
Reimbursement rules for posted workers: mapping national law in the EU28

—
Zane Rasnača

Background analysis 2019.01

european trade union institute

etui.

Reimbursement rules for posted workers: mapping national law in the EU28

—
Zane Rasnača

Background analysis 2019.01

europa european trade union institute

Zane Rasnača is a researcher at the European Trade Union Institute (ETUI) in Brussels.
Contact: zrasnaca@etui.org

The author is very grateful for the help and comments of Philippe Pochet and Lorenzo Repetti.

The information gathered about national legal systems in this report is based on the individual reports by the following national experts:

Alejandro García Esteban	Spain	ESADE
Alexandre de le Court	Belgium, Germany	Pompeu Fabra University
Aude Cefaliello	France	University of Glasgow
Aušra Bagdonaitė	Lithuania	Vilnius University
Barbara Kresal	Slovenia	University of Ljubljana
Carlotta Favretto	Italy	Marco Biagi Foundation
Christian Højer Schjøler	Denmark	University of Southern Denmark
Coralie Guedes	Luxembourg	Self-employed
Diana Balanescu	Romania	Council of Europe
Eva Grosheide	Netherlands	University of Amsterdam
Gábor Kártyás	Hungary	Eötvös Loránd University
Gabriel Amitsis	Greece, Cyprus	University of West Attica
Gabriel M. Vega	Austria	University of Amsterdam
Guilherme Grillo	Portugal	University of Lisbon
Hana Horak	Croatia	University of Zagreb
Iaroslava Genova	Bulgaria	University of Plovdiv
Jakub Tomšej	Czech Republic	Charles University
Jeff Kenner	United Kingdom	University of Nottingham
Krystyna Bakhtina	Malta, Ireland, Finland	Sant'Anna School of Advanced Studies
Marcin Wujczyk	Poland	Jagiellonian University
Natalja Preisa	Estonia, Latvia	LBAS
Niklas Selberg	Sweden	Lund University
Viktor Križan	Slovakia	Trnava University

ETUI publications are published to elicit comment and to encourage debate. The views expressed are those of the author(s) alone and do not necessarily represent the views of the ETUI nor those of the members of its general assembly.

Brussels, 2019
© Publisher: ETUI aisbl, Brussels
All rights reserved
Print: ETUI Printshop, Brussels



The ETUI is financially supported by the European Union. The European Union is not responsible for any use made of the information contained in this publication.

Contents

Glossary of key terms.....	4
Introduction	5
1. Comparative analysis of reimbursement rules in EU28	8
1.1 National legal framework on reimbursement of travel, board and lodging.....	10
1.1.1 Regulate both incoming and outgoing workers.....	10
1.1.2 Regulate outgoing, do not regulate incoming workers.....	11
1.1.3 Do not regulate reimbursement	13
1.2 Legal framework on minimum wage and remuneration	15
2. Overview of national rules.....	18
3. Regulatory context and changes.....	32
3.1 Framework currently in force (before amendments)	32
3.2 Framework under the amended Posted Workers Directive.....	35
Summary	40

Glossary of key terms

Posted worker – a worker who, for a limited period, carries out their work in the territory of a Member State other than the state in which they normally work.

Secondary posting – a situation where a posted worker is required to travel to and from their regular place of work in the Member State to whose territory they are posted, or where they are temporarily sent by their employer from that regular place of work to another place of work.

User undertaking – undertaking at whose place of business the posted worker performs assigned tasks (usually used in the context of temporary agency work).

Sending undertaking – undertaking posting the worker.

Remuneration – generally understood as reward for employment in the form of pay, salary, or wage, including allowances, benefits (such as company car, medical plan, pension plan), bonuses, cash incentives, and monetary value of non-cash incentives (the understanding of the concept may vary greatly from one country to another).

Allowance – in the context of this report, all extra rewards, bonuses and benefits that are paid to a worker due to their status as a posted worker, with the exception of reimbursement of the worker's actual expenses for travel, board and lodging.

Host country – the country to which a worker is posted and where they carry out the assigned work.

Country of origin – the country from which a worker is posted abroad.

Introduction

For more than a decade the posting of workers has been an area of focus for policymakers, stakeholders (especially trade unions) and researchers alike, both at the national and EU level. It has been and still is at the top of the EU's legislative agenda, and is seen as one of the most controversial topics, often politically dividing the EU Member States into conflicting groups.¹ The tensions surrounding this topic especially intensified over the last decade, following the last two EU enlargements,² and culminated in the adoption of the Enforcement Directive³ followed by the amending of the Posted Workers Directive (PWD)⁴ itself. At the time of writing, the posting of workers is still on the legislative agenda as part of the debate on the reform of EU social security coordination rules⁵ and on introducing new rules for posted workers in the road transport sector⁶.

Posting is an arrangement in the context of which an employer sends workers to work (temporarily) in a Member State other than the one where the workers habitually work. In principle, posted workers differ from so-called 'mobile workers' in that they remain in the receiving country (host state) only temporarily, and do not integrate in its labour market. Since posting of workers

1. Rasnača Z. (2018) Identifying the (dis)placement of 'new' Member State social interests in the posting of workers: the case of Latvia, *European Constitutional Law Review*, 14 (1), 131-153.
2. See, for example, Euractiv (2018) Hungary, Poland challenge EU's posted workers reform in court, 5 October 2018. <https://www.euractiv.com/section/central-europe/news/hungary-poland-challenge-eus-posted-workers-reform-in-court>
3. European Parliament and Council of the European Union (2014) Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), *Official Journal of the European Union*, L 159, 28 May 2014, 11–31.
4. European Parliament and Council of the European Union (1997) Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, *Official Journal of the European Union*, L 18, 21 January 1997, 1–6, and European Parliament and Council of the European Union (2018) Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, *Official Journal of the European Union*, L 173, 9 July 2018, 16–24.
5. European Commission (2016) Proposal for a regulation amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004, COM(2016) 815 final, 13 December 2016. The proposal was issued by the Commission in 2016; however, an agreement by the European Parliament and the Council still has not been reached.
6. European Commission (2017) Proposal for a directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector, COM(2017)0278, 31 May 2017.

happens under the ‘umbrella’ of the freedom to provide services, then a distinctive feature is also that such workers necessarily provide some sort of service in the host country.

In practice, however, posting situations often tend to be more complex than the definition suggests. In some cases, posted workers spend multiple years in the receiving Member State; in other cases, they are sent to multiple countries every year and never really work in their country of origin (e.g. the situation of temporary agency work). In yet other cases, the task in the host country (e.g. care for the elderly) is continuous and the sending employer repeatedly replaces one posted worker with another for the same work. Sometimes the so-called ‘user undertakings’ in the host countries employ almost no own staff at all, but rather use only posted workers for all their work.

Moreover, the posted work is not evenly distributed across Europe, with some countries being primarily ‘receiving countries’, others primarily ‘sending countries’ and yet others both receiving and sending workers in significant numbers.⁷ In the EU, the instances of posting have continued to increase gradually over the years, and in some sectors (particularly construction) and some EU Member States the posted workers constitute a significant part of the local workforce.⁸

Posting not only provokes heated political discussions, but also poses a regulatory conundrum in which numerous layers of regulation overlap and interact in quite a complex manner. Posting, under the freedom to provide services and as regulated by the PWD, is an exception to the principle of territoriality of labour law. As a rule, workers are usually covered by the labour laws of the place (country) where they work. By contrast, posted workers for the most part remain subject to the labour law of their country of origin. The EU law allows applying the host country’s labour law standards only to a very limited extent (see Chapter III for more detail). It is therefore not easy to determine the exact rights of individual workers involved in a posting situation, and it is even more complex for these workers to assert and enforce their rights against their employer.

The protection of posted workers’ interests is therefore of the utmost importance, and the question of how the protection of workers differs for workers working in their country of origin and for those temporarily working in another (‘host’) country is a key question for labour lawyers.

One basic element of necessary ‘extra’ protection for posted workers, which is not needed for workers working close to their home, is the coverage of travel, board and lodging costs. While one could imagine an array of other benefits and bonuses that could help to compensate being away from home for posted

7. See the summary of data: Batsaikhan U. (2017) EU posted workers: separating fact and fiction, Bruegel, 31 August 2017. <http://bruegel.org/2017/08/eu-posted-workers-separating-fact-and-fiction>

8. For example, in Luxembourg.

workers (some of which are mentioned in this report), travel, board and lodging costs constitute the very minimum that should be covered by the employer. The amended PWD ensures that posted workers will receive the same ‘remuneration’ as the local workforce⁹; however, this still does not mean that these workers have the same expenses and the same security. While formally the wage competition is solved, undertakings can still be established in the country that ‘costs less’ in terms of workers’ protection in all other aspects. What matters here are the social security costs and the obligation (or not) to cover ‘posting-related’ costs such as travel, board and lodging expenses as well as other types of ‘allowances’ specific to posted workers that many Member States require employers to pay. Indeed, since it seems that the ‘remuneration’ comparison is based on ‘gross’ rather than ‘net’ pay, taxation, social security costs and other payments required by national law become highly important not only from the perspective of the employer, but also that of worker. Some fundamental tensions have therefore remained unsolved by the PWD amendments.

