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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE  
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Posting of workers in the framework of the provision of services: achieving the full  
benefits and potential**

**On the examination of the situation in the Member States with regard to  
the aspects covered by the Communication from the Commission  
COM(2006) 159 "Guidance on the posting of workers in the framework of  
the provision of services"**

{ COM(2007) 304 final }

## TABLE OF CONTENTS

|     |                            |    |
|-----|----------------------------|----|
| 1.  | Introductory remarks ..... | 3  |
| 2.  | Belgium .....              | 4  |
| 3.  | Czech Republic .....       | 6  |
| 4.  | Denmark .....              | 8  |
| 5.  | Germany .....              | 9  |
| 6.  | Estonia .....              | 13 |
| 7.  | Ireland .....              | 14 |
| 8.  | Greece .....               | 16 |
| 9.  | Spain .....                | 18 |
| 10. | France .....               | 20 |
| 11. | Italy .....                | 23 |
| 12. | Cyprus .....               | 24 |
| 13. | Latvia .....               | 25 |
| 14. | Lithuania .....            | 27 |
| 15. | Luxembourg .....           | 29 |
| 16. | Hungary .....              | 32 |
| 17. | Malta .....                | 33 |
| 18. | Netherlands .....          | 35 |
| 19. | Austria .....              | 37 |
| 20. | Poland .....               | 39 |
| 21. | Portugal .....             | 41 |
| 22. | Slovenia .....             | 42 |
| 23. | Slovakia .....             | 43 |
| 24. | Finland .....              | 45 |
| 25. | Sweden .....               | 48 |
| 26. | United Kingdom .....       | 49 |
| 27. | Social Partners .....      | 51 |

## 1. INTRODUCTORY REMARKS

In the communication adopted on 4 April 2006<sup>1</sup> (hereafter the Communication) the Commission announced that it would further examine the situation in all Member States with regard to the aspects relevant to the application of the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (hereafter the Directive) and that are covered by it. It also announced that it would report on the results of such examination within one year<sup>2</sup>. The Commission carried out such examination on the basis of a detailed questionnaire that was sent to the 25 Member States that composed the Union in 2006 and also to the EFTA Monitoring Authority. A separate questionnaire was sent to the Social Partners at European level, both cross-industry and in certain sectors. The replies<sup>3</sup> were carefully examined and in certain cases, bilateral discussions were held with representatives of national authorities<sup>4</sup>. A previous version of this report was discussed with the expert group on posting of workers, and comments and suggestions of a factual nature were taken into account<sup>5</sup>.

The sources of information used in this report however are not limited to the replies to the questionnaire and include information obtained by the Commission's own monitoring of the content of websites and other communication tools made available by the Member States, as well as information obtained in hearings (such as the ones carried out by the Employment and Social Affairs Committee of the European Parliament on 26 January, 21 February and 20 April 2006), attendance of several seminars and debates, parliamentary questions and complaints introduced by citizens and undertakings.

This report presents a detailed view of the situation in each Member State as regards the issues dealt with in the Communication: administrative measures used by Member States to be able to exercise control regarding posting of workers and control measures to ensure compliance with the terms of the Directive, measures taken with respect to information of workers and undertakings, administrative cooperation between Member States, means available to ensure the monitoring of compliance and measures in place in the event of non-compliance. While having gone to great depth in order to obtain the most up-to-date and reliable information, the Commission services are aware that the situation as represented by the national legislation or the published administrative guidelines may not entirely correspond to the situation on the ground. In other cases, information continues to be missing or is insufficiently clear. This difficulty calls for a continuous effort to clarify and update information. The Commission services will continue to work in close cooperation with national authorities in order to reach this goal. They will also continue to

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<sup>1</sup> COM (2006) 159 of 4.4.2006 – "Guidance on the posting of workers in the framework of the provision of services"

<sup>2</sup> This report is presented with a slight delay in relation to the envisaged deadline, due to delays in the replies received from most Member States and the Social Partners.

<sup>3</sup> Replies were received from all 25 Member States and from Norway and Liechtenstein. For the replies received from Social Partners, see Section 27 of this report.

<sup>4</sup> Bilateral meetings were held with the authorities of Germany, Spain, Poland, Finland, Austria, Belgium and Luxembourg between 14 February and 18 April 2007.

<sup>5</sup> The multilateral meeting of the expert group on posting of workers took place on 19 April 2007.

examine attentively complaints by citizens and stakeholders and to give them appropriate legal follow-up when justified.

The two new Member States since 1 January 2007, Bulgaria and Romania, have not been included in this report as they were not Union Members when the communication to which this report refers was adopted and when the questionnaire was sent.

## **2. BELGIUM**

### **2.1. Situation as regards control measures**

Belgium is currently at the point of reviewing its legislation and administrative practice. The following control measures apply presently:

#### *2.1.1. The requirement to make a declaration*

As of 1 April 2007 new legislation is in force concerning the prior notification which has now become obligatory. When a foreign service provider posts workers to Belgium, the employer has to make a 'Limosa' declaration prior to the start of the work in Belgium by these workers. This declaration is done by electronic way through the website (<http://www.limosa.be>). A receipt of confirmation will then be sent immediately. The 'Limosa' declaration contains data about the identification of the worker and the employer, the period of posting, the type of services rendered, the place of work, the weekly working time and the work schedule. A national registry is foreseen, that will gather information based on declarations as well as on other official documents.

According to the legislation previously in force, a facultative system was in place whereby the sending of a prior declaration was one of the two obligations with which an employer, when posting workers to Belgium, had to comply if he wanted to be exempted from keeping social documents and a work regulation laid down in the Belgian law for a period of 6 months. The declaration was done on a specific form and had to be sent to the Labour Inspection by post, fax or e-mail. The Labour Inspection would then acknowledge receipt of the declaration within 5 days and give the employer a registration number, after which the posting could start.

#### *2.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

Under the new legislation in force since 1 April 2007, an employer who posts workers to Belgium is exempted from keeping social documents and a work regulation laid down in the Belgian law for a period of 12 months (under the legislation previously in force this was only 6 months), but the employer has to keep at the disposal of the Labour Inspection, on their request, the foreign pay documents equivalent to the Belgian pay documents. The latter documents are accepted in the format and language of the country of establishment. In case the posting continues beyond 12 months, foreign employers must keep the social documents in conformity with the Belgian law; the personnel register and a regulation that contains the terms and conditions of employment are mainly concerned. However, they do not need to

comply with the requirements of Belgian law regarding the establishment of companies.

Under the legislation in force since 1 April 2007 the foreign pay documents equivalent to the Belgian pay documents must be kept for 2 years (5 years under the previous legislation) and sent to the Labour Inspectorate at their request only. The legislation requiring that the employer sends to the labour inspection a copy of the foreign pay documents equivalent to the Belgian pay documents as well as an inventory of these documents by registered mail or deposit after the end of the posting and receives a receipt thereof, has been abrogated.

#### *2.1.3. Measures which apply to posted workers who are nationals of third countries*

In the situations where a worker is being posted to an establishment or to an undertaking owned by the same group or by a temporary employment undertaking, situations of posting considered under article 1(3) b) and c), a work permit is required for non-EU nationals and for nationals of Member States for which there is not yet free movement of workers. In addition, it is required that these workers have an employment relationship with their employer for at least 6 months. The latter requirement is in the process of being revised.

### **2.2. Situation as regards access to information**

The Belgian authorities have recently improved the information available on the website of the Ministry of Employment, Labour and Social Dialogue (<http://www.meta.fgov.be/>). The information is now easily accessible in French, Dutch and English. The site contains clear information both as regards the working conditions applicable and the formalities to be complied with and references where further information can be obtained, especially when it concerns working conditions laid down in generally applicable collective agreements. Information about working conditions in general is also available on this site.

The website is also used to disseminate information on the legislation that entered into force on 1 April 2007 on the obligatory electronic prior notification. A separate website has been created on this subject and a brochure will be available through this website in Dutch, French, English and German. Furthermore, a publicity campaign will be launched soon by the National Office for Social Security.

The Belgian authorities indicate furthermore that the labour inspectorate is developing brochures to inform posted workers in certain sectors about the possibility to complain to the labour inspectorate in case of non-compliance.

The Directorate General of individual labour relations has been designated as the liaison office. The liaison office is staffed by 10 lawyers of who 5 have been selected to deal with posting matters, although not exclusively, but without indicating a contact person. The liaison office replies to queries that are within its competence and forward other queries to the competent authorities or refers the person in question to them.

### **2.3. Situation as regards cooperation between Member States**

Cooperation with other Member States is not usually carried out through the liaison office, but rather through direct bilateral contacts between the Belgian labour inspectorate and those of neighbouring countries. Both the liaison office and the Labour Inspectorate are under the responsibility of the Ministry of Employment, Labour and Social Dialogue and are therefore competent to acquire the assistance and information from other administrations and if necessary ask them to carry out investigations.

### **2.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The Directorate general for the control of social laws and the directorate general of health and safety at work, both under the Ministry of Employment, Labour and Social Dialogue, are responsible for monitoring compliance. These monitoring authorities guide foreign service providers to a correct application of the legislation as a substantive part of their priority duties consists in informing employers. Monitoring takes place at their own initiative or on the basis of complaints or information received from social partners.

In case of non-compliance, employers are systematically invited to regulate the situation within a reasonable period. When this is not done, an official report is drawn up and transferred to the public ministry who can initiate a legal procedure following which an administrative or criminal sanction can be imposed. Since recently, the public ministry can initiate a civil action when a group of workers is affected by non-compliance with financial rights.

In case of non-compliance, workers can file a complaint with the inspection or initiate proceedings before the labour court. In addition, a draft law is being discussed which gives Belgian trade unions the possibility to bring a procedure before the court on behalf of the posted worker who e.g. is no longer in Belgium.

## **3. CZECH REPUBLIC**

### **3.1. Situation as regards control measures**

The Czech Republic currently applies the following control measures:

#### **3.1.1. *The requirement to make a declaration***

In the Czech Republic an obligation lays on the recipient of the services to declare the posting of workers on the day of the start of the work at the latest. The notification must be submitted in written form and should include the name, gender, highest achieved education, permanent address and identification number of passport of the worker, NACE categorization of the job, day of commencement of the work and day of supposed completion of the work, identification of recipient of the service, character and place of work and further information. The recipient of the service is also required to report the end of the posting within 10 calendar days.

In addition, there is an obligation for a temporary employment agency established in another Member State to inform the Ministry of Labour and Social Affairs (labour office) in the case of posting of workers to the Czech Republic at the latest on the day of commencement of the service.

### **3.2. Situation as regards access to information**

The information on posting of workers has recently been improved, in particular its accessibility. On the website of the Ministry of Labour and Social Affairs a link has been created to a separate page on posting of workers under the Czech Focal Point for Occupational Safety and Health (<http://www.mpsv.cz/en/1609>). On this page a link has also been created to the website of the Ministry of Industry and Trade (MIT), which contains information on posting of workers, in particular directed towards service providers. All the information is available in Czech and in English. The only information concerning the content of terms and conditions applicable to posted workers is a link to the country fiche on the European Commission's website on posting of workers. General information on labour law can be found on the website of the Ministry of Labour and Social Affairs.

According to the information received, a liaison office has not been designated. At present there are several contact points. In practice, the Ministry of Labour and Social Affairs functions as an information point.

### **3.3. Situation as regards cooperation between Member States**

Besides the fact that a liaison office does not exist, cooperation with other Member States seems to be limited to exchange of information that is available for inspection bodies for compliance with the terms and conditions that have to be applied to posted workers. When it comes e.g. to information relating to whether a company is established in the Czech Republic that needs to be obtained from other authorities, this information can only be obtained from the competent authority and the liaison office, if it existed, can not function as an intermediary in these cases.

### **3.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The State Office of Labour Inspection is responsible for monitoring labour relations and work conditions and has 8 regional Labour Inspectorates. In 2007 there will be targeted inspections of posted workers in order to ensure control of compliance with working conditions and to provide support material for further direction of control activities in this field. Other than that monitoring takes place on request. In case of non-compliance, the labour inspectorate can impose a financial sanction which can range in between CZK 200,000 to CZK 2,000,000 ( $\pm 6,472\text{€}$ -  $\pm 64,724\text{€}$ ).

The trade unions also assist in employee right enforcement as they are legally authorised to perform inspections of compliance with legal regulations and provide advice to employees.

Workers and organisations representing them can file a complaint in writing with the labour inspectorate.

## **4. DENMARK**

### **4.1. Situation as regards control measures**

Denmark currently applies the following control measures:

#### *4.1.1. Measures which apply to posted workers who are nationals of third countries [and of EU-8 and Romania and Bulgaria under the transitional arrangements]*

As it is considered that the purpose of posting workers by a temporary employment agency is to bring these workers into the labour market of the country where the temporary work is performed, these workers are treated as other foreign employees. This means that third country nationals and nationals of EU-8, Romania and Bulgaria posted to Denmark by a temporary employment agency established in another Member State need to obtain a work and residence permit.

Nationals from the EU-8, Romania and Bulgaria and third country nationals are exempt from the requirement to obtain a residence permit, but only for the first three months of posting and if a number of conditions are complied with, one of them being that they are permanently employed in the posting undertaking.

For a posting of more than three months, posted workers must obtain a residence permit. For nationals from the EU-8, Romania and Bulgaria and third country nationals to be granted this residence permit, one of the conditions to be fulfilled is that the posted worker is permanently employed in the posting undertaking.

In order to determine whether a worker is permanently employed in the posting undertaking, the Danish authorities make a concrete assessment in each case whereby the requirement of being permanently employed is interpreted as "habitually employed".

