

information

provided on the posting
of workers



**PART 1: THE NECESSITY
OF INFORMATION**

**PART 2: A COMPARATIVE ANALYTICAL
SURVEY OF WEBSITES
SET UP BY PUBLIC
ADMINISTRATIONS**



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Introduction

The posting of workers enters in the framework of a transnational provision of services and involves a minimum of two undertakings or even several in the case of sub-contracting in series, and salaried workers. This operation is complex because of various combined factors:

- It implies a triangular relation between two undertakings linked by a service provision agreement and workers in the framework of the posting.
- It is of a transnational nature entailing the enforcement of several national laws, even if all of them have to comply with Community law in principle.
- It necessitates compliance with both labour and social security legislation.

This complexity alone calls for special attention be paid to the manner in which the participants have access today to information required to ensure the legal safety of operations in which they make commitments. This is all the more justified given that Community rules have greatly reinforced information-related obligations incumbent on Member States.

The purpose of this survey is not to present the state of transposition of the Posting Directive in different Member States, but to highlight the necessity of improving the quality of information provided to undertakings and workers. The effectiveness of the rule of law pre-supposes a proper understanding thereof by the stakeholders, both in the case of those required to apply these rules and the beneficiaries.

Proper identification of the stakeholders for a better understanding of their respective needs is an essential factor in the delivery of adequate and better information. Yet, it appears today that the information is mainly directed towards foreign undertakings present on national territory in the framework of a temporary service offer in application of the Directive 96/71 on the posting of workers. It seldom concerns undertakings established on national territory who wish to temporarily post workers to another Member State or who want to use such a provision of services themselves. It is also rare that such information is directed towards the posted workers.

Better information also pre-supposes the necessity to assess all of the stakeholders' needs and transcend the legal logic whereby each institution only provides information falling under its scope. In other words, institutional rifts causing a dispersion of information have to be

surmounted, since the posting of workers involves compliance with not merely the labour law regulations of the Host State where the work is carried out, but also the rules related to the social security scheme of posted workers in the Home State of establishment. Consequently, it has appeared worthwhile to compare the obligations concerning information incumbent on the public administrations in the different Community instruments that have to be enforced.

This operation was taken into account as early as 1971 by EEC Regulation n°1408/71 of 14 June 1971¹ on the application of social security schemes to salaried and self-employed workers and their families moving within the Community, followed by Directive 96/71/CE of 16 December 1996 on the posting of workers in the framework of a provision of services². It also enters today in the framework of Directive 2006/123/CE of 12 December 2006 on services in the internal market³.

Workers posted in the framework of a provision of services does not exclude ipso facto the application of the Services Directive, contrary to certain deep rooted convictions. In fact, the Services Directive is explicitly linked to the Posting Directive and regulations on coordination of social security systems that also have to be enforced. Its article 3 on "*the relation with other provisions of Community law*" sets out in paragraph 1 : « *If the provisions of this Directive conflict with a provision of another Community act governing specific aspects of access to or exercise of a service activity in specific sectors or for specific professions, the provision of the other Community act shall prevail and shall apply to those specific sectors or professions. These acts include:*

a) *Directive 96/71/CE;*

b) *Regulation (EEC) no 1408/71 ».*

Consequently, the application of the Posting Directive does not aim to overshadow that of the Services Directive. The primacy of the Posting Directive is only guaranteed when it conflicts with the Services Directive, which as we will see, is not the case in matters pertaining to information. On the contrary, an in-depth reading of the two directives reveals that they complement each other as regards right to information.

¹ EEC regulation 1408/71 of 14 June 1971, on the application of social security schemes for salaried workers and their families moving within the Community, OJ L 149 of 5.7.1971, article 14, 1)

² Directive 96/71/EC of 16 December 1996 concerning the posting of workers in the framework of the provision of services, OJ L 18 of 21.1.1997

³ Directive 2006/123/EC of 12 December 2006 on services in the internal market, OJ L 376 of 27.12.2006

The three Community instruments previously mentioned emphasise the necessity of providing « *easy access* »⁴ to information, on the necessity of rendering this information « *generally accessible* »⁵, on the « *rapid provision and accessibility* » of exchanges⁶. All of these attach importance to communication and information technologies (CIT): preamble (50) of Directive 2006/123/EC of 12/12/2006 provides that Member States must ensure that relevant information is easily accessible to service providers and users. Thus, this obligation « *must be fulfilled by making this information available on a website* », bearing in mind that this information has to be provided « *in a clear and unambiguous manner* »⁷. §3 of article 7 of the same Directive requests Member States to ensure that information and assistance is « *easily accessible at a distance and by electronic means* »⁸. The new Community regulation (EC) n°987/2009 of 16 September 2009 laying down the procedure for implementing (EC) n°883/2004 regulation on the coordination of social security systems states in article 2§1 that exchanges between the authorities and institutions of Member States and persons covered by the basic regulation are based on « *the principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility, in particular for the disabled and elderly* ».

Directive 96/71, however, makes no mention of CIT as a means of information, which can be naturally explained by the trends at the time it was adopted in 1996.

Given the present state of Community law and national legislations applicable, it would therefore be expedient to check if undertakings and workers alike have easy access to information that is clear-cut and reliable enough for them to exercise their freedoms, safely enforce their rights and guarantee the effectiveness of social law.

The analysis of websites set up by public administrations to provide information on the posting of workers is a useful source of instruction, making it possible to check if

⁴ Preamble 50 of Directive 2006/123/EC.

⁵ Article 4§3 of Directive 96/71/EC : « 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 »..

⁶ Article 2§1 of Regulation n°987/2009 of 16 September 2009.

⁷ Recital (50) of Directive 2006/123/EC provides that « It is necessary for providers and recipients of services to **have easy access to certain types of information**. It should be for each Member State to determine, within the framework of this Directive, the way in which providers and recipients are provided with information. **In particular, the obligation on Member States to ensure that relevant information is easily accessible to providers and recipients and that it can be accessed by the public without obstacle could be fulfilled by making this information accessible through a website**. Any information given should be provided in a clear and unambiguous manner ».

⁸ Article 7§3 of Directive 2006/123/EC.

undertakings and workers have easy access to necessary information by using new communication and information technologies.

The first obstacle to be surmounted is the accessibility of websites which can be examined under three angles:

- Is the site correctly referenced in the search engines when an undertaking or worker seeks information on posting? This search may be simple for nationals who master the language and administrative culture of the State where they are established, but may be prove to be a daunting task for nationals of another Member State in search of information on the State where they intend to move in the framework of a temporary provision of services. Search engines propose a series of results among which it is sometimes difficult to identify the appropriate website.
- Presuming the workers do manage to access the official website of a public administration offering information on posting, they can legitimately assume that the information given is complete, in other words that it provides them with all the information necessary as regards rules and procedures to observe in the framework of a posting. This logic is that of a single point of contact that offers information on all the formalities required. However, this is where users come up against the transnational nature of the posting operation and the fact that certain formalities have to be accomplished in the State where they are established and not in the State where the work is performed; furthermore, these formalities do not fall under the scope of labour administrations, but of those in charge of social security systems. This is why it is useful to check how public administration websites handle this dispersion of formalities to be observed and whether they manage to provide a panoramic vision of obstacles related to posting.
- Lastly, accessibility can also be examined from a linguistic point of view; without any translation of the relevant information for the stakeholders, the websites will be out of reach of the public they target.

Website accessibility is a key element for the efficient circulation of information. At a second stage, the assessment of websites must include criteria such as the quality of content delivered, quality being understood as the capacity of websites to provide accurate, clear-cut and up to date information. The rights guaranteed to posted workers are derived from laws and collective agreements and potentially cover a large number of provisions ranging from minimum wage rates to occupational health. The profusion of rules can be prejudicial to their

understanding and constitutes a real challenge for the authorities in charge of presenting them. Furthermore, it is interesting to compare the procedures selected to simplify the complexity of provisions without affecting the quality of information provided.

Quality can also be measured in terms of assistance to users. This assistance is all the more necessary given the complexity of legal provisions and collective agreements, in addition to linguistic barriers that constitute a real handicap. Assistance could be of various forms: hot lines, on-line applications to administrative offices, user instruction guides and brochures.

The objective of this survey is to identify the content of the minimum information to be provided to undertakings and workers; it is based on the study of law, practices and content of websites created by public administrations as regards information on posting. Our analysis of websites does not claim to be exhaustive and is based on certain Member States, namely, those to which we had access through a website providing information on posting along with information translated into a language other than that of the State considered⁹. Consequently, we excluded Italy from our selection, since we were unable to access a website giving information in a language we could understand.

Time constraints also led us to limit the number of websites examined. Even if the comparative survey of websites dealt with in the 2nd part concerns a larger number¹⁰ of States, the first part on the content of information focuses on 4 Member States in particular, for which meetings with resource persons in central or local administrations enabled us to validate certain practices. These four States are:

- Germany
- Belgium
- France
- Luxembourg

All the Member States examined have implemented an information policy from which we can gain a useful insight today. This policy has continuously evolved and we wish to mention

⁹ Among the following languages : German, English and French

¹⁰ Germany, Belgium, Spain, Luxembourg, Netherlands, Sweden

that the information in this report was collected between 1 April and 30 August 2010. Within this period, the assessment of websites led us to observe changes indicating that the efforts to improve information delivered have been constant.

Part I. The Necessity of Information

In its recommendation of 31 March 2008¹¹, the European Commission called Member States to « *increase their efforts to enhance access to the information on the terms and conditions of employment that must be applied by service providers* ». This being the case, the Commission is only interested in one of the key aspects of the transposition of the 96/71 directive: enable service providers to know the content of the labour laws applicable to temporarily posted workers in the Host State where the work is performed. However, to improve the effectiveness of social law in the field of posting of workers, the information given cannot be merely for the benefit of the service providers. This objective can only be achieved by enabling each of the posting stakeholders to gain cognizance of the legal framework of their action, whether this relates to enforcement of the service provision terms by an undertaking in another Member State or the corresponding rights and obligations, if any, of the co-contractor, benefiting from the service or the rights guaranteed to workers having accepted a cross-border posting. The terms of the lawfulness of the posting presupposes compliance with all of the obligations under labour law and social security legislation in both the Home State of establishment and the Host State where the work is temporarily performed. Moreover, this necessity is derived from the different obligations incumbent on the Member States (Chapter 1).

On the basis of these observations, this survey attempts to define and specify the minimal content of information to be given to service provider and user undertakings alike in order to ensure compliance with related rules both prior to and during the posting. (Chapter II).

The information intended for workers, although not contained in the Services Directive which only concerns undertakings and users (legal entities or private individuals), is of utmost importance if the objective is to ensure the effectiveness of rights guaranteed by the Posting Directive. When informed of their rights, they can become the key players of their posting and contribute to the proper implementation of rules (Chapter III).

¹¹ Commission Recommendation of 31 March 2008, on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services (2008/C 85/01).

CHAPTER I. INFORMATION: THE BASIS OF ACTION

If undertakings, which usually have the major share of legal obligations, are to be guaranteed freedom to provide services within the European Union as laid down in the Treaties, they must benefit from proper access to information to avail of this right. The information must reach both the service providers and users linked to each other by contract and who, either in their capacity as provider and employer or as user of the services, face the risk of sanctions (Section 1).

This information is all the more justified given that the European Union is aware of the negative effects of insufficient information available to undertakings and individuals in the exercise of their freedoms, rights and obligations and has therefore progressively drawn up an array of rules which imposes on Member States an obligation to provide information (Section 2).

Section 1. Guaranteeing legal safety for service providers and users

Service provider and user undertakings are the main entities responsible for the enforcement of rules concerning the Posting Directive and social security legislation. Information on their respective social obligations, provided prior to the operation, will guarantee that the negotiation covering the content of the provision of services and its cost will incorporate the social cost of the posting (A).

This information is all the more essential considering that the rules of Community social law are complex to implement. This complexity can have two consequences: either it constitutes a real impediment to the freedom to provide services, because the participants are not in a position to manage it and have no propensity to take risks, or such an operation exposes the stakeholders to legal uncertainties of which they will only be able to assess the outcome during the implementation of the service when controlled by the administrative authorities of the Host State (B).

The severity of the sanctions faced is legitimate reason for undertakings to be afforded protection through appropriate information so that they can avoid them, whereas repression alone will not guarantee the effectiveness of law (C).

A. Identifying the undertakings to whom the information must be provided

The question of identifying the parties meant to receive the information is crucial. It must be directed towards the two undertakings linked by a service provision agreement. Moreover, the information must be given in both the State in which they are established and also the State where they intend to provide their services. This recommendation is justified on several grounds.

1. Informing undertakings established on the national territory

All undertakings are entitled to provide and use services and must, therefore, have access to information on the obligations of both these legal categories. However, the analysis of websites reveals that in the majority of cases, the information offered is only relevant to the service provider undertakings established in another Member

State, probably because the public administrations, in charge of the website pages dedicated to posting, focus mainly on compliance with social obligations specific to their own territory

and to which the undertakings established in another Member State must have access. The main concern arising from the transposition in internal law of the Posting Directive is to inform the foreign undertakings on the scope of their social obligations in the Host State where the work is performed.

The undertakings established on the national territory are rarely identified in the posting sections of the websites as requiring information appropriate to their own potential cross-border activity. However, as we will see, the posting of workers certainly implies compliance with obligations in the Host State, but it also involves formalities to be accomplished in the Home State where the undertaking is established. Adequate information must enable undertakings to gain knowledge of their obligations from an overall point of view, even before attempting to decipher the regulations applicable in the Host State, which they will naturally often seek out after understanding the constraints related thereto.

2. Informing undertakings established on the national territory in their capacity as service users

Moreover, the undertakings established on the national territory can be users of services involving the posting of workers and liable in this respect in the event of a violation of laws. To the extent that they play a role in the service provision agreements, they must be familiar with these obligations/responsibilities and also those of their co-contractors. Depending on the legislation applicable in the Host State, the service user can be involved and held jointly and severally liable for any offence reported¹².

The evolution of Community law, as that of national legislations, brings to light an increasing number of complaints against service users.

Community law has recently introduced rules which will affect all service users in all the Member States upon transposition of Directive 2009/52/CE of 18 June 2009, i.e. not later than 20 July 2011. The aim of this directive is to hold both the service provider and user liable in the case of employing third country nationals with illegal stay status.

Apart from sanctions aimed at the employer of illegal workers, it also sets out sanctions for the contractor using a direct employing sub-contractor of third country nationals with illegal stay status, as well as the main employer and any intermediate sub-contractor, who « *knew*

¹² Survey “*Liability in subcontracting processes in the European construction sector*”, European Foundation for the Improvement of Living and Working Conditions, 2008, accessible on the website <http://www.eurofound.europa.eu/pubdocs/2008/94/en/1/EF0894EN.pdf>

that the employing subcontractor employed illegally staying third-country nationals»¹³. The contractor can jointly and severally with the employer, or in the employer's place be liable to pay the financial sanctions in increasing amounts, depending on the number of illegally employed third country nationals, together with their return fares in the event that return proceedings have been initiated, any unpaid wages due in pursuance of the legal provisions and collective agreements applicable and all costs resulting from sending the unpaid wages to the country to which the third country national returned or was sent back to¹⁴.

The service user must therefore be aware of the risks entailed in using the services of a subcontracting provider who does not comply with the rules when employing third country nationals.

French legislation has already provided for criminal sanctions in this respect aimed at service users who employ « *directly or through intermediary persons* », a foreigner without

¹³ Directive 2009/52 of 18 June 2009, providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, Article 8, paragraph 2, OJ L 168 of 30.6.2009,

¹⁴ Directive 2009/52/EC of 18 June 2009, CJEU L 168/24 of 30.6.2009, Article 8 –« Sub-contracting-

1. Where the employer is a subcontractor and without prejudice to the provisions of national law concerning the rights of contribution or recourse or to the provisions of national law in the field of social security, Member States shall ensure that the contractor of which the employer is a direct subcontractor may, in addition to or in place of the employer, be liable to pay:

a) any financial sanction imposed under Article 5; and

b) any back payments due under Article 6(1)(a) and (c) and Article 6(2) and(3).

2. Where the employer is a subcontractor, Member States shall ensure that the main contractor and any intermediate subcontractor, where they knew that the employing subcontractor employed illegally staying third-country nationals, may be liable to make the payments referred to in paragraph 1 in addition to or in place of the employing subcontractor or the contractor of which the employer is a direct subcontractor.

3. A contractor that has undertaken due diligence obligations as defined by national law shall not be liable under paragraphs 1 and 2.

4. Member States may provide for more stringent liability rules under national law».

permission to have salaried employment in France¹⁵. This legislation is presently being updated for better compliance with the aforesaid new Community rules¹⁶.

Apart from the specific case stated above, some Member States have made the service user liable for obligations specific to posting operations.

Thus, since 1 April 2007, Belgian legislation imposes on “*any party with whom or for whom posted workers are employed whether directly or through sub-contracting*” to check, prior to any employment of these salaried workers in Belgium, whether a preliminary posting declaration for such persons was made via the LIMOSA site and whether they can submit an acknowledgement of receipt issued by the Belgian National Office of Social Security (NOSS)¹⁷. If this is not the case, the user is obliged to file this application at the NOSS under penalty of sanctions¹⁸. It may be noted that the Belgian public authorities have considerably simplified the performance of these mandatory declarations by allowing both service providers and users to make these declarations on-line via a dedicated internet portal¹⁹.

Germany imposes on undertakings hiring the services of one or several employees from a labour supplier established abroad (for which the activity falls within the scope of collective

¹⁵ Article L8256-2 of the labour code: « *The fact for any persons, whether directly or through an intermediary person, to hire, to keep in their service, or to employ for any duration whatsoever, a foreigner without a work permit authorising them to have a salaried job in France, in contempt of the provisions of the first paragraph of article L.8251-1, is punishable by imprisonment of five years and a fine of 15 000 euros.*

These sanctions are increased to imprisonment of ten years and a fine of 100 000 euros when the offence is committed in organised groups.

The fine is applied as often as there are foreigners concerned ».

¹⁶ Government bill on immigration, integration and nationality, National Assembly, n° 2400 of 31 March 2010.

¹⁷ Programme-law (I) of 27 December 2006, introducing a preliminary declaration for posted salaried and self-employed workers, BELGISCH STAATSBLAD — 28.12.2006 – Ed. 3 — MONITEUR BELGE

« *Sub-section 2. — Obligations for final users*

Art. 141. " Any party employing persons as stated in article 137, 2° and 5°, whether directly or under a sub-contracting agreement, must communicate by electronic means, prior to the start of employment of these persons, data concerning the identification of the persons who are unable to submit the acknowledgement of receipt pursuant to article 139, paragraph 4 of this chapter, to the National Social Security Office in accordance with the procedure set by the King.

As soon as the declaration mentioned above is made, the declaring party will receive an acknowledgement of receipt pursuant to article 3 of the aforesaid law of 24 February 2003.

The King will determine the procedures and data groups that must be stated in this declaration.

The national Social Security Office will determine the content of these data groups.

The King can designate the persons exempted from this obligation ».

¹⁸ Art. 158 of the law-programme. « *Without prejudice to articles 269 to 274 of the Criminal Code, any person who does not comply with the provisions of articles 141 and 155 faces a fine of 250 to 2 500 euros ; the fine is applied as many times as there are posted salaried employees or self employed workers toward whom an offence was committed, which fine shall not, however, exceed 125 000 euros ».*

¹⁹ In Belgium : https://www.socialsecurity.be/foreign/fr/employer_limosa/infos/registration/home.html.

agreements made mandatory) to submit a written declaration in German to the Bundesfinanzdirektion West²⁰.

Even if the service users claim no responsibility, they are, in all evidence, an effective intermediary to circulate information and ensure observance of regulations by the service providers. Providing information in a language they master, can only promote the conclusion of service agreements in conformity with the rules of the Host State. However, to this day, the service users do not specifically appear as recipients of global information on posting. The German site www.zoll.de is only aimed at "*hirers-out of labour*" as a specific category to which the information is directed.

The official Belgian site for information and services http://www.belgium.be/fr/emploi/contrats_de_travail/detachement/ only concerns the provider established abroad or the provider established on national territory. The French and Luxembourg sites are silent on this category.

3. Informing service provider undertakings

The undertaking that provides services is legally involved in a two-fold manner for posting operations. As a provider undertaking, it will temporarily transfer a part of its activity to the territory of the service user and will be exposed to the administrative constraints of the Host State. In its role as legal employer throughout the posting period, it is bound to comply with the social obligations of this same State. These constraints certainly account for the fact that the States have directed the information on their website for their intention, while often omitting to provide similar information to undertakings established on their territory and who wish to avail of their freedom to provide services in another State.

The information must concern not only the undertakings established on national territory to familiarise them with the rights and obligations incumbent on them in the framework of a cross border posting, but also the service providers established in another State of the European Union likely to operate on the national territory.

²⁰ Article 18 paragraph 3 of the law on the posting of salaried workers (AEntG).

B. Surmounting the complexity of rules to be observed by the provider

The information to be given to any undertaking must guarantee accessibility to legislation, by not only offering a panoramic vision of the obligations related to the provision of services in the framework of posting, but also by clearly mentioning the constraints. However, posting is a complex operation because the undertaking is established in a State where a part of the legislation will continue to be effective, whereas the temporary posting is carried out in another Member State where a part of the legislation entails a departure from the legislation of the State of origin.

This complexity also emerges as a result of the implementation of rules arising from two different branches of law with a logic that is diametrically opposite. In labour law, the Posting Directive implies compliance with a hard core of social rules applicable in the Host State if the rules of the Home State turn out to be less favourable, the objective being that freedom to provide services should not promote social dumping. In social security law, posting on the contrary, allows the posted worker to continue to be attached to the social security scheme of the Home State.

Nevertheless, it is all of these obligations that every undertaking must consider before deciding to provide services in another Member State, especially since compliance with social security rules must be ensured in the Home State before departure and that controls in the Host State cover these aspects.

Websites that provide an insight into all these provisions are few and far between. The implementation of social security legislation is often the responsibility of an administrative body that is distinct from that of labour administration, the partitioning of institutions resulting in a partitioning of the presentation of rules.

Only the official Belgian site for information and services http://www.belgium.be/fr/emploi/contrats_de_travail/detachement/ presents these two aspects at the outset.

For the others, the labour administration website may at best, present a link to the website of the social security administration, leaving the undertaking the task of seeking adequate information on this new website. At worst, the information may not deal with rules specific to social security matters, even though this aspect will be crucial for the lawfulness of the operation. In fact, the labour inspectorate of the Host State and in particular, the organisation

in charge of collecting social security contributions could suspect fraud in matters of illegal labour in the absence of an E 101 certificate (new A1).

The combined presentation of labour law rules and social security legislation is even more justified considering that many rules specific to social security law are gradually being taken into consideration by labour administrations. As an example, let us cite the necessity of performing significant activities in the Home State in order to benefit from the freedom to provide services. Even before this obligation appeared in the new 883/2004 regulation on the coordination of social security systems in article 12²¹, the Court of Justice of the European Union had had the opportunity, on several occasions, to set out the terms and conditions for using the derogation permitted in former article 14 of Regulation 1408/71: in the FTS²² judgement it was stated that *« in order to benefit from the advantage afforded by article 14 (1) (a) of regulation n° 1408/71, an undertaking engaged in providing temporary personnel which, from one Member State, makes workers available on a temporary basis to undertakings based in another Member State must normally carry on its activities in the first State. That requirement is met where the undertaking habitually carries on significant activities in the State in which it is established »*. The Plum²³ judgement included these same restrictions : *« It follows that a construction company, established in one Member State, which sends its workers to the territory of another Member State in which it performs all its activities, with the exception of purely internal management activities, cannot rely on Article 14(1)(a) of Regulation N° 1408/71 »*.

This requirement, as regards significant activity of the service provider undertaking in the State where it is established, is perfectly integrated today by labour administrations and their inspectorates. The information requested from the administrative offices of the Home State where they are established often deals with this question, although this requirement does not appear anywhere in the Posting Directive. The synergy of controls conducted by various administrations also results from their joint efforts in combating fraud in matters of illegal employment, to the extent that this definition encompasses dissimulation of activities.

²¹ Regulation 883/2004, article 12 : *« A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed 24 months and that he/she is not sent to replace another person »*.

²² CJEU of 10 February 2000, C-202/97, FTS, Rec. p. I-883, points 33 and 45

²³ CJEU of 9 November 2000, C-404/98, case Plum, point 22

C. Assurance for the parties: information as a shield against potential lawsuits

The inspection procedures for posting operations and sanctions related thereto in the case of infringement, constitute the major part of Community labour litigation. This litigation reveals that the Host States using the services have set up control procedures to guarantee compliance with their social legislation and in this way can prevent unfair competition between undertakings, harm to the labour market and safeguard the protection of workers. These means of control are part of a larger framework that aims to punish illegal work. Thus, it is hardly surprising that Germany has entrusted inspection of posting operations to the "Finanzkontrolle Schwarzarbeit" (FKS), the customs administration in charge of controlling undeclared work. The information to be given to undertakings must enable them to abide by the law and consequently protect themselves from lawsuits either because of offences specific to posting operations (1), or offences pertaining to illegal work (2).

Lastly, in certain cases, national legislation can call for the posting operation to be disqualified (3).

1. Sanctions incurred in respect of posting operations

Since the Directive EC 96/71 has explicitly entrusted Member States with the responsibility of taking «*appropriate measures in the event of failure to comply with this directive*»²⁴, each State has laid down its procedures of control and sanctions associated with non conforming posting operations.

These sanctions can be aimed at failure to comply with the preliminary declaration formalities or social rules of the Host State.

Thus, in Germany, employers who omit to submit a preliminary declaration, fail to do so in time, submit an inaccurate or incomplete declaration or do not respect the prescribed forms could face an administrative fine that amounts to 30 000€²⁵.

Belgian legislation has recently introduced a social criminal code regrouping all the offences in social law (effective in 2011). The absence of a preliminary declaration by the posting

²⁴ Article 5 of the Directive EC 96/71, op cit.

²⁵ Paragraph 18, point 1 of the AEntG law.

employer on Belgian territory²⁶ is punishable by a level 4²⁷ sanction, and the absence of declaration by final users is punishable by a level 3²⁸ sanction.

The offences can also concern non observance of rules applicable by virtue of a transposition in internal law of article 3 of Directive 96/71. Thus, in German legislation, non compliance with legal rules or collective wage agreements²⁹ is punishable by a fine of 500 000 euros.

2. The similarity between posting and illegal work

Although governed by specific Community rules, the posting operation could be deemed as an illegal work offence following an inspection. The Member States surveyed have all reinforced their means of combating illegal work, and posting has been identified as an operation demanding special vigilance from this point of view. This concern must not be construed as an inconsiderate increase in controls on the part of the Member States, but is very much in keeping with Council Resolution of 22 April 1999 « *on a Code of Conduct for improved cooperation between authorities of the Member states concerning the combating of transnational social security benefit and contribution fraud and undeclared work and concerning the transnational hiring-out of workers* »³⁰.

A certain number of bilateral cooperation agreements entered into by Member States, with explicit reference to this resolution, aims to combat illegal work and the hiring out of transnational workers. By way of examples we can mention :

- The agreement between France and Bulgaria in respect of « *combating undeclared employment and compliance with social legislation in the case of transnational movement of workers and services* » signed on 30 May 2008
- The administrative arrangement between France and Germany in respect of « *cooperation in matters related to combating undeclared employment and*

²⁶ Article 182 §1 of the law of 6 June 2010 introducing the Social criminal code, Le moniteur belge of 1 July 2010.

²⁷ Level 4 violations are more serious: Article 101, last paragraph of the law of 6 June 2010 introducing the Social Criminal Code: «*The Level 4 sanction consists in a prison sentence of six months to three years and a criminal fine of 600 to 6000 euros or only one of these sanctions, or an administrative fine of 300 to 3000 euros*».

²⁸ Article 183 §1 of the law of 6 June 2010 introducing the Criminal Social Code, op cit.

²⁹ §23, Absatz 6 of the AEntG law

³⁰ Resolution of the Council and the representatives of governments of Member States of 22 April 1999, (1999/C 125/01)

transnational fraud regarding social benefits related to a professional activity and in the field of transnational provision of workers » signed on 31 May 2001.

The Directive 2009/52/EC of 18 June 2009³¹, which provides for minimum standards in respect of sanctions and measures against employers of third country nationals with illegal stay status, also highlights the resemblance between posting and illegal work. The posted workers are mentioned in the directive several times: either to exclude them from the field of application of the directive once they are legally employed in a Member State and posted to another Member State by a service provider, or to specify that the information exchanged between administrations in the framework of the Directive 96/71/EC can aim to check that the third country nationals concerned are legally employed in the Member State of Origin.

French legislation has recently reinforced the crackdown on different forms of illegal work particularly among which are undeclared work, bargaining, illegal hiring out of labour and employment of alien workers without work permits³². The offence of concealing salaried employment³³ contains aspects that are often raised by the control authorities in matters pertaining to posting such as the absence of pay slips or a reduction in the number of hours actually worked.

If the service provider faces sanctions, the user too is also implicated in the event of an offence related to undeclared employment³⁴. In the case of cross border provision of services,

³¹ Directive 2009/52/EC of 18 June 2009, op cit

³² Article L8211-1 of the French Labour Code

³³ Article L8221-5 of the labour code : « *is deemed as undeclared work by concealment of salaried employment the fact for any employer to :*

1° intentionally abstain from carrying out the formality set out in article L. 1221-10, concerning the declaration prior to employment ;

2° or to intentionally abstain from carrying out the formality set out in article L. 3243-2, concerning the issue of a pay slip, or to state therein a number of hours which is less than that actually worked, unless resulting from an agreement or collective agreement on re-organisation of working time in application of title II , book I of the third part».

³⁴ Article L 8222-2 of the labour code «*Any party who fails to observe the provisions of article L. 8222-1, as well as any party charged with having used, whether directly or through an intermediary, the services of a person performing undeclared work, is jointly and severally liable with the party having received a report for an undeclared work offence:*

1° To the payment of taxes and mandatory social contributions along with penalties and additional charges due by such person to the Tax office or social protection bodies;

2° As the case may be, to the reimbursement of sums corresponding to the amount of State aid from which such person has benefited ;

3° To the payment of remuneration, indemnities and charges due by such person on grounds of having employed workers without having fulfilled one of the formalities provided in articles L. 1221-10, on the preliminary employment declaration and L. 3243-2, on the issue of pays slips »

the labour code makes the service user responsible for the inspection obligations of his co-contractor established abroad³⁵.

3. Posting and qualification of hiring-out of illicit labour

The posting of workers can also rapidly fall into the category of hiring-out of illicit labour when national legislations prohibit this mode of using labour, either because the hiring-out of labour is forbidden or because only authorised entities are entitled to do so. The labour inspectorates will then enforce their full range of laws to re-qualify the posting as illegal hiring-out of labour if the statutory terms of the offence appear to be satisfied.

³⁵ Article L8222-4 of the labour code

« When the co-contracting party operating on national territory is established or domiciled abroad, the obligations in respect of which compliance is monitored, are those resulting from the regulations with equivalent effect in his country of origin and those which are applicable to him as regards his activity in France »

Article D8222-7

« The contracting party, when such party is not a private individual meeting the terms referred to in [article D. 8222-6](#), is deemed to have carried out the checks required by [article L. 8222-4](#) if he has received from the other party established or domiciled abroad, at the time of signing the contract and every six months until the end of its term :

1° In all cases, the following documents :

a) A document stating his individual identification number given in application of [article 286 ter of the General Tax code](#). If the co-contractor is not obliged to have such a number, a document stating the party's identity, address and contact details or the contact details of the party's occasional tax representative in France ;

b) A document attesting to the legal validity of the co-contractor's social situation in accordance with Regulation (EEC) n° 1408 / 71 of 14 June 1971 or an international social security agreement or failing which, a certificate proving filing of social declarations issued by the French social protection body in charge of collecting social contributions to be paid by the co-contracting party and dated less than six months ;

2° When the registration of the co-contracting party is mandatory in the country of establishment or domiciliation, one of the following documents:

a) A document issued by the authorities who file the professional register or an equivalent document certifying this registration;

b) An estimate, advertisement or professional correspondence provided that the company is mentioned therein along with its name, full address, nature and description of the entry in the professional register;

c) For companies in the process of being created, a document dated less than six months issued by the authority authorised to receive the registration in the professional register and certifying the application for registration in the aforesaid register;

3° When the co-contracting party employs workers to carry out a provision of services lasting more than a month, an affidavit drawn up by the co-contracting party certifying issue of the pay slips to these employees containing the information required under [article R. 3243-1](#) or equivalent documents ».

Article D8222-8

« The documents and certificates listed in [article D. 8222-7](#) are drawn up in French or accompanied with a French translation ».

An undertaking established on French territory is guilty of illicit hiring-out of labour³⁶ when it uses the services of an undertaking « *which is not a temporary employment agency*», and that the contract entered into « *concerns exclusively the hiring out by this latter undertaking of persons who have no special expertise in relation to the employees of the undertaking exercising the same activity*»³⁷.

Article L 8241-1 of the labour code is enforced without distinction by the judges, irrespective of whether the service providers are established on French territory or not. The sanctions are aimed at both natural persons³⁸ and legal entities³⁹.

The provision of services with posting of workers exposes the undertakings involved to the risk of offences that are either specific to the national legislation on posting or that are not specific to the provision of transnational services, but frequent.

These sanctions should be mentioned on the posting websites if only for the sake of prevention, on condition, however, that such sites help undertakings to familiarise themselves with their obligations.

³⁶ Article L8241-1, al 1 of the Labour Code: « *Any for-profit operation having as exclusive objective the hiring-out of labour is forbidden. However, these provisions do not apply to operations in the framework of :*

1° Provisions of this code concerning temporary work, timesharing companies, and modelling agencies when this is carried out by a party holding a modelling agency licence ;

2° Provisions of Article L222-3 of the Sport code concerning sport associations or companies».

³⁷ Court of Cassation, of 8 June 2010 ,Appeal N°: 07-87289

³⁸ Article L8243-1 of the Labour Code

« The fact of resorting to an illicit hiring out of labour in contempt of the provisions of article L. 8241-1, is punishable by two years of imprisonment and a fine of 30 000 euros.

Moreover, the court can order a prohibition to sub-contract labour for a period of two to ten years. Failure to observe this prohibition whether directly or through an intermediary, is punishable by imprisonment of twelve months and a fine of 12 000 euros.

In all cases, the court can order the judgement to be displayed on the doors of the company's establishments and publication in designated journals, at the cost of the party sentenced ».

³⁹ Article L8243-2 of the Labour Code

« Legal entities that are deemed criminally liable under the terms of article 121-2 of the criminal code, for the offence of illegal hiring out of labour laid down in article L. 8241-1, face the following sanctions :

1° A fine in accordance with the terms and conditions set out in article 131-38 of the criminal code (five times the fines aimed at natural persons) ;

2° The penalties mentioned in 1° to 5°, 8° and 9° of article 131-39 of the same code (concealment, prohibition to continue work, judicial supervision, closing of the establishment, exclusion from public contracts..)

The prohibition mentioned in 2° of article 131-39 concerns the activity pursued or at the time of its performance when the offence was committed »

Section 2. Obligations with regard to information

Access to information is the keystone to action; it enables both undertakings and workers alike to implement their rights and gain knowledge of their obligations. This is particularly evident with regard to the provision of services entailing posting of workers, a complex operation requiring compliance not only with the obligations in the Home State where the provider is established, but also compliance with rules in the Host State where the work is performed.

Better and adequate information available to undertakings as regards the provision of services in the framework of posting of workers contributes to greater certainty of the operations carried out and also guarantees the effectiveness of social legislation, even if this entails the presence of a monitoring body with disciplinary powers. Community rules lay down different obligations in matters pertaining to information. Depending on their respective fields of application, the Community rules of law set out certain obligations regarding information to undertakings and workers. Information and assistance to persons are considered as a means of reinforcing the effectiveness of their rights and obligations.

Informing service providers and users about the procedures and formalities necessary for them to exercise their freedom to provide services, constitutes an obligation imposed on Member States by the Services Directive 2006/123/CE of 12 December 2006⁴⁰ (A).

