



## **Better enforcement through improved Nordic-Baltic cooperation. Final report**

This report is the final publication from the Better Enforcement Through Improved Nordic–Baltic Cooperation (BETIC) project, funded by European Social Funds+. The project has brought together the Labour Inspectorates in the Baltic and Nordic states.

Free movement of services in the single market includes sending workers to provide services in another Member State on a temporary basis, also called posted work. Numerous regulations have been introduced both at EU level and nationally to protect the situation of posted workers, and at the same time to ensure that businesses and workers can move freely within the single market. The topic in this report is enforcement of regulations for posted work. Among the challenges for enforcement are inadequate cooperation between national authorities, limited cross-border cooperation and lack of effective sanctions.

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# Preface

This report is the final publication from the Better Enforcement Through Improved Nordic–Baltic Cooperation (BETIC) project, funded by European Social Funds+. The project has brought together the Labour Inspectorates in the Baltic and Nordic states and has been coordinated by the Fafo Institute for Labour and Social Research in Norway.

The aim of the project has been to improve enforcement nationally and transnationally of posting in the Baltic and the Nordic region. By bringing together labour inspectorates from these countries we have mapped existing tools and experiences, identified best practice and obstacles, and tested new strategies used in inspections. Short geographical distances between Nordic and Baltic countries, familiar climate, and culture, combined with discrepant wage levels, are factors that promote cross-border service and labour mobility.

The labour inspectorates in Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, and Norway have been our partners in the project. Sweden is the only Nordic country not participating due to lack of capacity in the inspectorate. The Labour Inspectorate in Finland has participated on their own expense.

In August 2023, we published the first working paper from this project about the Transposition of the Enforcement Directive (2014/67/EU) in the participating countries (Alsos, 2023). The second working paper was published in October 2023, with the title: "Labour Inspections' strategies and tools used in enforcement of posting" (Alsos et al., 2023).

This final report based on firstly, the previous working papers, and secondly, the part of the project that has gathered experiences from a period with testing of new questions for the inspectors. The texts from the previous working papers have to some degree been revised but are in large parts similar. The chapter on new tools (chapter 6) is written for this report. The aim of the last part was to identify genuine or fake posting situations.

We want to thank our partners, the representatives from the labour inspectorates, for their efforts in providing background material, statistics, proposing people to interview and for their active and fruitful participation in our workshops. We are also grateful to the interviewees for their willingness to talk with us.

Oslo, September 2024

Anne Mette Ødegård

Project Manager

# Summary

Free movement of services in the single market includes sending workers to provide services in another Member State on a temporary basis, also called posted work. There exist no data for the total number of workers being posted across the EU, but estimations have been made. Wispelaere et al. (2023) find that in 2022, 3 million PD A1 certificates were issued to about 1.8 million people, and that the number has seen a linear increase over the last 15 years.<sup>1</sup>

Numerous regulations have been introduced both at EU level and nationally to protect the situation of posted workers, and at the same time to ensure that businesses and workers can move freely within the single market. The EU regulatory framework has different impacts in the Member States (and EEA-states), since it is applied in a variety of national systems.

The topic in this report is enforcement of regulations for posted work in the Nordic and Baltic states (except Sweden), i.e., Denmark, Estonia, Finland, Iceland, Latvia, Lithuania, and Norway. Both Iceland and Norway are bound by the regulations through the Agreement on the European Economic Area (EEA). The most common industries for posting in these countries are construction, shipbuilding, transport, and agriculture.

The report has the following main topics:

- ▶ The scope and regulations on posted work, including posting of third country nationals (people from outside the EEA) into the Nordic and Baltic states.
- ▶ Mapping of the transposition of the Enforcement Directive (2014/67) in the Nordic and Baltic states.
- ▶ Enforcement of posted work at national and transnational level by labour inspectorates and other public authorities. This includes experiences with cooperation between different authorities, such as labour inspectorates, police, and tax-authorities, and experiences with cooperation across national borders.
- ▶ Enforcement related to posting of third country nationals (TCNs) in the Nordic and Baltic states.
- ▶ How to improve enforcement. Possible new tools for national authorities during inspections to reveal fake posting.

Posted workers are facing a multitude of problems, such as labour right violations and difficult access to social insurance systems. Posting of third country nationals (TCNs) – i.e. countries outside the EU/EEA – also makes an important part of the picture. Contacts and information channels reaching across national borders, like the use of the Internal Market Information System (IMI), are therefore especially important between countries mainly sending and countries mainly receiving posted workers. National actors have neither the geographical scope nor the substantive authority to regulate and enforce service-based free movement effectively in an integrated market.

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<sup>1</sup> Portable Document A1 for social security that confirms the country where a person pays their social insurance.

One of the objectives of this project, was to map out the transposition of the Enforcement Directive (2014/67) in the Nordic and Baltic states (chapter 4). The background for the Directive, was the need to address many of the challenges connected with posting. The Directive defines administrative requirements and control measures, protects the rights of posted workers, and facilitates the enforcement of penalties and fines across national borders. Each country participating in this project has established its own national legislation to comply with the Directive. Most countries (except Norway) have established a register for posting, aiding labour inspectorates targeting inspections. The timing and type of information required for notification vary, and some countries require comprehensive information, including details about the assignor and documentation on work permits etc. All countries (except Denmark) require certain documents available in the receiving country, like employment contracts, pay slips, PD A1 certificates etc. Requirements for appointing a representative in the host country also vary. Moreover, most countries have implemented regulations concerning cross-border information sharing and cooperation between labour inspectorates.

The next topic covered in this report, is the enforcement of regulations for posted work, bringing together experiences from the participating countries (chapter 5). The competences of the labour inspectorates vary from solely covering occupational health and safety (Denmark) to control with wages (statutory minimum wages and extended collective agreements), working hours and employment contracts. In some countries, there are also targeted inspections on posted work.

Inspections on posted work are considered complex and time-consuming. Resources needed to carry out such inspections, include skills of the inspectors, access to translators, questionnaires, access to registers and real time information via digital tools. One of the main challenges of these inspections, is confirming the posted workers' legal employment and whether the company is legally established in the sending country.

Cooperation between labour inspectorates and other national authorities vary in scope and depth. Most commonly, the inspectorates cooperate with tax authorities and police. Secrecy Acts that prevent sharing and compiling certain information among the authorities also make a pending challenge. Transnational cooperation, for instance enabling inspectors to follow companies and posted workers across national borders, is complicated. However, bilateral, and multilateral cooperation is taking place, both formally and informally. Several challenges hinder this process, including differences in national laws, bureaucratic processes, divisions of labour, lack of trust, limited knowledge and access to data, and language barriers. Cross-border information sharing related to posted work typically occurs through ad hoc exchanges of information about individual workers or companies, for instance via The Internal Market Information System (IMI) or personal contacts.

Posting of third country nationals (TCNs), is an increasingly prevalent phenomenon, and these workers are seen as extra vulnerable. Their right to work in the EU/EEA will depend on having the right to reside and work in the sending country. None of the participating countries carry out inspections directly targeted at TCN posting, and number of issues must be clarified by the authorities in the receiving country to verify whether a

posted TCN is legally posted, e.g., whether the workers is legally and habitually employed in the sending state. This makes enforcement more challenging. The inspectorates report coming across workers posted through countries that the workers have never been to, hence the workers are sent directly from a third country. Additionally, many inspectors have little knowledge of TCN posting and what they should look for.

Based on findings from previous stages in the project, the labour inspectorates in the participating countries have tested out new tools to improve the enforcement of regulations of posted workers. The chosen topic for the testing, was how to better identify genuine posting situations. Tools to help reveal fake posting were selected both because the topic is relevant to most of the project participants, and because uncovering whether a posting is genuine or not can be demanding.

Building on this, we asked the inspectors to do the following:

- gather some specific information before on-site inspections,
- use a new questionnaire during on-site inspections,
- gather more information after the inspections, and reflect on whether this new approach was helpful or not.

The inspectors were interviewed after the testing period, and their experiences are presented in chapter 6. The inspectors were to prepare for on-site inspections by looking up information about posting companies and posted workers through their national registers, the European Commissions' business register, and/or other registers, or using IMI.

A relatively large share of the inspectors did not use IMI to gather information before the on-site inspections, mostly because they were able to retrieve the information they needed elsewhere, or because they were unfamiliar with/had no previous experience with IMI. Some of the inspectors also describe IMI as too formal or too legalistic, and that it sometimes took too long time to get answers.

Concerning on-site inspections, most of the inspectors were mainly in contact with employees, as the employers are often located elsewhere, most of the time in the sending country. The inspectors found that the new tools were useful. At the same time, some of them thought that there were too many questions and weighed that a shorter list would lower the barrier for inspectors to carry out similar inspections. Several of the informants emphasised that the questionnaire had been helpful to evaluate whether a posting situation was genuine or not.

Whether the inspectors uncovered any violations during the testing period, varied and is characterised by great uncertainty. The processes that followed cases of suspected false posting are also unclear. Several informants mentioned that when they discover something is not in order and suspected false posting, they forward the case to another authority, such as the police or the border guards. It was also noted that the police are often not very interested or do not have sufficient knowledge to follow up such cases.

Most of the inspectors described that it took longer to carry out these forms of inspections than their regular inspections, both because they had to ask additional questions,

and because they had to adjust to new issues. Several inspectors had spent some time gathering additional information after their on-site inspections. For example, contact with the sending company after the inspection to ask about their economic activity in the sending country. It often takes time to get an answer.

The questions were described as relevant for situations where the inspectors suspect something is wrong. On the other hand, the questionnaire is time-consuming, and the value might be reduced due to language barriers.

The testing of new tools had raised the awareness of posting in general among some inspectors. It has also been noted that the European Labour Authority (ELA) wants each country to have a team that is particularly familiar with posting, and it was emphasised that if the inspectorate had an expert team, greater attention could be paid to the topic. It was also weighed that the testing phase had helped some inspectors widen their horizons and granted them an opportunity to become more familiar with the IMI system.

Some inspectors intended to implement some of the questions into the routine to get a better picture of certain situations. The Latvian labour inspectorate is planning a posting campaign, where the questionnaire will continue to be used. One of the inspectors informed us that they have already adapted some of the questions to their inspections. At the same time, some of the questions were considered unnecessary, for instance where the workers are going after their current assignment.

One important question that was raised during our interviews when discussing the testing of new tools was in continuation of who's responsibility it is to react when a false posting is discovered: What difference does it make for the labour inspectorates, as long as the workers are able to document receiving the wages they are entitled to, and have legal working hours? Several inspectors explained that they are most concerned about working conditions, labour related crime and unregistered workers in their own country, and not necessarily whether the workers are posted or if the posting company has a real business activity in the sending country.

The last chapter in this report consists of some policy recommendations on the following topics:

- More responsibility for the assignors,
- better notifications- and registration system,
- access and storing of documents,
- better use of IMI and more cross border cooperation,
- more efficient sanctions
- improve enforcement of Third country national (TNC) posting, and
- new tools to disclose fake posting.



# 1 Introduction

Free movement of services in the single market includes sending workers to provide services in another Member State on a temporary basis, also called posted work. Posting-related issues are among the most highly politicized questions in recent European integration. It has come to symbolize the tension between East and West, between free trade and social protection, and between employers and workers (Arnholtz & Lillie, 2020).

The EU has engaged in policy actions related to the protection of the working conditions of temporary cross-border workers for many years (European Commission, 2024). The regulation on posted work aims to balance the following two principles: 1) As unrestricted playing field as possible for cross-border service provisions, 2) protection of the rights of posted workers to prevent unfair treatment.<sup>2</sup> Free movement of services is regulated in articles 54 and 56 to 62 in the Treaty of the Functioning of the European Union (TFEU). The situation for posted workers is further regulated in the Posting of Workers Directive from 1996, revised in 2018 (EU 2018/957). Moreover, the Enforcement Directive (2014/67) was adopted, among other things, to ensure that rules on posting apply uniformly across national borders and provides different tools to promote its purpose. Additionally, the European Labour Authority (ELA) is established to coordinate the various national enforcement systems and actors.

The key challenge in ensuring equal protection for temporary cross-border workers lies in the limited enforcement of existing legislation and the identification of non-compliant employers (Ecorys et al., 2023). Posted workers are facing a multitude of problems, such as labour right violations and difficult access to social insurance systems. Contacts and information channels between authorities across national borders, like the use of the Internal Market Information System (IMI), are therefore especially important between countries that are mainly sending and countries mainly receiving posted workers. National authorities have neither the geographical scope nor the substantive authority to regulate and enforce service-based free movement effectively in an integrated market.

Differences in implementation in national legal frameworks, their application and enforcement impact the extent to which rights and working conditions are guaranteed to posted workers in practice (European Commission, 2024). Moreover, the division of control and enforcement responsibilities and competences differ from country to country. Thus, different outcomes can result from the protection of workers, depending on how labour inspectorates and other authorities engage with this topic. The trade unions can also play an important role when it comes to protection of workers, especially in the Nordic countries.

This study includes experiences from the Baltic and Nordic states (except Sweden) and aims to share practices on control and enforcement of the regulations on posted work.

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<sup>2</sup> <https://www.europarl.europa.eu/factsheets/en/sheet/37/posting-of-workers>

These countries represent both sending and receiving countries when it comes to posted workers. One important aim is to identify factors that promote or inhibit common understandings and goals between national authorities and also across national borders. National competences are dispersed over several actors, complicating the development of comprehensive enforcement approaches (Cremers, 2020). Transnational cooperation is complicated by a whole range of factors like different regulations, bureaucratic processes, division of labour, lack of trust, language problems and so forth. Facilitating experience sharing and policy-learning can contribute to a basis for further similar collaboration in other regions inside the single market. The starting point for this project was conclusions and recommendations from previous projects in the Nordic-Baltic region (Nordic-Baltic Undeclared Work Project, 2021). It was emphasised that good practice cannot always be adopted from one country to another, but elements, ideas and experiences can be of help and inspiration.

However, it is also important to explore new ways to better the information exchange and division of labour. In this connection, we have tested out new tools for the inspectors in the participating countries that aim to identify whether there is a genuine posting situation or not. Posting of third country nationals (TCNs) (refers to countries outside EU/EEA), is an increasingly prevalent phenomenon, and these workers are seen as extra vulnerable (EU Commission, 2024).

The findings from the first part of this project (Alsos et al., 2023), indicate that one of the greatest challenges for the authorities in the receiving countries lies in determining whether a posting situation is genuine. This could be difficult for posted EU citizens, but even more for third-country nationals, as both the legal rule and the practical situation can be hard to grasp (ELA, 2023).

Construction is the main industry for posting in the participating countries, but the inspectorates also have experiences from other industries, like transport and shipyards.

This report has the following main topics:

- ▶ The scope and regulations on posted work, including posting of third country nationals (people from outside the EU/EEA) into the Nordic and Baltic states.
- ▶ Mapping of the transposition of the Enforcement Directive (2014/67) in the Nordic and Baltic states.
- ▶ Enforcement of posted work at the national and transnational level by labour inspectorates and other public authorities. This includes experiences with cooperation between different authorities, such as labour inspectorates, police, and tax-authorities, and experiences with cooperation across national borders.
- ▶ Enforcement related to posting of third country nationals (TCNs) in the Nordic and Baltic states.
- ▶ How to improve enforcement. Possible new tools for the national authorities during inspections to reveal fake posting.

## 2 Background

Posted work, where employees are sent by their employer temporarily to another country to perform work, is still a challenging field for regulators and enforcers in Europe. The topic has attracted continuous attention, especially since the EU enlargements in 2004 and 2007. Numerous of regulations have been introduced both on EU level and nationally to protect the situation of posted workers, but at the same time ensure that businesses and workers can move freely within the single market. Still, several problematic aspects prevails as relates to the protection of workers (Andriescu et al., 2024). On top of the posting of EU citizens, posting of third country nationals is increasing rapidly. These workers are even more vulnerable to violations of working rights, underpayment, and precarious conditions than EU posted workers (ibid).

The two main pieces of regulation of posted work is the posting of workers directive (PWD, Directive 96/71/EC, amended by Directive 2018/957/EU), and the Enforcement Directive (Directive 2014/67/EU. The PWD sets out which regulations the posted worker should be covered by, whether it is the regulations in the sending or the receiving country. The Enforcement Directive introduces administrative requirements and control measures, as well as aim to enhance cross-border cooperation between authorities. In addition to these EU instruments, several Member States have introduced national regulations both to transpose the EU acquis into national law, but also to pursue national considerations relating to posting.

Despite several regulative initiatives, being posted is still related to a risk of being in a precarious situation. In an EU study in this field several key factors leading to challenges in this field, are pointed out. These include:

- A highly complex set of regulations at national level and limited opportunities for employers to receive clear guidance about which rules apply to their specific situation in a cross-border context.
- The limited control and enforcement of existing regulations, which enable fraudulent behaviour and allow for such practices to go undetected or unsanctioned.
- The nature of the work itself, which in some cases is less visible than in others, and hence renders workers more vulnerable to rights violations. For example, live-in care and work on isolated farms constrain opportunities for labour inspectorates to control the application of existing legislation.
- Insufficient information exchange and cooperation between authorities to ensure the enforcement of rules in a cross-border perspective.
- The prevalence of undeclared work (EU Commission, 2024).

