



9 November 2021

## Barriers in posting of workers across the EU: the notification procedure

### Input from member organisations

- **BDA (Germany)**

More coordination on notification procedure (and especially on additional requirements according to art. 9.2 of the Enforcement Directive) is urgently needed. The different requirements in Member States pose a real risk to posting of workers and provision of services in the Single Market. We therefore support DG GROW's work on streamlining the national notification procedures and call for **reduction of administrative burden** that is currently put on companies.

Some general problems with the notification procedure:

- The required documents (incl. pay slips, time sheets) in many cases must be provided in the language of the Member State where the posting takes place. Even though this is allowed by the Enforcement Directive, in practice this leads to high costs of compliance for companies.
- Exemptions from the notification procedure vary to a great extent in the Member States. A general rule on exemptions (i.e. number of days) would render the posting notification for companies much easier.
- There is no common definition of what constitutes posting in the Member States.
- Some Member States sanction not only companies, but also host companies and customers. Many companies fear that this puts pressure on relations with their customers.
- Providing information on host company/customer is not always easy – in some cases they are reluctant to deliver the required information to the posting company (hence, information on host company and/or customer shall be kept to a minimum).

Several concrete examples:

- **Belgium:** The company must provide the notification document Limosa-1 to its customers before the start of posting. If the company fails to do so, the customer must notify the Belgian authorities (not notifying may lead to fines on company and/or customer).
- **Denmark:** Companies must indicate their national sales tax identification number (reason unclear) and the Danish cvr-number of the customer (which the posting companies usually do not have).
- **France:** Companies must submit the SIRET-number of the French companies and information on the professional qualifications of the posted worker. The posting company must provide the receipt of the notification to their customers, alongside with a declaration that no sanctions are currently unpaid. Customers can demand additional documents and information from the company, such as PD A1 and excerpt from the commercial register.



- **Greece:** The company must confirm that it does not use any hazardous substances or high-risk materials.
- **Italy:** The company must also provide the personal tax number of the legal representative of the company.
- **Luxembourg:** The company must provide medical certificate stating that the posted worker is fit for employment. All documents on professional qualifications of the posted workers must also be submitted. Companies must also provide a Luxembourgish VAT identification number and notify the occasional and temporary provision of services to the General Directorate for Small and Medium-Sized Enterprises at the Ministry of the Economy.
- **The Netherlands:** The customer will be automatically informed about the notification and asked to control the correctness of the information submitted before the start of posting. The companies had to submit a Dutch tax number, which the companies abroad did not possess (unclear whether still applies).
- **Switzerland:** Companies must notify the posting at least eight days before the start of posting. Exemptions are possible only in urgent cases.
- More examples are listed in paper “ZDH – posting in accordance with the rules must be simple”.

From our point of view, **these examples of additional requirements are not proportionate or necessary**, and hence not in line with the aim of art. 9.2 of the Enforcement Directive.

As for current in- and out-bound postings in Germany: Data from the German *Central Customs Authority* – the authority that is responsible for handling the incoming declarations according to article 9.1 – shows that annually almost **600.000 declarations** (584.547 in 2020) **from EU Member States and the UK alone** have to be handled. **Important:** note that these are the numbers for **2020**, the year where the **pandemic** caused an **abrupt interruption to large amounts of labour mobility**. The actual amount therefore is most likely much higher.

In the attached PDF “Overview national websites” you can find a very abstract evaluation of the national websites that provide information and links to forms related to posting.

Furthermore, we have also attached some additional information on posting of workers in Germany and short business trips.

- **FEDIL (Luxembourg)**

This is of highest importance for FEDIL as we are facing many challenges, as you know, in the area of posting – and since many years.

- In Luxembourg, the rules as they stand now are just exaggerated:
- As regards costs, it is difficult to evaluate. However it's important to note that:
  - Certain specialised service providers **refuse to serve Luxembourg costumers** because of conditions that are almost impossible to comply with. This is true for repairing, maintenance, transport, trade or conferencing visits etc... as they all fall under the scope of the exaggerated Luxembourg law and its application.



- The cost is not only linked to **extensive administrative burden**, the hours lost with paperwork but also the cost linked to **special expenses** like obligatory visits to occupational physicians prior to visiting Luxembourg...
- The cost is mainly linked to **the fact that installation, repairing or maintenance cannot take place or is seriously delayed.**
- **Costs are linked to fines that have to be paid if services from within the internal market are inevitable but compliance with the Luxembourg rules is impossible.**
- **Cost is also linked to the fact that competition within the internal market cannot play and Luxembourg costumers have to choose providers from the very narrow national market if such providers even exist within the borders.**

This is all extremely problematic and we strongly believe that there is a breach of the internal market rights.