This report focuses on one element – the reimbursement rules concerning travel, board (accommodation) and lodging (meals) expenses. It provides an overview of the national law and EU law in this regard, and looks at whether, how and for which groups of workers the Member States regulate reimbursement of travel, board and lodging costs. The report also covers the question of how these costs are regulated in relation to the worker’s salary, and lastly, it offers an analysis of the existing legal framework concerning reimbursement and the changes brought by the amendments of the PWD.

The legal framework at both national and EU-level is extremely complex, and this report therefore takes a step-by-step approach. It starts with a comparative analysis of the national level legal framework in the EU28 (Chapter I), proceeds with a short description of the rules in each EU country (Chapter II) and is concluded by an analysis of the current *status quo* and the changes to the EU-level legislative framework brought by the amendments of the PWD (Chapter III). Readers interested in the recent legislative reforms should therefore look directly at the last chapter.

Overall, the mapping of national rules and analysis of the EU level legal framework show that there are many inconsistencies at play, and that the national rules as well as their coverage vary greatly from one Member State to another. This means that it is extremely difficult to gauge what exact rights highly mobile posted workers have at each exact moment. The possibility of their slipping through the net and having no protection when it comes to the coverage of their travel, board and lodging costs is very real. Moreover, unfortunately, the amendments of the PWD does not seem to offer clarity. Instead of one set of EU-wide standards, patchwork national rules continue to apply to the detriment of legal certainty for individual posted workers.

9. See Article 3(1)(c) as amended by Directive (EU) 2018/957.

1. Comparative analysis of reimbursement rules in the EU28

The national legal framework across the EU28 concerning reimbursement rules for posted workers varies greatly. This chapter looks at the national rules currently in place. With the implementation deadline for the amended Posted Workers Directive being July 2020, one can expect that to an extent these rules will have to be changed in the future (see Chapter III for more detail).

This chapter comprises two sections: the first focuses on the existence of a statutory framework or universally binding rules on the reimbursement of travel, board and lodging costs for posted workers; and the second focuses on the national rules in which parts of reimbursement or allowances for posted workers are considered to constitute part of the minimum wage or remuneration.

This second aspect is relevant because the notion of ‘remuneration’, introduced during the PWD amendments, is not completely clear and its interpretation differs from one Member State to another. While remuneration is a term usually used to describe all the different forms of compensation packages for employees in an organisation (including non-monetary incentives), pay is often referred to simply as salary especially in relation to so-called ‘blue-collar’ workers. Hence what exactly ‘remuneration’ concerns, and whether reimbursement of travel, board and lodging costs as well as other types of posting allowances constitute part of it, might currently differ from country to country.

As Table 1 shows, there are a number of similarities in the general characteristics of the reimbursement rules for posted workers. First, the vast majority of Member States do not have any rules for incoming posted workers. Second, in the vast majority of Member States (20 out of 28), the rules differ for incoming and outgoing posted workers. Third, in all Member States except the United Kingdom the reimbursement of travel, board and lodging costs is made in full, in addition to the minimum wage (in the United Kingdom, accommodation costs can to an extent be offset by the employer against the minimum wage).

When looking at the situation from the perspective of the posted worker, in the majority of Member States, the rules of the posted worker’s country of origin are the relevant legal framework on which to rely with regard to reimbursement.

In addition, in the majority of countries, the compensation of travel, board and lodging costs is not considered part of the concept of ‘remuneration’ or ‘salary’, and the employer normally has no right to deduct such expenses from the posted worker’s salary. However, again, in some countries the situation is

different and employers and workers are allowed to deviate from this general rule by mutual agreement.

Table 1 Overview of national legal rules on reimbursement of travel, board and lodging costs in EU28

No	EU 28	Is there a statutory framework on reimbursement in place for posted workers?			Do rules differ for incoming and outgoing workers?	Are travel, board and lodging costs part of the minimum wage?	Are travel, board and lodging costs part of remuneration?
		Incoming	Outgoing	Internal posting			
1	AT	No	No	No	Yes	No	No
2	BE	No	Yes	Yes	Yes	No	No
3	BG	No	Yes**	No	Yes	No	No*
4	HR	No	No	No	No	No	No*
5	CZ	No	Yes**	No	Yes	No	No
6	CY	No	No	No	Yes	No	No*
7	DK	No	No	No	Yes	No*	No*
8	EE	No	No	Yes	Yes	No	No
9	FI	No	No	No	No	No	No
10	FR	Yes	Yes	Yes	Yes	No	No
11	DE	No	Yes	Yes	Yes	No	Yes
12	EL	Yes	Yes	Yes	No	No	No*
13	IT	Yes	Yes	Yes	Yes	No	No*
14	HU	No	Yes	Yes	Yes	No	No
15	IE	No	No	No	No	No	No
16	LV	No	Yes	Yes	Yes	No	No
17	LT	No	Yes	Yes	Yes	No	No
18	LU	No	No	No	Yes	No	No
19	MT	No	No	No	Yes	No	No
20	NL	No	No	No	Yes	No	Yes
21	PL	No	No	No	No	No*	No*
22	PT	No	No	No	No	No	No*
23	RO	Yes	Yes****	Yes	Yes	No	Yes
24	SK	No	Yes	No	Yes	No	No
25	SI	No	Yes	Yes	Yes	No	No
26	ES	No	Yes	Yes	Yes	No	No
27	SE	No	No	No	No	No*	No*
28	UK	No	No	Yes	No	Yes***	Yes

* General rule, but the parties of the employment contract can agree otherwise or on a different solution allowed by a collective agreement.

** For travel expenses only.

*** Up to a certain threshold the employer can offset accommodation costs against the minimum wage.

**** It is not clear whether protection actually reaches posted workers.

At the same time, there are also some quite significant divergences among the Member States. First, almost half of the Member States do not have statutory rules on the reimbursement of travel, board and lodging costs for workers posted outside their country. In situations where such workers are not covered by a collective agreement, they then potentially slip through the net of the legal framework and are not covered by reimbursement rules in any country and have no (statutory) right to request compensation for their travel, board and lodging. Second, 14 Member States (exactly half) do not have any statutory reimbursement rules for workers posted to another workplace within their own territory.

1.1 National legal framework on reimbursement of travel, board and lodging

It seems possible to organise the EU Member States in three groups when it comes to the national rules on the reimbursement of travel, board and lodging costs. In the first group, there are countries that regulate the matter for both incoming and outgoing posted workers, at least to some extent, even if not all of these countries give the right to posted workers to be reimbursed in full. In the second group, there are the Member States which regulate the matter for workers posted abroad but do not have rules for workers posted to their own territory. Finally, in the third group, there are the Member States that do not regulate the reimbursement of travel, board and lodging costs either for outgoing or for incoming workers. Notably, there is not a single Member State that regulates reimbursement for incoming workers but not for outgoing.

1.1.1 Regulate both incoming and outgoing workers

The first group concerns Member States that regulate the reimbursement for both incoming and outgoing workers (workers posted abroad, and workers posted in). Coincidentally, all three Member States that belong in this group also regulate reimbursement for the workers posted within their territory. Countries belonging to this group are **France, Greece, and Italy**.

In **Greece** the same rules apply for both incoming and outgoing posted workers. Workers who work away from their ordinary place of work are entitled to transport costs and a daily allowance amounting to 1/25 of their minimum salary. This allowance can be reduced if the employer provides accommodation and lodging. These same rules apply for all posted workers: posted into, outside or within the country.

French rules are formulated rather ambivalently concerning the obligation for foreign employers posting workers to France to cover travel, board and lodging costs. There is no explicit obligation for employers to cover these costs *per se*, but instead an obligation to indicate how the employer pays for travel, board and lodging. Moreover, if accommodation arranged by the employer does not comply with human dignity, the user undertaking (in France) is obliged

to provide ‘adequate’ accommodation. This seems to suggest that coverage of these expenses is expected from all foreign employers. For the outgoing workers and workers posted within France, there is a clear statutory right to claim reimbursement for any additional expenses of food and lodging, and a right to claim allowance (presumably meant to cover travel) in case of posting.

Finally, **Italian** law stipulates that employers who post workers to Italy have to apply the same minimum conditions as those that apply to (local) workers doing similar work in the posting location. In order to guarantee adequate economic protection to workers posted to Italy, their minimum wage must also include a so-called ‘secondment’ allowance (compensating for the inconvenience of moving away from their usual place of work) and travel allowance. This secondment allowance would thus be seen as aiming to cover board and lodging costs. Incoming posted workers clearly have a right to the secondment allowance and to other rights that local workers have.

For outgoing workers and workers posted within Italian territory, Article 30 of the so-called “Decreto Biagi” (D.lgs. n. 276/2003) applies. According to these rules, the posting employer continues to pay the wage and remains responsible for all other contractual obligations, including secondment allowance and travel allowance. More detailed provisions on accommodation, lodging and transport costs are set by the applicable collective agreements and/or the individual contract.

1.1.2 Regulate outgoing, do not regulate incoming workers

In the **second group** there are the Member States that do not regulate the reimbursement of travel, board and lodging costs for incoming posted workers, but that do regulate the issue for outgoing posted workers, at least to some extent. There are ten countries in this group: **Belgium, Czechia, Germany, Hungary, Latvia, Lithuania, Romania, Slovakia, Slovenia, and Spain.**

In **Belgium** there is no obligation for employers who send posted workers to Belgium to cover travel, board and lodging costs. However, as regards outgoing posted workers, Article 20 of the Law of 3 July 1978 is interpreted as imposing an obligation on the employer to cover all costs linked to the execution of an employment contract (such as travel, accommodation and meals), unless both parties have agreed differently, if the worker is required to work elsewhere rather than his usual place of work.