### **4.2. Situation as regards access to information**

A website ([www.posting.dk](http://www.posting.dk)) is dedicated to posting of workers which is easily accessible, provides clear information for workers and companies separately and indicates which national legislation has to be applied by foreign service providers in the case of posting of workers. The website is available in Danish and in English and the Danish authorities indicate that other languages are under consideration. The last update, however, dates from May 2005 and there is no reference to the liaison office. The Danish authorities indicated that an update is intended in spring 2007.

As regards other ways to make information generally available, a guide on the Danish labour market, which contains brief information on posting, was published in 2006, as well as pamphlets with information on occupational health and safety regulation and enforcement. Both are available in several languages and it is planned to issue the former in more languages. Furthermore, in 2006 two seminars were organised on posting of workers with the participation of relevant authorities and social partners from Denmark, Poland, Latvia, Estonia and Lithuania.

The liaison office is contacted very rarely and accordingly staffed with only 1 person, who is indicated. According to the information received, the liaison office seems to be organised in such a way that it can reply to requests (in Danish or in



English) or in any case function as in intermediary for other competent national bodies.

#### **4.3. Situation as regards cooperation between Member States**

The liaison office is endowed with the necessary resources and the authorisation to request information from other institutions or authorities. The code of conduct on good cooperation is equivalent to the Danish administrative law with regard to the procedures for handling requests from other authorities and has been implemented. The multilingual form for the exchange of information has been adopted. However, the number of requests is very limited.

#### **4.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Due to the organization of the Danish labour market where the social partners monitor pay and working conditions, Denmark does not have a general labour inspectorate for securing and enforcing the legislation mentioned in Directive 96/71/EC with the exception of the legislation on working environment. The National Working Environment Authority (NWEA) monitors, both at its own initiative and following complaints, compliance with regulations regarding health, safety and hygiene at work, minimum rest periods and protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people. NWEA employs a staff of 500 and an additional 100 persons will be engaged in 2007. In Denmark there is no institution responsible for the monitoring of compliance with regulations regarding maximum work periods, minimum paid annual holidays, equality of treatment between men and women and other provisions on non-discrimination. Therefore action by authorities in these areas only takes place following complaints or at the initiative of the posted worker.

The measures in the event of failure to comply depend on the regulation infringed. In the case of regulation on working environment, the NWEA can issue different sanctions, such as improvement notices, legal charges, guidelines and administrative fines that range from 10,000 to 20,000 DKK ( $\pm$  1,220-2,440€). In case of infringement of regulations on other terms and conditions of employment (maximum work periods, minimum paid annual holidays and equality of treatment between men and women and other provisions on non-discrimination) filing complaints and bringing action before the court can result in compensation to be paid to the posted worker.

As regards the measure in the event of non-compliance with the Danish holiday act, disputes between the posted worker and his employer must be settled in court in the country of origin.

### **5. GERMANY**

#### **5.1. Situation as regards control measures**

Germany currently applies the following control measures:

5.1.1. *The requirement to have a representative established on the territory of the host Member State*

The identification of a 'competent agent' (*verantwortlich Handelnder*) and an 'appointed agent' (*Zustellungsbevollmächtigte*) – as far as he is not identical with the "competent agent" are required. For the former, who is charged with executing the employer's instructions, residence in Germany is not required. As regards the 'Zustellungsbevollmächtigten' though, whose function is that official paperwork for the employer can be served to him, the German procedural law requires an address in Germany, as it is a legal requirement for concluding a judicial procedure that legal documents have to be sent in a certain formal way to the addressee in Germany, also after the posting has ended. The German authorities indicate that valid alternatives to submit legal documents to an address in the Member States that provide sufficient legal guarantees do not exist at this moment, also due to the large differences in legal settings amongst the Member States. Although the practice seems to be that both functions can be exercised by a supervisor, a site foreman or any other person appointed by the employer, and as an address in Germany the address of the workplace is accepted, an address in Germany is needed after the posting is over.

For social partners, this requirement serves the purpose of monitoring compliance with the posting directive. Trade unions underline the difficulties met when enforcing notices of fines against companies, with their registered office in another Member State, that have infringed the German legislation on posting of workers.

5.1.2. *The requirement to make a declaration*

Foreign service providers that post workers to Germany and to whom the generally applicable collective agreement in the construction sector is applicable, have to make a prior declaration. The form for this declaration is accessible through the internet, has to be submitted at the latest immediately before the start of the work and requires basic information about the posted workers, the start and the length of the work, the address of the work place, the address of the place where certain underlying documentation is kept and information regarding a competent agent [*verantwortlich Handelnder*] and an appointed agent [*Zustellungsbevollmächtigter*].

The German authorities indicate that the 'Posting of Workers Act' is being amended at present in the sense that legal provision will be made for these declarations to be made electronically and that in the case of agency work the reporting obligation will be shifted to the recipient of the services provided by the posted agency workers.

5.1.3. *The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

The German legislation and practice require that a foreign service provider records the beginning, ending and duration of the daily working time and that he has to keep certain original documents, such as the employment contract of the posted workers, pay slips and proof of payment, in German language and ready at an address in

Germany. This practice is the subject of an infringement procedure as far as concerns the language requirement.<sup>6</sup>

#### 5.1.4. *Measures which apply to posted workers who are nationals of third countries*

Following the judgment of the ECJ in case C-244/04, the national legislation (§15 '*Beschäftigungsverordnung*') needs to be modified. Compliance of the practice and the foreseen modification of the legislation will be assessed by the Commission in the context of its competences as established by Article 228 of the Treaty.

### 5.2. **Situation as regards access to information**

Under the portal of the customs administration, more particularly under the section of the department for 'Financial Control of Undeclared Employment' (*Finanzkontrolle Schwarzarbeit-FKS*) is a website ([http://www.zoll.de/english\\_version/index.html](http://www.zoll.de/english_version/index.html)) with information on posting of workers providing information for employers, recruiters and workers. Information on the formal requirements is clearly set out. While the terms and conditions to be applied to posted workers are exhaustively listed, the concrete content is lacking. The German authorities indicate that this website has been improved in the last six months and is now regularly updated. The information on the website dates from 14 March 2006 and is still only available in German. The authorities indicate that it will be made available in English and French probably in spring 2007.

As regards other sources of information, the German holiday fund (SOKA-BAU) of the construction industry published extensive brochures for employers and employees separately in several languages (DE, EN, FR, NL, PT, BG, CZ, HR, HU, PL, RO, TR and IT as concerns the information for workers). SOKA-BAU also provides information on the applicable minimum wage in the collective agreement in this sector. German social partners indicate that the competent staff consists of a large number of bilingual native speakers who answer employers' and employees' inquiries in 19 languages. Another brochure for posted workers was issued by the competent building, agricultural and environmental industrial union which is available in 8 of the official EU languages.

The liaison office consists of 4 members who are available to fulfil the information duties as regards posting next to their normal duties. No contact person has, however, been indicated. The liaison office may be addressed in German, English and Dutch and receives about 50 queries on average per month, mostly by telephone or electronically.

### 5.3. **Situation as regards cooperation between Member States**

The liaison office is responsible for the department's international cooperation and deals therefore with queries from liaison offices in other Member States. In 2006, the number of such queries was limited to 1-2 on average per month. In 2007 the number of such queries is increasing considerably. The German authorities indicate that in replying to queries from other liaison offices, the 4-week period set out in the code of

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<sup>6</sup> C-490/04, European Commission v Federal Republic of Germany (pending case).

conduct is usually upheld, except when translation is needed and when the query has to be forwarded to other authorities. As regards the reverse situation, the German authorities indicate that replies to queries they send to other liaison offices on average take two to four months. The multilingual form is used for simple questions, but for more complex data a freeform running text is added.

Exchange of information is limited to the competences of the authorities in Germany and as there is no competence to monitor legislation regarding holiday entitlements (unless based on generally applicable collective agreement) and equal treatment, information on these two issues can not be provided to foreign liaison offices.

#### **5.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The monitoring in Germany is allocated to different authorities depending on the different terms and conditions. As regards compliance with the compulsory working conditions in line with the Posting of Workers Act (AEntG), which includes minimum wage, minimum leave entitlement, holiday pay and contributions to the holiday fund system, the Department for the Financial Control of Undeclared Employment is responsible. As regards the monitoring of occupational health and safety, the authorities of the '*Länder*' are responsible. The Federal Employment Agency and the Customs Administration Authorities then are competent for control in the field of hiring out of posted workers to a user undertaking. Monitoring as regards holiday entitlements (unless based on generally applicable collective agreement) and equal treatment is lacking though.

Monitoring by the FKS is done both on the basis of routine inspections on the basis of annual target planning as well as on the basis of targeted inspections on the grounds of e.g. earlier irregularities, concrete tips or prior research and both German and non-German companies and workers are inspected. The German authorities indicate that negotiations with other national control authorities are ongoing in order to conclude cooperation agreements which should further optimise cooperation between national authorities.

The social partners in the construction industry have a role in the monitoring of compliance as they have entered into an alliance with the Federal Ministry of Finance against undeclared work and illegal employment in the construction industry. The member associations of the individual parties to collective agreements have formed regional alliances against undeclared work. The social partners issue recommendations for actions by these regional alliances and prepare, inter alia, model calculations and forms for lodging information about suspected undeclared work, which are distributed throughout the regions.

In the event of non-compliance fines can be imposed of up to 500,000 € for infringements of working conditions and up to 25,000 € for infringement of control measures. Undertakings may be excluded from participating in competitions for public contracts when the fine is over 2,500 €. The control authorities also have the possibility to give the company concerned a warning. The German authorities indicate that enforcing of fines on employers established in other Member States has been inadequate up to now, but expect that the transposition of the Council's

Framework Decision on the application of the principle of mutual recognition to financial penalties<sup>7</sup> will remedy this situation.

Workers can lodge their claims for working conditions before the competent German labour court, but this possibility does not exist for the parties to the generally applicable collective agreement wanting to bring e.g. a group action before the court. The possibility to take action before the German labour court is available for SOKA-BAU concerning the contributions to the holiday fund. A system of joint and several liability is in place in the construction sector whereby a company that subcontracts work is liable, in the same way as an absolute guarantor, in the event the subcontracted company does not pay its workers the minimum wage guaranteed by the AEntG or does not pay the contributions to the holiday fund (SOKA-BAU).

## **6. ESTONIA**

### **6.1. Situation as regards control measures**

Estonia currently applies the following control measures:

#### *6.1.1. The requirement to have a representative established on the territory of the host Member State*

According to the information received, there is no legal requirement to have a representative. However, the application of the Occupational Health and Safety Act and the keeping of working time records in accordance with the Working and Rest Time Act shall be ensured by the representative of the employer and, where it concerns the situations of posting defined in art. 1 par. 3 b) and c) Directive 96/71/EC, by the person for whom the posted worker works in Estonia. Following article 5 section 7 of the implementing legislation, the representative of the employer has to be 'located' in Estonia.

The representative, furthermore, has a function when third country nationals are posted to Estonia as the representative and/or the recipient of the service needs to be designated in the residence permit for work.

#### *6.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

The legislation provides that documents connected with the working conditions that are applicable to posted workers must be kept in a place that is available to the labour inspectorate at the establishment of the representative of the employer located in Estonia. This list of working conditions includes, next to all terms and conditions mentioned in the Directive, a written employment contract.

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<sup>7</sup>

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ 22.3.2005 L 76/16.

### 6.1.3. *Measures which apply to posted workers who are nationals of third countries*

A third country national posted to Estonia needs to apply for a work permit (residence permit for work) and without such permit he/she is prohibited to take up employment in Estonia.

## 6.2. **Situation as regards access to information**

On the homepage of the labour inspectorate there is a clear link (in English version) to a page on posting of workers, set up in November 2006 (<http://www.ti.ee/index.php?page=541&>). This page contains clear information on the terms and conditions applicable to posting of workers and on their content. Information on formal requirements is missing though.

The liaison office is the Labour inspectorate which has a central office and 14 regional offices, employs 153 persons and can be contacted in Estonian, English, Finnish and Russian. A contact person has been designated.

## 6.3. **Situation as regards cooperation between Member States**

Up to now there has been no cooperation with other Member States. The liaison office, however, seems equipped to deal with requests as it has access to several national databases, it can initiate investigations and, if necessary, request information from another authority or ask for its cooperation.

## 6.4. **Situation as regards monitoring of compliance and measures in the event of non-compliance**

The labour inspectorate monitors compliance in all fields related to posting of workers. Workers can file a complaint with the labour inspectorate which will be followed by a check at the workplace. In the case of non-compliance the labour inspector can issue a precept, with or without a written warning, and in case of non-compliance with the precept a penalty payment may be imposed. The upper limit of penalty payment for each imposition is 30,000 Estonian kroonid (±1,657€).

# 7. **IRELAND**

## 7.1. **Situation as regards control measures**

Ireland currently applies the following control measures:

### 7.1.1. *The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

Irish legislation foresees that any employer has to keep a record of the pay of employees at the workplace in order to show that the National Minimum Wage Act is being complied with and needs to retain these records for at least 3 years from the date of their making. Irish legislation also contains an obligation to keep records on other matters in relation to its employees, such as the hours worked, the annual leave and the protection of young workers. Pay records made up in accordance with the legislation of the country of origin, can be used. In addition, in accordance with the

Safety, Health and Welfare at Work Act 2005 a number of specific records need to be kept either at the workplace or at the offices of the employer, as appropriate, and discussions are taking place to allow, when the employer has 3 or more employees, that a Safety Statement needs to be produced. Such records need to be kept by the employer for up to 10 years. Electronic storage of records is acceptable in many cases so long as such records can be produced in hard copy should this be required.

