COUNTRY STUDY

ESTONIA

Transnational Monitoring and Enforcement of Posted Work: The Case of Estonia

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Mapping National Enforcement Capabilities

The Estonian Labour Inspectorate (ELI) falls under the area of governance of the Estonian Ministry of Social Affairs and conducts state supervision on both working environment (health and safety regulations) and labour relations, including over collective agreements. The Labour Inspectorate is also the implementing authority regarding the Posting of Workers Directive (PWD, 96/71/EC) and the Enforcement Directive (ED, 2014/67/EU; in Estonia regulated by the Working Conditions of Employees Posted to Estonia Act). On the one hand, the number of employee positions in ELI has decreased gradually in recent years, being 132 in 2010 and 115.5 in 2016 (Work Environment 2017: 52). However, the number of inspectors has stayed at the same level and their salaries have increased, reaching close to national average in 2015 (Table 1).

Table 1: Number of employed persons in the labour market, number of inspectors, inspections and labour costs in the ELI

<table>
<thead>
<tr>
<th>Main figures</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of employed persons in the labour market</td>
<td>624 900</td>
<td>640 900</td>
<td>644 600</td>
</tr>
<tr>
<td>Number of inspectors, (including inspector-lawyers)*</td>
<td>52</td>
<td>52</td>
<td>52</td>
</tr>
<tr>
<td>Average basic salary of a labour inspector** (percentage of national average wage***)</td>
<td>897 €</td>
<td>1 043 €</td>
<td>1 085 €</td>
</tr>
<tr>
<td>-89%</td>
<td>-98%</td>
<td>-95%</td>
<td></td>
</tr>
<tr>
<td>Number of enterprises subject to state supervision*</td>
<td>3235</td>
<td>3838</td>
<td>4436</td>
</tr>
</tbody>
</table>


There are 46 occupational health and safety and labour relations inspectors and six work accident inspectors-investigators (Work Environment 2017: 53). On the other hand, the number of companies where state supervision was carried out has increased in recent years (Table 1), indicating that the work load of inspectors has also increased.

ELI’s supervision activities are divided into four areas of which the largest volume is supervision over the work environment and safety (86% in 2016), which is also related to their main priority of reducing serious/fatal work accidents. 26% of all the occupational safety inspections were made in the construction sector (second was trade with 16%). Second largest activity is supervision over labour relations (9%), third joint supervision over work environment and labour relations (3%) and fourth supervision over work and rest time for drivers (2%) (Work Environment 2017: 23). In total ELI inspected 4436 enterprises in 2016 (out of 54 177 active enterprises in the labour market), which is 598 inspected enterprises more than in 2015. Violations were detected in 85% of the inspected cases (Work Environment 2017: 23-25).

As regards posting of workers, Estonia is considered to be mainly a sending state. According to A1 portable documents issued in 2015, 0.7% of Estonian employed population was posted abroad and the share of workers posted to Estonia in national employment was 0.4% (Pacolet & De Wispelaere 2016: 29-31). Thus, workers posted to Estonia have not been high on the agenda for the ELI. On the other hand, based on the experience of labour inspectors, the number of workers posted to Estonia seems to be increasing and controlling their employment situation sometimes also interacts with the control of illegal work, if posting of non-EU citizens is practiced.

2. Since 2017 it is easier to evaluate the number of workers posted to Estonia, as there is now a registration requirement for service providers using posted workers (see the section on the Enforcement Directive). The number of A1 forms alone provides often an inadequate picture of the phenomenon. The number of A1 forms issued in Estonia is available at: http://www.sotsiaalkindlustusamet.ee/et/organisatsioon-kontaktid/statistika-ja-aruandlus
Controlling of illegal work falls into the jurisdiction of the police. If there is a suspicion that a company/construction site might have non-EU workers, then Labour Inspectorate has joint inspections with the police, where police firstly controls the living and working permits of non-EU workers\(^3\). An increasing number of posted workers in Estonia are posted to Estonia via Polish companies, including also third-county citizens, mainly Ukrainian workers with Polish D-visas (also involving Ukrainian and/or Polish temporary work agencies). A new scheme where Belarusians were posted to Estonia through Lithuanian temporary work agency has also just emerged\(^4\). According to the Aliens Act when hiring third-county citizens, employer has to pay them at least the Estonian average wage\(^5\) (around 1200 EUR in 2017). If these workers are posted, however, this condition does not apply, and posted workers are entitled to the national minimum wage\(^6\) which in 2017 was 470 EUR (and in 2018 500 EUR).

