

Baza wiedzy: Delegowanie w Europie

Consolidated Version of the
Posting-Directive 2018/2020

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DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 December 1996 concerning the posting of workers in the framework of the provision of services
amended by DIRECTIVE (EU) 2018/957 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 June 2018

Article 1

Subject-matter and scope

1. This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.

a) This Directive shall ensure the protection of posted workers during their posting in relation to the freedom to provide services, by laying down mandatory provisions regarding working conditions and the protection of workers' health and safety that must be respected.

b) This Directive shall not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor does it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.

2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.

3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

a) post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

b) post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking as referred to in point (c) is to carry out work in the framework of the transnational provision of services within the meaning of point (a), (b) or (c) by the user undertaking in the territory of a Member State other than where the worker normally works for the temporary employment undertaking or placement agency, or for the user undertaking, the worker shall be considered to be posted to the territory of that Member State by the temporary employment undertaking or placement agency with which the worker is in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be an undertaking as referred to in paragraph 1 and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU of the European Parliament and of the Council.

The user undertaking shall inform the temporary employment undertaking or placement agency which hired out the worker in due time before commencement of the work referred to in the second subparagraph.

4. Undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State.

Article 2

Definition

1. For the purposes of this Directive, 'posted worker' means 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.
2. For the purposes of this Directive, the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.

Article 3

Terms and conditions of employment

1. Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out:

- by law, regulation or administrative provision, and/or
 - by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:
- a) maximum work periods and minimum rest periods;
 - b) minimum paid annual leave;
 - c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
 - d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - e) health, safety and hygiene at work;
 - f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
 - g) equality of treatment between men and women and other provisions on non-discrimination;
 - h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;
 - i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

Point (i) shall apply exclusively to travel, board and lodging expenditure incurred by posted workers where they are required to travel to and from their regular place of work in the Member State to whose territory they are posted, or where they are temporarily sent by their employer from that regular place of work to another place of work.

For the purposes of this Directive, the concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and means all the constituent elements of remuneration rendered mandatory by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with paragraph 8.

Without prejudice to Article 5 of Directive 2014/67/EU, Member States shall publish the information on the terms and conditions of employment, in accordance with national law and/or practice, without undue delay and in a transparent manner, on the single official national website referred to in that Article, including the constituent

elements of remuneration as referred to in the third subparagraph of this paragraph and all the terms and conditions of employment in accordance with paragraph 1a of this Article.

Member States shall ensure that the information provided on the single official national website is accurate and up to date. The Commission shall publish on its website the addresses of the single official national websites.

Where, contrary to Article 5 of Directive 2014/67/EU, the information on the single official national website does not indicate which terms and conditions of employment are to be applied, that circumstance shall be taken into account, in accordance with national law and/or practice, in determining penalties in the event of infringements of the national provisions adopted pursuant to this Directive, to the extent necessary to ensure the proportionality thereof.

1a. Where the effective duration of a posting exceeds 12 months, Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory, in addition to the terms and conditions of employment referred to in paragraph 1 of this Article, all the applicable terms and conditions of employment which are laid down in the Member State where the work is carried out:

- by law, regulation or administrative provision, and/or
- by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8.

The first subparagraph of this paragraph shall not apply to the following matters:

- a) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses;
- b) supplementary occupational retirement pension schemes.

Where the service provider submits a motivated notification, the Member State where the service is provided shall extend the period referred to in the first subparagraph to 18 months.

Where an undertaking as referred to in Article 1(1) replaces a posted worker by another posted worker performing the same task at the same place, the duration of the posting shall, for the purposes of this paragraph, be the cumulative duration of the posting periods of the individual posted workers concerned.

The concept of “the same task at the same place” referred to in the fourth subparagraph of this paragraph shall be determined taking into consideration, inter alia, the nature of the service to be provided, the work to be performed and the address(es) of the workplace.

1b. Member States shall provide that the undertakings referred to in point (c) of Article 1(3) guarantee posted workers the terms and conditions of employment which apply pursuant to Article 5 of Directive 2008/104/EC of the European Parliament and of the Council to temporary agency workers hired-out by temporary-work agencies established in the Member State where the work is carried out.

The user undertaking shall inform the undertakings referred to in point (c) of Article 1(3) of the terms and conditions of employment that it applies regarding the working conditions and remuneration to the extent covered by the first subparagraph of this paragraph.

2. In the case of initial assembly and/or first installation of goods where this is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and carried out by the skilled and/or specialist workers of the supplying undertaking, the first subparagraph of paragraph 1 (b) and (c) shall not apply, if the period of posting does not exceed eight days.

This provision shall not apply to activities in the field of building work listed in the Annex.

3. Member States may, after consulting employers and labour, in accordance with the traditions and practices of each Member State, decide not to apply the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) when the length of the posting does not exceed one month.

4. Member States may, in accordance with national laws and/or practices, provide that exemptions may be made from the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) and from a decision by a Member State within the meaning of paragraph 3 of this Article, by means of collective agreements within the meaning of paragraph 8 of this Article, concerning one or more sectors of activity, where the length of the posting does not exceed one month.

5. Member States may provide for exemptions to be granted from the first subparagraph of paragraph 1 (b) and in the cases referred to in Article 1 (3) (a) and (b) on the grounds that the amount of work to be done is not significant.

