CONTENTS

[1. HOME 2](#_Toc72481916)

[1.1. Who is the web page intended for? 2](#_Toc72481917)

[1.2. Definition of posted workers 2](#_Toc72481918)

[1.3. Permitted methods of posting 2](#_Toc72481919)

[2. POSTING TO RS 3](#_Toc72481920)

[2.1. Obligations of employers 3](#_Toc72481921)

[2.1.1. Social security – obtaining certificates 3](#_Toc72481922)

[2.1.2. Registration of beginning of performance of service 3](#_Toc72481923)

[2.1.3. Provision of rights 4](#_Toc72481924)

[2.1.4. Obligations to supervisory authorities 7](#_Toc72481925)

[2.2. Obligations of posted workers 7](#_Toc72481926)

[2.2.1. Posted workers who are citizens of the member states of the EU, EEA or the Swiss Confederation 7](#_Toc72481927)

[2.2.2. Posted workers who are citizens of third countries 7](#_Toc72481928)

[2.3. Fines and penalties 8](#_Toc72481929)

[2.4. Further information 9](#_Toc72481930)

[3. POSTING FROM THE RS 9](#_Toc72481931)

[3.1. Obligations of employers 9](#_Toc72481932)

[3.1.1. Employment contract 9](#_Toc72481933)

[3.1.2. Obtaining A1 certificate 10](#_Toc72481934)

[3.1.3. Notifying the Health Insurance Institute of Slovenia 11](#_Toc72481935)

[3.1.4. Maintaining the employment relationship 11](#_Toc72481936)

[3.1.5. Ensuring the rights of posted workers 11](#_Toc72481937)

[3.2. Obligations of posted workers 12](#_Toc72481938)

[3.2.1. Declining to be posted 12](#_Toc72481939)

[3.2.2. Arrangement of residence 12](#_Toc72481940)

[3.3. Fines and penalties 12](#_Toc72481941)

[3.4. Further information 13](#_Toc72481942)

[4. BREXIT 13](#_Toc72481943)

[4.1. Citizens of the United Kingdom in the Republic of Slovenia 13](#_Toc72481944)

[4.2. Posting of workers to the United Kingdom 13](#_Toc72481945)

[5. LEGISLATION 14](#_Toc72481946)

[6. FREQUENTLY ASKED QUESTIONS 15](#_Toc72481947)

[6.1. Most frequent violations by employers 22](#_Toc72481948)

[6.2. Most frequent violations by workers 23](#_Toc72481949)

[7. COMPETENT INSTITUTIONS AND INTEREST ASSOCIATIONS 24](#_Toc72481950)

[7.1. Competent institutions 24](#_Toc72481951)

[7.2. Interest associations 25](#_Toc72481952)

# HOME

Free movement of services – which in addition to free movement of persons, goods and capital is one of the four fundamental freedoms on the basis of which the internal EU market functions, as defined in the Treaty on European Union – means that a company or self-employed individual who fulfils the conditions for performing a certain activity in their own country may perform this activity anywhere in the EU. An employer may send its employee to another country to perform a certain task for the employer as part of the provision of a service (post a worker to another country).

##  Who is the web page intended for?

In order to make the rights and obligations in the situation of posting of workers to be more transparent, the web page intends to cover the broadest possible range of interested public, and the text is organised in a manner that enables specific groups (**foreign service providers, workers, employers, competent civil servants**) to easily find relevant information about the posting to and from the Republic of Slovenia (hereinafter referred to as: RS).

## Definition of posted workers

In accordance with the provisions of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17), a posted worker is any individual, regardless of their citizenship, who as part of a cross-border performance of services by a Slovenian or foreign employer by which they are employed, and where on this basis they are included in adequate social security schemes in the country where the employer is based, temporarily performs work in an EU member state that is not the one in which they usually perform work.

## Permitted methods of posting

* posting of workers to the territory of one of the member states on its own behalf and under its own management on the basis of a contract signed between the company that has posted the workers and the party for which the services are intended;
* posting of workers to an institution or company owned by the group in the territory of one of the member states on the basis of a comparable act in the case of posting to an affiliated company;
* when a company or agency providing work for the user company provides the user company based in the territory of a member state with a worker's work.

# POSTING TO RS

An employer based in a member state of the European Union, the European Economic Area or the Swiss Confederation (hereinafter referred to as: foreign employer) may, for the purpose of cross-border performance of services, post workers who are in an employment relationship with it to Slovenia, provided that:

* it usually performs the activity in the country where it is based, and that the posted worker usually does not perform work in the Republic of Slovenia, as evidenced by a valid A1 certificate
* it has not in the last three years been issued with a fine for a minor offence related to the exercise of rights of posted workers who perform work in the Republic of Slovenia, as stipulated by the law regulating employment relationships,
* the service is provided as part of the activity for which the foreign employer is registered in the country where it is based, except in the event that the worker is posted to an affiliated company, and
* the service is provided in one of the permitted ways, meaning that:
	+ the service is provided on behalf of and under the supervision of the foreign employer on the basis of a contract concluded with the service customer;
	+ the service is provided on the basis of a comparable act in the case of posting to an institution or company based in the RS, with which the foreign employer has a capital connection;
	+ posting is implemented as part of the provision of the work of employees to a user with a registered office or a residence in the RS.

## Obligations of employers

### Social security – obtaining certificates

Before workers are posted, the employer is obliged to obtain for each posted worker in the member state where it is based a certificate of the social security regulations that are applicable to the holder (A1 certificate) or other adequate certificate issued in accordance with the valid international contracts on social insurance that are binding on the Republic of Slovenia.

###  Registration of beginning of performance of service

Before the service commences, the foreign employer is obliged to complete an online registration at the Employment Service of the RS (instructions) or send to the address Zavod RS za zaposlovanje, Rožna dolina, c. VI/7, 1000 Ljubljana, a written notification about the beginning of the performance of service that includes information about the:

* name and registered office of the foreign employer,
* personal name, date of birth, and citizenship of the posted worker and address of temporary residence in the Republic of Slovenia,
* personal name and date of birth of the person authorised by the foreign employer for contacts with the supervisory authorities, including the sending and receiving of documents and notifications and service in accordance with the provisions of the law regulating general administrative procedure
* type of service,
* job title of the posted worker,
* planned date of the beginning and end of the performance of service – period of posting,
* address or, if the service will be performed at a location without an address, location where the service will be performed

The Employment Service of the RS issues a statement confirming the online or written registration.

If circumstances occur during the period of posting due to which it was not possible to perform the cross-border service within 12 months, the foreign employer may extend the performance of service to 18 months, provided that this is reported to the Employment Service of the RS with an explanatory note.

### Provision of rights

Foreign employers are obliged to provide their workers with rights during their posting to the RS in accordance with the regulations which apply in the RS and the provisions of the collective agreement for a particular activity that regulate working hours, breaks and rest periods, night work, minimum annual leave, pay, occupational health and safety, special protection of workers and affirmative action if this is considered more favourable for workers.

In the event of services that are not performed in the activity of construction, the following may be waived:

* provision of the minimum annual leave and amount of wage in the case of temporary work that has already commenced and that is an integral part of the contract pertaining to the supply of goods and is performed by the expert staff of the supplier, if it does not take more than eight days;
* provision of the amount of wage if the temporary work performed by posted workers takes no longer than one month in an individual calendar year.

The basic scope of the above-mentioned **minimum rights of workers** that foreign employers are obliged to respect when providing rights to their posted workers is determined with the following regulations:

**Regarding payment for work on the basis of the Minimum Wage Act and the Labour Relationships Act**

The Minimum Wage Act (Official Gazette of the Republic of Slovenia, No. 13/10, 92/15 and 83/18) stipulates that the minimum wage is a monthly wage for the work done within full‑time employment. Not included in the minimum wage are bonuses determined by laws and other regulations and collective agreements, performance bonuses and remuneration for performance agreed with a collective agreement or employment contract.

In accordance with the provisions of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the Constitutional Court, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE), a worker is eligible for seniority bonus and bonuses for special working conditions related to the distribution of working time, i.e. for night work, overtime, Sunday work and work on public holidays and work-free days pursuant to the an Act; special working conditions related to special burdens at work, unfavourable impacts of the environment and hazards at work which are not considered within the degree of difficulty of work may be determined with a collective agreement.

The amount of bonuses is determined in the collective agreement at the level of the activity.