#### *7.1.2. Measures which apply to posted workers who are nationals of third countries*

Third country nationals being posted to Ireland that are lawfully employed in another EU Member State do not need a work permit. Depending on the nationality of the third country national, they need to obtain a visa prior to entering Ireland, unless they have a (permanent) residence card. The processing of the application form might take up to 8 weeks and needs to be accompanied by a number of supporting documents, such as evidence of the person's right to reside and work in the country of origin and a declaration from the employer confirming that the person is lawfully employed by the posting company. Until April 2006 a qualification requirement for a third country national being posted to Ireland in the framework of the provision of services whereby the person had to be lawfully employed in another EU Member State for at least 1 year, was in force.

### **7.2. Situation as regards access to information**

A specific website (<http://www.entemp.ie/employment/rights/postedwork.htm>) on the rights of posted workers in Ireland is set up under the webpage of the Department of Enterprise, Trade & Employment. The website is fairly easy to find, although a direct reference would be useful. The information (only in English) mostly consists of references to the legal texts that apply to posted workers, without indicating which terms and conditions and formal requirements that exist as regards keeping of documents, but instead a link has been established to the Commission's website on posting of workers where this information is to be found in the country fiche on Ireland. The information is only available in English, although information on employment rights more generally, in the form of booklets are accessible through that website in 8 community languages (CZ, HU, IE, LV, LT, PL, PT and RO).

As regards other means to access to information, the Irish authorities indicate that explanatory leaflets on the working conditions of overseas workers are available in 7 EU languages which are distributed to foreign embassies, citizens' information centres and police stations. Furthermore presentations are made to immigrant groups in Ireland.

The liaison office seems to be properly resourced and in a position to reply to queries both from the general public and to function as an intermediary. A contact person for requests for information on posting has been designated. The liaison office can only be contacted in English.

### **7.3. Situation as regards cooperation between Member States**

Taking into account that the liaison office received up to date only two queries from other Member States and has not yet had to make any request itself, the liaison office, with 2 people assigned to deal with these requests, seems sufficiently

resourced. The liaison office also seems to be in a position to reply to queries from authorities from other Member States that need information from other Irish authorities or for which investigation by the Labour Inspectorate is needed in order to reply.

#### **7.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Monitoring of compliance with conditions of employment is done in Ireland by the Labour Inspectorate and, as regards health and safety legislation, the Health and Safety Authority. Both authorities monitor on the basis of targeted inspections and complaints. Labour Inspectors have the powers to recover pay arrears and, if appropriate, initiate civil or criminal proceedings. They also seek redress for the individual/s concerned in case of non-compliance.

Measures in Ireland aimed at enhancing the systems of employment rights compliance are underway under the Social Partnership Agreement "Towards 2016". The commitments under this agreement include a significantly increase of Labour Inspectors from 30 to 90. In this context work on new legislation has commenced in order to provide for, among others, the establishment of an Office of Employment Rights Compliance, the strengthening of the investigative powers of labour inspectors and the facilitating of exchanges of information between enforcement agencies.

Workers can take their matters before the Rights Commissioners, the Labour Court, the Employment Appeals Tribunal and the Equality Tribunal as appropriate or to the Labour Inspectorate or the Health and Safety Inspectorate.

### **8. GREECE**

#### **8.1. Situation as regards control measures**

Greece currently applies the following control measures:

##### **8.1.1. *The requirement to have a representative established on the territory of the host Member State***

Under Greek legislation a representative has to be authorised by the foreign service provider as the person who is legally responsible in Greece and shall be the person the Greek authorities can refer to and communicate with. The legislation does not require the legal representative to reside on the territory of Greece.

The Greek authorities indicate that the presence of a representative in the host country facilitates the resolving of problems that arise between the foreign service provider and the competent authorities, because the existing communications between the liaison offices is considered as time consuming and inefficient.

##### **8.1.2. *The requirement to make a declaration***

Before the start of the posting certain information needs to be submitted to the labour inspectorate in writing and in Greek language. It is not allowed to post workers



without having previously submitted this declaration. Next to the information about the posting company, the workplace, the representative and the start and nature of activities, information also needs to be provided about the posted worker such as similar previous employment with other employers and family situation. When submitting this information to the labour inspectorate, it is necessary to add the staff table and, in case of shift work, the programme of work.

**8.1.3. *The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory***

All the information and documents submitted to the labour inspectorate before starting the work also need to be kept at the workplace. In addition the representative of the posting company, in the same way as it is required from national employers, needs to keep a number of documents at the workplace: a social security document provided by the Greek social security administration for new entrants, the individual contact of employment, statements of wages and any additional payments, the register of attendance or presence cards, records of annual leave and an overtime logbook.

**8.2. Situation as regards access to information**

The website from the Ministry of Employment and Social Protection ([www.ypakp.gr](http://www.ypakp.gr)) to which the Greek authorities refer is only available in Greek, there is no link or information specific on posting of workers to be found, but contains legislative texts including the legislation implementing Directive 96/71/EC. The authorities indicate that information regarding the posting of workers will be published on the internet very soon and that, in time, it will also be available in English and in French.

In the different liaison offices there are several people dealing with matters related to posting. A contact person in each of the liaison offices has not been designated. Queries are also accepted in English. The liaison offices seem sufficiently equipped to be able to fulfil their information duties and to function as an intermediary.

**8.3. Situation as regards cooperation between Member States**

Although the liaison offices seem to be equipped to follow-up on queries from other Member States, cooperation with other Member States is at present practically non-existent.

**8.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Monitoring of the Greek legislation implementing Directive 96/71/EC is done by the labour inspectorate by way of inspections either planned or following complaints. The Greek authorities indicate that measures have been taken to enhance the institutional role of the labour inspectorate, to reinforce its personnel and technical infrastructure and to promote training of inspectors.

Workers and their representatives can invoke sanctions by depositing a complaint with the labour inspectorate, either directly or anonymously. Greek legislation

foresees in a procedure whereby both worker and employer can address themselves to the labour inspectorate who can then function as a mediator. The labour inspectorate may impose administrative sanctions or can forward it to the public prosecutor which can lead to penal sanctions.

## **9. SPAIN**

### **9.1. Situation as regards control measures**

Spain currently applies the following control measures:

#### *9.1.1. The requirement to make a declaration*

A foreign service provider posting workers to Spain for more than eight days has to notify the posting, before the start of the work, to the labour authority competent in the area where the services will be provided. A form is not available, but the notification must contain the following information: identification of the undertaking posting workers, the place of residence for tax purposes and VAT identification number, the personal and professional information of the posted workers, identification of the undertaking or workplace where the service will be provided, the expected start date and duration of the posting and a definition of the services indicating the type of posting.

In the case a foreign temporary employment agency is posting workers to Spain a notification is also required when the posting is less than 8 days. In that case additional information is required, namely that accreditation of the undertaking in the country of establishment and a detailed account of the temporary requirements of the user undertaking. The Spanish authorities indicated that the elaboration of a standard form is envisaged in the course of 2007.

#### *9.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

Foreign service providers posting workers to Spain have to keep a copy of the notification at the workplace, as well as documents regarding health and safety of the workplace and documents on working time. Following an inspection, employers can be required to appear in the offices of the labour inspectorate within 10 to 15 days and to submit any documentation. These documents, such as wage slips, do not necessarily have to be kept in Spain and in such cases the employer can be replaced by anybody who can act on his behalf. The Spanish authorities deny that there are any requirements as to translation of documents, such as the employment contract, into Spanish.

### **9.2. Situation as regards access to information**

There is no website on posting of workers. The website of the Ministry of employment contains a '*Guia laboral*' (<http://www.mtas.es/Guia/es/entrada.htm>) with general information on labour law, available in Spanish and in English. In this guide information on posting can be found under the illogical title on 'Amendment, suspension and termination of work contracts, more particular under the chapter on 'Changes in the work contract'. Very brief information can be found here and only on

what constitutes a posting and what are the obligations of the employer, without reproducing the material content of the obligations. This guide also contains information on temporary residence and work within the framework of transnational provision of services, but this applies only to companies established outside the EU/EEA. Information on the requirement to make a notification e.g. is only to be found in the Spanish version of the '*Guia laboral*'. References to where further information can be obtained (authorities of the Autonomous Communities especially as regards terms and conditions of employment laid down in generally applicable collective agreements and the Official Gazette), are not indicated. The Spanish authorities indicate that the detailed working conditions can be found on the EURES website, but no link or reference has been made.

For other means of information the Spanish authorities refer to the authorities of the Autonomous Communities and to the role the Labour and Social Security Inspectorate plays in informing and advising undertakings and workers during inspections.

As regards the functioning of the liaison office the Spanish authorities have taken measures to improve the access to information and cooperation with other Member States by allocating one single liaison office and one monitoring office to which requests for information, cooperation and supervision can be addressed, regardless of in which Autonomous Community the services are provided. This modification does not change the competence of the regional liaison office, but improves the access to information for workers and companies and the cooperation with liaison offices and monitoring authorities from other Member States. Each regional liaison office has a contact person who is in charge of posting-issues.

### **9.3. Situation as regards cooperation between Member States**

As regards the organisation of the liaison office, see the paragraph above.

Although it seems that the Labour and Social Security Inspectorate, who is solely responsible for supervising and monitoring compliance with the law on working conditions, has the necessary competence to deal with requests from the authorities of other Member States, the Spanish authorities indicate that they receive very few queries.

The central authority of the Labour and Social Security Inspectorate has issued specific instructions to the regional authorities about the application of the code of conduct, but in exchanging information the four week period is mostly not upheld. In addition, Spanish legislation requires the authorities to answer in Spanish or, where appropriate, the other official language of the relevant Autonomous Community. This legislation does not seem to take account of international situations.

### **9.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

As already stated above, the supervision and monitoring of compliance with legislation on working conditions is the exclusive responsibility of the Labour and Social Security Inspectorate, both at central and local level. Monitoring takes place through inspection visits, which can be supplemented later by interviews held by the

inspector with the employer or someone acting on his behalf, or following complaints that anyone can make in writing. The inspectorate is made up of 1589 persons and it is planned to increase the number of inspectors and sub-inspectors considerably during the coming years. The Spanish authorities further indicate that, in order to improve the effectiveness of the monitoring authority, a technical instruction was issued to the regional inspectorates.

The measures in the event of non-compliance are diverse: the inspectorate can give formal notices, order immediate suspension or to rectify shortcomings within a stipulated time period, initiate penalty proceedings by issuing infringement reports, inform the public prosecutor and propose official legal action. Penalties range from 60€ to 187,515€, depending on the seriousness of the offence committed. Criteria for that determination are laid down in law. The Spanish authorities indicated also that enforcement of penalties of undertakings established in another country has not been possible because of lack of legal channels. Workers and their representatives can file a complaint with the inspectorate or can bring cases before the court. Furthermore, a system of joint and several liability as regards remuneration and as regards occupational risk prevention in the case of contracting and subcontracting of workers exists in Spanish legislation.

## **10. FRANCE**

### **10.1. Situation as regards control measures**

France currently applies the following control measures:

#### *10.1.1. The requirement to have a representative established on the territory of the host Member State*

According to the information received, there is no such requirement in France. The declaration form, though, requests to indicate the identity of the representative in France. It is unclear what the requirements are for this representative, but in any case the labour code specifies that it is 'for the duration of the services'.

#### *10.1.2. The requirement to make a declaration*

Foreign service providers posting workers to France have to send a declaration, in French, to the labour inspectorate competent in the region where the work is being performed prior to the start of the works by registered mail with receipt confirmation or by fax, stating information about the foreign company, the activity performed in France and about the workers. When making the declaration, two documents need to be attached, namely a declaration of the work schedule and duration and hours of rest and, if necessary, a declaration of collective lodging has to be addressed to the "*Préfecture du département*" where the collective lodging is situated.

At the moment, the form for this declaration can be found on the internet, but needs to be sent by registered mail or by fax. It is foreseen to make it possible to do the declaration by electronic way and in several languages.

*10.1.3. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

The monitoring authorities are competent to request an unspecified number of documents of the foreign service provider, in particular as regards working time, remuneration, paid holiday and safety and hygiene, which have to be translated into French. In requesting documentation, account is taken of equivalent formalities that exist in the country of establishment of the foreign service provider, however it is not clear to what extent. The French authorities indicate that in the near future a decree will be adopted which sets out a list of documents that the labour inspectors can demand.

In addition, if the posting is for longer than 1 month, a pay slip or equivalent document has to be at the workplace. In case of posting less than one month, compliance with the minimum wage can be proven in any other way.

*10.1.4. Measures which apply to posted workers who are nationals of third countries*

There are no specific requirements for third country nationals being posted from another Member State to France provided they are lawfully (*de façon régulière*) and habitually employed. There are indications received by social partners that in order for a third country national to be lawfully employed, a contract of indefinite duration with the service provider is required.

*10.1.5. Other requirements or obligations as regards posting of workers*

In order to comply with obligations of medical surveillance, a foreign service provider is required to adhere for the duration of the provision of services to the medical service who is competent in the territory where the work is being performed. It is not clear whether this requirement applies without taking into account the protection afforded to the workers in the country of establishment as regards medical surveillance.

**10.2. Situation as regards access to information**

On the website of the Ministry of Labour practical fiches are published on a number of subjects, among them on 'posting of workers' (<http://www.travail.gouv.fr/informations-pratiques/fiches-pratiques/detachement-salaries-temporary-posting-of-employees-in-france-zeitweise-entsendung-von-auslandischen-arbeitnehmern-nach-frankreich/detachement-temporaire-france-un-salarie-une-entreprise-etrangere-temporary-posting-of-employees-in-france-zeitweise-entsendung-von-auslandischen-arbeitnehmern-nach-frankreich-2452.html>). The title of the fiche has been translated into English and German, but the information is only available in French. The French authorities indicate that access to this page will be improved in the near future and that it is foreseen to have the information available in several languages.

