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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 implemantation of 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')

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ANNEX I: ADMINISTRATIVE REQUIREMENTS AND CONTROL MEASURES

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1. ARTICLE 9

The Enforcement Directive gives Member States new tools to improve administrative cooperation and assistance and to fight against circumvention and abuses concerning the posting of workers.

In this context, Article 9 is of particular importance since it sets the administrative requirements and control measures that Member States are allowed to implement.

Paragraph 1 of Article 9 lists the administrative requirements and control measures Member States may impose and which are deemed to be justified and proportionate. Paragraph 2 of the same Article gives Member States the possibility to impose other administrative requirements and control measures, whenever the existing administrative requirements and control measures are not sufficient or efficient, provided that these are justified and proportionate.

Paragraph 5 of Article 9 provides that Member States must communicate to the Commission and inform service providers of any measures referred to in paragraphs 1 and 2 that they apply or that have been implemented by them. The Commission on its behalf shall communicate those measures to the other Member States and report regularly to the Council on measures communicated by Member States and, where appropriate, on the state of play of its analysis and/or assessment.

In addition, also Article 12 aims to tackle fraud and abuse concerning posting of workers, namely, in the subcontracting chains.

Paragraphs 7 and 8 of Article 12 provide that Member States shall inform the Commission about the measures undertaken under this Article and shall make the information generally available. In the case of paragraph 2, the information provided to the Commission shall include elements setting out liability in subcontracting chains. In the case of paragraph 6, the information provided to the Commission shall include elements setting out the effectiveness of the alternative national measures with regard to the liability rules referred to in paragraph 2. The Commission on its behalf shall make this information available to other Member States and will closely monitor the application of this article.

1.1. Austria

The following information is a nonbinding translation of the respective provisions of the Austrian Anti-Wage and Social Dumping Act.

Reporting requirement for posting or hiring out workers from an EU Member State or an EEA State or the Swiss Confederation

Section 19. (1) Employers and temporary work agencies established in an EU Member State or EEA State or the Swiss Confederation shall report the employment of workers posted or hired out to Austria. A separate report shall be filed each time a worker is posted or hired out. Retroactive changes of data pursuant to Para. 3 or 4

shall be reported without delay. A user undertaking which posts an employee to Austria in order to perform work shall be considered an employer with respect to the reporting obligations laid down in this paragraph and in Paras. 2 and 3.

(2) The posting or hiring out of workers as defined by Para. 1 shall be reported to the Central Co-ordinating Agency prior to commencement of the work. In the case of mobile employees in the transport sector, the report shall be submitted before the employees enter Austrian territory. This report shall be submitted exclusively by filling in the electronic forms of the Federal Ministry of Finance. In the event of a posting, the employer shall hand a copy of the report to the contact person as defined by Section 23 or, in the case of only one employee, to that employee or make it available electronically.

(3) The report pursuant to Para. 1 shall be submitted separately for each posting and shall include the following data; if the data changes at a later time, this shall be reported without delay:

1. employer's name, address and business license or field of business as defined in Para. 1, VAT identification number;

2. name and address of persons appointed to represent the employer in external matters;

3. name and address of the contact person pursuant to Section 23 nominated from among the employees posted to Austria or of persons established in Austria and authorised to professionally represent the parties (Section 21 Para. 2 no. 4);

4. name and address of the domestic client (general contractor);

5. names, addresses, birth dates, social security numbers and applicable social security institutions as well as the nationalities of the workers posted to Austria;

6. total period of posting as well as date of commencement and expected duration of employment in Austria for each employee, duration and scheduling of the agreed normal working hours for each employee;

7. amount of remuneration payable to the individual employee under Austrian law and date of commencement of the employment relationship with the employer;

8. place of employment (exact address) in Austria (including other work sites in Austria);

9. in cases pursuant to Section 21 Para. 2, the person (exact address) or the branch (exact address) where the reporting documents and pay documents are kept available;

10. type of work and deployment of the worker, taking into account the applicable Austrian collective agreement;

11. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is

required to employ the posted workers in the country where the employer is established;

12. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established;

(4) The report pursuant to Para. 1 shall be submitted separately for each hiring-out and shall include the following data; if the data changes at a later time, this shall be reported without delay:

1. name and address of the temporary work agency;

2. name and address of persons appointed to represent the temporary work agency in external matters;

3. name and address of the user undertaking, including VAT identification number and business licence or field of business;

4. names, addresses, dates of birth, social security numbers and social security institutions as well as citizenship of the hired-out employees or quasi-subordinate workers;

5. date of commencement and expected duration of employment of the individual hired-out employees or quasi-subordinate workers with the user undertaking;

6. places of employment in Austria, indicating the exact address;

7. in cases pursuant to Section 21 Para. 3, the person (exact address) or the branch (exact address) where the reporting documents and pay documents are kept available;

8. amount of remuneration payable to every single employee or quasi-subordinate worker under Austrian law;

9. type of work and use of the individual employees or quasi-subordinate workers, taking into account the applicable Austrian collective agreement;

10. in cases where an official permit is required to employ the hired-out employees or quasi-subordinate workers in the country where the temporary work agency is established: the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit;

11. in cases where the hired-out employees or quasi-subordinate workers need a residence permit in the country where the temporary work agency is established: the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit.

(5) If the recurring cross-border assignment of workers has been agreed under a service contract, a service procurement contract or within a group as defined by Section 15 AktG and Section 115 *GmbHG*, the posting or hiring-out to a domestic

client or user undertaking may, in derogation of Paras. 1 and 2, be reported for a period of up to three months before work is commenced for the first time.

(6) If the employee's cross-border assignment involves the fulfilment of similar service contracts entered into with several clients, all clients can be indicated in the report pursuant to Para. 1, provided that there is a close geographical and temporal connection between the service contracts.

(7) The report pursuant to Para. 1 on posting mobile employees in the transport sector shall be made exclusively pursuant to this paragraph for a period of six months in each case and has to include the following information; if the data changes at a later time, this shall be reported without delay:

1. employer's name, address and business license or field of business as defined in Para. 1, VAT identification number;

2. name and address of persons appointed to represent the employer in external matters;

3. unless the driver is the contact person (Section 23, second sentence): name and address of the contact person pursuant to Section 23 nominated from among the employees posted to Austria or of persons established in Austria and authorised to professionally represent the parties (Section 21 Para. 2 no. 4); regarding contact persons in the case of other means of transport Para. 3 no. 3 shall be applied;

4. names, addresses, birth dates, social security numbers and applicable social security institutions as well as the nationalities of the workers who will probably work in Austria in the given period;

5. license plate numbers of the vehicles operated by the employees specified in no. 4;

6. amount of remuneration payable to the individual employee under Austrian law and date of commencement of the employment relationship with the employer;

7. type of work and deployment of the worker, taking into account the applicable Austrian collective agreement;

8. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established;

9. the authority issuing the permit as well as the reference code, issue date and period of validity or a copy of the permit, provided that an official permit is required to employ the posted workers in the country where the employer is established.

Keeping reporting documents, social security documents and official permits readily available

Section 21. (1) Employers established in an EU Member State or EEA State or the Swiss Confederation shall keep the following documents readily available at the domestic place/site of work during the posting period or shall make them accessible electronically to the tax authorities or the Construction Workers' Holiday and Severance Pay Fund on site and at the time of the investigation:

1. documents showing the employee's registration for social insurance (social security document E 101 in accordance with Regulation (EEC) No. 1408/71, or social security document A 1 in accordance with Regulation (EC) No. 883/04 on the coordination of social security systems), unless the posted worker is subject to mandatory social security in Austria; if, at the time of the investigation, the employer furnishes evidence in German showing the inability to obtain these documents from the competent social security institution prior to the posting, equivalent documents in German (application for issuance of social security document E 101 or A 1 and confirmation of the competent social security institution that the employee is subject to a foreign social security scheme for the period of posting) shall be kept readily available;

2. the report pursuant to Section 19;

3. the official permit for employment of the posted workers in the country where the employer is established pursuant to Section 19 Para. 3 no. 11 or Para. 7 no. 8, provided such permit is required.

If an employee works in different places on the same day, the required documents shall be kept readily available at the first place/site of work or shall be made accessible electronically. In the case of mobile workers in the transport sector, the documents listed above shall be kept readily available in the vehicle as soon as the workers enter Austrian territory or shall be made accessible electronically. A user undertaking which posts an employee to Austria in order to perform work shall be considered an employer with respect to the obligation laid down in this provision.

(2) In derogation of Para. 1, the documents shall, except in the case of mobile workers in the transport sector, be kept readily available in Austria

1. with the contact person specified in the report pursuant to Section 19 Para. 3 no. 3; or

2. at a branch registered in Austria where the foreign employer operates not only occasionally; or

3. at a domestic independent subsidiary or the domestic parent company of a group as defined by Section 15 AktG or Section 115 *GmbHG*; or

4. with a professional representative of the parties established in Austria as defined by the Professional Accountants and Tax Advisors' Act (*Wirtschaftstreuhandberufsgesetz, WTBG*), Federal Law Gazette I no. 58/1999, the Code of Professional Conduct for Lawyers (*Rechtsanwaltsordnung, RAO*), Imperial Law Gazette no. 96/1868, and the Code of Ethics of Notaries (*Notiariatsordnung, NO*), Imperial Law Gazette no. 75/1871,

or made electronically accessible at the places indicated in nos. 1 to 4 at the time of investigation, provided this is specified in the report pursuant to Section 19 Para. 3

no. 9. If the investigation by the tax authorities or the Construction Workers' Holiday and Severance Pay Fund takes place outside the business hours of the professional representative, the latter shall, upon the tax authorities' or the Construction Workers' Holiday and Severance Pay Fund's request, submit the documents by the end of the second subsequent working day. No reimbursement of expenses shall be due for submitting the documents.

(3) The user undertaking shall keep the following documents on each hired-out worker readily available at the domestic place/site of work during the period the worker is hired out or shall make them accessible electronically to the tax authorities or the Construction Workers' Holiday and Severance Pay Fund on site and at the time of the investigation:

1. documents on the registration of the worker with a social security institution (social security document E 101 or A 1), unless the hired-out worker is subject to mandatory social security in Austria; if, at the time of the investigation, the temporary work agency furnishes evidence in German showing the inability to obtain these documents from the competent social security institution prior to the hiring-out, equivalent documents in German (application for issuance of social security document E 101 or A 1; confirmation of the competent social security institution that the employee is subject to a foreign social security scheme for the period of being hired out) shall be kept readily available;

2. the report pursuant to Section 19 Paras. 1 and 4;

3. the official permit for employment of the hired-out workers in the country where the temporary work agency is established pursuant to Section 19 Para. 4 no. 10, provided such permit is required.

Para. 2 shall apply accordingly.

Keeping wage or salary documents readily available

Section 22. (1) For the time of employment (in Austria) or the period of posting (Section 19 Para. 3 no. 6), employers as defined by […] Section 19 Para. 1 shall keep the employment contract or the statement of terms and conditions (*Dienstzettel*) as defined by Council Directive 91/533 on an employer's obligation to inform employees of the conditions governing the contract or employment relationship, the payslip (*Lohnzettel*), proof of wage payment or bank transfer statements, wage records, records of hours worked and documents relating to pay categorization in order to verify the remuneration that is payable to the posted employee under Austrian law for the duration of the employment, readily available in German, with the exception of the employment contract, at the place/site of work or make them accessible electronically to the tax authorities or the Construction Workers' Holiday and Severance Pay Fund on site and at the time of the investigation, even if the employment of the individual worker in Austria ended prematurely. The employment contract shall be kept readily available either in German or in English. If an employee works in different places on the same day, the pay documents shall be kept readily available at the first place/site of work or shall be made accessible electronically. A user undertaking which posts an employee to Austria in order to perform work shall be considered an employer with respect to the obligation laid down in this provision. Section 21 Para. 2 shall be applied accordingly.

(1a) In the case of posting mobile employees in the transport sector - in derogation of Para. 1 above - the employment contract or the statement of terms and conditions (*Dienstzettel*) as well as the records of hours worked (records as defined in Regulation (EU) No. 165/2014 on tachographs in road transport, OJ L 60 of 28 February 2014, p. 1), shall be kept readily available in the vehicle already as soon as the workers enter Austrian territory or shall be made accessible electronically to the tax authorities on site and at the time of the investigation. Payslips (*Lohnzettel*), proof of wage payment or bank transfer statements as well as documents relating to pay categorization for the mobile employee in the transport sector shall be submitted upon request of the tax authorities for the calendar month during which the inspection was carried out and, additionally, for the preceding calendar month if the employee performed work in Austria in the preceding month, within a period of 14 calendar days after the end of the calendar month of the inspection. If the pay documents as specified in the second sentence are not submitted to the tax authorities within this period or are incomplete, this is deemed a failure to keep the pay documents readily available.

(2) In the event of cross-border temporary agency work, the domestic user undertaking shall be obligated to keep the pay documents readily available pursuant to Para. 1. The temporary work agency shall demonstrably provide the pay documents pursuant to Para. 1 to the user undertaking.

Contact person

Section 23. In accordance with the provisions of this Federal Act, the contact person nominated in the report pursuant to Section 19 Para. 3 no. 3 shall keep documents readily available, accept documents and provide information. The contact person shall be nominated from among the workers posted to Austria or may be a person established in Austria and authorised to professionally represent the parties (Section 21 Para. 2 no. 4). In the case of posting mobile employees in the transport sector, the driver of the vehicle shall be the contact person unless the employer nominates a person authorised to professionally represent the partiers (Section 21 Para. 2 no. 4) as the contact person.

Investigations of tax authorities

Section 12. (1) The tax authorities shall be entitled to monitor compliance with the requirement of keeping available the documents specified in Sections 21 and 22 and, in connection with employees with their habitual place of work outside of Austria, to verify compliance with the pay to which an employee not subject to the *ASVG* is entitled in Austria as stipulated in Section 29 under consideration of the individual classification criteria (verification of pay levels), and to:

1. freely access the place of employment, premises and any external workplaces or sites as well as the day rooms of the employees and to use roads, even where public access is otherwise prohibited;

2. request from the individuals encountered there information concerning all facts relevant for the investigation pursuant to Para. 1, if there are grounds for assuming that those individuals are employers or employees; and to

3. inspect the documents required for the investigation (Sections 21 and 22), make copies of these documents and request the handover of these documents, with

such documents to be sent by the end of the second working day after the request was made. If the place/site of work changes within one working day and the inspection is not carried out at the first place/site of work, the documents shall be demonstrably handed over to the tax authority, with the documents to be sent by the end of the second working day after the request was made. No reimbursement of expenses shall be due for submitting the documents.

(2) The tax authorities shall submit to the CWSD Competence Centre the results of the investigations regarding the pay level verification and at the request of the CWSD Competence Centre conduct further investigations regarding previously submitted results which must be specifically defined or investigations based on substantiated third-party reports.

Determination of offences by the Construction Workers' Holiday and Severance Pay Fund

Section 15. (2) The Construction Workers' Holiday and Severance Pay Fund shall as part of its activities be entitled to check whether the documents are kept readily available pursuant to Sections 21 and 22, make copies of these documents and request the handover of these documents, with such documents to be sent by the end of the second working day after the request was made. If the place/site of work changes within one working day and the inspection is not carried out at the first place/site of work, the documents shall be demonstrably handed over to the Construction Workers' Holiday and Severance Pay Fund, with the documents to be sent by the end of the second working day after the request was made. No reimbursement of expenses shall be due for submitting the documents.

1.2. Belgium

The measures within the meaning of Article 9 of Directive 2014/67/EU that Belgium applies to the companies posting workers on its territory are mentioned hereafter. The measures specifically concern the posting companies and have been designed with a view to avoiding as much as possible their administrative burden.

These measures are based on paragraph 1 of the aforementioned Article 9.

1. Posting notification "LIMOSA".

A foreign employer posting gainfully employed workers to Belgium, or his/her authorised representative, must notify the Belgian authorities via the website https://www.international.socialsecurity.be/working_in_belgium/en/limosa.html before the employment of the workers in Belgium.

A first information in that regard, the relevant contact details and links concerning the aforementioned notification can also be consulted on the website of the Federal Public Service Employment, Labour and Social Dialogue (single official national website within the meaning of Article 5 of Directive 2014/67/EU): see the following webpage in that regard http://www.employment.belgium.be/defaultTab.aspx?id=41574 .

2. Liaison person

An employer who is going to post workers in Belgium must communicate to the Belgian Labour Inspectorate the identification and contact details of a liaison person.

2.1. This liaison person is the natural person appointed by the (posting) employer who can be contacted, if need be, by the Belgian Labour Inspectorate to deliver and receive, on behalf of this employer, any document or notification regarding the employment of posted workers in Belgium.

2.2. The obligation of communicating the identification and contact details of a liaison person has been implemented :

- as regards all the activities subject to the obligation of serving the posting notification LIMOSA, via such a notification;

- as regards certain activities exempted from the posting notification LIMOSA by an information sent to to the Belgian Labour Inspectorate:

a) road transport activities of persons by bus or coach but which do not consist in Belgium in cabotage or transit;

b) road transport activities of goods on behalf of third parties but which do not consist in Belgium in cabotage or transit;

c) activities of initial assembly and/or first installation of goods where this is an integral part of a contract for the supply of goods and which are necessary for taking the goods supplied into use, are carried out by the skilled and/or specialist workers of the supplying undertaking, where the period of posting does not exceed eight days and, where those activities do not relate to activities in the field of building work.

2.3. More information regarding the liaison person, the relevant contact details and links thereof can be consulted on the website of the Federal Public Service Employment, Labour and Social Dialogue (single official national website within the meaning of Article 5 of Directive 2014/67/EU): see the following webpage in that regard http://www.employment.belgium.be/defaultTab.aspx?id=47327 .

3. Documents to be delivered at the request of the Belgian Labour Inspectorate

3.1. The Belgian Labour Inspectorate may, if need be, under certain conditions, ask the posting company to deliver documents of the country of origin which are equivalent to the Belgian social records concerning remuneration and other documents referred to in the Belgian Posting Act of 5 March 2002.

3.2. Those documents are the following :

- as regards remuneration : the documents from the country of origin and which are equivalent to the individual account and the wage/salary statement and/or, if need be, a translation of the aforementioned documents, in French, Dutch, German or English language;

- other documents referred to in the Posting Act of 5 March 2002 i.e. :

a) a copy of the employment contract or any equivalent document;

b) information regarding the currency to be used for the payment of remuneration, the benefits in cash or kind attendant on the employment abroad and the conditions governing the employee's repatriation;

c) time-sheets indicating the beginning, end and duration of the daily working time;

d) a proof of payment of the posted workers' wages.

e) if need be, a translation of the aforementioned documents, in French, Dutch, German

or English language.

The aforementioned foreign documents can be delivered in paper or electronic form.

3.3. The aforementioned documents may also be asked by the Belgian Labour Inspectorate for a period of one year from the end of the posting.

3.4. An information regarding the documents to be delivered, the relevant contact details and links thereof can be consulted on the website of the Federal Public Service Employment, Labour and Social Dialogue (single official national website within the meaning of Article 5 of Directive 2014/67/EU). see the following webpage in that regard http://www.employment.belgium.be/defaultTab.aspx?id=47330.

1.3. Bulgaria

Administrative requirements and control measures in relation with posting of workers within the framework of provision of services on the territory of Bulgaria, which exist up to this moment are settled in Bulgarian Labour Code in Art 121a and in Ordinance on the conditions and procedures for sending to business trips workers and employers within the frames of provision of services (the Ordinance). Article 9, paragraph 1, letters a), d) and e) are settled in Art 12 of the Ordinance as follows:

In para 1 are listed the data which should be contain in the submitted information according to the posting of workers from other Member State on the territories of Bulgaria, namely:

1. Data about employer

2. Representative

3. Identification number of a natural or legal person or number of a document, issued by a Member State or a third country, certifying the enterprise's registration in the country of establishment;

4. Registered office and head office of the employer, who posted the workers;

5. Correspondence address of the employer who posted the workers;

6. Expected number of the posted or the sent workers;

7. Contact person to receive and send documents from/to the competent authorities in Bulgaria;

8. Contact person, if necessary, to act as a representative, through whom the respective social partners may try to involve the employer in the collective bargaining for the period of the provision of services.

Para 2 of Art 12 of the Ordinance provides that mentioned Application form shall be submitted to the General Labour Inspectorate Executive Agency by the single national website before genuine posting of workers. The process of development of the internet website is connected with creating of Register for posted workers to Bulgaria. Meanwhile, the application shall be submitted on paper to the relevant territorial Directorate of the Labour Inspectorate Executive Agency by working place of the posted worker or employee, based on Article 2 from Transitional and concluding provisions of the Ordinance. The application form is available on the official GLI EA website in both Bulgarian and English at the following link: http://www.gli.government.bg/page.php?c=211&d=2767. There is also information about the minimum working conditions for the Republic of Bulgaria.

In para 3 of Art 12 is laid down the obligation of the employer to notify immediately the General Labour Inspectorate Executive Agency about any change in the circumstances under Para 1 with exception of data about changing of employer, which are to be sent within 7 day term.

An additional information exists in Article 13 of the Ordinance that an employer or undertaking, providing temporary work, established or performing activity under the legislation of a Member State, sends to business trip a worker or employee – citizen of a third country, who shall be admitted to work after issuing a work permit or a single permit for work in the EU, issued by another Member State.

The provisions of Art 9 paragraph 1, letters b), c) and d) from Directive 2014/67/EU are settled to Bulgarian legislation with Art 14 of the Ordinance, in the following way:

In para 1 are listed the obligations of the employer, who is posting workers on the territory of Bulgaria to provide the local person, accepting a worker or an employee, sent to business trip, copies on paper or electronic media of: the labour contracts or another document, certifying the existence of employment relationship under the legislation of the sending state; the documents, certifying the working time, containing data for the beginning, the end and the length of the working period; the documents for the salaries paid or copies of equivalent documents, accompanied by a translation into Bulgarian language.

Furthermore, in para 2, is settled the obligation of the local person to keep the documents under para 1 at the work place of the worker or employee for the period of posting.

In para 3 of Art 14 of the Ordinance is stated that upon request by the Labour Inspectorate Executive Agency, the employer, who is posting his workers or the temporary work agency, assigning workers, is obliged to provide the required documents for performing an inspection. The employer or the temporary work agency shall provide the requested documents for a period of up to 1 year after the end of posting.

1.1. Croatia

Administrative requirements and control measures (Article 9)

1. Obligation to submit a posting declaration before the commencement of posting

When providing services in the Republic of Croatia, every service provider (employer) posting workers to Croatia, regardless of the State of the establishment, is obliged to submit a posting declaration before the commencement of posting/ before start of any work or service in Croatia.

Posting declaration should be submitted to the Labour Inspectorate electronically to the following e- mail address: postingdeclaration.inspektorat@mrms.hr

The form of the Posting declaration is prescribed and available here.

http://www.mrms.hr/posting/instructions-for-foreign-companies/

2. Obligation to notify data changes in already submitted Posting declaration or Notification of data change

If submitted data changes during the posting, the employer is obligated to notify any change of those data by sending the Form 2 - Notification of change of submitted posting declaration Form 2 EN.

This notification must be submitted **at latest 3 working days after the data change**, by electronic means, to the e-mail address: postingdeclaration.inspektorat@mrms.hr

For non-compliance, a fine in an amount ranging HRK 10,000.00-HRK 30,000.00 shall be imposed on the legal person and on the responsible person of the legal person in an amount ranging HRK 1,000.00- HRK 3,000.00. A fine in an amount ranging HRK 1,000.00-HRK 3,000.00 shall be imposed on the employer natural person.

An on-the-spot fine in the amount of HRK 5,000.00 shall be imposed on the employer legal person. An on-the-spot fine in the amount of HRK 500.00 shall be imposed on the responsible person of the legal person and on the employer natural person.

3. An obligation to designate a contact person who, during the posting period, keeps relevant documentation in Croatia, available to the inspecting authority and other Croatian competent authorities (Article 86, paragraph 13 of the Foreigners Act)

In the Posting declaration, a foreign employer has to authorize and designate a person who shall at the territory of the Republic of Croatia, during the posting period, at the place of work or another clearly defined and available place in the Republic of Croatia, keep or make available or retain copies in paper or electronic form of the employment contract or a letter of engagement, wage calculation showing all the elements and method of determination of wage amount, payslips, proof of payment of wages, time-sheets indicating the beginning, end and duration of the working time, for third country national work permit or other act proving that a

worker is legally employed, and other evidence necessary for control and supervision (such as a copy of contract between the contractor and foreign employer, documents in the field of safety and health at work).

In the case of non-compliance, a fine in an amount ranging HRK 31,000.00 - HRK 50,000.00 shall be imposed on the employer legal person. A fine in an amount ranging HRK 5,000.00-HRK 10,000.00 shall be imposed on the responsible person of a legal person and on the employer natural person.

An on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the employer legal person. An on-the-spot fine in the amount of HRK 2,500.00 shall be imposed on the responsible person of the legal person and on the employer natural person.

4. An obligation to, at request of the competent authorities, provide translation of requested documents into the Croatian language and provide the competent authorities with all other necessary information

(the employment contract or a letter of engagement, wage calculation showing all the elements and method of determination of wage amount, payslips, proof of payment of wages, time-sheets indicating the beginning, end and duration of the working time, for third country national work permit or other act proving that a worker is legally employed, and other evidence necessary for control and supervision (such as a copy of contract between the contractor and foreign employer, documents in the field of safety and health at work)

In the case of non-compliance, a fine in an amount ranging HRK 31,000.00 - HRK 50,000.00 shall be imposed on the employer legal person. A fine in an amount ranging HRK 5,000.00- HRK 10,000.00 shall be imposed on the responsible person of a legal person and on the employer natural person.

An on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the employer legal person. An on-the- spot fine in the amount of HRK 2,500.00 shall be imposed on the responsible person of the legal person and on the employer natural person.

5. An obligation to keep certain documents after the termination of posting

The service provider/ foreign employer must keep and upon request of the competent authorities of the Republic of Croatia, submit the documents referred to in point 4., for a period of five years after the end of posting.

In the case of non-compliance, a fine in an amount ranging HRK 31,000.00-HRK 50,000.00 shall be imposed on the legal person. A fine in an amount ranging HRK 5,000.00-HRK 10,000.00 shall be imposed on the responsible person of a legal person and on the employer natural person.

An on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the employer legal person. An on-the-spot fine in the amount of HRK 2,500.00 shall be imposed on the responsible person of the legal person and on the employer natural person.

6. An obligation to designate domestic authorized recipient in Croatia

In the Posting declaration a service provider/ foreign employer has to designate a person, residing in the Republic of Croatia, who will be authorized on behalf of and on account of the foreign employer to co-operate with the competent authorities, and, if necessary, receive, serve and send out requests, notices and other documents and correspondence and forward it to the foreign employer.

In the case of non-compliance, a fine in an amount ranging HRK 31,000.00-HRK 50,000.00 shall be imposed on the employer legal person. A fine in an amount ranging HRK 5,000.00-HRK 10,000.00 shall be imposed on the responsible person of a legal person and on the employer natural person.

An on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the employer legal person and on-the- spot fine in the amount of HRK 2,500.00 shall be imposed on the responsible person of the legal person and the employer natural person.

LEGAL PROVISIONS

Posting declaration Article 89, Foreigners Act

(1) A foreign employer referred to in Article 86 of this Act, i.e., the employer established in a third country, shall submit a posting declaration prior to the commencement of the posting period and only after the posted workers, who are nationals of a third country, have been granted work and temporary residence permit or certificate of registered employment in accordance with the provisions of this Act.

(2) The declaration referred to in paragraph 1 of this Article shall be submitted electronically, using a prescribed form, to the central state administration body competent for labour inspection and occupational safety and health.

(3) The employer referred to in paragraph 1 of this Article shall, during the period of posting, and within period of three working days, report any changes made to data in the posting declaration.

(4) The content and form of the posting declaration referred to in paragraph 1 of this Article and the method of reporting any data changes referred to in paragraph 3 of this Article shall be prescribed in an ordinance by the Minister of Labour.

Posted worker Article 8, paragraph 13, 14 and 15, Foreigners Act

(13) A foreign employer shall authorize and designate, in the declaration referred to in Article 89 of the Act, a person to keep, during the posting period, at the work place or at any other clearly designated and accessible place in the Republic of Croatia, copies of the employment contracts or other documents on which an employment relationship is based, work permits or any other document proving that the posted worker, who is a third-country national, is legally employed, wage statement specifying all the elements and the method of determining the amount of the wage (payroll account), proof of payment of wage, working time records specifying the beginning, duration and end of working hours and any other proof necessary for control and supervision. Such a person shall make these documents available, in hard copy or in electronic form, if so requested by the competent body and shall provide a Croatian translation of these documents, if so requested by a

competent body, and shall also provide competent bodies with any other required information.

(14) A foreign employer shall designate, in the declaration referred to in Article 89 of the Act, a contact person in the Republic of Croatia who shall be authorized, during the period of the posting, to cooperate on behalf of the employer with the competent authorities and to send and receive documents, requests, notifications and other correspondence, if necessary.

(15) A foreign employer shall keep, and provide, if so requested by the competent bodies of the Republic of Croatia, the documents referred to in paragraph 13 of this Article, for a period of five years after the posting period has ended.

PENAL PROVISIONS Article 288, Foreigners Act

(1) A fine in an amount ranging from HRK 10,000.00 to HRK 30,000.00, for a misdemeanour, shall be imposed on the foreign employer - legal person if he fails to submit a posting declaration, prior to the posting, using a prescribed form or submits an incomplete or inaccurate posting declaration, or fails to report any changes in the data provided in the declaration (Article 89).

(2) For a misdemeanour referred to in paragraph 1 of this Article, a fine in an amount ranging from HRK 1,000.00 to HRK 3,000.00 shall be imposed on the foreign employer natural person and responsible person of the foreign legal person.

(3) An on-the-spot fine in the amount of HRK 5,000.00 shall be imposed for a misdemeanour referred to in paragraph 1 of this Article, on the foreign employer legal person and an on-the-spot fine in the amount of HRK 500.00 shall be imposed on the foreign employer natural person and the responsible person of the foreign legal person.

(4) A fine in an amount ranging from HRK 31,000.00 to HRK 50,000.00, for a misdemeanour, shall be imposed, for every foreign national, on a legal person for whom the services are intended if they are aware or could have been aware of the fact that they are using the services of a posted worker engaged unlawfully by the foreign employer (Article 86, paragraph 8).

(5) A fine in an amount ranging from HRK 4,000.00 to HRK 6,000.00, for a misdemeanour, shall be imposed, for every foreign national, on a natural person for whom the services are intended and the responsible person of the legal person for whom the services are intended if they are aware or could have been aware of the fact that they are using the services of a posted worker engaged unlawfully by the foreign employer (Article 86, paragraph 8).

(6) For a misdemeanour referred to in paragraph 4 of this Article, an on-the-spot fine in the amount of HRK 15,500.00 shall be imposed, for every foreign national, on the legal person for whom the services are intended and a fine in the amount of HRK 2,000.00 shall be imposed, for every foreign national, on the responsible person of the legal person for whom the services are intended and on service user natural person.

(7) A fine in an amount ranging from HRK 31,000.00 to HRK 50,000.00, for a misdemeanour, shall be imposed on the foreign employer legal person if fails to

authorize and designate a person to keep, during the posting period, at the work place or at any other clearly designated and accessible place in the Republic of Croatia, copies of the employment contract or any other document on which employment relationship is based, work permits or any other documents proving that the posted worker is legally employed, wage statements specifying all the elements and method of determining the amount of the wage, proof of wage payment, working time records specifying the beginning, duration and end of working hours and other proof necessary for control and supervision or, if fails to make available, in hard copy or in electronic form, these documents, if so requested by the competent body. This fine shall also be imposed on the foreign employer legal person if the employer fails to provide a Croatian translation of these documents, if so requested by a competent body, or if the employer fails to provide competent bodies with any other required information.

(8) A fine in an amount ranging from HRK 5,000.00 to HRK 10,000.00, for a misdemeanour referred to in paragraph 7 of this Article, shall be imposed on the foreign employer natural person and the responsible person of the foreign legal person (Article 86, paragraph 13).

(9) For a misdemeanour referred to in paragraph 7 of this Article, an on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the foreign employer legal person and an on-the-spot fine in the amount of HRK 2.500.00 shall be imposed on the foreign employer natural person and the responsible person of the foreign legal person.

(10) A fine in an amount ranging from HRK 31,000.00 to HRK 50,000.00 shall be imposed on a foreign employer legal person if the employer fails to authorize and designate a contact person who shall be authorized, during the period of the posting, to cooperate on behalf of the employer with the competent authorities and to send and receive documents, requests, notifications and other correspondence, if necessary (Article 86, paragraph 14).

(11) A fine in an amount ranging from HRK 5,000.00 to HRK 10,000.00, for a misdemeanour referred to in paragraph 10 of this Article, shall be imposed on the foreign employer who is a natural person and the responsible person of the foreign legal person (Article 86, paragraph 14).

(12) For a misdemeanour referred to in paragraph 10 of this Article, an on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the foreign employer legal person and an on-the-spot fine in the amount of HRK 2.500.00 shall be imposed on the foreign employer natural person and the responsible person of the foreign legal person.

(13) A fine in an amount of HRK 31,000.00 to HRK 50,000.00, for a misdemeanour, shall be imposed on the foreign employer who is a legal person where the employer fails to provide, if so requested by the competent authorities of the Republic of Croatia, documents referred to in Article 86 paragraph 13 of this Act for the period of five years after the completion of the posting period.

(14) A fine in an amount ranging from HRK 5,000.00 to HRK 10,000.00, for a misdemeanour referred to in paragraph 13 of this Article, shall be imposed on the foreign employer who is a natural person and the responsible person of the foreign legal person (Article 86, paragraph 15).

(15) For a misdemeanour referred to in paragraph 13 of this Article, an on-the-spot fine in the amount of HRK 15,500.00 shall be imposed on the foreign employer who is a legal person and an on-the-spot fine in the amount of HRK 2.500.00 shall be imposed on the foreign employer who is a natural person and the responsible person of the foreign legal person.

1.2. Cyprus

Cyprus transposed the Directive into national Law in June 2017 (16/6/2017). The Posting of Workers in the Framework of the Provision of Services Law (N.63 (I) / 2017) and Regulations of 2017 (Κ.Δ.Π 517/2017) is the Legislation which provides in the same way the subject matter of Article 1 of the Directive.

The provision of paragraph 1 of Article 9 was transposed in the same way into the above national Law. Specifically Section 11(1) of the above law provides as follows:

Any European company posting workers to Cyprus is obliged to submit to the Department of Labour, which is the competent authority for posting, before beginning of the provision of services (there is no specific timeframe) via email, fax or by post office, a written statement in Greek or in English with the following information:

(a) Written statement on:

(i) Name of the undertaking, its head office address and its legal status

(ii) Name of the legal representative and the representative in the Republic of Cyprus if such a representative exists

(iii) Address where posted workers will provide services and name, address and legal status of the undertakings receiving the services

(iv) Date of starting posting and the possible duration

(v) Nature of economic activity

(b) List of Posted Workers (full name, passport no, occupation)

2. In case something of the above administrative requirements has changed or has not been submitted the undertakings are responsible to provide the competent authority with the appropriate information within 15 days from the date of any change.

3. Posting of workers without submitting the above papers is prohibited.

Moreover the provisions of paragraph (b), (d)-(f) of Article 9 of the Directive have been transposed in the Cyprus Regulations (Κ.ΔΠ 517/2017) in the same way (Regulation 6) according to our national Law.

1.3. Czech Republic

A. Regarding the administrative requirements and control measures according to the Art. 9/1, Czechia has adopted the following measures:

Obligation on the part of the receiver of the transnational service **to notify posting of workers** to the Labour Office. The notification obligation is laid down in the Section 87 of the Employment Act (435/2004 Coll.):

"Notification Obligations of the Employer

Section 87

(1) Should a citizen of a European Union Member State, his family member (Section 3 paragraph 2), family member of a citizen of the Czech Republic given in Section 3 paragraph 3, or a foreign national within the meaning of Section 98 a) to e) and j) to s) and in Section 98a, as not requiring a work permit, take up work, or a foreign national who is required to have a work permit, **the employer, or the legal entity or natural person who concluded a contract with a foreign employer, based on which these persons were posted to perform tasks arising from this contact in the territory of the Czech Republic, shall inform the competent regional branch of the Labour Office in writing of this fact no later than on the day when this persons takes up employment.** A similar obligation arises in cases when an event occurs when the foreign national no longer needs to have work permit, Green Card or Blue Card to continue his employment, and this notification requirement shall be complied with at the latest within 10 calendar days from the day on which the event eliminating the obligation to have a work permit occurred."

(2) The written notification shall contain data from the records the employer shall be required to keep pursuant to Section 102 paragraph 2. Any amendment to this data must be reported by the employer or the legal entity or physical person who concluded a contract with a foreign employer, based on the persons given in paragraph 1 were posted to perform tasks arising from this contract in the territory of the Czech Republic at the latest within 10 calendar days of the day on which the amendment was made or when he/she learned of it.

(3) The employer, or the legal entity or natural person, who concluded a contract with a foreign employer, based on which the persons given in paragraph 1 were posted to perform tasks arising from this contract in the territory of the Czech Republic, shall **inform the competent regional branch of the Labour Office of the termination of their employment or posting within 10 calendar days**.

The pieces of information to be notified are (according to the Section 102/2 and 91/1 of the Employment Act):

a) identification data of the foreign national,

b) an address in the country of permanent residence and a postal address,

c) the passport number and the name of the issuing authority,

e) the type of work, place of work and the period during which the work will be performed

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the sex of these persons;

the first day and last day of employment or posting to work by an employer from the EU Member State.

Obligation on the part of the receiver of the transnational service **to keep record** of the pieces of information which are subject to the notification obligation. The record obligation is laid down in the Section 102/2 of the Employment Act:

"(2) The employer shall be obliged to maintain records on nationals of EU Member States, their family members (Section 3 paragraph 2) and family members of the citizens of the Czech Republic given in Section 3 paragraph 3, and all foreign nationals he/she employs. The same obligation shall apply to a legal entity and natural person that have concluded contract with a foreign employer, on the basis of which the persons given in Section 87 paragraph 1 were posted to perform task arising from the contract in the territory of the Czech Republic. The records shall contain the data listed in Section 91 paragraph 1 point a), b), c) and e) as well as the sex of these persons, broken down in terms of the sector (industrial) classification of economic activities, the highest level of academic achievement, the academic qualifications required to perform the work, the period for which the work permit has been issued and for which he/she has a residence permit, the first day and last day of employment or posting to work by a foreign employer. **The legal entity and natural person that have concluded contract with a foreign employer, on the basis of which the persons given in Section 87 paragraph 1 were posted to perform task arising from the contract in the territory of the Czech Republic shall maintain records on data listed in Section 91 paragraph 1 point a), b), c) and e) as well as the sex of these persons, the first day and last day of employment or posting to work by an employer from the EU Member State.**"

Posting by temporary work agencies constitutes a specific case of transnational provision of services. According to Section 14/4 of the Employment Act, temporary agencies have obligation to notify to the Labour Office the following pieces of information (listed in Section 61 of the Employment Act): identification data of the brokering entity, the scope of business, the type of brokerage (Section 14/1), the type of employment to be performed in Czechia, and the period during which they intend to perform this activity; if the brokering entity is a natural person, s/he should also notify identification data of the liable representative.

"(4) This [the conditions for employment brokering set forth in this Act] shall not affect the rights of natural persons or legal entities established in other European Union Member States for the purpose of brokering employment in accordance with the legislation **to provide brokering services on a temporary or isolated basis on the territory of the Czech Republic**; however, **these persons shall be required to notify the Labour Office in writing of the details set forth in Section 61, paragraphs 1 or 3, and the period during which they intend to perform this activity at the latest on the day they begin these activities**."

Moreover, according to the Section 136/2 of the Employment Act, the employer established in EU Member State who posted worker to Czechia is obliged **to keep - at the workplace - copies of documents proving the existence of the labour law relationship**. These documents have to be **translated into the Czech language.**

1.4. Denmark

The Act on the posting of workers, etc.

Part 3a

The Register of Foreign Service Providers

7a. - A foreign undertaking posting workers to Denmark in the framework of its provision of services must notify the following information to the Danish Business Authority:

1) The name, business address and contact information of the undertaking
2) Dates of the commencement and completion of the service
3) The location of the performance of the service
4) A contact person for the undertaking. The contact person must be appointed by the undertaking among the individuals who are posted to Denmark in connection with the performance of the service
5) The undertaking's industry code
6) The identity of workers posted by the undertaking and the duration of the period of posting
7) Information about any VAT registration in the home country
8) Information on social security in relation to the workers, which the undertaking has notified according to para. 6) above
9) Information on the Danish assignor in connection with the performance of the service if the assignor is not a private person.

(2) A foreign undertaking that provides services while carrying out work in Denmark without employing any workers or without posting workers to Denmark must notify the following information for registration with the Danish Business Authority:

1) The name, business address and contact information of the undertaking
2) Dates of commencement and completion of the service
3) The location of the performance of the service
4) The undertaking's industry code
5) Information on any VAT registration in the home county
6) Information on social security in the home country
7) Information on the Danish assignor in connection with the performance of the service if the assignor is not a private person.