In **Romania** the Labour Code stipulates that posted workers have a right to the payment of travel and accommodation costs, as well as to a posting allowance, in line with the terms provided for in law or the applicable collective agreements. Although this provision suggests a general right for posted workers to such compensation, no more detailed statutory rules exist and since there are no universally binding collective agreements currently in force in Romania, the question as to whether all workers are always covered remains open to a certain extent.

In **Germany** expenses incurred during the execution of an employment contract have to be covered by the employer when these can be considered ‘necessary’. Travelling, accommodation and meal costs would fall under this provision. However, while this obligation applies to workers sent to work from and within Germany, it does not apply to incoming posted workers. The situation is identical in **Hungary** and **Lithuania**; however, in the former it seems to be possible to derogate from these rules in the individual employment contract.

In **Latvia** an employer is obliged to cover travel costs and to pay a daily allowance as stipulated in the Cabinet of Ministers Regulations for each specific country – an obligation that does not apply concerning incoming workers.

In **Slovenia** employers are obliged to cover travel and accommodation costs. In addition, a daily allowance has to be paid as well. Currently, there is a dispute among various national courts over whether the posting of workers and a business trip are one and the same, and whether the daily allowance can be taxed or not. It is therefore not completely clear how the legal framework has to be interpreted.

Finally, in **Spain** the employer only has to reimburse travel expenses, including travel to the place of origin for four working days every three months if the posting exceeds a three-month period. There is no obligation to cover board and lodging costs.

In all these countries, the same framework applies also to workers sent to another workplace within the country.

By contrast, in **Slovakia** and **Czechia**, there are rules covering only workers posted abroad, but there is no framework covering workers sent to work elsewhere within the country.

Slovak law requires the employer to reimburse travel, board and lodging, and also any necessary extra costs (e.g. commercial insurance, vaccination costs) for all workers posted abroad. In **Czechia** what matters is the agreement with the worker. If both employer and employee agree on the change of place of work, only the travel allowance for the first trip is paid; if not, then the employee is entitled to travel allowances throughout the whole stay, and can also claim accommodation, lodging and local transport costs.

In short, although these ten Member States all regulate reimbursement for workers posted out and do not regulate reimbursement for workers posted in, this is where the similarity ends. Each of the Member States has different rules on what exactly and how much is reimbursed for posted workers, and in what way. Moreover, some Member States provide a right for posted workers to other benefits beyond the mere reimbursement of travel, board and lodging costs, such as daily allowances or other allowances, coverage of insurance, vaccination costs and similar. The rules and rights applicable to posted workers therefore vary greatly depending on from which Member State these workers are sent.

1.1.3 Do not regulate reimbursement

Finally, in the **fourth group**, there are 15 Member States that do not have statutory rules on covering or reimbursing the costs of travel, board and lodging for either incoming or outgoing posted workers: **Austria, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Ireland, Luxembourg, Malta, the Netherlands, Poland, Portugal, Sweden** and the **United Kingdom**. This is the biggest group of Member States. The results of the individual national case studies reveal that in more than half of the Member States there are therefore no statutory rights for posted workers on the reimbursement of travel, board and lodging expenses.

There are two sub-groups within this group. The first consists of countries where, despite there being no statutory rules, these reimbursement matters are routinely regulated by collective agreements (which means that at least workers covered by the collective agreements are protected). The second sub-group consists of countries where the results of the country studies show that there seems to be no regulatory framework in place and that there is no significant coverage of reimbursement matters by collective agreements – with everything being left to the individual employment contract and with the situation of each posted worker originating from these countries depending on what the employer and the workers have agreed upon.

In **Finland**, there is no clear-cut statutory obligation to cover travel, accommodation and meal costs for workers posted in or for workers posted out. The exceptions are sectors, like construction, where there are universally applicable collective agreements in place. For example, the agreement in the construction sector contains rules on allowances to be paid to workers including a daily allowance, accommodation allowance, overnight allowance and compensation for travelling and commuting expenses. These rules apply to all workers working within Finland, but not necessarily to workers posted abroad. For other sectors, under the current EU framework, the collective agreements do not automatically apply to all incoming workers, although workers sent within the country and at times workers sent abroad are covered.

In **Denmark** too, reimbursement is regulated only in collective agreements. Such agreements typically state that costs of travelling, board and lodging are covered by the employer. Specific to the Danish system, these agreements are applicable only to signatories. What this means is that if for some reason an employer has not signed a collective agreement setting out these compensation rights, its workers will not be covered.

There is a similar situation in **Austria**, where the reimbursement of travel, board and lodging costs are regulated only in sectoral and branch-level collective agreements. These agreements typically provide for the compensation of travel and accommodation costs, and also provide rules on daily allowances, relocation expenses, and other matters like telephone costs, language courses and even study tours. However, it seems that the applicability of these agreements is restricted only to the Austrian territory; hence workers posted abroad from Austria are not covered, which seems to be potentially problematic.

In **Cyprus** the scope of company level agreements includes negotiations on travelling and other allowances. There is also a statutory obligation to inform outgoing workers about the duration of the employment abroad and any benefits and conditions applying while being abroad.

In the **Netherlands** there is no statutory obligation to cover the board, lodging and travel costs that arise because of posting. However, in the construction sector, in line with the generally applicable collective agreement in force, the employer must provide for housing, food and an allowance if the employee cannot be reasonably expected to return home every day. This obligation applies to incoming workers and workers posted within the Netherlands but does not apply to employers posting workers abroad (from the Netherlands).

Luxembourg and **Sweden** also leave the matter of reimbursement rules and any compensation for posting entirely to collective agreements.

In principle, leaving this question for social partners to regulate in countries where the coverage of collective agreements is high is not a problem. Indeed, social partners should be encouraged to negotiate on this matter. However, at the same time, the question still arises as to whether all collective agreements in practice contain such rules, whether all workers are protected in this way and whether workers not working on the territory of the state are also covered. The latter potentially seems to be an issue in some of the Member States mentioned above. More research should be carried out on this matter.

In the second group of Member States, reimbursement is not typically regulated in collective agreements.

For example, **Bulgaria** belongs to the group of countries not currently giving a statutory right to the reimbursement of travel, board and lodging costs for posted workers, even though prior to 2017 its legal framework was very protective in this regard. Currently Bulgaria covers such costs only for workers on a business trip, which is considered to be an arrangement distinct from posting.

In **Croatia** there is no obligation to cover such costs. However, any benefits in cash and kind that apply during the employment contract abroad must be explicitly regulated in the contract. In addition, the favourability principle applies to both incoming and outgoing workers. What matters are therefore the rules of the country of origin or the host country respectively.

Estonia presents a particular case where there is no complete clarity about how the existing rules should be and are applied in practice. There is a distinction between a worker on a business trip and a posted worker (the latter will always have an undertaking in the host country organising his work). Allowances and the compensation of expenses are envisioned for a worker on a business trip but not for a typical posted worker. At the same time, in certain situations, a posted worker could also be considered a worker on a business trip (this would be the case if their 'ordinary' place of work is in Estonia). It is not particularly clear, however, what rules apply in the majority of posting situations in practice.

Estonia has therefore been assessed as belonging to this group of Member States that do not regulate reimbursement. In any case, there are no rules covering incoming posted workers.

Ireland does not regulate the matter at all either; however, some clarity is provided through the notion of the minimum wage (see the next section). The situation is similar in the **United Kingdom**. Neither are there any rules in **Malta, Portugal** or **Poland**. At the same time, it is worth mentioning that Poland recognises a business trip as distinct from posting (short, typically 2-3 weeks and of incidental nature) and requires employers to pay expenses and a daily allowance for business trips but not for posting. Unfortunately, the vast majority of posting situations are not covered by the very limited scope of a 'business trip' as interpreted and applied in practice.

In short, in more than half of the EU Member States there are no statutory rules on the reimbursement of travel, board and lodging costs for posted workers, no rules for either incoming or outgoing posted workers. At the same time, in quite a few countries the matter is largely regulated by the applicable collective agreements. But even in these countries, the issue then becomes one of coverage, and coverage is often inevitably restricted territorially, sectorally and in terms of personal scope. In yet other Member States the situation is much graver and posted workers sent from these countries have no right to the reimbursement of travel, board and lodging costs at all.

1.2 Legal framework on minimum wage and remuneration

If the employer covers or reimburses travel, accommodation and lodging costs, the situation is again rather diverse when it comes to the question of whether the reimbursement of these costs constitutes part of the worker's minimum wage or part of their salary/remuneration (can be deducted).

Overall, the question of remuneration (see also Chapter III) has become highly relevant with the amending of the PWD, since the host country can determine and regulate the content of the concept 'remuneration', while in so far as travel, board and lodging costs are not considered part of remuneration, the law of the country of origin applies. Although the PWD clarifies that any posting allowances that cover costs actually incurred by the posted worker should not be considered part of remuneration, situations become increasingly complicated where some parts of allowances do not necessarily compensate actual costs. The national law on the constituent elements of 'minimum wage' and 'remuneration' therefore matters not only in terms of whether an employer has any rights of deduction, but also in terms of the law applicable.

