



Guest in reality

– About posted workers in practice

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FOREWORD

In this report we have tried to give a qualified picture of the incidence of posting of foreign workers in the LO (Swedish Trade Union Confederation) affiliates' industries. The report shows that in construction posted workers make up almost 19 per cent of the total workforce and in forestry about 11 per cent. In other industries the percentage of posted workers is more modest.

In LO industries where posting is common the motive often seems to be reducing the price of labour. It is our hope that this report, which was originally written as material for the parliamentary Lex Laval inquiry, will convey a picture of the part of the labour market where unsatisfactory conditions are most often greatest.

The first part is a survey of the incidence of posting of companies and workers and the industries/agreement areas where it exists. The second part of the report describes, on the basis of questionnaires and interviews, how local and central trade union organisations manage the Swedish collective agreement model when foreign companies and workers are working temporarily in the country.

It is clear that with increased internationalisation of the Swedish labour market and more foreign actors in Sweden, a strengthening of the regulatory framework related to collective agreements is required. Changed conditions require new types of regulation that help to create good order in the labour market.

Claes-Mikael Jonsson and Göran Larsson

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SUMMARY	4
1. INTRODUCTION	7
Purpose and method	7
2. INCIDENCE OF POSTING	9
Great variation between industries	9
Scope	9
Origin	12
Employment period in Sweden	13
Type of posting	13
Analysis and summary	14
3. TRADE UNION WORK ON POSTING	16
Contact with posted companies	16
Authorised representative	17
Collective agreement requirement	17
Compliance	19
Work with posting agreements at central level	21
Analysis and summary	21
4. PROPOSED MEASURES	23
Measures that LO already considers the legislator should implement	23
5. ANNEXES	25
Survey on the incidence of posted workers from the EU/EEA	25

Summary

The amendments made to the Posting of Workers Act, usually referred to as Lex Laval, came into existence after the Building Workers' Union and the Electricians' Union took industrial action against a Latvian company to obtain a collective agreement. After long legal proceedings the European Court of Justice found that the industrial action by the Building Workers' Union and the Electricians' Union was unlawful.

Lex Laval came into force on 15 April 2010 and has been criticised on some points, not least by the trade union movement. Partly because of this a majority in the Swedish parliament, the Riksdag, has requested a review of the Act. The Government has appointed a parliamentary committee of inquiry with representatives of all Riksdag parties instructed to investigate the effects of Lex Laval.

The committee has requested the social partners to help in obtaining facts and experiences that the Inquiry would find difficult to obtain by other means. Information and data in this LO report are mainly taken from an extensive questionnaire survey among branches of LO affiliated trade unions, supplemented by interviews with those responsible for collective bargaining at the LO affiliates.

Construction sector largest

The report notes that most posting of workers to Sweden is in the construction sector. Of a total of over 18,000 posted workers in the LO area during the survey period, about 15,000 were in the construction sector. The percentage of posted workers in the forestry industry is also relatively high, with about 1,200 people. Apart from these, the report states that about 3,700 foreign workers holding F tax cards were working in Sweden at the time of the survey.

In terms of the size of the respective industries the report shows that in construction posted workers make up almost 19 per cent of the total workforce, and in forestry about 11 per cent. In other industries the percentage of posted workers is more modest.

Cost competition

The motive for the large percentage of posted workers in some industries is a wish to reduce costs in one way or another. This may relate to avoiding Swedish tax legislation, corporate tax, social security contributions, occupational pension costs, insurance or other things, reducing labour cost and making it difficult for Swedish companies to compete.

Fast-moving contracting industries, where projects and work sites are moving all the time, are also particularly suitable for the type of competition that tries at any price to avoid the costs associated with more genuine establishments. Not infrequently these are cases of pure cheating and ruthless exploitation of employees, which are repeatedly reported in the media.

Thus it is considerably more unusual in the LO area to have posting due to a shortage of qualified workers in Sweden. That it takes place to such a modest extent is perhaps to do with the difficulties associated with moving to another country with a foreign language and culture. The people who nevertheless do this mainly come from the eastern parts of Europe and the Baltic states. Common to these countries is that employees there have, or have had, a lower pay level than in northern and western Europe and at times have also struggled with high unemployment. The social safety nets have also in many cases been poorer, which has meant greater pressure on people to find a livelihood even if it has meant scattered families and insecure employment.

The LO Branches estimate that six out of ten posted workers are here in Sweden with the company that

No support in legislation

The trade union work of monitoring the scope of collective agreements and employees' conditions of employment has been made more difficult by a lack of support in legislation and no official regulation. It is difficult to contact posted companies and there are many instances of cheating and illegalities.

More than 25 per cent of all trade union branches report that they often or always find it difficult to get hold of an authorised representative of the posted companies to negotiate collective agreements or raise other trade union issues. Another 30 per cent state that this is sometimes the case.

A number of foreign companies, mainly in the construction sector, act as if they are posted but in practice have established themselves permanently in Sweden. This gives a lower labour cost and denies employees the social safety net that follows from being fully convective agreements and the Swedish welfare systems.

The trade union organisations also have considerable difficulty in checking compliance with agreements. The posted workers are in Sweden for a limited period. This fact, together with language difficulties and fear of losing their jobs, means that few choose to join a trade union or to demand their contractual rights. Several branches testify to the existence of "double" employment contracts – one to show the Swedish client company and corresponding trade union organisation and a secret one with worse conditions that the foreign workers have been forced to accept.

LO's proposed measures

The Swedish collective agreement model rests on self-regulation between the parties. With increased internationalisation and more foreign actors in Sweden a strengthening of the regulatory framework related to collective agreements is required. Changed conditions require new types of regulation aimed at creating good order in the labour market.

LO has already been promoting a series of measures to deal with the problems that arise in connection with posting of workers. In this context there is reason to recall these demands, which may be of full or partial significance in the context of the parliamentary Laval Inquiry. The measures mentioned in the report do not, however, constitute an exhaustive list of possible measures. During the autumn LO intends to present further more detailed demands, in particular as regards methods and instruments for strengthening compliance with collective agreements.

- The main contractor should be responsible for ensuring that all actors in a project follow current legislation and agreements. At present main contractors are allowed to engage subcontractors that do not comply with the rules without any risk of liability. This is despite the fact that it is quite evident that prices offered are not based on fair conditions.
- Abolish the rule that allows non-payment of income tax for work in Sweden for up to 183 days. This has already been done in Finland and Norway. One positive effect should be that employees are given longer contracts than the six months that is currently common.
- Introduce a statutory notification requirement. Foreign companies should register their presence in Sweden on pain of sanctions. The basic framework of such regulation will be introduced into Swedish law on 1 July 2013. But LO considers that the liability to sanctions should be extended to include those who engage unregistered foreign companies. Experience from Denmark, where such extended regulation has been introduced, shows that an effective notification requirement system also requires the purchasers to be liable to sanctions.
- Change Lex Laval and make it possible for trade union organisations to enter into confirmation agreements. Foreign companies that state that they apply equivalent or better pay and conditions of employment should not be immune from industrial action unless these conditions are confirmed with a Swedish trade union organisation.