Directive 96/71⁴¹ contains a similar obligation, although its scope of obligation is restricted to information on the terms and conditions of work and employment as applicable in the Host State where the work is performed in the context of posting of workers (B).

This mission of providing information is also mentioned in the new Community regulations on coordination of social security systems that entered into force on 1 May 2010. Member States have the obligation to ensure that *«the necessary information is made available to the persons concerned»*⁴²(C).

⁴⁰ Articles 6 and 7 of Directive 2006/123/EC, op cit.

⁴¹ Paragraph 3, article 4 of Directive EC 96/71 : « .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 ».

⁴² Articles 3§1 of Regulation n° 883/2004 and 76§4 of Regulation n°987/2009 of 16 September 2009 : *« Member States shall ensure that the necessary information is made available to the persons concerned in order to inform them of the changes introduced by the basic Regulation and by the implementing Regulation to enable them to assert their rights. They shall also provide for user friendly services»*.

An in-depth examination of these rules reveals that they complement each other, while emphasising communication and information technologies as a means of providing this information.

A. The right to information in the Services Directive

The objective of the Services Directive is to «*to remove barriers to the freedom of establishment for providers in Member States and barriers to the free movement of services between Member States and to guarantee recipients and providers the legal certainty necessary for the exercise in practice of those two fundamental freedoms of the Treaty*»⁴³.

1. The beneficiaries of information in the “Services” Directive

The Services Directive serves as a reminder that the information to be conveyed must concern both the service providers and users: «*It is necessary for providers and recipients of services to have easy access to certain types of information. It should be for each Member State to determine, within the framework of this Directive, the way in which providers and recipients are provided with information. In particular, the obligation on Member States to ensure that relevant information is easily accessible to providers and recipients and that it can be accessed by the public without obstacle could be fulfilled by making this information accessible through a website. Any information given should be provided in a clear and unambiguous manner*». Preamble 50 of the Services Directive is clear on this point and highlights the importance of websites as an effective tool for making information available to service providers and users.

Article 6 provides for the creation of points of single contact for providers to carry out procedures and formalities necessary to access service activities.

The point of single contact must enable the service provider to carry out «*all procedures and formalities needed for access to his service activities, in particular, all declarations, notifications or applications necessary for authorisation from the competent authorities, including applications for inclusion in a register, a roll or a database, or for registration*

⁴³ Preamble 5 of Directive 2006/123/EC of 12 December 2006 on services in the internal market, op cit.

with a professional body or association »⁴⁴. A verbatim reading of article 6 would confirm that the obligation of providing information only concerns procedures and formalities necessary to access service activities. As regards the provision of services with posting of workers, the point of single contact should, in this connection, also state the rules concerning the preliminary posting declaration when this formality is compulsory in the Host State, as is the case in Germany, Belgium, France and Luxembourg for example. However, a teleological interpretation would lead to affirming that the information on “*procedures and formalities necessary*” for access to service activities includes all of the rules arising from the transposition of the Posting Directive in national legislation. In fact, the objective of the Services Directive is to enhance freedom to provide services, but preamble 3 identifies « *the legal uncertainty associated with cross-border activity* » as a major impediment to the objective pursued. In the light of these facts, it would be advisable to understand by the information on « *the procedures and formalities necessary for access to a service activity* » as *encompassing all of the administrative and social obstacles specific to the provision of services in the framework of posting of workers, as applicable in the territory where the work is performed* ».

2. The media for circulating information

Paragraph 3 of article 7 on the point of single contact attaches importance to communication and information technologies (CIT) as a means for circulating information:

« Member States shall ensure that the information and assistance referred to in paragraphs 1 and 2 are provided in a clear and unambiguous manner, that they are easily accessible at a distance and by electronic means and that they are kept up to date ».

This access to general information must be backed by assistance as laid down in paragraph 2 of the same article: *« Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in*

⁴⁴ Directive 2006/123/EC of 12 December 2006, Article 6 Points of single contact

« 1. Member States shall ensure that it is possible for providers to complete the following procedures and formalities through points of single contact:

a) all procedures and formalities needed for access to his service activities, in particular, all declarations, notifications or applications necessary for authorisation from the competent authorities, including applications for inclusion in a register, a roll or a database, or for registration with a professional body or association;

b) any applications for authorisation needed to exercise his service activities.

2. The establishment of points of single contact shall be without prejudice to the allocation of functions and powers among the authorities within national systems ».

information on the way in which the requirements referred to in point (a) of paragraph 1 are generally interpreted and applied. Where appropriate, such advice shall include a simple step-by-step guide. The information shall be provided in plain and intelligible language».

Regarding provision of services with posting of workers, it consequently appears that the information must concern both the service providers and users, be clear and unambiguous, up to date, easy to access and backed by assistance.

If read together with the provisions of the Posting Directive, the aforesaid provisions take on full significance.

B. The right to information in the Posting Directive

In article 4, paragraph 3, the Posting Directive sets out that « *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* ». In this connection, the Member States are under obligation to provide undertakings with all the information on national legislation as resulting from the transposition of the Posting Directive. At this stage, it has been noticed that there are further complications due to the diversity of rule content, permitted exemptions and their enforcement procedures.

1. The information to be provided

Article 3 of the Posting Directive contains 10 paragraphs enumerating the rules that have to be implemented by the service provider to the extent that they are in force in the Host State. These essential rules can be of a legislative, regulatory or administrative nature or related to collective agreements if the collective agreements or arbitral awards are declared as generally applicable.

The main difficulty encountered by Member States resides in the difficulty of providing access to the collective agreement obligations when such rules are established by the social partners. This difficulty has been emphasised by the European Commission in its recommendation of 31 March 2008⁴⁵. The quantity of work is indeed considerable because of the number of collective agreements potentially concerned.

⁴⁵Commission Recommendation on enhanced administrative cooperation in the context of posting of 31 March 2008, (2008/C 85/01), CJEU C85/1 of 4 April 2008.

Certain websites have opted for a summary presentation of applicable agreements by specifying for each sector containing a general application agreement or covered by decree, whether it contains a hard core of rules. Thus the German website www.zoll.de proposes a section on posting in 3 languages. It displays a table stating the existence or absence of applicable obligations arising from collective agreements for each professional sector⁴⁶. It is completed by a presentation of rules for each sector and category of social obligations (minimum wages, adjustment of working hours). Even if the extracts from collective agreements have not been translated, an effort has been made to provide essential information in 3 languages, on minimum wage agreements⁴⁷ which constitutes the main infringement reported by the control officers consulted.⁴⁸

2. Procedures adopted

The presence of liaison offices in an article of the Directive dealing with both cooperation between administrations and information to be given to the public⁴⁹ resulted in various divergent practices in the Member States studied.

Certain States like France consider that it is not the role of liaison offices to inform the public, but to carry out solely a task of cooperation with foreign public administrations. Consequently, the "posting" page of the Ministry of Labour, Solidarity and Civil Service website makes no mention of these liaison offices and the user is directed to "the labour

⁴⁶ http://www.zoll.de/fr_version/e0_aentg/c0_info_an/k0_arbeitsbedingungen/index.html

⁴⁷ http://www.zoll.de/fr_version/e0_aentg/a0_info_ag/b0_mindestlohn/a0_uebersicht_mindestlohn/index.html

⁴⁸ For further details on the linguistic accessibility of obligations arising from collective agreements, see Part II., p 125 and following.. For further details on the accessibility of collective agreements see Part II page 133 and following..

⁴⁹ Directive EC 96/71, 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 public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3. Such cooperation shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, including manifest abuses or possible cases of unlawful transnational activities.*

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».*

departmental offices of the place where the work is performed in France” without any further details.

Other Member States like Belgium and Luxembourg consider, on the contrary, that this is the job of the liaison offices and have set up within the national liaison office a unit assigned to cooperation and another unit to informing undertakings and workers. This division of the liaison office, with the appropriate means, is able to ensure that the department heads fully benefit from the specialisation required of their functions. These administrations thus discharge their duties set out in the Posting Directive along with those of the Services Directive related to assistance⁵⁰.

B. The right to information on the coordination of social security systems in Community regulations

The rules set out in the two regulations effective from 1 May 2010⁵¹ reinforced the right to information for persons covered. The Administrative Commission for the coordination of social security systems responsible in particular to «*monitor the quality of services provided to customers*»⁵², focused on a decision called «*information to and from citizens*»⁵³. The Community Regulations concern the users i.e. both the persons covered by the social security schemes and the undertakings, each of these categories being entitled to certain rights and bound by obligations in their relations with social security systems.

Article 3 of Regulation 883/2004 stipulates in paragraph 1: «*Member States shall ensure that the necessary information is made available to the persons concerned in order to inform them of the changes introduced by the basic Regulation and by the implementing Regulation to enable them to assert their rights. They shall also provide for user friendly services*». Article 76 §4 on cooperation, aims at institutions and persons covered alike, who «*shall have a duty of mutual information and cooperation to ensure the correct implementation of this Regulation*». When read in combination with Article 2 §1 of Implementing Regulation

⁵⁰ For further details, see Part II, page 157 and following...

⁵¹ Regulation EC n°883/2004 of 29 April 2004 on the coordination of social security systems, OJEU L166 of 30 April 2004 and Implementing Regulation EC n°987/2009 of 16 September 2009, laying down the procedure of implementing Regulation (EC) no 883/2004 on the coordination of social security systems, OJEU L284 of 30 October 2009

⁵² Article 89, §1 of Regulation EC n°987/2009 of 16 September 2009.

⁵³ ACCSSS, “Information to and from citizens”, of 26 August 2009.

n°987/2009 of 16 September 2009, it takes on another aspect, since the exchanges between authorities, institutions of Member States and persons covered « *shall be based on the principles of public service, efficiency, active assistance, rapid delivery and accessibility, including e-accessibility for the disabled and elderly in particular* ».

As regards posting, these two Regulations complete Directive 96/71 by laying down in articles 12 of Regulation 883/2004, 14 and 15 of Regulation 987/2009, the terms and conditions for using the rules governing exceptions to the principle by virtue of which the employed or self-employed workers are subject to the social security system of the State where they pursue their professional activity⁵⁴. An employer wishing to post workers to another Member State is therefore under obligation to comply with these provisions that involve steps prior to the posting operation.

Information on social security has received scarce attention in the provisions drawn up to acquaint service providers and users with their posting obligations. However, such information is crucial in view of the risks in certain Member States attached to the absence of certificates proving employee affiliation to the social security system of the Posting State when this absence is combined with other violations⁵⁵. Efforts to combat illegal work has resulted in increased collaboration between labour inspectorates and social security institutions, joint controls and/or exchanges of information that have further increased the risks of violation for service providers who fail to comply with their social security obligations.

The lack of information available from the point of view of the public concerned is evident: the information is absent on websites presenting obligations regarding posting under the sole angle of labour law. Such information may be available on other websites, in particular those operated by social security systems, but these sites could be difficult to access, especially because the best listed sites of the labour administrations do not mention them.

This inadequacy of information can have several explanations.

Since the best listed information websites are generally set up by labour administrations focusing on the Posting Directive, the information provided is therefore centred on the rules applicable under labour law.

⁵⁴ Article 11, §3,a) of Regulation 883/2004

⁵⁵ Risk of requalification of the posting operation as concealed employment of workers entailing the recovery of contributions in the Host State and possible obligation for the service user to pay the contributions.

The rules related to social security are those of the Home State and consequently, the websites aiming to inform primarily the service providers established in another Member State do not feel responsible for compliance with formalities specific to social security matters.

In France for example, the website <http://www.travail-solidarite.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/le-detachement-temporaire-en,2452.html> does not give any information on the provider's obligations regarding social security. The Centre for European and International Social Security (Cleiss)⁵⁶ website, although well documented in the field of posting, is only mentioned there under a sub-section concerning undertakings outside of the EU.

However, the Cleiss website presents all the different European regulations under a format with a simplified presentation that renders the articles quickly accessible. As regards posting, it presents the rules applicable in accordance with the employer's place of establishment and the intended destination together with the forms necessary to apply for required certificates.

The posting section of the German website www.Zoll.de reveals the same flaws.⁵⁷

Conclusion

Certain Member States have perfectly understood the links between the different legal obligations imposed by the Community tools and have implemented them in the field of the provision of services with posting.

The Belgian point of single contact is an illustration: from the single contact website as listed on the European Commission website⁵⁸ http://business.belgium.be/fr/gerer_votre_entreprise/ressources_humaines/detachement/index.jsp, the user has access to a posting page in 4 languages, intended either for the provider established on national territory or a provider established in another State. This site directs the user to the "posting" page of the official information and services portal of Belgium

⁵⁶ Centre for European and International Social Security, liaison office designated in France, to answer queries on information and assistance for applying the basic regulation and the implementing regulation and in charge of carrying out the tasks incumbent on them by virtue of title IV of the implementing regulation, www.cleiss.fr.

⁵⁷ For further details on websites all the information necessary, see Part II, page 107 and following.

⁵⁸ http://ec.europa.eu/internal_market/eu-go/index_fr.htm#be: the website presents the internet addresses of points of single contact and this reference listing is very useful given the confusion in the matter between official and commercial websites, the latter being better listed than the former.

http://www.belgium.be/fr/emploi/contrats_de_travail/detachement/detachement_en_belgique/.

From this official page, the user can access key information and websites dedicated to posting under its aspects of labour law and mandatory declarations. The information and links to other websites take into account the user's profile and queries: it could either be a foreign service provider and the website directs him to the site of the Belgian federal public service of employment and to the site where he can declare his temporary activity, or it could be a national service provider wishing to send employees to another Member State and the site directs him to the portal where he can obtain an E 101/A1⁵⁹ certificate required prior to the posting.

The Luxembourg point of single contact, <http://www.guichet.public.lu/fr/entreprises/gestion-juridique-commerciale/affaires-commerce/prestation-transfrontaliere-services/prestation-transfrontaliere-services/index.html>, can also be cited as an example since it contains full information on posting under the legal and commercial management section and directs the user by link to the ITM site, <http://www.itm.lu/detachement-de-travailleurs>.

In contrast, the French point of single contact⁶⁰ as regards content and applications appears particularly inadequate and unsuited to needs. No information is provided on the provision of services and even less on posting⁶¹.

⁵⁹ https://www.socialsecurity.be/site_fr/Applics/gotot/index.htm

⁶⁰ http://www.guichet-entreprises.fr/mgun_accueil/

⁶¹ For further information on points of single contact, see part II, page 111

CHAPTER II. WHAT INFORMATION SHOULD BE GIVEN TO UNDERTAKINGS ON THE TERMS AND CONDITIONS OF USING A PROVISION OF SERVICES WITH POSTING OF WORKERS?

When the necessity of information is evident both from the point of view of the stakeholders concerned and also from the legal angle, the exact content of the information to be provided must be examined.

To call attention to the applicable constraints, information must be given on the basic terms and conditions to be fulfilled in order to validly avail of the freedom to provide services with posting of workers. In certain cases, these terms and conditions are identical in all Member States to the extent that they result either directly from Community legislation or from interpretations supplied by the CJEU. They could also be specific to each State depending on the provisions of information and control procedures set up in relation to service providers and users. These conditions have a point in common: they must be observed prior to the posting in the State where the undertaking is established (Section 1). The information must also cover the rules applicable in the Host State in accordance with the Posting Directive. In this case, the information is specially intended for the foreign service providers and aims to apprise them of their social obligations during the period of the posting in the Host State territory where the work is carried out (Section 2).

Section 1. Terms and conditions to be fulfilled prior to the posting of workers

The undertakings wishing to avail of the freedom to provide services must be aware of the terms and conditions to be fulfilled before posting the workers. Some of these conditions relate to their economic activity in the State where they are established and the management of the staff they wish to post out; others pertain to the formalities to be carried out prior to the posting. Information on these basic conditions related to content and form will enable them to safely carry out their activity in the Host State.

A. Establishment in another Member State

Since the differences between the levels of employer social security contributions could be considerable, the provision of services with posting of workers is particularly attractive, because Community Regulations offer the possibility to maintain affiliation of the employees to the social security scheme of the Home State that posts out the workers. The benefit of these provisions is reserved for undertakings established in the Home State.

1. Significant activity in the State of origin

Called to rule on the terms for benefiting from the exception allowed by former article 14 of Regulation 1408/71 authorising the service provider to be exempted from payment of social contributions imposed in the Host State, the Court of Justice laid down that « *the undertaking [---] may benefit from the advantage afforded by that provision only if it normally carries on its activities in the Member State in which it is established.* »⁶².

The Plum judgement holds that the exception in matters of posting is applicable « *if the undertaking observes the conditions governing that freedom to provide services* »⁶³. However this does not apply to « workers of a construction company established in one Member State who are posted to carry out construction work in the territory of another Member State in which, apart from purely internal management activities, that undertaking performs all its

⁶² CJEU of 10 February 2000, C-202/97, FTS, point 30, Reports of cases 2000 page I-00883.

⁶³ CJEU of 9 November 2000, C-404/98, J Plum, Reports of cases 2000 page I-09379.

activities »⁶⁴. It would no longer be able to rely on the former Community regulations on posting.

These rules were contained again in the new Regulation (EC) N° 883/2004 of 29 April 2004 on the coordination of social security systems and its implementing regulation N° 987/2009: article 12 of Regulation 883/2004 sets out both for the employer and the self-employed worker, the necessity to pursue their activities « *normally* » in the Member State from where the posting is carried out⁶⁵. The implementing Regulation is even more specific because it covers the case law stated above. Article 14.2. insists on the pursuit of « *substantial activities other than purely internal management activities in the member state where it is established* ». An evaluation of this factor must take into account « *all criteria characterising the activities carried out by the undertaking in question; the relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out* »⁶⁶.

The Administration Commission for the coordination of social security systems laid down in 2009 the criteria of evaluation to be used:

« In order, where necessary and in cases of doubt, to determine whether an employer ordinarily performs substantial activities in the territory of the Member State in which he/she is established, the competent institution in the latter is required to examine all the criteria characterising the activities carried on by that employer, including the place where the

⁶⁴ CJEU, of 9 November 2000, C-404/98, J. Plum, point 19-22 , op cit.

⁶⁵ REGULATION (EC) N° 883/2004 of 29 April 2004 on the coordination of social security systems Article 12 « *Special Rules*

1. A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person.

2. A person who normally pursues an activity as a self-employed person in a Member State who goes to pursue a similar activity in another Member State shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such activity does not exceed twenty-four months ».

⁶⁶ Regulation (EC) No 987/2009 of 16 September 2009 laying down the procedures for implementing Regulation (EC) no 883/2004 on the coordination of social security systems.

Article 14 Details relating to articles 12 and 13 of basic regulation « 2. For the purposes of the application of Article 12 (1) of the basic regulation, the words 'which normally carries out its activities there' shall refer to an employer that ordinarily performs substantial activities other than purely internal management activities, in the territory of the Member State in which it is established, taking account of all criteria characterising the activities carried out by the undertaking in question.

The relevant criteria must be suited to the specific characteristics of each employer and the real nature of the activities carried out».

*undertaking has its registered office and administration, the number of administrative staff working in the Member State in which it is established and in the other Member State, the place where posted workers are recruited and the place where the majority of contracts with clients are concluded, the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand, the turnover during an appropriately typical period in each Member State concerned and the number of contracts performed in the sending State. This is not an exhaustive list, as the criteria should be adapted to each specific case and take account of the nature of the activities carried out by the undertaking in the State in which it is established ».*⁶⁷

2. Monitoring of this requirement

For an employer, the performance of a « *normal* » activity in the Home State is a prerequisite in the Community Regulations on social security and it has become a basic condition for freedom to use a provision of services from the point of view of CJEU case law.

The labour inspectorates and in particular, the labour administrations of the Host State conduct investigations to ensure that the undertaking really exists; this is one of the essential questions covered in the exchanges between the liaison offices.

The absence of significant activity has given rise to much litigation and is reason enough for the invalidation of the posted employees' affiliation in the State of origin, causing them to adhere to the social security system of the Host State⁶⁸.

Certain States like France make it mandatory for the service user to check as soon as the contract is concluded and every 6 months thereafter, that the other contracting party established in another Member State is able to provide all the documents necessary to prove

⁶⁷ Administrative commission on the coordination of social security systems, decision A2 of 12 June 2009, Official Journal n° C 106 of 24/04/2010 p. 0005 - 0008

⁶⁸ CSAS 13.01.2006, CCSS c/ K-INDUSTRIE s.a., Reg. N°: CCSS 2006/0008, N° : 2005/0073, (CAAS-20050314)

the existence of this undertaking⁶⁹. Apart from significant activity in the State of the establishment, the employers must be able to certify that the workers they post are lawfully employed.

B. Lawful employment of workers

Prior to the posting, the service providers must be aware of the nature of obligations they have to fulfil in the Host State as regards relations maintained with their employees.

Directive 96/71, article 2 §1: states that « *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*».

The employer must be able to attest to the lawful employment of posted workers by submitting to the control authorities of the Host State certain data as laid down by the CJEU.

⁶⁹ Article L8222-4 of the labour code : « *When the co-contracting party operating on national territory is established or domiciled abroad, the obligations in respect of which compliance is monitored, are those resulting from the regulations with equivalent effect in his country of origin and those which are applicable to him as regards his activity in France* ».

Article D8222-7 of the labour code « *The contracting party, when such party is not a private individual meeting the terms referred to in article D. 8222-6, is deemed to have carried out the checks required by article L. 8222-4 if he has received from the other party established or domiciled abroad, at the time of signing the contract and every six months until the end of its term :*

1° In all cases, the following documents :

a) A document stating his individual identification number given in application of article 286 ter of the General Tax code. If the co-contractor is not obliged to have such a number, a document stating the party's identity, address and contact details or as the case may be of the party's tax representative in France

b) A document attesting to the legal validity of the co-contractor's social situation in accordance with Regulation (EEC) n° 1408 / 71 of 14 June 1971 or an international social security agreement or failing which, a certificate proving filing of social declarations issued by the French social protection body in charge of collecting social contributions to be paid by the co-contracting party and dated less than six months ;

2° When the registration of the co-contracting party is mandatory in the country of establishment or residence, one of the following documents:

a) A document issued by the authorities who file the professional register or an equivalent document certifying this registration;

b) An estimate, advertisement or professional correspondence provided that the company is mentioned therein along with its name, full address, nature and description of the entry in the professional register;

c) For companies in the process of being created, a document dated less than six months issued by the authority authorised to receive the registration in the professional register and certifying the application for registration in the aforesaid register;

3° When the co-contracting party employs workers to carry out a provision of services lasting more than a month, an affidavit drawn up by the co-contracting party certifying issue of the pay slips to these employees containing the information required under article [R. 3243-1](#) or equivalent documents ».

1. Absence of requirement to justify a prior period of employment

The CJEU judgements in application of this article have brought to light a basic principle: the concept of « *lawful, regular employment* » does not entail « *a requirement of residence or employment for a certain period in the State of establishment of the service provider* »⁷⁰.

The employees of an undertaking established in a Member State who are posted to another Member State under a provision of services, « *do not purport to gain access to the labour market of that second State, as they return to their country of origin or residence after the completion of their work* »⁷¹. This consideration has generated several advantages for the provider.

The provider cannot be required to justify a prior period of employment of the posted worker since the Court holds that « *a measure which would be just as effective whilst being less restrictive than the measure at issue is the obligation imposed on a service provider to report, before the posting, to the local authorities the presence of one or more workers to be posted, the anticipated duration of their presence and the provision or provisions of services justifying the posting* »⁷².

However, this case was at variance with requirements set out in the former Regulation 1408/71 that laid down in article 14§ 1 a) that the posted worker is a "*worker employed in the territory of a Member State by an undertaking to which he is normally attached*".

This inconsistency no longer exists since the new Regulation 883/2004, under article 12, has done away with this requirement⁷³. The implementing regulation has weakened the contractual link binding the service provider to the posted worker by laying down in article 14: « *For the purposes of the application of Article 12(1) of the basic Regulation, a 'person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State' shall include a person who is recruited with a view to being posted to another Member State, provided that, immediately before the start of his employment, the person*

⁷⁰ CJEU of 19 January 2006, C-244/04, Com c/RFA, Case Report 2006 page I-00885.

⁷¹ CJEU of 21 September 2006, C-168/04, COM c/ Austria, Case Report 2006 page I-09041.

⁷² CJEU of 21 September 2006, op cit.

⁷³ Regulation 883/2004, Article 12 « *Special rules 1. A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf...* ».

concerned is already subject to the legislation of the Member State in which his employer is established ».

2. Lawful employment of third country nationals

Posting operations often involve the employment of nationals from third countries (outside of the EU, EEA and Switzerland). The Directive 2009/52 of 18 June 2009⁷⁴ for which transposition has to be effective on 20 July 2011 has nevertheless reinforced the employers'⁷⁵ obligations and imposed sanctions that are « *effective, proportionate and dissuasive against the employer* »⁷⁶ who does not comply with the terms and conditions in respect of employment of third country nationals.

Employers must therefore be informed about the specific rules concerning this category of labour. The CJEU ruled on the nature of information required in the State where the work is performed: « *a simple prior declaration certifying that the situation of the workers posted to that State who are nationals of non-member States is lawful, particularly in the light of the requirements of residence, work visas and social security cover in the Member State where that provider employs them* ». This requirement « *does not go beyond what is necessary in order to prevent the abuse to which the implementation of the freedom to provide services may give rise* »⁷⁷. They are not under obligation to provide residence and work permits for these workers. It is necessary and sufficient that the formalities are observed in the Home State and that the employers certify in their declaration that the workers are lawfully employed. The control authorities could then request information from the public administrations of the Home State, particularly through exchanges of information between

⁷⁴Directive 2009/52 of 18 June 2009, CJEU L 168/24 of 30 June 2009

⁷⁵ Article 4 of Directive 2009/52 of 18 June 2009 : « *Obligations on employers*

1. Member States shall oblige employers to:

(a) require that a third-country national before taking up the employment holds and presents to the employer a valid residence permit or other authorisation for his or her stay;

(b) keep for at least the duration of the employment a copy or record of the residence permit or other authorisation for stay available for possible inspection by the competent authorities of the Member States;

(c) notify the competent authorities designated by Member States of the start of employment of third-country nationals within a period laid down by each Member State ».

⁷⁶ Articles 5, 6 and 7 of the Directive

⁷⁷ CJEU of 21 October 2004, C-445/03, COM /LUX ,Reports of cases 2004 page I-10191 and CJEU of 1 October 2009, C-219/08, COM c/ Belgium, *JO C 282 du 21.11.2009*

the liaison offices, and the employers must be able to provide the documents requested to the administrative authorities of the Home State of establishment.

C. Affiliation of employees to the social security scheme of the Home State

The major advantage of posting is the possibility provided under articles 14 of Regulation 1408/71 and the new article 12 of Regulation 883/2004 which has replaced it since 1 May 2010⁷⁸ : The objective of this derogation is « *to facilitate the freedom to provide services for the benefit of employers which post workers to member states other than that in which they are established, as well as freedom of workers to move to other Member States. These provisions also aim at overcoming the obstacles likely to impede freedom of movement of workers and at encouraging economic inter-penetration whilst avoiding administrative complications especially for workers and undertakings* ». ⁷⁹

1. Prior affiliation to the Social Security scheme of the Home State

Workers have to be lawfully affiliated to the social security scheme of the Home State prior to being posted to another Member State and the employer must apply for a (A1/ ex E101) certificate from the competent authorities which will be required in the Host State where the work is performed.

The terms of issue of this certificate have been laid down in article 11 of the former implementing Regulation 574/72 and by implementing Regulation 987/09⁸⁰. During this transitional period, until 30 April 2012, and pursuant to ACCSSS decision E1 of 12 June 2009, the E101 forms drawn up by means of an application can continue to be issued in the framework of the new regulation in place of the portable A1 document : « *E-forms, documents and European Health Insurance Cards (including the Provisional Replacements*

⁷⁸ « *A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer's behalf shall continue to be subject to the legislation of the first Member State* »

⁷⁹ CJEU of 10 February 2000, C-202/97, FTS, point 28, op cit.

⁸⁰ Regulation 987/09 of 16 September 2009 laying down the procedure for implementing regulation (EC)n° 883/2004. Article 15 : « *Unless otherwise provided for by Article 16 of the implementing Regulation, where a person pursues his activity in a Member State other than the Member State competent under Title II of the basic Regulation, the employer or, in the case of a person who does not pursue an activity as an employed person, the person concerned shall inform the competent institution of the Member State whose legislation is applicable thereof, whenever possible in advance. That institution shall without delay make information concerning the legislation applicable to the person concerned, pursuant to Article 11(3)(b) or Article 12 of the basic Regulation, available to the person concerned and to the institution designated by the competent authority of the Member State in which the activity is pursued* »

Certificates) issued before the date of entry into force of Regulations (EC) No 883/2004 and (EC) No 987/2009 shall continue to be valid and be taken into account by the authorities of other Member States even after that date, until their own date of validity has expired or until they are withdrawn or replaced by the documents issued or communicated under regulations (EC) no 883/2004 and (EC) no 987/2009 »⁸¹.

The employers would still need to have carried out the formalities for this affiliation and provide proof thereof in the Host State.

2. Utility of the E 101/ A1 certificate

Application for the certificate from the competent institutions of the Home State implies affiliation to the social security system of this State and proof that the employee is present in the context of a posting.

Presentation of the A1 form creates a presumption of affiliation to the social security scheme linking the competent body and the judges of the Host State. As long as the E 101/A1 certificate has not been collected or declared invalid, the competent institution of the Host State cannot have the workers concerned insured by their own social security system⁸².

Depending on the legislation of the Host State, the absence of this certificate could lead to prosecution on grounds of illegal work. In France, this factor combined with a violation of the legislation concerning hiring out of foreign workers, employment of foreign workers without valid work permits and undeclared labour constitute grounds for criminal proceedings that could affect the service user⁸³.

The control authorities of the Host States are entitled to ask for this certificate which guarantees the provider the right to depart from the basic principle of the community regulations requiring workers to be affiliated to the social security scheme of the State in which they work⁸⁴.

⁸¹ Decision E1 of the administrative Commission on the coordination of social security systems of 12 June 2009 laying down the practical procedures for the transitional period for the data exchange via electronic means referred to in Article 4 of Regulation (EC) no 987/2009 of the European Parliament and Council, JO C 106 of 24 April 2010

⁸² CJEU 26 January 2006, C 2/05, Herbosh Kiere, Case 2006 page I-01079

⁸³ Court of Cassation, criminal division of 8 June 2010, appeal N°: 07-87289, published in the Bulletin

⁸⁴ Article 11, § 3 point a) of Regulation 883/2004: « *a person pursuing an activity as an employed or self-employed person in a Member State shall be subject to the legislation of that Member State* ».

The decision on appeal of the CJEU of 1 October 2009⁸⁵ also validated another use of this certificate: this document could be asked of posted workers who are third country nationals, as a means among others, to prove their presence as posted workers on the territory, which would consequently exempt them from the necessity of having a work permit.

In this respect and even if the CJEU upholds that this certificate can be submitted during the posting or even thereafter⁸⁶, it is preferable for the certificate be issued before the start of the period concerned.

D. Administrative formalities: the preliminary posting declaration

Almost half the Member States require service providers which post workers to their territory to submit a prior declaration to their authorities⁸⁷. However certain legislations impose this obligation only for specific professional sectors (as in Germany) or exclude certain activities therefrom (as in Belgium). The preliminary declaration can be demanded in addition to other concurrent declarations as in the case of Luxembourg which requires « *notice of a temporary and occasional provision of services* » to be addressed to the “*Ministère des classes moyennes*”.

1. Validity of the preliminary declaration

This system of preliminary declaration, depending on the formalities laid down by the Member States, could, in certain cases, constitute an impediment to the freedom to provide services. Nevertheless, the CJEU has upheld that certain formalities could be maintained when they meet « *overriding requirements relating to the public interest in so far as that interest is not safeguarded by the rules to which the provider of such a service is subject in the Member State in which he is established and in so far as it is appropriate for securing the*

⁸⁵ CJEU of 1 October 2009, C-219/08, Case . Commission vs. Belgium, op cit.

⁸⁶ CJEU of 30 March 2000, C178/97, point 53 and 54 aff. Banks, Case Report 2000 page I-02005 : « *Moreover, when issuing the E 101 certificate pursuant to Article 11a, the competent institution of a Member State does no more than state that the self-employed person concerned remains subject to the legislation of that Member State throughout a given period in the course of which he carries out a work assignment in the territory of another Member State. Although it should preferably be made before the beginning of the period concerned, such a statement may also be made during that period or indeed after its expiry.*

There is therefore nothing to prevent the E 101 certificate from producing retroactive effects, according to the circumstances ».

⁸⁷ Extract of the Commission notice: "Guidance on the Posting of workers in the framework of the provision of services", 04 April 2006, SEC(2006) 439. It concerns the following States: Austria, Belgium, Germany, Spain, France, Greece, Luxembourg, Hungary, Latvia, Malta, Netherlands, and Portugal.

attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it »⁸⁸.

2. Content of the preliminary declaration

Each State is free to determine the content of the preliminary declaration on condition that the content is relevant to the prevention of abuse in the Host State.

The preliminary declaration which is restricted to reporting « *before the posting, to the local authorities the presence of one or more workers to be posted, the anticipated duration of their presence and the provision of services justifying their posting* »⁸⁹ is considered as valid.

The preliminary declaration « *showing that the situation of the workers concerned is lawful as regards matters such as residence, work permit and social coverage in the Member State in which that undertaking employs them is a measure which in principal does not exceed what is necessary to prevent the abuse to which the implementation of the freedom to provide services may give rise* »⁹⁰.

The preliminary declarations present a hard core of rules that are globally similar: identification of the provider undertaking, identification of the employees, starting date of the posting period and anticipated duration, location where the service is provided ⁹¹.

This minimal content enables public authorities to carry out checks necessary in order to guarantee compliance with the social rules of the Host State.

These forms make it mandatory for specific additional information to be provided such as working hours, rest periods (France and Belgium), salary levels (France) or the date of signing the contract. In the case of Luxembourg, this information is not requested, but the provider must give the address of the person who is in possession of the social documents on the territory where the work is performed.

Lastly, certain declarations require identification of the user (Belgium) or that of the contractor (France) whereas for others, only the place where the work is performed needs to be mentioned (Germany, Luxembourg).

⁸⁸ CJEU of 21 October 2004, Commission/Luxembourg, C-445/03, Case p. I-10191

⁸⁹ CJEU of 21 09 2006 , C-168/04, Com/ Republic of Austria, op cit

⁹⁰ CJEU of 21 October 2004, Commission/Luxembourg, C-445/03, Case. p. I-10191, point 46; CJEU of 19 January 2006, Commission/Germany, C-244/04, Case. p. I-885 , points 41 et 42

⁹¹ As an example: for Luxembourg: article L. 142-2 of the Labour Code. For Belgium: article 4§1 of the Royal Decree of 20 March 2007, le Moniteur Belge of 28 March 2007, p16981. For Germany: article 18, al1 and 2 of the Law AEntG . For France : R 1263-3 of the Labour Code

Furthermore, the declaration required in Germany contains a clause whereby the provider undertakes to comply with the social rules of the Host State as resulting from the AEntG. (Law on the posting of workers).

3. Management of the preliminary declaration

The manner in which the preliminary declaration is processed reflects to a greater extent the state of the internal organisation of the administration receiving these declarations, generally the offices in charge of checking posting operations, than the controls related to content specifications. In short, the requirement as regards content is not synonymous with a more stringent inspection.

The electronic management of preliminary declarations simplifies formalities for the provider who enters the required data via the portal dedicated to preliminary declarations. In Belgium, this portal is <http://www.limosa.be>. This tool is only one element forming part of a far more ambitious data base called "GENESIS" (Gathering Evidences from National Enquiries for Social Inspection Services), which groups together other data bases emerging from other social declarations such as those required from undertakings established in Belgium (recruiting declaration, affiliation to social security (Dimona)), request for the E101/A1 certificate for undertakings established on the territory and wishing to post employees to another Member State (Gotot out), receipt of E101/A1 certificates from foreign administrations (Gotot in). In the long term, the goal is to have a point of single contact for foreign undertakings which would enable them to furnish all-inclusive data for multiple uses. From the administration's point of view, such a tool would promote the management of reliable statistics on the national level and also provide the administrative authorities concerned with data necessary for conducting checks in the field of both labour and social security legislation.