In almost half of the Member States (**Austria, Belgium, Czechia, Denmark, Estonia, France, Ireland, Latvia, Lithuania, Luxembourg, Malta, and Slovenia**) posting-related expenses such as travel, board and lodging are not generally considered either part of the minimum wage or 'remuneration'.

In these Member States, the employer is also, accordingly, prohibited from deducting such expenses.

However, in some of these countries the situation is not completely clear-cut. For example, in **Austria** any travel compensation going beyond the actual expenses will be part of remuneration.

This could create an interesting conundrum where the reimbursement of travel, board and lodging costs amounting to actual expenses is a matter left for the country of origin. At the same time, the host country can have rules on constituent parts of remuneration for posted workers going beyond the coverage of actual expenses. In such cases, the sending undertaking employing the posted worker will have to apply these host country rules. Finally, each Member State retains rights to have rules on additional benefits (e.g. monetary allowances or non-monetary incentives) for posted workers. If the country of origin has such rules, then the employer has to comply with these too. If such benefits (determined by the law of the country of origin) are not part of the concept of remuneration in the host country, the question then arises as to whether the employer could refuse to pay them to the posted worker.

In another group of Member States the situation is even more complex. While no deduction from the minimum wage is possible concerning travel, board and lodging expenses, and the said expenses, if covered, are paid on top of the minimum wage, the same or some of these expenses are seen as part of remuneration and hence could potentially be deducted from it. At the same time, in these countries the host country's law in line with the EU level legal framework will apply to the extent that these matters are part of 'remuneration' after the amended PWD is implemented.

For example, in **Bulgaria** any allowances for travel, board and lodging in the host country will be considered part of remuneration. In **Hungary** too, the compensation for daily travel and posting allowances will be considered part of remuneration. Workers posted to Bulgaria or Hungary will therefore have a right to request reimbursement independently of what the law of their country of origin states.

Moreover, in **Bulgaria** and the **United Kingdom**, the employer can deduct accommodation costs from the salary with agreement from the worker. With the worker's consent, such deduction is possible also in **Croatia, Greece, Sweden** and **Cyprus**. In **Germany** a deduction is possible, if it is allowed by the rules of the country of origin. In **Italy** constituent elements of remuneration can be determined in collective agreements, so the situation will depend on the provisions in the relevant collective agreement.

In **Finland** and **Spain** allowances specific to posting constitute part of the minimum wage. In **Ireland** board and lodging are included in the notion of minimum pay, while any expenses incurred by the employee in performing employment, including travel allowances, subsistence allowance, tool allowance and clothing allowance are not included in pay. The **Netherlands** allows

deduction of transport, board and lodging costs by the employer from the part of salary exceeding the minimum wage. All reimbursements unrelated to the actual costs are part of the notion of pay.

In **Poland** everything depends on the agreement between the employer and worker. If the agreement allows, deduction even from the minimum wage is possible. In **Portugal** deduction from remuneration is possible but cannot exceed 1/6 of the wage. **Romania** and the **United Kingdom** allow deduction of accommodation costs from the worker's salary (if it exceeds the minimum wage). In **Romania** the daily allowance, if paid to the posted worker, is also treated as part of the salary (remuneration).

Finally, some countries compensate posted workers for costs beyond accommodation, lodging and transport via various types of allowances. In some Member States the allowances posted workers receive (such as per diem, pocket money, transport costs for visiting family members) could be seen as a constituent part of remuneration for posted workers. Many Member States oblige employers to pay a daily allowance to workers posted abroad or within the Member State territory. Rules on daily allowances exist in **Austria** (only for workers working on Austrian territory), **Czechia**, **Estonia** (if the posting situation can be considered a business trip), **Finland**, **Greece**, **Italy**, **Latvia**, **Lithuania**, **Romania**, and **Slovenia**. In some Member States a daily allowance is considered part of remuneration (e.g. **Lithuania**), in others it is not (e.g. **Latvia** if the host country's law does not require it).

Other benefits, specific to posting, that exist in the Member States include transport costs for visiting family members (**Czechia**), an overnight allowance and compensation for commuting (**Finland**), healthcare costs for workers and their family members (**Germany**), subsistence, tool and clothing allowances (**Ireland**), parking space and special transport fees, bank commission fees, expenses for travel and public transport, insurance (**Latvia**), commercial insurance, vaccination, and cover of family visits (**Slovakia**).

In so far as such allowances (extra benefits beyond covering the actual travel, accommodation and lodging costs) are considered as constituting part of a worker's 'remuneration' in the host country, from July 2020 onwards workers posted to this country's territory will have a right to request them.

2. Overview of national rules

This chapter provides a summary of the main elements of the national regulatory framework for the reimbursement of travel, board and lodging costs for posted workers in the EU28.

Austria The provisions on the reimbursement of accommodation, lodging and transport costs for posted workers are laid down in sectoral and branch-level collective agreements. These costs fall within the concept of remuneration (under travel costs). According to the Anti-Wage and Social Dumping Act [Lohn- und Sozialdumping-Bekämpfungsgesetz], the collective agreements applicable in Austria to workers employed for commercial purposes also apply to workers posted to Austria from abroad. The territorial scope of the collective agreements is constrained to the territory of Austria; these rules do not therefore necessarily apply to workers posted abroad.

Workers are reimbursed in addition to the minimum wage, and employers are not allowed to deduct such costs from the salary paid to the worker.

Belgium As regards incoming posted workers, Belgian law mentions reimbursement and allowances in two instances without obliging the employer necessarily to cover these costs. First, the Law of 5 March 2002 on conditions of work, remuneration and employment of workers posted in Belgium stipulates that the coverage of accommodation, travel and lodging is one of the elements that must be taken into account when determining whether the situation is 'genuine posting'. Second, Article 5 of the same law states that allowances directly linked to posting must be considered part of the conditions of remuneration. Submitted, therefore, to Belgian legal or regulatory provisions, non-compliance risks criminal sanctions.

As regards workers posted within Belgium or posted abroad from Belgium, Article 20(1) of the Law of 3 July 1978 is interpreted as imposing on the employer the obligation to cover costs linked to the execution of the contract of employment, unless the worker and employer have agreed otherwise. Details are regulated in collective agreements.

Costs related to execution of the employment contract (such as accommodation, travel and lodging) are excluded from the calculation of the minimum wage. Finally, Article 23 of the Law of 15 April 1965 on the Protection of the Remuneration of Workers (applicable to incoming posted workers pursuant to Article 5 of the Law of 5 March 2002, and to outgoing posted workers if Belgian law is applicable) contains a closed list of items that can be deducted from remuneration. Accommodation, lodging and transport costs are not included on this list and therefore cannot be deducted by the employer.

Bulgaria

There are no rules for incoming posted workers or for workers posted within the territory of Bulgaria. For outgoing workers, a distinction is made between workers in a posting situation and workers on a business trip. With regard to posted workers, employers are obliged to conclude an additional agreement with the worker prior to posting. Bulgarian employers and temporary work agencies are obliged to compensate only travel expenses (except where the worker benefitted from free transport). In the agreement on posting, the parties are free to include an accommodation allowance. There is no obligation to pay any daily allowances; the only obligation is to pay the host country's minimum wage.¹⁰ Travel expenses cannot be deducted from this amount.

Previously an obligation existed in Bulgarian law to fully compensate travel, and provide a daily allowance and accommodation expenses; however, since changes in the Labour Code that came into force in January 2017 only workers who are not considered to be posted workers (e.g. workers on a business trip or a mission) can benefit from such compensation.

Croatia

The reimbursement of accommodation, lodging and transport costs for posted workers is not regulated by law but is regulated by either collective agreements or individual employment contracts. Among the issues that are regulated by collective agreements are wages, including minimum wages. In all sectors except the construction sector, the minimum rate of pay cannot be less than the Croatian minimum wage guaranteed by the Minimum Wage Act.

The collective agreement for the construction sector is declared universally applicable¹¹ and Article 53 provides that

10. KPMG (2017) New rules regarding posting and sending of employees within the framework of provision of services. <https://home.kpmg/bg/en/home/insights/2017/01/new-rules-regarding-the-posting-and-sending-of-employees-within-.html>

11. Available at: <http://www.mrms.hr/wp-content/uploads/2013/12/COLLECTIVE-AGREEMENT-CONSTRUCTION-SECTORcro.pdf>

“costs and subsistence allowances for business trips abroad are calculated in line with regulations for state administration bodies”. Workers sent to work abroad must be paid an “expatriation allowance” by their employer, which means either paying for or compensating accommodation costs.

In general, any additional payments to workers related to their (temporary) relocation are exempt from taxes under the Law on Contributions and are not part of the concept of minimum wage. However, there is a possibility to agree differently in the employment contract.

Czechia

The Czech law has one set of rules that applies to “business trips abroad” (Article 166-171 of the Labour Code) and another set that applies to “posting situations” (Article 172 Labour Code). The former obliges the employer to cover, among other things, travel, board and lodging costs, while the latter contains only an obligation to cover travel expenses at the beginning and at the end of the posting assignment. The question is, however, whether the posted workers in practice cannot be considered the same as workers on a business trip.