- Introduce a statutory requirement that foreign service companies must have a legal representative. There must always be an authorised representative with whom an application agreement can be entered into. Without an authorised representative there is no one who can sign for the company.
- Introduce a statutory requirement for the provision of certain types of document. Companies must be obliged to provide payrolls, working hours lists and other information of importance in assessing the working and employment conditions applied by the company. The employer's obligation must cover both union and non-union workers. The documents must be available to the trade unions.
- The Public Procurement Act must be clear that conditions equivalent to collective agreement conditions can be required in public procurement. Public funds must not be used in such a way as to contribute to wage dumping and dirty competition. In addition, Sweden must ratify ILO Convention 94 on labour clauses in public contracts.
- Introduce a stricter interpretation of the term fixed place of business. A company that is active continually, regularly or periodically in Sweden for a 12-month period should be considered to be established in Sweden.

1. Introduction

Ever since EU enlargement in 2004 the percentage of foreign labour in the Swedish labour market has been increasing. Enlargement meant that the availability of cheap labour was great. In many of the new member states (sending countries) wages were considerably lower than in the old member states (receiving countries). At the time of enlargement there were no established structures for recruitment, posting and hiring out of workers. Structures for posting emerged as the standard of living successively rose in the sending countries. Labour costs in Europe developed towards equality.

This development was interrupted by the financial crisis of 2008. A second wave of posting started. With falling wages and high unemployment in several of the countries to which workers are posted, the possibilities and incentives for continued abuse have increased. Posting of workers gains its strength from unemployment and low wages.

The European Court of Justice judgment in the Laval case in 2007 brought the issue of posted workers even more to the fore. Through the Laval judgment the trade unions were prevented from using the collective agreement to promote equal treatment between foreign and domestic workers.

To deal with the consequences of the European Court of Justice judgment on Swedish law a government inquiry was set up. On the basis of the inquiry proposals the Swedish Government presented Bill 2009/10:48 – Measures in response to the Laval judgment. The Riksdag passed the “Lex Laval” legislation in 2010.

The Swedish trade union movement has been fighting ever since to reinstate the equal treatment principle in the Swedish labour market. In February 2013 Lex Laval was criticised severely by the ILO Committee of Experts, a UN body. A parliamentary inquiry aimed at examining the legislation was set up in 2012. The inquiry's proposed measures will not be presented until December 2014.

During these years an on-going question has been how extensive posting to Sweden really is. No actor has been able to answer that question. Foreign companies and workers that are in Sweden temporarily have not been obliged to report their presence in the Swedish labour market.

Purpose and method

The purpose of this report is to provide a picture of how extensive the posting of foreign workers to Sweden is, in the LO affiliates' industries. As a basis for the report LO prepared a questionnaire (annex 1) and sent it to all the branches and regions of the thirteen affiliated trade unions taking part in the study. The questionnaires were supplemented by interview with centrally placed officials responsible for collective bargaining in the LO affiliates. The questionnaire responses were gathered by and large between 22 April and 14 May. Some work to increase the response rate resulted in further responses being added between 14 and 28 May. In addition special efforts were made in early June to clarify the situation in forestry. The only LO affiliate excluded from the survey is the Musicians' Union.

The report was prepared as supporting material for the parliamentary posting committee and consists of two parts. The first part is a survey of the incidence of posting of companies and workers and the industries/agreement areas where it is done. Information and data were mainly gathered from the questionnaires to the branches of the LO affiliates.

Branches or regions representing about 90 per cent of the LO affiliates' membership responded. All the local branches or regions of the Building Workers' Union, Electricians' Union, Hotel and Restaurant Workers' Union, Paperworkers' Union and Food Workers' Union responded and almost all branches and regions of the Painters' Union, Municipal Workers' Union, IF Metall and the Commercial Employees' Union. The branches of

SEKO (Union for Service and Communication Employees) submitted information centrally, as this was more appropriate due to that union's agreement structure.

Only just over half of the branches of GS Facket, the Swedish union of forestry, wood and graphical workers, answered the questionnaire but the responses were supplemented by data from people responsible for collective bargaining who were familiar with the problems concerning forestry.

The response rate from the Transport Workers' Union was, however, low. Only a quarter of its branches responded. A contributory reason was that the questionnaire was carried out towards the end of a collective bargaining round. This meant that the branches of the Transport Workers' Union were occupied with other matters.

Altogether the questionnaires were sent to 216 branches or regions and 173 responded, which gives a response rate of 80 per cent. Excluding the Transport Workers' Union, which had particular difficulties in responding to the questionnaire, 168 out of 192 branches or regions responded, which gives a total rate of 88 per cent.

The high response rate does not mean, however, that all the problems concerning correctness of data were solved. It is natural that to a great extent it is a matter of qualified assessments based on knowledge of local industry. Consequently it was important to get responses to the questionnaire from as far out in the organisations as possible.

One example of the difficulties relating to data is that the number of foreign companies can be assumed to be on the high side. The same companies may figure in the material from several branches.

The same source of error as regards employees is, however, less probable, since the survey was carried out over a short period of time. However, there is some uncertainty in those figures too. Several branches have responded to the questions about the number of posted companies and workers as an interval. In those cases the report figures are based on the highest figure. The reason for this is that in principle all branches have noted that large numbers go unreported.

The second part of the report describes, on the basis of questionnaires and interviews, how local and central trade union organisations manage the Swedish collective agreement model when foreign companies and workers are working temporarily in the country. The picture is of course not consistent over the entire part of the labour market covered by the LO affiliates. It is often complicated for a trade union organisation to ensure that the foreign companies are not conducting unfair competition and that the posted workers do not come to harm.

The report aims to summarise and analyse the facts and experiences that emerged in interviews and questionnaires. The ambition is also to describe the measures that LO believes would be appropriate to guarantee that free movement of labour does not lead to social dumping and difficult social tensions and conflicts.

The report was written by Claes-Mikael Jonsson and Göran Larsson at LO.

2. Incidence of posting

This part of the study focuses on investigating the extent of posting of both companies and workers, how this has changed over time and the countries from which the workers and companies come, along with associated questions.

It should be pointed out that no trade union has fully monitored the incidence of posting. This means that data is mainly estimated, based on the experience of the local organisation. In some industries it is easier to monitor posting as it almost exclusively consists of contracts ordered by large companies with well-functioning local trade union activities. This is often the case for example in the engineering industry.

A large number of branches have, however, covered themselves when reporting the number of posted companies and employees. They are convinced that their estimates are on the low side and that there are a large number of unreported cases.

