

OPEN Summary of Ad-Hoc Query no 2024.44

Posted workers

Answered by: Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta (closed), Netherlands, Poland, Slovakia, Slovenia, Sweden, Portugal (21 in Total)

Launched by: EMN Estonia on 26 July 2024 (deadline 6 September, extended 13 September)

Background:

Estonian Ministry of Economic Affairs and Communications has commissioned a study from the Estonian Qualification Authority to forecast Estonia's foreign labour needs by the year 2035. To better map the volume of foreign labour engaged in the Estonian labour market and the possible future needs, posted workers are also taken into account. For the purpose of the study, this query would like to request information on national regulations and practices (in the framework of the main regulating Directives¹) regarding third-country national posted workers with a focus on any additional conditions set for hiring posted workers (e.g. need to submit a motivated notification to extend the period of employment, sector specific requirements etc.) and on the other hand, if recruitment to specific sectors or occupations is somehow facilitated. Responses from other EMN Member countries will help to put together a comparative analysis between Estonia's practices and those of other countries.

Key points to note:

- **Registration and documentation requirements:** all Member States require the registration of TCN posted workers either before or on the day of posting, with the responsible authority varying across states (e.g., State Labour Inspectorate, Employment Agency). Common documentation includes proof of identity, qualifications, employment contract, social insurance, and health insurance details.
- **Additional conditions:** while 12 Member States reported not imposing additional conditions for TCN posted workers, some do. These conditions may include labour market tests, sector-specific requirements, time limits on postings, and additional documentation requirements, especially for intra-corporate transfers.
- **Sector-specific facilitation:** most Member States do not have a list of eligible sectors for TCN posted workers, except for a few which exempt some sectors from labour market testing or based on regional labour shortages.
- **Employer criteria:** most Member States require employers to comply with basic labour laws when hiring posted workers, such as minimum wage, working hours, and equal treatment.
- **Data collection:** most Member States collect data on TCN posted workers, often through labour inspectorates, police, immigration authorities, and ministries. The data typically includes information on residence permits, visas, work permits, and registration of posted workers.

Main findings:

- ***What are the main registration and documentation requirements for hiring a third-country national posted worker in your Member State?***

All Member States who provided their input to this inquiry, require that the posted worker must be registered in a relevant authority either few days before or no later than the day of the posting and/or data/documentation is gathered when applying for a work permit, visa or residence permit (depending on the period of employment). Relevant authority with which the posted worker must be registered differs in Member States. Most often it is the State Labour Inspectorate (PL, LV, FI, CZ,

¹ Directive 96/71/EC Posted Workers Directive, Directive 2018/957/EU Revised Posted Workers Directive, Directive 2008/104/EC Temporary Agency Work Directive.

EE, NL, SK), Employment Agency/Service (BG, DE, LU, SI, LT), Department of Labour (CY, FR²), Occupational Safety and Health Authority (FI), Immigration Desk/Office (IT, FR³), Inspectorate of Labour and Mines (LU), Work Environment Authority (SE), National Social Security Office (BE), Office of Labour, Social Affairs and Family (SK).

Most often, the documentation requirements include: data about the posted worker (e.g. copy of identity document, proof of relevant qualification) and the employer (employment contract, company name and registry number), data regarding the position (e.g. posting period, characteristics of the service provided/employment, location/country of the posting), proof of social insurance payments and/or health insurance, information on salary, working hours and equal treatment, contact person appointed to communicate with relevant authorities if necessary. In addition, some Member States require the posted worker to submit an extract of police/criminal record (BE if someone stays longer than 90 days, LU, SK, SL) and/or A1 certificate/Portable Document from a social security institution (BE, SI, PT).

- ***Does your Member State implement any additional conditions regarding third-country national posted workers outside the scope of the Directives (e.g. maximum time limit for employment, labour market tests, sector specific requirements, need to provide specific reasons for employment such as increased workload)? YES/NO If you answer yes, please elaborate.***

12 Member States do not implement any additional conditions (BG, CY, CZ, EE, HU, LV, LU, NL, PL, SI, SK, SE), 8 Member States do implement additional requirements or conditions in certain cases (AT, FI, FR, DE, GR, IT, LT, PT). In general, TCN posted workers need to fulfil requirements set in national legislation regarding lawful entry, stay and employment. Some Member States carry out labour market tests. For example, in Austria, a labour market test is always carried out when issuing a work permit. The labour market test is not required for labour market services that cannot be provided by domestic labour force and if a temporary employment permit has been issued. In Finland, if a residence permit for employment is applied for, it may be subject to labour market testing, which means that there will be assessment whether suitable labour is available within a reasonable period of time for the vacancy in question in the local labour market area (EU/EEA area). If appropriate labour is available within a reasonable time period, there is no justification for granting a non-EU citizen a resident permit on the basis of employment. However, some occupational sectors are exempted from the labour market testing.

