Rights of workers implicated by EU-Directives on posting and on temporary agency work

Posted workers	Posted temporary agency workers	Temporary agency workers
▪ **Core working conditions in the host country** ▪ **public policy provisions** ▪ **more favourable provisions**	***All of the working conditions*** of temporary agency workers in the host country	**Equal treatment in the user undertaking** regarding core working conditions

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

EU-Directives on posting and on temporary agency work Transposition in Austria

Posted workers	Posted temporary agency workers	Temporary agency workers
▪ At least **remuneration** that a law, an ordinance or a collective agreement **in Austria** defines for performing that work ▪ **Annual leave** entitlements **pursuant to Austria law** ▪ **Austrian regulations** relating to **working time, maternity leave, protection of young employees, safety and health at work**	• **Continued remuneration** in cases of illness or accident, on public holidays in Austria and **when prevented from work for important personal reasons** • **Entitlement in case of unlawful termination of employment**	Payment of **at least** the amount of **remuneration** stipulated in **collective agreements (business of user undertaking or for temporary agency work)**

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Enforcement of workers rights related to EU-Directives on posting and on temporary agency work in Austria:

Administrative requirements 1

Notification of cross-border employment in advance:

- **One week before** the start of the work at the latest
- **Contents**: names, remuneration, duration of posting, workplaces etc.
- Receiving authority: so called Central Coordination Office for the Control of Illegal Employment
- Use of **electronic forms**
- **Copy** of the notification must be **handed over to representative**

Notification of cross-border services in advance – certificate of qualification:

- Posting undertaking's activity is in the field of a **regulated trade**
- Provisions of services in the State of establishment at least two years during the last ten years
- Receiving authority: Federal Ministry of Science, Research and Economy
- Use of **electronic forms**

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Enforcement of workers rights related to EU-Directives on posting and on temporary agency work in Austria:

Administrative requirements 2

Obligation to being provided with documents

At the place in Austria where the posted or temporary agency worker is employed are required to be kept available:

- **Social security document A1**

- **Copy of the notice for the cross border assignment of workers**

- **Pay documents** that show remuneration actually paid:
  - Employment contract or written record of the content of the employment contract
  - Payslip, proof of payment by the employer or bank transfer statements
  - Wage records
  - Documents relating to pay categorisation
  - These documents must be available in German

- **Employment permit of the posting country**
  ← posted employee is not a citizen of an EU Member States or is from Croatia

- **Records of the hours worked**

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Enforcement of workers rights related to EU-Directives on posting and on temporary agency work in Austria:

Authorities carrying out controls

Compliance with minimum wage regulations:

- **Financial police:**
  executive branch of tax authorities which investigates facts
- **Construction Workers' Holiday and Severance Pay Fund**
  ("*Bauarbeiter-Urlaubs- und Abfertigungskasse", "BUAK"*): investigates facts in the construction sector
- **CWSD Competence Centre (*Kompetenzzentrum LSDB*) at the Vienna Regional Health Insurance Fund ("*Wiener Gebietskrankenkasse"*):**
  determines underpayment

Compliance with regulations on working time, occupational safety and health, protection of young employees, of employees during pregnancy and maternity protection period:

- **Labour Inspection**

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Enforcement of workers rights related to EU-Directives on posting and on temporary agency work in Austria:

Enforcement procedures

Administrative penal proceedings

- Supervisory authorities themselves in general cannot impose fines

- **Authorities have to report, any other person (e.g. an employee) can report** a lack of compliance with provisions relating to minimum remuneration, working time, workplace safety and health to the District Administration Authority

- Administrative penal proceedings start up with the **report to the District Administration Authority** (District Commission, City Magistrate, Magistrate or, in Vienna, the Municipal District Office).

- **Outcomes of the administrative penal proceedings:**
  - Fine is imposed on the employer
  - Employer is prohibited from future activities in Austria
  - Proceedings are discontinued

Civil proceedings
e.g. on the occasion of unlawful notice of termination of employment, failure of annual leave pay, enforcement of wage entitlement as an individual claim

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Enforcement of workers rights related to EU-Directives on posting and on temporary agency work in Austria:

Liability of clients, general contractors, user undertaking

- Several provisions **limited to specific scopes, liable persons and economic sectors**

- ## Construction sector:

  o Liability of **general contractor** as deficiency guarantor for entitlements to the **remuneration** for the workers employed by the subcontractor
    ☝**restraints**:
      - expiry six months after the end of performing work
      - subcontractor's insolvency

  o Liability of **contractor** of which the employer is a subcontractor for **contributions to social insurance**
    ☝**restraints**:
      - liabiliy dispensed if contractor pays 20% of compensation to Vienna Regional Health Insurance Fund
      - only contributions lacking until paying compensation

- ## Temporary agency work:
Liability of user undertaking as guarantor for **remuneration, contributions** to social insurance and Construction Workers' Holiday and Severance Pay Fund

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Awaiting more efficient instruments of transnational enforcement:

EU-Directive 2014/67/EU on the enforcement of the posting of workers Directive

- **Single national website**:
  Information and advice on which working conditions in the host country have to be faced and how they are enforced

- **Mutual assistance between competent authorities**:
  - Treatment of requests for information
  - Carrying out of checks, inspections, investigations
  - Consultation of registers in which service providers have been entered

- **Forwarding of information about the service provider**:
  - Form of establishment
  - Good conduct, possible infringements

- **Subcontracting liability** at least in the construction sector

- **Recognition and recovery of decisions**

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria

Thank you for your kind attention!

Robert Murr
Federal Ministry of Labour, Social Affairs and Consumer Protection - Austria