In addition, the Labour Code provides that if the parties of an employment contract agree on change of the place of work, then the worker has only a right to the travel allowance for his first trip there and back. If no such agreement is reached by the parties, then the worker is entitled to the travel allowances during the whole stay abroad. In such a case, in accordance with Section 156 of the Labour Code, the employee may, inter alia, claim accommodation, lodging and transport costs. The amount of such reimbursement should cover all actual costs accrued by the employee subject to the condition that the means of accommodation/lodging and transport have been provided by the employer.

Any such costs are paid in addition to the minimum wage or overall remuneration. No deduction is allowed.

There are no rules for workers posted within or to the Czech territory.

Cyprus

According to Cypriot law, undertakings that post workers to or within the territory of Cyprus, irrespective of the law applicable to the employment relationship, must guarantee the terms and conditions as stipulated by Cypriot labour legislation and collective labour agreements. There are no specific provisions about reimbursement of travel, board and lodging costs for posted workers in national law and this matter is not regulated by the industry level collective

labour agreements either. This means that employers and employees are free to negotiate the reimbursement of board, lodging and transport costs at the company level for any days away from the usual workplace. The scope for company level agreements *inter alia* includes pay and travelling and other allowances. These rules, depending on the scope of the collective agreement in question, may apply to both incoming and outgoing posted workers, as well as to workers posted within the territory of Cyprus.

Travel, board and lodging costs should be reimbursed in addition to the minimum wage and cannot be deducted by the employer, even from the salary exceeding minimum wage.

Denmark

Working conditions including the reimbursement of travel, board and lodging costs are regulated by collective agreements that are not given *erga omnes* effect but are binding only for signatories and their members. Section 6a in the Danish Act concerning the Posting of Workers allows for workers to take up industrial action against a foreign provider of services in a manner similar to that of industrial action against a Danish employer in support of a demand for the conclusion of a collective agreement in order to ensure that posted workers receive pay equivalent to the amount that a Danish employer is obligated to pay for the execution of similar work. Industrial action can be started if the foreign provider of services has been presented with provisions in the agreements that have been contracted by the most representative social partners in Denmark and cover the entire Danish territory and if these agreements indicate with necessary clarity the rates of pay that must be paid.

Collective agreements typically require that the employee is reimbursed for the costs of travelling, and where accommodation and meals are not provided by the employer at the workplace, the worker has to be reimbursed for these expenses. Workers posted from Denmark abroad are typically not covered by these collective agreements.

The reimbursement of travel, board and lodging costs cannot be deducted from the worker's salary.

Estonia

The situation in Estonia is slightly ambivalent. In general, Estonian law makes a distinction between a worker on a business trip and a posted worker. In some cases, these two terms may overlap. A business trip is usually less than 30 days long, and while a posted worker will always have a host or recipient of the service in the host country, a worker on a business trip will not. A posted worker will be considered

a worker on a business trip if the ordinary workplace is in Estonia and the employer sends him to work abroad under his direction on a contract which the employer has concluded with the party in another EU member state for whom the services are intended. Only a posted worker who is considered to be on a business trip has a right to compensation for expenses and a right to a daily allowance (not taxed).

At the same time, the equal treatment obligation concerning posted workers could be interpreted as requiring that posted workers' travel and board expenses also have to be compensated. Since the daily allowance is not mandatory for workers sent on a business trip within Estonian territory but is always mandatory for workers sent on a business trip abroad, posted workers could also try to rely on these provisions by invoking the equal treatment obligation. This is another way that the Estonian rules could be interpreted. For now, however, this equal treatment obligation does not seem to be widely recognised or enforced in practice.

According to § 5 of the Working Conditions of Employees Posted to Estonia Act, monetary compensation in connection with the posting shall be considered part of the worker's salary, unless it is paid to cover travel, accommodation or meal expenses incurred during the posting. At the same time, any business trip-related expenses cannot be deducted from the worker's salary.

Finland

The statutory framework does not explicitly state that an employer is obliged to reimburse travel, accommodation and meal costs for posted workers. This matter in general is left for the social partners and is often regulated in sectoral collective agreements. For example, the agreement in the construction sector states that posted workers have a right to a daily allowance, accommodation allowance and an overnight allowance. Compensation for travel expenses and commuting expenses is also regulated by the collective agreement. Such collective agreements apply to workers permanently working in Finland who are sent to perform assignments in Finland, and also to posted workers working on temporary assignments in Finland. They do not necessarily apply to workers posted abroad.

According to the Posted Workers Act 1146/1999, special allowances paid due to posting are regarded as part of remuneration, unless they are paid in reimbursement of actual costs incurred because of the posting.

France

France does not impose an explicit legal requirement for employers posting workers to France to cover travel, board

and lodging costs. However, employers are obliged to complete a posting declaration indicating how they pay for transport, food, and possibly, accommodation. The obligation is therefore somewhat implicit in these rules. The undertakings who use posted workers (user undertakings) in France have an obligation to provide accommodation, if the accommodation provided by the foreign employer does not respect human dignity. Outgoing posted workers and workers posted within France have a right to claim the reimbursement of the additional board and lodging expenses that arise due to the posting. Employers must respect the collective agreement when agreeing with the individual worker on posting conditions, and some collective agreements do regulate the reimbursement of transport, board and lodging costs for posted workers.

The sums paid as a reimbursement of the expenses actually incurred because of the detachment/posting, and the expenses incurred by the employer as a result of detachment such as travel, accommodation or food, are excluded from the minimum wage and cannot be charged to the posted worker.

Germany

There are no specific rules regulating the reimbursement of accommodation, lodging and transport costs for posted workers. In line with application by analogy of §670 BGB (Civil code) to the contract of employment, necessary expenses of the worker incurred in the execution of the contract must be reimbursed by the employer (an obligation which can be changed by agreement between the worker and employer). Transport, board and lodging costs fall under this category. These rules do not apply to incoming posted workers. They apply only to workers sent from and within Germany.

Travel, board and lodging expenses are not considered to constitute part of remuneration; if reimbursed, they should therefore be paid in addition to the minimum wage.

Greece

There are no specific provisions about the reimbursement of travel, board and lodging costs for posted workers. This issue is therefore subject to general labour law provisions about the reimbursement of costs for “away days”, as laid down in the Common Ministerial Decision No. 21091/2990/3.8.1946. According to this Decision, workers who move away from the ordinary place of work are entitled to a) transport costs and b) reimbursement for each away day, amounting to their minimum daily wage (for manual workers) or to 1/25 of their minimum salary (for employees). If the employer provides accommodation and meals, then reimbursement is reduced to 25%. If the employer provides only meals, then reimbursement is reduced to 50%. Finally, if the employer provides only

accommodation, then reimbursement for each away day is reduced to 80%. These rules apply to both incoming and outgoing posted workers, as well as to workers who are posted to a different place of work within the Greek territory.

Transport, board and lodging costs should be reimbursed in addition to the minimum wage. Deduction from salary exceeding the minimum wage is possible only on the basis of agreement between the worker and the employer.

Italy

During the posting period, posted workers must be guaranteed, by the posting company, the same minimum conditions of employment as those for wage labour workers doing similar work in the posting location, as provided for by the legislative provisions and the collective labour agreements. The minimum wage inter alia includes a secondment allowance (compensation for the inconvenience due to move of the worker from his usual place of work) and travel allowance. Secondment allowance and travel allowance cannot be deducted from the minimum wage and have to be paid in addition. Whether these allowances can be deducted from salary exceeding minimum wage depends on the relevant collective agreement. Usually collective agreements set the secondment allowance and the travel allowance in addition to the salary. These rules apply to incoming workers.

As regards outgoing posted workers and workers posted to a different workplace within Italy, the posting employer continues to pay the wage and remains responsible for all other contractual obligations, including secondment allowance and travel allowance. The provisions on transport, board and lodging costs, like those on secondment allowance and travel allowance, are set by the collective agreement and/or the individual contract. These allowances must be paid on top of the minimum wage and usually cannot be deducted from salary exceeding the minimum wage.

Hungary

Hungary does not regulate the reimbursement of travel, board and lodging costs for incoming posted workers since these costs do not constitute part of income and thus are not subject to personal income tax. The country of origin law applies to the reimbursement of travel, board and lodging costs to workers posted to Hungary.

As regards workers posted from and within Hungary, employers are liable to reimburse their employees for all justified costs incurred in connection with fulfilment of the employment relationship. This seems also potentially to cover costs of transport, board and lodging. Special rules apply to the

reimbursement of travel costs resulting from travel between the employee's home and the actual place of work. Such costs are to be reimbursed only if the two places are in different settlements, and the employer is obliged to reimburse only 86% of the travel costs. Finally, the parties may set further terms between them concerning the reimbursement of expenditure incurred by the worker.¹²

Travel, board and lodging costs are covered on top of the minimum wage and can be deducted from the salary exceeding minimum wage only with the consent of the worker.