The amount of the minimum wage in the RS is determined once a year, in the span between 120% and 140% of the minimum costs of living and taking into account any increase in consumer prices, wage trends, economic situation and economic growth and employment trends. The amount of the minimum wage is determined by the minister responsible for labour after consultations with social partners.

As of 1 January 2021, the minimum gross monthly wage for full-time work is EUR 1,024.24.

**Regarding annual leave, working time, special protection of workers and prohibition of discrimination as specified in the Employment Relationships Act**

In accordance with the provisions of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the Constitutional Court, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE) the annual leave in an individual calendar year may not be shorter than four weeks, regardless of whether the worker works full-time or part-time, while the minimum number of days of a worker's annual leave shall depend on the distribution of working days within the week of an individual worker. A worker has the right to one additional day of annual leave for every child in their family under the age of 15, while an older worker, a disabled person, a worker with at least a 60% physical impairment or a worker who cares for a child in need of special care in accordance with the regulations governing family benefits has the right to at least three additional days of annual leave.

The employer is obliged to pay annual leave allowance in the amount of at least the minimum wage to a worker who is eligible for annual leave. A worker is eligible for a proportionate part of annual leave allowance if they have the right to use only a proportionate part of annual leave on the basis of a part-time employment contract.

The provisions of the Labour Relationships Act also regulate working time and minimum rest, stipulating that working time consists of the effective working hours (hours during which a worker carries out their work, which means that they are at the employer’s disposal and are required to fulfil their working obligations arising from the employment contract) and the 30-minute break that a worker who works full-time is eligible for during daily working time. The Act furthermore stipulates that full-time work shall not exceed 40 hours a week, and that a working week shall not exceed 56 hours. An Act or collective agreement may also provide that full-time work consists of working time that is shorter than 40 hours a week, although not shorter than 36 hours a week, except for jobs in which there is a greater risk of injury or health impairment.

In addition to rest during daily working time, a worker has the right to rest between two successive working days of at least 12 uninterrupted hours within a period of 24 hours, and to weekly rest of at least 24 uninterrupted hours within a period of seven successive days, where the minimum duration of a weekly rest shall be considered as the average in a period of 14 successive days.

By means of special conditions for work and employment, the Labour Relationships Act provides special protection in an employment relationship, among other protection, to workers under the age of 18, and to workers who are eligible for such protection due to pregnancy or parenthood.

In accordance with the Labour Relationships Act, both indirect and direct discrimination against workers is prohibited – employers have the obligation to provide equal treatment to workers irrespective of their nationality, race or ethnic origin, national or social background, gender, skin colour, state of health, disability, faith or beliefs, age, sexual orientation, family status, trade union membership, financial standing or other personal circumstances.

**Regarding occupational health and safety, as regulated by the Health and Safety at Work Act**

The fundamental aspects of occupational health and safety are regulated in the Health and Safety at Work Act (Official Gazette of the Republic of Slovenia, No. 43/11) or implementing regulations on the basis thereof that regulate individual specific areas or procedures. The fundamental duties of employers as stipulated by the Health and Safety at Work Act are:

* Every employer must produce and adopt a written safety statement in which the manner and measures for ensuring safety and health at work are determined.
* The employer ensures health and safety at work in particular with the following measures:
	+ entrusting the implementation of safety tasks to a safety officer, and the implementation of health measures to an occupational health practitioner;
	+ taking measures to ensure fire safety, first aid and evacuation;
	+ informing workers of the introduction of new technologies and equipment;
	+ training workers in safe and healthy working practices;
	+ providing means and equipment for personal protection to workers, health examinations of workers and periodic inspections of the working environment and equipment.
* The employer defines specific health requirements for specific work.
* The employer may give hazardous substances to a worker for their use only if such substances are accompanied by documentation in a language the worker understands.
* The employer must inform the labour inspection about the commencement of work 15 days prior thereto.
* The employer must report to the labour inspection any fatal injury or injury due to which the worker is unable to perform work, any collective accident, dangerous occurrence or detected occupational disease.
* The employer must allow worker representatives to take part in discussions on all questions relating to health and safety at work.
* The employer must finance all acts and measures related to health and safety at work.
* The employer must maintain all records and keep all documentation under the law.

**Regarding the conditions for providing the work of employees to the user under the Labour Market Regulation Act**

In accordance with the Labour Market Regulation Act (Official Gazette of the Republic of Slovenia, No. 80/10, 40/12 – ZUJF, 21/13, 63/13, 100/13, 32/14 – ZPDZC-1, 47/15 – ZZSDT, 55/17, 75/19, 11/20 – decision of the US and 189/20 – ZFRO), an employer providing work may start carrying out the activity if:

* it has not incurred an enforceable fine for violating the regulations governing the employment relationships, employment and work of foreigners, health and safety at work, undeclared work and the labour market in the last two years.
* it has had no outstanding liabilities arising from remuneration for work in the last two years.
* it has not appeared in the last two years on the list of entities or persons that are liable for tax and which have outstanding tax liabilities and/or on the list of entities or persons not filing tax returns as published by the Tax Administration of the Republic of Slovenia and the Customs Administration of the Republic of Slovenia, and has no outstanding tax liabilities on the day of filing the application.
* it meets the staff, organisational, spatial and other conditions prescribed in detail by the minister responsible for labour;
* the provision of temporary work is registered as its principal activity.
* it provides a bank guarantee in the amount of not less than EUR 30,000;
* it has a subsidiary established in the territory of the RS, if it is a foreign employer,
* a foreign employer that wants to provide the work of employees to a user in the territory of the RS submits an application for a licence and entry in the records with the ministry responsible for labour. Attached to the application should be a copy of the document not older than one year on the basis of which the employer may carry out the activity in the country where it is based, and a certified translation of that document into the Slovenian language and evidence of compliance with the listed conditions that cannot be obtained ex officio. Entry in the register shall be made on the day the decision issued by the ministry responsible for labour becomes final, concerning which the ministry issues a certificate to the employer providing work. The activity may commence on the date on which it is entered in the register.

When providing the defined rights to posted workers, a foreign employer is obliged to respect, in addition to the provisions of the listed regulations, the related provisions of the collective agreement for the activity in which the service is performed, if such an agreement is concluded for the country's territory. The record of collective agreements concluded for the country's territory is maintained by the ministry responsible for labour, while the data that employers need to calculate all remuneration from work on the basis of the most important collective agreements may be obtained by selecting the adequate collective agreement on the website of the Chamber of Commerce and Industry of Slovenia.

### Obligations to supervisory authorities

A foreign employer ensures that, for the duration of the cross-border performance of service in the Republic of Slovenia, the following documents are kept at the location where the service is performed and that these are produced upon the request of a supervisory authority: a copy of the contract between the customer of the service and the foreign employer or a comparable act in the case of posting to an affiliated company, a certificate of registration of the commencement of the performance of service, an extract from the relevant register for the performance of activity, certificate of registration in the act regulating craft activities, certificate on the legal establishment in the country of employment, copies of employment contracts, copies of payrolls, record of presence, documents from the field of occupational health and safety, evidence of wages paid or copies of equivalent documents for all posted workers, and A1 certificates. A foreign employer ensures that the listed documents are translated into the Slovenian language upon request from a supervisory authority.

##  Obligations of posted workers

Foreigners who are posted to the RS by a foreign employer must have a regulated residence during the posting in accordance with the provisions of the Foreigners Act (Official Gazette of the Republic of Slovenia, No. 1/18 – official consolidated text, 9/18 – corr. and 62/19 – decision of the Constitutional Court).

### Posted workers who are citizens of the member states of the EU, EEA or the Swiss Confederation

If a worker posted by a foreign employer to the RS is a citizen of a member state of the EU, they may reside in the territory of the RS without registering their residence for up to 90 days from the day of entry into the country. If they wish to reside in the RS for longer than 90 days, they must register their residence at the administrative unit covering the area where they reside prior to the expiry of the permitted 90-day residence.

The administrative unit issues a certificate on the submission of an application for a residence registration certificate to the EU citizen that permits them to reside until the final decision on the application. The administrative unit issues a certificate on registration of residence if the worker has a valid identity card or passport and proof of performance of work.

### Posted workers who are citizens of third countries

A worker posted by a foreign employer to the RS who is a citizen of a country that is not an EU member state must, in order to enter and reside in the RS, previously obtain a single permit for cross-border performance of services with posted workers. An application to be issued a single permit may be filed by the foreign employee or their employer. The foreigner must submit an application to be issued the first permit at the relevant diplomatic or consular representation of the RS abroad, while the employer may submit an application at the administrative unit covering the area where the foreigner will reside, or at the administrative unit covering the area where it is based or where the activity will be performed.

