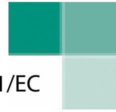

Implementation Report
Directive 96/71/EC concerning posting of workers in the framework of the provision of services

EU Member States: Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia

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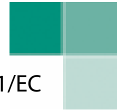

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1. Introduction

This report concerns the implementation of Directive 1996/71/EC concerning the posting of workers in the framework of the provision of services in the ten newest Member States. It is written in the context of Contract reference VC/2005/0038, concerning *Studies on the Implementation of Labour Law Directives in the enlarged European Union*. This report is based upon the reports submitted by national experts[1] to the Commission.

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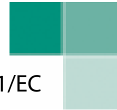


2. Overview

The Directive has been implemented in all the Member States concerned in this report, although there are issues connected to adequate implementation.

In many Member States the implementing legislation is recent. As a result there is a lack of formal studies into its effectiveness and there have only been a limited number of judicial cases in the national courts.

Czech Republic

The Directive was transposed by points 3 and 4 No. 155/2000 Coll., the Labour Code Amendment Act. This amended section 6 paras 2-4 and introduced a new section 5 to the Labour Code. It came into force on May 1 2004.

The Second Labour Code Europeanization Amendment Act (No. 46/2004 Coll.) modified Sec. 6 Para 2 of the Labour Code. It implemented Directive Article 1.3(b) and came into force on March 1 2004.

The New Labour Code has been approved by Parliament through Act No. 262/2006 Coll and entered into force on the 1st January 2007. In Sec. 319 of the New Labour Code, some changes of the posting of workers have been made.

Of relevance are also Sec. 6 para 1(h) of the Employment Act; Sec. 13 to 30 of the Labour Inspection Act and Sec. 7 para 1 of the Civil Procedure Act.

Estonia

Estonia has transposed the Directive by adopting the Working Conditions of Workers Posted in Estonia Act 2004 which took effect on 1 May 2004

Cyprus

The Directive was transposed by Law 137(I) 2002, which came into effect by order of the Council of Ministers on 1 May 2004.

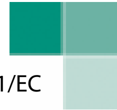
Latvia

The Directive is transposed by Articles 3 and 14 of the Labour Law. The State Labour Protection Law implements Article 4 of the Directive and the Civil Procedure Law is concerned with the implementation of Directive Article 6.

Lithuania

The Law on Amendment and Supplement of Articles of 5, 109, 146, 180, 220 of the Labour Code No. IX-2293 of June 22, 2004, Official Gazette 2004, No. 103-3756.

The Law on Guarantees for Posted Workers of the Republic of Lithuania No. X-199 on May 12 May 2005, Official Gazette, 2005, Nr. 67-2406 (hereinafter referred to as the Law on Guarantees for Posted Workers).



Hungary

Act XVI. of 2001 on the Amendment of the Labour Code transposed the requirements of the Directive. The 2001 Amendment introduced Sections 106/A and 106/B on specific rules for posted employees. The new Chapter XI of the Labour Code also regulated the hiring-out of workers (Section 193/B-193/P). Of relevance also are Act 75 of 1996 on Labour Inspection, sections 1 and 5; Act XCIII of 1993 on Labour Safety, the Labour inspection Act and Law-Decree no 13 of 1979 on international private law, section 61.

Malta

Legal Notice 430 of 2002 (LN430/02), Posting of Workers in Malta: Regulations 2002 transposes the Directive. These are regulations made by the Minister of Labour and supplement the Employment and Industrial Relations Act 2002 (Act XXII 2002 Cap. 452 of the Laws of Malta).

Poland

Articles 67.1 to 67.3 and 281-183 of the Polish Labour Code transpose the Directive. Also of relevance is Article 8(11d) of the Act on the National Labour Inspectorate and the Act of 12 November 1965 on Private international law.

Slovenia

The Directive is transposed by Articles 3 and 213 of the Employment Relationship Act (Zakon o delovnih razmerjih, Ur.l. 42/2002); Also of relevance are the Health and Safety at Work Act and Articles 30 and 13 of the Employment and Work of Aliens Act.

Slovakia

The provisions of the Directive were implemented in Article 5 of the new Labour Code (Act No. 311/2001 Coll. *Zakonnik prace* as amended) effective as of 1 April 2002. In addition, Article 58 stipulates that during a temporary assignment the employee shall have terms and conditions no less favourable than those that would be enjoyed by a permanent employee, doing the same work, taking into account qualifications and experience. Also of relevance is Article 6 Sec. of the Act on Labour Inspection No. 125/2006 Coll., Articles 1 and 3 of the International Private and Process Law and Articles 1 and 3 of the Act on Minimum Salary.

3. Analysis of transposition measures

Article 1: Scope

1. This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.
2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.
3. This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

    a. post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or
    b. post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or
    c. being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

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

Czech Republic

The establishment of undertakings in the Czech Republic is regulated by Section 21 of the Commercial Code. There appeared to be some confusion about whether there was a requirement to apply the Directive to workers posted to another Member State, but this appears to have been resolved with the application of the law being to those workers posted to the Czech Republic.

Directive Article 1.2 is not transposed. The Czech Republic does not have any seagoing vessels. The Directive, however, does not make a distinction between those Member States that have seagoing vessels and those that do not.

Article 1.3(a) and 1.3(b) of the Directive was transposed by Sec. 6 Para 2 of the Labour Code and Sec. 319 Para 1 of the New Labour Code, in the framework of the transnational provision of services.

Directive Article 1.3(c) has not been expressly implemented. There are no special provisions which state that temporary workers hired out by a temporary employment undertaking or placement agency to a user from another Member State come within the legislation. There appears, in Czech law, to be no distinction between employees of temporary employment undertakings or placement agencies and other employees, so the provisions should apply to those workers mentioned in Directive Article 1.3(c).

There appears to be no specific application of Directive Article 1.4. Section 319 of the New Labour Code only refers to 'employees or employers from another Member State who is posted to perform work in the Czech Republic'.

Estonia

Article 1 of the Working Conditions of Workers Posted in Estonia Act (the Act) states that 'the purpose of this Act is to ensure the protection of the rights of workers from a foreign country who have been posted in Estonia in the framework of the provision of services, and fair competition between employers involved in the provision of services.'

There is, therefore, no restriction to undertakings established in a Member State as the Act imposes compliance on all undertakings established who post workers to Estonia. The Act does not provide for a definition of when an undertaking is considered to be established abroad. The explanatory note however provides that a "foreign employer is an employer who is not Estonian resident". According to Article 6 (2) of the Income Tax Act "A legal person is a resident if it is established pursuant to Estonian law" in all other cases a legal person in not an Estonian resident.

Article 2 (2) of the Act provides that the 'Act does not apply to crew members on cargo ships belonging to merchant navy undertakings'. Crew member (laevapere liege) is defined under Article 3 of the Seafarers Act (Mereteenistuse Seadus) as "an individual who is employed on the ship for the fulfilment of employment obligations that in operation of a ship supports or provides services to ship and/or passengers. A seafarer's contract of employment is concluded with crew members"

It appears that linguistically this means the same as the term used in the Directive and is therefore a correct implementation.

Act 2(1) of the Act prescribes three situations which are aimed at implementing Directive Article 1.3. It provides for the application of the Act to, firstly, work at the employer's expense and subject to the employer's management and supervision, on the basis of a contract signed between the employer and a contracting entity resident in Estonia; secondly, to work in one of the employer's branches or in a company that belongs to the same group as the employer; and, thirdly, to the employer who is a legal person or sole proprietor that provides temporary labour.

Article 2(1) of the Act transposing the three posting situations refers only to the relationship between employer and contracting entity. The legal nature of the relationship between an employer and posted worker is defined through Articles 3(1), Article 3(2) and Article 5(1) 1) of the Act. Based on the definitions of a posted worker and an employer (Articles 3(1) and 3 (2) of the Act respectively) it may be concluded that the relationship between an employer and posted worker must be based on an employment contract. Employment contract, as referred in the Act, articles 3(1) and 3(2) and as defined in Article 1 of the Employment Contracts Act, is not limited to a written employment contract. However as provided by Article 28 (1) of the Employment Contracts Act employment contract for a period longer than two weeks must be in a written form. This condition of a written employment contract is even more stringent for posted workers. According to Article 5(1) 1) one of the conditions established in Estonian that is applicable to posted workers is a written employment contract. Thus, contrary to Article 1(3) of the Directive the Act prescribes existence of the written employment contract for posted workers. Thus the notion of 'employment

relationship' as provided by the Directive is reduced under national law to the notion of a 'written employment contract'.

Directive Article 1.4 is implemented by the fact that the Act applies equally to undertakings in Member States and non-Member States.

Cyprus

Directive Article 1.1 is repeated verbatim by Article 3(1) of Law 137(I) 2002.

The exclusion of merchant navy undertakings (Directive Article 1.2) is carried almost verbatim into the Cypriot law. The latter, at Article 3(3), provides that it 'shall not apply to merchant navy undertakings as regards seagoing personnel'

Directive Article is repeated verbatim by Article 1.3 is repeated by Article 3(2) of the Law.

Directive Article 1.4 is replicated in Article 3(4) of Law 137(1) 2002 ensuring that undertakings established in a non-Member State are not given more favourable treatment than undertakings established in a Member State.

Latvia

Commercial companies are established from the moment of their registration in the public registrar (Article 135(2) of the Commercial Law).

Article 14 (5) of the LL provides that the provisions of Article 14 of the LL shall not apply to ship's crews of merchant fleet undertakings. This appears to mean the same as the exclusion in Directive Article 1.2.

Article 14 (1)(1) of the LL implements Article 1(3) of the Directive stating that within the meaning of LL, the posting of an employee shall mean those cases where, in connection with the provision of international services, the employer, on the basis of a contract which he or she has entered into with a person for whose benefit the work will be performed,

- sends an employee to another State;
- sends an employee to another State to a branch or to an undertaking that is part of the group of companies; or
- a placement agency as employer sends an employee to a person for whose benefit the work will be performed, if the undertaking of such person is located in another State or it performs its operations in another State.

There is a requirement for there to be an employment relationship between the undertaking making the posting and the posted worker.

Directive Article 1.4 is not specifically implemented but the LL applies equally to wokers from companies established in Member States and in non-Member States.

Lithuania

There are no provisions in the Law on Guarantees for Posted Workers explicitly stating when an undertaking is truly established and what criteria are applied.

