

Pursuant to Section 26(2) of Government Decree 115/2021. (10.III.) on the activities of the Employment Supervisory Authority, the Employment Supervisory Authority shall examine the employment of posted workers in Hungary within the framework of the cross-border provision of services on the basis of the assessment criteria published on the website.

### **Criteria for assessing the appropriateness of posting within the framework of the provision of services**

1. In the case of workers posted in Hungary within the framework of the cross-border provision of services, for the purposes of the implementation, application and enforcement of [Directive 96/71/EC](#) concerning the posting of workers in the framework of the provision of services, the Employment Supervisory Authority will comprehensively assess all factual elements of the work to determine whether or not the worker is a posted worker.

2. In order to determine whether an undertaking actually carries out a substantial activity other than purely internal administrative or management activities, a comprehensive assessment of the factual elements characterising the activities carried out by the undertaking in the EEA State where it is established and, if necessary, in the EEA State of posting, should be carried out over a wider time frame. These elements include in particular:

- a) the place where the undertaking has its registered office and administration, uses office premises, pays public charges (taxes, social security contributions), is authorised to operate or is a registered member of a chamber of commerce or professional body;
- b) the place where posted workers are recruited and from which they are posted;
- c) the law applicable to contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other;
- d) the place where the enterprise carries out its substantial business activity and employs administrative staff;
- e) the number or size of contracts and/or turnover achieved in the EEA State where the undertaking is established, taking into account, inter alia, the specific situation of newly established undertakings and small and medium-sized enterprises.

3. In order to determine whether a posted worker carries out his or her work temporarily in an EEA State other than the EEA State in which he or she habitually works, all factual elements relating to the work and the situation of the worker must be examined. Such elements include, in particular:

- a) whether the work is carried out for a limited period of time in another EEA State;
- b) the date on which the posting starts;
- c) whether the posting takes place in an EEA State other than the EEA State in which or from which the posted worker habitually carries out his or her work in accordance with [Regulation \(EC\) No 593/2008 \(Rome I\)](#) and/or the Rome Convention;
- d) whether the posted worker will return to the EEA State from which he/she is posted or is expected to continue his/her work there after having completed the work or the provision of services for which the posting took place;
- e) the nature of the activities;
- f) whether travel, board and accommodation is provided or reimbursed by the employer who posts the worker and, if so, how this is provided or the method of reimbursement;
- g) any previous period during which the post was filled by the same or another (posted) worker.

4. Failure to meet one or more of the factual elements listed in points 2 and 3 does not automatically mean that the situation does not constitute a posting. The assessment of these elements must always be adapted to each specific case and take into account the specific

nature of the situation. In order to assess whether a worker is indeed covered by the definition in [Article 2\(2\) of Directive 96/71/EC](#), it is necessary, in particular, to examine the facts relating to the work, subordination and pay of the worker, irrespective of how the relationship is described in a contractual or other agreement between the parties.