There exist no data that for the total number of workers being posted across the EU, but by using the number of issued PD A1 certificate, indicating that an employee is covered by the social security system in the sending country, estimations on the number of posting for some countries have been made. De Wispelaere et al. (2023) find that in

2022 3 million certificates were issued to about 1.8 million people<sup>3</sup>, and that the number has seen a linear increase over the last 15 years. Between 2012 and 2022 the number of issued certificates have tripled (p. 9). While the increase can be explained by the growing importance of cross-border services, other explanations are also provided to this increase, e.g. better information on the need for applying for a certificate to the authorities of the sending country and better data on the issuing of such certificates.<sup>4</sup>

In 2022, Lithuania was the country issuing the most certificates of the countries covered by this report, with more than 100,000 certificates. The rest, except Norway and Iceland, issued between 10,000 and 50,000 certificates, while Norway and Iceland had 5,800 and 200 respectively (ibid p. 19 and 21).<sup>5</sup> While the number of issued certificates say something about the numbers of postings from a country, receiving certificates indicate how many postings a country receives. Both Denmark and Norway received above 40,000 in 2022, Estonia 60,000, Finland 31,000, Iceland 18,000, Lithuania 13,000 and Latvia 3,200. Based on this it is possible to calculate whether states are a net exporter of posted workers. Of the countries included in this study Lithuania is sending more than they receive, while Latvia is close to balancing sending and receiving. The others are net receiving countries with Estonia on top receiving close to 55,000 more than they send (ibid p. 29). In general, most 6 out of 10 posting takes place within NACE B to F (mining, manufacturing, electricity etc., water supply etc. and construction), with construction counting for half of these.

As mentioned, not only EU citizens are posted across Europe. An increasing number of third country nationals (TCNs) are sent from one Member State to another to work, and these are counting for an increasing share of the workers posted in countries like Slovenia and Poland (ELA, 2023; De Wispelaere et al., 2022). These workers are often in a more vulnerable position than posted EU citizens. This is related to the fact that their right to stay and work in a Member State often will be related to the employment contract they have with their employer. If this contract is terminated, the person will also have to leave the country. This can make it harder for these workers to raise their voice about wrongdoings. Further, language barriers and lack of knowledge of their rights could be even more challenging for TCNs.

Posting of workers have proven challenging for labour inspectorates and other authorities that are responsible for enforcing regulations. Since the beginning of the 2000s several issues have been raised both legal unclarity and practical obstacles. Challenges are related to wage gaps and divergence in labour costs, actors exploiting loopholes in the regulations, lack of clarity and poor cooperation between authorities (EU Parliament, 2023). To improve enforcement and cooperation national authorities have introduced a range of regulations improving the monitoring of posting of work. The Enforcement

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<sup>3</sup> Persons who are employed by an employer which normally carry out its activities in a Member State and who are posted by that employer to another Member State to perform work on its behalf, and persons who normally pursue an activity as a self-employed person in a Member State who go to pursue a similar activity in another Member State

<sup>4</sup> There are several limitations to this calculation, see Wispelaere et al. 2023 p. 48 fl. for a detailed methodological discussion.

<sup>5</sup> Note that certificates are issued not only to those covered by the posting of workers directive, but also others, e.g. self-employed.

Directive introduced a European level regulation in this field. While the directive points to administrative systems that could be used by the authorities, it also put limitations on how far Member States can go in order to monitor posting. For national authorities it is not always clear what they can do and not, thus limiting the kind of measures that are actually introduced (Alsos et al., 2023).

As part of the Social Fairness Package in 2018, proposed by the European Commission, European Labour Authority (ELA) was established in 2019. The aim is, among other things, to support Member States' cooperation in their effort to enforce union law related to labour mobility across borders. ELA provides different kinds of support and legal expertise, translation, and interpretation services to Member States carrying out cross-border or joint inspections. As EEA States, Norway and Iceland solely participate as observers in ELA's Management Board (ELA, n.d.). On that note, ELA organizes the Forum on the Posting of Workers, bringing together national authorities from the Member States and social partners. The aim is to identify the challenges and instruments for action in the field of posting of workers. Further, in 2023 ELA launched the 'Posting 360 Programme', which is a framework for the cooperation between relevant stakeholders to improve the exchange of information, increase knowledge, and enhance administrative cooperation on EU and national rules on the posting of workers (ELA, n.d.).

## 3 Data and Methods

As described in the introduction, the project seeks to improve the enforcement of posted work nationally and transnationally in the Baltic and Nordic countries. By bringing together representatives from labour inspectorates in Norway, Denmark, Finland, Iceland, Estonia, Latvia, and Lithuania, our aim has been to survey existing tools and experiences, to identify best practices and obstacles, and to test new strategies and tools used for inspections on posting. Further, we have intended to analyse and suggest improvements for both national approaches and transnational cooperation on the enforcement of posting, and to improve enforcement practices related to third country posting.

The project period is divided in stages/work-packages with different aims. The first stage regarded a mapping out of legislations and national labour inspectorates' strategies and tools for the enforcement of posting. The second stage was concerned with third country posting, while the third and final stage was concerned with labour inspectorates testing new strategies and tools for improved enforcement, and the evaluation of their experiences.

This report makes the project's final report. It is based on previous working papers; "Tools to support the monitoring of posted workers in the Baltic and Nordic countries" (Alsos, 2023), and "Labour Inspections' strategies and tools used in enforcement of posting" (Alsos et al., 2023), presenting the results and analysis from the project's first two stages. In this final report, we gather the threads from stages one and two, and present findings from the project's third and final stage, concerning labour inspectorates' experiences with testing new strategies and tools. In the following sections, we describe the methods we have employed to execute the project's different stages.

### 3.1 Literature review

Among the research methods used for the project's first two stages, was a literature review. As the literature review was conducted at the outset of the project, it provided us with an overview of the field of posted work, including the roles of national supervisory authorities in general, and labour inspectorates in particular on the enforcement of regulations on posted work.

Relevant literature, including grey reports, collected through Google Scholar, Solidar, the European Labour Authority (ELA), the websites of labour inspectorates in the Nordics and the Baltics, among other relevant sources to the topic were used. In addition to providing an overview of the field of posting, an objective of the literature review was to identify areas of improvement and initiatives that have been effective for enforcement. To achieve this, we extended the literature review to include examples from labour inspectorates other than the ones participating in the project.

### 3.2 Interviews

Qualitative interviews were used for all three stages of the project. Throughout the spring and summer of 2023, we conducted 35 semi-structured interviews with 35

informants in Norway, Denmark, Finland, Iceland, Estonia, Latvia, and Lithuania. Among the interviewees were labour inspectors from all the participating countries, as well as representatives from other authorities and social partners in the Nordics. Most of the interviews were conducted through physical meetings in the respective countries, while the rest were conducted through Microsoft Teams.

For the interviews, we used semi-structured interview guides, allowing for the opportunity to ask follow-up questions, while at the same time maintaining a certain degree of structure. The interview guides were adjusted to each informant and their role, and included questions related to how inspections are planned and carried out, cooperation with other authorities and social partners at the national level, cross-border cooperation, and experiences with the Internal Market Information System (IMI), third country posting, and suggestions for improving the inspectors' work.

The data from the interviews was analysed and compared, and the findings were discussed in a workshop with representatives from the labour inspectorates of all the participating countries. Chapter 3.4 provides a closer description of the interviews conducted in the project's third stage.

### **3.3 Workshops and webinars**

Three workshops were organised with the project participants throughout the project period: a kick off meeting in March 2023, a digital workshop in June 2023, and a mid-term workshop in September 2023. The first and last workshops were held at the premises of Fafo in Oslo, Norway. The workshops were important to secure that all partners were included in the detailed planning of the project, and to ensure that the necessary progress had been achieved.

During the kick off meeting, all project partners were gathered to obtain a common understanding of the project activities and the project's time schedule. Here, the background for the project was presented, both by the project participants who had been involved in the previous Nordic-Baltic collaboration on undeclared work, and by Fafo. The representatives from the Nordic and Baltic labour inspectorates shared their experiences concerning transnational cooperation among labour inspectorates, and Fafo asked the participants for input on existing literature relevant to posting, as well as national strategies and systems for registration and identification of posted work. The parties also discussed who Fafo should interview in the participating countries.

During the online workshop, Fafo asked for feedback on the draft of the first working paper concerning the transposition of the Enforcement Directive, and preliminary findings from the interviews on inspection strategies and tools and transnational cooperation were presented. The parties also started discussing the upcoming testing phase.

The midterm workshop was important to facilitate the testing period. Fafo, based on good practices identified in the project's first stages, presented suggestions for strategies, approaches, and tools to be tested in the participating countries in accordance with the countries' competences and legislations, and the project participants decided on adjustments to be made in national inspections and transnational approaches.

Throughout the project period, Fafo has also arranged two webinars. The first webinar was arranged in April 2024, and was concerned with third country posting. During the webinar, findings from the research project were presented, and the Norwegian Labour Inspection Authority as well as the European Labour Authority (ELA) shared their insights on the matter. The second webinar was arranged in June 2024 and was concerned with how to improve cross-border inspections on posted work. Here, findings from the research project were presented, together with the insights and experiences of representatives from the Norwegian and Lithuanian labour inspectorates, as these inspectorates are involved in a collaborative cross-border project addressing work-related crime.

### **3.4 Testing of new strategies and tools**

Through the testing phase, the labour inspectorates of the participating countries were to test new tools in inspections to improve the enforcement of regulations concerning the posting of workers. Based on good practices identified in the first stages of the project, inspectors in the participating countries implemented adjusted strategies, approaches, and tools in their work. During the evaluation of the testing phase, we aimed to collect the inspectors' experiences.

Fafo provided the participants with questionnaires for the inspectorates to test out. The questionnaires were drawn on experiences and feedback from the project group, as well as the interviews conducted in the first stages of the project. The representatives from the labour inspectorates were responsible for implementing the suggested adjustments nationally.

One main aim for the testing period was finding out whether posting situations were genuine or not. This aim was chosen both because it is relevant to most of the project participants, and because it can be demanding to figure out. This predicament is both linked to whether a company is established in the sending state, and whether the workers actually are posted.

For the testing period, the inspectors were to look up information about posted companies in their national business registers and the European Commission's business register. This included companies' respective industry, number of employees, owner, year of establishment, and operating income and result. If the inspectors were unable to find the information through the registers, they were to use IMI. The inspectors could also ask the undertakings questions and for specific documentation by e-mail, phone, or on-site.

After gathering information, the inspectors were to carry out on-site inspections. During these, the inspectors were to use the questionnaires provided by Fafo in their interviews with workers, even if the information was already available through A1 and/or through their work contracts. The list of questions is presented in chapter 6.2, where we report on the experiences from the inspections.

As of documentation, the inspectors were to ask for the workers' ID, and occupational health and safety cards where this is applicable. After the inspections, the inspectors were to reflect upon whether they got the information they needed, if the undertaking or



the workers were able to answer all questions, if the questions contributed to bring about information they usually would not have obtained through regular inspections, and whether the information made it possible to conclude on the posting situation being genuine or false.

To evaluate the testing period, we conducted 17 semi-structured interviews with the inspectors (totally 21 persons were interviewed) who had tested out the questionnaires through Microsoft Teams, following the same interview guide for all interviews. The inspectors were asked about why they were selected to test the questionnaire, their selection of industries and companies and their work in advance of the inspections, about the inspections and the questions that were asked, and about the work they carried out after the inspections. The data from these interviews was then compared and analysed.

## 4 The Enforcement directive – transposition in the Baltic and Nordic states

In order to strengthen enforcement, the Enforcement directive (2014/67/EU) was adopted in 2014. The Directive was to be transposed into national law by the Member States by 18 June 2016. The aim of the directive is to ensure that rules on posting apply uniformly across national borders. To do so, the directive provides different tools. It provides a more detailed definition of posting and defines the Member States' responsibilities to verify compliance with the PWD. Further, it aims to achieve better cooperation between national authorities, by laying down an obligation to respond to requests for assistance and setting time limits for responses to information requests across borders. Finally, the directive enables administrative penalties and fines imposed on service providers by one Member State to be enforced by and recovered in another Member State.

In Alsos (2023) we made an overview of the transposition of this directive into the countries covered by this project, e.g. Denmark, Estonia, Finland, Iceland, Latvia, Lithuania and Norway. The overview was made based on English translations of national regulations implementing the directive into national law. In the following we will refer the main outtakes from this mapping.

The Enforcement Directive covers the following topics:

- defines the administrative requirements and control measures that Member States may impose to monitor compliance with the rules on the posting of workers
- defends the rights of posted workers and protects them from retaliation (unfavourable treatment by their employer in case they take legal or administrative action against the employer if their rights are not respected)
- ensures that the rights of posted workers in subcontracting situations are protected
- ensures the effective application and collection of administrative penalties and fines across EU Member States
- obliges Member States to put in place effective, proportionate, and dissuasive penalties

The directive is transposed into national law either in statutes dedicated to posting (DK, EE, FI IS), or as a part of the more general labour code (LV, LI, NO), see table 4.1 for an overview of the main pieces of national regulations.

**Table 4.1. Transposition in the different countries and other regulations of importance**

Country	Main national legislation
Denmark	Act on Posting of Workers etc., i.e. Consolidation Act No.1144 of 13 December 2021 and subsequent amendments
Estonia	Working Conditions of Employees Posted to Estonia Act, passed on 17.03.2004
Finland	Act on Posting Workers (447/2016, amendments up to 62/2022 included)
Iceland	Act on Posted Workers and the Obligations of Foreign Service-Providers] 1) No. 45/2007
Latvia	Labour Code of 2001, chapter 3
Lithuania	Labour Code of 2016 art 108 and 109
Norway	Working Environment Act of 2005, section 1-7 and administrative regulation 16.12.2005 no. 1566

The Enforcement directive defines the administrative requirements and control measures that Member States may impose to monitor compliance with the rules on the posting of workers. However, what requirements and measures that are introduced nationally, differs. In the Enforcement Directive Article 9, Member States could require a simple declaration from the company posting workers to this country. Such declarations must be made in all the seven countries covered by this project, but what it includes and whether it is useful for the labour inspectorates varies. For some countries it gives the inspectorates a tool to target their inspections, as they know where the posted workers can be found. In others it is of little practical use to the inspectorates, and thereby failing to support enforcement. This is related to how the registers are set up, what information they contain and who can access them.

All countries have either prior to the implementation of the directive or as a part of it established a register to which the posting company must notify the receiving country of the posting. In Norway, a duty to notify the tax authorities already exists, and the government did not see any need for a new register. This might explain why the Norwegian register seems to be the least useful for the authorities and others that seek information about posting. In all countries except for Norway, posting register can be accessed by the public, although some of the information may be undisclosed.

What kind of information that is asked as part of the notification does also vary between the countries. It seems most common to follow the list of simple declarations given in article 9.1 (a). Some countries also require additional information, including information about the assignor, and some copies of documents, for instance concerning work permits, working conditions, the service contract etc. To show the variety, two examples are given below.

## Iceland

This information should include the following:

- for the undertaking – name, address, and e-mail address
- for the representative – name, address, and e-mail address
- proof that the undertaking is established in its home state, in the occupation which covers the services it provides in Iceland, and that it operates lawfully there; this information could include documents from the tax authorities or comparable authorities in its home state, including its VAT number, operating licence, and volume of turnover in its home state
- for the assignor – name, VAT number or other identification
- for workers – names, dates of birth, addresses in their home country, nationality, whether covered by social security, dwelling place, intended working time, occupational qualification (if appropriate)
- for third-country nationals – the validity of work permits
- the type and duration of the service
- a copy of service contract
- a copy of employment contracts
- any other information that the Directorate of Labour may request for the purpose of monitoring (section 12), to establish that the undertaking demonstrably provides a service under the EEA agreement etc. and that the workers are employees of the undertaking

## Lithuania

- the name of employer
- the name of posted worker
- the assignor
- the posting period
- the place of posting
- the working conditions – limited to the list of conditions in the posting directive, transposed by Labour Code article 108 (2)

While most countries require the notification to be given at least the day before or at the day the posting starts, it varies whether this duty is enforced.<sup>6</sup> In some countries the labour inspectorate check this as part of the inspection and can issue fines if the duty is not met. In some countries the assignor is also forming a part of the notification. For instance, in Finland, the assignor has a duty to check that notification is done, while in Iceland the posting company should inform the assignor of the notification.

As we will return to later in this report, labour inspectorates can find it hard to make out whether a worker is actually posted or not. However, it varies what information that is requested as part of the notification procedures. How detailed these are can be

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<sup>6</sup> Norway is an exemption to this as notification can be made 14 days after the posting has started.

important when assessing whether or not a worker is posted, and whether the sending company is established in another country. For instance, Iceland requires proof that the undertaking is established in the home state, in which covers the services it provides in Iceland, and that it operates lawfully there. The Norwegian notification, however, is mainly related to tax issues, and does not require any detailed information, but mainly the name and business number of the posting firm. Lack of information can make national authorities less aware of what conditions that are to be met and complicate enforcement.

The directive also allows for Member States to demand that certain documentation are available in the receiving country, either at the place where the work is undertaken or by the representative of the company. This comes in addition to documents that are submitted as part of the notification. This is required by all countries in this study except Denmark. What kind of documentation that is required, and how long it should be provided after the posting ends, varies. Employment contracts, working-time schedules, payslips, and proof of the wages having been paid are required in one or more countries, and some countries also require A1 certificates and service contracts to be stored (see Alsos 2023 for a more detailed overview). The national regulations do also lay down requirements regarding the translation of these documents.

Variation in the transposition can also be seen in the requirements for the posting companies to have a representative or a contact person present in the receiving country. While all countries require such a person to be appointed, the demand regarding their responsibilities differ. In some countries, the representative is empowered to receive notifications of official decisions or summons.