Great variation between industries

All the national trade unions have been asked in which industries or agreement areas posting exists. It can be noted that it is common in the industries where contracting and sub-contracting are normal, such as construction, repairs and renovation, road and bridge building and installation or dismantling of industrial facilities. Posting in the above industries is mainly in the form of posting of companies. It is less common, according to what has emerged, that it is in the form of hiring out of workers via foreign staff agencies.

Contracting industries that in principle have no posting of workers are in the Building Maintenance Workers' Union agreement areas, in property maintenance and cleaning. To the extent these industries have foreign labour it is rather in the form of labour immigration. They are then employed by Swedish companies and thus covered by collective agreements in most cases.

Posting in the form of hiring out via foreign staff agencies is more common in forestry and farm work, in wholesale trade and large warehouses as well as in slaughtering and butchering in the food industry. It also exists to some extent in industry for dismantling industrial facilities.

There are major differences within and between industries as regards the reasons for posting. In some industries it is mainly a matter of lack of qualified labour. This applies for example to the meat and delicatessen industry, in tunnelling work for roads and railways and for maintenance and repairs of power transmission grids.

In other industries it is a matter of cutting costs and keeping wages down. This particularly affects the construction industry, the transport sector and farming and forestry. In those industries there are also downright illegalities and exploitation of foreign labour, which not least the media have drawn attention to. In industries characterised by special work environment requirements, such as scaffolding, roof snow clearing, forestry clearing work and asbestos cleaning, it cannot be ruled out that foreign labour is used to cut down on work environment requirements and industrial safety.

Scope

As regards the extent, the national union branches had to assess the number of posted companies and the number of posted workers in their area at the time of the survey, as well as whether the incidence had increased or decreased compared with five years ago. Questions were also put about the country of origin of the companies and employees.

The responses show that the national unions' local organisations estimate that at the turn of the month April-May there were about 800 foreign companies from the EU/EEA active in Sweden. The branches further estimated that the total number of posted workers, including both those here with the company in which they are employed and those who are contracted, is just over 18,000. In this context it should be emphasised that

the number of foreign companies can be assumed to be on the high side. The same companies may figure in the material from several trade union branches. The same source of error as regards employees is, however, less probable, since the survey was carried out over a short period of time.

Number of posted companies and employees by trade union

Trade Union	Posted companies	Posted workers
Building Workers' Union	542	14 980
GS Facket (Swedish union of forestry, wood and graphical workers)	55	1 500
IF Metall (Swedish Industrial and Metalworkers' Union)	52	469
Seko (Union for Service and Communications Employees)	32	420
Municipal Workers' Union	20	248
Food Workers' Union	15	245
Transport Workers' Union	47	220
Electricians' Union	15	87
Painters' Union	4	100
Commercial Employees' Union	15	48
Total	797	18 317

Table 1

Table 1 shows clearly that the construction sector is entirely dominant as regards posted companies and workers. This is largely because there are many small companies here offering their services to private individuals. For example, the Building Workers' Union branch for Greater Stockholm estimates that about 2,500 posted building workers are working on the large construction projects covering new production and infrastructure – but that in addition there are about 10,000 posted construction workers here in the smaller scale RMI (repairs, maintenance and improvement) sector with private individuals as customers. Some of these are probably here formally as self-employed workers with F tax cards.

Counting the entire construction industry, that is the Building Workers' Union, Seko, the Electricians' Union and the Painters' Union, that sector accounts for more than 80 per cent of the total number of posted workers in the LO area.

Apart from the number of posted workers reported in Table 1, the trade union branches have estimated that there were at least 3,700 foreign self-employed workers with F tax cards working in Sweden at the time of the survey. There is probably a large number of unreported cases. About half of the branches note that they have no possibility whatsoever of even estimating the number, even though they know that there are foreign self-employed workers in their industries.

Among the trade unions asked, centrally placed officials responsible for collective bargaining at the Building Maintenance Workers' Union, the Hotel and Restaurant Workers' Union and the Paperworkers' Union replied that they have no posted companies or workers in their agreement areas. That perception is also confirmed by the questionnaire responses received from the local branches of these trade unions. This does not mean that there is no posting of workers at these trade unions' workplaces, but that then it is a matter of jobs that belong to other unions' agreement areas, mainly the Building Workers' Union.

The predominance of the construction sector as regards competition from posted companies, workers and self-employed workers becomes even more evident in a comparison of the estimated number of posted workers with the number of gainfully employed members of the respective trade unions according to statistics from the National Mediation Office as at 31 December 2011, as in Table 2. For the Building Workers' Union the number of posted workers is equivalent to 19 per cent of their gainfully employed members.

Posted workers in forestry employed in clearing and planting and in the wood industry put GS, the Swedish

Union of Forestry, Wood and Graphical Workers, at just over three per cent. That figure doesn't tell the whole truth, however, since the union organises workers from many different industries. Taking into account Swedish Forest Agency statistics from 2011 of the total number of employees in forestry alone, the proportion of posted workers is about 11 per cent.

Number of gainfully employed in 2011 and percentage of posted workers

Trade Union	Membership	Percentage of posted workers
Building Workers' Union	79 184	18.9 %
Electricians' Union	20 842	0.4 %
Building Maintenance Workers' Union	29 243	0.0 %
GS Facket (Swedish union of forestry, wood and graphical workers)	47 487	3.2 %
Commercial Employees' Union	120 699	0.0 %
Swedish Hotel and Restaurant Workers' Union	30 507	0.0 %
IF Metall (Swedish Industrial and Metalworkers' Union)	273 555	0.2 %
Municipal Workers' Union	500 374	0.0 %
Food Workers' Union	27 680	0.9 %
Painters' Union	12 470	0.8 %
Paperworkers' Union	16 935	0.0 %
SEKO (Union for Service and Communications Employees)	83 167	0.5%
Transport Workers' Union	56 585	0.4 %

Table 2

Apart from these two, no other trade union comes up even to one per cent except possibly the Food Workers' Union. It should be pointed out that the figures for the transport sector do not give the full picture.

The problems the industry is struggling with are not primarily due to competition from posted companies or drivers. It is instead the cabotage rules that are difficult to monitor and "self-employed" drivers in their own or other people's trucks that cause problems for Swedish haulage contractors and drivers. It was not possible to determine how great a percentage of active workers are taxable abroad.

As regards how the incidence has changed compared with five years ago there is some uncertainty in many union branches. Three times more respondents assess that there are more posted workers today than respondents who consider that the number has dropped. A quarter believes that there are about the same number.