The administrative unit issues a single permit if the foreigner meets the conditions of having a valid passport and sufficient means of subsistence and having social insurance in the country from which they are posted. A single permit is issued for the duration of the work determined in the contract or act on posting or for a maximum period of one year, with the possibility of extension.

An application for issue or extension of a single permit for cross-border performance of services with posted workers is submitted on a 9/1 form, which is an annex to the Rules on the method of means testing for sufficient funds in the issuing procedures for residence permits (Official Gazette of the Republic of Slovenia, No. 44/18).

## Fines and penalties

1. In accordance with Article 25 of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17; ZČmIS):
* A fine of EUR 6,000 to EUR 60,000 is imposed on a foreign employer that performs a cross-border service despite not meeting the relevant conditions. A fine of EUR 6,000 to EUR 60,000 is also imposed on the responsible person
* A fine of EUR 20,000 to EUR 60,000 is also imposed on an employer that:
	+ does not register the service before the service starts to be performed or does not perform the service in accordance with the registration of the service;
	+ does not keep documentation or does not produce documentation when called upon to do so by the competent supervisory body.

A fine of EUR 200 to EUR 2,000 is also imposed on the responsible person.

1. In accordance with Article 145 of the Foreigners Act (Official Gazette of the Republic of Slovenia, No. 1/18 – official consolidated text, 9/18 – corr. and 62/19 – decision of the Constitutional Court), a fine of EUR 800 to EUR 1,200 is imposed on a foreigner who resides in the Republic of Slovenia illegally or does not reside in accordance with the purpose for which the residence permit has been issued.
2. In accordance with Article 217 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the Constitutional Court, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE) a fine of EUR 3,000 to EUR 20,000 is imposed on an employer who fails to provide workers posted for temporary work in the Republic of Slovenia with the rights that regulate: working hours, breaks and rest periods, night work, minimum annual leave, pay, occupational health and safety, special protection of workers and affirmative action if this is considered more favourable for workers.
3. In accordance with Article 177 of the Labour Market Regulation Act (Official Gazette of the Republic of Slovenia, No. 80/10, 40/12 – ZUJF, 21/13, 63/13, 100/13, 32/14 – ZPDZC-1, 47/15 – ZZSDT, 55/17, 75/19, 11/20 – decision of the Constitutional Court and 189/20 – ZFRO) a fine of EUR 10,000 to EUR 30,000 is imposed on an employer providing work if they:
	* fail to guarantee a posted worker all the rights arising from the employment relationship during the period of employment,
	* limit a posted worker's liberty to enter an employment relationship with the user after the period for the provision of work expires,
	* require a posted worker to carry out work in the framework of other activities for which they are not registered, or carry out work with posted workers that they have been awarded on the basis of contracts concluded under civil law, or
	* demand payment or other compensation from a posted worker or candidate for employment due to the posting to a user or the conclusion of an employment contract with a user.

A fine of EUR 5,000 to EUR 10,000 will also be imposed for the same offence on an employer providing work that employs ten or fewer workers, and a fine of EUR 4,000 on the responsible person of the employer providing work.

1. In accordance with Article 178 of the Labour Market Regulation Act (Official Gazette of the Republic of Slovenia, No. 80/10, 40/12 – ZUJF, 21/13, 63/13, 100/13, 32/14 – ZPDZC-1, 47/15 – ZZSDT, 55/17, 75/19, 11/20 – decision of the Constitutional Court and 189/20 – ZFRO) a fine of EUR 10,000 to EUR 30,000 is imposed on a user if it:
	* fails to comply with the regulations governing employment relationships during a posting period,
	* fails to allow a posted worker to be informed of job vacancies or types of work provided by the user,
	* fails to provide a posted worker with opportunities to conclude a permanent employment contract with the user that is equal to the opportunities provided to other workers employed by the user, or
	* accepts a posted worker from an employer providing work who does not hold a licence to carry out the activity and is not entered in the register or records.

A fine of EUR 5,000 to EUR 10,000 will also be imposed for the same offence on a user that employs ten or fewer workers, and a fine of EUR 4,000 on the responsible person of the user.

## Further information

**Information related to entry and residence**

**Information regarding enforcement of legislation**

**All other information**

# POSTING FROM THE RS

A Slovenian employer that usually performs their activity in the Republic of Slovenia and does not violate the most important provisions of labour legislation related to worker rights may, with the purpose of performing a service, post a worker to another member state of the EU, the EEA or the Swiss Confederation, in one of the following permitted ways:

* service is performed on behalf of and with the Slovenian employer that posts them from Slovenia,
* service is performed on the basis of an act of the institution or company based in another member state,
* posting is implemented as part of the provision of work of employees to a user based in another member state.

## Obligations of employers

### Employment contract

An employer may temporarily post a worker for work to another EU member state in accordance with the employment contract. If the employment contract does not envisage the possibility of work abroad, the employer and worker must conclude a new employment contract and, if the possibility of work abroad is already envisaged in the employment contract, it is permitted to determine the conditions of work abroad in detail with an annex to the contract.

In addition to the mandatory elements under the law regulating employment relationships, the employment contract or the annex on the basis of which the worker will be posted must also contain provisions concerning:

* duration of the work abroad,
* holidays and work-free days,
* minimum annual leave,
* amount of the wage and the currency in which it is to be paid,
* additional insurance for healthcare services abroad,
* other remuneration in money or in kind for which the worker is eligible for the duration of their work abroad,
* manner of provision and exercise of the rights related to the payment for work and other remuneration that is, in accordance with the regulations of the country where the work is performed, provided in a different manner, although at least to the extent guaranteed by that law or more favourably,
* conditions for the return to Slovenia.

### Obtaining A1 certificate

Before a worker is posted, the employer is obliged to obtain an A1 certificate for the worker that confirms that the conditions are fulfilled for the social security regulations of the Republic of Slovenia to still be applied for the worker during their work in another country and that this exempts them from the obligation to secure adequate insurance in the country where they are posted.

The Health Insurance Institute of Slovenia decides on the issuing of the A1 certificate, and the procedure differs depending on the specifics of work of an individual worker.

If the employer wants to post a worker who is a third-country national, it is necessary to consider, in the procedure to issue the A1 certificate, certain specifics that apply in individual countries (the United Kingdom, Denmark, Norway, Iceland, Liechtenstein and the Swiss Confederation). Detailed information is available in the "Frequently asked questions" tab.

#### Occasional performance of work in another member state of the EU, the EEA or the Swiss Confederation (Article 12 of Regulation (EC) No. 883/2004)

The employer submits an application for a certificate through the SPOT system not earlier than 30 days before the planned beginning of the posting, and attaches to the application a copy of the employment contract concluded with the worker due to be posted and the contract regarding the performance of service or the act on posting.

The Health Insurance Institute of Slovenia issues the A1 certificate not later than within 5 working days if the following conditions are fulfilled:

* the worker for whom the application for the A1 certificate was submitted does not already have a valid A1 certificate issued for the same period,
* the employer has been entered in the Slovenian Business Register for at least two months,
* the employer has an opened transaction account that is registered in the tax register in accordance with the law regulating the Financial Administration, and which is not blocked,
* the employer that employs 5 to 10 workers employs at least one worker who on that basis has been continuously included in the compulsory pension and disability insurance, compulsory health insurance, insurance for parental care and unemployment insurance (hereinafter referred to as: compulsory social insurances) in the Republic of Slovenia for at least six months or, if the period since the establishment is shorter, since the establishment, or that the employer that employs more than 10 workers employs at least three workers who, on that basis, have been continuously included in the compulsory social insurances in the Republic of Slovenia for at least six months or, if the period since the establishment is shorter, since the establishment,
* in the last twelve months or, if the period since the establishment is shorter, since the establishment, the total number of hours of the inclusion of all workers employed by the employer in that period in the compulsory social insurances on the basis of posting has not exceeded 80% of the total number of hours of the inclusion of the same workers in the compulsory social insurances on the basis of the employment relationship with the same employer,
* the employer states under criminal and material liability that it actually and usually performs the activity in the Republic of Slovenia,
* a fine for a violation related to payment for work, working hours or undeclared employment has not been imposed on the employer more than once in the last three years,
* the employer has submitted withholding tax returns for income from the employment relationship and has settled outstanding tax liabilities for the last six months before the month in which the application for the A1 certificate or for the period since the establishment, if it is shorter than six months, and
* the worker to be posted has been continuously included in the compulsory social insurances in the Republic of Slovenia on the basis of full-time employment or in adequate social insurances on another legal basis for at least 30 days. The condition of full-time employment does not apply for a worker included in the compulsory social insurances in the Republic of Slovenia on the basis of part-time employment if the working hours are shortened in accordance with the regulations on pension and disability insurance, or if they have been employed by the employer that intends to post them part time for at least six months.