Finally, most countries have incorporated regulations concerning cross-border information, cooperation, and collection of fees etc. into their legislation. This typically refers to the use of the IMI system, and the duty to give out information to authorities in other countries. To facilitate the exchange of information outside the IMI, some countries state that this can be done as part of bilateral agreements. Regulations also stipulates the time limits within which the authorities must respond to these requests, and these limits follow the Enforcement directive. National regulations, e.g. in Finland, also lay down a duty for national authorities to inform other countries if they discover that a posting company does not comply with regulations. The Lithuanian regulations are the only one allowing inspectors from other EU/EFTA states to participate in inspections conducted by the Lithuanian Labour Inspectorate.<sup>7</sup>

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<sup>7</sup> See Law on State Labour Inspectorate

## 5 Inspection of posted workers – how to improve enforcement

Effective enforcement of regulations is dependent on several different factors including national tools, competences of labour authorities, strategies, and resources. In this chapter, we will give an overview of tools used by national labour inspectorates, what their competences and strategies are, and how these elements contribute to effective enforcement.

One part of an enforcement strategy is the cooperation between the labour inspectorates and other authorities, which differs in scope and depth in the participating countries. It varies from case-to-case cooperation to joint centres where several authorities are gathered under the same roof. In the Nordic countries, the social partners will, to variable degrees, also play a role when it comes to monitoring and reporting on posted work.

Moreover, the labour inspectorates have experiences with transnational cooperation. Cross-border cooperation is seen as crucial for combatting undeclared work and other forms of work-related crime connected to posting of work.

### 5.1 National tools, competences, strategies, and sanctions

While labour inspectorates are the main public actor when it comes to enforcing labour rights in all the Baltic and Nordic countries, their structure and functions differ between countries, and so does their position in the legal system. Therefore, their focus during inspections of posting will vary. Hence, this is also the case for their attention during inspections with posted workers.

#### Competences of the labour inspectorates

National systems can be divided into single, dual, or multifunctional inspectorates (Walters, 2017). In the single system, the inspectorates are responsible only for Occupational Safety and Health (OSH). In the dual system, the inspectorates cover a wide range of matters including working conditions which includes employment contracts and wages. In the most multifunctional system, industrial relations, social security, and employment-related matters are all covered to some degree. This is for instance the case in France and Spain (*ibid.*).

Of the countries covered by this study, Denmark is the only one with a single system. The dual system is found in Estonia, Latvia, Lithuania, Finland, and Norway. The inspectorate in Iceland is somewhere in between these models, as another authority is responsible for occupational safety and health.

Social partners also play a role in enforcement. In the Nordic countries, many trade unions are very active in checking wages and conditions at the workplaces. In Denmark, checking wages is solely the responsibility of trade unions, as the labour inspectorate

does not have any competence in this area. In Norway, the trade unions do not separate between posted workers and labour immigrants.

Table 5.1. provides an overview of the competence of the national labour inspectorates in the participating countries. It should be noted that the table is not exhaustive, as the agencies may have other competences not listed here, like control of PD A1-forms, health and safety cards, proof of accident insurance and sufficient health care while posted.

**Table 5.1. Competences for labour inspectorates in Nordic-Baltic countries.**

	DK	ES	FI	ICE	LA	LT	NO
Occupational health and safety (OSH)*	X	X	(X)		(X)	(X)	(X)
Request ID-documents (voluntarily to answer)	X	X	X	X		X	X
Wages**		X	X	X	X	X	(X)
Working Hours***	(X)	X	X	X	X	X	X
Employment contracts		X	X	X	X	X	X
Accommodation****	(X)				(X)	(X)	(X)

X=competence, (X)=partly competence. This is explained below.

\*Iceland has a separate authority that is responsible for occupational health and safety (OSH). In Norway, there is a special unit in the Labour Inspectorate that checks OSH and do normally inspect foreign labour. It is the same division between OSH and inspection of foreign labour in Finland, Latvia, and Lithuania.

\*\*In Denmark, the question of not complying with Danish wage-standards is a matter for the trade unions. In Norway, the Labour Inspectorate has the authority to control wages in the parts of the labour market covered by extended collective agreements between industries (i.e., construction, shipyards, cleaning, transport, electrical work, agriculture and horticulture sectors, fish processing industry and hotels and restaurants). In Finland (mainly) and Iceland, wages for posted workers are laid down in extended collective agreements that can be controlled by the labour inspectorates. In most countries (Iceland expected), the inspectorates cannot impose payment of wages as this is deemed to be a matter of civil law. In Lithuania, a specific tripartite body in the inspectorate (labour disputes commission) has the right to impose payment of wages. The Norwegian Labour Inspectorate can claim backpay in areas covered by extended collective agreements.

\*\*\*In Denmark, resting hours are part of the inspections, but not working hours.

\*\*\*\*Accommodation could be something that the labour inspectorates check when the employer is responsible for housing. In Lithuania, this goes for third country nationals, seasonal work only.

## Notifying systems and registers

According to the Enforcement directive (article 9), member states may impose an obligation on posting undertakings to make a declaration to the responsible competent authority. As described in chapter 4, most of the participating countries have established an obligation for firms posting workers to their country, to notify the authorities of this posting. The information provided as part of these notifications, are gathered in a register that can be used by labour inspectorates to decide on firms to target. An overview of posted workers is valuable for the authorities in the host countries to evaluate and enforce regulations and to limit fraud, fake postings, and undeclared work (Ødegård & Alsos, 2018). According to our informants, the notifying systems/registers make it easier to choose companies for labour inspections. In combination with information on the

duration of posting, this data can also be used as a source for statistics. However, the form of information that is covered as part of these notifications, and how easily this information can be accessed for the labour inspectorates and social partners, differs between countries and affects how the registers are valued by inspectors.

All countries covered in this project, except from Norway, have established a register through which the posting employers must notify about the posting to the labour inspectorate in question, as part of the transposition of the Enforcement directive (see chapter 4 and Alsos, 2023). In Norway, the tax authority is the recipient of the notification, and not the labour inspectorate. Several years ago, the Norwegian labour inspectorate made a request to the Ministry of Labour and Social Affairs to implement a similar register of posted workers as the Danish RUT-register,<sup>8</sup> in connection to the implementation of the Enforcement directive (Ødegård & Alsos, 2018). The Ministry responded that this would be considered at a later stage. Currently, there are—in general—few problems for the Norwegian labour inspectors to retrieve information from the tax authorities. However, the data available is often quite old (up to one month), according to our informants, and the information is described as limited, e.g. information concerning individual workers.

In Lithuania, there are two registers. In the first register, the sending company is responsible to notify about posted workers sent to Lithuania. Further, the host company must then declare their posted workers separately and submit this information to the labour inspectorate in a second register. It is the latter register (with information from the host company) that is utilised the most among inspectors.

One of the most well-known registration systems on posting in the EU, is LIMOSA, used in Belgium. LIMOSA is described in the textbox below.

### **LIMOSA in Belgium**

LIMOSA is an online compulsory system of registration of service provisions in the country, introduced in 2007. All posted workers, including third-country nationals, as well as interns and self-employed persons who plan to perform economic activities in Belgium on a temporary basis must register in advance. The employer receives a 'LIMOSA-form' that the posted worker must keep with them for the full duration of the posting. The Belgian assignor must check that the workers carry this document. The system enables actors to map whether there are streams of circular mobility, for instance if the same posted worker registers repeatedly within a year (Mussche et al., 2018).

LIMOSA became well known because it was subject to a case in the Court of Justice of the European Union (CJEU) in 2012. The ruling was that LIMOSA violated the free movement of services, and that the information asked from foreign workers must be reduced. Despite the reduction of information required, the database still offers comprehensive information on posting (Mussche et al., 2018).

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<sup>8</sup> RUT is the register of Foreign Service Providers in Denmark.



## **Portable document A1 for social security – PD A1**

Having a PD A1 confirms that a worker remains subject to the social security system in his/her home-country while working abroad, which is the case for posted workers. Therefore, posted workers should be able to show such a document to be considered posted. The current legal framework states that the employer or the person concerned must inform the competent authorities about their planned transnational activities whenever possible and before these activities take place. In some countries, the control of PD A1 is very strict, while in other countries, there is no control at all. For instance, France and Austria have implemented sanctions in cases of failure to show a PD A1 as a condition for legal posting (De Wispelaere et al., 2022).

For authorities, PD A1 documents can provide a valuable source for surveillance of posting. However, the practice of checking PD A1 documents varies among the participating countries. In Finland, the main contractors are obliged to oversee that the posted workers are equipped with PD A1 documents. Host companies in Iceland are required to register the insurances the workers are covered by, but they are not obliged to submit PD A1 documents. Labour inspectors in Norway do not ask for PD A1 documents during their inspections, but the tax authority can check. Danish labour inspectors do not ask for PD A1 either, but the document can be uploaded in the RUT-register. In Lithuania, it is mandatory for labour inspectors to check PD A1 for third country nationals, which are dominant among posted workers in this country. The inspectorate uses these documents as indirect evidence of whether the posting is legitimate or not.

Other countries have developed tools to make it easier to check PD A1 documents, and to increase the trust towards these documents. For instance, to avoid missing, incomplete, or falsified PD A1s, the Polish social institution has developed an A1 validator that can be used by authorities in the host countries (see textbox below).

### **A1 Validator in Poland**

In April 2022, ZUS (the Polish social insurance institution) launched the 'A1 ZUS validator', a tool enabling online verification of the validity of the A1 certificate. The validator will be available to the employer, the foreign social security institution or any other entity wishing to verify the validity and authenticity of the certificate issued by ZUS. Verification is possible by entering the relevant data into the online tool.

In Finland and Norway, it is compulsory for some groups of workers to bring a personal card for identification at the workplaces. In Finland, these cards apply for construction and shipyards, and must include the name and a picture of the worker, as well as the firm's tax-number. For Norway, there are so-called "health and safety cards" for all workers in cleaning and construction. Such cards are, according to the inspectors, useful to identify the workers and firms, and contributes to efficiency during inspections. However, there have also been some trouble with misuse when workers borrow cards from each other or have cards from previous employers. From 2022, a QR code has also been required for all employees (including posted workers and self-employed persons) in the Lithuanian construction industry. This code is generated in the social

security system to verify data about the person and to identify that the person is insured by a specific insurer.

The EU has also been working on digitalising and coordinating this process further through Electronic Exchange of Social Security Information (EESSI) and a European Social Security Pass (ESSPASS). EESSI is an IT system that facilitates the cross-border exchange of information by social security institutions. ESSPASS is still in a pilot phase but aims to make it easier to exchange information between national authorities and workers, e.g. through real-time verification of social security coverage (European Commission, 2023).

### **Planning and undertaking inspections**

Article 10 of the Enforcement directive prescribes that inspections on posted workers shall primarily be based on a risk assessment by the competent authorities. The risk assessment may be related to sectors of activity, type of projects, e.g. large infrastructural projects, the existence of long chains of subcontractors, geographic proximity, past record of infringement, and the vulnerability of certain groups of workers.

Among the labour inspectorates in the participating countries, there is a huge variety of how inspections are planned and conducted. The variation relates, among other things, to the different competences and resources available. However, there are also some common features. Inspectorates have national and regional plans for their work, they make use of both unplanned and planned inspections all of which can be announced or unannounced. It is also common to plan for action weeks within some industries or topics, and also to give priority to some industries such as construction, transport and shipyards, and seasonal work like in agriculture.

The inspectorates are preoccupied with risk assessment, and this is underlined in most of our interviews. The more critical approach is how to be sure that the right objects are singled out, i.e., do the inspectorates succeed to target the firms that are the most in need for guidance and corrections? Among other things, high incidence of accidents at work, high numbers of migrants, and industries in which posting and/or undeclared work is known to be common, are all factors that constitute basis for inspection within the plans they have made. Inspectorates also act on tips and complaints from, for example, the public or trade unions, or reports in media, which are not possible to plan for. Due to several years of cooperation among national authorities and contact between the Baltic and Nordic countries, it has also become more usual to receive requests from other authorities and countries to conduct inspections within certain firms. This also includes requests via IMI (Internal Market Information System).

In Denmark, the inspectorate uses algorithms to decide where to conduct inspections. Among other things, the data analysis includes previous inspections with reactions and firms that are newly notified in RUT-register, the size of the firm, and industry. In Finland, all inspections are planned at the regional level, using posting notifications and information from inspectors as a foundation. The Icelandic labour inspectorate has a small staff and uses the notification system and reports from the trade unions as basis for inspections. The aim is to reach out to most of the posted firms, one way or another,

but mostly online. In Norway, the inspections are based on a mix of annual plans and investigation. This might also vary between the regions since it is not likely that 'one size fits all'.

The Baltic countries have mainly been sending countries, and thus posted workers have not been on the top of the agenda for these inspectorates. Nevertheless, posting of workers from third countries is on the increase (see chapter 5.4), and third country posting is considered a risk factor.

### **Identifying posting**

As posting is related to higher risk of non-compliance, the inspectors we interviewed were asked if they have specific strategies for targeting posted workers. In some countries, there are targeted inspections on posted work; Denmark is one example. The RUT-register is used as one basis for inspections, and the inspectors check that the workers at the workplaces are the same as notified in the register. The same goes for other countries having similar registers. Estonia does, however, not target posted workers, even if the information is available, but use other indicators to decide where to go. In Norway, the inspectorate targets foreign workers in general, not posted work specifically. This is partly explained by the lack of a notification system (register) administered by the inspectorate.

Posted workers are also identified during regular inspections, but not necessarily. For the inspectors' tasks, it does not necessarily matter whether the workers are posted or not. This could be the case for OSH inspections, but also for inspections of wages, as requirements could be the same for posted and non-posted workers. In such cases, where the migration status does not matter, the inspectors might not prioritise questions concerning posting over other tasks.

### **Desk- and physical inspections**

Inspections can be carried out from the office through e-mail, phone calls etc., physically by visiting workplaces, or as a combination of these two methods. According to our interviewees, it is considered efficient to start with a desk-inspection, asking for relevant documents and providing advice in writing, and then eventually visit the workplace. This is especially the case in posting cases, where the employer is located in another country.

However, it is emphasised that it is easier to get answers on follow-up questions if the meeting, often with a representative in the host country, is physical. Requests for documentation are often standardised, while meeting face-to-face makes it easier to ask questions outside the form. Additionally, the inspectors' qualitative impressions of the workplaces can be valuable for further investigations, and physical inspections are necessary to conduct interviews with the workers.

In the Baltic states and Finland, a combination of desk- and physical inspections is often used. As stated by an Estonian informant, the inspectors normally start out with document inspections, providing a basis for selecting sites for physical inspections. In Iceland, the staff in the inspectorate is, as mentioned, so small that most of the work must be done from the office. On the other end of the scale is Denmark, where the inspectors

solely carry out physical inspections. Danish inspectors are typically 'on the road' four days a week and have one day for administrative work. In Norway, most inspections are also carried out on-site.

### **Tools and resources**

Inspections of posting are considered complex and time-consuming for most parties. Thus, the tools and resources the inspectorates have at hand are significant. These resources can include the inspectors' skills, such as language proficiency, access to translators, questionnaires, registers and real-time information via digital tools.

Not all inspectors have access to real-time information, for example by the use of tablets during inspections. In Latvia and Norway, there is limited access to real time databases, while Finnish inspectors do not have access to tablets at all. This is by some inspectors considered a draw-back for the work they aim to carry out.

In cases of linguistic barriers, Danish inspectors can access translators via phone within minutes. Finnish inspectors can also access translators either physically or through the phone.

### **Sanctions**

According to the Enforcement directive, Member States should take appropriate measures in the event of failure to comply with the obligations in the directive, including administrative and judicial procedures, and should provide effective and proportionate penalties. Posted workers are protected by national regulations in the host countries under the principle of equal treatment, which includes remuneration, minimum paid annual leave, maximum work and rest periods, and health and safety at work (Directive (EU) 2018/957).

For years it has been clear that the national systems of warnings and fines are not well fit for posting situations. It takes time, also because the firms can dispute sanctions. The result is often that the firms have left the country before the sanction process is completed. These kinds of obstacles constituted the background for the opening for cross-border enforcement of administrative penalties and/or fines in the Enforcement directive. However, a common experience from the labour inspectorates covered by this project is that there are still complicated and lengthy difficulties with sanctioning across national borders.

In some countries (Denmark, Estonia and Lithuania), the firms (sending- or host-company) can be fined for not registering posting. The inspectorate in Iceland can-not sanction the host-company, only the sending company. In Denmark, this fine which is fixed for all firms—is given on the spot and has immediate effect. In Norway, there are no specific sanctions towards posting situations.

The general sanctions, covering all workers regardless for their status, are connected to breaches of OSH-regulations and other labour regulations. A regular proceeding can be that the inspectorate gives a warning (or several) before issuing a fine. The fines vary according to the seriousness of the breaches. Our informants do agree that the levels of the fines are generally too low, but this also depends on the size of the firm that

receives them. In most cases, it is also possible for the firm to complain or appeal after having received a fine, making it harder to correct misconducts before the posting assignment has come to an end.

To suspend work was considered an effective sanction among our informants. In cases of immediate danger, the inspectorates have the means to stop the work. There are also other examples, like in Iceland, where the work can be stopped until the authorities get the information that is required. Normally, it will take several rounds of reminders and/or warnings until the work is suspended.

When the inspectors suspect or reveal serious breaches, or when they are not able to get in contact with the firm for imposing fines, it may become relevant to report the matter to the police. In these situations, the inspectorates normally face obstacles, such as the police not having the resources or competence to follow up the case, or that relevant workers do not want to speak about or witness the breaches. For these reasons, it is often difficult to bring these cases to court.

