasons.

In the transposition of the Directive, the applicable provisions on these two elements above vary between Member States, as detailed below. Those provisions apply to posted workers in so far as they exist for national workers in the host Member State.

12 Member States[23] have provisions on conditions of accommodation when the workers are away from their regular place of work and these provisions are applicable to posted workers. Slovenia applies these provisions only to local workers posted abroad (they do not apply to workers posted to Slovenia).

12 Member States[24] do not stipulate in their national legislation the conditions of accommodation when the workers are away from their regular place of work. However, such conditions can feature in collective agreements or in individual employment contracts, as

[18] Belgium, Germany, Estonia, Ireland, Croatia, Hungary, Italy, Malta, Austria, Poland and Finland.
[19] Bulgaria, Czechia, Spain, France, Cyprus, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania and Slovenia.
[20] See subpoint 3.1.1.4.3 of the accompanying staff working document, where it is stated that 14 Member States responding to the questionnaire on the implementation of the Directive consider that the situation of posted workers has improved following the change from 'minimum rates of pay' to 'remuneration'.
[21] See footnote 20.
[22] Some stakeholders interviewed in the context of the study supporting the monitoring of the Directive and of the Enforcement Directive have emphasised this point, in particular the challenges for employers and temporary employment agencies. See point 8.1.3 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU as well as subpoint 3.1.1.4.3 on remuneration in the staff working document accompanying this report.
[23] Bulgaria, Czechia, Denmark, Germany, Greece, Latvia, Lithuania, Luxembourg, Hungary, Portugal, Slovenia and Finland.
[24] Belgium, Ireland, Spain, France, Croatia, Italy, Cyprus, Malta, the Netherlands, Slovakia, Poland and Sweden.

provided for by applicable collective agreements, and would cover posted workers (posted temporary agency workers in the case of Poland), except in Belgium and Ireland.

In addition, 18 Member States[25] include national provisions on the reimbursement or compensation of expenditure related to travel, board and lodging for workers away from home for professional reasons. These provisions are also applicable to posted workers. Slovenia does not have specific provisions to cover the reimbursement of expenses for travel, board and lodging for workers posted away from home for professional reasons[26].

The Commission notes that there are some concerns related to substandard conditions of accommodation which may affect posted workers[27].

2.3. Information obligations

The Directive provides that Member States must (without undue delay and in a transparent manner) publish the information on the terms and conditions of employment applicable under Article 3(1) of Directive 96/71/EC, including the constituent elements of remuneration as well as the terms and conditions of employment applicable to long-term posted workers. In this context, Member States must ensure that the information provided on the single official national website is accurate and up-to-date.

If this information does not indicate which terms and conditions of employment are to be applied, this will be taken into account when determining penalties, according to national law and/or practice, in the event of infringement of the national provisions adopted pursuant to the Directive, to the extent necessary to ensure their proportionality.

Member States have set up national websites on posting in order to comply with the Directive's reinforced information obligations.

Most Member States have adapted their national legislation to establish proportionality of sanctions if the information provided on those national websites does not indicate which terms and conditions of employment are to be applied.

Ireland, Spain, France, Cyprus, Slovenia and Slovakia do not specifically have such proportionality of sanctions. However, in some of these Member States, proportionality is applied in practice through general provisions of labour law (France) or by labour inspectors (Slovakia).

The Commission notes shortcomings in the content of the information published by Member States, such as difficulties in finding information on collective agreements and incomplete or outdated information on national websites[28]. For the employers it is crucial however that the

[25] Bulgaria, Czechia, Denmark, Germany, Estonia, Greece, Spain, Latvia, Lithuania, Luxembourg, Hungary, the Netherlands, Austria, Poland, Portugal, Romania, Slovakia and Finland.

[26] See subpoint 3.1.1.4.4 of the accompanying staff working document.

[27] See footnote 26. An EU level trade union has mentioned in its response to the questionnaire on the implementation of the Directive that substandard accommodation is a persistent concern for posted workers, in terms both of qualitative and quantitative elements. See also point 6.6.2 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU. That study highlights a range of occupational, safety and health (OSH) issues related to the accommodation of posted workers (for instance, accommodation can be of poor quality and overcrowded).