(3) A foreign undertaking that provides services while carrying out work in Denmark without the requirements for posting being met as set out in section 4 must notify the following information to the Danish Business Authority:

1) The name, business address and contact information of the undertaking
2) Dates of the commencement and completion of the service
3) The location of the performance of the service

4) A contact person for the undertaking. The contact person must be appointed by the undertaking among the individuals who work in Denmark in connection with the performance of the service
5) The undertaking's industry code
6) The identity of the workers who perform the service in question and the duration of their employment
7) Information on any VAT registration in the home county
8) Information on social security in the home country in relation to the workers who have been notified according to para. 6) above
9) Information on the Danish assignor in connection with the performance of the service, if the assignor is not a private person.

(4) The notification according to subsections (1) – (3) must be filed according to the Act on the Procedure for Notification of certain Information etc. to the Danish Business Authority.

(5) Information that has been notified according to subsections (1) - (3) may solely be used for:

1) Control by Danish authorities of whether undertakings comply with current legislation related to work in Denmark
2) Control by Danish authorities of the compliance with the requirements for posting workers to Denmark
3) Case processing work at the Danish Labour Market Fund for Posted Workers
4) Statistics on foreign undertakings and posted workers.

(6) The information required according to subsections (1) – (3) must be notified no later than at the same time as the performance of the service in Denmark is commenced. Changes in the information must be notified no later than on the first weekday after the change.

(7) The Danish Business Authority may lay down rules on the notification of information according to subsections (1) – (6), including rules on the conditions which notifying parties may or must register in the Authority's computer system and the use of this system.

7b.-(1) An undertaking shall not notify information according to section 7a if

1) The duration of the performance of the service does not exceed eight days,
2) The service is performed as part of the delivery of a technical plant or a technical installation and
3) The worker or the independent undertaking, see section 7a(2) is tasked with and a specialist in or qualified for fitting, installing, inspecting, repairing or providing information about a technical plant or a technical installation in Denmark.

(2) The Minister for Employment may lay down rules according to which certain short-term provisions of services are exempted from the notification obligation set out in section 7a.

7c-(1) The information referred to in section 7a(1) para. 1) – 5) and para. 7, subsection (2) para. 1) – 5) and subsection (3) para. 1) – 5) and 7) above may be made available to the public. Information about the number of posted workers who are employed at a work site may furthermore be made available to the public.

(2) A trade union which has entered into a collective agreement with a foreign undertaking may when an industrial disputes procedure on the interpretation of or a breach of the agreement has been commenced obtain access to the information notified according to section 7a(1) para. 6) and 9) and subsection (3) para. 6) and 9) for the purpose of this procedure and to information on how many of the notified workers have been notified as covered by social security in their home country under section 7a(1) para. 8). Where an employers' association is a party to the collective agreement, that association will equally have access to the information referred to in the 1st sentence above.

(3) The Danish Business Authority may lay down specific rules regarding access for trade unions and employers' associations to information according to subsection (2).

(4) The Danish Business Authority may lay down rules regarding payment for information that is disclosed according to subsection (1). To the extent that the information has been retrieved from the Central Business Register (CVR) the payment for and disclosure of information must be in compliance with the rules of the Act on the Central Business Register (CVR).

7d.-(1) The service provider is obliged to give the assignor documentation no later than upon the commencement of the performance of the service, showing that information has been notified according to section 7a(1) – (3), in case the service involves building and construction, agriculture, forestry and market gardening.

(2) An assignor who receives a service from an undertaking obliged to notify information within the industries referred to in subsection (1) above must, no later than three days after the performance of the service has commenced, approach the Danish Working Environment Authority, if the assignor has not received documentation proving that the undertaking has notified information to the Danish Business Authority, or if the information regarding the location of the performance of the service or the dates of the commencement and conclusion of the service is incomplete or wrong.

(3) The Minister for Employment may lay down rules according to which the obligation for service providers and assignors, see subsections (1) and (2), is extended to comprise other industries than those referred to in subsection (1) above.

7e (…) [transposes art. 10 of the Enforcement Directive.]

7f.-(1) Where an undertaking has failed to notify information according to section 7a, the Working Environment Authority may order the undertaking to ensure that the information is notified at once.

(2) In case an undertaking fails to comply with an improvement notice issued according to subsection (1), the Working Environment Authority may impose daily penalties on the undertaking until the improvement notice is complied with.

(3) The Working Environment Authority may disclose information about undertakings to which it has issued an improvement notice under subsection (1) or imposed daily penalties under subsection (2) to other public authorities and to trade unions and employers' associations.

(4) Complaints against or actions before the courts due to an improvement notice under subsection (1) or the imposition of daily fines under subsection (2) shall not have any suspensive effect.

(5) The Minister for Employment may lay down more detailed rules on the disclosure of information under subsection (1) above.

1.5. Estonia

Article 5^1 of Working Conditions of Employees Posted to Estonia Act stipulates the data the employer of a posted employee must communicate to the Labour Inspectorate. The data is following:

1) the name, personal identification code or registry code, area of activity, and details of the residence or location and means of communication of the employer of the posted employee;

2) the name and details of the means of communication of the contact person who represents the employer of the posted employee;

3) the number of posted employees, their names and personal identification codes or dates of birth;

4) the expected duration of the posting and the scheduled start date and end date;

5) the name, personal identification code or registry code, area of activity, and details of the residence or location and means of communication of the contracting entity or contracting authority (specified in § 2 (1) 1) and § 2 (1) 2) or 3) of the same Act), for whom the posted employee works in Estonia;

6) the name and details of the means of communication of the contact person who represents the contracting entity or contracting authority (specified in § 2 (1) 1) and § 2 (1) 2) or 3) of the same Act) for whom the posted employee works in Estonia;

7) information regarding in which area of activity the posted employee will be working in Estonia, and the address of the place of performance of work of the posted employee.

The employer of a posted employee shall provide the Labour Inspectorate with the data listed above via e-mail no later than on the day the posted employee commences the performance of work in Estonia.

At the request of the Labour Inspectorate, the employer of a posted employee shall provide the Labour Inspectorate with documents necessary for the exercise of state or administrative supervision. Those documents may be an employment contract, working time schedule, payslip or another document on the basis of which it is possible to prove the compliance with the working conditions applicable to posted employees.

The employer of a posted employee shall provide the Labour Inspectorate with documents immediately. Documents may also be requested by the Labour Inspectorate within the period of seven years after the end of the employee's posting period.

Taking into account paragraph 1 of Article 12 of Language Act Labour Inspectorate, if document submitted to them is in a foreign language, has the right to require the person who submits the document to submit the translation of the document into Estonian.

All this information is available on line http://ti.ee/en/organisation-contacts/the-labour-inspectorate/posted-workers/registration/.

Single official national website can be found here http://ti.ee/en/organisation-contacts/the-labour-inspectorate/posted-workers/.

Working Conditions of Employees Posted to Estonia Act https://www.riigiteataja.ee/en/eli/513072017009/consolide.

Language Act https://www.riigiteataja.ee/en/eli/512012016001/consolide.

1.6. Finland

Our Act on Posting Workers (447/2016, amendments up to 74/2017 included) implements the Enforcement Directive as well as directive 96/71/EY. The new law came in force 18th June 2016.

Administrative requirements and control measures are in Chapters 3 – 5 and they are in line with the obligations under Article 9 para 1. In addition these measures also complement the overall protection of posted workers together with other obligations and support our implementation method chosen concerning Article 12 para 6 (especially Sections 7-8 and 10-15). Chapter 4 Section 15 read in conjunction with the Sections 7-8 and 10 -15 includes our system and option to implement the Article 12 para 6.

The obligations of the Chapter 4 Section 15 are based and corresponds the praxis in force in the construction sector due to universally binding collective agreements and framework agreement in national context. Even if the national praxis as such is not binding as a part of a collective agreement it is applied in national situations. This system was incorporated as a legal obligation in the Act on Posted Workers to cover also cross-border situation. This implementation system makes this more transparent for the foreign employers and workers and affords the same kind of protection as we have for national workers. The system requires that the builder or the general contractor have to act immediately and actively if a posted worker informs irregularities with salary or working conditions related to pay. The posted worker can decide to whom he/she contacts at the first phase. In addition, our regulatory

framework in the construction sector is meaningful to protect workers and promoting fair level playing field for companies.

Required administrative procedures are possible to do online or in electronic form and are in line the principles of Article 9 para 4.

In addition, we changed our sanctions system from criminal sanctions to administrative sanctions on procedural obligations because these are now possible to enforce cross the boarders. This makes the supervisory process more proactive and faster compared to previous system. The new notification procedure also supports this because it enables real-time monitoring of posted companies during the posting period in Finland.

The system was assessed as a holistic manner when we chose our implementation method.

These provisions complement other obligations in force at the time of implementing the Enforcement directive in the construction sector. These are the following:

- obligation to have a tax number,
- information obligations on contractors and all persons working in construction site to the tax administration and
- legislation on the contractor's liability (the Act on the Contractor's Obligations and Liability when Work is Contracted Out)

All these measures were regarded meaningful and increasing the overall protection of posted workers to avoid irregularities with respect of pay when the implementation method of Article 12 para 6 was decided in Finland.

The content of these chapters are following:

Chapter 3

Obligations of posting undertakings

Section 7

Notification of the posting of a worker

(1) Before work is commenced, the posting undertaking shall notify the occupational safety and health authority about the posting of workers to Finland under an agreement on cross-border service provision.

(2) Notification of the posting a worker is not required if the undertaking is posting workers to Finland in an internal transfer within a group of undertakings for no more than five working days. When calculating the duration of the posting of workers, the period of the posting in question and all other periods in the four months preceding the end of the posting during which a worker transferred internally by the same group of undertakings was working in Finland are taken into account. In the case of building work, however, notification is always a requirement for performing the work.

(3) The notification shall include:

1) the posting undertaking's identification details, contact information, foreign tax

identification number and information on the responsible persons in the State in which the posting undertaking is established;

2) the identification details and contact information of the contractor;

3) the identification details and contact information of the builder and the general contractor the case of building work;

4) the anticipated number of posted workers;

5) the identification details and contact information in Finland of the representative of the posting undertaking referred to in section 8 or information about the grounds under which no representative need be appointed;

6) the starting date of the workers' posting and the anticipated duration of the posting;

7) the location where the work will be performed;

8) the sector in which the posted worker will work.

(4) If the information referred to in subsection 3 changes significantly, a requirement for the work to continue is that the posting undertaking submits a supplementary notification immediately the changes occur.

(5) In the case of building work, submission of the notification referred to in subsections 3–4 to the builder and the general contractor is also a requirement for performing the work.

Act 386/2017: Section 7 enters into force on 1 September 2017.

Section 8

Appointment of a representative

(1) The posting undertaking shall have a representative in Finland whom the posted worker and the authorities can contact at all times during the posting of the posted worker. The representative may be a legal person or a natural person.

(2) The posting undertaking does not need to have a representative if it is posting workers to Finland for a maximum period of ten working days. When calculating the duration of the posting of workers, the period of the posting in question and all other periods in the four months preceding the end of the posting during which a worker of the same undertaking was working in Finland are taken into account.

(3) The representative shall be authorised to receive official documents and summons on behalf of the undertaking and to submit documents from the undertaking to the authorities and the courts. The representative shall also be authorised to represent the posting undertaking in a court of law.

Section 9

Documentation of working hours and records of annual holidays

A posting undertaking shall comply with the provisions of sections 36–37 and 37a of the Working Hours Act concerning documentation of working hours and section 29 of the Annual Holidays Act concerning records to be kept on annual holidays. Posting undertakings shall also comply with the provisions of sections 34–35 of the Working Hours Act or other procedures that guarantee the same standard of protection to workers.

Section 10

Obligation to keep available information on workers posted to Finland

(1) Posting undertakings shall keep available the following information in written form in Finland for the entire duration of the posting:

1) the identification details of the posting undertaking and information on the responsible persons in the State in which the posting undertaking is established;

2) the identification details of the posted worker;

3) written information in accordance with Chapter 2, section 4 of the Employment Contracts Act on the employment conditions applicable to the employment contract of the posted worker;

4) information about the basis of the posted worker's right to work.

(2) If the posting of a worker lasts for more than ten working days, the posting undertaking shall keep available in Finland, in written form for the entire period of posting, the timesheets and pay slips and a financial institution's verification of wages paid for the work performed by the posted worker in Finland.

(3) Before work is commenced in Finland, the posting undertaking shall notify the contractor about where the information referred to in subsections 1–2 will be kept during the worker's posting.

(4) After the end of the worker's posting, the posting undertaking shall keep the information referred to in subsections 1–2 for a period of two years.

Section 11

Provision of information to the contractor in the case of subcontracted or temporary agency work

(1) If an undertaking sends posted workers to Finland under a subcontracting agreement or to perform temporary agency work following commencement of the work referred to in the contract on the provision of services, the posting undertaking shall provide the contractor with information on how the social security of these workers is determined before these posted workers commence work in Finland.

(2) A written certificate of compliance shall be kept for the duration of the work specified in the agreement.

(3) This section does not apply if the value of the remuneration in the subcontracting agreement is less than EUR 9,000 (excluding value added tax) or if the total duration of the work of the temporary agency worker does not exceed ten working days. Work is considered to have continued without interruption if the work performed for a contractor or the output of the work is based on a number of successive contracts continuing without interruption or with only brief interruptions.

Section 12

Providing information to staff representatives

If the duration of a posting of a posted worker exceeds ten working days, the posting undertaking shall, subject to authorization by the posted worker, give the shop steward elected by the staff group in question or the elected representative referred to in

Chapter 13, section 3 of the Employment Contracts Act, the information referred to in Chapter 2, section 4 of the Employment Contracts Act on the employment conditions applicable to the employment contract of the worker.

Chapter 4

Obligations of the contractor

Section 13

Obligation to submit a notification and to ensure the availability of a representative

(1) The contractor, in contracts signed with the posting undertaking or by other means at its disposal, shall ensure that the posting undertaking submits the notification referred to in section 7 and that the posting undertaking has the representative referred to in section 8.

(2) If an occupational safety and health authority carrying out a supervisory task cannot reach the representative of the posting undertaking, the contractor shall, at the request of the occupational safety and health authority, request the posting undertaking to provide information on where and how the representative may be reached and shall provide the information it obtains to the occupational safety and health authority.

Section 14

Submitting information on temporary agency work to a posting undertaking

The contractor shall submit to the posting undertaking the information that the undertaking needs to meet its obligations as an employer in the case of temporary agency work.

Chapter 5

Authorities' duties and right to information

Section 16

Competent authorities

(1) The provision of information concerning this Act is the responsibility of the Ministry of Economic Affairs and Employment and the occupational safety and health authority.

(2) The monitoring of compliance with this Act is the responsibility of the occupational safety and health authority, with the exception of the Equality Act provisions set out in section 3, the compliance with which is monitored the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland.

(3) The occupational safety and health authority, the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland are responsible for administrative cooperation between the public authorities of European Union Member States on the monitoring of compliance with legislation on posted workers.

(4) The occupational safety and health authority, the Ombudsman for Equality, the National Non-Discrimination and Equality Tribunal of Finland and the administrative courts are responsible for the cross-border serving of decisions on financial administrative penalties and fines. The Legal Register Centre is responsible for the cross-border recovery of financial administrative penalties and fines.

(5) The Act on Regional State Administrative Agencies (896/2009) lays down provisions on the assignment of occupational safety and health authority responsibilities laid down in this Act to one or more occupational safety and health divisions of regional state administrative agencies.

Section 17

Right to information

(1) Occupational safety and health authorities have the right to obtain from posting undertakings, contractors, builders and general contractors, without delay, all the information and documents that a posting undertaking, contractor, builder or general contractor is required, under this Act, to prepare, keep or submit.

(2) The occupational safety and health authority is also entitled to obtain from the posting undertaking other necessary information and documents than those referred in subsection 1 for the purpose of monitoring compliance with legislation concerning posted workers.

(3) When assessing whether a worker is a posted worker as referred to in this Act or investigating a suspicion of non-compliance with or circumvention of the legislation on posted workers, the occupational safety and health authority also has the right to obtain information and documents necessary for this task from parties that have been in a contractual relationship with the posting undertaking during the preceding 12 months or that have operated concurrently with the posting undertaking on the same worksites during that period.

(4) The occupational safety and health authority is entitled to obtain copies of documents.

(5) The occupational safety and health authority is entitled to obtain from the posting undertaking a translation into Finnish, Swedish or English of the information and documents referred to in section 10 if it cannot perform its supervisory duty on the basis of information or documents in the original language.

(6) In addition to what is provided in this Act, provisions on the occupational safety and health authority's right to information are laid down in the Act on Occupational Safety and Health Enforcement and Cooperation on Occupational Safety and Health at Workplaces (44/2006).

(7) For the purposes of performing their supervisory duties concerning compliance with the provisions of the Equality Act, the Ombudsman for Equality and the National Non-Discrimination and Equality Tribunal of Finland have the same right to information as the occupational safety and health authority under subsections 1–5.

(8) In addition to what is laid down in this Act, provisions on the Ombudsman for Equality's right to information are laid down in the Equality Act and on the National Non-Discrimination and Equality Tribunal of Finland's right to information in the Act on the National Non-Discrimination and Equality Tribunal (1327/2014).

(9) Notwithstanding confidentiality provisions, the occupational safety and health authority has the right to submit information it has received under section 7 that is necessary for supervisory duties to other supervisory authorities for the purpose of monitoring the posting of workers.

Chapter 8

Section 35

Negligence fee

(1) A posting undertaking is liable to pay a negligence fee if it has neglected its obligation to:

1) submit the notification on posting workers referred to in section 7;

Act 386/2017: Section 35(1)(1) enters into force on 1 September 2017.

2) appoint the representative referred to in section 8; or

3) keep available the information and reports referred to in section 10(1–2).

(2) A contractor is liable to pay a negligence fee if it has neglected its duty to act referred to in section 13(2) despite being requested to do so by the occupational safety and health authority.

(3) With regard to building work, the builder or the general contractor is liable to pay a negligence fee if, having received notification about a posted worker, it has not requested a report from the posting undertaking or provided the report it has received to the posted worker, or, despite the request of the posted worker, has not submitted the report it has received to the occupational safety and health authority as required under section 15.

(4) A negligence fee may be imposed on a natural person only when the person has failed to comply with the obligations referred to in this section wilfully or through negligence.

Section 36

Amount of the negligence fee

(1) The negligence fee for negligence referred to in section 35 is at least EUR 1,000 and not more than EUR 10,000, taking into consideration the type, extent and recurrence of the negligence.

(2) If the act can be considered minor and waiving the penalty or imposing a penalty that is less than the minimum amount can be considered reasonable in view of the type and recurrence of the negligence and its deliberateness and other conditions, the negligence fee may be waived or a penalty that is less than the minimum amount may be imposed.

(3) If a negligence fee were to be imposed on two or more acts of negligence at the same time, a joint amount is imposed on these negligence acts, which may not exceed EUR 10,000.

These obligations are describe in more detailed in our national website:

http://www.tyosuojelu.fi/web/en/employment-relationship/posted-worker

Other procedural and administrative requirements are also applied in posting situations according to other Finnish legislation the same way as in national context. These laws were in force before the Enforcement directive and are regarded to be in line with Article 9 para 1 and 2 (non-discriminatory and disproportionate).

For the construction industry: Finnish tax legislation on tax number According to the new Finnish tax legislation posted workers working in Finland on construction industry need a tax number. This measure makes it possible to supervise taxes and it also combines the needs of supervision on the terms of employment. This measure is in line with Article 9 para 2 and Article 12 para 6 of Enforcement Directive.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006) is not a part of the Finnish legislation applicable in accordance with the Posting Directive, but all posting employers should be familiar with this act. After the Enforcement Directive this has been meaningful with respect to Article 12 para 6 because this system supports the overall protection of posted workers.

The Act on the Contractor's Obligations and Liability when Work is Contracted Out contains certain obligations to Finnish and foreign customer companies (a contractor) who uses temporary agency workers or workers employed under a subcontract. The Act is applied when the work is done in Finland.

The Act is applicable also to customer companies (contractors) who receive above-mentioned services from posting employers. The Act is applicable to posting employers too if they function as a customer company (a contractor) in Finland.

The content of the contractor's obligations is to check before signing a contract if the company who provides the services is reliable and whether they intend to act in compliance with certain legislation. In practice this must be done by asking the contracting party to give the contractor certain information and documents prescribed in the Act.

The contracting party has an obligation to provide the contractor these information and documents. The information and documents are related to taxation and pension insurances. Also, an extract from the Trade Register must be provided and the information on the applicable Finnish collective agreement. If the customer company (a contractor) is involved in constructions operations, it shall ask the contracting party to give a certificate of statutory accident insurance too.

When concluding the contract, the contractor shall require that the contracting partner provides the certificates stating how the social security of the workers posted after the start of the work described in the contract is determined before the posted workers in question start their work. If the customer company (a contractor) is involved in constructions operations, the contractor must ensure that all posted workers have valid certificates stating how the social security of the workers in question is determined before the workers in question start their work.

The Regional State Administrative Agencies / Divisions of Occupational Safety and Health (labour inspectorates) enforce the Act on the Contractor's Obligations and Liability when Work is Contracted Out. If the customer company (a contractor) has not obeyed the act, it shall be obliged to pay a negligence fee (2 000 - 20 000 euro) or raised negligence fee (20 000 – 65 000 euro).

More information on our legislation on posted workers, contractors' obligations and reporting requirement

The unofficial translations of the Acts in English:

https://www.finlex.fi/en/laki/kaannokset/2016/en20160447

http://www.finlex.fi/sv/laki/kaannokset/2006/en20061233.pdf

Ministry of Economic Affairs and Employment

http://tem.fi/en/posted-workers

Occupational Safety and Health Authority

http://www.tyosuojelu.fi/web/en/employment-relationship/posted-worker

More information on contractor's obligations and liability:

http://tem.fi/documents/1410877/2106637/01_2016_TEM_ESITE_Tilaajavastuuta_EN_16022016_WEB.pdf/94caec2d-0433-4940-9ee9-60f97555659c

http://tem.fi/en/contractor-s-obligations-and-liability

Tax number and Information reporting requirement in the construction industry

http://www.vero.fi/en-US/Individuals/Individual_Tax_Numbers

https://www.vero.fi/en/detailed-guidance/guidance/48413/information_reporting_requirement_in_th2/

1.7. France

According to Article 9 of Directive 2014/67/EU, four laws and their implementing decree underpin the current legal framework for the posting of workers on national territory:

- Law No 2014 of 10 July 2014 seeking to combat unfair social competition;
- Law No 2015-990 of 6 August 2015 on growth, activity and equality of economic chances;
- Law No 2016-1088 of 8 August 2016 on labour, modernising social dialogue and securing professional pathways
- Law No 2018-771 of 5 September 2018 on the freedom to choose one's professional future

This legislative framework supplements national measures which were already implemented by the French authorities upstream from the implementing directive, namely the prior declaration, as of 2009, and therefore have not been submitted for notification to the Commission.

In total, three administrative requirements allowed under Directive 2014/67/EU are laid down in national law:

- the prior declaration of posting;
- the designation of a representative on national territory;
- the preservation of obligatory documents for the duration of the posting, and the means of submission in the event of a control by the labour inspectorate;

With regard to the prior declaration of posting:

This measure is laid down in French law in Article L. 1262-2-1, while the content and means of submission are specified in Article R. 1263-3 of the Labour Code.

The prior declaration of posting had been established well ahead of the adoption of the implementing directive, namely by decree of 3 March 2009 establishing the automatic processing of nominative data called 'FRAMIDE' (France migration secondment) concerning the management of procedures for requests of authorisation for foreign employees and upon receipt of the declarations of posting for workers whose employer is established outside France. The preliminary discussions and studies by the European Commission surrounding the negotiations on the implementing directive had confirmed to the French authorities that a prior declaration of posting was necessary and useful for preventing infringements of basic rights guaranteed to foreign employees working on national territory, while ensuring the statistical monitoring of movements in and out of the country. The Law of 10 July 2014 made it possible to give this provision legislative value.

A prior declaration of posting must be made on the SIPSI website www.sipsi.travail.gouv.fr/:

- for a **service contract** between the employer and a contractor operating or established on national territory (point 1. of L. 1262-1);

- for **intragroup mobility** between two establishments or two businesses belonging to the same group (point 2. of L. 1262-1);

- for the posting of a **temporary employee** employed by a temporary employment agency established outside national territory (L. 1262-2).

With regard to the content of the prior declaration of posting:

Article 9(1)(a) of Directive 2014/67/EU allows the Member States to make obligatory under national law a prior declaration of posting which contains 'the relevant information necessary in order to allow factual controls at the workplace, including' a range of subjects listed below.

In this respect, the information listed in Articles, R. 1263-3 R. 1263-4 and R. 1263-6 of the Labour Code are requested for each declaration completed on the SIPSI platform.

This information concerns mainly the identity of the employer, surname, first name, date and date of birth of the manager(s); the links of the employer with the host business or establishment of the employee(s), nationality of the employee(s), date of the employment contract, professional qualification, type of employment held, provisional working hours, amount of remuneration, address of accommodation, general information on any arrangements for the employer to cover the costs of travel, subsistence and group housing, designation of the State in which the employer is covered by the social security regime.

With regard to the designation of a representative:

Article 9(1) of Directive 2014/67/EU opens the possibility for a Member State to require the designation of a representative of the employer on national territory, for the duration of the provision of services, who will assume the role of adviser capable of maintaining the relationship between the employer and the competent monitoring authorities. This possibility had been transposed into national law by the above-mentioned Law of 10 July 2014, shortly after the adoption of the implementing directive, and codified in Article L. 1262-2-1.

With regard to the documents to be kept on site:

The obligation to preserve at the place where the services are preformed or in a location easily accessible for the designated representative a number of documents listed in Article R. 1263-1 is made possible by Article 9(1)(b) of Directive 2014/67/EU.

These documents which on the one hand concern the situation of the employee and, on the other hand, the company, can be required at any time over the duration of the posting or afterwards, without delay, and must be translated into French, with all recorded amounts expressed in euros:

- the work permit allowing the national of a third country to perform paid employment;

- the document certifying that a medical examination was carried out in the country of origin equivalent to that provided for in Article R. 1262-13;

- where the duration of posting is longer or equal to one month, the pay slips for each posted employee or an equivalent document certifying remuneration and including specific references;

- where the duration of posting is less than a month, a document providing proof of payment of the minimum wage;

- a document certifying the actual payment of the employee;

- a record of hours indicating the start, end and duration of the daily working time for each employee;

- the copy of the designation by the employer of its representative in accordance with Article R. 1263-2-1;

- the documents required for the purpose of ensuring the real and substantial activity of the employer (regularity of social situation, employment contract or any other equivalent document certifying the place of recruitment, a document certifying the number of contracts carried out and the turnover made by the employer in its country of establishment and on national territory).

In order to better adapt the regulations and administrative requirements to the challenges of combating fraud, the Law of 5 September 2018 on the freedom to choose one's professional future, the regulatory measures for which are currently being developed, has lightened the administrative requirements for certain postings at low risk of fraud.

- For instance, the posting of workers in the context of mobility in France without a service contract and on the sole initiative of the employer established outside national territory (referred to as a posting on own account) is now exempt from prior declaration (point 3. of Article L. 1262-1) and from the designation of a representative since 7 September 2018. An alteration to the list of documents to be kept at the place of work is also provided for by law and must be specified by a decree, in the drafting stage.

- Short-term services relating to activities listed by a decree in the drafting stage are also concerned by three simplifications: a) exemptions from the preliminary formalities (prior declaration of posting and nomination of the company's representative in France); b) exemption from the obligation to keep at the place of work the list of documents referred to in Article R.1263-1 of the Labour Code; and c) a 15-day deadline within which to submit, in the event of a labour inspection, the documents referred to in Article R.1263-1 of the Labour Code.

- Lastly, the draft implementing decree for the Law of 5 September 2018 will specify the arrangements allowing the administrative authority representing the French Ministry of Employment in an administrative region to adjust and simplify the administrative formalities concerning posting, for certain short-term

work not concerned by the above-mentioned decree. These simplifications may concern both the obligation for prior formalities and the list of documents to be kept at the workplace.

With regard to the national statutory and agreement-based provisions: **Article L. 1262-2-1:**

https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000029229063&cidTexte=LEGITEXT000006072050

Article R. 1263-3, R. 1263-4 and R. 1263-6:

https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTI000018483747&dateTexte=&categorieLien=cid

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=0161D628B6C6324B70FDC4E83BC3015C.tplgfr23s_3?idArticle=LEGIARTI000034651934&cidTexte=LEGITEXT000006072050&dateTexte=20190405&categorieLien=id&oldAction=&nbResultRech=

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=0161D628B6C6324B70FDC4E83BC3015C.tplgfr23s_3?idArticle=LEGIARTI000034651937&cidTexte=LEGITEXT000006072050&dateTexte=20190405&categorieLien=id&oldAction=&nbResultRech=

With regard to the BTP professional card

The creation of the professional i.d. card for building works and public works (BTP, ***b****âtiment et des* ***t****ravaux* ***p****ublics*) established by Law No 2015-990 of 6 August 2015 was inspired by the need to make building sites safe, and in particular to identify the employees working on these building sites. Its obligatory nature stems from Article L. 8291-1 of the Labour Code.

Above all, it makes it possible to prevent and combat abuse and fraud through illegal work, particularly in the case of undeclared workers (within the meaning of labour law and social security law).

It targets all types of workers, national or foreign, posted or employed by companies established in France, in the building sector or other sectors (temporary workers, metalworking, etc.), where they are directly employed in the performance of work in the building and public works sector.

https://www.cartebtp.fr/postedworker.html

This provision must be brought into line with Article 9(1) of the implementing directive insofar as the information declared by an employer (including a temporary employment agency) for the posting declaration (identification of the employer and employee if they are covered by the card) are automatically integrated into an 'SI-CIP' database, which makes it possible to automate the first stage in the creation of a BTP card. By means of interoperability between the SIPSI and SI-CIP information

systems, an employer wishing to post workers on national territory for the purpose of providing a service in the building and public works sector:

- completes the posting declaration on the national SIPSI platform;

- after this first step, receives an invitation by e-mail from the national operator responsible for issuing the professional cards (UCF) in order to finalise the procedure for creating cards for posted employee(s) identified in the prior declaration of posting.

By way of illustration, obtaining the BTP professional card concerns mainly workers employed by companies established in France:

- number of active accounts: 113 684, of which 106 909 are French companies and 6 775 are foreign companies;

- number of cards: 1 613 063 cards issued, including 1 359 556 active cards distributed between 1 322 616 workers employed in France and 26 940 posted workers. *The relevant national legal and regulatory provisions are as follows:*

Article L. 8291-1

https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000030996938&cidTexte=LEGITEXT000006072050

Article R. 8291-1

https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTI000032094982

Article R. 8293-2

https://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=012C4F40A4064E6C8A30819F5AB9ED7E.tplgfr23s_3?idArticle=LEGIARTI000033643479&cidTexte=LEGITEXT000006072050&dateTexte=20190405&categorieLien=id&oldAction=&nbResultRech=

1.8. Germany

The administrative requirements and control measures set out and permitted under **Article 9 of the Enforcement Directive** have been transposed into national law as follows:

Sections 17 to 19 of the Act on Mandatory Working Conditions for Workers Posted Across Borders and Workers Regularly Employed in Germany (Posted Workers Act, *Arbeitnehmer-Entsendegesetz*),

Sections 16 to 17 of the Act Regulating a General Minimum Wage (Minimum Wage Act, *Mindestlohngesetz*), and

Sections 17b and 17c of the Act Regulating the Provision of Temporary Workers (Provision of Temporary Workers Act, *Arbeitnehmerüberlassungsgesetz*).

Three ordinances issued on the basis of the laws mentioned above contain supplementary provisions, and in particular simplifications, namely:

the Ordinance Modifying the Obligation to Document Working Hours Pursuant to the Minimum Wage Act and the Posted Workers Act (Minimum Wage Documentation Ordinance, *Mindestlohnaufzeichnungsverordnung*),

the Ordinance on Notification Requirements Pursuant to the Minimum Wage Act, the Posted Workers Act and the Provision of Temporary Workers Act (Minimum Wage Notification Ordinance, *Mindestlohnmeldeverordnung), and*

the Ordinance on Documentation Requirements Pursuant to Sections 16 and 17 of the Minimum Wage Act and Sections 18 and 19 of the Posted Workers Act in Relation to Specific Groups of Workers (Ordinance on Minimum Wage Documentation Obligations, *Mindestlohndokumentationspflichtenverordnung).*

Any administrative requirements and control measures contained in these laws and ordinances belong to the group of measures listed in Article 9 (1) of the Enforcement Directive. The provisions in detail:

Simple declaration, contact person

Article 9 (1) (a) sets out that Member States may demand a **simple declaration** of the service provider containing a certain set of information. **Point (e)** allows the Member States to impose an obligation to designate a person to liaise with the competent authorities in the host Member State to send out or receive documents and/or notices, if need be.

Germany has made use of these possibilities in section 18 of the Posted Workers Act, section 16 of the Minimum Wage Act and section 17b of the Provision of Temporary Workers Act.

In accordance with section 18 (1) of the Posted Workers Act, employers domiciled abroad and required under the Posted Workers Act to comply with a universally applicable collective agreement when employing workers in Germany shall submit a written posting notification before the commencement of each work or service. Pursuant to section 16 (1) of the Minimum Wage Act an equivalent notification shall be submitted if a foreign employer employs a worker in Germany in one of the sectors listed in section 2 (a) of the Act to Combat Clandestine Employment (*Schwarzarbeitsbekämpfungsgesetz*). The notification must contain the following information:

1. The family name, the given names and the date of birth of those workers employed under the scope of application of the Acts,

2. The beginning and anticipated duration of the employment,

3. The workplace, and for construction services the building site,

4. The place in Germany where the documents required under section 19 of the Posted Workers Act (or section 17 of the Minimum Wage Act) are kept available,

5. The family name, the given names, the date of birth and the address in Germany of the person responsible for the posting *(verantwortlich Handelnder)*,

6. If an ordinance based on the Posted Workers Act applies: the sector to which the workers will be posted, and

7. The family name, the given names and the address in Germany of an authorised recipient *(Zustellungsbevollmächtigter)* unless he or she is identical to the person responsible for the posting referred to in no. 5.

If a temporary work agency domiciled abroad assigns a worker to a user enterprise, section 18 (3) of the Posted Workers Act requires the user enterprise to submit an equivalent notification, if the Posted Workers Act requires the user enterprise to comply with a universally applicable collective agreement. In these cases the following special rules apply:

the information required under point (2) refers to the beginning and the duration of the assignment,

the information under point (5) is not necessary, instead an authorised recipient at the temporary work agency must be designated in line with point (7),

the information under point (6) must include the sector to which the worker will be assigned,

in addition, the family name, the given name or the name of the undertaking, as well as the address of the temporary work agency must be provided.

The user enterprise must also submit a notification, if it employs the worker in one of the sectors listed in section 2 (a) of the Act to Combat Clandestine Employment (section 16 (3) of the Minimum Wage Act), or if an ordinance on a wage floor is in force (section 17b of the Provision of Temporary Workers Act). If the notification obligation of the user enterprise results from several of these legal acts, a single notification by the user enterprise suffices.

The single official national website provides information on the sectors for which employers posting workers and user enterprises must submit a notification in keeping with the above-mentioned provisions of the Posted Workers Act, the Minimum Wage Act and the Provision of Temporary Workers Act.

Changes to the submitted notification must be reported immediately.

Under the Ordinance on Notification Requirements Pursuant to the Minimum Wage Act, the Posted Workers Act and the Provision of Temporary Workers Act of 26 November 2014 (published in the Federal Law Gazette 2014 I p. 1825), the notification requirements for certain cases have been simplified. Instead of notifying every single posting, it is possible to provide operational schedules for these cases. Depending on the case category, these schedules can cover a period of up to three or six months. Such simplifications for example apply to exclusively mobile workers, e.g. transport of goods or passengers. The ordinance provides for further

simplifications in cases of later changes. For mobile workers, it is not necessary to notify changes.

In keeping with **Article 9 (4)** of the Enforcement Directive, undertakings can complete the procedures and formalities for the submission of notifications in a user-friendly way. In particular, an easy-to-use web-based notification portal in German, English and French has been available since 1 January 2017 (www.meldeportal-mindestlohn.de) allowing undertakings to fulfil their notification requirements. In addition, explanations are given in Bulgarian, Italian, Polish, Romanian, Spanish and Hungarian. As of April 2018, more than 99% of notifications were submitted using this notification portal.

Obligation to keep available documents

Pursuant to **Article 9 (1) fr(b)** of the Enforcement Directive, Member States may impose an obligation to keep or make available certain documents or to retain them. Germany has availed itself of this option in section 19 of the Posted Workers Act, section 17 of the Minimum Wage Act and section 17c of the Provision of Temporary Workers Act.

Employers or user enterprises (in the case of the provision of temporary workers) are obliged to record the beginning, end and duration of daily working hours at the latest by the end of the seventh day following the day on which the work was performed. Similar to the posting notification, the obligation to record working hours exists for all sectors with a universally applicable collective agreement under the Posted Workers Act, and when employing workers in a sector listed in section 2a of the Act to Combat Clandestine Work. In addition, the obligation to record working hours also applies if a wage floor ordinance is in force for the provision of temporary workers in question. The working hour recordings must be retained for at least two years from the effective date applicable to the recording.

For certain employers the Ordinance Modifying the Obligation to Document Working Hours Pursuant to the Minimum Wage Act and the Posted Workers Act of 26 November 2014 (published in the Federal Law Gazette 2014 p. 1824) has simplified the obligation to record working hours. Employers qualify for the simplification if they employ workers who exclusively perform mobile work, who are not subject to instructions regarding their concrete daily working hours and who decide on their daily working hours autonomously. If the conditions laid down in the ordinance are met, it is sufficient to record the duration of the daily working hours, whereas it is not necessary to document their beginning and end.

In addition, the employers and user enterprises required to record the working hours must keep available the documents necessary to verify compliance with the obligations arising from a universally applicable collective agreement under the Posted Workers Act, compliance with the minimum wage under the Minimum Wage Act and compliance with a wage floor ordinance under the Provision of Temporary Workers Act. The documents must be kept available in German for the entire period during which the worker is employed in Germany. However, the retention period is limited to a maximum of two years. The Minimum Wage Notification Ordinance contains a simplification for workers who exclusively perform mobile work: If, when submitting the operational schedules permitted for these workers, the employer assures the authorities that he will provide the documents in German in Germany for inspection at the request of the custom authorities, he only has to make them

available at the time of such request (see Art. 9 (1) (2) (c) of the Enforcement Directive for this option).

In line with the Ordinance on Documentation Requirements Pursuant to sections 16 and 17 of the Minimum Wage Act and sections 18 and 19 of the Posted Workers Act in Relation to Specific Groups of Workers of 29 July 2015 (published in the Federal Gazette on 31 July 2015), the above-mentioned notification and recording requirements and the requirements for keeping available documents do not apply to workers whose gross monthly earnings exceed certain thresholds as long as certain conditions are met. Simplifications also apply to family members assisting an employer with his or her business. The employer must keep available the documents which prove that he meets these conditions in German in Germany.

1.9. Greece

Article 7 of Presidential Decree 101/2016 on measures to monitor the application of Presidential Decree 219/2000 and of this Decree provides that:

'1. To enable and ensure efficient monitoring of the application of Presidential Decree 219/2000 and of this Decree, undertakings posting workers to Greece pursuant to Article 2(2) of Presidential Decree 219/2000 shall be required to:

A. Submit, at the latest when the provision of services commences and irrespective of its duration, the following documents drawn up in Greek to the competent department of the Directorate for Labour Inspection at the location in which the services are provided:

(a) a written declaration that includes the following information:

(i) the service provider's name or business name and legal form, registered office, address, contact telephone number, fax number, e-mail address and tax identification number or other registration number in the relevant register;

(ii) the particulars (name, surname, father's name, mother's name, date of birth, home address, address of employment, contact telephone number, e-mail address) of the undertaking's legal representative;

(iii) the particulars, as above, of the representative of the undertaking in Greece during the provision of services in accordance with Article 5 (1)(cc) of Presidential Decree 219/2000, who shall also liaise with the competent authorities referred to in Articles 3 and 4 above and, if necessary, send and receive the relevant documents;

(iv) the address(es) of the workplace(s) where the posted workers will carry out their work, and also the name or business name, the legal form, registered office, address and tax identification number of the undertaking(s) where the posted workers will carry out their work;

(v) the date on which the provision of services and the posting of workers will commence and the envisaged duration; and

(vi) the nature of the activity of the undertaking in which the work is carried out, and whether or not it involves the use of hazardous materials or processes.

(b) a list of the posted workers, to be submitted in two (2) copies, providing the following information on each worker:

(i) first name, surname, identity card or passport number and issuing country, date of birth, sex and field of expertise;

(ii) the date on which the employment contract was concluded, any record of similar work experience and family status;

(iii) the length of daily and weekly working time, daily starting and finishing hours, interruptions and breaks and weekly days off, and

(iv) all forms of remuneration paid.

Undertakings shall see to it that one copy of the above lists is displayed prominently in the workplace, whereas the other will remain in the Labour Inspectorate's files.

Where work is carried out in shifts, the undertakings must also submit a table of the weekly shift rotas in addition to the above lists.

In the event of a change to the above information, the above undertakings must submit a supplementary list within fifteen (15) days of the change. Furthermore, in the event of a change or modification to the working hours or the organisation of working time, they shall be required to submit a supplementary list setting out those changes at the latest on the day on which the change or modification takes effect, and in any event before the workers take up their duties.