The Law is applicable where a worker is posted to perform temporary work in the territory of another Member State and for the workers posted by other States to perform temporary work in the territory of Lithuania:

1. under a contract for the provision of services or performance of work as concluded by the employer with a customer operating in that Member State, or
2. in a branch, representative office of the undertaking or undertaking of the group of the employer ("group of undertakings" is defined as a group consisting of a controlling undertaking and controlled undertakings as specified in the Law on European Work Councils (para 5 Article 2), or
3. as an employee of a temporary employment undertaking (para 1 Article 3) (temporary employment undertaking is defined as a legal or natural person engaged in the posting of its employees to perform temporary work for another person for that person's account and under his direction (para 7 Article 2)).

There is no reference to a framework of the transnational provision of services.

The Law does not apply to the seagoing personnel of merchant ships, which are subject to the Maritime Shipping Law (para 3 Article 3). This appears to correspond with the definition in Directive Article 1.2.

Undertakings established in a non-Member State must not be given more favourable treatment than undertakings established in a Member State (para 1 Article 1).

The Law on Guarantees for Posted Workers applies to employees, i.e. those who are in an employment relationship with the undertaking making the posting. An employment relationship is the relationship which exists between the employer and the employee under the employment contract. The parties may not establish working conditions that are contrary to the Labour Code, regulatory acts or collective agreements.

Hungary

An undertaking is established in a Hungary if its personal law is Hungarian law. According to Section 18 of Law-Decree No. 13 of 1979 on International Private Law the legal capacity and economic capacity of a legal entity (employer) shall be adjudged according to its personal law. The personal law of a legal entity is the law of the state, in the territory of which the legal entity was registered.

The regulations cover all employees of foreign employers performing work in Hungary within the framework of posting, temporary assignment or hiring-out of workers (Section 1 of the Labour Code). There appears to be no specific reference to the framework of the transnational provision of services.

Merchant navy undertakings are excluded from the protection provided by Section 106/A of the Labour Code as regards seagoing personnel (Section 106/B Subsection 1).

Sections 106/A-106/B of the Labour Code cover three categories of workers: employees working in the framework of posting, temporary assignment or hiring-out of workers. The need for an employment relationship is provided by the fact that posting, hiring out and temporary assignment is only possible in the context of an employment relationship. The Labour Code does not define an employment relationship but

- posting (kiküldetés) covers those situations, in accordance with Article 1.3.(a) of the Directive, when the employer obliges his/her employee for economic reasons to work temporarily at places other than the normal place of work (Section 105 Subsection 1 of the Labour Code). The Labour Code provision on posting (sending out) refers to an employee of an employer, which suggests that it covers only employment relationships. Moreover, the condition of applying this provision is that the posted employee continues to work under the employer's direction and instructions. These are fundamental characteristics of an employment relationship in Hungarian labour law.
- temporary assignment (kirendelés) covers those situations, in accordance with Article 1.3(b) of the Directive, when the employer obliges his/her employee to perform work on a temporary basis at another employer owned by the Group. Hungarian law also allows for the assignment of workers in this category to employers who are part owned by the assigning employer.
- the hiring-out of workers (munkaerő-kölcsönzés), which is also in accordance with Article 1.3(c) of the Directive, refers to when an employee is hired out by a temporary employment company or a placement agency to a user enterprise for work, if there is an employment relationship between the worker and the temporary employment company or the placement agency (Section 193/C of the Labour Code).

The Labour Code provisions on posted workers (Section 106/A-106/B) cover all foreign employers and do not distinguish between undertakings established in a Member State or a non-Member State. The requirement for an employment relationship during the posting is guaranteed, as posting, temporary assignment or hiring-out is possible only in an employment relationship (Section 105, 106, 193/C).

Malta

The Regulations (3(2))exclude all personnel employed on vessels falling under the Merchant Shipping Act (Cap234 of the Laws of Malta). This is a broader restriction than the Directive provides for. It appears not to be restricted to sea going personnel or to merchant navy undertakings.

The Regulations (3(1))apply to the extent that the foreign undertakings send posted employees to Malta on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or send posted employees to an establishment or to an undertaking in Malta which is owned by the foreign undertaking, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or being temporary employment undertakings or placement agencies, hire out a worker to a user undertaking established or operating in Malta, provided there is an employment relationship between the temporary employment undertaking, or placement agency and the worker during the period of posting.

A 'foreign undertaking' is defined as an undertaking which is established in a State other than Malta.

There are no provisions for the implementation of Directive Article 1(4). It is not clear whether this could lead to 'more favourable treatment', in terms of the relationship with the posted worker, as there is a requirement that posted workers should not receive less favourable conditions compared to other employees falling within the scope of EIRA (Regulation 3(3)).

Poland

The scope of the Directive covers undertakings but the provisions in the Labour Code apply to employers. There appear to be no detrimental consequences from this as Article 3 of the Labour Code defines an employer as any organisational entity, even where it has no legal personality, as well as a natural person, if they employ any employees.

Article 67[1] of the Labour Code states that the provisions of Chapter IIa of Section 2 of the Labour Code, titled 'Employment conditions of employees posted to work within the terrritory of the Republic of Poland from the Member States of European Union' apply to employee posted for a fixed period by an employer, for reasons of performance of any contract concluded by this employer and the foreign entity, by reason of the performance of a job in its foreign branch office or as a temporary employment agency.

There is no reference to the posting of employees within the framework of the transnational provision of services but it is suggested by the national author that the text and title of the provisions indicate a broader application.

The text of provisions nor titles does not indicate that they concern only situation when employees are posted in the framework of provision of services. Such formulation of the title may suggest provisions should be applicable also in situations not limited only to the provision of services.

The provisions are applied to employers who post employees under a contract concluded by the employer and the foreign undertaking or to their foreign branch office or by a temporary employment agency for which services are intended. The requirements of the Directive appear to be met by these provisions, including the need for an employment relationship as all references are to employers and employees.

Seagoing personnel of merchant navy undertakings are excluded.

Slovenia

There is no specific mention of Directive Article 1.1 in the ERA, but foreign undertakings must meet the same conditions for providing services as undertakings established in Slovenia. Article 213 applies to measures in which a foreign worker was posted to work in Slovenia by a foreign employer according to the foreign law. There is a definition of a foreign company contained in the Employment and Work of Aliens Act.

Directive Article 1.2 has not been transposed.

Para 1 Article 213 ERA provides that a worker who has been posted to the Republic of Slovenia on the basis of a contract governed by foreign law for a limited period of time will need to abide by the conditions laid down by the Employment and Work of Aliens Act. This appears to be the method for ensuring that all posted workers are protected by the ERA in the same way as national workers. There does not seem to be specific mention of the three categories described in Directive Article 1.3.

Article 1 3(c) was transposed through Articles 57 -62 of the ERA. These Articles define the rights and obligations existing between the employer, temporary worker and the user. It states that the employer who engages in the activity of providing workers to another employer must conclude an employment contract with such workers. There are no specific provisions in national law which would apply specifically to workers posted by an employment agency.

Directive Article 1.4 has not been transposed into the national law.

Slovakia

Article 5 Sec.2 of the Labour Code states that the employment relationship of employees who are posted by their employers for the performance of work from a European Union Member State territory to the territory of the Slovak Republic shall be governed by the Labour Code, special regulations or a relevant collective agreement.

There is no reference in the Code to the 'transnational provision of services'.

According to Article 3 Sec. 2 of the Labour Code 'labour relations of transportation employees, members of ships' crew flying the flag of the Slovak Republic, employees of private security services and professional sports people shall be governed by this Act, unless stipulated otherwise by a special regulation'. There is a special regulation, the Act on International Private and Process Law, which says that employment relations between members of ships' crew (engaged by either a river or navy undertaking) flying the flag of other than the Slovak Republic and their employers shall be governed by the national legislation of the state under which flag the vessel is operated. Thus employees working for employers who operate ships (either a river or seagoing vessel or merchant navy) under the Slovak flag are covered by the Labour Code.

Directive Article 1.3 has not been explicitly implemented apart from the contents of Article 5 which applies the Labour Code to posted workers. There is no consideration of the different categories contained in Directive Article 1.3, so there are no measures specifying that workers in these situations are posted workers to whom the implementing measures apply, nor is there any requirement set out for such posted workers to have an employment relationship with the sending undertaking, nor is there any requirement for contractual relations as in Article 1.3(a).

Directive Article 1.4 is not explicitly transposed into the Slovak Labour Code, but through Article 36 of Act on IPPL. Foreign employees posted to perform work in Slovakia from a non-EU state shall be treated as if they were Slovak employees, i.e. under the whole Labour Code or other applicable foreign legislation under their agreement, however, to the extent that this does not contravene Slovak laws, mainly the Labour Code. On the other hand, employees posted from the EU Member State are guaranteed their minimum and maximum terms and conditions as provided in Article 5 Sec. 2 of the Labour Code. Based on this,

Directive Article 1.4 has been implemented correctly, though not explicitly into the Labour Code.

Article 2: Definitions

1. For the purposes of this Directive, 'posted worker` means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.
2. For the purposes of this Directive, the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.

Czech Republic

There is no specific definition of a posted worker, nor any definition which refers to workers being posted for a limited period of time**,** except that there is reference to the fact that if an occupational activity can no longer be considered as being exercised temporarily, within the meaning of the Directive, then 'all the binding rules and regulations on labour relations in the Czech Republic apply'.

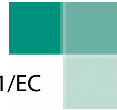
The Labour Code covers all employees. Section 319 applies to employees, who are, according to Article 6 of the New Labour Code, individuals or natural persons who have acquired 'the capacity to have rights and duties as an employee in labour relations and the capacity to acquire these rights and take on such duties by his own legal acts…'.
Other state public officials will be regulated by Act No. 218/2002 Coll., on the Civil Service, which has yet to come into force. Regional and municipal clerks are regulated firstly by the Labour Code and then by the Act No. 312/2002 Coll., on Regional Autonomies Officials. There are also special regulations for Managers, based on nomination.

Estonia

Article 3 (1) of the Act provides a definition of a posted worker. The posted worker is defined as 'a natural person who usually works in a foreign country on the basis of an employment contract, and whom the employer has posted to work in Estonia for a certain period, in the framework of the provision of services'.

According to Article 3 (1) of the Act 'A contract concluded in a foreign country concerning an employment relationship is considered to be an employment contract for the purposes of this Act if that agreement complies with the provisions of the Republic of Estonia Employment Contracts Act relating to employment contracts.' An employer for the purposes of the Act is defined in Article 3 (2) as 'a legal person or sole proprietor registered or established in a foreign country that is not a resident of the Republic of Estonia and with whom the posted worker has signed an employment contract.'

The requirement for a written employment contract for posted workers appears to be narrower that the notion of 'employment relationship' provided in the Directive.



Cyprus

Cypriot law defines posted worker as a worker normally working in the territory of a member state, who is posted by the undertaking in the territory of the Republic in accordance with article 3.2 of the present law (which corresponds to Directive article 1.3), in order to work there for a limited amount of time.