#### Usual performance of work in two or more member states of the EU, the EEA or the Swiss Confederation

If a worker usually performs as part of the employment relationship with a Slovenian employer work for that employer in two or more countries, it is possible to obtain an A1 certificate that is valid for work in multiple countries. The application and procedure differ depending on the nature of the work that will be performed by the posted worker.

In the case of performance of work in the activities of installation, servicing or transport in road traffic, an employer or self-employed person based in the Republic of Slovenia may submit an application for the A1 certificate through the e-VEM national portal for companies and entrepreneurs. In other cases, in order to obtain the A1 certificate an employer or self-employed person based in the Republic of Slovenia or a worker employed in another EU member state sends to the Health Insurance Institute of Slovenia a correctly completed Questionnaire for the issuing of the A1 certificate.

### Notifying the Health Insurance Institute of Slovenia

After obtaining the A1 certificate, an employer is obliged to notify the Health Insurance Institute of Slovenia about all changes that occur during the period of posting, in particular if the posting has not been implemented or if it was terminated prematurely.

### Maintaining the employment relationship

The employment relationship between the employer and the posted worker must exist for the entire duration of the posting, with a special emphasis on the performance of work as part of an organised work process of the employer and by its instructions and under its supervision. Exceptions are postings by employers providing work for another user (temporary work agencies) in accordance with the provisions of the law regulating employment relationships.

### Ensuring the rights of posted workers

If it is more favourable for the worker, employers are obliged to respect the provisions of the valid regulations and relevant collective agreements declared as generally applicable of the country where the worker is posted, in respect of ensuring the rights of the posted worker in regard to:

* amount of wage, including performance bonus and other bonuses,
* duration of annual leave and amount of annual leave allowance,
* working hours, rest periods and breaks,
* protection of workers in regard to pregnancy and parenthood and protection of workers under the age of 18 years,
* prohibition of discrimination,
* occupational health and safety, and
* conditions for the provision of work to the user.

For information about the extent and manner in which the listed rights are regulated in the national regulations of other countries and about other obligations prescribed by these countries in these circumstances, employers may turn to the competent authorities of the country where workers will be posted.

##  Obligations of posted workers

### Declining to be posted

If the valid employment contract envisages work abroad, the worker may decline being posted only if justifiable reasons exist, such as:

* pregnancy,
* care of a child under the age of seven years,
* education and care of a child under the age of 15 years if the worker lives alone with the child and provides for their education and care,
* disability,
* health reasons,
* other reasons determined with the employment contract or collective agreement that is directly binding on the employer.

### Arrangement of residence

Posted workers must arrange their residence in the EU member state where they are to be posted in accordance with the national regulations of the EU member state where the work will be performed. For information about the relevant procedures the employer should refer to the competent authorities of the country where workers will be posted.

##  Fines and penalties

In accordance with Article 217.a of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the Constitutional Court, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE), an employer is fined from EUR 1,500 to EUR 4,000 if it fails to ensure the worker their return to Slovenia after the termination of work abroad. A small employer that is a legal person, an individual sole trader or an individual who performs independent activities is fined from EUR 300 to EUR 2,000 for the same offence.

In accordance with Article 177 of the Labour Market Regulation Act (Official Gazette of the Republic of Slovenia, No. 80/10, 40/12 – ZUJF, 21/13, 63/13, 100/13, 32/14 – ZPDZC-1, 47/15 – ZZSDT, 55/17, 75/19, 11/20 – decision of the Constitutional Court and 189/20 – ZFRO) a fine of EUR 10,000 to EUR 30,000 is imposed on an employer providing work if they:

* fail to guarantee a posted worker all the rights arising from the employment relationship during the period of employment,
* limit a posted worker's liberty to enter an employment relationship with the user after the period for the provision of work expires,
* require a posted worker to carry out work in the framework of other activities for which they are not registered, or carry out work with posted workers that they have been awarded on the basis of contracts concluded under civil law, or
* demand payment or other compensation from a posted worker or candidate for employment due to the posting to a user or the conclusion of an employment contract with a user.

A fine of EUR 5,000 to EUR 10,000 will also be imposed for the same offence on an employer providing work that employs ten or fewer workers, and a fine of EUR 4,000 on the responsible person of the employer providing work.

##  Further information

**Liaison offices and authorities responsible for providing information related to obligations by individual countries**

**Tax treatment of posted workers**

**Additional information related to social security of posted workers**

**Additional information related to the procedure to obtain A1 certificates**

**Additional information related to payroll accounting**

**A1 certificate validation check**

# BREXIT

## Citizens of the United Kingdom in the Republic of Slovenia

Citizens of the United Kingdom and their family members who were legally residing and working in the Republic of Slovenia on 31 December 2020 and who intend to reside in the Republic of Slovenia after 1 January 2021 retain the same status on the Slovenian labour market as provided by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. This means that the rights of workers and their family members remain unchanged and that they may reside and work in the Republic of Slovenia under the same conditions, as stipulated by the Foreigners Act.

The right to free access to the Slovenian labour market for citizens of the United Kingdom is specified in Article 5 of the Employment, Self-employment and Work of Foreigners Act (Official Gazette of the Republic of Slovenia, No. 1/18 – official consolidated text and 31/18).

As of 1 January 2021, newly posted workers from the United Kingdom must be included during the performance of work in the Republic of Slovenia in the national social security system on the basis of a single permit for residence and work of posted workers, which is issued for posted workers on the basis of the Employment Service.

The system of posting in regard to maintaining insurance in the country of employment remains similar. Postings can be made for two years on the basis of maintaining insurance in the country of employment, without the possibility of extension or under the condition that this is not only a replacement of the posted worker. All statuses of workers posted after 1 January 2021 are kept until the activity is concluded.

Access to the labour market is not regulated by the agreement. In accordance with this, citizens of the United Kingdom who enter Slovenia with the intention of performing work for a Slovenian employer may need a single permit for residence and work that is issued on the basis of the approval of the Employment Service of the RS.

## Posting of workers to the United Kingdom

The Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part was published in the Official Journal of the European Union, L 444, of 31 December 2020 (hereinafter referred to as the Agreement). The Agreement has been temporarily applied on the basis of reciprocity since 1 January 2021. More at the link .

Under the agreement, the applicant may also obtain a certificate of maintenance of social insurance for the duration of the performance of work by a worker posted abroad (A1 certificate) for the purpose of working in the United Kingdom. The conditions for obtaining this certificate are determined by a protocol. European regulations (Regulation (EC) 883/2004, Regulation (EC) 987/2009) are no longer used in connection with the United Kingdom in this regard. The Transnational Provision of Services Act does not apply to workers posted to the United Kingdom, either. The "A1 certificate" document may be used until a new form that is specifically drafted to cover the arrangement with the United Kingdom is prescribed.

Applicants who completed a questionnaire for work in a third country (United Kingdom) and submitted it to the Health Insurance Institute of Slovenia after 1 January 2021 may submit an application for the "A1 certificate" retroactively (i.e. with the period of posting from 1 January 2021 onwards), and the Health Insurance Institute of Slovenia may issue them with such an "A1 certificate". The applicant is obliged to register and de-register the insurance of the person under the correct insurance basis. Additional information related to the issuing of A1 certificates is available here.

# LEGISLATION

The area of cross-border performance of services with posted workers between member states of the EU/EEA is bound to international and national legal bases that regulate the basic rights and obligations of the parties involved.

International legislation for the territory of the EU/EEA may be divided into two sets of legal bases that regulate the posting of workers.

