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2 **QUESTIONNAIRE FOR ASSOCIATIONS CONCERNING PRESENT LEGISLATION ON**
3 **POSTING AND ITS CONCRETE APPLICATION IN YOUR COUNTRY**
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5 **The Directive should have been transposed by the 16th December**
6 **1999.**

7 *When and how did this happen in your country?*

8 *Were existing texts adapted, and in this case, did this happen*
9 *in a systematic manner or just to settle particular cases?*

10 *Was a later version of the Directive presented as a*
11 *transposition?*

12 *Were the modifications or transpositions object of a law, a*
13 *collective agreement or another type of provision and in this*
14 *case what?*

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16 **II. According to the first article, the Directive applies to all**
17 **undertakings established in a Member State which, in the**
18 **framework of the transnational provision of services, post**
19 **workers, in accordance with paragraph 3, to the territory of**
20 **another Member State.**

21 *Which undertakings are concerned by the instrument of*
22 *transposition: only the undertakings of Member States of the*
23 *European Union, also undertakings of Third countries, or only*
24 *some of them?*

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26 **III. Article 2 of the Directive defines posted worker as a worker**
27 **(in the sense of the legislation regarding the place where the**
28 **provision of services is carried out) who, for a limited**
29 **period, carries out his work in the territory of a Member State**
30 **other than the State in which he normally works.**

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32 *1. Do difficulties arise in your country from the definition*
33 *of worker in legislation regarding the place where the*
34 *provision of services is carried out, for example because the*
35 *worker is considered employed in the country where the*
36 *provision of services is carried out and considered as self-*
37 *employed in the country of origin? Or because of the*
38 *difficulty of defining in your country the precise difference*
39 *between employed and self-employed work?*

40 *2. What is the definition of the concept of "posted" given by*
41 *the instrument of transposition of the Directive in your*
42 *country? If the concept is defined broadly, do you think that*
43 *this can have a beneficial effect on workers?*

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45 *How is the length of the posting considered? How is the*
46 *concept of "country on whose territory the worker normally*
47 *works" defined?*

48 *Do difficulties result from the absence of harmonization*
49 *between the concept of posting in work legislation and in that*
50 *of social security schemes (regulation 1408/71)?*

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54 **IV. Article 3 of the Directive foresees seven matters in which**
55 **legal, regulatory provisions and in certain cases collective**
56 **agreements are, in principle and subject to the possibility of**
57 **exemption, to be applied.**

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59 **The "hard core" of these protective regulations concerns:**

- 1 a) maximum work periods and minimum rest periods;
2 b) minimum paid annual holidays;
3 c) the minimum rates of pay;
4 d) the conditions of hiring-out of workers;
5 e) health, safety and hygiene at work;
6 f) protective measures with regard to the terms and conditions of
7 employment of pregnant women or women who have recently given
8 birth, of children and of young people;
9 g) equality of treatment between men and women and other
10 provisions on non-discrimination.
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13 1. Article 3, paragraph 1 concerns the terms and
14 conditions that, in the Member State on whose territory the work is
15 carried out, are laid down by legal, regulatory or administrative
16 provisions; for activities described in the annex (i.e. building
17 work) the terms and conditions of employment are laid down by
18 collective agreements or arbitration awards declared of universal
19 application. These collective agreements and arbitration awards have
20 to be respected by all undertakings in the geographical area and in
21 the profession or industry concerned. In the absence of a system for
22 declaring collective agreements or arbitration awards to be
23 universal application, Member States can, if they decide, base
24 themselves on other collective agreement or arbitration awards, as
25 described by paragraph 8 of article 3.
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27 Paragraph 10 of the third article permits Member
28 States to apply in equal manner to national undertakings and to
29 undertakings of other States 1°) terms and conditions of employment
30 on matters other than those referred to in article 3 in the case
31 of public policy provisions and 2°) terms and conditions of
32 employment laid down in the collective agreements or arbitration
33 awards within the meaning of article 3.8 and concerning
34 activities other than those referred to in the Annex (activities
35 in the field of building work).
36

37 *How are these protective measures in the different domains laid*
38 *down in your country: legal, regulatory, administrative*
39 *provisions and/or collective agreements or arbitration awards?*
40

41 *Is the infringement of the protective measures enumerated in*
42 *article 3 of the Directive sanctioned in your country?*
43 *In this last case, are there difficulties to determine what*
44 *collective agreement applies to an undertaking providing*
45 *services installed in another country of the EU?*
46

47 *Does your country make use of the faculty of extension to other*
48 *matters than those described in the Directive? In that case,*
49 *which ones, and to what is referred to determine that the*
50 *provisions are public policy provisions or of police character?*
51 *It would be interesting to verify if in certain countries the*
52 *laws regarding the representation of the personnel are police*
53 *laws to reach conclusions about the collective status of the*
54 *posted worker in relation to the European Works Council.*
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56 *Has your country made use of the faculty of extension to make*
57 *rules of collective nature (collective agreements and*
58 *arbitration awards) mandatory to activities other than building*
59 *work?*

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4 2. The concept of minimum rates of pay is defined by
5 legislation and/or national practice of the host country.

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7 *Does the definition chosen in your country pose problems in the*
8 *case of posting?*
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11 3. The Directive foresees that in the case of
12 initial assembly and/or first installation of goods, the provisions
13 relative to the minimal period of paid vacation and the minimum rate
14 of pay is not applied if the period of posting does not exceed eight
15 days, except in the case of building work. This is therefore an
16 obligatory exception.

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18 *Does this text entail concrete problems in your country?*
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21 4. Member States can decide not to apply the minimal
22 rates of pay (except in the case of posting by temporary employment
23 undertakings or by undertakings that hire out workers) if the period
24 of posting does not exceed one month and can be left for employers
25 and labour to arrange.

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27 *What is the case in your country? If there is an exception, what*
28 *form has it taken?*
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30 5. Member States may provide for exemptions to be
31 granted from the maximal periods of work/ minimal periods of rest
32 and to the minimal rates of pay on the grounds that the amount of
33 work to be done is not significant

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35 *Has your country availed itself to this option, and in this case*
36 *how is the concept of "not-significant" defined?*
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39 6. In a general manner, the examination of
40 sentences by the Court of Justice shows the difficulties that
41 administrative and judiciary authorities have found to establish
42 the restrictions arising from the application to posted workers of
43 laws, regulations and agreements of the host country corresponding
44 to the demands of the free circulation.

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46 We therefore find essential to gather information
47 on this issue from the monitoring instances involved as well as
48 the maximum jurisprudence, to examine if it is possible to verify
49 if workers benefit or not from a comparable protection to the
50 country of establishment of their employer.
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53 **V. Information about the rights of posted workers.**

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55 *Is information concerning situations of posting and the*
56 *provisions applied to posted workers easily available?*
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58 **VI. Measures destined to assure the respect of the obligations of**
59 **the employers that post workers.**

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1. What are the measures taken by your country to effectively monitor the obligations of the employees (for example the keeping social documents in the country of posting and writing up these documents in the language of the country)?

2. Article 6 of the Directive foresees the right of the posted worker to institute judicial proceedings in the Member State in whose territory the worker is posted.

How is this clause put in place in your country: what are the guarantees provided regarding judicial and procedural competence; provisions permitting to ensure the effectiveness, like in the case of subcontracted work, according the worker the possibility of turning against the foreman or the obligation of the employee to create a deposit?

How do political, administrative and judiciary authorities understand this right in your country?