Worker is defined as a person working for another person either under an employment contract or under conditions from which an employment relationship can be derived.

Latvia

A posted worker is defined, in Article 14(2) of the LL, as an employee who for a specified period of time performs work in a state other than the state in which he or she customarily performs work.

An employee is, according to Article 3 of the LL, a natural person who, on the basis of an employment contract for agreed work remuneration, performs specific work under the guidance of an employer.

Lithuania

Para 6 Article 2 of the Law on Guarantees for Posted Workers, a posted worker is defined as an employee who is habitually employed in the territory of Lithuania, but has been posted by the employer temporarily to perform work in another Member State as well as a worker who is habitually employed in another state, but has been posted temporarily to perform work in the territory of Lithuania.

An employee is a natural person, possessing legal capacity in labour relations employed under an employment contract for remuneration (Article 15 Labour Code). A natural persons' legal capacity in labour relations is defined as a legal ability of nationals, foreign nationals and stateless persons, who are permanently residing in Lithuania, to exercise labour rights and undertake labour obligations (para 1 Article 13 Labour Code). All employees are included in the definition, including those in the public and the private sector and there are no workers or groups of workers who are excluded from the scope of the implementing legislation.

Thus, it is explicitly stated in Lithuanian Law on Guarantees for Posted Workers that it applies to employees, i.e. to those who have an employment relationship with the undertaking making the posting. An employment relationship is the relationship which exists between employer and employee under the employment contract.

Hungary

The Labour Code does not contain a definition of a posted worker. However, it is clear from the definition of posting that a 'posted worker' is an employee who is obliged by his/her employer for economic reasons to work temporarily at places other than the normal place of work. This definition does not expressly state that this other place may be another Member State.

The Labour Code provisions on posting refer to an employee of an employer, which clarifies that it covers only employment relationships. Moreover, the condition of applying this provision is that the posted employee continues to work under the employer's direction and instructions. These are fundamental characteristics of an employment relationship in Hungarian labour law (Act XVI. of 2001 amending Section 105 of the Labour Code passed the present definition of posting).

Malta

Regulation 2 of LN 430/02 defines a posted worker as an employee of a foreign undertaking who does not normally work in Malta, but who for a limited period of time is sent by the foreign undertaking to work in Malta.

Under Article 2 of the EIRA an employee is any person who has entered into or works under a contract of service, or any person who has undertaken personally to execute any work or service for, and under the immediate direction and control of another person, including an outworker, but excluding work or services performed in a professional capacity or as a contractor for another person when such work or service is not regulated by a specific contract of service. Worker has the same meaning as employee under the EIRA, apart from the law dealing with industrial relations.

Poland

Article 67^1 of the Labour Code states that the provisions of Chapter IIa of Section 2 of the Labour Code, which is titled 'Employment conditions of employees posted to work within the terrritory of the Republic of Poland from a Member State of the European Union' are applied in the case of performance of work on the territory of the Republic of Poland by the employee posted to this job for a fixed period by an employer from another Member State. Article 2 of the Polish Labour Code defines an employee as 'a person employed based on an employment contract, appointment, election, nomination or co-operative employment contract'.

Slovenia

Paragraph 3 of Article 3 of the ERA states that in case of workers posted to the Republic of Slovenia by a foreign employer on the basis of an employment contract pursuant to foreign law, the ERA shall apply to this relationships in accordance with the provisions (Article 213 ERA) regulating the position of workers posted to work in the Republic of Slovenia. Article 213 defines specifically which minimum rights are to be guaranteed to posted workers in Slovenia. Paragraph 1 of the mentioned Article states that a worker, who has been posted to perform work in the territory of the Republic of Slovenia by a foreign employer on the basis of an employment contract in accordance with the foreign law, shall carry out work for a limited period in the Republic of Slovenia under the conditions laid down in regulations governing the work and employment of foreign citizens (The Employment and Work of Aliens Act).

According to Article 5 a worker is a natural person who has, on the basis of a contract of employment, entered into an employment relationship with an employer and who, on the basis thereof, has been provided with compulsory social insurance by the employer.

The definition of a posted worker contained in the Employment Relationship Act is not limited only to workers who carry out their work in the territory of a Member State but any State. Thus it is said to apply not only to workers posted to Slovenia, but also to workers posted to any Member State.

Slovakia

In the Labour Code, posted worker means 'an employee who, for a limited period of time, performs work on the territory of a Member State other than the State in which he normally works' (Article 5 Sec. 4 of the Labour Code).

Worker is defined under Article 11 Sec. 1 as an employee who is 'a natural person who in labour-law relations and, if specified by special regulation also in similar labour relations, performs dependent work for the employer pursuant to the employer's instructions, for a wage or for remuneration'. The definition includes private and public sector employees.

Article 3: Terms and conditions of employment

1. 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 which, in the Member State where the work is carried out, are laid down:

   - by law, regulation or administrative provision, and/or
   - by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:

     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. (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.

   For the purposes of this Directive, the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.

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

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

3. Member States may, after consulting employers and labour, in accordance with the traditions and practices of each Member State, decide not to apply the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) when the length of the posting does not exceed one month.
4. Member States may, in accordance with national laws and/or practices, provide that exemptions may be made from the first subparagraph of paragraph 1 (c) in the cases referred to in Article 1 (3) (a) and (b) and from a decision by a Member State within the meaning of paragraph 3 of this Article, by means of collective agreements within the meaning of paragraph 8 of this Article, concerning one or more sectors of activity, where the length of the posting does not exceed one month.
5. Member States may provide for exemptions to be granted from the first subparagraph of paragraph 1 (b) and (c) in the cases referred to in Article 1 (3) (a) and (b) on the grounds that the amount of work to be done is not significant.
   Member States availing themselves of the option referred to in the first subparagraph shall lay down the criteria which the work to be performed must meet in order to be considered as 'non-significant`.
6. The length of the posting shall be calculated on the basis of a reference period of one year from the beginning of the posting.
   For the purpose of such calculations, account shall be taken of any previous periods for which the post has been filled by a posted worker.
7. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers.
   Allowances specific to the posting shall be considered to be part of 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.
8. 'Collective agreements or arbitration awards which have been declared universally applicable` means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.
   In the absence of a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

   - collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or
   - collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory, provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.
     Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:
   - are subject, in the place in question or in the sector concerned, to the same obligations as posting undertakings as regards the matters listed in the first subparagraph of paragraph 1, and
   - are required to fulfil such obligations with the same effects.

9. Member States may provide that the undertakings referred to in Article 1 (1) must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out.
10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, 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.

Czech Republic

Act No. 255/2005 Coll., Amending Collective Bargaining Act, which has been in force since 1 July 2005, stipulates a new Sec. 7 of the Collective Bargaining Act. It established a standard administrative petition of both social partners regulated by the Administrative Procedure Code to the Ministry of Labour and Social Affairs. The Ministry shall review it if a petition fulfils the conditions stipulated by Sec. 7 of the Collective Bargaining Act. If so, the Ministry shall announce in the Collection of Laws sectors to which this sectoral collective agreement shall be extended. In the new régime these sectoral collective agreements were extended to:

1. building and construction (the communication of the Ministry of Labour and social affairs No. 433/2005 Coll. as amended by the communication of the Ministry of Labour and social affairs No. 53/2006 Coll.)
2. glass and ceramics (the communication of the Ministry of Labour and social affairs No. 55/2006 Coll. as amended by the communication of the Ministry of Labour and social affairs No. 429/2006 Coll.)
3. textile, garment & leather (the communication of the Ministry of Labour and social affairs No. 106/2006 Coll.)
4. road transport (the communication of the Ministry of Labour and social affairs No. 366/2006 Coll.)

There are no national collective agreements.

Section 319(1) of the New Labour Code implements Directive Article 3.1 and provides that the regulation of the Czech Republic applies to employees posted to perform work in the in the territory of the Republic as regards

i). the maximum length of working time and minimum rest periods
ii). minimum length of paid annual leave
iii). the minimum wage, minimum wage rates and premium payments for overtime work
iv). the conditions of work in the case of employment by an employment agency
v). occupational safety and health
vi). the working conditions for pregnant employees, employees who are breastfeeding, and female employees until the end of the ninth month after childbirth and for adolescent employees.
vii). (vii) equal treatment for male and female employees and the prohibition of discrimination

Sections 109 to 150 of the New Labour Code apply to the minimum wage and related matters.

There is no implementation of Directive Article 3.2.

Section 319 para 2 of the New Labour Code implements Directive Article 3.3 by providing that if the posting last for 30 days or less (excluding posting by an employment agency to perform work), then the provisions relating to the minimum wage shall not apply**.** Of concern is that also excepted are the guarantees relating to annual leave, which is not permitted by the Directive. Alternatively this also implements Directive Article 3.5, by establishing that the criteria for non-significant is a period up to 30 days and thus implementing Directive Articles 3.3 and 3.5.

The derogation in the previous Labour Code (section 6 para 3) was adopted after wide consultation with the social partners.

There is no application of Directive Article 3.4.

The length of the posting is calculated on the basis of a reference period of one year from the beginning of the posting (Sec. 319 para 2 of the Labour Code).

Section 319(1) para 2 provides, with regard to the implementation of Directive Article 3.7, that the guarantees contained therein shall not apply if there are more advantageous rights ensuing from the statutory provisions of the Member State from which the employee is posted.

Directive Article 3.8 is not applicable.

Directive Article 3.10 is not taken advantage of.

Estonia

Article 4 (2) of the Act provides that extended collective agreements may apply to the working conditions of posted workers. The application of extended collective agreements is regulated by Article 4 (4) of the Collective Agreements Act. Hence, Article 4 (4) of the CAA provides that a collective agreement entered into between an association or federation of employers and a union or federation of employees and a collective agreement entered into between the central federation of employers and the central federation employees may be extended by agreement of the parties in respect of the wage and working and rest time conditions.

Two extended collective agreements are concluded in the health and transport sectors. Currently there are no extended collective agreements in the construction sector. Under national law extended collective agreements may only cover wages and working and rest time conditions

The working conditions applicable to posted workers are listed in Article 5(1) of the Working conditions of workers posted in Estonia Act. These are:

i). a written employment contract;
ii). a standard for working time, including the standard limit on overtime, total working time and reduced working time;
iii). rest periods, including on-call time, weekly and between-shift rest periods and breaks during the working day, except for holidays and breaks that are paid for from state budgetary funds;
iv). free time for ante-natal examination;
v). limits to the use of employees in overtime, work during the evening and at night, as well as on days of rest and national and state holidays;
vi). the conditions for the calculation of total working time;
vii). wage rates;
viii). the conditions for the payment of additional remuneration for overtime work and work done during the evening and at night and on days of rest and national and state holidays, or the compensation of the said work with the granting of free time;
ix). limits on deductions from wages;
x). payment in the event of transfer to other work or temporary release from work duties as a result of a work stoppage or production emergency;
xi). compensation for delay in payment of wages or final settlement;
xii). the duration of the annual holiday, as well as the granting of vacation time at a time that is suitable to the worker, apart from holidays for which payment is made from state budgetary funds; the amount of the vacation pay, the procedure for its calculation and the monetary compensation of unreceived vacation in the event of the termination of an employment contract;
xiii). equal treatment and equal opportunities.

