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| **E.C.P.W. 07/2010 – final** |
| **Replies to questionnaire on cross border enforcement problems** |
| **SECRETARIAT – 08/02/2013** |

**Orig.:EN**

**<u>Note from the Secretariat</u>**

**Subject:** **(cross-border) enforcement issues and encountered problems – summary of the replies to the questionnaire in note E.C.P.W. 04/2010**

## I. Introduction

Adequate and effective implementation, application and enforcement are key elements in the protection of (posted) workers' rights, whereas poor enforcement undermines the effectiveness of the Community and national rules applicable in this area.

With respect to **the monitoring of compliance** by the Member States previous analysis have revealed that concept, competences and methods used vary significantly from one country to another.

The extent and content of the replies received confirm the above. The present note gives a comprehensive overview of the replies received from the **22** Member States [1] and **Norway**. Its purpose is to serve as a basis for an open debate, to share best practices but also to discuss practical problems and possible solutions.

## II. Replies received

1. *a) How is **non compliance** with the obligations resulting from the Posting of Workers Directive sanctioned in your Member State? Are the **sanctions** imposed of an administrative or penal character, or both?*

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| Member States applying sanctions primarily of a penal character: **BE, CY, DK, FR, MT, PL, SI.**<br>Member States applying sanctions primarily of an administrative character: **AT, DE, EE, LT, NL, PT, SE, SK.**<br>Both types exist: **BE, CZ,  EL, FI, HU, LU ,IT, LV, NO, PT, SE.** |

In **AT**, sanctions have an administrative character. Administrative offenses are also punishable if they were not committed in AT. In this case, they are considered committed in the place where they are identified. The offences are punished separately with respect to each affected worker.

[1] The summary includes replies received from the government experts as well as from the social partners from the given Member States. No replies were received from BG, ES, IE, , RO, UK, NO, ICE and LI.

Foreign employers employing workers in Austria who do not respect Austrian labour law are subject to the same penalties as the Austrian employers.

**BE** applies penal sanctions for non-respect of the provisions applying as referred to in the transposing law of 5 March 2002 (it is to say provisions subject to penal law). But it is possible to choose an administrative fine in social matters (by the *Service public fédéral Emploi, Travail et Concertation Sociale*) instead. The accumulation of the both types of sanctions is not possible.

In **CY**, the sanctions imposed in case of a non-compliance are of penal character.

In **CZ**, for violations of the provisions of the Labor Code[2], sanctions and fines may be imposed on employers to eliminate deficiencies. Both forms are used independently but also in parallel. Violation of the provisions of the Labor Code is not considered to be a crime. The regional labor inspectorates and Labor Offices[3] carry out control of the compliance with the Labor Code according to the Act No. 251/2005 on labor inspection.

In **DE,** the sanctions imposed on posting companies are the same as for domestic companies in the same situation. That means: according to Article 23 of the AEntG, the controlling authorities can impose a fine up to 500.000 € for non compliance with the posting rules which constitutes an offence. Further sanction is the exclusion from participation in public procurement procedures, where a fine of minimum 2500 € has been given (Article 21 AEntG).

In **DK**, the sanctions imposed on posting companies are the same as for domestic companies in the same situation. Further, a prior declaration scheme applies to posting companies. The non-respect of the posting rules and the breach of the obligation to send a declaration are subject to a fine.

In **EE**, the labour inspectors have the right to issue an employer a precept in the event of violation of the requirements of the transposing act (Working Conditions of Workers Posted in Estonia Act (WCWPE)). A precept is binding on an employer, and the labour inspector has the right to verify compliance with the precept within the specified term. Upon failure on the part of the employer to discharge his obligations, the labour inspector may impose a penalty payment in the amount of up to 1300 euro. The Labour Inspectorate has not applied the coercive measure yet.

In **EL**, both penal and administrative penalties are provided under Presidential Decree 219/2000 in case of non-compliance with the Posting of Workers Directive.

In **FI**, only a court of law (a district court is the first instance) can impose actual sanctions for violation of the regulations on posted workers. However, occupational safety and health authorities and equality authorities have administrative means at their disposal, which they use to ensure compliance with the regulations.

[2] Posting of Workers Directive was implemented into the § 319 of Act No. 262/2006, the Labour Code

[3] According to the Act 435/2004 Coll., On employment (especially § 125-126). Labour offices have such authority to monitor whether a foreigner performs work for a legal or natural person on the basis of employment relationship or any other agreement, and whether the work is exercised in accordance with the issued work permit or green card.

The Posting of Workers Directive has been implemented by the Posted Workers Act, which refers to provisions under Finnish law and regulations under universally applicable collective agreements applicable to posted workers. Compliance with the Posted Workers Act, other labour legislation and universally applicable collective agreements is supervised by the occupational safety and health authorities. Compliance with the Equality Act is supervised by equality authorities. If non-compliance with the Posted Workers Act or the provisions of Finnish law or regulations under universally applicable collective agreements referred to in the Posted Workers Act occurs, the posted worker and the authorities have the same legal remedies at their disposal as otherwise in cases of similar non-compliance.

In **FR**[4], sanctions imposed in case of a non-compliance with the mandatory rules are of penal character. Financial penalties and imprisonment may be imposed depending on the seriousness of the offence.

In **HU**, the National Inspectorate for Labour and for Work Safety (OMMF) is competent to enforce compliance with labour regulations. The OMMF may or has to impose a fine (depending on the gravity of the violation) on the basis of the Labour Code. Some of the sanctions for breach of the provisions relating to posting are administrative in nature (e.g., fine, obligation to remedy the situation), some other sanctions are penal in nature (e.g. fine for misdemeanour).

In **IT**, the labour inspectorates control the compliance with the Directive. The protection measures imposed are the same as for Italian workers. The posted worker can address to the Italian judge like any other Italian worker to ask for the recognition of his salary and working rights. The sanctions imposed are both administrative and penal depending on the type of the non-compliance.

In **LU**, sanctions may be of administrative or penal nature.

In **LV,** depending on the nature of relevant infringement, administrative or criminal liability is established and relevant sanctions are applied. Both, penal and administrative sanctions, can be imposed in relevant cases as a result of non compliance.

In **MT**, sanctions are of a criminal/penal nature.

In **NL**, the labour inspectorates monitor the compliance with the core conditions and impose sanctions (warning, penalty – depending on the seriousness and type of the violation) if violation is detected. Non compliance is a civil matter. If a worker thinks he or she is being discriminated he or she can file a complaint at the Dutch Equal Treatment Commission which takes further actions if necessary.

In **NO,** sanctions could be of penal or administrative character, depending on the type of obligation. Sanctions could be injunctions, order of suspension of work, coercive fines, paying compensation to the offended, fines and/or imprisonment. When obligations stem from generally applicable collective agreements, the parties to the agreements may under certain conditions use boycott as a means to force the employer to comply with obligations according to the agreement.

[4] The summary regarding FR was based only on the reply given by FIEC, FFB-FNTP.

In **PL**, non-compliance with the principles of posting is considered an offence and in such case a labour inspector may impose a fine. The fine may also be imposed by the magistrate's court (district court department considering e.g. offence cases) upon the motion of a labour inspector. Moreover, fines are imposed by a criminal court in case of deeds which are offences against the rights of persons performing paid work which may concern posted workers.

In **PT**, non-compliance with the provisions on Labour Code is sanctioned by the labour inspectorate. Whenever a breach of the law is encountered, labour inspectors can apply a fine, which amount depends on the seriousness of the infraction and the business revenues of the company in question. The sanction is directly applied by the labour inspectorate, giving the transgressor the possibility of immediate payment of the fine or presenting defence to the alleged infraction. Only when companies present defence to a court, the sanction is applied by the judicial system. In case of repeated or very serious offences, the labour inspectorate publishes the name of the transgressor company. Also prior notification of posted workers plays a preventive role, but only employers posting workers outside Portugal have to notify the labour inspectorate of the posting.
Additional sanctions can be the exclusion of companies infringing the law from applying to public tenders until a period of 2 years or the ceasing of the establishment or the company for the same period.
There are also penal sanctions for some infractions, especially regarding failure to comply with health and safety standards or collective representation.

There are both administrative and penal sanctions in **SE**. Sanctions of administrative character are sanction charges (between 1000 SEK and 100 000 SEK) and injunctions or prohibitions. Sanctions of penal character are fines or imprisonment. The level is to be decided by the court in each case.

In **SI**, the sanctions imposed on the employer not complying with the provisions of relevant national legislation on posting are primarily of a penal character.
The general sanction is a fine the amount of which depends on the type and seriousness of the violation. Besides the penal sanction, the labour inspectors can in accordance with the Art. 15 of the Labour Inspection Act also issue a decision, with which he/she orders the employer to take action, to not take action or to pass an act within a deadline prescribed by the inspector, and to implement acts, other regulations, collective contracts and general acts within his competence.

In **SK** in the event of non-compliance with the posting rules by employers, the inspectorates are authorized to impose sanctions pursuant to Act No. 125/2006 Coll. on Labour Inspection and on changes and supplements to Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on changes and amendments to certain Acts as amended. The sanctions imposed by the labour inspectorates are of an administrative character.

*b) Which **fines** can be imposed under the respective sanction regime applicable? Please indicate also the **level** of the fines/sanctions that can be imposed.*

As the replies show, the level of fines varies considerably from Member State to Member States according to the type and seriousness, recurrence of the non-compliance, but also on the quality of the transgressor (being a natural or a legal person).

In general administrative fines are used in most of the Member States, but these are often accompanied by penal sanctions (fines or imprisonment punishments).

In **AT**, the fact of the posting has to be declared (Art 7b AVRAG). The employer also has to keep readily available at the place/site of work documents in German as are required for verifying the remuneration payable to the employee pursuant to Austrian law.
If the employer or the representative fails to make the declaration in time or does not have the required documents at hand, this constitutes an administrative offense with a fine from 500 to 5 000 euro, in case of recurrence between 1 000 to 10 000 euro. In addition, employers in the construction industry have a monthly declaration obligation to the construction workers' holiday and leave/redundancy fund. The non-respect of that obligation (non or late declaration as well as with false data) unless it constitutes an offense under the jurisdiction of the courts, is sanctioned by an administrative fine of 500 to 2 000 euro, in case of recurrence between 2 000 and 3 500 euro.
The unlawful posting of third country national workers and workers from the new Member States, in relation which transitional measures concerning freedom of movement of workers and freedom to provide services still are in force (for the time being Bulgaria and Romania) is punished up to three posted foreign workers by a fine from 1 000 to 10 000 euro after each of them, in case of recurrence from 2 000 to 20 000 euro. Over three unlawfully posted foreign workers, the fine is from 2 000 to 20 000 euro, in case of recurrence from 4 000 to 50 000 euro per worker each.
Any employer who employs or has employed an employee without paying the employee at least the base pay to which the employee is entitled as stipulated in a law, ordinance or collective agreement, is sanctioned by an administrative fine, unless the offence constitutes a criminal offence under the jurisdiction of the courts. If the underpayment affects no more than three employees, the fine ranges from 1 000 to 10 000 euro for each employee, in case of recurrence from 2 000 to 20 000 euro. If more than three employees are affected, the fine ranges from 2 000 to 20 000 euro for each employee, in case of recurrence from 4 000 to 50 000 euro.
If the difference between the remuneration actually paid and the base pay level is slight or if the employer´s fault is negligible and if it is the first case where the employer has paid less than the base pay level, no fine will be imposed, provided that the employer demonstrably compensates the employee with the difference between the remuneration actually paid and the amount to which the employee is entitled pursuant to Austrian law.