## **5.2 Cooperation at national level**

Cooperation between authorities at national level differs in scope and depth and can range from formalised joint centres on the one hand, to case-by-base cooperation on the other. While formal agreements make the most common form of collaboration for long-term solutions, informal cooperation e.g. through personal contacts can be effective for solving single cases (Nordic Baltic Undeclared Work Project, 2021). Examples of the latter could be an inspector contacting the tax authority directly when suspecting tax fraud, or the police when discovering illegal work.

### **Exchange of information**

To achieve successful cooperation between authorities, it is decisive to dedicate resources and establish routines for information sharing. Our informants emphasise that effective collocation of information is a question of resources. The sharing of certain forms of information is also challenged by secrecy acts, and as the level of data protection among public authorities is generally high, retrieving information for specific cases can be complicated. Our informants express that they often meet barriers for information exchange with other authorities, and especially with the tax authorities. Even so, a number of the informants describe a substantial progress for information sharing in several countries during recent years.

The exchange of information between national authorities in Estonia is described as efficient. Estonian inspectors have access to the national employer register and can retrieve information from the tax authority and customs when needed. The sharing and combining of relevant information are also permitted by Icelandic law. In Norway, a relatively new regulation for information sharing aims to make it easier for the social and welfare administration (NAV) and the tax authorities to cooperate. However, information sharing between Norwegian authorities independent from the labour crime centres is hampered by practical hindrances, such as the lack of access to shared archives.

The Finnish labour market, which is divided in different regions, has a central computer system where all regions have access, allowing for the regions to exchange relevant information with each other. The Lithuanian labour inspectorate had also established a formal agreement for sharing data with other authorities yet faces issues with its computer systems. In Latvia, the labour inspectorate saw a need to establish new agreements for information sharing. The Danish labour inspectorate also informed that inspectors have the possibility for information sharing in practice.

### **Joint inspections**

Joint inspections between different authorities at the national level are becoming more widespread, and are often concerned with issues like undeclared work, working hours, employment contracts, legal residence, and wages. However, diverging legislations and competences entail that the nature of joint inspections differ between countries.

Since 2015, Norway has had labour crime centres. These are practical and investigation centres where the labour inspectorate, tax authorities, social and welfare administration and the police participate. In 2020, it was made clear that the police no longer had the legal authority to participate in joint inspections with the other authorities. Nonetheless, the police still have a duty to assist if necessary and can be called upon by other authorities. Norway has also established service centres for foreign workers (SUA), through which foreign workers, employers, and self-employed workers can receive information about Norwegian regulations, wage-levels and other working conditions, and help with necessary registrations and applications. SUA is a cooperation between the labour inspectorate, the tax authority, and the directorate of immigration (UDI).

Finland has a national website directed at posted workers, covering issues related to employment rights and social security issues (Ahlo, 2017). The extent to which the information reaches the workers, and their opportunity to use it is unclear, amongst other things due to weak bargaining positions in relation to their employers. In Denmark, a set number of days is reserved for joint inspections between the labour inspectorate, tax authorities, and the police annually. The inspections often revolve around labour related crime. A key challenge for these inspections is that the labour inspectorate and tax authorities often have higher budget allocations for these inspections than the police.

Iceland has a task force meeting monthly to discuss social dumping and labour related crime, and to plan joint inspections. It is composed by the Directorate of Labour, the Administration of Occupational Safety and Health, Iceland Revenue and Customs, and the police. According to our informants, going through with joint inspections in Iceland is challenged by the lack of top-level interest from relevant authorities and ministries. The Estonian labour inspectorate's cooperation with other authorities varies between regions. In the western region, the labour inspectorate, tax authorities, and border police meet weekly to exchange information and plan inspections. In the southern region, this form of cooperation is more case-oriented.

The Latvian labour inspectorate holds an official agreement on cooperation with the State Border Police, signed in 2022, aiming to conduct joint inspections through bottom-up cooperation. Lithuania has joint operational and risk analysis centres where

representatives from different authorities meet monthly to coordinate joint inspections, often for the transport and construction industries. Lithuania has also recently established a labour crime centre similar to the Norwegian centres (see textbox on page 34).

### **The role of social partners**

Social partners, and the cooperation between the partners and the national labour inspectorates, are important in some countries.<sup>9</sup> Union rights are based in systems of national industrial relations, while posting is set apart from national systems. Efforts to recruit posted workers therefore seldom result in sustained memberships, and unions are often more concerned with providing posted workers with information about wages and working conditions (Lillie et al., 2020).

Establishing solidarity among domestic and transnational workers has also proven to be difficult, due to the short-term nature of the transnational workers' stay, language barriers, cultural differences, economic disincentives, and a lack of common identity and objectives (Arnholtz & Refslund, 2019). Even so, trade unions are key national enforcement actors in the Nordics concerning wages and working conditions. It is also a general impression from our interviews that it is more difficult to engage the employers' organisations than the trade unions when it comes to posting.

According to our informant from the Danish trade union, the union aims to conclude collective agreements with firms that post workers, and sometimes uses picketing and sympathy strikes to get the agreements in place. Most information in RUT is public, and unions use it as a basis for controls. Nonetheless, as 2500 construction firms are notified in RUT annually, and collective agreements cover about 10 percent of the foreign firms, the union cannot fully secure wages and working conditions for posted workers in the construction industry. In Iceland, the trade unions had agreements with the employers on where they can conduct inspections and what they can ask about. Nonetheless, our union informant stated that the unions have not done a good enough job concerning posted workers, partly because union representatives lack knowledge about posting, and partly because it is difficult to get in contact with the posted workers. The same goes for Norway, where the unions don't target posted workers as such.

In Finland, trade unions have the legal right to use boycotts towards employers who do not respect Finnish collective agreements. For example, Finnish trade unions have boycotted Estonian and Polish companies entering the Finnish labour market (Ahlo, 2017). One of our informants underlined that a recent development is that Estonians have become more aware of their rights when posted in Finland and are not afraid to claim them. Instead, posted workers from Romania, or third country-nationals are more subject to low payment and bad working conditions. The Finnish trade union in construction also visited thousands of workplaces annually and undertake joint inspections with the employer organisation. In Norway, there have been established "tripartite industry programmes" between the labour inspectorate and relevant social partners in four industries: the automobile sector (repairs, car-cleaning etc.), cleaning, hotels/restaurants,

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<sup>9</sup> The information in this report is for the most part from the trade union side, mainly because the employers' organisations have been reluctant to take part in interviews. The exception is the Finnish employers' organisation in construction.

and transport. The programmes aim to jointly document and address commonly recognised challenges regarding working conditions and working environment in these industries.

In most of the participating countries, the labour inspectorates also received tips from trade unions concerning firms they suspect violate labour regulations. The tips were appreciated by inspectors, and often used to target inspections. Still, inspectors found it impossible to follow up all of them. Informal contact between inspectors and trade union representatives was also relatively widespread, especially in construction. Lithuanian inspectors informed us that they have had closer contact with the transport union.

There are generally low union densities in the Baltic states, but all the countries participating in this project have established formalised cooperation between ministries and/or the labour inspectorate and representatives from the social partners. Here, representatives typically met once annually to exchange information and discuss relevant topics.

### **5.3 Cooperation at transnational level**

The Enforcement directive aims to achieve better cooperation between national authorities (Alsos, 2023). Still, transnational cooperation is complicated, due to differences in national legislation, division of labour, bureaucratic processes, lack of data, lack of trust etc.

Most Member States have implemented some sort of cooperation mechanism with other countries on the enforcement of regulations concerning posted workers. How, with whom, and to what extent varies greatly. One obstacle for transnational cooperation on this matter, was that national authorities were not necessarily aware of the competences of authorities who oversee labour inspection issues in other countries (Ahlo, 2017).

#### **Formal and informal transnational cooperation**

Informal cooperation through networks and personal contacts, and formalised bilateral/multilateral agreements were therefore important measures for coordination at the transnational level.

Čaněk et al. (2018) argues that establishing personal relations across borders is decisive to form common objectives and trust, and that the combination of informal and formal cooperation may lead to greater outcomes. Inspectors from several of the labour inspectorates participating in the project, emphasise that transnational cooperation through bilateral agreements facilitated the supervision of companies and posted workers across borders. Inspectors also valued the opportunity such agreements provided to establish personal contacts in other countries, and to gain a new perspective on the ways in which labour inspectorates in other countries operate. Another premise for this type of cooperation to succeed, was national authorities' commitment in terms of resources and time needed to operationalise it.

Examples of formalized transnational cooperation are the bilateral agreement between Estonia and Finland, and the trilateral agreement between the Baltic states. In addition



to their bilateral agreement with Finland and the other Baltic states, Estonia has a cooperation agreement with Norway through which the two countries plan on carrying out joint inspections. Estonian inspectors report that their bilateral and trilateral agreements provide them with a network of contacts, making it easier to exchange information on posted work across borders.

Inspectors from the Danish labour inspectorate valued the network the Nordic Council of Ministers provides for the Nordic labour inspectorates to share information and for inspector exchanges. Danish inspectors also highlighted the collaboration between German and Danish police on labour related crime taking place on both sides of the border. The Norwegian labour inspectorate had also agreed upon numerous bilateral cooperation agreements with the labour inspectorates of other countries, including Romania, Poland, Lithuania, Latvia, Estonia, and Bulgaria. The Lithuanian and Norwegian labour inspectorates have also had comprehensive cooperation to operationalise the labour crime centre in Vilnius.

“The Hub” is an informal network of representatives from the Nordic and the Baltic labour inspectorates, originating from a project concerning undeclared work. Several of our informants underlined the Hub as an important arena for networking, and for the opportunity to compare practices.

The level at which transnational cooperation takes place, was described as very important by several of our informants. Some of our informants meant that participants in cross-border collaborations should present the same level of their respective authorities. One of our informants emphasised that cross-border cooperation should take place between inspectors, as they are the ones to conduct inspections and therefore also the ones in need of contacts in other Member States. Another informant stressed the need to concertise transnational cooperation, for instance by defining concrete cases for cooperation.

Informal, personal contacts in other Member States were described by our informants as a necessity, and a very important factor to solve cases rapidly. At the same time, it is noted that to make transnational cooperation last, it must be formalised through binding agreements. As stated by Čaněk et al. (2018), inspectors also imply that the combination of informal and formal cooperation is the most effective form. Generally, our informants described a need for common priorities, and cross-border cooperation is described as challenging when the participating parties have different interests. It was also mentioned that some Member States are more difficult to cooperate with than others. Language barriers, and the inspectorates’ use of different practices during inspections were also mentioned as hinders for effective cross-border cooperation.

### **Cross-border exchange of information and data**

Information exchanges on wages, taxpayer statuses, reported working hours, social security payments, results from previous inspections and the like, are required to build a case on posted work (Stefanov et al., 2020). Therefore, the lack of information concerning companies who post workers abroad and the workers they employ, complicates efforts to enforce regulations concerning posted work (Čaněk et al., 2018). Having to

meet both legal and data protection requirements, cross-border data exchange can be challenging, and barriers for the sharing of certain types of information is one of the main obstacles for a coordinated approach between Member States on enforcement (Stefanov et al., 2020; Workgroup Cooperation<sup>10</sup>, 2021).

The A1 portable social security document is the only European-wide data source on posting. However, it does not provide a sufficient basis of information for labour inspections, as labour enforcing bodies do not necessarily access them (Čaněk et al., 2018). Another way of exchanging information regarding posting, is through personal contacts by e-mail, phone calls, or meetings (Kall, 2018). For instance, the labour inspectorate from a sending country could have useful information for the inspectorate of a hosting country, such as the correct contact information of an employer. Today, cross-border information sharing in relation to posted work mainly takes place through ad hoc exchange of information about individual workers and companies, often through the Internal Market Information System (IMI) or personal contacts.

IMI is currently the only mechanism at EU level that provides inspection bodies of labour rights to share information about specific posting companies and posted worker cases across borders in a systematic way (Čaněk et al., 2018). Some inspectors described information exchange through IMI as too formal, while others emphasised that it made it much easier to reveal letterbox companies and has provided useful information about the owners of such companies. The use of IMI varied greatly between Member States. In some countries, several national authorities had access to the system, while in other countries, the responsibility for IMI requests could lay on a single person in the labour inspectorate. It is also our impression from the interviews that there are large variations of how much IMI was used by each labour inspectorate. The variation of practices and experiences concerning IMI among the participating inspectorates is discussed in further detail in chapter 6.

According to our informants, enquiries in IMI are typically concerned with whether a company posting workers to another state is operating in the sending state, or the enforcement of a penalty claim. Some inspectors report to receive answers to their enquiries within a reasonable time frame most of the time, while others report that the response time varies greatly depending on the Member State. The sending party can either send an urgent or regular enquiry<sup>11</sup>.

The reason for varied response time between Member States could be linked to the inspectorates' access to relevant databases, as other authorities might be responsible for these areas. Several inspectors were under the impression that some countries must carry out inspections to gather the information requested by another state through IMI,

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<sup>10</sup> Through a previous joint project among the labour inspectorates in the Nordics and Baltics, which is referred to as the "workgroup cooperation", inspectors learned about regulations, organization, priorities, methods for inspections, paperwork, and culture in the collaborating countries. The project was a collaboration between national authorities and social partners.

<sup>11</sup> The Enforcement directive (2014/67/EU) article 6 states that for urgent enquiries, it should take no longer than two working days to get an answer. For all other requests, it could take up to a maximum of 25 working days, unless the Member States have mutually agreed upon a shorter time limit.

making it very time consuming to receive answers from these states. Belated or missing IMI responses were described as a hinder to cooperation in practice, for instance if a labour inspector must find out whether a group of workers really are posted or not. The companies and workers in question are often very mobile and may have moved to a new location by the time the inspector receives an answer to his/her IMI request.

Some inspectors stressed the need to communicate outside of IMI as well, for instance through personal contacts. This was reasoned by the possibility to ask follow-up questions, as IMI requires the sending part to send a new request to add questions. Other inspectors were happy about the option in the IMI system to include additional questions and information in free text boxes. Some inspectors also described IMI as too bureaucratic, and therefore too time consuming.

### **Concerted and joint inspections**

Cross-border inspections can be useful to address challenges related to posted work (Stefanov et al., 2020). Concerted inspections are inspections carried out in two or more Member States at the same time regarding related cases, while joint inspections are carried out in one Member State with the participation of national authorities from another, or several states. Concerted inspections are less resource intense than joint inspections, as less coordination and minimal travel expenses are needed. At the same time, joint inspections have a surprise effect through the presence of foreign inspectors who often understand the language of the posted workers and can have important insights in the company's activities from the sending country.

Cross-border inspections are often hindered by incompatible legal frameworks within different Member States, or limited prospects for the sharing of data across borders (Stefanov et al., 2020). Thus, some countries' enforcement authorities have strategic approaches for going through with their inspections, such as France, Belgium, and the Netherlands. As cross-border inspections usually require more resources than national inspections, political and high-level support is often needed (ibid.).

Most Member States have a legal framework for cross-border joint inspections either stipulated in their national law, or in multilateral or bilateral agreements. In some cases, the regulatory frameworks for cross-border joint inspections take form in statutory provisions on the grounds of a bi/multilateral agreement (Welz et al., 2019). In other cases, a legislative basis offers the possibility of joint cross-border inspections of labour inspectorates or similar bodies, while there are also states where the basis of joint inspections is solely based in bilateral agreements. Certain states also have no legal basis for joint cross-border inspections.

In most countries, foreign inspectors solely carry an "observer status" while participating in cross-border inspections, hence primarily offering guidance and translation support, or gathering information (Stefanov et al., 2020). National legislations often leave the investigation powers unspecified or open to interpretation, while some countries have more rigid legislations, such as Denmark, which explicitly states that foreign inspectors may only act as observers. Lithuania, on the other hand, has implemented a

law<sup>12</sup> stating that foreign inspectors have the right to perform their competences while participating in cross-border joint inspections in Lithuania. The law states that on the basis of bilateral or multilateral agreements, inspectors and civil servants from other EU/EFTA Member States can participate in inspections carried out by the Lithuanian labour inspectorate within the territory of the Republic of Lithuania. In these cases, inspectors and civil servants from the participating countries have the same rights and obligations as Lithuanian inspectors.

The Estonian and Finnish labour inspectorates and tax authorities have cooperated on carrying out cross-border joint inspections. Our informants implied that both countries have benefited from this cooperation, for instance by learning that the other country's inspectorate asks different questions during inspections. Danish labour inspectors have also participated in cross-border joint inspections, e.g., through cooperation with Estonia and Germany. Danish inspectors emphasised that joint inspections and staff exchanges are useful to understand the ways in which other inspectorates are organised. However, they also noted that their need for additional cross-border inspections is limited due to the Danish labour inspectorate's competences. The inspectors were under the impression that such inspections are more effective for combating work-related crime at the transnational level, while the Danish inspectorate is solely concerned with OSH.

Lithuanian inspectors have carried out cross-border joint inspections with Latvia, Belgium and others, while Latvian labour inspectors have carried out joint inspections with Finnish, Swedish, Estonian, and Lithuanian inspectors. Some of our informants saw it as a disadvantage that foreign inspectors in most countries only can observe and ask questions during such inspections. Norwegian labour inspectors have carried out joint inspections in cooperation with Estonia, Lithuania, Romania, and Bulgaria. They also underlined that they are only observers and hold no authority when participating in most of these inspections. However, they expressed that the aim of such cooperation is to learn from one another and to see how inspections are carried out in other countries. For instance, Norwegian inspectors pointed to the effectiveness of the inspectors in Romania and Estonia when enforcing sanctions.