Article 5 (2) of the Act refers to Article 14 of the Working and Rest Time Act and the Occupational Health and Safety Act as norms applicable to posted workers.

The ECA provisions relating to women who have recently given birth, children and people apply equally to posted workers.

These provisions cover the subject matter listed in Directive Article 3.1(a) to (g) with the exception of Directive Article 3.1(d). In Estonia there are no regulations referring to the hiring out of workers and to temporary employment agencies. As a result all workers, including posted ones, come within the scope of the ECA.

The Act provides that posted workers must be guaranteed the working conditions listed in Article 5 which also apply to Estonian workers. With regard to the implementation of Directive Article 3.7, however, if a foreign State of the posted worker provides for more favourable working conditions than provided under Estonian law, then according to Article 4 (3) of the Act, the posted worker shall enjoy the more favourable working conditions of the foreign-state. The exception to this rule are the provisions of the Occupational Health and Safety Act and Article 14 of the Working and Rest Time Act. According to Article 5 (2) of the Act, Article 14 of the Working and Rest Time Act and the Occupational Health and the Safety Act apply to posted workers, even when these are less favourable for posted workers than the provisions of foreign legislation.

Article 5 (3) of the Act implements Article 3.2 of the Directive, provides that the working conditions related to wage rates and the duration of the annual holiday will not apply. This is only applicable in the case of a maximum eight-day posting. According to Article 5(5) of the Act this exception does not apply if the work to be done by the posted worker is connected with construction work.

For determining the reference period Article 5(4) of the Act provides that "the periods of time worked by another worker posted to Estonia by the same employer for the performance of the same work in the year leading up to the commencement of the posting shall be taken into consideration ..."

No advantage is taken of Directive Articles 3.3, 3.4 or 3.5.

Article 5(4) of the Act provides that "the periods of time worked by another worker posted to Estonia by the same employer for the performance of the same work in the year leading up to the commencement of the posting shall be taken into consideration ..."

In relation to payment and calculation of wages for posted workers, Article 5 (6) of the Act provides that "remuneration paid in cash in connection with the posting shall be considered to be part of a worker's wages, unless these are paid for the compensation of travel, accommodation or meal expenditures incurred during the course of the posting."

Article 3.10 of the Directive is implemented by Articles 4(2) and 5(2) of the Act. Article 4(2) states that 'Regardless of the choice of law to be applied to employment contracts, the application of the working conditions specified in section 5 of this Act in accordance with Estonian law, other legislation and the provisions of section 4(4) of the Collective Agreements Act pertaining to extended collective agreements must be guaranteed for posted workers.' Section 5(2) begins 'Section 14 of the Working and Rest Time Act and the Occupational Health and Safety Act shall apply to posted workers, even when these are less favourable for posted workers than the provisions of foreign legislation..'.

Cyprus

Article 4(1) of the Cypriot Law restricts the scope of applicability of collective agreements to the activities listed in the Annex of the Directive, in other words to the construction industry. No other collective agreements have been rendered a compulsory source of terms and conditions of employment of posted workers.

Article 4.1 of the Cypriot law guarantees to posted employees the applicability of terms and conditions applicable in Cyprus and listed in paragraphs (a)-(g).

Article 4.1(a) and 4.1(b) repeat verbatim Directive Articles 3.1(a) and 3.1(b).

Article 4.1(c) refers to Directive Article 3.1(c), except for the exclusion of supplementary occupational retirement pension schemes. This exclusion is contained In Article 4.2, which also defines the term minimum wages.

Article 4.1(d) implements Directive Article 3.1(d) but also adds the term 'or undertakings supplying workers'.

Article 4.1(e) repeats Directive Article 3.1(e) verbatim.

The protective measures with regard to the terms and conditions of employment of pregnant women or women who had recently given birth, of children and of young people is regulated by law. Maternity rights are secured through the Maternity Protection Law No 100(1)/1997 (last amendment Law (64(I)/2002). The employment of under 15-year-old children is prohibited.

The issue of equality of treatment between men and women and other provisions on non-discrimination is regulated by the Law for Equal Treatment of Men and Women in Employment and Occupational Training, which came into force on 1st January 2003; the law on Equal Pay between Men and Women; the Law for Equal Treatment of Men and Women in Issues of Social Security; and the Law for Equal Treatment of Men and Women on Occupational Plans for Social Security.

Article 5.1 follows the text of the Directive Article 3.2, except for subsection 5.2 which provides that it does not apply to the activities in the construction industry listed in the Annex, as provided in the second paragraph of article 3.2 of the Directive. The Annex of the Cypriot law is identical to the Annex appended to the Directive. In the cases of workers posted for less than 8 days, the provision of the Directive Article 3(6) is applied for calculating the length of the posting, thus it is calculated on the basis of a reference period of one year from the beginning of the posting. Also for the purpose of such calculations, account is also taken of any previous periods for which the post has been filled by a posted worker.

Directive Articles 3.3, 3.4, 3.5, 3.9 and 3.10 are not taken advantage of.

Directive Articles 3.6 and 3.7 are repeated verbatim by Articles 6 and 7.

Latvia

There are provisions in law recognising general collective agreements and single undertaking agreements. LL Article 14(3) provides that working conditions and provisions for posted workers may not be less than those of a Latvian employee provided by law and generally binding collective agreements. There is, however, no specific requirement that requires collective agreements to be applied to posted workers.

Article 20 of the LL provides that a collective agreement should be applicable to all employees within the field it covers, i.e. both to trade union members and unorganized workers. Article 20 (1) states that 'collective agreements shall be binding on the parties and its provisions shall apply to all employees who are employed by the relevant employer or in a relevant undertaking of the employer, unless provided for otherwise in the collective agreement.'

The only exception from its universal application is provided in part 2 of Article 20 of the collective agreements and it is a case of a more favourable clause included in the labour contract. Article 20 (2) of the LL provides that an employee and an employer may derogate from the provisions of a collective agreement only if the relevant provisions of the employment contract are more favourable to the employee.

Article 14(3) of the LL provides that if an employee has been sent to perform work in Latvia, then, irrespective of the law applicable to the employment contract and employment legal relationships, such an employee who has been sent, shall be ensured the working conditions and employment provisions provided for by Latvian regulatory enactments, as well as by

collective agreements which have been recognized as generally binding and which regulate: maximum working time and minimum rest periods; minimum annual paid leave; minimum wage rates, as well as supplementary payment for overtime work; provisions regarding securing a workforce, especially through a work placement agency; safety, health protection and hygiene at work; protection measures for persons under 18 years of age, for pregnant women and women during the period following childbirth, as well as the provisions of work and employment of such persons; and equal treatment of men and women, as well as prohibition of discrimination in any other form.

There appear to be no measures with respect to Directive Articles 3.2 to 3.10.

Lithuania

Article 4.1 of the Law on Guarantees for Posted Workers provides that, whatever the law applicable to the employment contract or employment relationship, a posted worker must be applied the provisions and regulatory enactments of the state to whose territory the worker is posted to perform temporary work, including extended sectoral or territorial collective agreements, insofar as they concern:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates;
- the conditions of employment of workers of temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of young people, pregnant women, women who have recently given birth and are breast feeding;
- prohibition of discrimination at work.

As the definition of posted worker includes those posted temporarily to Lithuania, it must be assumed that Article 4 also applies to such posted workers. The list of provisions in Article 4.1 fulfils the requirements in Directive Article 3.1(a)-(g).

Directive Article 4.2 is implemented by para 5 Article 4 which provides that guarantees related to minimum annual holidays, minimum rates of pay and overtime rates, should not apply where initial assembly and/or first installation of goods is an integral part of a contract for the supply of goods and necessary for taking the goods supplied into use and is carried out by the skilled and/or specialist workers of the supplying undertaking, if the period of posting does not exceed eight days. This exception does not apply in situations where a posted worker carries out building work in the territory of Lithuania as provided for in the Law on Construction.

Directive Articles 3.3 – 3.5 are implemented by Para 4 Article 4 which states that where a worker is posted to perform temporary work in the territory of another Member State under a contract on the provision of services or performance of work, as concluded by the employer with a customer operating in that Member State, or in a branch, representative office of the undertaking or undertaking of the group of the employer, the guarantees related to the minimum rates of pay, including overtime rates, do not apply where the period of posting does not exceed 30 days. There is no information as to whether representatives of employers or labour were consulted.

The length of a posting is calculated by adding up all calendar days of the posting or postings over a period of one year from the beginning of the first posting in order to provide a reference period (Directive Article 3.6).

Where the legal provisions of a state, whose law is applicable to an employment contract or employment relationship, provide to workers more favourable conditions than the provisions of paragraph 1 of the Article 4 the Law on Guarantees for Posted Workers, the legal provisions of the state whose law is applicable to the employment contract or employment relationships are to apply (para 3 Article 4).

In accord with Directive Article 3.7 para 2, per diem allowances for posted workers, with the exception of expenditure on travel, board and lodging actually incurred on account of the posting, are to be considered to be part of the minimum wage (para 2 Article 4).

Para 2 Article 52 of the Labour Code states that where the provisions of a sectoral or territorial collective agreement are important to an appropriate sector of production or profession, the minister of social security and labour may extend the scope of application of the sectoral or territorial collective agreement or separate provisions thereof, establishing that the agreement should be applied with respect to the entire sector, profession, sphere of services or a certain territory if such a request has been submitted by one or several employees' or employers' organisations which are parties to the sectoral or territorial collective agreement. There are no such generally applicable collective agreements. There is no generally applicable collective agreement in the construction sector.

The advantage of first indent of Article 3.10 allowing for the application of public policy provisions relating to terms and conditions of employment not listed in Article 3.1. is not taken up by the national legislation.

Hungary

The statutory provisions for posting, temporary assignment or hiring-out of workers are contained in Section 106/A-106/B of the Labour Code. These sections refer to the relevant parts of the Labour Code which are to be applied to posted workers. These are maximum working time (Section 117) and minimum rest periods (Section 122), minimum annual paid leave (Section 131), minimum wages (Section 144), conditions of the hiring-out of workers (Chapter XI), occupational safety (Section 1 of Act 93 XCIII. of 1993 on Labour Safety), access to employment or work by pregnant women or women who have recently given birth, of children and of young people (Section 121, 128), the principle of equal treatment (Section 5).