Absence of the declaration is processed differently depending on internal regulations: ranging from a fine that could amount to 30 000€ in Germany ⁹² to a 4th class fine of a maximum of 750€ in the case of French legislation ⁹³.

This may involve the service user who can be obliged to submit the declaration in place of the defaulting provider, under risk of penalty (Belgium).

⁹² Article 18§1 Loi AEntG: failure to submit, failure to submit before the deadline, inaccurate declaration, incomplete declaration or contrary to prescribed forms.

⁹³ R1264-1 of the labour code.

Section 2. Rules applicable during the posting of workers

When the service providers have taken all the measures necessary to ensure that they fulfil the aforesaid conditions, they will be under obligation, in their capacity as legal employers, to comply with certain labour law provisions of the Host State.

These rules are based on one essential rule in matters of posting: maintaining a direct relationship between the employer and the posted worker during the posting. It arises from both the Posting Directive⁹⁴ and the interpretation of the Community regulation 883/2004⁹⁵.

In order to establish whether such a direct relationship exists between the employer and his employee throughout the period of posting « *a number of elements have to be taken into account, including responsibility for recruitment, employment contract, remuneration (without prejudice to possible agreements between the employer in the sending State and the undertaking in the State of employment on the payment to the workers), dismissal, and the authority to determine the nature of the work* »⁹⁶.

A. Determination of labour law legislation

The service provider is obliged to comply with the rules set forth in article 3 of the Posting Directive in the State where the work is carried out. Consequently, all the States have made information available on websites as regards the content of these obligations, even if such information is complicated to deliver on account of the sources and quantity of rules.

⁹⁴ Article 1,§3 of the Posting Directive

⁹⁵ Article 1 §1a), b) and c) of the Directive 96/71/EC of the European Parliament and the Council of 16 December 1996, article and Decision A2 of 12 June 2009 of the Administrative Commission of the European Communities for the social security of migrant workers containing the list of different terms and conditions necessary to implement article 12 of Regulation 883/2004. Recital 3 and 4: « *To this end, the first decisive condition for the application of Article 12(1) of the said Regulation is the existence of a direct relationship between the employer and the worker it engages. The protection of the worker and the legal security to which he and the institution with which he is insured are entitled require full guarantees that the direct relationship be maintained throughout the period of posting*».

⁹⁶ Decision A2 of 12 June 2009 of the Administrative Commission for the social security of migrant workers containing the list of different terms and conditions necessary for the application of article 12 of Regulation (EC) 883/2004 : article 1.2 and article 1.3

1. Identification of social rules applicable in the Host State

The determination of rules applicable to foreign service providers is an elaborate process, but its aim is to avoid social dumping practices and safeguard the employment terms and conditions of posted workers.

These minimum terms and conditions of employment cover a certain number of factors set out under article 3, §1 of Directive 96/71⁹⁷ : « *Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters [-----]*

- a) maximum work periods and minimum rest periods;*
- b) minimum paid annual holidays;*
- c) the minimum rates of pay, 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 ».*

These rules may or must be waived in specific cases in accordance with paragraphs 2, 3 ,4 and 5 of article 3. Consequently, the information must highlight the compulsory and optional exceptions applicable in the Host State, in respect of minimum wage rates, work and rest periods and indicate the rules incumbent on temporary employment undertakings in particular.

2. Enforcement of rules in the State

The Directive allows the application of these rules to the provider only if they are determined « *by law, regulation and administrative provisions and/or by collective agreements or arbitration awards which have been declared universally applicable* » and applicable to

⁹⁷ 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

activities in the construction sector stated in the annex. This Directive shall not preclude the application by Member States « *to national undertakings and to the undertakings of other States, on a 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;*
- *terms and conditions of employment laid down in the collective agreements or arbitration awards within the meaning of paragraph 8 and concerning activities other than those referred to in the Annex »⁹⁸.*

The importance of these social rules applicable will vary depending on whether the State insists on strict enforcement of article 3§1, paragraph 1 and 2 (application of laws, regulations and administrative provisions and/or collective agreements or arbitration awards which have been declared universally applicable concerning activities in the construction sector) or whether the State decides to enforce article 3 §10.

By way of examples, France⁹⁹ and Luxembourg¹⁰⁰ have opted for the latter possibility, whereas Luxembourg has recently reviewed some of its provisions considered as non-

⁹⁸ Article 3 §10 of Directive 96/71

⁹⁹ Article L1262-4 of the labour code « *Employers who post workers on a temporary basis to the national territory are subject to the legal provisions and collective agreements applicable to the workers employed by the undertaking of the same sector of activity established in France as regards labour legislation on the following matters: 1° Individual and collective freedoms in the work relation; 2° Discrimination and professional equality between men and women; 3° Protection of maternity, maternity and paternity leave, leave for family events; 4° Terms of availability and guarantees afforded to employees of temporary employment agencies; 5° Right to strike; 6° Duration of work periods, compensatory rest periods, holidays, annual paid leave, duration of work periods, night work for young workers; 7° Terms and conditions related to contributing to holiday and bad weather insurance funds; 8° Minimum wages and payment of salaries, including overtime bonuses; 9° Rules related to health and safety at work, minimum working age, employment of children; 10° Illegal work. »*

¹⁰⁰ Article L 010-1 of the Luxembourg labour code : « *Deemed as provisions for the maintenance of public order applicable to all employees pursuing an activity on the territory of the Grand Duchy of Luxembourg, are all such provisions as those of a legal, regulatory, administrative nature including those resulting from collective agreements declared generally binding or an arbitration award having a field of application similar to that of collective agreements declared generally binding or an agreement in matters of inter-professional social dialogue declared generally binding in respect of:*

1. the written employment contract or the document drawn up pursuant to Directive 91/533/EEC of 14 October 1991 concerning the employer's obligation to inform the employee of the terms and conditions applicable to the contract or the work relationship; 2. the minimum wages and the automatic adjustment of the salary to the cost of living index; 3. the duration of working hours, breaks, daily and weekly rest periods; 4. paid leave; 5. collective leave; 6. official holidays; 7. rules concerning temporary work and provision of labour; 8. rules concerning part time work and fixed term contracts; 9. protection measures applicable to the working conditions and employment of children and youth, pregnant women and those who have just given birth 10. non-discrimination; 11. collective labour agreements 12. mandatory inactivity pursuant to the legislation on technical and bad weather unemployment; 13. illegal or clandestine work including provisions

conforming by the CJEU¹⁰¹. When there is a wider agreement for a professional sector, the information to be provided could be a complex process.

The posting section of the German administration website mentions the legislative provisions and regulations applicable along with the professional sectors to which a collective agreement is applicable to posted workers¹⁰². The providers/employers do not have access to the precise content of the rules if they do not understand German, but they are made aware of the existence of these rules related to collective agreements by means of a table translated into two languages.

Under the posting section of the Belgian website of the Federal Public Service of Employment, Labour and Social Dialogue¹⁰³, information is given on the legal rules and collective agreements in 3 languages with a translation of the collective agreements. But the site states « *you may obtain additional information by consulting the documents related to the following joint committees... »*.

The providers who do not fall under the professional field concerned are therefore unaware if they are likely to be affected by agreements other than those listed.

In France, the service providers are merely directed to the website from where all the wider collective agreements can be consulted. However, in addition to the difficulty in identifying the collective agreements covering specific points falling under the hard core of rules and their extension, the information is only available in French. It is therefore, impossible for

concerning work authorisations for those who are not nationals of a Member State of the European Economic Area; 14. safety and health of the employees at the work place in general and in particular the minimum safety and health requirements established by Grand Ducal regulation based on article L. 314-2. »

¹⁰¹ CJEU Commission c/ Luxembourg 19 June 2008 case. C 319/06

Article L141-1 of the Luxembourg Labour Code : « (1) *The provisions of paragraph 1 of article L.010-1, to the exclusion of points 1, 8 and 11, are applicable to undertakings, which in the framework of a transnational provision of services, post workers to the territory of Grand-Duchy, except for merchant navy undertakings.*

The automatic adjustment of salaries to the cost of living set forth in point 2. of paragraph (1) of article L. 0101 is applicable to posted workers, solely in relation to the statutory minimum wage or the minimum wage rates applicable in the sector, the branch and/or profession in pursuance of a collective agreement declared generally binding »

¹⁰² www.zoll.de: the sectors concerned are: waste collection and treatment, Initial and ongoing training, building and public works, Special work in coal mines, messaging services, roofing, Electricity, Horticulture, landscaping and construction of sports grounds, industrial cleaning, scaffolding, paints and varnish, assembly works at construction sites, care to dependant persons, security services, stone cutting and sculpture , laundry services in the service user's undertaking

¹⁰³ <http://www.employment.belgium.be/defaultTab.aspx?id=6224>

service providers to be acquainted with their legal constraints when they result from the provisions contained in the collective agreements.

The only noteworthy exception as regards information available on the internet is the website set up by the European social partners in the construction sector : the website www.posting-workers.eu created by the European Construction Industry Federation (FIEC) and the European Federation of Building and Woodworkers (EFBWW). This website presents for the 27 Member States essential information specific to each State, i.e. the national legislation applicable in accordance with the posting directive and the contact details of websites of the national social partners of the professional sector. The information is given in the language of the State consulted and in English.

Its distinctive feature is that it deals with a single professional sector which facilitates the availability of information. It is the only one to provide in an accurate manner the classification grids resulting from collective labour agreements and associated wage levels.

In the absence of precise information on the website, it appears indispensable to have a multilingual telephone helpline. This is even more necessary given that all of these rules could possibly be set aside to the benefit of the legislation of the Home State.¹⁰⁴

B. Application of the Home State rules that are similar or more favourable

The rules of the Host State may be turned aside « *in so far as that interest (defended by this regulation) is not safeguarded by the rules to which the provider of such service is subject in the Member State where he is established* »¹⁰⁵, when those workers « *already enjoy more favourable terms and conditions of employment as regards the matters referred to in that provision* »¹⁰⁶.

Such being the case, it is necessary to provide precise rules in order to make the comparison between the two legislations. For example in the case of minimum wages, the information must contain the elements that are included and excluded from the basis of calculation, bearing in mind that the Directive states in paragraph 2 of §7 of article 3 that « *allowances specific to the posting shall be considered to be part of the minimum wage, unless they are*

¹⁰⁴ For further information on the manner in which websites present provisions contained in the collective agreements refer to part II. Page 132 and following...

¹⁰⁵ CJEU 25 October 2001, Case C-49/98, FINALARTE, point 31, Case Report 2001 page I-07831

¹⁰⁶ CJEU, 03 April 2008, Case C-346/06, RÜFFERT, point 34, JO C 128 of 24.5.2008, p. 9–9

paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging ».

The German website http://www.zoll.de/d0_zoll_im_einsatz/b0_finanzkontrolle/e0_aentg/a0_info_ag/b0_mindestlohn/index.html provides an example of good practice in this connection since it itemises the elements that are included and excluded from the gross salary.

C. Indication of the control authorities and documents required

Inspection procedures tend to vary from one Member State to another and undertakings must be made aware of the control authorities and labour inspectorates they are likely to confront in the Host State, especially since the fact of obstructing their functions is often subject to sanctions.

Furthermore, the providers must be prepared for likely inspections and be informed about documents required and sanctions they could face for failure to submit these documents.

This information is provided on all the websites surveyed and reveals considerable differences as regards content of documents required by the control authorities. They do, however, make mention of the documents required by the control authorities of the labour administration or by the administrative authority in charge of inspecting posting operations.

CHAPTER III. GUARANTEEING WORKER PROTECTION THROUGH THE PROVISION OF ADEQUATE INFORMATION

As posted workers, employees benefit from certain social rights for the period of their posting which are related to their performance of work in a State other than that where they concluded their employment contract. But the reality, as reported by the labour inspectorates, reveals that they are far from familiar with their rights, let alone asserting them. The precarious nature of their situation as posted workers, the duration of their posting and the linguistic impediments are merely some of the factors that account for the inadequate effectiveness of social rules mentioned in the Posting Directive. Improving the quality of information available to them and to those who are likely to assist them in asserting their rights along with finding new methods of circulating this information would contribute not only to the enhanced protection of workers, but also improved effectiveness of legislation. (Section 1). It would, consequently, be appropriate to outline the content of the information to be provided thus enabling workers to prepare for their departure and assert their rights in the Host State (Section 2).

Section 1. Unawareness of rules protecting posted workers

Posted workers are often uninformed about the specific legal characteristics concerning posting operations. Experience reveals that they are sometimes even unaware of their employer's identity during the posting in the State where the work is carried out. They usually come forward when a problem relating to payment of promised remuneration arises, a situation which plunges them into financial difficulty in the territory of the Host State.

When they work in a service provider undertaking with staff representatives, the posted workers are often unknown to these representatives, who are uninformed of their presence and of the contracts concluded. The short duration of their posting, the number of providers present at the work premises and the sub-contracting in series does not promote their integration in the undertakings using their services nor strengthen relations with the staff representatives. In this connection, the foreign posted workers are in a situation yet more unfavourable than the employees of national providers in a user undertaking, since added to the difficulty of integrating these persons inherent to posting operations, is the problem of cultural and linguistic barriers. The staff representatives in the user undertaking, who could

legitimately appear as resource persons, are often perplexed in these situations in which they themselves have doubts regarding the rules applicable in the face of complex legal arrangements and the establishment of the legal employer in another Member State.

The information intended for posted workers would undoubtedly benefit the staff representatives present in the undertaking using the services (presuming there are staff representatives, which is seldom guaranteed in professional sectors such as agriculture or entertainment).

The consequences of an ignorance of rules are well known: the posted workers agree to work under conditions of hygiene and safety that are hazardous for their health and beyond the maximum working duration set forth by the Host State legislation or accept wages under the minimum prescribed by law or labour agreements applicable in the Host State, etc... Their dependence on their employer, coupled with the fact that the remuneration agreed to is higher, albeit illegal in the Host State, than what they would have received in their state of residence, does not encourage them to seek information on their rights and claims.

A. The necessity of providing specific information to workers

The rules described in chapter II are binding on the employers in charge of their workers' employment terms and conditions and they must guarantee observance thereof. These rules have to be brought to the knowledge of the workers. They are complex as seen earlier and to be effective, they must be explained in the language of the persons concerned, while taking into account their special work situations and professional sectors.

In view of the provisions of paragraph 3 of article 4 of Directive 96/71¹⁰⁷ that does not distinguish between information intended for undertakings and that intended for workers, many Member States make do with general information. Such information is insufficient from a point of view of legal obligations incumbent on the service providers and users and confusing to the workers. Only the website www.zoll.de gives clear-cut information to workers on the page dedicated to posting.

As needs and responsibilities are not the same, the information provided must be specific to these different categories.

¹⁰⁷ Article 4§3 of directive EC 96/71: « 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 ».

1. The necessity of general information

From a point of view of content, none of the websites analysed provide clear and summarised information on the situation of posted workers as regards

- relations with their employers throughout the duration of their posting
- performance of their work in a Member State other than their State of residence and the possibility of benefiting from certain clearly stated social entitlements
- continued affiliation to their social security scheme of the Home State, in addition to social security cover in the Host State.

Most websites merely enumerate the rules applicable by virtue of the transposition of the Posting directive in the Host State.

Nevertheless, it does appear beneficial to provide general information on posting in the websites of each Member State. It would enable workers to understand the posting operation in a language they master, while apprising them of the distinctive aspects of their situation as posted workers and prompting them to seek information on their rights in the Host State.

2. Specific information for posted workers from other Member States

Each State must introduce on their websites information that is specifically intended for the workers posted by a service provider to the national territory. This information could focus on certain key sectors and particularly those professional sectors that in view of national statistics, are most concerned by posting operations. The rules applicable by virtue of collective agreements of general application specific to each sector identified could thus be outlined by means of this information. Such a measure would help to overcome the obstacle stated earlier, namely the difficulty of presenting all of the provisions in collective agreements applicable in the Host State. It would be a first step towards improving the quality and adequacy of information and would meet the requirements of the Commission, which underlined in its recommendation of 31 March 2008¹⁰⁸ : « *In order to bring about further improvements with respect to access to information, Member States should:*

- 1) avoid referring to or providing general information on labour law only, but instead to indicate clearly which terms and conditions of employment and/or which part of their (national and/or regional) legislation have to be applied to workers posted to their territory;

¹⁰⁸ Recommendation of the Commission of 31 March 2008 on enhanced administrative cooperation in the context of the posting of workers carried out in the framework of a provision of services (2008/C 85/01)

2) take the necessary measures to make generally available the information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by foreign service providers; where possible, links to existing Internet sites and other contact points, in particular the relevant Social Partners, should be provided ».

B. Diversifying the tools for circulating information

Undertakings may easily rely on CIT to seek information, but it would be risky today to presume that all the employees of the 27 Member States make the same use of such information and particularly those workers that undertakings employ in certain sectors of activity. As far as workers are concerned, it would be worthwhile to diversify the outlets of information.

The information should be circulated both in the usual State of residence in order to present the fundamental aspects of posting and the Host State where the work is performed for specific information on terms and conditions of work and employment. In brief, each State must provide information, as some have already done for the benefit of undertakings, that is intended for workers who will be posted out and information for workers posted to the national territory.

This information could be circulated :

- on the website dedicated to queries on posting via a section « *Information for workers* »,
- by means of brochures which would be circulated by local offices of public administrations and labour union organisations, while attaching greater importance to those in the professional sectors concerned.

Assistance under other forms could also be provided.

Certain websites, such as those of Luxembourg and Belgium¹⁰⁹, provide direct access to assistance specific to posting by indicating telephone contacts, postal and e-mail addresses,

¹⁰⁹<http://www.itm.lu/detachement-de-travailleurs/contact-international>
http://www.zoll.de/fr_version/b0_centre_information/index.html
<http://www.emploi.belgique.be/defaultTab.aspx?id=6224>

whereas other websites redirect the user to a non-dedicated helpline (Germany) or their local administrations (France).

Among the liaison offices contacted and in particular those that consider that offering information to undertakings and workers is part of their job¹¹⁰, the conclusions are the same: they are rarely contacted for information by the workers themselves. However, they are well equipped from a legal and linguistic point of view and their knowledge of specific rules applicable as regards posting should incite the States to support them in their mission of providing information by giving them adequate publicity.

One of the essential outlets for circulating information could be constituted by the staff representative bodies in the service user undertakings that have the advantage of being near to the posted workers at the work place. Under this same perspective and according to the social models of each Member State, the representative labour unions in the professional sector considered could also play a pivotal role in accompanying and assisting the posted workers. Thus, the website set up by the European social partners in the construction industry, provides links for each Member State to websites of labour unions established in the construction sector. Specialised websites for a professional sector facilitates this policy of providing links.

¹¹⁰ The Belgian and Luxembourg liaison offices.

Section 2. The content of information to be given to workers

The information to be provided in the usual State of residence must present the context and the special aspects of posting; the social rules of the Host State do not need to be given in detail, but the posted workers must be informed of their rights and obligations as regards posting (A).

The information intended for posted workers coming from another Member State must contain additional details on the essential social rules forming part of the hard core of the Directive as implemented in the Host State and in accordance with paragraph 2 of article 5¹¹¹ of the Posting Directive. It must mention the remedies available to the employee in the Host State (B).

A. The general information to be given to workers

For the posting operation to function efficiently, the workers must be informed about the context in which they find themselves. This information must render the provision of services safe in the Host State by precluding any potential troubles for the workers and enabling them to identify their contacts and assert their rights.

1. Working in a legal context

A lawful posting presupposes the existence of an employment contract with an employer established on the territory where his activities are normally carried out. Furthermore, the employer must maintain this function throughout the duration of the posting and will be responsible for compliance with rules related to wages, working hours, hygiene and safety at work, according to the legislation of the Host State. Even if according to the laws of the Host State and the legal framework of the posting, the worker could be under the control and management of the employer of the user undertaking, the maintenance of an « *employment relationship during the period of posting* » is the factor common to all the forms of posting set forth in the posting directive under article 1§3.

¹¹¹ Al 2 of article 5 of Directive 96/71/EC of 16 December 1996: «*They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive*».

This information will avoid confusion as regards respective responsibilities of undertakings involved at the place of work.

2. The special case of third country nationals

Even if it is the employer's role to attest to the lawfulness of a third country national's situation in the preliminary declaration, it is preferable for employees to be in possession of the work and residence permits authorising them to stay and work in their employer's State of establishment. The controls and inspections conducted in the Host State could oblige the posted worker to leave the country if the employer or posted worker is unable to provide the necessary documents and if in addition to this, there are other punishable offences.

3. Affiliation to the Social Security scheme applicable in the Home State

Before being posted, employees must be covered by the social security scheme of the State where they normally work, the effect of the posting being to maintain this situation. This affiliation must pre-exist even if the new implementing Regulation 983/2009 has considerably eased the terms and conditions of this prior affiliation by indicating in its article 14 paragraph 1¹¹² that the employee "*can be a person who is recruited with a view to being posted to another Member State provided that, immediately before the start of his employment the person concerned is already subject to the legislation of the Member State in which his employer is established*".

The decision of the administrative commission on the coordination of social security systems has however laid down certain restrictions by stating that in the case of the person concerned "*having been subject to the legislation of the Member State in which the employer is established for at least one month, can be considered as meeting the requirement*"¹¹³.

¹¹² Regulation (EC) n° 987/2009 of 16 September 2009 laying down the procedure for implementing Regulation (EC) n°883/2004 on the coordination of social security systems .Article 14 paragraph 1

« *1. For the purposes of the application of Article 12 (1) of the basic regulation, "a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State shall include a person who is recruited with a view to being posted to another Member state, provided that, immediately before the start of his employment, the person concerned is already subject to the legislation of the Member State in which his employer is established* ».

¹¹³ Decision A2 of 12 June 2009 concerning the interpretation of article 12 of Regulation (EC) n°883/2004 on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State.

4. Documents required of the posted worker

Two key documents are required in the Host State and can facilitate the worker's rights and measures to be taken.

Posted workers must have in their possession the A1 form (previously E 101) certifying that they are present in the context of a posting and that in this respect, they are affiliated to the social security scheme of the State which has sent them. This certificate must be provided by the employer who applies for it from the competent institution. Even if this certificate can be issued at a later date, its presentation would remove suspicions of fraud as far as the control authorities are concerned.

Lastly, employees must also be informed about the usefulness of the European health Insurance Card and the issuing authority. This would enable them to benefit from health care benefits in the Host State as if they were affiliated there. *"The European Health Insurance Card guarantees that the card holder receives in the Member State of stay the same treatment (procedures and tariffs) as a person covered by the sickness insurance scheme of this State"*¹¹⁴. The card holders would not need to return to the competent State or State of Residence to receive health care before the projected end of their stay.

5. Enforcement of social rules in the Host State

Posted workers must be informed of the basic principle of the Posting Directive by virtue of which, in respect of certain fundamental aspects, they will benefit from the rules applicable in the Host State. This information may prompt them to inquire about and avail of their rights. This information is identical to that given to undertakings.

B. Information to be provided by the Host State to the posted worker

Posted workers are often unaware of their rights and especially those by virtue of which the level of their salaries have to conform to the minimum rates applicable to workers of the same category in the Host State. All of the information hereafter must be outlined in accordance with the existing legal rules or collective agreements.

1. Rules applicable to the provision of work

The rules to be outlined to the posted worker must include complete information on :

¹¹⁴ ACCSSS, DECISION S1 of 12 June 2009 concerning the European Health Insurance card, (2010/C 106/08)

- the salary applicable in the Host State for each professional category including a definition of gross salary, its components and the principle determining payment of travel, board and lodging, and restaurant costs in reimbursement of expenditure incurred on account of the posting, that does not enter into the calculation of the minimum wage¹¹⁵,
- the reminder that this rule does not affect the application of the contractual salary if the latter is more favourable,
- any exceptions to the minimum wages provided under the Directive 96/71¹¹⁶ when the period of posting is less than a month or because the amount of work to be done is insignificant.
- legislation concerning maximum working periods, minimum rest periods and the minimum duration of paid annual leave, along with the possibility of derogation as specified under directive 96/71 in the case of an insignificant amount of work.
- legislation concerning safety, health and hygiene.

The extensive scale of information must not be detrimental to the clarity of rules ; this is why it appears useful to point out to the workers the resource persons whose role is to ensure observance thereof, both within and outside of the undertaking where they will be posted.

2. Indication of remedies possible

Under article 5 of the Posting Directive, “Member States shall take appropriate measures in the event of failure to comply with this Directive. They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive”.

To guarantee the effectiveness of rules, the information must make mention of the categories of representatives in the service user undertaking likely to inform the workers and defend them in the Host State.

In the absence of such institutions, the information must specify the labour union organisations (confederations and federations) set up in the sector of activity. This is the case for the site <http://www.posting-workers.eu> created by the European social partners in the

¹¹⁵ Directive 96/71 of 16 December 1996 , op cit , article 3 paragraph 7 «*Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging* ».

¹¹⁶ Directive 96/71 of 16 December 1996, op cit , article 3 paragraph 3, 4 and 5 .

construction industry: it indicates, for each Member State, the websites of labour organisations specific to each sector. Experience reveals, in fact, that the labour unions contacted are a valuable link to guarantee aid in the form of legal assistance and advice. Their knowledge of social rights, their organisation and capacity to intervene make them the main negotiators for employees in difficulty. They are the ones who will take concrete action in justice in order to enforce terms and conditions as stated in article 6 of the directive¹¹⁷.

Precise information must also be provided on the control authorities and labour inspectorates. This information is available on the German site www.zoll.de under the section "workers".

3. Health cover for workers in the Host State

It is the role of the Member States to set out the exact terms and conditions of workers' rights in the field of health care whether arising from illness or work related accidents.

As regards health insurance, the employee must be informed about the rules to observe in order to benefit from the allowances in kind and cash and the procedure to obtain cover. This information is clearly explained in the CLEISS¹¹⁸ website, but the absence of translation into another language reduces its usefulness.

In matters pertaining to work-related accidents, the employee must be informed of the time limits to declare the accident, the organisations providing cover and the procedure involved both as regards health cover and the right to obtain alternative income in the case of work lost time injury.

¹¹⁷ Directive 96/71, 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 ».

¹¹⁸ http://www.cleiss.fr/particuliers/je_viens_travailler_detachement_rgt.html

OUTLINE FOR THE STRUCTURE AND CONTENT OF THE MINIMUM INFORMATION THE MEMBER STATES SHOULD PROVIDE

The provision of services involving posted workers is all the more complex since it is at the hub of two different rationales: ensuring the freedom of undertakings in the field of service provision within a framework of fair competition and guaranteeing that workers' rights are fully respected.

Consequently, each Member State has transposed the rules stemming from the posting directive and attempted to introduce adequate information about the rules governing foreign service providers. However, the States have often neglected to inform national service providers and users, although such information would have helped raise the awareness of all stakeholders and stimulated a more widespread dissemination of the information required.

The task is difficult due to the social models of the Member States and the role of management and labour in determining the terms of employment and labour which are at the heart of the posting directive.

Adequate information also presupposes that the current divides between employment administrations and social security administrations are overcome in order to supply stakeholders with a summary of all their rights and obligations relating to each operation.

The tables below attempt to outline how the information can be structured taking into account the needs of different categories of users. This information could be made available on the websites of each State and would allow all stakeholders to become familiar with their rights and obligations according to their specific situation.

The tables are structured firstly to deal with the general information which all stakeholders should receive (Table 1), and secondly the information is divided into "sections" specific to each category of stakeholder (Tables 2 to 6).

The content is adapted to take into account certain criteria.

General information presenting the main features of posting (Table 1)

Information targeting undertakings set up on national territory enabling them to gauge the constraints linked with the posting operation they have in mind (Table 2)

Information targeting foreign undertakings set up in another Member State of the European Union wishing to post workers to the national territory (Table 3)

Information targeting the service users (Table 4)

Information targeting workers on the national territory who are scheduled to be posted to another State (Table 5)

Information targeting workers posted to the national territory by foreign undertakings (Table 6)

GENERAL INFORMATION TO BE GIVEN TO ALL STAKEHOLDERS

(Table 1)

Definition of posting

Main outlines of posting in terms of labour and social security law

PUBLISHING INFORMATION SPECIFIC TO EACH STAKEHOLDER

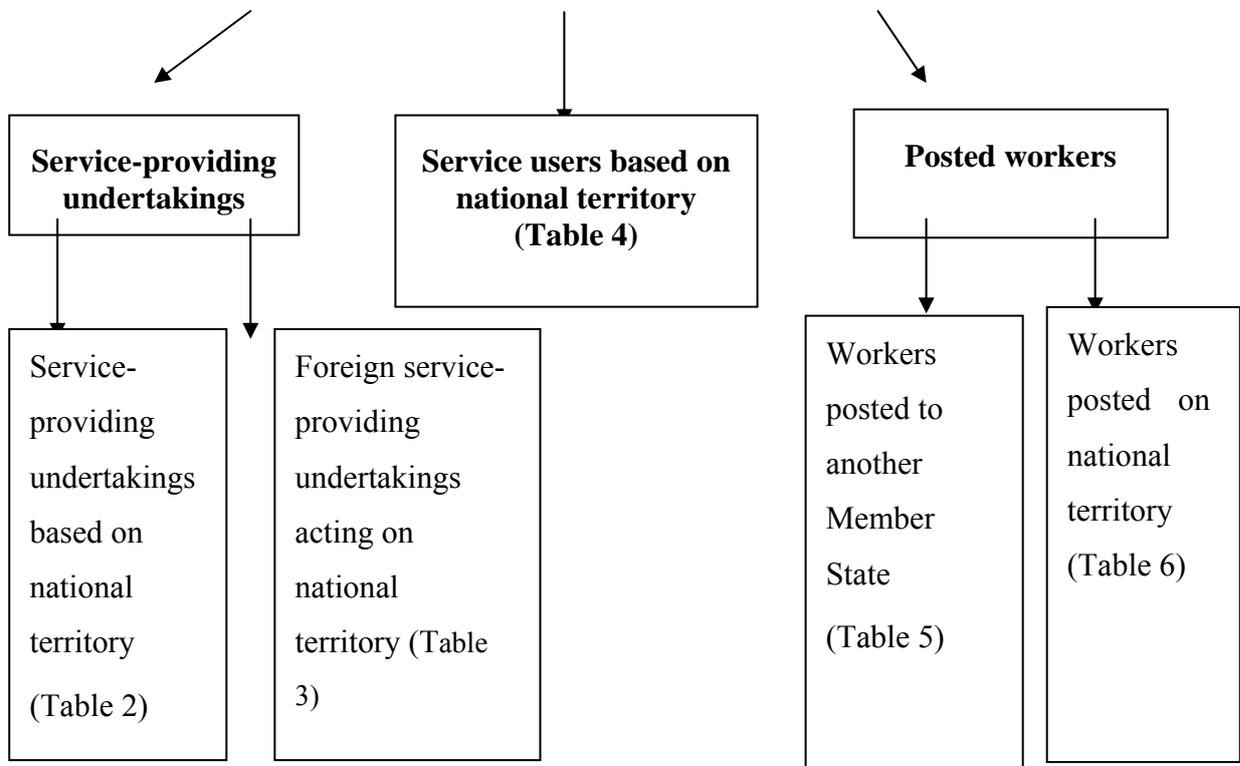


Table 1

GENERAL INFORMATION FOR ALL STAKEHOLDERS	
<p style="text-align: center;">THE POSTING OF WORKERS AND THE FREEDOM TO PROVIDE SERVICES</p> <p style="text-align: center;"><i>Article 56 Treaty on the functioning of the European Union (former article 49 TEC)</i></p>	<p>The transnational posting of workers falls within the framework of the freedom to provide services. The freedom to provide services enables service providers based in a Member State to provide services in another member State on a temporary basis without having an establishment there. Any restrictions to this freedom are prohibited regarding nationals from Member States based in a Member State other than that hosting the service provision.</p> <p>The transnational posting of workers is therefore an operation by which an undertaking based in a Member State sends workers onto the territory of another Member State to carry out the temporary provision of services.</p> <p>This operation involves three stakeholders: the undertaking posting the workers (service provider), the posted workers and the service user (customer, supervisor, contractor)..</p> <p>To comply with Community law, the posting operation presupposes that rules in terms of labour and social security law are abided by.</p>
POSTING WORKERS AND LABOUR LAW	
<p style="text-align: center;">THE POSTING FRAMEWORKS</p>	<p>The directive provides for three different categories of posting:</p> <p>Performing a service-provision contract: a contract is signed between the service-providing undertaking based in Member State A and the service user based in Member State B. To execute the contract, the service provider posts a worker under their management and working on their account, to the territory of member State B.</p> <p>Intra-group mobility: an undertaking posts a worker to an undertaking belonging to the same group, but based in another Member State.</p> <p>Hiring out employees for temporary work: a temporary employment undertaking hires out a worker for a user undertaking either based or conducting its activity on the territory of another Member State.</p> <p>In these three hypotheses, a work relationship between the sending undertaking and the posted worker must exist during the posting period. This means that the undertaking which employs and posts the worker remains the worker's employer.</p>

<p style="text-align: center;">DEFINITION OF POSTING</p>	<p>Directive 96/71 defines the posted worker as "a worker who, for a limited period of time, carries out his work in the territory of a Member State other than the State in which he normally works".</p> <p>Posting is temporary by nature.</p> <p>⇒ While the directive only provides that posting can be carried out "for a limited period of time", Community rules coordinating the social security systems provide for a maximum posting period of 24 months.</p>
<p style="text-align: center;">RULES TO BE OBSERVED IN THE HOST STATE</p>	<p>Respecting the rules of the Host State is a necessity:</p> <p>The undertaking posting the worker must abide by the labour law applicable in the Host State relating to the following labour and employment conditions:</p> <ul style="list-style-type: none"> ⇒ maximum work periods and minimum rest periods; ⇒ the minimum duration of paid annual holidays; ⇒ the minimum rates of pay, including increments for overtime ⇒ the conditions for hiring out workers, notably by temporary employment undertakings; ⇒ health, safety and hygiene at work; ⇒ the protective measures applicable to the work and employment conditions of pregnant women and women who have recently given birth, children and young people; ⇒ equal treatment between men and women and other provisions on non-discrimination. <p>The service-providing undertaking is only subject to these rule if they are laid down:</p> <ul style="list-style-type: none"> ⇒ by law, regulation or administrative provision ⇒ and/or collective agreements or arbitration awards which have been declared universally applicable to activities in the field of the building sector. <p>However, the directive concedes that Member States can impose on national undertakings and undertakings from other Member States the conditions for labour and employment laid down in collective agreements or arbitration awards that are universally applicable for activities other than the building sector.</p> <p>The rules for the Host State may be set aside insofar as the posted worker already benefits from similar or more</p>

	<p>favourable rules in the Home State.</p> <p>What are universally applicable collective agreements and arbitration awards? They are collective agreements and arbitration awards that must be observed by all undertakings in the profession or industry concerned and in the geographical area in question.</p> <p>In the absence of a declared system for universally applied collective agreements and arbitration awards, the Member States can base themselves on:</p> <p>⇒ collective agreements or arbitration awards which are generally applicable to all similar undertakings in the profession or industry concerned in the geographical area in question,</p> <p>and/or</p> <p>⇒ collective agreements signed by the most representative employers' or labour organisations at a national level and which are applied throughout the national territory.</p>
<p>SOURCES OF THE RULES</p>	<p>⇒ Directive 96/71 of 16 December 1996 concerning the posting of workers in the framework of service provision.</p>
<p>POSTING WORKERS AND SOCIAL SECURITY LAW</p>	
<p>OBJECTIVES AND CONDITIONS</p>	<p>The objective pursued by Community regulations in coordinating the social security systems is to facilitate the freedom of service provision by simplifying formalities for undertakings: the worker remains affiliated to the social security system of the Home State while carrying out a temporary service in another State.</p> <p>A work relationship must be maintained between the employer and the worker: the employer who employs and posts the worker must remain the employer. The direct relationship must continue to exist during the period of posting.</p>
<p>MAXIMUM PERIOD OF POSTING AND EXEMPTIONS</p>	<p>The foreseeable posting period should not exceed 24 months (non-renewable).</p> <p>An exemption to this period of 24 months may however be granted by mutual agreement between two or more Member States, the competent authorities in these member States or organisations appointed by these authorities, in the interest of certain persons or categories of persons.</p>