On this site information is available on the formalities that have to be complied with and on the terms and conditions have to be applied, although the concrete content has not been indicated. Information about working conditions in general is to be found on other pages on this website.

On this website brochures, concentrated on different groups, have also been published with very brief information on the obligations in case of posting of

workers to France. These brochures are available in French, English, German, Italian and Portuguese and are foreseen to be published in Czech and Polish.

The liaison office is composed of two different services, namely by the Directorate General of Labour (DGT) by the interministerial delegation for the fight against illegal work (*délégation interministérielle à la lutte contre le travail illegal* - DILTI), the former for information concerning the applicable legislation and the latter for the cooperation with authorities of other Member States. A contact person has not been indicated. The French authorities, however, indicate that the liaison office does not fulfil a function when it comes to providing information to the public and that this is not required by article 4 Directive 96/71/EC.

### **10.3. Situation as regards cooperation between Member States**

The French authorities seem to make most use of cooperation with other Member States. Exchanges of information take place or are about to start in relation to Belgium, Germany, Poland, Czech Republic, Spain, Luxembourg, Portugal, Bulgaria and the Netherlands. To this end arrangements have been signed or are being negotiated at present. Exchange of information usually takes place on the request of the French authorities.

As concerns the exchange of information on the request of authorities of other Member States, the French authorities indicate that the liaison office is only competent to reply to queries within concerning the labour law applicable to posted workers and that queries concerning issues outside this domain are transferred to the competent authorities. If a query necessitates the investigation of another authority, the query is transferred to the competent authority.

### **10.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The labour inspectorate is responsible for monitoring of terms and conditions of employment applicable to posted workers and disposes of a total work staff of about 2340 people. In addition, the labour inspectorates in the agricultural and transport sector employ an additional 1180 persons. A plan to modernise and to develop the labour inspectorate has been presented on 9 March 2005 and which seeks to respond to the internationalisation of the mission of the labour inspectorate and the growing complexity of the organisation of work that results from that. This plan foresees, among others, an increase of 700 posts in the labour inspectorate by 2010 and more coordination between the different services within France.

In case of non-compliance, measures are available following a criminal procedure initiated by the labour inspectorate and they depend on the legal provisions not complied with. Non-compliance with working conditions constitutes an offence of the fifth class and can be penalized with a fine of maximum €1,500.

Workers and their representatives dispose of a number of measures in the case of non-compliance: they can initiate a civil procedure, file a complaint with the public prosecutor, or be a third party in a criminal procedure initiated by the labour inspectorate.

A system of joint and several liability exists in the case of subcontracting. If the recipient of the service, the main contractor, has not done the necessary verifications when contracting a service provider, he can be held jointly liable for, among others, arrears in salary in the case of undeclared labour, insolvability or unstable finances.

## **11. ITALY**

### **11.1. Situation as regards control measures**

Italy currently applies the following control measures:

#### *11.1.1. The requirement to keep and maintain social documents on the territory of the host country*

Any employer has to keep a payroll, a registry of workers, an accidents registry and a registry of medical visits. This obligation applies also to the recipients of services in the case of posting. The first two documents have to be kept for at least 10 years, either digitally or on paper, at the workplace. It is unclear where the documents have to be kept after the posting is over. Another possibility is to keep the documents at the office of a '*consulente del lavoro*' in case these services are used.

The accidents registry has to be kept for at least 4 years in the company. The registry of medical visits and the accidents registry have to be kept near the place of work of the posted worker in Italy.

#### *11.1.2. Measures which apply to posted workers who are nationals of third countries*

The legislation contains a requirement for third country nationals to obtain a specific certificate prior to being posted to Italy. This legislation is being modified at the moment. It is foreseen that the employer of the third country nationals that is being posted from one Member State to Italy sends a declaration containing the names of the workers and in which it is certified that the residence of these workers and their employment situation is regular in the Member State where the employer is established. This declaration needs to be accompanied by a communication from the contractual client for whom the work is being performed. The conformity of this new legislation will be assessed by the Commission in the context of the infringement procedure that was initiated against Italy.

### **11.2. Situation as regards access to information**

The only information available on the website of the Ministry of Labour and Social Security is a link to the local Eures sites where information can be found for workers moving within the European Union (<http://www.lavoro.gov.it/Lavoro/md/AreeTematiche/occupazione/domandaOfferta/>). There is no information available in any form on posting of workers, nor on the website, neither through other means. The website is only available in Italian. The Italian authorities indicate that a multilingual version will be provided and that the portal will be modified in order to include specific information on posting of workers.

The Labour Market Directorate-General within the Ministry of Labour and Social Security is designated as liaison office. Since the structure of this ministry is being

redefined at the moment, it is possible that this function will be allocated to another department of the ministry in the (near) future.

### **11.3. Situation as regards cooperation between Member States**

In order to process requests coming in at the liaison office, either from the public or from authorities of other Member States, the provincial labour directorates, in the context of their normal work, operate in constant coordination with other monitoring authorities. Other than this, there is practically no information available on the cooperation with other Member States.

The code of conduct on cooperation standards has not yet been implemented in the work of the provincial labour directorates.

### **11.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The labour inspectorate is responsible for monitoring all working conditions and is dispersed around Italy by way of provincial labour directorates. As regards compliance with health and safety rules, the ASL's (local health authorities) are also responsible. Inspection activities are generally coordinated at central level and every year a *modus operandi* is established for interventions in particular sectors on the basis of specific priorities. Inspections can also take place in response to a request from the judicial authorities. The capacity of the labour inspectorate has recently been expanded as 850 additional labour inspectors were recruited.

In case of non-compliance both individual workers and organisations representing them have the possibility to complain directly to the competent authorities. In order for a swifter settlement of disputes, the legislation implementing Directive 96/71/EC provides that, when the Italian legal authorities are seized by posted workers, the preliminary phase relating to the obligation to seek conciliation, does not apply and the case is passed directly to the labour court.

## **12. CYPRUS**

### **12.1. Situation as regards control measures**

Cyprus currently applies the following control measures:

#### *12.1.1. The requirement to make a declaration*

Before the start of the works, a foreign service provider is obliged to submit two documents to the Ministry of Labour and Social Insurance in Greek or in English (no form), namely a written statement with details about the posting company, the recipient of the service and the nature, start and duration of the posting, and a list of the workers that will be posted with their details.

#### *12.1.2. Measures which apply to posted workers who are nationals of third countries*

The Cypriot authorities indicate that when third country nationals are posted to Cyprus a residence visa is required and the procedure to obtain such a visa includes



the prior approval of the Labour Department of the Ministry of Labour and Social Insurance taking into account the situation in the labour market.

## **12.2. Situation as regards access to information**

There is no internet site with information specifically on posting of workers, nor are there brochures or other means to make information generally available on posting of workers. The internet site of the Department of Labour of the Ministry of Labour and Social Insurance ([www.mlsi.gov.cy/dl](http://www.mlsi.gov.cy/dl)) contains very brief information on working conditions in general and for concrete information it refers to EURES. The only information available is a translation of the legislation on the website of the Ministry of Labour and Social Insurance. There is no indication of which terms and conditions of employment apply to posted workers.

The department of labour is designated as liaison office and there is one officer dealing with requests both from the general public and other Member States, but no contact person has been indicated. The liaison office can be addressed in Greek and English.

## **12.3. Situation as regards cooperation between Member States**

Cooperation with other Member States is practically nonexistent at the moment. The Cypriot authorities indicate that the liaison office is authorised to initiate investigations, assign another authority to carry out an investigation and to request information from other authorities, provided that the protection of personal data is taken into consideration.

## **12.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

In Cyprus three different departments of the Ministry of Labour and Social Insurance are responsible for monitoring: the Department of Labour Relations monitors terms and conditions concerning employment, the Department of Labour Inspections monitors terms and conditions concerning health, safety and hygiene at work and the Department of Labour monitors terms and conditions indicated under art. 3 par.1 under e, f and g of Directive 96/71/EC. Complaints are always followed up, but have not been made yet, and the departments also perform random checks and inspections.

Non compliance with the terms and conditions of employment provided for in Cypriot legislation is an offence and the perpetrator is liable to imprisonment of up to 3 months or to a fine of up to CYP2,000 (±3,015€). Labour legislation in general provides for fines from CYP500 (±754€) to CYP20,000 (±3,0157€).

## **13. LATVIA**

### **13.1. Situation as regards control measures**

Latvia currently applies the following control measures:

*13.1.1. The requirement to have a representative established on the territory of the host Member State*

According to the information received, there is no such requirement in Latvia. However, the requirement to make a declaration includes the indication of a representative of the employer in Latvia. The Latvian authorities indicate that this requirement is interpreted in the sense that a contact person among the persons, who are going to be posted, shall be indicated.

*13.1.2. The requirement to make a declaration*

An employer who posts a worker to Latvia has to inform, prior to the posting of the employee, in writing the State Border Guard and the State Labour Inspection of such posting and has to indicate details of the worker, date of start, duration and location of the work, as well as the name of the representative of the employer in Latvia. The Latvian authorities indicate that this requirement ensures the possibility for the State Labour Inspectorate to consult and inform foreign employers prior to the posting about the legal rules applicable to posted workers.

*13.1.3. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

According to the information received, there is no such requirement in Latvia. The Latvian authorities, however, indicate that there might be amendments to the Labour Code establishing an obligation to employers to keep and maintain relevant social documents, such as time sheets and work schedules, at the workplace.

*13.1.4. Measures which apply to posted workers who are nationals of third countries*

According to the information received, at present third country nationals posted to Latvia have to obtain a work permit. The Latvian authorities indicate that amendments have been proposed to exempt third country nationals from this obligation and to introduce an obligation to foreign service providers to confirm that posted third country nationals are legally employed in the country of establishment.

**13.2. Situation as regards access to information**

On the internet site of the State Employment agency ([www.nva.gov.lv](http://www.nva.gov.lv)) is a page with information (under 'employment of foreigners') on posting of workers (in Latvian and English) which provides the content of terms and conditions that have to be applied to posted workers and the legal provision in the labour code containing the obligation to notify the posting. References have been made to other legal texts and institutions, among others the State Labour Inspectorate whose site (since second half 2006 also available in English) contains the same information on terms and conditions of employment without specifying that it applies also to posted workers ([www.vdi.gov.lv](http://www.vdi.gov.lv)).

There have been no other measures taken to make information generally available.

According to the information received from the Latvian authorities there are two liaison offices, namely the State Employment Agency and the State Labour Inspectorate. This is not in line with the information communicated to the European

Commission earlier. The Latvian authorities indicate that it is foreseen that in the future the State Labour Inspectorate will function as liaison office.

Both authorities can be contacted in English and Russian and can obtain information directly from other institutions if necessary.

Social partners have signed an agreement on cooperation and together they are organising information events.

### **13.3. Situation as regards cooperation between Member States**

Cooperation with other Member States is very limited at the moment and in practice only the State Labour Inspectorate has received queries. The State Labour Inspectorate is authorised to initiate investigation if necessary and can request information from other authorities if necessary.

### **13.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The State Labour Inspectorate is responsible for monitoring compliance with labour legislation, but does this mostly according to complaints of employees. Complaints can be made in writing or by calling and are followed by an inspection on which the complainant receives a response in written form within 15 days. This can be extended up to 30 days in case additional information or further action is required.

In case of non-compliance, the Labour Inspectorate may give the company an order to correct the situation within a given time limit and if the order is not complied with, coercive fines may be imposed. Depending on several factors, the fines range from a warning up to LVL 1,000 (±1,224€). In this respect, the Latvian authorities indicate that the Latvian legislation is not binding for companies registered abroad.

## **14. LITHUANIA**

### **14.1. Situation as regards control measures**

Lithuania currently applies the following control measures:

#### *14.1.1. The requirement to make a declaration*

The foreign service provider has to notify to the territorial division of the State Labour Inspectorate of the place of work the provisions that are applied to the worker as regards the terms and conditions enumerated in article 3 par. 1 a-g Dir. 96/71/EC, unless posting lasts less than 30 days. If the posting is about carrying out construction works, the notification shall be carried out in all cases. This notification has to be done on a set form (in preparation), in the Lithuanian language and submitted by post or by fax not later than 5 days before the starting date of the work. In case of work that could not be anticipated, notification must be submitted on the first day of work.

*14.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

Foreign service providers shall keep documents relating to a posted worker for a period as determined by and in accordance with procedure laid down in the national legislation of the country of establishment, but in any case not less than the duration of a worker's posting to Lithuania. It is not clear which documents it concerns and whether they have to be kept in Lithuania in order to be presented immediately at the request of the competent institution.

*14.1.3. Measures which apply to posted workers who are nationals of third countries*

A third country national who works legally in a Member State of the European Union and posted by his employer to work in Lithuania and has an E 101 certificate issued by the competent institution of a Member State of the EU, does not require a work permit.

**14.2. Situation as regards access to information**

On the website of the State Labour Inspectorate a link has been provided recently to a page (in English) that sets out the legislation implementing the posting of workers directive (<http://www.vdi.lt/index.php?-1480230723>). Very general and brief information on posting of workers is to be found, although not easily, on the website of the Ministry for Social Security and Labour (<http://www.socmin.lt/index.php?-846611483>) without setting out which terms and conditions of employment have to be applied or which formal requirements have to be complied with. This site, available in English, contains some general information on working time and rest time and on remuneration. The Lithuanian authorities indicate that there are plans to update this website in the near future.

The Lithuanian authorities indicate that general brochures, such as a publication "Temporary employment of Foreigners in Lithuania", are available in Lithuanian and in English.

