



Current EU legislation on Posting of Workers Directive and the Enforcement Directive

The Posting of Workers Directive

Formal title: Direktiva Evropskega parlamenta in sveta 96/71/ES z dne 16. decembra 1996 o napotitvi delavcev na delo v okviru opravljanja storitev

Link: <http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX%3A31996L0071>

The Enforcement of Posting of Workers Directive

Formal title: Směrnice Evropského parlamentu a Rady 2014/67/EU ze dne 15. května 2014 o prosazování směrnice 96/71/ES o vysílání pracovníků v rámci poskytování služeb a o změně nařízení (EU) č. 1024/2012 o správní spolupráci prostřednictvím systému pro výměnu informací o vnitřním trhu („nařízení o systému IMI“)

Link: <http://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX%3A32014L0067&qid=1409050437183>



Posting Directive

What is posting?

When the worker is employed in one EU Member State but sent by his employer on a temporary basis to carry out his work in another Member State.

For example, a company may win a contract in another country and send his employees there to execute out the contract or a Agency company can send workers to another country



Posting Directive

What needs to be respected?

To guarantee that the rights and working conditions of a posted worker are protected throughout the European Union, and to avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower, there are a core of mandatory rules regarding the terms and conditions of employment to be applied to an employee posted to work in another Member State.

On the other hand social security protection remains in the host country



Posting Directive

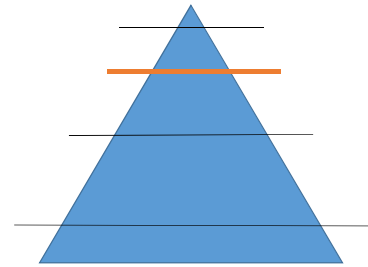
Which working conditions must be respected?

(1) maximum work periods and minimum rest periods, (2) minimum paid annual leave, (3) minimum rates of pay, (4) equal treatment between men and women and the conditions of hiring out workers, (5) as health and safety at work and (6) protective of pregnant women, of children and of young people



Posting Directive

What is the reality (according EFBWW finding)



In 3 – 5 percent of all cases: there is full equal treatment

In approx. 10 percent of all cases: there is a minimum equal treatment

In 15 – 25 percent of all cases: either the social security of the working conditions are not respected

In 25 – 70 percent of all cases: there is a flagrant breach of the legislation

In 10 to 20 percent of all cases: there is modern slavery



Enforcement Directive

1. Factual elements of posting

Article 3 aims to provide legal clarity by an indicative, non exhaustive list of factual criteria characterizing both the temporary nature of the provision of services and the notion of establishment of the posting company



Enforcement Directive

2. Access to information

Article 5 aims to improve access to information by ensuring that applicable laws and collective agreements are available on the national websites in several languages free of charge, in a clear, transparent, comprehensive and easy accessible



Enforcement Directive

3. Minimum wages - concept

Article 5(4): The relevant info should in particular cover the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration due and the qualifying criteria for classification in the different wage categories. Clarifies that application of the entire national minimum wage structure is allowed!



Enforcement Directive

4. Mutual assistance between national authorities

Article 6-8 aim to improve cooperation between authorities. 'Home' MS must provide useful info to host MS on its own initiative ; time limits to provide info (asap and at at max 2 days in urgent cases)



Enforcement Directive

4 National control measures

- Article 9: aims to strike a balance between necessity of guaranteeing legal certainty and transparency for service providers, while acknowledging MS' competence Member States may only impose justified and proportionate control measures + also other measures in case of new developments



Enforcement Directive

5. Defence of rights – facilitation of complaints-back-payments

Article 11 aims to improve Art. 6 of PWD by ensuring that workers (and/or their representatives) can claim and receive what they are entitled to, even if they have returned from the MS where the posting took place



Enforcement Directive

6. Subcontracting liability

Article 12 limits obligatory subcontracting liability to direct subcontractor situations in the construction sector. Instead MS can take other appropriate enforcement measures.



Enforcement Directive

7. Cross border enforcement

Chapter IV: builds on the principle of mutual assistance and mutual recognition when enforcing admin. fines and penalties imposed on a cross-border service provider who fails to abide by the applicable rules on posting in another MS



Enforcement Directive

8. Cross border enforcement

Chapter IV: builds on the principle of mutual assistance and mutual recognition when enforcing admin. fines and penalties imposed on a cross-border service provider who fails to abide by the applicable rules on posting in another MS

Posting is unfortunately sometimes ABUSED









Thank you