	<p>The service-providing undertaking may therefore enter a request to benefit from an exceptional, individual agreement to:</p> <ul style="list-style-type: none"> ⇒ plan a posting period exceeding 24 months from the outset or ⇒ extend the initial posting period beyond 24 months.
PROHIBITIONS	<ul style="list-style-type: none"> ⇒ The posted worker must not replace another posted worker. ⇒ Repeated postings, i.e. the following operations are prohibited: <ul style="list-style-type: none"> ▪ The undertaking to which the worker has been posted in turn posts the worker to another undertaking in the Member State where it is based or to an undertaking based in another Member State, ▪ The worker is recruited with the aim of being posted by an undertaking located in a second Member State to an undertaking located in a third Member State.
FORMALITIES	<p>The A1 (ex E101) certificate to be requested from institutions in the State of origin firstly constitutes a presumption that affiliation to the social security system of this State has been maintained, and secondly certifies that the employee is living in the Host State within the posting framework.</p> <ul style="list-style-type: none"> ⇒ The application for the form can be made before, during or after the posting period, although it is preferable to ask for it before posting. Indeed, checks could be carried out in the Host State and the form could be requested at any point. Applying for the form before the posting period therefore means one can proceed act in all serenity. ⇒ Presenting the A1 form creates a presumption of affiliation to the social security system binding the competent organisation and the judges in the Host State. As long as the A1 certificate has not been withdrawn or declared invalid, the competent institution in the Host State cannot submit the workers in question to its own social security system. ⇒ E 101 forms may continue to be issued instead of A1 forms until 30 April 2012.
SOURCES OF THE RULES	<ul style="list-style-type: none"> ⇒ Articles 12 and 16 Regulation (EC) n°883/2004 of the European Parliament and of the Council of 29 April 2004

	<p>on the coordination of social security systems</p> <ul style="list-style-type: none">⇒ Regulation (EC) n°987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedures for implementing regulation (EC) n° 883/2004 on the coordination of the social security systems⇒ Decision A2 of 12 June 2009 of the Administrative Commission for the coordination of social security systems⇒ Decision E1 of 12 June 2009 of the Administrative Commission for the coordination of social security systems
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Table 2

	<p align="center">INFORMATION FOR SERVICE-PROVIDING UNDERTAKINGS BASED ON NATIONAL TERRITORY</p>
<p align="center">CONDITIONS TO BE FULFILLED PRIOR TO POSTING</p>	<p>⇒ Service-providers can only make use of the rights connected with the freedom to provide services if they perform a substantial activity in the State where they are based: Service-providers must conduct substantial activities in their establishment other than activities that are purely connected to internal administration.</p> <p>The absence of any significant activity in the Home State means that the affiliation to a social security system for posted workers in another Member State may be invalidated and they may be subject to a system in the Host State.</p> <p>⇒ Posted workers must be employed in due form: The employees must have a work contract with the service provider. No particular length of service is required in the working relation. Employees who are third-country nationals must hold a work permit/residence permit in the Home State of their employer.</p> <p>⇒ When an A1 form is issued by the social security system of the State where the worker is normally employed, this certifies that affiliation to the social security system of this State has been maintained: Service providers must request the A1 form from the competent organisation in the Home State (postal and Internet address) preferably before proceeding with posting. Presenting this form to the inspection authorities in the Host State gives rise to a presumption of due affiliation to the social security system and binds the competent organisations and the judges in the Host State for as long as the certificate is not withdrawn by the issuing organisation.</p>
<p align="center">LEGISLATION APPLICABLE DURING POSTING</p>	<p>⇒ Alerting service providers about the need to be informed as to the rules applicable in the Host State. These rules may vary from one State to another.</p> <p>⇒ When the period of posting is less than 8 days, if the provision of services consists in work pertaining to the initial assembly and/or first installation of goods, which form an integral part of a supply contract for goods, performed by skilled workers, the employer does</p>

	<p>not have to observe the minimum rate of pay or the minimum period of annual paid holidays in the Host State. This exemption does not apply to activities in the building industry.</p> <p>⇒ Informing the service provider of any additional exemptions provided for in terms of the maximum period of work, minimum periods of rest and the minimum rate of pay in the case of small-scale work.</p> <p>⇒ In the building and public works sector: alerting the service provider of the existence of any system of funds for time off due to bad weather and any obligation to be affiliated to this fund should the equivalent of affiliation not exist on the national territory.</p>
INSPECTIONS	<p>⇒ Alerting service providers to any inspections in the Host State and information exchange between administrations to check the lawfulness of their situation.</p> <p>⇒ Encouraging service providers to look for information on the website of the Host State concerning the competent inspection bodies, the documents required and any penalties which may be incurred.</p>
LIABILITIES AND PENALTIES INCURRED	<p>⇒ Alerting service providers to the risks of concealing activities, concealing employees, fraudulent subcontracting, the illicit hiring-out of labour, hiring third-country nationals without a work/residence permit etc.</p>
CONTACTS	<p>⇒ Supplying service providers with assistance in the formalities and directing them towards the competent authorities in the Host State.</p> <p>⇒ Informing service providers about the website of the European Commission (www.europa.eu) to find further information and contacts in the Host State.</p>
SOURCES OF THE RULES	<p>⇒ Presenting european regulations (Directive 96/71, Regulations on the coordination of the social security systems) and the websites where these informations can be found</p> <p>⇒ Presenting the national rules, procedures and competent organisms for social security</p>

Table 3

	<p align="center">INFORMATION FOR SERVICE PROVIDERS PERFORMING TEMPORARY SERVICES ON NATIONAL TERRITORY</p>
<p align="center">CONDITIONS TO BE FULFILLED BEFORE POSTING</p>	<p>⇒ Informing the service providers of any requirement in terms of declaring the posting operation: role and content of the declaration competent organisation to be contacted (website supplying a declaration form or with an on-line service) how to send it (electronically or by post) deadlines for sending the form any penalties.</p> <p>⇒ Informing service providers of any other requirements.</p> <p>⇒ Informing service providers that to respect the lawful conditions in the Home State, they need: to exercise a significant, declared activity to have legally employed staff members to ensure any third-country nationals have a work/residence permit.</p> <p>⇒ Informing about the need to ask for a posting certificate (A1/ E101) from the social security scheme to which the employees are affiliated.</p>
<p align="center">LEGISLATION APPLICABLE DURING POSTING</p>	<p>⇒ Informing service providers of the social rules applicable to posted workers.</p> <p>⇒ If the rules of collective agreements are applicable, explaining the national mechanism of collective agreements (professional and/or geographical scope).</p> <p>Presenting the rules laid down by the law or collective agreements related to the following fields:</p> <ul style="list-style-type: none"> - maximum work periods and minimum rest periods; - the minimum duration of paid annual holidays; - the minimum rates of pay, including increments for overtime; - conditions for hiring out workers, in particular by temporary work undertakings; - safety, health and hygiene at work;

	<ul style="list-style-type: none"> - protection measures applicable to the labour and employment conditions of pregnant women and women who have recently given birth, children and young people; - equal treatment between men and women and other provisions on non-discrimination. <p>Explaining the principle by which this legislation is only applicable if it does not overlap with the legislation applicable in the Home State or if it is more favourable.</p>
INSPECTIONS	<ul style="list-style-type: none"> ⇒ Presenting the competent inspection bodies and their powers (labour inspectorate, police, customs, social security inspectorate etc.). ⇒ Presenting the documents required during inspections i.e. documents proving the observance of labour and employment conditions (pay slips, record of hours worked, A1 form etc.). ⇒ Presenting the penalties which may be incurred in the case of non-presentation of the documents or hindering the inspection process.
LIABILITIES AND PENALTIES INCURRED	<ul style="list-style-type: none"> ⇒ Presenting the various offences which may be retained in the case of concealing activities, concealing salaried employment, fraudulent sub-contracting, illicit hiring-out of labour, employing third-country nationals without a work/residence permit etc.
CONTACTS	<ul style="list-style-type: none"> ⇒ Contact details of the national and local public administrations for labour and the social security (line dedicated to posting or geographical map of the Host State with zoning to locate the locally competent authority more easily). ⇒ Contact details of employer organisations and consular chambers.
SOURCES OF THE RULES	<ul style="list-style-type: none"> ⇒ Presenting the national rules

Table 4

	INFORMATION FOR THE SERVICE USER
EMPLOYMENT OF ILLEGALLY STAYING THIRD-COUNTRY NATIONALS	<p>⇒ Informing the service user of the risks associated with calling on a service provider that does not observe the rules applicable to the employment of third-country nationals</p> <ul style="list-style-type: none"> ▪ in the case of the service provider employing third-country nationals who do not, or no longer, fulfil the residence conditions in the service provider's Home State, service users are informed of the penalties they may incur under civil and criminal law in their capacity as: ▪ a contractor using a "sub-contractor" (legal entity or private individual who is entrusted with the performance of part or all the obligations of a pre-signed contract), ▪ a main contractor or intermediate sub-contractor if they were aware that the sub-contractor employed illegally staying third-country nationals <p>⇒ Indicating the penalties resulting from transposing Directive 2009/52/EC of 18 June 2009 into the national legislation</p> <ul style="list-style-type: none"> ▪ the service provider may be held jointly liable with the employer, contractor or direct sub-contractor or in their stead and incur financial penalties, ▪ regarding the payment of costs for returning illegally employed third-country nationals in cases where a return to the home country is undertaken, ▪ regarding the back pay of any illegally employed third-country nationals, ▪ regarding all costs resulting from sending unpaid salaries to the country to which the third-country national has returned or been sent.

LIABILITIES AND PENALTIES INCURRED	<p>According to national legislation:</p> <ul style="list-style-type: none">⇒ informing service users of any formalities required under national law,⇒ informing service users of the risks of joint liability with the service provider with reference to illegal employment.
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Table 5

	INFORMATION FOR WORKERS POSTED TO ANOTHER MEMBER STATE
THE WORKER'S SITUATION BEFORE POSTING	<p>⇒ Employees must be declared as being:</p> <ul style="list-style-type: none"> ▪ holders of a work contract, and ▪ affiliated to the social security system of the State where they usually work <p>⇒ Third-country employees must hold a residence and/or work permit allowing them to work on national territory.</p>
WORK AND EMPLOYMENT CONDITIONS DURING POSTING	<p>⇒ Employers who post employees maintain their position as employers during the posting period:</p> <ul style="list-style-type: none"> ▪ they pay the salary and remain liable for the application of the work contract. ▪ they must apply certain provisions in the Host State if they are more favourable than those provided for in the national legislation applicable to the work contract and they are compulsory for workers in the same category in the Host State. <p>⇒ These rules are applied either by virtue of the law of the Host State or by virtue of collective agreements.</p> <p>⇒ The rules may concern:</p> <ul style="list-style-type: none"> ▪ the maximum working times and minimum rest periods; ▪ the minimum duration of annual paid holidays; ▪ the minimum rate of pay, including incremented rates for overtime; ▪ the conditions under which workers are hired out, in particular by temporary employment agencies; ▪ safety, health and hygiene at work; ▪ protection measures applicable to the work and employment conditions of pregnant women and women who have recently given birth, children and young people; ▪ the equal treatment between men and women and other provisions on non-discrimination. <p>Caution: Allowances paid during the posting period (mobility bonus, expatriation bonus etc.) are part of the minimum salary.</p> <p>But allowances paid to reimburse expenses incurred due to the posting (travel, accommodation and living expenses) are not included in the calculation of the minimum salary.</p>
ACCESS TO AND COVERAGE OF HEALTHCARE	<p>Before leaving:</p> <p>⇒ Ask for the European Health Insurance Card from the relevant social security organisation. The card guarantees direct access to care providers based in the Host State without any prior formalities with the locally competent organisation, and coverage of medically required care services.</p>

	<p>Care services are the same as for local people insured under the scheme.</p> <p>⇒ In the case of sick leave due to an occupational injury during the posting period:</p> <ul style="list-style-type: none"> ▪ The employer and social security organisation should be informed. ▪ The healthcare is covered as for occupational injuries suffered by workers in the Host State by the Host State organisation according to its own rules. ▪ Indemnities to compensate the loss of salary are paid directly by the social security scheme to which the worker is affiliated.
<p>USEFUL DOCUMENTS IN THE HOST STATE</p>	<p>⇒ The European Health Insurance Card.</p> <p>⇒ Form A1 (formerly form E101). It proves that the employee is affiliated to the social security system in the Home State. It must be requested from the employer.</p> <p>⇒ The residence/work permit issued by the Home State if the worker is a third-country national. A residence/work permit from the Host State is not necessary.</p>
<p>POTENTIAL REMEDIES AND CONTACTS</p>	<p>⇒ Assistance in the case of non-observance of the rules:</p> <p>Alerting workers of how they can appeal to staff representatives in the undertaking where they are posted or trade union organisations in the Host State.</p> <ul style="list-style-type: none"> ▪ Giving information about the liaison offices of the various Member States accessible on the site of the European Commission http://ec.europa.eu/social/main.jsp?catId=726&langId=fr <p>Informing workers that they can find further information on the website of the labour and social security administration of the Host State.</p> <p>⇒ Legal recourse:</p> <p>Informing workers of their right to appeal to the courts and tribunals in the Host State against their employer</p> <p>Informing workers of all recourse available when they return to their Home State (cases which can be heard, competent tribunals, modalities of appeal, advice on the usefulness and cost of the proceedings).</p>

Table 6

	INFORMATION FOR WORKERS POSTED ON THE NATIONAL TERRITORY
THE WORKER'S SITUATION BEFORE POSTING	<p>⇒ Employees must be declared, i.e.:</p> <ul style="list-style-type: none"> ▪ hold a work contract and ▪ be affiliated to the social security system of the State where they usually work. <p>⇒ Employees who are third-country nationals must have a residence/work permit enabling them to work on the national territory of the Home State.</p>
LABOUR AND EMPLOYMENT CONDITIONS DURING POSTING	<p>⇒ Employers posting the employees remain their employers during the posting period, i.e.:</p> <ul style="list-style-type: none"> ▪ They pay the salary and remain liable for the application of the work contract. ▪ They observe certain provisions in the national legislation applicable on the territory of the Host State. They are applicable if they are more favourable than those provided for by the national legislation of the Home State. <p>⇒ Indicating whether the rules are applied by virtue of the law or collective agreements:</p> <ul style="list-style-type: none"> ▪ If the rules of the agreements are applied, explaining the national mechanism of collective agreements (professional and/or geographical scope). <p>⇒ Indicating precisely the compulsory rules on the national territory or in the professional sector, including:</p> <ul style="list-style-type: none"> ▪ the maximum work periods and minimum rest periods; ▪ the minimum duration of annual paid holidays; ▪ the minimum rate of pay, including incremented rates for overtime; ▪ the conditions for hiring-out workers, especially by temporary employment agencies; ▪ safety, health and hygiene at work; ▪ protection measures applicable to the work and employment conditions of pregnant women and women who have recently given birth, children and young people; ▪ equal treatment between men and women and other provisions on non-discrimination. <p>Caution: Allowances paid during the posting period (mobility bonus, expatriation bonus etc.) are part of the minimum salary.</p> <p>But allowances paid to reimburse expenses incurred due to the posting (travel, accommodation and living expenses) are not included in the calculation of the minimum salary.</p>

<p>SOCIAL COVER</p>	<p>Explaining the basic principles: employees are affiliated to the social security system of the State where they usually work (Home State). This affiliation is certified by the A1 / E101 certificate.</p> <p>This affiliation entitles them to rights in both the Home State and the Host State.</p>
<p>ACCESS TO AND COVERAGE OF HEALTHCARE</p>	<p>Healthcare is covered according to the rules of the social security system in the Host State.</p> <p>Replacement income in the case of sick leave is covered according to the rules of the system in the Home State.</p> <p>Healthcare coverage:</p> <ul style="list-style-type: none"> ⇒ Employees are entitled to the care deemed medically necessary as if they were affiliated in the Host State. ⇒ They are reimbursed directly for any expenses within the ceiling and according to the rates and conditions of reimbursement laid down by the Host State. ⇒ If the legislation in the Host State does not provide for the reimbursement of expenses, employees may be reimbursed by their own system, depending on the rules. <p>Sick leave in the case of illness:</p> <ul style="list-style-type: none"> ⇒ The right to a replacement income in the case of sick leave requires a medical certificate to be provided by the Host State which must be sent to the social security system of the Home State. This State shall pay out indemnities if the employees fulfil the conditions provided for by the legislation of the system to which they are affiliated. <p>In the case of sick leave for an occupation injury or disease:</p> <ul style="list-style-type: none"> ⇒ The occupation injury or disease declaration is carried out in accordance with the rules of the social security system of affiliation and the rules in force in the Host State.

	<p>⇒ Indemnities are directly paid out by the scheme to which the workers are affiliated.</p>
<p>USEFUL DOCUMENTS ON THE NATIONAL TERRITORY</p>	<p>⇒ The European Health Insurance Card issued by the relevant social security organisation of the Home State guarantees direct access to care providers based in the Host State without any prior formalities, and coverage of medically required care services.</p> <p>⇒ Care services are given under the same conditions as those provided for local users.</p> <p>⇒ Failing this, the employees' health insurance scheme issues a provisional replacement certificate for the European Health Insurance Card which is valid for three months.</p> <p>⇒ Form A1 (formerly form E101) allows employees to prove they are affiliated to the social security system of the Home State in the case of an inspection.</p> <p>⇒ The residence/work permit issued by the Home State if the employees are third-country nationals.</p>
<p>REMEDIES AND CONTACTS IN THE HOST STATE</p>	<p>Assistance on the national territory:</p> <p>⇒ Explaining the categories of staff representatives in national undertakings.</p> <p>⇒ Presenting the inspection bodies in charge of ensuring the law-based and/or collective agreement rules are observed.</p> <p>⇒ Supplying the contact details of trade union organisations on the national territory, in particular in sectors where posting is more frequently applied (postal address, email and telephone number).</p> <p>Legal recourse:</p> <p>⇒ Indicating the competent court or tribunal in the case of a breach of rights on the national territory (organisation of the</p>

courts, possible remedies, modalities, existence of organisations assisting victims).

⇒ Specifying whether appeals are possible once the employees have returned to the Home State.

**Part II. INFORMATION AVAILABLE ON THE POSTING OF
WORKERS:**

**A comparative analytical survey of websites set up by public
administrations**

Introduction

In the first part, we identified needs in terms of information, its potential content and the categories of information receivers.

The second part aims to present the findings of an assessment of websites providing information on posting.

Public administrations have a duty to provide information and assistance, yet how do they manage to carry out this task in concrete terms? What can we learn from the assessment of their websites?

In order to assess and compare the websites and webpages developed by the public administrations of the various Member States in terms of posting, the comparison criteria had to be defined from the outset based on precise objectives.

To lay down these objectives, we had to consider ourselves as users of the information supplied, either as undertakings aiming to conduct the provision of services freely by posting workers within the internal market, or as posted workers themselves.

A. Objectives

With this aim in mind, 2 main criteria were identified: ease of access to the information and the quality of services offered online.

The first criterion, centred on how easy it is to access information (Chapter I), covers several points.

Can users easily access information regarding posting conditions? In other words, if users are looking for reliable, accurate information on posting, will they be efficiently directed to the adequate website, i.e. to the website of the public administration in charge of supplying the information required? Indeed, while the Internet is a fantastic tool for disseminating knowledge, inadequate referencing of public websites may lead the user on a painstaking, and even discouraging, search considering the number of rival websites and the user's inability to identify the right source.

Another key element for users consists in supplying comprehensive information covering their rights and obligations in terms of the legislation of the Home State and the Host State

with reference to "labour laws" and "social security laws". We have indeed observed that it is not possible to consider posting from the sole angle of the rules of labour laws applicable in the Host State. The legal frame of posting implies that certain conditions in the Home State must be respected, including rules pertaining to labour laws and social security laws. This rationale is evident in the services directive: the point of single contact must represent a gateway to a whole set of useful information for a given activity. Assuring the provision of services through posting workers therefore implies, in particular, that general information should be supplied to the service provider, whose duty it is to respect the legal conditions, by going beyond the sectarian approach we witness today, where information is supplied by each type of public administration and by each State separately.

Does the information take into account the user's profile? Indeed information needs are not the same depending on whether we are dealing with a service provider, service user or a posted worker. Users who are confronted with a mass of information that does not correspond to their needs are no doubt likely to abandon the public website quickly and turn to other websites that are more adapted to their profile.

Is the information readily available from a language viewpoint? Language is still a major obstacle in terms of accessing information. And the more complex and scattered the information is, due to the different sources of rules applicable, the greater the language barrier becomes.

The second criterion retained to assess the websites of public administrations consists in checking the quality of the online services, i.e. the quality of the information supplied and the possibility of carrying out the required administrative formalities (Chapter II). Several aspects have been examined under this criterion.

Does the general information quoted above give precise, accurate and up-to-date information in particular concerning the key points which form the nerve centres in terms of posting workers?

Do the websites enable users to proceed with a certain number of formalities online? The possibility of using electronic means to fulfil the obligations of the Home State or the Host State obviously facilitates the performance of transnational service provision.

Do websites offer additional assistance by providing users with the precise details of public administrations which can answer their questions? Do the websites develop a policy of links towards the websites of other organisations able to assist undertakings and workers who wish to benefit from their rights?

Do the websites provide downloadable guides and brochures so that users can take on board all their rights and obligations? Making available a "*simple step-step guide*" is advised by the services directive in article 7 §2. This is part and parcel of the competent authorities' duty to provide assistance.

The aim of this evaluation is not to disqualify any website among those that have been studied, but to identify good practices and highlight potential paths for improvement so as to meet the informational needs of stakeholders involved in posting more efficiently.

B. Methodology

The websites selected for the assessment provide information on posting in the language of the administration managing the website and at least one other language, i.e. English, German or French, to enable us to check the content and accuracy of the information provided. However, this study is not exhaustive and time constraints forced us to limit our field of study to the following Member States: Belgium, France, Germany, Luxembourg, Netherlands, Spain and Sweden. Overall, fourteen websites developed by public labour and social security administrations were analysed.

The assessment also included an atypical website in terms of the criteria quoted above. The website www.posting-workers.eu, developed by European social partners in the building sector¹¹⁹ was funded by the European Union in the framework of social affairs and employment actions and programmes. The decision to include this website was justified by three factors :

- It enables a comparison to be made between the findings for a website dedicated to posting workers and websites not exclusively oriented towards this theme (as is the case of all the national websites studied).
- The information published by the representatives of posting stakeholders (undertakings and workers) can be compared with the information made available by public administrations.
- Information dealing with posting in all Member States can be compared with information targeting the rules applicable in a single State.

¹¹⁹ The two European federations concerned are the ECIF (European Construction Industry Federation) and the EFBW (European Federation of Building and Woodworkers)

This work was conducted between 1 April 2010 and 15 August 2010. Some observations may therefore already be obsolete if changes have since been made to the websites.

CHAPTER I: ACCESS TO INFORMATION

Public authorities supplying information on posting tend to be labour administrations and social security services, which are both directly affected by the rules framing the posting operation by virtue of Directive 96/71 and the Community regulations on the coordination of social security systems. In certain cases, there is a public portal presenting general information and referring to the above-mentioned specialised websites. In theory, the websites of the public administrations should supply reliable, accurate and up-to-date information. This is why they should be given priority in relation to websites developed by legal entities coming under private law which may be obsolete or supply partial information in both senses of the term. It therefore seems important to check that the audience potentially targeted by this information can easily access the public websites whose main task is to provide adequate information.

Access to information must be assessed according to different objectives.

Using a search engine, can users easily access the public website set up by the public administration in charge of supplying adequate information? In other words, is the website properly referenced and well ranked in the results displayed by the search engines and what are the risks linked with inadequate referencing? Faced with a plethora of websites, can users identify the public administration in charge of the website? This is key information for reassuring users. They must know if the rights and obligations presented on the website are truly in line with the legislation as interpreted and applied by the public administrations. In other words, if they respect the rights and obligations, they can consider themselves as being protected from any irregularities and legal actions against them (Section 1).

Whether our users are undertakings or workers, are they able to apprehend all the rights and obligations, or does the existence of several websites dedicated to providing useful information lead to the risk of accessing only part of the information required? Can they access information taking into account their position as a foreign service provider that does not master the language of the State where the service shall be provided? Easy access lies in the website's ability to overcome language barriers: if no translation is available in one or more foreign languages, the information supplied can only reach nationals who are looking to provide a service in another Member State (Section 2).

Section 1: Access to the website and reliability of the information available

Increasing use of ICTs means that information can be searched beyond national borders and therefore constitutes a prime method of disseminating information.

Various stakeholders may search for information on the subject of posting: undertakings set up in another Member State, undertakings set up on national territory and workers involved in the posting process. Searching for information is more problematic for the first of these categories. Indeed, it is easier for individuals to identify the website of a national public administration insofar as the search is conducted in a familiar cultural and linguistic, and therefore more or less controlled, environment. Foreign undertakings, on the other hand, are not familiar with the general administrative organisation of the Member State where they intend to provide services. They may not speak the language of the Host State or fully apprehend its administrative organisation. They are therefore at a particular disadvantage when they surf the Internet to find specific information. The ranking of the website designed to meet their needs is therefore a key factor in terms of accessing the right information. To help users seeking information, it must be possible to distinguish between the official websites of public administrations and rival websites (A). In view of our findings, we feel that it would be helpful to examine the factors that foster the visibility of websites among the results displayed by search engines (B).

A. Website ranking in search engines

Faced with a plethora of websites which may meet their needs, users must be able to access the relevant website directly. Inadequate access to sites developed by the public administrations due to inadequate ranking in the search engines may have a negative impact. Users can make mistakes by using inadequate information provided by more highly ranked websites. They may also give up their search in the face of a myriad results that are not relevant to their needs.

It is absolutely essential that the website should be ranked top in the results generated by the search engine. If the aim of a public administration website is to provide information enabling users to be secure in their undertakings by supplying them with the rules in force, then obviously all risk of competition from websites offering information which may be wrong, obsolete or inadequate must be avoided (2). Being able to identify the publisher of the website is a means of underlining the reliability of the information provided. By being able to identify the official public administration in charge of providing adequate information, users may legitimately suppose that the rules they find there will protect them from irregularities (3). However, the choices adopted to proceed with this assessment require some clarification (1).

1. Methodology

From a methodological point of view, it was important to use a good balance of different categories of users and search engines in the assessment.

To take into account the difficulties specific to undertakings and salaried workers who are not nationals of the Host State, ranking was measured based on a request stemming from a service provider wishing to post one or more workers to another Member State where the official language is different from that of the Home State. For the assessment to be valid, the basic hypothesis consists in considering that the user speaks at least English as an international language standard, even if this hypothesis may appear to presume too much.

From the vast range of search engines available, the Google search engine was selected for the assessment in view of its dominant position on the search engine market in Europe.

A survey conducted in 2008 by the American firm ComScore, which ranks among the world leaders in audience measurement in the field of digital market intelligence¹²⁰, drew up statistics on the state of the search engine market in Europe in 2008. According to the survey, the Google search engine easily tops the bill with a total of 19.43 billion requests processed in March 2008, corresponding to a market share of 79.2%¹²¹. In most countries in the EU, Google occupies 90% of the search engine market¹²².

The request introduced into the search engine has been kept deliberately simple. While the terms used in the search request from one user to another may vary, referencing methods give priority to a choice of simple key words with which the target user is familiar¹²³. The service provider or posted worker is supposed not to be familiar with the regulations pertaining to posting and to search for general information specific to the Member State where the service will be performed. Therefore, the terms selected were "posting workers" and the name of the Member State where the service would be performed, e.g. "Posting+workers+ Germany". This choice can be called into question, especially as the term "posting" might not be known to the users. Yet introducing a broader request such as "mobility" or on the contrary, a narrower term concerning a particular aspect of posting, such as "E101 certificate" would not correspond to our aim which was to assess the availability of information provided by public administrations on the overall theme of posting.

¹²⁰ http://www.comscore.com/fre/About_comScore.

¹²¹ http://www.comscore.com/fre/Press_Events/Press_Releases/2008/05/Top_European_Search_Engines;

¹²² Source: <http://www.atinternet-institute.com/pdf/fr-FR/Barom%C3%A8tre%20des%20moteurs%20-%20Ao%C3%BBt%202010.pdf>.

¹²³ Source: Le Journal Du Net, excerpt from the article "Comment ne pas rater son référencement", <http://www.journaldunet.com/imprimer/0502/050221referencement.shtml>.

2. The classification of websites in the Google search engine

A well-ranked, and therefore clearly visible, website or page must appear among the first five results displayed by the search engine. Actually, 71% of internet browsers consult less than 5 pages in the results displayed by the search tool. Beyond this, the result is considered as being inconclusive insofar as several non-relevant websites will be ranked before the website whose visibility should be clear, i.e. the website of a public administration.

If they are not correctly referenced, the websites of public administrations can be totally inaccessible and enter into competition with inadequate websites that present themselves under the angle of "independent authorities", as in the case of an identical request targeting Spain. The websites for the Spanish labour and immigration services¹²⁴ and the social security services¹²⁵ do not appear on the screen. Ranking top of the results, we find information dating from 2003 available on the www.eurofound.europa.eu website. The second result presents a website aimed at expatriate workers in Spain, whereas expatriation is very distinctly different from posting in terms of the regulations applicable¹²⁶. The website www.posting-workers.eu ranks third in the list of results and displays the Spanish national report specific to obligations in the building sector.

¹²⁴ http://www.mtas.es/es/guia/texto/guia_6/contenidos/guia_6_15_3.htm.

¹²⁵ http://www.seg-social.es/Internet_6/Internacional/reglamentoscomunitarios2/regla883/TrabDesCE/index.htm.

¹²⁶ Expatriation is a legal notion in Social Security Law which refers to a situation whereby foreign workers living in a Member State are affiliated to the social security system of that Member State because they perform services within this territory.

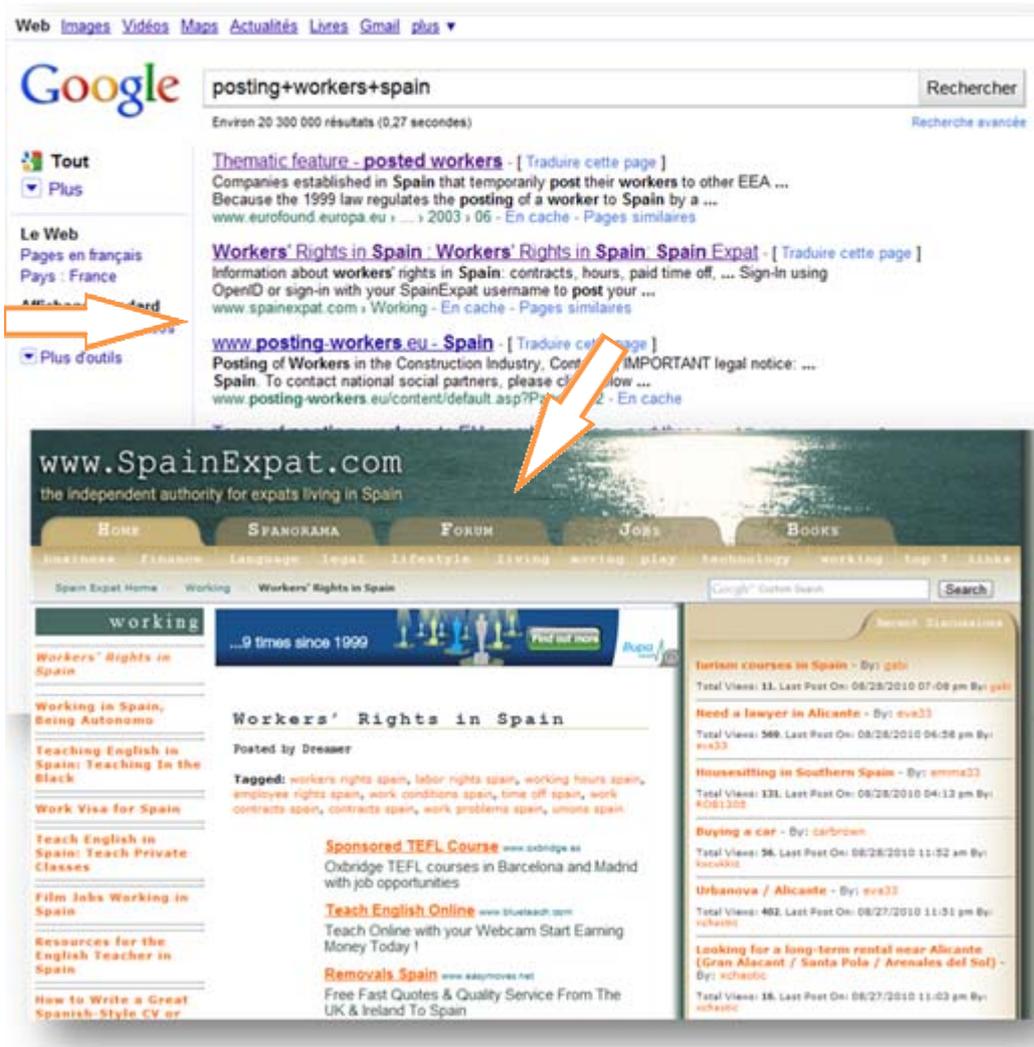


Illustration: the search request "posting+workers+Spain" does not display the website of the Ministerio de Trabajo e Inmigración (Spain). The website ranked second targets expatriates in Spain and can lead to mistakes being made since it is presented as the website of an "independent authority". This deficiency is partially rectified by the address listed third in the results with the report on posting workers in Spain from the website <http://www.posting-workers.eu>, which is well referenced, but specific to the building sector.

A further example showing a similar result is the request "posting+workers+Sweden", which does not give access to the relevant website of the Swedish labour and social security administrations¹²⁷ in terms of posting. This result is partially explained by the absence of the heading "posting" in the websites. The only information available on the website of the Work Environment Authority is submerged in the section on "working in Sweden".

¹²⁷ The user should be able to access the website published by the Swedish Work Environment Authority http://www.av.se/inenglish/working/this_is/

However, in the fifth rank, the request displays the downloadable booklet on posting available in English on the website of the Swedish Work Environment Authority.

Google

posting+workers+sweden

Rechercher

Environ 9 510 000 résultats (0,21 secondes)

Recherche avancée

Tout Plus

Affichage standard Recherches associées Plus d'outils

[PDF] [The Directive on the Posting of Workers – the case of Sweden](#) - [Traduire cette page]
Format de fichier: PDF/Adobe Acrobat - Afficher
This was even reiterated by Sweden in a declaration annexed to the accession protocol. Secondly, the Posting of Workers Directive was based on the political ...
lo.se/home/lo/home.nsf/.../file/The%20posting%20of%20workers.pdf

[PDF] [The Directive on the Posting of Workers – the case of Sweden](#) - [Traduire cette page]
Format de fichier: PDF/Adobe Acrobat - Afficher
The Directive on the Posting of Workers – the case of Sweden. Memorandum. The labour market system in Sweden. The average unionisation rate in the labour ...
lo.se/home/lo/home.nsf/unidView/.../file/waxholm.pdf

[Thematic feature - posted workers](#) - [Traduire cette page]
22 Jul 2003 ... The legal position of posted workers in Sweden is the same as for national workers. If posted workers prefer to be treated under the legal ...
www.eurofound.europa.eu » EIROnline » 2003 » 06 - En cache

[Terms of posting workers to EU member states - part three ...](#) - [Traduire cette page]
The document contains detailed information on terms of posting workers to EU ... Information on terms of the stay in Sweden in English and many foreign ...
www.businessinfo.cz/.../posting...workers/...posting-workers.../57733/ - En cache

[PDF] [View PDF - Posting in Sweden - foreign employees who work in ...](#) - [Traduire cette page]
Format de fichier: PDF/Adobe Acrobat - Afficher
certain level of protection is based on provisions in the EC Posting of Workers Directive. In Sweden, the rules apply to all posted workers, ...
www.av.se/dokument/inenglish/books/h448.pdf

[Foreign Posting of Employees Act](#) - [Traduire cette page]
seat in Sweden and post employees to another Member State within the European of 16 December 1996 concerning the posting of workers in the framework of ...