The State Labour Inspectorate has been designated as liaison office and the manager of the legal division has been appointed as a contact person (although little information communicated to the commission and no name of contact person). According to the information received the State Labour Inspectorate is responsible for providing free information to the competent authorities of other Member States and to employers established in other Member States. The State Labour Inspectorate will also provide information to posted workers. The State Labour Inspectorate can ask for assistance from other national authorities if necessary and can be addressed in English, German, French and other languages for which translation services are available.

**14.3. Situation as regards cooperation between Member States**

Although cooperation with other Member States is very limited at the moment, the existing legal framework provides that the State Labour Inspectorate can cooperate and exchange information with other institutions.

#### **14.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The State Labour Inspectorate is responsible for monitoring compliance with terms and conditions of employment in Lithuania. Monitoring takes place on a regular basis, either by responding to complaints or by carrying out checks according to predefined plans. In order to improve effective monitoring, cooperation agreements with other institutions are underway in order to exchange data about posted workers.

In the case of non-compliance the State Labour inspectorate may impose pecuniary penalties that range from LTL 400 to LTL 2,000 ( $\pm 100\text{€}$  to  $\pm 500\text{€}$ ). Workers may defend their rights by applying to workers' representatives, institutions in charge of the investigation of workers' disputes, authorised bodies (State Labour Inspectorate) and the courts.

### **15. LUXEMBOURG**

#### **15.1. Situation as regards control measures**

Luxembourg currently applies the following control measures:

##### *15.1.1. The requirement to have a representative established on the territory of the host Member State*

The legislation requires that certain documents are kept in the hands of a qualified ad hoc representative who resides in Luxembourg. The Luxembourg authorities indicate that this is to be interpreted as a person who is staying in Luxembourg for professional reasons and who is reachable during the work that is carried out and the only function is to keep certain social documents available. This requirement is the subject of an infringement procedure before the ECJ in which the Commission takes the view that this requirement is not justified by the necessity of an effective monitoring and constitutes a restriction to the free provision of services.<sup>8</sup>

##### *15.1.2. The requirement to obtain authorisation from the competent authorities of the host Member State or to be registered with them, or any other equivalent obligation*

The Luxembourg authorities reply that there is a requirement to obtain an ad hoc certificate that proves the foreign service provider has an authorisation of establishment in the home country. This certificate is in principle provided within a day by the Ministry of Small and Medium-sized Businesses and Tourism and will be provided on the basis of a copy of the authorisation of establishment from the home country.

##### *15.1.3. The requirement to make a declaration*

The legislation requires a declaration to be made before the commencement of the work which provides certain information to the labour inspectorate and this information should be available on demand and as quickly as possible. The content

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<sup>8</sup>

C-319/06, pending case.

of this requirement is one of the grievances in an infringement procedure against Luxembourg<sup>9</sup>

In order to comply with this requirement a form is available on the website which requests information about the workers, the place and the duration of the work. The form, though, requests more information than required by Art. L 142-2 of the Labour Code, namely information about the employer, the recipient of the service and the working conditions applicable to the workers.

*15.1.4. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

According to Article L. 142-3 documents necessary for verifying compliance with the obligations under the title on posting of workers in the Labour Code are required to be in the possession of the ad hoc representative. In particular reference is made to Art. L. 142-2 which mentions that a copy of the E-101 form has to be in the hands of the ad hoc representative throughout the period of posting, as well as a copy of the employment contract or written statement in accordance with Directive 91/533/CEE. As regards the latter, this requirement is the subject of an infringement procedure<sup>10</sup>.

The declaration form explicitly lists all the documents which have to be filed with the ad hoc representative. In addition to the above mentioned documents reference is made to the three most recent pay slips, information on measures applied by the employer in the area of occupational health and safety, certificate of fitness for work (issued by the country of origin's occupational health services competent for the sector), authorization of establishment, VAT certificate, residence and work permit, copy of the identity cards or passports of posted workers. In case of subcontractors or temporary agency work, in addition a copy of the subcontractor contract or copies of the contracts with the temporary work agency of workforce loaner is required.

The legislation does not foresee that these documents have to be conserved at the ad hoc representative after the end of the posting, but the Labour Inspectorate can ask the production of pay slips during three years.

The moment at which the above documents should be available with the ad hoc representative, whether at the start of the work or before the start of the work, is also subject to an infringement procedure<sup>11</sup>

*15.1.5. Measures which apply to posted workers who are nationals of third countries*

Following the judgment of the European Court of Justice on 21 October 2004 (C-445/03), Luxembourg legislation has been modified by '*Règlement grand-ducal*' from 31 July 2006. According to the modified legislation derogation from a work permit can be obtained if the posting company has a real and effective activity in the country of establishment and if the posted workers have a right to stay and work in the country of establishment for a period longer than the duration of the posting in Luxembourg. The company wanting to post a foreign worker needs to apply for the

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<sup>9</sup> C-319/06, pending case.

<sup>10</sup> C-319/06, pending case.

<sup>11</sup> C-319/06, pending case.

derogation and attach the necessary proof. The administration then has up to 16 days to grant the derogation. Moreover, temporary employment agencies and companies posting workers in the context of the hiring out of workers can not qualify for this derogation. The conformity of this new legislation is being assessed by the Commission in the context of its competences as established by Article 228 of the Treaty.

#### **15.2. Situation as regards access to information**

On the website of the labour inspectorate (*Inspection du travail et des mines-ITM*) ([http://www.itm.lu/detachement-de-travailleurs/posting-of-workers?set\\_language=en](http://www.itm.lu/detachement-de-travailleurs/posting-of-workers?set_language=en)) information is to be found on posting of workers which is easily accessible and available in French, English and German. This site contains detailed information on the formal requirements a foreign service provider has to comply with, but leaves to be desired as to the indication which terms and conditions of employment have to be applied to posted workers (some information is to be found under 'FAQ') and what their concrete content is, although on the same site a link is provided to labour law in general (only available in French).

The Luxembourg authorities indicate to work on a manual on good practices relating to posting of workers, which should be available in the spring of 2007. The '*Chambre du travail*' is also working on a publication. Furthermore, awareness raising campaigns have been organised at the chambers of commerce in the border regions and the '*Maison du Luxembourg*' at the Luxembourgish border in Thionville (DE) is providing information to workers and to companies who want to provide a service in Luxembourg.

In the liaison office one person is designated to deal with queries related to posting of workers, which mostly come from the authorities of other Member States. The liaison office can be contacted in French, German and English and seems to be properly equipped in order to be able to function as intermediary.

#### **15.3. Situation as regards cooperation between Member States**

The liaison office seems to be in a position to reply to queries from authorities from other Member States that need information from other Luxembourg authorities or for which investigation by the Labour Inspectorate is needed in order to reply. The Luxembourg authorities do not indicate any problems in the cooperation with other Member States, although the number of queries is very low, and in particular with the authorities of the neighbouring Member States study visits and bilateral meetings take place regularly.

#### **15.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The ITM and the customs administration is responsible for monitoring. The ITM is insufficiently staffed in relation to the number of posted workers (more than 17000 per year) as well as to be able to follow-up the complaints received. Monitoring takes place on the basis of spontaneous controls or following complaints from the specialised service on posting of ITM. A brief analysis is done of each declaration. In

order to improve efficiency a partial regionalisation has taken place of the ITM since January 2007.

Workers, their representatives, authorities and social partners can lodge a complaint with the ITM in case of non-compliance. In general, the ITM has the authority to issue administrative notices or can decide to forward a formal report to the public prosecutor who then decides on whether to initiate criminal proceedings.

## **16. HUNGARY**

### **16.1. Situation as regards control measures**

Hungary currently applies the following control measures:

#### *16.1.1. The requirement to make a declaration*

The foreign service provider is obliged to register his employees who are being posted to Hungary and who are nationals of the EU8 (Czechs, Estonians, Latvians, Lithuanians, Polish, Slovenians and Slovaks) with the local employment services no later than the first day of the work. Together with this declaration a copy of the document certifying the citizenship of the employee must be enclosed with its authentic Hungarian translation. This registration is not a condition to start a job.

### **16.2. Situation as regards access to information**

At present there is no website specifically on posting of workers, nor have other means been used to make information generally available about the conditions of employment and requirements that apply when posting workers to Hungary. General information should be available on the governmental portal (only in Hungarian). The Hungarian authorities indicate that a special website will be available on the website of the Ministry of Social Affairs and Labour (<http://www.szmm.gov.hu/main.php?folderID=13318&langchanged=eng>), the Public Employment Service and the Labour Inspectorate ([www.hli.hu](http://www.hli.hu)). Only on the website of the Public Employment Service information in another language is available on posting of workers ([http://en.afsz.hu/engine.aspx?page=en\\_posting](http://en.afsz.hu/engine.aspx?page=en_posting)) and also a brochure can be downloaded on working conditions in general. This page sets out general information on posting of workers and more detailed information on leave, pay and working hours. No information has been made available by any means on the formal requirements that have to be complied with, on the 'help lines' that are available for posted workers and links towards sources that can provide further information are missing.

The Hungarian authorities indicate that in the first half of 2007 a site dedicated to information on posting will be in place and the site of the labour inspectorate will also contain more information on posting of workers.

In the liaison office (HLI) two persons have been designated to deal with requests about posting of workers (contact person indicated), the liaison office can be addressed in English, German and French and has translation services at its disposal if necessary.



### **16.3. Situation as regards cooperation between Member States**

Although cooperation with other Member States is very limited at the moment, the Hungarian authorities indicate that the HLI can obtain information from other authorities, subject to the rules on data protection, and it can order inspections to obtain the required information. Most information can be obtained directly by the HLI, except for the tax number of a company, which needs to be obtained from the tax authority.

### **16.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Recently an organisational change resulted in the HLI now being responsible for monitoring compliance with all terms and conditions of employment. Monitoring by the HLI takes place on the basis of randomly selected checks and of complaints. The Hungarian authorities indicated that in 2005 and 2006 the number of inspectors was increased by 100 additional inspectors in order to improve effectiveness of the HLI.

In case of non-compliance the inspectorate can impose an obligation on the employer to comply with the regulations and may impose fines on the employer with a maximum of HUF 20 million ( $\pm 69,633\text{€}$ ) at present. The amount of the fine is influenced by a number of issues, such as the number of the employees concerned, whether it is a repeated infringement, the duration of the infringement and its impacts. Labour inspectors can also initiate penal proceedings against the employer.

## **17. MALTA**

### **17.1. Situation as regards control measures**

Malta currently applies the following control measures:

#### *17.1.1. The requirement to obtain an authorisation*

Personnel of foreign service providers need to obtain a work permit prior to being able to carry out their work. The Maltese authorities indicate that a work permit for EU-nationals is granted automatically. Just before adoption of this report, the Maltese authorities indicated that, following an administrative decision, it will no longer be required to obtain a work permit for posted workers, regardless of their nationality, provided the requirements of the obligations related to the notification (see par. 17.1.2.) are complied with.

#### *17.1.2. The requirement to make a declaration*

A foreign service provider has to notify the Director of the Industrial and Employment Relations Department within the Ministry of Education, Youth and Employment, prior to the posting, of the intention to post a worker to Malta. This notification has to include data about the posted worker, the address where the service is provided, the start, nature and duration of the work, the address of the recipient of the service and a copy of a document containing the information to be provided to the employee pursuant to the Information to employees Regulation (written contract of employment or other written document).

*17.1.3. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

A copy of this notification as well as updated records sufficient to show that the provisions of the regulation implementing Directive 96/71/EC are being complied with, have to be kept at the undertaking in Malta that receives the services.

*17.1.4. Measures which apply to posted workers who are nationals of third countries*

According to the Immigration Act, personnel of foreign service providers need to obtain a work permit prior to being able to carry out their work. See par. 17.1.1.

**17.2. Situation as regards access to information**

The only information available on posting of workers specifically or on working conditions applicable in Malta in general are the different Acts available on the website of the Department of Industrial and Employment Relations ([www.industrialrelations.gov.mt](http://www.industrialrelations.gov.mt)). The Maltese authorities indicated that there are plans to set up a new website for this Department, which would include more specific information on posted workers.

The Department of Industrial and Employment Relations (DIER) within the Ministry of Education, Youth and Employment has been designated as liaison office. In the liaison office a number of enforcement officers are well-versed in legislation on posting of workers.

**17.3. Situation as regards cooperation between Member States**

Cooperation with other Member States is at present practically not existing. Very few occasions arose where this could be applied. The Maltese authorities indicate that the liaison office can only seek public information from other institutions in Malta. In addition, when a query from another Member State concerns a matter outside the competence of the liaison office, the information needs to be obtained from the relevant sources and the Ministry of Foreign Affairs needs to be informed.

**17.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The Department of Industrial and Employment Relations is responsible for the monitoring of all the terms and conditions of employment applicable to posted workers. Monitoring is done by the inspectorate section on the basis of random checks and at present, the inspectorate is working specifically on the posting of workers which has resulted in 2 cases of posting of workers out of a total of 150 inspections.

In case of non-compliance the Department can proceed with the case before the Maltese Court of Magistrates who can issue a fine to the employer in the range of Lm50 to Lm500 (±100€- ±1,000€).