**BE** emphasizes that the amount of the fine (being penal or administrative) depends on the different legislation and the type and seriousness of the non-compliance. A Social Law Criminal Code was adopted on 6th June 2010 and is in force since 1st of July 2011. This Code contains all criminal provisions concerning social law. Its Article 101 establishes 4 levels of sanctions. The first penalty level is an administrative fine of 10 to 100 euro. The second level is either a criminal fine of 50 to 500 euro or an administrative fine of 25 to 250 euro. The third level is either a criminal fine of 100 to 1000 euro or an administrative fine of 50 to 500 euro. The fourth level is either an imprisonment from 6 months up to three years or, a criminal fine of 600 to 6000 euro or an administrative fine of 300 to 3000 euro. Article 102 envisage a multiplying factor for the penal and administrative fine equally which is 5,5. This has to be indicated in the decision imposing the fine.

In **CY**, the sanctions are: imprisonment not exceeding 3 months or a fine not exceeding 3400 euro or both.

In **CZ**, the Act No. 251/2005 on labor inspection defines the maximum level of fines for the violation of the provisions of the Labor Code or other regulations.

- For non-compliance with the maximum working hours and rest periods; failure to meet minimum wage, the lowest level of the guaranteed pay, and for unpaid allowances for overtime; in case of infringement of the provisions related to the safety and health at work – up to 2 million CZK[5].
- For non-compliance with the conditions for pregnant workers and workers who are breastfeeding, and workers by the end of the ninth month after childbirth and youth workers or with the conditions of agency employment – up to 1 million CZK.
- In case of violation of equal treatment of men and women and prohibition of non-discrimination – 400 thousand CZK.
- For non-compliance with the minimum length of holidays per calendar year or a proportion – up to 200 thousand CZK.

Further to this, the Act 435/2004 Coll. on employment, defines the maximum fines for the violation of its provisions for both personal and legal entities in § 139 and 140.

- ➢ In case of violation of the prohibition of discrimination or failure to provide equal treatment under this Act, natural or legal person – up to 1 million CZK.
- ➢ For the provision of employment without authorization, natural or legal person – up to 2 million CZK. Moreover, legal person can be punished the same way also for a different form of failure of the Employment Act or for the violation of good morals in case of recruitment.
- ➢ For carrying out illegal work the fines of natural person – up to 10 thousand CZK, whereas the nature of this administrative offence prevent the application to legal persons.
- ➢ For allowing exercise of illegal work natural and legal person – up to 5 million CZK.

In **DE,** the sanctions imposed on posting companies are the same as for domestic companies in the same situation. That means: according to Article 23 of the AEntG, the controlling authorities can impose a fine up to 500.000 € for non compliance with the posting rules which constitutes an offence. Further sanction is the exclusion from participation in public procurement procedures, where a fine of minimum 2500 € has been given (Article 21 AEntG).

In **DK**, employers that breach the health and safety legislation and/or the holiday act are subject to fine. Employers who breach the act on equal wage for women and men, the act on equal treatment between women and men and the act on non-discrimination are subject to both paying compensation to the offended and to fines. The general level of fines varies according to the graveness of the offence:

- ➢ Formal violations: 10.000 DKK[6].
- ➢ Material violations: 20.000 DKK.
- ➢ Serious material violations: 40.000 DKK.
- ➢ Serious material violations having resulted in death or serious injury: 75 – 300.000 DKK.

The general level of the fine regarding the breach of the obligation to send a declaration is 5.000 DKK, and as of 1 June 2010 the level is expected to be increased to 10.000 DKK. DK has no reports on court cases involving posting companies.

[5] Approximately 77280 euro.
[6] Approximately 1345 euro.

There is only an obligation to pay minimum levels of wage if the foreign company has entered into a collective agreement. Not paying the minimum levels of wage is therefore breach of contract which is settled by the labour court. In case of breach of contract the company will have to pay damages that contain the missing payments as well as a supplementary penal element. The penal element is normally 1/5-1/3 of the missing payments – in some cases lower or higher depending on the graveness.

In **EE**, upon failure on the part of the employer to discharge his obligations, the labour inspector may impose a penalty payment in the amount of up to 1300 euro.

In **EL,** Articles 4 and 5 of the Presidential Decree 219/2000 provide for *administrative penalties.* For every infringement of the provisions of and of the provisions of labour legislation as a whole, a fine from 50 000 GRD to 3 000 000 GRD[7] is imposed for each infringement, by reasoned decision of the competent Labour Inspector, issued after a hearing at which the employer concerned can provide explanations. This decision is communicated to the offender with an invoice and the fine itself constitutes Government revenue. In the amount of the administrative fine the severity of the infringement, any repeated acts of non-compliance with competent bodies' instructions, similar infringements for which penalties have been imposed in the past and the degree of fault are taken into consideration. The fine limits can be increased i.e. by decisions of the Minister of Labour and Social Security which are published in the Government Gazette.

Article 9 of this Presidential Decree provides *for criminal penalties*. Any employer, manager, *chargé d'affaires* or company representative with any other title who fails to meet the obligations of Articles 4 and 5 (the payment of the administrative fine) is punishable either by imprisonment of at least three months or a fine of at least 100 000 GRD or both penalties. Special Labour Law provisions which provide for different handling of a criminal case are still applicable

In **FI**, the occupational safety and health authorities and the equality authorities have no actual right to impose punitive sanctions or fines.

Conditional fines that the occupational safety and health authorities and the equality authorities can impose in order to encourage compliance with various obligations are euro-denominated. Provisions on conditional fines have been laid down under Finnish law, but there are no provisions on the euro amount of conditional fines. According to the Act on Conditional Fines, in determining the amount of a conditional fine, the quality and extent of the primary obligation, the solvency of the obligated party and other matters that have an impact on the issue must be taken into consideration. In practice, the occupational safety and health authorities have imposed conditional fines of approximately 1,000 euros in cases concerning posted workers. (An example is the obligation to submit a certain document to the occupational safety and health authorities. If there are several documents, the amount of the conditional fine is increased.)

Since the equality authorities have handled no cases of conditional fines concerning posted workers, no level of conditional fines has been determined.

[7] Approximately from 150 to 8800 euro

Provisions on fines for offences imposed by a court of law are laid down in the Criminal Code of Finland. A fine for an offence is imposed in the form of day fines, the minimum number of which is one and the maximum number 120 day fines. (For several offences the number is 1-240). Blameworthiness for a criminal act will increase the number of day fines. The amount of the day fine is set so that it is reasonable in view of the solvency of the person fined. Provisions on determining the reasonable monetary amount of a day fine are laid down in the Criminal Code. The total monetary amount of the fine is equal to the number of day fines multiplied by the monetary amount of the day fine.

The minimum amount of a corporate fine is 850 euros and the maximum amount 850 000 euros. The monetary amount of a corporate fine is set in view of the quality and extent of the neglect shown by the legal person, the management's involvement and the legal person's financial position.

In **FR**, the non-compliance is sanctioned as follows:

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| Minimum salary | 5th level fine (after each concerned employee) – 1500 € for natural person,<br>7500 € for legal person. If the salary paid to the worker is much lower than the minimum wage, this offence may lead to a sanction of 5 years imprisonment and 150 000 € fine (Article 225-13 of Penal ) |
| Maximum daily and weekly working hours | 4th level fine (after each employee)<br>750 € for natural person<br>3750 for legal person |
| Rest period | 5th level fine (after each concerned employee) – 1500 € for natural person,<br>7500 € for legal person<br>Possibility of closure of the establishment by summary judgment<br>Damages for employees |
| Paid holiday | 5th level fine (after each concerned employee) – 1500 € for natural person,<br>7500 € for legal person |
| Non-compliance with provisions concerning temporary work | 4th level fine (after each employee)<br>750 € for natural person<br>3750 for legal person |
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| Illegal employment | Imprisonment of 2 years<br>Fine of 30 000 € |
| Health and safety rules | Fine of 3750 €<br>Offence of endangering others: fine of 15000 € |

**Offences related to regulations containing public social policy regulations**

| Offences | Legal provision | Sanctions |
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| Non compliance of provisions on salary | Article L.1262 CT | Articles R.3233-1, 2263-3,3246-1 |
| Maximum daily and weekly working hours | Article L.1262-4 CT | Articles 3124-3,3124-11 CT |
| Lacking asbestos removal plan | Article L.1262 CT | Article L.4741 and next CT |
| Lacking protection against falling from height | Article L. 1262-4 | Article L.4741-1 and next CT |
| Work equipment not in conformity | Article L.1262-4 CT | Article L.4741-1 and next CT |

**Non compliance with regulations on temporary work**

| Offence | Sanctions |
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| Illegal activity of a temporary work enterprise | Article L.1254 CT (fine of 3750 €, recidivism: imprisonment 6 months and 7 500 € fine) |
| Lacking employment contract or mission contract | Article L.1254-2 CT (3750 € fine; recidivism: imprisonment six months and 7 500 € fine) |
| Lacking specification on the causes of the mission contract | Artcicle L.1254-2 CT (fine of 3750 €; recidivism: imprisonment of 6 months and 7 500 € fine) |
| Lacking financial guarantee | Article L. 1254-2 CT (3 750 €; redivism: imprisonment of six months and 7 500 € fine) |

**Fraud related to posting of workers**

| Offence | Sanctions |
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| Fraud in the establishment of the company or fraud in the posting of workers | Article L. 82245-1 CT (imprisonment 3 years and 45 000 € fine |
| Lacking mandatory notification of the posting | Article R 1264-1 CT |
| Lacking declaration of workers to Social Security institutions (or not providing certificates) | Article L. 8224-1 CT |
| No presentation of documents (pay slip, work permits, Social security, etc) | Article R 1264-3 CT (third category contravention) |
| Lacking notification of an accident at work (for workers not included in the French Social Security) | Article R 1264-2 CT (forth category contravention) |