Member States availing themselves of the option referred to in the first subparagraph shall lay down the criteria which the work to be performed must meet in order to be considered as 'non-significant'.

6. The length of the posting shall be calculated on the basis of a reference period of one year from the beginning of the posting.

For the purpose of such calculations, account shall be taken of any previous periods for which the post has been filled by a posted worker.

7. Paragraphs 1 to 6 shall not prevent the application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. The employer shall, without prejudice to point (h) of the first subparagraph of paragraph 1, reimburse the posted worker for such expenditure in accordance with the national law and/or practice applicable to the employment relationship.

Where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the allowance specific to the posting are paid in reimbursement of expenditure actually incurred on account of the posting or which are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure.

8. 'Collective agreements or arbitration awards which have been declared universally applicable' means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

In the absence of, or in addition to, a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

- collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or

- collective agreements which have been concluded by the most representative employers' and labour organisations at national level and which are applied throughout national territory,

provided that their application to undertakings as referred to in Article 1(1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article and, where applicable, with regard to the terms and conditions of employment to be guaranteed posted workers in accordance with paragraph 1a of this Article, between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.

Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:

- are subject, in the place in question or in the sector concerned, to the same obligations as undertakings as referred to in Article 1(1) as regards the matters listed in the first subparagraph of paragraph 1 of this Article and, where applicable, as regards the terms and conditions of employment to be guaranteed posted workers in accordance with paragraph 1a of this Article, and
- are required to fulfil such obligations with the same effects.

9. Member States may require undertakings as referred to in Article 1(1) to guarantee workers referred to in point (c) of Article 1(3), in addition to the terms and conditions of employment referred to in paragraph 1b of this Article, other terms and conditions that apply to temporary agency workers in the Member State where the work is carried out.

10. This Directive shall not preclude the application by Member States, in compliance with the Treaties, to national undertakings and to the undertakings of other Member States, on the basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions.

Article 4

Cooperation on information

1. For the purposes of implementing this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more liaison offices or one or more competent national bodies.

2. Member States shall make provision for cooperation between the competent authorities or bodies, including public authorities, which, in with national law, are responsible for monitoring the terms and conditions of employment referred to in Article 3, including at Union level. Such cooperation shall in particular consist in replying to reasoned requests from those authorities or bodies for information on the transnational hiring-out of workers, and in tackling manifest abuses or possible cases of unlawful activities, such as transnational cases of undeclared work and bogus self-employment linked to the posting of workers. Where the competent authority or body in the Member State from which the worker is posted does not possess the information requested by the competent authority or body of the Member State to whose territory the worker is posted, it shall seek to obtain that information from other authorities or bodies in that Member State. In the event of persistent delays in the provision of such information to the Member State to whose territory the worker is posted, the Commission shall be informed and shall take appropriate measures.

The Commission and the public authorities referred to in the first subparagraph shall cooperate closely in order to examine any difficulties which might arise in the application of Article 3 (10).

Mutual administrative assistance shall be provided free of charge.

3. Each Member State shall take the appropriate measures to make the information on the terms and conditions of employment referred to in Article 3 generally available.

4. Each Member State shall notify the other Member States and the Commission of the liaison offices and/or competent bodies referred to in paragraph 1.

Article 5

Monitoring, control and enforcement

The Member State to whose territory the worker is posted and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and in Directive 2014/67/EU and shall take appropriate measures in the event of failure to comply with this Directive.

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall in particular ensure that adequate procedures are available to workers and/or workers' representatives for the enforcement of obligations under this Directive.

Where, following an overall assessment made pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of this Directive, that Member State shall ensure that the worker benefits from relevant law and practice.

Member States shall ensure that this Article does not lead to the worker concerned being subject to less favourable conditions than those applicable to posted workers.

Article 6

Jurisdiction

In order to enforce the right to the terms and conditions of employment guaranteed in Article 3, judicial proceedings may be instituted in the Member State in whose territory the worker is or was posted, without prejudice, where applicable, to the right, under existing international conventions on jurisdiction, to institute proceedings in another State.

Article 7

[...]

Article 8

[...]

Article 9

This Directive is addressed to the Member States.

ANNEX of Directive 96/71/EC

The activities referred to in Article 3(2) include all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:

1. excavation
2. earthmoving
3. actual building work
4. assembly and dismantling of prefabricated elements
5. fitting out or installation
6. alterations
7. renovation
8. repairs
9. dismantling
10. demolition
11. maintenance

12. upkeep, painting and cleaning work

13. improvements.

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- ✓ dokumentację kontraktową,
- ✓ konsultacje na temat prawidłowego i zyskowego delegowania pracowników za granicę,
- ✓ dostęp do wiedzy na temat regulacji w państwach, do których delegowani są pracownicy,
- ✓ dostęp do regulacji państw przyjmujących w zakresie stawek minimalnych, czasu pracy, dodatków i innych przepisów, do których stosowania zobligowani są polscy przedsiębiorcy,
- ✓ audyty dla firm delegujących w zakresie prawidłowości i opłacalności delegowania,
- ✓ audyty dla kontrahentów n/t poprawności delegowania przez polską firmę,
- ✓ certyfikację w zakresie zgodności z normą [CBE-2020 [Cross-Border Employment] Construction, Infrastructure & Energy]

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