Minimum wage covers the basic wage and any consideration paid for special work duty and remuneration paid for working abroad. Supplemental payments to pension funds and the part of reimbursed expenses in connection with working abroad, such as the costs of travel and room and board, that are not subject to personal income tax, are not included in the minimum wage (Section 106/A Subsection 4).

Beyond the conditions listed by Section 106/A Subsection 1, there are no other terms and conditions applied to posted workers.

Section 106/B Subsection 2 complies with Article 3.2 of the Directive which concerns the exclusion of terms relating to minimum paid annual holidays and minimum rates of pay in cases of workers posted for less than 8 days and those carrying out initial assembly or first

installation of goods. In the case of initial assembly and/or first installation of goods, where this is an integral part of a contract and carried out by workers posted by the supplying enterprise, the provisions of Section 106/A shall not apply in terms of minimum paid annual leave and minimum rates of pay if the period of posting does not exceed eight days. Construction work is an exception from this rule as it is defined by Section 106/A Subsection 2.

No advantage is taken of Directive Articles 3.3-3.5.

According to Section 106/A Subsection 3, the special provisions shall not apply if the posted employee is subject to more favourable regulations by virtue of the relevant labour law or the parties' agreement to the contrary, provided that this results in more favourable terms for the employee.

In respect of Directive Article 3.8, Hungarian labour law is based on statutory regulation, and there is no system of nationwide collective agreements. In the majority of industries collective agreements have a supplementary and minor role. There is only one provision about collective agreements in the Labour Code in this respect. As regards employers engaged in construction work, in terms of the defined terms and conditions, the workers shall be subject to collective agreements covering the entire industry or an entire sector provided the given collective agreement provides more favourable conditions (Section 106/A Subsection 2). The collective agreement for the construction industry was extended to the entire sector in March 2006.

The Labour Code does not take advantage of Articles 3.9 or 3.10 of the Directive.

Malta

There are no universally applicable collective or sectoral collective agreements in Malta. If workers are posted to undertakings where collective agreements apply, these agreements are to be taken into consideration in order to ensure that the conditions of work of the posted employee are not less than those provided for in the collective agreement

Regulation 4 provides for the terms and conditions of employment which must be applied in the case of those employees which fall within the scope of the Regulations and Directive.

Regulation 4(1) provides that the conditions of work which are given to posted employees shall not be less than the minimum conditions of work given to a comparable employee by virtue of the EIRA, or any regulations issued thereunder or any other legislation or by virtue of a collective agreement regulating the class of employment.

Regulation 4(1) also provides that any allowances specific to the posting granted to the posted employee, shall be considered to be part of the wage payable to a comparable employee, unless they are paid as a reimbursement of expenses actually incurred on account of the posting, including expenditure on travel, board and lodging.

Regulation 4(2) provides that when workers are sent to Malta they shall have the same minimum conditions as a Maltese national working in the same establishment who is engaged for the same or similar work. Posted workers shall therefore be entitled to receive equality of treatment as to comparable Maltese employees. These workers shall also be entitled to have equal access to employment rights and health and safety rights under

Maltese law. For the purpose of Regulation 4 and the term 'equality of treatment' includes: maximum work periods and minimum rest periods; minimum annual paid holidays; minimum rates of pay and overtime rates; equality of treatment between men and women and other provisions of non-discrimination; protective measures with regards to terms and conditions of employment protecting pregnant women or women who have recently given birth; measures protecting children and young people; measures relating to health, safety and hygiene at work; and conditions of hiring out of workers, in particular the supply of workers by temporary employment undertakings.

Regulation 4(3) provides that they do not apply, in respect of holidays and rates of pay, in cases of initial assembly and or first installation of goods where such activity is an integral part of a contract for the supply of goods necessary for taking the goods supplied into use and carried out by the skilled and, or specialist workers of the supplying organisation, where the posting does not exceed eight days.

However, the Directive provides that this exclusion shall not apply in the case of those activities in building work, as listed in the Annex to the Directive. Such activities are listed under the proviso to Regulation 4(3).

When a period of posting does not exceed one month, the posted employee is not entitled to the minimum rates of pay, including overtime rates as applied to various classes of employees, in respect of those situations in 1.3(a) and 1.3(b) of the Directive.

No advantage is taken of Directive Articles 3.4 or 3.5.

The length of posting shall be calculated on the basis of a reference period of one year from the beginning of the posting. For the purpose of such a calculation, account shall be taken of any previous periods for which the post has been filled by a posted worker.

Directive Article 3.7 is implemented in Regulation 4(1) and the second para of Directive Article 3.7 is repeated almost verbatim in Regulation 4(1) para 2.

The principle of equality of treatment contained in Regulation 4(2) has been extended by local regulation to include conditions of hiring out of workers, in particular those supplied by temporary employment undertakings.

There is no application of Directive Article 3.10.

Poland

There are no universally applicable collective agreements. As a result of Article 9 of the Polish Labour Code, collective agreements are a specific source of labour law. It is possible to conclude establishment-level collective agreements and multi-company collective agreement.

The statutory implementing measure of Article 3 of the Directive is Article 67^2 of the Polish Labour Code. This provides that the employment conditions concern norms and periods of work and daily and weekly rest periods, holiday leave period, minimum wages, rate of overtime allowance, health and safety at work, rights related to parenthood, employment of young people, anti-discriminatory measures and provisions on temporary workers.

Paragraph 2 provides that the provisions of this Article may not be applied to workers performing initial and/or first installing works except for construction works if the period of posting does not exceed eight days, in relation to holiday leave, minimum wages and overtime levels.

The relevant employment conditions are contained in Article 67[2](1). This list complies with the requirements of the Directive in Article 3(1). Protection for the employment conditions of adolescents and children were added in June 2006. Minimum pay is regulated by the Act of 10 October 2002 on minimum pay for work.

No advantage is taken of Directive Articles 3.3, 3.4 and 3.5.

There is no reference to the length of the posting as in Directive Article 3.6.

The implementation of Directive Article 3.7 is ensured in the manner in which Article 67[1] is formulated.

The provisions of Directive Article 3.9 of the Directive are implemented in Article 67[1](2) of the Labour Code.

Slovenia

The terms and conditions of employment of posted workers are included in the general act defining employment relationships, as well as in collective agreements. Currently, there are two general collective agreements in force in Slovenia (for Private and for the Public sector), However the collective agreement for the private sector was revoked on July 1 2006. The collective agreement for the private sector was generally applicable and it has to be applied to posted workers where its provisions are more favourable than those set out in the Employment Relationships Act.

A general clause on the position of posted workers is included in Article 213 of the ERA. Other provisions of the Act such as the minimum wage, the principle of non-discrimination and annual leave also apply to posted workers.

All matters listed in Directive Article 3.1, except for temporary employment relationships, are also listed in Article 213, paragraph 2 of the ERA which explicitly states that an employer must ensure the posted worker the rights according to the regulations of the Republic of Slovenia and according to the provisions of the general collective agreement, which regulate working time, breaks and rests, night work, minimum annual leave, wages, safety and health at work, special protection of workers and equal treatment, if these are more favourable to the worker. Temporary employment relationships are regulated by Articles 57 to 62 of the ERA, but there is no mention of provisions concerning posted workers.

Article 213 (3) ERA is implemented by Directive Article 3.2 and states that in case of temporary initial works, which are an integral part of the contract for the supply of goods, which do not exceed eight working days and are carried out by skilled workers of the supplier, the provision of the previous paragraph shall not apply in the part referring to the minimum annual leave and wage. However, this provision does not apply in the construction sector.

Article 213 (4) of the Employment Relationship Act states that where the provisions for the posted worker are more favourable in the Member State of the posted worker, then the requirements of Article 213(2) will not apply in relation to wages (for those contained in Directive Articles 1.3(a) and 1.3(b)) when the length of the posting does not exceed one month.

Articles 3.5 and 3.6 have not been transposed into national law

National law does not take advantage of Directive Article 3.10 in relation to public policy provisions. The collective agreement for the private sector, as already stated, has to be applied where its provisions are more favourable.

Slovakia

Minimum standards guaranteed to posted workers to be observed by the posting employer in Slovakia are provided for in the Labour Code, the Act on Employment Services, the Act on Health and Safety at Work, the Antidiscrimination Act, several hygiene regulations, company collective agreements and industry collective agreements.

There is no method for making collective agreements universally applicable. Company or industry collective agreements also apply to posted employees within the scope of the terms and conditions listed in Article 5.2 of the Labour Code.

Article 5 Sec. 2 provides that 'labour-law relations of employees who are posted by their employers for the performance of work to other employers from a Member State territory to the territory of the Slovak Republic shall be governed by the Labour Code, special laws or a relevant collective agreement, and which regulate: the length of the working time and rest periods; the length of holidays; minimum wage, minimum wage claims and wage overtime rate; occupational health and safety; working conditions for women, adolescents and employees caring for child younger than three years of age; equal treatment for men and women and a prohibition of discrimination'. The Labour Code generally states that posted employees shall be entitled to be treated, in relation to these, as if they were employees under the Slovak Labour Code. This means that the minimum and maximum protective rules as stated in the Labour Code will apply also to employees posted to Slovakia.

Directive Article 3.1(d) is not included and the Slovak Labour Code is silent about protective rules and conditions of hiring-out workers. As a result, employees posted by a temporary agency undertaking shall be treated as if they were regular employees of the regular employer who is doing the posting if they do have an employment relationship with the employer/temporary employment agency who is making the posting (Article 58 of the Labour Code refers to temporary agencies).

Article 5 Sec. 5 of the Labour Code states that the provisions on annual paid holidays and minimum rates of pay shall not apply in cases of initial assembling or first installation of goods which are the main component of the contract for the delivery of goods, which are necessary in order to start using the goods delivered, and which are executed by qualified employees or specialists of the supplier, unless the term of posting exceeds eight days within the last 12-month period from the beginning of the posting. However, this will not apply in the field of building works.

Directive Articles 3.3, 3.4 and 3.5 are not taken advantage of.

Article 3.6 of the Directive has not been transposed into the Labour Code.

The Labour Code (Article 5. Sec 3)stipulates that the provisions in Article 5 Sec. 2 of the Labour Code shall not prevent application of terms and conditions of employment which are more favourable to workers. In addition, the Labour Code stipulates that each employment claim shall be considered individually.

