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Case No: 90907
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Ministry of Social Affairs and Housing
Síðumúli 24
108 Reykjavík
Iceland

Dear Sir or Madam,

Subject: Letter of formal notice to Iceland concerning the implementation of Directive 2018/957 amending the Posting of Workers Directive

1 Introduction

1. The cross-border supply of services has prompted a growing number of companies to send or “post” their employees abroad temporarily to perform work in the territory of an EEA State other than that in which they are habitually employed.¹ Such employees, commonly referred to as *posted workers*, usually return to the EEA State from which they were sent once the work has been completed.²
2. Remaining employed by the sending company, posted workers are subject to the law applicable to their employment contract, which most often is the law of their home EEA State. For example, a Polish construction company with a contract to build an office block in Reykjavík might send workers (Polish or other) to Iceland to deliver the project. At the outset, those workers remain subject to Polish law not only for the purpose of social security coordination and taxes but, also, labour law.
3. However, to guarantee that rights and working conditions for posted workers are protected throughout the EEA and to ensure a level-playing field, EEA law defines a set of mandatory rules regarding the terms and conditions of employment to be granted to such workers.³
4. Concretely, the wish to promote transnational economic activity while at the same time ensuring a climate of fair competition and the rights of workers led to the adoption of Directive 96/71/EC on posting of workers (“PoW Directive”) in 1996.⁴ Notably, its Article 3(1) provides that posted workers are to benefit from generally applicable rules⁵ of the host EEA State on matters such as remuneration, paid annual leave and rest periods. The result is that, in the example provided above, the workers are to receive pay and annual leave according to Icelandic rules, not those of the home EEA State (Poland).

¹ See preamble 3 to Directive 96/71/EC.

² See preamble 9 to Directive 2018/957.

³ C.f. the European Commission’s [website](#) dedicated to the topic of posted workers.

⁴ Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services. Incorporated into Annex XVIII of the EEA Agreement by Decision of the EEA Joint Committee No 37/98, entering into force on 1 July 1999.

⁵ That is, rules laid down by law, regulation or administrative provision, and/or certain collective agreements, see Article 3(1) PoW Directive.

5. The PoW Directive was subsequently amended by Directive (EU) 2018/957 ("Directive 2018/957").⁶ The amendments include *inter alia* new provisions on long-term posting, reimbursement of expenditure on travel, board and lodging and also, on monitoring, control and enforcement.
6. The Authority notes that a subgroup was set up by the Expert Committee on Posting of Workers (the "Subgroup") in order to assist EU Member States in transposing the provisions of Directive 2018/957 into their national legal orders. The Subgroup delivered a report on the transposition of Directive 2018/957 (the "EPCW Subgroup's Report")⁷.
7. Directive 2018/957 applies in the EEA EFTA States as of 1 January 2023.
8. The issues identified by the Authority in this letter of formal notice stem from the fact that the Icelandic Government concluded that the national legislation already in force at the time fulfilled the requirements of Directive 2018/957. Therefore, *no specific measures whatsoever* (legislative or other) were adopted with a view to implement Directive 2018/957 into the national legal order.
9. After having examined the information and explanations received from the Icelandic Government, the Authority cannot conclude that Iceland has sufficiently implemented Directive 2018/957 into the national legal order.

2 Correspondence

10. On 13 June 2023, the Authority received a Form 1 from the Icelandic Government indicating full implementation of Directive 2018/957.⁸
11. By email dated 16 June 2023 in reaction to an inquiry made by the Authority, the Icelandic Ministry of Social Affairs and Labour confirmed that, in its view, "no implementing measures are necessary as the legislation in force in Iceland already fulfils the requirements of the Directive".⁹
12. On 6 September 2023, the Authority informed the Icelandic Government that it had decided to carry out a conformity assessment of Iceland's implementation of Directive 2018/957. To facilitate this assessment, a Table of Correspondence ("ToC") was requested.¹⁰
13. On 6 November 2023, the Authority received the requested ToC.¹¹
14. On that basis, the Authority undertook a first assessment which raised issues prompting it to request further information and clarifications, by way of a letter dated 21 February 2024.¹²

⁶ Directive (EU) 2018/957 of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. Incorporated into Annex XVIII of the EEA Agreement by Decision of the EEA Joint Committee No 19/22, entering into force on 1 January 2023.

⁷ Report of the subgroup on the transposition of Directive (EU) 2018/957 – Report to the Committee of Experts on Posting of Workers (ECPW) – May 2020.

⁸ Form 1 dated 13 June 2023 (Doc No 1379526).

⁹ See email from the Icelandic Ministry to the Authority of 16 June 2023 (Doc No 1379782).

¹⁰ Request for information from the Authority to the Icelandic Government of 6 September 2023 (Doc No 1395486).

