

# Thematic feature - posted workers

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This article examines the Portuguese situation, as of June 2003, with regard to: legislation and collective bargaining on the pay and conditions of posted workers (ie workers from one EU Member State posted by their employer to work in another); the number of such posted workers; and the views of the social partners and government on the issue.

EU [Directive 96/71/EC concerning the posting of workers in the framework of the provision of services](#) seeks to avoid 'social dumping' by ensuring that a minimum set of rights is guaranteed for workers posted by their employer to work in another country. The basic principle is that the working conditions and pay in effect in a Member State should be applicable both to workers from that State, and those from other EU countries posted to work there. The Directive covers undertakings established in a Member State, which, in the framework of the transnational provision of services, post workers to the territory of another Member State.

The Directive establishes a core of essential regulations aimed at ensuring employees' minimum protection in the country in which their work is performed. It guarantees the application of the host country's statutory and regulatory provisions relating to:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates (excluding supplementary occupational retirement pension schemes);
- the conditions of hiring-out of workers, in particular the supply of workers by temporary employment agencies;
- health, safety and hygiene at work;
- protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; and
- equality of treatment between men and women and other provisions on non-discrimination.

As well as these generally applicable statutory and regulatory provisions, a Member State's collectively agreed provisions on these issues must also be applied to workers in the construction sector (where these are based on 'collective agreements or arbitration awards which have been declared universally applicable').

The Directive allows for a number of exceptions to all or some of these 'minimum provisions' for: the crew of merchant ships; staff involved in the initial assembly and/or first installation of equipment; postings lasting less than a month; and where 'the amount of work to be done is not significant'. The Member States were obliged to transpose the Directive by 16 December 1999.

In 1999, the European Industrial Relations Observatory (EIRO) conducted a [comparative study](#) on posted workers and the implementation of the Directive. In June 2003, the EIRO national centres in each EU Member State (plus Norway), have updated the basic information in the earlier comparative study, four years on, in response to a questionnaire. The Portuguese responses are set out below (along with the questions asked).

## Regulatory framework

What changes were made to national legislation in your country in order to implement the Directive? And have there been any further changes to the relevant legislation since then?

The posted workers Directive was implemented in Portugal by [Law no. 9/2000](#) of 15 June 2000.

Please outline very briefly the current legal position of posted workers in your country - are they covered by specific or general employment legislation, what is their position with regard to social security (are they covered under the social security system in their country of origin or the host country?) etc. Also, have any specific measures been taken to prevent abuses arising from the posting of temporary agency workers (eg an agency hiring temporary workers through a subsidiary in a low labour cost country and sending them to work for a user company in a higher labour cost country)?

Law no. 9/2000, applies to the posting of workers to perform work on Portuguese territory by an undertaking located in another state, in one of the following situations:

- in execution of a service contract between the company that posts the worker and the company operating in Portugal for which the services are intended, provided that the worker remains under the direction of the posting company;
- posting to an establishment belonging to the same company or a company belonging to the same group; or
- posting of a worker by a temporary work agency or a company that places the worker at the service of a user (provided that there is an employment relationship between the agency or placement company and the worker during the period of the posting).

Such posted workers are covered by Portuguese legislation and collective agreed provisions on: maximum work periods and minimum rest periods; minimum paid annual leave; minimum rates of pay, including overtime rates (and payments related to the posting, such as travel and accommodation expenses); the conditions of hiring-out of workers by temporary work agencies and placement companies; health and safety at work; protective measures for pregnant women and women who have recently given birth, for children and for young people; and provisions on non-discrimination, including equal treatment between men and women. It is mandatory to apply to posted workers the relevant provisions of 'collective agreements and arbitration awards which are the subject of an extension and which are applicable to all undertakings belonging to the sector of activity in the geographical area and in respect of the occupation to which the posting relates'.

In line with the requirement to nominate a body to ensure the cooperation required by the Directive, the Portuguese law designates the the Inspectorate General for Labour (Inspeção Geral do Trabalho, IGT) to play this role. According to its 2001 annual activity report, IGT's interventions relating to posted workers mainly aim to promote the regularisation of illegal postings of workers to EU countries, prevent forms of employment that fail to declare workers to the labour, social security or tax authorities and fight efforts to hide the existence of employment contracts.