France has an exception for ICT seconded employees who can stay in France for non-renewable 3-year period and have to submit additional documents, for example as evidence of at least 6 months' seniority in the employing company's group. In some cases, access to the German labour market for posted TCNs requires the approval of the Federal Employment Agency. The Ordinance on the Employment for Foreigners determines different time limits for the employment of posted workers in these cases (e.g. ICT card up to three years). Italy deploys a time limit on the maximum duration of the posting which cannot exceed 5 years. In Lithuania, TCNs require a work permit even if they are only temporarily working in the country. In order to obtain a work permit, the employer must provide information about the foreign worker's qualifications and confirm that the worker has at least one year of work experience in the last three years, related to the job they will be performing in Lithuania. Portugal emphasized that posted workers of all nationalities have the right to the working conditions laid down by law and by collective labour regulations.

- ***Does your Member State implement a list of eligible sectors or occupations where employing third-country national posted workers is facilitated (e.g. sectors with labour shortages)? YES/NO If you answer yes, please indicate in which sectors/occupations and why.***

Majority of Member States do not implement a list of eligible sectors or occupations (AT, BE, BG, CY, GR, CZ, FR, DE, EE, HU, IT, LV, LT, LU, PL, SI, SK, SE, NL, PT). In Finland, some occupational sectors are exempted from the labour market testing, but this is not specific to posted workers. The work permit policies of the Centre for Economic Development, Transport and the Environment include the

² For the mission itself.

³ For the work/residence permit.

occupational sectors that can be regionally justified without the aforementioned testing because the availability of labour has become reduced.

- ***What criteria has to be fulfilled by the employer in your Member State undertaking a third-country national posted worker?***

7 Member States (BE, BG, DE, LT, NL, SI, PT). do not have special criteria set for the employer Most Member States listed the general provisions of labour law that must be complied with such as minimum remuneration, working hours, minimum leave, employee protection, reimbursement of expenses for travel, accommodation, equal treatment, health insurance etc (AT, CY, CZ, FI, FR, GR, LV, SE). Estonia marked that the employer (a company in Estonia) must ensure that the TCN hired for the job has the appropriate training, work experience and state of health as well as the necessary professional skills and knowledge for performing the work. In Italy, a fundamental requirement for the application of posting regulations is the existence of a corporate relationship between the foreign posting company and the host company in Italy. This connection exists when the posting occurs at a production unit of the same company, another company within the same group, or as part of a contract between the company sending the workers and the recipient of the service in Italy.

In Luxembourg, a contract of transnational provision of services must be concluded between the sending firm and the recipient of the service provision based on carrying out its activity in Luxembourg and concerning the precise object or activity limited in time and ending with the execution of the object of the contract. In Poland, the primary requirement in order to be regarded as an employer posting a worker to the territory of Poland, is that a foreign employer must be established and carry out substantial business activities in another Member State, from which he or she temporarily refers a worker to the territory of Poland. Such an activities cannot be carried out for purely internal management or administrative purposes.

- ***What criteria has to be fulfilled by an employer or agency in your Member State that temporarily sends a third-country national posted worker to work in another EU Member State?***

9 Member States noted that there are no special requirements to be fulfilled by the employer for posting to another EU Member State (AT, BG, GR, HU, NL, PL, SK, SE, PT). 10 Member States listed criteria that has to be fulfilled (BE, CZ, EE, FI, FR, DE, LV, LT, LU, SL). For example, in Estonia, an employer that temporarily sends a TCN posted worker to work in another EU Member State must be a legal person or sole proprietor registered or established in a foreign state that is not a resident of Estonia and must have an employment contract with the posted TCN. In Lithuania, temporary employment agencies must not have suspended activities, bankruptcy proceedings, significant fines related to illegal work or labour violations and no outstanding debts. In Slovenia, employer can provide a service across borders if, among other things, the service is provided for its own account and under its own management on the basis of a contract concluded with the customer of the service, a deed on secondment to a related company or within the scope of the activity of providing the work of workers to the user. In Belgium, the employer must provide information whether worker's repatriation has been arranged and if so, how the repatriation is being arranged.

- ***Does your Member State collect data on third-country national posted workers? YES/NO If you answer yes, please indicate which data is collected and by whom.***

Most replied Member States collect data on TCN posted workers (AT, BE, CZ, FI, EE, FR, GR, HU, IT, LV, LT, LU, NL, PL, SK, SI, SE, PT). Authorities that collect the data, are the following: most often the State Labour Inspectorate (CZ, EE, FI, LV, LT, LU, PL, SK), Police/Immigration Authority (EE, HU), Ministry of the Interior (AT, FR), Work Environment Authority/ Authority for Labour Conditions/Occupational Safety and Health Authority (SE, PT, FI), Employment Agency (LU, SL), Tax and Customs Board (EE), Ministry of Foreign Affairs (GR), the Observatory (IT), general Department of Immigration (LU), Social Insurance Institution (PL), Institute of Social Security (PT), National Social Security Office (NSSO) (BE). Most often the data is collected on issued, extended, valid and/or refused residence permits, visas and work permits for posted workers (AT, EE, FR, GR, HU) and on notification/registration for the posted worker, including employment contract and information about the service offered/job (CZ, FI, EE, HU, IT, LT, SK, SI, SE).