[28] See subpoint 3.1.1.4.5 of the accompanying staff working document regarding, in particular, the views from stakeholders, including employer organisations.

information on the terms and conditions of employment (particularly remuneration and all its mandatory elements) applicable to posted workers (including on collective agreements and on long-term posting situations) is complete and up-to-date .

Directive 2019/1152/EU[29] on transparent and predictable working conditions has introduced new information requirements for employers to ensure that posted workers are properly informed about the core working and employment conditions of their work assignment in the host Member State. Information on the national websites is available through the 'Your Europe website'[30].

2.4. Rules on long-term posting

The Directive introduces new rules addressing long-term postings, where the effective duration of posting exceeds 12 months, or 18 months if the undertaking submits a motivated notification. In such situations, all the applicable terms and conditions of employment of the host Member State, which are laid down by law or by collective agreement within the meaning of Article 3(8) of Directive 96/71/EC must be guaranteed, with two exceptions[31].

Almost all Member States guarantee to long-term posted workers all additional terms and conditions of employment applicable by law and/or by collective agreements or arbitration awards which have been declared universally applicable. In Ireland, the same terms and conditions apply to a posted worker regardless of the duration of posting. Furthermore, all other Member States require a company to submit a motivated notification to extend a period of long-term posting from 12 months to 18 months.

The Commission notes that both the specification of the additional terms and conditions of employment applicable to posted workers in long-term posting situations; and the timeframe to submit the motivated notification vary between Member States[32]. The Commission also notes that it is necessary to ensure that national websites include information on long-term postings, which has not always been the case so far. Only complete information ensures an appropriate understanding by employers of the applicable terms and conditions of employment.

2.5. Equal treatment of posted temporary agency workers

The Directive provides that posted temporary agency workers are to be treated in the same way regarding the matters covered by Article 5 of Directive 2008/104/EC on temporary agency work[33] as workers hired-out by temporary employment agencies established in the Member State where the work is carried out.

Almost all Member States (except Ireland and Slovenia) have enacted an obligation to guarantee to posted workers the terms and conditions of employment which apply pursuant to Article 5 of Directive 2008/104/EC.

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[29] Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, p. 105.

[30] Posting staff abroad: Guidelines & social security rules - Your Europe (europa.eu)

[31] The two exceptions concern: (i) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses; and (ii) supplementary occupational pension schemes.

[32] For more information (including the views of social partners) see subpoint 3.1.1.4.6.1 of the accompanying staff working document.

[33] Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, p. 9.

In Estonia, the obligation of the user undertaking to inform the temporary employment agency of the terms and conditions of employment which apply to temporary agency workers only applies to long-term posting and chain posting, whilst Malta imposes that information obligation only for posting periods exceeding 4 consecutive weeks. Sweden imposes this obligation only when the temporary employment agency asks for it. Croatia requires the temporary employment agency to confirm in writing that it has been informed of the terms and conditions of employment.

The Commission notes therefore that some Member States either oblige the user undertaking to inform the temporary employment agency only in specific situations of the terms and conditions which apply to temporary agency workers; or introduce additional information requirements.

The Commission also notes some strong concerns that the practical application of the provisions of the Directive related to posted temporary agency workers may result in situations where less favourable conditions may be applied to such workers. This could be due to an actual intention to circumvent the rules, but it could also result from a limited awareness on the part of the temporary employment agencies and the user undertaking(s) of the relevant rules that apply in other Member States, particularly regarding collective agreements[34]. Employers reported that the complexity of the legal system regulating temporary cross-border work (e.g., posting) may lead to inadvertent non-compliance, in particular by smaller companies. Easily accessible and understandable legal information is therefore required[35].

2.6. Posting allowances

Many Member States[36] specify which parts of the allowances for the posting are paid in reimbursement of expenditure actually incurred on account of the posting, and which are part of the remuneration.

According to the Directive, where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the posting allowance are paid in reimbursement of expenditure actually incurred on account of the posting, the entire allowance is considered to be paid in reimbursement of expenditure. A large majority of Member States[37] have included this rule in their national legislation.