Ireland

Irish legislation does not regulate the reimbursement of transport, board and lodging costs for posted workers. This is a contractual matter regulated by the individual employment contract. Accommodation and lodging are considered as reckonable pay and thus are included in the calculation of the minimum wage. On the other hand, any payment of expenses incurred by the employee in performing their employment, including travel allowance, subsistence allowance, tool allowance and clothing allowance, is regarded as non-reckonable pay, and must be reimbursed in addition to the minimum wage. There is no right for the employer to deduct accommodation, lodging and transport costs from the salary paid to the worker. However, whether these costs are covered at all depends on the employment contract or collective agreement. All the rules apply to incoming and outgoing workers and workers posted within Ireland alike.

Latvia

An employer has a duty to compensate expenses of work-related travel. Article 76 of the Labour Law obliges the employer to reimburse all expenses of the employee that are necessary for the performance of work, especially expenses related to official travel or a work trip. The Supreme Court has held that posting is a type of work-related travel. The employer is therefore obliged to cover the expenses of the posted worker during the posting. Posted workers have a right not only to the reimbursement of travel (transport), accommodation and meal (only breakfast) expenses, but also the right to a daily allowance and coverage of other related expenses (e.g. insurance, drawing up of the travel documents, bank fees, and public transport costs). These rules apply to all outgoing posted workers. Workers sent within the Latvian territory also have a right to the daily allowance. Workers posted to the territory of Latvia from abroad are not, however, covered by these rules.

12. Letter from the Ministry for National Economy to Line Eldring (LO), not publicly available.

According to Article 14.²(3) of the Labour Law, the daily allowance of an official trip related to the relevant posting is considered to constitute part of the minimum wage, but only if it is required by the law of the host state. Other remuneration, which is related to covering actual expenses, is not deemed to be part of the minimum wage. Normally, neither actual expenses nor the daily allowance can be deducted from a worker's salary. However, if in the host country the daily allowance is considered part of the minimum wage, deduction is possible, but in accordance with the case law of the Supreme Court – not if the minimum wage itself is not enough to compensate the additional expenses that occur to an employee in a posting situation.

Lithuania

Lithuanian law provides that during secondment (posting), the employee shall retain his remuneration, and if during secondment the employee incurs extra costs (e.g. transport, travel, accommodation and other expenses), the employer is obliged to reimburse them (Article 107 (2) of the Labour Code). If the posting exceeds one working day, the worker also has a right to a daily allowance. The Labour Code also stipulates that except for payments allocated for the reimbursement of actual travel, accommodation and meal expenses related to the posting, the daily allowance and other payments payable to the employee must be considered part of remuneration (Article 108 (3)). These rules apply to workers posted within and from Lithuania. There is no obligation for the employer who sends workers to Lithuania to reimburse travel, board and lodging costs since they are not considered to constitute part of the worker's minimum wage.

Costs of actual travel, board and lodging expenses related to the posting are not part of remuneration. They are therefore reimbursed in addition to the minimum wage. No deduction is possible from salary exceeding the minimum wage.

Luxembourg

There are no statutory rules on the reimbursement of travel, board and lodging costs applicable to posted workers. The matter is regulated only by collective agreements.

At the same time, the Labour Code provides that allowances directly linked to posting have to be considered part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred, such as expenditure on travel, board and lodging. This rule applies to workers posted to the territory of Luxembourg. There are no specific rules for outgoing workers or workers posted within Luxembourg.

Malta

Maltese law does not regulate reimbursement for posted workers and there is no obligation for the employer to

reimburse costs related to a posting. At the same time, the Posting of Workers in Malta Regulations provide that any allowances specific to the posting paid to posted workers are considered part of the wage payable to a comparable employee ('employee in an enterprise situated in Malta who is engaged in the same or similar work or occupation') unless they are paid as the reimbursement of expenses actually incurred on account of the posting, including expenditure on travel, board and lodging. This rule is applicable only to workers posted to Malta.

As regards outgoing workers, the Employment and Industrial Relations Act explicitly states that it does not prevent an agreement between the employer and employee for giving the latter food, a dwelling place or other allowances in addition to the national minimum wage. The matter is therefore left for the worker and the employer to agree upon.

Deductions of travel, board and lodging costs from salary are not allowed.

Netherlands

Dutch law does not provide a legal basis for demanding the sending undertaking to reimburse the posted worker's travel, board and lodging. This matter is sometimes regulated in collective agreements. Collective agreements deal with reimbursement in different ways. In the construction sector, the relevant sectoral agreement requires the employer to provide housing, food and an allowance if an employee cannot reasonably be expected to return home every day. This provision applies to workers posted to and within the Netherlands. Other collective agreements applicable to posted workers do not require the sending undertaking to reimburse these costs, but only exclude these costs from the notion of pay. These rules in the collective agreements do not apply to workers posted abroad.

The rules on the statutory minimum pay explicitly refer to transport, board and lodging expenses as examples of the 'necessary expenses' that fall outside the ambit of the notion pay. If covered, they must therefore be paid on top of the minimum wage. At the same time, deduction from salary exceeding minimum wage is possible.

Poland

Polish law does not regulate the reimbursement of travel, board and lodging costs for posted workers, and thus it does not impose any obligation on the employer in this regard. There are no statutory rules applicable to either incoming or outgoing posted workers, and neither are there any rules concerning workers posted within Polish territory. The employer and worker can agree in the individual employment contract on how these costs will be handled.

Polish law distinguishes between posting and a business trip. The former requires agreement on a new place of work, while the latter does not. Moreover, the duration of a business trip is always short (no longer than 2-3 weeks) and it is of an incidental, temporary nature, according to the case law of the Supreme Court. While posted workers have no rights to the reimbursement of their travel and accommodation expenses or a daily allowance, the workers on a business trip do. Posted workers may be entitled to benefits both for business trips only within the country where they were posted and to other countries from the country to which they were posted.

If the employee and employer have agreed in the employment contract on the reimbursement of transport, board and lodging costs, these expenses have to be considered part of the minimum wage (although some academics challenge this approach). Benefits received as reimbursement of costs incurred during a business trip do not constitute part of the minimum wage.

Portugal

There is no express provision in Portuguese labour law that ensures the reimbursement of transport, board and lodging expenses for posted workers (either for incoming workers or for outgoing).

For the purposes of preserving the minimum wage guaranteed by law, the Portuguese Labour Code provides that the reimbursement of transport, accommodation and food expenses does not constitute part of the statutory minimum wage. There are no provisions allowing or prohibiting deduction of such costs from the worker's salary exceeding minimum wage; such a clause could therefore theoretically be inserted in the individual employment contract.

Romania

There is no express obligation to reimburse travel, board and lodging costs for incoming posted workers. The Labour Code provides that a posted worker has a right to the payment of transport and accommodation costs, as well as a posting allowance, in line with the terms provided for in the law or the applicable collective labour agreement. The workers also have a right to an allowance granted to compensate the inconvenience caused by posting. However, Romania has no universally applicable collective agreements, and only statutory entitlements can therefore be enforced. This applies to outgoing posted workers and workers posted within Romania.

Any allowance specific to the transnational posting is considered part of the minimum wage, unless it is paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

Slovakia

An employer may (but is not obliged) to compensate an employee for expenses incurred during posting. An employee on a business trip has a right to the reimbursement of proven travel and accommodation expenses, meal allowance, reimbursement of any necessary extra costs, commercial insurance, vaccination costs, and travel expenses to visit family, if agreed with the employer. Workers posted from the Slovak Republic are considered to be workers on a business trip. These reimbursement rules apply solely to workers posted abroad.

Workers posted to the Slovak Republic have the right only to the nucleus of mandatory rules as set out in the Posting of Workers Directive (e.g. minimum wage). However, their application cannot prevent application of more favourable rules of the country of origin.

The reimbursement of travel costs and other expenses necessary for the fulfilment of the employment contract is not considered to constitute part of the worker's salary. Costs for travel, food and accommodation are not included among the deductions the employer is entitled to make under § 131 of the Labour Code. However, the employer may deduct unused advance payments for travel expenses.

Slovenia

Slovenian labour legislation and collective agreements regulate the reimbursement of certain work-related costs, but not specifically for posted workers. According to Article 130 of the Employment Relationships Act, in addition to remuneration for work, workers are entitled to the reimbursement of expenses for meals during work, travel expenses to and from work and expenses incurred on a business trip (travel, accommodation and a daily allowance). The amounts of reimbursement of these costs are determined by sectoral collective agreements. Slovenian reimbursement rules apply to outgoing posted workers, since their employment relationship is governed by Slovenian labour law also during the posting period, i.e. when they are temporarily posted abroad. All mandatory rules provided for in legislation and collective agreements on minimum standards apply, including the reimbursement rules, but only in so far as they are not less favourable to the workers than the provisions applicable in the host country. However, there are currently inconsistencies in the case law as to whether a posted worker is the same as a worker on a business strip and thus has the same rights to reimbursement.

The employment relationship of the incoming posted worker is governed by the law of the sending country also during the posting period. Slovenian reimbursement rules do not apply

to incoming posted workers even if they are more favourable to the workers than the rules of the sending country.

If a worker is sent on a business trip within Slovenia, to work temporarily at a different location within Slovenia, they are entitled to the reimbursement of travel costs, accommodation costs and a daily allowance.

Reimbursement of work-related costs does not constitute part of the (minimum) salary and must be reimbursed/paid by the employer in addition to the salary. An employer is not allowed to deduct any work-related costs from the salary paid to a worker. Such costs have to be reimbursed/paid by the employer in addition to the worker's salary. However, if for example the employer rents an apartment to the worker, the worker has to pay regular rent for such an apartment.

