

**PRACTICAL GUIDE**  
**ON THE POSTING OF WORKERS FOR THE PROVISION OF SERVICES**



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# 1. INTRODUCTION

## 1.1 Purpose

EU legislation on the posting of workers ensures their protection during their secondment in relation to the freedom to provide cross-border services, by laying down mandatory provisions regarding working conditions and the protection of their health and safety.

Articles 56 to 62 of the Treaty on the Functioning of the European Union (TFEU) establish the freedom to provide services within the European Union. The freedom to provide services includes the right of a service provider established in one Member State to post workers to another Member State in order to provide a service. In accordance with Article 57 TFEU, persons providing a service may, in order to do so, temporarily pursue their activity in the Member State where the service is provided, under the same conditions as that State imposes on its own nationals.

The institutional framework of the European Union in relation to posting is regulated by Directives 96/71/EC, 2014/67/EU, 2018/957 and Regulation 1024/2012/EU. These provisions require Member States to provide for compliance by service providers posting workers to their territory with a framework of mandatory minimum protection rules for workers.

Labour mobility is governed by the *lex loci laboris* rule. This means that a person employed in the territory of one Member State is subject to the legislation of that Member State, even if they reside in the territory of another Member State, or if the undertaking employing them has its registered office in another Member State. The starting point of the protection of the employment of posted workers is that they remain subject to the labour law of the sending Member State, but that certain aspects of employment protection in the host Member State also apply. These provisions are set out in Directive 96/71/EC ('hard core provisions') and the main ones include remuneration, maximum work periods, minimum rest periods and minimum paid annual leave. However, these elements of employment protection in the host State only apply if they are more favourable than the protection offered by the labour law of the sending State.

In order to enhance the fair mobility of workers and promote the application of European law, the European Labour Authority (ELA) was established by Regulation 2019/1149. ELA's core competences are: a) to support Member States with capacity building in the field of labour mobility and facilitate access to information; b) to enhance cooperation and exchange of information between Member States; c) to coordinate and support joint and coordinated controls; d) to support Member States in tackling undeclared work.

In 2023, the ELA and the European Commission launched the Posting 360 programme, which aims to improve information exchange, strengthen administrative cooperation and develop digital tools. Its main actions include:

- Creating a checklist to identify genuine postings.
- Developing workflows for third-country nationals, due to the complex issues of labour, insurance and immigration legislation.
- A handbook on national practices in the 27 Member States.

## 1.2 The dimension of social security rules<sup>1</sup>

The social security dimension of labour mobility is governed by the social security coordination regulations, which are based on the free movement of workers and allow the determination of which national social security legislation is applicable [Regulations (EC) No 883/2004 and 987/2009, replacing Regulations (EEC) No 1408/71 and 574/72]] in order to coordinate the social security systems of the EU Member States, the EEA and Switzerland. After all, we cannot speak of the free movement of workers without social security coordination. It is therefore necessary to specify which legislation is applicable to ensure payment of social contributions in a Member State. More specifically, pursuant to Article 12(1) of Regulation (EC) No 883/2004, a person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there, and who is posted by that employer to another Member State to perform work on that employer's behalf, shall continue to be subject to the legislation of the first Member State, provided that:

- ✓ the anticipated duration of such work does not exceed 24 months;
- ✓ this person is not sent to replace another person.

With regard to the implementation of the abovementioned article, Article 15(1) of Regulation (EC) No 987/2009 provides that where a person pursues their activity in a Member State other than the competent Member State, the employer, or, in the case of a person who does not pursue an activity as an employed person, the person concerned, shall inform the competent institution of the Member State whose legislation is applicable, whenever possible in advance. That institution shall provide an attestation to the person concerned that such legislation is applicable and shall indicate, where appropriate, until what date and under what conditions. The portable Document A1 (PDA1) is therefore issued by the competent social security institutions of the sending Member State as proof

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<sup>1</sup> For more information, see the practical guide on the applicable legislation in the European Union (EU), the European Economic Area (EEA) and in Switzerland, in relation to matters of social security, available at:

<https://www.efka.gov.gr/sites/default/files/2023-01/EL%20-%20CE%A0%CF%81%CE%B1%CE%BA%CF%84%CE%B9%CE%BA%CF%8C%CF%82%20%CE%9F%CE%B4%CE%B7%CE%B3%CF%8C%CF%82%20%CE%B3%CE%B9%CE%B1%20%CF%84%CE%B7%CE%BD%20%CE%B5%CF%86%CE%B1%CF%81%CE%BC%CE%BF%CF%83%CF%84%CE%AD%CE%B1%20%CE%BD%CE%BF%CE%BC%CE%BF%CE%B8%CE%B5%CF%83%CE%AF%CE%B1%20-12.2013.pdf>

of the social security status of posted workers, which is binding both on the institutions and on the courts of the host Member State(s). In the event of a dispute between Member States concerning the determination of the applicable legislation, the competent bodies should engage in dialogue on the matter, but PDA1 remains valid until withdrawn by the issuing body. Only in cases of proven fraud may the courts of the host country ignore PDA1, which, in any event, has no binding effect on obligations imposed by national legislation outside the realm of social security.

### **What is the difference between social security coordination and harmonisation?**

Coordination, as a technique of European social security law, is different from harmonisation, where international convergence agreements are implemented to establish general principles and minimum social protection thresholds, as well as common objectives. The effects of harmonisation are more radical than those of coordination, with coordination establishing rules to remedy the adverse effects of national rules on migrant workers, without, however, calling for a revision of those rules. European Union legislation does not aim to define a single social security scheme, but to bridge the different schemes controlled by Member States and help independent national schemes to communicate effectively, in order to facilitate the mobility of workers and ensure their rights.

### **What about workers recruited in one Member State with a view to being posted to another Member State? Is an employer allowed to post a newly recruited worker?**

A person posted to another Member State is subject to the social security scheme of the Member State in which the employer is established immediately before the start of that person's employment. The posting is subject to an employment relationship being present throughout the period of posting, from the beginning to the end. In practice, a worker may be posted to another Member State if that worker is subject to the legislation of their MS of origin at least one month before the posting begins (pursuant to a decision of the Administrative Commission for the Coordination of Social Security Systems), whereas for shorter relevant periods, a case-by-case assessment is required, taking all factors into consideration.

## 2. KEY CONCEPTS

### 2.1 Transposition of EU law

The legislative framework applicable to postings at EU level has been incorporated into Greek legislation by Presidential Decrees 101/2016 and 30/2021.

**Presidential Decree 30/2021**, which provides the key regulatory framework for the posting of workers (replacing Presidential Decree 219/2000), ensures the protection of posted workers during their posting, by laying down mandatory provisions to be met as regards working conditions and protection of the health and safety of workers.

**Presidential Decree 101/2016** aligned Greek legislation with the provisions of Directive 2014/67/EU and the amendment of Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI regulation').

Finally, **Presidential Decree 1/2023** amended the framework in relation to the information to be provided to the competent department of the Labour Inspectorate by an undertaking posting workers to Greek territory.