* **The first set of rules** regulates the procedure of performance of services, provision of minimum standards that service providers are required to provide for their posted workers, supervision and cooperation between supervisory authorities and access to key information. Four documents are particularly important for the first set:
	+ Directive 96/71/EC – This determines a list of the fundamental conditions of employment that must be provided to workers posted abroad by employers in the country to which they are posted (host country). Its purpose is to provide protection to workers and equal competitive conditions for service providers.
	+ Directive 2014/67/EU – This deals with issues such as abuse of rules on posting and avoidance of these rules, shared liability in subcontracting chains and exchange of information between EU member states.
	+ Directive 2018/957/EU – This determines the rules on the conditions of employment and health and safety of posted workers and is intended to secure fair wages and equal competitive conditions for companies that post workers and for local companies in the host country, while preserving the principle of free movement of services).
	+ Directive 2020/1057/EU – This determines the special rules for posting of drivers in the road transport sector and the effective implementation of these rules. It provides rules that are better adjusted to the highly mobile nature of work in the road transport sector. Its purpose is to eliminate discrepancies between the interpretation, application and implementation of rules on posting workers in the road transport sector in the EU countries.
* **The second set of rules** determines the rules for the coordination of social security systems under which the acquired rights in the area of social security are retained even in the event of work or moving to another member state. These rules also limit the duration of work of a posted worker. Relevant in this area are:
	+ Regulation 883/2004/EC,
	+ Regulation 987/2009/EC and
	+ Regulation 1231/2010/EU (relates to third-country nationals).

The fundamental national regulation in the area of cross-border performance of services and, in this framework, the posting of workers is the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17), which determines the conditions under which legal entities and individuals registered for performance of an activity based in the Republic of Slovenia may temporarily perform services in another member state of the European Union (hereinafter referred to as: EU member state) and the conditions under which legal entities and individuals registered for performance of an activity based in another EU member state may temporarily perform services in the Republic of Slovenia. The provisions of this Act are also applied to the cross-border performance of services to or from the member states of the European Free Trade Association (Iceland, Norway, Liechtenstein, Switzerland).

# FREQUENTLY ASKED QUESTIONS

**A Slovenian company hires another Slovenian company to perform work for it in Austria. Who should be stated as the contracting authority in the application for the A1 certificate given that both companies are based in Slovenia?**

The Slovenian company that is hired to do the work should be stated as the contracting authority in the application for the A1 certificate.

**A Slovenian repairer visits three customers in Austria in one day. Is it possible to get an A1 certificate for that day, with all visited customers being listed (either under Article 12 or Article 13 of Regulation 883/2004)? The Austrians request this.**

Pursuant to the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17), it is not possible to obtain an A1 certificate for multiple locations or multiple A1 certificates for different locations in the same period. In order to ensure the option for performing work in the described manner, it is necessary to obtain an A1 certificate on the basis of Article 13 of Regulation (EC) No. 883/2004, which enables work to be performed in multiple locations and different EU member states.

**Is there a guarantee that host countries will accept the A1?**

Accepting or rejecting A1 certificates issued by a competent Slovenian authority is not in the competence of foreign supervisory authorities. In the event of doubt, they may inform the Health Insurance Institute of Slovenia, which will again examine the conditions under which the A1 certificate was issued.

**An individual has been posted to an affiliated company in Switzerland for one year, for which they obtain an A1 form on the basis of Article 12 of Regulation 883/2004. There, the individual works in the regional centre for internal audit of companies in the group, where they learn internal auditing – as part of this they also visit, along with a colleague from Switzerland, affiliated companies in the US, Switzerland, Austria, and Italy. The service of internal audit is charged to affiliated companies. Is this possible, on the basis of the interpretations provided so far, and if it is, what A1 form would the individual need to obtain?**

Based on an A1 certificate issued on the basis of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17), it is possible to perform work exclusively in one location.

Based on the description provided, in such an instance we would suggest examining the option of obtaining an A1 certificate on the basis of Article 13 of Regulation (EC) No. 883/2004 for the performance of work by the worker in affiliated companies in Switzerland, Austria and Italy, while adequate commercial insurance would have to be concluded for the employee's work in the US given the regulations in that country.

**Considering that the Transnational Provision of Services Act does not apply to third countries, where is the line separating a business trip and a posting?**

The location where the work is performed (EU, third countries) is not a relevant circumstance for differentiation between a business trip and a posting.

**An individual employed in a Slovenian company goes to Austria, where they negotiate on the sale of products to company X in Austria. At the meeting, they agree the contractual price and terms of the sale contract, while the sale contract itself is subsequently signed and sent by mail. Products are subsequently delivered on the basis of an order by company X. Is the mentioned meeting considered a business trip or a posting? In accordance with an explanation from the Ministry of Labour, Family and Social Affairs (MDDSZ), the meeting will not be charged to company X as there is no customer of a service, while the question regarding competing on the market remains open.**

The explanation from the MDDSZ regarding the differentiation between a business trip and a posting serves as orientation, while we emphasise that, in practice, the circumstances of individual cases need to be comprehensively examined.

Additionally, we explain that, based on the described circumstances, we conclude that in the case in question, it is a business trip – the work performed by the employee does not belong to the registered activities of the company, the company doing the posting is the end user of the work performed and it will not receive direct payment for the performed work, while the work performed by the employee does not represent competition to other companies in the market.

**Is a worker eligible for reimbursement of travel expenses (for example: airline ticket, public transportation, fuel for their own vehicle) related to posting abroad, and how are such expenses to be calculated correctly?**

A worker has the right to be reimbursed the expenses they incur while performing certain work and tasks from the employment relationship both when sent for a business trip and when posted abroad, because in both cases it is about implementation of the rights and obligations from the employment relationship.

The Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the US, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE) stipulates in Article 130 the general eligibility of workers for reimbursement of travel-related expenses, while the manner and detailed conditions for the exercise of these rights are defined in the collective agreements and general acts of the employer. In that case, it is necessary to examine, in addition to the general regulation by the labour legislation, the regulation in the collective agreement binding on the employer. Possible questions related to interpretations of collective agreements may be addressed to the competent commission established for the purpose of interpreting collective agreements. Interpretations of collective agreements made by competent commissions that have already been adopted are published in the Official Gazette.

**Is a specific case a posting or a business trip?**

When assessing whether the institute of posting or the institute of a business trip should be used in a specific case, we emphasise that this should be established for each case separately based on a comprehensive assessment of the circumstances of an individual case. Considering the legislative regulation and relevant case law, we think that, from the aspect of labour law, the time component is not a relevant distinctive criterion, and that it is necessary to take into account the content of the work itself. In doing so, it is possible to rely on the criteria listed below. However, we emphasise that these are listed as examples and that this is not a complete set of circumstances.

As the work performed by workers abroad is subject to supervision by the country in which the work is performed, we propose that in the case of doubt regarding which institute to use, you turn for a reliable answer to the competent authorities of the host country.

|  |  |  |
| --- | --- | --- |
| **CRITERION** | **POSTING** | **BUSINESS TRIP** |
| Type of work performed by worker | Work is performed as cross-border performance of a service as part of the activity determined in the company's articles of incorporation | Work is required for the existence and performance of the company's activity, and does not represent direct performance of a service of the company as part of the activity determined in the company's articles of incorporation |
| End user of service | Customer of service | Employer |
| Employer's revenue | Employer expects direct contractually agreed payment for the work performed by worker | Employer does not expect direct payment for the work performed by worker |
| Another country's market | Company directly enters the market of another country and competes with other countries in that market | Company does not directly enter the market of another country and does not compete with other countries in that market |

*EXAMPLE:*

POSTING: A company registered in the RS for the activity of construction concludes a contract for final works on the construction of a building in Austria. For this purpose, a worker employed in the company in question performs the work of a tiler in Austria.

* The worker performs the work as part of a registered activity of the employer.
* The worker performs the work as part of a contractually agreed service for which their employer expects to be paid.
* The company for which the worker performs the work enters the labour market of Austria and represents competition to other companies in the activity.

BUSINESS TRIP: A company registered for the activity of construction wants to conclude a contract for final works on the construction of a building in Austria. For this purpose, a worker employed in the company in question negotiates the conclusion of a contract in Austria.

* The worker performs work that is important for the performance of the company's activity, but it does not represent direct performance of the activity.
* The end user of the work performed by the worker is their employer, which will not receive payment for the work performed by the worker.
* The company for which the worker performs the work does not enter the labour market of Austria and does not represent competition to other companies in the activity.

**In what circumstances is a break required between the first and second posting?**

Decision No A2 of the Administrative Commission for the Coordination of Social Security Systems stipulated in point 3(c) that once a worker has ended a period of posting, no fresh period of posting for the same worker, the same undertakings and the same member state can be authorised until at least two months have elapsed. This means that after concluding a 24-month posting to one member state, a worker usually may be immediately posted by the same company to another member state, and to the same member state only after two months have elapsed.

