

EEPOW Peer Review

Remuneration of posted workers and equal pay: The German approach

Magdeburg, Germany, 8 May 2019

Executive Summary

The peer review focused on problems regarding the remuneration of posted workers and the principle of equal pay. Participants had the opportunity to listen to experts from the host country and the participating peer countries' had possibilities to share their countries' approach to the implementation of the Posting of Workers Directive (96/71/EC) and the challenges faced regarding the circumvention of guaranteed working conditions, particularly minimum wages. Different ways how employers and companies circumvent national provisions on remuneration in practice were discussed next to measures national authorities and NGOs take to monitor and control irregularities. The provision of information on the remuneration by employers and the lack of such provision in the sending and the host countries were explored in detail. Exchanged information built the ground for the subsequent discussions in working groups.

The event was hosted by the Center for Social Research Halle e.V. in co-operation with the Ministry of Labour, Social Affairs and Integration of Saxony-Anhalt. The peer review in Magdeburg brought together representatives of policy-makers, labour inspectorates, customs offices, public employment service, social partners, civil society and the research community from the host country, Germany, and seven peer countries: Austria, Italy, Slovenia, Serbia, Albania, Montenegro and North Macedonia.

Key learning messages from the Peer Review

The peer review revealed that there are various ways in which companies circumvent national rules on remuneration of posted workers across the EU. Similarities were identified among the peer countries. However, the types and intensity of measures taken by countries in order to identify and control this abuse highly differ. In the candidate countries North Macedonia, Montenegro, Serbia and Albania a general lack of detailed information regarding the posting of workers is observed. Still, in Albania, posting is already identified as a potential upcoming problem. Participants informed that there is no significant posting of workers from Albania to EU-Member states although data are not yet available.

On practices of circumvention of the rules regarding the remuneration of posted workers

There are various ways of circumvention of the rules on remuneration of posted workers observed in the countries under scrutiny. A widespread practice is a decrease of payments by subtracting costs for food, travel, boarding, and lodging in the host countries, as well as other fraudulent forms such as double books, in which workers are paid officially correctly but have to return a certain amount to the employer. Austria is confronted with irregularities in terms of documentation of working hours, bogus self-employment, but recently also had problems with fake part-time contracts – which could be successfully counteracted by extended obligations for companies to inform about the form of employment beforehand. Germany observes circumvention of the minimum wage due to abusive penalty clauses in the working contract that means a regular payment on paper but a deducted wage in reality. Another common practice in Austria and Germany seems to be the denial of the last monthly payment. Some Italian companies pursue a new strategy: operating in neighbouring countries in order to post workers back to Italy with even worse working conditions.

On the mechanisms to inform workers on the remuneration in the host country

According to the amending Directive (2018/957/EU), recital 23, employers should, before the beginning of a posting, take appropriate measures to provide essential information to the worker about the terms and conditions of employment – including remuneration. In practice, however, the dissemination of information is very inconsistent. To follow the provisions of the Enforcement Directive, which, amongst other things, requires user-friendly access to information to the relevant working conditions in the host country, all states must provide an official information website.

Austria runs this website in multiple languages, whereas Italy provides information only in two (I, EN) and Germany in three languages (DE, EN, F). NGOs and trade unions often provide further, albeit not always sufficient information. Slovenia also operates an corresponding official website and additional other institutional websites. Supply with important information is limited in some of the candidate countries, e.g. in North Macedonia, due to the lack of official information facilities. Employees will exclusively obtain information orally or directly via the working contract. There are few unofficial websites for information in Serbia, most of which allegedly are often not trustworthy. Furthermore, the purposeful disinformation of workers by companies about the remuneration (workers will be given false information about the minimum wage in the host country) seems to be a severe problem.

On monitoring and control and enforcement of the provisions on remuneration

A problem that was already identified in the peer review in Vienna is that methods of monitoring and controlling the provisions of remuneration vary significantly in the Member States. In Germany, the frequency of controls by the Customs Unit which is responsible for monitoring compliance with the minimum wage provisions depends on a risk evaluation. The Unit often deals with poor information being available due to a fragmentary documentation of e.g. working hours by the companies. In Austria, several authorities carry out controls: the financial police (executive branch of tax authorities), Construction Workers' Holiday and Severance Pay Fund, which investigates facts in the construction sector, as well as the CWSD Competence Centre at the Vienna Regional Health Insurance Fund, which determines underpayment. In Italy, in addition to the labour inspectorates, supplementary controls are facilitated by trade unions. In North Macedonia, Montenegro and Albania sporadic inspections are conducted but official statistics regarding the outcome are missing. In almost all participating countries enforcement bodies seem to be understaffed and/or underfinanced in order to ensure an effective control of compliance with the legal provisions. These deficits result in a very fragmented picture of the situation.

On possible measures to avoid circumvention in the future

In order to avoid future circumvention of remuneration rules it is crucial to guarantee access to essential information and establish effective mechanisms to monitor, control and enforce legal provisions in the host and the sending countries. A well-established transnational cooperation furthermore is fundamental. The Internal Market System (IMI) system can and should play a key role here; unfortunately, it has not been used sufficiently so far.

One of the aspects which should be improved in the host and sending countries are documentation duties. Instruments to display the relevant information on working conditions need to be established. Here, the Austrian construction site database could be a prototype, which helps unveil actual working hours and the contractual relationship of entangled companies. A similar project regarding seasonal workers in the agricultural sector is in a testing phase in Serbia. Germany proposes a system that requires companies to make a deposit in advance to ensure that the full remuneration is paid – a similar project is already in place in North Macedonia concerning temporary-work agencies. These deposits will be refunded if employers prove that the remuneration was correct. This could be used to tackle the fraudulent practice of denying the last monthly payment in particular.