The Norwegian and Lithuanian labour inspectorates have collaborated on several initiatives throughout a project period lasting from 2019 to 2023 (Gramath et al., 2024). The collaboration has been concerned with promoting decent work, strengthening tripartite cooperation, and combating work-related crime, and was funded by the Social Dialogue – Decent Work programme<sup>13</sup> from the Norway grants, operated by Innovation Norway. The collaboration included six initiatives, and among them an interdepartmental bilateral cooperation. A project group was established with representatives from both countries,

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<sup>12</sup> LIETUVOS RESPUBLIKOS VALSTYBINĖS DARBO INSPEKCIJOS ĮSTATYMAS. 2003 m. spalio 14 d. Nr. IX-1768 Vilnius. PIRMASIS SKIRSNIS BENDROSIS NUOSTATOS.

<sup>13</sup> The Social Dialogue Decent Work Programme, finances projects contributing to stronger cooperation between social partners and public authorities at different levels, preferably collaborating with Norwegian partners (Innovation Norway, 2019). It is part of Norway Grants 2014-2021 financial mechanism aiming to reduce economic and social disparities in the EEA, and to strengthen bilateral relations within the area.

and cross-border joint inspections were conducted in both Norway and Lithuania. These inspections involved participants from cooperating authorities in addition to the labour inspectorates. One central result from the initiative was a pilot for a new labour crime centre in Vilnius, inspired by its Norwegian counterparts. The centre is initially funded for one year of operation. The labour inspectorate, tax authorities, and social services will have permanent employees at the pilot centre full time. The police, the state border guard service, and the financial crime investigation service have representatives that can be called upon for assistance when needed. Another central part of the interdepartmental bilateral cooperation was the establishment of a transport group consisting of representatives from the participating authorities in Norway and Lithuania. Both countries have great interest in cooperating in the transport sector, both because there are transport companies running business in both countries, and because many Lithuanian workers work in the Norwegian transport sector.

### **The European Labour Authority (ELA)**

In addition to cross-border joint inspections, several of the participating countries informed us that they have good experiences with inspector exchanges between Member States. Often, these exchanges are financed by ELA. ELA was established in 2019, as part of the Social Fairness Package in 2018, proposed by the European Commission. ELA aims, among other things, to support Member States' cooperation in their effort to enforce union law related to labour mobility across borders. ELA has also provided a platform for organising joint inspections. As EEA States, Norway and Iceland solely participate as observers in ELA's Management Board (ELA, n.d.).

Our informants from the Estonian labour inspectorate had good experiences with ELA. The inspectorate participated in most of the seminars, workshops, and trainings ELA coordinated. It was also emphasised that Estonian inspectors would not have had the opportunity to go on staff exchanges without ELA's financial support. Like Estonian inspectors, Latvian inspectors reported to have participated in most of ELA's events, for instance the EU labour mobility training on posted workers and road transport in 2023. It was also emphasised that the possibility to participate through Microsoft Teams made it easier to prioritise.

One of our informants from the Lithuanian labour inspectorate expressed that ELA worked very efficiently by initiating inspector exchanges and cross-border joint inspections, for which the Lithuanian labour inspectorate had used ELA's support. Like the Estonian and Lithuanian labour inspectorates, Lithuanian inspectors tried to use all opportunities provided by ELA.

Inspectors from the Danish labour inspectorate also emphasised ELA's contribution to staff exchange, as well as the Authority's overview and role as a common platform for posted work. However, as with cross-border joint inspections, Danish inspectors added that it is quite limited what ELA can do for their work, as the inspectorate's work is solely concerned with OSH and the notifications in RUT. Inspectors from the Norwegian labour inspectorate noted that it is important to be part of ELA's work and hoped that Norway's connection to the authority will be sorted out soon. Inspectors also noted that it is

important to maintain bilateral agreements as well, and to not only depend on ELA for transnational cooperation.

## 5.4 Posting of Third country nationals

Third-country national workers (TCNs), i.e. workers from outside the EU/EEA that are working in the EU/EEA, can be posted to other countries in the same way as EU/EEA citizens. These workers are covered by the same regulations as posted EU/EEA citizens, although some additional conditions apply. The number of TCNs posted within the EU has increased over the years and has outnumbered TCNs directly immigrated to the country they work in (Lens et al., 2021, cited in Andriescu et al., 2024).

Posted TCNs are often seen as more vulnerable than other posted workers, as their right to work will depend on them having the right to resident and work in the sending EU/EEA state. The right to work will often be related to an employment contract with a company, and if this contract is terminated the right to resident and work in the EU/EEA will lapse. Therefore, TCNs are more dependent on their employer than other posted workers and can therefore be more hesitant to speak up if their rights are infringed (Cut Krilic et al., 2020).

For the Labour Inspectorates, challenges when it comes to enforcement of TCN posting are, in many respects, the same as for posted EU/EEA Citizens. However, there are also some issues that make the job of the Labour Inspectorates more complex. In the following, we will summarise some of the challenges identified by the Labour Inspectorates in this respect, and also to point to best practices and possible changes when it comes to enforcement of TCN posting. This part is based on Alsos et al., 2023, Part 2).

### The right to post TCNs – legal framework

The Vander Elst case<sup>14</sup> confirmed that the right to post workers from one Member State to another also applied where the posted workers are TCNs. However, this right depends on the workers being lawfully and habitually employed in the Member State where their employer is established. The implication is that receiving states cannot require a work permit of the posted TCN if the person is lawfully and habitually employed in the sending country. The Vander Elst case does not provide further guidance to what is required to fulfil the conditions of 'lawfully and habitually employed'. The Court of Justice of the European Union (CJEU) has, however, concluded that the states cannot require the worker to hold an employment contract of indefinite duration or have at least one year of prior employment before being posted. Such conditions are disproportionate according to the CJEU.<sup>15</sup> Further, the court has said that 'habitually employed' means that the worker is 'carrying on their main activity' in the country where the employer is established.<sup>16</sup> The court has further indicated that an obligation for the service provider to give information showing that the TCN has a lawful residence, work permit

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<sup>14</sup> Raymond Vander Elst v Office des Migrations Internationales (C-43/93). Judgement from the Court of Justice of the European Union, August 1994.

<sup>15</sup> See ELA 2023, p. 17 with references to case law, i.e. C-445/03, C-244/04 and C-168/04.

<sup>16</sup> ELA, 2023, p. 18, C-445/03.

and social coverage, as well as carrying out the main activity in the sending state, is acceptable.<sup>17</sup>

For the receiving country, the Vander Elst ruling means that they cannot require a work permit for granting TCNs the access to work as posted workers, so long as they are lawfully employed in the sending country. The Vander Elst case did only concern the work permits, meaning that the receiving Member State still has competence when it comes to requiring a residence permit of posted workers.<sup>18</sup> As we will return to—the Baltic and Nordic countries have taken different approaches in this respect.

### Posting corridors

Since it is partly for the Member States to decide the conditions for third-country nationals to enter the country and to take up work, national regulations have created what can be described as ‘posting corridors’. ELA (2023) gives some examples of this. Slovenia has a bilateral agreement with Bosnia, Herzegovina and Serbia, making it easier for citizens of these countries to take up work in Slovenia. In Poland, citizens of Ukraine, Belarus, Moldova, Armenia and Georgia are able to take up work without a work permit, based on a declaration of entrusting work to foreigners (ELA, 2023, p. 35).<sup>19</sup>

Such regulations can be seen as a pull-factor for companies to establish business-models to hire workers from these third countries and post them to other countries. Number of TCNs posted between different countries, they indicate that some posting corridors have been more common than others.<sup>20</sup>

**Table 5.2. Posting corridors for Third country Nationals (TCNs) 2020.**

Sending member state	Share of TCNs in total outgoing/incoming posted workers	Main nationalities concerned	Main flows	Main sectors of activity
<b>Slovenia</b>	60%	Bosnia and Herzegovina	TNCs from Bosnia and Herzegovina being posted from Slovenia to Austria	Construction
<b>Poland</b>	17%	Ukraine	Ukrainian workers being posted from Poland to Germany, France, Austria, Belgium and the Netherlands	Road freight transport, construction (live-in care)
<b>Spain</b>	11%	Morocco and Ecuador	Moroccan workers being posted from Spain to France	Agriculture

<sup>17</sup> C-445/03, C-168/04 and C-244/04 summarised in ELA 2023, p. 105.

<sup>18</sup> See eg. Case-540/22

<sup>19</sup> See Danaj et al. (2023), table 9 for a comprehensive overview of labour market access in Slovenia and Poland.

<sup>20</sup> Note that this has changed as a consequence of the war in Ukraine and Russia, where special regulations have come into force for Ukrainians, as well as Russians and Belarussians.

Receiving member state				
<b>Belgium</b>	20%	Ukraine and Belarus	Ukrainian and Belarusian workers being posted to Belgium from Poland and Lithuania	Construction and road freight transport
<b>Austria</b>	22%*	Ukraine, Bosnia and Herzegovina, Belarus	TCNs from Bosnia and Herzegovina being posted from Slovenia to Austria. Ukrainian and Belarusian workers being posted to Austria from Poland and Lithuania.	Road freight transport and construction
<b>France</b>	23%	Ukraine and Morocco	Moroccan workers being posted to France from Spain	Agriculture
<b>The Netherlands</b>	30%	Ukraine and Belarus	Ukrainian and Belarusian workers being posted to the Netherlands from Poland and Lithuania	Transportation and storage, agriculture, and road freight transport

Source: Based on ELA 2023, p. 98 following, based on the Posting.stat project coordinated by HIVA

\* Number for 2019

Data on posting is not easily available and is partly based on PD A1 data. As such information is collected in different ways, numbers do not give a precise overview of the flows of workers but can be used as an indication of corridors and level of posting. Table 5.2 shows the countries that have the highest share of TCNs among their posting workers, either as sending countries or as receiving countries. As we can see, both Slovenia and Poland are among the three sending countries with a high share of TCNs, and the majority of posted workers in Slovenia are TCNs. If looking at actual numbers, it increased in Slovenia before and during the Covid 19 pandemic from 23,800 in 2018 to above 45,500 in 2021 (ELA, 2023, p. 92 with reference to the Posting.stat project coordinated by HIVA<sup>21</sup>). For Poland, the number increased in the same period from 23,200 to 115,000 (ibid). Looking at the receiving side, more than 9,000 TCNs were posted to Austria (2022), 26,000 to Belgium (2019), 17,800 to Germany (2020) and almost 10,900 to the Netherlands (ibid),

There are scarce numbers when it comes to TCN posting to and from the Baltic and Nordic states. In ELA (2023) the number of incoming posted TCNs to Lithuania is included, and the number increased from 1,752 in 2019 to 3,139 in 2021 (p. 91). When it comes to outgoing posting, Estonia and Finland are listed with small numbers, 787 and 333 respectively. According to Geyer et al. (2022) 75 percent of posted workers going from Lithuania to Austria in 2019 were TCNs. In 2021, more than 15,000 Belarusian and Ukrainian workers were posted from Lithuania to Belgium (ELA, 2023, p. 96).

In general, construction is the predominant industry where posted TCNs can be found, but road freight transport and agriculture are also important industries for these workers

<sup>21</sup> <https://hiva.kuleuven.be/en/news/newsitems/posting-stat-enhancing-collection-and-analysis-national-data-on-intra-eu-posting>



(ELA, 2023). Construction is the industry mentioned most frequently in interviews in the Nordic and Baltic states. For Estonia, Finland and Norway, shipbuilding is also an important receiving industry for posted TCNs.

### **National conditions covering posting of TCNs.**

Posted TCNs are covered by the same regulations as other posted workers. However, most Member States have some additional requirements when it comes to posted TCNs. In the following, we will give an overview of such regulations both in the countries covered by this project and in other EU Member States.<sup>22</sup>

- Most Member States require a residence permit for posted TCNs, usually if the posting exceeds 90 days.<sup>23</sup> However, some also require it if the posting is shorter, and some do not require it at all. Denmark, Estonia, Finland, Latvia, and Norway require this if the posting exceeds 90 days.
- While most states do not refer to the conditions laid down in case law of a lawfully and habitually employed worker in the sending state, some do, either by repeating these conditions or a variation over these, e.g., Luxembourg, France, Austria, and the Netherlands.
- Finland requires that the work permit allows the worker to return to the sending state, while German law requires the worker to have a principal activity in the sending state. This condition is not considered to be fulfilled if the work permit corresponds exactly to the posting period, or if the employer does not have any business activity in the sending country.
- Some Member States require the posting employer to notify the receiving Member State that the condition for lawful employment is fulfilled.
- The assignor in the receiving state is also made responsible, in some countries, for making sure that the conditions are met. In Croatia, the assignor cannot make use of the worker if they know or could know that the worker is not legally employed in the sending country.<sup>24</sup> In Lithuania the assignor is obliged to require copies of the residence permit/visas, ID cards etc., and to keep these documents for the duration of the posting. If this requirement is not met, the assignor will be liable.
- Most states require that notification contains provision of the nationality of the worker. This is the case for Iceland, Denmark, and Lithuania, but is not required in Latvia and Finland. In Estonia and Norway, this information is given to other authorities, and is not—or not easily—accessible for the labour inspectors.
- Some states require the submission of information related to the work and residence permit of TCNs in the sending country. These states include Austria, Luxembourg, Croatia, Ireland, Latvia and Lithuania. However, while some countries only require a declaration of this, other requires that a copy of the permit is included.
- Some states require confirmation that the worker is legally employed in the sending country.

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<sup>22</sup> This overview is mainly based on ELA 2023 p. 104 following and interviews and document studies of countries covered by the project.

<sup>23</sup> The condition of 90 days refers to the Schengen right to move freely for periods not exceeding 90 days within a period of 180 days.

<sup>24</sup> Law 128/2020, art. 20.

- Some states require the work permit to be kept in the receiving country or that it could be made available if requested.

### **Inspection of posted TCNs in the Baltic and Nordic countries**

In some EU Member States like Germany and Belgium, the authorities carry out inspections targeted toward posted TCNs (ELA, 2023). None of the participating countries in this study do target posted TCNs especially but cover them as a part of inspections of posting in general or other kinds of inspections. The inspectors do often have to involve the police in such inspections, as they lack formal competences, for instance to check residence permits or IDs.

In Finland the labour inspectorate would check whether the worker has a work permit in the sending country, and for how long they have been working in Finland. In Lithuania, they checked visa and residence permit, as well as the notification made. They also asked for the PD A1 document through the IMI. If the sending countries has issued a PD A1, they assessed the posting to be lawful.

### **Challenges related to inspection of posted Third Country Nationals (TCNs)**

While the labour inspectorates face many of the same challenges when it comes to posting of TCN as for posting of EU citizens, there are also 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. To do this, an understanding of the legal framework in the sending country is often needed. It goes without saying that this can represent a challenge for the receiving country. The conditions for legal employment in the sending state will depend on which country the company is established in. Further, there are still many 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. These challenges were also reflected in the interviews by the labour inspectorates in the Baltic and Nordic countries.

In some countries the labour inspectorates lacked information on where to find posted workers, or where to find posted TCNs. The lack of a sufficient notification system in Norway made it difficult for the Norwegian Labour Inspectorate to target posted workers in general:

*You only notice when you realize they speak another language. We use 'Detect language' through google translate' (inspector, Norway).*

In the project group it was discussed whether the inspectorates are allowed to ask for the nationality of the workers. Nationality is not explicit mentioned in the Enforcement directive but is part of the notification procedure in several countries with such systems. One problem related to this is that some companies may give up the wrong nationality of the workers they post. This has been an issue in Iceland where workers have been declared as Polish, but when the inspectors asked for IDs during the inspections, they had a Belarusian passport. In such cases the inspectorate can impose

administrative fines, as the companies have sent the wrong information. Whether this is done on purpose or not does not matter in this regard.

Wrongful nationality could also make the inspections more complicated when translators are needed.

Sometimes we meet workers who say they are from Romania. And we get a Romanian translator, and then they cannot understand each other. Typically, [they are] from Moldova or Belarus and then we need to get another interpreter (inspector, Finland).

Even though nationality is notified, this was not always used by the inspectorates to target inspections.

During inspections, we don't use the data in the notification system so much because we choose the inspection places where we expect to find TCNs. We use drones, check where new construction sites are established, and there we suspect to find foreigners. When finding TCNs, firstly, we must identify the person by his ID-card/passport.

Then, we check if he is staying in Lithuania legally. If he does not have a visa/visa free regime/residence permit, he is an illegal worker (inspector, Lithuania).

The greatest challenge for many inspectors was to decide whether there was a genuine posting situation. This was not only the case for posting of TCNs but posting in general. However, as there are some additional requirements to posting of TCNs, this assessment can be even more difficult. This regards the conditions of lawful and habitual employment in the sending country being fulfilled. The approaches among the labour inspectorates varied.

For the condition of the employment to be lawful, it is mainly done by checking the work permit of the worker. One inspector mentioned that it was hard to find out whether the work permit was valid and whether a residence permit was required. The problem can be related to the basis of the work permit. For instance, as Poland gives work permits to some TCNs for a period of 90 days, it will be important to clarify whether the worker has been working in another country before they came to this receiving state.

The conditions for legal posting of TCNs are, however, not known by all inspectors, and some found it difficult to understand what the conditions are when it comes to lawful and habitual employment. This can result in inspectors not really wanting to dig into these issues and enforcement becoming insufficient. Some inspectors stated that they do not really see it as important to clarify whether the posting is genuine or not. This was more a general problem, but also related to posting of TCNs (see 5.1).