The Commission notes that some Member States[38] have not included in their national legislation a specific provision that posting allowances are part of remuneration unless they are paid in reimbursement of expenditure actually incurred on account of the posting. In addition, the national legislation of some Member States[39] does not include or does not clearly specify

[34] Points 6.1.2 and 6.1.3.1 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU. See also subpoint 3.1.1.4.6.2. of the accompanying staff working document.
[35] Subpoint 6.1.3.1 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU and subpoint 3.1.1.4.6.2. of the accompanying staff working document.
[36] Belgium, Bulgaria, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia and Finland.
[37] Belgium, Cyprus, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Finland and Sweden.
[38] Czechia, Denmark, Hungary, Austria, Slovenia and Sweden.
[39] Belgium, Czechia, Denmark, Germany, Ireland, Spain, Luxembourg, Hungary, Latvia, Malta, the Netherlands, Austria, Portugal, Poland, Slovenia and Finland.

that the reimbursement of travel, board and lodging expenditure for the posted worker is done in accordance with the national law and/or practice of the home Member State.

2.7. Collective agreements

The Directive extends the option of applying to posted workers collective agreements not made universally applicable in Member States that already have a system for declaring collective agreements universally applicable[40]. Of the 18 Member States that apply universally applicable collective agreements, at least 4 Member States[41] have used the option provided by the Directive to also apply to posted workers collective agreements which are not universally applicable.

2.8. Cooperation between Member States

The Directive requires that Member States provide for cooperation between the authorities or bodies competent to monitor the terms and conditions of employment mentioned in Article 3 of Directive 96/71/EC. All Member States have included in their national legislation provisions on cooperation between their competent national authorities and bodies.

2.9. Monitoring, control and enforcement

The Directive requires, inter alia, that Member States lay down effective, proportionate and dissuasive rules on penalties applicable to infringements of national provisions adopted pursuant to the Directive. In all Member States (except Ireland) infringements of national provisions implementing the Directive are sanctioned by administrative fines. Six Member States apply criminal fines[42]. The Commission notes that the penalties vary between Member States. For instance, the maximum fines range from EUR 1 100 in Latvia to EUR 400 000 in Austria and EUR 500 000 in Germany.

3. Subcontracting and posting of workers.

Article 2(2) of the Directive requires the Commission to include in its analysis of the application and implementation of the Directive an assessment of whether further measures to ensure a level playing field and protect workers are required in the case of subcontracting.

In relation to subcontracting, Article 12 of the Enforcement Directive[43] sets out a liability mechanism. According to this liability mechanism, a contractor to which the employer is a direct subcontractor, in addition to or in place of the employer, can be held liable by a posted worker with respect to any outstanding net remuneration or contributions to common funds or institutions of social partners insofar as they are covered by Article 3 of Directive 96/71/EC.

Member States are required to introduce such subcontracting liability on a non-discriminatory and proportionate basis in the construction sector and may also provide for it in other sectors. They may also introduce more stringent liability rules in terms of the scope (for instance, cover more companies involved in the subcontracting chain, rather than only the direct contractor) and the range (for instance, cover more working conditions under Article 3 of Directive 96/71/EC) on a non-discriminatory and proportionate basis. Member States may also apply

[40] See subpoint 3.1.1.4.8 of the accompanying staff working document.
[41] Greece, Hungary, the Netherlands and Finland.
[42] Belgium, Denmark, Estonia, Greece, France and Cyprus.
[43] Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), OJ L 159, 28.5.2014, p. 11.

other enforcement measures instead of these liability rules provided that these are justified and proportionate in accordance with EU law.

Considering this legal framework as well as the information collected and analysed in the context of this report, the Commission notes that one of the main challenges, which may affect the rights of posted workers, as well as the level playing field between companies, is long subcontracting chains. In those long subcontracting chains, the lack of transparency and accountability may make enforcement of the applicable rules very difficult due to problems in identifying the liable company. The direct responsibility and liability of the contractor may therefore be considerably reduced. This may also affect the recovery of unpaid wages.[44]

The liability mechanism provided for in the Enforcement Directive allows Member States to cover longer chains. However, most Member States have limited this liability to the direct contractor and have not extended it to other parties in the subcontracting chain. 10 Member States[45] have introduced a full chain liability (i.e., a subcontracting liability that is not limited to one link up the chain)[46]. Four Member States (Belgium, Spain, France and Italy) have also introduced further measures, such as a ceiling on the number of subcontracting levels within subcontracting chains[47].