¹¹ Letter from the Icelandic Government to the Authority of 6 November 2023 (Doc No 1410862 / your ref. FRN23090027/02.3.04).

¹² Request for further information from the Authority to the Icelandic Government of 21 February 2024 (Doc No 1437363).

15. At the subsequent package meeting in Reykjavík in May 2024, the representatives of the Authority emphasised their concerns about the complete lack of implementing measures for the Directive in Icelandic law.¹³
16. The Icelandic Government subsequently replied to the Authority's letter on 10 July 2024.¹⁴ In its reply, as regards some but not all the issues raised by the Authority, the Icelandic Government expressed its willingness to undertake "further review" to reconsider whether amendments to national law were necessary after all.
17. On 25 March 2025, the Authority requested further clarifications from Iceland.¹⁵ The reply was received on 25 April 2025.¹⁶

3 Relevant EEA law

18. Article 1(1)(c)(ii) of Directive 2018/957 (Article 1(3) of the PoW Directive) concerns chain posting. It reads:

"(ii) the following subparagraphs are added:

'Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking as referred to in point (c) is to carry out work in the framework of the transnational provision of services within the meaning of point (a), (b) or (c) by the user undertaking in the territory of a Member State other than where the worker normally works for the temporary employment undertaking or placement agency, or for the user undertaking, the worker shall be considered to be posted to the territory of that Member State by the temporary employment undertaking or placement agency with which the worker is in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be an undertaking as referred to in paragraph 1 and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU of the European Parliament and of the Council.

The user undertaking shall inform the temporary employment undertaking or placement agency which hired out the worker in due time before commencement of the work referred to in the second subparagraph."

19. Article 1(2)(a) of Directive 2018/957 (Article 3(1) of the PoW Directive), sets out, *inter alia*, the list of generally applicable rules of the host EEA State that must be applied to posted workers. It reads:

"(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out:

— by law, regulation or administrative provision, and/or

¹³ See Follow-up Letter to the package meeting (Doc No 1458817).

¹⁴ Letter from the Icelandic Government to the Authority of 10 July 2024 (Doc No 1470906 / your ref. FRN24050041/90907).

¹⁵ 2nd request for further information from the Authority to the Icelandic Government of 25 March 2025 (Doc No 1526363).

¹⁶ Letter from the Icelandic Government to the Authority of 25 April 2025 (Doc No 1533223 / your ref. FRN23110325/90907).

— *by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:*

- (a) maximum work periods and minimum rest periods;*
- (b) minimum paid annual leave;*
- (c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;*
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;*
- (e) health, safety and hygiene at work;*
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;*
- (g) equality of treatment between men and women and other provisions on non-discrimination;*
- (h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;*
- (i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.*

[...]

20. Article 1(2)(b) of Directive 2018/957 (Article 3(1b) of the PoW Directive) adds a new provision on temporary agency workers. It reads:

“[...]

1b. Member States shall provide that the undertakings referred to in point (c) of Article 1(3) guarantee posted workers the terms and conditions of employment which apply pursuant to Article 5 of Directive 2008/104/EC of the European Parliament and of the Council to temporary agency workers hired-out by temporary-work agencies established in the Member State where the work is carried out.

The user undertaking shall inform the undertakings referred to in point (c) of Article 1(3) of the terms and conditions of employment that it applies regarding the working conditions and remuneration to the extent covered by the first subparagraph of this paragraph.”

21. Article 1(2)(c) of Directive 2018/957 (Article 3(7) of the PoW Directive) amends, *inter alia*, posting allowances. It reads:

“7. Paragraphs 1 to 6 shall not prevent the application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. The employer shall, without prejudice to point (h) of the first subparagraph of paragraph 1, reimburse the posted worker for such expenditure in accordance with the national law and/or practice applicable to the employment relationship.

Where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the allowance specific to the posting are paid in reimbursement of expenditure actually incurred on account of the posting or which are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure.”

22. Article 1(4) of Directive 2018/957 (Article 5 of the PoW) concerns monitoring, control and enforcement including non-genuine posting. It reads:

“Article 5 is replaced by the following:

‘Article 5

Monitoring, control and enforcement

The Member State to whose territory the worker is posted and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and in Directive 2014/67/EU and shall take appropriate measures in the event of failure to comply with this Directive.

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall in particular ensure that adequate procedures are available to workers and/or workers’ representatives for the enforcement of obligations under this Directive.

Where, following an overall assessment made pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of this Directive, that Member State shall ensure that the worker benefits from relevant law and practice.

Member States shall ensure that this Article does not lead to the worker concerned being subject to less favourable conditions than those applicable to posted workers.”