Illustration: the first four sites that come up are not relevant. The first relevant result is only ranked fifth in the list. This is a PDF document published by the Swedish Work Environment Authority, whereas the website of this authority http://www.av.se/inenglish/working/this_is/ is not given in the results displayed.

Five websites rank first in the results on screen :

- ⇒ The German Customs Authority in charge of posting operations in Germany of the Bundesministerium der Finanzen (Germany)¹²⁸
- ⇒ The website for the French Ministry of Labour, Solidarity and Public Service (Ministère du travail, de la Solidarité et de la Fonction Publique)¹²⁹
- ⇒ The website of the Luxembourg Labour and Mines Inspectorate (Inspection du Travail et des Mines)¹³⁰
- ⇒ The website of the Dutch Ministry of Social Affairs & Employment¹³¹
- ⇒ The official information and services portal in Belgium¹³².

One website is ranked second – the Belgian Federal Public Service for Employment, Labour and Social Dialogue (Service Public Fédéral de l'Emploi, Travail et Concertation sociale - SPFE)¹³³, but the presence in first position of the official Belgian portal with a link to the SPFE does not detract from its visibility.

Among the other nine websites¹³⁴, none was ranked in the first five places when the search request was entered. It is interesting to note that among these nine websites, seven are dedicated to the "social security law" aspect of posting.

¹²⁸ http://www.zoll.de/english_version/f0_aentg/index.html.

¹²⁹ <http://www.travail-solidarite.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/temporary-posting-of-workers-in,8988.html>.

¹³⁰ http://www.itm.lu/faq/sr_detach/faq_posted_abroad.

¹³¹ http://english.szw.nl/index.cfm?menu_item_id=14640&hoofdmenu_item_id=14632&rubriek_item=392437&rubriek_id=391971&set_id=3630&doctype_id=6&link_id=112021.

¹³² http://www.belgium.be/en/work/posting_workers_to_belgium/index.jsp

¹³³ <http://www.employment.belgium.be/defaultTab.aspx?id=6196>

¹³⁴ Cf. all the website addresses in the appendix.

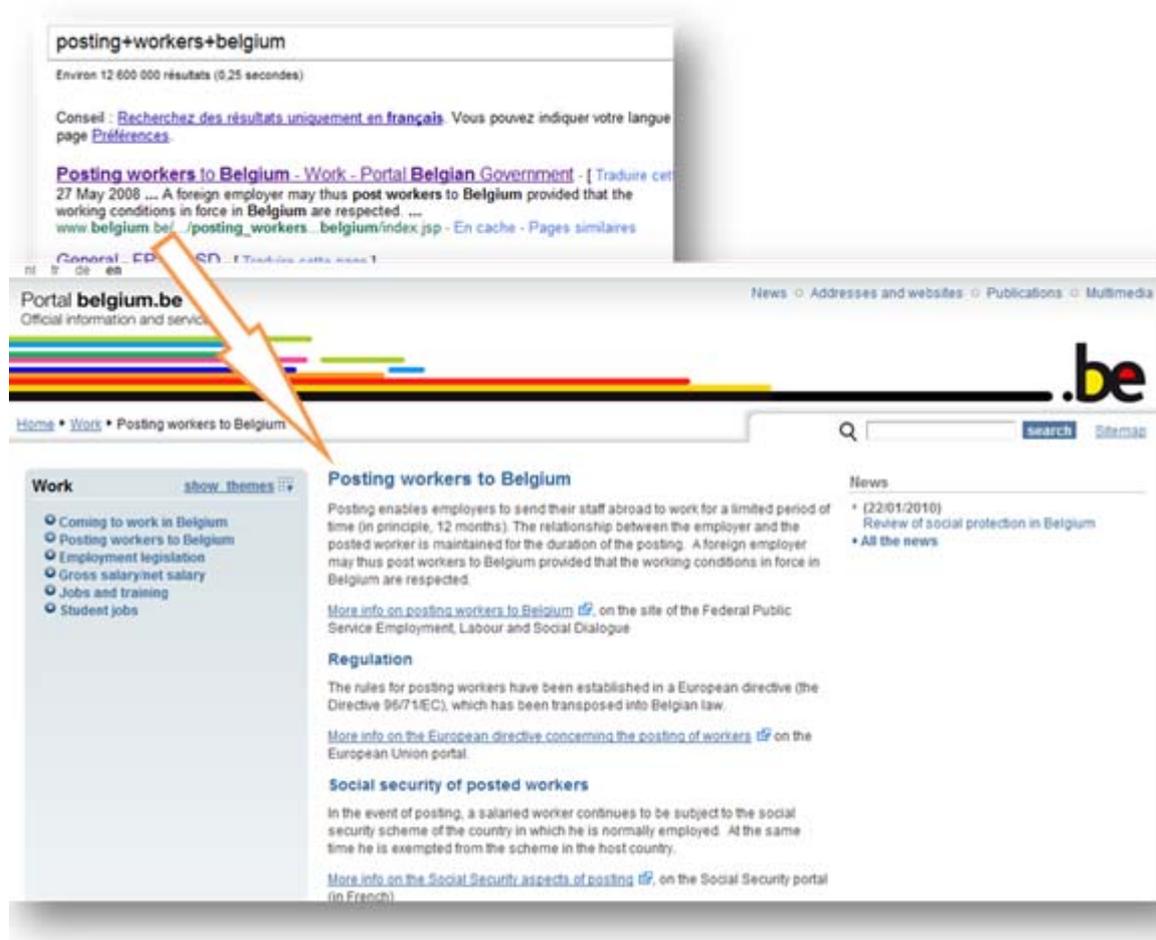


Illustration: according to the criteria selected, the page dedicated to posting on the website managed by the Dutch Ministry of Social Affairs & Employment is well referenced¹³⁵.

Our first observations is that the well-ranked websites are mainly those managed by the public administrations in charge of posting from the angle of labour laws (the case of France, Luxembourg, and the Netherlands) or the services in charge of inspecting posting operations (the Customs Authority in Germany).

Belgium presents an exceptional, exemplary case insofar as the search requests leads to the page on posting of the official information and services website which provides key information and refers users to the websites of the labour and social security departments via links, depending on their specific needs. If the undertaking is set up in Belgium and wants to proceed with posting to another Member State, the website suggests accessing the Belgian social security department to request a posting certificate. If the undertaking intends to post workers to Belgium, the website directs the user to the website for the preliminary declaration.

¹³⁵http://english.szw.nl/index.cfm?menu_item_id=14640&hoofdmenu_item_id=14632&rubriek_item=392437&rubriek_id=391971&set_id=3630&doctype_id=6&link_id=112021



*Illustration: the efficiency of the Belgian official information and services portal
http://www.belgium.be/en/work/posting_workers_to_belgium/*

The inadequate ranking of websites pertaining to aspects of social security law may be explained by the fact that in terms of posting, the service provider must proceed with compulsory social security formalities in the Home State where it is based. This partly explains why the websites are not translated into a foreign language and that consequently they are not well referenced when the request is introduced in English.

However, this inadequate referencing means that posting is presented as if it only necessitates social obligations in the Member State where the service is performed, which is not true. It would therefore seem necessary that the public administration websites in the Host State should do more than just supply information on the regulations pertaining to labour laws, but should also remind users that they must carry out certain formalities in the Home State (affiliation of the workers to the social security system in the Home State and the need to apply for the correct forms proving this affiliation, hiring and signing employment contracts, and adhering to the regulations in the case of recruiting workers from outside the EU).

This inadequate ranking is all the more regrettable as the websites are sometimes rich in useful information. The websites managed by the French Centre of European and International Liaisons for Social Security (Centre des Liaisons Européennes et Internationales de Sécurité Sociale - CLEISS¹³⁶) offers targeted information for undertakings and workers set up in another Member State and wishing to carry out temporary services in France. However, the absence of any translation into another language means that the portal only addresses French nationals.

3. Securing access to information

Faced with the plethora of websites and pages encountered when surfing the Internet, users must be able to identify a public administration website and distinguish it from a website developed by private individuals or legal entities coming under private law.

The information given to undertakings and workers cannot just provide content. They must also include information on the identity of the legal entity running the website as the public administration authorised to issue official information. This information implies the use of an official logo and legal information on the website. This can, moreover, be imposed by law, as is the case in France¹³⁷. Legal information must include, as is the case in France, some mention of the website publisher and hoster.

¹³⁶ <http://www.cleiss.fr>

¹³⁷ Legal information on a website was made compulsory in France by Act n° 2004-575 of 21 June 2004 fostering confidence in the digital economy.

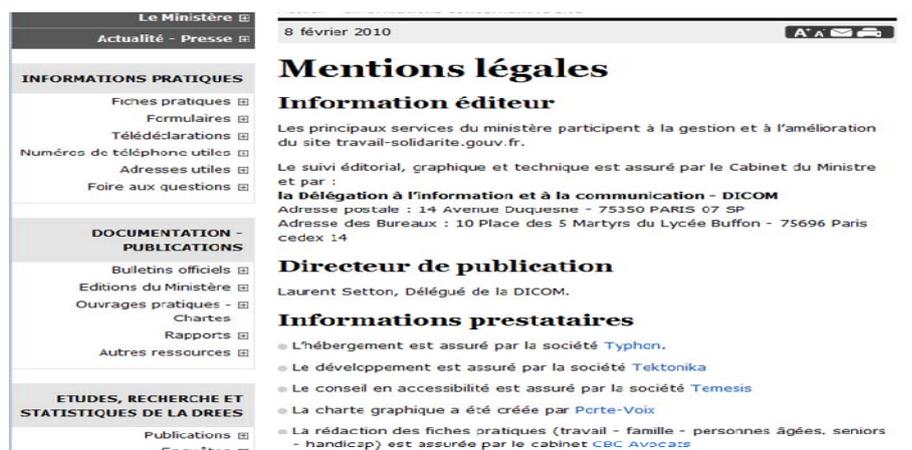


Illustration: full legal information given on the website of the French Ministry of Labour, Solidarity and Public Service¹³⁸

We find information on the website publisher (the Minister's cabinet), the Director of publications for the website, the service providers involved in making the website (e.g. the practical information files were drafted by the law firm CBC avocats).

In contrary cases, the general appearance of a website and lack of legal information may make people doubt its reliability.

¹³⁸ <http://www.travail-solidarite.gouv.fr/informations-concernant-le-site,93/mentions-legales,2266.html>



Illustration: the legal information of the Social Security Centre in Luxembourg¹³⁹ is not complete since it does not specify either the name of the publisher or the name of the hoster, nor does it mention any service providers who may have contributed to setting up the website.

The presence of the authority's logo or insignia on every page of the website and the documents given as appendices also contribute to the reliability of the information given. A counter example is the downloadable appendix on the French Ministry of Labour's website summarising information about posting in France, which does not contain any information about the author of the text.

B. Factors fostering good website referencing

Good website referencing by search engines depends on several criteria which, when taken together, help to optimise visibility.

Among the various criteria, we can note the choice of the domain name contained in the Uniform Resource Locator (URL) of the different website pages, respecting the international W3C standard¹⁴⁰, structuring the content of the site, promoting it on different search engines and setting up partnerships with other popular websites¹⁴¹. Among these criteria, the key words contained in the URL of information websites are essential factors.

¹³⁹ <http://www.ccss.lu/>

¹⁴⁰ The world wide web consortium whose main aim is to develop open and free protocol standards to foster maximum interoperability.

¹⁴¹ Article "Comment ne pas rater son référencement" <http://journaldunet.com/0502/050221.shtml>

URL is an international convention of attributing names which serve to identify the location of a file on the Internet in a unique manner. It is structured as followed :

URL (Uniform Resource Locator)		
Protocol	Domain name	Path
http://	www.posting-workers.eu	/Content/Default.asp?PageID=107

The creation of URLs containing "descriptive names" for documents given on a webpage improves the website's informational structure and make it easier for research engines to explore and therefore improves the website's referencing¹⁴².

Some search engines give absolute priority to the key words in the URL, especially the key words given in the domain name. It is therefore helpful to choose an intuitive URL, i.e. one that is adapted to the target public and the information contained in the webpages.

In the frame of websites dedicated to providing information for all posting stakeholders, it could therefore be useful to include the name of the Member State concerned in the domain name or failing that, the suffix for the Member State in the URL (e.g. .fr for France, .lu for Luxembourg, .be for Belgium). Likewise, the URL of the webpage devoted to information on the posting of workers should include a key word that directly targets the theme of the page, i.e. the term "posting"¹⁴³. The use of English is moreover a priority for the website to be correctly referenced when a request is introduced in English on the search engine.

On this basis, several hypotheses arise concerning the address of the webpage containing information specific to the posting of workers :

The address is what is known as non-intuitive, which means that it does no include any of the key words searched, which can have an adverse impact on its referencing,

Or it contains at least the identity of the Member State,

Or it is associated with the identity of the Member State and the term "posting".

The assessment demonstrates that none of the pages relating to posting in the websites analysed contained the combination of terms "State concerned + posting" in its URL. In fact,

¹⁴² Source: Guide de démarrage Google® - Optimisation pour les moteurs de recherche -13/11/2008 http://static.googleusercontent.com/external_content/untrusted_dlcp/www.google.fr/fr/fr/intl/fr/webmasters/docs/search-engine-optimization-starter-guide-fr.pdf.

¹⁴³ Source: Le Journal du Net, excerpt from the article "Référencement : quelle importance du nom de domaine ?" available on the website <http://www.journaldunet.com>.

although the name of the State or the term "posting" was mentioned in the URL for some websites, the vast majority of webpages containing information which might interest users on the subject of posting, do not have an intuitive address.

For example, the URL of the section on "Posting" of the website managed by the Belgian public service for labour (Service Public Fédéral Emploi, Travail et Concertation sociale) clearly identifies the State, but is unsatisfactory since the key word "posting" is not mentioned :

http://www.emploi.belgique.be/detailA_Z.aspx?id=860

Conversely, the URL of the "posting" section in the website of the Luxembourg Labour and Mines Inspectorate integrates "posting" as a key word in both French and English:

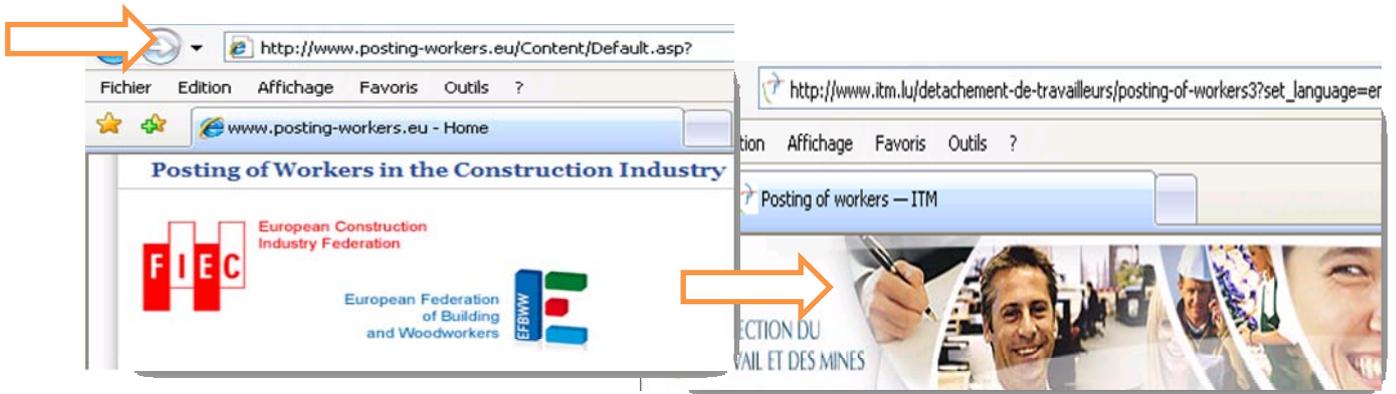
http://www.itm.lu/detachement-de-travailleurs/posting-of-workers3?set_language=en.

This is also the case for the posting section of the French Ministry of Labour, although the URL is complex:

<http://www.travail-solidarite.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/temporary-posting-of-workers-in,8988.html>

Only the website published by the European Construction Industry Federation (ECIF) and the European Federation of Building and Woodworkers (EFBW) <http://www.posting-workers.eu> has an intuitive address. The website is dedicated to the posting of workers and presents the regulations specific to each of the 27 Member States. Consequently, it is extremely well referenced by the search engines and can partially bridge the gaps in the websites of the national public authorities.

This result can be easily explained: generally speaking, public authorities do not develop websites dedicated solely to posting. The subject of posting is usually found on a page within a website dealing with other themes coming within the authority's scope.



Moreover, the Google tool help centre for webmasters reminds us that a URL must be as simple as possible and be "*constructed logically and in a manner that is most intelligible to humans*"¹⁴⁴. For example, a URL such as <http://www.itm.lu/detachement-de-travailleurs> will better incite users looking for information on posting workers than a URL such as <http://www.itm.lu/index.php?>

It would therefore seem to be important that the URLs should be simple and explicit to improve the referencing of websites and pages dedicated to information on the posting of workers, thereby enabling users to access them easily.

¹⁴⁴ Excerpt from the Google site for webmasters.

<http://www.google.com/support/webmasters/bin/answer.py?hl=fr&answer=76329>

Section 2. Access to information available on the websites

The assessment covered 7 Member States and 14 websites, which immediately demonstrates that the information provided on the subject of posting is shared between several websites within a single State. From the user's point of view (undertaking or worker), dispersing the information available carries a high risk. Users may be content with consulting a single website which, while providing them with solid information on certain points, only gives partial information if the website consulted does not alert users of the need to find information on other points (A). Finally, if we suppose that users access information dedicated to posting on adequate public administration websites, the issue of language barriers still remains. Have the public authorities in question taken the decision to make the information accessible in a language other than their own (B)?

A. Information accessibility facilitated by a website dealing with all aspects of social law in terms of posting workers

For nationals, it is important to be able to access a summary of information covering all their rights and obligations so that they can be sure of every aspect of the provision of services when the project is in its initial stages. Will they be able to access full information easily regarding their needs, or will they have to consult several websites to have an overall view of their rights and obligations?

Article 6 of Directive 2006/123/EC enjoins States to set up a "point of single contact" through which service providers must be able to carry out "*all formalities and procedures needed for access to [...] service activities, in particular all declarations, notifications or applications necessary for authorisation from the competent authorities*"¹⁴⁵. Here, the aim is to simplify the formalities foreign service-providing undertakings have to carry out. This philosophy applied to service provision implying the posting of workers leads us to question whether there are indeed websites allowing national or foreign undertakings to access summarised information easily on the subject of their social obligations, i.e. all the specific rules in terms of social security and labour laws.

¹⁴⁵ Article 6§1 a) of Directive 2006/123/EC.

Failing a point of single contact, it is essential that all information relating to social security and labour laws should be pooled by the public administrations in each State and be presented either on a single website, or failing this, there should be a clear link policy providing access to all the rules applicable to posting workers (1).

Accessibility must also be evaluated from the viewpoint of the different categories of people concerned by posting. If these categories are not targeted and supplied with information adapted to their respective needs, the public administrations in charge of the information run the risk of not reaching the target audience with the information they give (undertakings, workers) (2).

1. The capacity of public administrations to supply a summary of information

The freedom to provide services through posting workers presupposes that obligations in terms of social security and labour laws are respected upstream in the posting process, as are specific rules during the posting period. Information relating to these obligations generally comes under the aegis of different public administrations in each Member State (work and employment administration and the social security administration). From the user's angle, this administrative partitioning is not helpful and, if it has repercussions on the information supplied, it may hinder the stakeholders from being properly informed.

Several hypotheses can be retained to assess the capacity of websites to pool the information required :

Several websites offer complementary information and in this case, it should be checked whether there is a link strategy removing any obstacle which may arise due to the scattered nature of the information.

One website gives general information and uses links to refer the user to helpful public administration websites.

One single website provides all information required to meet the user's needs.

The case most frequently encountered is where each State supplies users with information on posting scattered over several websites.

Generally speaking, the "posting" pages on the websites of labour administrations supply fuller information, but they only present the rules coming within the scope of the administration that manages the website. This means that labour administrations tend not to mention the existence of specific rules in terms of social security laws and vice versa.

This situation is easily explained when we take into account the target audience. If the information targets foreign service-providing undertakings, the Host State's public administration is bound to supply information on the social rules applicable in terms of labour laws, since the social security rules applicable are those of the Home State. And we are obliged to observe that the websites do not identify national undertakings as requiring information in terms of posting.

However, even if these constraints must be respected in the Host State, i.e. a State other than that supplying the information required, it would seem important to remind all service providers, whatever their nationality, of the entire set of rules pertaining to posting. The gap in this field undeniably constitutes an obstacle to accessing information and respecting the rules and constraints service providers have to abide by whatever their Home State.

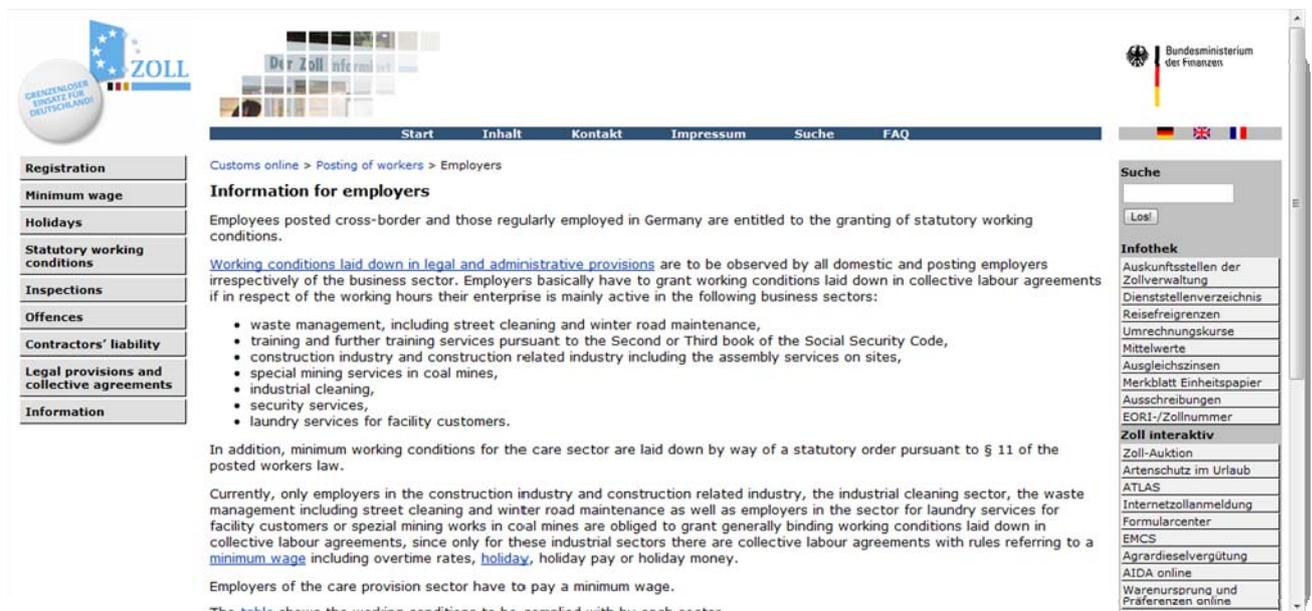


Illustration: the page of the Customs Authority website dedicated to work conditions applicable to posted workers¹⁴⁶ (Germany) does not mention the existence of specific rules applicable in terms of social security

Some websites nevertheless deserve credit for dealing with both the "labour laws" and "social security" sections of posting, but all too often, one of these aspects is developed extensively to the detriment of the other, which is presented succinctly without there being a strategy of links to the website of the institute competent to deal with this subject.

¹⁴⁶ http://www.zoll.de/fr_version/e0_aentg/a0_info_ag/index.html

The absence of links between the websites of the public administrations competent to deal with the labour law aspect and the social security rules is absolutely regrettable when each website supplies quality information on the same theme. This information is very often complementary for the user. For instance, the website of the department for social insurance in the Netherlands offers a page in 5 languages and explanatory brochures. This is not mentioned at all on the website of the Dutch Ministry of Social Affairs and Employment.

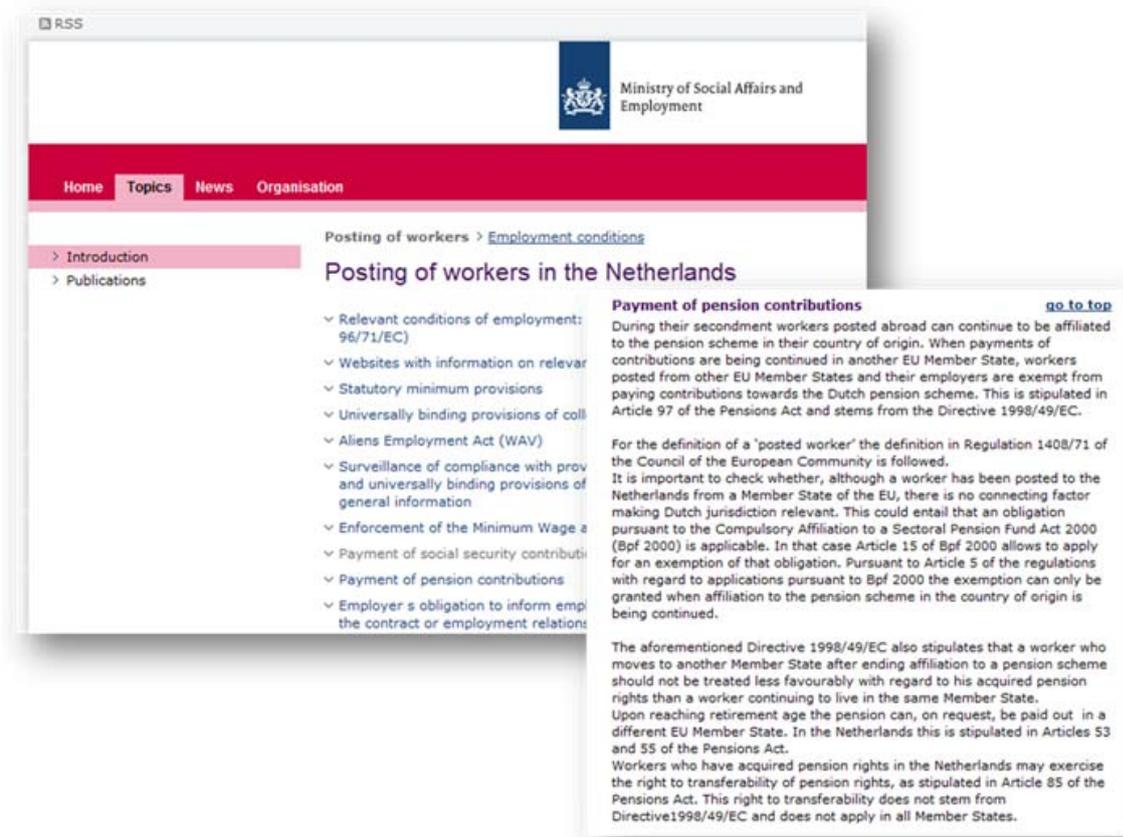


Illustration: the website of the Dutch Ministry of Social Affairs & Employment¹⁴⁷ gives details on the labour law aspect of posting and briefly deals with the social security aspect although there is no strategy for links to the competent social security administration¹⁴⁸

¹⁴⁷ http://english.szw.nl/index.cfm?menu_item_id=14640&hoofdmnu_item_id=14632&rubriek_item=392437&rubriek_id=391971&set_id=3630&doctype_id=6&link_id=112021#link8569400

¹⁴⁸ <http://www.svb.nl/int/fr/id/index.jsp>: website of the general social insurance department in the Netherlands.



Aperçu complet Détachements internationaux

► Employeurs

- Votre employé va travailler à l'étranger
 - Dans quel pays devez-vous payer les cotisations d'assurances sociales ?
 - Les membres de la famille de l'employé sont-ils également assurés ?
- Qu'est-ce qu'une attestation E101 ?
 - Comment demander une attestation E101 ?
- Un salarié qui travaille dans plusieurs pays de l'UE
 - Dans quel pays devez-vous payer les cotisations d'assurances sociales ?
- Changements à signaler impérativement

► Salariés

- Vous allez travailler hors des Pays-Bas
 - L'assurance des membres de votre famille
- Qu'est-ce qu'une attestation E101 ?
 - Comment demander une attestation E101 ?
- Vous travaillez dans plusieurs Etats membres de l'UE

Posez ici votre question

Utilisez au moins 2 mots

Recherche

*Illustration: the website of the department of social insurance in the Netherlands gives targeted information on posting together with brochures and on-line forms
<http://www.svb.nl/int/de/id/index.jsp>*

On the other hand, it would seem that the website developed by the representatives of posting stakeholders is more aware of this problem: the website <http://www.posting-workers.eu> contains a report for each Member State stipulating the national legislation applicable in terms of labour laws and also the principles applicable to posted workers in terms of social security rights and obligations.



Illustration: the reports presenting the rules of each Member State make a real attempt to address all the social aspects of posting – social security and labour laws. "Posting Report France"¹⁴⁹ offers links to the administrations, in particular social security (cf. above right).

Partitioning information related to posting can be overcome once the public administration has set up a public website which acts as a point of single contact. This is the case for Belgium.

¹⁴⁹ <http://www.posting-workers.eu/content/default.asp?PageID=108&DocID=11582>

Toutes les démarches

Création

Financement

Implantation

Professions réglementées

Sécurité sociale

Fiscalité et comptabilité

Ressources humaines

▶ Droit du travail

Détachement

Le détachement permet à des employeurs d'envoyer des travailleurs à l'étranger pour y effectuer des prestations de travail, pour une durée limitée. La relation entre l'employeur et le travailleur détaché est maintenue lors de toute la durée du détachement.

- [Détachement de travailleurs en Belgique](#)
- [Détachement de travailleurs à l'étranger](#)

Règles

En cas de détachement de travailleurs au sein de l'Union européenne, les employeurs doivent respecter les conditions de travail (durée du travail, congés, bien-être, etc.) et de rémunération en vigueur dans le pays d'accueil. Toutefois, si les conditions de travail et de rémunération sont plus favorables dans le pays d'origine, celles-ci peuvent être



Actualités

- (12/08/2010) Il y a 4 470 000 travailleurs en Belgique
- (29/07/2010) La Politique scientifique fédérale publie un rapport en matière de science, technologie et innovation
- (01/07/2010) Présidence belge du Conseil de l'Union européenne
- (28/04/2010) Nouveaux films promotionnels pour la Belgique
- (13/04/2010) La Banque nationale publie son rapport d'entreprise 2009

Toutes les actualités >

Illustration: section of the Belgian point of single contact

http://undertaking.belgium.be/fr/gerer_votre_entreprise/ressources_humaines/detachement/

In the "human resources" section, this website supplies a summary of information on posting. It targets national and foreign undertakings according to their posting project (posting personnel in Belgium or posting personnel to another State). It gives a link to "posting" pages on the Belgium's official information and services portal.

ni fr de en

Portail **belgium.be**
Informations et services officiels

Actualités | Calendrier | Services en ligne | Adresses et sites | Jobs | Publications | Vidéos

Home > Emploi > Contrats de travail > Détachement

Chercher Plan du site

Emploi [afficher](#)

- Recherche d'emploi
- Contrats de travail
 - Types de contrats
 - Documents sociaux
 - Protection de la vie privée
 - Durée du travail et temps de repos
 - Préavis et licenciement
 - Détachement
 - Détachement en Belgique
 - Détachement à l'étranger
 - Dialogue social
- Gestion de carrière

Détachement de travailleurs

Le détachement permet à des employeurs d'envoyer des travailleurs à l'étranger pour y effectuer des prestations de travail, pour une durée limitée. La relation entre l'employeur et le travailleur détaché est maintenue lors de toute la durée du détachement.

- [Détachement de travailleurs en Belgique](#)
- [Détachement de travailleurs à l'étranger](#)

Règles

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Actualités

- ▶ (22/04/2010) La sécurité sociale belge à l'étranger : quels sont vos droits ?
- ▶ (07/04/2010) Nouveau site web pour le SPF Affaires étrangères
- ▶ (22/01/2010) Tour d'horizon de la protection sociale belge

▶ **Toutes les actualités**

Services en ligne

- ▶ Limosa : déclaration en ligne pour les étrangers qui viennent travailler en Belgique temporairement
- ▶ Demande de détachement de travailleurs

Illustration of Belgian information and services portal and its posting page

http://www.belgium.be/fr/emploi/contrats_de_travail/detachement/detachement_a_l_etranger/r/index.jsp

This link sends the user to the webpages "posting workers abroad" or "posting workers to Belgium" in the portals of the Belgian employment and social security administrations.

One single website among those studied presents all the obligations specific to posting in terms of social security and labour laws.

This is the approach of the Luxembourg point of single contact, even if it is only oriented to foreign undertakings ensuring an occasional and temporary service in Luxembourg.



Illustration: excerpt from the "commercial and legal management" section of the Luxembourg single point of contact presenting the provision of cross-border services in Luxembourg <http://www.guichet.public.lu/fr/entreprises/gestion-juridique-commerciale/affaires-commerce/prestation-transfrontaliere-services/prestation-transfrontaliere-services/index.html>

The Luxembourg point of single contact addresses undertakings and private individuals. Under the "legal and commercial management" section targeting undertakings, it presents an item on "cross-border service provision" on a page entitled "business and commerce". The general principles of posting are presented, followed by the obligations in terms of social security and labour laws. Links to other public administration websites are not given systematically insofar as the information supplied is in fact relatively exhaustive. The website enables users to access forms directly (notification of temporary and occasional service provision, declaration for posting salaried workers, certificate A1). However, it is to be regretted that there are no precise links to the ITM website¹⁵⁰ insofar as the point of single

¹⁵⁰ www.itm.lu

contact does no more than mention minimum legal rates of pay and the existence of constraints stemming from universally applied collective agreements. The ITM website, on the other hand, supplies the collective agreements for each professional sector and has extracted the provisions applicable in terms of the minimum rate of pay.

The German point of single contact¹⁵¹ gives summary information on posting and is limited in two ways: the information only targets foreign undertakings and only deals with general constraints in terms of labour laws. For further information on labour laws, it refers the user to the website of the Customs Authority which is competent in the field of posting www.Zoll.de and which remains a key source of information.

¹⁵¹<http://www.german-undertaking-portal.info/GBP/Navigation/en/EU-Service-Market/points-of-single-contact.html>

The screenshot shows the German Business Portal website. The header includes the logo of the Federal Ministry of Economics and Technology and navigation links like 'About Us', 'Contact', 'Sitemap', 'Imprint', and 'Disclaimer'. The main navigation menu on the left lists categories such as 'Market Entry', 'Business Sectors', 'Country Information', 'Germany Today', 'Business Contacts', 'Work', 'Your Stay in Germany', and 'EU Service Market'. The 'Work' category is expanded to show 'German Labor Market', 'Legal Working Conditions', 'Work Permit', and 'Professional Qualification'. The 'Legal Working Conditions' page features a search bar, a 'print view' button, and a 'Further information' sidebar with links to 'Posted Workers Act (German only)', 'Posted Workers - Customs Administration Online', and 'Posted Workers - European Commission'. The main content area is titled 'Legal Working Conditions' and includes a list of topics: Labor Law, Independent or Employed?, Statutory Working Conditions for Posted Workers, Payroll Tax, Social Security System, and International Social Security Regulations. Below this list is a section titled 'Statutory Working Conditions for Posted Workers' with an image of a scale of justice and a paragraph explaining that labor contracts are determined by the legal system of the country where the posting employer is located. It also lists minimum standards: maximum work periods and minimum rest periods, minimum paid vacation, and minimum wage.