Have there been any collective agreements concluded on the issues covered by the Directive? Have the social partners been consulted as part of the legislative and policy-making process and, if so, in what way? Have the social partners taken any other initiatives related to posted workers?

No collective agreements or initiatives by the social partners specifically concerning posted workers have been reported in Portugal. The government consulted the social partners via the Economic and Social Council (Conselho Económico e Social) in the normal way on the legislation implementing the Directive.

## The workers affected

Please provide the latest figures available on the number of employees who are posted from your country to other EU Member States.

The available statistics give no indication of the number of workers posted from Portugal to work abroad. However, a limited idea of the extent of the phenomenon is provided by figures (Quadros de Pessoal 2000) from the Ministry of Social Security and Labour's Department of Labour, Employment and Vocational Training Statistics (Departamento de Estatística do Trabalho, Emprego e Formação Profissional, DETEFP). In 2000, there were 17 enterprises with registered offices in Portugal that operated abroad, mainly in the construction industry (10 enterprises) and telecommunications (three), with one company each in monetary intermediation, insurance, auxiliary activities for insurance and pension funds and 'other associative activities'. According to the same source, these companies employed 510 people, almost all in the construction industry (499).

Please provide similar figures, if available, for employees posted to your country from other EU Member States.

Again, there are no statistics available on the number of workers posted to Portugal from abroad. DETEFP does provide figures (Quadros de Pessoal 2000) on the numbers of foreign workers working for companies in Portugal, which may include some posted workers. There were 27,550 such employees in 2000, of whom 4,415 were nationals of other EU Member States. Of the remainder: 6,423 were from non-EU European countries; 12,883 from African countries; 1,173 from Asian countries; 3,406 from American countries; and 42 from Oceanian countries. In sectoral terms, these workers were found mostly in: real estate activities, rentals and services to companies (8,531); construction (4,992); manufacturing industries (4,596); accommodation and catering (3,135); and sale and repair of motor vehicles and personal and domestic goods (2,643). Where these workers' qualifications are concerned, the number of qualified (9,861) and unqualified (8,346) workers were similar. There were 1,544 senior management staff, 736 middle-management staff, 478 team managers, 1,100 highly qualified employees, 3,236 semi-qualified employees, 1,620 trainees and apprentices and 629 of unknown status.

## Workers in the construction industry

The EU Directive, although of general application, is aimed particularly at workers in the construction industry (building and public works), in which discrepancies between practice and legal standards are often observed. Has any special action been taken by the social partners or the state to address the situation of posted workers in this industry?

No initiatives or specific actions by the social partners are reported concerning posted workers in the construction industry.

As part of its remit, the Inspectorate General for Labour has exchanged information with its German counterpart on illegal work situations involving Portuguese construction companies in Germany. According to the 2001 IGT annual activity report, among 220 such Portuguese companies inspected, there were 112 cases of tax evasion, failure to pay social security contributions and pay arrears, and some cases were being dealt with in the German courts. In the same year, the Portuguese consulates in London and Dublin received 2,000 complaints from Portuguese workers (including an undetermined number of construction workers), who had been posted to the UK and Ireland by Portuguese temporary work agencies, concerning pay arrears, refusal to pay repatriation expenses and the performance of work not included in the contract. These complaints were passed on via the Directorate General of Consular Affairs and Portuguese Communities (Direcção Geral dos Assuntos Consulares e Comunidades Portuguesas) to the competent departments of IGT for appropriate action to be taken. In 2001, IGT continued to monitor the situation in cooperation with the authorities in London and Dublin.

## The positions of the social partners and government

Please outline the stances adopted by the social partners and the public authorities/government on this issue. Particular attention should be given to unions and employers in the construction industry.

Since the discussions over the transposition of the Directive, the issue of posted workers has not figured prominently on the agenda of the social partners and government. The main issues related to the cross-border movement of workers which attract the interest of the social partners concern immigration and emigration matters which are not covered by the Directive ([PT0205103F](#)). (António Casimiro Ferreira, UAL)