In addition, the application of collective agreements may provide a different protection to posted workers in subcontracting chains and may be used to pay such workers according to less favourable agreements[48].

As regards the identified challenges, adopting good practices would help Member States and/or social partners to increase transparency and liability in subcontracting chains. These good practices include limiting the number of levels in subcontracting chains and/or extending the subcontracting liability to the full chain; and enhancing cooperation between Member States to facilitate inspections and tackle abusive practices[49].

To that end and as a follow-up to this report, the Commission could, with the support of ELA, consider mapping the current situation in Member States regarding the coverage of subcontracting liability (i.e., sectors, levels and working conditions covered). This could include providing guidance on applying more stringent rules at national level with regard to the scope of subcontracting liability (i.e., imposing full chain liability or extending liability to other terms and conditions of employment), on a proportionate and non-discriminatory basis. The Commission does not currently see the need to amend the Directive regarding subcontracting specifically.

[44] See, in this context, point 6.7.2 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU as well as section 4.2 of the accompanying staff working document.
[45] Belgium, Bulgaria, Spain, France, Italy, Lithuania, Luxembourg, the Netherlands, Austria and Poland.
[46] See subpoint 4.2.2.2 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU.
[47] See subpoint 4.2.2.1 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU.
[48] See points 4.2.2 and 5.3.4 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU.
[49] For more good practices, see section 4.3 of the accompanying staff working document.

4. Posting of third-country nationals

This section and the related section of the accompanying staff working document presents the main challenges affecting the working conditions of posting of third-country nationals as well as some good practices to address those challenges. It does not provide an account of the legal framework applicable to the entry and stay of third-country nationals in a host Member State.

The posting of workers directives apply equally to posted workers who are EU citizens and to posted workers who are third-country nationals. In this context, third-country national workers who are regularly and habitually employed by a service provider established in a Member State can be posted to another Member State without being subject in the other Member State to undue administrative formalities such as the obligation to obtain a work permit[50].

In most Member States, the same general rules on posting, which transpose the relevant EU legislation, apply to posted third-country nationals. Three Member States[51] have introduced specific provisions on posting of third-country nationals into their national legal framework. Croatia and the Netherlands explicitly state in their legislation that a person legally employed in a Member State where their employer is established does not require a work permit. Similarly, the Latvian Labour Law requires an employer to declare that a worker is legally employed in the sending Member State[52].

The Commission notes that posted third-country nationals are generally more exposed to abusive practices, such as fraudulent posting, labour rights violations, precarious working conditions, irregular payment and non-payment of social contributions[53]. Posted third-country nationals are also likely to accept remuneration below what should be paid[54]. Risks related to precarious living and working conditions also seem to be higher for posted third-country nationals [55].

In addition, posted third-country nationals are more vulnerable than EU posted workers due to their potential dependency on their employer for the renewal of work and/or residence permits[56]. They are also often unaware of their rights and face language barriers.

A number of measures could address the situations identified, such as providing better access to information on labour rights focused on posted third-country national workers[57]; enhancing

[50] Judgment of the Court of Justice of the EU of 9 August 1994, *Raymond Vander Elst v Office des Migrations Internationales*, C-43/93, EU:C:1994:310.
[51] Croatia, Latvia, and the Netherlands.
[52] See point 2.2.1 of the report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals, Final Report ELA/2022/RS/027/ELA.306-2021/TITLE 3/2.2 February 2023.
[53] See point 6.5.2 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU as well as point 3.1 of the report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals, Final Report ELA/2022/RS/027/ELA.306-2021/TITLE 3/2.2 February 2023.
[54] See point 6.5.2 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU.
[55] See point 8.5 of the study supporting the monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU.
[56] See point 3.1 of the report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals, Final Report ELA/2022/RS/027/ELA.306-2021/TITLE 3/2.2 February 2023.
[57] See, in particular, point 3.4.2 of the report on the cooperation practices, possibilities and challenges between Member States – specifically in relation to the posting of third-country nationals, Final Report ELA/2022/RS/027/ELA.306-2021/TITLE 3/2.2 February 2023.

transnational cooperation between enforcement bodies and migration authorities; and reinforcing the enforcement of the posting rules in specific sectors with a high number of posted third-country nationals[58].