**Must the location where work is performed be precisely defined in the contract or is it possible to determine it with an annex to the employment contract?**

The fundamental condition for posting of a worker in accordance with the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the US, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE, here ZDR-1) is that the obligation or option of temporary performance of work abroad is agreed within the employment contract. If there is no such provision in the contract, a new employment contract must be concluded for temporary work abroad in accordance with Article 208.

The location where work is performed must be referred to or be determinable (for example: specifying the region, country, etc.) in the employment contract that envisages the possibility of work abroad. It is then specified in detail, together with the other elements referred to in Article 209 ZDR-1 in an annex to the employment contract before the actual posting of a worker abroad.

**How do we define a longer posting of a worker abroad?**

The labour legislation does not differentiate between short and long postings and does not recognise any differentiation of postings relative to the time component.

**Is it necessary to give a worker posted abroad a day off during their work abroad on a Slovenian holiday that is a work-free day in Slovenia?**

When it comes to holidays and work-free days, the worker and employer have the option of reaching an agreement regarding days off for holidays in the host country or days off on holidays in the country the worker comes from, while it is also possible to agree on both.

**Does the time of travel abroad in the event of posting count as working hours?**

Considered as the effective working hours in accordance with the national legislation or the second paragraph of Article 142 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the US, 22/19 – ZPosS, 81/19 in 203/20 – ZIUPOPDVE, hereinafter referred to as ZDR-1) is not only the time when work is actually performed, but also every other period of time in which the worker is available to the employer and fulfils their obligations from the employment contract. The ZDR-1 does not specify these periods.

**The regulations of which country are considered when determining the duration of working hours of a posted worker?**

In addition to the compulsory elements specified in Article 31 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the US, 22/19 – ZPosS, 81/19 in 203/20 – ZIUPOPDVE, hereinafter referred to as ZDR-1), an employment contract for the performance of work abroad must also contain the rights and obligations specific for work outside the home country.

The minimum standards related to the maximum working hours in member states are unified on the basis of directives that regulate individual areas. How a certain directive is transposed into the law of an individual member state is a matter for that member state and its internal regulation.

As an example, we note that the ZDR-1 transposes Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of service (Official Journal of the European Union, No L 18 of 21 January 1997) from the aspect of regulation of labour rights of workers posted to the Republic of Slovenia in Article 210. That article determines the scope of rights that an employer must ensure to workers posted to the Republic of Slovenia under Slovenian law, if this is more favourable. These are rights under the regulations and provisions of the collective agreement at the level of activity that regulate working hours, breaks and rests, night work, minimum annual leave, payment, safety and health at work, special protection of workers, and affirmative action if this is considered more favourable for workers. This article also defines certain exceptions (see the third, fourth and fifth paragraphs of Article 210 of the ZDR-1).

As we have already noted, the way in which such a transfer is regulated in other member states must be checked in the legislation of the member state to which it is intended that workers are to be posted.

**Is it necessary to take into account during the posting the collective agreements of the country where posted workers will temporarily perform work?**

It follows from the third paragraph of Article 6 of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17) that an employer provides rights to a worker during posting in accordance with the provisions of the law or another regulation and collective agreement or other acts with general validity or validity at the level of activity that in the country of posting regulate working hours, breaks and rest periods, night work, minimum annual leave, payment, safety and health at work, special protection of workers, and affirmative action if this is considered more favourable for workers.

The conditions that must be provided by the employer thus depend on the country to which workers are posted. In the event that the conditions described above are less favourable for the worker in the country of posting, the conditions determined by the legislation of the Republic of Slovenia are applied.

**Can an employer post a worker with whom he has a business contract to provide cross-border services?**

A company may post only a worker with whom it has concluded an employment relationship and who has been continuously included in social insurances in Slovenia for at least 30 days.

**Can we post workers to another EU member state where they will perform a service for which the company is registered with the client's equipment and under its management?**

In accordance with Article 4 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – decision of the Constitutional Court, 22/19 – ZPosS, 81/19 and 203/20 – ZIUPOPDVE), an employment relationship is a relationship between a worker and an employer in which the worker is voluntarily involved in the employer's organised work process and, personally and without interruptions, performs work for payment under the instructions of and under the supervision of the employer. What is more, it follows from Article 4(6) of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17) that a worker may perform work on the basis of a contract with the client of the service exclusively under the management of the employer.

Considering the above, it could be concluded on the basis of the performance of work in the described circumstances that the employment relationship no longer exists, and that the worker is left to the client, which is unlawful.

EXAMPLE: A company has registered the activity of installation of windows or welding, but does not have its own equipment, so it sends its employees to companies with which it has concluded contracts on business cooperation. By doing so, it avoids not only the existing labour legislation, but also the EU directive under which every worker during their work for an employer must have the right to equal pay and equal bonuses.

**What rules are in force for workers in international road transport?**

For workers in international road transport, the European legislation refers to the acquisition of an A1 certificate under Article 13 of Regulation 883/2004. An employer submits an application for an A1 certificate through the SPOT national portal for companies and entrepreneurs.

**Must the employer report the change in the insurance basis to the Health Insurance Institute of Slovenia?**

In the event of a posting for which the employer has obtained an A1 certificate on the basis of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia, No. 10/17) (temporary and occasional work), the insurance basis is changed with the first day of posting from 001 to 002 under compulsory powers. After the posting ends or the A1 certificate expires, making adequate changes to the insurance basis is the obligation of the employer.

**Can a service contract be submitted in a foreign language during the A1 certification process?**

Yes.

**We intend to post to Germany workers among whom there are citizens of Bosnia and Herzegovina who have valid residence and work permits in Slovenia. Is it necessary to arrange anything else for these workers in addition to what we need to arrange for workers who are Slovenian citizens?**

From the aspect of work in another EU member state, citizenship of a posted worker is not a relevant circumstance, while the mentioned is important from the aspect of entry and residence in another EU member state. As the conditions for entry and residence by third-country nationals are in the jurisdiction of an individual country, it is necessary to contact the competent authorities of the host country regarding these conditions.

As for entry and residence by a third-country national as part of cross-border performance of services by a Slovenian company, we add that it is necessary to obtain a so-called Van Der Elst visa, detailed information about the obtaining of which you may read on the website of the German Embassy in Ljubljana.

**I am a sole proprietor, and I am interested in whether, as a subcontractor of another Slovenian company, I can perform work together with it?**

Yes, although we advise a consistent demarcation of work between yourself and your workers and the workers of the main contractor, including the use of equipment.

**Do my workers need to be employed full-time in order for me to obtain an A1 certificate for them?**

A company may post a worker for part-time work, i.e. on the basis of a part-time employment contract, while the worker must be continuously included at least 30 days prior in compulsory social insurances on the basis of full-time employment or in adequate social insurances on another legislative basis. The condition of previous full-time employment does not apply in the case of workers whose working hours are shortened in accordance with the regulations on pension and disability insurance or parental care by these workers, or if they have been employed by the employer that intends to post them part time for at least six months.

**What provisions should an act on posting (or a comparable act in the case of posting) on the basis of a worker being posted to an affiliated company contain?**

(??) On the basis of Article 23 of the Employment, Self-employment and Work of Foreigners Act (Official Gazette of the Republic of Slovenia, No. 1/18 – official consolidated text and 31/18), posted workers may perform work at the host entity only on the basis of an employment contract concluded with a foreign employer and an act on posting, which must contain provisions on:

* the duration and location of the performance of work for the time of reassignment
* the provision of rights, except for pay, in accordance with the provisions of the law regulating labour relationships related to the status of workers posted to the Republic of Slovenia;
* the planned return to the affiliated company based in a third country or another EU member state;
* the tasks that the posted worker will perform at the host entity;
* the amount of wage of the posted worker, which must not be lower than the amount of wage received by workers in the Republic of Slovenia for comparable jobs, in accordance with the regulations and collective agreements with general validity or validity at the level of activity.

**Are we also subject to all rules for posting of workers when our posted workers only perform work in another EU member state and return to Slovenia on a daily basis?**

Yes.

**We want to post our workers who are third-country nationals. Are there any particularities regarding A1 certificates in that case?**

Regulation (EU) No 1231/2010 of the European Parliament and of the Council of 24 November 2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality stipulates that the Regulation is binding in its entirety and directly applicable in Member States in accordance with the Treaties. We emphasise at this point that, in accordance with preliminary notes 18 and 19 of Regulation 1231/2010, these rules are not applied in the United Kingdom and Denmark.

