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FREE MOVEMENT OF WORKERS AND THEIR POSTING IN THE FRAMEWORK OF TRANSNATIONAL SERVICE PROVISION

In this new NewsLetter of the EU-funded project on **cooperation as a key element to overcome the challenges of posting of workers in the care, construction, transport and agriculture sectors**, we would like to highlight the differences between free movement of workers and posting of workers in the scope of transnational provision of services.

Among the fundamental freedoms that make up the European single market (free movement of goods, persons, services and capital, and freedom of establishment), *the freedom to provide services* (Article 56 of the Treaty on the Functioning of the European Union, TFEU) and *the free movement of persons* form the framework within which the transnational phenomenon of the temporary posting of workers in the European Union takes place.

However, *what do we mean by a posted worker?* To find out, we need to look at the definition given by Directive 96/71/EC, which considers a worker to be posted when **...a person who carries out his work in the territory of a Member State other than the State in which he normally works (Art. 2.1 of Directive 96/71).**

This definition makes a clear distinction between what is considered to be a *posted worker* and those who are migrant workers, those who are the product of new recruitment or those who provide their services on the basis of another formula such as "secondment".

Furthermore, in accordance with the aforementioned *Directive*, a posted worker can only be understood as a worker who is posted within a Member State and who comes from another Member State.

In order for there to be a **posting of workers**, **4 characteristics** must be met:

- the posting must be temporary: maximum 12 months (can be extended to 18 months);
- the posting must not be to replace another worker who has already reached this maximum posting period;
- there must be a relationship of dependence (*organic link*) between the worker and the sending undertaking for the entire duration of the posting;
- and the work is carried out on behalf of and in the interest of the sending undertaking and in a centre of the undertaking or its group of undertakings.

Consequently, a clear distinction must be made between migrant workers and those who are engaged in the transnational provision of services in the context of posting.