### 2.2 Scope

Provisions on posting apply to undertakings established in the 27 Member States of the European Union, in non-EU States which are signatories to the Agreement on the European Economic Area (Iceland, Liechtenstein and Norway), and in Switzerland. **Only** undertakings lawfully established in a Member State of the EU, the EEA and Switzerland may exercise their freedom to provide services (Article 1 of Presidential Decree 30/2021).

### 2.3 Posting situations

In accordance with Article 1 of Presidential Decree 30/2021, the posting of workers is subject to the above provisions, provided that it is carried out by an undertaking:

- (a) which has concluded a service contract with the recipient of the services in Greece, provided that an employment relationship exists between the undertaking of the Member State of origin and the posted person;
- (b) wishing to post a worker to an undertaking within the same group in the territory of Greece, provided that an employment relationship exists between the undertaking and the posted person;
- (c) by a temporary-work agency, or placement agency hiring out employees to a user undertaking

established or operating in Greece, provided that an employment relationship exists between the TWA or the placement agency hiring out workers to a user undertaking and the worker. This employee is deemed to have been posted by the temporary-work agency or the placement agency, to which the worker is bound by an employment relationship, i.e. the hiring-out entity.

### What are the basic working and employment conditions of TWA workers?

With regard to employees hired out to a user undertaking, the principle of equal treatment applies. This means that their basic working conditions shall be, for the duration of their assignment at a user undertaking, at least those that would apply if they had been recruited directly by that undertaking, i.e. the user undertaking, to occupy the same job. The principle of equal treatment is also stipulated in Article 5 of Directive 2008/104/EC on temporary agency work, which has been transposed into Greek law by Articles 113 to 133 of Law 4052/2012 (Government Gazette 41/A'/01.03.2012), as applicable.

### What is the meaning of a 'group'?

In accordance with Article 26 of Law 4540/2018 (Government Gazette 91/A'/22.05.2018), a group of undertakings means two or more undertakings recognised as linked in one of the following ways:

an undertaking, in relation to another undertaking directly or indirectly:

- ✓ holds a majority of that undertaking's subscribed capital;
- ✓ controls a majority of the votes attached to that undertaking's issued share capital;
- ✓ is entitled to appoint more than half of the members of that undertaking's administrative, management or supervisory body;
- ✓ or both undertakings are managed on a unified basis by the parent undertaking.

In particular, and in line with case-law (for instance, see judgements: 235/2012 of the Court of Appeal of Larissa; 192/2020 of the Court of Appeal of Piraeus; 10/2018 of the Supreme Court), a group of companies is determined by common management, common economic policy, common financing, in short: common financial interests. While it consists of several independent legal entities, it constitutes one economic unit. There is no group of undertakings where there is an independent legal entity and management, autonomous action and financial autonomy, and none of them is a parent or subsidiary of another undertaking, and an autonomous budget and balance sheet is prepared, and none of them acts as controlling or dominant or parent company.

## 2.4 The concept of posting

A posted worker means an employee who is bound by an employment relationship to an undertaking established in the territory of a Member State of the European Union, the EEA or Switzerland and

who is posted by that undertaking to the territory of another Member State, in accordance with the three abovementioned cases, to perform work for a limited period of time (Article 2 of Presidential Decree 30/2021).

### How is posting distinguished from temporary or cross-border work?

Workers who are sent to work temporarily in another Member State but do not provide services there are not considered posted workers. Temporary work means any cross-border activity linked to work, such as participation in conferences, congresses, exhibitions, training events, business trips, etc.

In both posting and temporary work, the employer shall be required to inform the insurance institution in the Member State of origin, and that institution shall provide the employee or employer with PDA1, to be kept by the employee as proof of payment of social security contributions.

Finally, a cross-border/border worker is a person employed in a Member State other than the State of residence who returns to their country of residence at least once a week. In this case, posting provisions shall not apply.

### What about third-country nationals?

Third-country nationals are not directly posted from non-EU countries, but mainly through another Member State. Posted third-country nationals are mainly engaged in cross-border road transport, construction and to some extent in agriculture and care services. A necessary condition for the posting of a third-country national to any Member State is that national to legally reside and work in a Member State. A third-country employee who is posted by an undertaking in a Member State to a different Member State is considered to legally reside and work in that Member State, therefore the host Member State may not require the undertaking to obtain that employee's work permit from the competent service of the host Member State (see judgement of the Court of Justice of the European Union in Case C-43/93, available at: <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99020&pageIndex=0&doclang=EL&mode=lst&dir=&occ=first&part=1&cid=2882963>). Nevertheless, in some cases, the host Member State may require a visa or 'blue card' from the third-country national as proof of his/her legal residence in its territory.

According to Article 71 of the Greek Immigration Code [Law 5038/2023 (Government Gazette 81/A/01.04.2023)], third country nationals moving from a company established in an EU or EEA Member State for a period exceeding 90 days but not exceeding one year (365 days) should apply for a national entry visa allowing residence for work purposes (in the event of an extension of the period beyond one year, the provisions of Art. 12 of Law no. 5038/2023 are applied). In the case of an application for an entry permit, it must be ensured that the undertaking of the Member State of



origin bears the costs of the worker's stay, return and medical treatment.

With regard to United Kingdom nationals, those who enter Greece for the purpose of work are subject to the provisions of the Immigration Code [Law 5038/2023 (Government Gazette 81/A'/01.04.2023)], since they shall be considered third-country nationals after the end of the transition period. In any case, they must have a legal document, unless they are beneficiaries of the Withdrawal Agreement and have been granted a special residence permit for five or 10 years. All residence permits shall indicate full access to the labour market (see document 23162/23.04.2021 of the Directorate for Individual Support of the Ministry of Labour and Social Security).

### Intra-corporate transfers

In accordance with Articles 26 and 27 of Law 4540/2018 (Government Gazette 91/A'/22.05.2018) 'intra-corporate transfer' [Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer has been transposed by Law 5038/2023 (Chapter C)] means the temporary secondment for occupational or training purposes of a third-country national who, at the time of application for an intra-corporate transferee permit, resides outside the territory of EU Member States, from an undertaking established outside the territory of a Member State, and to which the third-country national is bound by a work contract prior to and during the transfer, to an entity belonging to the undertaking or to the same group of undertakings which is established in Greece, and, where applicable, the mobility between host entities established in one or several second Member States. An intra-corporate transferee permit shall bear the acronym 'ICT' and shall entitle its holder to reside and work in the territory of the first Member State and, where applicable, of second Member States. On the conditions of entry, a third-country worker wishing to obtain an 'intra-corporate transferee permit' in Greece should be transferred by an undertaking established in a third country to an undertaking belonging to the same group of undertakings in Greece, where that worker will be employed as manager, specialist or trainee employee. The maximum duration of the intra-corporate transfer shall be three (3) years for managers and specialists and one (1) year for trainee employees.