ELI does also joint inspections with the Tax and Customer Board. In 2015 and 2016 the ELI, the Police and Border Guard Board and Tax and Customer Board had 18 joint visits to control the legality of employment. In 2015 these visits established 31 and in 2016 14 companies where people were working without legal ground and a written employment contract. There were also several cases where the employer who organised the work in Estonia claimed that the employees are posted workers, thus do not have to be registered in the employment register of Estonia. What follows, is that the Police has to first make sure if the person has a living and/or work permit applicable and the ELI has to confirm if this is indeed posted worker by making an inquiry to another member state through IMI (Work Environment 2017: 32). There have been several news reports that highlight the use of (posted) Ukrainian workers in Estonia whose employment conditions are poor, wages low and legal status often unclear. For example, in September 2017 ELI had a joint inspection visit with the Police and Border Guard Board and the Tax and Customer Board to a construction site of the new courthouse in Tallinn. Main contractors did not have any construction workers on their payroll, all the construction work was outsourced through long subcontracting chains and in the end of the subcontracting chain were Ukrainian workers posted to Estonia through Polish TAW company (e.g. Kaukvere & Ilvest 2017).

The cooperation between ELI and different NGOs, including trade unions is rather poor (which might be related to the rather weak and underdeveloped civil society in Estonia). Although ELI meets the social partners at least once a year to discuss the priorities of state supervision and relevant problems, the construction sector, for example, where posting of workers mostly takes place, does not have an active trade union that would represent local workers, let alone posted workers. On the other hand, the Finnish Construction Trade Union Rakennusliitto has established their office in Tallinn (capital of Estonia) where they provide information and counselling to Estonian construction workers who are working or planning to work in Finland\(^7\).

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3. Interview with the Estonian LI’s representative, June 2015
4. Email exchange with Estonian LI’s representative, September 2017
7. [https://rakennusliitto.fi/et/](https://rakennusliitto.fi/et/)
Transnational Cooperation

ELI is also the liaison office for posting and administers the IMI requests (see Table 2). Regarding posting of workers, Estonia mainly cooperates and exchanges information with Finland and Poland. Estonians are mainly posted to the Finnish construction sector and Polish companies send workers to Estonia.

Estonian labour inspectorate uses both IMI and personal contacts between inspectors (email, phone, meetings) to share and ask for information regarding posting of workers. In the area of posting of workers, in 2016 Estonia sent out 12 and received 13 IMI requests\(^8\). Although IMI is a secure system for sharing information, using it might be sometimes too slow and insufficient. For example, although the answer should come within 25 working days, but there are cases when the answer has taken 60-70 days, depending on a bureaucracy of a country (in some countries the communication between state institutions is slow). If the information request is closed in IMI, but there is still information to be sent, then other less secure ways of communication are used (email, regular mail). Automatic language translation to Estonian is occasionally insufficient and it is not possible to understand the answer\(^9\).

Answering IMI requests is also considered difficult, as highlighted in the 2016 ELI’s report:

> A major problem in responding to IMI inquiries is the fact that we are not able to find the employer who posted their workers to the territory of another member state. Often, the company is fictitiously registered in Estonia; however, in reality, no business activity is carried out here. Another reason is that the enterprise has entered either false or incorrect information about their means of communication (such as phone, e-mail, is not located at the seat entered in the commercial register) in the official registries (register of employees, commercial register), which serve as the main sources of information to use. In addition, the management board members often fail to cooperate with the Labour Inspectorate. Nevertheless, in 2016, we responded to all inquiries received through IMI; this above all thanks to different databases and the cooperation with the Tax and Customs Board, Police and Border Guard Board and Estonian Academy of Security Sciences. (Work Environment 2017: 33)

Table 2: Developing mutual cooperation / „architecture“ of cooperation

<table>
<thead>
<tr>
<th>IMI liaison office(s) for posting module</th>
<th>Other institutions involved in IMI posting module</th>
<th>IMI requests sent/received*</th>
<th>Transnational enforcement of sanctions</th>
<th>Bilateral agreements and joint inspections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estonian Labour Inspectorate</td>
<td>Information exchange with other state institutions is sufficient.</td>
<td>In 2016 Estonia sent out 12 and received 13 requests; in 2017 Estonia sent out 12 and received 9 requests.</td>
<td>No cases yet.</td>
<td>Cooperation agreements with Southern Finland, Latvia, Lithuania and Poland. There have been joint inspections with Regional State Administrative Agency Southern Finland.</td>
</tr>
</tbody>
</table>