**Illegal employment**

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| Bogus self-employment | Article L.8234-1 CT (imprisonment for 70 years and 30 000 € fine) |
| Bogus subcontracting (illicit assignment of workers) | Article L.8243 CT (imprisonments for 2 years and 30 000 € fine |

In **HU**, the non-compliance is sanctioned as follows (1.000.000 HUF ~ 3650 EUR):

If the employer breaches for the first time the rules pertaining to maximum working time, minimum rest periods, minimum annual paid leave, and the conditions of temporary agency work, the amount of the fine for violation of labour provisions is as follows:
- one type of violation that concerns one employee: 30.000 - 3.000.000 HUF
- several types of violation that concern only one employee: 30.000 – 5.000.000 HUF
- one type of violation that concerns several employees: 30.000 – 8.000.000 HUF
- several types of violation that concern several employees: 30.000 – 10.000.000 HUF

If the employer breaches the rules pertaining to minimum wages, access to employment or work by pregnant women or women who have recently given birth, of children and of young people, the amount of the fine for violation of labour provisions is as follows:
- one type of violation that concerns several employees: 30.000 – 5.000.000 HUF
- several types of violation that concern several employees: 30.000 – 8.000.000 HUF

Breach of the principle of equal treatment is sanctioned as follows:
- one type of violation that concerns one employee: 30.000 – 2.000.000 HUF
- one type of violation that concerns several employees: 30.000 – 6.000.000 HUF

Other factors influencing the amount of the fine for violation of labour provisions are: frequency of the violation (a repeat offence within three years raises the upper limit to HUF fifteen million) and the number of the employees at the times of the inspection (below 20 employees, the upper limit of the fine is decreased by half). When determining the actual amount of the fine within the applicable limits, the duration of the violation, the severity of the damage caused, the number and significance of the breached provisions and the amount of employees affected need to be taken into account (Section 7 (7) of the Met).

If the representative of the employer tries to hinder the procedure by exhibiting a certain behaviour defined by law (e.g. does not show up at a hearing, acts in bad faith) or if he does not fulfil the obligations contained in the official decision, a procedural fine may be imposed. The upper limit of this fine is HUF one million.

The OMMF is competent to conduct an inspection in respect of occupational safety regulations, during which the authority imposes a fine for violation of the provisions relating to occupational safety, if the employer seriously endangers the life, health or well-being of the employee. The amount of the fine ranges between HUF fifty thousand to HUF ten million. In the event of negligence of a specific person, the inspector may initiate a procedure for misdemeanour. In the course of a misdemeanour procedure, the OMMF imposes the fine on the person responsible for the negligence (as opposed to the other pecuniary sanctions). The upper limit of the fine is HUF one hundred thousand.

In **IT**, in case of non compliance with the rights of posted workers, the same protection measures foreseen for Italian workers are to be applied. The Legislative decree 66/2003 deals with the protection of Italian workers and those who have been posted in another EU country. It foresees mainly administrative sanctions for non- compliance with the maximum working periods and minimum rest periods; protection of pregnant women and new mothers, minimum duration of paid vacation. However, no administrative or penal sanction is applicable to non-compliance with minimum wage rates, including increased rates for overtime. Though, labour

inspectors can issue a formal “assessment legal notice” in case of any pay rate differences. The "assessment legal notice" is regulated by the article 12 of the Legislative decree 124/2004 and has the same value of a sentence issued by the labour judge.
Therefore, the worker can claim for the execution by the bailiff. The Italian legislation in the field of health and safety protection of workers ( D.lgs. 81/2008 *Testo Unico in materia di salute e sicurezza sul lavoro*) also applies to EU posted workers. This regulation mainly foresees penal sanctions, including in particular fines or other kind of punishments, i.e. arrest. In both cases it is possible for the offender to cancel the fault through a reward system. This system is called “obligatory limitation” (*prescrizione obbligatoria*), which is an “adaptation order” issued by the inspector, acting as a police officer. In this case, the offender is obliged to comply with the administrative order he had received during the limitation period and he has to pay the imposed fine.

In **LT**, sanctions are stated in Article 41(8) of Lithuanian Administrative Violations Code. A breach of the Law on Guarantees for Posted Workers shall incur a penalty for employers or their authorized persons from five hundred to one thousand litas (approximately 145 – 290 Euro). Repeated breach of the Law on Guarantees for posted workers shall incur a penalty for employers or their authorized persons from one thousand to two thousand litas (approximately 290– 580 Euro).

If the administrative liability applies to offender, in **LV** a warning or a pecuniary penalty should be issued depending on the type of concrete infringement and its severity. For its part, if the criminal liability applies to offender, the applicable sentence is deprivation of liberty, custodial arrest, community service or a pecuniary fine, with or without deprivation of the right to engage in specific employment for several years depending on the type of the concrete infringement and its severity.
Article 41 of the Latvian Administrative Violations Code[8] provides for penal sanctions the amount of which depends on the type of the non-compliance and can be between 25 and 10 000 LVL[9] depending on the type of the offender – a natural person or a legal person.
Besides, according to Article 146 of the Criminal Law [10], the violation of labour protection rules can be punished by imprisonment up to two years or custodial arrest, community service, a fine amounting up to the 40 times of the minimum monthly wage with or without deprivation of the right to engage in specific employment until up to five years.

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[8] Due to the amount of rules, please see the exact provisions of the Latvian Administrative Violations Code in the annex.

[9] Approximately between 35 and 14 000 euro.

[10] “(1) For a person who commits violation of the requirements of regulatory enactments regulating occupational protection or technical safety, where commission thereof is by the manager of an undertaking (company), institution or organisation, or other person responsible for compliance therewith, and if such offence has caused bodily injury with damage to health or permanent loss of ability to work, the applicable sentence is deprivation of liberty for a term not exceeding two years, or custodial arrest, or community service, or a fine not exceeding forty times the minimum monthly wage, with or without deprivation of the right to engage in specific employment for a period not exceeding five years.
(2) For a person who commits the same offence, if such has caused the death of a human being or serious bodily injury to several human beings, the applicable sentence is deprivation of liberty for a term not exceeding eight years, with or without deprivation of the right to engage in specific employment for a period not exceeding five years.”
Furthermore, in compliance with Article 280 (Violation of Provisions Regarding Employment of Persons) of the Criminal Law for a person who commits a violation of restrictions or provisions, as provided for by law, regarding employment of persons, where commission thereof is by the employer and repeated within a one year period, the applicable sentence is deprivation of liberty for a term not exceeding one year, or custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.

Concerning administrative sanctions the Labour Inspectorate has the right to:
- completely or partially suspend the activities of persons or objects subject to their supervision and control;
- after complete or partial suspension of activities of a person or object:
a) apply a lead seal or to seal up control and communication devices, which start the devices to be stopped or supply them with energy, as well as to draw up a deed of applying a lead seal,
b) control whether a decision regarding suspension of activities of the person or object is executed.

In **LU**, as regards administrative sanctions, the inspectors can, within the framework of their surveillance task of labour and working conditions legislation:

- Order a posting company that has posted workers to Luxembourg and has failed to notify the posting to the Labour and Mines Inspectorate before the deadline (the start of the works in Luxembourg territory) to notify within the 24 hours following the reception of the order of compliance.

- Order the immediate suspension of work concerned where there is obvious non-observance of the legal, regulatory provisions or relative collective agreements on:

  - minimum age required for work;
  - working time and night work;
  - respect of weekly rest;
  - official holidays;
  - protection of working conditions of pregnant women and young workers.

- Order emergency measures for correcting and stopping violations of the law in relation to workers' health and safety at work place, in particular, in the event of threat to employees' health and safety.

- Carry out or make somebody carry out technical checks of an installation, devise, machine or vehicle and, in general, any inspection or examination of equipment or work methods, in order to ensure that the legal and regulatory provisions on workers' health and safety are complied with.

- Order the necessary changes to ensure the application of the legal, regulatory, administrative and conventional provisions on workers' health and safety and that they are carried out within a suitable time, which is fixed by the inspectors.

- Take immediate enforcement measures, such as the stop of work of threatened workers and the evacuation of work places, in case of imminent and serious danger for workers' health and safety. These measures have a validity duration limited to 48 hours. Any other extension of the suspension or closure of the workplaces is responsibility of the Director of the Mines Labour Inspectorate. In the event of non-observance within the assigned period the injunctions of the Director or of the inspectors, if duly notified in writing form, the Director of the Inspectorate has the right to impose the employer or his human resources directors an administrative fine. The amount of this fine is fixed between € 25 and € 25,000.

Regarding the criminal sanctions, the Luxembourg Labour Code provides for some of the offences in the following fields:

- Temporary work: a fine from EUR 500 to 10,000, and, in the event of reiteration, imprisonment from two to six months and a fine from EUR 1,250 to 12,500, or one of these penalties only.
- Working time in general: the offences and the attempts at offence are punished with a fine from EUR 251 to 15,000.
- Working time in the hotel trade and catering sector: imprisonment penalty from eight days to six months and a fine from EUR 251 to 20,000 or one of these penalties only. These penalties can be increased up to the double of the maximum in the event of reiteration within two years.
- Working time in the road transport sector: imprisonment sentence from eight days to six months and a fine of EUR 251 to 20,000, - or one of these penalties only. These penalties can be increased up to the double of the maximum in the event of repetition within two years.
- Minimum social wages: the employers who pay wages lower than the applicable rates are liable to a fine from EUR 251 to 25,000. However, in the event of recidivism within two years, the penalties provided for can be increased up to the double of the maximum.
- Employees' weekly rest: a fine from EUR 251 to 5,000 and imprisonment from eight days to a month or one of these penalties only.
- Official holidays: imprisonment penalty from eight days to three months and a fine from EUR 251 to 50,000 or one of these penalties only.
- Paid annual leave: a fine from 251 to EUR 5, 000 and imprisonment from eight days to a month or one of these penalties only.
- Safety at work: any offence by the employer is punished with imprisonment from eight days to six months and a fine from EUR 251 to 25,000 or of one of these penalties only. Any offence of its obligations on the part of the employee is punished with a fine from EUR 251 to 3,000.
- Employment of pregnant women and women following the birth of a child: imprisonment from eight days to six months and a fine from EUR 251 to 25,000 or one of these penalties only.
- Employment of young people: imprisonment from eight days to six months and a fine from EUR 251 to 25,000 or one of these penalties only.
- Protection against the risks related to an exposure to chemical, physical and biological agents: a fine from EUR 251 to 50,000 and imprisonment from eight days to a month or one of these penalties only. Moreover, the confiscation of the agents or objects having been used to commit the offence can be ordered by the courts. In the event of reiteration within two years from the previous condemnation, penalties could be increased up to the double of the maximum.
- Clandestine work: a fine from EUR 251 to 5,000 and, in the event of reiteration within five years, an imprisonment sentence from eight days to six months and a fine as the double of the maximum, or of one of these penalties only. The suspension of illegal work is also ordered.