Number of posted workers today compared with five years ago

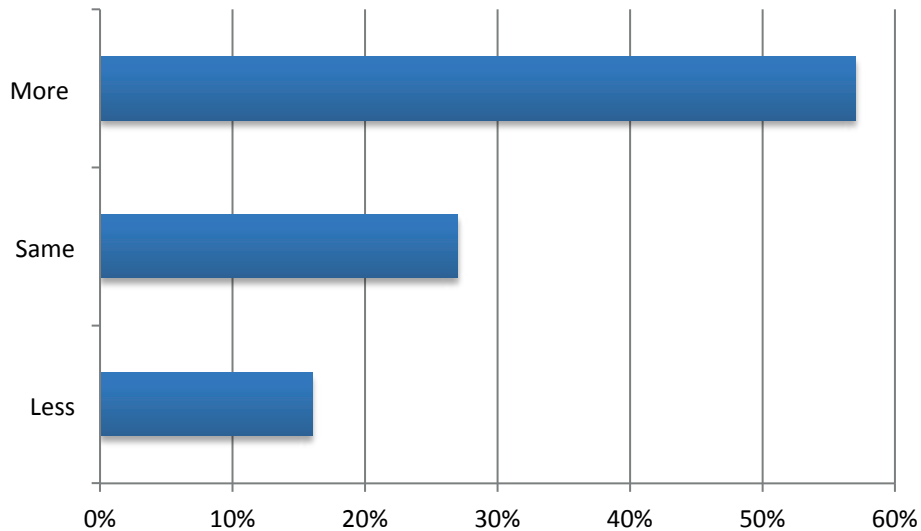


Diagram 1

As regards assessing the number of posted companies today compared with five years ago, the same applies. On the other hand, looking only at the construction sector, which is predominant as regards incidence, all branches except one state that there are more posted companies and workers today than five years ago.

Origin

The replies to our questionnaire show that the majority of posted companies come from Eastern Europe and the Baltic. In addition there are companies from Germany, Austria, Ireland and the United Kingdom. The predominant countries are regarded as Poland, the Baltic States, Germany and Ireland, but not necessarily in that order.

Not surprisingly it was stated that posted workers also come from the Baltic States and Eastern Europe, but here workers from third countries are also mentioned, such as Central Asia and Turkey, as well as former Yugoslavia. African countries are also mentioned. In some cases it may be a matter of hiring labour from foreign staff agencies but also of labour immigration from third countries. Most workers, however, were said to come from Estonia Latvia, Lithuania and Poland. The union branches were also to reply to the question of whether it is ever that case that the workers come from a different country than that of the company where they are employed and about half of them replied. Most of the respondents said that it is unusual but a relatively large minority consider it to be common. By far the most common in the latter case seems to be that the workers come from Eastern Europe while the foreign staff agency is based in Ireland or the United Kingdom. German and Danish staff agencies also sometimes have employees from Poland or other Eastern European countries.

Do the employees come from a different country than the company

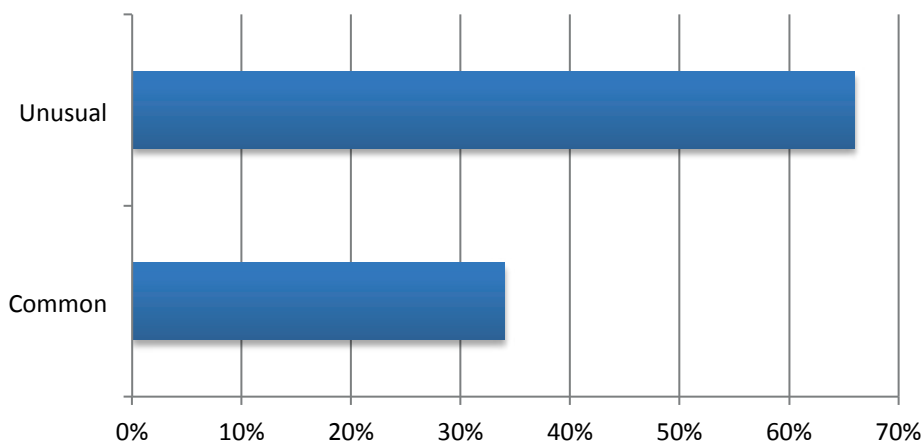


Figure 2

Employment period in Sweden

When the union branches are to estimate how long an average posted worker normally works in Sweden the replies vary considerably depending on the industry and the type of posting concerned. The replies vary from about one month to more than a year.

In seasonal industries such as forestry it may be three to eight months, in greenhouses and gardens approximately six months and in outdoor cultivation down to one or two months for harvesting. However, in one case a branch of IF Metall found four Czechs in a caravan in the forest. They had been here for two years.

In construction and engineering it may be a matter of very long periods, and in extreme cases up to seven years, depending on the type of contract. In those cases it seems to be common for the labour force to be replaced at six-month intervals. In that sector it is also difficult to monitor whether the posted company or the workers leave the country after a completed project or if they move on to another project in another part of the country. Several mention that companies try to avoid the Swedish tax rules by replacing workers after a certain period or not reporting to the tax authorities.

Type of posting

The term posting covers workers who are posted within their employer's company group, hired out by their employer or who perform services across borders on behalf of their employer.

Posting within company groups is not particularly extensive in the LO affiliates' agreement areas. One exception is construction workers in the SEKO (Union for Service and Communications Employees) Road and Track sector. Posting of workers exists there in the large company groups operating in that industry.

The replies show that most of the posted workers are here with the company that employs them. In building and construction and the industrial sector it is usually foreign contractors that are here for a limited project, even though there are local exceptions. Hiring out of labour is less common and exists mainly in industries such as agriculture and forestry and the food industries.

A fairly large number of foreign workers from the EU/EEA area are also here as self-employed workers with F-tax cards. Apart from what is reported as posting, the union branches have estimated the number of F-tax card holders as 3,700. They are not covered by the Posting of Workers Act but it is probably of interest to obtain a picture of the extent of these cases too. In building and painting it is common to have F-tax card holders, which entails special problems as regards ensuring compliance with health and safety and similar regulations. It may also be difficult to determine if a person with an F-tax card is to be regarded as self-employed or employee in terms of labour law, which is of significance as regards the effect of collective agreements and other labour legislation.

In what capacity are the posted workers in Sweden?

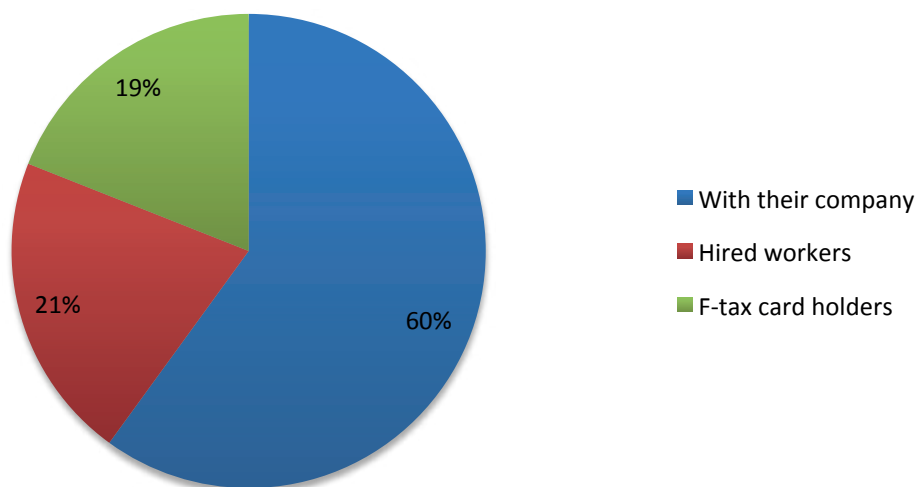


Figure 3

On the basis of the responses to the questionnaire it is not entirely simple to identify whether it is a matter of posting within the EU/EEA or if it is labour immigration from a third country that is not covered by the Posting of Workers Act. For example it may sometimes be contractors in the EU that have employees from a third country or a corresponding staff agency.