Source: Communication with the representatives of ELI; * [http://ec.europa.eu/internal_market/imi-net/statistics/2016/12/index_en.htm#t_1_3](http://ec.europa.eu/internal_market/imi-net/statistics/2016/12/index_en.htm#t_1_3)

\(^8\) [http://ec.europa.eu/internal_market/imi-net/statistics/2016/12/index_en.htm#t_1_3](http://ec.europa.eu/internal_market/imi-net/statistics/2016/12/index_en.htm#t_1_3)

\(^9\) Focus group interview, May 2017
1. Bilateral agreement with the Regional State Administrative Agency Southern Finland. Two meetings annually, exchange of information about legislation, companies (focus on posting), exchange of inspectors, joint inspections.

2. Bilateral agreement with Poland (new, signed in 2017): one meeting per 2 years (focus on posting).

3. Trilateral agreement with Latvia and Lithuania: one meeting annually, discussing common problems in the labour market, exchanging information about legislation.

Currently Estonian Labour Inspectorate is taking part of the project “Promotion of Transnational Cooperation Among Stakeholders and Dissemination of Best Practices to Enhance the Enforcement of the European Legislation Regarding Posted Workers and Posting Issues”, together with labour inspectorates and social partners from the Baltic states and Poland and the Senior Labour Inspectors Committee’s (SLIC) information and enforcement oriented project “Safe and healthy work for temporary jobs” (2017-2019) that aims to promote occupational safety and health of temporary agency workers and cross-border workers. In addition, ELI has participated in projects like the INTEPF’s “Learning by Doing”, and working groups like the SLIC WG Cross-Border Enforcement working group (and other SLIC working groups), the European Commission’s expert committee on posted employees, and the European Commission’s working group “Transposition of the Enforcement Directive of the Posting of Workers Directive 2014/67/EU (TREND)” (Work Environment 2016).

Estonian Labour Inspectorate has transnational cooperation agreements with neighbouring countries and with countries from/to which posting is an important phenomenon (Finland, Latvia, Lithuania and Poland), thus interdependency of labour markets is the main reason for signing the agreements:

Issues specific to the cross-border regulation of posting

Before the implementation of the Enforcement Directive in December 2016 there was no registration requirement for posted workers and inspectors considered it problematic. It was possible to find posted workers through general state supervision, targeted control, based on tips, or to try to locate them based on information received from A1 forms: all these ways proved to be insufficient. 

10. Focus group interview, May 2017
12. Focus group interview, May 2017
13. Focus group interview, May 2017
14. Focus group interview, May 2017; Interview with the Estonian LI's representative, June 2015
There are several cases where Estonian workers posted to other countries have turned to the Estonian Labour Dispute Committee and to Estonian courts when their labour rights have been violated. However, workers posted to Estonia have not used Estonian court system to claim their rights, although this was possible already before the implementation of the ED. Workers posted to Estonia also do not generally turn to the ELI for information and consultation.

The awareness of the laws and regulations concerning posted workers is rather limited in receiving firms (Work Environment 2015: 29). Estonian minimum wage (and other conditions stipulated in the PWD) also apply to posted workers. However, when it came to posted workers’ employment conditions, before the implementation of the Enforcement Directive in the end of 2016, labour inspectors were able (and obliged) only to take action when health and safety regulations were violated, they could not sanction employers for the violations of employment conditions, except to point them out and inform sending country inspectors about the problems - when there are problems with employment relations.

Related to the low awareness about posting regulations, in 2014 the Estonian Labour Inspectorate had a campaign about posted workers rights, including 15 information days across the country, comprehensive media coverage, information sharing in a ferry operating between Estonia and Finland; they also published an information material for posted workers, available in Estonian, Russian and in English. Information about regulations applicable to posted workers is available on Labour Inspectorates’ homepage in Estonian, English and in Russian, relevant legislation is translated into English. ELI officials continue to inform public about issues concerning posting of worker and currently they are also preparing information materials in Polish.

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15. Focus group interview, May 2017
The Enforcement Directive

ED entered into force in Estonia on 17th of December 2016. Main changes are the following: First of all, there is now a registration requirement for service providers using posted workers. Employer has to send information (notification) about using posted workers, including information about the company and about posted workers to the labour inspectorate no later than on the day the posted employee starts working in Estonia (Table 3; see also Working Conditions of Employees Posted to Estonia Act § 5).