Illustration: information supplied on the posting webpage of the German point of single contact: <http://www.german-undertaking-portal.info/GBP/Navigation/en/Work/legal-working-conditions.did=313724.html>

2. Processing information according to the different audiences targeted by posting

Each user is searching for specific information according to each individual situation and needs: service providing undertakings, undertakings using the service, posted workers. When the pages dedicated to posting are organised according to the profiles and needs of the users, the information is more likely to reach the audience targeted directly.

Consequently, it is pertinent to check whether the websites have fine-tuned and processed the information according to these different targets.

Points of single contact target undertakings, not workers. Consequently, the websites of public administrations should be examined to check whether they target different audiences, including workers.

Employment administrations or other administrations in charge of checking posting operations more often target undertakings than workers, which can be explained by the fact that it is up to the undertakings to ensure that the legal and agreement-based obligations are respected.

The website of the Swedish Work Environment Authority¹⁵² constitutes an exception as it solely addresses private individuals coming to Sweden to work.

The website of the Luxembourg Work and Mines Inspectorate¹⁵³ exclusively addresses undertakings to describe their obligations in the case of posting workers on the territory of Luxembourg (need to supply the posted work information, list of documents required) and answer any questions through a FAQ (frequently asked questions) page.

Conversely, the "posting" page on the website of the German Ministry of Finance <http://www.zoll.de> targets three categories of public: employers, posted workers and user undertakings in the frame of hiring-out labour¹⁵⁴.

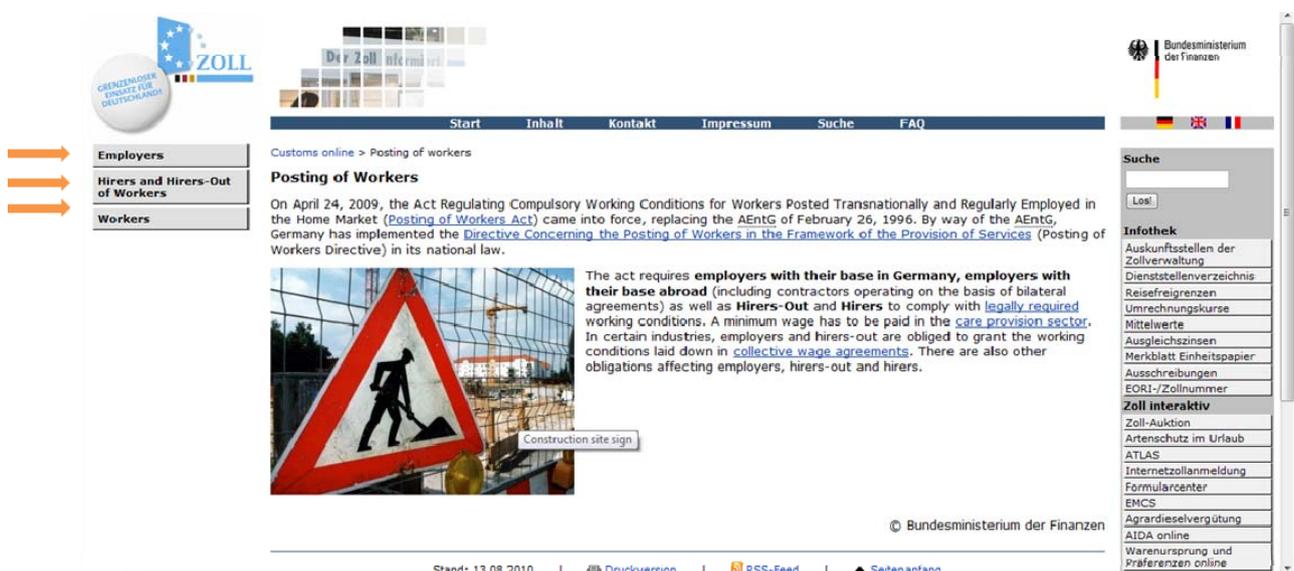


Illustration: the posting page contains three thumbnails so that each category of user can rapidly consult their rights and obligations, even if some information may be identical, especially in terms of the social law applicable.

The logic by which information should be applied according to the target categories is often present on the websites of social security administrations. The French CLEISS website <http://www.cleiss.fr> and the website of the Belgian social security administration https://www.socialsecurity.be/site_fr/home_default.htm immediately present the information according to user's profile and needs. The CLEISS website organises the information

¹⁵² http://www.av.se/inenglish/working/this_is/

¹⁵³ <http://www.itm.lu/detachement-de-travailleurs>

¹⁵⁴ http://www.zoll.de/fr_version/e0_aentg/index.html

according to the user's profile: private individual, self-employed worker, employer. In terms of posting, the information targets :

the rights and obligations of foreign employers posting a worker to France,

the rights and obligations of workers posted to France,

the rights and obligations of employers based in France and wishing to post workers outside France,

the rights and obligations of workers who usually work in France and are posted outside France.



Illustration: information processed according to the target public on the websites www.cleiss.fr and https://www.socialsecurity.be/site_fr/home_default.htm

Other websites developed by social security administrations present the information according to the profile of the users, notably the Dutch social security website.

Choisir la police de caractère A A A ▶Nederlands



SVB accueil ▶

Détachements internationaux accueil

Si vous allez travailler à l'étranger pendant un certain temps, vous pouvez rester assuré aux Pays-Bas en demandant un formulaire E101. Ce formulaire, à faire établir par la SVB, est indispensable pour pouvoir travailler dans un grand nombre de pays.

Vous êtes <ul style="list-style-type: none">▶ Employeur▶ Salarié▶ Travailleur indépendant▶ Artiste▶ Étudiant ou stagiaire▶ Transport européen	Mon dossier SVB <ul style="list-style-type: none">▶ Demander un formulaire E101
--	---

[Aperçu com](#)

Illustration: the publics targeted on the webpage dedicated to posting on the Dutch website for social insurance <http://www.svb.nl/int/fr/id/>

B. Access to information through other languages

The use of different languages to access the information supplied on the website is essential if we want service providers and workers based in other Member States to be able to find out about their obligations and rights in the Host State. It constitutes one of the obligations of Member States as stipulated in Directive 96/71 article 4, paragraph 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*".

The websites evaluated are faced with the need to translate both general information on posting (1) and practical information pertaining in particular to the agreement-based obligations the employer must adhere to in the Host State (2). The translation task is facilitated when uniform rules are applied to their entire territory and all professional sectors. However, the task becomes Herculean when the obligations vary because they stem from agreement-based rules per sector and per geographical area.

1. Translating general information into (a) foreign language(s)

The translation of general information on posting immediately allows the user to grasp all the rules specific to posting. It contributes to the readability of the obligations binding undertakings and the rights granted to workers. The task of translating required of the Member States does not go as far as guaranteeing access to information in the languages of the 27 Member States. The choice of language can depend on several criteria.

And English translation can be considered as the minimum threshold required to ensure the information is disseminated sufficiently widely.

To remove language barriers, the national statistics indicating which States post most workers could be taken into account. The statistics tend to identify two flows: the flow from new Member States, notably due to the rates practised by the undertakings based there, and the flow from bordering States.

To illustrate this point for France, the three top-ranking countries in 2008 were Poland, Germany and Luxembourg, which alone clocked up around 20,000 posting declarations, corresponding to two-thirds of the total declarations reported for that year¹⁵⁵.

We therefore understand the usefulness of translating information into at least one of the languages of the new Member States of the European Union and the official languages of the bordering countries.

¹⁵⁵ Report by the French Ministry of Labour, Solidarity and Public Service "Intervention des entreprises étrangères prestataires de services en France en 2008", June 2009, p.24.

Certain informational websites are not available in any language other than that of the administration managing the website, which often makes them inaccessible when making a request via a search engine.

This is the case of the Ministerio de Trabajo e Inmigración¹⁵⁶ (Spanish Ministry of Employment and Immigration) whose home page nonetheless proposes a translation into 5 languages including English and French. Unfortunately the translation effort has not extended as far as the "posting" webpage which is only available in Spanish.



Illustration: the absence of any translation of the general information on posting workers (desplazamiento de trabajadores) in Spain in spite of there being thumbnails for translations in several languages. Although the language originally selected was English, the website automatically swings back into Spanish.

Conversely, the Swedish Work Environment Authority website¹⁵⁷ offers a translation of the webpage "working in Sweden" in 12 languages, 7 of which are languages of Member States¹⁵⁸ and 5 from outside the European Union.

¹⁵⁶ http://www.mtin.es/es/Guia/texto/guia_6/contenidos/guia_6_15_3.htm

¹⁵⁷ http://www.av.se/inenglish/working/this_is/

¹⁵⁸ The languages proposed are English, Estonian, German, Latvian, Lithuanian, Polish and Spanish.

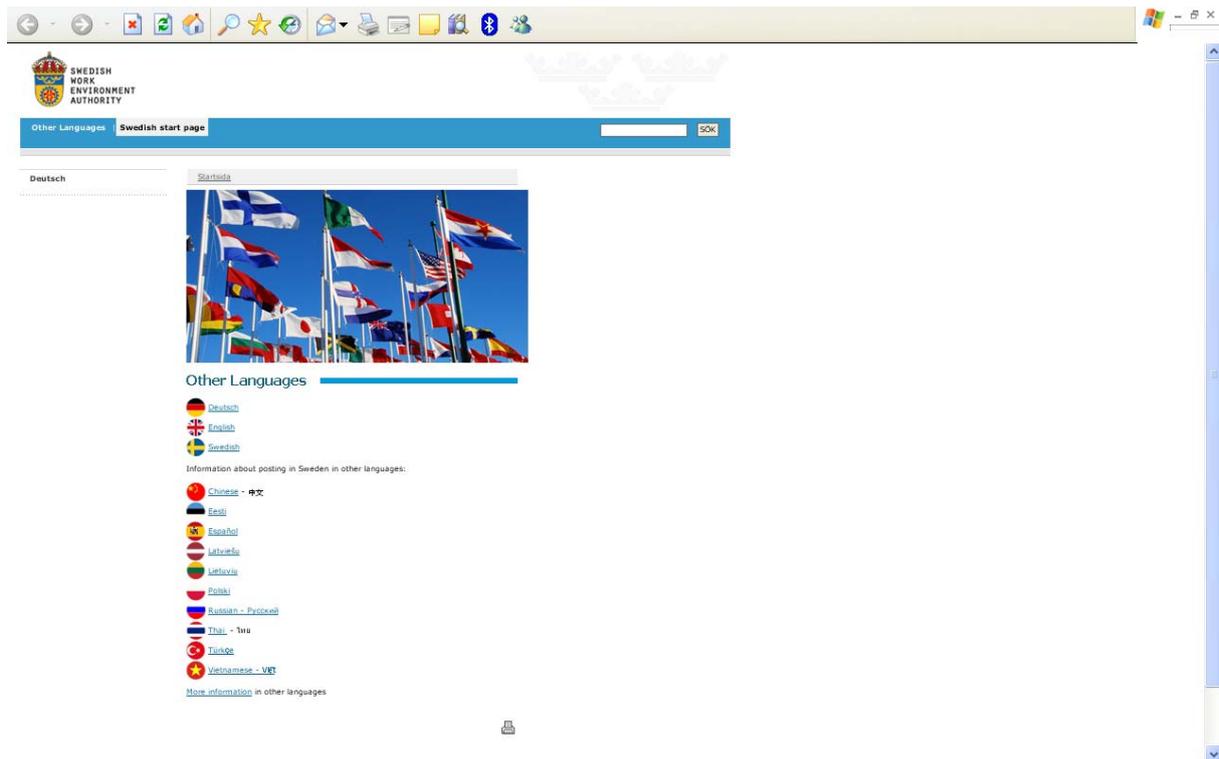


Illustration: access to languages on the website of the Swedish Work Environment Authority
<http://www.av.se/languages/index.aspx>

Other Member States have made the effort to translate the general information into English, one of the languages of the new Member States and border States. The webpage on posting workers on the Luxembourg labour administration website is translated into English and German, and the official German website is translated into English and French.

The "posting" webpage of the French Ministry of Labour, Solidarity and Public Service¹⁵⁹ offers information available in 5 languages, even if all the border countries are not treated on an equal footing (no Italian or Spanish translations).

¹⁵⁹<http://www.travail-solidarite.gouv.fr/informations-pratiques.89/fiches-pratiques.91/detachement-de-salaries.407/>

Illustration: the posting webpage of the French labour administration is translated into English, German, Polish, Portuguese and Romanian.

The effort made to translate general information on posting is not uniform in the various Member States, and the same is true from one public administration to another within the same State. For example in France, the website of the French Ministry of Labour, Solidarity and Public Service offers a translation into 5 languages, but the complementary CLEISS website on posting, which supplies key information on social security issues, does not offer any translation of the general information although this website clearly targets foreign employers and workers.

CLEISS au service de la protection sociale à l'international

Le Cleiss Particuliers **Employeurs** Indépendants Documentation Actu

Espace employeurs

Employeur établi dans l'Union Européenne

vous envoyez un salarié ressortissant d'un Etat membre de l'UE en France

Vous êtes un employeur établi dans un État de l'Union européenne, vous envoyez en France votre salarié qui exerce habituellement son activité dans l'Etat où vous êtes établi. S'il est ressortissant d'un Etat membre de l'UE, les [règlements \(CE\) 883/2004 et 987/2009](#) s'appliquent dans cette situation depuis le 1er mai 2010.

Selon les dispositions européennes le salarié qui se déplace dans l'Union européenne doit être assujéti à une seule législation de sécurité sociale, en règle générale celle de l'Etat où l'emploi est exercé.

Dans la situation particulière du détachement, il est possible, sous certaines conditions, de maintenir le salarié au régime de protection sociale de l'Etat dans lequel vous opérez normalement dès lors que la période est limitée dans le temps. Si les conditions du détachement ne sont pas réunies, des accords exceptionnels peuvent être conclus. Dans les deux cas les cotisations et contributions sociales continuent d'être versées dans l'Etat où vous êtes établi, ce qui vous exonère du paiement de celles-ci en France..

1. Le salarié que vous envoyez en France est

The same is true for the Luxembourg social security centre which does not offer any translation. Only the on-line forms (including the application for the E101 certificate) are available in French and German.

CCSS CENTRE COMMUN DE LA SÉCURITÉ SOCIALE

Home Formulaires Certificats Avis Législation Jurisprudence

Salariés Non-Salariés Volontaires Ménage Cotisations F.A.Q.

Déclaration d'exploitation	FR	
Salariés		
Déclaration d'entrée pour salariés du secteur privé*	FR DE	FR DE
Déclaration d'entrée pour salariés du secteur public*	FR	FR
Déclaration d'entrée pour travailleurs intérimaires*	FR	FR
Déclaration des périodes d'incapacité de travail	FR DE	FR DE
Demande en cas de détachement d'un salarié	FR DE	FR DE
Déclaration de sortie pour salariés	FR	
Non-salariés		
Déclaration d'entrée pour travailleurs indépendants	FR DE	FR DE
Déclaration d'entrée pour aidants	FR DE	
Demande de dispense pour aidants	FR DE	
Demande en cas de détachement d'un indépendant	FR DE	FR DE
Déclaration de sortie pour travailleurs indépendants	FR DE	
Demande d'adhésion volontaire des non-salariés à la Mutualité des employeurs	FR DE	
Agricole		
Antrag auf Beitrittsklärung (Landwirtschaft, Weinbau oder Gartenbau)	DE	
Betriebsübergabeerklärung	DE	
Demande d'adhésion à l'assurance volontaire en matière d'assurance accident agricole et forestier	FR DE	

Illustration: website of the Luxembourg social security centre, form webpage <http://www.ccss.lu/>

The posting page on the website of the Dutch social security offices is particularly efficient in terms of breaking down the language barrier as it is translated into 5 languages, including 4 EU languages.

Elija tamaño de la letra **A A A** [Nederlands](#) [English](#) [Deutsch](#) [Français](#) [Español](#) [Türkçe](#)

SVB voor het leven Sociale Verzekeringsbank

[SVB inicio](#) [Sobre el SVB](#) [Contactar](#) [Carpeta del sitio](#) [Ayuda](#)

Desplazamientos internacionales inicio

Si va a trabajar temporalmente fuera de Holanda, puede seguir estando asegurado conforme a la legislación social holandesa. Para este propósito tiene que solicitar un formulario E101 en nuestras oficinas. En muchos países no puede trabajar sin este formulario.

Haga su pregunta aquí

Por lo menos dos palabras

Buscar

Está

- ▶ [Empresa](#)
- ▶ [Empleado](#)
- ▶ [Autónomo](#)
- ▶ [Artista](#)
- ▶ [Estudiante o trabajador](#)
- ▶ [Transporte Europeo](#)

Gestionar directamente

- ▶ [Solicitud de formulario E101 por internet](#)

Folletos e impresos Desplazamientos Internacionales

- ▶ [Folletos e impresos Desplazamientos Internacionales](#)

Illustration: posting page in Spanish on the website of the Dutch social security offices
<http://www.svb.nl/int/es/id/>

Travail temporaire dans un autre pays
 tout en restant assuré aux Pays-Bas

TRAVAIL TEMPORAIRE DANS UN AUTRE PAYS	
TOUT EN RESTANT ASSURÉ(E) AUX PAYS-BAS	1
LA PROCÉDURE	4
BON À SAVOIR	4
ADRESSES	5

Illustration: on the same website, forms and brochures are also translated, here into French
http://www.svb.nl/Images/9030FZ_0410.pdf

2. Language access to specific obligations based on law- and agreement-based sources

By virtue of the rules stemming from Directive 96/71 on posting, each State is authorised to impose a certain number of rules on foreign service providers as defined in article 3 §1 of the directive insofar as these rules are laid down by "*by law, regulation or administrative provision, and/or by collective agreements or arbitration awards which have been declared universally applicable*" for activities in the field of construction as stipulated in the annex. The directive also concedes that Member States may apply these rules "*to national undertakings and to the undertakings of other States, on a 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,*

terms and conditions of employment laid down in the collective agreements or arbitration awards within the meaning of paragraph 8 and concerning activities other than those referred to in the Annex"¹⁶⁰.

This margin for manoeuvre means the social model of each Member State can be respected, but it is also highly complex to implement insofar as, firstly an information tool for undertakings and workers has to be set up and secondly, the information supplied must be clear, precise and non-ambiguous. The plethora of sources and complexity of the rules form a real obstacle in terms of overall accessibility and this is compounded in terms of language accessibility.

Among those studied, no website offered a complete translation of the specific obligations stemming from the law- and agreement-based rules, at least in English. This task is in fact extremely fastidious in view of the number of texts concerned and an exhaustive translation does not necessarily guarantee that the stakeholders have access to the rules.

The websites developed by public administrations in charge of implementing the rules in terms of posting, attempt to overcome the obstacles linked with languages barriers in various ways.

The French law- and agreement-based rules are difficult to summarise and translate in view of the number of legal and/or statutory provisions and/or collective agreements which are potentially applicable to service-providing undertakings posting workers on French territory.

¹⁶⁰ Article 3 §10 of Directive 96/71.

The existence of a plethora of general application agreements per sector or per geographical zone render this task even more complex.

The posting webpage of the French Ministry of Labour, Solidarity and Public Service¹⁶¹, translated into 5 languages presents a simplified list of legal obligations in an "annex" at the foot of the page.

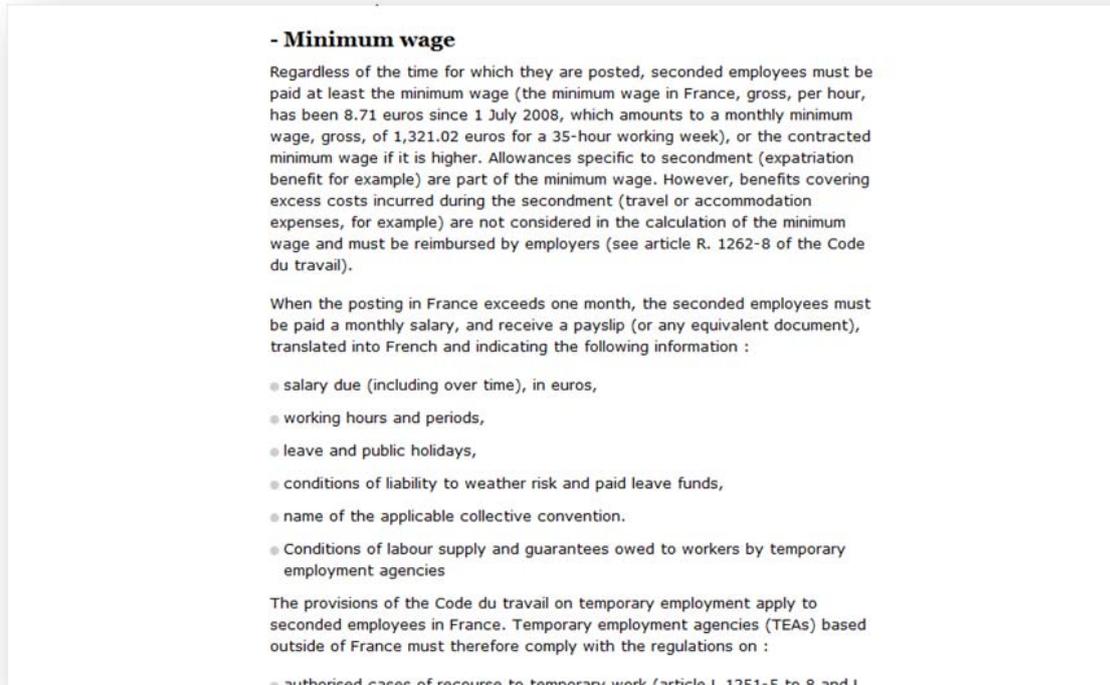


Illustration: excerpt from the annex in English presenting the minimum rate of pay of the website of the French Ministry of Labour, Solidarity and Public Service

Regarding the agreement-based obligations, the website refers the user to the French public service portal supplying legal information <http://www.legifrance.gouv.fr/> allowing access to the collective agreements, yet this website is only available in French.

¹⁶¹http://www.travail-solidarite.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/temporary-posting-of-workers-in,8988.html#sommaire_3

What rules must be applied ?

3.1 During the posting of their workers in France, employers are subject to the French rules on certain matters stipulated in an exhaustive list in article L. 1262-4 of the Code du travail.

The "French rules" cover :

- laws and regulation,
 - rules stipulated in extensive collective agreements and conventions applicable to employees who practise the same activity as the work carried out by the posted employees (the collective conventions can be consulted).
- Employers must therefore comply with the French provisions that apply in terms of work and employment conditions. See details of the French provisions that apply to employees during their secondment in France (see article L. 1262-4 of the Code du travail that do not apply to posted workers).

The screenshot shows the Legifrance website interface. At the top, there is a navigation bar with the date 'dimanche 29 août 2010' and the site name 'Legifrance .gouv.fr'. Below this, there is a search bar and a list of recent legislative acts. The main content area is divided into several sections: 'Droit français' (French Law), 'Droit européen' (European Law), and 'Droit international' (International Law). The 'Droit français' section includes 'Lois et règlements' (Laws and Regulations), 'Conventions collectives' (Collective Agreements), and 'Jurisprudence' (Case Law). The 'Droit européen' section includes 'Traité européens' (European Treaties), 'Journal officiel de l'Union européenne' (Official Journal of the European Union), 'Transposition des directives' (Directive Transposition), and 'Jurisprudence européenne' (European Case Law). The 'Droit international' section includes 'Traité internationaux' (International Treaties) and 'Jurisprudence internationale' (International Case Law). There are also sidebars for 'Le Journal officiel de la République française' and 'Actualité juridique'.

Illustration: For collective agreements, the posting webpage of the French Ministry of Labour, Solidarity and Public Service refers the user to the portal <http://www.legifrance.gouv.fr> which is only available in French

It is therefore impossible for a foreign service provider or a foreign worker to gain easy access to the agreement-based rules applicable due to a major language barrier.

The posting webpage of the Belgian labour administration (Service Public Fédéral Emploi, Travail, Concertation sociale - SPFE) presents the main legal rules applicable to Belgian territory. In terms of working hours and minimum rates of pay, the website offers the content of the collective agreements in English and French.

Maximum weekly working time

In Belgium, working time may not exceed **40 hours a week**.

On 1 January 2003 a rule was introduced in Belgian law under which working time was generally reduced to **38 hours a week**. Under this general reduction to 38 hours, the general rule is that the weekly work schedule that can be applied in undertakings is:

- either 38 effective hours a week ;
- or 38 hours on average over a specified reference period.

Examples :

- effective work for 40 hours a week with the allocation of 12 compensatory days of rest (over a one-year reference period) ;
- effective work for 39 a week with allocation of 6 compensatory days of rest.

However, collective agreements concluded in joint committees in a number of sectors have reduced this level to 38 hours.

Moreover, a number of joint committees have reduced weekly working time to less than 38 hours.

To sum up: In order to find out the weekly working time applicable in your undertaking, **you should know:**

1. under which joint committee you come (belonging to a particular joint committee depends on the principal activity of your undertaking);
2. which weekly working time has been laid down by the joint committee to which you belong as well as any more detailed implementation rules laid down in the collective agreement concluded in the framework of this joint committee.

For instance, you may obtain additional information by consulting the documents related to the following joint committees:

- [JC 111 Metal, machine and electric construction for workers \(PDF, 40 KB\)](#)
- [JC 121 Cleaning and disinfection undertakings \(PDF, 36 KB\)](#)
- [JC 124 Building sector \(PDF, 178 KB\)](#)
- [JC 145 Horticultural undertakings \(PDF, 38 KB\)](#)
- [JC 209 Metal, machine and electric construction for clerical workers \(PDF, 31 KB\)](#)

Joint Committee for horticultural enterprises (PC 145)

❖ **Area of application**

This file applies to enterprises which belong to the Joint Committee for horticultural enterprises for their activities carried out in Belgium.

A complete description of the area of competence of this sector can be found [here](#).

If you wish to know whether your company falls within this sector, you can contact the [Directorate for the Administration of Joint Committees](#) or the [General Directorate for Control on Social Legislation](#) without any commitment on your part.

❖ **Working hours**

All JSC, except JSC 145.04

On average on an annual basis (not applicable to seasonal and occasional staff) : 38 hrs/w.

Weekly working hours for seasonal and occasional staff : 38 hrs/w.

JSC 145.04

On average on an annual basis : 38 hrs/w.

Illustration: the Belgian SPFE's website indicates the legal rules in terms of working hours and provides access to excerpts from certain collective agreements in English. The title of the agreements and their content have been translated into English. Above is an excerpt from the collective agreement applicable to the horticultural sector in terms of working hours

<http://www.employment.belgium.be/defaultTab.aspx?id=6224>

The website developed by the German Customs Authority is an interesting example from this point of view.

The page of the German website presents a sub-section relating to the law- and agreement-based provisions applicable. It is translated into two languages (English and French) and the title of each source is translated, although the links to the laws, decrees and collective agreements applicable are only available in the original language.

The screenshot shows the Zoll website interface. At the top, there is a navigation bar with links: Start, Inhalt, Kontakt, Impressum, Suche, Hilfe, FAQ. The main content area is titled "Minimum Wage" and contains text in English: "The provisions on the payment of a minimum wage represent a major part of the regulations contained in the AEntG. In accordance with the AEntG, the following minimum wage agreements are currently applicable (as of May 1st 2010):". Below this, there is a list of links in German:

- [Waste management including street cleaning](#)
- [\(Primary\) construction sector](#)
- [Special activities in coal mines](#)
- [Roofing trade](#)
- [Electrician's trade](#)
- [Industrial cleaning sector](#)
- [Painting and decorating trade](#)
- [Laundry services for facility customers](#)

To the right of the list, a box displays the title of a collective agreement in German: "Rechtsnormen des Tarifvertrages zur Regelung der Mindestlöhne für gewerbliche Arbeitnehmer in der Gebäudereinigung im Gebiet der Bundesrepublik Deutschland (TV Mindestlohn) vom 29. Oktober 2009 § 1 Geltungsbereich". Below this, it lists "1. Räumlicher Geltungsbereich: Das Gebiet der Bundesrepublik Deutschland." On the left side of the screenshot, there are menu items: "Overview of minimum wages", "Overtime pay", and "Flexible Working hours".

Illustration: the website of the German Customs Authority presents the general collective agreements with the title translated, but the content accessible by link remains in German.

Above, the example of the collective agreement of the industrial cleaning sector http://www.zoll.de/english_version/f0_aentg/a0_info_ag/b0_mindestlohn/index.html

However, this language barrier is compensated by a summary presentation of the main social obligations to be respected on German territory translated into English and French.

La douane en ligne > Détachement de travailleurs > Travailleurs > Conditions de travail conventionnelles

Conditions de travail à respecter conformément à la loi AEntG dans le cadre de conventions collectives ou d'un décret pour le secteur des soins à la personne

Les conditions de travail conventionnelles à respecter sont listées par secteurs dans le tableau suivant.

	Salaire minimum	Majorations pour heures supplémentaires	Durée des congés payés	Indemnité de congés	Prime de vacances	Caisse de congés payés
Collecte et traitement des déchets	oui	non	non	non	non	non
Formation initiale et continue	Encore aucune convention collective étendue					
Bâtiment et travaux publics	oui	oui	oui	oui	oui	oui
Travaux spéciaux dans des mines de houille	oui	non	oui	non	oui	non
Services de messagerie	non	non	non	non	non	non
Couverture de bâtiments	oui	oui	oui	oui	oui	non
Electricité	oui	non	non	non	non	non

Illustration: the website www.zoll.de presents a simplified table of the agreement-based obligations in force in English and French.

Conversely, the task of the website <http://www.posting.workers.eu> developed by the European social partners for the building sector is simplified since this website only addresses the building sector. Each national report and theme is accessible in the language of the State concerned and English.

Posting of Workers in the Construction Industry [Contacts](#) | **IMPORTANT legal notice: disclaimer**

FIEC European Construction Industry Federation

European Federation of Building and Woodworkers **EFBBW**

Home Countries Themes Search Links

Download Chapter by Country

Austria	en	de
Belgium	en	fr
Bulgaria	en	bg
Cyprus	en	
Czech Republic	en	cs
Denmark	en	
Finland	en	
France	en	fr
Germany	en	de
Greece	en	el
Hungary	en	hu
Ireland	en	
Italy	en	it
Lithuania	en	lt
Luxembourg	en	fr
Netherlands	en	nl
Poland	en	pl
Portugal	en	pt
Romania	en	ro

Maximum working time and minimum rest

What are the maximum and minimum working time applicable in the construction sector ?

Download chapter for all countries in English

Download chapter for all countries in original language

Illustration: reports available in the language of each State and English on the theme of working hours and the right to rest periods on the website <http://www.posting-workers.eu/content/default.asp?PageID=98>

In all cases, it would appear to be difficult to impose on Member States the necessity of translating all the law-based, agreement-based and statutory texts.

The increase in cross-border flows in terms of posting may incite the Member States to improve the translation of information on the websites. If there is no translation of the social obligations service providers must undertake, one solution could consist in giving the service users based on the national territory the responsibility of monitoring that the law- and agreement-based terms applicable to employment and working relations binding the service providers and their workers during the period of posting are well and truly respected.

Conclusion

The assessment of websites supplying information on posting shows that while information may be available, it is not necessarily readily accessible by the audience it targets.

Each State has put information on posting on line and Chapter I has allowed us to check the accessibility of this information, i.e. how easy it is to identify the right sources using search engines without being confused by widely scattered information and language barriers.

No website is perfect and each one fulfils part of the obligations laid on States in terms of supplying information.

If accessibility to the information available on posting is to be guaranteed, the following is required :

the right referencing of the webpages concerned,

making sure all the information required is supplied either via a portal providing all the information needed, or a portal referring the user to the key websites via links, or again by well referenced websites providing mutual links,

ensuring the information is translated into one or more languages, selected according to their relevance (English, border States, States that send workers most frequently),

making sure the information is simplified when there is a significant quantity of subject matter.

The quality of the services offered by the websites still remains to be verified. By quality we mean the ability to provide clear, non-ambiguous information and services facilitating the use of the rights and freedoms granted.

CHAPTER 2: THE QUALITY OF SERVICES OFFERED BY WEBSITES IN TERMS OF POSTING

The quality of services offered by public administration websites in terms of posting can be assessed from the angle of the quality of the information, i.e. the possibility of being supplied with useful, clear and non-ambiguous information¹⁶². The posting operation is particularly complex from the viewpoint of the rules that are applicable. It would therefore seem essential to provide information which is not only simple, but also precise and up to date (Section 1).

This very complexity leads us to question the services accompanying the provision of help services. The opportunity to fulfil certain formalities on line or via electronic means can simplify the process for users who are called on temporarily to transfer their residence to another Member State for the period of the service provision. The availability of a phone helpline and details of organisations which may be able to assist undertakings and workers to benefit from their rights may help users in the practical steps that have to be taken. Likewise, guides can contribute to improving understanding of the rules (Section 2).

¹⁶² Considering 50 of the "services" Directive 2006/123/EC, op cit.

Section 1. Quality of on-line content

The content put on line should allow users to conform to the national and Community rules in force. From this angle, the work authorities bear the heaviest burden if they intend to make useful, precise data available for users. Indeed, the content of the posting directive authorises each Member State to impose the social rules in force on foreign service providers insofar as the rules fill two cumulative conditions, i.e. they pertain to the labour and employment conditions laid down in article 3 paragraph 1 and their source is upheld "*by law, regulation or administrative provision, and/or by collective agreements or arbitration awards which have been declared universally applicable*"¹⁶³ or failing agreements of this kind and if the States so decide, "*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 organizations at national level and which are applied throughout national territory*"¹⁶⁴.

Consequently, the greater the number of agreement-based provisions, which are complex in terms of their field of application, the more difficult it will be to make the content available (A). Furthermore, the information put on line when providing services must also meet the needs of undertakings and workers present on the territory. Service-providing undertakings must be able to anticipate the inspections they will undergo and know which documents are required during inspections by the authorities. The workers must be in a position to know their rights and the appeal processes on the territory of the Host State (B).

A. Making precise, accurate information available: a challenge in the offing

While most labour administration websites present law-based and statutory provisions that are universally applicable by virtue of the directive and notably article 3 paragraph 1 being

¹⁶³ Paragraph 1 of article 3 of Directive 96/71, op cit.

¹⁶⁴ Paragraph 8 of article 3 of Directive 96/71, op cit.

transposed in national legislation¹⁶⁵, some websites have been more forward than others in attempting to raise the challenge formed by presenting the agreement-based rules (1).

Finally, the information supplied must be regularly up-dated either directly or through a "news" column. (2).

1. Accuracy and precision of the information given

The social legislations studied include both universally applied law-based provisions and agreement-based provisions, the content of which should be presented when it is applicable to undertakings and workers.

The high number of social provisions applicable to foreign service providers and the combination of law-based rules and agreement-based rules make it particularly difficult to respect the obligation laid down in article 4 paragraph 3 of Directive 96/71: "*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*".

The assessment has yielded different findings :

No practical information is accessible. This is the case encountered with the website of the Spanish labour and immigration services¹⁶⁶ (Ministerio de Trabajo e inmigracion):

¹⁶⁵ The subjects targeted by article 3§1 of Directive 96/71/EC are: "*a) maximum work periods and minimum rest periods; (b) minimum paid annual holidays; (c) the minimum rates of pay, 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.*"

¹⁶⁶ http://www.mtin.es/es/Guia/texto/guia_6/contenidos/guia_6_15_3.htm

- ▶ El desplazamiento de un trabajador por parte de una empresa de trabajo temporal para su puesta a disposición de una empresa usuaria que esté establecida o que ejerza su actividad en España.

Obligaciones de los empresarios

Los trabajadores afectados en sus desplazamientos tendrán garantizado por su empresa, cualquiera que sea la legislación aplicable a su contrato de trabajo, las condiciones de trabajo previstas por la legislación española relativas a:

- ▶ Jornada laboral, horas extraordinarias, trabajo nocturno y a turnos, descanso semanal, fiestas y permisos.
- ▶ Vacaciones anuales, salvo que los desplazamientos no excedan de ocho días y sean efectuados por empresas que no sean de trabajo temporal.
- ▶ Cuantía del salario, salvo en los desplazamientos que no excedan de ocho días y sean efectuados por empresas que no sean de trabajo temporal.