With regard to allowances specific to the posting, the Slovak Labour Code sets down that travel allowances shall not be considered to be part of the minimum salary (Article 118 Sec.2 of the Labour Code). Contrary to this, the Slovak translation of the Directive rules that allowances on account of the posting shall be considered to be a part of the minimum salary whenever they are paid in reimbursement of expenditure actually incurred as the expenditures expenditure on travel, board and lodging.

Directive Articles 3.9 and 3.10 have not been taken advantage of.

Article 4: Co-operation 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.

Czech Republic

Sec. 6 Para 1(h) of the Employment Act provides that the Ministry of Labour and Social Affairs of the Czech Republic is the competent national body for providing any information. If it does not have this information, then it will obtain it from other Czech authorities.

The provision of information is done informally. The Ministry of Labour and Social Affairs provides a lot of information via its web sites in both Czech and English.

Estonia

According to Article 6 (1) 'The Labour Inspectorate shall make information available and answer reasoned requests for information concerning Acts, other legislation and extended collective agreements that apply to posted workers.

Article 6 (2) provides that the Labour Inspectorate shall answer reasoned requests for information concerning sole proprietors and legal persons that serve as employment intermediaries, and also concerning instances in which they have violated legislation or undertaken illegal international activities.

Article 6 (3) provides that the Labour Inspectorate shall co-operate with other Member States of the EU and the corresponding institutions of the Member States of the EEA.

The Act does not provide for any specific procedures on how the Labour inspectorate must make information available and how reasoned requests should be answered. To meet the information requirements provided by the Directive in practice the official internet page of the Labour Inspectorate contains information regarding posted workers in English. The internet page includes information on the law applicable to posted workers as well as contact information of the responsible individual at the Labour Inspectorate.

Cyprus

The wording of the Cypriot law follows that of the Directive.

Article 9 provides that the supervision and monitoring of the implementation of the law is assigned to the “supervising authority”, elsewhere (article 2) defined as the Minister of Labour. Articles 10(1) and 10(2) of the Cypriot law then proceed to define the areas in which the Labour Minister is obliged to provide information: the conditions of work as set out in articles 4-6 of the Cypriot law which employers must guarantee to workers posted to Cyprus (art. 10(1)) and issues related to such conditions of work as these are requested by the competent authorities of other member states, including manifest abuses or possible cases of unlawful transnational activities (art. 10(2)).

Latvia

The State Labour Inspectorate is the designated national body.

Directive Article 4 is implemented by Article 9(2) of the State Labour Inspection Law. The State Labour Inspection Law provides that the Labour Inspectorate will co-operate with competent institutions of the European Union Member States, particularly in relation to information on the posting of employees. Information is generally available on the web sites of the relevant institutions.

The State Labour Inspectorate were not able to provide any examples of practice.

Lithuania

The designated body is the State labour Inspectorate.

The State Labour Inspectorate is obliged to provide, free of charge, information or co-operate otherwise with the competent bodies of other Member States with regard to the application of the conditions to posted workers as well as with regard to violations of the guarantees provided for posted worker. It is also required to ensure that information about the provisions of the regulatory enactments of Lithuania, including extended sectoral or territorial collective agreements, with regard to the conditions specified in paragraph 1 of

Article 4 of the Law on Guarantees for Posted Workers and applied to a posted worker are available to employers of the Member States (para 3 Article 5).

The State Labour Inspectorate, at its own initiative and/or at the request of the competent bodies or posted workers of other Member States, must carry out verifications to ascertain whether posted workers' guarantees are not violated (para 4 Article 5).

Hungary

The designation of the National Inspectorate and the Mining Authority fulfils the requirements concerning competent national bodies. Section 2 Subsection 3 of the Labour Inspection Act is the only provision on co-operation and information. According to this provision, the National Labour Inspectorate and the Mining Authority will prepare reports for the Ministry of Economics on experiences gained from investigations regarding compliance with labour standards – except occupational safety – deriving from Articles 106/A and 106/B on posted workers. This report will contain the necessary information and the results of their investigations. There is no time limit for preparing the report and there is no available information about it.

There are no further rules on co-operation and provision of information.

Malta

Regulation 6(1) provides that the Director of Employment Relations must cooperate with the European Commission and other authorities having corresponding responsibilities in other Member States on issues relating to the application of Directive 96/71/EC. This includes requests for or the provision of information on trans-national hiring-out of workers.

The Commission Code of Conduct on Cooperation Standards has been implemented by the local Department, and brought to the attention of all inspectorate staff. Besides the code, the Department is in possession of a set of forms to be used by the requesting administration. These forms are used whenever a request for information is made by a national authority.

Regulation 6(3) provides that the Director has the duty to facilitate access to information on the terms and conditions of employment. The local Directorate now has its own web page which directs the user to the main legislation, the Employment and industrial Relations Act, and to all the legal notices issued thereunder, including the Wage Regulation Orders. The Department is currently in the process of including on the website specific information on the posting of workers.

Poland

The Polish liaison office is the Polish National Labour Inspectorate.

The obligation of co-operation with EU Member States institutions is provided in Article 8(11d) of the Act of 6 March 1981 on The National Labour Inspectorate. It states that the scope of the National Labour Inspectorate's activity comprises in particular the cooperation with other EU Member States' authorities responsible for supervision of the terms and conditions of employment of employees posted to work in their territory for a limited period set by the employer that has its seat in a Member State.

Such co-operation consists of the provision of information with regard to employment terms of employees posted to work within the territory of a Member State for a fixed period set by the employer based in Poland. The Polish National Labour Inspectorate provides a web site in English and other foreign languages and there is some important information concerning employment relations in Poland, as well as employment conditions and other important issues. If a person is interested in a particular issue, then she or he may ask the National Labour Inspectorate for help. The request will be settled as soon as possible and no later than 30 days after the request or 60 days if the request for an answer was complex.

Slovenia

Article 213/ 6 ERA provides that the designated body for monitoring and for cooperation and dealing with requests is The Employment Service. Accordingly, the Employment Service will monitor and provide information on the terms and conditions of employment of workers who are posted to work in Slovenia by a company registered in another Member State. The Employment Service publishes regular reports with data on the developments on the Labour Market which are available to the general public. They also provide all the necessary data to all the other public bodies/ and all other interested public which make written requests to them about the data which they keep in their records.

The Ministry of Labour and Social Affairs is the main designated body which has a duty to provide the necessary information.

There are no further rules or procedures which would further define the provision of information.

Slovakia

According to the Act on Labour Inspection No. 125/2006 Coll., effective as of 1 July 2006, the National Labour Inspectorate has been designated as the competent national body in Slovakia (Directive Article 4.1).

The Act on Labour Inspection stipulates that the National Labour Inspectorate is obliged to provide information on working conditions:

a. to citizens of the Slovak Republic and citizens of the Member States about working conditions in the Slovak Republic (according to what is said in Article 5 Sec. 2 of the Labour Code) as well as about the working conditions in other Member States,
b. to competent bodies of the European Union and bodies of the Member States about working conditions in the Slovak Republic (according to what is said in Article 5 Sec. 2 of the Labour Code).

Article 6 Sec. 1 point o) of the Act lays down that the National Labour Inspectorate is obliged to cooperate with the competent bodies of the European Union and bodies of other Member States in examining, controlling and assessing working conditions according to Article 5 Sec. 2 of the Labour Code.

Procedure and rules for provision of information and dealing with requests is governed by Act No. 211/2000 Coll. on Free Access to Information and an internal directive issued by the National Labour Inspectorate. The law says that the National Labour Inspectorate shall make

accessible and publicly known only information that is currently available to the National Labour Inspectorate.

Offering advice to employers and employees shall be free of charge (Article 2 Sec. 1 point c) of the Act on Labour Inspection), except for postal fees or fees for making photocopies. Information provided in person, by phone or electronic post shall also be provided for free.

The internet page of the National Labour Inspectorate contains a little information on working conditions to be followed up by employers who are posting workers to perform work in the territory of Slovakia as the posted employees. The information is quite general and is available only in the Slovak language.

Article 5: Measures

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.

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.

Czech Republic

In the Czech Republic there are no statutory conciliation/mediation bodies for individual labour law disputes. The procedure available for the settling of individual labour disputes is that of court proceedings. There are no special courts in the Czech Republic, which would be called upon to deal with individual labour conflicts. Private law disputes go to general courts: district, regional, high, and the Supreme Court of the Czech Republic. These are subject to civil proceedings before a court, on the same footing as other civil court proceedings (Act No. 99/1963 Coll. Civil Procedure Code, as amended). Labour disputes are judged by panels consisting of one professional judge and two lay judges (courts of first instance), or by panels consisting of three professional judges (courts of appeal). Public law disputes go to the administrative branch of regional courts and then to the Supreme Administrative Court.

Directive Article 5 was implemented by the normal methods of dealing with breaches of labour law, especially Sec 13 to 30 of the Labour Inspection Act.

As posted workers are treated in the same way as other workers, such workers will have full access to the Czech courts during and after their period of work in the country, so will have the right to take action in the Czech courts after the posting had finished.

Estonia

According to Article 8 (1) State supervision over compliance with the requirements of this Act are to be exercised by the Labour Inspectorate.

The enforcement of the obligations is regulated by Article 6 and 7 of the Act. According to Article 7 (1) Posted workers have the right of recourse to the courts of the Republic of Estonia for the protection of the rights guaranteed by the Act. This however "does not limit their right to bring their claim to the courts of a foreign country, if such a right arises from an international agreement". Workers may bring proceedings after the period of posting has been completed, but Article 7 (2) of the Act states that "the limitation period for claims arising from this agreement is four months, and in the case of wage claims three years, from the day following that on which the posted worker became aware or should have become aware of the violation of his or her rights".

The general procedure for bringing claims for breach of obligations provided under national law is applicable. The Act does not provide for any special procedures for the purposes of the Directive.

Cyprus

No information is available as to the implementation of the rights of posted workers to institute proceedings. The Cypriot law does not specify who can bring an action against an employer for non-compliance, but this cannot be interpreted to preclude the posted workers themselves. The courts of Cyprus are appointed as the competent courts, subject to the right to institute proceedings in another state, in accordance with existing international conventions, including after the posting has finished.

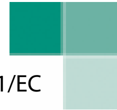
Article 8(1) provides that undertakings following within the scope of the legislation on posting of workers are obliged to submit to the Ministry of Labour and Social Insurance the following information, before the posting: Name, address and legal entity of the undertaking, the legal representative of the undertaking and representative in the Republic (if such a representative exists), place of work of posted workers, date of commencement of the provision of services, duration of posting, nature of activity and personal details of posted workers. However, according to the national author, such information is often not provided by the undertakings and as a result the competent authority is not aware of cases of the posting of workers. No measures have been taken in order to address this and no sanctions have so far been imposed, nor have any monitoring procedures been introduced in order to become aware of such violations.