23. Article 3 concerns transposition and application. It reads:

“1. Member States shall adopt and publish, by 30 July 2020, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from 30 July 2020. Until that date, Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

*2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
[...]*”

4 Relevant national law

24. The national measures indicated in the ToC as implementing measures are:

- Act on Posted Workers and Obligation of Foreign Service-Providers No 45/2007, with subsequent amendments (*Lög um útsenda starfsmenn og skyldur erlendra þjónustuveitenda með síðari breytingum nr. 45/2007*) ("the Posted Workers Act");
- Act on Working Environment, Health and Safety in Workplaces No 46/1980, with subsequent amendments (*Lög um aðbúnað, hollustuhætti og öryggi á vinnustöðum nr. 46/1980, með síðari breytingum*);
- Act on Equal Treatment on the Labour Market No 86/2018 (*Lög um jafna meðferð á vinnumarkaði, nr. 86/2018*);
- Regulation No 931/2000 on measures to increase health and safety at the workplace for women who are pregnant, have recently given birth or are breastfeeding (*Reglugerð nr. 931/2000 um ráðstafanir til að auka öryggi og heilbrigði á vinnustöðum fyrir konur sem eru þungaðar hafa nýlega alið barn eða hafa barn á brjósti*);
- Act on Temporary Work Agencies No 139/2005 (*Lög um starfsmannaleigur nr. 139/2005*) ("The Temporary Work Agencies Act"); and
- Act on Administrative Procedures No 37/1993 (*Stjórnsýslulög nr 37/1993*) ("The Administrative Procedure Act").

25. Article 1 of the Posted Workers Act defines its scope. It reads:

**"Article 1
Scope**

This Act applies to undertakings which ...) post their workers temporarily in Iceland in connection with the provision of services:

- a. on the account of the undertaking and the worker being under its direction ...)*
- b. on the account of the undertaking, to an establishment or undertaking owned by the same undertaking group in Iceland, or*
- c. on the account of the undertaking and the worker being hired out for a fee in order to carry out work at the workplace of the user undertaking under its direction [in connection with a service contract to this effect between the undertaking and the user undertaking according to the Act on Temporary Work Agencies].*

This Act also applies to workers of undertakings who are posted temporarily to Iceland in connection with the provision of services by the undertaking under indents a, b or c of the first paragraph. The requirement is that an employment relationship must at all times exist between the undertaking and the worker during the period in which he works in Iceland.

This Act also applies regarding the obligation which self-employed individuals who come to Iceland of their own accord in connection with the provision of services have to provide information. This Act furthermore applies regarding the obligations and liabilities of user undertakings in connection with the service contracts they conclude with undertakings.

In the case of undertakings covered by indent c of the first paragraph, the Act on Temporary-Work Agencies shall also apply (cf. the second paragraph of Article 1 of that act) regarding the undertakings in question and their workers in Iceland, as appropriate. The same applies regarding the obligations and responsibilities of user undertakings that have concluded service contracts with such undertakings.] Articles 8-11 shall not apply to [undertakings under]1) item c of the first paragraph. ...)

This Act does not apply to the crews of merchant vessels."

26. Article 4 of the Posted Workers Act reads:

"Article 4

Terms and conditions of employment.

In the event of the posting of workers in Iceland in the sense of this Act, the following legislation, and regulations issued thereunder, shall apply to their terms and conditions of employment, irrespective of the foreign legislation covering other aspects of the employment relationship between the worker and the relevant undertaking:

- 1. Article 1 of the Working Terms and Pension Rights Insurance Act, No. 55/1980, with subsequent amendments, regarding minimum wages and other wage-related issues, overtime payments, the right to vacation pay, maximum working hours and minimum rest periods.*
- 2. The Act on Working Environment, Health and Safety in the Workplace, No. 46/1980, with subsequent amendments.*
- 3. The Holiday Allowance Act, No. 30/1987, with subsequent amendments.*
- 4. Article 4 of the Vessel Inspection Act, No. 47/2003.*
- 5. Section VI of the Air Traffic Act, 60/1998.*
- 6. Articles 11, 29 and 30 of the Maternity, Paternity and Parental Leave Act, No. 95/2000.*
- 7. The Act on the Equal Status and Equal Rights of Women and Men, No. 96/2000, and also other legal provisions proscribing discrimination.*

The first paragraph of this Article shall apply without prejudice to more favourable terms and condition of employment for worker according to his employment contract with the relevant undertaking, or a collective agreement or legislation in the state in which he normally works.

Payments that relate specifically to the employment shall be calculated as part of the worker's minimum wages. However, the undertaking may not calculate payments in connection with expenses for which it has made disbursements to cover the worker's travel, board and lodging as part of the minimum wage demands under item 1 of the first paragraph of this Article."

