

The case of self-employed - Estonian Labour Inspection

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1. Overview

According to Estonian Tax department's hint, Estonian Labour Inspection carried out inspection on a construction site, related of using migrant workers (KuressaareSoojus AS).

At the construction site were identified Polish employees contractual relationships. At the process of inspection, came out that an Estonian Company (as main contractor) had signed contract with an Austrian company. The Austrian company had to provide and install a boiler heating system for the Estonian Company.

The Estonian Company ordered the installation of the boiling heating system from a Polish Company. Estonian Company did not have any contacts with Polish citizens to provide the installation service at the construction site. At the time of inspection, there were no Polish persons at the construction.

2. Exchange of information and results

Estonia Labour Inspection sent a request to Polish Labour Inspection about the Polish employer through IMI and received the following information: Polish company's registered address, registration date and registered activities. The Polish company's registered activities were construction planning

and installation of burning systems of biomasses. The working place was registered as Europe. The Company wasn't registered as employment agency.

Polish company's work was to install the heating systems for the boilers. According to the Polish law and to the European directive 96/71/EC, the employees were not employees, but sole proprietors (self-employed). Each person was separately registered as such in the Polish Business Register. All these sole proprietors provided for the Polish company.

Estonian Labour Inspection identified that the Polish company was acting legally on the Polish territory and the so-called employees **have never been employees at the company**. The Polish citizens were sent to the construction site in Estonia by the Polish company's Unit as sub-contractors. The Polish company itself was sub-contractor of the Austrian company which had been "hired" by the Estonian company.

The self-employed were working at their own cost and had signed contracts for the specific work in Estonia.

3. Feed back

Posted employees in Estonia work under conditions which are regulated by the "Act of Working Conditions of Workers Posted in Estonia". A Posted employee is a physical person who usually works in a foreign country under an employment contract and the employer posts the employee to Estonia for a specified period. A posted employee's employment contract is applicable to the international law.

The various obstacles arising from the MS posted employee's rights are often similar between different cases, although in Estonia every case is treated separately because the practical experience can't be generalized.

This fundamental aspect is illustrated by the present case. During the inspection processes, different employment relationships are identified on the basis of available information (sole proprietor/contract...), which can't be excluded.

Although state agencies are closely co-operating in Estonia, the time delay is indispensable, such as within MS co-operations. We know from our practice that despite of the case's priority we received through IMI system, it is impossible to always contact employer and then receive the needed information. The problem is not data base using between state agencies but rather as a necessary and accurate data exchange between countries.