5. Main conclusions and potential further actions

The transposition of the Directive by all Member States has improved the working conditions of posted workers, especially as regards their remuneration, the equal treatment of posted temporary agency workers and the reimbursement of expenditure incurred on account of the posting (e.g., expenditure on travel, board and lodging).

Member States' legislation substantially complies with the Directive's requirements. However, the Commission has identified various issues of non-conformity of national measures transposing the Directive that could be subject to further actions. These issues concern various provisions of the Directive, such as double or chain posting, remuneration, the two new elements of the terms and conditions of employment of the host Member State, long-term posting, equal treatment of temporary agency workers, posting allowances or monitoring, control and enforcement. The Commission will continue working with the Member States to ensure that the Directive is correctly transposed and applied.

The Commission notes some difficulties in determining the remuneration applicable to posted workers with all its mandatory elements. In close cooperation with Member States and social partners, ELA[59] could work on a tool to facilitate the calculation of the remuneration of posted workers and increase its transparency. Such a tool, for which the general elements could be established by ELA, would be used and implemented at national level.

The Commission also notes some concerns related to the conditions of accommodation which may affect posted workers. National inspection authorities and social partners (particularly trade unions) could, together with ELA, develop targeted awareness-raising campaigns to address issues such as the substandard conditions of accommodation that may affect posted workers, including more specific information on the right of posted workers to accommodation conditions in host Member States (where provided to national workers) and sanctions for not respecting that right.

It is also crucial that employers and workers have access to complete and up-to-date information on the terms and conditions of employment (particularly remuneration and all its mandatory elements) applicable to posted workers (including on collective agreements and on long-term posting). ELA could therefore continue and reinforce its work with Member States on making such information more transparent, comprehensive, up-to-date and easily accessible for posted workers and service providers.

The Commission has identified strong concerns in relation to the practical application of the provisions of the Directive to posted temporary agency workers. ELA could address those concerns, in close cooperation with Member States, through more effective and extensive cross-border cooperation and enforcement efforts targeting temporary agency work. Social partners could also consider supporting the work of labour inspectorates. In addition, Member States could carry out reviews of existing legislation and its implementation at the national

[58] See also section 5.2 of the accompanying staff working document.

[59] The potential further actions for ELA in this report fall under its mandate of assisting Member States and the Commission in their effective application and enforcement of EU law related to labour mobility across the EU.

level; and/or set up, with the support of ELA, assistance services for temporary employment agencies and user undertakings on the application of the posting rules.

The Commission notes that some Member States have not included some specific provisions on posting allowances in their national legislation. In this context, and also in relation to other provisions of the Directive, the Commission will engage in a dialogue with Member States in order to ensure a transposition in conformity with the Directive. In addition, ELA could facilitate the transparency of information regarding posting allowances and the reimbursement of posting related costs in Member States.

With respect to subcontracting, limiting the number of levels in subcontracting chains and/or extending the subcontracting liability to the full chain could help Member States (as the main responsible actors for the enforcement of the rules on the posting of workers) and where applicable social partners, to increase transparency and liability in subcontracting chains, on a proportionate and non-discriminatory basis. In addition, the Commission could, with ELA's support, consider mapping the current situation in Member States regarding the coverage of subcontracting liability (including providing guidance on applying more stringent rules at national level with regard to the scope of subcontracting liability).

Finally, as regards third-country national posted workers, ELA could play a key role in facilitating access to information and supporting Member States by enhancing transnational cooperation between national enforcement bodies[60].

Considering the main conclusions and further actions presented above, the Commission does not see any need to propose amendments to this Directive or to Directive 96/71/EC at this stage.

In conjunction with and without prejudice to its wider role as guardian of the Treaties, the Commission will continue working with the Member States to ensure that the Directive is correctly transposed and applied.

The Commission will also continue working with Member States, with the support of ELA, on enforcement of the posting rules.

[60] See section 5.2 of the accompanying staff working document.