We rely on the Commission to make Luxembourg change its legislation. Indeed, we have done an extensive work with our prior Minister of Labour, Mr. Nicolas Schmit, who is now Commissioner. Indeed, he proposed a law to correct these considerable impacts and he acknowledged that the legal framework must be adapted. However, this law is now stuck in Parliament since 2017/2018 and has never been adopted... pressure from the Commission is essential for us.

The letter including evidence of the obstacles to posting sent to PM Schmit in 2017 is attached.

- **Medef/UiMM (France)**

Estimations of the cost of compliance with the requirements of the Enforcement Directive, focusing on articles 9.1 and 9.2: it can be financial estimation, but also estimation of time/human resources necessary to comply with these requirements:

From the returns we had from our member companies (and their contractors), filling in the sipsi declaration and gathering all the documents needed in case of control can easily take up half a day of work for an HR person (for one posted employee), if not more (people who are not familiar with posting will need longer or assistance, e.g. from a lawyer, which is costly). It is therefore not possible to post an employee on the same day because of the preparation work needed.

Potential gold-plating in the notification procedure.

Please find below a summary regarding the administrative requirements and control measures for posting workers by the French authorities.

- 1. Regarding the declaration to make by the service provider established in another Member State (article 9. 1 (a) of the Directive 2014/67/UE)**

The Article 9. 1 (a) of the Directive 2014/67/EU contains a list of information to be communicated to the host Member State via the declaration. This information is designed to allow the host authorities to carry out factual controls at the workplace. Concerning this declaration, we noted that the French authorities request additional details (via the web site <https://www.sipsi.travail.gouv.fr/>) in comparison with the information listed by the Directive.



As a general comment for all the cases of posting, the additional information below is requested by the French authorities :

- As regards the identity of the service provider : company's director personal information (i.e., name and family name, date and place of birth).
- Information on the client based in the host country.
- As regards information on the service provision : possible use of dangerous tools or proceeding, working hours, number of rest days per week and flexible working hours.
- Expenses : travel, food and accommodation expenses provided or reimbursed by the employer who post the worker and if so, how this is provided or the method of reimbursement.
- Nature of posting : social security legislation applicable to the posted worker, date of signing of the contract or of the beginning of the contractual relationship with his/her employer, professional qualification and employee's hourly rate during the secondment.
- Place where the documents, to be provided to the Labour inspectorate, are stored (i.e., place of work in France or secure storage space).

Concerning posting of an interim worker by a temporary agency established abroad, the French authorities also request information related to the proof of a financial guarantee. In this case, it must be indicated the identity of the company from which the financial guarantee was obtained.

2. Regarding the documents to keep or make available in case of Labour inspectorate's request (article 9. 2 (b) of the Directive 2014/67/UE)

In addition to the documents listed in article 9. 2 (b) of the Directive 2014/67/UE, French authorities require, in most cases, that the documents below (articles R. 1263-1 and R. 1263-8 of the Labour Code) be presented immediately:

- Document proving an equivalent medical monitoring in the home country. This document is required to be exempted from specific medical examinations provided by French law.
- In case of posting  $\geq 1$  month, payslips or any equivalent document showing the remuneration requested by the French authorities must contain specific information. As per article R. 1263-1 of the Labour Code, this document must contain the following information : gross remuneration, working hours and period with a distinction between hours paid at regular rate and those paid with an increased rate, holiday and bank holiday and related salary, conditions of registration with paid leave and bad weather funds (if applicable), title of the collective agreement applicable at sector level to the employee. Whereas, in case of posting  $< 1$  month, a document showing that the minimum remuneration has been paid is requested.
- Companies established in a country outside the EU must submit to the French authorities, a social security posting certificate or a certificate of social declaration provided by the French social protection agency responsible for collecting social contributions less than 6 months old and showing the posted worker's registration with the French social security scheme.



- For temporary agencies, a proof of a financial guarantee (or proof of an equivalent guarantee in the home country), assignment contract and contract for the supply of agency workers in accordance with French law are requested.
- Please also note that French law requires a work permit for third-country nationals. This requirement is expressly provided by the article R. 1263-1 of the Labour Code.

Please note that, for us, the reference to “the additional information referred to in Article 4 of that Directive “ in §9.2 is unclear.

Additional comments: information is difficult to be found on national portals, notably because they are not harmonised (some have much information that is hard to navigate; other lack sectoral information etc.) and rules can differ from one country to another. The determination of the remuneration applicable to the posted worker is quite tricky.

\*\*\*\*\*