In **MT**, any person contravening the provisions of the Posted Workers Regulations shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) of not less than 116 euro 47 cents and not more than 1 164 euro and 69 cents.

If the Labour Inspectorate detects violations in **NL** regarding the legal minimum working conditions, sanctions will be imposed. If wages are underpaid, a penalty can be imposed to a maximum of € 6,700 for each underpaid employee and in the event of underpaid holiday allowance, a fixed penalty of € 700,- for each infringement. The amount of the penalty depends on the extent and duration of the underpayment. The employer will also be required to pay the amount of wage and/or holiday allowance that was unlawfully not paid. If the employer fails to do this, a penalty can be imposed for each day that the employer continues to be in default. This penalty can increase to up to € 400 per day (penalty order).

In addition, many provisions regarding wages (above the legal minimum) have been laid down in collective labour agreements or other collective schemes. Social partners are responsible for monitoring collective labour agreements but here the non compliance is a civil case.

In case of health, safety and hygiene at work, the Labour Inspectorate supervises that employers and employees comply with Occupational Health and Safety legislation. If a violation is less serious, the Labour Inspectorate will also take into consideration the general attention to working conditions and working hours. If appropriate, a comment or warning will suffice. If that attention is structurally lacking however, more severe actions (fines) will be taken.

Non-compliance regarding equal treatment between men and women is a matter for the Dutch Equal Treatment Commission.

In **PL**, in the case of committing a petty offence against the rights of employees defined in Articles 281 - 283 of the Labour Code, the labour inspector imposes a fine from PLN 1000 (EUR 251.82) to PLN 2000 (EUR 503.65) or reports the offence to a competent court. As a result of the reporting, the court can impose a fine in the amount ranging from PLN 1 000 (EUR 251.82) to PLN 30 000 (EUR 7554.77).

In special circumstances, if a person who has been sentenced at least twice for committing a petty offence defined in Articles 281 - 283 of the Labour Code commits such petty offence within 2 years from the date of the last sentence, the labour inspector may impose a fine on that person in the amount of up to PLN 5000 (EUR 1259.12).

In the case of petty offences referred to in the Act of 9 July 2003 on employing temporary workers, the labour inspector may impose a fine in the amount of up to PLN 2000, i.e. EUR 503.65 (Article 96(1a) of the Code of Procedure for Petty Offences) and the competent court, on the basis of a claim filed by the labour inspector, can impose a fine of up to PLN 5000, i.e. EUR 1259.12.

Some infringements of the rights of employees with relation to workers posted to perform work on the territory of Poland may be qualified as offences against the rights of persons performing paid work. These offences include the following and are sanctioned by the Penal Code:

1) malicious and persistent infringement of the rights of employees resulting from a work contract relationship or social insurance (Article 218(1) of the Penal Code); where the penalty is a fine, or restriction of liberty punishment or imprisonment up to 2 years,

2) not fulfilling obligations with relation to the work health and safety and thus exposing an employee to the immediate danger of the loss of life or a serious impairment of health (Article 220(1), (2) of the Penal Code), where the penalty is an imprisonment of up to 3 years (Article 220(1)); and if the perpetrator acts unintentionally – a fine, restriction of liberty punishment or imprisonment up to one year (Article 220(2)),
3) not reporting promptly, despite his/her duty, to the appropriate authority an accident at work or a case of occupational disease or failing to prepare or present the required documentation (Article 221 of the Penal Code), where the penalty is a fine of a maximum of 180 times the daily fine or restriction of liberty punishment.

In **NO**, the level of fines are decided on a case by case basis, according to the nature and seriousness of the offence.

In **PT**, whenever a breach of the law is encountered, labour inspectors can apply a fine, which amount depends on the seriousness of the infraction and the business revenues of that company. The amount of fine goes from € 204 to € 122 400. The sanction is directly applied by the labour inspectorate. Other sanctions include deprivation of applying for public tenders until a period of 2 years or the ceasing of the establishment or the company for the same period. There are also penal sanctions for some infringements, especially regarding failure to comply with health and safety standards or collective representation.

In **SE**, there are both administrative and penal sanctions. Sanctions of penal character are fines or imprisonment. The level is to be decided by the court in each case.
Sanctions of administrative character are sanctions charges (between 1000 SEK and 100 000 SEK) and injunctions or prohibitions

In **SI**, the Employment Relationship Act states that the following fines shall be imposed on the employer not respecting the rights of the posted workers:

- a fine of 3.000 € to 20.000 €, if the employer is a legal person or a sole proprietor;
- a fine of 1.500 € to 8.000 €, if the employer is a legal person or a sole proprietor employing not more than 10 workers;
- a fine of 450 € to 1.200 €, if the employer is a natural person. The latter fine may also be imposed on the responsible person of the employer – legal person and on the responsible person in the state body, state organisation or local community.

Besides the above mentioned penal sanctions, the labour inspectors can, in accordance with the Art. 15 of the Labour Inspection Act, also issue a decision, with which he/she orders the employer to take action, to not take action or to pass an act within a deadline prescribed by the inspector, and to implement acts, other regulations, collective contracts and general acts within his competence.

In **SK**, the labour inspectorate is authorized to fine an employer up to 100,000 EUR; in the event of a violation of the ban on illegal employment, it is authorized to fine an employer from 2,000 EUR up to 200,000 EUR.

*c) Have systems or instruments been established with the objective of preventing non-compliance with the Posting of Workers Directive? If so, please specify.*

In many Member States there are no specific instruments or systems beside the normal sanction system established for preventing non-compliance.

The most common measures regarded as preventive are the following:
– information (campaigns, brochures etc.) on the applicable rules and rights of the posted workers,
– fines,
– prior declaration system,
– exclusion from public procurement in case of non-compliance,
– joint liability rules,
– publication obligations (of transgressors, applied sanction or of rules).

In **CY, CZ, EE, IT, LT, MT, SE, SI** and **SK** no specific instrument or system has been established.

In **AT**, administrative bodies monitoring and – some of them - controlling compliance which different aspects of the Directive are labour inspectorates, tax authorities, health insurance bodies and regional administrative authorities. Monitoring and controlling fulfil a preventive function too. Fines can have special preventive function in individual cases. Further measures to prevent non-observance of rules applicable are exclusion from public contracts/public procurement, prohibition from carrying out subsequent services and collecting a security deposit from the client of the service provider who fails to comply with the Directive's provisions on minimum rates of pay. If available on the internet publication of statistics on irregularities found and information on facts and anonym description of violations might have preventive effect.

In **BE**, information campaigns are organised to inform posted workers on their rights (brochures, websites). The role of the liaison office (DG Individual Labour Relations of the Federal Public Service Employment, Labour and Social Dialogue) and the regional offices of the "*Direction générale Contrôle des lois sociales*" (Labour Inspectorate, same Federal Public Service) should also be mentioned in this context.

In **DE**, the prevention is mainly through measures aiming to inform the posted workers and their employers. Therefore, it refers to the replies given by DE to questions 7 to 18 in Commission's questionnaire of January 2007 (follow-up of communication COM (2006) 159). Further prevention measure is the rule on the chain liability in subcontracting situations. The main contractor has the possibility to influence the subcontractor to comply with the rules if he/she learns about the opposite.
Preventive is also the possibility of imposing fines or the exclusion from the award of public contracts mentioned under 1a), as well as the statutory measures enabling the national authorities to monitor compliance with the relevant working conditions. The existence of an effective control system increases the compliance to avoid sanctions. Instruments for controls and detection of violations are:
– the reporting requirement (under § 18 AEntG),
– the obligation to record the working hours (under § 19 para 1 AEntG),
– the obligation to keep documents, from which the compliance with the working conditions under the AEntG can be established (under § 19 para 2 AEntG).
For further details DE recalled its replies to questions 3 and 4 of the above-mentioned Commission questionnaire.

In **DK**, a prior declaration scheme has been introduced as of 1 May 2008. Figures show that many companies do not send the declaration and therefore amendments were made in order to strengthen the enforcement. For instance, the service provider is obliged to inform the service recipient that a declaration has been send, otherwise, the service recipient will have to notify the health and safety inspectorate.

In **EL**, to ensure the efficient monitoring of the implementation of the Directive and the prevention of infringements, undertakings who post employees to Greece are required, before commencing the provision of services and regardless of its duration, to submit the following documents drawn up in Greek to the competent authorities of the Labour Inspection Corps of the location at which the services are to be provided:

a) a written declaration including the following information:

- aa) the name or business name of the undertaking, its headquarters, address and legal form,
- bb) the identifying data (name, surname, father's name, mother's name, date of birth, home address, etc.) of the legal representative of the undertaking;
- cc) the identifying data, as cited above, of the representative of the undertaking in Greece for the duration of the provision of services;
- dd) the address of the location or locations where the posted employees will provide their services as well as the name or business name, headquarters, address and legal form of the undertaking(s) where the posted employees will provide their services;
- ee) the start date of the provision of services and of the posting of the employees as well as its likely duration; and
- ff) the nature of the activity pursued as well as the use or not of dangerous materials or processes.

b) a list of the posted employees for inspection, in two copies, providing the following information for each worker:

- aa) name, surname, age and specialisation;
- bb) the conclusion date of the employment relationship, a record of similar work experience for other employers and family status;
- cc) the length of daily and weekly working time, the starting hours, interruptions, breaks, and finishing hours of work as well as weekly days off;e and
- dd) any kind of remuneration.

One of the above copies of the list of workers is to be displayed prominently in the workplace, the other will remain filed in the Labour Inspection Corps authorities' archives. In the case of changes, undertakings are required to submit a supplementary list for every case within fifteen (15) days of the occurrence of the change. Where work is carried out in shifts, undertakings are required, in addition to the above lists, to include a table of the weekly shift rotas to be validated. Without these documents, the posting is not allowed.

In **FI**, in 2005 the occupational safety and health authorities employed occupational safety and health inspectors who specialise in monitoring the employment terms for foreign employees. They also monitor the employment terms of posted workers. Currently, there are nine inspectors specialised in foreign employees for the entire country.