Latvia

There are no special measures in respect of Directive Articles 5 or 6.

Sanctions for breaches of the LL and other acts regulating employment relations could be of a civil or administrative nature. A civil sanction is compensation paid to the employee. Administrative sanctions which consist of a fine imposed by the State Labour Inspection due to the low capacity of the Inspection may not be, according to the national author, regarded as effective, proportionate and dissuasive.

Posted workers are able to enforce their rights in the Latvian courts, as national workers, even after the posting has ended.



Lithuania

The State Labour Inspectorate is not specifically empowered to oversee compliance of employers with requirements of the Directive, but it does have a general obligation to monitor, control, inspect and redress infringements of legal requirements governing employment relationships. It also appears to act as the liaison office for the purposes of Directive Article 4.1.

The State Labour Inspectorate, at its own initiative and/or at the request of the competent bodies or posted workers of other Member States, may carry out investigations to ascertain whether posted workers' guarantees are being violated (para 4 Article 5). There is no information either on how workers enforce obligations under the Directive or what kind of such abuses have taken place yet.

The employer posting a worker to perform temporary work in the territory of Lithuania for a period exceeding 30 days, or to carry out building work as provided for by the Law on Construction is due in accordance with the procedure laid down by the Ministry of Social Security and Labour, to notify in advance the territorial division of the State Labour Inspectorate of the posted worker's place of employment of the provisions as specified in paragraph 1 of Article 4 of this Law on Guarantees for Posted Workers and applied to this worker. (Order No.A1-169 of the Minister of Social Security and Labour "Concerning the Description of the Order of Notification about Posted Workers" of June 16, 2005). There is no information how these procedures are implemented in practice.

Employers are required to keep the documents relating to a posted worker within the time limits and in accordance with procedures laid down in the laws of Lithuania.

Workers posted to the territory of Lithuania may apply to courts of Lithuania for non-performance or undue performance of the guarantees provided for under the Law on Guarantees for Posted Workers in accordance with the procedure laid down by the Code of Civil Procedure (Para 1 Article 6). Disputes concerning the guarantees specified in the Law on Guarantees for Posted Workers may be, at the choice of the worker, examined in accordance with the procedure laid down by legal acts of Lithuania for examining labour disputes (para 2 Article 6). The law provides for a possibility for the posted worker to choose proceedings existing in the country where s/he normally works or Lithuania. Workers and/or their representatives may use the procedures available for labour dispute resolution, as envisaged by the Chapter XIX of the Labour Code.

Posted workers are able to take action in the Lithuanian courts even after the posting has finished providing their claims meet the requirements of statutory limitations applicable to the specific claim.

There is no information how this works in practice.

Hungary

There have been no specific measures adopted to prevent abuses or to establish adequate procedures for workers or their representatives to enforce obligations under the Directive (Article 5). The only possibility for workers to enforce obligations under the Directive is through the National Labour Inspectorate. However, there is no available information on such cases.

The National Labour Inspectorate is responsible for investigating the compliance with Section 106/A of the Labour Code regarding posted workers. The National Mining Authority is responsible for the labour inspection of mining companies. The labour inspector may impose all the sanctions provided by the Labour Inspection Act such as labour fines (Section 6-7).

According to Law Decree 13 of 1979 on International Private Law, Hungarian courts shall have jurisdiction in employment-related lawsuits filed by employees against employers if the place of regular employment is in Hungary or was last in Hungary; and/or the place of business of the employer where the employee was actually employed is in Hungary, provided that the place of regular work neither is nor was in the same country (Section 61). Section 61 does not include those situations when an employee works temporarily at places other than the normal place of work (posting).This provision exclusively refers to employment when the employee works at the place of business of his/her employer. If the employee works in the framework of posting, temporary assignment or hiring-out in Hungary, then the worker is regularly posted to the place of business of another employer. Consequently, the Hungarian Labour Courts do not have jurisdiction in employment-related lawsuits filed by posted employees against employers. Thus, the rights of posted workers to institute the labour court proceedings are not provided for in Hungary, as Section 61 of Law Decree 13 of 1979 on International Private Law does not comply with Article 6 of the Directive. However the Labour Law department of the Labour Ministry insists that Section 61 covers posted workers as well. There are no specific guarantees with respect to the second part of the sentence in Directive Article 6.

Malta

Regulation 6 of LN430/02 provides a duty of enforcement on the Director responsible for Employment and Industrial Relations, who can access all information about a posting and the terms and conditions of service. It appears that enforcement by the Directorate is carried out in two ways. First, whenever, during one of the random checks carried out by the duly appointed inspectors, it discovers that a particular enterprise employs posted workers, the inspectors ask for information related to the posted workers' conditions of work as proven by documents. In the event of any breach, the employer posting the worker is informed about the requirements envisaged by the law and asked to rectify his/her position. Besides these random checks, however, the inspectorate is currently working specifically on the posting of workers regulations. Whenever it discovers that a particular company may be employing foreign workers, they visit the latter and check whether the persons concerned are posted workers or otherwise. If the company is employing posted workers, the inspectors ensure compliance with the law and take the appropriate action in case of breach. In case the company does not employ posted workers as defined by the law, the inspectors still bring to the attention of the persons concerned the applicability of the legal notice and the obligations it imposes on the host undertaking. A total of 92 inspections have been carried out to date specifically to ensure compliance with the posting of workers regulations. Of these inspections, employment of posted workers resulted only in two cases.

Regulation 6(4) provides that without prejudice to any other right regarding the institution of proceedings in another State (workers have this right), a posted worker shall have the right to institute proceedings in the courts of Malta to safeguard any right granted to him by virtue of the local Regulations. The latter therefore provides for the possibility of institution of proceedings in Malta by an employee in order to safeguard his rights in terms of the Regulations, although it is not clear whether this is only possible during the posting period.

Article 47 of the EIRA does provide that proceedings for an offence under the Act or under Regulations issued by authority of the Act may be commenced for a period of up to one year from the commission of the offence.

Poland

Measures to prevent abuses are the general rules applicable in cases of infringements of any workers' rights

The Polish National Labour Inspectorate may indicate any failures in the procedures and any violations of the rights of posted workers, which are contrary to the Polish legislation. Article 21a of the Act on the National Labour Inspectorate provides that as a result of the findings of any inspection, and following adequate proceedings, the labour inspector may issue orders, address improvement notices, lodge complaints and then participate in proceedings and undertake any other activities provided in relevant provisions.

If any of the provisions concerning issues in Section XIII Liability for offences against workers' rights of the Polish Labour Code were involved, then the case will be proceeded with in Poland.

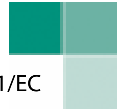
Article 242 of the Polish Labour Code and following provisions provide that an employee may bring any claims related to the employment relationship to court, thus meeting the requirements of Directive Article 6. Posted workers may bring proceedings after the posted worker is no longer based in Poland.

Slovenia

Article 30 of the Employment and Work of Aliens Act, outlines that the supervision of the implementation of the Act shall be the responsibility of the Labour Inspectorate of the Republic of Slovenia. Inspection and supervision may be initiated by any legal or natural person and ex officio by the Employment Service if it suspects that a violation of this Act has occurred.

According to the Labour Inspectorate's Report for 2005, one of their objectives for the year 2005 was inspecting whether employers are fulfilling their obligations set out in Article 213, which regulates the status of posted workers. However they found that an efficient supervision is not possible; the main obstacle is that they are not familiar with the national law of the State where the worker comes from (especially on provisions on wage and annual leave) and therefore cannot determine which law is more favourable for the posted worker. However it is their assessment that the area where the rights of the posted workers are mostly violated is the construction segment as this is also the area where the Slovenian nationals face most violation. Nevertheless they found no violation of Article 213 in 2005.

Should a worker think that the employer does not fulfil his or her obligations arising from the employment relationship or that he or she violates any of the worker's rights arising from the employment relationship, he or she shall have the right to request in writing that the employer remove the violation and/or fulfil obligations. Should the employer not fulfil his or her obligations and/or not abolish the violation within eight working days upon the receipt of the worker's written request, the worker may request judicial protection before the competent labour court within 30 days from the expiry of the time limit stipulated for the fulfilment of obligations and/ or abolishment of violation by the employer.



Posted workers have at their disposal the same judicial remedies as other workers with the employer, and can therefore seek the court's help if the employer is violating the provisions of national law, meaning that appropriate procedures are available to them under the same rules which apply to other workers, both during and after the posting is complete. There is no reference as to whether this can be done without prejudice to the institutions of proceedings in another State.

Slovakia

Under Article 5.2 of the Labour Code the Inspectorate can investigate infringements on its own initiative or following requests from third parties. As information is available only in Slovak it is not clear how posted workers become aware of it and enforce their rights. There has been no case law on infringements and abuses.

Posted workers are not allowed to institute proceedings in Slovak courts, which are only open to petitioners having residency. However, the Act on International Private and Process Laws does not specify what is considered to be a residency, so it is presumed, that the residency should mean any address in the territory of Slovakia where the employee is staying during the posting. This view has not been tested in the Courts. There are no provisions with regard to the second part of the sentence in Directive Article 6.

4. Conclusions

Article 1: Scope

Article 1 provides that the Directive applies to undertakings established in a Member State which post workers to the territory of another Member State. This includes transnational measures where undertakings post workers on their own account and under their direction under a contract concluded with the party for whom services are to be provided, post workers to an establishment or undertaking owned by the Group in the territory of the Member State; or being a temporary employment undertaking or placement agency hiring out a worker to a user undertaking in the territory of a Member State. In all these situations there needs to be an employment relationship between the undertaking making the posting or agency hiring out the worker. There are also further provisions excluding the application of the Directive to merchant navy undertakings as regards seagoing personnel and also ensuring that undertakings in a non-Member State do not receive more favourable treatment than undertakings established within a Member State.

There does not appear to be a general rule as to when an employer is said to be established in a Member State. This seems especially true in Cyprus and Lithuania. In other Member States it appears to be an issue of residency or nationality of the legal or natural person that employs the affected workers. This is the case in Estonia where a foreign employer is an employer who is not an Estonian resident; in Hungary where the law applies to all employees of foreign employers performing work in the country and Slovenia where the issue is having a residence or head office outside of the Republic. There are more formal procedures reported in the Czech Republic and Latvia. There do not seem to be any issues arising from this lack or variety of definition. Reference is made to the context of being in the framework of the transnational provision of services in the Czech Republic, Cyprus, Latvia and Lithuania. In Estonia reference is just to the provision of services. There appear to be no issues arising from the fact that these words are not used in other Member States.