## 2.5 Terms and conditions of employment of posted workers

In accordance with Article 3 of Presidential Decree 30/2021, during the period of posting, undertakings are required to guarantee, on the basis of equality of treatment, and irrespective of which law applies to the employment relationship, workers who are posted in Greece the terms and conditions of employment laid down in:

- (a) Greek legislation (laws, decrees, ministerial decisions);
- (b) general national collective labour agreements laying down minimum terms of remuneration and non-remuneration that apply to all workers throughout the country inasmuch as they are binding on the recipient of the services;
- (c) any applicable collective agreements or arbitration awards which have been declared universally applicable; or
- (d) sectoral or professional collective agreements concluded by the most representative organisations that apply to the geographical area in question and to the sector or profession in question, inasmuch as they are binding on the recipient of the services and **exclusively** regulate the matters referred to below:
- maximum working periods and minimum rest periods;
  - minimum paid annual leave;
  - remuneration;
  - protection for children, young people and women at work who are pregnant or have recently given birth;
  - protecting the safety, health and hygiene of workers at work;
  - equal treatment of men and women and non-discrimination at work in general;
  - assignment of workers to user undertakings by temporary-work agencies or placement agencies;
  - lodging provided by employers to workers working away from their usual place of work;
  - additional allowance for overnight stay to cover travel, board and lodging expenses for workers away from home for professional reasons (only applicable to travel, board and lodging expenses for posted workers in the territory of Greece when they are required to travel from and to their regular place of work both within Greece and in another Member State during the period of posting).

**Exceptions:** As regards the initial assembly and/or first installation of goods, where the period of posting does not exceed eight (8) days, provisions on remuneration and the minimum duration of paid annual leave under certain conditions do not apply (this exception does not apply to the construction industry).

## 2.6 Remuneration of posted workers

In relation to entitlements, it is useful to distinguish between the following:

Directive (EU) 2018/957 provides that *'...the concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and means all the constituent elements of remuneration rendered mandatory by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply...'*

In accordance with Article 3 of Presidential Decree 30/2021, remuneration means the gross

remuneration laid down in Greek legislation (laws, decrees, ministerial decisions) and the applicable, subject to paragraph 1 of this article, collective agreements, inasmuch as they are binding on the recipient of the services, and comprises the basic pay and various allowances, **including the pay and extra pay for additional work such as overtime or extra work.**

Remuneration does not include allowances paid to posted workers by reason of the posting, provided they are paid in reimbursement of expenses actually incurred by reason of the posting, such as the costs of travel, board and lodging.

Undertakings to which this PD applies and which post workers to the territory of Greece must pay posted workers the above costs in accordance with national legislation and/or the practice applicable to the employment relationship with the posted worker.

Unless the terms of work and employment applicable to the employment relationship specify if and which elements of a posting-related allowance are paid in reimbursement of expenses actually incurred by reason of the posting and which form part of the worker’s remuneration, that allowance is regarded in its entirety as having been paid in reimbursement of those expenses.

In all other respects, host Member States shall ensure that undertakings guarantee to the posted workers the terms and conditions of employment relating to the conditions of workers’ accommodation when work is provided away from their regular place of work.

**Examples of checking payment of remuneration**

Let us assume that the gross amount to be paid according to the host Member State rules amounts to EUR 1 550.

Example 1: The gross amount that was actually paid is EUR 2 100 and comprises the salary, posting allowance, and allowance for board and lodging expenses. The first two amounts correspond to EUR 1 600 and exceed the amount due under the rules of the host Member State.

Gross amount <u>to be paid</u> according to the host Member State rules		Gross amount that was <u>actually</u> paid	
Salary for the category	€ 1 550	Salary	€ 800
		Posting allowance	€ 800
		Allowance for board and lodging expenses	€ 500
Total	€ 1 550		€ 2 100

Example 2: The gross amount that was actually paid corresponds to EUR 1 800. However, considering

that: 1) extra pay for overtime and Sunday work will not be taken into account; 2) since it is not specified if and which elements of a posting-related allowance are paid in reimbursement of expenses actually incurred by reason of the posting and which form part of the worker's remuneration, that allowance may be regarded in its entirety as reimbursement of those expenses. Therefore, in this case, the salary is lower than the amount due under the rules of the host Member State.

Gross amount <u>to be paid</u> according to the host Member State rules		Gross amount that was <u>actually paid</u>	
Salary for the category	€ 1 550	Salary	€ 800
		Posting allowance	€ 600
		Payment for overtime and Sunday work	€ 400
Total	€ 1 550		€ 1 800

When checking remuneration, a Labour Inspector shall take into account an employee's monthly gross earnings, which should be at least equivalent to the minimum remuneration required by the Greek legislation (as host Member State) and should not include posting-related allowances, provided they are paid in reimbursement of expenses incurred by reason of the posting (such as the costs of travel, board and lodging).

#### Example of off-site allowance

An employee recruited and employed in an undertaking in Spain is posted to provide services to an undertaking in Athens International Airport for a limited period of time. The costs of travel, board and lodging shall be paid in accordance with the Spanish **law** and/or practice applicable to the employment relationship with the posted worker.

During their posting, the worker is invited to attend a vocational training event in Thessaloniki. Off-site allowance will be estimated in accordance with the **Greek labour law**, as the host State sending the employee for vocational training. More specifically, pursuant to Joint Ministerial Decision No 21091/2990 (Government Gazette 142/04.09.1946) employees shall, for each overnight stay, be entitled to travel expenses and daily allowance equal to one daily wage or 1/25 of the statutory salary. Where the following are granted:

- ✓ board and lodging: 1/4 of the above allowance is paid;
- ✓ only board: 1/2 of the allowance is paid;
- ✓ only lodging: 4/5 of the allowance is paid.

For engineers in particular, Joint Ministerial Decision No 43739/4395 (Government Gazette, Series I, No 138, 03-08-1951) provides for, in addition to travel and other subsistence expenses, extra pay equal to 1/20 of the monthly salary for each night away from home.

## 2.7 Long-term postings

In accordance with Article 4 of Presidential Decree 30/2021, where the duration of the posting exceeds 12 months, host Member States shall ensure that undertakings posting workers to their territory guarantee to those workers, on the basis of equality of treatment, all applicable terms and conditions of employment which apply in the host country in addition to those referred to in Article 3 of Presidential Decree 30/2021 (see Chapter 2.5).

The above 12-month time limit may be extended to 18 months, provided that a motivated notification is submitted to the competent department of the place of supply of services before expiry of that 12-month period. The extension is not subject to an authorisation procedure, as it is a notification rather than application.

**Exceptions:** The procedures and conditions of the conclusion and termination of the employment contract (including non-competition clauses) and the rules on supplementary pension schemes do not apply to long-term posted workers.

### What does 'the same task at the same place' mean?

When an undertaking established in an EU or EEA Member State or Switzerland posting workers to the territory of Greece replaces a posted worker by another posted worker performing **the same task at the same place**, the duration of the posting shall be the cumulative duration of the posting periods of the individual posted workers concerned. The concept of 'the same task at the same place' shall be determined taking into consideration, inter alia, the nature of the service to be provided, the work to be performed and the address(es) of the workplace.

Daily and weekly rest periods and regular paid annual leave are counted when calculating the duration of the posting, but periods of time such as non-paid leave, suspension of employment relationship and sick leave are **disregarded**.

For example, when an employee posted for 12 months gets sick after 6 months and needs to be replaced, another person may be posted for the rest of the agreed period.