B. Keep, for the duration of the posting at the place where the work is carried out, copies of the following in printed or electronic form:(a) the individual employment contract or an equivalent document within the meaning of Council Directive 91/533/EEC (transposed into Greek law by means of Presidential Decree 156/1994 (Government Gazette, Series I, No 102)), which includes the information required by Article 4 of that Directive, (b) salary statements or payslips, (c) time sheets showing the beginning, end and duration of the daily working time, and (d) proof of payment of remuneration or equivalent documents.

C. Keep the documents referred to in the previous paragraph for up to two (2) years after the end of the posting and send them, on request, to the competent authorities referred to in Article 3 of this Decree within fifteen (15) days of the date of receipt of such a request in Greek or in English.

2. The provisions of this Article shall not affect other obligations of undertakings falling within the scope of this Decree to notify or declare to public authorities any action carried out pursuant to other provisions.

3. The undertakings may submit, keep and send the documents referred to in paragraph 1 above by electronic means.

4. Employing posted workers without prior submission of the documents referred to in paragraph 1.A. and without keeping and sending the documents referred to in

paragraph 1.B of this Article shall lead to imposition of the administrative penalties provided for in Article 16 of this Decree.'

Note that it is the responsibility of the undertaking posting workers to Greece to comply with the above requirements.

1.10. Hungary

The requirements of the Article 9 of the Enforcement Directive

1) Section 8/D of the **Act LXXV of 1996 on Labour Inspection** (hereinafter: Labour Inspection Act) regulates the administrative requirements that should be fulfilled by service providers in case of posting of workers to Hungary **before the commencement of posting**:

(1) Service providers who are entitled to the freedom to providing services and are subject to *Act LXXVI of 2009 on the general rules of taking up and pursuit of service activities* are bound by an obligation to submit a declaration and provide information in accordance with Subsections (2) and (3).

(2) The obligation to submit a declaration and provide information applies to the foreign employer referred to in Subsection (1) if they employ or intend to employ an employee referred to in Section 295 of *Act I of 2012 on the Labour Code* [namely under agreement with a third party] in the territory of Hungary for the provision of a cross-border service.

(3) The foreign employer referred to in Subsection (1) shall make a declaration in Hungarian or English language to the labour authority referred to in Subsection (1) of Section (2) at the start of the service provision at the latest. The declaration shall be made on the electronic interface provided for this purpose, with the data content specified in Annex 2.

Annex 2 of the Labour Inspection Act contains the list of the relevant information required by the labour authority at the registration of posted workers which allows factual controls at the workplace.

The service provider established in another Member State is obliged to make a simple declaration to the national competent authorities for the purposes of:

- identification of the service provider:
  - name of the service provider,
  - address (or seat) of the service provider,
  - Member State where the service provider is established,
  - nationality and registration number of the service provider,
  - name and address of the person to liaise with the competent authorities in Hungary;
- identification of the service:
  - identification of the service provided,
  - information required to begin and perform the services subject to specific legislation,

- identification of the authority that granted, approved, licenced or registered the service,
- the number or registration number of the licence/authorisation of the service provider (if the service provided by the service provider is subject to grant, approval, licence or registration in the Member State where the service provider is established),
- the service provider's statement on the service that this will be performed as cross-border service provision;

- identification of the service provision:

- the anticipated number of clearly identifiable posted workers,
- the anticipated duration of the posting,
- the beginning date and end date of the posting,
- the address(es) of the workplace,
- the nature of the services justifying the posting.

2) Section 297, Subsections 3-6 of the **Act I of 2012 on the Labour Code** (hereinafter: Labour Code) regulate the administrative requirements that should be fulfilled by service providers in case of posting of workers to Hungary **during the posting:**

(1) The Labour Code regulates an obligation for a service provider established in another Member State, under which the beneficiary of the services shall ensure that:

a) the employment contract or equivalent other document of posted workers,

b) the time sheets of posted workers,

c) the proof of payment of the wages of posted workers on paper or in electronic format

is available during the whole duration of posting, at the place where the work is carried out, and for a period of three years after the end thereof at the employer's registered office or fixed establishment for the purpose of verification.

(2) The Labour Code regulates the obligation of designating a person to liaise with the competent authorities:

The foreign employer shall delegate an officer for implementation of communication with the employment authority acting as the designated authority, and for sending and receiving the documents referred to in Subsection (3). The foreign employer shall forthwith notify the employment authority about such delegated officer, including any changes in the person of the delegated officer.

(3) The Labour Code regulates the obligation to designate a contact person to liaise with social partners:

The foreign employer shall designate a contact person for the purpose of liaison between social partners and the service provider in the interest of collective bargaining for the duration of the service. If the designated person does not permanently reside in Hungary, the contact person appointed must be available upon reasonable and justified request.

1.11. Ireland

Administrative requirements and control measures

4. (1) A service provider established in another Member State who temporarily posts workers in the State shall—

(*a*) make a declaration (in the English language and using the form set out in Schedule 1) and furnish it to the competent authority no later than the date on which he or she commences providing the service,

containing—

(i) the identity of the service provider,

(ii) the anticipated number of clearly identifiable posted workers,

(iii) the anticipated duration and envisaged beginning and end dates

of the posting of each worker,

(iv) the address of the workplace to which each worker is to be

posted, and

(v) the nature of the services justifying the posting,

(*b*) keep at a place identified by the service provider to the competent

authority and make available to the competent authority at its request, in paper or electronic form, for the duration of the period of the posting, in respect of each posted worker—

(i) his or her contract of employment or a written statement of terms of employment (within the meaning of section 3 of the Terms of Employment (Information) Act 1994 (No. 5 of 1994)) or an equivalent document,

(ii) his or her payslips or equivalent documents,

(iii) where relevant, time sheets, or equivalent documents, indicating the beginning, end and duration of his or her daily working time, and

(iv) proof of payment of wages,

(*c*) after the period of the posting and at the request of the competent authority, deliver to the competent authority, within a period of one month after the request, the documents referred to in paragraph (*b*) and, where necessary, a translation of those documents into the English language, and

(*d*) designate a person to liaise with the competent authority and to send out and receive documents and notices as necessary be.

1.12. Italy

Administrative requirements to be undertaken by Service Providers

As regards the specific measures adopted to prevent and contrast the abuse and circumvention of the regulations concerning the transnational posting of workers, administrative requirements considered in Article 9, paragraph 1, letters a) to d) of the Enforcement Directive have been introduced through internal legislation. Apart from the overall assessment of all the factual elements aimed at identifying the genuine postings or detecting cases of abuse and circumvention pursuant to art. 4 of the Enforcement Directive, these administrative requirements shall be the focus of inspections carried out by the inspection staff. Indeed, they are crucial for improving the planning and targeting activities of the Labour Inspectorate aimed at tackling the mentioned cases of abuses and circumventions. More specifically, Article 10 of the decree sets forth the following commitments for Service Providers:

- to make the declaration of posting of workers to Italy in compliance with the procedures defined in the specific Ministerial decree of 10 August 2016 (by electronic means) and in its related annexes (Article 10, paragraphs 1 and 2) and further clarified in the Italian National Labour Inspectorate (INL) circular No 3 of 22 December 2016;

- to conserve, and make available hard or electronic copies in Italian, employment documentation (employment contract or an equivalent document containing the information referred to in Articles 1 and 2 of Legislative decree No 152 of 26 May 1997 - transposing Directive 91/533/EEC), payslips, time-sheets indicating the beginning, end and duration of the daily working time, proof of payment of wages or copies of equivalent documents, certification regarding legislation on applicable social security (A1 form) and the public registration of the establishment of the working relationship or equivalent documents so far as is necessary in order to verify that the posted worker is not unknown to the competent authorities of his/her Country of origin (Article 10, paragraph 3, letter a).

It is to be noted that national law, in view of the principle of proportionality, fixes the validity of the above-mentioned requirement for the entire duration of the posting and up to two years from its termination, adopting as a benchmark the time limit for the joint liability of the 'user' undertaking as provided for by Article 10, paragraph 2 of Legislative decree No 276/2003;

- to designate a person domiciled in Italy to liaise with the competent authorities to send out and receive documents and/or notices (e.g. requests for information and documentation, notifications and verifications of infringements) on behalf of the posting undertaking, including the formal notification of acts to the undertaking itself on the part of the inspection staff. Also in this case, the law has fixed the term for the entire duration of the posting and up to two years from its termination. Failing this designation, without affecting the application of the penalty and/or fine as provided for by Article 12, paragraph 3, the decree establishes that "the registered office or company premises of the Italian employer shall be considered the liaison office of the foreign posting company" (Article 10, paragraph 3, letter b). The identification of the above-mentioned person-which can be a worker of the posting company, the 'user' company, a labour consultant or other professional figure, or person of trust of the posting undertaking, as long as he/she is domiciled in Italy- is clearly meant to facilitate communication between the inspection authorities and the undertaking undergoing inspection, and to facilitate the notification in the case of dispute to

guarantee the effectiveness of controls and the penalties and/or fines. It is however to be specified that the service provider alone is responsible for complying with the requirements laid down in the above-mentioned Article 10 and for the payment of any penalties and/or fines and not the above-mentioned liaison person (Article 10, paragraph 3, letter b);

- to designate a contact person, also the same as the one above, for the entire duration of the posting, who shall act as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining and who is not obliged to be present in the posting location but shall make his/her services available whenever the social partners make a motivated request (Article 10, paragraph 4).

1.1. Latvia

The requirements of the Article 9 of the Enforcement Directive are included in Section 14.[1] of the Labour Law:

"Section 14.[1] Duties of an Employer when Posting an Employee to Perform Work in Latvia

(1) If an employer posts an employee to perform work in Latvia, then, irrespective of the law applicable to the employment contract and employment legal relationships, such posted employee shall be ensured the working conditions and employment provisions provided for by the laws and regulations of Latvia, as well as by collective agreements which have been recognised as generally binding and which govern:

1) maximum working time and minimum rest period;

2) minimum annual paid leave;

3) minimum wage rate, as well as supplementary payment for overtime work;

4) provisions regarding securing a workforce, especially with the intermediation of work placement services;

5) safety, health protection and hygiene at work;

6) protection measures for persons under 18 years of age, for pregnant women and women during the period following childbirth, as well as the provisions of work and employment of such persons;

7) equal treatment of men and women, as well as prohibition of discrimination in any other form.

(2) An employer who posts an employee to perform work in Latvia has a duty, prior to posting the employee, to inform the State Labour Inspectorate in the official language regarding such posted employee in writing, indicating:

1) the given name, surname, and address of the employer - natural person - or the name (firm), registration number, and address of a legal person, as well as other contact information (telephone number, electronic mail address);

2) the given name and surname of the employee;

3) the anticipated duration of posting, as well as the time of starting and ending work;

4) the location of performing the work (if the performance of work duties is not intended in some certain place, specify that the employee may be employed in different locations);

5) the representatives of the employer referred to in Paragraphs three and four of this Section, indicating the given name, surname, as well as contact information;

6) the person for whose benefit work will be performed (recipient of the service), as well as the nature of service justifying the posting of the employee;

7) a certification that the posted employee who is a third-country national legally works for an employer in the European Union Member State, the European Economic Area State or the Swiss Confederation.

(3) An employer who posts an employee to perform work in Latvia has a duty to designate its representative in Latvia who is authorised to represent the employer in institutions and court of Latvia.

(4) An employer who posts an employee to perform work in Latvia has a duty, if necessary, to designate its representative who may be addressed by the parties of the collective agreement for the purpose of initiating negotiations regarding entering into a collective agreement in accordance with the provisions of this Law. That person may not be the same person who is referred to in Paragraph three of this Section and does not have to be located in Latvia, however, has to be available on a reasonable and justified request.

(5) An employer who posts an employee to perform work in Latvia, during the period of posting the employee, has a duty to ensure storage of the employment contract entered into, of the calculation of the work remuneration, documents accounting working hours, and documents certifying disbursement of work remuneration with the person referred to in Paragraph three of this Section and presenting thereof to the supervisory and control authorities, as well as, if necessary, their translation into the official language.

(6) An employer who posts an employee to perform work in Latvia has a duty, within two years after the end of the period of posting the employee, to ensure presentation of the documents referred to in Paragraph five of this Section to the supervisory and control authorities.

(7) The provisions of Paragraph one of this Section shall also be applicable to third-country nationals who are employed in Latvia in a framework of an intra-corporate transfer.”

1.2. Lithuania

Article 109 of *the Labour Code of the Republic of Lithuania* provides that an employer under the jurisdiction of a foreign country who posts a worker to work temporarily in the territory of the Republic of Lithuania for a period of more than 30 days or to perform construction work established in the Republic of Lithuania Law on Construction shall, in accordance with the procedure established by the Minister of Social Security and Labour of the Republic of Lithuania, give advance notice to the territorial office of the State Labour Inspectorate where the job function of the posted worker will be performed about the conditions established in points 1–7 of Article 108(2) of this Code that will apply to this worker. Employers must have the documents related to the posted worker at the place where the job function of the posted worker is being performed during the entire period of the posting and must provide them without delay to competent authorities at the request thereof. The State Labour Inspectorate shall provide information immediately and free of charge to, or otherwise cooperate with, competent authorities of other European Union Member States regarding the application of the conditions set out in this Code to posted workers as well as violations of posted worker guarantees. The State Labour Inspectorate shall ensure that information on the provisions of the regulatory acts of the Republic of Lithuania, including expanded collective sectoral and territorial agreements, concerning the conditions applicable to a posted worker, is available to European Union Member State employers free of charge, in a clear, transparent and comprehensive manner, remotely and electronically, in internet access format and standards, while ensuring accessibility to people with disabilities. A worker posted to the territory of the Republic of Lithuania may defend his or her violated rights in accordance with the procedure for the settlement of labour disputes on rights.

Procedure for the provision of information about posted workers, approved by order of the Minister of Social Security and Labour of the Republic of Lithuania No. A1-169 of 16 June 2005 (hereinafter – Procedure), establishes the procedure for the provision of information about posted workers and guarantees for such workers to territorial offices of the Lithuanian State Labour Inspectorate under the Ministry of Social Security and Labour (hereinafter "LSLI territorial offices"). Point 3 of the Procedure provides that an employer under the jurisdiction of a foreign country who posts a worker to work temporarily in the territory of the Republic of Lithuania for a period of more than 30 days or to perform construction work established in the Republic of Lithuania Law on Construction, shall submit to the LSLI territorial office of the place of performance of the work functions a report in the set form in the Lithuanian language (Annex) about posted worker (hereinafter "Report").

Point 5 of the Procedure provides that the Report shall be submitted by e-mail, post, fax or using the system of electronic services for employers of the Republic of Lithuania State Labor Inspectorate under the Ministry of Social Security and Labour not later than one working day prior to commencement of work by the posted worker in the territory of the Republic of Lithuania.

Form of the Report contains information on: employer posting the worker; posted worker; legal/natural person accepting the posted worker; posting (start of posting, anticipated posting period, place of posting, etc.); guarantees provided for the posted worker.

Paragraphs 8.1.18 of the Regulations of the State Labor Inspectorate of the Republic of Lithuania **provides that** the State Labour Inspectorate within the remit of its competence shall inspect if posted worker guarantees are not violated.

1.3. Luxembourg

A law of 14 March 2017 transposing 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') transposed Article 12 by introducing Articles L. 142-2 paragraph 2 and L. 281-1 into the Luxembourg Labour Code. Article L. 143-2 of the same Code provides, in particular, for administrative penalties for failure to comply with the aforementioned two Articles.

Article L. 142-2.

(1) For the purposes of applying this title, undertakings, including those which have their headquarters outside the territory of the Grand Duchy of Luxembourg or which habitually conduct their work outside Luxembourg, and of which one or more workers perform an activity in Luxembourg, including workers on a temporary posting to Luxembourg in accordance with Article L.141-1 must, from the start of work on Luxemburgish territory, and without prejudice to the possibility of an earlier declaration decided on by the posting company, inform the Labour and Mines Inspectorate (Inspection du travail et des mines) of this by using the dedicated electronic platform to report the elements essential for obtaining the certificate of posting (badge social) and for the legal checks to be carried out by the Labour and Mines Inspectorate:

1. the identifying details of the posting employer and of its representative;

2. the identity of the natural or legal person clearly and freely determined by the posting undertaking and present on Luxemburgish territory who will be the reference person for communication with the Labour and Mines Inspectorate and the other competent authorities listed in Article L.142-4 in relation to respect for the conditions linked to the posting;

3. the date of the start and the anticipated duration of the posting in accordance with the contract for the provision of services;

4. the workplace(s) in Luxembourg and the expected duration of the work;

5. the full names, dates of birth, nationalities and professions of the employees;

6. the capacity in which the employees are recruited by the undertaking and their regular profession or occupation and the activity they will pursue during their posting to Luxembourg.

All subsequent changes, in particular to the place or purpose of the work, must be notified by means of the same procedure to the Labour and Mines Inspectorate, without prejudice to the need for a new contract for provision of services for a different purpose.

(2) The project owner or contracting authority who concludes a contract with a service provider that posts employees under the conditions set out in Articles L.141-1 and

L.141-2 is required to check with the latter and, as necessary, with the direct or indirect subcontractor – or the co-contractor of the subcontractor – that they have, no later than the start of the posting, sent the declaration referred to in paragraph 1, sub-paragraph (1) to the Labour and Mines Inspectorate and that they have met the condition set out in point 2 of that same sub-paragraph in that declaration.

Article L. 143-2.

(1) Infringements of the provisions of Articles L.142-2, L.142-3 and L.281-1 shall be subject to an administrative fine of between EUR 1 000 and EUR 5 000 per seconded worker and of between EUR 2 000 and EUR 10 000 for a repeat offence within two years from the date of notification of the first fine.

The total amount of the fine shall not exceed EUR 50 000.

In setting the amount of the fine, the Director of the Labour and Mines Inspectorate shall take into account the circumstances and gravity of the infringement and the behaviour of the party committing the infringement.

(2) Failure by the project owner or contracting authority to meet any of their verification obligations under Article L.142-2, paragraph 2 shall be subject to an administrative fine provided for in paragraph 1.

(3) The administrative fine shall be imposed by the Director of the Labour and Mines Inspectorate on detection of the infringement by one of the inspecting officers referred to in Article L.142-1 and under the injunction procedure provided for in Article L.614-13.

The employer or the person appointed by it shall be notified of the fine by registered mail or by a signature placed on a copy of the decision.

(4) The Land Registration and Estates Department (Administration de l'enregistrement et des domaines) shall be responsible for the recovery of administrative fines communicated to it by the Director of the Labour and Mines Inspectorate in a copy of its decisions setting the amount of each fine. The claim shall be pursued as a registration matter.

(5) Cases of serious infringement of Articles L.142-2, L.142-3 and L.281-1 shall be punishable by cessation of work on the order of the Director of the Labour and Mines Inspectorate.

In setting the amount of the fine, the Director of the Labour and Mines Inspectorate shall take account of the circumstances and gravity of the infringement and the behaviour of the party committing it.

Article L. 142-3.

Any undertaking whatsoever, whether established and with its registered office abroad or which does not have a stable establishment in Luxembourg within the meaning of the law governing taxation, one or more employees of which work in Luxembourg in any capacity whatsoever, is required to transmit to the Labour and Mines Inspectorate,

via the dedicated electronic platform, starting from the first day of the posting and without prejudice to the possibility of an earlier declaration decided on by the posting undertaking, the following documents required to prove the information referred to in Article L.142-2:

1. the copy of the supply contract as necessary;

2. the prior declaration certificate or the attestation replacing it issued by the Ministry of Small Firms and Traders, pursuant to the law of 19 June 2009 transposing Directive 2005/36/EC in relation to a) the general rules on the recognition of educational and professional qualifications b) the temporary provision of services;

3. the original or a certified copy of form A1; or, where applicable, a specific indication of the social security bodies to which the workers are affiliated during their stay in Luxembourg;

4. the VAT certificate issued by the Land Registration and Estates Department;

5. either a copy of the employment contract or a certificate of conformity to Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, as transposed by the legislation of the competent State, issued by the competent control authority of the country where the posting undertaking has its head office or habitually provides its services;

6. a certificate of conformity, issued by the competent control authority of the country where the posting undertaking has its head office or habitually provides its services, covering the employment relationship of the posted workers at the time of posting in relation to the competent legislation transposing Directive 97/81/EC on part-time working and Directive 1999/70/EC on fixed-term working;

7. official documents confirming the professional qualifications of the employees;

8. payslips and proof of payment covering the duration of the posting;

9. timestamps indicating the start, end and length of the working day covering the entire duration of the posting on Luxemburgish territory;

10. a copy of the residence permit or residence document (autorisation de séjour or titre de séjour) for all third-country nationals posted to Luxemburgish territory;

11. a copy of the pre-recruitment medical certificate issued by the occupational health services responsible for the relevant sector.

The documents must be translated into French or German.

1.4. Malta

Employment and Industrial relations act, Posting of Workers in Malta Regulations, 2016

Administrative requirements and control measures.

6. (1) It shall be the duty of the service provider posting the worker to Malta to notify the competent authority in Malta of the intention to post a worker to Malta prior to the date of posting of the worker, at the latest at the commencement of the posting, which notification shall contain the relevant information necessary in order to allow factual controls at the workplace. This notification, effected in the English language, shall include:

(a) the identity of the service provider;

(b) the address in the country where the worker habitually carries out his work;

(c) the anticipated number of clearly identifiable posted workers;

(d) the name, date of birth and nationality of the posted worker;

(e) the persons referred to sub-regulations (6) and (7);

(f) the anticipated duration, envisaged beginning and end date of the posting;

(g) the nature of the services justifying the posting, including the type of work to be carried out; and

(h) the name and address of the undertaking in Malta to which the worker is to be posted.

(2) A copy of the notification referred to in sub-regulation (1), together with updated records sufficient to show that the provisions of these regulations are being complied with, shall be kept at the undertaking in Malta making use of the services of the posted worker.

(3) It shall be the duty of the service provider posting the worker to Malta to keep, to make available and to retain copies, in paper or electronic form, of the employment contract or an equivalent document within the meaning of Council Directive 91/533/EEC, including, where appropriate or relevant, the additional information referred to in article 4 of that Directive, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in the undertaking making use of the services of the posted worker.

(4) It shall be the duty of the service provider posting the worker to Malta to deliver the documents referred to in sub-regulation (3) of this regulation, after the period of posting, at the request of the competent authority in Malta, within a reasonable period of time.

(5) It shall be the duty of the service provider to provide a translation of the documents referred to in sub-regulation (3) into the English language.

(6) It shall be the duty of the service provider to designate a person to liaise with the competent authority in Malta, and to send out and receive documents and, or notices, where appropriate.

(7) It shall be the duty of the service provider to designate a contact person, who may be different from the one designated in terms of sub-regulation (6), to act as a representative in Malta through whom the social partners may seek to engage the

service provider to enter into collective bargaining during the period in which the services are provided. It is not required that such contact person is present in Malta but he has to be available on a reasonable and justified request.

(8) The obligations imposed in terms of this regulation are to be disseminated as required by regulation 7(8), and shall be deemed to be fulfilled in case where they are complied with by electronic means.

1.5. Netherlands

Act of 1 June 2016 regulating the terms of employment of posted workers in connection with the implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of the Posting of Workers Directive and amending the IMI Regulation on administrative cooperation through the Internal Market Information System (Terms of Employment (Posted Workers in the European Union) Act)

Article 7

The service provider shall indicate a contact person, for the period of transnational provision of services, to act as contact point of the service provider and to be available in the Member State where the work is carried out for sending out and receiving information concerning the transnational provision of services, in the Netherlands, for Our Minister, in connection with the posting to the Netherlands.

Article 8

1. The service provider who posts a worker to the Netherlands shall be required to notify Our Minister of this, in writing or electronically, at a time before the commencement of the activities, stating:

a. his identity;

b. the identity of the recipient of services and of the posted worker;

c. the contact person, referred to in Article 7;

d. the identity of the person responsible for paying the wage;

e. the nature and anticipated duration of the activities;

f. the address of the workplace; and

g. the contribution to applicable social security schemes.

2. If the service provider posts a worker to the Netherlands, the service provider shall provide the recipient of services before the commencement of the activities, with a written or electronic copy of the notification, referred to in paragraph 1, including at least the data concerning his identity and the identity of the posted worker, the address of the workplace and the nature and duration of the activities.

3. The recipient of services shall check whether the copy of the notification, referred to in paragraph 2, states the data listed in paragraph 2 and, before the commencement of the activities, shall notify Our Minister, in writing or electronically, of inaccuracies.

4. Regulations may be laid down by ministerial order with regard to the format of the notification, the language, the notification procedure, the documents to be submitted and the time of the notification, referred to in paragraph 1.

5. The requirement in paragraph 1 concerning the notification of the nature and anticipated duration of the activities, the identity of the person responsible for paying the wage and the identity of the person who carries out the activities and the requirement under paragraph 2 shall apply mutatis mutandis to self-employed persons operating in professions or business sectors designated by general administrative regulation.

6. By general administrative regulation, categories of posted workers and service providers shall be designated to whom this Article does not apply or for whom detailed rules for the notification, to be determined by this general administrative regulation, apply.

7. The activities of Our Minister in connection with this Article may be carried out by an independent administrative body to be designated by Our Minister. Our Minister may designate a processor as referred to in Article 14 of the Personal Data Protection Act (Wet bescherming persoonsgegevens) for the processing of the data on the basis of this Article.

Article 9

1. During the period of posting, the service provider shall ensure that the following are available at the workplace, referred to in Article 8(1)(f), in writing or electronically:

a. the employment contract with the posted worker;

b. a statement, as referred to in Article 626 of Book 7 of the Civil Code;

c. a statement, as referred to in Article 655 of Book 7 of the Civil Code;

d. documents showing how many hours the posted worker has worked;

e. supporting documents showing the contribution to social security schemes and the identity of the service provider, the recipient of services, the posted worker and the person responsible for paying the wage; and

f. proof of payment of the wage to the posted worker.

2. Self-employed persons for whom the requirement, referred to in Article 8(5) applies, shall ensure that, during the period in which they carry out activities, substantiating documents are present at the workplace, referred to in Article 8(1)(f), showing their identity, the identity of the recipient of services and the identity of the person responsible for paying the wage.

1.6. Poland

Art. 9 (1)

Administrative and control measures, referred to in **article 9 paragraph 1** of the Enforcement Directive (2014/67/EU) have been defined in the article 24 and 25 of the *Act of 10 June 2016 on posting of workers in the framework of provision of services (Journal of Laws of 17 June 2016, item 868 with further amendments)* **– hereinafter referred to as "the Act".**

Pursuant to article 24 paragraph 1 and 2 of the Act an employer posting a worker on the territory of the Republic of Poland appoints a person authorized to act as an intermediary in contacts with the National Labour Inspectorate and to send and receive documents or notices, who is present during the period of posting on the territory of the Republic of Poland.

This person at the request of the National Labour Inspectorate shall immediately provide the National Labour Inspectorate with the data of the person authorized by the employer posting the employee on the territory of the Republic of Poland to represent them during the inspection conducted by the National Labour Inspectorate.

This person's data includes their name, address, telephone number and business email address. Upon reasoned request of the National Labour Inspectorate, in connection with the conducted inspection, this person should be available on the territory of the Republic of Poland.

According to the paragraph 3 the abovementioned article an employer who posts an employee on the territory of the Republic of Poland at the latest on the day of commencement of the service shall submit a declaration to the National Labour Inspectorate with the following information necessary to conduct the inspection of the actual situation at the workplace:

1) employer identification data including:

a) name,

b) place of establishment (address) and phone number and business email address, and in the case of an employer who is a natural person - place of residence (address), telephone number and business email address,

c) tax identification number (NIP) or identification number obtained in the Member State of establishment of the employer for tax or insurance purposes;

2) the expected number of employees posted on the territory of the Republic of Poland with data including their name, date of birth and nationality;

3) anticipated date of commencement and termination of posting of employees on the territory of the Republic of Poland;

4) addresses of the workplace of employees posted on the territory of the Republic of Poland;

5) the nature of the services justifying the posting of workers on the territory of the Republic of Poland;

6) data of the person referred to in paragraph 1, including their name, address where they reside, a telephone number and business email address;

7) place of keeping of the documents referred to in art. 25 paragraph 1.

Under article 25 of the Act, an employer posting a worker on the territory of the Republic of Poland shall be obliged, during the period of posting, to keep the following documents on the territory of the Republic of Poland in paper or electronic form:

1) a copy of the employment contract of the employee posted on the territory of the Republic of Poland or another equivalent document certifying employment conditions within the established employment relationship;

2) documentation concerning working time of an employee posted on the territory of the Republic of Poland with regard to commencement and termination of work and the number of hours worked on a given day, or a copy thereof;

3) documents determining the remuneration of an employee posted on the territory of the Republic of Poland together with the amount of deductions made in accordance with the applicable law and evidences of payment to the employee or copies thereof.

The employer posting a worker on the territory of the Republic of Poland shall be obliged, at the request of the National Labour Inspectorate, to make the documents referred to in this article, and their translation into Polish available not later than within 5 working days of receipt of the request.

Within 2 years after the end of the work performed by an employee posted on the territory of the Republic of Poland, upon the request of the National Labour Inspectorate, the employer posting the employee on the territory of the Republic of Poland shall provide the documents referred to in this article, no later than 15 working days from the date of receipt of the request. The request may also require the translation of certain documents into Polish.

The employer posting a worker on the territory of the Republic of Poland shall provide documents or copies thereof in paper or electronic form, including through a single contact point within the meaning of Chapter III of the Act of 6 March 2018 on the Central Registration and Information on Economic Activity and the Information Point for Entrepreneurs (*Journal of Laws of 30 March 2018, item 647).*

Poland did not make use of the possibility provided for in the article 9 paragraph 2 of the Enforcement Directive 2014/67/EU, to impose other administrative requirements and control measures.

1.7. Portugal

Measures taken according to Article 9 (Article 9 of the Law n.º 29/2017 of 30 May) **which transposed the Directive 2014/67/EU, of the European Parliament and of the Council of 15 May 2014**).

a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow factual controls at the workplace, including:

a. the identity of the service provider;

b. the anticipated number of clearly identifiable posted workers;

c. the persons referred to under points (e) and (f) of Article 9 (1);

d. the anticipated duration, envisaged beginning and end date of the posting;

e. the address(es) of the workplace;

f. the nature of the services justifying the posting.

b) an obligation to keep or make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document within the meaning of Council Directive 91/533/EEC (1), payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;

c) an obligation to deliver the documents referred to under point (b), after the period of posting, at the request of the authorities of the host Member State, within a reasonable period of time (up to one year after the end of the posting);

d) an obligation to provide a translation of the documents referred to under point (b) into one of the official languages of the host Member State (Portuguese);

e) an obligation to designate a person to liaise with the competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices, if need be;

f) an obligation to designate a contact person, if necessary, acting as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State, in accordance with national law and/or practice, during the period in which the services are provided.

1.8. Romania

Romania transposed Directive 2014/67/EU (Enforcement Directive) by Law no. 16/2017 and Governmental Decision no. 337/2017. According to this national legislative framework, employers established in other Member States that post workers on Romanian territory (service providers) have the administrative requirements and control measures provided by Art. 9 Paragraphs 1 points (a), (b), (c), (d) and (e) of the Enforcement Directive. Concerning the obligation on prior declaration mentioned at point (a), service providers have also the obligation to submit a copy of this declaration to the beneficiary (Art. 7 Paragraph (4) G.D. no. 337/2017).

There are no supplementary administrative measures imposed to service providers through Romanian legislation according to Art. 9 Paragraph 2 of the Enforcement Directive.

In order to establish the employment status of the workers and wheatear the worker qualifies as posted worker, in the case of an inspection the beneficiaries of the services have also the obligation to provide:

- commercial contract concluded with service provider, in situation provided by Art. 1 Paragraph 3 point (a) of Directive 96/71/EC (Art. 12 G.D. no. 337/2017);

- posting documents and a list of workers, in situation provided by Art. 1 Paragraph 3 point (b) of Directive 96/71/EC (Art. 13 G.D. no. 337/2017);

- hire out contract concluded with temporary work agencies, in situation provided by Art. 1 Paragraph 3 point (c) of Directive 96/71/EC (Art. 14 G.D. no. 337/2017).

Regarding tackle fraud and abuse concerning posting of workers in the subcontracting chains, Romanian legal framework concerning posting of workers has no set other liability rules than those provided by Art. 12 Paragraph 1 to 3 of the Enforcement Directive, no more than those general provisions and has not included sectors other than construction.

Information provided to posted workers and employers are available in English on https://www.inspectiamuncii.ro/transnational-posting-of-workers.

1.9. Spain

Posting notification

Article 5 of Law 45/1999

The business owner that post workers to Spain in the framework of the transnational provision of services must notify the posting, prior to commencement and irrespective of its duration, to the labour authority of the Autonomous Community where the services are to be provided. If the services are to be provided in the Autonomous Cities of Ceuta and Melilla, the information on the posting must be addressed to the work and immigration departments of the respective Government Delegations.

Unless the undertaking is a temporary employment undertaking, there shall be no need to notify the posting if the duration of the same is not greater than eight days.

The notification on the posting shall contain the following details and information:

- Identification of the undertaking that is posting the worker.
- The tax address of this undertaking and its tax identification number for the purposes of Value-added Tax.
- The personal and professional details of the posted workers.
- The identification of the undertaking or undertakings and, where applicable, of the work centre or centres where the posted workers shall provide their services.
- The scheduled start date and duration of the posting.

- Determination of the provision of services that the posted workers are going to carry out in Spain with an indication of the corresponding case.

- The identification and contact details of a physical or legal person in Spain designated by the company as its representative, to liaise with the competent Spanish authorities and to send and receive documents or notifications, as necessary.

- The identification and contact details of a person in Spain who may represent the service company in workers' information and consultation procedures and in negotiation procedures affecting workers who are posted to Spain.

When the undertaking that posts workers to Spain is a temporary employment undertaking, the notification of the posting must also include the following:

- Accreditation that it satisfies the legal requirements of its State in order to temporarily place its contracted workers at the disposal of other user undertakings.

- The statement of the temporary needs of the user undertaking to be satisfied with the contract, indicating the corresponding case pursuant to those set out in article 6 of Law 14/1994, of 1 June, regulating temporary employment undertakings.

When the undertaking that posts workers to Spain wishes to be contracted or subcontracted for works on a construction site, said undertaking must also be registered with the Register of Accredited Companies (REA) (see the section below on "Additional obligations of undertakings that post workers to Spain for the performance of works on a subcontracting basis in the construction sector").

The procedure to notify the posting shall be that determined by the competent Autonomous Community. ((Contact details of the employment authorities for the purposes of information about the terms and conditions of employment and posting notification).

The obligation to report the posting is understood without prejudice to compliance with whatsoever other obligations concerning notification, information or declaration of activities to be made to the Public Administrations by business owners by virtue of other provisions.

Additional obligations of undertakings that post workers to Spain to carry out work under a system of subcontracting in the construction sector

Additional provision one of Royal Decree 1109/2007, of 24 August, which implements Law 32/2006, of 18 October, regulating subcontracting in the Construction Sector.

•They shall provide substantiation of observing the requirements set out in Article 4.2 a) of Law 32/2006, of 18 October, by providing documentation that proves compliance with the obligations set out in the national rules that transpose articles 7 "Protective and preventive services" and 12 "Training of workers" of Council

Directive 89/391/EEC, of 12 June 1989, on the introduction of measures to encourage improvements in the health and safety of workers at work.

•In the event of postings for longer than eight days, these must be registered with the Register of Accredited Companies (REA) of the labour authority in whose territory the services are to be provided in Spain.

To this end, the first notification of the posting carried out pursuant to article 5 of Law 45/1999 (see the previous section on "Posting notification") shall be considered to be an application for registration, which must be accompanied by a declaration pursuant to the form established in Annex I.A of Royal Decree 1109/2007. The application thus formulated shall provisionally enable the undertaking to take part in the subcontracting process until the date of registration or refusal.

Once the registration has been completed, notifications concerning subsequent postings must include, together with the legally required details, the registration number in the Register of Accredited Companies.

Representatives of posted workers

Additional provision three of Law 45/1999

Representatives of workers posted to Spain, who hold such status pursuant to national legislation practices, may exercise administrative or judicial actions under the terms recognised for workers' representatives in accordance with Spanish legislation.

Representatives of workers of user undertakings and undertakings that receive in Spain the services from the workers posted under the aegis of the provisions set out in this Law shall have the terms of reference with regard to these workers as acknowledged under Spanish legislation, irrespective of the place where the temporary employment undertaking or the undertaking providing the services is located.

Inspection actions

•Article 6 of Law 45/1999.

•Article 8 of Law 45/1999.

•Article 8 bis of Law 45/1999.

•Article 12.1.a)4 of Law 23/2015, of 21 July, on the Structure of the Labour and Social Security Inspection System.

The Labour and Social Security Inspectorate (ITSS) is responsible for ensuring compliance with the obligations imposed on business owners that post their workers to Spain. In order to apply legal provisions concerning posting of workers, and in order to ensure compliance therewith, the competent authorities may carry out a comprehensive review of factual information, such as the location at which the company performs its primary activity and the nature of the activities of the posted worker.

Business owners to which the Law on the Posting of Workers applies must appear, if so requested by the Labour and Social Security Inspectorate, at the designated government office and provide any documentation that has been demanded as evidence of compliance with said Law, including documentation proving that the company was validly incorporated.

Without prejudice to the provisions of the above section, during the posting period business owners must have the following documents available for immediate consultation at the place of work or in digital format, among others:

a.Employment contracts or the documents referred to in Article 5 of Royal Decree 1659/1998, of 24 July, implementing Article 8.5 of the Workers' Statute Law concerning informing workers of the essential elements of employment contracts, when the information referred to in said article does not appear in the written employment contract, for each worker.

b.The payslips for each worker and the proof of payment of wages or salaries to each worker.

c.Records of working hours, indicating the beginning, end and duration of the working day.

d.The document evidencing the authorization to work held by citizens of third countries, pursuant to the legislation of the State in which the undertaking is established.

Once the posting has been completed, the business owners must provide the documents referred to in the above paragraphs when requested to do so by the Labour and Social Security Inspectorate.

Business owners must notify the Labour Authority in writing, as determined by regulations, of any harm to the health of posted workers caused during or by the work performed in Spain.

The documentation referred to in the above paragraphs must be submitted translated into Spanish or the co-official languages of the regions where the services are to be rendered.

Further information about the Labour and Social Security Inspectorate: http://www.empleo.gob.es/itss/web/index.html

1.10. Sweden

9.1	Sections 5(d), 10-11 and 21 of the Posting of Workers Act (1999:678) Sections 7-9 of the Posting of Workers Ordinance (2017:319)
9.2	No legislation or other form of regulation necessary.
9.3	No legislation or other form of regulation necessary.

9.4	Section 7 of the Posting of Workers Ordinance (2017:319)
9.5	The Commission was informed about the measures referred to in paragraphs 1 and 2 that are applied by Sweden in the correlation table sent on 10 May 2017.

1.11. Slovenia

Article 9 and 12 of the Directive 2014/67/EU have been transposed into national legislation with the adoption of the Cross-border Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17). Relevant to the transposition of the two Articles is Chapter III, which establishes a framework for the cross-border provision of services in Slovenia by employers and self-employed persons, legally established in another EU Member State.

Article 14 of the Cross-border Provision of Services Act lists the obligations of the EU employers, posting workers in the framework of the provision of services to Slovenia (EU service providers), including the administrative requirements and control measures.

Paragraph 1 of the Art. 14 of the Cross-border Provision of Services Act, transposing the Art.

1(1)(a) of the Directive 2014/67/EU, imposes the obligation of the EU service to, prior to the

posting, declare the commencement of the service provision, which includes following information:

 the name and registered office (seat) of the EU service provider,

 the name and date of birth of the EU service provider's responsible person,

 the names, dates of birth, nationality of the posted workers and the addresses of their

residences in the Republic of Slovenia,

 the type of service,

 the location and duration of the provision of services,

 the name and date of birth of the posted worker appointed to act as the contact

between the EU service provider and the competent supervisory bodies and

 the name and the registered office or address of the client for whom the services are intended.

An EU service provider can declare the commencement of the service provision online or in writing.

According to the paragraph 3 of the Art. 14 of the Cross-border Provision of Services Act, transposing the Art. 1(1)(b) and (d) of the Directive 2014/67/EU, an EU service provider is required to ensure that the following documents are kept on the location where the activity is

carried out and can be provided for inspection the request of the supervisory body:

 a copy of the contract between the client and the EU service provider or a copy of the act of posting and its translation into Slovenian,

 a certificate of the submitted declaration of the commencement of the provision of services,

 copies of the employment contracts and their translations into Slovenian,

 copies of pay slips and their translations into Slovenian,

 time-sheets and their translations into Slovenian,

 documents regarding health and safety at work and their translations into Slovenian,

 evidence of wages paid or copies of equivalent documents for all posted workers and their translations into Slovenian,

 certificates concerning the social security legislation that applies to the worker (the A1 form),

 certificate concerning legal establishment and, where appropriate, registration of the EU service provider and

 where appropriate, declaration of cross-border temporary activity in accordance with the Small Business Act.