In accordance with this, we emphasise that the Health Insurance Institute of Slovenia does not issue A1 certificates for posting of third-country nationals for the United Kingdom, Denmark, Norway, Liechtenstein, Iceland and the Swiss Confederation, but another adequate certificate proving inclusion in the compulsory social insurance system in Slovenia, if there is legal basis for this (for example, the Convention between the Republic of Slovenia and the Swiss Confederation on social security).

**A Slovenian company that has outstanding tax liabilities is not able to obtain an A1 certificate, even after it presents, after settling the liabilities, a certificate from the Financial Administration (FURS) that it is not a tax debtor. How is the company to proceed in such a case, as the conditions for obtaining an A1 form are met?**

After eliminating the reason for the rejection of an application, the employer may re-submit the application through the e-Vem portal. If the data in the system of the Health Insurance Institute of Slovenia (ZZZS) is not updated on the date the application is submitted, the employer applies for the certificate at the competent financial office, proving by doing so that the reasons for the rejection of the application have been eliminated. The FURS automatically sends the issued certificate to the ZZZS system for the issuing of A1 certificates. More information about this is available on the website of the FURS.

**What is considered as a break or shorter break for the purposes of the Personal Income Tax Act (ZDoh-2), in particular in the case of short postings for the purpose of provision of services (example: a worker sells products at a trade fair in Austria for a week, and then in Slovenia for two weeks, and then goes to Germany for two weeks)?**

In defining the period of posting, of key importance is the agreement between the worker and employer on the duration of posting, where the agreement in question from the aspect of assessment of the suspension of posting must be treated in the substantive rather than formal sense and take into account in particular the statement of affairs and economic content. In the case of an agreement between the worker and employer under which the worker alternately works abroad and in Slovenia (example: it is determined with the employment contract that the worker works one week in Austria, then two weeks in Slovenia and then two weeks in Germany), in the assessment of the duration of the posting the days when the work is performed in Slovenia are considered as a suspension of the posting. A detailed explanation regarding determining the period of posting is published on the website of the FURS.

**Are individuals who are employed by a Slovenian employer full time and who perform a regional function also eligible for the tax benefits under Articles 44 and 45.a of the ZDoh-2, as hauliers are? Example: an individual is employed full time in Slovenia as a human resources director who heads human resources divisions in Slovenia, Croatia, Serbia, Bosnia-Herzegovina and Bulgaria. They perform the work in each of these countries three days a month, and the rest in Slovenia.**

In accordance with Article 44 of the ZDoh-2, the amount of reimbursement of costs related to temporary posting is tied to the period of posting (up to 30 days and over 30 days or over 90 days for hauliers), while the exercise of the special tax basis under Article 45.a of the ZDoh-2 is tied to the period of posting (provided that all other conditions are fulfilled). In the case specified, the worker is not continuously posted abroad for more than 30 days and the special tax basis under Article 45.a of the ZDoh-2 cannot be exercised. A detailed explanation is published on the website of the FURS.

**Is the basis for contributions by workers who have an A1 certificate under Article 13 of Regulation (EC) No. 883/2004 the wage for the same works in the Republic of Slovenia, but not part of the wage for the work abroad?**

Workers who are posted abroad under Article 13 of Regulation (EC) 883/2004 and who perform their usual work in two or more EU member states are also included in compulsory insurance during the posting under the insurance basis 001 and pay social security contributions from their entire income.

**How is a withholding tax form (REK) submitted for a posted worker who has an A1 certificate under Article 13 of Regulation (EC) No. 883/2004, given that the insurance basis in the described case remains 001?**

As regards the submission of REK forms, we would like to clarify that the taxpayer, when paying out wages to workers who are posted abroad, submits an REK-1 form that states the type of income:

1091 Wage and compensations – posted workers; this type of income is used when a wage is paid out to a worker who is included in social insurance under the insurance basis 002, and also when a wage is paid out to a worker for whom the special tax base is applied under Article 45 of the ZDoh-2, regardless of the basis for inclusion in insurance for that worker;

1001 Wage and wage compensations; this type of income is used when a wage and wage compensation is paid out to a worker who is posted abroad in accordance with Article 13 of Regulation EC No. 883/04 and for whom the special tax base under Article 45 of the ZDoh-2 is not applied.

**What must a United Kingdom-based company that wants to perform cross-border services with posted workers in the Republic of Slovenia present to the Labour Inspectorate of the Republic of Slovenia in the event of an inspection?**

**Frequently asked questions related to the procedure to obtain an A1 certificate on the basis of the Transnational Provision of Services Act**

## Most frequent violations by employers

**What can I do if the employer has failed to provide me with payment for my work?**

If you have not received your wages from your employer, you have several options at your disposal. You can request the payment of your wages with a lawsuit against the employer at the Labour Court, where it is considered that the written payroll issued by the employer is an authentic document on the basis of which the worker can propose court enforcement. The statute of limitations for claims arising from an employment relationship is five years.

If the employer:

* has failed to pay you your wage (or has paid you a substantially lower salary) for two months, or
* has failed to pay you your wage twice in succession or within a period of six months, taking into consideration the legally and/or contractually stipulated period, or
* has failed to provide you with work for more than two months and has also failed to pay you the wage compensation provided by the law, or
* has failed to pay in full your social security contributions three times in succession or within a period of six months,

then in all the cases listed above you have the option to terminate the employment contract extraordinarily (without a notice period) under the conditions from the ZDR-1. In that event, the employer is required, in addition to overdue wages and contributions, to pay you severance pay, as defined for the case of ordinary cancellation of the employment contract for business reasons, and compensation amounting to no less than the amount of the lost remuneration during the notice period.

You can also report violations related to the failure to pay wages to the Labour Inspectorate of the Republic of Slovenia. What is important to bear in mind here is that a labour inspector, if they establish relevant violations, can only penalise the employer for the committed violation; they are not able to ensure with their measures that the wages owed are actually paid out. Only the Labour Court can do so.

**What can I do if the employer has dismissed me without reason or without any documents?**

If the employer unjustifiably terminates your employment contract or does this orally, without a particular procedure or documents, you can request that the Labour Court, within 30 days following the handing out of the termination or within 30 days following the day you learned about your rights being violated, establish whether the termination was unlawful. Termination of an employment contract must, in any case, be in writing and it must be handed out to the worker in an adequate manner, and the employer must carry out the procedure prescribed by the law prior to that stage. If the employer has failed to do so, you can also report such an act to the Labour Inspectorate of the Republic of Slovenia. If an inspector establishes a violation related to the procedure or notification of the termination, they will be able to penalise the employer for the offence. However, they will not be able to ensure with their measures that the termination is rescinded. The latter is in the exclusive competence of the Labour Court.

**What can I do if the employer has not enabled me to return to the home country?**

If the employer fails to enable the worker to return to Slovenia after they have finished performing work abroad, such an act represents an offence that the worker can report to the Labour Inspectorate of the Republic of Slovenia. After returning to the home country, the worker can sue the employer to be reimbursed the costs related to the return, and to be reimbursed the damages incurred due to the related inconveniences.

If a worker finds themselves abroad on their own and without funds for the return to the home country, they may also turn to a diplomatic representation of the Republic of Slovenia (for example, embassy or consulate). At the diplomatic representation, the worker can be issued with a document to enable them to return to Slovenia (for example, passport for return or identity card) and can be put in touch with their relatives or the competent social work centre if the worker has no other options or is not able to pay for the return to the home country themselves. If there is no Slovenian representation in the country where the worker is stranded, they may turn to a diplomatic representation of one of other EU member states, where they can be issued with an emergency travel document.

## Most frequent violations by workers

**What can I do if a worker fails to show up for work?**

If a worker fails to show up for work and does not excuse their absence, such an act represents a violation of the contractual obligations to which the worker has committed by signing the employment contract. Depending on how violations related to the labour relationship are defined by the employer in its general acts, the worker can, if disciplinary liability is established, receive a disciplinary sanction in accordance with the rules of disciplinary procedure (if these were previously defined by the employer), although this must not permanently change the worker's position from the aspect of labour legislation. If the employer has incurred damages due to the worker's unjustified absence, the worker is required to compensate the employer following, of course, a procedure in which the amount of damage, the responsibility for it and the perpetrator are determined.

Unjustified absence from work is also a reason for extraordinary termination of the employment contract, as the employer can carry out extraordinary termination (without a notice period) of the employment contract with a worker who has failed to show up for work for five consecutive days while failing to notify the employer about the reasons for their absence, provided that they were capable of doing so. Before the termination, the employer must carry out a special procedure and be careful about deadlines, which are very short in the case of extraordinary termination. In this case, the worker's employment contract is terminated on the first day of the unjustified absence from work if they fail to return to work until the day of the notification of the extraordinary termination.