## 3. OBLIGATIONS AND RIGHTS

### 3.1 Obligations of undertakings – subcontractor’s liability

#### 3.1.1 Obligations of undertakings (Article 1 of Presidential Decree 1/2023)

Undertakings that post workers to the territory of Greece must:

**A. Submit** the following documents, in Greek, to the Department of Labour Relations Inspections responsible for the place in which the services are provided by no later than the date on which the provision of services commences, irrespective of the duration of the posting:

**(a) a written declaration**, which shall contain:

- the details of the service provider;
- the details of a person designated by the undertaking in Greece during the provision of the services, who shall also act as liaison with the competent authorities;
- the details of the place(s) of work of the posted workers;
- the start date and possible duration; and
- the nature of the undertaking’s activity.

**(b) a list of posted workers**, in duplicate, indicating the following information for each worker: forename, surname, ID card or passport number and country of issue, date of birth, sex and specialism. One copy of the above lists shall be displayed prominently at the workplace and the other copy shall be kept in the department's records.

If the above information changes, the above undertakings must submit a supplementary list within fifteen (15) days of the change.

In addition to the written declaration and the staff list, undertakings posting workers to the territory of Greece must:

**B. Keep** copies of the following during the posting in printed or electronic format in the place where the work is carried out:

(a) individual employment contract or equivalent document, including information concerning the expatriate worker [In accordance with Article 8 of Law 5053/2023 (Government Gazette, Series I, No 158, 26.09.2023)].

(b) payslips or salary statements;

(c) time-sheets indicating the beginning, end and duration of the daily working time; and

(d) proof of payment of wages or copies of equivalent documents.

**C.** Up to two years after the end of the posting, undertakings posting workers to the territory of Greece must **retain and provide** the above documents to the competent departments of the Labour Inspectorate, at the latter’s request, within fifteen (15) days from the date of receipt of such request,

in Greek or English.

### What are the main changes brought by Article 1 of Presidential Decree 1/2023?

Article 1 of PD 1/2023 amended Article 7 of PD 101/2016 and removed the obligation for undertakings posting workers to the territory of Greece to indicate the following information in the list of posted workers: (1) the length of the working day and week, the beginning, break times and end of a working day, as well as weekly rest period; (2) all kinds of payments; (3) the date of conclusion of the employment contract, prior experience and family status.

This amendment was made in the context of Greece's compliance with the letter of formal notice sent by the European Commission, which noted that reporting obligations appear to be neither proportionate nor justified and go beyond what is necessary to achieve the objective of the provision, which is to make a declaration 'containing the relevant information necessary in order to allow factual controls at the workplace', given that relevant documents are kept in the workplace and that the information on the above issues may be obtained from the contact person at a later stage, if deemed necessary.

Furthermore, Article 1 of PD 1/2023 no longer separates the information of the legal representative of the undertaking and that of the representative of the undertaking in Greece.

### Examples

#### 1. Posting through a TWA

A temporary-work agency established in Greece hires out an employee to a Greek undertaking, which posts that worker for six months to a user undertaking in Germany. The undertaking responsible for informing the TWA about the working conditions applicable in the German undertaking is the user undertaking, i.e. the German one. Accordingly, the Greek TWA must apply **at least** the working conditions applicable in the German undertaking and submit to the German authorities the documents required prior to the posting.

#### 2. Chain posting

A temporary-work agency established in Austria hires out a worker to a user undertaking in Belgium. One month later, the user undertaking hires out that worker to France under a service agreement. In this case, the undertaking in Austria is responsible for complying with the proper terms and conditions of employment and for submitting the declaration prior to the posting, and the worker is entitled to benefit from the more favourable working conditions of either the Belgian or the French undertaking.

The user undertaking is responsible for informing about the working conditions, and the undertaking hiring out and bound to the worker by an employment relationship is responsible for complying with

the working conditions.

### 3. Sending Member State

An undertaking established in Italy concludes a service contract with a French construction company. In order to perform work in France, the Italian undertaking posts its own workers and three temporary workers from a Polish temporary-work agency. In this case, temporary workers are considered posted in France by the Polish (and not the Italian) temporary-work agency and shall be subject to the French terms and conditions of employment.

**Can the representative of the undertaking in Greece be an employee in the undertaking in which the posted worker carries out his or her work?**

In accordance with Article 1 §1<sup>A</sup> of PD 1/23, the service provider should be represented in Greece and also liaise with the competent authorities during the provision of the services. Since the information of the undertaking's legal representative and that of the undertaking's representative in Greece are no longer separated, the undertaking's representative in Greece cannot be an employee of the user undertaking or of the undertaking hiring out the employee, or even a worker posted to the territory of Greece.

**What should the employment contract of a posted worker include?**

Law 5053/2023 transposed Directive (EU) 2019/1152 of the European Parliament and of the Council on transparent and predictable working conditions in the European Union. Where a worker is required to work in a Member State or third country other than the Member State in which he or she habitually works, the employer shall provide the required documents<sup>2</sup> **before the worker's departure**, which should include the following additional information:

- ✓ the country or countries in which the work abroad is to be performed and its anticipated duration;
- ✓ the currency to be used for the payment of remuneration;
- ✓ the benefits in cash or kind relating to the work assignments;
- ✓ information as to whether repatriation is provided for, and if so, the conditions governing the worker's repatriation;
- ✓ the remuneration to which the worker is entitled in accordance with the applicable law of the host Member State;
- ✓ any allowances specific to posting and any arrangements for reimbursing expenditure on travel, board and lodging (where applicable); and
- ✓ the official national website developed by the host Member State where the worker is to provide their work, through which they can learn about the terms and conditions of employment

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<sup>2</sup> In accordance with Article 8 of Law 5053/2023 (Government Gazette, Series I, No 158, 26.09.2023).



applicable to seconded workers.

Any change in the above details (or material terms of the employment contract or relationship) must be the subject of a written document to be given by the employer to the employee not later than the date of entry into effect of the change in question.

### 3.1.2 Subcontractor's liability

With a view to tackling abuses in subcontracting situations and in order to protect the rights of posted workers, Member States should take appropriate measures, in accordance with Article 12 of Directive 2014/67/EU, to ensure subcontracting liability.

In accordance with Article 9 of PD 101/2016, as amended by Article 92 of Law 4876/20211, the contractor of which the employer (service provider) covered by Article 1(4) of PD 30/2021 is a direct subcontractor shall be held liable towards the posted worker jointly and severally with the subcontractor with respect to any outstanding pay provided for by Article 3 of PD 30/2021 or contributions due to common funds or institutions of social partners in relation to activities covered by the Annex to Directive 2014/67/EU (all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work: 1. excavation; 2. earthmoving; 3. actual building work; 4. assembly and dismantling of prefabricated elements; 5. fitting out or installation; 6. alterations; 7. renovation; 8. repairs; 9. dismantling; 10. demolition; 11. maintenance; 12. upkeep, painting and cleaning work; 13. Improvements). The subcontractor's liability only covers the direct contractor and does not extend to the entire subcontracting chain. This liability shall be limited to workers' rights arising under the contractual relationship between the contractor and the subcontractor, which means it concerns workers employed under that particular subcontracting.