Another issue was related to transnational cooperation, and problems with getting work permits validated. This seemed especially to be the case where the sending country was among the important posting corridors for TCNs, as is Poland. These varied requirements—some of which are the competence of other national authorities—may explain common difficulties in verifying lawful and habitual employment. For the requesting countries enforcement of these conditions becomes impossible when it takes long to get a reply from the sending country.

You might send a question through the IMI. If we are lucky, we get an answer within 2-4 days, but then it is too late. We need to be able to decide when we are there (labour inspector, Norway).

Some inspectors stated that they had come across workers posted through countries that the workers have never been to but are sent directly from a third country. Others found it hard to check whether the worker actually lived in the sending state before they were posted; They may lack an address, or all workers from that sender have the same address in the sending country.

It goes quite smoothly, but we have an issue of workers being posted, maybe having a residence permit in Latvia, being posted from a Lithuanian company. This poses an issue of whether they are posted. What is their residence status in Lithuania in relation to the residence in Latvia? If their residence permit is in Latvia, but they are sent from Lithuania, I check that they are permitted to work in Lithuania as well (inspector, Iceland).

I tried an IMI request for a Swedish company. The company had no activity in Sweden. The workers had been posted to Sweden before from Slovakia. I asked Slovakia, but the workers had never been posted from Slovakia, so they just move around and are not registered anywhere. I think most inspectors find it too complicated (inspector, Norway).

Another way of avoiding regulations related to posted workers is to register workers as self-employed. The Finnish informants pointed out that the problem with bogus self-employed was increasing. While this was a general problem, immigration law could mean that this was a way for TCNs to get access to the EU labour market. Regulation of the right for self-employed to residence and deliver services is left to the national competence, and regulations may differ from country to country, making it easier to get access to the labour market in some countries than others.

There has been an increased interest in the challenges related to posting of TCNs, among others by ELA (ELA, 2023) and the European Commission (COM (2024)320 final). However, so far, no regulatory initiatives have been taken to improve the situation for TCNs, and the focus has been more on best practices. In a report from the European Commission measures as promoting exchange of information between Member States, reinforcing the enforcement of posting regulations, and providing workers with better information and networks empowering them to claim their rights (COM (2024) 320 final p. 35).

## 6 New tools to identify false posting

Based on findings from previous stages in the project, the labour inspectorates in the participating countries have tested out new tools to improve the enforcement of regulations of posted workers. The chosen topic for the testing, was how to better identify genuine posting situations through, among other things, new questions to employers and employees during inspections. Tools to help reveal fake posting were selected both because the topic is relevant to most of the project participants, and because uncovering whether a posting is genuine or not can be demanding.

Building on this, we asked the inspectors to do the following:

- gather some specific information before on-site inspections,
- use a new questionnaire during on-site inspections,
- gather more information after the inspections, and
- reflect on whether this new approach was helpful or not.<sup>25</sup>

The definition of a 'posted worker' is, according to the Posting of Workers Directive (EU 2018/957) a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works (art. 2). The employer should be genuinely established in the Member State from which the posting takes place, and perform substantial activities (Enforcement directive, 2014/67/EU (article 4)). By "identifying genuine posting situations", we refer to identifying whether undertakings are established in the sending country, whether the workers are posted from the sending country, and whether workers are falsely declared as self-employed.

The inspectors participating in the testing phase have relevant work experience, either through working specifically with posted workers, with foreign workers and foreign companies, or with low-wage competition and work-related crime. Some of them also have extensive experience from conducting inspections in the construction industry, where most of the inspections for testing new tools were carried out. Others have worked in the police, as border guards, or in the immigration service prior to their current positions in the labour inspectorate. The participating inspectors that were part of the testing phase were either chosen by their coordinator or volunteered after being informed about the project. While some of the inspectors tested out the questionnaires together, others carried out inspections alone. Some also planned the inspections together in advance.

The inspectors were interviewed by us after the testing period. In the sections that follow, we present the work carried out by the inspectors before, during, and after inspections.

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<sup>25</sup> The new tools are described in closer detail in chapter 3.4.

## Great variety of nationalities

With the exception of a few additional industries, including transport, energy supplies, and shipyards, all the labour inspectorates participating in the testing of new tools carried out inspections in the construction industry, where posted work is quite common. The posted workers that were interviewed during inspections represented a great variety of nationalities, and the companies they represented are also diverse in terms of country of establishment.

Most of the inspectors chose their inspection objectives based on national registers for posted work, on risk analysis or on previous experience. Table 6.1. provides an overview of the industries, countries of origin of the posted workers and the posting companies, as well as the reasons why the inspectors chose to carry out inspections with these companies.

**Table 6.1. Overview of industry, origin country and rationale divided by country.**

Labour Inspectorate	Industry	Country of origin	Rationale
Denmark	Construction, energy supplies	Indian, Slovenian, Bela Russian, Georgian and Polish workers employed in Latvian, Ukrainian, Romanian and Polish companies	Based on the RUT-register and/or on previous inspections
Estonia	Construction, electrical engineering	Latvian, Polish, Moldovan, and Ukrainian workers employed in Polish, Finnish, Latvian, and Romanian companies *	Based on posting notifications and previous experience.
Finland	Construction, metal industry, shipyards	Estonian, Kazakhstan or Azerbaijan workers employed in Estonian, Bulgarian and Latvian companies	Based on risk analysis
Latvia	Construction	German, Ukrainian, Romanian and Tajikistan workers employed in Estonian and German companies.	Based on national registers.
Norway	Construction, transport, hospitality	Dutch, Romanian, Portuguese, British, Ukrainian, and Georgian workers in Polish, Swedish and Dutch companies.	Based on previous experience, risk-analysis and tips. Chose several companies at a large construction site due to the lack of a national posting register **
Iceland	Construction	Portuguese and Serbian workers employed in Polish and Swedish companies	Chose several companies at a large construction site. Targeted companies with employees who are not of the same origin as the company
Lithuania***	-	-	-

\*Estonian inspectors also interviewed an Estonian worker that was posted to Estonia from Finland. The worker was pleased with being able to work close to home.

\*\*Some Norwegian inspectors carried out inspections together with visiting Polish inspectors. The Polish inspectors wanted to find workers who were posted from Poland, preferably a specific Polish enterprise they could visit in Poland afterwards. The inspectors were however unable to find the relevant enterprises.

\*\*\* The Lithuanian labour inspectorate was unable to test the questionnaire within the set time frame.

### **Adjusted to national circumstances.**

The new tools had to be adjusted in accordance with the participating inspectorates' competences and regulatory frameworks. We asked the inspectors whether they had to make any adjustments in the questionnaire, or in terms of the types of documentation they could ask for. Estonian and Icelandic inspectors informed us that there were no regulatory limitations to take into consideration. Danish inspectors told us that questions concerning the workers' home addresses in Denmark was something they could contact the municipalities for, however weighed that this was a very rare practice.

A Latvian inspector underlined that the questions the inspectors can obtain answers to depends on the workers – if the worker wants to cooperate, he or she will answer, but if the workers do not want to answer, the inspector cannot pressure them. Similarly to the Latvian inspector, inspectors from the other countries emphasised that while they can ask for the workers' IDs, they cannot demand to see them. Still, several countries have regulations on workers' occupational health and safety cards in industries where these apply, such as the construction industry.

## **6.1 Information gathered prior to on-site inspections**

When testing new tools, the inspectors were to prepare for on-site inspections by looking up information about posting companies and posted workers through their national registers, the European Commission's business register, and/or other registers, or using IMI in cases where the information was not to be found elsewhere. Prior to the inspections, the inspectors were also to ask the companies questions about:

- ▶ their economic activities in the sending country,
- ▶ where their substantial business activity is performed,
- ▶ documentation of their office space,
- ▶ key numbers of economic activities,
- ▶ their five largest contracts throughout the past year,
- ▶ number of employees/where they were hired, and
- ▶ the service contract for the activity the on-site inspection would cover.

### **Inspectors' experiences with gathering information before inspections.**

During our interviews with inspectors who have tested out the new tools, we asked about what kind of information they gathered before their on-site inspections, and through which means.

Estonian inspectors informed us that they used their national registers for posting, and checked where the posting company is registered, how many employees there are, the company's activities, the industry the company operates in, and the duration the workers will stay in Estonia. In Estonia, posting companies are obliged to notify the posting, at the latest the same day as the work starts.

An Icelandic inspector had also used the national register to gather information, including company names, the country the companies are registered in, how many workers they have posted to Iceland, and the workers' nationality. Based on this information, the inspector had selected workers to interview on-site. Similarly, Latvian inspectors used

their national register to obtain an overview of the workers posted to Latvia. One of the Latvian inspectors informed us that although not all employers notified Latvian authorities about posting, the inspectors had used the information available to identify a construction site where many third country nationals (TCNs) worked and decided to visit the site for an inspection based on this information.

A Finnish inspector explained that he/she did not know which companies would be present at a worksite before going there. The inspector informed us that while it was possible to ask the Tax Authority for information about this, the information in their register is two months old, and due to a relatively high turnover among subcontractors, two months is often too long. For another case, the inspector had asked the Tax Authority for information about an Estonian company, to find out whether the workers had received wages in Finland. Through this register, inspectors could also retrieve information about whether the workers have paid taxes in Finland.

Finnish inspectors also utilise information from the Finnish immigration service. The service has a register for foreign nationals who have received a residence permit or are in the process of receiving one. For instance, one Finnish inspector had used this register to find out that a worker was working in Finland illegally, as he/she was not to be found in the register.

Additionally, Finnish inspectors reported using the Estonian company register, as many of the workers posted to Finland are posted from Estonian companies. Several of the inspectors described the Estonian company register as very effective:

Most countries have these registers, but the Estonians are very open about everything, so they have a lot of information about the companies (inspector, Finland).

Norwegian inspectors informed us that they use the State Register of Employers and Employees ("Aa-registeret") before inspections, while they cannot check the Assignment and employee register ("OAR-registeret"). The former is a register of labour relations in Norway owned and managed by the Labour and Welfare Administration, while the latter is a register of all assignments granted to a foreign contractor on land or on the continental shelf managed by the Tax Administration (Nav, 2024; Norwegian Tax Administration, n.d.). The inspectors explained that if the workers have OSH-cards, but are not registered in the Aa-register, they have most likely been registered in the OAR-register at one point. Therefore, they compare the Aa-register and the register for OSH-cards, and if the difference between the number who have OSH-cards, and the number who are reported in the Aa-register is significant, some of the workers must be posted, as this would mean they are registered elsewhere.

While the inspectors cannot access the OAR-register, they can receive information from it through the Tax Administration. To retrieve this information, the inspectors had to know the birth number of the workers, or who they worked for. The state labour crime centres also have a digital system for collaboration to exchange information, but only the inspectors who were located at the centres had access.



In addition to national registers, many of the participating inspectors had utilised the European business register to gather information about the companies before on-site inspections. For instance, one of the Finnish inspectors had first checked the European business register to find the Estonian company he/she was looking for, and then used the Estonian company register to find more detailed information. Some were already familiar with the register, while others tried it for the first time during this testing period. Some described it as very useful, and reported that they will continue using it in future cases, while others struggled to find the information they were looking for:

It turned out a lot of my colleagues were not aware of this website. It proved more useful than I knew (inspector, Finland)

It worked well. I spread it to most of my colleagues as well. That they should use it for foreign companies without organisation numbers. History connected to companies in the transport sector for instance. Found who they are, their activities, number of employees, one can even find the number of cars (inspector, Norway)

I found more information from doing a simple google search and finding information from private registrations. Most of the information I found on the websites was inaccessible. Almost never in English. The google translate option was of no assistance (inspector, Iceland)

It was very difficult to find out how many who works in the company (...) Minimal information. And how the company operates. I only found it when using a direct link to the company, not the register. In the register I found practically nothing (inspector, Latvia)

Several inspectors also did not use the European business register during the testing period. Some had simply chosen not to, while others did not need it, as they found the information they were looking for through other means.

We were also informed that there is a Polish web-based forum for workers, where posted workers write comments or reviews about the different companies they have worked for. An Estonian inspector had used the forum to read about a Polish company. According to the reviews, several workers had experienced issues with their payslips and living conditions while working for this company. The inspector told us that also German companies are discussed in this forum.

All the Norwegian inspectors we interviewed described it as challenging to gather information about posting prior to inspections, due to the lack of a national register on posting.

### **Experiences with the Internal Market Information System (IMI)**

Several of the participating inspectors had used IMI to retrieve information about posting companies before carrying out on-site inspections. The participating labour inspectorates have different practices for the use of IMI. For instance, a small number of

persons in the Danish labour inspectorate were responsible for sending and responding to all IMI enquiries, hence inspectors forwarded their enquiries to the responsible person in question. In other inspectorates, there were several persons in charge of IMI enquiries. Estonian inspectors informed us that these enquiries were sent out by a lawyer.

As was our impression from interviews carried out in the project's first stages, inspectors described that certain countries took longer to answer to IMI requests than others. One example used by inspectors from several countries was that Polish inspectors carry out inspections to retrieve information before answering their IMI request. Thus, it can take some time before one receives answers concerning Polish companies. Several of the inspectors described waiting time as a central challenge when using IMI:

I still think it is a bit difficult to remember which countries can provide different forms of information on a short notice. Some countries have access to work contracts and information concerning wages, while others do not (inspector, Norway)

We use IMI sometimes for our work. To receive an answer through IMI, one must wait for a very long time, often for two months. I didn't think I had the time for that this time, so I thought there was no point in trying (inspector, Latvia).

We use IMI to find out whether the company is legally established in the home-country. Normally, it takes more than a month to get an answer. Moreover, this information is not anything we can use during our health and safety inspections (inspector, Denmark).

A Finnish inspector found that one challenge with IMI concerning waiting time, was that the deadlines are not strict enough, and that once an inspector or another employee in the labour inspectorate has sent an enquiry to another country's labour inspectorate, he/she does not receive any updates before the enquiry was finally treated:

You don't have a contact, an e-mail, so I find it a bit difficult to use if I am in a time pressure (...) The receiving country must accept the request, and I am informed, and when they reply, I get informed, but you don't get an update unless they are kind enough to send a personal e-mail, but I understand that no one has time for this (inspector, Finland).

The inspector's statement suggested that although the Enforcement directive regulates how long it should take to receive a response to a regular or an urgent enquiry through IMI (see Chapter 5.3 on cross-border exchange of information and data), these regulations might not always work in practice. Other inspectors have used IMI actively and describe it as very effective. For instance, an Icelandic inspector had sent 5 or 6 IMI requests during the testing period and received almost immediate responses in all cases.

The kind of information the inspectors were after when sending IMI requests also varied. Some inspectors used IMI to ask for information about where certain posted workers were employed in the sending country. Other inspectors noted that, in addition to

requesting answers to the list of questions from the sending company before their inspections, they also requested this information from the labour inspectorate through IMI. Inspectors typically reported using IMI to ask whether a company is legally established in the sending country, and for more detailed information about the workers, e.g. whether they are registered in the sending country.

Additionally, a relatively large share of the inspectors did not use IMI to gather information before the on-site inspections, mostly because they were able to retrieve the information they needed elsewhere, or because they were unfamiliar with/had no previous experience with IMI. Some of the inspectors also describe IMI as too formal or too legalistic. Several of which had contacted their personal contacts in other countries' labour inspectorates instead. For instance, Latvian inspectors described contacting Estonian colleagues directly through phone calls and e-mails. This was also the case for one of the Norwegian inspectors, which described the use of personal contacts as much more effective, at least in the first instance:

*It (IMI) takes a lot of time. It is much easier to send an e-mail to an Estonian colleague there and then (...) Not for administrative procedures, but as an indicator for if we should dig deeper, or if the company is ok (inspector, Norway)*

It was also mentioned that it had become more challenging to find information about British companies after Brexit, as Britain is no longer part of the IMI system. Some inspectors also pointed out that IMI is more relevant to use after an inspection than prior to an inspection. Others stated that thanks to the testing phase in this project, they had become more familiar with the IMI-system.

## **6.2 During the inspections**

After gathering information, the inspectors were to carry out on-site inspections. During these, the inspectors were to use the questionnaires provided by Fafo in their interviews with workers, even if the information was already available through A1 and/or through their work contracts. These questions included:

- ▶ Who is your employer?
- ▶ How long have you been employed by this company?
- ▶ How were you recruited for this job?
- ▶ Do you have a permanent or temporary work contract?
- ▶ Where did you work before this assignment?
- ▶ Where do you usually work (for this undertaking)?
- ▶ For how long are you going to work on this assignment?
- ▶ Where will you go after this assignment has ended?
- ▶ Where do you live, and who has arranged the housing?
- ▶ What is your home address (in the sending country)?
- ▶ Ask the workers for ID Card and health and safety card (if applicable).

Which questions the inspectors can ask, and the kinds of documentation they can ask for, depends on the competence of the labour inspectorates. Therefore, the questionnaires had to be adjusted to national legislations. For instance, as previously mentioned,

inspectors are commonly allowed to ask for, but not to demand ID-cards from the workers.

The inspectors described having conducted a number of very different inspections. The following sections outline some of these cases. Lithuanian inspectors had carried out a number of inspections with posted workers during an action week before the testing period was initiated and did not meet any posted workers during the testing period. They were therefore unable to test the new tools in connection with this project. However, we have included some of the Lithuanians' experiences from previous inspections.

### **On-site communication**

At construction sites, it was quite common that the inspectors obtained a list of the names of workers that they could interview. Inspectors from Norway explained that at larger construction sites, there is often an on-site manager that can provide a list of the employees registered that day. Similarly, a Latvian inspector told us that when they arrived on site, the employer, or the person in charge had shown them the electronic time recording system through which they could get an overview of who worked there.

