



Aluehallintovirasto
Regionförvaltningsverket
Regional State Administrative Agency

Enforcement of the Act on Contractor's Obligations and Liability at the OL3 nuclear plant construction site

**European project on posting workers -
transnational workshop, construction
sector, Warsaw the 26th of March**



Content of this presentation

1. Act on Contractor's Obligations and Liability

2. Enforcement of the Act at the OL3 construction site

(3. Briefly on the enforcement of identity card and tax number in the construction business)



Act on the Contractor's Obligations and Liability

- Act on the Contractor's Obligations and Liability when work is Contracted Out (1233/2006)
- Entry into force 1.1.2007
- The OSH authorities supervise compliance with this Act by virtue of law
- The Act applies equally to Finnish and foreign companies
- Regional State Administrative Agency of Southern Finland carries out the supervision in the whole country
- In the 2012 changes to the Act related to work in the field of construction (Act has some special regulation only applied in construction work)



Objectives of the Act (Section 1)

- Promote equal competition between enterprises
- Create conditions in which contractors can ensure that enterprises concluding contracts with them on temporary agency work or subcontracted labour take care of their statutory obligations as contracting parties and employers
- Promote observance of the terms of employment
- Prevent grey economy



The contractor's obligations to check

- Contractor is obligated to check some information about its subcontractor or temporary work agency before making a contract with it. The contractor has to ask the following information before making a contract:
 - 1) An account of different tax registrations (Prepayment Tax register, Employer register and VAT-register)
 - 2) An extract from the Trade Register
 - 3) A certificate regarding tax payment
 - 4) Certificates regarding pension insurances
 - 5) An account of the collective agreement or the principal terms of the employment applicable to the work
 - 6) A certificate of statutory accident insurance (only applied in the field of construction)



Negligence fee

- If the contractor has not obeyed the law, it shall be obliged to pay a negligence fee.
- The OSH Field of Responsibility orders by decision the contractor to pay the negligence fee, after having heard the contractor
- The right to order the negligence fee expires in two years from the date on which the work has been completed
- The negligence fee is contract-related
- If the contractor does not accept the negligence fee, they can appeal to the administrative court and afterwards to the supreme administrative court
- The court gives the decision on a negligence fee
- The negligence fee is payable to the state



Results of the enforcement at the OL 3

- These results represent the situation in the 31st of January 2013 (many administrative processes are still unfinished)
 - First inspections made in 2009
- By now, there have been 49 inspections to the OL3 concerning the Act on Contractor's Obligations and Liability (57 % of the inspected contractors are foreign companies)
- In many cases, the contractor has been asked to show the statutory documents about its foreign subcontractor or temporary work agency during the inspection



Comparison: OL3 vs. General level

Olkiluoto 3	Inspections completed *	Observed negligences (percentage of the inspected contracts)
	39	69%

All inspections in Finland related to Contractor's Liability and Obligations	Inspections completed	Observed negligences (percentage of the inspected contracts)
2009	789	60%
2010	872	63%
2011*	675	52%
2012*	885	50%

* = 39 inspection reports finished, 10 still unfinished



Comparison: OL3 vs. general level

- At the OL3, 64 % of the inspections have led to a hearing process (before the OSH Field of Responsibility orders the negligence fee, it hears the contractor)
- The percentage of hearing processes in general:

Year	Inspections	Hearings (percentage of all inspections)	Hearings (percentage of inspections made in the construction sector)
2009	789	16 %	23 %
2010	872	15 %	19 %
2011	675	14 %	14 %
2012	885	17 %	17 %

Percentages counted on the same date each year – however, many processes have been unfinished at that date each year



Results

OL 3	Inspections completed	Decisions on negligence fee	Amount of negligence fees	Amount of contracts sanctioned in decisions
	39	15	336 400	35

Decisions:

- Final (=non-appealable) decisions: 9, worth of 199 800 €
- Decisions appealed: 3 (11 contracts), worth of 136 600 €
- Appeal period not finished: 3 decisions (6 contracts), worth of 40 500 €
- 6 processes of negligence fees unfinished



Example case

- Foreign contractor X had made in 2009-2010 contracts with four different foreign companies about concrete works at the OL3 site
- The contractor had insufficient documents about all four companies related to Act on Contractor's Liability and Obligations (for example the E101-documents were insufficient)
- In all the contracts the invoicing was based on fixed hourly salary
- The OSH Field of Responsibility reasoned that with that fixed hourly price the subcontractors could not obey their all statutory obligations (taxes, social security payments and minimum wages in accordance with Finnish statutory labour legislation)
 - The OSH Field of Responsibility ordered a negligence fee to a contractor about all four contracts (fee in total 44 000 €)
- Contractor appealed on the decision but without success



Posted workers, OL3 and the enforcement of Act on Contractor's Liability and Obligations

- Most of the negligence fees related to foreign companies
- Many negligence fees ordered to foreign contractors about their contracts with foreign subcontractors and temporary work agencies
- Some key perceptions related to posted workers at the OL3 from the perspective of Act on Contractor's Liability and Obligations:
 - Insufficient E101-/A1-certificates
 - The fixed price in the contract in so low level that the employer cannot obey Finnish labour legislation



Identity card and tax number

Occupational Safety and Health Act, Section 52 a §

- Section changed in the 1st of September 2012
- Each person (also posted workers) working at the construction site must wear visible pictorial identification while moving on the site
- The identification must indicate:
 - The name of the worker
 - The real employer of the worker (=company paying worker's salary)
 - Tax number which is registered into a public tax number register
- The obligatory use of tax number is intended to ensure that all the workers in the field of construction in Finland pay taxes of their work to Finnish tax authorities



Identity card and tax number, enforcement

- The OSH authority enforces the use of identity cards and tax numbers at the construction sites
- If somebody works at the construction site without a correct identity card and tax number registered into a public tax number register, the main contractor has to expel the worker from the construction site
- Main contractor, builder and all the companies operating at the construction site have joint liability to ensure that the workers have identity cards with tax numbers and that the tax number shown in the card is in a public tax number register while working at the site
- The OSH authority has a national intensive enforcement campaign with the other authorities (Police, Tax Administration and Centre for Pensions) 2013 regarding the use identity cards and tax numbers
- Police can order fees to main contractors, builders and the subcontractors if OSH authority encounters workers without the identity card and tax number



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THANK YOU!