## 3.2 Workers' rights

In accordance with Article 8 of PD 101/2016 an employer shall ensure the employee's rights acquired under the employment contract between the employer and the posted worker. The competent local Labour Inspectorate services shall examine all complaints and requests submitted by posted workers concerning compliance with the PD, both during and after the posting, and take the measures provided for under the applicable legislation. The procedure for resolving industrial disputes also applies to posted workers, in line with applicable provisions. Anyone who considers themselves to have been wronged due to an infringement of the relevant provisions (even if the employment relationship has been terminated or has expired) is entitled to judicial protection and to initiate proceedings before the competent administrative authorities, regardless of the law governing the employment relationship (subject to applicable provisions on statute of limitations). The trade unions concerned, in accordance with the applicable legislation, and other legal entities which substantiate a legitimate interest, may initiate any administrative or judicial proceedings seeking application of the Presidential Decree provisions on behalf or in defence of posted workers or their employers, with their consent. Unfavourable treatment by employers of posted workers who

exercise the above rights is prohibited.

Where, following an overall assessment by the Greek competent authorities, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of this decree, the worker must benefit from the applicable law and practice.

#### Which authority is responsible for lodging complaints?

In accordance with Article 11 of Directive 2014/67/EU: *‘Member States shall ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the Member State in whose territory the workers are or were posted, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended’.*

A posted worker may lodge a complaint with the competent authority of the MS of origin if the rights stemming from the contractual employment relationship (such as non-payment or delay in payment of remuneration) are affected. Similarly, if a posted worker considers that he/she has sustained damage as a result of a failure to apply the applicable rules, even after the employment relationship has ended, he/she may lodge a complaint against the service provider with the competent authority of the host Member State (examples include issues related to working time limits, remuneration or other terms applicable in the host Member State, equal treatment and so on).

## 4. ENFORCEMENT

### 4.1 Supervision and enforcement

Article 3 of PD 101/2016 provides that the Labour Inspectorate services shall be responsible for supervising and enforcing the provisions of PD 30/2021 and PD 101/2016, mainly relating to the working conditions of workers posted in the territory of Greece. However, they are also responsible for monitoring the service provider, when the service provider is established in the territory of Greece, as well as workers posted to another Member State from Greece. To this end, labour inspectors are empowered to enter the employer’s premises and carry out an inspection in accordance with the provisions of Law 3996/2011 and, in case of non-compliance, make recommendations and, if these are not complied with, impose administrative and/or criminal penalties. They also have the power to resolve labour disputes in accordance with Article 3 of Law 3996/2011, as applicable.

#### Which other authorities can the Labour Inspectorate cooperate with during enforcement?

The supervision and enforcement of the relevant provisions shall be carried out, where necessary, in collaboration with the following departments:

(a) the Hellenic Financial Police and Cyber Crime Division; (b) the bodies of the Hellenic Financial Crime Prosecution Unit;

(c) the Regional Social Security Inspection Centres (PEKA), or the control bodies of the Unified Social Security Fund (EFKA) Revenue Department.

The supervision and enforcement of the relevant provisions, as well as the examination of the facts when carrying out inspections in the territory of Greece as the host Member State, shall be carried out, as deemed necessary, either automatically or upon request by and in cooperation with a competent authority of the origin Member State (through IMI).

### How are inspections conducted using a risk analysis system?

In addition to random checks, the competent departments of the Labour Inspectorate shall carry out inspections based on a risk assessment. The risk analysis system and taking into account the size of the workforce employed in different industries identifies those industries where higher employment rates of posted workers are concentrated in the framework of the provision of services. To identify the above industries, several factors such as the implementation of large infrastructure projects, the existence of long chains of subcontractors, geographic proximity (with the Member State where the service provider is established), the special problems and needs of specific sectors, the past record of relevant complaints and infringements and the sector-specific infringement indicator, as well as the specific characteristics of certain groups of workers, may be taken into account.

## 4.2 Joint and concerted inspections

The increasing complexity of abuses in labour mobility requires cooperation between different law enforcement bodies and the need for secure exchange of information. In that regard, at the request of one or more Member States, the European Labour Authority shall coordinate and support concerted or joint inspections in the areas within the Authority's competence, with a view to enhancing prevention and compliance. For example, the ELA Working Group on Inspections consists of Member States and social partners and plays a key role in work carried out on inspection tools and modalities. At this link: [https://www.ela.europa.eu/sites/default/files/2022-11/EL\\_Guidelines-for-concerted-and-joint-inspections%281%29.pdf](https://www.ela.europa.eu/sites/default/files/2022-11/EL_Guidelines-for-concerted-and-joint-inspections%281%29.pdf) the following ELA Manual is available: '*Guidelines for concerted and joint inspections*'. In particular, pages 17-19 of the manual detail key principles for information exchange and provide guidance on how to conduct an inspection.

### 4.3 Administrative cooperation

To foster a spirit of cooperation and provide mutual administrative assistance in order to effectively implement and comply with all EU Directives on posting, the Labour Relations Inspection Directorate for Planning and Coordination, the Regional Directorates and the Directorate-General for Labour Relations, Health and Safety and Inclusion in Work under the Ministry of Labour and Social Security shall provide the requesting competent authorities, workers and undertakings with information on the applicable collective labour agreements, their scope, terms and conditions of employment, provisions applicable to posted workers, and any other necessary and useful information concerning the content, supervision and enforcement of PDs 30/2021 and 101/2016.

The above services shall also provide the requesting competent authorities, workers and undertakings information on the applicable national labour legislation and practice related to the rights and obligations of workers and employers, as well as any information to ensure proper compliance with the relevant provisions.

Any request received by the local competent offices of the Labour Inspectorate shall be forwarded without delay to the relevant Regional Directorate of the Inspectorate. All the above requests shall also be communicated without delay to the Central Offices (Directorate for Planning and Coordination) and the Directorate-General for Labour Relations, Health and Safety and Inclusion into Work under the Ministry of Labour and Social Security.

If the competent Greek authority, where a worker is posted from Greece, does not hold the information requested by the competent authority or institution of the Member State in whose territory the worker is posted, that authority shall request such information from other authorities in Greece.

Mutual administrative assistance and cooperation shall be provided without delay and by electronic means, within the time limits laid down in Article 5(4) of PD 101/2016.

#### **What is the official national website with information on posting?**

Information on posting is available clearly and in an accessible format in Greek and English on the official website of the Ministry of Labour and Social Security (<https://ypergasias.gov.gr/ergasiakes-scheseis/atomikes-ergasiakes-sxeseis/apospasi-ergazomenon/>). The Directorate-General for Labour and Inclusion in Work, in cooperation with, where technical issues arise, the Directorate for e- Governance of the Directorate-General for Administrative Support and e-Governance of the Ministry of Labour and Social Security shall have the obligation to manage the above website, update and develop its content, including details of the contact persons designated by each competent authority.

The Labour Inspectorate has also updated its own website with information on posting issues and employers' obligations, as well as a template for the declaration of posting of workers.