Spain

Spanish law distinguishes between relocation (*traslado*) and posting (*desplazamiento*). A change to a workplace different from the contractually agreed one is considered a 'relocation' when it is permanent or when its duration exceeds one year within a period of three years, whereas such change is considered a 'posting' when its duration does not exceed the said limit. In the case of a relocation that requires a change of residence, workers are entitled to the reimbursement of expenses, which must include both their own expenses and those of their dependent relatives, in line with the agreement between the parties, and must never be less than the minimum limits established in the applicable collective bargaining agreements. In the case of a posting that requires a change of residence, workers are entitled to the reimbursement of travel expenses. In addition, if the posting lasts more than three months, every three months the posted workers are entitled to a leave period of four working days to travel to their location of origin. The employer must bear such travel expenses. These rules apply only to outgoing posted workers and workers posted within the Spanish territory, and more detailed rules can often be found in collective agreements.

Reimbursement of travel, board and lodging is not considered to constitute part of a worker's (minimum) salary. The employer is not allowed to deduct such costs from the salary paid to the worker.

Sweden

There is no legislation on reimbursement for transport, board and lodging for posted workers. A government inquiry is tasked with developing a proposal for legislation implementing Directive 2018/957/EU in this regard. The proposed legislation is to be presented no later than 31 May 2019.

As the law currently stands, the matter is left entirely for the social partners. This means that the rules on reimbursement, if found in collective agreements, will apply if the agreement is universally applicable in a certain sector or if the posting company has concluded an agreement with the Swedish trade unions. The scope of the collective agreements is limited to Swedish territory; these provisions do not therefore usually apply to workers posted abroad.

If the parties to the employment contract do not explicitly allow for it, the employer cannot remunerate work with anything else than the agreed sum of money. Expenses for travel, accommodation and food cannot therefore usually be deducted from the minimum wage. Moreover, the agreed wages have to be understood as remuneration for the totality of the worker's performance because of the employment relationship, and any remuneration besides the agreed wages needs to be contracted separately and specifically between the employer and employee. Any deduction from the salary exceeding minimum wage is possible only with explicit agreement from the worker.

**United
Kingdom**

There is no legislation regulating the reimbursement of travel, board and lodging costs for posted workers. The only relevant national legislative provision concerns the national minimum wage. Posted workers working in the United Kingdom are entitled to the national minimum wage on the same basis as UK-based workers. The United Kingdom is unique in comparison with other EU countries in that that it allows for the employer to partially offset accommodation costs when calculating the national minimum wage.

There is an offset rate of £7 per day (£49 per week). If the employer charges more than the offset rate for the accommodation, the difference is taken off the worker's pay which counts for the national minimum wage. However, the employer cannot deduct other costs such as heating or meals/lodging from the national minimum wage.

At the same time, deduction from salary, if the parties have explicitly agreed on it in the employment contract, is possible. If the posted worker is earning above the national minimum wage after these deductions are made, there is no other employment protection governing this situation. These rules apply only to incoming workers and workers posted within the United Kingdom. They do not apply to workers posted abroad.

3. Regulatory context and changes

As the preceding chapters have shown, EU Member States regulate the reimbursement of travel, board and lodging costs in a very diverse way. Some states have statutory rules in place covering all posted workers (including those posted into, outside or within their territory); others have rules covering some of these groups, while still others have no statutory rules in place at all. In some countries the question of reimbursement is routinely regulated in collective agreements (but not for all groups of posted workers) and in some, unfortunately, it is not. The level of protection of posted workers across Europe is therefore extremely varied.

In addition, the content of reimbursement rules also differs. Some Member States cover only travel, others also accommodation and yet others also meals. While some have very limited rights to reimbursement for posted workers, others provide for a wide range of additional allowances (e.g. language courses in the host country).

The EU legal framework is also rather complex and has to interact with 28 different national legal orders. Parts of EU law interact with national law (often with two sets of national law – both the law of the country of origin and that of the host country) in a particularly complex manner and together they regulate the situation of individual workers. Moreover, a number of EU-level provisions are particularly ambivalent when it comes to the question of reimbursement. While the amendments to the PWD have added some clarity, many questions still remain open and it is by no means easy to envision how these rules will function in practice following implementation.

3.1 Framework currently in force (before amendments)

The amendments to the PWD, adopted in June 2018, have to be implemented across the EU28 by 30 July 2020. The current legal framework under the Posted Workers Directive, as it was adopted in 1996, will therefore remain relevant until then.

The PWD refers to the country where the worker habitually works as the country whose law will generally apply to the employment relationship.¹³ In

¹³. Recital 8 Posted Workers Directive.

standard posting situations, therefore, the country of origin's law will apply to the majority of matters concerning the worker. The situation might be more complicated in the temporary agency posting situations where the agency is located in the country of origin, but the worker never or almost never works in the territory of that country. Here, determining the applicable law would be more difficult since the country of origin would not necessarily be the 'habitual place of work'.

As an exception to the country of origin rule (and as an exception to the general rules of the Rome I Regulation), the PWD lays down a nucleus of mandatory rules for minimum protection that have to be observed in the host country by posting employers. This nucleus includes the minimum wage of the host country (Article 3(1)(c)). Article 3(7) PWD states that allowances specific to the posting must be considered part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting (i.e. expenditure to cover travel, board and lodging). Generally, reimbursement of travel, board and lodging costs will not therefore be considered part of the minimum wage and will be among the matters regulated by the law of the country of origin. By contrast, any posting allowances exceeding expenditure actually incurred by the worker due to the posting situation (e.g. daily allowances exceeding the worker's actual expenses) could potentially be regulated by the host country's law since these allowances could theoretically constitute part of the minimum wage.

Importantly, however, the application of the nucleus of host country rules cannot prevent the application of terms and conditions of employment which are more favourable to workers (Article 3(7) PWD). If the posting allowances are considered to constitute part of the minimum wage in the host country, it does not therefore mean that 'more favourable' rules of the country of origin would not apply – in other words, if the country of origin provides that some additional allowances should be paid on top of the wage, those rules (as more favourable for the worker) should apply.

The PWD Enforcement Directive¹⁴ added that while allowances specific to posting can be considered part of the minimum wage, such allowances should only be deducted if national law, collective agreements and/or practices of the host member state provide for this. This further complicates the question of allowances, because it seems that the host country's law prevails in this situation, but it is not particularly clear what to do with the favourability principle if the country of origin's law is considered more favourable to the worker.

In the *Finnish Electrician Union's* case,¹⁵ the CJEU clarified the situation to some extent by ruling that the PWD has not harmonised the material content of the mandatory rules for minimum protection, although it has provided certain

14. Directive 2014/67/EU.

15. Judgment of 12 February 2015, *Sähköalojen ammattiliitto* (C-396/13) ECLI:EU:C:2015:86.

information concerning that content.¹⁶ The task of defining what the constituent elements of the minimum wage are is a matter for the law of the host Member State, but only in so far as it does not impede the freedom to provide services.¹⁷ In this case the CJEU proceeded to restrict the discretion left for the member state in determining the constituent elements of the minimum wage by ruling that a daily allowance that is not paid in reimbursement of expenditure actually incurred on account of posting (in this case compensation for daily travelling time which is paid to the workers on condition that their daily journey to and from their place of work is longer than one hour, and holiday pay received for the minimum paid annual holidays) should be considered part of the minimum wage.¹⁸ By contrast, accommodation costs and meal vouchers should not be considered part of the minimum wage.¹⁹

To sum up, therefore, when it comes to allowances and posting expenses (travel, board and lodging), the rules currently in force at the EU level:

- do not contain an obligation for the employer to cover such costs (or pay any extra allowances) in the case of posting;
- provide that, if the law of the country of origin provides some extra benefits or allowances for posted workers, then they should be part of the minimum wage of the host country, with the exception of costs incurred on the account of posting (travel, board and lodging);
- provide that allowances specific to posting should only be deducted from the minimum wage if the host country's laws require this.

The role of the favourability principle (Article 3(7) PWD) is particularly ambivalent and there is no case law from the CJEU that clarifies the situation. The question is whether counting a posting allowance as a constituent part of the minimum wage can be considered unfavourable to the worker if the laws of the country of origin do not require this. If it can be seen as 'unfavourable', then it could be argued that even if the host country's law allows deduction, the law of the country of origin has to prevail. If not, then the current legal framework in place seems to suggest that the host country's law prevails, and deduction is possible, if allowed by the host country. This disadvantages – sometimes significantly – workers posted from countries with a more protective system in place. No question arises in situations where both home and host countries' rules either allow or prohibit deduction.

This is further complicated by the question of whether the rules on posting allowances could be considered to constitute overriding mandatory provisions of the law of the forum in line with Article 9 of the Rome I Regulation. If this is the case, then the rules of the place where the court case was brought will apply since such provisions apply irrespective of the law otherwise applicable.

16. Ibid, para 31.

17. Judgment of 7 November 2013, *Isbir* (C-522/12) ECLI:EU:C:2013:711, para 37, and *Sähköalojen ammattiliitto*, para 33-34.

18. *Sähköalojen ammattiliitto*, para 46-52, 53-57, 69.