Durante desplazamientos de más de ocho días tendrán garantizado el salario, fijado en su cuantía mínima por las disposiciones legales o reglamentarias del Estado, o establecido por convenio colectivo, aplicable en el lugar y en el sector o rama de la actividad de que se trate para el grupo o categoría profesional correspondiente a la prestación del trabajador desplazado, incluyendo en él el salario base y los complementos salariales, gratificaciones extraordinarias y, en su caso, la retribución correspondiente a horas extraordinarias y complementarias y trabajo nocturno, y sin descontar de dicha cuantía mínima los tributos, pagos a cuenta y cotizaciones a la Seguridad Social a cargo del trabajador.

A efectos de comparar la cuantía del salario que corresponda al trabajador desplazado conforme a la legislación aplicable a su contrato de trabajo y la garantizada por la legislación española, se incluirán también en dicha cuantía los complementos abonados al trabajador correspondientes al desplazamiento, pero no aquellos que se abonen como reembolso de los gastos originados por el mismo, como manutención, alojamiento o gastos de viaje.

Los trabajadores contratados para ser cedidos a empresas usuarias, tendrán derecho a percibir, como mínimo, la retribución total establecida para el puesto de trabajo a desarrollar en el convenio colectivo aplicable a la empresa usuaria, calculada por unidad de tiempo, incluida en ella, en su caso, la parte proporcional de pagas extras, descanso semanal, festivos y vacaciones. Dicho salario deberá consignarse por la empresa usuaria en el contrato de puesta a disposición del

Illustration: the page http://www.mtin.es/es/Guia/texto/guia_6/contenidos/guia_6_15_3.htm on the website of the Spanish Ministry of Labour does not provide any figures pertaining to the minimum rates of pay that should be respected. There are no links referring users to other webpages on the site.

The information on the law-based provisions is exhaustive, but particularly difficult to read if the audience targeted is not specialised in law.

The information given on the page of the Dutch Ministry of Social Affairs¹⁶⁷ is hardly more convincing from the user's point of view. It is presented in the form of a series of texts without highlighting the key point for each type of rule. No collective agreements are addressed and the website merely mentions their existence by referring the user to a website which is written exclusively in Dutch.

¹⁶⁷http://english.szw.nl/index.cfm?menu_item_id=14640&hoofdmenu_item_id=14632&rubriek_item=392437&rubriek_id=391971&set_id=3630&doctype_id=6&link_id=112021#link8569120

This model is also true of France as previous developments have proved. Not only do users in this case come up against the language barrier to access the agreement-based obligations, but they must further identify the collective agreement they are likely to come under in order to extract the precise rules that apply to their case, as only the agreement-based rules corresponding to those laid down in article 3 paragraph 1 of Directive 96/71 are applicable. It is then up to the users to check how these rules are positioned in relation to the law-based rules of the Host State and even those providing cover in their Home State.

All Member States where the labour and employment conditions come under law-based and agreement-based provisions come up against the difficulty of making the agreement-based provisions accessible, although some have attempted to simplify the users' researches. Indeed, these provisions present several difficulties :

They may be numerous either due to the sectors covered or because of the territorial scope of application,

They may include different clauses which by their content, are applicable to foreign service-providing undertakings,

They define their professional and territorial scope which presupposes this mechanism is explained to the service-providing undertakings temporarily present in order to enable them to decide if they come under this category or not. From this angle, it is useful that the preliminary posting declaration should ask service providers for information as to their main activity, which could trigger off the application of a collective agreement (case of Belgium, France, Germany and Luxembourg, for instance).

In the face of these difficulties, it is interesting to observe how the public administration have attempted to clarify the presentation of their rules in favour of service-providing undertakings and workers temporarily deployed on their territory.

The posting webpage on the Belgian labour administration website (Service Public Fédéral Emploi, Travail et Concertation sociale)¹⁶⁸ supplies information pertaining to the minimum rate of pay applicable and presents examples of collective agreements applicable in certain sectors. The presentation does not attempt to be exhaustive insofar as the number of sectors is very vast indeed.

¹⁶⁸ <http://www.emploi.belgique.be/defaultTab.aspx?id=6224>

Remuneration

Minimum wage

In Belgium, the minimum wage of gainfully employed persons is fixed by collective agreements.

- In principle, the minimum wage scales are laid down per sector by the competent joint committee. The collective agreements concluded within these committees include provisions designed to determine the general basis for calculating wages/salaries according to the various levels of qualifications and posts. These scales indicate the gross wage/salary.

For workers posted to Belgium, only the collective agreements that have been declared to be generally binding (i.e. those subject to penal law) are applicable.

The determination of the joint committee to which a particular undertaking belongs depends on that undertaking's principal activity. To find out to which joint committee your undertaking belongs, [please contact the Social Legislation Inspectorate](#).

- If your undertaking belongs to a sector for which the joint committee has not laid down any minimum wage scale, the level applicable is the average minimum monthly income that has been determined at inter-professional level (i.e. applicable throughout the private sector). From 1 October 2008 this is:
 - > €1387,49 for workers aged 21 and over
 - > €1424,31 for workers aged 21½ with six months' seniority
 - > €1440,67 for workers aged 22 with twelve months' seniority

By way of example, you may obtain additional information by consulting the documents relating to the following joint committees:

- [JC 111 Metal, machine and electric construction for workers](#)
- [JC 121 Cleaning and disinfection undertakings \(PDF, 36 KB\)](#)
- [JC 124 Building sector \(PDF, 178 KB\)](#)
- [JC 145 Horticultural undertakings \(PDF, 38 KB\)](#)
- [JC 209 Metal, machine and electric construction for clerical](#)
- [JC 218 Supplementary national joint committee for clerical](#)

Payment of wages/salaries

If the wage/salary is paid in Belgium, the payment should be carried out in accordance with the Royal Decree of April 1965 on the protection of workers' wages and salaries:

Joint Committee for metal, mechanical and electrical construction (JC 111)

Area of application

The regulation applies to enterprises which belong to the Joint Committee for metal, mechanical and electrical construction for work executed in Belgium.

A complete description of the area of competence of this sector can be found [here](#).

If you wish to know whether your company falls within this sector, or to obtain more information on the below mentioned regulation, you can contact the [Directorate for the Administration of Joint Committees](#) or the [General Directorate for Control on Social Legislation](#) without commitment from your part.

❖ Salaries (gross per hour in €)

Adjustments as from the 1st of July 2010

JSC 111.01 INDUSTRIAL METALWORK JSC 111.02 SMALL-SCALE METALWORK

National:

Minimum hourly wage 38 hours/week 9.6612

Province of Brabant:

Minimum hourly wage 38 hours/week 10.40

Minimum hourly wage 39 hours/week 10.13

Minimum hourly wage 40 hours/week 9.88

Province of Antwerp:

Minimum hourly wage 38 hours/week 10.9137

Province of Flanders

The posting page on the German Customs Authority website has chosen to present the collective agreements applicable. The restricted number of sector agreements applicable means a list can be displayed with the sectors covered by a restrictive agreement.



Overview of minimum wages
Overtime pay
Flexible Working Hours

Customs online > Posting of workers > Employers > Minimum wage

Minimum Wage

The provisions on the payment of a minimum wage represent a major part of the regulations contained in the [AEntG](#).

In accordance with the [AEntG](#), the following minimum wage agreements are currently applicable (as of May 1st 2010):

- [Waste management including street cleaning and winter road maintenance](#)
- [\(Primary\) construction sector](#)
- [Special activities in coal mines](#)
- [Roofing trade](#)
- [Electrician's trade](#)
- [Industrial cleaning sector](#)
- [Painting and decorating trade](#)
- [Laundry services for facility customers](#)

Furthermore, a legal ordinance pursuant § 11 of the [AEntG](#) prescribes a minimum wage for the [care provision sector](#).

The minimum wage refers to the gross wage. It is deduced according to the following principles:

Illustration: the website www.zoll.de gives a list of sectors covered by generally applied collective agreements or specific law-based rules.

To enable undertakings to identify the nature of their obligations at first glance, the website offers a summary table per professional sector together with any agreement-based restrictions in the areas forming the "hard core": minimum wage, increments for overtime, length and indemnities for paid holidays, holiday bonuses and paid holiday funds. The table does not give the exact content of the obligations, but does alert the user to the fact that these rules exist and that their precise content is given on a specific webpage dealing with the law- and agreement-based provisions which the user can access in German via the links.

La douane en ligne > Détachement de travailleurs > Travailleurs > Conditions de travail conventionnelles

Conditions de travail à respecter conformément à la loi AEntG dans le cadre de conventions collectives ou d'un décret pour le secteur des soins à la personne

Les conditions de travail conventionnelles à respecter sont listées par secteurs dans le tableau suivant.

	Salaire minimum	Majorations pour heures supplémentaires	Durée des congés payés	Indemnité de congés	Prime de vacances	Caisse de congés payés
Collecte et traitement des déchets	oui	non	non	non	non	non
Formation initiale et continue	Encore aucune convention collective étendue					
Bâtiment et travaux publics	oui	oui	oui	oui	oui	oui
Travaux spéciaux dans des mines de houille	oui	non	oui	non	oui	non
Services de messagerie	non	non	non	non	non	non
Couverture de bâtiments	oui	oui	oui	oui	oui	non
Electricité	oui	non	non	non	non	non

http://www.zoll.de/fr_version/e0_aentg/c0_info_an/k0_arbeitsbedingungen/index.html

Making summary tables available in a language understood by the service provider or posted worker can be considered as a satisfactory alternative. The intermediate solution retained by the German website consists in pointing out the agreements applicable and indicating whether they contain rules which should be applied or not. This alert may encourage the service provider to be vigilant and contact the service user to receive key information. In the case where the number of universally applied collective agreements is higher either because of the professional sectors covered or due to their geographical scope, a feasible solution could consist in supplying detailed information for the professional sectors, which, according to the statistics, are the most concerned by the phenomenon of cross-border posting.

1. Up-dating: the example of the minimum rate of pay

Social law is constantly changing and therefore implies the need to update on a regular basis. It is particularly preferable that all information on a webpage or a document appended as an annex should be dated so that users can check its relevance.

Insofar as Directive 96/71 allows Member States to impose the minimum rate of pay in force in the Host State on service providers and that these rates may stem either from a provision at national level or an agreement-based provision, it would seem pertinent to make sure that this information is updated on the various websites.

Information updates relating to the minimum rate of pay applicable to posted workers in the Member States were more or less satisfactory depending on the individual websites studied.

The website of the Dutch labour administration did not give any figures under the heading "Minimum rates of pay". The published and downloadable document presented in the annex of the posting page gave the minimum wage applicable in 2006 in point IX.

The French labour administration website only presented the minimum rate of pay and recommended hourly rate dated from 1st July 2008.

On the other hand, the Luxembourg labour administration provides access to the minimum rate of pay and the rates applicable in the collective agreements through links updated on 1st July 2010.

The screenshot shows the ITM website interface. The main content area is titled "Salaire social minimum" and includes the following text:

Base légale: Code du travail - Livre II - Titre II - Chapitre II - Salaire social minimum

Le salaire social minimum s'applique à tous les salariés, sans distinction de sexe, occupés par un employeur dans le cadre d'un contrat de travail, toutes professions et entreprises confondues, de toutes les professions, dans toutes les entreprises, occupés par un employeur dans le cadre d'un contrat de travail.

Les taux du salaire social minimum sont fixés en fonction de deux considérations: l'âge des bénéficiaires et leur qualification.

Les conditions pour être considéré comme qualifié sont reprises dans la fiche informative "Le salaire social minimum"

Taux indiciaire à partir du 1er juillet 2010: 719.84 points

Le salaire social minimum s'établit comme suit à partir du **1er juillet 2010**: (augmentation de l'indice de 702.29 à 719.84 points)

	%	base 100		ind. 719.84
		salaire horaire	salaire mensuel	€
18 ans et plus non qualifié	100%	9,9700	239,6100	1724,81
17 - 18 ans	80%	7,9760	191,6880	1379,85
15 - 17 ans	75%	7,4775	179,7075	1293,61
18 ans et plus qualifié	120%	11,9640	287,5320	2069,77

Illustration: the minimum legal rate of pay in Luxembourg, ITM website, Luxembourg
<http://www.itm.lu/droit-du-travail/salaire-social-minimum/salaire-social-minimum>

The agreement-based obligations in terms of the minimum rates of pay are also accessible and updated. The ITM website presents the list of collective agreements and the user can access the content of the agreements rates of pay via links.

- Occupation d'élèves et d'étudiants
- Durée du travail
- Travail des jours fériés légaux
- Maintenir l'emploi
- SÉCURITÉ - SANTÉ
- SEVESO
- DÉTACHEMENT - ENTSENDUNG - POSTED WORK
- LÉGISLATION
- CONGÉS COLLECTIFS
- ACTUALITÉS

Tous les documents présentés ci-dessous sont des documents en format PDF.

Conventions collectives de travail par branche déclarées d'obligation générale:

Veuillez prendre note que le salaires social minimum a augmenté le 01.01.09. Les salaires inférieurs sont automatiquement à adapter au salaires social minimum.

En juillet 2010, l'augmentation de l'indice a fait augmenter les salaires tarifaires.

branche	pdf (ko)
Agents des sociétés de service de sécurité et de gardiennage	16
Assurances	13
Bâtiment et génie civil	12
Carreleurs	11
Chauffeurs d'autobus et salariés auxiliaires des entreprises d'autobus privés	13
Electriciens	24
Installateurs d'ascenseurs	22
Installateurs sanitaire, de chauffage et de climatisation	13
Menusiers	12
Métiers graphiques	15
Nettoyage de bâtiment	14

Illustration: the ITM website gives access to professional sectors covered by a universally applied collective agreement and under the heading for rates of pay, the user can access directly the minimum rates of pay per sector <http://www.itm.lu/droit-du-travail/conventions-collectives-de-travail/salaires-resultant-de-conventions-collectives-de-travail>

Installateurs sanitaires, de chauffage et de climatisation			
Etat actuel au:	01/07/2010		
Base:	Règlement grand-ducal du 23 décembre 2005 portant déclaration d'obligation générale des avenants IV et V à la convention collective de travail du 13 février 1996 pour les métiers d'installateur sanitaire et d'installateur de chauffage et de climatisation conclus entre les syndicats OGB-L et LCGB, d'une part et la Fédération des Installateurs en Equipements Sanitaires et Climatiques asbl, d'autre part		
Changements:	01/01/2005	Salaires tarifaires inscrit dans l'avenant	ok
	01/07/2005	Salaires tarifaires inscrit dans l'avenant	ok
	01/10/2005	Changement indice 652.16	ok
	01/07/2006	Augmentation des salaires tarifaires de 1%	ok
	01/12/2006	Changement indice 668.46	ok
	01/01/2007	augmentation du salaire social minimum http://www.itm.public.lu/droit_travail/salaire_social_minimum/index.html	ok
	01/07/2007	Augmentation des salaires tarifaires de 1%	ok
	01/03/2008	Changement indice 685.17	ok
	01/01/2009	augmentation du salaire social minimum http://www.itm.public.lu/droit_travail/salaire_social_minimum/index.html	ok
	01/03/2009	Changement indice 702.29	ok
	01/07/2010	Changement indice 719,84	ok
Salaires social minimum:	Si les salaires indiqués ci-après sont en-dessous du salaire social minimum, celui est à appliquer par défaut !		
Travailleurs qualifiés	Salaires social minimum à appliquer		

Illustration: the minimum rates of pay laid down in the collective agreements have been extracted from each universally applied collective agreement and are up-to-date for 2010, ITM website, Luxembourg.

The German Customs Authority website has made a similar effort. In the absence of a legal minimum rate of pay, the site presents the minimum rates of pay per professional sector, geographical area and professional category with the pages being translated into 2 languages

(English and French). The "minimum wage" heading presents concise information in a summary table of minimum rates of pay per sector, employee categories and geographical areas.

The screenshot shows the ZOLL website interface. The main heading is "Overview of applicable minimum wages based on collective wage agreements or a legal ordinance pursuant § 11 AEntG of the care sector". Below this, there are several links for different sectors: Waste management, Building industry, Special work activities in coal mines, Roofing trade, Electrical trade, Industrial cleaning services, Painting and varnishing trade, Care provision sector, and Laundry services for facility customers.

The "Building Industry" section contains the following table:

Valid in	From/until	wage group 1 ¹⁾	wage group 2 ²⁾
Baden-Wuerttemberg, Bavaria, Bremen, Hamburg, Hesse, Lower Saxony, North-Rhine Westphalia, Rhineland-Palatinate, Saarland, Schleswig-Holstein	01.09.08 - 31.08.09	EUR 10,70	EUR 12,85
	01.09.09 - 31.08.10	EUR 10,80	EUR 12,90
	01.09.10 - 30.06.11	EUR 10,90	EUR 12,95
	01.07.11 - 30.11.11	EUR 11,00	EUR 13,00
Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Thuringia	01.09.08 - 31.08.09	EUR 9,00	EUR 9,80
	01.09.09 - 31.08.10	EUR 9,25	Wage group 2 does not apply
	01.09.10 - 30.06.11	EUR 9,50	
	01.07.11 - 30.11.11	EUR 9,75	
Berlin	01.09.08 - 31.08.09	EUR 10,70	EUR 12,70
	01.09.09 - 31.08.10	EUR 10,80	EUR 12,75
	01.09.10 - 30.06.11	EUR 10,90	EUR 12,75
	01.07.11 - 30.11.11	EUR 11,00	EUR 12,85

Footnotes:
¹⁾ Workers, machine worker
²⁾ Skilled workers, engine operators, drivers

The "Special work activities in coal mines" section contains the following table:

Valid in	From/until	Wage group 1 ¹⁾	Wage group 2 ²⁾
Entire Federal Republic of Germany	24.10.09 - 31.12.10	11,17 €	12,41 €

Footnote:
¹⁾ Wage group 1

Illustration of the sub-heading "minimum rate of pay" from the posting page of the website http://www.zoll.de/english_version/f0_aentg/a0_info_ag/b0_mindestlohn/a0_uebersicht_mindestlohn/index.html

B. Necessary information and website ergonomics

The ergonomics of the website can be defined as its capacity to meet the expectations of users efficiently and provide comfortable browsing.

The complexity of the information to be processed must be simplified to reach the audience it targets. Particular vigilance is required when structuring the information on the website.

The first stumbling block for users who have accessed the appropriate public website is to identify the page which will meet their expectations within the website.

If the website is not dedicated to posting problems, a posting heading should at least be displayed on the home page (1). If the posting page is accessible, we can examine sub-headings within the page and the choice of the sub-headings regarding the modalities of applying the posting directive in the State in question (2).

1. Identifying the posting page on the website

None of the websites managed by a public administration is entirely dedicated to information on posting workers.

The only website abrogating this rule is <http://www.posting-workers.eu>, a website developed by the European social partners in the building sector. This website is entirely dedicated to the issue of posting workers in the building sector in Europe. It presents two approaches: a presentation of the law- and agreement-based rules per Member State in two languages, of which one is always English, and a presentation of the main obligations specific to each Member State as required by article 3 of Directive 96/71: minimum rates of pay, overtime, working hours, health and safety at work and paid holidays. The webpage on additional information presents other particularities for each national legislation.



Most of the websites developed by public administrations present the theme of posting via a heading on their home page. This presentation immediately helps users to identify the right page and access it.



Illustration: "posting of workers" heading on the homepage of the German Ministry of Finance's website http://www.zoll.de/english_version/index.html



*Illustration: homepage of the website of the Belgian labour administration:
<http://www.emploi.belgique.be/home.aspx>*

This is however not the case of the website of the French Ministry of Labour, whose homepage with the "Labour" heading does not mention that any such information is available. This lack is however mitigated by the good ranking of the page dedicated to posting in the results displayed by the search engines.

Le Ministère ▢	Travail	Toutes les informations concernant la santé au travail sur le site : travailler-mieux.gouv.fr
Actualité / Presse ▢	12 juillet 2010	
DOSSIERS	Lancement du second plan de santé au travail	 Retraites 2010 - comprendre les enjeux de la réforme
Gestion des ressources humaines ▢	Le deuxième plan de santé au travail (couvrant la période 2010-2014) a été présenté ce lundi 12 juillet. Il a été élaboré grâce à une large concertation avec les administrations concernées, les organismes de prévention et l'ensemble des partenaires sociaux.	 IDCC - Identification des conventions collectives
Le travail social ▢		3 septembre 2010
Relations professionnelles ▢	L'opinion des employeurs sur les seniors : les craintes liées au vieillissement s'atténuent	 Le Revenu de Solidarité Active
Rémunération ▢		La publication de la DARES montre qu'en 2008, les employeurs du secteur marchand estiment, dans leur majorité, que les salariés seniors sont un atout
Représentants du personnel ▢		
Santé et sécurité au travail ▢		
Temps de travail ▢		
Travail ▢		
INFORMATIONS PRATIQUES		
Fiches pratiques du droit du travail		
Faire ses questions		

Illustration: the homepage of the "Labour" page on the French Ministry of Labour does not include a "posting" heading

Another case encountered is where the information on posting is buried in a page dealing with more general matters. The website of the Swedish Work Environment Authority does not accord posting a dedicated section. The information is dealt with in a broader section called "Working in Sweden". Apart from the fact that it only addresses workers, users have to make a considerable effort to read the entire webpage in order to identify the points specific to their situation as posted workers.

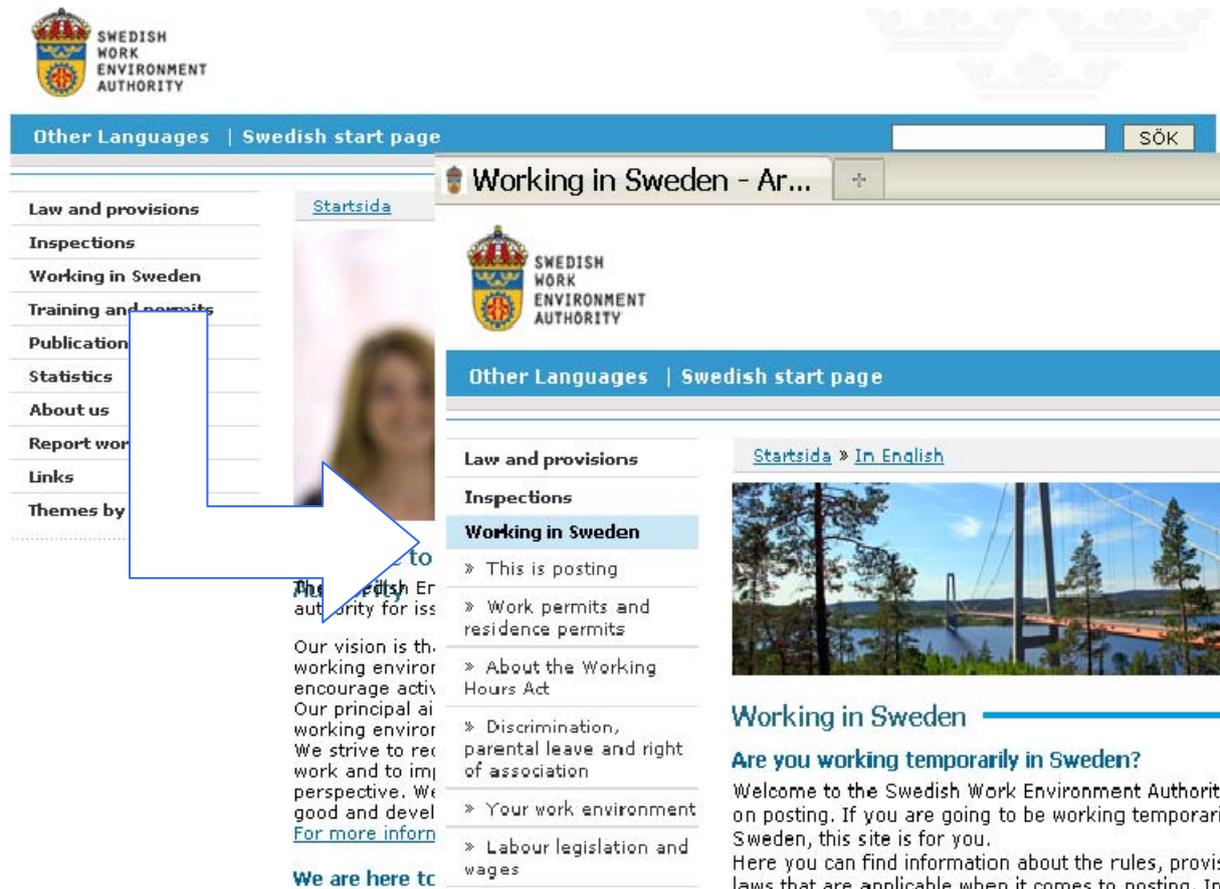


Illustration: the homepage of the Swedish Work Environment Authority website only presents a "Working in Sweden" section which includes information on posting.

2. Processing information specific to posting

The way in which the site organises access to information is essential if the aim is to allow users to understand their rights and obligations rapidly. To avoid discouraging users, the information should be organised by sub-headings using keywords adapted to their needs.

The posting page by the Belgian labour administration¹⁶⁹ does not seem satisfactory from this point of view in that it only includes two sections: a general section explaining the notion of posting and a single section presenting all the rules one after the other without distinguishing between the target audiences. It is up to the users to identify the relevant data in the long list displayed.

The website of the Luxembourg labour administration¹⁷⁰ does not allow users to identify the wealth of information given at first glance. The information presented on the "posting" page

¹⁶⁹ <http://www.employment.belgium.be/defaultTab.aspx?id=6540>

¹⁷⁰ http://www.itm.lu/detachement-de-travailleurs/posting-of-workers3?set_language=en

is brief and users may well miss the links at the bottom of the page with their non-explicit titles. And yet it is via these links that users can access the forms, collective agreements, agreed rates of pay etc.

The screenshot shows a website page titled 'Détachement de salariés' (Posting of workers) from the Luxembourg labour administration (ITM). The page is in French and features a navigation menu on the left with categories like 'ITM', 'DROIT DU TRAVAIL', 'SÉCURITÉ - SANTÉ', 'SEVESO', 'DÉTACHEMENT - ENTSENDUNG - POSTED WORK', 'LÉGISLATION', 'CONGÉS COLLECTIFS', 'ACTUALITÉS', 'FORMULAIRES', 'PUBLICATIONS', and 'FAQ'. The main content area includes a breadcrumb trail 'Accueil -> Détachement - Entsendung - Posted Work', the title 'Détachement de salariés', and several paragraphs of text explaining the scope and objectives of the posting of workers. It also provides contact information for the national and international services, including a phone number (+352 247-76200) and a fax number (+352 29 11 94 - 6288). At the bottom, there is a 'Liens' (Links) section with three links: 'Communication de détachement de salariés (CDS)', 'FAQ "Détachement de salariés"', and 'Fiche d'information de la Commission Européenne'. The page is in English as indicated by the URL and the 'set_language=en' parameter.

Illustration: posting page on the website of the Luxembourg labour administration
http://www.itm.lu/detachement-de-travailleurs/posting-of-workers3?set_language=en

The website of the German Customs Authority¹⁷¹ in charge of inspecting posting operations is undeniably the easiest to read as the information is processed according to users' needs. The posting section distinguishes between three target audiences : undertakings, workers and labour hirers and hirers-out.

¹⁷¹ http://www.zoll.de/english_version/f0_aentg/index.html

Posting of workers



Start Inhalt Kontakt Impressum Suche FAQ

Customs online > Posting of workers

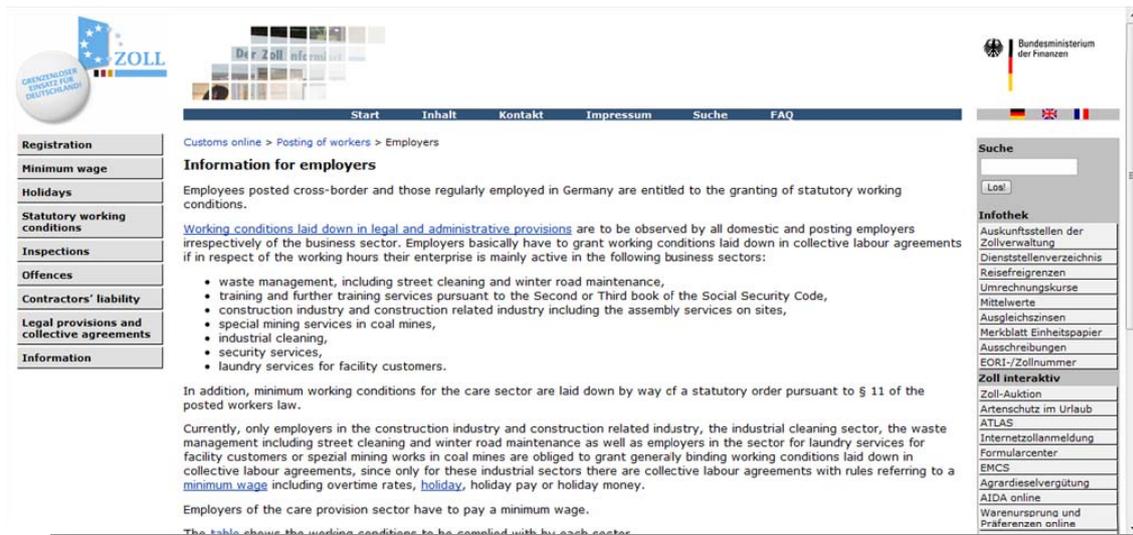
Posting of Workers

On April 24, 2009, the Act Regulating Compulsory Working Conditions for Workers Posted Transnationally and Regularly Employed in the Home Market ([Posting of Workers Act](#)) came into force, replacing the AEntG of February 26, 1996. By way of the AEntG, Germany has implemented the [Directive Concerning the Posting of Workers in the Framework of the Provision of Services](#) (Posting of Workers Directive) in its national law.



The act requires **employers with their base in Germany, employers with their base abroad** (including contractors operating on the basis of bilateral agreements) as well as **Hirers-Out** and **Hirers** to comply with [legally required](#) working conditions. A minimum wage has to be paid in the [care provision sector](#). In certain industries, employers and hirers-out are obliged to grant the working conditions laid down in [collective wage agreements](#). There are also other obligations affecting employers, hirers-out and hirers.

Each of these categories gives access to a specific tree structure dealing with the rights and/or obligations concerned.



Registration
Minimum wage
Holidays
Statutory working conditions
Inspections
Offences
Contractors' liability
Legal provisions and collective agreements
Information

Customs online > Posting of workers > Employers

Information for employers

Employees posted cross-border and those regularly employed in Germany are entitled to the granting of statutory working conditions.

[Working conditions laid down in legal and administrative provisions](#) are to be observed by all domestic and posting employers irrespectively of the business sector. Employers basically have to grant working conditions laid down in collective labour agreements if in respect of the working hours their enterprise is mainly active in the following business sectors:

- waste management, including street cleaning and winter road maintenance,
- training and further training services pursuant to the Second or Third book of the Social Security Code,
- construction industry and construction related industry including the assembly services on sites,
- special mining services in coal mines,
- industrial cleaning,
- security services,
- laundry services for facility customers.

In addition, minimum working conditions for the care sector are laid down by way of a statutory order pursuant to § 11 of the posted workers law.

Currently, only employers in the construction industry and construction related industry, the industrial cleaning sector, the waste management including street cleaning and winter road maintenance as well as employers in the sector for laundry services for facility customers or spezial mining works in coal mines are obliged to grant generally binding working conditions laid down in collective labour agreements, since only for these industrial sectors there are collective labour agreements with rules referring to a [minimum wage](#) including overtime rates, [holiday](#), holiday pay or holiday money.

Employers of the care provision sector have to pay a minimum wage.

The table shows the working conditions to be complied with by each sector.

Suche

Los!

Infothek

- Auskunftsstellen der Zollverwaltung
- Dienststellenverzeichnis
- Reisefreigrenzen
- Umrechnungskurse
- Mittelwerte
- Ausgleichszinsen
- Merklblatt Einheitspapier
- Ausschreibungen
- EORI-/Zollnummer

Zoll interaktiv

- Zoll-Auktion
- Arbeitschutz im Urlaub
- ATLAS
- Internetzollanmeldung
- Formularcenter
- EMCS
- Agrardieselsvergütung
- AIDA online
- Warenursprung und Präferenzen online

The sub-headings are particularly well-adapted for the requirements resulting from the posting directive being transposed into national law.

The employer has access to requirements pertaining to:

- the formalities to be respected upstream of posting
- the minimum rates of pay
- paid holidays
- the legal terms applicable under the labour laws

- inspection authorities which may act on the territory of the Host State, their prerogatives and, in particular, the documents they may demand to see
- the various offences and penalties applied
- the liability of the contracting parties
- the original texts from law- and agreement-based sources
- the point of contact which may provide assistance

Workers can access pages which are identical in part, plus a section reminding them of their right to appeal in the Host State.

Section 2. The quality of services offered by the website

In addition to the information accessible from the websites, the quality of services offered to potential users constitutes an important factor in evaluating the public administration's ability to fulfil the criteria of "*efficiency, active assistance, rapid delivery and accessibility, including e-accessibility*" as described in article 2 §1 of the implementing regulation in terms of coordinating social security¹⁷². To this effect, several types of service can be envisaged: the website gives the opportunity of carrying out the formalities on line (A), offers assistance services (B) and make brochures and guides available (C).

A. Possibility of carrying out the administrative formalities on line

In terms of cross-border posting, the possibility of carrying out on-line formalities considerably simplifies the process for service providers who have a number of obligations to fulfil either in the State where they are based or in the State where they are envisaging providing services on a temporary basis. In view of the deadlines for providing the service, the possibility of conducting the formalities on line can simplify the task of undertakings and enable them to conform to the rules.

E-administration is also advantageous for the public administrations themselves since the data collected via the on-line declarations not only allow the in- and out-flows of service-providing undertakings to be determined for inspection purposes, but also useful databases for setting up public actions. Drawing up statistics for the professional sectors concerned, the nationality of the service providers and the period during which the services are provided, the number and level of qualification of the workers concerned – all this constitutes data which can help public policies to be adjusted (reinforcing cooperation with the administrative services of the Home States, identification of the sectors in demand and lack of labour force on the national territory etc.). From this angle, a single State is a pioneer in the field: Belgium.

The possibility of carrying out formalities on line presupposes that on-line forms can be accessed and acknowledgements of receipt or certificates can also be requested and obtained

¹⁷² Regulation n°987/2009 of 16 September 2009, op cit.

on line. This e-administration is not to be confused with the possibility of accessing downloadable forms which then have to be sent by post.

Our analysis shows that the situation differs according to the website: most websites provide access to downloadable forms to be filled in.

When the legislation demands a preliminary posting declaration, the websites of the work authorities very often propose this declaration in electronic form. Whether they are filled in manually or not, the fact that they have to be signed makes it necessary to print them out. Users sometimes choose to scan the printed document to send it in digital form to the competent authority or else send it by post.

For example, the websites of the French public administrations only propose downloadable forms and the addresses to which they have to be returned are particularly diverse. The posting declaration must be filled in and sent to the work inspectorate in the area where the service is provided.