Analysis and summary

There are always special problems when a company is to move workers from where they live for work in another place and this is regardless of whether it is within a country or between countries. For example, the employees need a place to live, transportation, the opportunity to make visits home and run a normal household with regard to cooking, washing and personal hygiene.

In some industries they are used to dealing with this type of problem, since the type of work means that employees seldom work where they live. Examples are building and construction contracts but also those who install and dismantle large industrial systems and machines.

In other industries with fixed work sites such as warehousing and the food industry it is far more common for companies to hire in labour if they need to, due to peaks in the workload etc. They usually use a staff agency

in their own area of the labour market and escape the problems above. Those companies do not have the same procedures for ensuring that life outside the gates is tolerable.

This explains why there are regular revelations about foreign employees coming to harm from having to accept unreasonable housing for long periods. In the transport industry this is often the driver's truck. Swedish collective agreements have rules governing subsistence allowances to cover extra living expenses or other forms of compensation when working far away from home. This is not always the case in the posted companies and particularly not in the industries where posting is used to keep costs down as much as possible.

Most posting of workers to Sweden is in the construction sector. Of a total of over 18,000 posted workers in the LO area, more than 15,500 were in the building and construction sector. The building and construction sector have great experience of dealing with the fact that employees work a long way from home. The same can apply in forestry.

The motive for the large percentage of posted workers is a wish to reduce costs in one way or another. This may relate to avoiding Swedish tax legislation, corporate tax, social security contributions, occupational pension costs, insurance or other things, reducing labour cost and making it difficult for Swedish companies to compete.

Fast-moving contracting industries, where projects and work sites are moving all the time, are also particularly suitable for the type of competition that tries at any price to avoid the costs associated with more genuine establishments. Not infrequently these are cases of pure cheating and ruthless exploitation of employees, which are repeatedly reported in the media.

Thus it is considerably more unusual to have posting due to a shortage of qualified workers in Sweden. That it takes place to such a modest extent is perhaps to do with the difficulties associated with moving to another country with a foreign language and culture. According to the questionnaires, the people who nevertheless do this mainly come from the eastern parts of Europe and the Baltic states. Common to these countries is that employees there have, or have had, a lower pay level than in northern and western Europe and at times have also struggled with high unemployment. The social safety nets have also in many cases been poorer, which has meant greater pressure on people to find a livelihood even if it has meant scattered families and insecurity.

3. Trade union work on posting

Quite evidently there are specific problems when it comes to trade union monitoring of companies and employees who are here temporarily. Before now there was no notification requirement to an authority from which the trade union could obtain data. Such legislation enters into force on 1 July 2013. Companies often have no address or authorised representative on site and sometimes the workplace is not clear either. Posted employees generally cannot speak the language nor have any deeper knowledge about the rules that apply in Sweden or how our collective agreement system works.

Another problem, which is perhaps not particularly clear in the construction sector, is that some companies that use the EU's freedom of movement should really be regarded as permanently established in Sweden. It is well-nigh impossible for both the authorities and trade union organisation to know if a small posted company, specialising for example in renovation and repairs, is here temporarily or in practice conducts all its operations in Sweden.

What enables the trade union local organisations to nevertheless manage trade union monitoring is in many cases the provisions of the Act on Co-determination at Work concerning information and negotiation when engaging contractors. If the posted workers are here as employees of staffing agencies there are in addition local trade union representatives for most of the staffing agencies that can contact their local branch or national trade union.

Contact with posted companies

The most common way of getting in touch with posted companies is the outreach activity conducted by the local trade union organisations.

How does the branch get in touch with posted workers and companies? (Multiple-choice question)

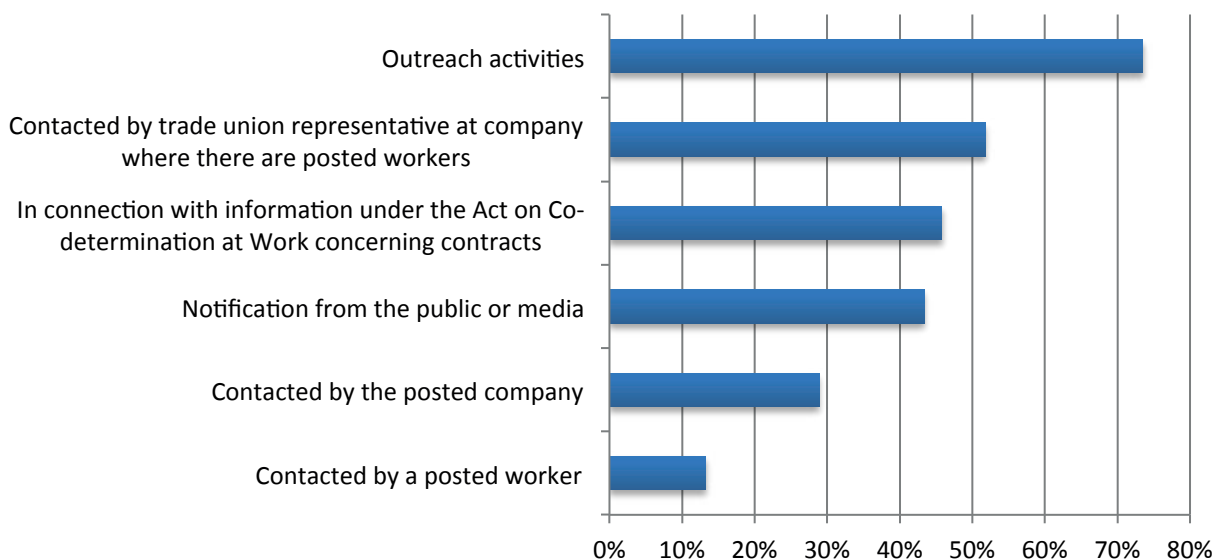


Figure 4

It is also common for a local branch to be contacted by a trade union representative at the workplace that has received a foreign contractor or foreign employees of a staffing agency, which is certainly often a direct consequence of the Act on Co-determination at Work.

Possibly somewhat surprisingly, local branches quite often are tipped off by the public or via the media.