## **18. NETHERLANDS**

### **18.1. Situation as regards control measures**

The Netherlands currently applies the following control measures:

#### *18.1.1. The requirement to make a declaration*

There is no such requirement in the Netherlands, at least not for workers posted to the Netherlands for whom the free movement of workers applies (see under 18.1.2)

#### *18.1.2. Measures which apply to posted workers who are nationals of third countries*

For third country nationals (and nationals of Romania and Bulgaria for whom the free movement of workers does not yet apply) posted by a temporary employment agency to a user undertaking in the Netherlands or posted to an establishment in the Netherlands belonging to the same group a work permit is required. If these workers are posted by the foreign service provider who offers a service in the Netherlands using its own employees (situation as provided in article 1(3) (a) of Directive 96/71/EC) a work permit is not required on the condition that a notification is sent to the Public Employment Service prior to the commencement of the work. To that end a form can be filled out that requires information about the name and the address of the employer, the nature of the company and the registration in the country of establishment, the name and the address of the service recipient, the nature of the service, where and when the posted workers will perform the work as well as information about the identity of the posted worker. A number of documentary evidence needs to be added to this form, such as a copy of the residence- and work permit and a copy of the passport of the posted worker<sup>12</sup>. This legislation is presently subject of an infringement procedure.

### **18.2. Situation as regards access to information**

On the website of the Ministry of Social Affairs and Employment (<http://www.employment.gov.nl/>) information on posting of workers is available in English and since March 2007 also in German. However, social partners perceive the information on the website as well as the accessibility as deficient. The website has recently been improved and expanded and now contains information on the terms and conditions of employment that have to be applied to posted workers and on the formal requirements. A separate page is available (through a link) with information on collective agreements that have been declared generally applicable. The authorities, however, consider dissemination of information on such collective agreements a task for the parties to the agreement, i.e. the social partners. In this context a recommendation was issued by the Labour Foundation (composed of social partners) to all parties engaged in collective bargaining, informing them about the legislation relevant for posting workers to the Netherlands. Social partners at local level are recommended to inform also foreign employers and to provide the Ministry of Social Affairs and Employment with a text of the relevant provisions. This recommendation is in the process of being implemented at local level.

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<sup>12</sup> The requirement of a copy of the passport of the posted worker is foreseen to be deleted soon.

Furthermore, a more general brochure about working in the Netherlands and the rights and obligations of employees can be downloaded. This brochure contains also general information about posting of workers and is available in 7 languages and 3 more languages are in preparation.

The function of the liaison office with regard to the information duties is exercised by a team in the Ministry dedicated to providing information to the public. This team consists of 15 persons. The liaison office (as well as the communications team) can be addressed in Dutch, English, German and French and if needed, have access to translation facilities and interpreters. In 2006 over 400 e-mails were received with questions about working in the Netherlands, without distinguishing between the questions about posting.

### **18.3. Situation as regards cooperation between Member States**

As regards the cooperation with other Member States, one person at the liaison office is responsible for dealing with requests. As mentioned above, the liaison office can not reply to queries about generally applicable collective agreements. In 2006 the intermediary function of the liaison office was implemented in the form of a one-stop desk with relation to other relevant national authorities. The liaison office is authorised to exchange information with other relevant public monitoring authorities, both nationally and internationally and can initiate investigation if necessary.

The Dutch authorities indicate to have bilateral cooperation with a number of Member States: with Slovakia an agreement has been concluded and with Poland, Czech Republic, France and Germany negotiations are underway, study visits have been organised with Poland and France and bilateral exchanges with labour inspectorates of Latvia and Lithuania took place where exchange of information was discussed.

### **18.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The labour inspectorate monitors legislation on minimum wages, working hours, legality of employment and occupational safety and health by way of inspections and following tips and reports. The Centres for Work and Income are responsible for checking applications for work permits and notifications.

The Dutch legislator has just adopted legislation which empowers the labour inspectors to impose administrative fines (up to 6,700€ per worker) when the legislation on minimum wages is not complied with, as well as penalties to force the employer to pay the arrears and the minimum wage. The labour inspectorate could already impose fines in the event of non-compliance of other matters, such as infringements against the Working Hours Act or non-compliance with the obligation to notify under the Aliens Employment Act.

Certain terms and conditions of employment can only be enforced under private law, at the initiative of the parties to the (individual or collective) agreements, such as terms and conditions laid down in generally applicable collective agreements and matters regulated the Equal Treatment Act. In this context social partners have negotiated an agreement with the government on the cooperation of social partners

and the labour inspectorate with respect to the exchange of information on employment conditions to be applied and the enforcement of the relevant employment conditions in generally binding collective agreements. In a limited number of sectors agreements between social partners have been concluded about joint enforcement arrangements. In the trade unions' view, these provisions are not sufficient to ensure a proper enforcement of the posting rules. In this connection, the above mentioned recommendation (see 18.2.) also recommends to further develop, if necessary, the monitoring of the compliance with and enforcement of the relevant provisions of the collective agreements.

Dutch legislation has a system of joint and several liability in the case of subcontracting, but only as concerns social security contributions, income tax and the administrative penalty in case of infringement of the Foreign Nationals Employment Act.

## **19. AUSTRIA**

### **19.1. Situation as regards control measures**

Austria currently applies the following control measures:

#### *19.1.1. The requirement to have a representative*

The Austrian legislation provides that a copy of the posting notification (see below) is provided to a representative of the employer and that this representative shall be deemed to be authorised to accept service of legal documents within the meaning of the Service of Documents Act (*Zustellgesetz*). This representative is the person who is in a position to give instructions to the other workers on behalf of the employer. A formal designation, however, is not required, nor is it required according to the Austrian authorities that this representative resides in Austria.

#### *19.1.2. The requirement to make a declaration*

Foreign service providers need to send a notification to the Central Coordination Office for the Monitoring of Illegal Employment of the Federal Ministry of Finance no later than one week before the work commences (form available on the website of the Federal Ministry of Finance). In case of emergencies, work that can not be postponed or work to be carried out at short notice, notification shall be provided immediately before commencement of the work. Next to details about the workers, the service provider, the recipient of the service and the place and length of work, the amount of pay of each worker needs to be provided. A copy of the notification needs to be provided to the authorised worker or, if only one worker is to be posted, to the worker (see above on the requirement to have a representative). In the absence of such copy, the representative (or the worker) shall submit a notification immediately on commencing work.

In case workers are posted to Austria for the purpose of being hired-out, a notification needs also to be sent to the regional administrative authority competent for the location of the Austrian user undertaking.

*19.1.3. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

Foreign service providers have the obligation, as have national employers, to produce records with regard to working time and (annual) leave. The copy of the notification and the E-101 form (unless worker is subject to social insurance contributions in Austria) has to be kept at the workplace.

*19.1.4. Measures which apply to posted workers who are nationals of third countries*

As regards the requirements for third country nationals being posted to Austria, the ECJ ruled in September 2006<sup>13</sup> that certain requirements in Austrian legislation are an infringement of Article 49 EC Treaty. As the latter provision, as interpreted by the ECJ, is directly applicable in Austria, the government has issued instructions to the competent administration to ensure a practice which is in line with the judgment. The compliance of the practice and the necessary modification of the legislation will be assessed by the Commission in the context of its competences as established by Article 228 of the Treaty.

**19.2. Situation as regards access to information**

The website of the Federal Ministry of Economics and Labour has set up an information site on posting of workers (<http://www.bmwa.gv.at/EN/Topics/Labourlaw/Law/Crossborder/default.htm>) which is fairly easy accessible and which provides clear information (in German and English) on the obligations of the foreign service provider, although a link to the declaration form is missing, and sets out the content, or otherwise a reference, of the terms and conditions of employment to which the worker is entitled. The website of the Federal Ministry of Finance, where the declaration form is to be found, is less clear, but the Austrian authorities indicate that the information on this site will be improved in the near future.

Information on the terms and conditions laid down in generally applicable collective agreements has been transferred to the social partners, who are responsible for making this information generally available.

Specific brochures on posting of workers are not available, but written information in several languages has been issued about e.g. health and safety legislation and the organisation of the labour inspectorate.

Two members of staff have been designated for the liaison office and can be contacted in English.

**19.3. Situation as regards cooperation between Member States**

The Austrian authorities indicate that the liaison office can not assign other Austrian authorities to carry out investigation if such proves necessary following a query from another Member State. They further indicate that the Labour Inspectors are

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<sup>13</sup> Case C-168/04 (Commission of the European Communities v Republic of Austria), judgment of 21 September 2006.

confronted with doubts on the national data protection laws and formalities which could be opposed to the possibilities for action by the authorities based on quick and adequate forwarding of information.

#### **19.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

In Austria mainly two monitoring authorities are involved when it concerns posting of workers, namely the labour inspectorate and the tax authorities, more particularly by Control of illegal employment (KIAB).

The labour inspectorate is responsible for monitoring legislation on working time, on health and safety and on workers protection, while the KIAB monitors the specific legislation on posting of workers. Legislation on minimum wage and holiday are monitored by the tax authorities, but as they come under employment contract law, workers themselves have to enforce any claims by bringing a civil action before the labour and social courts. Workers and social partners can bring claims as regards health and safety at their workplace to the labour inspectorate which the latter are obliged to investigate.

In recent years evaluations carried out by the tax authorities and the labour inspectorate have led to measures to improve effectiveness, such as the introduction of a quality management system, new IT-system and the increase of the number of inspectors working for the tax authorities (from 190 in 2005 to 325 in 2007).

The tax authorities and the labour inspectors can initiate an administrative procedure for penalties. The labour inspectorate can also file a report on a criminal offence and become party to the penal proceedings. Neither tax authorities nor labour inspectorates can immediately impose a fine on their own. Austrian legislation has a system of liability for pay claims of the workers in force between the contractor and the immediate subcontractor and after the worker has unsuccessfully instituted enforcement proceedings against the employer and the claim has proved to be unrecoverable. This system applies irrespective of the country of establishment of the subcontractor.

### **20. POLAND**

#### **20.1. Situation as regards control measures**

Poland currently applies the following control measures:

##### *20.1.1. Measures which apply to posted workers who are nationals of third countries*

When third country nationals are posted to Poland, the worker in question needs to obtain a visa that has to be requested at the competent consular post in the country of domicile of the worker and such a visa has to be obtained before entering Poland. The posted worker can request for a residence visa for professional purposes without being obliged to present a work permit, but the posted worker has to present a declaration from his employer established outside of Poland.

## **20.2. Situation as regards access to information**

Information is available on the website of the National Labour Inspectorate (<http://www.pip.gov.pl/html/en/html/08000000.htm>), in English, German and French, under the heading 'information for foreigners'. A document is placed on this website which sets out the terms and conditions that have to be applied to posted workers. This document has also been published in the form of a brochure. The Polish authorities indicate to have plans to update the site in the near future.

The national labour inspectorate has been designated as liaison office and although three people within the liaison office are dealing with requests concerning posting of workers, no contact person has been indicated. The liaison office approaches, if necessary, the competent institution with a request to provide the relevant information, which it then forwards to the applicant and exercises an intermediary function between the person requesting the information and the institution that competent for a certain matter.

## **20.3. Situation as regards cooperation between Member States**

The Polish liaison office seems to receive the most requests from other Member States. The liaison office is authorised to request information from other institutions and can initiate investigations.

In order to improve cooperation with other Member States, Poland has participated in study visits to the liaison offices of the Netherlands, France, Belgium and Norway.

## **20.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The labour inspectorate is also the body responsible for monitoring compliance with all terms and conditions of employment. Monitoring takes place on the basis of systematic checks carried out in accordance with the operating plan of the labour inspectorate and through a process of verification of individual employee complaints.

In case of non-compliance the labour inspector can issue an order, e.g. to pay the wages due, and such orders are immediately enforceable. The labour inspectors may also file petitions to the court that can then impose a fine. In the latter case, the labour inspectors have the rights of public prosecutors. Instead of applying to a court, the labour inspector may impose a money fine by issuing a penalty notice. These fines can be up to PLN 1,000 (±230 €).

In order to compel compliance a labour inspector can, in cases of non-compliance with legislation relating to occupational health, safety and hygiene and the failure to pay employees' wages or other entitlements, also issue a decision in which a fine is imposed. These fines can not be higher than PLN 5,000 (±1,000 €) as concerns individuals, and in the case of legal entities and organisations without a legal personality, not greater than PLN 25,000 (± 5,000 €).



## **21. PORTUGAL**

### **21.1. Situation as regards control measures**

Portugal currently applies the following control measures:

#### *21.1.1. The requirement to make a declaration*

Any company active in Portugal is required to make a declaration to the General Labour Inspectorate (IGT) about the start of the activity, the branch of the company and its address and other places of work. In the construction sector a declaration must be made prior to the opening of the construction site when the work takes more than 30 days and there will be more than 20 workers simultaneously working at any given time or more than 500 working days. There is no form available for this declaration and information on this requirement has not been made generally known, e.g. there is no information on the posting website. In the case of posting by a temporary employment agency it is required to inform the IGT beforehand of the identity of the posted workers, the user, the place of work and the start and foreseeable duration of the posting.

#### *21.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

The IGT requires companies active in Portugal to maintain in the workplace a number of documents relating to workers: working time sheets, organisational staff chart and holiday chart, records of social security payments, pay slips, personnel register, insurance policy for accidents at work, overtime register, written information issued to workers on the conditions of their employment contract, certificates of workers' fitness, risk assessments, contracts for fixed-term employment and employment contracts concluded with foreign workers. These requirements apply irrespective of the country of establishment of the company.

#### *21.1.3. Measures which apply to posted workers who are nationals of third countries*

A third country national is not required to obtain a work visa when being posted to Portugal. The foreign service provider, however, needs to provide a declaration that confirms that the third country national is in a regular situation and legally employed in the country of establishment and it has to be done in such a way that the Portuguese authorities can control this information.

### **21.2. Situation as regards access to information**

Under the website of the IGT, separate web pages ([http://www.igt.gov.pt/IGTi\\_C08.aspx?cat=cat\\_legislacao\\_leg\\_nac\\_destacamentoen\\_g&lang=](http://www.igt.gov.pt/IGTi_C08.aspx?cat=cat_legislacao_leg_nac_destacamentoen_g&lang=)), in Portuguese and English, can easily be found (link) on posting of workers where ample information can be found on the terms and conditions of employment that need to be applied. Information on the requirements a foreign service provider has to comply with are lacking though.