## 4.4 Internal Market Information System (Articles 3-5, 10-15, 17 of PD 101/2016)

Established by Regulation (EU) No 1024/2012, the IMI (Internal Market Information System) is the electronic tool provided by the European Commission to facilitate administrative cooperation between competent authorities of the Member States and between competent authorities of the Member States and the Commission. Its purpose is to improve the functioning of the internal market by providing an effective, user-friendly tool for the implementation of administrative cooperation between Member States and between Member States and the Commission. This system allows searching for competent authorities, using pre-defined and pre-translated questions, submitting requests with attached files, tools to follow-up on requests and storing information in an IMI database. It facilitates the cross-border exchange of information (by searching for competent authorities and submitting requests), administrative cooperation and the exchange of personal data between competent authorities of the Member States in the internal market field ([https://ec.europa.eu/internal\\_market/imi-net/index\\_el.htm](https://ec.europa.eu/internal_market/imi-net/index_el.htm)).



### 4.4.1 Sections supported in the area of posting of workers

Pursuant to Directive 2014/67/EU, the five sections supported by IMI in the field of posting are the following:



1. **Requests for exchange of information:** This section includes requests in relation to posting, health and safety, working conditions, urgent requests related to the establishment of a service provider, requests to send documents to a service provider.

**2. Reporting potential irregularities:** Where there are facts that indicate possible irregularities, a Member State shall, on its own initiative, communicate to the Member State concerned any relevant information without undue delay [Article 7(4)]. Types of potential irregularities include:



- ▶ Non-compliance with working conditions or administrative requirements
- ▶ Posting of a non-temporary nature
- ▶ Irregular employment
- ▶ Absence of an employment contract
- ▶ Irregular stay of posted workers in the Member State of establishment
- ▶ Revocation of the PDA1 form
- ▶ Unlawfully established service provider / failure to perform substantial activities in a sending Member State or failure to fulfil social security obligations for posted workers



**3. Notification of a decision imposing an administrative penalty and/or fine** (Articles 14-18): This section includes requests to notify a decision imposing an administrative penalty to a service provider and recover an administrative penalty from a service provider.

**4. Recovery of an administrative penalty and/or fine** (Articles 14-18): With regard to the above cooperation and assistance, the competent services of the Labour Inspectorate shall ensure, in accordance with the applicable provisions, that service providers established in the territory of Greece provide the competent Greek authorities with all the necessary information in order to respond to any relevant request by a competent authority of another Member State.

Where a service provider refuses to provide details or information referred to in the previous subparagraph, or provides incorrect or false details or information, penalties shall be imposed under Article 24 of Law 3996/2011. In case of any difficulty arising in the exercise of their respective competences, the competent authorities shall inform the competent authority of the requesting Member State in a timely manner, to help take any necessary action. Mutual administrative assistance and cooperation shall be provided without delay and by electronic means. Any information exchanged between competent authorities shall only be used in relation to the matter(s) contained in the request.

#### 4.4.2 Time limits

The time limits for providing the above information are as follows:

(a) in urgent cases requiring the consultation of registers, such as those on confirmation of the VAT registration, for the purpose of checking an establishment in another Member State: as soon as possible and up to a maximum of two working days from the receipt of the request. The reason for the urgency shall be clearly indicated in the request, including some details to substantiate that urgency.

(b) in all other requests for information, up to a maximum of 25 working days from the receipt of the request, unless a shorter time limit is mutually agreed between the Member States.

#### 4.5 Prevention of abuse and circumvention

Posting rules aim to make things easier for employers and workers who are temporarily employed in another Member State. Consequently, they may not be used to staff companies or contracts in progress through repeated postings of different workers in the same jobs and for the same purposes. In addition to the temporary nature of posting and the fact that it is not designed to replace another worker, there are many important points to note about this special rule, which are discussed below.

##### How can Member States identify a non-genuine posting?

To check whether a worker qualifies as a posted worker, Member States should carry out an overall assessment of all factual elements that are deemed to be necessary. For example, in order to determine whether an undertaking genuinely performs substantial activities in the Member State from which the posting takes place, in accordance with Article 4(2) of Directive 2014/67/EU, Member States may, in particular, take into account:

- the place where the undertaking has its registered office and administration, uses office space, pays taxes and social security contributions;
- the place where posted workers are recruited and from which they are posted; the law applicable to employment contracts;
- the place where the undertaking performs its **substantial** business activity (other than purely internal management and/or administrative activities) and where it employs administrative staff, if the undertaking is registered as required by relevant legislation;
- the number of contracts performed and/or the size of the turnover realised by the undertaking in the Member State of establishment, the time the undertaking was established, taking into account the specific situation of, inter alia, newly established undertakings and small and medium-sized enterprises (SMEs).

In order to assess whether a posted worker temporarily carries out their work in accordance with Article 4(3) of Directive 2014/67/EU, Member States may, in particular, examine whether:

- the work is carried out for a limited period of time in the host Member State;
- the posting takes place to a Member State other than the one in or from which the posted worker habitually carries out his or her work;

- the posted worker returns to or is expected to resume working in the Member State from which he or she is posted;
- travel, board and lodging or accommodation is provided or reimbursed by the employer who posts the worker and, if so, how this is provided or the method of reimbursement;
- any previous periods during which the post was filled by the same or by another posted worker.

**NB:** these elements are indicative factors in the overall assessment to be made and therefore shall not be considered in isolation. The above elements may also be considered in order to determine whether a posted worker is working in the framework of an employment relationship, notwithstanding how the relationship is characterised by the parties. In addition, if an undertaking unlawfully or fraudulently creates the impression that the situation of a worker falls within the scope of the Directive, the Member State concerned must ensure that the worker benefits from the applicable law and practice. Member States must ensure that this measure does not imply that the worker concerned is subject to less favourable conditions than those applicable to posted workers.

#### What documents should be requested during an inspection?

For a standard inspection, the following documents should be requested:

- ✓ Posting declaration
- ✓ List of posted workers
- ✓ Employment contract or an equivalent document
- ✓ Proof of payment of wages or equivalent documents
- ✓ Payslips
- ✓ Time-sheets indicating the beginning, end and duration of the daily working time
- ✓ Social security attestation (Form A1 / Portable Document A1), which also applies to self-employed work

#### Questions that help with effective control

Effective control takes into account the above mentioned factual elements, **in particular** the following: the type of employment contract (in order to determine whether it is paid employment or self-employment), the employee's tasks (as different types of fraud may be concealed in the form of self-employment, apprenticeship, and in cases of undeclared or under-declared work), the duration of the posting and the actual terms and conditions of employment (salary, benefits, limits on working time).



For this reason, Labour Inspectors can ask posted workers:

- by whom they are employed;
- who gives them instructions and supervises their work;
- where they perform their work;
- when they started working and their salary;
- their country of origin;
- their country of permanent residence;
- the country in which they are normally employed;
- the country from which they travelled and the country to which they will return at the end of the posting.

To facilitate the work of inspectors, a relevant questionnaire in Greek and English is attached to the Annex.

**When can we speak of a direct relationship between the worker and the undertaking that posted him/her?**

- When the undertaking is responsible for the recruitment;
- When the employment contract was and still is valid and binding upon the parties during the posting period;
- When the undertaking which posts the employee retains the power to determine the nature of the work provided by the posted worker, not in terms of specifying the details of the type or manner of work which is to be carried out, but the more general terms and conditions for the identification of the final product or service provided;
- When the power to terminate the employment contract lies exclusively with the undertaking that posts the employee.