The exclusion, in Directive Article 1.2, of sea going personnel in merchant navy undertakings is not transposed in the Czech Republic, which, according to the national author, has no ships or crews to regulate. Nor is it transposed in Slovenia. In Slovakia it is transposed in so far as the crews of sea going ships and river ships under a non-Slovakian flag are excluded. It is transposed in Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta and Poland. In Estonia and Latvia there may be linguistic issues about the exact meaning of the words used, but the effect appears to be the same. There appears to be an issue with regard to terminology in Malta on this subject, where Regulations exclude all personnel employed on vessels falling under the Merchant Shipping Act. Thus the exclusion appears not to be restricted to sea going personnel only. As a result it appears that there is a wider exclusion than that permitted by the Directive.

In all the Member States there are rules that attempt to ensure that all foreign workers receive the same employment protection, subject sometimes to the exceptions in the Directive, as national workers. The requirement for an employment relationship exists insofar as it also applies to national workers.

With regard to the three categories in Directive Article 1.3, the new Labour Code in the Czech Republic excludes category 1.3(a). Section 319 para 1(g) of the new Labour Code refers to the supply of workers by temporary employment undertakings, but not the conditions for the hiring out of workers in general. Thus the only application concerns employment agencies

and the national author distinguishes between these and other bodies who might be involved in the hiring out of workers.

Other Member States repeat (although not usually in a verbatim way as in Malta) the three categories in domestic legislation. This is the case in Estonia, Cyprus, Latvia, Hungary, Malta and Poland. In Slovenia, there is no mention of the three categories, but there is a requirement that posted workers are treated in the same way as national workers, although, for example there is a lack of specific provisions applying Directive Article 1c to posted workers rather than for those working for an employment agency in general. In Slovakia there is a more general statement that all undertakings posting workers to Slovakia must abide by the Labour Code.

Most Member States have not specifically transposed Directive Article 1.4. These are the Czech Republic, Estonia, Latvia, Hungary, Malta, Poland, Slovenia and Slovakia. Safeguards that exist are, however: in the Czech republic the Labour Code forbids the non equal treatment of workers; in Estonia, Latvia, Hungary and Poland no distinction is made in the rules as they apply to Member States or non- Member States; in Malta and Slovakia there are provisions that posted workers should not receive less favourable treatment, although it is unclear how this replaces the implementation of Directive Article 1.4.

Article 2: Definitions

Article 2 defines a posted worker as a worker who, for a limited period, carries out work in the territory of a Member State that is different to the one in which he or she normally works. It also requires that, for the purposes of this Directive, the definition of a worker should be that which applies in the Member State to whose territory the worker has been posted.

The legislation in the Czech Republic and Hungary does not include a specific definition of a posted worker. In the Czech Republic there appears to be no statutory definition of worker or employee. An employee is said to be someone with an employment relationship and this definition would apply equally to posted workers. In Hungary it is clear from the definitions of posting that the characteristics applied to defining a worker in national law also apply to posted workers.

In Estonia the requirement for a written employment contract for posted workers appears to be narrower that the notion of 'employment relationship' provided in the Directive.

There are no other issues with regard to definitions in the other Member States.

Article 3: Terms and conditions of employment

Article 3 is concerned with ensuring that the undertakings referred to in Article 1(1) guarantee workers posted to their territory the terms and conditions of employment which are laid down by law, regulation or administrative provision or by collective agreements or arbitration awards which have been declared universally applicable. The relevant terms and conditions are specified in Article 3.1 of the Directive. There are exceptions concerning cases of initial assembly and/or first installation of goods in certain circumstances where the period of posting does not exceed eight days; where, subject to consultation of the social partners, the posting does not exceed one month and where the amount of work to be done is not significant. The length of a posting is to be calculated on the basis of a reference period of one year, taking into account previous periods for which the post has been filled by a posted

worker. Allowances specific to the posting shall count towards the minimum wage unless they are re-imbursement of actual costs incurred. There are further rules concerning collective agreements, treatment of temporary workers and equality of treatment with undertakings of other States.

In Cyprus, Malta, Poland and Slovakia there are no means of making collective agreements universally or generally applicable. In the other Member States there are possibilities of undertaking, sectoral or universal collective agreements which can be extended (see individual summaries above for further details). In Estonia, Latvia and Lithuania there are specific provisions in law which ensure that such agreements apply to posted workers. In the other Member States, including those where there are no means of extending collective agreements, this is achieved by the fact that under national law, there is no distinction made between posted and national workers in terms of the protection offered.

All Member States, except the Czech Republic, have legislation which specifically states that workers posted to their territory are guaranteed the terms and conditions listed in Directive Article 3.1. This objective is achieved in the Czech Republic by the law and collective agreements not distinguishing between posted workers and national workers. In this sense there is a failure to provide the guarantee, although this does not appear to have any consequences in terms of the application of the Directive.

The contents of Directive Article 3.1(a), (b), (c), (e), (f) and (g) are provided for in all the Member States.

Directive Article 3.1(d) concerning the hiring out of workers is also provided for in all the Member States except the Czech Republic, Estonia and Slovakia.

In the Czech Republic there were no provisions for this in the current Labour Code and the new Code refers to the supply of workers by temporary employment undertakings, rather than the hiring out of workers in general.

In Estonia and Slovakia there are no regulations referring to the hiring out of workers and to temporary employment undertakings; such workers are treated in the same way as all other workers. Thus there appears to be no failure of implementation in this respect.

Directive Article 3.2 is fully implemented in all the Member States except for the Czech Republic, where there is no transposition. In Latvia there appear to be no specific provisions at all in relation to Directive Articles 3.2 -3.10.

The option in Directive Article 3.3 is taken advantage of in the Czech Republic, Malta, Lithuania and Slovenia.

The option in Directive Article 3.4 is taken advantage of in Lithuania.

The option in 3.5 is taken advantage of in the Czech Republic and Lithuania.

The reference period of one year is applied in all Member States except for Hungary , Poland, Slovenia and Slovakia where there does not appear to be a reference period set.

Directive Article 3.7 is explicitly taken advantage of in the Czech Republic, Cyprus (verbatim), Malta and Slovakia.

Directive Article 3.10 is taken advantage of in the Czech republic only, in that legislation which may permit the extension of collective agreements is not confined to those areas listed in the annex;

Article 4: Co-operation and information

Article 4 provides that each Member State should nominate one or more liaison offices or competent national bodies. There is a requirement for making provision for co-operation between the public authorities responsible for monitoring the terms and conditions of employment listed in Article 3. This co-operation is to include the provision of information about abuses or unlawful activities in relation to the transnational hiring out of workers. Each Member State must also take appropriate measures to make information on the terms and conditions of employment generally available.

All the Member States have designated a liaison office or competent national body. Most Member States have a formal requirement for the implementation of the measures in Directive Article 4.2 and 4.3. The Czech Republic, Hungary and Slovenia
appear not to have a formal requirement in national law, or to have only a limited one.

For practical steps where they are evident please refer to the national reports.

Article 5: Measures

Article 6: Jurisdiction

These Articles firstly ensure that there are appropriate measures that can be taken for failure to comply with the Directive and that adequate procedures are available to employees or their representatives to enforce the obligations of the Directive. Judicial proceedings may be instituted in the Member State to which the worker is, or was, posted.

In Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia supervision over compliance rests with the Labour Inspectorate. In Cyprus responsibility rests with the Director of Employment and Industrial relations. In Cyprus and Hungary no measures, according to the national authors, have been taken to ensure compliance

In all the Member States there is recourse to the courts to deal with failure to comply with the relevant provisions. In the Czech Republic, Cyprus, Latvia, Poland and Slovenia this means that the processes are the same for posted workers as for national workers before the civil courts, both during and after the posting has finished.

In some Member States there is specific provision for posted workers to protect their rights in the national courts. This is the case in Estonia, Lithuania and Malta where the law provides for posted workers to have recourse to the civil courts without prejudice to their right to bring actions in the courts of a foreign country.

There are problems in Hungary, where posted workers appear not to have the right to take action in the Hungarian labour courts (although the labour Ministry disputes this), and Slovakia where it is not clear whether a posted worker can show that they have the residency which is required to institute proceedings.

The ability to take action after posting has finished is ensured in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Malta, Poland and Slovenia. There are no guarantees of this possibility in or Slovakia.

Practical application

The general picture is that the Directive has had very little practical effect in the Member States consider here. The significant case has, of course, been that of the Latvian company undertaking a contract in Sweden. There has been little litigation elsewhere and the Directive's provisions do not seem to be a subject of much debate in most Member States.

Generally: in the Czech Republic it appears that the national provisions are more generous in their provisions than the Directive. The important difference is that before transposition all such arrangements were decided between the employer and employee, who would agree on which national law to apply. Now there is a clear obligation to respect more favourable provisions contained in either domestic or foreign law; in Cyprus very little can be said of the practical application. There appear to be no issues relating to posted workers that are the subject of debate or litigation and there are no published views of the social partners or other Government bodies. Trade unions do claim, however, that they have not been provided with information, nor have they sought to obtain any such information with regard to procedures for the implementation of their obligations under the law, as provided by Directive Article 5; in Esatonia the analysis of the transposition of the Directive 96/71/EC into Estonian law suggests that at large, Estonia has transposed the Directive in full but no reports of any further practical application; in Latvia the major issue of application for Latvia has been in the dispute concerning Laval and Partneri Ltd and the Swedish Building Workers Union. It is perhaps one of the few examples of how the Directive may have an impact; in Lithuania there is little information available on the practical application of the Directive in terms of workers enforcing their rights or how the liaison office undertakes the task of providing information, co-operation with other Member States or the active seeking of compliance by the monitoring authority; in Hungary the implementation of the Directive improved the quality of labour law provisions regarding posted workers, although it has not had a remarkable effect on conditions of employment of workers performing their work in the framework of posting, temporary assignment and hiring-out. This limited effect is shown by the fact that there is no practice at the Labour Courts and the Labour Inspectorate concerning posted workers. Nor are there any published views of the social partners and other relevant Government and non-Governmental bodies on these issues; in Malta there is no evidence as to what has been the effect of the Directive, nor is there any information about awareness of the protection afforded; in Poland there has been no litigation on the subject and little apparent active interest from the social partners; in Slovenia, implementation of the Directive has improved the safeguarding of workers rights and position and the problem in practice remains the lack of case law. It seems that workers do not seek redress at the Courts. The Labour Inspectorate has found no violations of the provisions with regard to posted workers; in Slovakia there have been no litigation on the subject and no issues leading to debate. There are issues around information from the Social Insurance Company to the National Inspectorate at Work which means that employers may wait for some weeks before an answer to a query is provided. The National Labour Inspectorate collects information from monitoring terms and conditions and there appears to be a 'unoffical database' aimed at fulfilling of notification duties.