In **FR**, the Labour Ministry works on the dissemination of information through a web page, in six languages (French, English, German, Polish, Romanian, Portuguese), addressed to all actors involved in the posting of workers. The posting companies can thus receive information in advance on the procedural rules applied in France. The Ministry participates also in awareness raising campaigns addressed to companies that usually make use of foreign posting companies in the construction, agriculture and show business sector in order to disseminate information regarding rules and applicable procedures and sanctions.

In **HU**, many of the instruments regulating posting (and employment in general) have a preventive purpose, but some of them can only apply after a violation has been committed. Such instruments are:
- sources of information (website of the authority, publications, brochure),
- toll-free green number (occupational safety information point),
- labour law information point, occupational safety advisory service,
- entering certain violations in an official register, which result in an exclusion from state aid and public procurement for 2 years,
- preventive effect of the applicable fines.

In **LU,** on the Internet site of the Labour and Mines Inspectorate, a heading dedicated to posting of workers provides valuable information to the foreign companies who wish to post workers to the territory of the Grand-Duchy (http://www.itm.lu/detachement-de-travaillors ), in order to know more about Luxembourg's law. This information can be consulted either in French, German or English. For further information, the posting companies can also address their questions to a specific mail address, namely: detachement@itm.etat.lu .

The Luxembourg liaison office "Detachment" (mailto:blld@itm.etat.lu ) also plays an important role in the dissemination of legislative information and developments as regards posting for the authorities and involved organisations (for example: employers' or trade-union organisations) of the other Member States of the European Union and, on a subsidiary basis, for the posting companies and workers. Moreover, in order to allow effective control by the Labour and Mines Inspectorate regarding the respect of Luxembourg legislation by the posting companies, the latter have to provide to the Inspectorate, at the latest from the beginning of work on the Luxembourg's territory, a communication of posting (Posted Work information).

**LV** has a prior declaration scheme. According to Latvian Labour Law, art. 14 para. 4 an employer who sends an employee to perform work in Latvia has a duty, prior to posting the employee, to inform in writing the State Labour Inspection regarding such a sent employee, indicating: given name and surname of the employee; date of commencing work; intended length of employment; location of performing the work (if the work performance is not provided in a given workplace, then it should be indicated that the employee may be employed in various locations); representative of the employer in Latvia, who is authorized to represent employer at state institutions and court of Latvia; person for whom the work will be done (service receiver); proof that the employee, who is third-country national, is legally working in the European Union Member State, the European Economic Area country or the Swiss Confederation. LV also puts the information about employees` rights (including information about posted employees` rights) on websites.

**NL** supplies information on websites and in brochures.[11]

In **NO**, several measures have been introduced in order to ensure compliance with the rules that have to be observed by posting undertakings, some of which are:

[11] http://www.arbeidsinspectie.nl/english/index.aspx, http://english.szw.nl/
https://www.werk.nl/werk_nl/werknemer/working_in_the_netherlands_wn

- The Labour Inspection Authority has been given the competence to ensure that generally applicable collective agreements are complied with, and can use coercive measures in order to get documentation.
- Joint liability for wages and holiday allowances according to generally applicable collective agreements in subcontracting.
- “See-to-duty” and information duties: Contractors have an obligation to ensure that generally applicable collective agreements are complied with and to inform subcontractors about the provisions to be complied with
- Establishing information centres for foreign workers and employees in Oslo, Stavanger and Kirkenes.
- Labour Inspection Authority has issued brochures on rights and obligations for posted workers/posting companies in several languages, multilingual officers are manning information hot-line, employing translators accompanying inspectors.
- Agreements to cooperate with responsible authorities in Poland, Latvia, Lithuania and Estonia. Introduction of ID-cards for workers working at building sites, in cleaning, hotels and restaurants.

The parties to the collective agreements that have been declared generally applicable have the right to monitor whether regulations on pay are complied with.

In **PL**, as specified in the Act of 13 April 2007 on the National Labour Inspectorate (Journal of Laws of 2007, No. 89, item 589, subsequently amended) the National Labour Inspectorate, upon a written request of an interested party, is obliged to inform him/her about the minimum terms of employment for persons posted to work in Poland. The aforementioned task is e.g. that of a liaison office that is to say, the Chief Labour Inspectorate. Moreover, the National Labour Inspectorate has launched an Internet sub-site containing a detailed description of minimum working conditions in Poland in the following languages: Polish, English, French and German.

In **PT**, when serious offenses with deceit are repeated or very serious offenses are committed, the labour inspectorate publishes the name of the transgressor and the information on the applied sanction. This publicity has a preventive role. Also prior notification of posted workers plays preventive objectives, but only employers posting workers outside Portugal have to notify the labour inspectorate of the posting.

2. *What **other measures** are available in cases of non compliance with the obligations resulting from the Posting of Workers Directive? <u>If so, please specify</u>.*

The civil liability and the possibility of enforcement of rights before civil courts were the most often mentioned other measures. Furthermore, not just the posted worker but also labour inspectors and other bodies, such as trade unions, public prosecutors have the right to claim the worker's rights or initiate proceedings before the competent courts.

In **CY, DE, EL, FI, FR, IT, MT,** and **SI** the measures that are available are the ones mentioned in the answers to question 1.

In **AT**, the civil claims (especially pay and holidays) of posted workers can be addressed before the Austrian courts. The supplements to the leave scheme (holiday funds) for construction workers that the employer failed to pay, can be claimed legally from the fund.

Despite these possibilities only a few worker go against his/her employer because of fear of dismissal or simply lack of knowledge on applicable wage and working conditions.

In **BE**, regarding criminal cases, a complaint may be filed with the Inspection Service or directly to the criminal courts, namely to the public prosecutor of social issues. In civil cases, according to Article 8 a) and b) of the law of 5 March 2002 Posting of Workers, workers who are or were posted in Belgium, as well as organizations representing workers and organizations representing employers can take legal actions in Belgium for asserting the workers' rights recognized by the laws, regulations conventional criminal penalties. This power does not affect the right of the posted worker to act personally, to join the action or to intervene in the proceeding.
Furthermore, the public prosecutor can start its own proceedings before the Labour Court for an action for damages based on a report drawn up by the labour inspector.

In **CZ**, the rregional labour inspectorates carry out checks on the basis of complaints and they preventive inspections of employers. Other inspection bodies are the Czech Social Security Administration, tax offices, health insurances, etc. The posted worker can also claim his/her rights before the courts, on the basis of § 7 (1) of the Civil Court Procedure.
According to the Labor Code, the employer has an obligation to discuss employee’s complaints, concerning the employee’s exercise of rights and obligations arising from the employment relationship, with the employees or, at his request, with the representatives of employees.

In **DK**, posted workers may institute judicial proceedings. Further to this, the courts in Denmark upon request from employees concerned must use foreign law implementing the directive. DK finds that the “*effet utile*” of the directive requires member states to have such a provision. It seems to be of specific importance once the directive on temporary agency work has been transposed.

In **EE**, posted workers have the right of recourse to the courts for the protection of their rights.

In **HU**, the inspector proceeds to inspect a certain employer ex officio. The employee, however, can file a complaint, request or other note with the Inspectorate (OMMF). The complaint may be filed in writing, orally or by electronic means. The inspectorate investigates the complaint, and takes the appropriate measures to put an end to the violation. The central office of the OMMF also investigates complaints which allege that the inspectorates failed to proceed to an inspection, or have proceeded to an incorrect inspection. Both the employer and the original complainant may file such a complaint.

In **LU**, in addition to proactive controls or in reaction to complaints, the inspectors can issue injunctions with a view to correct situations of non-compliance of legislation on labour law and health and safety at work. The inspectors reflect their findings in the so-called "*process-verbaux*" which are accepted as proofs, unless the counterpart presents other evidence, of infringement of the laws, regulations and collective agreements the supervision of which is entrusted to the Labour and Mines Inspectorate.

However, it is left to the free decision of the inspector either to issue warnings or to advice the employer or his representative. Official reports are sent to the Public Prosecutor by the Director of the Labour and Mines Inspectorate.

The Minister and the Director of the Labour and Mines Inspectorate will be informed by the Public Prosecutor of the follow-up to the official reports, under its prerogative of assessment of the appropriateness of the proceedings. In parallel, it remains still possible for the posted worker to refer to the labour court a conflict with his employer (pay, right to leave etc), even if this faculty only is very seldom used by the posted workers.

In **LV**, in addition to administrative and criminal liability, also civil liability is provided for in the provisions of Labour law and Civil law.

In **NL**, workers can always contact a trade-union or seek the judgement of a civil court.

In **NO**, posted workers have the same right as Norwegian workers to bring a case before a civil court it order to enforce their rights.

In **PL**, in case when obligations following from the Directive 96/71/EC are not met, persons posted to work in the Republic of Poland may lay their claims from an employer via legal proceedings in front of the competent court (art. 19 of the Council Resolution (EC) 44/2001). They are also entitled to file their complaints to the National Labour Inspectorate.

In **PT**, the labour inspectorate can directly demand from the employers to pay wages to the employees in case of non-compliance with the obligation of timely payment or payments below minimum rates of pay. This has effectiveness problems when employers are established outside Portugal.

In **SE,** an employer who breaches e.g. the Annual Leave Act has to compensate the employee for any damage incurred. This obligation is to be found in some other acts as well as in collective agreements. Other measures are industrial actions including stoppages of work (lock-outs and strikes), blockades and boycotts.

In **SK**, in case of non-compliance, it is possible to address to the relevant labour inspectorate with a request for a labour inspection. The second possibility is to address to the court.

3. *Were specific issues raised or did you encounter any problems with respect to application of **Regulation Rome I** and/or **Regulation 44/2001** ('Brussels I'), i.e. the question of which legislation is applicable or which court is competent in your member State? Did this lead to litigation, procedures or judgments? <u>If so, please specify</u>.*

The majority of the Member States who replied did not have or were not aware of any particular problems related to the application of Regulation Rome I and/or Regulation Brussels I.

The few reported problems related to establishing the competent court, the lack of access to the foreign legal acts and their translation during the legal proceedings and cross-border recovery issues.

The replies received pointed out the lack of experience with respect to Regulation Rome I (Regulation 593/2008).

No specific issues or any problems have been raised or encountered in **BE, CY, CZ, DE, EE, EL, FR, HU, LU, LV, MT, NL, PT, SE** and **SI.**

Regarding the competent court, **AT** remarks that according to Article 4 paragraph 1 of the Labour and Social Court Act (*Arbeits- und Sozialgerichtsgesetz*), the plaintiff has a choice of jurisdiction regarding the claims deriving from the working relationship and concerning the duration of the work in Austria. In posting cases the competent court can also be where the work is to be or was carried.