**What are the most common abusive practices?**

According to the European Labour Authority, the most widespread infringements and abusive practices include the establishment of letterbox companies, bogus self-employment, the use of forged A1 documents and fraudulent posting of third-country nationals.

Certain companies, taking advantage of low social protection in a Member State, are established in that State, in order to benefit from low social security costs and conduct their business in other Member States by posting their workers. Labour inspectors often face difficulties in identifying certain factual elements in such posting situations (e.g. where businesses are registered, number of contracts performed, whether posted workers return or are expected to resume working in the

sending Member State) in order to properly perform their inspection. Complex schemes using contractors and subcontractors (mainly in the construction industry) are also not uncommon. For this reason, cooperation between Member States (through IMI), both with regard to standard and effective control, is often crucial.

### What are the challenges related to letterbox companies?

Letterbox companies can often be linked to undeclared work, exploitation and violation of workers' rights. Main challenges include:

- Lack of a uniform definition: Different authorities use different criteria, and the Posting of Workers Directives offer some guidelines, but do not provide full clarity. Moreover, the lack of a common framework in the field of social security further complicates the identification of letterbox companies. It is therefore necessary to develop a unified approach at EU level to effectively address the challenges related to letterbox companies and ensure fair and well-functioning labour markets.
- Lack of transparency: Letterbox companies often lack transparency in their operations, as their ownership structures are complex and obscure. They may have been constituted as different legal forms, making it difficult to identify the real individuals or entities behind them. In particular, they may not be registered with chambers of commerce, provide clear addresses, or pursue genuine activities in the country where they are established. Their complex nature, making it easy for them to vanish into thin air, are new challenges in their detection and identification.
- Access to information: Letterbox companies operate in secrecy, making it more difficult for authorities to access information about their activities, ownership and financial transactions. This may hinder investigation and enforcement efforts.
- Cross-border nature of the issue: Letterbox companies often operate across borders, making it difficult to locate them. This often requires the collection of information from several authorities, such as labour and social security inspection, tax and immigration authorities. The need for close cooperation between these authorities both at national and cross-border level is therefore stronger.
- Limited resources: Identifying this type of companies needs time and resources. The lack of necessary resources to effectively investigate and prosecute them is a challenge for enforcement authorities.

To sum up, dealing with LBCs requires cross-border cooperation, coordinated effort by all stakeholders and allocating resources to audit authorities to investigate and enforce prevention and compliance measures (such as digitalisation of the A1 form, or creation of a database with the notification of posted workers).

## 4.6 Administrative penalties

Ministerial Decision No 80016/2022 (Government Gazette, Series II, No 4629, 01.09.2022) distinguishes between infringements related to the posting of workers based on their severity and separately describes each infringement referred to in PD 30/2021 and PD 101/2016, as applicable, as follows:

### (A) General infringements

INFRINGEMENT	DESCRIPTION	PROVISIONS
Late submission of motivated notification to the Labour Inspectorate where the effective duration of a posting exceeds 12 months or non-submission of such notification	GENERAL SIGNIFICANT (No 38)	Articles 4 and 7 of PD 30/2021 (Government Gazette, Series I, No 75)
A service provider established in the territory of Greece refuses to provide information or provides incorrect or false information related to the posting of his or her workers to another Member State	GENERAL VERY HIGH (No 64)	Articles 16 and 5(3) of PD 101/2016 (Government Gazette, Series I, No 178), as applicable
Failure by an undertaking posting workers to the territory of Greece to submit to the Labour Inspectorate a written declaration and list of posted workers in the framework of administrative cooperation and assistance with the competent authorities of other Member States for the effective application and compliance with provisions on posting or late submission thereof	GENERAL VERY HIGH (No 65)	Articles 16 and 7(1) of PD 101/2016 (Government Gazette, Series I, No 178), as applicable
Failure by an undertaking posting employees to the territory of Greece to submit or late submission of a supplementary list containing the details of a change in the posting declaration to the Labour Inspectorate	GENERAL VERY HIGH (No 66)	Articles 16 and 7(1) of PD 101/2016 (Government Gazette, Series I, No 178), as applicable

Failure by an undertaking posting workers to the territory of Greece to keep copies (in paper or electronic form) at the workplace (or operating base in the case of drivers) during the period of posting, of: a) the individual employment contract or equivalent document; b) pay slips; c) time-sheets indicating the	GENERAL VERY HIGH (No 67)	Articles 16 and 7(1) of PD 101/2016 (Government Gazette, Series I, No 178), as applicable
beginning, end and duration of the daily working time; and d) proof of payment of wages or copies of equivalent documents.		
Failure by an undertaking posting employees to the territory of Greece to keep or send copies (in paper or electronic form) of: a) the individual employment contract or equivalent document; b) pay slips; c) time-sheets indicating the beginning, end and duration of the daily working time; and d) proof of payment of wages or copies of equivalent documents, to the competent SEPE authorities within 15 days of the receipt of the application, upon request, or late submission of these documents (very high)	GENERAL VERY HIGH (No 68)	Articles 16 and 7(1) of PD 101/2016 (Government Gazette, Series I, No 178), as applicable

## (B) Individual infringements

INFRINGEMENT	DESCRIPTION	PROVISIONS
Failure by an undertaking posting an employee to the territory of Greece to apply the terms and conditions of employment applicable to the posting	INDIVIDUAL VERY HIGH (No 88)	Articles 3 and 7 of PD 30/2021 (Government Gazette, Series I, No 75)
Failure by an undertaking posting an employee to the territory of Greece to apply the terms and conditions of employment applicable to a long-term posting	INDIVIDUAL VERY HIGH (No 89)	Articles 4 and 7 of PD 30/2021 (Government Gazette, Series I, No 75)

Failure by an undertaking posting a driver to the territory of Greece to apply the terms and conditions of employment applicable to the posting	INDIVIDUAL VERY HIGH (No 90)	Articles 7 and 12 of PD 30/2021 (Government Gazette, Series I, No 75), in conjunction with Joint Ministerial Decision No Φ451/10787/8-4-2022/ (Government Gazette, Series II, No 176512-04-2022)
Violation by an undertaking/employer posting a worker to Greece, of the obligation not to discriminate against a posted worker who exercises his/her right to judicial protection and recourse before the competent administrative authorities on the claim that he/she has been harmed	INDIVIDUAL VERY HIGH (No 91)	Articles 16 and 8(7) of PD 101/2016 (Government Gazette, Series I, No 178')

#### 4.7 Cross-border enforcement of administrative penalties

Articles 10 to 15 of PD 101/2016 provide for a procedure for the cross-border enforcement of decisions relating to administrative penalties or fines imposed on a service provider established in Greece or another Member State for failure to comply with the relevant provisions. These articles describe:

- the competent authorities, i.e. the Labour Inspectorate Regional Directorates and the Independent Revenue Administration (IAPR) authorities, to which any documents relating to the collection of administrative pecuniary sanctions or fines are transmitted;
- the actions of the competent Labour Inspectorate Regional Directorate, acting either as a requesting authority or an authority receiving a request by another Member State, with regard to the notification and recovery of administrative penalties;
- information contained in the requests in relation to the notification and recovery of administrative penalties;
- the grounds for refusal by the competent Labour Inspectorate Regional Directorate to a request by a competent authority of another Member State;
- the suspension of the enforcement of a decision imposing a penalty in case the decision is appealed, - details of the amounts collected and costs incurred. Amounts related to penalties or fines imposed by act of a Greek administrative authority, for the recovery of which a request is made to a competent authority of another Member State shall accrue to the competent authority of the requested Member State.

