

Enforcement and revision of the posting rules

Enforcement Directive 1

- Aim: better, more uniform implementation, application and enforcement of the posting rules, including measures to prevent and sanction any abuse or circumvention of the rules
- No new posting rules, but integration of court rulings/jurisprudence into the enforcement practice.
- Main motto: enhanced cooperation, improvement of accessibility of relevant information.

Enforcement Directive 2

- Elements: designation of competent authorities, guidance with regard to assessment, different elements of a genuine undertaking and of legitimate posting, improved access to information, mutual assistance and better cooperation, (justified and proportionate) requirements, control measures and inspections, introduction of chain liability, possibilities to complain (also by trade unions and third parties), cross-border enforcement of penalties and cooperation in recovery, use of IMI.

Enforcement Directive 3

Transposition is still pending in 10 out of 28 MS.

First impression:

- ❖ Transposition varies from complete revision of existing posting legislation (f.i. Austria, Malta), new law next to existing posting legislation (f.i. NL), to modification of several applicable laws.
- ❖ Overall focus is on definition of administrative requirements, notification of posting and identification of workers involved.

Enforcement Directive 4

- ❖ Clearer identification of competent authority.
- ❖ Some countries make a clear link to the EU Directive on written proof of employment, others (not all) to valid A1.
- ❖ Sanctioning of non-compliance varies from possible suspension of the work (France: up to one month) to fines (with a broad range, e.g. in Italy & Austria related to every separate aspect).
- ❖ Liability is extended to user undertaking.



The planned revision of the posting rules

Posting revision – proposal 1

Article 2. Insertion of a new article 2a.

- 1. When the anticipated or the effective duration of posting exceeds twenty-four months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.
- 2. In case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.

Posting revision – proposal 2

Article 3.

- Exclusive application of article 3 only to construction is deleted.
- Notion ‘minimum rates of pay’ changed into ‘remuneration’.
- MS publish in the official website the constituent elements of remuneration ‘with full respect for the autonomy of the social partners, and in co-operation with the social partners’.
- New paragraph on subcontracting added.
- EU TWA-Directive applies to posted agency workers.

Posting revision – pay

What is meant by remuneration:

- remuneration means all the elements of remuneration rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable and/or, in the absence of a system for declaring collective agreements or arbitration awards to be of universal application, other collective agreements or arbitration awards within the meaning of paragraph 8 second subparagraph, in the Member State to whose territory the worker is posted.

Posting revision – subcontracting

If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement, to sub-contract in the context of their contractual obligations only to undertakings that guarantee certain terms and conditions of employment covering remuneration, the Member State may, on a non-discriminatory and proportionate basis, provide that such undertakings shall be under the same obligation regarding subcontracts with undertakings referred to in Article 1 (1) posting workers to its territory.