In **DK**, the trade unions report that they experience problems in cross-border recovery. Using the procedures in the Brussels I-regulation is time consuming and when the claim is finally presented the foreign company often does not exist. However, this seems sometimes to be due to the fact, that the foreign company was fictitious in the first place (see also Monti-report on "letterbox-companies"). The trade unions have also experienced that lack of knowledge on the Danish system have caused difficulties. For instance, foreign authorities have questioned whether the Danish labour court is a "court" within the meaning of Brussels I-regulation (which it without any doubt is).

In **FI**, provisions on the competent court in matters concerning posted workers are also laid down in section 9 of the Posted Workers Act. According to this provision, in addition to provisions on jurisdiction elsewhere in the law or in international conventions binding on Finland, an action based on the rights or duties referred to in the Act can be brought before a Finnish district court within whose jurisdiction workers carry or have carried out work as posted workers.
Cases concerning posted workers very rarely go to court. It seems that posted workers do not wish to jeopardise the continuance of their employment relationship. They are also not always aware of their rights.
Statistics kept on cases are not detailed enough to distinguish cases concerning posted workers (either civil or criminal cases) from other, similar cases. In addition, it has not otherwise come to the attention that the question of which court is competent or which law is applicable would have caused any specific problems in courts or for the occupational safety and health authorities.

**IT** reports on two issues concerning Regulation of *Rome I* and the application of national legislation. The first one deals with individual working contracts, in particular referring to applicable salary system. In fact, some posted enterprises would prefer to comply with the rules of their country of origin and not only in what concerns the legal framework (this is considered as legitimate in Italy, according to the Regulation of Rome I) but also in what concerns the wage treatment of the worker, in particular if the wage treatment in the origin country is lower than what fixed by national collective agreements. In this case in fact, posted enterprises should comply with the principle of respect of the minimum pay rates foreseen by national collective agreements.

The second is connected to the posted workers having a fixed term contract with temporary employment agencies established in other EU countries, having obtained an authorization in the country of origin. Practical problems mostly relate to the problem of "equivalence" among the authorization certificate issued by other EU countries and that one foreseen by national legislation. In addition to this, some temporary working agencies not established in Italy usually operate in Italy by means of the EU posting system, but without complying with the legal principle of equal wage treatment, that oblige Italian employers to treat temporary workers (supplied workers) in the same way as employees of the same field of activity, as foreseen by national collective agreements.

In **PL**, the provisions of the Directive 96/71/EC, the Regulation of the European Parliament and the Council (EC) No 593/2008 and the Regulation of the Council (EC) No 44/2001 were applied in 7 cases, 5 of which have already been concluded. In three cases problems have been reported pertaining to the lack of access to the foreign legal acts, and after the access has been granted – problems have arisen as to the necessity of their translation. In one case the applicant requested remuneration for the work done as a part of a delegation abroad, but the court dismissed the claim. In another case the court dismissed the claim, *inter alia* on the basis of the Regulation 44/2001.

**SK** informed that in the beginning stages of the application of Council Regulation (EC) No. 44/2001, certain problems arose in determining the jurisdiction in matters of alimony (including spouse maintenance) caused by the incorrect Slovak language version. This problem was reported to the Commission and the situation was resolved after the publication of the Corrigendum (OJ L 12 of 16.1.2001) and the training of the judges. The remaining language shortcomings related to this Regulation were eliminated through another Corrigendum. SK does not have any great experience with the application of Regulation (EC) No. 593/2008 (Rome I) since it has only been applied since 17. December 2009. Rather, questions occurred regarding its predecessor, the Convention on the Applicable Law for Contractual Obligations of 19 June 1980 (Rome Convention). The courts did not know from when it pertained to the Slovak Republic.

*4. Has the application of* ***Council Framework Decision 2005/214/JHA*** *of 24 February 2005 on the application of the principle of mutual recognition to financial penalties*[12] *led to the identification of specific issues or problems? If so, please specify.*

The majority of the Member States who replied have not reported specific problems. This can be due to the fact that the implementing rules of the Framework Decision are not yet in place, thus not applied in some Member States.

It seems from the replies that fewer problems exist regarding the penal type financial penalties, but considerably more with the recovery and cross-border enforcement of administrative fines. The further reported problems mainly relate to the not-yet-implementation of the Framework Decision in certain countries and to the lack of criminal jurisdiction before labour courts within the meaning of the Framework Decision as well as language problems.

No specific issues or any problems have been raised by **CY, CZ, DE, DK, EE, EL, FR, LV, MT, PT, SE, SI** and **SK.**

Despite ratifying the Convention and the framework decision, according to the **AT** authorities, several Member States refuse assistance making the administrative offence/criminal procedure and enforcement of financial penalties more difficult.

[12] OJ 2005 L 76/16; see also Report from the Commission based on article 20 of this Council Framework Decision, COM (2008) 888 final, 22.12.2008

Furthermore, the Convention on Mutual Assistance in Criminal Matters of 29 May 2000 which can also be applicable in case of administrative offences is not ratified yet by Italy, Poland, Bulgaria, Romania, Ireland, Luxembourg and Greece.

Despite ratifying the Convention and the framework decision, according to the Austrian authorities France refuses assistance making the administrative offence/criminal procedure against a person who is permanently resident in France more difficult.

It is upheld that the procedures against companies outside the own country are problematic because of language problems. The investigation and translation costs can be higher then the penalty imposable, therefore the procedures are often dropped.

In the area of cross-border law enforcement urgent action is needed at the European level, because some companies which post mainly workers from outside the EU at pay and working conditions that fall well below the Austria level, or without the necessary requirements in the home state of the posting company (work and residence permit, registration for social security) to Austria, can not be sued.

Therefore, cross-border law enforcement at European level has to be intensified, in particular through the introduction of an electronic information system enabling easier controls.

**BE** has transposed the Framework Decision by adopting the Act of 19 March 2012 (Belgian Official Gazette of 4 April 2012, p. 21135, entry into force on 14 April 2012)**.**

**DE** has transposed it in October 2010.

In **FI**, the application of the Framework Decision on financial penalties is in practice only commencing, because the framework decision has not yet been implemented in all EU member states. The competent authority in Finland, the Legal Register Centre, does not keep statistics on the enforcement of fines in such detail that cases concerning posted workers could be distinguished from other cases. According to the Legal Register Centre, based on the types of offences for which fines have been enforced, it can be estimated that no cases concerning posted workers have yet been encountered in the enforcement of fines.

In **IT**, there are neither particular problems to refer, nor real opportunities in terms of transnational efficiency of the sanctions in the field of the directive 96/71/CE relating to the Decision 2005/214/JHA. However, most significant practical problems in this field relate to the application of administrative sanctions in other EU countries. As regards the applicability of penal sanctions, they could be part of the area of applicability of the Decision 2005/214/JHA. The matter is up to the Civil Court and not the labour inspector, who acts as a bailiff and therefore cooperates with the appropriate Civil Court.

In **HU**, the main problem concerning assistance in the execution of decisions is that many of the Member States who adopted the framework decision have not transposed its requirements into national law, therefore requests for assistance are not accepted by these Member States. Furthermore, the translation into a foreign language of the documents necessary for these procedures generates significant costs, which are to be borne by the Hungarian authority in charge of the original procedure, who is requesting the assistance.

Recently, requests for assistance in the execution of decisions have been answered as follows: 13 requests were received regarding a final decision imposing a financial penalty, in view of its execution, issued against Hungarian nationals, mostly from the Netherlands, but there were requests from Austria and Slovenia as well. In 3 of these instances, further information necessary for execution was requested, in 5 cases the request had to be denied on grounds of having been statute-barred, in 1 case the amount in question was below EUR 70, in 4 cases the request related to a criminal offense, and was therefore forwarded to the competent court.

In 32 cases HU requested the transfer of the execution of final decisions imposing a financial penalty, issued against foreign nationals by the Hungarian authority entitled to pursue misdemeanours. The files were transferred to the authorities of Austria, Slovakia, Poland, Germany, Czech Republic, Belgium, France, Romania and the Netherlands.
Out of the files forwarded:
- in 7 instances the files were sent back, because the receiving member state has not implemented the provisions on the assistance in the execution decisions,
- in 6 cases the files were sent back on the grounds of having been statute-barred,
- in 3 cases the foreign authority did not reply within the time limit for execution (1 year after the decision has become final),
- in 1 case collecting the amount was unsuccessful, in 3 cases the debt was registered,
- in 2 cases the foreign authority sent the files back because the foreign address was inadequate,
- in 1 case the request for assistance was withdrawn by the Hungarian authority, because the foreign offender paid the fine in Hungary,
- in 1 case the file was sent back to us so with request for further information,
- in 8 cases the foreign authority has not responded (as yet) to the request.

HU also received requests for procedural assistance, four times from a foreign state and once from the administrative authority of a Hungarian municipality, which were transferred to the Prosecutor General's office.

In the light of the above, it can safely be said that the assistance in the execution of decisions has not been very effective since the entry into force of Szjtv (the act on assistance). The main reason is that many of the member states concerned have not transposed the relevant provisions. Furthermore these procedures generate significant costs, and also the request for assistance is received such a long time after the initial offense was committed and the decision imposing a financial penalty became final, that the procedure becomes statute-barred.

In **LU**, the FD was transposed by the Law of 23 February 2010 concerning the application of the principle of mutual recognition to financial fines. It is however still too early to draw a first assessment on possible difficulties encountered in the application of the principle of mutual recognition.

Nevertheless, it must be pointed out that *"administrative sanction"* falls within the scope of the law only if they are imposed due to a criminal offence or due to a punishable act and they may be appealed before a criminal court. This gives rise to two comments:

- the control of these conditions in the executing State, in this case Luxembourg, will be difficult and the data contained in the certificate is not sufficient;

- the condition required as to a relevant judge competent in criminal matters should exclude all administrative decisions that can only be appealed before an administrative court.

**LV** has faced problems during the application of the FD 2005/214/JHA regarding administrative offence cases. Due to Latvian national legislative peculiarities there were complications regarding the transposition of this Framework Decision. Latvian law does not provide for international cooperation in administrative cases, therefore it was possible to transpose the Framework Decision only with regard to recognition and execution of decisions in criminal cases by amending the provisions on international cooperation in the Criminal Procedure Law. As a result of that, currently there is no possibility to execute other EU Member States' decisions made in administrative cases (there is no problem with criminal cases decisions). However, taking into account that the FD 2005/214/JHA is the only instrument for the execution of administrative decisions, most of the requests concern administrative cases. Therefore, such requests cannot be executed in the territory of Latvia which amounts to approximately 80% of requests received in accordance with the FD 2005/214/JHA.
Currently Latvia is looking for possible solutions to this problem, as enforcing the Framework Decision would entail substantial changes to the national legal system.