According to the Norwegian inspectors, the quality of these lists varied, for instance, workers were often registered in several companies at the same time. Inspectors from the other countries also described the challenge of workers not being present when they arrived at the workplaces to conduct the inspection.

Most of the inspectors have mainly been in contact with employees during their on-site inspections, as the employers were often located elsewhere, most of the time in the sending country.

For instance, a Finnish inspector explained that neither the main contractor, nor the employer's representative were at site at the time of one of the inspections. Another inspector told us that one of the workers had been reluctant to talk to them, and assumed he was unsure what to tell them. Later, the inspector found out that the worker was in fact one of the company owners. The rest of the employees had however been very open to answer their questions. Another Finnish inspector had tried talking to the manager at one of the worksites, yet after asking a few questions, it became clear that the "manager" was not in the position he claimed to be in. He did not have the documentation, was unable to answer most of the questions, and said that the inspector should ask the headquarters in Bulgaria.

In some cases, the inspectors were, however, able to interview the employers during on-site inspections. For instance, some of the Estonian inspectors were in contact with both a representative from the posting company and the company in Estonia where the workers were posted to. They described that they generally encounter a representative for the employer during their inspections. This contrasted with the experiences from most inspectors in the other countries.

An Icelandic inspector informed that he/she had mostly spoken to whoever was in charge and underlined that the employer was seldom on site. The inspector had a list of names and asked if he/she could talk to these workers, and the person in charge at the

worksite collected them. The inspector had not met any union representatives during these inspections.

Lithuanian inspectors described that they mostly have contact with the Lithuanian companies, as they are also obliged to notify the labour inspectorate about posting. They are usually not in contact with the employers from the sending country.

A Norwegian inspector explained that when they interviewed the employees, they made sure that representatives from the management or foremen were somewhere else, so that the interviews would not be affected by their presence. Another inspector from Norway told us that they initially approached the workers that speak English, and therefore missed many of the others. Moreover, if one or more of the employees acted in a bit more dominant manner, they split them to get as much information as possible.

Similarly, a Danish inspector experienced difficulties receiving answers from two Slovenian workers during an inspection, as their employer stayed close by listening to the conversation.

One of the Finnish inspectors explained that he/she often started the interviews by telling the workers that they did not have to talk to the inspectorate, and that it was completely voluntary, but that it would be beneficial to know that they were paid in accordance with Finnish legislations. In his/her experience, this made the workers more open to being interviewed. He/she also experienced that when talking to two or three workers at the same time, it was easier – as one of them started to talk, the others often followed. However, it was added that some workers also prefer talking to inspectors alone.

The Danish inspector explained that this type of inspection is very complex, as the inspectors have little time to ask many questions at busy workplaces during unannounced inspections. As mentioned above, several of the inspectors described language barriers as a central challenge when carrying out inspections concerned with posted work:

I think the language barriers is always the biggest problem for us asking the questions. Usually, it is the foremen who speaks English, which is usually the person that I don't want to talk to (inspector, Finland).

It is very often difficult to communicate with the workers, and you don't know if the person that translate is trustworthy. It is hard to ask about employment contracts and conditions because they don't understand the questions (inspector, Latvia).

Due to language barriers, it is often difficult to clarify what we mean by posting. Some of them are travelling all the time, and they don't understand the purpose of finding out their status (inspector, Norway).

Nonetheless, as previously described in this report, many of the inspectors often have access to translators during inspections, physically or over the phone, or they use google translate.

## Testing of new questions

During the inspections in the testing phase, the inspectors were to use the questionnaires provided by Fafo in their interviews with workers (see above). Afterwards, the inspectors were asked to evaluate these questions. Here are some quotes from inspectors on how they experienced this:

The workers were not able to answer all the questions – for instance how long they were going to work at this assignment. They did not know. They did not know their home address in the sending country. Nor were they sure where to go next (inspector, Latvia).

On the question how you were recruited to this job, many workers got quite confused. The responses were “the normal way” or “my father works for this company” (inspector, Iceland).

We normally get the answer that the workers were recruited by friend and acquaintances. It’s a bit odd. Moreover, most of the workers do not know anything about their next assignment (inspector, Norway).

As shown, the Latvian inspectors informed us that they had asked all the questions in the questionnaire but missed the answers on several occasions. One Finnish inspector meant that the questionnaire provided more or less the same information they normally obtain during inspections, except from the workers’ home addresses. Another Finnish inspector meant that the testing questions *do* differ from their regular questionnaires. The inspector explained that in regular inspections, they are mostly concerned with the workers’ terms of employment, including their salaries and how much they work. Therefore, the inspector found that the new tools provided added value. At the same time, the inspector thought that there were too many questions, and weighed that a shorter list would lower the barrier for inspectors to carry out similar inspections.

I was concerned whether the company had any business going on in the sending country, so the questionnaire was very helpful in this concern (inspector, Finland).

The questionnaire fits better to third country nationals to find out whether they actually live in the sending country or no. I could have asked the tax authority, but that register is two months behind (inspector, Finland).

The Norwegian inspectors had used the questionnaire in combination with the questions they normally ask during a regular inspection. Therefore, they had also asked who their manager is, who they call when they are sick, and who controls the time sheets.

While the inspectors asked about the workers’ home address in the sending country, they underlined that the most important factor to them was the workers’ living conditions in the receiving countries. For example, one Estonian inspector said that:

If we find out that the workers' living situation in Estonia do not comply with Estonian norms, we can investigate this further. Otherwise, it is difficult.

Several of the informants emphasised that the questionnaire had been helpful to evaluate whether a posting situation was genuine or not. However, other inspectors had not suspected false posting in any of their cases and therefore found it difficult to evaluate whether the questionnaire would make it easier to uncover these situations.

### **Documentation**

During on-site inspections, the inspectors were to ask the workers for their IDs, as well as their health and safety cards in cases where this was applicable. Demanding formal ID was not something that the labour inspectors could do, but our interviews showed that there were few problems connected with this. The normal practice was to ask for it and then see what happened. In the construction industry, it was also a widespread requirement that the workers have a health and safety card.

From 1 October 2023, the main contractor of a large construction in Estonia must ensure that the construction is registered and that people entering and exiting the construction and the duration of their stay are registered with a special smart card or other permitted electronic registration device replacing it. Each construction company must indicate its subcontractors and the employees allowed on the constructions by the company. The data is submitted to Estonian Tax and Customs Board. No OHS competences are registered.

In Latvia, everyone who works at construction sites must have employment certificates and be registered in the time recording system. When the inspectors arrive at the construction site, they can ask about the identification, which also tells which country the workers come from. Latvian inspectors did not encounter any issues when asking for IDs.

One of the Danish inspectors told us that she/he always asks for ID cards. Some inspectors also explained that they ask for IDs based on necessity. If there is a foreign worker and they suspect something is wrong, for instance if someone answers their questions in an avoidant manner, they ask for ID. One inspector told us that if the workers did not want to show their ID cards, they were told that they might run into problems. This usually brought out the cards. The cards were photographed so they could be used in the inspectors' inspection report.

Moreover, what kind of documentation that were asked for and that was present at the workplace varied. A Norwegian inspector explained that they often also ask for payslips and working contracts, and at construction sites, the workers are not allowed to enter without health and safety cards. One of the inspectors said that they often asked kindly for IDs as well if they have it with them, mostly to check that the identity on the health and safety card was correct. The inspectors found it useful to see the workers' IDs, so that they cannot just say a name, for the inspectors to later find out that the company had no employees by that name. While the health and safety-cards often are sufficient, they do not contain any information about where the workers are from.

Similarly, Finnish inspectors told us that the workers are not obliged to show the inspectors their ID-cards, and so they cannot do anything if they refuse. Nonetheless, the workers are obliged to if the police are part of the inspection. On construction sites however, the workers must show their OSH-cards, which include their tax number, name, and the company they work for. One of the inspectors explained that they often ask for the workers' names and nationalities, and that the workers often find it easier to show them in writing. The inspector added that the arrangement of OSH-cards in construction sites makes it easier, and that it can be more difficult to carry out inspections concerning bogus posting in industries without such cards. One of the Finnish inspectors also informed us that for TCNs, they checked residence permits.

Lithuanian inspectors also asked for IDs, and informed that they got to see them most of the time. However, the workers did not always have their IDs with them, and some only had it on their phones, but very few refuse.

An Icelandic inspector told us that the service contracts and all the workers' employment contracts were available in the inspectors' database. The inspector had showed some of the workers the contracts and asked if they recognised them, which they did. Some of the workers had even showed the payments they had received from the companies. The inspector also had some of their payslips in his/her database and asked if the workers recalled receiving that amount of money, which they did. In addition, the inspector had requested to see ID-cards the workers had to carry on the construction site, and their formal IDs.

### **Genuine or false posting?**

Whether the inspectors uncovered any violations during the testing period, varied and was characterised by great uncertainty. The processes that followed cases of suspected false posting were also unclear.

A Danish inspector had talked to five Ukrainian workers at a construction site, using the questionnaire. From what the inspector could tell, the workers had their main employment contracts in the sending country, and everything seemed to be in order. The inspector was able to confirm that the workers were really posted. This inspector had also carried out an inspection with five Indian workers and interviewed them with help from a translator. According to the translator, the team leader of the five was on the phone with their employer, discussing what he was supposed to answer the inspector. The Indian workers, who were welders, were employed in a Polish company, which was also responsible for their accommodation. However, some of the workers had not been working in Poland for two years. One Danish inspector commented in this way:

As I understand the rules about posting, this was a clear violation. It is simply illegal work. The case has been reported to the police, who say that as long as they are registered in RUT, everything is in order.

One Finnish inspector had tested out the questionnaire during an inspection at a shipyard. The inspector knew before going there that there were many third country nationals (TCNs) at the worksite, as the posting company had sent workers there for the past



decade. Thus, the inspectors had doubts about whether this was a genuine posting situation. In another case, the inspector carried out an inspection at a construction site. As the workers were not there, the inspector sent a request to the posting company with the questionnaire. As the company was Estonian, and the inspector asked about the company's activity in both Finland and Estonia. The company turned out to have most of its business in Finland, and the inspector therefore concluded that it was not a posting company.

One of the Finnish inspectors had just received answers from a company he/she suspected was not really posting the workers. Having just received the answers, he/she was still unsure at the time of the interview. The inspector had asked for information from another posting company as well, but the company still had some time to answer the request. In the latter case, the inspector suspected that the workers were not really posted, based on the information received during the on-site inspection. One main reason for the suspicion was that the workers had previously worked for another company in another part of Finland, and because most of the workers said they had no work in the sending country. The inspector added that during the past few years, bogus posting had received greater attention among inspectors. According to this inspector, one way of finding out about these sorts of issues is to ask more about the companies' activities in the sending countries, and using IMI when the companies are unwilling to answer. One Finnish inspector asked a company whether the workers were posted, and the answer was: "well, whatever that means".

At one inspection I concluded that this company is not a posting company, because the main part of business is in Finland. Of course, I will write this in my report, even if I think the main call is that the workers' life is good. We have to develop our inspections to find out what is real and what is fake posting (Inspector, Finland).

There are so many different scenarios. Sometimes the employees work in the country they are posted from, usually they don't. (...) Many have not even worked in the company that they are posted from (inspector, Iceland).

Some of the Latvian inspectors had started out their on-site inspections with questions used during their regular inspections, and then tested the questions from the new questionnaire. The inspectors explained that while asking the workers their regular questions such as their names, wages, working hours and so on, everything seemed fine. However, once they started asking questions from the new questionnaire, they started suspecting something was wrong. The employees had not been able to answer all the questions, for instance how long they would work on their assignment and where they would go afterwards, nor their home addresses in the sending country. When asked about it, they said that they had never been in the country they were posted from. It turned out that most of the workers were from Tajikistan and were posted directly to Latvia, even though their employer was supposedly based in Estonia. The inspectors then contacted the Estonian labour inspectorate, which could inform that the company had no workers in Estonia.

The question showing where the posting went wrong was “what is your address in the sending country”, and it turns out that they had never been to Estonia (inspector, Latvia).

Inspectors in Norway had contacted the managers at a large construction site and asked for a list of employees. Based on the list, they searched through their own administrative system and chose a few employees to interview. One of the Norwegian inspectors was uncertain whether the workers that were interviewed were really posted or not, suspecting that the company did not have its own activities in the sending country. The inspector had asked whether the workers had worked in the sending country and received rather vague answers. The inspectors had also seen a tendency they disliked – a culture of fear, that the workers did not dare to speak up when they were unsatisfied.

I have met the same workers on several construction sites this year. Each time, they are employed by different companies. One of the companies we checked turned out to be a mailbox company in Poland. The company was owned by a Norwegian (inspector, Norway).

We can't do anything about false postings. We do say something, try to tell them that they need to register, etc. But if they aren't interested, they just disappear. And then another company with a different name shows up (inspector, Norway).

One of the Estonian inspectors explained that he/she did not suspect anything wrong during the testing period. All the workers they had interviewed had showed their ID-cards and answered honestly to all their questions. Another Estonian inspector uncovered violations in terms of a posting company that had sent its notices on posting too late, while another company violated the workers limits for working and resting time.

One Danish inspector had carried out an inspection at a construction site where he met two workers and asked them whether they were employed or had their own companies. Both told the inspector that they had their own companies and informed him that they had no business activity in their home countries, even though they had been registered in RUT for a decade. As it turned out it was not a posting case, the inspector ended the testing of new tools.

In terms of evaluating whether a posting situation is genuine or false, one of our informants expressed that a frustration for the labour inspectorate was the police assuming that everything is in order once a posting company is registered and added that this is not necessarily the case. Several informants also mentioned that when they discover something is not in order, for instance that a posted worker is treated as a temporary agency worker, working for another company in the receiving country than the one he or she is posted to, or suspect false posting, they forward the case to another authority, such as the police or the border guards. The police are often not very interested or do not have sufficient knowledge to follow up such cases.

### 6.3 After the inspections

We wanted to know whether the inspectors had to carry out any additional work after the inspections, for instance having to gather information they were unable to obtain before or during inspections. Another question was whether they, based on their experiences, had any suggestions for improvements on how to carry out inspections with posted workers, whether the new tools should become part of their regular inspections, and whether the questionnaire made it easier to evaluate a genuine or false posting situation.

The inspectors' responses were varied concerning the amount of extra work the testing of new tools resulted in. Most of the inspectors described that it took longer to carry out these forms of inspections than their regular inspections, both because they had to ask additional questions, and because they had to adjust to new issues. For instance, one Danish inspector described that an inspection had taken a few hours, considering the number of questions, and the complexity of the inspection. An Estonian inspector emphasised that while testing the new tools took longer than their regular inspections, it had been interesting to do it differently.

Inspectors from both Finland and Latvia underlined that the amount of extra work these forms of inspections led to, depended a lot on the complexity of the posting situation, whether everything was in order, and on how easy or difficult it was to get the workers and employers to respond.

Several of the inspectors also underlined that this way of carrying out inspections could be more time consuming in cases where they had to use IMI, depending on how long it takes to get a response to one's enquiry. Other inspectors weighed that it had been time consuming to get acquainted with work contracts in foreign languages. Some of our informants also meant that testing the new tools had taken no longer than their regular inspections.

Several of the inspectors we interviewed, had spent some time gathering additional information after their on-site inspections. For example, one of them had been in contact with the sending company after the inspection to ask about their economic activity in the sending country and had not yet received an answer. Another inspector had contacted the sending company to follow-up a reported violation. The company would therefore have to report back concerning adjustments that had been made in accordance with the inspectorate's report. An Estonian inspector described that the sending companies do have some time to respond to these reports, but if they do not, the inspectorate will initiate a procedure.

While some of the inspectors chose to use IMI to retrieve information prior to their on-site inspections, others used IMI after the inspections to gather additional information. For example, one of the Finnish inspectors used IMI to ask the Bulgarian labour inspectorate whether a Bulgarian company had any business activity in the sending country and whether the workers were regarded as posted from Bulgaria. The inspector had also sent questions directly to the employer. When we interviewed the inspector, he/she had not yet received any answers to the IMI request, but from the employer. The answers had been helpful clearing up that the workers were in fact posted:

What was especially useful was to find out not just that the company had any activity in the sending country, but also (..) that they have administrative staff there (inspector, Finland)

The inspector had reflected upon the situation, and problematised that during inspections, the colleagues often have different mindsets and questions set for "regular companies" and posting companies:

I started out thinking it was not a posting, and then it seemed like a posting after all, so I had to add the questions. It is not a problem, but it shows our way of thinking. You cannot always squeeze the world into boxes (inspector, Finland)

Norwegian inspectors informed us that they had collected additional information after their on-site inspections in cases where the employer had not been present. The inspectors added that in these cases, they often ask for information through IMI parallelly, as it can help legitimise the information they receive from the employer. Gathering information from the undertakings was however described as cumbersome. On one occasion, the inspectors had established cases and sent letters to the enterprises with demands for information and documentation, for instance about wage- and working conditions. Some of the enterprises did not answer, and the inspector explained having used an unnecessary amount of time to try and get in contact. Sometimes by googling for email-addresses and phone numbers:

So, we might notify about an order, adopt an order, notify about a compulsory fine, adopt it, and so goes week after week. If you are lucky and get an answer, it might be of unclear quality at times. They don't always answer 100 percent but may have succeeded in tiring us out or that the inspection becomes so old that it is no longer relevant, and then we accept the answer we receive (inspector, Norway).

A quite large share of the inspectors also informed us that they did not gather any additional information after their on-site inspections, as they had not suspected anything wrong, or they had received all the information they needed before or during the inspection.

