

Labour Inspections' strategies and tools used in enforcement of posting

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The EU regulatory framework for posted work has a different impact in The Member States because it is applied in a variety of national industrial relations and collective bargaining systems. Hence, very different outcomes can result from the protection of workers, depending on how labour inspectorates, other authorities and the social partners engage with posting. The overriding theme in this brief is enforcement of regulations for posted work, bringing together experiences from the Nordic (except Sweden) and Baltic states. Both Iceland and Norway are bound by these regulations through the Agreement on the European Economic Area (EEA). A more detailed description can be found in the [Fafo working paper: Fafopaper 2023:12](#)

Posted workers moving between different national systems are facing a multitude of problems such as labour right violations and difficult access to social insurance security systems. Competences of the national labour inspectorates and the possibility of their cooperation with other authorities constitutes the basis for enforcement of the regulations. However, national actors have neither the geographical scope nor the authority to effectively enforce regulations for free movement of services in an integrated market. Therefore, it is vital for the authorities to have contact and cooperate across national borders. Enforcement related to posting of third-country nationals (TCNs)—i.e., countries outside the EU/EEA—is also part of the picture.

Enforcement and cooperation at the national level

According to the Enforcement Directive (2014/67/EU), monitoring and control of compliance with the rules laid down in the Posting of Workers Directive (96/71/EC), shall primarily be based on a risk assessment and must not be discriminatory and/or disproportionate (article 10).

The competences for the labour inspectorate in all participating countries vary from solely occupational safety and health (Denmark) to control with wages (i.e., statutory minimum wages and extended collective agreements, working hours and employment contracts). The inspectorates (except Norway)

also have different forms of registers/notifying systems for posted workers.

In some countries there are targeted inspections on posted work. The Danish inspectorate uses algorithms to decide where to conduct inspections. Among other things, the data analysis includes previous inspections—including any subsequent reactions—and firms that are newly registered, the size of the firm and industry. The most common industries for posting are construction, shipbuilding, transport and agriculture.

Inspections of posting are considered to be complex and time-consuming for most parties. Thus, tools and resources for the inspectorates are important. Resources can include skills of the inspectors, for example language proficiency, access to translators, questionnaires, access to registers and real-time information via digital tools.

One of the main problems reported from all our partners is confirming the posted workers' legal employment and whether the company is legally established in the sending country.

The countries involved have experience with cooperation between authorities on a national level, but cooperation differs in both scope and depth. It varies between joint centres to case-by-case cooperation. It is most common to cooperate with tax authorities and police. Secrecy Acts that prevent sharing and compiling certain information among the authorities are a pending challenge.

Enforcement and cooperation at the transnational level

The Enforcement Directive aims to achieve better cooperation between national authorities. Experiences from our partners show that transnational cooperation is complicated. Nonetheless, bilateral and multilateral cooperation is taking place across borders, both formally and informally. The combination of informal and formal cooperation may lead to greater outcomes. The bilateral agreement between the labour inspectorates in Estonia and Finland and the trilateral agreement between the Baltic States are two examples of this.

Labour inspectors emphasize that transnational cooperation provides the opportunity to follow companies and posted workers across countries. This can, for example, be through joint and concerted inspections. Joint inspections refer to inspections carried out in one Member State with the participation of national authorities from another or several other countries. Concerted inspections refer to inspections carried out in two or more Member States at the same time regarding related cases.

The inspectors also underline the value of establishing contacts as well as the ability to get a new perspective on the way in which they themselves operate. Nonetheless, a premise for this type of cooperation to succeed is the commitment of the authorities in the participating states as resources, time and money are required to operationalize it.

Lithuania has implemented a law stating that foreign inspectors have the right to perform their competences while participating in cross-border joint inspections in Lithuania. Moreover, the Lithuanian and Norwegian inspectorates are currently cooperating on a pilot project on work-related crime. Lithuanian inspectors have visited the work-related crime centres in Norway and presented their idea about a pilot project to the Lithuanian government.

Today, cross-border information sharing in relation to posted work generally takes place through ad hoc exchange of information about individual workers or companies, i.e., through The Internal Market Information System (IMI) or personal contacts.

Posting of Third Country Nationals (TCNs)

Third-country national workers (TCNs) can be posted to other countries in the same way as EU/EEA citizens. TCNs are often seen as more vulnerable than other posted workers, as their right to work will depend on them having the right to reside and work in the sending country. Such rights to work will often be related to an employment contract with a company, and if this contract is terminated the right to reside and work in the EU/EEA will lapse.

None of the participating countries do inspections especially targeted at TCN posting. Inspections of these workers are either done as a part of inspections of posting in general or other kinds of inspections.

There are some more specific challenges related to TCNs. A number of issues must be clarified by the authorities in the receiving countries to verify whether a posted TCN is legally posted, eg. whether the worker is legally and habitually employed in the sending state. To do this, an understanding of the legal framework in the sending country is often needed. Further, as case law plays an important role in the interpretation of regulations governing TCN posting, there are still a number of issues that remain unclear and may be practiced differently within and between different Member States. For instance, it could be hard to decide what is meant by 'habitual' employment. This makes enforcement more challenging.

It has also been discussed whether the inspectorates should ask for nationality of the workers, as is required in the notification procedure in Denmark, Iceland and Lithuania. This could make it easier to target posted TCNs. Further, some inspectors report that they come across workers posted through countries that the workers have never been to but are sent directly from a third country. Some inspectors have little knowledge of TCN posting and what they should look for when talking to posted TCNs and their employers. Therefore, it seems to be a need for training in this field, including the conditions for TCN posting, what inspectors could ask for and what documents to require.



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