In **NL,** sanctioning non-compliance is mainly done via administrative sanctions as it is faster and less burdensome on the judicial system. In cross border sanctioning the Framework Decision is not a suitable title to cooperate on cross border application and collection of administrative fines for NL. The Framework Decision demands an appeal procedure involving a judge with powers in criminal matters. In the Dutch judicial system the appeal is at an administrative court. Therefore, the Dutch Labour Inspectorate is not very effective in collecting these administrative fines across borders through our bailiff.
Changes in either the European or the Dutch legal system could resolve the problem but both have far reaching consequences. Rule of law in Europe requires to find a solution. It is not right that one may neglect a fine for non-compliance simply because the breach of law was within another country.

In **PL**, the Framework was transposed into Polish law under the Act of 24 October 2008 on changing the Penal Code and certain other acts (Dz. U. No 214, item 1344). The Act introduced two new chapters to the Penal Code: 66a and 66b.
The above provisions were applied to 14 cases, taking into account the total number of decisions on execution of a motion of another Member State, decisions on submitting a motion to another EU Member State and the litigation which is still in progress in Polish courts pursuant to chapters 66a and 66b of the Penal Code. In relation to the application of these provisions, difficulties have been reported pertaining to the necessity of translation into Polish of the files annexed to the motion, the lack of information on the competent bodies in foreign States, the lack of agreements with Member States on distribution of money obtained from the enforcement of decisions. An increase in number of cases is predicted upon the implementation of the Framework Decision by Germany and Sweden.

**SK** is currently preparing the legal regulation which will ensure the implementation of the Council Framework Decision 2005/214/JHA. This legal regulation is expected to take effect on 1. January 2011.

5. *Have* ***bilateral contacts or agreements*** *been established in order to tackle lacunas acknowledged in the cross-border enforcement? If so, please specify and indicate to what extend these have been (more) efficient.*

The majority of the Member States who replied have bilateral contacts, i.e. agreements with other Member States, with the exception of **DK, FI, HU, IT, MT** and **SE**. Those Member States who established bilateral agreements consider them a useful tool in solving cross-border cases.

The scope of these agreements is mainly administrative cooperation between inspection services, which often encompasses exchange of information, sharing best practices. In some cases also joint inspections take place.

**AT** has an agreement with Germany since 1988 on official and legal assistance in administrative matters. Under this agreement the relevant competent control authorities (*Finanzpolizei* in Austria and the *Finanzkontrolle Schwarzarbeit* (FKS) in Germany) cooperate directly and in a relatively formless way, as well as exchange specific and general information rapidly and efficiently.
This bilateral agreement is the legal basis for mutual administrative and legal assistance in all administrative matters and offenses and is especially in the area of occupational safety more efficient than the Framework Decision 2005/214/JHA.

**BE** has cooperation agreements between labour inspectorates with France, Luxembourg, Poland and Portugal (through single point of contacts) and also others are in preparation. There are annual or biannual meetings to discuss difficulties encountered and to develop best practices. These agreements allow exchanging personal data and information of confidential character better. In some cases also cross-border controls take place.

**CY** has signed a bilateral agreement with Bulgaria for co-operation in the field of working conditions of posted workers.

In **IT, MT** and **SE** no bilateral agreements have been established either.

**CZ** has concluded bilateral agreements with FR[13], DE[14] and NL. The Memorandum with NL concerns data exchange and cross border cooperation in combating fraud in the international posting workers and the fight against illegal employment. In this case the practical use has already occurred, but did not affect the posting of workers.

**DE** promotes the bilateral agreements as a useful tool to combat cross-border forms of illegal work and employment. These agreements set out the forms and levels of cooperation, the rules of mutual information exchange as well as the central contact points/persons. The Federal Ministry for Finance has therefore worked out a draft agreement on the basis of which it conducts negotiations with several Member States, including the majority of the new Member States, to conclude such a bilateral cooperation agreement. The German-Bulgarian agreement on combating cross border illegal and undeclared employment was signed on 12

[13] on the exchange of information and cooperation in the field of insurance and to combat abuse of social security benefits
[14] on cooperation in combating illegal employment and undeclared employment and illegal hiring of cross-border workers and with this related cross-border abuse of social benefits and non payment of insurance premiums

November 2008 in Sofia, the interdepartmental agreement with CZ on 28 August 2009 in Prague.

**DK** has not yet concluded any bilateral agreements, but it might be the result of on-going considerations on how to tackle problems such as lack of knowledge of the Danish system.

The Labour Inspectorate of **EE** concluded a Cooperation Agreement with the Labour Inspection Authority of Norway in 2008, on exchange of information and provision of legal assistance related to posted workers.

In **FR,** the bilateral agreements between France and Germany (31-May-2001) and Belgium (9-May-2003) envisage to put in place decentralised liaison offices in the Directorate General of Enterprises, Competition and Consume, Labour and Employment, respectively at Strasburg and Lille. These offices are competent for exchanging information in matters related to the respect of posting of workers legislation. The cooperation between France and Belgium has allowed fruitful exchange of information between borderline services. The geographical proximity has indeed allowed to keep both sides mutually informed and to follow up the development of the regulations on posting of workers in both countries, to compare regulations and required documents (elaboration of comparison tools in order to facilitate control operations). The Ministry of Labour wishes to spread these areas of cooperation including other neighbour countries. On the other side, the declaration of intentions between France and Spain of 22 September 2010 envisages not only cooperation between inspection services in the borderline, but also the setting up of a decentralised liaison office at Aquitane et Languedoc-Rousillon and in Spain in each borderline region. Finally, the Ministry of Labour at present has signed an agreement with Luxembourg on 15$^{th}$ of March 2011 and is pursuing negotiations with Italy in order to sign new agreements based on the one reached between France and Spain.

**LU** signed bilateral cooperation agreements with Belgium, Portugal and, Poland Labour Inspectorates. Negotiations are under way with France and Germany. Thanks to the single contact points, the exchange of information is more rapid. Annual or biannual assessment meetings also make it possible to discuss the encountered difficulties and to improve the practices accordingly.

**LV** has bilateral (trilateral) agreements with the Republic of Lithuania and the Republic of Estonia on Judicial Assistance and Judicial Relations, which was signed on 11 November 1992, as well as with the Republic of Poland on Judicial Assistance and Judicial Relations in Civil, Family, Labour and Criminal Matters, which was signed on February 23, 1994. Both of these treaties are concluded to deal not only with cross-border enforcement of judgements in civil matters. The cooperation based on the terms of these treaties takes different forms and has wider scope envisaging judicial cooperation in both, criminal and civil matters, although the question of cross-border enforcement of judgements in civil matters is also dealt with in these treaties. Nevertheless, it should be taken into consideration that these treaties made between the Member States have very restricted application and they only relate to the matters not regulated on the level of legislative acts of the EU.
In addition, LV Labour Inspectorate concluded a cooperation agreement with the Labour Inspectorate of Norway on exchange of information, including on cross-border issues. The cooperation agreement was drawn up on the basis of the initiative of both inspectorates, thereby implementing the principle of good administration, as well as in order to identify and

prevent the infringements committed by the Latvian employers in respect to its employees posted to Norway.

**NL** has concluded Memoranda of Understanding or other agreements with Poland, Romania, Bulgaria, France, UK, Slovakia, Czech Republic and Portugal. Treaties with Germany and Belgium are to be concluded.

**NO** has entered into agreements with Poland, Latvia Estonia and Lithuania, mainly regarding exchange of information.

In **PL,** the National Labour Inspectorate concluded 4 agreements with authorities responsible for the supervision of work and employment conditions in other Member States which directly concern cooperation related to the exchange of information on posting workers in the framework of the provision of services. The agreements were concluded with counterpart institutions in the Netherlands, Norway, Belgium and Portugal.
As a rule, the agreements obliged the parties to exchange information concerning:

1) employees posted to perform work on the territory of both countries which are parties to the agreement, employment conditions, employment irregularities detected during inspections, including the infringement of the rights of the employees,
2) identified petty offences against the rights of the employees,
3) legal status and type of activity conducted by employers who post workers to perform work on the territory of countries which are parties to the agreement,
4) accidents at work suffered by posted workers.

Polish trade unions have also concluded various bilateral agreements (e.g. by NSZZ Solidarnosc). Some of them are of a general character such as organisation of workers (which implicitly includes foreign workers as well), e.g. an agreement with British TUC from 2008. French CFDT (1993), CNV, Netherlands (1993), Bulgarian Cartel Alfa (1996) and Podkrepa (1995), Slovak KOZ SR, German DGB and others. There are however some agreements that include more specific provisions about co-operation in fields such as: counteracting social dumping (Irish SIPTU 2006), exchange of information about migrant workers – Georgian GTUC (2006), support and help in the field of migration (Belarusian BKDP (2007). Nevertheless it has to be underlined that the actual scale of co-operation is not based strictly on agreements. There are various activities undertaken (information campaigns, ad hoc actions), regardless of official agreements.

**PT** signed a bilateral agreement in 2003 with the Spanish Labour and Social Security Inspection, with a broader content. Within the scope of enforcement of sanctions, cooperation operates mainly through exchange of information, namely on the headquarters of companies to where infractions notes can be delivered or even help to deliver the infraction note. Information is provided also on sanctions applied to companies of the neighbouring state. Other bilateral agreements with Member States were made, more recently, with Belgium, Bulgaria, Poland and Luxembourg.

No formal forms of cooperation or agreements have been established by **SI**. However, SI has exchanged some information regarding correct interpretation of the legislation transposing the Directive 96/71/EC with responsible bodies in other Members States, which has been very successful.

**SK** signed in autumn 2006 a draft Memorandum of Understanding with NL on Cooperation in the Enforcement of Social Policy Rules in the Case of Work and Services on the Territory of

Another State was submitted. Further to this, the draft Agreement between the Ministry of Labour, Social Affairs and Family of the Slovak Republic and the Federal Ministry of Finance of the Federal Republic of Germany on Cooperation in Combating Cross-border Misuse of Benefits and Social Insurance Contributions in the Case of Gainful Employment and Unreported Gainful Employment as well as on illegal cross-borer employment was submitted in November 2006.

6. *Do **Social Partners** have any information that could be useful with respect to the above mentioned issues? Have they encountered specific problems in the enforcement of the applicable legislation on posting of workers?*

As a preliminary remark, it should be noted that the role of social partners regarding enforcement is different in the various Member States.

Most of the problems reported concern the application and enforcement problems of the Directive 96/71/EC, in particular relating to the mandatory core conditions.

Most of the issues raised relate to the problem of the letter-box foreign companies, temporary agency work, fake self-employed and lack of representation in the host country.