Furthermore, according to paragraph 4 of the Art. 14 of the Cross-border Provision of Services Act, transposing the Art. 1(1)(c) of the Directive 2014/67/EU, an EU service provider is obliged to keep and, at the request of the supervisory body, make available the above mentioned documents during the period of 24 months after the end of posting.

1.12. Slovakia

Section 4

Obligations of the host employer and the home employer

(1) The host employer shall be obliged to notify the National Labour Inspectorate at the latest on the day of posting in a documentary or electronic form regarding:

a) its business name and registered office if it is a legal person and its business name or forename and surname (if different from the business name) and place of residence if it is a natural person,

b) its identification number, if assigned, and the register in which it is registered,

c) the estimated number of posted employees,

d) forename, surname, date of birth, place of permanent residence and nationality of the posted worker,

e) the day of commencement and termination of posting,

f) the place of work and the type of work performed by the posted worker in the course of posting,

g) the name of the service or services that the host employer will be providing through a posted employee in the Slovak Republic,

h) the forename, surname and address of the person in charge of the service of documents which will be located within the Slovak Republic (hereinafter referred to as the 'contact person') during posting.

(2) The host employer shall be obliged, during the posting at the place of work, pursuant to paragraph 1(f):

a) to retain an employment contract or other document confirming the employment relationship with the posted employee,

b) to maintain and keep records of the posted employee's working time to the extent specified in separate legislation,[6)]

c) to keep records of the wage paid to the posted worker for the work performed during the posting.

(3) At the labour inspectorate's request, the host employer shall:

a) submit documents pursuant to paragraph 2.

b) deliver the documents referred to in paragraph 2 (even after the termination of posting),

c) submit a translation into Slovak of the documents referred to in paragraph 2 or parts thereof within a reasonable period specified by the labour inspectorate.

(4) The home employer shall be obliged to provide information to the National Labour Inspectorate or the labour inspectorate at their request for the purposes of Section 5(1)(a).

Hosting employer will fulfil the obligation of notification:

- www.ip.gov.sk – hosting employer will fill in the e-mail contact, will register him/herself and will create his/her account. After the registration he/she will be able to notify the hosting of workers and consequently to administrate the given data (notice the change at the currently posted workers or fill up new posted workers).

- Documentary form – it is necessary to complete the form, print it and send it by post to the address: National labour inspectorate, Masarykova 10, 0404 04 Košice or by e-mail to: nip@ip.gov.sk.

1.13. United Kingdom

England, Wales and Scotland and Northern Ireland

There is no general requirement in the UK for posted workers to be registered either before arrival or on entry and nor is there a system to monitor or keep records of documents specifically in relation to postings.

Gibraltar

Application of regulation to detached workers.

15A. (1) Where a detached worker is an entitled worker–

(a) by virtue of falling within one of the paragraphs of regulation 6(4); or

(b) because his employer is an employer who, by virtue of the application of the law of the European Union or of the European Economic Area is entitled to provide services in Gibraltar, the employer shall notify the Director no later than five working days before it is proposed that the detached worker commence temporary employment in Gibraltar.

(2) A notification under subregulation (1) shall he accompanied by the prescribed fee, and shall be in writing and shall include sufficient details of the employer and the detached worker to enable the Director to satisfy himself that the detached worker in respect of whom the notification is made, is employed by the employer in the State of establishment of the employer and has the benefit of the relevant provisions in that State in respect of industrial injury insurance and medical expenses.

(3) Subject to subregulation (3A), where the Director is satisfied that the detached worker in respect of whom notification has been made is employed in the State of establishment of the employer and has the benefit specified in subregulation (2), the Director shall so advise the employer in writing.

(3A) In order to meet the requirement of subregulation (3), the Director of Employment shall make an overall assessment of all factual elements that are deemed necessary, in particular those set out in subregulations (3B) and (3C), to determine that the person is a genuine detached worker.

(3B) In order to determine whether an employer genuinely performs substantial activities, other than purely internal management or administrative activities, the Director of Employment shall make an overall assessment of all factual elements characterising those activities, which may include–

(a) the place where the employer has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in accordance with national law has a professional licence or is registered with the chambers of commerce or

professional bodies;

(b) the place where detached workers are recruited and from which they are sent;

(c) the law applicable to the contracts concluded by the employer with its workers, on the one hand, and with its clients, on the other;

(d) the place where the employer performs its substantial business activity and where it employs administrative staff;

(e) the number of contracts performed or the size of the turnover realised in Gibraltar, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.

(3C) In order to assess whether a detached worker temporarily carries out his work in Gibraltar as opposed to his ordinary Member State of employment, all factual elements characterising such work and the situation of the worker shall be examined, and such elements may include-

(a) the work is carried out for a limited period of time in a Member State;

(b) the date on which the work in Gibraltar starts;

(c) the detached worker returns or is expected to resume working in the Member State from which he is sent after completion of the work or the provision of services for which he is sent to Gibraltar;

(d) the nature of the activities;

(e) travel, board and lodging or accommodation is provided or reimbursed by the employer who sends the worker and, if so, how this is provided or the method of reimbursement;

(f) any previous periods during which the post was filled by the same or by another detached worker. (4) An employer who causes a detached worker to perform work in Gibraltar prior to receiving the written notification specified in subregulation (3) and the person to whom that employer is providing a service (except where that person is a private householder) shall be guilty of an offence punishable on summary conviction by a fine at level 3 on the standard scale.

(5) Where the detached worker is an entitled worker regulations 4, 5, 6 (except subregulation (4)) 7, 8, 9, 10, 11, 12, 13 and 15 shall not apply. (6) Regulation 14 shall apply subject to the variation that the reference shall be to regulation 15A in place of regulation 11.

(7) Where an employer proposes to use a detached worker in Gibraltar and that detached worker is not an entitled worker, the provisions of regulation 7 shall apply as if references in that regulation to a proposal to engage a worker were references to proposals to use a detached worker.

(8) The provisions of these Regulations shall apply to a person to whom subregulation (7) applies subject to such variations as are necessary to substitute for references to a worker references to a detached worker.

ANNEX II – SUBCONTRACTING LIABILITY

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2. ARTICLE 12

Article 12 of the Enforcement Directive aims to tackle fraud and abuse concerning posting of workers, namely, in the subcontracting chains.

Paragraphs 7 and 8 of Article 12 provide that Member States shall inform the Commission about the measures undertaken under this Article and shall make the information generally available. In the case of paragraph 2, the information provided to the Commission shall include elements setting out liability in subcontracting chains. In the case of paragraph 6, the information provided to the Commission shall include elements setting out the effectiveness of the alternative national measures with regard to the liability rules referred to in paragraph 2. The Commission on its behalf shall make this information available to other Member States and will closely monitor the application of this article.

2.1. Austria

The measures are related to activities mentioned in Article 12 para. 2 of the Enforcement Directive (of the Annex to Directive 96/71/EC). The client/contractor is liable for the gross remuneration corresponding to the minimum rates of pay and for the supplements to the Construction Workers' Holiday and Severance Pay Fund.

The client/contractor is liable as guarantor and payer pursuant to Section 1357 ABGB; that means there is no need for the employee to remind or sue his employer.

The following information is a nonbinding translation of the respective provisions of the Austrian Anti-Wage and Social Dumping Act.

Liability provisions applicable to the construction sector

Section 9. (1) The client shall, as guarantor and payer pursuant to Section 1357 ABGB, be liable for the entitlement of workers posted or hired-out on a cross-border basis to remuneration they are entitled to receive from their employer under a law, ordinance or collective agreement, under consideration of the individual classification criteria, for construction work in Austria assigned in accordance with Section 3 Para. 6. The client, who is not a contractor of the assigned construction work, shall be liable only if aware of the non-payment of remuneration prior to commissioning the work, or if the client had to seriously reckon with non-payment due to obvious indications and accepted it.

(2) The following requirements for establishing the client's liability pursuant to Para. 1 shall apply:

1. the worker shall inform the Construction Workers' Holiday and Severance Pay Fund (BUAK) about the claim to remuneration outstanding no later than eight weeks after the remuneration's due date, indicating a specific amount and remuneration payment period;

2. the worker's information shall comprise data about the employer concerned, the existence of an employment relationship, the place and period when work under the assignment was performed, as well as the type of the work activity;

3. the Construction Workers' Holiday and Severance Pay Fund shall notify the client in writing about it after having completed the investigation pursuant to Para. 3, indicating a specific amount; and

4. the entitlement to the outstanding remuneration has neither expired nor lapsed.

The client's liability shall be established at the time of receipt of the written information pursuant to no. 3. The liability shall expire nine months after the due date of the respective remuneration, unless the claim is asserted vis-à-vis the client in court by the employee within this period. The liability shall be limited to the amount indicated in the information provided.

(3) On the basis of the data provided pursuant to Para. 2 nos. 1 and 2, the Construction Workers' Holiday and Severance Pay Fund shall check the existence of an employment relationship as well as the claim asserted by the employee. Sections 23b and 23c BUAG shall apply. The Construction Workers' Holiday and Severance Pay Fund shall transmit the information pursuant to Para. 2 no. 3 to the client, the contractor and the employee, in which case the transmission to the contractor shall mean an out-of-court assertion in order to avoid the entitlement to the remuneration outstanding to expire or lapse. It may add reasonable grounds for doubting the existence of the employment relationship or the entitlement to the information provided to the client.

(4) As soon as the client's liability pursuant to Para. 1 has been established, it can, for the duration of the liability period, refuse payment of the compensation it owes to the contractor pursuant to Para. 1 from the particular or any other contract. The right to refuse payment is limited to the amount indicated in the information pursuant to Para. 2 last sentence, plus a reasonable amount covering any costs of court proceedings. The commencement of insolvency proceedings concerning the contractor shall not affect the establishment or the continued existence of the client's right to refuse payment. To the extent that the client pays the contractor's debt, the client shall be discharged from its debt to the contractor. If the client makes payment as a result of an enforceable court ruling handed down against it and if it has notified the contractor of the litigation (Section 21 of the Code of Civil Procedure (Zivilprozessordnung, ZPO), Imperial Law Gazette no. 113/1895) or taken the steps it can reasonably be expected to take regarding such notification in order to enable the contractor to object to the claim raised in a way that was beneficial to its interests, the payment including the amount covering the costs of the court proceedings against the contractor shall have a discharging effect. The payment shall not have a discharging effect where the amount indicated in the court ruling is based on wanton conduct of the client. The client's payment shall also have a discharging effect to the extent that it is covered by an enforceable court ruling handed down against the contractor.

(5) If the client has paid the compensation, it may claim reimbursement from the contractor for the debt paid in the contractor's place (Section 1358 ABGB). If the client makes payment as a result of an enforceable court ruling handed down against it and if it has notified the contractor of the litigation (Section 21 ZPO) or taken the steps it can reasonably be expected to take regarding such notification in order to enable the contractor to object to the claim raised in a way that was beneficial to its interests, it may

claim reimbursement from the contractor for the payment made including the amount covering the costs of the court proceedings. There is no claim to reimbursement where the amount indicated in the court ruling is based on wanton conduct of the client. The client's payment shall also constitute an entitlement to reimbursement if it is covered by an enforceable court ruling handed down against the contractor.

(6) Within the scope of Paras. 1 to 5, any and all clients shall truthfully provide the Construction Workers' Holiday and Severance Pay Fund with information about the companies they have contracted and about subcontracting construction work no later than 14 days from receiving the request for information. In order for the employee to assert his/her claims, the Construction Workers' Holiday and Severance Pay Fund shall have the right to forward to the employee the information provided and the data related to information that was not provided. To this end, the Construction Workers' Holiday and Severance Pay Fund shall name to the employee any and all clients (name and address) it is aware of.

(7) If a person who is required to provide information to the Construction Workers' Holiday and Severance Pay Fund fails to do so, that person shall, as long as the necessary information is not provided, with respect to the subcontracted construction work or other contracts, be considered the contracting company for all subcontracted companies.

(8) The client's liability shall extend to employees of each further contractor if placing the contract is to be considered a legal transaction designed to evade liability (evasive transaction) and the client was aware of that or had to consider it entirely possible due to obvious indications and accepted it.

(9) If workers hired out on a cross-border basis are employed by a client to perform construction work as defined by Para. 1, Paras. 1 to 8 shall be applied to the relationship with the client as a user undertaking. Section 14 AÜG shall not be applied in that case.

(10) As guarantor and payer pursuant to Section 1357 ABGB, the client as defined by Para. 1 shall also be liable for supplements its contractor has to pay to the Construction Workers' Holiday and Severance Pay Fund for its employees within the scope of the employment relationship, unless they have expired or lapsed. The Construction Workers' Holiday and Severance Pay Fund shall inform the client as defined by Para. 1 in writing of the commencement of liability and of the amount of supplements to be paid. The liability of the client as defined by Para. 1 shall be limited to the amount indicated in the information provided. Liability shall be established at the time of receipt of the written information and shall expire nine months after the supplements have been due, unless the Construction Workers' Holiday and Severance Pay Fund asserts the claim vis-à-vis the client in court within this period. Paras. 4 to 9 shall also apply.

2.2. Belgium

1. Belgium has transposed Article 12 (1) to(5) of Directive 2014/67/EU by implementing in the Act of 12 April 1965 regarding the protection of wages a specific system exclusively concerning the joint and several liability of the direct contractor in case of building activities, hereafter mentioned as the "specific system in case of building activities". Moreover, as such, it has to be noted that this specific system in case of building activities derogates from the pre-existing general system of joint and several liability also provided by the aforementioned Act of 12 April 1965 (see point 3 in that regard).
2. Main principles governing the specific system in case of building activities.

Where, in case of building activities, an employer does not (totally or partially) pay the remuneration owed to his/her employee, the specific system in case of building activities entitles the aforementioned employee, under certain conditions, to subsidiarily obtain payment of such an owed remuneration from third persons, i.e. the jointly liable persons.
2.1. Workers concerned.
Such a specific system in case of building activities concerns all workers employed in Belgium regarding these activities (including the posted workers).
2.2. Remuneration debts concerned.
The remuneration owed to the employee but which has not been paid, neither by his/her employer, neither by the one who is required to pay it on behalf of the aforementioned employer. Moreover, the owed remuneration corresponds to the work performed by the worker for the benefit of the jointly and several person (see point 2.5.).
2.3. Activities concerned by the specific system in case of building activities.
The building activities within the meaning of the Belgian Act of 12 April 1965.
2.4. Contractual relationship concerned.
The specific system in case of building activities only concerns the direct contractual relationship between the employer of the unpaid workers and his/her direct contractor, i.e. the person jointly and severally liable. It may apply in case of existence of subcontracting chains but also in the absence of such chains (see hereafter).
2.5. Persons jointly and severally liable under the specific system in case of building activities: the direct contractor of the employer (of the unpaid workers), i.e. :
- the initial client, direct contractor of the employer (of the unpaid workers), hereafter mentioned as the "initial client".
- the direct contractor of the subcontractor — employer (of the unpaid workers) in case of subcontracting chains and in the absence of such chains, hereafter mentioned as the "contractor".
2.6. Exemptions from the joint and several liability provided by the specific system in case of building activities.
- The specific system in case of building activities does not apply to the initial client/natural person on whose behalf the employer (of the unpaid workers) performs building activities exclusively for private purposes.
- Without prejudice to the abovementioned, as the case may be, the initial client or the contractor are not jointly and severally liable provided that they are in possession of a written declaration, signed by them and their direct contractor-employer/ direct subcontractor- employer, in which:
+ as the case may be, the initial client or the contractor communicates to his/her direct contractor-employer the electronic address of the website of the Federal Public Service Employment, Labour and Social Dialogue providing the information regarding to the owed remuneration, and;
+ the contractor-employer certifies that he/she pays and shall pay the remuneration owed to his/her workers.
Nonetheless, this second exemption (based on the aforementioned declaration) shall no longer apply and therefore, as the case may be, the initial client or the contractor shall be jointly and severally liable for the payment of the owed remuneration corresponding to the work performed by the worker for their benefits during the period beginning from the expiration of a period of fourteen working days which takes itself effect when, as the case may be, the aforementioned initial client or contractor are aware of the non-payment of the remuneration by the employer.
2.7. More information about the specific system in case of building activities can be consulted via the following webpages of the :
- in French language : http://www.emploi.belgique.be/defaultTab.aspx?id=47596;
- in Dutch language : http://www.werk.belgie.be/defaultTab.aspx?id=47596.

Regarding posting of workers, such an information can also be consulted from the following webpage of the Federal Public Service Employment, Labour and Social Dialogue which is specifically dedicated to the remuneration to be paid in case of such a posting http://www.employment.belgium.be/defaultTab.aspx?id=38256.
3. As such and as already aforementioned, the specific system in case of building activities derogates from the general system of joint and several liability provided by Belgian Labour Law which already applied before the entry into force of Directive 2014/67/EU. Therefore, in case of building activities, by effect of the derogating specific system, this general system shall no longer apply to the direct contractual relationship. Nonetheless, it is important to point out that such a general system remains fully applicable to the non-direct subcontracting relationship.
More information about the general system concerning the joint and several liability can be consulted via the following webpage :
- in French language: http://www.emploi.belgique.be/defaultTab.aspx?id=44664 ;
- in Dutch language : http://www.werk.belgie.be/defaultTab.aspx?id=44664.

Regarding posting of workers, such an information can also be consulted from the following webpage of the Federal Public Service Employment, Labour and Social Dialogue which is specifically dedicated to the remuneration to be paid in case of such a posting http://www.employment.belgium.be/defaultTab.aspx?id=38256.

2.3. Bulgaria

In order to comply with the obligation of Art 12 from directive 2014/67/EU, in Bulgarian Labour Code is settled a new provision – Art 357, para 4, where it is determined that, if an employee has been posted Bulgaria within the framework of service provision by an employer, registered under the legislation of another EU Member State, state – party to EEA Agreement, or Confederation Switzerland or of third country, have suffered harms because of non-compliance of the work conditions laid down in Bulgarian legislation, they could appeal their rights in front of court. According to the same provision, the contractor in the subcontracting chains could be held liable by the workers. This is stipulated in the following text: "Where the employer is subcontractor, the claims for non-paid of the worker or employer minimum remunerations may be claimed against the contractor, to whom the employer is direct subcontractor or solidarily against the employer and contractor. The responsibility of the contractor shall be restricted to the rights of the worker or employee, comprising from the contractual relations between the contractor and employer.

2.4. Croatia

Subcontracting liability in the construction sector (Article 12)

Croatia has implemented an obligation arising from Article 12 (2) and introduced in a subcontracting situation in the construction sector a liability of the contractor of which the employer is a direct subcontractor with respect to any outstanding net remuneration corresponding to the minimum rates of pay. Pursuant to Article 12 (5), the Croatian law also provides that a contractor who has undertaken due dilligence obligations shall not be liable.

So, in the case if a direct subcontractor fails to pay wage or a part of wage to his or her posted worker on due date, a contractor shall be jointly and severally liable for the obligations of the subcontractor towards subcontractor's posted worker for worker's claims for due and unpaid minimum rate of pay.

The liability of the contractor is limited to worker's rights acquired under the contractual relationship between the contractor and his/her direct subcontractor, arising from the contract of provision of services in one or more construction activities.

Due diligence obligations as defined in Croatian law

The contractor shall not be liable if, he or she, has taken all appropriate actions to request and receive from his/her subcontractor before the beginning and/or during the period of the posting:

1. a copy of the submitted posting declaration and any subsequent amendments thereto,

2. a list of all posted workers employed in executing a contract between a contractor and a subcontractor,

3. for each individual posted worker: worker's identification number, date of birth, job description, citizenship, date of commencement and completion of posting, place or places of providing services/building site, regular working time, including overtime hours, and gross monthly wage,

4. the written guarantee of the subcontractor that he or she will pay the posted worker guaranteed wage within due date and in the amount due to him/her during the posting,

5. for the duration of the contract between the contractor and the subcontractor:

– at least once a month, for each individual posted worker: records of the working time, wage records, wage calculation (payroll account), from which all the elements, amounts and method of determining these amounts is evident, the currency to be used for the payment, a proof of payment within the time limit and in the amount to which the worker is entitled during the posting.

Possibility to provide for more stringent liability rules as defined in Article 12 (4) or to take other appropriate enforcement measures instead of the liability rules reffered to in Article 12 (2), not used.

Liability of a contractor for the obligations of subcontractors towards posted workers in the construction industry (Article 88.b, Foreigners Act)

(1) The contractor shall be jointly and severally liable for the obligations which a subcontractor has in its capacity as employer towards its posted workers, for the claims for overdue minimum rate of pay, including increased wage for overtime to which a posted worker is entitled in line with the provision of Article 86 paragraph 5 point 3 and paragraph 6 of this Act.

(2) A posted worker to whom the subcontractor in its capacity as employer has failed to pay on due date his wage or part of the wage referred to in paragraph 1 of this Article shall be entitled to request a payment of such wage from the contractor after the expiration of a time period in which, pursuant to the Act which regulates employment

relationships, the subcontractor was required to provide the worker with a payroll account specifying the amount due to be paid to the worker.

(3) Liability of the contractor referred to in paragraph 1 of this Article shall apply to contractual relationship between a contractor and subcontractor arising from an agreement on provision of services in one or more construction activities according to the relevant National Classification of Activities.

(4) The protection referred to in Article 88 paragraph 1 of this Act shall also apply to the liability of the contractor referred to in paragraph 1 of this Article.

(5) The contractor shall not be held liable under paragraph 1 of this Article, if the contractor has taken all appropriate measures to request and receive from its subcontractor, prior to the commencement and/or during the posting period, the following:

1. a copy of subcontractor's posting declaration and all subsequent modifications therein,

2. a list of all workers engaged to provide services set out in the contract entered into by the contractor and subcontractor,

3. for each individual worker referred to in item 2 of this paragraph: worker's identification number, date of birth, job description, citizenship, date of the commencement and completion of the posting, place of posting, regular working time, including overtime hours and gross monthly wage,

4. a written guarantee provided by the subcontractor stating that in its capacity as an employer it shall pay the posted worker his wage within a time limit and in the amount to which the worker is entitled during the period of posting,

5. for the duration of the contract between the contractor and subcontractors, for each posted worker, at least once a month: working hours records, payroll records, payroll account clearly specifying all elements which determine the amount of wage and the corresponding total wage amount, the currency used for the payment of wage and proof of wage payment made within a time limit and in the amount to which the worker is entitled during his period of posting.

(6) For the purpose of this Article, a contractor means a service provider which has concluded a service agreement with another service provider and there exists a direct contractual relationship between the contractor and the subcontractor.

(7) For the purpose of this Article a subcontractor means a service provider making the posting under a service agreement concluded with the contractors, undertaking to perform all works or parts thereof, i.e., provide services undertaken by the contractor.

According to the Article 93 of the Labour Act**,** the employer shall be obliged to hand over to the worker a payroll account, no later than 15 days after the wage is paid, evidencing the method of determining these amounts. The employer who fails to make the payment of wage within due date, or who fails to pay it the full amount, shall be obliged to provide the worker with a payroll account for the amounts he was required to pay, by the end of month in which the payment of wage, was due.

2.5. Cyprus

Cyprus transposed the Directive into national Law in June 2017 (16/6/2017). The Posting of Workers in the Framework of the Provision of Services Law (N.63 (I) / 2017) and Regulations of 2017 (Κ.Δ.Π 517/2017) is the Legislation which provides in the same way the subject matter of Article 1 of the Directive.

Article 12
Section 19 (1) and (2) of the above Cyprus Law have been harmonized with Article 12 paragraph 1-3 of the Directive. Specifically according to Section 19 (1) of the relevant Law in subcontracting chains when the direct subcontractor is the employer of a posted worker, the contractor and the direct subcontractor are jointly and severally liable to the posted worker with respect to any ……(the same wording of article 12) if they provided by Article 3 of directive 96/71/EC , section 7 (Terms of employment of posted workers) of the Cyprus relevant Law in cases of :
(a) Fraud and abuse
(b) Activities mentioned in the Annex to Directive 96/71/EC (Annex of the Cyprus relevant Law)
Provided that the liability of the contractor is suspended if it appears that the remuneration rights according to paragraph 1 of the section 19 can be paid by direct subcontractor.
According to Section 19(2) of the Cyprus Law the liability which is mentioned above shall be limited to workers rights acquired under the contractual relationship between the contractor and direct subcontractor. (article 12(3) of the directive).
Finally paragraph 5 of article 12 of the Directive is transposed into the Cyprus law in exactly the same way.

2.6. Czech Republic

Article 12 has been transposed by the **Section 319 paragraph 3 of the Labour Code** (262/2006 Coll.). According to this provision, **the person to which an employee is posted** (by an employer established in EU Member State to perform task arising from the contract of transnational provision of service**) is liable for payment of the minimum or guaranteed wage**, provided that

the minimum remuneration has not been paid by the employer establish in the EU MS which posted the employee to Czechia;

this employer has been fined for the offence listed in the Section 13 paragraph 1 point b)[1] or Section 26 paragraph 1 point b)[2] of the Labour Inspection Act (251/2005 Coll.);

the person to which the employee has been posted was or must have been aware of the fact that the remuneration had not been paid.

[1] *„(1) A natural person shall be considered guilty of a breach of the legislation on the remuneration of employees if he… (b) fails to provide to an employee a wage or pay at least as high as the minimum wage or the minimum wage tariff or the pay fixed for the job."*

[2] *(1) A legal person shall be considered guilty of an administrative offence with respect to the remuneration of employees if it… (b) fails to provide to an employee a wage or pay at least as high as the minimum wage or the minimum wage tariff or the pay fixed for the job."*

If the actual duration of posting cannot be substantiated by evidence, it is assumed that the worker has been posted to and worked in Czechia for 3 months.

This liability is not restricted to the activities referred to in the Annex of the Directive 96/71/EC.

C. The obligation on the part of Member States according to Article 5 to make information generally available on **a national webpage** in relevant languages has been transposed by Section 4 paragraph 2 point i) of the Labour Inspection Act. The information is available here: http://www.suip.cz/vysilani-pracovniku/ in English, French, German, Bulgarian, Romanian and Ukrainian.

Please find enclosed the up-to-date text of the relevant transposition statutes cited above (in Czech):

Act No. 435/2004 Coll., Employment Act

Act. No 262/2006 Coll., Labour Code

Act. No 251/2005 Coll., on Labour Inspection

2.7. Denmark

During the preparations of the transposition of the Enforcement Diretive, the most representative social partners in the private sector in Denmark (The Confederation of Danish Employers (DA) and The Danish Confederation of Trade Unions (LO)), presented a joint proposal to the Government on how Article 12 in their view should be implemented in a Danish context.

This proposal resulted in *the Act on The Labour Market Fund for Posted Workers*[3] adopted by the Danish Parliament on 3 June 2016 and *The Danish Labour Market Fund for Posted Workers* (AFU) was established on 18 June 2016.

By establishing the fund, Denmark has made use of Article 12, paragraph 6, according to which, Member States may take other appropriate enforcement measures, in accordance with Union and national law and/or practice, which enable, in a direct subcontracting relationship, effective and proportionate sanctions against the contractor, to tackle fraud and abuse in situations when workers have difficulties in obtaining their rights.

Information on the Danish Labour Market Fund for Posted Workers

If posted workers in Denmark covered by a Danish collective agreement have problems receiving their wage from the employer the worker can get the missing wage paid from the Danish Labour Market Fund for Posted Workers.

Posted workers can receive their wages from the fund if:

- They are posted from an EU or EEA country

[3] Se The Act on The Labour Market Fund for Posted Workers (https://bm.dk/media/7036/act-on-the-labour-market-fund-for-posted-workers.pdf) and Executive Order on The Labour Market Fund for Posted Workers (https://bm.dk/media/7026/executive-order-on-the-labour-market-fund-for-posted-workers.pdf)

- They are covered by a Danish collective agreement

- They have unsuccessfully attempted to receive their wages – on the basis of an industrial dispute ruling – from their employer

If the fund has paid wage to posted workers as mentioned above, the employer as well as the Danish assignor of the employer are imposed an extraordinary contribution to the fund. The purpose is to encourage assignors and employers to pay the correct wage to posted workers in the first place. The fund will seek to recover the wage the fund paid to the workers from their employer in his home country.

The trade union that pursued the labour industrial dispute case can represent the worker.

The fund is financed by contributions from all employers (Danish as well as foreign employers) providing services in Denmark.

Information on the fund is made available on the website established in accordance with Article 5 of the Enforcement Directive: www.workplacedenmark.dk (https://workplacedenmark.dk/en/working-conditions/danish-labour-market-fund).

The Danish Government, DA and LO firmly expect, at that the fund will effectively protect posted worker's rights, among other things because the Danish contractor has an interest in securing that service providers respects their obligations according to collective agreements including paying the agreed salary.

2.8. Estonia

Article 5^2 of Working Conditions of Employees Posted to Estonia Act **stipulates liability of person who ordered service from employer of posted employee.**

If an employee posted to Estonia performs work in construction (renovation, maintenance, alteration or demolition of buildings, including excavation work, earthmoving work, actual construction work, or the assembly and demolition, connection and installation, modification, renovation, repair, disassembly, demolition, maintenance, painting, cleaning or repair of prefabricated components) and the employer does not pay the employee wages, the wages shall be paid by the person who ordered the service from the employer of the posted employee.

This obligation shall be fulfilled by the person who ordered the service from the employer of the posted employee if it is not possible to collect the wages from the employer within six months after the enforcement of the decision.

The claim is limited to the minimum monthly wage. If in everyday economic activities the person who ordered a service from the employer of a posted employee has exercised due diligence in their relationship with the employer of the posted employee, the person does not have the obligation before the employee.

Single official national website can be found here http://ti.ee/en/organisation-contacts/the-labour-inspectorate/posted-workers/.

Working Conditions of Employees Posted to Estonia Act https://www.riigiteataja.ee/en/eli/513072017009/consolide.

Language Act https://www.riigiteataja.ee/en/eli/512012016001/consolide.

2.9. Finland

The obligations of the Chapter 4 Section 15 are based and corresponds the praxis in force in the construction sector due to universally binding collective agreements and framework agreement in national context. Even if the national praxis as such is not binding as a part of a collective agreement it is applied in national situations. This system was incorporated as a legal obligation in the Act on Posted Workers to cover also cross-border situation. This implementation system makes this more transparent for the foreign employers and workers and affords the same kind of protection as we have for national workers. The system requires that the builder or the general contractor have to act immediately and actively if a posted worker informs irregularities with salary or working conditions related to pay. The posted worker can decide to whom he/she contacts at the first phase. In addition, our regulatory framework in the construction sector is meaningful to protect workers and promoting fair level playing field for companies.

Section 15

Duties of the builder and the general contractor in building work

(1) If a posted worker has not been paid the minimum rate of pay referred to in section 5, he or she may notify the construction site builder or the general contractor of the matter. After receiving the notification, the builder or the general contractor shall immediately request the posting undertaking to provide a report on the wages paid to the posted worker and whether these comply with section 5.

(2) The builder or the general contractor shall immediately send the request for information and the report submitted by the posting undertaking to the worker. At the request of the worker, the information request and the report shall immediately be submitted to the occupational safety and health authority. The builder or the general contractor shall keep the information request and report for two years following the end of the work.

2.10. France

Article 12 of the implementing Directive lays down an obligation for each Member State to introduce measures to guarantee that, in subcontracting chains, contractors employed by a direct subcontractor may, in addition to or in place of the employer, be held responsible by the posted worker for respect for the rights of such workers, specifically when the net remuneration received by the worker is lower than specified in the statutory and contractual provisions of the host Member State.

This provision is one of the key elements in the system of duty of care of the contracting authority and its increased responsibility when the latter concludes a contract with a service provider who is not aware of the obligations in terms of declarations or the rights guaranteed to posted workers in France.

Concerning joint and several liability in relation to non-payment of the minimum wage:

Pursuant to Article L.1262-4-3 of Law No 2015-990 on growth, activity and equal economic opportunities, the contracting authority may be held liable in the event of 'non-payment of part or all of the statutory or contractual minimum wage due to the posted worker'.

The aim sought by the French authorities here was to reassure posted workers that full payment of the wages due to them could be guaranteed by the project owner or contracting authority that concluded the service contract with the undertaking that had failed to fulfil its obligations. Here, the contracting authority or the project owner are under an obligation to obtain results: if after being contacted in writing the undertaking that has failed to fulfil its obligations has not rectified the situation, the contracting authority or project owner will be held jointly and severally liable, with the employer, for the payment of the remuneration due.

The concept of remuneration covers the statutory minimum wage or, if this is more beneficial to the worker, the minimum wage as established by an extended sectoral collective agreement that is due to the posted worker and any related expenses and charges enshrined in law or established by collective agreement.

Concerning the organisation of checks:

Article L. 1262-4-3 of the Labour Code states that *'If the project owner or contracting authority is informed in writing by one of the inspecting officers referred to in Article L. 8271-1-2 of the partial or total non-payment of the statutory or contractual minimum wage to a worker who has been posted within the meaning of Article L. 1261-3, by his/her co-contractor, a direct or indirect subcontractor or a co-contractor of a subcontractor, he or she must immediately call upon that subcontractor or co-contractor and the contracting authority immediately responsible for the latter to put a stop to this situation without delay. '.*

The order must first come from the officers empowered to put a stop to the fraudulent situation. The inspection powers of the inspecting officers referred to in Article L. 8271-1-2 of the Labour Code allow the latter to receive any relevant information from the posted workers affected by partial or total non-payment of the minimum wage due. The possibility for any employee to inform an inspecting officer of the Labour Inspectorate about his or her individual situation with a view to exercising his or her rights is stated on the website provided for in Article 5 of the implementing Directive (https://travail-emploi.gouv.fr/droit-du-travail/detachement-des-salaries/). This provision primarily makes it possible to guarantee protection for posted workers so that they are not required to deal directly with the employer, the contracting authority and, potentially, the project owner.

Moreover, it should be noted that employees can contact the employment tribunal for a court decision directly enforceable against their employer. Lastly, since the Law of 10 July 2014, a representative trade union organisation can take legal action to enforce the rights of a posted worker, even without a formal mandate from the latter, provided he or she does not object (Article L. 1265-1). During these court proceedings the employee remains entitled to take action him or herself to assert his/her own rights at any time.

The intermediary role played by trade union organisations and qualified inspecting officers provides guarantees to employers and employees as regards the follow-up to complaints or alerts raised by employees or third parties concerning the working and employment conditions of posted or directly employed workers.

Concerning the legal provisions:

Article L. 1262-4-3:

https://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072050&idArticle=LEGIARTI000030996800&dateTexte=&categorieLien=cid

2.11. Germany

In accordance with Article 12 (1) of the Enforcement Directive, Member States may take measures in order to ensure that in subcontracting chains the contractor of which the employer is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker with respect to any outstanding net remuneration and/or contributions due to the common funds or institutions of the social partners. Pursuant to Article 12 (2) of the Enforcement Directive the introduction of such an obligation is mandatory for the construction sector. In accordance with Article 12 (4) Member States may provide for more stringent liability rules on a non-discriminatory and proportionate basis with regard to the scope and range of subcontracting liability. Member States may also provide for such liability in sectors other than the construction sector.

Germany has implemented Article 12 of the Enforcement Directive through provisions in the Posted Workers Act and the Minimum Wage Act.

Back in 1999 Germany already included a provision in its Posted Workers Act which implements the civil contractor liability laid down in Article 12 of the Enforcement Directive. The current version of section 14 of the Posted Workers Act stipulates that a company commissioning work or services to another company is liable for certain obligations of the subcontractor or those of a temporary work agency contracted by the subcontractor, namely for their obligations to pay workers the minimum level of pay and for contributions to a joint institution of the social partners. Liability for the minimum level of pay refers to net remuneration, which is defined in the corresponding legal provision. Liability extends to the entire subcontracting chain. It applies to the construction sector and to all other sectors where a collective agreement on a minimum level of remuneration or a joint institution has been extended to non-contracting partners pursuant to the Posted Workers Act. Section 14 of the Posted Workers Act does not provide for exculpation (due diligence rule). Regarding the right of workers to the general statutory minimum wage, section 13 of the Minimum Wage Act contains a reference to the provisions of section 14 of the Posted Workers Act ensuring that subcontracting liability extends to this area, too.

Germany fully complies with the obligation to introduce general subcontracting liability in the construction sector. Subcontracting liability applies where a specific, overriding, higher universally applicable collective agreement on a minimum wage in the construction sector exists pursuant to the Posted Workers Act as well as to cases where the general minimum wage is applied to the construction sector. In addition, those contracting work or services in significant quantities by commissioning this work or

these services as entrepreneurs to another entrepreneur of whom they know or negligently do not know that he does not pay the relevant remuneration or contributions to the joint institution or whouses or permits a subcontractor to execute the order, who does not pay the relevant remuneration or the contributions to the joint institution, commit an administrative offence under section 23 (2) (2) of the Posted Workers Act and section 21 (2) (2) of the Minimum Wage Act. For the civil liability and the act of committing an administrative offence it is irrelevant whether the employer is domiciled in Germany or abroad.

2.12. Greece

Article 9 on liability in subcontracting provides that a contractor which has entered into a subcontracting agreement with an employer/service provider (subcontractor) in accordance with Article 2(2) of Presidential Decree 219/2000 shall be liable vis-a-vis the posted worker jointly and severally with the subcontractor for any failure to pay the remuneration or contributions provided for in Article 4 of Presidential Decree 219/2000 to social partners' joint funds or institutions, unless it has exercised due diligence with respect to fulfilling its obligations.

The above liability also applies to all intermediate subcontractors (limited to workers' rights arising from the contractual relationship between the contractor and the subcontractor).

Relevant provisions of national law within the remit of the Ministry of Labour, Social Security and Social Solidarity:

I. Article 68 of Law 3863/2010, as in force, requires the contracting authority, if it is the State, a legal person governed by public law, a local authority or an entity or body in the public sector, to exclude from a contract award undertakings providing cleaning and/or security services which, over a period of two (2) years before the closing date for the submission of tenders, have incurred three (3) fines for specific categories of offences under labour law resulting from a prescribed number of inspections or notices of fines.The contracting authority may exclude undertakings from a contract award in the following two cases: (a) if they have been formally excluded under a relevant provision of this Decree during the last three (3) years before the closing date for the submission of tenders, (b) if they have incurred the penalty of temporary closure of a particular production process or with respect to one or more departments or the entire undertaking or holding pursuant to the relevant provisions of Law 3996/2011 in the three (3) years before the closing date for the submission of tenders (Article 68(2)(c) of Law 3863/2010, as added by Article 22(2) of Law 4144/2013 and amended by Article 39(B) of Law 4488/2017).

In this context, a contractor must immediately inform the recipient of the services in writing if it delegates the execution of the project or of a part thereof to a subcontractor. In such cases the contractor and subcontractor are jointly and severally liable towards the workers with respect to the payment of any kind of remuneration and insurance contributions (Article 68(4), as renumbered, of Law 3863/2010).

The contract will be terminated by the contracting authority if the departments or committees monitoring the satisfactory performance of the service recipient's project establish any breach of the requirements of this article while the project is being

implemented. If such breaches are established at the time of handing over the project, the rights deriving from the contract cannot be claimed but the service recipient is required to pay the workers' remuneration and social security contributions (Article 68(5), as renumbered, of Law 3863/2010 as replaced by Article 22(4) of Law 4144/2013).

The Labour Inspectorate (SEPE) and IKA-ETAM inform the contracting authority in writing if, in the context of inspections, they establish offences relating to undeclared work, illegal employment of aliens or infringements of labour and social security legislation. They also inform the contracting authority in writing of the notices of fines issued in relation to those offences. If a notice of a fine is issued to a contractor for labour law offences defined by the relevant provisions as 'severe' or 'very severe' for the second time during the validity of a contract, the contracting authority must terminate the contract and the contractor will be formally excluded from submitting tenders (Article 68(7), as renumbered, of Law 3863/2010, as amended by Article 24(11) of Law 3996/2011 (Government Gazette, Series I, No 170) and as subsequently replaced by Article 22(5) of Law 4144/2013).

II. Paragraphs (1)-(5) and (8)-(11) of Article 9 of Law 4554/2018 on insurance and pension arrangements, tackling undeclared work, better protection of workers, guardianship of unaccompanied minors and other provisions (Government Gazette, Series I, No 130 of 18 July 2018), which relate to the liability of contracting entities, contractors and subcontractors vis-a-vis workers, provide that: '1. Any natural or legal person who, in the course of their business activities, entrusts the performance of a project or a part thereof (the contracting entity) to another natural or legal person (the contractor), shall be liable jointly and severally with the contractor vis-a-vis the latter's workers with regard to the payment of remuneration, insurance contributions and any severance payments due.

The above liability shall be limited to workers' rights derived from the contractual relationship between the contracting entity and the contractor for the specific project or part thereof.

If the contractor delegates the execution of the project or part thereof to a subcontractor, the joint and several liability shall concern the contracting entity, the contractor and the subcontractor, subject to the reservations set out in the previous paragraph.

2. Any contractor who delegates the execution of a project or part thereof to a subcontractor who employs staff to carry out the project, must immediately inform the contracting entity in writing.

3. The contract delegating the project or part thereof shall include a specific clause on the contractor's obligation to comply with labour and insurance legislation and the legislation on the health and safety of workers and prevention of occupational hazards.

This specific condition shall also be included in the contract drawn up between the contractor and subcontractor.

4. Each month the contractor shall send the contracting entity proof of payment of the remuneration and any severance payments due and confirmation that the social security contributions for its own workers as well as for the workers of any subcontractors have been paid.