The liaison office is situated within the IGT. Trade unions, however, indicate that national legislation (art.13 law 35/2004) limits the possibility of asking for information on the working conditions that are applicable to posted workers.

### **21.3. Situation as regards cooperation between Member States**

The IGT seems to be in a position to function as an intermediary when a query necessitates information to be obtained from other national authorities, although very little information is available, also as regards the practice.

The Portuguese authorities refer to the agreement on the exchange of information and cooperation concluded with the Spanish inspectorate in 2003 which results in an improvement of the cooperation in many areas. They furthermore indicate that the code of conduct on cooperation standards is currently being implemented and that 4 weeks for replying to queries is reasonable, although necessary translations might slow matters down.

### **21.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The IGT is responsible for the monitoring of compliance with terms and conditions of employment in Portugal. Monitoring takes place on the basis of inspections which can be either at own initiative, based on annual plans, or following a complaint from companies, workers or organisations representing them. Information was received from social partners that inspection works in an inefficient way.

Posted workers can send written complaints to the IGT and the regional services and "Citizens One-Stop Shops" (*lojas do cidadão*) can give a clear explanation of the working conditions to which they are entitled in accordance with the Labour Code.

In case foreign service providers infringe the rule governing the keeping of documentation, the labour inspectorate can issue a written warning, but only in case no irreparable damage has been suffered. The labour inspectorate can also issue a prosecution report which can lead to the imposition of fines. Fines can be imposed, depending on the severity of the infringement, from approximately 192€ to 57,600€.

## **22. SLOVENIA**

### **22.1. Situation as regards control measures**

Slovenia currently applies the following control measures:

#### **22.1.1. *The requirement to make a declaration***

The recipient of the service has to register the posting three days before the commencement of the work to the Employment Service and has to enclose a number of documents, namely a copy of registration of the service provider, a copy of evidence proving the identity of the workers and a list of the workers.

### **22.2. Situation as regards access to information**

At the moment there is no website on posting of workers and no other measures have been taken to make information generally available. On the website of the Ministry of Labour, Family and Social Affairs the legislation on working conditions in general can be found (<http://www.mdds.gov.si/en/>).

The Slovenian authorities indicate that they are working on new web pages containing information on posting of workers in Slovenian and in English and that this would have become operational in May 2007.

The Slovenian authorities indicate that contact persons have been appointed in the Slovenian liaison office, the Ministry of Labour, Family and Social Affairs, but they have not been identified or communicated to the European Commission in order to adapt the list of liaison offices that is available on its website.

### **22.3. Situation as regards cooperation between Member States**

The cooperation with other Member States seems to be very limited so far. As monitoring is the responsibility of the Labour Inspectorate, this institution answers to requests received from other Member States rather than going through the liaison office.

### **22.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

The Labour Inspectorate is responsible for monitoring compliance with the implementing legislation as regards employment and health and safety at work and is organised by 12 regional units. The labour inspectorate monitors on the basis of submitted reports, complaints, notices and any other forms of provision of relevant information, but there is no information available that the labour inspectorate also monitors ex officio. The information available indicates that inspections concentrate on documents and people present at the workplace.

An informal procedure is available whereby a worker can, in the case of disagreement, propose an intervention by a labour inspector, provided that a number of conditions are fulfilled.

In case of non-compliance with the rights of posted workers, the employer is committing a violation and fines can be imposed to the amount of at least €4,172 when the employer is a legal entity, and of €2,086 when the employer is a physical person. Before issuing such a decision, the labour inspectorate sends the employer an invitation to give a written or verbal statement within a specified deadline that cannot be shorter than 48 hours. After the expiry of the deadline, the inspector can issue a decision.

## **23. SLOVAKIA**

### **23.1. Situation as regards control measures**

Slovakia currently applies the following control measures:

#### *23.1.1. The requirement to make a declaration*

For statistical purposes the foreign service provider has to notify in writing the start and end of the posting of a worker to Slovakia on a form/information card. Further details are not available to the Commission's services.

*23.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

Foreign service providers have to comply with the same obligations as employers established in Slovakia as concerns social documents and are obliged to present during a labour inspection on demand a document proving the employment relationship as well as all documentation and information required to prove fulfilment of obligations laid down by law. This includes attendance record and documents proving the payment of wages. Documents have to be kept on file for 5 years. The fact that all documents have to be presented during a labour inspection seems to imply that they have to be present at the workplace.

*23.1.3. Measures which apply to posted workers who are nationals of third countries*

Unless a third country national is posted to Slovakia for less than 7 consecutive days or less than 30 days in the calendar year or when they are posted to carry out installation work in accordance with a trade contract or perform guarantee and repair work, third country nationals are required to have a work permit. When submitting written application for a work permit a certified copy of the contract in Slovak has to be attached.

*23.1.4. Other requirements or obligations as regards posting of workers*

According to information received from social partners, if the posting of a worker exceeds 12 months, then it is considered as a permanent work with the obligation to set up a subsidiary, however, no information can be found to verify this.

**23.2. Situation as regards access to information**

The Slovak authorities indicate that information on posting of workers can be found on the websites of the Ministry Labour, Social Affairs and Family ([www.employment.gov.sk](http://www.employment.gov.sk)) and of the National Labour Inspectorate ([www.safework.gov.sk](http://www.safework.gov.sk)). Information is, however, only available in Slovak. The Slovak authorities indicate that a special website on posting of workers under the portal of the National Labour Inspectorate is under construction which will be in Slovak and in English. The Slovak authorities furthermore indicate that it is planned to publish brochures on posting of workers in 2007.

The National Labour Inspectorate has been designated as liaison office and two persons are dealing with requests for information and have been indicated as contact persons. The liaison office can be addressed in English and German and but does not seems to be in a position to function as intermediary between the person requesting the information and other competent national bodies.

**23.3. Situation as regards cooperation between Member States**

In cooperation with other Member States the National Labour Inspectorate can require certain other national authorities to cooperate, such as the Social Insurance authority, but in relation to other institutions, there is no competence to oblige other authorities to cooperate when a request from another Member State necessitates such cooperation.

A bilateral agreement has been concluded with the Netherlands and negotiations with Germany are under way.

The Slovak authorities indicate that the cooperation with other Member States has been limited so far to one direction as no requests have been addressed by the National Labour Inspectorate to other Member States. In order for the locally competent labour inspectorates to be informed about the handling of requests, the National labour Inspectorate has held extensive training for employees contributing directly or indirectly to such requests.

#### **23.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Monitoring of compliance is done by the locally competent labour inspectorates who are managed and controlled by the National Labour Inspectorate. In the case of non-compliance the labour inspectorate draws up a report on the inspection in which the inspectors order the employer to remedy the deficiencies and to inform the inspectorate of the remedying measures taken. If this order is not complied with the labour inspectorate initiates procedure to penalise the employer. Following this procedure a decision is made on the imposition of individual sanctions. The labour inspectorate can impose fines of up to SKK 1,000,000 ( $\pm 25,195\text{€}$ ) for a breach of an obligation and a procedural fine of up to SKK 20,000 ( $\pm 500\text{€}$ ) for hindering an inspection.

In case of non-compliance workers can submit a request to carry out an inspection, this request can also be done anonymously, and based on this request the competent labour inspectorates conduct inspections focusing on the breaches of the employer's obligations referred to by the complainant. Workers can also enforce their rights through a court with physical and local jurisdiction.

### **24. FINLAND**

#### **24.1. Situation as regards control measures**

Finland currently applies the following control measures:

##### *24.1.1. The requirement to have a representative established on the territory of the host Member State*

Finnish legislation requires since the beginning of 2006 that foreign service providers select a representative if the posting lasts longer than 14 days who will be authorised to act for the company in a court of law and to receive on its behalf writs of summons or other documents. This authorisation needs to be valid for a minimum of 12 months after the posting has ended and the party in Finland for whom the services are intended, is liable for a fine if its contractor has not designated a representative provided that the party in Finland has not in its contracts or by other means at its disposal taken care of its obligation to ensure that the foreign company selects a representative.

There are no formal requirements this representative has to comply with, but the Finnish authorities indicate that in practice it is not possible that one of the workers

functions as the representative, because of the fact that the authorisation needs to be valid for a minimum of 12 months after the posting has ended.

#### *24.1.2. The requirement to make a declaration*

A work notification procedure for statistical purposes has been laid down in Finnish law for citizens of the EU-8 and Romania and Bulgaria. Citizens from these Member States working in Finland (not only in a situation of posting) need to fill in a form for registration available at the employment office (or on website: [www.mol.fi/finnwork](http://www.mol.fi/finnwork) under "Permits for and registration of those working in Finland) and send it within 14 days of commencement of the work. Non-compliance with this requirement does not lead to sanctions.

#### *24.1.3. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

At the start of the work the employer or its representative has to have in its possession certain information, namely identifying details of the company posting the worker and of the posted worker, written information on the essential aspects of the employment relationship (mostly contract of employment), which must include at least a list of items fixed in Finnish legislation, and information on the basis on which the employee is allowed to work in Finland (in the case of third country nationals). This information has to be kept on file for two years, but can be kept in the country of establishment after the expiry of the authorisation of the representative.

When the posting lasts for more than eight days, the employer or its representative must have in its possession in Finland documentation on the working hours concerning work performed in Finland and records of the wages paid to the posted worker. The original documents are not required, nor translation. It is sufficient to provide for instance a copy of the pay slip of information in writing on paid salary and working times.

All the above named documents and information must be provided to the occupational safety and health authorities on their request.

#### *24.1.4. Measures which apply to posted workers who are nationals of third countries*

A third country national has to request a workers' residence permit (a work permit does not exist, with a residence permit one is allowed to work in Finland) when the posting is longer than three months. This workers' residence permit will be based on a consideration of the availability of labour. In addition, it is required that the third country national posted to Finland has a permanent employment relationship with the service provider and this requirement also applies when the posting lasts less than three months. The Finnish authorities indicate that the term "permanent employment" does not lay down a criteria of the quality of the employment relationship in the meaning of labour law and that in practice an employment relationship which is in force during the posting is sufficient.

#### *24.1.5. Other requirements or obligations as regards posting of workers*

Since the beginning of 2007 new legislation is in force which provides for a number of requirements in the context of services provided by a temporary employment agency.

#### **24.2. Situation as regards access to information**

Information on posting of workers can mainly be found on the website of the Ministry of Labour in Finnish, Swedish and English. The information is not easy to find, and is insufficient, especially as regards the terms and conditions of employment that have to be provided or on the formalities a foreign service provider has to comply with. The page contains links to the legal acts to which reference is made.

Efforts have been made to improve information for foreigners working in Finland which includes general information on working conditions, by way of a new (since August 2006) website ([www.mol.fi/finnwork](http://www.mol.fi/finnwork)) and brochures available in Finnish, Swedish, English, Estonian and Russian. It includes a compilation of minimum wage regulations in generally binding collective agreements in certain sectors.

Finnish trade unions have set up an information office in Tallinn.

As regards the liaison office, the Ministry of Social Affairs and Health, two people have been designated to deal with enquiries of which one is indicated as contact person. They receive very few queries and can be contacted in English.

#### **24.3. Situation as regards cooperation between Member States**

The Finnish authorities indicate that information exchange between national authorities, e.g. following a query from another liaison office, is straightforward, but that each authority is responsible for tasks belonging to its sector. From the information received it is not clear whether, considering also the customary administrative cooperation that exists between the different Finnish authorities, the liaison office can function as a true intermediary.

Cooperation with other Member States is at present almost non-existent, which can be explained in large, according to the Finnish authorities, by language difficulties. The multilingual form is not yet in use in all districts, and it is doubtful that it will be used generally, as it is considered impractical. Cooperation with other Member States is limited because of what is perceived as fundamental differences in responsibilities and duties between national administrations.

#### **24.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Monitoring of labour law including the Posted Workers Act is done by the occupational safety and health authorities under the responsibility of the Ministry of Social Affairs and Health. Monitoring is initiated by authorities and by customers (workers, employers). Social partners can not on behalf of the worker be a plaintiff in a court procedure. In 2006 25% of the 22000 inspections were at the instigation of customers.



Following complaints from social partners about the lack of monitoring of posted workers' rights, special inspections have been instigated and stronger control measures (requirement to have a representative) were introduced. The capacity of the Health and Safety authority is also being expanded with 9 new positions in 2006 and 12 in 2007.

The Health and Safety authority can, in certain cases, impose a fine and most of the acts for which this authority is responsible entail penal provisions.

## **25. SWEDEN**

### **25.1. Situation as regards control measures**

Sweden currently applies the following control measures:

#### *25.1.1. The requirement to have a representative established on the territory of the host Member State*

The Swedish legislation on Foreign Branches requires that a foreign company establishes a branch office in order to conduct business in Sweden and that, if the managing director is not a Swedish resident, a Swedish resident must be appointed with authority to receive documents on the company's behalf. According to this Act, foreign and Swedish citizens residing outside of Sweden must, when conducting business in Sweden, appoint a person who lives in Sweden with the authority to act in matters concerning the business. Building enterprises who work for less than one year in Sweden are excluded from these requirements.

#### *25.1.2. The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory*

A foreign service provider, as all employers in Sweden, has to produce and keep documents concerning health and safety matters at the workplace and shall also maintain records in respect of on-call hours, overtime and additional hours and, in case of persons performing mobile road transport activities, of all working hours. Furthermore, collective agreements frequently provide that the employer has to present certain documents, such as time sheets, upon request.