## Practical issues related to the imposition of administrative penalties

Document 559479/08.11.2023 of the Labour Relations Inspection Directorate for Planning and Coordination lists practical issues related to the imposition of administrative sanctions for infringements concerning the posting of workers. In particular, in cases where infringements of labour law are found in undertakings not established in Greece and therefore without a Greek tax ID number, a tax ID number may be assigned to a taxpayer or a person who is not subject to taxation by an internal initiative, in accordance with IAPR Governor's Decision ΠΟΛ 1123/28-06-2018 (Government Gazette, Series II, No 2864). In particular, the Labour Inspectorate should submit a written request to the First Tax Office Department of Athens requesting the assignment of a tax ID number to an audited undertaking which has been found to violate the labour law and does not have a tax ID number in Greece. The request shall be accompanied by the findings of the Inspection Report, showing the infringements identified, in order to substantiate that the assignment of a TIN is necessary prior to the procedure for issuing and confirming a fine notice.

The inspection report and the fine notice shall be notified to the undertaking through its representative in Greece. A request for the recovery of a fine shall be made by the competent LRI Regional Directorate through IMI, once the time limits for the exercise of the relevant remedies have expired.

## 4.8 FAQs

### 1. How are posting allowances different from the elements of remuneration as regards workers posted in Greece?

The Greek legislation includes a specific provision whereby posting allowances **are part of the remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting.**

In addition, Greek legislation clearly specifies that a posted worker's travel, board and lodging is reimbursed in accordance with the law applicable to the employment relationship (mainly the law of the home Member State under Roman law). Information on national websites can be found in the 'Posting staff abroad' section at <https://european-union.europa.eu/>.

Posting allowances must cover at least the reimbursement of expenditures to cover travel, board and lodging costs for workers away from home for professional reasons. The Labour Inspectorate must therefore consider what are the actual costs, if any, which are covered by the applicable legislation/practices in the employment relationship and whether they have been reimbursed to the worker.

It is not always easy to distinguish posting allowances from remuneration elements. For this reason, an inspection includes the following:

A. Detailed pay slips are requested which should consider if there is a separate breakdown of expenditure incurred on account of the posting (travel, board and lodging) in addition to any posting allowance paid.

B. Inspectors also review whether the terms of the employment contract provide for the payment of a posting allowance and, if so, whether the elements paid as reimbursement are determined. It might be helpful to request a written record of the working conditions of posted workers. It is recalled that in the employment contract or the relevant information document delivered to a posted worker before he/she leaves the home Member State for the host Member State, the employer must inform the worker of any payment of a posting allowance [Directive (EU) 2019/1152].

C. Where the terms of employment applied to the employment relationship do not determine whether and, if so, which elements of the posting allowance are to be paid as reimbursement of expenditure actually incurred on account of the posting, **the entire allowance shall be considered to be paid in reimbursement of expenditure**. This means that, in this case, the posting allowance shall not count as remuneration, but is paid in addition to the remuneration due based on at least the law or collective agreements/arbitration awards of the host country.

## 2. How to check that housing conditions are provided for?

The right of posted workers to accommodation conditions in host Member States is established (where provided to national workers). Greek legislation does not provide for any specific provision on housing conditions where employees are away from their usual place of work. Globally applicable minimum accommodation standards on appropriate accommodation also apply in Greece, as long as the employer provides housing. However, these terms may be included in collective agreements or individual employment contracts.

## 3. How to check that additional conditions of employment for long-term posted workers are ensured?

If an employer submits a motivated notification to extend the period of posting from 12 to 18 months before the end of that 12-month period, provisions on long-term posting do not apply. This is why inspectors should check whether an extension request has been submitted to the Labour Inspectorate. If not, or if the 18-month period has expired, in accordance with the above, the employer must grant and apply to long-term posted workers all the additional terms and working conditions applicable by law and/or collective agreements or arbitration awards which have been declared universally applicable.

Any exceptions shall cover: (i) procedures, formalities and conditions related to the conclusion and

termination of an employment contract, including non-competition clauses; and (ii) supplementary occupational retirement pension schemes.

**4. How is the equal treatment of posted temporary agency workers ensured, especially where relevant collective agreements apply?**

Presidential Decree 30/2021 lays down the employer's obligation to apply to posted workers any working and employment conditions applicable in accordance with Article 5 of Directive 2008/104/EC.

A user undertaking must inform the temporary agency of the terms and conditions applicable to temporary agency workers. During the inspection, in order to comply with the above principle, the Labour Inspectorate shall, after having been informed by the user undertaking of the legislation applicable to their employees (e.g. any operational collective agreement), check whether these conditions apply to temporary agency workers posted by the employer (TWA) or whether more favourable working conditions governing employment in the TWA in the home country apply, or even in the final recipient of the service (in case of chain posting). In case the comparison shows that the working conditions of temporary posted workers are worse, the employer is required to comply. The joint and several liability of the TWA and the user undertaking for compliance with labour law in relation to posted workers is recalled.

**5. What is the source of information for posted workers?**

It is crucial that employers and employees have access to complete and up-to-date information on terms and conditions of employment (in particular remuneration and other mandatory elements).

Directive (EU) 2019/1152 on transparent and predictable working conditions (as transposed into Greek law by PART II of Law 5053/2023) introduced new information requirements for employers to ensure that posted workers are properly informed on basic working conditions related to their mission in the host Member State. Information on national websites can be found in the 'Posting staff abroad' section at <https://european-union.europa.eu/>.



## 5. CONCLUSION

The aforementioned regulations introduce essential posted labour protection rules, which affirms the European Union's intention to protect workers from a work arrangement that affects social Europe's path and widens the gap between EU Member States in terms of the standard of living and working of European citizens (due to the wide opportunities provided to employers by the fundamental freedom to provide services).

Member States must, in order to promote the freedom to provide services and comply with obligations imposed on them under Community legislation on the posting of workers, lay down appropriate rules to address the European Union's dual objective, by providing adequate protection for workers posted to their territory without imposing disproportionate constraints on employers/service providers. However, in some cases employers are able to benefit from low-cost posted labour, and social dumping between European countries remains a constant threat to the EU's social objectives, despite efforts to tackle it.

It is therefore concluded that the posting of workers, in the framework of the provision of services, is, for the EU legal order, a necessary complement to the freedom to conduct business, the exercise of which cannot ignore the impact it has on employment relationships directly linked to it. The revision of relevant laws is a critical step towards enhancing the protection of posted workers, which Member States should guarantee within their competence.