The subcontractor shall have the same obligation towards the contractor.

5. The contracting entity shall have a right of recourse under the relevant provisions, in particular if it has exercised due diligence with respect to the contractor and any subcontractor fulfilling their obligations towards their workers. Due diligence shall, in particular, be deemed to have been exercised where the contracting entity:

(a) requires the contractor, in accordance with paragraph 4, to send monthly proof that remuneration and any severance payments due have been paid, as well as monthly confirmation that insurance contributions have been paid for the contractor's own workers and for those of any subcontractor;

(b) issues an extrajudicial statement to the contractor and any subcontractor as soon as it has been established that they have failed to fulfil their obligations towards their workers or to meet the requirement set out in point (a), inviting them to comply within fifteen (15) days; and

(c) terminates the contract with the contractor without delay if no action is taken within the deadline of fifteen (15) days of notification of the extrajudicial statement referred to in point (b) was issued.

The contractor shall have the same right of recourse, on the same conditions, vis-a-vis the subcontractor.

8. The joint and several liability set out in paragraph 1 shall apply for three (3) years from the expiry of the contract between the contracting entity and the contractor.

9. Any agreement between the parties which excludes or restricts the rights of workers under this Article shall be null and void.

10. More specific provisions of the legislation in force, insofar as they are not contrary to the provisions of this Law, shall continue to apply.

11. This Article shall not apply to public contracts pursuant to Law 4412/2016 (Government Gazette, Series I, No 147) .'

2.13. Hungary

Subcontracting liability (Article 12 of the Enforcement Directive)

Section 297, Subsection 2 of Act I of 2012 on the Labour Code (hereinafter: the Labour Code) regulates the subcontracting liability in case of posting of workers to Hungary.

If the beneficiary knew or should have been aware given reasonable care that the foreign employer failed to comply with the obligation of payment of wages and contributions in connection with the employee's employment, the beneficiary shall be jointly and severally liable with the foreign employer for the payment of wages and other payroll costs otherwise payable by the foreign employer.

Section 297

(1) Prior to the conclusion of a services contract the beneficiary shall inform the foreign employer in writing concerning the working conditions applicable pursuant to Section 295. In the event of failure to provide the information described above the beneficiary shall be subject to full financial liability for the employee's claims under Section 295.

(2) If the beneficiary knew or should have been aware given reasonable care that the foreign employer failed to comply with the obligation of payment of wages and contributions in connection with the employee's employment, the beneficiary shall be jointly and severally liable with the foreign employer for the payment of wages and other payroll costs otherwise payable by the foreign employer.

2.14. Ireland

Subcontracting liability
7. (1) This Regulation applies in respect of a contracting chain operating in one or more of the activities mentioned in Schedule 2.
(2) Subject to Regulation 8, where the employer of a posted worker is a direct subcontractor of a contractor and the posted worker has not received net remuneration due to him or her for work under the contractual relationship between the contractor and the posted worker's employer, the posted worker's employer and that contractor are jointly and severally liable for the amount of net remuneration outstanding.
Due diligence
8. A contractor shall not be liable for any outstanding net remuneration due to a worker by virtue of Regulation 7 where the contractor shows that he or she has taken all reasonable steps to obtain from the employer of the relevant posted worker—
(*a*) a copy of the acknowledgement of the employer's declaration to the competent authority issued under Regulation 6,
(*b*) a list of all persons employed by him or her to carry out work under the contractual relationship between the contractor and the employer, and in respect of each person, his or her personal public service number (PPSN), date of birth, job description, nationality, start date and end date of posting, gross weekly wage and normal number of hours to be worked per week,
(*c*) a written assurance that he or she will pay the worker's net remuneration,
and
(*d*) once per month during the period of the contract, wage records, time sheets and proof of payment (EFT details) in respect of the worker for each pay period.
Presentation of complaint under Act of 2015
9. (1) A posted worker referred to in Regulation 7 may present a complaint, naming both his or her employer and a contractor as co-respondents, under section 41 of the Act of 2015 to the Director General (within the meaning of that Act) that he or she has not been paid net remuneration in accordance with section 20(2) of the Protection of Employees (Part-Time Work) Act 2001 (No.
45 of 2001) and—
(*a*) section 14, 15 or 16 of the Act of 2000,
(*b*) an employment regulation order made under section 42C (inserted by section 12 of the Industrial Relations (Amendment) Act 2012) of the Act of 1946,
(*c*) a registered employment agreement (within the meaning of Chapter 2 of Part 2 of the Industrial Relations (Amendment) Act 2015), or
(*d*) a sectoral employment order (within the meaning of Chapter 3 of Part 2 of the Industrial Relations (Amendment) Act 2015).

(2) Where a complaint is presented under paragraph (1) the Director General shall, subject to section 39 of the Act of 2015, refer the complaint for adjudication by an adjudication officer (within the meaning of that Act).
(3) References to employee and employer in—
(*a*) Part 4 (other than section 41(1) and (2)) of the Act of 2015,
(*b*) section 26(1) of the Act of 2000,
(*c*) section 23(2) of the Industrial Relations (Amendment) Act 2015, and
(*d*) section 45A of the Act of 1946,
shall, in so far as they relate to a complaint by a posted worker against a contractor under this Regulation, be construed as references to the posted worker and contractor, respectively.
(4) Each of the provisions specified in subparagraphs (*b*), (*c*) and (*d*) of paragraph
(3) are relevant redress provisions for the purposes of section 41(5) of the Act of 2015 in relation to a complaint against a contractor under this Regulation presented under that section.

2.15. Italy

Joint and Several Liability

The provision set forth in Article 4, paragraphs 4 and 5, recalls internal legislation in force regarding **joint and several liability in contracting, labour outsourcing and transport** that guarantees the rights of employed workers covering matters pertaining to remuneration and contributions, and in so doing makes the law applicable also to service providers that post workers to Italy (cf. note ML No 33/2010).

Pursuant to the afore-mentioned law, in the case of transnational posting by a contractor or subcontractor, the regulations provided for in Article 29, paragraph 2 of Legislative decree No 276 of 2003 shall apply, according to which, in the case of works or services contracts, the client undertaking or employer is held jointly liable with the contractor and with any subcontractors with respect to any outstanding remuneration (including the amounts for severance pay-TFR) and/or contributions due as well as any insurances accrued during the contracting period.

In the case of subcontracting chains and for all industrial sectors, posted workers can hold liable the client undertaking and the contractor as well as any subcontractors for the respect of the posted workers' rights (referred to remuneration and social security contributions) within and no later than two years from the termination of the contract.

Essentially the same joint and several liability is provided for in the case of temporary employment undertakings in Article 35, paragraph 2 of Legislative decree No 81/2015 and, except for some specific characteristics, also in the case of freight transport as referred to in Article 83, paragraphs 4bis to 4 sexies of Legislative decree No 112/2008 (converted from Law No 133/2008).

With particular regard to road haulage operations for hire or reward, the legislation provides specific due diligence obligations on the basis of which the 'user' company or the carrier, in the case of subcontracting, shall not be held liable if he/she undertakes to verify, before stipulating the contact, the regularity of the payments of salaries, social security contributions and insurances made by the service provider. For this purpose they must obtain, upon conclusion of the contract, a certified document issued by the social security institution of the Country of origin, dated no more than three months after its date of issue, which certifies that the company is up to date with the deposit of insurance

and social security contributions (equivalent to the DURC); this is necessary due to the fact that the new online validation procedure as referred to in Article 83 bis, paragraph 4 quater, is not applicable in the cases of transnational posting because the national register mentioned therein only regards persons or companies registered in Italy. The provision in question establishes that the 'user' company or the carrier that does not verify the authenticity of the certified document mentioned above is jointly liable with the carrier, as well as any subcontractors, within a year of the termination of the transport contract, to pay the workers' salaries as well as the social security and insurance contributions to the competent authorities, for the services provided during the period of the transport contract.

With regard to the transport sector, it is useful to clarify that in the case of transnational posting by temporary employment undertakings (the hiring out of drivers by temporary employment agencies in another Member state to an Italian 'user' company as provided for in Article 1, paragraph 2) the joint liability regime finds application as referred to in Article 35, paragraph 2 of Legislative decree No 81/2015 and not the one mentioned in Article 83 bis. This is in consideration of the rationale behind the legislation regarding joint liability which evidently has the purpose of protecting workers with an employment relationship with a temporary employment agency, considering the specific type of contract and the greater vulnerability of his/her position which deserves the specific stronger protection provided for therein.

2.16. Latvia

Article 12 of the Enforcement Directive is implemented in the Section 75.^{2} of the Labour Law:

"Section 75.^{2} Special Liability Provisions Regarding Disbursement of Work Remuneration in Case of Posting an Employee

(1) If complete or partial fulfilment of contractual liabilities has been transferred to an employer as a sub-contractor, however, the employer has not fulfilled the duty to disburse work remuneration to an employee within the time period specified in the employment contract or collective agreement, then the employee has the right to request disbursement of the work remuneration not disbursed from the person who has directly transferred complete or partial fulfilment of the contractual liabilities to the employer. In such case the employee has the right to request disbursement of the whole work remuneration not disbursed within the scope of such contractual liabilities in the amount of the rate of the minimum wage which is specified in the state to which the employee has been posted.

(2) The person who has directly transferred complete or partial fulfilment of the contractual liabilities to the employer shall obtain the right to recovery in relation to the employer to such extent as to which he or she has disbursed work remuneration to the employee of the employer.

(3) The provisions of this Section shall be applicable only in such case if the employee has been posted to perform construction work in relation to construction of buildings or specialised construction works."

2.17. Lithuania

Paragraphs 8 and 9 of Article 108 of *the Labour Code of the Republic of Lithuania* provide that when the employer is a subcontractor, the contractor shall bear subsidiary responsibility for fulfilment of the monetary obligations established in point 3 of paragraph 2 of this Article related to minimum wage due to an employee specified in paragraph 1 of this Article when the latter is performing construction work specified in the Republic of Lithuania Law on Construction. Subsidiary responsibility of the contractor when the employer is a subcontractor shall arise from the rights and obligations established in the subcontract.

2.18. Luxembourg

A law of 14 March 2017 transposing 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') transposed Article 12 by introducing L. 281-1 into the Luxembourg Labour Code.

Article L. 281-1.
(1) A project owner or contracting authority concluding a contract with a service provider is required to keep the Labour and Mines Inspectorate informed.
(2) Where the project owner or contracting authority is informed by the Labour and Mines Inspectorate in writing of the non-payment of part or all of the legal or contractual wage due to the employees, or of any other breach of the public-policy provisions referred to in Article L.010-1, it shall immediately instruct the undertaking to put an end to this by registered letter with acknowledgement of receipt.
The obligation to put an end to the infringement applies to the other party to the contract, a direct or indirect subcontractor or a co-contractor of a subcontractor.
(3) The undertaking concerned by the injunction must as soon as possible confirm by registered letter with acknowledgement of receipt that it has rectified the situation. It shall send a copy of its reply to the Labour and Mines Inspectorate without delay.
In the absence of a written reply from the undertaking within a reasonable time, taking into account the duration of the subcontract and within 15 calendar days from the notification of the infringement referred to in paragraph 2, the project owner or contracting authority shall inform the Labour and Mines Inspectorate accordingly as soon as possible.
(4) In the event of failure to meet its obligations to provide information and under the injunction, as referred to in paragraphs 2 and 3, the project owner or contracting authority shall be held jointly and severally liable with the undertaking for the payment of remuneration, allowances and expenses due to employees of the latter, including the related social contributions. In addition, the project owner or contracting authority shall be subject to the administrative fine provided for in Article L.143-2 paragraph 1.
(5) The provisions of paragraphs 1 and 4 shall not apply to an individual who enters into a contract with an undertaking for his own use, or that of his/her spouse or of his/her partner as defined in Article L.233-16 or his relatives in the ascending or descending line.
(6) The responsibility referred to in paragraph 4 is limited to the rights acquired by the worker under the contractual relationship between the project owner or contracting authority and its co-contractor, its direct or indirect subcontractor or the co-contractor of a subcontractor.

2.19. Malta

Employment and Industrial relations act, Posting of Workers in Malta Regulations, 2016

10. In any civil proceedings instituted by the posted worker with respect to the set of rights granted by regulation 5, where there is a subcontracting chain, the posted worker can hold the contractor of which his employer is a direct subcontractor civilly liable in addition to or in place of the employer: Provided that the liability referred to in this regulation shall be limited to the posted worker's rights acquired under the contractual relationship between the contractor and his subcontractor.

2.20. Netherlands

Already implemented through the Fraud (Bogus Schemes) Act.
Regulation of chain liability for payment of wages has been included in the Civil Code: Articles 616 to 616f of Book 7 in the Civil Code. This regulation is applicable irrespective of the law applicable to the agreements, including the employment contract. The liability is applicable to payment of wages on the basis of an employment contract (including the temporary employment contract), and carrying out work in chains of implementation of contacts of engagement and contracts for work. The fact that these claims also apply for posted workers has been clarified by adding Articles 616a to 616f in Article 2 of the Implementation Act.

Article 616a

1. If work is performed for the employer pursuant to a contractual agreement or an agreement to accept work, the employer and his principal shall be jointly and severally liable for the payment of the wages owed to the worker. If work is performed for the employer pursuant to an agreement to transport goods by road or an agreement to have goods transported by road, the employer and his counterparty shall be jointly and severally liable for the payment of the wages owed to the worker.

2. Notwithstanding paragraph 1, the principal or the counterparty referred to in paragraph 1 shall not be liable if he establishes credibly in law that, given the circumstances of the case, he can not be blamed for the fact that the wages referred to in paragraph 1 have not been paid.

3. This article shall not apply to a natural person who is not acting for professional or business purposes.

Article 616b

1. With due regard to paragraphs 2 to 5, if work is performed for the employer pursuant to one or more agreements concluded between a principal and a contractor, each principal shall be liable for the payment of the wages owed by the employer to the worker. With due regard to paragraphs 2 to 5, if work is performed for the employer pursuant to one or more agreements to transport goods by road or to have goods transported by road, the consignor, the principal of the forwarding agent, the forwarding agent and the carrier that has not concluded the transport agreement with the consignor but to whom the carrier has entrusted the transportation of goods by road shall be liable

for the payment of the wages owed by the employer to the worker. For the purposes of this Article and Articles 616c to 616e, the parties referred to in the previous sentence shall be deemed to be counterparties.

2. A claim under paragraph 1 may in each case be brought only against the next highest principal or the next highest counterparty if a claim under Article 616a or a claim against the next lowest principal or the next lowest counterparty has not been successful because the employer or his principal, or alternatively the next lowest principal, or the counterparty, or alternatively the next lowest counterparty:

a. has no known address or known actual place of residence;

b. is not entered in the commercial register referred to in Section 2 of the Commercial Register Act 2007 or in a foreign company register;

c. has been declared bankrupt and the wages referred to in paragraph 1 cannot be paid by being offset against the other assets;

d. has been ordered by the courts, in a final and unappealable judgment, to pay the wages referred to in paragraph 1 and the judgment cannot be enforced; or

e. in the case of a principal or the counterparty, is not liable for the failure to pay the wages referred to in paragraph 1

3. Notwithstanding paragraph 1, the principal or the counterparty referred to in paragraph 1 shall not be liable if he establishes credibly in law that, given the circumstances of the case, he can not be blamed for the fact that the wages referred to in paragraph 1 have not been paid.

4. Notwithstanding the order set set out in paragraph 2, the worker may hold the principal, or the counterparty referred to in paragraph 1, who is not acting on the instructions of another principal or counterparty, liable for the payment of the wages referred to in paragraph 1 if:

a. a claim under Article 616a has not been successful on account of circumstances as referred to in paragraph 2;

b. the worker has notified the principal or the counterparty referred to in the introductory wording, in writing or electronically, that he has instituted a claim under Article 616a(1) or that he has not been able to institute such a claim on account of circumstances as referred to in paragraph 2(a);

c. the claim, in accordance with paragraph 2, has in each case been instituted against the next highest principal or the next highest counterparty; and

d. that claim has not been paid within a year of the day following that on which the notification referred to in (b) was made.

5. Notwithstanding paragraph 4(d), the worker may, six months after the date of the notification referred to in paragraph 4(b), hold the principal or the counterparty referred to in paragraph 1, who is not acting on the instructions of another principal or counterparty, liable for the payment of the wages referred to in paragraph 1, if the claim

involves the payment, over a period of at least three consecutive months, of less than half of the wages owed or less than 70 % of the applicable minimum wage referred to in Section 7 of the Act on the minimum wage and minimum holiday allowance.

6. This article shall not apply to a natural person who is not acting for professional or business purposes.

Article 616c

1. If the work is performed in the Netherlands, Articles 616a, 616b and 616d to 616f shall apply, irrespective of the law that is applicable to the contract of employment, the contractual agreement, the agreement to accept work, the agreement to transport goods by road or the agreement to have goods transported by road.

2. Paragraph 1 shall not apply to the transport of goods by road where the goods are loaded and unloaded outside the Netherlands.

Article 616d

The principal or the counterparty who has met a claim under Article 616b shall have the right of redress from all goods of:

a. the employer; or

b. the principal or the counterparty against whom a claim under Article 616a or 616b was not successful on account of circumstances as referred to in Article 616b(2)(a), (b) or (d).

Article 616e

1. With a view to his instituting a claim as referred to in Article 616a or Article 616b, any principle, contractor, employer or counterparty shall, upon request which may be made in writing or electronically, provide the worker with information relating to the name, address or actual place of residence of:

a. the principal, contractor or employer with whom the principle, contractor or employer referred to in the introductory wording has concluded a contractual agreement or an agreement to accept work, and of any counterparty; and

b. the principal or counterparty who is not acting on the instructions of another principal or counterparty.

2. If the principle, contractor or counterparty, not also being the employer, fails to provide the information referred to in paragraph 1 within two weeks of the worker requesting it, the worker may, notwithstanding the order set out in Article 616b(2), hold that principal, contractor or counterparty liable under Article 616b.

Article 616f

Any clause that conflicts with Articles 616a to 616e shall be void.

2.21. Poland

Art. 12

The rules of the joint and several liability of the contractor ordering the service and the employer providing the service for obligations resulting from the violation of employee rights acquired under the contractual relationship between the contractor and its subcontractor are set out in Article 7 of the Act.

Art. 7. 1. The contractor entrusting the performance of works referred to in Art. 5 paragraph 2[4] to employers posting workers on the territory of the Republic of Poland shall bear joint and several liability with the employer for their obligations arising in the course of execution such work for the remuneration and allowances referred to in art. 4 paragraph 2 points 3 and 4[5].

2. The joint and several liability for the obligations set forth in paragraph 1 shall be governed by the provisions of the Act of 23 April 1964 - Civil Code (consolidated text: Journal of Laws of 2 March 2017, item 459 with further amendments)[6].

At the same time, the possibility for an employer to being exempt from the joint and several liability thanks to the fulfillment of due diligence obligations (**article 12 paragraph 5 of the Enforcement Directive 2014/67/EU**), has been regulated in art. 8 of the Act, according to which:

Art. 8. In case of due diligence by the contractor referred to in art. 7 paragraph 1, consisting in transferring the written information about the terms and conditions of employment referred to in Art. 4 paragraph 2[7], and obtaining the confirmation of the declaration referred to in art. 24 paragraph 3[8], the contractor shall not be jointly and severally liable.

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[4] Work related to a construction work or a maintenance work at a given position, in particular:
1) excavation;
2) earth works;
3) assembly and disassembly of prefabricated elements;
4) equipping or installing;
5) renovation;
6) dismantling;
7) demolition;
8) maintenance;
9) painting and cleaning works.

[5] Minimum remuneration for work determined on the basis of separate regulations (art. 4 par. 2 point 3 of the Law) and the amount of remuneration and overtime allowance (art. 4 par. 2 point 4 of the Law).

[6] According to the Civil Code, the joint and several obligations are the obligations in which several debtors may be liable in such manner that the creditor may claim the whole performance or a part thereof from all debtors jointly, from several of them or all of them severally, and the satisfaction of the creditor by any of the debtors frees the remaining ones (joint and several liability of debtors).Until the creditor is fully satisfied all joint and several debtors shall remain liable.

[7] The terms and conditions of employment referred to in 1, shall concern:
1) duration of working time, working hours and periods of daily and weekly rest;
2) the amount of holiday leave;

Poland did not use the possibility of applying other enforcement measures which enable, in a direct subcontracting relationship, effective and proportionate sanctions against the contractor, to tackle fraud and abuse in situations when workers have difficulties in obtaining their rights, provided for in the **article 12 paragraph 6 of the Enforcement Directive 2014/67/EU**.

With reference to the provision **of article 12 paragraph 7 of the Enforcement Directive 2014/67/EU**, it should be pointed out that information on measures adopted in accordance with this article is available on the website https://www.biznes.gov.pl/przedsiebiorcy/biznes-w-polsce/prowadze-firme/pracownicy/delegowanie-pracownikow-do-polski

2.22. Portugal

Measures taken according to 12.

According to Article 12.º of the Law n.º 29/2017 of 30 May (the Directive 2014/67/EU, of the European Parliament and of the Council of 15 May 2014 was transposed by Law n. º 29/2017 of 30 May 2017):

In the cases of posting covered by article 6 of the Labour Code and for the purposes of the working conditions of Article 7 of the same Code, the contractor to whom the service is provided is jointly and severally liable for any outstanding net remuneration corresponding to the minimum remuneration, legal, conventional or guaranteed by labor contract, due to the posted worker by the service provider as a direct subcontractor.

The liability is limited to the rights of the worker acquired under the contractual relationship between the contractor and the service provider as a direct subcontractor.

The system of joint and several liability is applicable in the construction sector and others sectors, which, being a general provision also applies to companies that post workers to Portugal.

Thus, according to Law 28/2016, of 23 August, on Combating Modern Forms of Forced Labor, the contractor and the construction owner, company or agricultural holding, as well as their managers, administrators or directors, are jointly and severally liable for the compliance of legal provisions and for any violations committed by the subcontractor performing all or part of the contract at its premises or under its responsibility, as well as for payment of the respective fines.

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3) minimum remuneration for work determined on the basis of separate regulations;
4) the amount of remuneration and overtime allowance;
5) occupational health and safety;
6) protection of workers during pregnancy and during maternity leave;

7) employing young people and performing work or other paid work activities by a child;
8) principles of equal treatment and prohibition of discrimination in employment, referred to in art. 11^2 and Art. 11^3 of the Act of 26 June 1974 - Labour Code;
9) executing work in accordance with the provisions on temporary employment.

[8] A declaration submitted to the National Labour Inspectorate by an employer posting an employee on the territory of the Republic of Poland at the latest on the day of commencement of service provision.

Romania

Regarding tackle fraud and abuse concerning posting of workers in the subcontracting chains, Romanian legal framework concerning posting of workers has no set other liability rules than those provided by Art. 12 Paragraph 1 to 3 of the Enforcement Directive, no more than those general provisions and has not included sectors other than construction.

Information provided to posted workers and employers are available in English on https://www.inspectiamuncii.ro/transnational-posting-of-workers.

2.23. Spain

Law 45/1999, of November 29, on posting of workers in the framework of a transnational service provision.

Second additional provision. Obligations and responsibilities of the user companies and of the companies that receive in Spain the provision of services of the posted workers.

The user companies and the companies that receive in Spain the provision of services of the posted workers under the provisions of this Law shall assume with respect to such workers the obligations and responsibilities laid down in the Spanish legislation for such cases, regardless of where the temporary work agency or the company that provides the services are located.

Consolidated text of the Law of the Workers' Statute approved by Royal Legislative Decree 2/2015, of October 23.

Article 42. Subcontracting of works and services.

1. Employers who contract or subcontract others to carry out works or services corresponding to their own activity must verify that these contractors are up to date in the payment of Social Security contributions. For this purpose, they shall collect in writing, with identification of the affected company, a negative certification in the General Treasury of the Social Security, which must inexcusably issue such certification within thirty unextendable days and in the terms established by the implementing regulation. Once this period has elapsed, the applicant employer shall be exempted from liability.

2. The principal employer, except for the expiration of the aforementioned period with respect to the Social Security, and during the three years following the completion of his assignment, will be jointly and severally liable for the obligations to Social Security incurred by contractors and subcontractors during the term of the contract.

The principal employer will be jointly and severally liable within the year following the completion of the assignment for the obligations of salary nature incurred by the contractors and subcontractors with their workers.

There will be no responsibility for the actions of the contractor when the activity contracted refers exclusively to the construction or repair that a head of household can contract with respect to his house, as well as when the owner of the work or industry does not contract its realization because of a business activity.

Law 32/2006, of October 18, regulating subcontracting in the Construction Sector.

Without prejudice to the application of the provisions of article 42 of the Consolidated Text of the Workers' Statute Law and in the rest of the social legislation to subcontracts made in the construction sector, Law 32/2006 regulates subcontracting in the construction sector, with the aim of improving the working conditions of the sector, in general, and the safety and health conditions of workers in it, in particular.

Law 31/1995, of 8 November, of prevention of Occupational Risks

Article 24. Coordination of business activities.

3. Undertakings which contract or subcontract with others the carrying out of works or services corresponding to the activities of those companies and which are developed in their own establishments shall monitor compliance by such contractors and subcontractors of the regulations for the prevention of occupational risks.

2.24. Sweden

Article 12 **Subcontracting liability**	
12.1-12.6	Act (2018:1472) on entrepreneurial responsibility for wage claims Act (2018:1473) amending the Posting of Workers Act (1999:678) (introducing a new Section 7a) Collective construction agreement (concluded between the Swedish Building Workers' Union and the Swedish Construction Federation) Annex D
12.7	The Commission was informed about the measures taken under Article 12 in the correlation table sent on 20 December 2018. Section 9 of the Posting of Workers Act (1999:678) Section 3 of the Posting of Workers Act (2017:319)
12.8	Not addressed to the Member States. No legislation or other form

	of regulation necessary.

2.25. Slovenia

The subcontracting liability, as defined by the Article 12 of the Directive 2014/67/EU, has been transposed by the Article 16 of the Cross-border Provision of Services Act, after thorough consultation with relevant social partners.
Paragraph 1 of the Article 16 states that in the circumstances where an EU employer, providing cross-border construction services as a direct subcontractor, does not ensure the posted worker the salary in accordance with the Employment Relationship Act, the contractor, established or residing in the Republic of Slovenia, is subsidiarily liable for the fulfilment of the obligation.
Article 210 of the Employment Relationship Act namely transposes the relevant provisions of
the Article 3 of the Directive 96/71/ES concerning the posting of workers in the framework of the provision of services.

2.26. Slovakia

(9) In the case of a posting pursuant to paragraph 4(a) or (b), a visiting employee to whom the host employer has not made available the wage due (or a part thereof) pursuant to paragraph 2(c) shall be entitled to claim payment thereof from the natural or legal person who is the service supplier within the Slovak Republic ('the service supplier') and whose direct subcontractor is the host employer. The service supplier shall make available to the visiting employee the wage due or any unpaid part thereof within 15 days of being asked to do so by that employee, less any amounts that the host employer would deduct if he were making the wage available; responsibility for deducting and paying such amounts does not pass to the service supplier. The service supplier shall notify the host employer that the wage has been paid in accordance with the second sentence. In the case of a posting pursuant to paragraph 4(c), the procedures laid down in Section 58(10)(a) and Section 58a(4) shall be followed.

(10) At the request of the service supplier, the host employer shall without delay provide the data needed in order to enable the service supplier to check whether the host employer has made available to the visiting employee the wage due (or a part thereof) pursuant to paragraph 2(c) and to enable the service supplier to comply with the obligation laid down in the second sentence of paragraph 9. The host employer shall make visiting employees' personal data available to the service supplier to the extent necessary for the purpose described in the first sentence to be achieved.

2.27. United Kingdom

England, Wales and Scotland

Right not to suffer unauthorised deductions
5.—(1) This regulation applies if a posted worker in the construction sector is remunerated by the employer for any pay reference period commencing on or after the

date these Regulations come into force at a rate that is less than the national minimum wage.
(2) The contractor is to be treated for the purpose of these Regulations as having made an unauthorised deduction of the relevant sum from the worker's wages.
(3) In this regulation and in regulation 6 the "relevant sum" means the proportion of the amount due to the worker as additional remuneration in respect of the pay reference period, calculated in accordance with section 17 of the National Minimum Wage Act 1998 (**a**) (non-compliance:
worker entitled to additional remuneration), which is the same as the proportion of the pay reference period during which the worker carried out work relating to the employer's obligations to the contractor.
(4) In this regulation— "national minimum wage" has the same meaning as in the National Minimum Wage Act 1998; "pay reference period" has the meaning given by regulation 6 of the National Minimum Wage Regulations 2015(**b**).

Complaints to employment tribunals

6.—(1) A posted worker in the construction sector may present a complaint against a contractor to an employment tribunal that the contractor is to be treated as having made an unauthorised deduction of the relevant sum from the worker's wages by virtue of regulation 5(2).
(2) Paragraph (1) does not apply to a posted worker in the construction sector who has—
(a) presented a claim against the employer under section 23(1)(a) of the Employment Rights Act 1996(**c**) (deductions from worker's wages in contravention of section 13 of that Act) to an employment tribunal in respect of the sum due; or
(b) commenced other civil proceedings against the employer for the recovery, on a claim in contract, of the sum due.
(3) In any complaint brought under paragraph (1), it is a defence for the contractor to show that it exercised all due diligence to ensure that the worker's employer would remunerate the worker in respect of the relevant sum due to the worker.
(4) Subject to paragraph (6) and regulation 7 (extension of time limit to facilitate conciliation), an employment tribunal must not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning with the date of payment of the relevant wages from which the deduction was made.
(5) Where a complaint is brought under this regulation in respect of a series of deductions, the reference in paragraph (4) to the deduction is to the last deduction in the series.
(6) Where the employment tribunal is satisfied that it was not reasonably practicable for a complaint under this regulation to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.
(7) An employment tribunal is not (despite paragraphs (5) and (6)) to consider so much of a complaint brought under this regulation as relates to a deduction where the date of payment of the relevant sum from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.
(8) A posted worker in the construction sector who presents a complaint under this regulation is prohibited from—
(a) presenting a complaint against the employer under section 23(1)(a) of the Employment Rights Act 1996 (deductions from worker's wages in contravention of section 13 of that Act) to an employment tribunal in respect of the sum due; or
(b) commencing other civil proceedings against the employer for the recovery, on a claim in contract, of the sum due, unless the tribunal dismisses the complaint under this regulation in accordance with paragraph (3).

Northern Ireland

Right not to suffer unauthorised deductions

4.—(1) This regulation applies if a posted worker in the construction sector is remunerated by the employer for any pay reference period commencing on or after the date these Regulations come into operation at a rate that is less than the national minimum wage.

(2) The contractor is to be treated for the purpose of these Regulations as having made an unauthorised deduction of the relevant sum from the worker's wages.

(3) In this regulation and in regulation 5 the "relevant sum" means the proportion of the amount due to the worker as additional remuneration in respect of the pay reference period, calculated in accordance with section 17 of the National Minimum Wage Act 1998(**a**) (non-compliance: worker entitled to additional remuneration), which is the same as the proportion of the pay reference period during which the worker carried out work relating to the employer's obligations to the contractor.

(4) In this regulation—

"national minimum wage" has the same meaning as in the National Minimum Wage Act 1998;

"pay reference period" has the meaning given by regulation 6 of the National Minimum Wage Regulations 2015(**b**).

Complaints to industrial tribunals

5.—(1) A posted worker in the construction sector may present a complaint against a contractor to an industrial tribunal that the contractor is to be treated as having made an unauthorised deduction of the relevant sum from the worker's wages by virtue of regulation 4(2).

(2) Paragraph (1) does not apply to a posted worker in the construction sector who has—

(a) presented a claim against the employer under Article 55 (1)(a) of the Employment Rights (Northern Ireland) Order 1996(**a**) (deductions from worker's wages in contravention of Article 45 of that Order) to an industrial tribunal in respect of the sum due; or

(b) commenced other civil proceedings against the employer for the recovery, on a claim in contract, of the sum due.

(3) In any complaint brought under paragraph (1), it is a defence for the contractor to show that it exercised all due diligence to ensure that the worker's employer would remunerate the worker in respect of the relevant sum due to the worker.

(4) Subject to paragraph (6) an industrial tribunal must not consider a complaint under this regulation unless it is presented before the end of the period of three months beginning with the date of payment of the relevant wages from which the deduction was made.

(5) Where a complaint is brought under this regulation in respect of a series of deductions, the reference in paragraph (4) to the deduction is to the last deduction in the series.

(6) Where the industrial tribunal is satisfied that it was not reasonably practicable for a complaint under this regulation to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

(7) A posted worker in the construction sector who presents a complaint under this regulation is prohibited from—

(a) presenting a complaint against the employer under Article 55(1)(a) of the Employment Rights (Northern Ireland) Order 1996 (deductions from worker's wages in contravention of Article 45 of that Order) to an industrial tribunal in respect of the sum due; or

(b) commencing other civil proceedings against the employer for the recovery, on a claim in contract, of the sum due, unless the tribunal dismisses the complaint under this regulation in accordance with paragraph (3).

Gibraltar

Detached workers in the construction sector.

12.(1) This Part applies to a person (P) who is–

(a) a detached worker; and

(b) is employed to undertake any of the activities set out in Schedule 2.

(2) In this Part–

(a) P's direct employer is referred to as "E"; and

(b) where P undertakes work in respect of which E is a subcontractor, the person with whom E has a contract is referred to as "C";

(c) a reference to the "minimum wage" means a reference to the minimum wage that a person is entitled to receive, under any enactment, relating to work in that sector.

Duty to investigate a complaint.

13. On receipt of a complaint that E has paid P wages that are less than the minimum wage the competent authority must investigate the matter.

Liability to administrative penalty.

14.(1) Subject to subregulation (2) if, after investigating the complaint, the competent authority establishes that P has been paid less than the minimum wage it must issue C, E, or both with an administrative penalty.

(2) An administrative penalty must not be issued to C where C proves to the satisfaction of the competent authority that C had exercised due diligence in its affairs with E and that taking into account all the circumstances of the case it would not be reasonable to hold C liable.

Issue of administrative penalty.

15.(1) An administrative penalty must be issued by the competent authority in writing and be served on C or E or both, as the case may be, either in person or, in the case of a corporate body, on an officer of that body or by sending it by registered mail to the registered office or its principal place of business.

(2) An administrative penalty must state the sum that is due to be paid, the time by which it must be paid and details as to how payment may be effected.

(3) The amount to be included in the administrative penalty must comprise of the amount by which the wages were underpaid, plus an additional amount of at least the equivalent of level 3 on the standard scale but not exceeding level 4 on the standard scale.

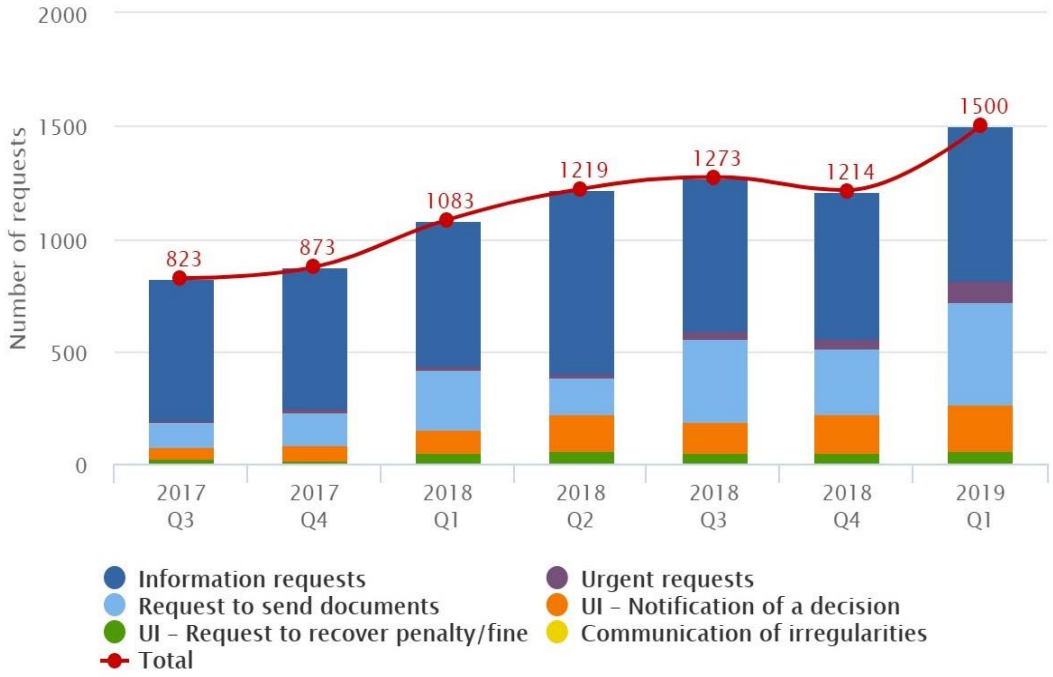
Payment in full.