There were no specific information regarding this issue or no problems were reported by the social partners from **CY, CZ, EE, HU, IT, LT, MT, NL,NO, PT, SE** and **SI**.

In **AT**, the *Bundesarbeitskammer* (employee’s side) notices some improvements regarding the control of pay. Since May 2011, a new law provides that the authorities control the payment of workers and that employers, who infringe the correct payment have to expect sanctions or - in severe cases - a prohibition of working. Until now it is too early to say, if this new law will be effective.
The *Wirtschaftskammer* (employer's side) pointed out the problem of the control of the actual payment of the minimum rates of pay to the posted workers. Minimum wage claims may indeed exist on paper, but it is hard to prove whether they were actually paid as well. In order to remedy this problem of control, a legal amendment (§ 7d AVRAG) requires the employer to keep salary payment papers available at the place of work. In case that a safe-keeping is unacceptable at the place of work, the employer may store these documents in the home country but has to make them available upon request by the Austrian authorities within 24 hours. There is still a lack of information about the applicable rules in the host country to posted workers and this shortcoming should be remedied urgently.

In **BE**, the social partners are particularly aware of the problems that arise on posting and abuse. Campaigns were developed by some employers' federations to inform their members about the risks they take in case of non-compliance with social rules, but their call for good practice has not lead to an improvement in the field.
The better knowledge the entrepreneurs have of the rules, the more complex and sophisticated the techniques and networks become to circumvent the obligations of the Directive.

In **DE**, the *Deutscher Gewerschaftsbund Bundesvorstand* (employees' side) refers back to its reply given to the minimum rates of pay questionnaire and reports on the problem of fake self-employed persons and the non-respect of the rules on working time and pay.

In **DK**, the trade unions report that they experience problems in cross-border recovery. Using the procedures in the Brussels I-regulation is time consuming and when the claim is finally presented the foreign company often doesn't exist. However, this seems sometimes to be due to the fact, that the foreign company was fictitious in the first place (see also Monti-report on "letterbox-companies"). The trade unions also sometimes find it difficult to verify if a company is established abroad or on the other hand must be deemed to be established in Denmark. In this connection they have asked, if a company that is established abroad and hire people with the sole purpose to post them abroad can be deemed to be established abroad. They ask for better quality of – and coordination between - company registers. The trade unions have also experienced that lack of knowledge on the Danish system have caused difficulties. For instance, foreign authorities have questioned whether the Danish labour court is a "court" within the meaning of Brussels I-regulation (which it without any doubt is).

**EL** noted that the administrative penalties cannot be imposed on the representative of the undertaking in Greece but only on the employer, manager, chargé d'affaires or any representative with any other title of the undertaking who posts the employee. As a result, it is not possible to impose administrative penalties on the undertaking which posts employees to Greece since it does not have a tax identification number in the host country.

In **FI**, the Central Organisation of the Finnish Trade Unions (SAK) and Finnish Confederation of Salaried Employees (STTK) mentioned the following:
One problem in the implementation of the rights of the posted workers and employees of them is the fact that the worker or employee, as well the employer, may leave the country before any inspection can catch the breaches. The inspection authorities' resources do not correspond at all the practical needs. Just in the capital region there are approximately 1000 construction sites with more than 10 workers. And there are even more smaller sites. In these circumstances the nearby single inspection activity is that realized by the social partners and ultimately a threat of industrial action by the Construction Trade Union, if it becomes aware of terms and conditions below the level of the *erga omnes* CBA (collective bargaining agreement) and the threat is otherwise efficient in the circumstances of the case. There are also a lot of smaller sites where all the workers are posted ones and do not dare to come up with their claims. The Construction Trade Union finds, on the basis of its practical knowledge of the grass-root circumstances, that the negligence of the *erga omnes* CBA is wide-spread at posted workers in the sector.
The problem that the Finnish terms and conditions are not claimed and/or applied is not limited to construction industry.
In order to make the legislation more effective a coherent chain liability of client/principal contractor should be realized (in addition to the present system limited to checking), thus also covering the wage claims.

In **FR**, the FFB (*Fédération Française du Bâtiment*) and the FNTP (*Fédération Nationale des Travaux Publics*) are in favour of a European level model-type of prior declaration as well as an improved cooperation between Member States.

In **LU** the social partners have no power or any authority other than to denounce the illegal situations on the matter.

The Labour and Mines Inspectorate is only requested by the law to supervise the application of the legal provisions concerning the employees' posting, in close cooperation with the Ministries having competences on right of establishment, health, customs and taxes, the

Grand-Ducal Police force, the Employment service, the direct Tax authorities, the Administration of Register and Properties and the Accidents at work insurance Association.

In **LV**, the Free Trade Union points out that mostly construction industry employees face the problems related to the posting of workers. The main problems are:
- According to Paragraph 11 of the Cabinet Regulations No.219 "Procedure for reimbursement of expenses related to business trips and expenses related to working trips of employees" the employer is not obliged to pay the daily allowance in full if the employee is provided with free accommodation (including food expenses) during a mission. In practice there have been cases where the employers with an aim not to pay daily allowance in full pay the transport costs, provide a free accommodation, at the same time providing food expenses, which in practice are not sufficient for living;
- Lack of understanding of the rules regulating posting of workers in the case when the employee is posted to another state;
- Lack of sufficient information (which taxes and in which countries should be paid, what are the minimum standards that employers must ensure for their employees posted to foreign countries);
- Difficulty of securing evidence in cases where an employee submits a claim against the employer on unfulfilled liabilities (mostly for unpaid wage) in foreign country. It is problematic to prove employment conditions, performed work, working hours, because the evidences are located abroad.

In **PL,** trade unions[15] are addressed by posted workers who face problems with their working conditions (especially remuneration) abroad. In most cases these workers are not fully aware of who their actual employer is or what regulations apply. Most often doubts appear as to the notion of minimum wage, and more specifically whether per diems paid by the Polish employer, cost of accommodation and transport from/to Poland are includes in the minimum wage. The information workers receive is often either incomplete or nor understandable for them, which renders any form of assistance or help difficult.

In **PT**, all enforcement of labour sanctions is of the competence of the labour inspectorate. The role social partners play resides on the denouncement for non-compliance situations.

Although in **SI**, social partners did not report any problems in this respect, the Labour Inspectorate however reports general problems relating to the implementation of the directive in cases where employers do not have the subsidiary or representation in Slovenia. This results in many difficulties in obtaining information on the employers and their responsible persons and special difficulties in handing over the decisions, establishing that the offence took place.

In **SK**, the Federation of Employers' Associations registers application problems in the administration of the European execution title and the low level of mutual cooperation in ensuring the execution title and time difficulties.

[15] The paragraph is based on the reply received from Solidarnosc.

**Annex**

The Article 41 of the Latvian Administrative Violations Code provides:

"In the case of a violation of regulatory enactments regulating employment legal relations relating, except for the cases, which are specified in Paragraphs two and three of this Article – a warning shall be issued or a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 25 up to LVL 250, and for a legal person – from LVL 50 up to LVL 750.

In the case of not entering into a written form of the contract of employment – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 100 up to LVL 350, and for a legal person – from LVL 750 up to LVL 5000.

In the case of not ensuring the State specified minimal monthly wage, if the person is employed for a normal working time, or not ensuring the minimal hourly tariff rates – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 300 up to LVL 400, and for a legal person – from LVL 600 up to LVL 5000.

In the cases of the violations provided for in Paragraph one of this Article, if they have been recommitted within a year after the imposition of administrative sanction – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 250 up to LVL 500, and for a legal person – from LVL 750 up to LVL 2000.

In the cases of the violations provided for in Paragraphs two and three of this Article, if they have been recommitted within a year after the imposition of administrative sanction – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 400 up to LVL 500, and for a legal person – from LVL 5000 up to LVL 10 000."

Article 41.4 of the Latvian Administrative Violations Code provides:

"In the case of violation of the regulatory enactments that regulate labour protection, except for the violations referred to in Paragraphs two, three, four, five and six of this Article – a warning shall be issued or a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 50 up to LVL 250, and for a legal person – from LVL 100 up to LVL 750.

In the case of non-performance of a work environment risk assessment and the non-development of a labour protection measures plan or the non-conformity thereof with the requirements of regulatory enactments regulating labour protection – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 50 up to LVL 250, and for a legal person – from LVL 250 up to LVL 1000.

In the case of not using safety signs and not placing them appropriately in the work environment – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 100 up to LVL 250, and for a legal person – from LVL 250 up to LVL 750.

In the case of not sending employees for the performance of mandatory health examinations, if such are provided for in regulatory enactments – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 100 up to LVL 250, and for a legal person – from LVL 500 up to LVL 750.

In the case of failure to investigate an accident at work in conformity with the requirements of regulatory enactments or its concealment – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 100 up to LVL 350, and for a legal person – from LVL 250 up to LVL 1000.

In the case of failure to investigate an accident at work in conformity with the requirements of regulatory enactments or its concealment, as a result of which the employee has been caused serious health disorders or his or her death has occurred – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 350 up to LVL 500, and for a legal person – from LVL 1500 up to LVL 3000.

In the cases of the violations provided for in Paragraph one, two, three, four and five of this Article, if they have been recommitted within a year after the imposition of administrative sanction – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 350 up to LVL 500, and for a legal person – from LVL 1000 up to LVL 3000.

In the case of the violations provided for in Paragraph six of this Article, if they have been recommitted within a year after the imposition of administrative sanction – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 400 up to LVL 500, and for a legal person – from LVL 4000 up to LVL 10 000."

Moreover, Article 41.5 of the Latvian Administrative Violations Code provides:

"In the case of violation of regulatory enactments that regulate labour protection, which cause a direct threat to the safety and health of an employee, except the violations referred to in Paragraphs two, three and four of this Article – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 350 up to LVL 500, and for a legal person – from LVL 1000 up to LVL 2000.

In the case of not ensuring employees with personal means of protection necessary for work – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 250 up to LVL 500, and for a legal person – from LVL 1000 up to LVL 2000.

In the case of using work equipment not in conformity with the requirements of regulatory enactments regulating labour protection or non-observance of safety requirements – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 250 up to LVL 500, and for a legal person – from LVL 1000 up to LVL 2000.

In the case of failing to instruct employees or the non-performance of training on issues regarding the safety and health of employees at work – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 250 up to LVL 500, and for a legal person – from LVL 1000 up to LVL 2000.

In the cases of the violations provided for in Paragraph one, two, three and four of this Article, if they have been recommitted within a year after the imposition of administrative sanction – a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 400 up to LVL 500, and for a legal person – from LVL 3000 up to LVL 10 000."