#### *25.1.3. Measures which apply to posted workers who are nationals of third countries*

A third country national being posted from another Member State to Sweden is not required to obtain a work permit provided that the third country national is entitled to work and stay in the country where he normally works and is an employee of the service provider. There are indications received by social partners that in practice this is considered the case when a residence and a work permit of more than one year in the country of origin can be proven.

### **25.2. Situation as regards access to information**

A separate website ([www.posting.se](http://www.posting.se)) is available on posting of workers under the portal of the Swedish Work Environment Authority, designated liaison office, which is available in Swedish and English and easy accessible. Information is very short,



contains a reference to the legal provisions applicable and there are links to other sources and to fact sheets on the work environment in Sweden in general (available in 10 languages). The concrete content of the applicable provisions is lacking, although a link has been provided to the Swedish country fiche on the Commission's website, and information on the formal requirements with which a foreign service provider needs to comply is also not set out.

In the liaison office two people have been designated as contact persons to deal with requests concerning posting of workers. When it comes to information regarding collective agreements, the liaison office refers employers and workers to the parties of those agreements who then can provide specific information. Their contact details are indicated on the website. Trade unions are at present undertaking work in order to improve their information to foreign employers and employees, e.g. by employing interpreters..

### **25.3. Situation as regards cooperation between Member States**

The cooperation with other Member States is at the moment practically non-existent. The liaison office, however, seems to be in a position to function, if necessary, as an intermediary.

### **25.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Although the Work Environment Authority is responsible for monitoring compliance with the requirements relating to work environment and working time by foreign service providers, compliance with rules regarding working and employment conditions has to a large extent been left to the social partners as they are fixed in collective agreements.

Both the Work Environment Authority and social partners can carry out inspections and checks and they can be based on complaints from an outside source. Workers can also institute proceedings and claim damages due to the non compliance under a number of acts that apply to posted workers.

The Work Environment Authority can issue orders and prohibitions in conjunction with default fines. Fines can also be issued when foreign service providers do not comply with the requirements set out above under 25.2.1 and 2.

## **26. UNITED KINGDOM**

### **26.1. Situation as regards control measures**

The UK currently applies the following control measures:

#### **26.1.1. *The requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory***

UK legislation requires that all employers to keep certain health and safety records and sufficient records to establish that workers are being paid at least the National Minimum Wage for a particular pay reference period. These documents, however, do

not have to be kept at the workplace or in the UK, but need to be shown on demand of the health and safety enforcing authorities and an enforcement officer respectively.

## **26.2. Situation as regards access to information**

On the website of the Department for Trade and Industry (DTI) a page on posting of workers can be found (<http://www.dti.gov.uk/employment/employment-legislation/employment-guidance/page19313.html>), although not easily, which sets out the applicable British legislation. The concrete content is not elaborated on, but can be found on different pages on the website of DTI. A link on the DTI's website is foreseen to other sources. The UK authorities indicate that they currently give active consideration to provide advice and information, including of a summary of terms and conditions of employment, in a range of community languages.

The liaison office seems appropriately equipped to fulfil its information duties and a contact person is indicated.

## **26.3. Situation as regards cooperation between Member States**

Cooperation with other Member States is at present practically non-existing. The UK authorities indicate that the liaison office can request information from other institutions/authorities, but it can not provide details on individual employees. The liaison office can confirm whether a company is registered in the UK. When investigation is necessary in order to be able to reply to a request, the liaison office can not instruct this as the investigation is at the discretion of the enforcement authorities.

## **26.4. Situation as regards monitoring of compliance and measures in the event of non-compliance**

Different authorities monitor compliance with national minimum wage, health and safety (including maximum weekly working time) and hiring of workers. As regards the monitoring of the national minimum wage the HM Revenue and Customs (HMRC) are responsible. They have 16 compliance teams across the UK and a helpline is in place where support is offered in over 100 languages and all complaints are followed up. In addition, the HMRC pro-actively investigates cases. In case of non-compliance penalties can be imposed and if the employer does not swiftly repay arrears to workers an officer may present a complaint to an Employment Tribunal or start civil proceedings in the County Court on behalf of the worker to regain arrears.

Any employee, including a posted worker, with a dispute over his employment rights may make a complaint to an Employment Tribunal, a labour court that can order compensation and remedy, which is easily accessible and at low cost.

The Health and Safety Executive and Local authorities are responsible for monitoring matters on health and safety and working time and have a range of tools at their disposal in seeking to secure compliance with the law and following a successful prosecution the court can impose penalties. The Employment Agency Standards inspectorate monitors legislation governing hiring-out of workers through inspections and investigations on the basis of complaints or risk analysis.

Workers and undertakings can report concerns and make complaints to the health and safety enforcing authorities and the Health and Safety Executive uses both web-based and telephone service access points to facilitate such contact.

## **27. SOCIAL PARTNERS**

The social partners' replies to the specific questionnaire that was addressed to them include factual information which was used in order to complete the analysis provided in this report. While in most cases these contributions corroborate the information provided by national authorities, there are cases that call for further investigation of the facts.

The social partners' contributions also include interpretative statements that in some cases diverge from the assessment provided by the national authorities. This report tried to incorporate this aspect of the social partners' contributions, so as to provide as much as possible a balanced and complete picture of the situation.

ETUC and EFBWW jointly sent a response reflecting disagreement with the Commission's position as expressed in the communication of 4 April 2006. In their position, these two trade union organizations stress that "an increasingly open labour market requires a set of firm and faire rules of the game, in which transparency and security for workers are put centre stage". They call on the Commission to take more account of the diversity of national labour market regulation and industrial relations systems, and to accept the validity of legal requirements that in the context of such national systems are needed in order to monitor and enforce Directive 96/71/EC. These two organizations further recommend to the Commission a set of policy actions, the subject of which is taken up in the communication to which this report is attached.

As regards SME's, UEAPME takes the view that individual obligations imposed on service providers do not dissuade them from starting cross-border activities. However, the accumulation of various obligations imposed on foreign service providers by host country authorities for control purposes, may seriously hamper their ability to provide cross-border services through the posting of workers.

Replies to the questionnaire were received from the following social partners:

- (1) European Trade Union Confederation and European Federation of Building and Woodworkers (joint response), including replies from: General Confederation of Labour of Luxembourg (CGT), German Confederation of Trade Unions (DGB), Austrian Trade Union Federation (OGB), a joint reply from Swedish Trade Union Confederation (LO-S), Swedish Confederation of Professional Associations (SACO) and Swedish Confederation of Professional Employees (TCO), as well as a joint reply from General Labour Federation of Belgium (ABVV/FGTB), Confederation of Christian Trade Unions (ACV/CSC) and General Confederation of Liberal Trade Unions of Belgium (CGSLB), Netherlands Trade Union Confederation (FNV), Finnish trade union confederations (Confederation of Unions for Academic Professionals in Finland (AKAVA), Central Organisation of Finnish Trade Unions (SAK), Finnish Confederation of Salaried Employees (STTK)),

Independent and Self-Governing Trade Union "Solidarnosc" (NSZZ Solidarnosc), Union of Independent Trade Unions of Latvia (LBAS), Confederation of Trade Unions of the Slovak Republic (TUC), General Confederation of Portuguese Workers (CGTP-IN) and the European Transport Workers' Federation (ETF).

- (2) European Association of craft, small and medium-sized enterprises (UEAPME)
- (3) BusinessEurope, including replies from: the Irish Business and Employers Confederation (IBEC), the Danish Employers' Confederation (DA), the Confederation of Portuguese Industry (CIP), the German Business Representation (DBA). A reply was also received from the Confederation of Netherlands Industry and Employers (VNO-NCW).
- (4) European Construction Industry Federation (FIEC)
- (5) General Confederation of Agricultural Co-operatives in the EU (GEOPA-COPA)

Annex I Table of requirements in place in the Member States

|                | Representative | Authorisation | Declaration     | Social documents | 3 <sup>rd</sup> country nationals | Other |
|----------------|----------------|---------------|-----------------|------------------|-----------------------------------|-------|
| Belgium        |                |               | x               | x                | x                                 |       |
| Czech Republic |                |               | x <sup>1</sup>  |                  |                                   |       |
| Denmark        |                |               |                 |                  | x                                 |       |
| Germany        | x              |               | x               | x                | x                                 |       |
| Estonia        | x              |               |                 | x                | x                                 |       |
| Ireland        |                |               |                 |                  | x                                 |       |
| Greece         | x              |               | x               | x                |                                   |       |
| Spain          |                |               | x               | x                |                                   |       |
| France         | (x)            |               | x               | x                | (x)                               | x     |
| Italy          |                |               |                 | x                | (x)                               |       |
| Cyprus         |                |               | x               |                  | x                                 |       |
| Latvia         | x              |               | x               |                  | x                                 |       |
| Lithuania      |                |               | x               | (x)              |                                   |       |
| Luxembourg     | x              | x             | x               | x                | x                                 |       |
| Hungary        |                |               | x <sup>14</sup> |                  |                                   |       |
| Malta          |                | x             | x               | x                | x                                 |       |
| Netherlands    |                |               |                 |                  | x                                 |       |
| Austria        | x              |               | x               | x                | x                                 |       |
| Poland         |                |               |                 |                  | x                                 |       |
| Portugal       |                |               | x               | x                | x                                 |       |
| Slovenia       |                |               | x               |                  |                                   |       |

<sup>14</sup> Only as regards nationals of the EU-8.

|          |   |  |                 |   |     |     |
|----------|---|--|-----------------|---|-----|-----|
| Slovakia |   |  | x               | x | x   | x   |
| Finland  | x |  | x <sup>15</sup> | x | x   | (x) |
| Sweden   | x |  |                 | x | (x) |     |
| UK       |   |  |                 |   |     |     |

<sup>1</sup> Obligation on the recipient of the service

NB: Brackets indicate situations that merit further clarification.

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<sup>15</sup> Only as regards nationals of the EU-8 and Romania and Bulgaria.

Annex 2 Information and Cooperation between Member States

| <b>Member State</b>   | <b>Languages internet site</b> | <b>Languages other ways of info</b>      | <b>Number of staff liaison office</b> | <b>Number of persons dealing with requests</b> | <b>Average number of requests per month from public</b> | <b>Average number of requests per month from other MS</b> |
|-----------------------|--------------------------------|--|---------------------------------------|--|---|---|
| <b>Belgium</b>        | FR, NL, EN                     | FR, NL, EN, DE                           | 10                                    | 5  | 20  | ?   |
| <b>Czech Republic</b> | CZ, EN                         | -  | -                                     | 3  | 30-40 per year (by phone)                               | Less than 1   |
| <b>Denmark</b>        | DK, EN                         | DK, EN, PL, LT, DE                       | 1                                     | 1  | 1-2   | Less than 1   |
| <b>Germany</b>        | DE                             | SOKABAU: 13 (11 EU)<br>IG BAU: 12 (8 EU) | 4                                     | 4 (requests other MS)                          | 50  | 1-2   |
| <b>Estonia</b>        | EE, EN                         | -  | 153                                   | 1  | 1 since May 2005  | 0   |
| <b>Ireland</b>        | EN                             | CZ, HU, LV, LT, PL, P, RO                | 14                                    | 2 (requests other MS)                          | 8000 (not only on posting)                              |   |
| <b>Greece</b>         | EL                             | EL                                       | ?                                     | 12   | 15-20   |   |
| <b>Spain</b>          | ES, EN                         | -  | 3 in central office                   | ?  | ?   | 4-6   |
| <b>France</b>         | FR                             | FR, EN, IT, PT, DE                       | ?                                     | DGT:1<br>DILTI:2                               | -   | 1-2   |
| <b>Italy</b>          | IT                             | -  | ?                                     | ?  | ?   | ?   |
| <b>Cyprus</b>         | EL, EN                         | -  | ?                                     | 1  | Not many  | 2 in 2006   |

|                       |                |   |  |    |                          |                   |
|-----------------------|----------------|---|--|----|--------------------------|-------------------|
| <b>Latvia</b>         | LV, EN         | -                                       | ?  | 1  | 1-2                      | 1                 |
| <b>Lithuania</b>      | LT, EN         | LT, EN                                  | ?  | ?  | ?                        | 3 in 2006         |
| <b>Luxembourg</b>     | FR, EN, DE     | -                                       | 3  | 1  | ?                        | few               |
| <b>Hungary</b>        | HU, EN         | -                                       | ?  | 2  | ?                        | 6 in 2006         |
| <b>Malta</b>          | EN             | -                                       | 3  | 3  | rarely                   | 2 since May 2004  |
| <b>Netherlands</b>    | EN, DE         | EN, P, FR, PL, CZ, SK, HU (+BG, RO, DE) | 1 (for requests other MS)<br><br>+<br><br>a unit for questions of the public | 1  | 30 (not only on posting) | 3                 |
| <b>Austria</b>        | DE, EN         |   | 2  | 2  | 5-10                     | few               |
| <b>Poland</b>         | PL, EN, FR, DE | Idem                                    | ?  | 3  | 0                        | 10                |
| <b>Portugal</b>       | PT, EN         | -                                       | ?  | ?  | several                  | several           |
| <b>Slovenia</b>       | SI             | SI, EN                                  | 2  | 2  | ?                        | 2 since May 2004? |
| <b>Slovakia</b>       | SK             | -                                       | ?  | 2  | 10                       | 1-2               |
| <b>Finland</b>        | FIN, SE, EN    | FIN, SE, EN, EE                         | ?  | 2  | few                      | 1                 |
| <b>Sweden</b>         | SE, EN         | 10                                      | 800  | 2  | 2                        | very rare         |
| <b>United Kingdom</b> | EN             | -                                       | 22   | 22 | 1                        | 1-2               |