16. The competent authority must not accept part payment of any sum due under an administrative penalty.

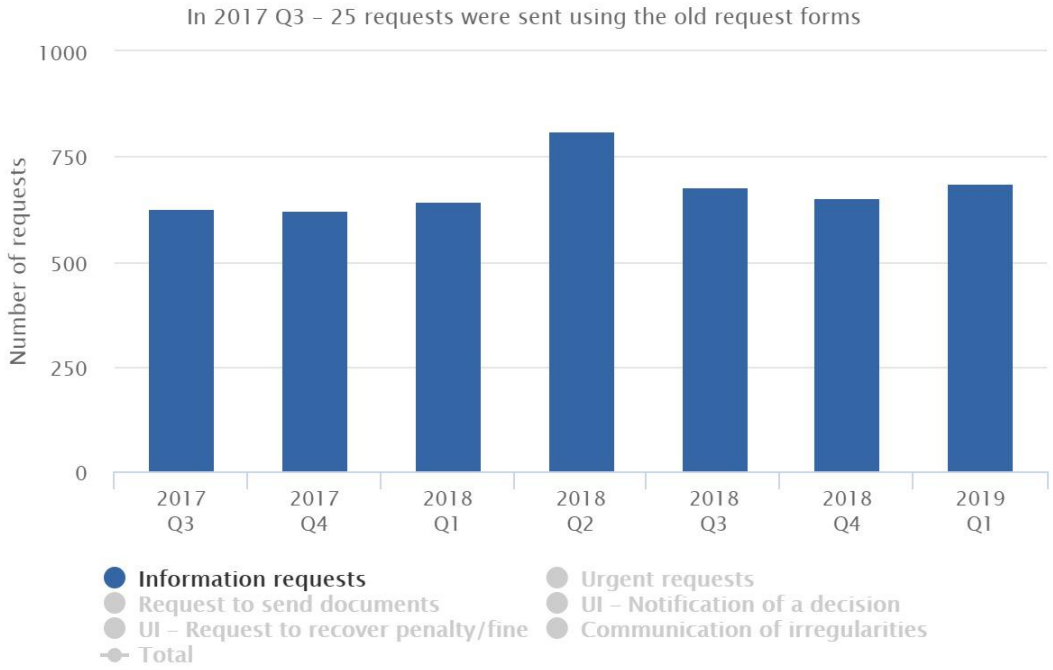
ANNEX III – IMI STATISTICS

1. Number of exchanges in IMI

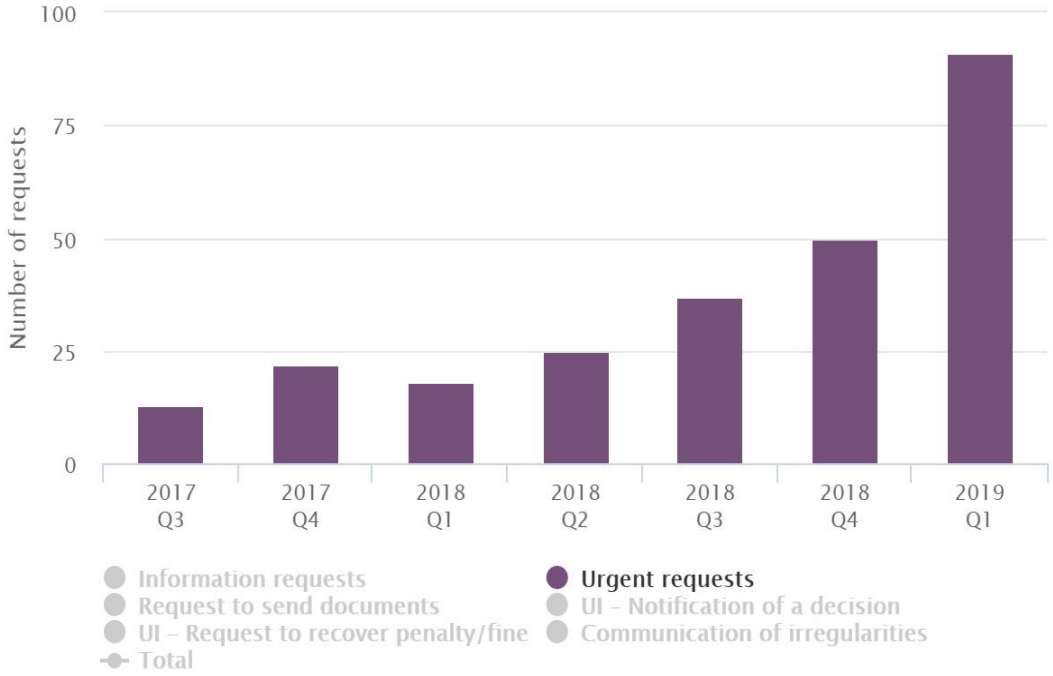
1.1.Total number of exchanges from Q3 2017 – Q1 2019



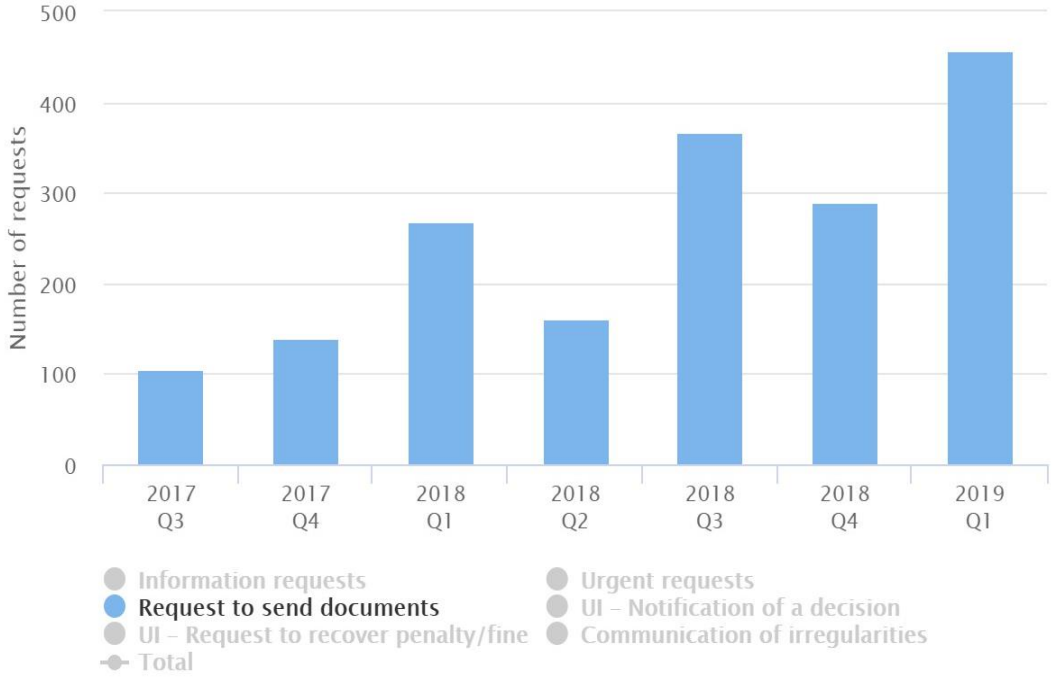
1.2.Information requests from Q3 2017 – Q1 2019



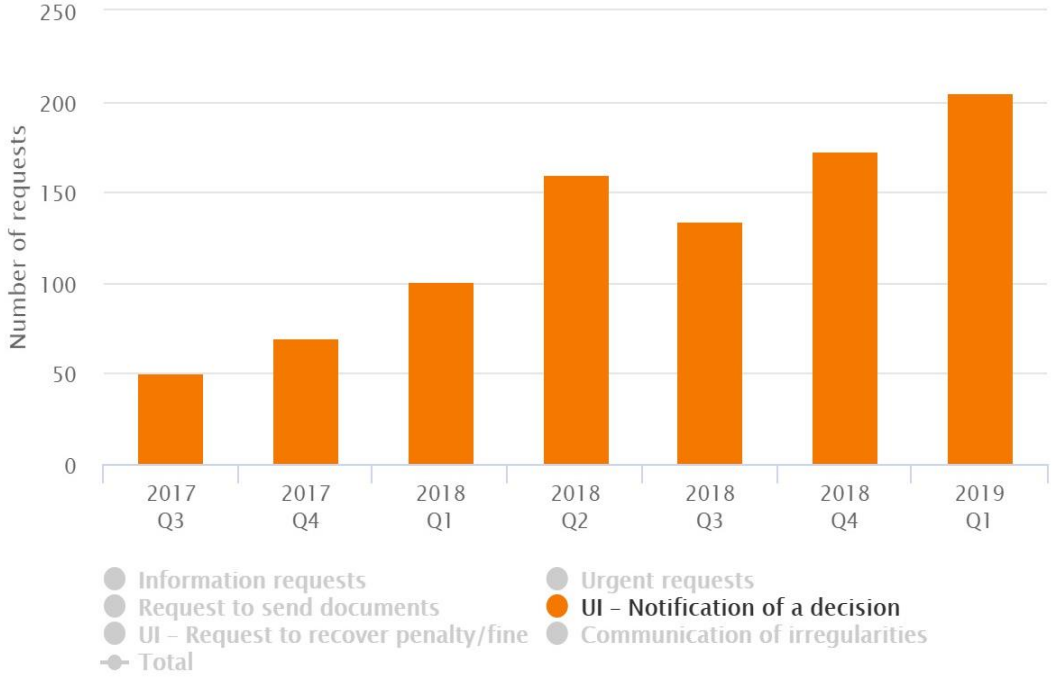
1.3.Urgent requests from Q3 2017 – Q1 2019



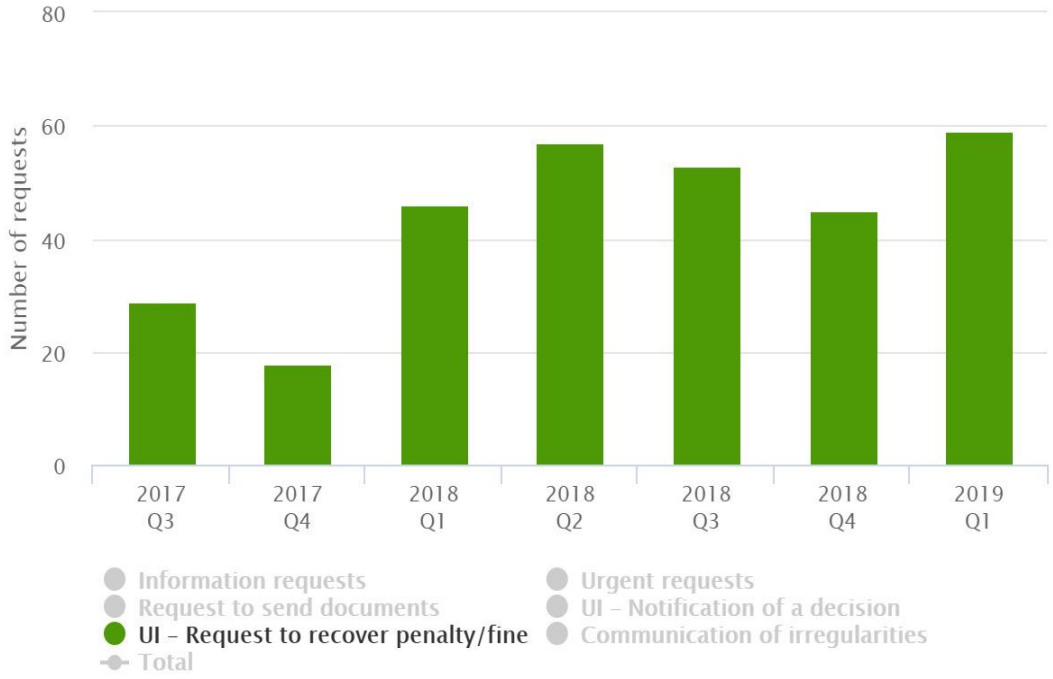
1.4.Requests to send documents from Q3 2017 – Q1 2019



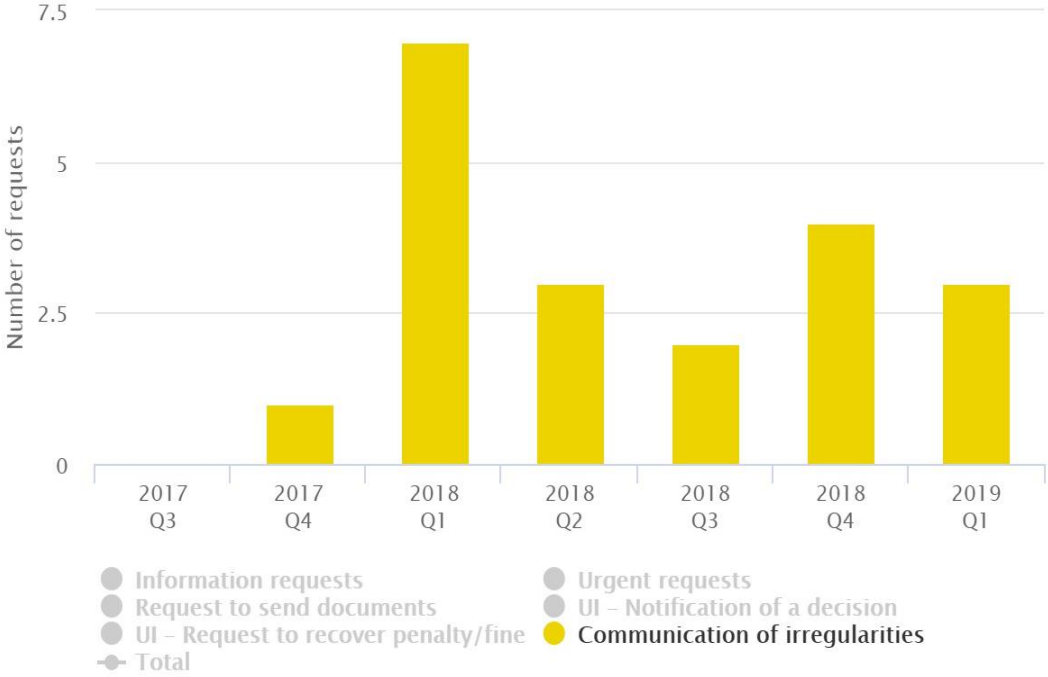
1.5.Requests to notify a decision (Chapter VI) from Q3 2017 – Q1 2019



1.6.Requests to recover an administrative penalty or fine (Chapter VI) from Q3 2017 – Q1 2019



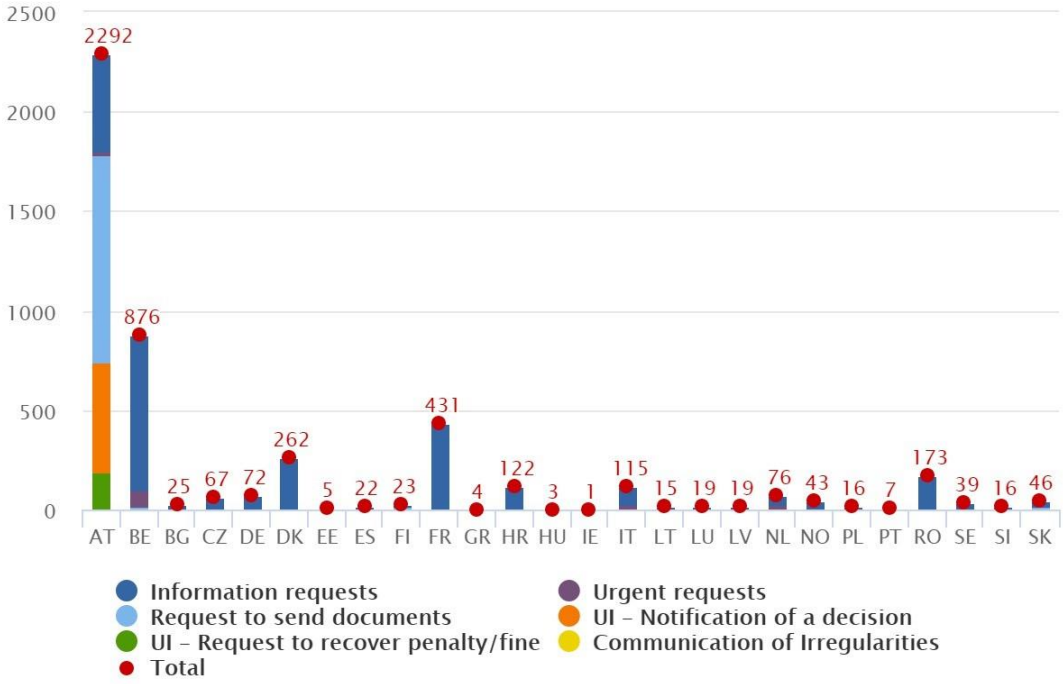
1.7.Communications of irregularities from Q3 2017 – Q1 2019



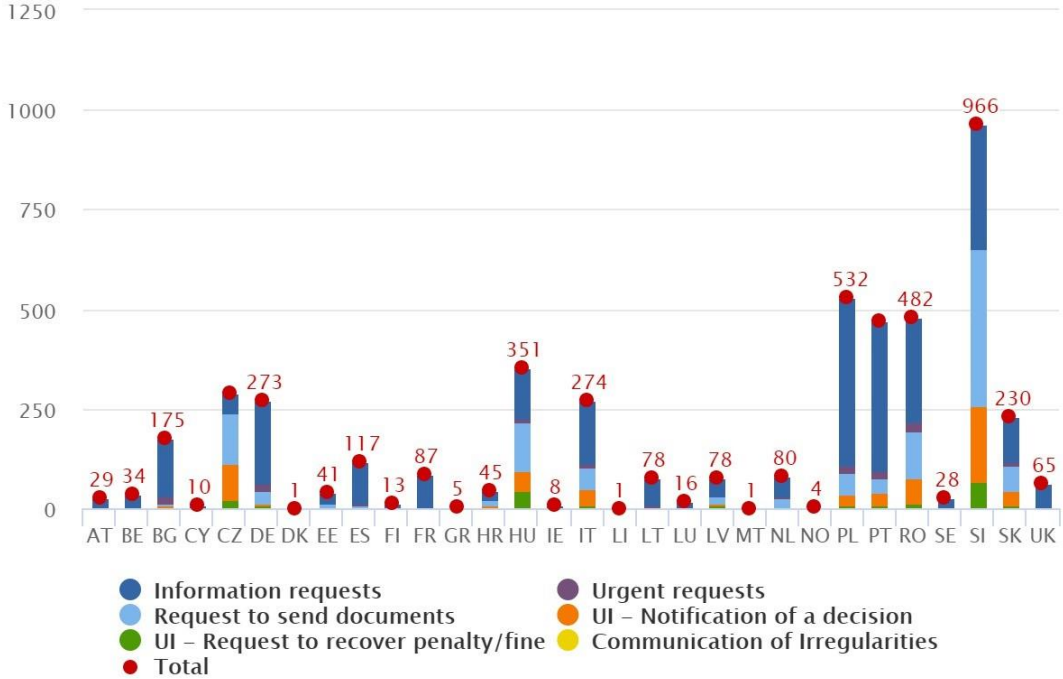
2. Information exchanges by Member States in 2018

2.1. All exchange types

2.1.1. By sending Member State

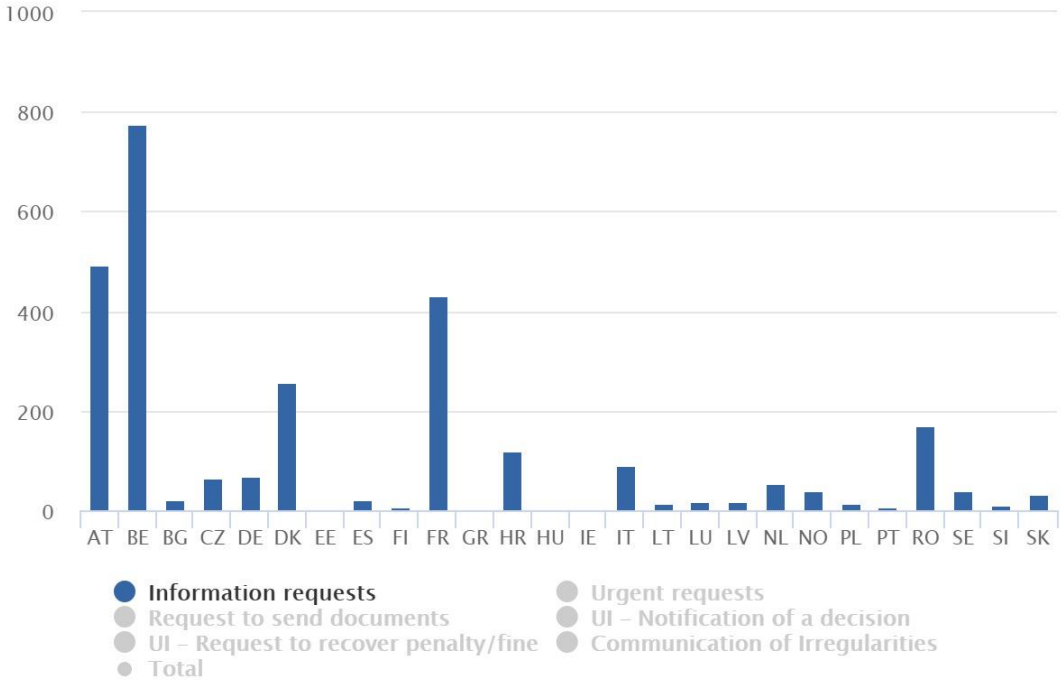


2.1.2. By recipient Member State

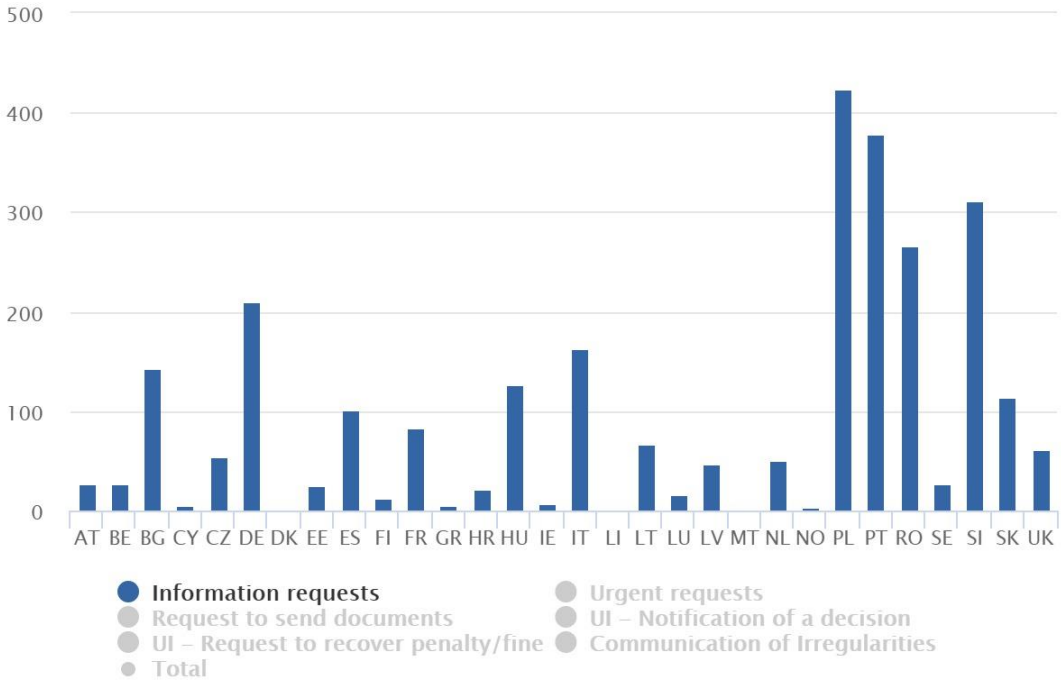


2.2. Information requests[9]

2.2.1. By sending Member State



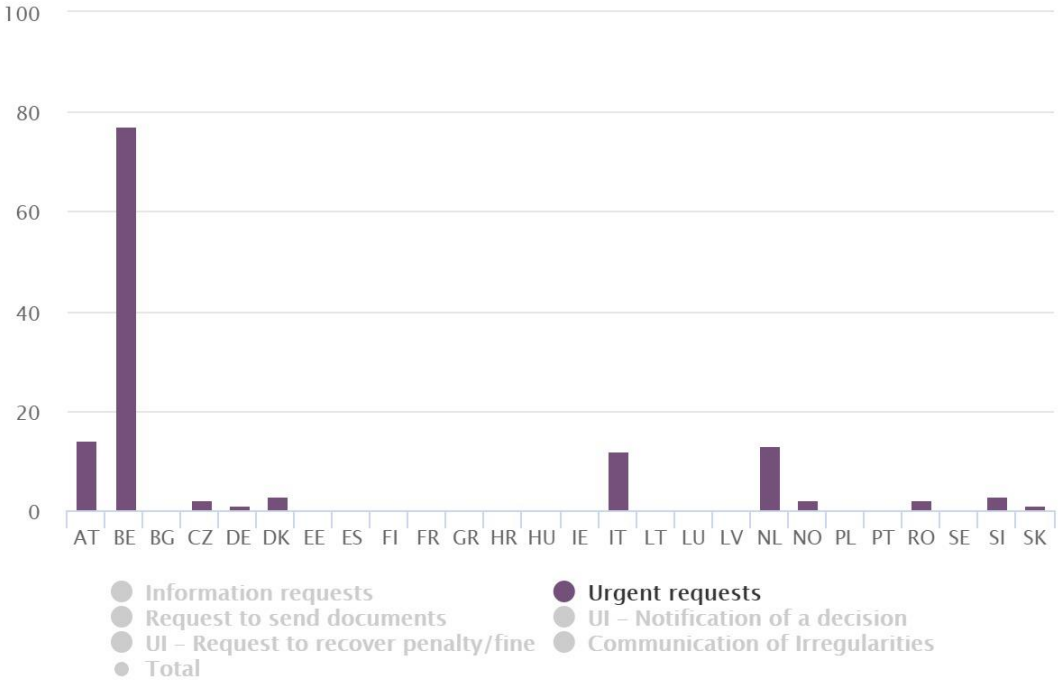
2.2.2. By recipient Member State



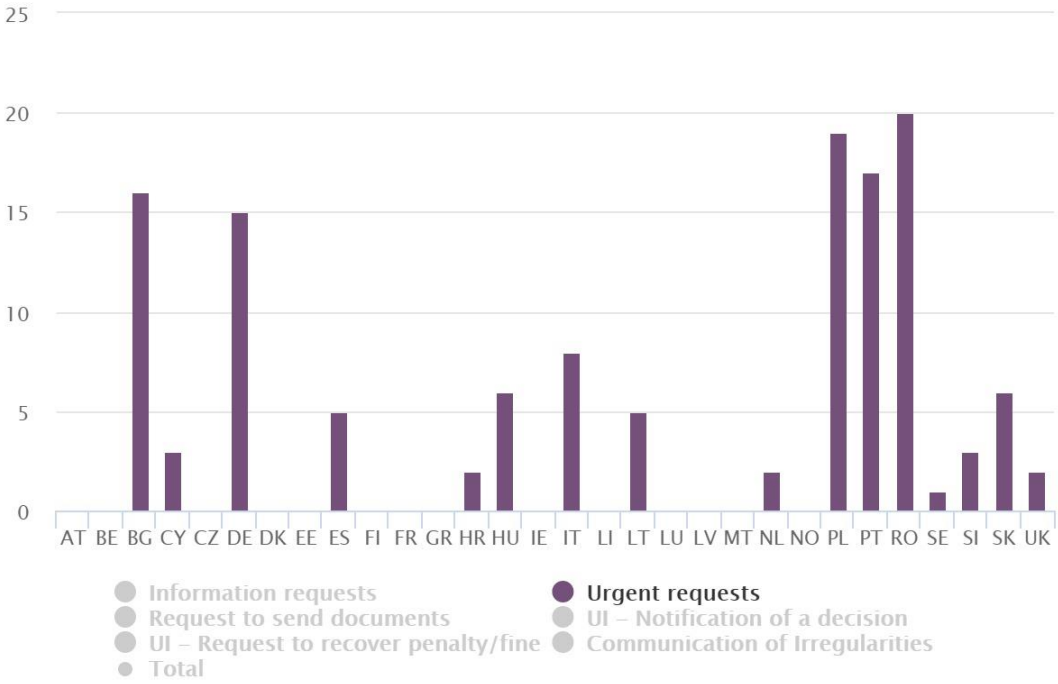
[9] Very low volumes of exchanges may not be visible on the graphs. For more detailed information, please consult the IMI website: http://ec.europa.eu/internal_market/imi-net/statistics/2019/03/posting-of-workers/index_en.htm

2.3.Urgent requests

2.3.1. By sending Member State

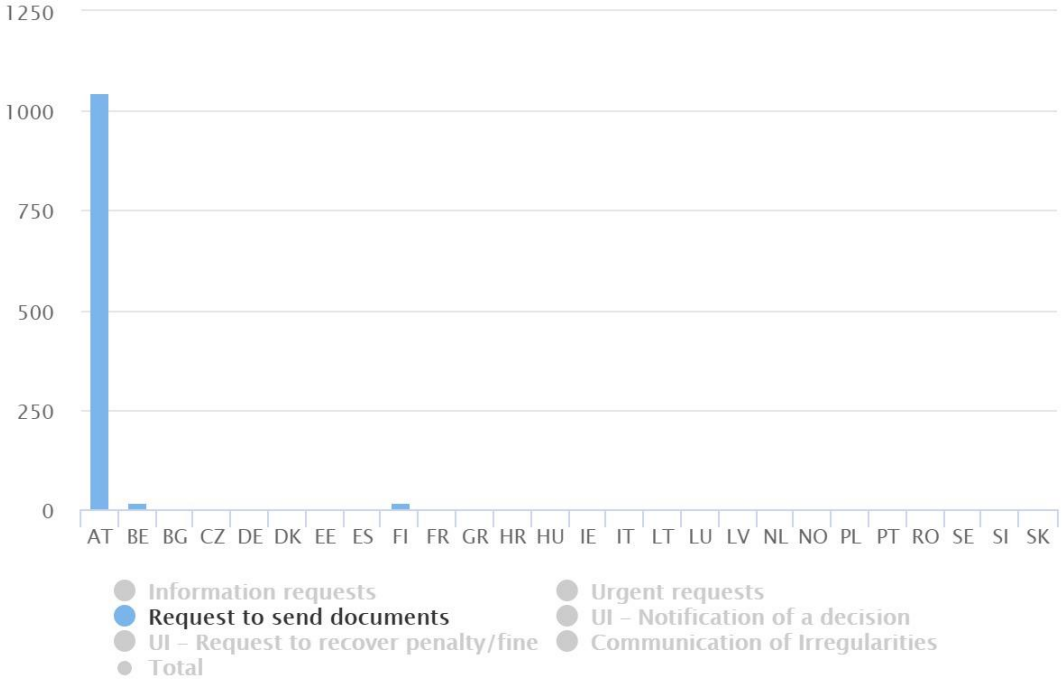


2.3.2. By recipient Member State

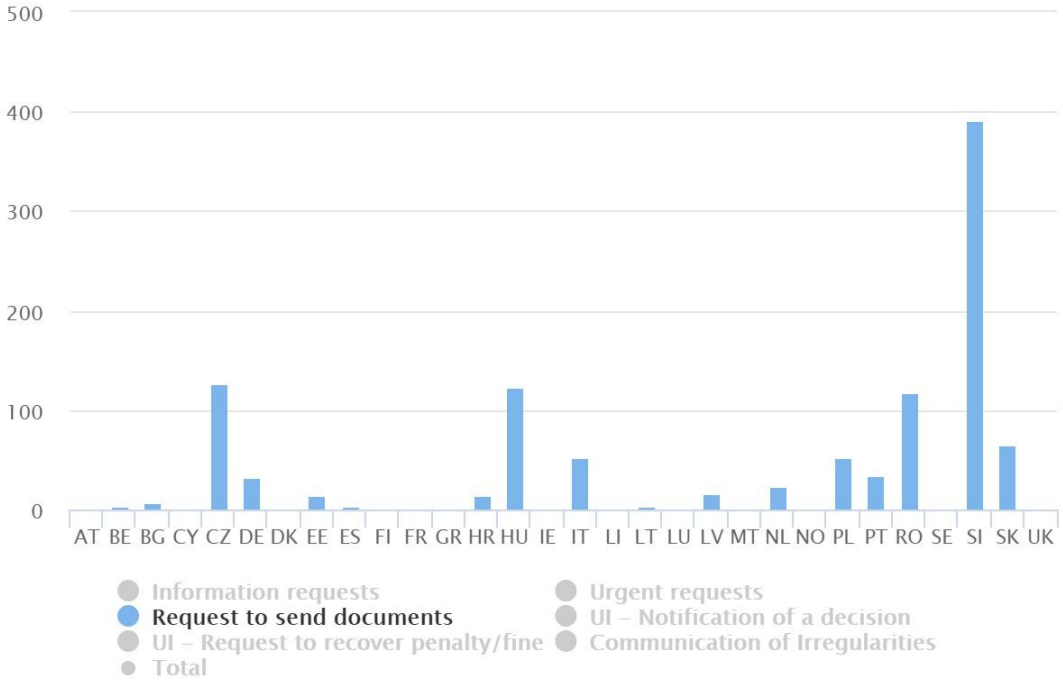


2.4.Request to send documents[10]

2.4.1. By sending Member State



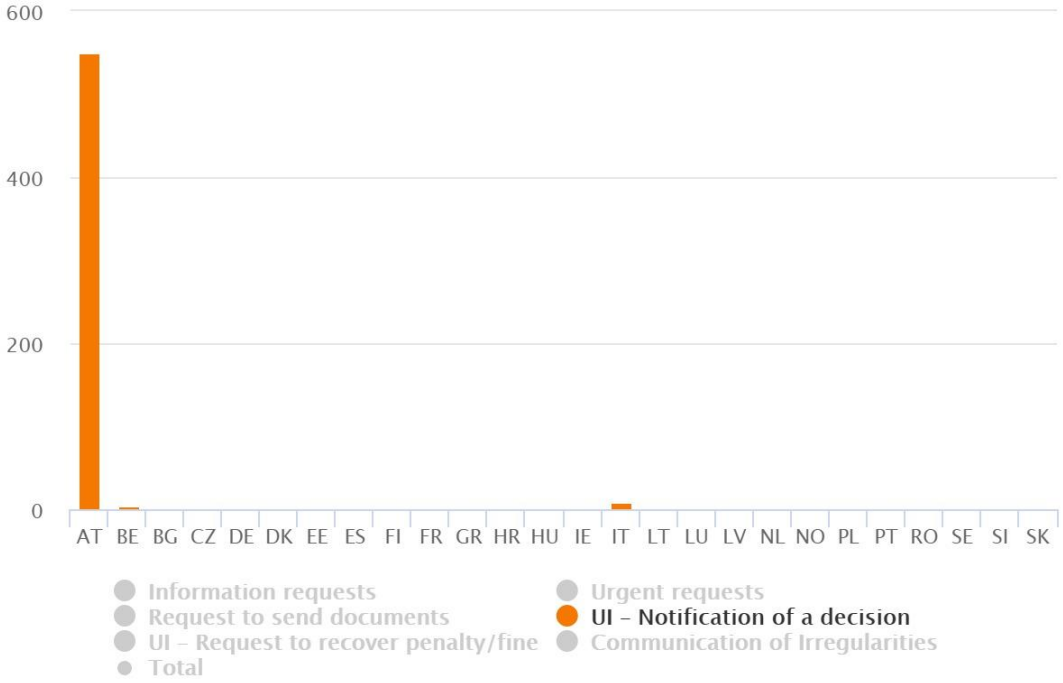
2.4.2. By recipient Member State



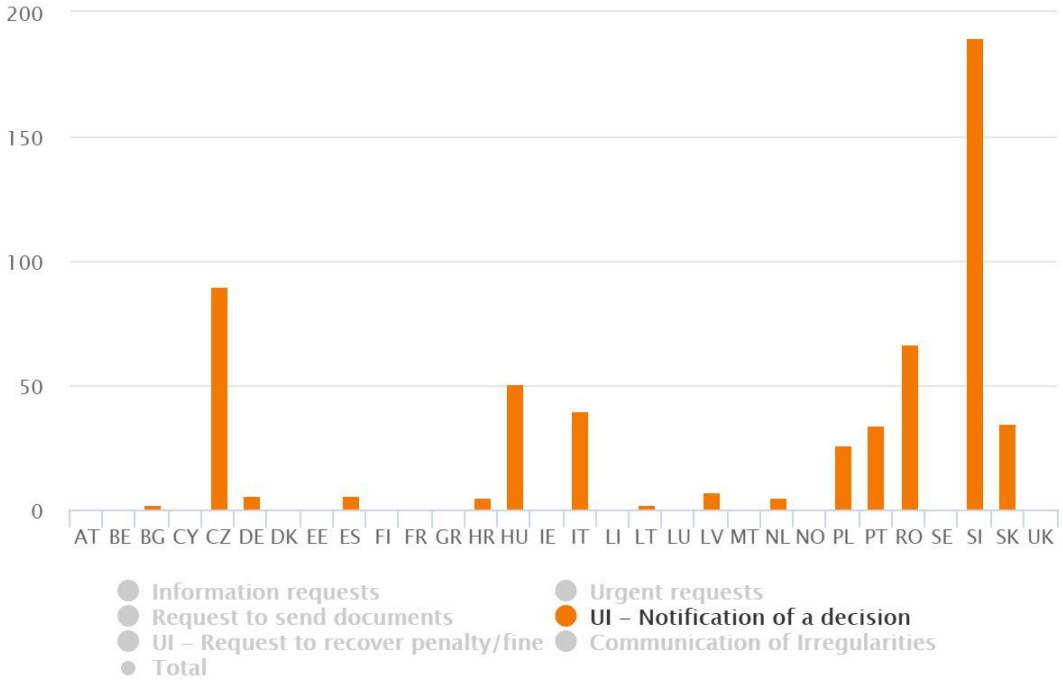
[10] Very low volumes of exchanges may not be visible on the graphs. For more detailed information, please consult the IMI website: http://ec.europa.eu/internal_market/imi-net/statistics/2019/03/posting-of-workers/index_en.htm

2.5.Request to notify a decision (Chapter VI)[11]

2.5.1. By sending Member State



2.5.2. By recipient Member State



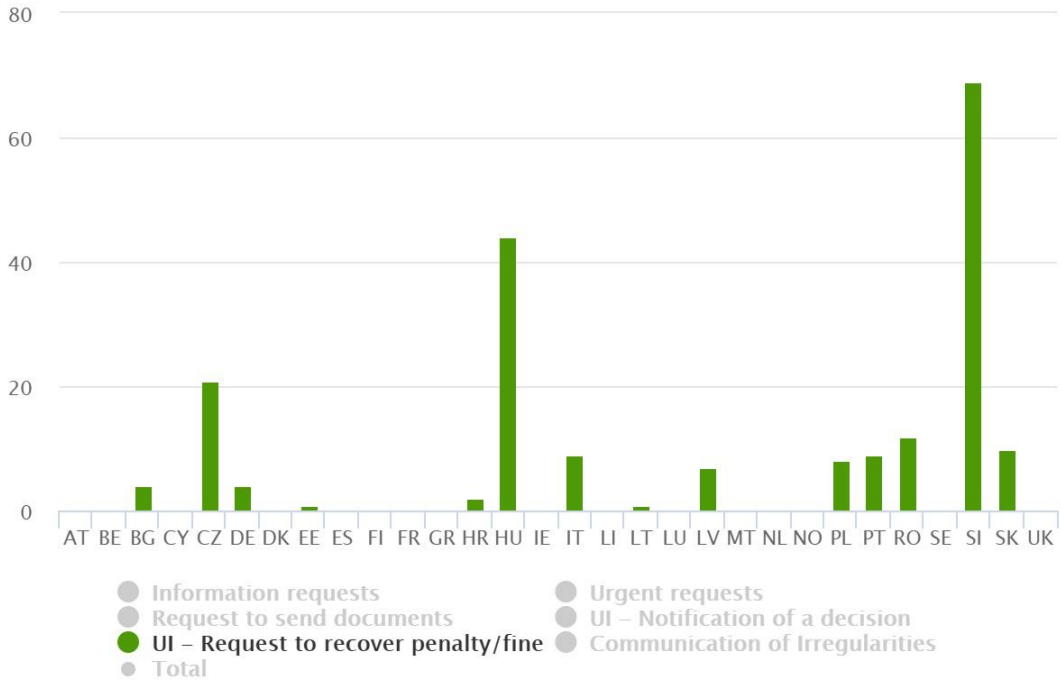
[11] Very low volumes of exchanges may not be visible on the graphs. For more detailed information, please consult the IMI website: http://ec.europa.eu/internal_market/imi-net/statistics/2019/03/posting-of-workers/index_en.htm

2.6.Requests to recover an administrative penalty or fine (Chapter VI)[12]

2.6.1. By sending Member State



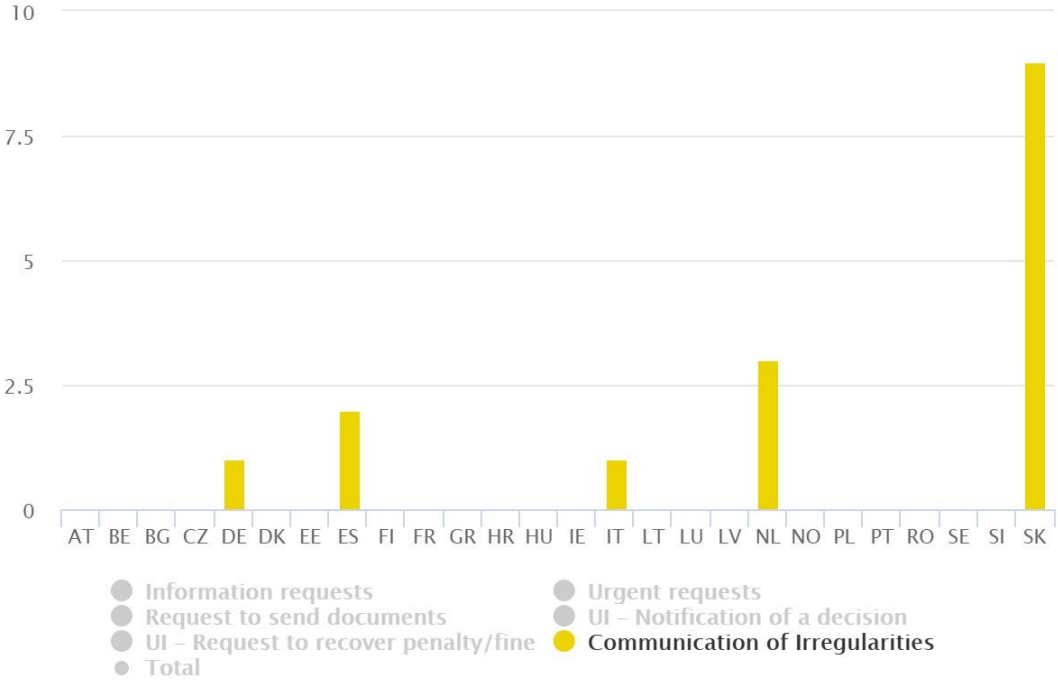
2.6.2. By recipient Member State



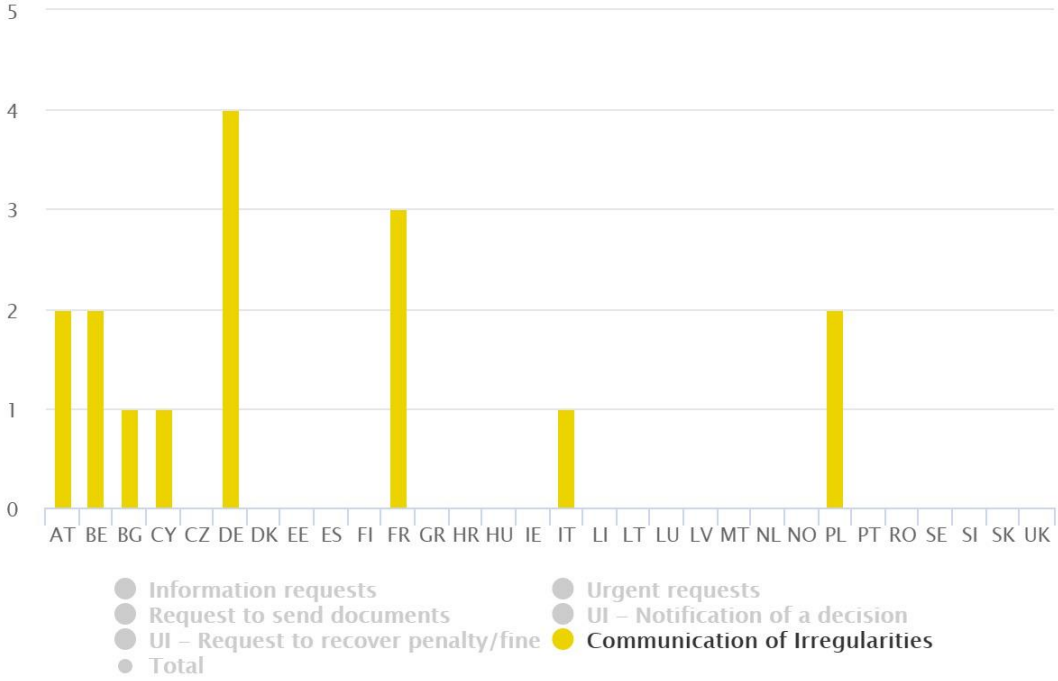
[12] Very low volumes of exchanges may not be visible on the graphs. For more detailed information, please consult the IMI website: http://ec.europa.eu/internal_market/imi-net/statistics/2019/03/posting-of-workers/index_en.htm

2.7.Communication of irregularities

2.7.1. By sending Member State



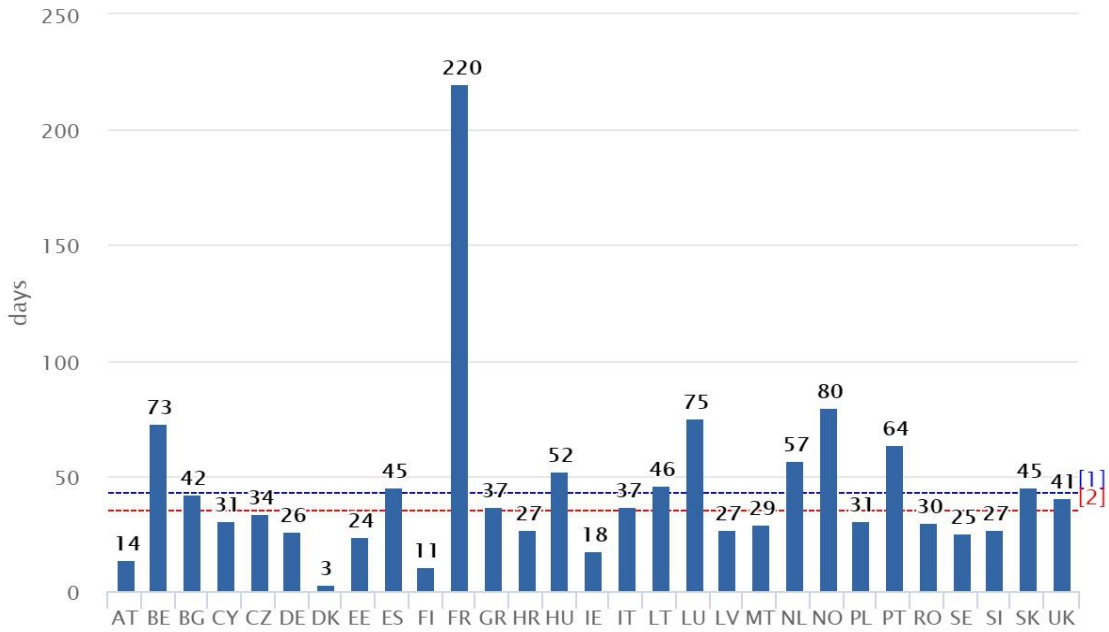
2.7.2. By recipient Member State



3. Average response time of answering to requests

3.1.Information requests

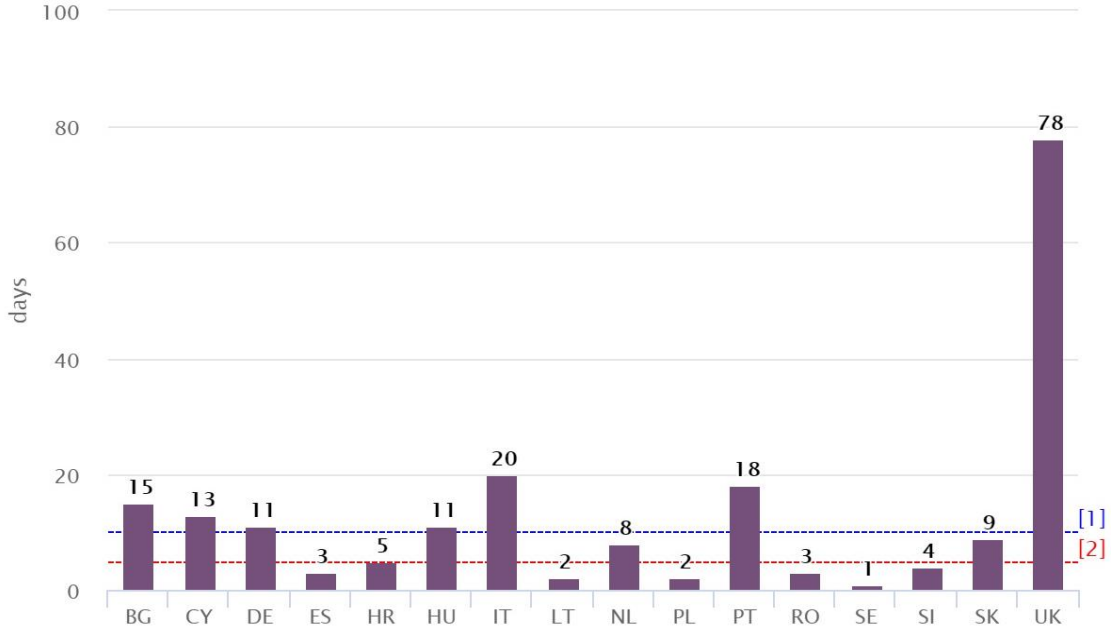
Deadline: 35 calendar days - EEA average 43 days



[1] EEA average: 43 days – [2] Legal deadline: 35 days (25 working days)

3.2.Urgent requests

Deadline: 5 calendar days



[1] EEA average: 10 days – [2] Legal deadline: 5 days (2 working days)

Annex IV



Posting of workers

Collection of data from national declaration tools

Reference year 2017

Frederic De Wispelaere & Jozef Pacolet – HIVA-KU Leuven

December 2018













EUROPEAN COMMISSION

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Unit D/1

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Posting of workers

Collection of data from national declaration tools
Reference year 2017

Directorate-General for Employment, Social Affairs and Inclusion
Network Statistics FMSSFE (Contract VC/2017/0463 'Network of Experts on intra-EU mobility – Lot 2: Statistics and compilation of national data')
2018

Network Statistics FMSSFE

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1. INTRODUCTION

Posting of workers plays an essential role in the Internal Market, particularly in the cross-border provision of services: companies, in order to provide their services in another Member State, must be able to send their workers for a limited period to that Member State to perform the tasks under the relevant contract of services.

