

Tools for Labour Inspectorates to identify false posting of workers

Posted work 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 (art. 4)). Thus, ways to determine genuine posting situations include 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.

One part of the BETIC-project ([Better Enforcement Through Improved Nordic-Baltic Cooperation](#)) was for the participating labour inspectorates to test new tools to identify false posting of workers. Previous stages in the project uncovered that one main challenge for the inspectors is confirming the posted workers' legal employment and whether the company is legally established in the sending country.

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).

Based on the testing and the evaluation afterwards, the approach outlined below (see text box) can be useful for labour inspectorates in order to disclose fake posting. As competences, resources and strategies vary between countries, the approach would have to be adjusted according to the national context. The questions are therefore 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. In some

situations, to ask all questions to the employees would take too long, and we have highlighted (in bold) the questions considered most important.

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" (euro-pa.eu), you can search for information from national registers on enterprises. There are also national registers that can be used. Information to look for includes:

- 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 Internal Market Information System (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.

Literature:

Alsos, K., Huseby, J. S. & Ødegård, A.M. (2024). Better enforcement through improved Nordic-Baltic cooperation. Final report. Faforeport 2024:38

Ecorys, HIVA-KU Leuven, Spark Legal and Policy Consulting, and wmp consult (2023) Study supporting the Monitoring of the Posting of Workers Directive 2018/957/EU and of the Enforcement Directive 2014/67/EU – The situation of temporary cross-border mobile workers and workers in subcontracting chains, Directorate-General for Employment, Social Affairs and Inclusion

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

1. During the interview with workers, ask the following questions (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)? (To identify whether the employee lives and work 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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