#### **6.4 The inspectors' reflections**

Several of the inspectors reflected upon their role for carrying out inspections concerning posted workers, considering their competences and the mission of their work. Most of the inspectors participating in the testing of new tools, described this new way of carrying out inspections as useful when it comes to uncovering false posting. The questions were described as good suggestions for situations where the inspectors suspect something is wrong. On the other hand, the questionnaire is time-consuming, and the value might be reduced due to language barriers. Some of the questions were regarded as less useful, like how the workers were recruited and where they would go for their next assignment. Most of the inspectors emphasised that while the questionnaire

will not become a regular part of their routines, many of them added that some of the questions will be used for certain occasions.

One of the Norwegian inspectors explained that he/she had not met that many posted workers, and so the type of questions that were included in the questionnaire are not normally asked. Therefore, the testing of new tools had raised the awareness of posting in general. The inspector weighed that the “absence” of posted workers could have to do that they had not been asked these questions before, as Norwegian inspectors have no register to check posting. Thus, a main outtake from the testing period was learning to ask a broader variety of questions. The inspector added that the lack of focus on posted work could also be connected to the inspectors having too much to do.

*I think that if we had a register of posted workers, this would be completely different. But as long as we don't, and don't know where the posted workers are, it is not our focus all of the time (inspector, Norway).*

The questionnaire was considered useful to evaluate whether the inspectors were encountering a real posting situation or not. It was emphasised that especially for inspectors who are not very familiar with posting, the questionnaire is very valuable, and, moreover, a good reminder for the inspectors who have worked with posting for some time as well.

Another impression was that obtaining surplus information could be useful for the inspectorates in many ways. A Norwegian inspector had noted that ELA wants each country to have a team that is particularly familiar with posting and meant that if the inspectorate had an expert team, greater attention could be paid to the topic.

A Finnish inspector had a similar reasoning as the Norwegian inspector. Although there is a Finnish national register for posted workers, the inspector underlined that they are only just starting to figure out that there is actually false posting going on. Thus, more focus will be directed at asking the sort of questions that are included in the questionnaire, and that they probably will use this again. Still, it is important to adjust the questions to achieve good results from each individual inspection.

When evaluating whether a worker really is posted or not, inspectors usually asks directly if they work in country X for the company Y in question. From this inspector's experience, the answer is often “no”. In these cases, they usually ask how long they have worked for the company, and how long they have worked in Finland. One of the inspectors underlined that while she/he cannot speak on behalf of other inspectors, the impression is that the inspectorate often trusts companies if their A1s and posting notifications are in order:

*We are just now starting to take baby steps to find out that even though these things are in order, it is not necessarily a real posting (inspector, Finland).*

Lithuanian inspectors also pointed out that they do not necessarily check whether the posted workers have worked in the sending country. For instance, when meeting a lot of third country nationals who are posted from Poland during inspections, they do

check whether the workers have Polish residence permits, as these documents allow them to work in Lithuania for 90 days, but not if the workers have worked in Poland before coming to Lithuania:

The main task is to check if these foreigners are legally in Lithuania, and that they are legally employed in the posting companies (inspector, Lithuania)

An Estonian inspector expressed that the tasks connected to the testing phase could be effective to uncover if a worker is being misused. Another Estonian inspector had a similar argument – if the inspectors suspected illegal or undeclared work, the questionnaire would be valuable, but not in cases where they do not suspect anything. The inspector weighed that the testing phase had helped them widen their horizons and granted them an opportunity to become more familiar with the IMI system.

One of the Estonian inspectors told us that a lot of their work depends on gut feeling, and seeing how a situation develops, for instance if a worker does not want to show his/her documentation.

An Icelandic inspector explained that the testing phase provided information the inspectors would not normally have obtained. However, it was underlined that the additional information would in most cases be irrelevant, such as where the workers will go after their assignment has ended and where they worked before it started:

We are mostly focused on what they do when they are here in Iceland. However, the questionnaire is also useful in our effort to detect labour violations and made me look into things I normally would not have inspected (inspector, Iceland).

The feedback from Iceland was further that the questionnaire should not necessarily be used in every instance, but rather in cases where the inspectorate knows that something might not be as it should be. Not at least because it is time-consuming. They will not have the time to ask every worker all the questions, especially considering linguistic barriers. Nevertheless, the inspector intended to implement some of the questions into the routine to get a better picture of certain situations.

Latvian inspectors emphasised that questions on how long the workers will stay and where they will go, helped them obtain information they normally would not get. The Latvian labour inspectorate is planning a posting campaign, where the questionnaire will continue to be used. One of the inspectors informed us that they have already adapted some of the questions to their inspections.

### **Why care?**

One of the most important questions that were raised during our interviews when discussing the inspectors' reflection on the testing of new tools was in continuation of who's responsibility it is to react when a false posting is discovered: What difference does it make for the labour inspectorates, as long as the workers are able to document receiving the wages they are entitled to, and have legal working hours? Several inspectors explained that they were most concerned about working conditions, labour related crime and unregistered workers in their own country, and not necessarily whether the

workers were posted or if the posting company had a real business activity in the sending country.

In certain countries, the question of reacting to uncovered situations of false posting might be of greater importance to other authorities than the labour inspectorate, such as tax authorities or the police. Nonetheless, it is our impression from the interviews that other authorities are also challenging to involve and encourage to react in such cases.

As pointed out by a Norwegian inspector; when the inspectors send IMI requests to find out whether a posting company has real activity in the sending country or not, and are informed that it is a postbox company with all its activity in Norway, it is no longer the labour inspectorates' area of responsibility:

We can tell the tax authorities for them to take on the case, as the company should pay taxes in Norway, but we don't know how many of these cases the tax authorities solve (inspector, Norway).

### **Suggestions for improvement**

The following bullet points includes the inspectors' suggestions for improving the new tools, based on their experiences from the testing period.

- It was suggested that the questionnaire should include a question concerning whether the workers are self-employed. Some also pointed to the value of asking whether the workers have a permanent or temporary contact.
- Some inspectors experienced that the question of how the workers were recruited as unnecessary, as most of them have been recruited by a relative or an acquaintance. Other inspectors found the question effective, as it could provide useful information, for instance about all the workers being from the same town. The inspectors that found the question useful, were also under the impression that most of the posted workers are acquaintances or friends with their employer. This could be valuable information as the inspectors experienced that when asking critical questions, for instance regarding working hours, the workers would often answer "no, but he (the employer) is a friend", which affects the situation.
- Several inspectors meant that there were too many questions in the questionnaire, emphasising that it takes a long time to ask them all. Some also pointed out that they already have a lot of the information in their databases.
- Several inspectors suggested to ask more general questions, allowing the workers to speak more freely, and then ask follow-up questions. This was reasoned by allowing the inspectors to adjust the questions to each individual case.
- One inspector suggested to include a question on how long the workers are in the country they are posted to, and how much time off they have. In the inspector's experience, this could tell something about whether the workers have a home and a family in the home country.
- Another inspector suggested to add a question about where the workers have signed their employment contracts, and about what industry they normally work in.

- Some of the questions were considered unnecessary, for instance where the workers are going after their current assignment. Some inspectors pointed out that they have no use for this type of information.
- It was suggested that cross-border cooperation should be emphasised, as cooperation between countries is effective to decide whether a posting situation is genuine or not, if inspectors in one country do not have all the information needed to conclude.
- Several inspectors pointed to language issues and emphasised that the language should be clear and simple, and suggested to translate the questions into several languages.
- Norwegian inspectors emphasised that it would be a lot easier to test the questionnaire if they had a national register for posted workers.
- One inspector experienced that some workers became insecure when asked about their home addresses, and wondered why the inspectors needed this type of information. Another inspector found this question to be the most useful when interviewing third country nationals (TCNs), as it is a clear indication of a false posting if the worker does not know.



## 7 Policy recommendations

As argued by the EU Commission, the key challenge in ensuring equal protection for temporary cross-border workers lies in the limited enforcement of existing legislation and the identification of non-compliant employers (Ecorys et al., 2023). One central objective of this project has been to analyse and suggest improvements for the national approaches in, and for the transnational cooperation between the Baltic and Nordic countries.

The project has had four overriding subjects:

- Tools to support the monitoring of posted workers – transposition of the Enforcement directive (2014/67/EU).
- Enforcement of posted work at the national and transnational level by labour inspectorates and other public authorities.
- Enforcement related to posting of third country nationals (TNCs).
- How to improve enforcement. Possible new tools for the national authorities during inspections to reveal fake posting.

Based on our findings, this chapter will provide some policy recommendations to improve the enforcement of regulations related to posted work. Before delving into more specific suggestions, it is important to consider the core motivations of labour inspectors, who have been central actors in our study, which include protecting workers from exploitation, such as low wages, excessive working hours, and other abuses, regardless of whether they are posted or not. This may lead to a discussion on the need for amendments to regulations or the enhancement of enforcement tools to address issues related to posted workers. Although this question has not been the primary focus of our project, it is worth noting that, for most labour inspectors, the distinction between posted workers and other labor immigrants might seem artificial in their daily work. Many of the most pressing issues concerning compliance with European regulations on posting are more relevant to other authorities, such as tax authorities, social security, and the police (regarding illegal immigration). Subsequently, effective enforcement requires closer and more efficient cooperation between different authorities than what we find in the Baltic and Nordic countries.

Moreover, regulations concerning posted work are complex and quite difficult to apprehend. Many inspectors find it difficult to obtain a complete overview, especially as it includes having to consider the regulations of other countries. This, naturally, also applies to both employers and employees, and result in confusion and insecurity regarding legal statuses. The status of the employees can change from being posted to not being posted without any change in their working situation (Ødegård & Alsos, 2018). Another complication is that posted workers commonly lack knowledge about their rights in the country they perform their work.

### **Responsibility of assignor**

A central challenge with mobile work, is companies and workers leaving the country before the labour inspectorates manage to react. This could be solved by delegating more responsibility to the assignor, as we have seen implemented in for example Finland and Iceland. This could include that the assignor becomes responsible for valid work permits, and that non-compliance can be fined. As in Denmark and Latvia, the notification system could be used to forward information to the assignor that the posting company has registered. In Iceland, if a company has not registered and have third country nationals (TNCs), they must stop the work immediately, and can only continue after the labour inspectorate has received the evidence that the workers are allowed to work there.

### **Notification and registration systems**

Among our participating countries, all except Norway have established a register to which the posting employers must notify the posting to the Labour Inspectorate. Such an overview is valuable for the inspectorates to enforce regulations.

Moreover, registers on posted work seem to be valuable for targeting posted third country nationals (TNCs) during inspections. The nationality of the workers and a copy of their employment contract and their work/residence permit in the sending country would be useful. This would help enforcement both by targeting these employees and by making the assessment of whether they lawfully and habitually work in the sending state less challenging. One might also look further, to assess whether the worker habitually worked in the sending state.

The national systems should be developed further in cooperation with the labour inspectorates. It is, among other things, vital that the inspectorates get access to real-time information from the registers. Inspections could also be improved by granting inspectors better access to the relevant databases they find useful. This could include PD A1 documents and a validation tool for these documents, and electronical records of what services companies are providing using posted workers.

Further, national business registers should become more easily accessible for authorities in other countries. It is also necessary to increase awareness of existing business registers and how to use them. Several inspectors highlighted the Estonian register as transparent and effective, and that this should be seen as best practice.

### **Access to and storing of documents**

It is useful for the labour inspectorates to gain access to service contracts between the contractor that order the assignment and the posting firm on when and how to accomplish the tasks. National regulations may also request that certain documents are kept at the workplaces or can be made available within short time. In the Netherlands, documents like employment contracts, copies of ID-cards etc. should be kept at the workplace. Other documents that could be useful to better assess the posting situation for TNCs are copies of residence cards and work permits.

### **Improve cooperation between national authorities**

Dedicated recourses and routines to share information are among the topics that need to be in place to establish and perform cooperation between authorities (for example between labour inspectorates, tax authorities and the police). Secrecy acts that prevent sharing and compiling certain information among the authorities are a pending challenge. Moreover, it is also a question of resources to collocate the information in an effective manner and to identify areas of responsibility.

### **Make better use of the IMI and further cross-border cooperation.**

The Internal Market Information System (IMI) is labour inspectors' main tool for retrieving information about posted companies and their workers. As the IMI is designed to use pre-set questions, challenges to use it may be related to these questions. There are also questions that seem to be lacking. For posting of TCNs, a broader range of information is required compared to posting of EU citizens. One example is information that could be important in order to assess the validity of the work permit, for instance to be able to know if it has expired or if the worker is in need of a residence permit. Additionally, it is very common that the answers come too late.

It should become easier to share information at the transnational level, as lack of information constitute the main obstacle for a coordinated approach between Member States. One recommendation is to evaluate the IMI-system, and another is to provide a larger number of inspectors training in how to use the system.

Other types of cross border cooperation are also judged as essential to disclose fake posting. Cross-border concerted and joint inspections make important measures for addressing challenges related to posted work. Informal cooperation through networks, as well as formal cooperation and agreements constitute central measures for becoming more coordinated at transnational level.

### **Consequences and sanctions**

Currently, it appears to be few consequences for fake posting, and according to our informants, it is rarely sanctioned. Uncovering and addressing fake posting is challenging. Some labour inspectors express uncertainty about how to proceed even in cases where they are able to identify fake posting. Coordination and cooperation with other relevant authorities in such situations are often unclear or entirely lacking. There is a need to clearly define the responsibilities of national authorities—detailing who should take action and when—perhaps through formal agreements when fake posting is uncovered. This clarification could help eliminate grey areas and streamline processes, especially during transitions in personnel. Additionally, training on these issues is necessary for police, tax authorities, border guards, and even labor inspectorates.

It is also important to consider imposing higher fines and expanding the authority to suspend work for firms and contractors that breach regulations. Cross-border enforcement of administrative penalties and fines is currently complicated and lengthy, and labour inspectors often do not know the outcomes of the cases they have identified.

### **Improve enforcement of the posting of Third country nationals (TCNs)**

No regulatory initiatives have been taken to improve the situation for TCNs. The emphasis has rather been on best practices. None of the countries involved in this project conduct targeted inspections of posted TCNs. Inspectors report having limited knowledge of TCN posting and what they should look for during such inspections, as well as on how far they can go when checking whether the worker is habitually employed in the sending country. There seems to be a need for training in this field, including guidance on what inspectors can ask for and what documents they can require.

ELA (2023) proposes a list of five issues that could be part of inspections of TCN posting: 1) The identity of the worker, 2) whether the worker has the right to reside in the sending country, 3) the length of the worker's residence and work in the sending state prior to posting, 4) applicable social security regime and 5) proof of professional qualifications.

One issue that has commonly been raised, is the shared competence between the labour inspectorate and the police in some countries. As there are many factors that must be assessed to find out whether a TCN is legally posted to another Member State, one possibility is to provide the labour inspectorates with a competence in this field instead of—or in addition to—other authorities like the police. Had this been the case, the labour inspectorates would be able to assess whether the posting of TCNs to the country is lawful. Even though some labour inspectorates express that they lack knowledge in this field, their general experience of understanding employment relationships could also contribute to the assessment of whether the worker is lawfully and habitually employed in sending country.

In some EU Member States like Germany and Belgium, the authorities carry out inspections targeted toward posted TCNs (ELA 2023). It seems that it could be a good idea to expand this practice to additional Member States. Another possibility would be to develop a template for inspectors to use when assessing the situation of TCNs.

### **New tools to disclose fake posting**

At last, we describe the approach that can be used by labour inspectorates to disclose fake posting. This approach has been tested by inspectors and adjusted to their experiences. As competences and resources vary between countries, the approach would have to be adjusted according to national regulations. The questions in the text box below are indicative and not to be followed step by step. Rather, it can provide some ideas of the kind of questions/documentation that could be asked for during inspections to disclose fake posting.

A) Desk inspections prior to on-site inspections.

1. Look up information about the posted companies that will be covered by the on-site inspection. In the register established by the European Commission, [European e-Justice Portal - Business registers – search for a company in the EU \(europa.eu\)](https://european-council.europa.eu/media/1025892/1/160917en01_en.pdf) you can search for information in national registers on enterprises. There are also national registers that can be used.

- a. Industry/sector
- b. Number of employees
- c. When it was established
- d. Operating income and operating result

2. If you cannot find information through the registers, ask for it through the IMI.

- a. Use free text boxes to explain and ask more detailed questions. Include description of the case / why you ask.
- b. See Box 2 for other relevant questions.

3. Ask the undertaking the following questions and for the following documentation (by e-mail, phone or on-site)

- a. Describe:
  - i. the economic activity in the sending country,
  - ii. where the substantial business activity is performed
  - iii. the five largest contracts you have had the last year with information about the assignor, registration number and address.
- b. Send documentation of:
  - i. Business address
  - ii. Key number of the economic activity, including operating income and operating result
  - iii. Number of employees and hereof number of administrative staff
  - iv. Where these employees are employed
  - v. Service contract for the activity the inspection covers.

B) On-site inspections (adjust question to what the national legislation allows you to ask)

1. During the interview with workers, ask the following question (even if the information is given in A1 and/or work contracts.

- a. Who is your employer?
- b. How long have you been employed by this company?
- c. How were you recruited to this job?
- d. Do you have a permanent or temporary contract?
- e. Where do you usually work (for this undertaking)?
- f. Where did you work before this assignment?
- g. How long are you going to work on this assignment?
- h. Where do you live and who has arranged the housing (yourself, employer, other)?
- i. What is your home address (in the sending country)?

2. Ask the worker for the following documentation:

- a. ID card
- b. Health and safety card (if applicable)

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