The terms and conditions of employment are regulated by Directive 96/71/EC (i.e. the 'Posting of Workers Directive'), recently amended by Directive (EU) 2018/957 (the rules of the amending Directive will only apply from 30 July 2020). They include, in particular, maximum work periods and minimum rest periods, minimum paid annual leave and minimum rates of pay (replaced by "all the elements of remuneration" by Directive (EU) 2018/957). The Posting of Workers Directive applies to workers sent temporarily by their employers in one of the following three situations: the direct provision of services between two companies under a service contract; posting in the context of an establishment or company belonging to the same group ('intra-group posting'); and posting through hiring out a worker via a temporary work agency established in another Member State.

In 2014, Directive 2014/67/EU (the 'Enforcement Directive') was approved. Its aim is to strengthen the practical application of the terms and conditions of employment set out in the Posting of Workers Directive, by addressing issues related to fraud, circumvention of rules, and exchange of information between the Member States.

In particular, Article 9 of the Enforcement Directive provides that Member States might put in place administrative requirements and control measures that "are necessary in order to ensure effective monitoring of compliance with the obligations set out in this Directive and Directive 96/71/EC, provided that these are justified and proportionate in accordance with Union law". Article 9(1) lists some measures that the Member States may put in place, such as the obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities. Should such a system exist and be compulsory, service providers would have to make this declaration at the latest at the commencement of the service provision, and include elements such as their identity, the anticipated number of clearly identifiable posted workers, and the envisaged beginning and end date of the posting. Although some Member States had in place systems for prior declaration of posting before the adoption of the Enforcement Directive, its number has increased with the implementation of the Enforcement Directive.

Traditionally, the only source of information on posting has been the so-called 'Portable Document A1' (PD A1). This form is provided by the competent Member State at the request of the employer or the person concerned and establishes the presumption that the holder is properly affiliated to the social security system of the Member State which has issued the certificate. Consequently, it confirms that the person concerned has no obligations to pay contributions in another Member State. It should be noted that a PD A1 is not only issued to posted workers but also to several other mobile workers, such as persons who are active in two or more Member States, mariners, and flight or cabin crew members. Data on the number of PDs A1 is collected at EU level by a questionnaire launched within the framework of the Administrative Commission. For the key figures on PD A1 for reference year 2017, the most recent PD A1 report could be consulted.[13]

[13] De Wispelaere, F. and Pacolet, J. (2018), *Posting of workers: Report on A1 portable documents issued in 2017*, Network Statistics FMSSFE, European Commission.

The data based on the A1 forms will continue to be the main source of information on postings as it covers all Member States and as it is the only source providing fully comparable data. Nevertheless, it is now possible to complement the data based on the PD A1 form with data concerning the posting declarations under Article 9 of the Enforcement Directive. This report presents the results of the data collection on the number of posted workers registered in the declaration tools of host Member States during reference year 2017. The data on incoming posting undertakings and posted workers registered by national declaration tools will therefore usefully complement the data on posting provided by the A1 certificate. Nonetheless, both data sources only provide an indicative picture of the phenomenon of intra-EU posting because of several limitations (see also *Chapter 11*).

The data on incoming posted workers registered by national declaration tools were collected via a questionnaire sent to the Expert Committee on Posting of Workers *(ECPW)*.[14] The questionnaire aimed to collect detailed figures for reference year 2017 on the number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made.[15] The scope of the questionnaire included both posted workers and self-employed persons, posted from an EU-28 country, an EFTA country or even a country outside the EU-28/EFTA. The results of the data collection are reported and analysed in the next chapters.[16] However, it is necessary to indicate that the image presented below is still tentative, because not all Member States were able to send their data, either because they do not have in place a system for prior declaration (it is a faculty given to Member States, not an obligation), do not collect national data on postings, or did not yet have the data available. Before discussing the collected data, an overview is given of the characteristics of the national declaration tools.

[14] http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2274.

[15] Moreover, some Member States publish figures/annual reports based on the data extracted from the national declaration tools. Denmark: https://erst.virk.dk/rut3/public/forespoergsel/liste; France: https://travail-emploi.gouv.fr/IMG/pdf/prestations_de_services_internationales_2016__doc.pdf; Luxembourg: http://www.itm.lu/home/itm/rapport-annuel.html; Sweden: https://www.av.se/arbetsmiljoarbete-och-inspektioner/utlandsk-arbetskraft-i-sverige/utstationering---utlandsk-arbetskraft-i-sverige/statistik-over-utstationering/.

[16] The Network Statistics FMSSFE would like to thank the Expert Committee on Posting of Workers for providing these data and the Directorate-General for Employment, Social Affairs and Inclusion - Unit D.1 Free Movement of Workers, in particular Fernando Pereira, Federico Pancaldi and Carita Rammus for remarks, comments and exchanges on previous versions.

2. OVERVIEW OF NATIONAL DECLARATION TOOLS

1. Article 9 (1) (a) of the Enforcement Directive states that Member States may impose an obligation on a service provider established in another Member State to make a simple declaration to the responsible national competent authorities containing the relevant information necessary to allow factual checks at the workplace, including:

- the identity of the service provider;
- the anticipated number of clearly identifiable posted workers;
- the identity of the person to liaise with the competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices to, if need be;
- the identity of the contact person acting as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State, in accordance with national law and/or practice, during the period in which the services are provided;
- the anticipated duration, and the envisaged beginning and end date of the posting;
- the address(es) of the workplace; and
- the nature of the services justifying the posting.

Table 1 gives an overview of the policy applied by Member States with regard to the implementation of such a declaration tool. Currently, 26 out of 28 Member States have used this opportunity to implement a declaration tool for incoming posting undertakings and the workers concerned. The United Kingdom is an exception, while the declaration system in the Netherlands should be operational by 2019. EFTA countries (Iceland, Norway and Liechtenstein) and Switzerland are not included in *Table 1*. Norway reported that it does not have a designated declaration tool for posting as such. However, it does have a registration scheme, for tax purposes, for foreign undertakings providing services in Norway.[17]

The national registration tool may assist the competent authorities in identifying both posted employed and self-employed persons. The obligation to register applies, however, in most Member States to posted workers and not to self-employed, except in Belgium, Denmark and Slovenia where also the latter should register.

The policy of Member States to require the registration of posting undertakings from countries outside of the EU-28/EFTA varies. The declaration tools from Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Spain, France, Croatia, Italy, Lithuania, Luxembourg, Austria, Poland, Romania, Finland and Sweden cover persons posted from countries outside of the EU-28/EFTA. This is not the case in Estonia, Ireland, Greece, Cyprus, Latvia, Hungary, Malta and Slovakia.

Based on the above findings, it seems that only the national declaration systems in Belgium *(LIMOSA)* and Denmark *(RUT)* require that all foreign service providers, thus also posted self-employed persons and posting undertakings from countries outside of the EU-28/EFTA, register before providing services in these Member States.

17 https://www.skatteetaten.no/en/business-and-organisation/foreign/foreign-sole-proprietorships/registration-obligation/the-assignment-and-employment-register/.

Table 1 Overview of the national declaration systems, 2018

	Implemented a declaration tool?	Self-employed covered?	Persons posted from countries outside of the EU-28/EFTA covered?
BE	YES	YES	YES
BG	YES	NO	YES
CZ	YES	NO	YES
DK	YES	YES	YES
DE	YES	NO	YES
EE	YES	NO	NO
IE	YES	NO	NO
EL	YES	NO	NO
ES	YES	NO	YES
FR	YES	NO	YES
HR	YES	NO	YES
IT	YES	NO	YES
CY	YES	NO	NO
LV	YES	NO	NO
LT	YES	NO	YES
LU	YES	NO	YES
HU	YES	NO	NO
MT	YES	NO	NO
NL	NO (by 2019)		
AT	YES	NO	YES
PL	YES	NO	YES
PT	YES	NO	
RO	YES	NO	YES (other system)
SI	YES	YES	
SK	YES	NO	NO
FI	YES	NO	YES
SE	YES	NO	YES
UK	NO		

Source Questionnaire on incoming posted workers ; Reply for CZ, FR, NL and UK based on desk research.

Table 2 provides a short description of the registration tool as well as a link to a relevant national website. Article 9 (4) of the Enforcement Directive states that "*Member States should ensure that the procedures and formalities relating to the posting of workers can be completed in a user-friendly way by undertakings, at a distance and by electronic means as far as possible*." Consequently, this has led to differences among Member States with regard to the registration procedure. Most Member States have implemented an online/electronic registration tool (Belgium, Denmark, Germany, France, Italy, Luxembourg, Hungary[18], Malta, Austria, Poland, Slovenia, Slovakia, Finland and Sweden). Nonetheless, in Bulgaria, Ireland, Cyprus, Latvia, Romania, the notification of posting is done by post, and/or in the Czech Republic, Estonia, Ireland, Cyprus, Greece, Croatia, Lithuania Portugal by e-mail.

[18] A new declaration tool will be introduced in 2019 by the Hungarian authorities.

Table 2 Description of the national declaration systems, 2018

	Short description of the national declaration system	Type of procedure	Link to the webpage of the national declaration procedure
BE	Limosa: Foreign employers and self-employed workers who come to work temporarily or partially in Belgium must, prior to the beginning, declare their activities to the Belgian government via the web application Limosa.	Electronically	www.limosa.be
BG	The information about the posting of workers in the framework of providing services in Bulgaria is submitted by the employer on paper. The form is published at the website of the General Labour Inspectorate Executive Agency and should be submitted to the territorial office of General Labour Inspectorate Executive Agency.	Post	http://www.gli.government.bg/page.php?c=211&d=2767
CZ	The employer, or the legal entity or natural person who concluded a contract with a foreign employer, based on which these persons were posted to perform tasks arising from this contact in the territory of the Czech Republic, should inform the competent regional branch of the Labour Office. This means that the declaration should be made by the Czech client and not by the posting undertaking.	Mail/post	https://portal.mpsv.cz/sz/zahr_zam/tiskopisy/informace_o_nastupu.pdf
DK	RUT: All foreign enterprises performing work temporarily in Denmark must notify about the enterprise and the services electronically.	Electronically	https://indberet.virk.dk/myndigheder/stat/ERST/Register_of_Foreign_Service_Providers_RUT
DE	Meldeportal-Mindestlohn: On the registration website, employers and users of labour can access the online forms (which are the same as the previously available printed forms) in English, German and French. The (Minimum Wage Registration Website) exists since the beginning of the year 2017.	Electronically	https://www.meldeportal-mindestlohn.de/Meldeportal/form/display.do?%24context=2C5C9D68A44D7F3371BA
EE	The employer is obligated to register its workers posted to Estonia by sending an e-mail to the Labour Inspectorate of Estonia (posting@ti.ee).	Mail	http://ti.ee/en/organisation-contacts/the-labour-inspectorate/posted-workers/registration
IE	The service provider must provide certain information which will enable the Workplace Relations Commission (WRC) to monitor posting activity and ensure compliance with posting rules. The form of declaration may be submitted by post or mail.	Mail/post	http://www.workplacerelations.ie/en/Publications_Forms/Form-of-Declaration.pdf
EL	The documents (translated in Greek language) have to be submitted by the service provider to the competent department of the Labour Inspectorate Body of the place where services are provided, at the latest at the commencement of service provision.	Mail/post/fax	http://www.ypakp.gr/uploads/docs/10805.pdf
ES	The business owner that post workers to Spain in the framework of the transnational provision of services must notify the posting, prior to commencement and irrespective of its duration, to the labour authority of the Autonomous Community where the services are to be provided. The procedure to notify the posting shall be that determined by the competent Autonomous Community.		http://www.empleo.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores-eng/desplazamiento/index.htm#section6
FR	Système d'information sur les prestations de service internationales – SIPSI: The SIPSI webservice opened in 2016 and was made compulsory in January 2017 to convert the hardcopy of the declaration to the French labour inspectorate into an online procedure. The objective was also to establish a national database of postings in France to improve the efficiency of inspections and the quality of statistics. Before 2016-2017, the declaration of posting could be transmitted to the local labour inspectorate by email, postal mail, fax.	Electronically	www.sipsi.travail.gouv.fr

	Short description of the national declaration system	Type of procedure	Link to the webpage of the national declaration procedure
HR	Submitting a declaration is obligatory for every employer posting workers to Croatia. It is only a prescribed Form (1 and 2), to be fulfilled and sent by e-mail.	Mail	http://www.mrms.hr/posting/instructions-for-foreign-companies
IT	The foreign service providers who wish to post workers to Italy must make a prior declaration, setting out specific information regarding the posting of the workers, by midnight of the day preceding the start of the posting itself and must notify of any subsequent modifications within 5 days of the change being made. All foreign service providers are required to notify the posting of workers in Italy via the Compulsory Communications procedure. As of 1 March 2017 a specific notification procedure has been set up for cabotage operations.	Electronically	http://www.distaccoue.lavoro.gov.it/Pages/Documentazione.aspx?lang=eng
CY	Any European company posting workers to Cyprus is obliged to submit to the Department of Labour, which is the competent authority for posting, before beginning of the provision of services via email, fax or by post office, a written statement in Greek or in English.	Mail/post	www.mlsi.gov/dl
LV	An employer who posts an employee to perform work in Latvia has the obligation, prior to posting the employee, to inform the State Labour Inspectorate in the official language of such posted employee in writing.	Mail	http://vdi.gov.lv/en/contacts
LT	An employer posting a worker to Lithuania for longer than 30 days or to perform construction works, shall submit to the State Labour Inspectorate territorial office of the place of performance of the work functions a report in the set form in the Lithuanian language concerning the guarantees applied for posted workers. The report shall be submitted by post.	Mail/post/fax	https://www.vdi.lt/Forms/Tema.aspx?Tema_ID=50
LU	After being registered and identified, the foreign company posting staff must make an electronic declaration of the posted employees and post the social documents (A1 certificate, employment contract, etc.) in a PDF version on the platform.	Electronic	https://guichet.itm.lu/edetach/
HU	Service providers must declare their workers posted to the territory of Hungary after registration via the website of the labour authority.	Electronic	http://www.ommf.gov.hu/index.php?akt_menu=552
MT	The undertaking posting the worker to Malta is obliged to notify the Director of Industrial and Employment Relations (DIER) of its intention to post a worker to Malta. A 'Notification of a Posted Worker to Malta' form, prepared for such purpose has to be filled in. The Notification Form accompanied with a copy of the posted worker's employment contract (with the posting undertaking) and, in the case of a TCN posted employee from an EU/EEA country, also with a copy of his existing working license, should reach Department of Industrial and Employment Relations prior to the commencement of the posting. The undertaking making use of the services of the posted worker is obliged to keep a copy of such Notification Form at the place of work for monitoring purposes by the inspectors of the DIER.	Electronically	https://eforms.gov.mt/pdfforms.aspx?fid=wes072e
NL			
AT	FinPol Online: The declaration of posting is only possible with a web-form on the homepage of the Ministry of Finance. The form goes into a system of the financial police who is responsible for inspections in certain areas of labour market controls. The system is process oriented for the documentation of inspections and enforcement.	Electronically	https://www4.formularservice.gv.at/formularserver/user/formular.aspx?pid=fe66cedb506e495c94b3e826701443e5&pn=B461f73088ab946fe9bd1d1cce573d81a
PL	A statement on the posting of a worker to the territory of the Republic of Poland and a notification of change of the statement on the	Post/	Electronically:

	Short description of the national declaration system	Type of procedure	Link to the webpage of the national declaration procedure
	posting of a worker to the territory of the Republic of Poland are documents which enable identification of persons sent to work to the territory of Poland by foreign entities (from EU/EEA countries, Switzerland and third countries). They can be submitted in paper or in electronic form, in Polish or in English.	Electronically	https://www.biznes.gov.pl/en/firma/cudzoziemcy/chce-delegowac-pracownikow-do-polski/proc_1328-oswiadczenie-o-delegowaniu-pracownika; Post: https://www.pip.gov.pl/pl/f/v/155136/Oswiadczenie%20pracodawcy%20delegujacego%20pracownika%20na%20terytorium%20RP.pdf
PT	A form is available on the website of the competent institution and should be sent to destacamento@act.gov.pt	Mail	http://www.act.gov.pt/(pt-PT)/CentroInformacao/DestacamentoTrabalhadores/Destacamentodetrabalhadores/Paginas/default.aspx
RO	Employers established in other Member States that post workers to Romania (service providers) have the administrative requirement to submit a prior notification to territorial labour inspectorate from the county where the workplace will be situated, not later than the day before starting of work. The Notification must be sent in the Romanian language. It has to be submitted to territorial labour inspectorate in each county where the workplace will be situated.	Post	https://www.inspectiamuncii.ro/documents/66402/1518590/ModelDeclaratie-en.pdf/976f2580-2efd-4553-8382-df76328dca5b
SI	Electronic registration of the provision of services in Slovenia by an employer established in another EU Member State or the EEA, or Switzerland.	Electronically	https://www.ess.gov.si/delodajalci/zaposlovanje_in_delo_tujcev/spletna-prijava-dela-tujcev/-spletna-prijava-dela-tujcev-prijava-izvajanje-storitev-delodajalca-s-sedezem-v-drzavi-clanici-eu-egp-ali-svicarski-konfederaciji?cl=35&cl=35
SK	The employer, posting his/her workers to the territory of Slovak republic to perform works at provision of services, is obliged to notify the National labour inspectorate the basic data of posting electronically or by mail.	Electronically/ mail	https://www.ip.gov.sk/posting-of-workers/
FI	Before the work begins in Finland, the posting company must notify the OSH authorities about the posting of workers. The reporting duty entered into force September 1st 2017. The duty is fulfilled by filling an electronic form.	Electronically	https://anon.ahtp.fi/_layouts/15/FormServer.aspx?OpenIn=Browser&XsnLocation=/Lomakkeet/Ilmoitus_ty%c3%b6ntekij%c3%b6iden_l%c3%a4hett%c3%a4misest%c3%a4_en.xsn&Source=https://anon.ahtp.fi/sivut/submitted.aspx
SE	An employer must report a posting to the Swedish Work Environment Authority at the latest when a posted worker begins work in Sweden. If the posting lasts for five days at the most, no report is required. If the work is extended, a report must be made by the sixth day at the latest.	Electronically	posting.av.se
UK			

Source Questionnaire on incoming posted workers

An overview of the information requested by the declaration systems is presented in *Table 3*. Most Member States follow the information that can be requested according to Article 9 (1) (a) of the Enforcement Directive. Notably, all Member States that implemented a declaration tool ask information about the service provider, the posted workers (except Finland), the person to liaise with, the anticipated duration, the address(es) of the workplace, and finally the nature of the services justifying the posting. Information about the contact person acting as a representative is requested by 13 Member States. Most Member States request also additional relevant information complementary to the information that can be requested according to the Enforcement Directive. Based on the detailed replies of some Member States, it seems that mostly additional relevant information is requested about the working time, about the remuneration and finally about the client in the host Member State.

Table 3 Information requested by the national declaration systems, 2018

	The identification of the service provider	The identification of the posted workers	Person to liaise with the competent authorities in the host Member State	Contact person acting as a representative	The anticipated duration, envisaged beginning and end date of the posting	The address(es) of the workplace	The nature of the services justifying the posting	Other information
BE	YES	YES	YES	NO	YES	YES	YES	YES
BG	YES	YES	YES	YES	YES	YES	YES	YES
CZ	YES	YES	YES	NO	YES	YES	YES	YES
DK	YES	YES	YES	YES	YES	YES	YES	YES
DE	YES	YES	YES	YES	YES	YES*	YES	NO
EE	YES	YES	YES	NO	YES	YES	YES	YES
IE	YES	YES	YES	YES	YES	YES	YES	YES
EL	YES	YES	YES	NO	YES	YES	YES	YES
ES	YES	YES	YES	YES	YES	YES	YES	NO
FR	YES	YES	YES	NO	YES	YES	YES	YES
HR	YES	YES	YES	NO	YES	YES	YES	YES
IT	YES	YES	YES	YES	YES	YES	YES	YES
CY	YES	YES	YES	YES	YES	YES	YES	YES
LV	YES	YES	YES	YES	YES	YES	YES	YES
LT	YES	YES	YES	NO	YES	YES	YES	
LU	YES	YES	YES	NO	YES	YES	YES	YES
HU	YES	YES	YES	NO	YES	YES	YES	YES
MT	YES	YES	YES	YES	YES	YES	YES	YES
NL								

AT	YES	YES	YES	YES	YES	YES	YES	YES
PL	YES	YES	YES	NO	YES	YES	YES	YES
PT	YES	YES	YES	YES	YES	YES	YES	YES
RO	YES	YES	YES	YES	YES	YES	YES	YES
SI								
SK	YES	YES	YES	NO	YES	YES	YES	
FI	YES	NO	YES	NO	YES	YES	YES	YES
SE	YES	YES	YES	YES	YES	YES	YES	
UK								

* DE : not for mobile workers.

Source Questionnaire on incoming posted workers

3. NUMBER OF PERSONS REGISTERED IN THE NATIONAL DECLARATION TOOLS

The figures in this report are based on the number of *persons* registered in the national declaration tools. A person is considered in the below figures insofar as at least one declaration for one or more days was made for him or her in 2017. Within that year, the person concerned is counted only once, even if multiple declarations for that person were made in 2017. For instance, if a person was sent 5 times to Member State A in 2017, s/he will be registered 5 times in the national registration tool of that Member State (= number of postings). However, s/he will be counted only once if the number of persons registered in the national declaration tool for whom at least one declaration for one or more days was made are counted for 2017. Consequently, the total number of declarations substantially exceeds the number of persons registered in the declaration tools.

Member States were asked to report the number of persons registered in the national declarations and not the number of declarations.[19,20] There are several reasons for this methodological choice. Counting the number of registered persons provide a better view on the *real size* of intra-EU posting to another Member State, as this number could be compared to the total number of employed persons in the host Member State. Using the number of declarations, especially without a full-time equivalent estimation, may result into a significant overestimation of the relative impact. Moreover, retaining the 'person registered' as an indicator warrants reliable figures on the average period a person is posted to another Member during the reference year. To take an extreme example, if every day a posting undertaking made a new declaration for the persons providing services in the host Member State, and did so during the whole year, using 'postings' as the indicator would yield an average posting period of the reference year of 1 day , while opting for 'person registered' yields 365 days. Moreover, in the above example, this also implies that there were 365 postings for only one person during the reference year. This shows that by counting 'postings' there is an increased risk of overestimating the size and impact of intra-EU posting and misjudging the duration of posting. These remarks notwithstanding, it might also be interesting to have in the future a view on the total number of postings, which could also be collected by the questionnaire.

A total number of 19 Member States provided data on the number of persons registered in their national declaration tools for whom at least one declaration for one or more days was made. The data on PD A1 for reference year 2017 shows that most persons provided services in Germany, France and Belgium. For both France (by SIPSI)[21] and Belgium (by LIMOSA) data on the number of posted workers received is reported below. Data on the number of posted workers registered in the German declaration tool 'Meldeportal-Mindestlohn' (Minimum Wage Registration Website) are not yet available. (Some) figures from the German 'Meldeportal-Mindestlohn' will become available in 2019.[22] Nonetheless, some figures for Germany are cited in this

[19] It cannot be ruled out that some Member States reported data on the number of declarations instead of persons registered.

[20] The PD A1 report includes both figures on the number of postings (the number of PDs A1 issued) and on the individual persons posted, albeit from a sending perspective. Based on the reported figures for reference year it can be concluded that on average one individual person was sent abroad two times.

[21] The reported data by France are based on a processing of the SIPSI database and should be considered estimates. Before 2017, the national report on posting in France published by 'la direction générale du travail (DGT)' was based on a survey on the number of declarations received by the local labour inspection services. Since 2017, statistics are directly established by requesting the SIPSI database. In addition, the methodology applied in the national report differs from the methodology described in this report.

[22] It should be noted that notifications via the *Mindestlohnmeldeportal* are only made within the scope of § 16 *Mindestlohngesetz* in conjunction with § 2a *Schwarzarbeitsbekämpfungsgesetz*, § 18 *Arbeitnehmer-Entsendegesetz* and § 17b *Arbeitnehmerüberlassungsgesetz*. Employers employing posted workers in those sectors that are mentioned in the *SchwarzArbG* and in those sectors which are covered by extended sectoral minimum wage

report. For instance, SOKA-BAU collects data on the number of posting undertakings who participate in the leave scheme of the German construction industry.

The 19 reporting Member States registered some 700,000 incoming posted persons, mainly providing activities in Belgium (216,018 persons) and France (208,713) *(estimate)* and to a lesser extent in Austria (95,051 persons)[23] and Sweden (72,552 persons) *(Table 4)*. Luxembourg, Denmark, Italy and Slovakia registered between 10,000 and 30,000 posted persons. This is in contrast to Cyprus and Latvia, who registered less than 100 posted persons. Finally, it was reported that 35,272 persons were providing services for foreign undertakings in Norway.[24]

Most of the posted workers come from Poland and Germany (see also *Table A1.1*). Nonetheless, only in Romania and Sweden the main Member State of origin is Poland. In Denmark, Luxembourg, Hungary and Austria most of the posted persons come from Germany. Most of the posted workers employed in France come from Portugal. In several host Member States a high number of posted persons are from a neighbouring Member State. This is in particular the case for Austria (mainly coming from Germany), Luxembourg (mainly coming from Germany), Belgium (mainly coming from the Netherlands), Ireland (mainly coming from the UK) and Estonia (mainly coming from Latvia). Finally, Lithuania (98%), Cyprus (69%) and Poland (42%) registered a high number of persons providing services for posting undertakings from countries outside of the EU-28/EFTA.

agreements (extended under the Posted Workers Act) are obliged to fill in notifications on the who, when, and where of the employment of posted workers. Consequently, not all incoming posting undertakings should make such a declaration.

[23] The reported figures do not cover the Austrian transport sector *(see for more information chapter 7)*.

[24] Based on data extracted from the registration scheme of the Norwegian Tax Administration.

Table 4 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, breakdown by sending Member State, 2017

Sending Member State (country of origin)	Receiving Member State (host country)																											
	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
BE	2,300*	22		202		2	9	0		12,276		122	0	0	0	3,873	2	n.a.		68	52		15		n.a.		0		18,943
BG	5,522			186		1	9	206		4,487		458	0	0	0	130	11	n.a.		1,060	10		124		n.a.		186		12,390
CZ	2,806	3		594		0	4	58		3,139		189	0	0	0	105	154	n.a.		3,244	642		226		n.a.		5,272		16,436
DK	491	1				2	17	0		880		13	0	0	1	14	0	n.a.		277	53		10		n.a.		1,556		3,315
DE	21,838	64		6,441		23	56	62		24,769		1,026	0	3	5	12,496	953	n.a.		29,370	1,259		444		n.a.		4,112		102,921
EE	67	0		118				21		506		41	0	0	0	11	0	n.a.		18	15		1		n.a.		2,616		3,414
IE	598	0		159		0		0		452		61	0	0	0	11	4	n.a.		8	6		17		n.a.		1,050		2,366
EL	265	11		69		0	0			362		22	40	0	0	0	2	n.a.		5	16		43		n.a.		21		856
ES	4,262	70		136		3	12	0		26,196		1,368	0	8	0	263	49	n.a.		791	186		798		n.a.		519		34,661
FR	16,977	17		88		0	3	38				209	12	1	2	2,606	26	n.a.		47	56		136		n.a.		125		20,343
HR	1,342	3		132		0	4	0		914		749	0	0	0	207	78	n.a.		1,425	12		12		n.a.		872		5,750
IT	5,245	11		776		3	22	39		18,654			0	0	0	295	220	n.a.		4,067	638		599		n.a.		574		31,143
CY	335	0		24		1	0	27		670		3		0	0	21	0	n.a.		95	0		366		n.a.		2		1,544
LV	579	3		518		499	0	17		746		5	0		7	12	3	n.a.		24	11		7		n.a.		6,067		8,498
LT	2,952	9		1,974		172	1	15		2,377		182	0	0		1,518	0	n.a.		377	2		0		n.a.		5,861		15,440
LU	7,636	9		13		0	0	0		4,338		3	0	0	0		0	n.a.		33	9		0		n.a.		28		12,069
HU	2,930	18		341		0	14	0		1,206		217	0	0	0	509	93	n.a.		14,406	157		590		n.a.		141		20,622
MT	23	0		0		0	0	0		119		139	0	0	0	0	0			247	0		0		n.a.		50		578
NL	55,058	8		950		0	10	34		4,847		96	0	0	0	203	12	n.a.		1,230	69		142		n.a.		520		63,179
AT	832	27		299		0	9	0		2,184		811	0	0	0	159	301	n.a.		8	322		168		n.a.		663		5,783
PL	34,058	10		5,632		417	6	9		18,109		938	0	4	19	2,355	505	n.a.		9,237			949		n.a.		26,644		98,892
PT	16,267	0		312		45	19	0		25,171		147	0	0	0	665	0	n.a.		1,238	9		64		n.a.		780		44,717
RO	14,092	53		452		0	1	6		11,637		7,005	6	0	25	642	28	n.a.		2,667	41				n.a.		1,049		37,704
SI	4,183	2		176		0	3	20		1,082		672	0	0	0	200	34	n.a.		12,221	63		7		n.a.		580		19,243
SK	6,518	0		547		2	2	2		4,155		219	0	0	0	164	287	n.a.		8,863	135		132				2,132		23,158
FI	167	6		230		41	0	15		416		18	0	0	0	0	1	n.a.		94	13		15		n.a.		2,311		3,327
SE	352	1		1,029		4	6	5		636		29	0	0	0	2	7	n.a.		102	23		8		n.a.				2,204
UK	4,045	7		925		11	190	165		15,991		1,300	2	0	2	60	101	n.a.		1,647	421		187		n.a.		380		25,434
IS	4	0		1		0	0	0		1		1	0	0	0	0	0	n.a.		3	0		0		n.a.		4		14
LI	3	0		27		0	0	0		11		1	0	0	0	0	0	n.a.		1,375	0		0		n.a.		3		1,420
NO	45	1		329		3	0	0		332		44	0	0	0	2	0	n.a.		69	15		60		n.a.		203		1,103
CH	460	11		129		0	4	177		4,518		883	0	0	0	173	20	n.a.		735	48		80		n.a.		228		7,466
Extra-EU	6,543	54		527		n.a.	n.a.	6		17,532		1,996	0	36	2,658	n.a.	15	n.a.		n.a.	3,089		808		n.a.		8,003		41,267
Total	216,018	403		23,336		1,229	401	922		208,713		18,967	59	52	2,722	26,696	2,906	552		95,051	7,372		6,008		15,930		72,552		699,889

* Figure is an 'error': Belgian companies might have made a mistake (for instance, filling in a declaration when an individual is subject to Belgian social security but has not the Belgian nationality).

** Belgium and Denmark: including both posted workers and self-employed persons.

*** Austria : excl. the transport sector.

**** France: estimates. Moreover, the same worker might be posted by companies from different countries. For that reason, the total (i.e. 208,713 persons) is not equal to the total reported in *Table 7* (by nationality) (i.e. 207,512 persons).

Source Questionnaire on incoming posted workers

4. BREAKDOWN BETWEEN WORKERS AND SELF-EMPLOYED PERSONS

As stated earlier, a limited number of Member States require the registration of incoming posted self-employed persons. Of these Member States, only Belgium and Denmark reported figures on both the number of posted workers and self-employed persons *(Table 5)*. Some 13% of the persons providing services in Belgium and some 8% of the persons providing services in Denmark are self-employed.

Table 5 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, by status, 2017

Receiving MS	Incoming posted workers		Incoming self-employed persons		Total
	Number	*Row %*	*Number*	*Row %*	*Number*
BE	190,087	87%	28,813	13%	218,900
DK	21,548	92%	1,788	8%	23,336

Source Questionnaire on incoming posted workers

For both Belgium and Denmark, a more detailed analysis of the profile of the incoming self-employed persons could be made on the basis of the reported figures by Member State of origin. For Belgium, it appears that 35% and 38% of the posted workers from respectively Poland and Slovakia have a self-employed status. A similar picture is revealed when analysing the figures reported by Denmark. Again a high percentage of the posted persons from Slovakia (31%) and Poland (18%) are self-employed. Moreover, if one examines the construction sector in more detail, it appears that 13% of the persons providing services in Denmark are self-employed. Based on figures for 2015, some 19% of the persons posted to the Belgian construction sector were self-employed.[25]

5. BREAKDOWN BY TYPE OF POSTING

The Posting of Workers Directive distinguishes between three types of postings, namely posting between a company and a service provider ('contract of services'), posting of workers within the same group ('intra-group posting') and posting through temporary work agencies. A total of nine Member States were able to make (to some extent) a distinction by type of posting *(Table 6)*.

The share of posting through temporary employment agencies amounts to 27% in France, 13% in Austria, 11% in Belgium, 4% in Poland and 1% in Luxembourg. Bulgaria, Ireland, France, Cyprus and Malta mainly received posted workers who provide services as a subcontractor to another company. Furthermore, some 23,000 foreign workers were posted in 2017 to the same group in France, which covers 11% of total intra-EU posting to France. Belgium, Austria, Luxembourg and Poland could not make a distinction between intra-group posting and subcontracting.

[25] De Wispelaere, F. and Pacolet, J. (2017), *The size and impact of intra-EU posting on the Belgian economy. With a special focus on the construction sector. Summary*, HIVA – KU Leuven.

Table 6 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, by type of posting, 2017

	Posting under a contract concluded between the business making the posting and the party for whom the services are intended ('contracting/ subcontracting')	Posting to an establishment or business owned by the same business group in the territory of another Member State ('intra-corporate transfers')	Hiring out by a temporary employment firm or placement agency to a user business established in another Member State	Total
BE	174,134*		21,928	196,062
BG	204	199		403
IE	401			401
FR	129,684	22,827	56,202	208,713
CY	59	1		60
LU	26,376*		320	26,696
MT	470	82		552
AT	82,499*		12,552	95,051
PL	7,060*		312	7,372

* Belgium, Austria, Luxembourg and Poland could not make a distinction between subcontracting and intra-group posting.

** France: estimates.

Source Questionnaire on incoming posted workers

6. BREAKDOWN BY NATIONALITY

The nationality of the posted worker does not necessarily correspond to his or her Member State of origin. *Table 7* therefore gives a detailed overview of the nationality of the incoming posted workers. Such data are available for 11 Member States. Both Slovakia and Malta provided data on the nationality of the incoming posted workers, which both countries were not able to do for the Member State of origin *(see Table 4)*.

Some interesting conclusions can be made on the basis of this table. In general the distribution of the posted workers by nationality does not differ so much from the distribution by Member State of origin given that the correlation between both variables is 0.95 or more for all reporting Member States.[26] However, it appears that for France, Austria and Belgium the share of posted workers with a nationality from outside the EU-28/EFTA in the total number of incoming posted workers *(see Table A1.2)* is much higher compared to the share of posted workers coming from outside the EU-28/EFTA *(see Table A1.1)*. Furthermore, the share of posted workers with Polish nationality in the total number of incoming posted workers in Bulgaria, Denmark, Luxembourg and Romania is (much) higher compared to the share of posted workers coming from Poland to these countries. This implies that a (high) number of posted workers with Polish nationality resides in a Member State other than Poland.

The nationality of the incoming posted workers might also correspond to the Member State where the services are provided. For instance, more than 5% of the incoming posted workers in Italy and Slovakia have the nationality of their Member State of temporary employment. Furthermore, some 4% of the posted workers employed in France have the French nationality.

[26] The correlation coefficient is a measure that determines the degree to which two variables are associated. A correlation of -1.0 indicates a perfect negative correlation, and a correlation of 1.0 indicates a perfect positive correlation.