**What can I do if a worker performs their work unprofessionally, in an untimely manner, and makes mistakes?**

This depends on the reasons why the worker performs their tasks in the described manner. If disciplinary violations are an issue, the employer can initiate disciplinary proceedings against the worker. The employer can also request compensation (in a special procedure) from the worker if their conduct (or lack thereof) has caused damage to the employer.

If the reasons for the worker's unprofessional or untimely work are health-related, the employer can refer the worker for a targeted preventive health examination, namely:

* in the case of a reduced working capacity,
* after an illness or injury outside work that requires longer treatment and where there are doubts about the worker's working capacity,
* if there is suspicion about addictions that can affect the working capacity of the worker,
* if the worker was on a sick leave due to illness or injury on five or more occasions during a period of one year.

The authorised physician must submit to the employer within ten days an assessment of whether the worker meets the special medical requirements for a certain type of work in the working environment. On the employer's proposal and with the consent of the worker's personal physician, the procedure for the exercise of the rights from disability insurance for the worker may be initiated. The employer must take into account the results of the health examination and provide the worker with work that will not worsen their health condition. If there is no such work, the employer may initiate the procedure of termination of the employment contract for incompetence or disability, if the worker has the status of a disabled person. In the latter case, the employer must obtain the opinion of a special commission before the termination.

Failure to achieve the expected results because the worker does not perform their work in a timely manner, professionally and with good quality, is also a reason for regular termination of the employment contract due to incompetence. Before such termination, the employer must carry out the special procedure determined in the ZDR-1.

**What can be done if a worker does not follow the instructions of the employer?**

As stated in the previous question, the employer can also initiate disciplinary and damages proceedings against the worker in this case. In addition to this, the employer can carry out a pre-termination procedure and terminate the contract either for incompetence or fault-based grounds (violation of a contractual obligation or other obligation from the labour relationship). Failure to follow the employer's instructions may in certain occupations and in certain circumstances endanger the health or life of the worker and their co-workers or other people. For this reason, the employer has the option, in the event of major violations of employment obligations by the worker, to exercise an extraordinary termination of the employment contract in accordance with the procedure envisaged by the ZDR-1. If the procedure of extraordinary termination of the employment contract is initiated, the employer may prohibit the worker from performing work for the duration of the procedure. For the duration of the prohibition of performance of work, the worker is eligible for wage compensation amounting to half of their average wage in the last three months.

# COMPETENT INSTITUTIONS AND INTEREST ASSOCIATIONS

## Competent institutions

**Employment Service of Slovenia**

The Employment Service of Slovenia (ZRSZ) is a body competent for accepting registrations of the performance of services with posted workers in the Republic of Slovenia and for issuing consent to the single permit for posted workers.

Registration may also be performed electronically, while the ZRSZ provides consent to the single permit for posted workers at the request of the administrative unit as part of the procedure to issue the single residence and work permit for cross-border performance of services.

**Labour Inspectorate of the Republic of Slovenia**

An individual can claim violations at the Labour Inspectorate of the Republic of Slovenia, which is established as a body affiliated to the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Among other tasks, the inspectorate performs inspection supervision of laws and other regulations, collective agreements and general acts regulating labour relationships, wages and other remuneration from the labour relationship.

**Financial Administration of the Republic of Slovenia**

The Financial Administration of the Republic of Slovenia (FURS) provides information about tax obligations of posted workers who have been sent for work abroad by their employers, or foreigners who perform work in Slovenia on the basis of posting, while it also provides information to their employers concerning taxation of income from employment. The tasks of the FURS also include assessing and charging compulsory duties and financial supervision.

**Health Insurance Institute of Slovenia**

The Health Insurance Institute of Slovenia (ZZZS) is, in accordance with the European legislation in the area of social security, specified in regard to the posting of workers as the body competent for implementing both the provisions concerning healthcare and provisions concerning the relevant legislation, including the issuing of A1 certificates.

The A1 certificate is an official document issued on the basis of the EU regulation with which a country confirms that the conditions have been fulfilled for its legislation in the area of social security to continue to apply for a certain worker in a certain period of performance of work in another country. When such a document is produced, the country in which the posted worker performs work cannot demand that the worker be included in its own system of social insurances and charge and collect social insurance contributions under its own legislation.

**Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia**

In the area of labour migrations, the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia (MDDSZ) closely cooperates with the Employment Service of Slovenia and other departments, in particular with the Ministry of the Interior of the Republic of Slovenia. Its sector that deals with employment, social entrepreneurship and migrations drafts proposals of bills and implementing regulations in the area of employment and work of foreigners in Slovenia, monitors the implementation of regulations and resolves complaints against decisions of the Employment Service of Slovenia in which permits for the seasonal work of foreigners are rejected. It also participates in the drafting of legislative proposals of the EU in the area of free movement of workers and services and the entry, residence and employment of third-country nationals, while its representatives participate in various working groups of the European Union in the area of migration and coordination of social security systems.

**Ministry of the Interior**

The Ministry of the Interior is responsible for matters of entry and residence of workers posted to the Republic of Slovenia in accordance with the Foreigners Act (Official Gazette of the Republic of Slovenia, No. 1/18 – official consolidated text, 9/18 – corr. and 62/19 – decision of the Constitutional Court).

## Interest associations

**Association of Free Trade Unions of Slovenia**

Work and competences of the Association of Free Trade Unions of Slovenia related to posted workers:

* raising the awareness of posted workers about the posting procedures and verifying employers;
* strengthening cooperation with supervisory authorities and competent institutions in the area of posting of workers (example: Labour Inspectorate, Health Insurance Institute of Slovenia);
* strengthening international inter-institutional cooperation by means of mutual information and participation;
* encouraging posted workers to cooperate with supervisory authorities and prosecuting authorities;
* raising the awareness of posted workers by providing them with professional assistance and legal information and counselling;
* strengthening cooperation with German trade unions and official authorities from Germany and Austria;
* cooperating with countries where Slovenian companies post their workers;
* visiting competent institutions or organisations in countries where the problem of violations of the rights of posted workers is pronounced;
* preparing and distributing relevant informative and advisory material and accessories for posted workers;
* strengthening the already established cooperation with supervisory authorities and prosecuting authorities at international level by means of immediate reporting of detected violations and regular notification.

**Chamber of Craft and Small Business of Slovenia**

The Chamber of Craft and Small Business of Slovenia protects and represents the interests of employers. It has been intensively active for several years in counselling and providing professional assistance to its members regarding posting of workers and related procedures. It also provides counselling and legal assistance in regard to contracts that deal with the posting of workers. The Chamber of Craft and Small Business cooperates internationally with employer institutions and strengthens cooperation with supervisory authorities, both in the EU and with third countries. As an employer institution, it cooperates with other chambers of craft around the world and, by exchanging best practices and various forms of strengthening of institutional capacities (for example, study visits of experts to various EU member states), which are largely co-financed by various EU programmes, provides its members with professional support.

**Association of Employers of Slovenia**

The Association of Employers of Slovenia (ZDS) was the first voluntary economic interest association in Slovenia and has been representing and protecting the interests of employers since 1994.

The ZDS has been dealing with the topics and issues related to the posting of workers abroad for a number of years. It has issued two related leaflets, entitled "Procedures of posting of Slovenian workers to EU member states" and "Posting of managers and experts abroad".

As part of their membership in the ZDS, employers are provided with information about the procedures involved in the posting of workers abroad. It also provides advice related to the compulsory content of contracts that must be concluded with a worker in the event of posting abroad.

**Chamber of Commerce and Industry of Slovenia**

The Chamber of Commerce and Industry of Slovenia is the largest, most powerful and most influential alliance of businesses in Slovenia. Its main mission is to improve the business environment, which consequently enables greater economic growth. The GZS is organised as a network and it covers all regions in Slovenia and all industries. In addition to lobbying, it also offers a wide range of various services in support of the operation of companies at home and abroad, and is exceptionally active in the area of the posting of workers.

**Delavska Svetovalnica**

[Delavska Svetovalnica (Counselling Office for Workers)](http://www.delavskasvetovalnica.si/) is an organisation intended for the advocacy, protection, promotion and development of the employee, social and status rights of workers and other vulnerable groups, while paying particular attention to respecting the rights of posted workers.