In 2017 ELI received 329 posting notifications for 1220 posted workers. Main posting countries have been Latvia (40% of the posted workers), Poland (34%) and Lithuania (14%) and main sectors metal, arts & entertainment and construction.

ELI also makes publicly available part of the information received through posting notifications: name of the service recipient; name of the employer of posted workers; field of activity of the service recipient and the posting company; home country of the posting company; number of posted workers; position and workplace of posted workers.

Table 2: Developing mutual cooperation / „architecture“ of cooperation

<table>
<thead>
<tr>
<th>Notification requirement</th>
<th>Information required</th>
<th>How it is used for controls</th>
<th>Issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification has to be sent no later than on the day the posted employee starts working in Estonia to the ELI by email.</td>
<td>* Employer’s name, personal or business ID, sphere of activity, place of residence/location and data about the means of communication; * Name of the representative or a contact person of the posted worker’s employer and data about his/her means of communication; * Number of workers posted to Estonia, their names and personal identification numbers or dates of birth; * Duration of the posting and the start and end date of the posting; * Name of the service provider and/or the sole proprietor for whom the posted employee works in Estonia, his/her personal or business ID, sphere of activity, place of residence or location and data about the means of communication; * Name of the representative or a contact person of the service provider and/or the sole proprietor for whom the posted employee works in Estonia and the data about the means of communication; * The work the employee performs or will perform in Estonia and the address of the location where the work is/will be performed.</td>
<td>The sample of posting companies that will be targeted by the ELI is partly assembled based on the posting notifications.</td>
<td>Not all employers are complying with notification requirement; some give incorrect information.</td>
</tr>
</tbody>
</table>

Secondly, after the implementation of the ED, posted workers have the right of recourse to a labour dispute resolution body of Estonia (in additions to the courts also to Labour Dispute Committee, as do local workers) for the protection of the rights guaranteed by Working Conditions of Employees Posted to Estonia Act (although these institutions might be too incompetent to solve all cases). Currently there has been only one case (4-1/752/17) where a worker, posted to Estonia through a Polish company, has turned to the Estonian Labour Dispute Committee to claim his back pay, and the claim was partially satisfied, so that the company was ordered to pay the worker his lawfully earned wage.

Thirdly, the revised act gives a possibility for the cross-border administrative penalties and fines (Working Conditions of Employees Posted to Estonia Act§ 7). Although before the implementation of the ED Labour Inspectorate also conducted state supervision on posted workers employment conditions, they did not have any means to sanction the foreign companies, as the previous version of the Working Conditions of Employees Posted to Estonia Act did not give such possibilities. They could only point out the problems and inform the LI of the foreign company’s home state. To this point there are no cases of cross-border administrative penalties and fines.

Fourthly, the revised act establishes a contractual liability in the construction sector. Since the implementation of the ED on 17 December 2016 there is a liability regulation for unpaid wage in the construction sector. Working Conditions of Employees Posted to Estonia Act§ 52 states: If an employee posted to Estonia performs work in the construction sector and the employer does not pay the employee wages, the wages shall be paid by the person who ordered the service (simple direct contractual liability) from the employer of the posted employee. This claim, however, is limited to the minimum monthly wage (including income tax) of Estonia. However, if the employer has exercised due diligence, the liability regulation does not apply (Working Conditions of Employees Posted to Estonia Act§ 52 (4)). Before the implementation of the ED liability regulations applied only to conditions stipulated in the Occupational Health and Safety Act.

Conclusions

Although Estonia has been mainly a sending country regarding posted workers, considering the smallness of Estonian labour market, a considerable numbers of workers – including third country citizens – are posted to Estonia as well. In recent years, the Estonian Labour Inspectorate has more and more put an emphasis on monitoring and enforcing the rights of posted workers, including developing transnational cooperation with other labour inspectorates and participating in multinational projects aimed at protecting the rights of posted workers. Although ELI’s resources are limited and finding posted workers and correct information about their working conditions and employers can still be difficult, implementation of the Enforcement Directive gave some new possibilities, like mandatory notification requirement for posting companies and a possibility to issue cross-border administrative penalties and fines, which effectiveness should be evaluated in the future.

24. Interview with the Estonian LI’s representative, June 2015
References


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