19. *Sähköalojen ammattiliitto*, para 58-60, 61-63.

In *Unamar*,²⁰ the CJEU ruled that national provisions can be classified as public order legislation if compliance with them is deemed to be so crucial for the protection of the political, social or economic order in the member state concerned that the compliance by all persons present on the national territory is required. Moreover, Article 9 of the Rome I Regulation has to be interpreted strictly.²¹ According to the CJEU, this classification is possible if protection of certain groups of persons is seen as a specific interest of the country; however, this can be done only in exceptional circumstances since the law rejected is the law of another Member State and the mutual recognition principle generally applies.²² It would therefore be quite far-fetched to argue that rules on reimbursement can be classified as public order requirements; however, until such an argument is tested before the CJEU, the answer is not crystal clear.

All in all, the EU-level framework currently in force is very complex, even though a general rule seems to be that whether or not a posted worker has a right to be reimbursed (compensated) for travel, board and lodging expenses related to posting is normally determined by the law of the country of origin. The situation is more complicated with posting allowances that are not paid to cover expenses actually incurred by the worker.

What does this mean in the light of the findings in Chapters I and II? Quite simply that many posted workers originating from countries that do not entitle workers to the right to claim travel, board and lodging costs (and there are many such Member States) currently remain unprotected. This is highly problematic and puts posted workers in a very vulnerable situation since their needs in this sense differ from the needs of the local workforce and they should be able to claim such costs from their employers. Otherwise, independently of whether or not they earn the same wage as the local workforce, their expenses will always be comparatively higher.

3.2 Framework under the amended Posted Workers Directive

The amended PWD, which has to be implemented in national law by July 2020 at the latest, amended some of provisions dealing with reimbursement rules.

Both Recital 19 and Article 3(7) in the amended version of the PWD now state that:

“The employer shall [...] reimburse the posted worker for [expenditure actually incurred on account of the posting, such as [...] on travel, board and lodging] in accordance with the national law and/or practice applicable to the employment relationship.”

20. Judgment of 17 October 2013, *Unamar* (C-184/12) ECLI:EU:C:2013:663, para 47.

21. *Ibid*, para 49.

22. *Ibid*, para 50-51.

The question is whether this provision entails any obligation for the Member States to ensure that posted workers are actually reimbursed – that is, whether this provision establishes a right for posted workers to the reimbursement of travel, board and lodging costs at the EU level? The European Parliament seemed to interpret this provision in this way, at least during the negotiation process.²³ The ETUC also considers that there is now an obligation to reimburse:

“[T]he revised Directive introduces an obligation for the employer to reimburse the posted worker for expenditure actually incurred [...]. The respect of such an obligation should be ensured in all situations. Member States should then define the way in which this provision is to be applied (e.g. through law or collective agreements), but they should in any case guarantee the respect of this obligation [...]. This will entail a change in legislation and/or practices in some Member States [...]”²⁴

At the same time, this provision is not preceded by the customary “Member States shall take appropriate measures [...]” phrase for giving individual rights via a directive.²⁵ In addition, Recital 19 states that “[i]t is for Member States, in accordance with their national law and/or practice, to set rules with regard to the reimbursement of such expenditure”.

As seen in the preceding chapter, many Member States currently do not oblige employers who post their workers to cover these costs. Therefore, future interpretation of this provision is of utmost importance.

An additional complication, potentially affecting how allowances and reimbursements for posted workers are determined, is the replacement of the notion of ‘minimum wage’ with ‘remuneration’ in the directive (see Article 3(1) (c) PWD as amended). While this allows to require that posted workers receive equal pay for equal work in the host country, what happens when the notion of ‘remuneration’ as understood in the host country also covers posting allowances meant to cover travel, board and lodging or to compensate for difficulties faced by posted workers?

23 ETUC (2018) Equal pay in sight for posted workers? <https://www.etuc.org/en/pressrelease/equal-pay-sight-posted-workers>; and European Parliament (2018) Posting of workers: final vote on equal pay and working conditions. <http://www.europarl.europa.eu/news/en/press-room/20180524IPRO4230/posting-of-workers-final-vote-on-equal-pay-and-workingconditions>

24 Interview with Liina Carr, ETUC Confederal Secretary, 20 March 2019.

25 See by analogy e.g. provisions in the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time.

Rules on secondary posting

“Secondary posting” – Posting of the worker to another workplace within the host state territory from their original place of work in the host country.

The legal situation concerning secondary posting has been fully clarified by the amendments of the Posted Workers Directive. The host country’s rules applicable to local workers posted locally will always apply in such situations and if the worker is posted secondarily within the host country, they receive the same level of protection as the local workers being posted within the territory of the Member State.

The posted worker is guaranteed (as the minimum) the same allowances or reimbursement of expenditure to cover travel, board and lodging costs and the same level of accommodation as the host country’s workers working away from home for professional reasons (amended Article 3((1) (h) and (i) PWD).

Therefore, if a worker is posted from state A to B, and the latter gives the local workers sent internally to another workplace a right to compensation for travel, board and lodging costs, then if the worker is posted secondarily within B territory, they will have the same rights as local workers. If the host country does not give any rights to local workers sent to another workplace internally, the (secondary) posted worker will have no such rights either.

Here the story becomes increasingly complex. ‘Remuneration’, and determination of its constituent elements, is (still) left within the competence of the host state (Article 3(1)). Recitals 18 and 20 limit this freedom to an extent by requiring that allowances beyond expenditure actually incurred on account of posting should be considered part of remuneration. The host country’s law would therefore apply to the extent that posting allowances and compensation for expenses go beyond travel, board and lodging expenses actually incurred. In other words, if the host country’s law requires payment of posting allowance and considers this to constitute part of remuneration, the posting undertaking will have to pay it to the worker independently of what the laws of the country of origin require in this regard. Information about the constituent elements of remuneration therefore becomes absolutely crucial for having any legal certainty and for understanding which law applies, and to what extent, to posting allowances and reimbursement of travel, board and lodging costs.

If it is not clear which part of an allowance is to reimburse expenditure and which part exceeds this, the assumption is that the entire allowance is meant to cover the reimbursement of expenditure (Recital 20). The assumption is therefore that the law of the country of origin will apply in cases of uncertainty concerning compensation where it is ambivalent whether certain compensation, reimbursement or allowance specified by law or collective agreement covers expenses actually incurred or has a compensatory character to remedy the posting situation for the worker.

To make it even more complex, there is still the favourability principle and the application of more favourable terms for the worker should not be prevented. However, it seems that any impact of this principle on reimbursement and allowance rules is now slightly limited since the same paragraph states that allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred (Article 3(7)).

In short, while the amendments of the Posted Workers Directive has dealt with some long-standing issues, like the matter of equal pay for equal work, some fundamental tensions remain.

Summary

The EU legal framework currently in force leaves significant discretion to the Member States to shape their rules on reimbursement of travel, board and lodging costs for posted workers as they see fit. In line with this discretion, the national level rules on reimbursement of travel, board and lodging for posted workers vary greatly in the EU28. Although the amendments to the Posted Workers Directive have offered some legal certainty when it comes to the rights of posted workers, uncertainties remain.

This uncertainty means that the national reimbursement rules remain significant and might not necessarily see any amendments with the implementation of the amended Posted Workers Directive.

In addition, the concept of ‘remuneration’ and its constituent elements has become increasingly important following the PWD revision. The Member States shall require that workers posted to their territory receive the same remuneration as the local workforce. Accordingly, in so far as any posting related allowances are considered part of remuneration, the host country’s law will prevail. At the same time, however, the reimbursement of posted worker’s actual expenses will not usually constitute part of remuneration. In order to adequately protect and enforce posted workers’ rights in each posting situation awareness is, and will be, needed of the details of both home and host country’s laws concerning the reimbursement and allowances due to posted workers, as well as awareness of what constitutes ‘remuneration’ in the host country.

As the national rules currently stand, there are several Member States that do not regulate the question of reimbursement of travel, board and lodging costs for posted workers at all and leave it for the individual agreement between the worker and employer. This means that workers are left vulnerable. In other Member States this question is often regulated in collective agreements. If the posted workers are covered by these agreements, this is entirely enough. The question nevertheless arises as to whether all posted workers are covered, and in all situations.

At the same time, some Member States go further than mere reimbursement of travel, board and lodging costs for posted workers. There is a wide range of other benefits (allowances) accessible for these workers in some of the Member States (e.g. daily allowances, public transport allowances, insurance coverage, coverage of vaccination costs, even coverage of costs for visiting family, and relocation costs). This should be encouraged since posting is an atypical work

situation and creates an additional burden for workers who are temporarily removed not only from their usual place of work but also from their family and friends and from jurisdictions whose rules and ways of functioning, they recognise and understand.

Overall, the results of this comparative study have shown that when it comes to reimbursement of travel, board and lodging costs posted workers are still in an especially vulnerable situation. They are often posted to a country where they lack any support network, where they do not speak the language and have no knowledge of where exactly to seek help if they are being exploited. On top of this, in many instances they currently have no rights to claim compensation for their travelling and living expenses that would not have arisen if they had been working in their country of origin.

**European
Trade Union Institute**

Bd du Roi Albert II, 5
1210 Brussels
Belgium

+32 (0)2 224 04 70
etui@etui.org
www.etui.org

etui.