The image shows a French preliminary declaration form for worker detachment. The form is titled "DÉCLARATION PRÉALABLE DE DÉTACHEMENT" and includes the following text:

DÉCLARATION PRÉALABLE DE DÉTACHEMENT
Posting of worker's declaration
(Hors mobilité intragroupe et travail temporaire)
(Excepting intragroup mobility and temporary work)

DÉTACHEMENT TRANSNATIONAL DE TRAVAILLEURS PAR UN EMPLOYEUR ÉTABLI HORS DE FRANCE DANS LE CADRE DE L'EXÉCUTION D'UNE PRESTATION DE SERVICES INTERNATIONALE OU D'UNE OPÉRATION POUR PROPRE COMPTE (1)
TRANSNATIONAL POSTING OF WORKERS BY EMPLOYERS BASED OUTSIDE FRANCE IN THE FRAMEWORK OF THE PROVISION OF SERVICES, OR OF AN OPERATION ON THEIR OWN BEHALF (1)

à remplir par l'entreprise prestataire (employeur) (2)
to be filled by the employer (2)

Article R. 1263-3 du code du travail

ENTREPRISE ÉTRANGÈRE (EMPLOYEUR) FOREIGN COMPANY (EMPLOYER)

Raison sociale : _____
Business name: _____
Adresse dans le pays d'établissement : _____
Address in country of establishment: _____
N° de téléphone : _____
Telephone number: _____
N° de télécopie : _____
Fax number: _____
Courriel : _____
Email: _____
Forme juridique : _____
Legal status: _____
Immatriculation ou enregistrement de l'employeur dans le pays d'établissement : _____
Registration of employer in country of establishment: _____
Registre : _____
Register: _____
Références de l'immatriculation ou de l'enregistrement : _____

Illustration: preliminary declaration form put on line by the French Ministry of Labour, to be filled in and returned by post http://www.travail-solidarite.gouv.fr/IMG/pdf/IT_300-2.pdf

The need to request a posting certificate for social security is indicated on the CLEISS website¹⁷³, but as this organisation is not authorised to issue the request form, undertakings are faced with the difficulty of identifying the competent organisation, i.e. the health insurance fund to which it is affiliated. There is no link to the health insurance fund to find

¹⁷³ www.cleiss.fr

out whether the request form is available on line. The various forms can be downloaded from the website of the general health insurance fund for workers www.ameli.fr, but no on-line services are proposed and the website is not up to date as the conditions for posting found on the site date back to the system under regulation 1408/71.

The screenshot shows the website www.ameli.fr for employers/entreprises. The main navigation bar includes: Accueil portail, Assurés, Professionnels de santé, Employeurs, Aide, and Plan du site. A search bar is present with an 'OK' button. Below the search bar are buttons for 'Votre caisse', 'Vos services en ligne', 'Vos démarches', and 'Risques professionnels'. The 'Vos démarches' section is active, showing a breadcrumb trail: Accueil > Vos démarches > Détachement à l'étranger > Détachement dans un Etat de l'EEE ou en Suisse. The main content area features a section titled 'Détachement d'un salarié dans un Etat membre de l'EEE ou en Suisse' with a document and email icon, dated 'Dossier mis à jour le 3 juin 2009'. The text states: 'Les modalités de détachement d'un salarié dans un des Etats membres de l'Espace économique européen ou en Suisse résultent des dispositions prévues par les règlements communautaires. En tant qu'employeur, vous avez certaines formalités à effectuer, variables selon la durée du détachement. A noter que des formalités simplifiées sont prévues pour les détachements de courte durée, inférieurs à 3 mois.' Below this is a 'Au sommaire du dossier' section with a bulleted list:

- Détachement inférieur à 3 mois
- Détachement dans plusieurs Etats membres
- Détachement compris entre 3 mois et 12 mois
- Prolongation du détachement au-delà de 12 mois
- Détachement de longue durée

 To the right, there is an 'En pratique' section with 'Questions / Réponses' (1 - Quels sont les Etats membres de l'Espace économique européen ? > Lire la réponse...) and 'Sites utiles' (CLEISS: Le site de référence sur la sécurité sociale à l'étranger : textes des accords internationaux de sécurité sociale, règlements communautaires et conventions bilatérales, et informations sur les régimes de sécurité sociale dans le monde.). A left sidebar contains 'Chiffres utiles', 'Embauche', and 'Détachement à l'étranger' with a list of links:

- Qu'est-ce que le détachement ?
- Détachement dans un Etat de l'EEE ou en Suisse
- Détachement dans un Etat sous convention
- Détachement en Nouvelle-Calédonie
- Détachement en Polynésie française
- Détachement dans un autre Etat

Illustration: information on posting issued on the website of the French general health insurance for workers www.ameli.fr

The German Customs Authority website provides access to the posting declaration form, enabling the user to fill it in on line and to download it to send it back by post or fax to the central administration.

Form for employer	STRASBOURG	date 05.09.2010
Company name:		
House number, street:		
Place, postal code:		
Country of origin:		
Bundesfinanzdirektion West Worthstraße 1-3 50668 Köln Fax: + 49 (0) 221 / 964870		
Registration pursuant to section 18 (1) Arbeitnehmer-Entsendegesetz (Posting of Workers Act) (employer)		
<small>Information pursuant to section 4 (3), second sentence, Bundesdatenschutzgesetz (Federal Data Protection Act): Pursuant to section 18 (1), first sentence and second sentence, Arbeitnehmer-Entsendegesetz (Posting of Workers Act), you are obliged to provide these data. The failure of submitting the registration with these data, the submission of a wrong or incomplete registration or of registrations that are not completed in the required manner or the failure of submitting the registration in due course may constitute an administrative offence punishable by a fine of up to EUR 30,000.</small>		
Sector to which the employees shall be posted:		
Place of employment (or construction site in case of construction services):		
	<small>Exact address (house number, street, place, postal code, or field name if no street name exists)</small>	
Start and probable duration of the		

Illustration: preliminary declaration form put on line on the German Customs Authority website, to be filled in electronically, but to be sent by fax or by post <https://www.formulare-bfinv.de/ffw/form/display.do?%24context=0>

The Belgian work authority and social security administration perform best from this point of view. According to the undertaking's project (carrying out temporary provision of services on Belgian territory or temporary provision of services in another State), the website of the official information and services portal enables users to access the two applications required to carry out the formalities on line.

By using the website <http://www.limosabe.be/>, foreign undertakings can identify themselves to the Belgian labour administration when they post workers to Belgium and an account is opened allowing them to manage their declarations on line. Although LIMOSA is managed by the Belgian National Social Security Office (ONSS), this is an administrative formality that addresses the obligations of service providers with regard to the Belgian labour administration (SPFE).

en | nl | fr | de About Social Security | Contact 

 **international.socialsecurity.be**
working in Belgium - Limosa

Working in Belgium: Limosa

 On Saturday, 4 September 2010, maintenance work will be performed on [the Social Security portal](#). The portal will consequently not be available from 12:00 AM until 7:00 PM.

It will still be possible to submit Limosa declarations, except between 1:00 and 4:00 PM.

We apologise for any inconvenience.

Working in Belgium: Limosa

Are you a foreign company, organisation or self-employed person and do you wish to employ someone in Belgium? Or do you wish to establish yourself in Belgium in order to pursue a temporary or partial activity as a self-employed person? Then you must first meet a number of basic conditions.

On this site, we are building a unique portal, which will considerably simplify your administrative obligations.

How to proceed

- 1 Create account**
In order to submit Limosa declarations, you must have a User ID and a password, so you need to [create an account](#) first.
- 2 Report your activities using the 'mandatory LIMOSA declaration' application**
If you are a non-Belgian employer or self-employed person and you carry out temporary or partial assignments in Belgium, you must declare these activities in advance.

 **Secured Access**

[Register](#)

 **Online Service**

[Mandatory declaration](#)

 **Belgian Limosa users**

 [Portal site for Social Security](#)

Illustration: the Limosa website aims to simplify declaration obligations for foreign undertakings and self-employed workers enabling them to proceed with the posting declaration on line https://www.socialsecurity.be/site_fr/Applics/meldingsplicht/index.htm

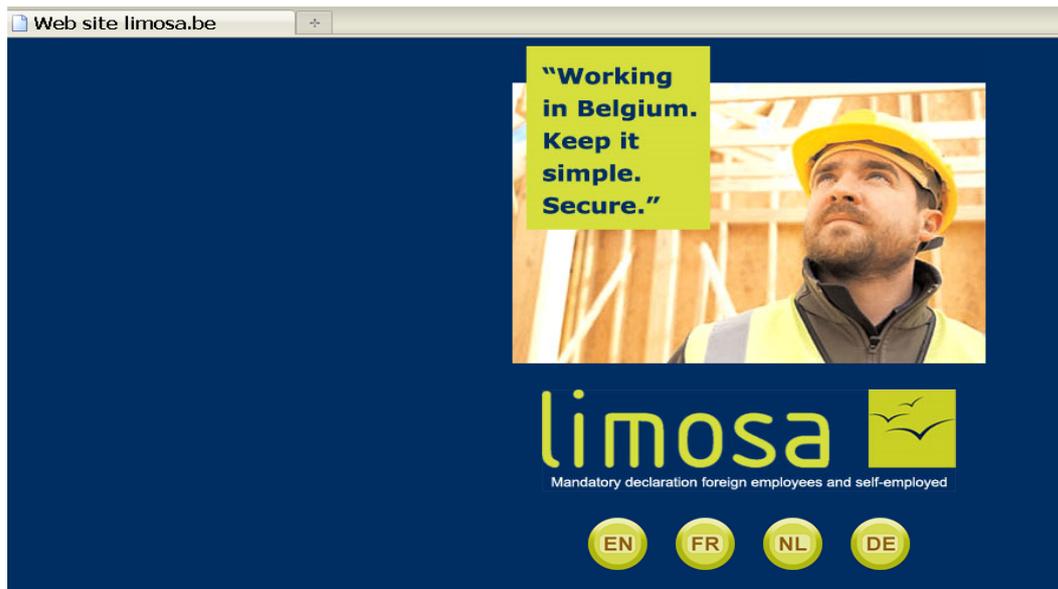


Illustration: homepage of the LIMOSA website, Belgium

The Belgian tool LIMOSA, set up in 2007, is a reference in terms of its easy access and the on-line services offered. The website gives details on the procedure and obligations to be carried out by the service provider and user, indicates the data to be provided, the deadline, and any penalties which may be incurred etc. Service providers who have identified themselves and proceeded with the compulsory declarations receive an acknowledgement of receipt called "limosa 1" which serves as a certificate that they have fulfilled their obligations both for the service user, who must request this document, and the Belgian inspection departments.

The social security administration has also developed a tool for Belgian undertakings that envisage posting staff to another State.

The Gotot application (GrensOverschrijdende Tewerkstelling - Occupation Transfrontalière) on cross-border employment enables users to request a posting authorisation from the Belgian social security administration. Formalities conducted on line lead to the automatic reception of an acknowledgement of receipt. Forms E101/A1 can be obtained by post or directly in a secure, personal zone on the portal website.

Gotot - Détachement

» [Détachement](#)

L'application Gotot (GrensOverschrijdende Tewerkstelling - Occupation Transfrontalière) permet de demander des **détachements de travailleurs** électroniquement.

Le détachement permet d'envoyer un travailleur au travail à l'étranger pour une période limitée pour le compte de son employeur belge, tout en sauvegardant ses droits inscrits dans le cadre de la sécurité sociale belge. Ainsi, le travailleur évite de perdre ses droits ou d'être assujéti à deux systèmes, moyennant un minimum de formalités.

Grâce à Gotot, il est possible d'obtenir facilement une autorisation de détachement auprès de l'ONSS : le demandeur reçoit directement un **accusé de réception** pour sa demande. Ensuite, après le contrôle de fond du dossier, les **documents de détachement** nécessaires (le formulaire E101, A1 ou autre document d'application) sont envoyés à l'employeur belge.

Les documents de détachement sont envoyés à l'employeur sous forme papier (par la poste), mais les employeurs qui ont accès à la zone sécurisée du site portail reçoivent leurs documents électroniquement dans leur e-Box: cette dernière garantit bien entendu un plus court délai de livraison dans la majorité des cas. S'il s'agit d'un détachement exceptionnel, nous devons toujours attendre l'accord du pays de destination avant de pouvoir délivrer le document.
(des informations supplémentaires à propos d'e-Box sont disponibles via la rubrique [e-Box](#))

Infos générales

- [A propos du détachement](#)
- [Manuel Informations spécifiques](#)

Demande

- [Comment faire une demande?](#)

[Demande de détachement](#)

Illustration: the portal of the Belgian social security administration enables users to request the posting certificate on line via the GOTOT application
https://www.socialsecurity.be/site_fr/Applics/gotot/index.htm

Being able to carry out formalities on line undeniably facilitates the task of undertakings and workers. It avoids searching for the appropriate postal addresses, which in terms of posting, can sometimes be varied and hard to identify (e.g. in France, the preliminary declaration to the offices of Direccte¹⁷⁴ in the area where the service is provided, which supposes that the service provider knows the major regions of France in order to identify the right address as the link proposed to identify the list of addresses only gives a list of French regions, when a geographical map would undeniably be more convenient for a foreign service provider. The posting certificate for social security has to be requested from the health insurance office for salaried workers. This scattered approach can be harmful in terms of respecting the obligations and inefficient in terms of processing the data by the collecting administration.

B. Assistance provided

The assistance received by the stakeholders is all the more important as the process can be complex and the websites do not supply exhaustive information translated into the language of the potential user. Assistance therefore constitutes an essential supplement to making

¹⁷⁴ Direction Régionale des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi (Regional Department for Companies, Competition, Consumers, Labour and Employment).

information available. It can come under different forms: providing access to a telephone helpline dedicated to posting (1) or providing other useful contacts for the stakeholders (2).

1. Access to assistance provided by the public authorities

Under article 7 of the Services Directive 2006/123/EC, the Member States must make sure that the service providers and users can benefit from the assistance of the competent authorities as and when required, in particular in terms of supplying the details necessary to contact them directly¹⁷⁵. The posting directive is less categorical on assistance since the article related to cooperation regarding information deals with cooperation between administrations, notably through the setting-up of liaison offices supplying information to the stakeholders. The article has consequently been implemented differently from one public administration to another.

Most public administration websites in charge of posting indicate precise details for the resource structures for stakeholders in the posting process.

The German website <http://www.zoll.de>, indicates different details (phone and email) for undertakings or private individuals according to the language used (English or German). These points of contact are not specifically dedicated to posting.

On the other hand, the Labour and Mines Inspectorate in Luxembourg¹⁷⁶ mentions the existence of a "posting hotline" and proposes a dedicated email address¹⁷⁷.

Along the same lines, the Belgian SPFE website provides details of a structure in charge of informing employers and posted workers in Belgium about general questions regarding labour law and referring them, where appropriate, to the competent departments.

The Belgian example illustrates the diversity of situations regarding the role of liaison offices in terms of assistance.

The national Belgian liaison office considers that the task of assistance as part and parcel of its functions.

¹⁷⁵ Article 7§1 b) of Directive 2006/123/EC: "*1. Member States shall ensure that the following information is easily accessible to providers and recipients through the points of single contact: b. the contact details of the competent authorities enabling the latter to be contacted directly, including the details of those authorities responsible for matters concerning the exercise of service activities*"; Article 7§2. « *2. Member States shall ensure that it is possible for providers and recipients to receive, at their request, assistance from the competent authorities, consisting in information on the way in which the requirements referred to in point (a) of paragraph 1 are generally interpreted and applied.*»

¹⁷⁶ <http://www.itm.lu/detachement-de-travailleurs>

¹⁷⁷ detachement@itm.etat.lu

CONTACTS AND LINKS

Belgian liaison office

The Belgian liaison office is the first point of contact for a foreign employer who wishes to post workers to Belgium. The liaison office is responsible for providing information to employers and workers posted to Belgium about general questions regarding labour law, where appropriate referring them to the competent services.

The liaison office also has the task of ensuring cooperation among the various public services concerned (such as labour inspectorates)

Address of the Belgian liaison office:

FEDERAL PUBLIC SERVICE EMPLOYMENT, LABOUR AND SOCIAL DIALOGUE

In Dutch language :

Algemene Directie van de Individuele Arbeidsbetrekkingen
Ernest Blerotstraat 1
1070 Brussel
Telephone: + 32 (0)2 233 48 22
Fax: + 32 (0)2 233 48 21
E-mail: iab@werk.belgium.be

In French language :

Direction générale des relations individuelles du travail
rue Ernest Blerot 1

Illustration of the details provided in the posting section of the Belgian SPFE website

On the other hand, the French Ministry of Labour only undertakes the task of supplying information in the framework of administrative cooperation with the competent authorities of other Member States. This choice has a negative impact on the assistance given to stakeholders: the posting webpage on the Ministry of Labour's website does not give any precise contact details and refers the user to the work inspectorates of the place where the service is provided, without any further specification.

Additional information

Employers and employees who would like additional information on the transnational posting of workers, or who would like to inform the inspection du travail of certain situations, can contact the direction départementale du travail of the place where their service will be provided in France.

Illustration of the posting webpage of the French Ministry of Labour http://www.travail-solidarite.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/le-detachement-temporaire-en,2452.html#sommaire_6

Supplying precise information from a central or local service which can answer the questions of the parties involved in a posting operation would today seem to be absolutely essential, and here, France does not come up to scratch.

2. Supplying the contact details of other useful sources

Assistance can also be understood as making information available about organisations and structures which can help the stakeholders uphold their rights.

Article 7§1 e) of Directive 2006/123/EC requires Member States to make sure the contact details of associations or organisations other than the competent authorities are easily available via the points of single contact from which service providers and users may obtain practical help. In the same spirit, article 5 of the posting directive requests that "*Member States shall take appropriate measures in the event of failure to comply with this Directive.*

They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive". Bearing this in mind, it would seem relevant to give stakeholders (undertakings and workers) the contact details of organisations capable of helping them uphold their rights.

Presenting trade union organisations in charge of defending the interests of workers and employers in the Host State can help stakeholders who wish to introduce proceedings to ensure that the rights guaranteed under the directive are duly performed.

The Swedish Work Environment Authority website dedicates a page to giving the contact details of Swedish employers' and employees' organisations to inform foreign workers :



- Law and provisions
- Inspections
- Working in Sweden
 - » This is posting
 - » Work permits and residence permits
 - » About the Working Hours Act
 - » Discrimination, parental leave and right of association
 - » Your work environment
 - » Labour legislation and wages**
 - » Taxes and benefits
- Training and permits
- Publications
- Statistics
- About us
- Report work injury
- Links
- Themes by subject

[Startsida](#) » [In English](#) » [Working in Sweden](#) » [Labour legislation and wages](#)

Employers' and employees' organisations

Employers' and employees' organisations represent their members – employers and employees respectively – and have as their assignment to look after the interests of their members. They negotiate together, for example in order to draw up collective agreements and solve disputes.

There are local and central organisations.

On the part of the employees there are trade union federations and trade unions. Most trade unions belong in their turn to one of three federations – LO, TCO or SACO (a number of member unions are listed below under each respective federation).

Trade union federations:

LO – The Swedish Trade Union Confederation

Members of LO:

- [All LO unions](#)
- The Swedish [Building Workers' Union](#)
- The Swedish [Electricians' Union](#)
- The [Building Maintenance Workers' Union](#)
- The [Graphic Workers' and Forest and Wood Workers' Union](#)(GS)
- The [Commercial Employees' Union](#)
- The [Hotel and Restaurant Workers' Union](#)
- The Swedish [Industrial Workers' and Metalworkers' Union](#)(IF)
- The Swedish [Municipal Workers' Union](#)
- The Swedish [Food Workers' Union](#)
- The Swedish [Painters' Union](#)
- The Swedish [Paper Workers' Union](#)
- The Union for Service and Communications Workers (Seko)
- The Swedish [Transport Workers' Union](#)

TCO – The Civil Servants' Central Organisation

Collective Agreement Partners

LO – The Swedish Trade Union Confederation

SE-105 53 Stockholm, Sweden
Phone: + 46 8 796 25 00.
Email: mailbox@lo.se
[Website](#)
[Links to LO affiliates](#)

TCO – The Swedish Confederation of Professional Employees

Linnégatan 14
SE-114 94 Stockholm, Sweden
Phone: +46 8 782 9100
Fax. + 46 8 663 75 20
Email: tco@tco.se
[Website](#)

SACO – The Swedish Confederation of Professional Associations

Box 2206
SE-103 15 Stockholm, Sweden
Phone: + 46 8 613 48 00
Fax. + 46 8 24 77 01
Email: kansli@saco.se
[Website](#)

□

Illustration: the website

http://www.av.se/inenglish/working/labour_legislation/organisations.aspx presents a list of links to the websites of trade union organisations by professional sector

Reports giving details of posting per State on the website <http://www.posting-workers.eu> present all the links to trade union and employers' organisations in the building sector for each Member State.

European Federation
of Building
and Woodworkers



8. Links to useful sources of information

Social bodies:

National Construction Confederation (Employers Association)

<http://www.cnc.es/>

Metalworkers & Related Construction Union– UGT (Workers Union)

<http://mca.ugt.org/>

State Federation of Woodworkers & Related Construction (Workers Union)

<http://www.fecoma.es/Home.aspx>

Illustration: excerpt from the "Spain report" presenting the website details of employers' and trade union organisations in the building sector on the website

<http://www.posting-workers.eu>

Making available the contact details of other professional organisations, such as consular chambers, may also contribute to improving assistance for stakeholders.

C. Availability of brochures and guides

Article 7§2 of Directive 2006/123/EC specifies that the assistance provided by the Member States must include "*a simple step-by-step guide*" and that the information on the parties' rights and obligations should be expressed in "*plain and intelligible language*"¹⁷⁸.

The guides should provide concise, portable information, thereby contributing to the process of disseminating information to the stakeholders.

Many websites do not propose a downloadable guide (this is notably the case of the Spanish Ministry of Labour, the German Customs Authority and the Belgian SPFE website).

¹⁷⁸ Article 7§2 of Directive 2006/123/EC.

An inappropriate title may also have a negative impact on the readability of the information available, which is the case, for example, of the downloadable document on the French Ministry of Labour's website entitled "annex"¹⁷⁹.

An interesting example of an on-line guide dealing with aspects of both labour law and social security on the subject of posting is provided by the website of the Swedish Work Environment Authority¹⁸⁰. The guide compensates for the gaps observed in the website in terms of posting by supplying concise information which is difficult to access on the website as they are buried in the section on "working in Sweden".

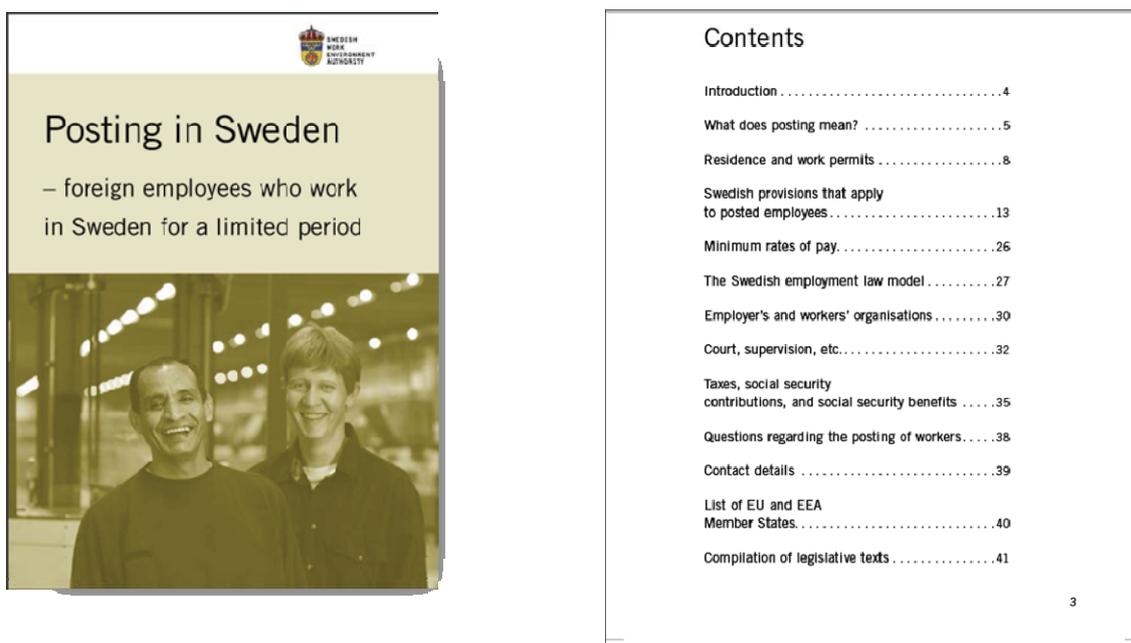


Illustration: the downloadable on-line guide "Posting in Sweden" on the Swedish Work Environment Authority website <http://www.av.se/inenglish/working/>

Each national report can be downloaded from the website <http://www.posting-workers.eu>. These reports deal with all the social aspects of posting, insisting on the need to supply practical information for posting stakeholders in the building sector. The guides can be downloaded in PDF format in their entirety or by theme (pay, health and safety at work etc.).

¹⁷⁹ www.travail-solidarite.gouv.fr/IMG/pdf/Annexe_fiche_Detachement_temporaire_en_France_d_un_salarie_d_une_entreprise_etrangere-3-2.pdf

¹⁸⁰ <http://www.av.se/dokument/inenglish/books/h448.pdf>

Download Report Chapter by Chapter

- 1. Mandatory declarations en it
- 2. Minimum wages en it
- 3. Wage supplements and allowances en it
- 4. Maximum working time and minimum rest en it
- 5. Health and Safety rules en it
- 6. Minimum paid annual holiday en it
- 7. Additional information en it
- 8. Useful links en it



Italy

To contact national social partners, please click below



Download full report in English

Download full report in original language



("Variante di Valico project" (A1 Motorway between Florence and Bologna) © Todini (IT/AGI))



((IT/AGI))

Illustration: Italy report available on the website <http://www.posting-workers.eu>

The public administration websites of the Belgian and Dutch social security administrations are particularly rich in the downloadable guides they offer, which summarise the rules of the posting process. The website of the Belgian social security administration (ONSS) offers brochures that explain the rules concerning posting to Belgium or another Member State.



Illustration: brochures accessible on the ONSS website
https://www.socialsecurity.be/site_fr/Applics/gotot/index.htm
https://www.socialsecurity.be/site_fr/Applics/meldingsplicht/index.htm

Conclusion

The quality of services offered by the websites of public administrations targeting undertakings and workers implies considerable, on-going investment in order to guarantee the precision and accuracy of the information supplied and present the key aspects. The on-line services are still under-developed, with the exception of Belgium which is a pioneer in this field. Set up in 2007, the "Limosa" and "Gotot" applications available to undertakings involved in transnational posting operations are based on two observations: Community law guarantees the free movement of services and people, but these freedoms come within the framework of national regulations. Making use of these freedoms should not distort the terms of competition on the territory of the Member States or jeopardise the level of protection of workers, and more broadly speaking their social model and the mechanisms of solidarity, in

particular via universally applied collective agreement tools and social security systems. The applications used in Belgium enable the Belgian State to check on the stakeholders and draw up reliable statistics while simplifying the formalities for the users. These tools also reflect a remarkable partnership between the different public administrations¹⁸¹ whose needs converge: having a central database at their disposal fed by the stakeholders as they carry out their economic activities and, by pooling data collection, avoiding any overlap of the formalities required.

¹⁸¹ Limosa is based on a partnership between the competent public services in terms of labour, social security, national security and foreign affairs (Ministries and social security systems).

Overall conclusion

To ensure accessibility to quality information and associated services, we first need to consider the objectives targeted not just by a particular administration, but by all those who may benefit from an improvement to the services provided. At a time when one of the aims of the public policies of Member States is to combat fraudulent practices by tightening their legislation and reinforcing controls, they must provide information and assistance services upstream which will enable undertakings and workers to understand their obligations and rights.

Assessing websites dedicated to information on posting means we can evaluate how much more must be done. The States have to overcome a whole gamut of difficulties to improve the information provided for stakeholders.

Dispersion of information may lead to the key information being completely smothered. The structure of public administrations can constitute a real obstacle when the public authorities do not set up a portal helping to clarify the functions of each public service. This observation is particularly true in terms of social security where the information is spread over several systems and/or branches of social security. In this case, it is particularly difficult for users to define the exact nature of their obligations. Setting up a single portal along the lines of the Belgian or Luxembourg model could improve the reliability of the information, either by directly indicating the precise rules on the portal itself, or by giving the reference websites. For this single portal to be efficient, good referencing is an essential factor and can eliminate any competition from inadequate websites which may be better ranked¹⁸². The good referencing of websites undeniably facilitates access to information. The authors of this report sometimes found it hard to identify the right source, i.e. the official websites of the public administrations, even though we had many advantages over the everyday user (knowledge of the content searched, research ability and use of ICTs).

¹⁸² The single Belgian portal is not well referenced from this point of view since when the request "single Belgian portal" is entered, it does not appear in the top 10 results.

The posting of workers carried out within the frame of cross-border service provision constitutes a good illustration of the ability of the Member States to remove obstacles stemming from the dispersion of the rules within the legal paraphernalia and their ability to ensure that foreign persons can access these instruments without the barrier of language.

Improving the quality of the information made available on the websites may seem more immediately attainable by the public administrations: updating the data and structuring the information to improve its readability on the website are relatively simple points to change.

Developing on-line services is on the agenda in various States (France, Luxembourg), even if the services offered may not be so exhaustive. France has scheduled the implementation of a tool for on-line declarations via the "Framide¹⁸³" application (the application should allow work permits to be requested for foreign employees). The Luxembourg administration (ITM) is planning on setting up "e-posting", a service allowing undertakings to carry out the preliminary declarations on line, which will replace the CDS communication system currently available on line in Word format.

It would seem that the difficulties recorded cannot be overcome without assistance being provided by the public authorities and professional organisations whose function is to represent and assist undertakings and workers.

This assessment has enabled us to observe that each website offers advantages which can be exploited to improve the information systems on line. The table hereafter identifies the best practices with a cross. Consequently all interested persons can consult these best practices on the website concerned.

Analysis can lead to a reflection on the adequate level required to disseminate this key information to the stakeholders concerned.

A comparison between the information given on the websites of the public administrations and the social partners in the building sector has often led us to quote the latter as a model. It is better referenced than some national websites, it sometimes provides exhaustive information and it addresses the practical aspects. It is useful in a sector that is particularly affected by transnational postings of workers. Set up in 2009, it remains to be seen how it develops in the future, in particular as far as updates are concerned.

¹⁸³ Framide being a contraction of "France migration détachement" (France migration posting).

However, it cannot replace the information given on a national level by the public administrations, especially if they offer stakeholders on-line services and technical assistance.

It cannot really be compared with public administrations in that it targets all the Member States regarding a single business sector.

It does, however, pose the question of the adequate geographical scope for disseminating the information.

Even supposing that the Member States gradually improve the information they give, our assessment has led us to observe that the main obstacle resides in access to the appropriate websites. The rule put forward in article 5 §3 (ex-article 5 TEC) of the European Union Treaty and Treaty on the functioning of the European Union could be useful: "*Under the principle of subsidiarity, and in areas which do not fall within its exclusive competence, the Union shall only act if, and insofar as, the objectives of the proposed actions cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.*". By virtue of this rule, the role of the European Commission could be to foster the publication of addresses in the section of its website dedicated to posting :

<http://ec.europa.eu/social/main.jsp?catId=726&langId=fr>

This page provides access to the national reports of the 27 Member States in three languages¹⁸⁴. The reports present the rules stemming from the transposition of Directive 96/71. Some are obsolete (e.g. France and Sweden), others give no information on the websites from which the reports were drawn (e.g. Germany), and none deal with the key aspects in terms of social security since their aim is limited to presenting the rules stemming from Directive 96/71.

This page could usefully pad out the information by giving the precise URL address of the pages dedicated to posting in each Member State. This data is already present, but only in a file giving the contact details of the liaison offices, which does not help to make them readily accessible.

Furthermore, the addresses provided are often incomplete either because they refer users to general websites, or because the useful websites are not systematically displayed, or again because the only referral to labour administration websites turn out to be inadequate from the

¹⁸⁴ English, French and German.

point of view of the users. In addition, the page is currently very badly referenced and only well informed users are able to access it.

		Germany	Belgium	Spain	France	Luxembourg	Netherlands	Sweden	European social partners in the building sector						
		http://www.zoll.de/english_version/10_aenig/index.html	http://www.fcta.be/actes/laatste/stand/AnlageA1.htm	http://www.emphymen.be/num_bef/default.asp?x27d=6540	https://www.socialsecurity.be/site_fr/home_default.htm	http://www.mtas.es/gu/idioma/ingles/contenidos/ingles_6_16_3.htm	http://www.seg-social.es/inter.net_6/inter.net/inter.net/legislacion/numeros2/regia8837traBDesCF/index.htm	http://www.travail.solidarite.couv.fr/information-pratiques/99/fiches-pratiques/31/etablissement-salaires/07/annuaire-postes-01/988.html	http://www.ciess.lf/	http://www.ltm.lu/etablissement-de-travailleurs/posting-of-works/32?sel_language=en	http://www.ecss.lu/	http://english.szw.nl/index.cfm?menu_item_id=14&documentid=14632&urltek_id=392437&urltek_id=391971&set_id=3620	http://www.sub.nl/nl/fr/did/	http://www.av.se/en/englis_hvorkaghtis_is/	http://www.posting-workers.eu/
Quality of the on-line content	Up-dating: the example of the minimum legal rate of pay	✓		✓					✓						✓
	Up-dating: the example of new rules coming into force in terms of coordinating the social security systems			✓	✓			✓		✓			✓		
	Social security: rights to services and applicable legislation addressed on the posting webpage				✓				✓						
	Identification of the posting webpage on the site's home page	✓		✓						✓			✓		
Quality of services offered by the website	Forms/form applications available on line	✓	✓			✓	✓		✓	✓					
	Possibility of carrying out administrative formalities on line			✓	✓							✓			
	Access to assistance devoted to posting provided by the public administrations	✓		✓	✓					✓		✓			
	Supplying contact details of other useful stakeholders								✓	✓			✓	✓	✓
	Availability of brochures or guides devoted to posting				✓					✓		✓	✓	✓	✓

ANNEXES:

Germany:

http://www.zoll.de/english_version/f0_aentg/index.html, website of the Customs Authority in Germany in charge of inspecting posting operations under the aegis of the Ministry of Finance (Bunderministerium der Finanzen)

<http://www.dvka.de/oeffentlicheSeiten/ArbeitenAusland/AntragA1.htm>, website of the department in charge of international relations with the "GKV Spitzenverband", a federal public structure representing the legal health insurance funds.

Belgium:

<http://www.employment.belgium.be/defaultTab.aspx?id=6540>, website of the SFPE Federal Public Service for Employment, Labour and Social Dialogue (Service public fédéral Emploi, Travail et Concertation sociale)

https://www.socialsecurity.be/site_fr/home_default.htm, website of the Federal Public Social Security Department (Service Public Fédéral de Sécurité Sociale)

Spain:

http://www.mtas.es/es/guia/texto/guia_6/contenidos/guia_6_15_3.htm, website of the Spanish Ministry of Labour and Immigration

http://www.seg-social.es/Internet_6/Internacional/reglamentoscomunitarios2/regla883/TrabDesCE/index.htm, website of the Spanish Social Security Department coming under the aegis of the Spanish Ministry of Labour and Immigration

France:

<http://www.travail-solidarite.gouv.fr/informations-pratiques,89/fiches-pratiques,91/detachement-de-salaries,407/>, website of the French Ministry of Labour, Solidarity and Public Service (Ministère du travail, de la solidarité et de la fonction publique)

<http://www.cleiss.fr/>, website of the Centre for European and International Liaisons for Social Security (Centre des liaisons européennes et internationales de la sécurité sociale), a

public administrative service in charge of fostering the correct application of Community and international rules working for the public authorities and all the social security institutions

Luxembourg:

http://www.itm.lu/detachement-de-travailleurs/posting-of-workers3?set_language=en,

website of ITM, the Labour and Mines Inspectorate (Inspection du Travail et des Mines) coming under the aegis of the Ministry of Labour and Employment.

<http://www.ccss.lu/>, website of the joint social security centre, coming under the Ministry of Social Affairs and Employment

Netherlands:

http://english.szw.nl/index.cfm?menu_item_id=14640&hoofdmenu_item_id=14632&rubriek_item=392437&rubriek_id=391971&set_id=3630, website of the Ministry of Social Affairs and Employment

<http://www.svb.nl/int/fr/id/>, website of the social insurance bank (Sociale Verzekeringsbank -SVB), a State-controlled public organisation in charge of applying Dutch social insurance

Swede:

http://www.av.se/inenglish/working/this_is/, website of the Swedish Work Environment Authority

"Posting Workers"

<http://www.posting-workers.eu>, website on posting in Europe of the European social partners in the building sector, (ECIF-EFBW)

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