Authorised representative

A problem in connection with the work of enforcing the Swedish system of regulation of pay and conditions of employment is that it may be difficult to get hold of the party to the agreement. A majority of the local branches asked report that this is the case sometimes, often or always. According to the interviews with those responsible for collective bargaining at the trade unions, the problem exists both in the first contact aimed at signing a collective agreement and in other contexts when a collective agreement has been signed and a trade union issue requires negotiation.

How common is it not to be able to get in touch with an authorised representative of the company?

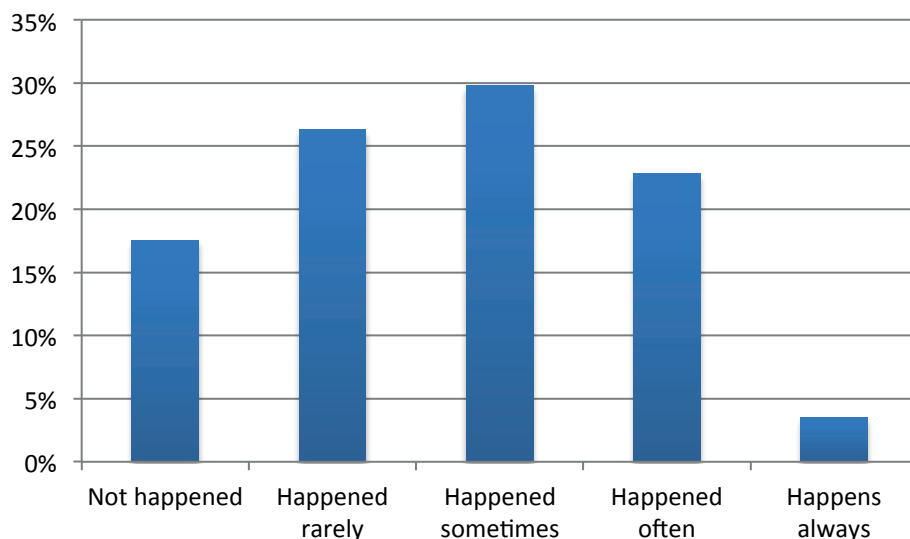


Figure 5

Collective agreement requirement

One response that sticks out somewhat in relation to what is known is the response to the question whether posted companies have refused demands for a collective agreement. As shown in Figure 6 about four out of ten of the trade union branches that responded to the question replied that they met with opposition in such cases.

Have posted companies refused demands for a collective agreement?

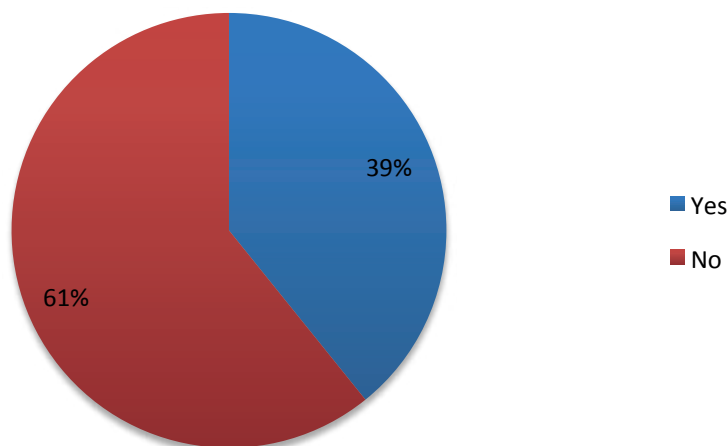


Figure 6

What may seem surprising is that no trade union, since the dispute between the Building Workers' Union and Laval un Partneri, has considered it necessary to take industrial action to reach a collective agreement. Nor has the National Mediation Office been involved to achieve an agreement in that way. In the interviews carried out with those responsible for collective bargaining at the trade unions a couple of possible explanations have been discernible.

One explanation is that the initial opposition to signing a collective agreements ceases when the company that engages the foreign contractor or staff agency demands an agreement. Many Swedish companies that engage posted companies or employees of staff agencies think that it is entirely reasonable to require an agreement as part of the business deal. If not for other reasons then at least for maintaining good relations with its own staff.

Another explanation, which is the complete opposite, but which may also be true in some cases, is that the local trade union organisation has not given priority to signing collective agreements since it has sometimes seemed difficult to break through the company's statement that they have pay and conditions that well match Swedish collective agreements. Eight out of ten local branches whose demand for a collective agreement was refused state that this was the argument that was used.

When posted companies assert that they have pay and conditions that are in parity with Swedish agreements it is sometimes a difficult task for the trade union organisation to find out if this is really the case. The questionnaire had an interlocking question on the type of documentation the trade union organisation had been given access to. In several cases there was no documentation but only an oral description.

The companies' arguments for refusing collective agreements

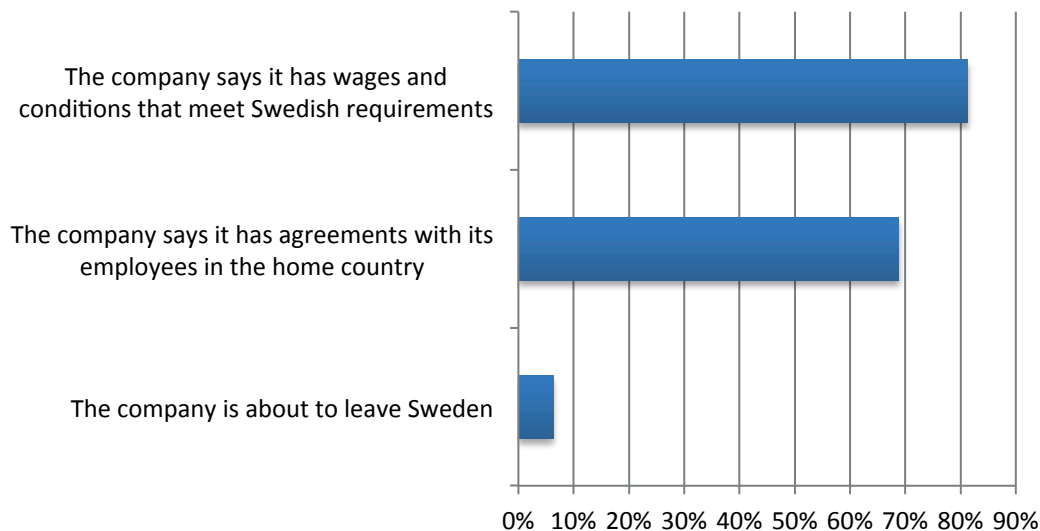


Figure 7

A branch of IF Metall states that when they wanted to find out what pay the posted workers earned the posted company maintained that this was confidential since it was a trade secret. It was solved after hard work but it took a long time because of the company's unwillingness to have an open dialogue.

In the cases where it has gone better the trade union has been given access to employment contracts, pay statements, insurance agreements and pension documents. In some cases even court documents from their country of origin. At the same time reliance on the documents presented is not particularly high. Only half of the branches that responded to the questionnaire say that they trust the data they have been given access to. The perception is that in many cases there are two widely differing employment contracts – one to show in Sweden and another with worse terms that the employee feels forced to approve since otherwise he would not get the job.