Table 7 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, by nationality, 2017

Nationality	Receiving Member State (host country)																												
	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT	PL	PT	RO	SI	SK	FI	SE	UK	Total
BE	3,399	7		115						10,634		76	0			3,376		3		81			16		1				14,332
BG	5,850	7		399						5,383		350	0			298		23		1,960			150		79				14,201
CZ	2,315	6		559						3,081		156	0			115		1		3,082			203		5,155				14,558
DK	398	2		135						905		11	0			12		0		265			8		8				1,732
DE	15,986	54		4,970						19,879		894	0			10,317		56		21,363			376		1,721				65,299
EE	73			137						191		8	0			13		0		26			4						439
IE	700	2		176						602		87	0			10		9		23			16		1				1,616
EL	676	11		224						720		34	34			30		16		146			39		3				1,903
ES	3,578	56		134						14,892		1,143	0			228		31		625			717		165				21,341
FR	17,809	19		84						8,241		226	0			2,438		20		99			183		56				26,737
HR	2,346	2		259						1,469		889	0			337		2		2,236			21		52				7,276
IT	4,474	15		639						15,613		979	0			400		104		3,494			508		312				26,138
CY	14			2						7		2						2		3			1						31
LV	726	10		719						651		14	0			33		16		67			0						2,203
LT	2,898	2		1,898						1,991		143	0			766		3		313			14		15				7,277
LU	171	6		4						112		2	0					1		0			0						296
HU	4,234	21		489						1,663		257	0			639		8		16,637			592		552				24,453
MT	18			0						6		6	0							0			0						30
NL	45,165	6		671						4,314		126	0			228		5		1,191			115		16				51,609
AT	823	20		216						1,887		663	0			121		18		935			124		184				4,870
PL	35,476	26		6,408						20,616		855	0			2,980		94		10,946			1,298		4,482				80,201
PT	16,186	4		405						26,644		289	0			837		20		1,726			76		35				45,385
RO	19,421	43		1,026						17,492		7,460	6			1244		22		4,671			237		462				50,840
SI	1,305	2		123						642		393	0			89		0		8,878			7		89				11,439
SK	4,847	4		606						4,179		164	0			166		0		7,979			136		917				18,832
FI	170	4		169						417		26	0					0		105			7		1				899
SE	349	1		717						627		29	0			2		0		115			5		32				1,875
UK	3,295	6		742						13,612		1,086	2			59		77		1,618			101		119				20,658
IS	7			3						26		2	0			1		0		7			0		2				47
LI	0			1						1		0	0					0		11			0						13
NO	47	1		178						141		25	0			2		0		73			19		1				485
CH	167	3		29						1,124		80	0			90		3		341			6		1				1,754
Extra-EU	19,692	43		1,078						29,750		2,476	0					13		5,829			1,029		921				60,831
Total	216,018	383		23,315						207,512		18,951	42			24,831		552		94,845			6,008		15,930				583,514

* Belgium and Denmark : including both posted workers and self-employed persons.

** France: estimates.

Source Questionnaire on incoming posted workers

7. BREAKDOWN BY SECTOR OF ACTIVITY

The flow of incoming posted workers might vary highly by sector of activity. Figures on the distribution of the posted workers by sector of activity were provided by 13 Member States *(Table 8)*. Austria only reported figures for the construction and transport sector.

On average, almost one out of three of the individual posted workers registered by the 12 reporting Member States (excluding Austria) are providing services in the construction sector *(see Annex I – Table A1.3)*. In addition, some 1 out of 4 posted workers are employed in the manufacturing sector. Above average figures covering the reporting Member States are strongly affected by the data reported by France. If we do not include the figures for France, some 50% of the posted workers are employed in the construction sector. Most of the incoming posted workers registered in Bulgaria, Denmark, Estonia, Lithuania, Latvia, Slovakia and Sweden are employed in the construction sector. In 2017, some 45,000 posted workers provided services in the French construction sector, which amounts to some 21% of the incoming posted workers. In Greece most of the posted workers are active in the hotel and catering industry, while in France, Italy and Romania most of them provide services in the manufacturing industry. In France, a high number of posted workers are employed in sectors other than for those figures are reported.[27]

In 2017, there were 95,051 individual posted workers registered in Austria, of which 22,919 were involved in the construction sector. This means that the construction sector represented 24% of the total number of individuals posted to Austria. Furthermore, 224,753 individual posted workers were registered in the Austrian declaration as providing services in the transport sector, mainly coming from Poland, Hungary and Germany. This number is extremely high because of an interpretation of an Austrian law regarding transport, which makes that the figures for 2017 are distorted compared to the years before.[28] The reported figures for Austria in the different chapters of this report therefore only contain 'normal' posting and hiring out activities without including the transport sector.

Before October 2017, data extracted from LIMOSA revealed only whether or not the employer of the posted worker was involved in construction activities. Data for other sectors was not available for Belgium. Since October 2017 posting undertakings should indicate more in detail the nature of their services.[29] Because of this change, for 2017 no data on the sector of activity are available for Belgium as the notion of 'construction' used before 2017 differs to some extent from the notion used after 2017. However, based on figures for 2015, the Belgium construction sector represented 62% of the total number of individuals posted to Belgium.[30]

[27] France reported data for the following sectors: agriculture, manufacturing, construction, accommodation and food service activities, performing and tour operators.

[28] Based on input from the national expert from Austria.

[29] List with sectors: construction; meat processing; agricultural; cleaning; security; ICT; financial institutions and insurance; production and distribution of electricity, gas and water; health care and social services; accommodation and catering; private households; metalwork; electrical installation and assembly works – petrochemical industry; transport and distribution; wood and furniture industry; trade in other consumer goods; other.

[30] De Wispelaere, F. and Pacolet, J. (2017), *The size and impact of intra-EU posting on the Belgian economy. With a special focus on the construction sector. Summary*, HIVA – KU Leuven.

Table 8 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, by sector of activity, 2017

Receiving MS	Agriculture, forestry and fishing	Mining and quarrying	Manufacturing	Electricity, gas, steam and air conditioning supply	Water supply; sewerage; waste management and remediation activities	Construction	Wholesale and retail trade; repair of motor vehicles and motorcycles	Transporting and storage	Accommodation and food service activities	Information and communication	Financial and insurance activities	Real estate activities	Professional, scientific and technical activities	Administrative and support service activities	Public administration and defence; compulsory social security	Education	Human health and social work activities	Arts, entertainment and recreation	Other services activities	Activities of households as employers;	Activities of extraterritorial organisations and bodies	Total
BE*																						
BG	1	1	27	20	7	142	50	11	15	50	35	1	4	0	0	0	0	25	5	0	0	394
CZ																						
DK**	1,068	139	6,514	384	81	12,396	398	574	74	718	20	8	629	870	15	10	18	242	770	1	0	24,929
DE						79,672***																
EE	0	0	7	54	0	482	14	0	1	57	2	0	98	8	0	4	0	1	0	0	4	732
IE																						
EL	0	0	59	0	0	0	0	0	518	0	0	0	4	6	0	0	0	143	192	0	0	922
ES																						
FR****	22,003		64,547			45,024			6,373									13,143				217,885
HR																						
IT	263	123	5,977	180	127	2,797	914	4,347	1,450	323	363	34	457	1,442	119	52	124	321	34	1	5	19,453
CY	0	0	0	12	0	40	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	53
LV																						
LT	0	0	0	0	0	25	24	0	0	0	1	0	7	0	0	0	2	1	2	0	0	62
LU	117	24	4,223	291	237	12,472	486	5,087	25	233	44	20	316	1,331	0	3	86	94	193	8	4	25,294
HU																						
MT																						
NL																						
AT*****						22,919		224,753														
PL																						
PT																						
RO	79	0	2,144	197	67	736	1128	13	358	63	82	0	213	105	0	2	12	1	0	0	0	5,200
SI																						
SK	506	7	4,692	92	37	6,679	208	221	54	91	6	2	660	2,418	0	1	20	115	493	172	4	16,478
FI																						
SE	919	297	10,918	418	805	43,596	243	221	18	6,457	573	73	928	1,336		62	358	60	46		12	67,341
UK																						
Total******	24,956	591	99,108	1648	1361	124,389	3,465	10,474	8,886	7,992	1,127	138	3,316	7,516	134	134	620	14,146	1,735	182	29	378,743

* Belgium: figures are not included as data only available until September 2017.

** Denmark: including both posted workers and self-employed persons.

*** Germany: SOKA-BAU collects data on the number of posting undertakings and posted workers who participate in the leave scheme of the German construction industry (reported figure only includes EU/EFTA countries – total amounts to 85,272 workers in 2017).

**** France: estimates. The same individual worker can be posted from different countries to different sectors. This explains the higher total figure compared to *Tables 4 and 7*. France reported detailed data for the following sectors: agriculture, manufacturing, construction, accommodation and food service activities, performing (reported under 'arts, entertainment and recreation' and finally tour operators (4,284 posted workers – figure not included in *Table 8*). Some 62,511 posted workers were employed in 'other sectors'.

***** Austria: reported figures for the construction and transport sector by Austria are not taken into account when calculating total figures.

Source Questionnaire on incoming posted workers; SOKA-BAU.

8. AVERAGE DURATION OF THE POSTING PERIOD

Figures on the average period of posting of persons for whom at least one declaration for one or more days has been made in 2017 is reported in *Table 9*. In case a person was posted multiple times abroad in 2017, the sum of all these periods will be made. Consequently, the average duration per posting (see also the PD A1 report) will be lower than the figures cited in this report. For instance, if a person is sent 2 times to another Member State in 2017, the first time for a period of 3 months and the second time for a period of 5 months, the average duration per posting amounts to 4 months and the duration the person concerned has been posted during 2017 is 8 months.

The average period workers are posted abroad may differ strongly, particularly depending on the services that should be carried out. In that regard, figures on the duration of the period by sector of activity would be very useful. However, there is little chance that Member States are able to provide such detailed figures. Some 12 Member States reported data on the average period posted workers are providing services in their country. Some of these countries even made a more detailed distribution by type of posting.

The average period of posting per individual amounts to some 133 days in these 12 Member States.[31] The average period posted workers are providing services in Latvia and Poland is longer than one year. This is in contrast to the very short period of posting activities in Denmark[32] and Luxembourg. The average period a worker is employed in France amounts to some 115 days and does not differ between the type of postings.

[31] These findings are confirmed by figures of the German construction sector as more than 90% of the incoming workers are posted for a period less than 6 months (SOKA BAU, *Geschäftsbericht 2014*).

[32] However, the average period is calculated solely for those postings with a start date and end date in 2017.

Table 9 Average period of posting of persons for whom at least one declaration for one or more days has been made, number of days, by type of posting, 2017

	Posted workers				Posted self-employed	Total
	Posting under a contract concluded between the business making the posting and the party for whom the services are intended ('contracting/ subcontracting')	Posting to an establishment or business owned by the same business group in the territory of another Member State ('intra-corporate transfers')	Hiring out by a temporary employment firm or placement agency to a user business established in another Member State	Total posted workers		
BE	173*		139	175	180	177
BG	22	154		87		87
CZ						
DK				34	26	33**
DE						
EE						
IE	139			139		139
EL						
ES						
FR	115	119	119	116		116
HR						
IT				83		83
CY	153					
LV				498		498
LT						
LU	44*		37	48		48
HU						
MT						
NL						
AT**	107*		132	111		111
PL			513	512		512
PT						
RO				126		126
SI						
SK				72		72
FI						
SE						
UK						
Average*						133

* Belgium, Luxembourg and Austria could not make a distinction between intra-group posting and subcontracting.

** Austria and Denmark: weighted average.

*** France: estimates.

Source Questionnaire on incoming posted workers

9. SHARE OF INTRA-EU POSTING IN NATIONAL WORKFORCE

The number of incoming individual posted workers registered in the national registration tools can be compared to the total number of employed persons in the receiving Member States to know the relative impact of intra-EU posting. Such data are available for 18 Member States. However, the numerator only include the persons registered in 2017 (i.e. flow of posted workers). This results into an underestimation of the size of posted workers (i.e stock of posted workers) as it does not include the persons who were providing services in 2017 but who were registered in the host Member State in a previous year (for instance, in December 2016).

On average, 0.6% of the employment in these 18 Member States can be related to the employment of posted workers *(Table 10)*. The share of this type of intra-EU mobility is marginal in host countries Bulgaria, Ireland, Greece, Cyprus, Latvia and Poland.

However, not in all Member States the impact of posting on total employment is negligible. For Belgium, incoming intra-EU posting amounts to 4.5% of its total employment and in Luxembourg it even amounts to almost 6%. Also in Austria (2.2%), Sweden (1.4%) and Denmark (0.8%) the share of posting in total employment is higher compared to the EU average. Finally, posted workers account for approximately 0.8% of total employment in France.

By using the data about the duration of the posting period reported in *Table 9*, the relative weight of posting on the labour market in terms of full-time equivalents (FTEs) can be estimated. Such data are only available for 11 Member States. The fact that posted workers are active for only a limited number of months in the host Member State results in a lower impact of posting on total employment in terms of FTEs. For instance, the share of posting in total employment decreases to 2.5% for Belgium, to 1.3% for Luxembourg and to 0.3% for France.

Finally, a more detailed analysis is made of the share of posted workers in the employment by sector of activity. These figures are reported for 10 Member States by *Table 11*.

Several host Member States are confronted with a high share of posted workers in their construction sector. The relative impact of intra-EU posting in the construction sector amounts to 47% in Luxembourg, 11% in Sweden, 6.9% in Denmark and finally 6.3% in Austria. The share of intra-EU posting in total employment accounts for 'only' 2.5% in the French construction sector.

SOKA-BAU collects data on the number of posting undertakings who participate in the leave scheme of the German construction industry. Based on these data, posting accounts for some 5% of the employed workers in the German construction sector. Finally, intra-EU posting accounts for almost one third of employment in the Belgian construction sector.[33]

The relative impact of posting in sectors other than construction seem to be (very) low for all the reporting Member States. Only for Luxembourg we observe that intra-EU posting also has a significant impact in several other sectors of activity (manufacturing; electricity, gas, steam and air conditioning supply; administrative and support service activities). Moreover, according to figures published by Wagner and Hassel approximately 4 out of 10 of the workers employed in the German meat processing industry are posted workers.[34]

[33] De Wispelaere, F. and Pacolet, J. (2017), *The size and impact of intra-EU posting on the Belgian economy. With a special focus on the construction sector. Summary*, HIVA – KU Leuven.

[34] Wagner, I. and Hassel, A. (2016), 'Posting, subcontracting and low-wage employment in the German meat industry', *Transfer: European Review of Labour and Research*, Vol. 21, No. 2, p. 201-213

Table 10 Share of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made in total employment, 2017

	Total employed persons (in ,000)	Number of incoming posted persons	% of postings on total employed persons	Estimated total employed persons in FTEs (in ,000)	Estimated number of incoming posted persons in FTEs*	% of employed persons in FTEs
BE	4,638	216,018	4.5%	4,060	104,888	2.5%
BG	3,150	403	0.01%	3,112	96	0.003%
CZ						
DK	2,816	23,336	0.8%	2,446	1,656	0.1%
DE						
EE	659	1,229	0.2%			
IE	2,194	401	0.02%	1,964	153	0.01%
EL	3,753	922	0.02%			
ES						
FR	26,880	207,512	0.77%	24,355	65,949	0.27%
HR						
IT	23,023	18,967	0.1%	20,868	4,316	0.02%
CY	380	59	0.02%			
LV	895	52	0.01%	855	52	0.01%
LT	1,355	2,722	0.2%			
LU	433	26,696	5.8%	260	3,511	1.3%
HU	4,421	2,906	0.1%			
MT						
NL						
AT	4,260	95,051	2.2%			
PL	16,423	7,372	0.0%	15,824	10,341	0.1%
PT						
RO	8,671	6,008	0.1%	8,330	2,074	0.0%
SI						
SK	2,531	15,930	0.6%	2,452	3,142	0.1%
FI						
SE	5,022	72,552	1.4%			

UK			
IS			
LI			
NO			
CH			
Total	111,502	698,136	0.6%

* In order to estimate the number of posted persons in FTEs, the average duration was divided by 365 days, because figures were collected in terms of 'calendar days' and not in terms of 'working days'.

Source Questionnaire on incoming posted workers and Eurostat.

Table 11 Share of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made in total employment, by sector of activity, 2017

Receiving MS	Agriculture, forestry and fishing	Mining and quarrying	Manufacturing	Electricity, gas, steam and air conditioning supply	Water supply; sewerage; waste management and remediation activities	Construction	Wholesale and retail trade; repair of motor vehicles and motorcycles	Transporting and storage	Accommodation and food service activities	Information and communication	Financial and insurance activities	Real estate activities	Professional, scientific and technical activities	Administrative and support service activities	Public administration and defence; compulsory social security	Education	Human health and social work activities	Arts, entertainment and recreation	Other services activities
BE																			
BG	0.0%	0.0%	0.0%	0.1%	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
CZ																			
DK	1.7%	3.3%	2.0%	2.6%	0.6%	6.9%	0.1%	0.4%	0.1%	0.7%	0.0%	0.0%	0.4%	0.8%	0.0%	0.0%	0.0%	0.4%	1.1%
DE						± 5%													
EE	0.0%	0.0%	0.0%	0.7%	0.0%	0.8%	0.0%	0.0%	0.0%	0.2%	0.0%	0.0%	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
IE																			
EL	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.2%
ES																			
FR	3.1%	0.0%	1.9%	0.0%	0.0%	2.5%	0.0%	0.0%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	2.8%	0.0%
HR																			
IT	0.0%	0.4%	0.1%	0.1%	0.1%	0.2%	0.0%	0.4%	0.1%	0.1%	0.1%	0.0%	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%	0.0%
CY																			
LV																			
LT																			
LU	3.6%		31.5%	26.7%		47.3%	2.4%	34.6%	0.3%	2.4%	0.2%	1.3%	1.5%	14.1%	0.0%	0.0%	0.4%	4.5%	4.0%
HU																			
MT																			
NL																			
AT						6.3%													
PL																			
PT																			
RO	0.0%	0.0%	0.1%	0.2%	0.1%	0.1%	0.1%	0.0%	0.2%	0.0%	0.1%	0.0%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
SI																			
SK	0.7%	0.1%	0.7%	0.3%	0.1%	2.7%	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.7%	3.6%	0.0%	0.0%	0.0%	0.3%	1.4%
FI																			
SE	1.0%	3.1%	2.1%	1.5%	3.7%	11.3%	0.0%	0.1%	0.0%	2.8%	0.6%	0.1%	0.2%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%
UK																			

Source Questionnaire on incoming posted workers; SOKA-BAU; Eurostat.

10. EVOLUTION OF INTRA-EU POSTING

Member States were asked to report the evolution of intra-posting by providing figures for 2012 to 2017. Compared to 2016, incoming intra-EU postings strongly increased in Lithuania and Slovakia in relative terms. Furthermore, Sweden and Austria registered a much higher number of posted workers in 2017. Finally, Greece and Romania registered less posted workers compared to 2016.

It should be noted that the evolution of the number of individual posted persons to Belgium shows a remarkable growth. In 2017, an additional 73,700 persons were registered in LIMOSA compared to 2012. Such a strong increase, mainly concentrated in the construction sector, has a significant impact on the share of intra-EU posting in Belgium.

Table 12 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, 2012 - 2017

	2012	2013	2014	2015	2016	2017	Change 2016 - 2017	
							%	*Number*
BE	142,272	164,972	185,030	207,491	208,558	216,018	3.6%	7,460
BG								
CZ								
DK		16,518	16,517	18,805	22,172	23,336	5.2%	1,164
DE								
EE								
IE								
EL			1,008	668	981	922	-6.0%	-59
ES								
FR								
HR								
IT								
CY								
LV					64	52	-18.8%	-12
LT	336	102	116	427	480	2,722	467.1%	2,242
LU			13,624	17,403	19,002	26,696	40.5%	7,694
HU					2,023	2,906	43.6%	883
MT	439	249	213	326	507	552	8.9%	45
NL								
AT				71,600	74,845	95,051	27.0%	20,206
PL					4,148	7,372	77.7%	3,224
PT								
RO	4,851	6,140	4,973	4,360	6,418	6,008	-6.4%	-410
SI								
SK					6,031	15,930	164.1%	9,899
FI								
SE			38,251	42,697	47,727	72,552	52.0%	24,825
UK								

Source Questionnaire on incoming posted workers

11. COMPARISON TO THE DATA FROM THE A1 FORMS

In this last chapter, the figures from the national registration tools are compared to the data on received postings from the PD A1 report for reference year 2017. It first takes up the opportunity to systematise the discussion on the differences between both application/registration systems from a receiving perspective. Differences between the reference groups covered by PD A1 and the national registration tools should clearly be indicated in order to avoid any misinterpretation of the data and consequently wrong conclusions by the reader.

Table 13 Differences between the A1 application process and the registration in the national declaration tools, from a receiving perspective

	Data from the A1 form	Data from the national declaration tools
Legal base	Basic Regulation (EC) No 883/2004 and Implementing Regulation (EC) No 987/2009	Directive 2014/67/EU
Area	Social security	Terms and conditions of employment
Scope	Determined by Art. 12 of the Basic Regulation	Determined by Art. 3(1) of the Posting of Workers Directive + (for some MSs: + self-employed and/or + posting undertakings established outside the EU-28/EFTA)
Exempted	Persons active in two or more Member States (Art. 13 of the Basic Regulation); postings longer than two years; repetitive postings	Several categories in some/most host MSs (for instance, persons attending business meetings or participation in seminars and lectures are not always required to register) + (by several MSs: + self-employed and/or + posting undertakings established outside the EU-28/EFTA)
Enforcement	In some cases, a posting may take place without the institutions being informed of it. Moreover, a PD A1 can also be awarded with retroactive effect.	Implementation of a 'simple declaration' system is a faculty given to Member States, not an obligation. Most Member States implemented sanctions in the event of non-registration.

It should be acknowledged that the data from the A1 form and the national registration tools only provide an indicative picture of the actual number of posted workers because of several limitations *(see also Table 13)*.

Firstly, the notion and scope of Regulation (EC) No 883/2004 on the coordination of social security systems (i.e. the 'Basic Regulation') [35] differ from the notion and scope of the Posting of Workers Directive.[36] Because of the differences in scope, persons might be 'posted' under the Basic Regulation but not in the meaning of the Directive. For instance, self-employed persons falling under Article 12 (2) of the Basic Regulation are not covered by the Posting of Workers Directive. In contrast, persons might also be posted under the Posting of Workers Directive and not under the Basic Regulation. For instance, workers who pursue an activity in two or more Member States (Article 13

[35] Article 12 (1) of the Basic Regulation – posted worker: "a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf […] provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person". Article 12 (2) - self-employed person of the Basic Regulation: "a person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State […] provided that the anticipated duration of such activity does not exceed twenty-four months."

[36] Article 1 (3) of the Posting of Workers Directive – posted worker means "a worker who, for a limited period, carries out his or her work in the territory of a Member State other than the State in which he or she normally works (Article 2) provided that the undertakings, in the framework of transnational provision of services, take one of the following transnational measures:

(a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

(b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting."

of the Basic Regulation) may fall under the terms and conditions of the Posting of Workers Directive. This fact makes it difficult to count the exact number of posted persons in the EU.

Secondly, not all Member States have a system for prior declaration as this is not an obligation. Moreover, most declaration tools exempt posted self-employed persons and posting undertakings established outside the EU-28/EFTA from the requirement to register in the host Member State. In addition, several categories of 'posted' workers might be exempted (e.g. persons attending business meetings, participating in seminars and lectures, international truck drivers). This creates an incomplete view of the size and characteristics of posting undertakings providing services. Also the data from the A1 forms do not fully reflect intra-EU posting. According to social security coordination rules, workers who at the outset will be posted for a period of longer than two years fall outside the posting provisions of the Regulation, and in such case they need to be socially insured in the host Member State, unless a specific agreement under Article 16 of the Regulation is concluded. Hence, in the absence of such agreement, they no longer need a PD A1 document, and these workers will not appear in the related data. Moreover, as workers may be posted to the same Member State more than once per year, it may be the case that the person applies for a PD A1 which is then used on more than one occasion during its validity period. Therefore, while EU data will count one posting (only one PD A1 is issued), national data will count for example two or three, depending on the number of declarations made prior to the posting.

Finally, there is no view on the group of posted workers without a PD A1 or the group of unregistered posted workers in the national declaration tools. In some cases, a posting may take place without the institutions being informed of it. Moreover, a PD A1 can also be awarded with retroactive effect. Consequently the number of PDs A1 issued and its evolution may depend on the number of inspections performed by the enforcement bodies in the host Member State as well as to what extent host Member States have implemented sanctions for failure to present a PD A1. As a result, the group of posted workers without a PD A1 might be comprehensive. Most host Member States define sanctions in case the provision of services by incoming posted workers is not registered in their declaration tool. This should limit the number of unregistered posted workers.

Not only the above limitations affect the picture of the actual number of posted workers, but also the collection of data. Data on the A1 forms is collected at EU level via a thematic questionnaire launched in the framework of the Administrative Commission. An important limitation of this exercise is that only data on the number of PDs A1 issued according to Article 12 of the Basic Regulation are available from the perspective of the receiving Member State, which is an underestimation of the total number of PDs A1 received. Moreover, these figures count the number of A1 forms and not the number of persons involved. Consequently, the 'unit of measure' reported in *Table 14* differs as the A1 data refers to forms and the data from the national declaration tools refer to persons registered[37].

It is clear that both data sources are comparable to a limited extent. In 2017, a total of 1.73 million PDs A1 were issued for persons covered by Article 12 of the Basic

[37] Consequently, it might be interesting to have in the future a view on the total number of postings counted by the national declaration tools.

Regulation. The main sending Member States were Germany (332,091 PDs A1), Poland (235,836 PDs A1) and Slovenia (163,876 PDs A1). The main receiving Member States were Germany (427,175 PDs A1), France (241,363 PDs A1) and Belgium (167,335 PDs A1). *Table 14* shows that Belgium, Denmark, Lithuania, Slovakia and Sweden registered a higher number of incoming posted persons in their national registration tools compared to the number of PDs A1 it received according to Article 12 of the Basic Regulation. However, the opposite conclusion holds true for Bulgaria, Estonia, Ireland, France, Greece, Italy, Malta, Latvia, Luxembourg, Hungary, Malta, Austria, Poland and Romania.

The average duration persons are active under Article 12 was 98 days in 2017. By multiplying the average duration by the number of times a person is sent during the year it is possible to estimate the average duration an individual person covered by Article 12 was temporarily employed in another Member State. The fact that the average duration was 98 days and that the person was sent almost two times abroad in 2017 makes that an individual person was abroad 191 days on average. This figure is higher compared to the figure in this report (the average period of posting per individual amounts to some 133 days).

Table 14 Number of PDs A1 received versus persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, 2017

	Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made	Number of A1 forms received according to Article 12 of Regulation (EC) No 883/2004
BE	216,018	167,335
BG	403	3,508
CZ	n.a.	24,227
DK	23,336	15,592
DE	n.a.	427,175
EE	1,229	3,025
IE	401	6,171
EL	922	8,109
ES	n.a.	60,488
FR	207,512	241,363
HR	n.a.	12,791
IT	18,967	64,669
CY	59	1,256
LV	52	1,356
LT	2,722	2,261
LU	26,696	32,664
HU	2,906	12,924
MT	552	2,513
NL	n.a.	111,522
AT	95,051	141,046
PL	7,372	20,620
PT	n.a.	22,639
RO	6,008	12,036
SI	n.a.	6,357
SK	15,930	13,759
FI	n.a.	22,252
SE	72,552	44,005
UK	n.a.	59,587

Source Questionnaire on incoming posted workers and PD A1 Questionnaire

12. CONCLUSION

This report provides additional quantitative information on the phenomenon of posting of workers from a receiving perspective. In most Member States, incoming posting undertakings are required to fill in a declaration before providing services. This declaration obligation opens up a wealth of information on the size and profile of incoming posted workers. Such data is now collected and reported for the first time and is a useful complement to the main source of information coming from the PD A1 forms.

The image presented is incomplete due to missing data from Member States which have a declaration tool in place and to the voluntary nature of a system for previous declaration. It can therefore be expected that the main fully comparable dataset will continue to be the PD A1 forms. Nevertheless, in the coming years more Member States will probably be able to provide data coming from the declaration tools, thus giving us a better image of intra-EU posting in terms of size and characteristics.

ANNEXES

Table A1.1 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, column %

Sending Member State (Member State of origin)	Receiving Member State (host country)																			
	BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT
BE	1.1%	5.5%		0.9%		0.2%	2.2%	0.0%		5.9%		0.6%	0.0%	0.0%	0.0%	14.5%	0.1%			0.1%
BG	2.6%	0.0%		0.8%		0.1%	2.2%	22.3%		2.1%		2.4%	0.0%	0.0%	0.0%	0.5%	0.4%			1.1%
CZ	1.3%	0.7%		2.5%		0.0%	1.0%	6.3%		1.5%		1.0%	0.0%	0.0%	0.0%	0.4%	5.3%			3.4%
DK	0.2%	0.2%		0.0%		0.2%	4.2%	0.0%		0.4%		0.1%	0.0%	0.0%	0.0%	0.1%	0.0%			0.3%
DE	10.1%	15.9%		27.6%		1.9%	14.0%	6.7%		11.9%		5.4%	0.0%	5.8%	0.2%	46.8%	32.8%			30.9%
EE	0.0%	0.0%		0.5%		0.0%	0.0%	2.3%		0.2%		0.2%	0.0%	0.0%	0.0%	0.0%	0.0%			0.0%
IE	0.3%	0.0%		0.7%		0.0%	0.0%	0.0%		0.2%		0.3%	0.0%	0.0%	0.0%	0.0%	0.1%			0.0%
EL	0.1%	2.7%		0.3%		0.0%	0.0%	0.0%		0.2%		0.1%	67.8%	0.0%	0.0%	0.0%	0.1%			0.0%
ES	2.0%	17.4%		0.6%		0.2%	3.0%	0.0%		12.6%		7.2%	0.0%	15.4%	0.0%	1.0%	1.7%			0.8%
FR	7.9%	4.2%		0.4%		0.0%	0.7%	4.1%		0.0%		1.1%	20.3%	1.9%	0.1%	9.8%	0.9%			0.0%
HR	0.6%	0.7%		0.6%		0.0%	1.0%	0.0%		0.4%		3.9%	0.0%	0.0%	0.0%	0.8%	2.7%			1.5%
IT	2.4%	2.7%		3.3%		0.2%	5.5%	4.2%		8.9%		0.0%	0.0%	0.0%	0.0%	1.1%	7.6%			4.3%
CY	0.2%	0.0%		0.1%		0.1%	0.0%	2.9%		0.3%		0.0%	0.0%	0.0%	0.0%	0.1%	0.0%			0.1%
LV	0.3%	0.7%		2.2%		40.6%	0.0%	1.8%		0.4%		0.0%	0.0%	0.0%	0.3%	0.0%	0.1%			0.0%
LT	1.4%	2.2%		8.5%		14.0%	0.2%	1.6%		1.1%		1.0%	0.0%	0.0%	0.0%	5.7%	0.0%			0.4%
LU	3.5%	2.2%		0.1%		0.0%	0.0%	0.0%		2.1%		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%			0.0%
HU	1.4%	4.5%		1.5%		0.0%	3.5%	0.0%		0.6%		1.1%	0.0%	0.0%	0.0%	1.9%	3.2%			15.2%
MT	0.0%	0.0%		0.0%		0.0%	0.0%	0.0%		0.1%		0.7%	0.0%	0.0%	0.0%	0.0%	0.0%			0.3%
NL	25.5%	2.0%		4.1%		0.0%	2.5%	3.7%		2.3%		0.5%	0.0%	0.0%	0.0%	0.8%	0.4%			1.3%
AT	0.4%	6.7%		1.3%		0.0%	2.2%	0.0%		1.0%		4.3%	0.0%	0.0%	0.0%	0.6%	10.4%			0.0%
PL	15.8%	2.5%		24.1%		33.9%	1.5%	1.0%		8.7%		4.9%	0.0%	7.7%	0.7%	8.8%	17.4%			9.7%
PT	7.5%	0.0%		1.3%		3.7%	4.7%	0.0%		12.1%		0.8%	0.0%	0.0%	0.0%	2.5%	0.0%			1.3%
RO	6.5%	13.2%		1.9%		0.0%	0.2%	0.7%		5.6%		36.9%	10.2%	0.0%	0.9%	2.4%	1.0%			2.8%
SI	1.9%	0.5%		0.8%		0.0%	0.7%	2.2%		0.5%		3.5%	0.0%	0.0%	0.0%	0.7%	1.2%			12.9%
SK	3.0%	0.0%		2.3%		0.2%	0.5%	0.2%		2.0%		1.2%	0.0%	0.0%	0.0%	0.6%	9.9%			9.3%
FI	0.1%	1.5%		1.0%		3.3%	0.0%	1.6%		0.2%		0.1%	0.0%	0.0%	0.0%	0.0%	0.0%			0.1%
SE	0.2%	0.2%		4.4%		0.3%	1.5%	0.5%		0.3%		0.2%	0.0%	0.0%	0.0%	0.0%	0.2%			0.1%
UK	1.9%	1.7%		4.0%		0.9%	47.4%	17.9%		7.7%		6.9%	3.4%	0.0%	0.1%	0.2%	3.5%			1.7%
IS	0.0%	0.0%		0.0%		0.0%	0.0%	0.0%		0.0%		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%			0.0%
LI	0.0%	0.0%		0.1%		0.0%	0.0%	0.0%		0.0%		0.0%	0.0%	0.0%	0.0%	0.0%	0.0%			1.4%
NO	0.0%	0.2%		1.4%		0.2%	0.0%	0.0%		0.2%		0.2%	0.0%	0.0%	0.0%	0.0%	0.0%			0.1%
CH	0.2%	2.7%		0.6%		0.0%	1.0%	19.2%		2.2%		4.7%	0.0%	0.0%	0.0%	0.6%	0.7%			0.8%
Extra-EU	3.0%	13.4%		2.3%		0.0%	0.0%	0.7%		8.4%		10.5%	0.0%	69.2%	97.6%	0.0%	0.5%			0.0%
Total	100%	100%		100%		100%	100%	100%		100%		100%	100%	100%	100%	100%	100%			100%

Source Questionnaire on incoming posted workers

Table A1.2 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, by nationality, 2017, column %

		Receiving Member State (host country)																		
		BE	BG	CZ	DK	DE	EE	IE	EL	ES	FR	HR	IT	CY	LV	LT	LU	HU	MT	NL	AT
Nationality	BE	1.6%	1.8%		0.5%						5.1%		0.4%				13.6%		0.5%		0.1%
	BG	2.7%	1.8%		1.7%						2.6%		1.8%				1.2%		4.2%		2.1%
	CZ	1.1%	1.6%		2.4%						1.5%		0.8%				0.5%		0.2%		3.2%
	DK	0.2%	0.5%		0.6%						0.4%		0.1%				0.0%		0.0%		0.3%
	DE	7.4%	14.1%		21.3%						9.6%		4.7%				41.5%		10.1%		22.5%
	EE	0.0%	0.0%		0.6%						0.1%		0.0%				0.1%		0.0%		0.0%
	IE	0.3%	0.5%		0.8%						0.3%		0.5%				0.0%		1.6%		0.0%
	EL	0.3%	2.9%		1.0%						0.3%		0.2%				0.1%		2.9%		0.2%
	ES	1.7%	14.6%		0.6%						7.2%		6.0%				0.9%		5.6%		0.7%
	FR	8.2%	5.0%		0.4%						4.0%		1.2%				9.8%		3.6%		0.1%
	HR	1.1%	0.5%		1.1%						0.7%		4.7%				1.4%		0.4%		2.4%
	IT	2.1%	3.9%		2.7%						7.5%		5.2%				1.6%		18.8%		3.7%
	CY	0.0%	0.0%		0.0%						0.0%		0.0%				0.0%		0.4%		0.0%
	LV	0.3%	2.6%		3.1%						0.3%		0.1%				0.1%		2.9%		0.1%
	LT	1.3%	0.5%		8.1%						1.0%		0.8%				3.1%		0.5%		0.3%
	LU	0.1%	1.6%		0.0%						0.1%		0.0%				0.0%		0.2%		0.0%
	HU	2.0%	5.5%		2.1%						0.8%		1.4%				2.6%		1.4%		17.5%
	MT	0.0%	0.0%		0.0%						0.0%		0.0%				0.0%		0.0%		0.0%
	NL	20.9%	1.6%		2.9%						2.1%		0.7%				0.9%		0.9%		1.3%
	AT	0.4%	5.2%		0.9%						0.9%		3.5%				0.5%		3.3%		1.0%
	PL	16.4%	6.8%		27.5%						9.9%		4.5%				12.0%		17.0%		11.5%
	PT	7.5%	1.0%		1.7%						12.8%		1.5%				3.4%		3.6%		1.8%
	RO	9.0%	11.2%		4.4%						8.4%		39.4%				5.0%		4.0%		4.9%
	SI	0.6%	0.5%		0.5%						0.3%		2.1%				0.4%		0.0%		9.4%
	SK	2.2%	1.0%		2.6%						2.0%		0.9%				0.7%		0.0%		8.4%
	FI	0.1%	1.0%		0.7%						0.2%		0.1%				0.0%		0.0%		0.1%
	SE	0.2%	0.3%		3.1%						0.3%		0.2%				0.0%		0.0%		0.1%
	UK	1.5%	1.6%		3.2%						6.6%		5.7%				0.2%		13.9%		1.7%
	IS	0.0%	0.0%		0.0%						0.0%		0.0%				0.0%		0.0%		0.0%
	LI	0.0%	0.0%		0.0%						0.0%		0.0%				0.0%		0.0%		0.0%
	NO	0.0%	0.3%		0.8%						0.1%		0.1%				0.0%		0.0%		0.1%
	CH	0.1%	0.8%		0.1%						0.5%		0.4%				0.4%		0.5%		0.4%
	Extra-EU	9.1%	11.2%		4.6%						14.3%		13.1%				0.0%		2.4%		6.1%
	Total	100%	100%		100%						100%		100%				100%		100%		100%

Source Questionnaire on incoming posted workers

Table A1.3 Number of persons registered in the national declaration tools for whom at least one declaration for one or more days has been made, by sector of activity, row %, 2017

Receiving MS	Agriculture, forestry and fishing	Mining and quarrying	Manufacturing	Electricity, gas, steam and air conditioning supply	Water supply; sewerage; waste managment and remediation activities	Construction	Wholesale and retail trade; repair of motor vehicles and motorcycles	Transporting and storage	Accommodation and food service activities	Information and communication	Financial and insurance activities	Real estate activities	Professional, scientific and technical activities	Administrative and support service activities	Public administrat and defen compulso social secu
BE															
BG	0.3%	0.3%	6.9%	5.1%	1.8%	36.0%	12.7%	2.8%	3.8%	12.7%	8.9%	0.3%	1.0%	0.0%	0.0%
CZ															
DK	4.3%	0.6%	26.1%	1.5%	0.3%	49.7%	1.6%	2.3%	0.3%	2.9%	0.1%	0.0%	2.5%	3.5%	0.1%
DE															
EE	0.0%	0.0%	1.0%	7.4%	0.0%	65.8%	1.9%	0.0%	0.1%	7.8%	0.3%	0.0%	13.4%	1.1%	0.0%
IE															
EL	0.0%	0.0%	6.4%	0.0%	0.0%	0.0%	0.0%	0.0%	56.2%	0.0%	0.0%	0.0%	0.4%	0.7%	0.0%
ES															
FR*	10.1%		29.6%			20.7%			2.9%						
HR															
IT	1.4%	0.6%	30.7%	0.9%	0.7%	14.4%	4.7%	22.3%	7.5%	1.7%	1.9%	0.2%	2.3%	7.4%	0.6%
CY	0.0%	0.0%	0.0%	22.6%	0.0%	75.5%	0.0%	0.0%	0.0%	0.0%	1.9%	0.0%	0.0%	0.0%	0.0%
LV															
LT	0.0%	0.0%	0.0%	0.0%	0.0%	40.3%	38.7%	0.0%	0.0%	0.0%	1.6%	0.0%	11.3%	0.0%	0.0%
LU	0.5%	0.1%	16.7%	1.2%	0.9%	49.3%	1.9%	20.1%	0.1%	0.9%	0.2%	0.1%	1.2%	5.3%	0.0%
HU															
MT															
NL															
AT															
PL															
PT															
RO	1.5%	0.0%	41.2%	3.8%	1.3%	14.2%	21.7%	0.3%	6.9%	1.2%	1.6%	0.0%	4.1%	2.0%	0.0%
SI															
SK	3.1%	0.0%	28.5%	0.6%	0.2%	40.5%	1.3%	1.3%	0.3%	0.6%	0.0%	0.0%	4.0%	14.7%	0.0%
FI															
SE	1.4%	0.4%	16.2%	0.6%	1.2%	64.7%	0.4%	0.3%	0.0%	9.6%	0.9%	0.1%	1.4%	2.0%	0.0%
UK															
Total	6.6%	0.2%	26.2%	0.4%	0.4%	32.8%	0.9%	2.8%	2.3%	2.1%	0.3%	0.0%	0.9%	2.0%	0.0%

* France: estimates. France reported detailed data for the following sectors: agriculture, manufacturing, construction, accommodation and food service activities, performing (reported under 'arts, entertainment and recreation' and finally tour operators (2% of total posted workers – figure not reported in *Table A1.3)*. Some 29% posted workers were employed in 'other sectors'.

Source Questionnaire on incoming posted workers

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