A branch in the Food Workers' Union states: "We often only get oral information or 'self-produced' documents, such as certificates of employment, that the employees have not seen."

In the transport industry there is an added complication. A questionnaire response from a branch of the Transport Workers' Union expressed it like this: "The entire reasoning around the demand for a collective agreement, industrial action etc. becomes irrelevant in the haulage industry, since dirty competition is exclusively from one-person businesses from other EU countries. Even if they were to sign a collective agreement, as contractors they would not themselves be covered by it. Entirely different measures are needed to rectify this. For example this could be more effective control of tax evasion, more serious sanctions for tax evasion, which can also be enforced against citizens of another EU country, restricted granting of F-tax cards for contractors without their own equipment or with only one customer."

Compliance

A major problem that many bear witness to is compliance, in other words monitoring and ensuring that employees really receive the agreed wages and have the agreed conditions of employment. The Swedish labour market model with collective agreements builds on such things as the trade union organisation being represented at the workplace. Then a collective agreement between two parties becomes the concern and the responsibility of both employer and employee. If an individual employer should want to deviate from the

agreement members and trade union representatives react, which also benefits the employer, since it makes irresponsible competition difficult.

In connection with posting of workers the difference becomes obvious. The foreign companies are based in other labour market systems and the Swedish agreements feel as though they are imposed from above. They are not members of the Swedish employer organisations, other than in exceptional cases, and feel no loyalty to the industry agreements.

One branch of the Building Workers' Union describes it like this: "Foreign companies have learned to sign collective agreements. The problem is monitoring compliance with the agreement as we have no members at the company and the employees are scared and do not dare get in touch with us. If they do they will be replaced and sent home."

Another branch of the Building Workers' Union: "I see it as extremely important that the main contractor has the responsibility for ensuring that employees of subcontractors receive what they are entitled to. As it is today the companies that come here are glad to sign agreements with us but they know that we have no possibility of checking compliance with its conditions. In other words they fix themselves up with a driving license for the Swedish labour market by signing an agreement they do not follow."

One branch of IF Metall writes: "We demanded documentation that the wages paid follow the collective agreement signed with the company. However, it has been shown that one company opened bank accounts that gave the company legal control of the money. At the same time the real (lower) wages were paid into the workers' own accounts."

A branch of the Municipal Workers' Union with posted workers in horticulture states: "Almost all of them are here on condition that they do not join a trade union. If they talk to us and tell us what their real wages and terms of employment are they are sent home. I would say that only a few get what they are entitled to under the agreement."

One response from a branch of the Transport Workers' Union takes as its starting point the cabotage rules and notes that it is a disaster for the haulage industry that Sweden is unable to control them.

Another response from a Transport Workers' Union branch notes: "Contracts and hiring out of workers by foreign companies are in my opinion only marginal occurrences in the haulage industry. The completely predominant dirty competition comes from so-called F-tax card holders from other countries, mainly from the EU. In the majority of cases they are probably not here more than six months at a time, but at the same time have neither a Swedish F-tax card nor A1 certificate. It is usually claimed that they have an F-tax card in their country of residence and/or pay their social security contributions there. The F tax card holders are often recruited by a third party. This party is, however, only a middleman that takes a percentage of the F tax card holders' remuneration."

A branch of the Commercial Employees' Union that has posted hired workers in warehouse work relate that they cooperate with the Transport Workers' Union locally to ensure compliance with the agreement. Since in that case they are staff agency employees working side by side with Swedish employees the work is somewhat easier.

It is an important but enormously onerous and difficult task as a trade union organisation to ensure compliance with collective agreements at companies where there are no members. For the Building Workers' Union, for example, it has meant the use of considerable resources for interpreting, since it would otherwise be difficult to talk to posted companies and workers.

Work with posting agreements at central level

Nothing in the responses to the questionnaire indicates that the problems of ensuring that the Swedish collective agreement model also functions for foreign companies and their employees, have anything to do with the existence or not of posting contracts.

IF Metall has been signing "foreign agreements" since 1975 with companies temporarily in Sweden. In general these concern contracts for installation or dismantling industrial facilities. The trade union's foreign agreements have then formed the basis of the posting agreement reported to the Swedish Work Environment Authority. IF Metall also states that they sign about 25 posting agreements annually.

Apart from IF Metall, the Municipal Workers' Union and SEKO (Union for Service and Communication Employees) have reported posting agreements to the Swedish Work Environment Authority. In the case of the Municipal Workers' Union there are two agreements: one for horticulture and one for garden landscaping. The other trade unions in the interviews have not given priority to the work of drawing up posting agreements since they have not felt any need. Despite this a number of trade unions are in the process of drawing up posting agreements as the wage bargaining round enters a calmer period with three-year agreements for the first time in many years. These include GS, the Swedish Union of Forestry, Wood and Graphical Workers, the Building Workers' Union and the Electricians' Union. In addition work is in progress at the Swedish Trade Union Confederation to draw up posting agreements for the staff agency industry.

Apart from IF Metall the trade unions mainly sign traditional industry agreements/application agreements with posted companies, regardless of whether they have drawn up posting agreements or not. They simply feel that foreign companies do not request posting agreements but willingly accept the normal national agreement.

The Commercial Employees' Union also notes that most foreign companies that come here and fall under that union's agreement area are here to stay, and consequently posting agreements are not relevant.

When application agreements have been signed with companies operating here on a temporary basis this takes place in two ways. Some unions enter into limited period agreements linked to the work input or project the posting refers to.

Other trade unions enter into agreements that apply until further notice; that is collective agreements that apply even when the company leaves the country and comes back later.

Analysis and summary

The trade union work of monitoring the scope of collective agreements and employees' conditions of employment has been made more difficult by a lack of support in legislation and the lack of official regulation. It may be difficult to contact posted companies and there are also many instances of cheating and illegalities.

A number of foreign companies, mainly in the construction sector, act as if they are posted but in practice have established themselves permanently in Sweden. They avoid Swedish legislation and rules regarding corporate tax, social security contributions, occupational pension costs, insurance and other things. This gives a lower labour cost and denies employees the social safety net that follows from being fully covered by the Swedish welfare systems.

Trade union monitoring seems to work best in the sectors and sub-markets where posted companies are sub-contractors to established Swedish companies that are concerned to uphold good relations with the trade union. The provisions of the Act on Co-determination at Work on negotiation with respect to important changes and contracts seem to work well in these contexts.

In the same way, posted workers employed by staff agencies often work for companies with functioning trade union activities, which generally facilitates the demand for collective agreements. At the same time it means that it is extremely difficult for trade unions to monitor compliance with agreements and rules in the sectors where the entire labour force is made up of posted workers employed by staff agencies, which may be the case for example in construction and forestry.

The trade union organisations also have considerable difficulty in checking compliance with agreements. The posted workers are in Sweden for a limited period. This fact, together with language difficulties and fear of losing their jobs, means that few choose to join a trade union or to demand their contractual rights. Several branches testify to the existence of "double" employment contracts – one to show the Swedish client company and corresponding trade union organisation and a secret one with worse conditions that the foreign workers have been forced to accept.

4. Proposed measures

The Swedish collective agreement model rests on self-regulation between the parties. With increased internationalisation and more foreign actors in Sweden a strengthening of the regulatory framework related to collective agreements is required. Changed conditions require new types of regulation aimed at creating good order in the labour market.

Despite free movement of goods, services, capital and persons in the internal market there is much the legislator can to maintain good order in the labour market. The Swedish legislator is not powerless, despite membership of the EU. It is important to emphasise this.

LO has already been promoting a series of measures to deal with the problems that arise in connection with posting of workers. In this context there is reason to recall these demands, which may be of full or partial significance in the context of the parliamentary Laval Inquiry. These policy demands cannot be refused with a general reference to EU law.

The measures mentioned here do not constitute an exhaustive list of possible measures. During the work of the inquiry LO intends to present further more detailed demands, in particular as regards methods and instruments for strengthening compliance with collective agreements.

Measures that LO already considers the legislator should implement

- The main contractor should be responsible for ensuring that all actors in a project follow current legislation and agreements. At present main contractors are allowed to engage subcontractors that do not comply with the rules without any risk of liability. This is despite the fact that it is quite evident that prices offered are not based on fair conditions.
- Abolish the rule that allows non-payment of income tax for work in Sweden for up to 183 days. This has already been done in Finland and Norway. One positive effect should be that employees are given longer contracts than the six months that is currently common.
- Introduce a statutory notification requirement. Foreign companies should register their presence in Sweden on pain of sanctions. The basic framework of such regulation will be introduced into Swedish law on 1 July 2013. But LO considers that the liability to sanctions should be extended to include those who engage unregistered foreign companies. Experience from Denmark, where such extended regulation has been introduced, shows that an effective notification requirement system also requires the purchasers to be liable to sanctions.
- Change Lex Laval and make it possible for trade union organisations to enter into confirmation agreements. Foreign companies that state that they apply equivalent or better pay and conditions of employment should not be immune from industrial action unless these conditions are confirmed with a Swedish trade union organisation.
- Introduce a statutory requirement that foreign service companies must have a legal representative. There must always be an authorised representative with whom an application agreement can be entered into. Without an authorised representative there is no one who can sign for the company.
- Introduce a statutory requirement for the provision of certain types of document. Companies must be obliged to provide payrolls, working hours lists and other information of importance in assessing the working and employment conditions applied by the company. The employer's obligation must cover both union and non-union workers. The documents must be available to the trade unions.

- The Public Procurement Act must be clear that conditions equivalent to collective agreement conditions can be required in public procurement. Public funds must not be used in such a way as to contribute to wage dumping and dirty competition. In addition, Sweden must ratify ILO Convention 94 on labour clauses in public contracts.
- Introduce a stricter interpretation of the term fixed place of business. A company that is active continually, regularly or periodically in Sweden for a 12-month period should be considered to be established in Sweden.

5. Annexes

Survey on the incidence of posted workers from the EU/EEA

Basic facts about posting

1 In which agreement areas/industries does posting of workers exist in your trade union branch? Posted workers are people who are here with the foreign company that employs them (contract workers) or workers who are hired out by foreign employers to carry out work in Sweden (staff agency workers).

.....

2 a About how many posted companies are currently operating in the respective agreement area/industry? (If this is not possible to specify, estimate the total number of posted companies.)

.....

2 b About how many posted companies are there today compared with five years ago?

More The same..... Fewer Don't know

3 a About how many posted workers are currently operating in the respective agreement area/industry? (If this is not possible to specify, estimate the total number of posted workers.)

3 b About how many posted workers are there today compared with five years ago?

More The same..... Fewer Don't know

4 a About how many foreign self-employed workers (including F tax card holders) are currently operating in the respective agreement area/industry?

4 b About how many posted self-employed workers are there today compared with five years ago?

More The same..... Fewer Don't know

5 a Which countries do the posted companies come from?

From Don't know

5 b Are companies from any country predominant and in that case which?

Yes, from: No Don't know

6 a Which countries do the posted workers come from?

From Don't know

6 b Are workers from any country predominant and in that case which?

Yes, from: No Don't know

7 Do the workers ever come from a different country than the company that employs them? Is this common? Give examples.

Common..... Uncommon Don't know Example

8 Estimate in months how long an average posted worker normally works in Sweden. (If there are great differences between different agreement areas/industries please illustrate with examples.)

..... months. Don't know ...

Other information

9 In what role/position are the foreign workers here? Estimate the percentage.

Here with the company that employs them%.

Hired out to Swedish company%.

Here as self-employed worker (F tax card holder) %

Don't know ...

10 Own comments, additions or clarifications:

.....

Trade union work on posting

11 How does the branch get in touch with posted companies or workers? Several alternatives may be marked.

... Outreach activities

... Contacted by trade union representative at company where there are posted workers

... In connection with information under the Act on Co-determination at Work concerning contracts

... Contacted by the posted company

... Contacted by a posted worker

... Notification from the public or media

... Other, please state how:

.....

12 How common is it not to be able to get in touch with an authorised representative of the company in connection with demands for collective agreements or other trade union matters?
Not happened ... Happened rarely ... Happened sometimes ... Happened often ... Happens always...
Don't know ...

13 a Have posted companies refused demands for a collective agreement?
Yes..... No Don't know (If No or Don't know, go to question 15.)

13 b If you replied Yes to the question above, state the company's arguments. Several alternatives may be marked.
... The company says it has wages and conditions that meet Swedish requirements
... The company says it has agreements with its employees in the home country
... The company is about to leave Sweden
Other arguments

13 c If in 14 b above, you marked that the company has stated it has conditions that meet Swedish requirements, what type of documentation have they presented?
.....

13 d Was there reason to suspect that the documentation was false?
Yes No

13 e Has industrial action been taken against posted companies aimed at achieving a collective agreement?
Yes No

14 Apart from contacts with posted employers and employees, have other measures been taken to ensure that the operations are run on reasonable terms?
Yes No If yes, what are they?

15 Own comments, additions or clarifications:
.....



Trade unions and the EU: Guest in reality

This report gives a qualified picture of the incidence of posting of foreign workers in the LO (Swedish Trade Union Confederation) affiliates' industries. The report shows, for example, that in construction posted workers make up almost 19 per cent of the total workforce and in forestry about 11 per cent. In other industries the percentage of posted workers is more modest. The motives behind posting of workers in the LO industries seem often to be to reduce the price of labour. The report also describes how trade unions work to ensure that foreign workers are not exploited in the Swedish labour market.

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