5 The Authority's assessment

5.1 Implementation of Directives in EEA law and specifically on the situation where no implementing measures are adopted

27. It follows from Article 7 of the EEA Agreement that the EEA States have the choice of form and method when implementing directives into their legal order.¹⁷ The EFTA Court has held that provisions of directives must be implemented with unquestionable binding force and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty and that EEA States must ensure full application of directives not only in fact but also in law.¹⁸
28. Accordingly, and recalling that the Icelandic Government concluded that *no specific* implementing *measures* were necessary to make Directive 2018/957 part of its internal legal order,¹⁹ it is observed that the EFTA Court has ruled that the implementation of a directive into domestic law does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific, express provision of national law. A general legal context may be sufficient provided it actually ensures the full application of the directive.²⁰
29. Indeed, in particular the existence of general principles of constitutional or administrative law may render implementation by specific legislation superfluous, provided however that those principles guarantee that the national authorities will in fact apply the Directive fully and that, where the Directive is intended to create rights for individuals, the legal position arising from those principles is sufficiently precise and clear and the persons concerned are made fully aware of their rights and, where appropriate, afforded the possibility of relying on them before the national courts.²¹
30. That last condition is of particular importance where the Directive in question is intended to accord rights to nationals of other Member States because those nationals are not normally aware of such principles.²²
31. Regarding the case at hand specifically, it is observed that Iceland is required, under Article 7 of the EEA Agreement, to adopt the measures necessary to implement Directive 2018/957 and to communicate these to the Authority.

5.2 Article 1(1)(c)(ii) of Directive 2018/957 (Article 1(3) of the PoW Directive): chain posting

32. Article 1(1)(c)(ii) of Directive 2018/957 introduces two subparagraphs to Article 1(3) of the PoW Directive.
33. The first subparagraph addresses the situation known as 'double' or 'chain' posting, which is a situation where a worker is sent by a temporary work agency and hired out to a user undertaking which in turn sends the worker to temporarily carry out activities in an EEA

¹⁷ See Case E-15/12 *Jan Anfinn Wahl v. Iceland*, [2013] EFTA Ct. Rep. 534, paragraph 49 and Case E-12/13 *EFTA Surveillance Authority v Iceland*, [2014] EFTA Ct. Rep. 58, paragraph 67.

¹⁸ See *Wahl*, cited above, paragraphs 50-51 and 56. See also *EFTA Surveillance Authority v Iceland*, cited above, paragraph 70.

¹⁹ See email from the Icelandic Ministry to the Authority of 6 June 2023 (Doc No 1379782).

²⁰ *Wahl*, paragraph 50.

²¹ Case 29/84 *Commission v Germany*, paragraph 23.

²² *Idem*

State other than where the worker normally works.²³ This subparagraph is meant to ensure that temporary work agencies established in an EEA State's territory are aware that they will be considered as the undertaking having made the posting in case the user undertaking sends the worker to another EEA State and that they will thereby bear the entire responsibility for that posting.²⁴

34. The second subparagraph contains an obligation on the user undertaking to inform the temporary work agency about the double or chain posting in due time before commencement of the work.
35. The EPCW Subgroup's Report concludes that this particular provision should be transposed into the national legislation of the Member States and that any Member State might be concerned from three different perspectives. These three perspectives are: (i) as the EEA State of establishment of the temporary work agency, (ii) as the EEA State of establishment (or operation) of the user undertaking and (iii) as the EEA State where the activities are carried out following the double or chain posting.²⁵
36. The Authority observes that those provisions confer specific rights and obligations on individuals and undertakings.
37. According to the ToC, those provisions of Directive 2018/957 are implemented into the Icelandic legal order by Article 1(1) and (4) of the Posted Workers Act.²⁶ In its letter of 10 July 2024, the Icelandic Government maintained that those national provisions adequately implemented the two provisions of Directive 2018/957 into the national legal order, there being no need for any specific implementing measures.²⁷
38. The Authority notes that no amendment was made to Article 1(1) and (4) of the Posted Workers Act to implement the aforementioned new subparagraphs introduced by Article 1(1)(c)(ii) of Directive 2018/957. Article 1(1) and (4) were last amended by Act No 75/2018 on 20 June 2018, which was an amending act to the Posted Workers Act with the main objective of implementing Directive 2014/67/EU ("the Enforcement Directive").²⁸ The last amendment to the referred provisions of the Posted Workers Act therefore pre-dates Directive 2018/957, which was published in the Official Journal of the European Union on 9 July 2018 and entered into force in the EEA on 1 January 2023.
39. Articles 1(1) and 1(4) of the Posted Workers Act do not contain any reference to the situation described in Article 1(1)(c)(ii) of Directive 2018/957 (first subparagraph of Article 1(3) of the PoW Directive on chain posting).

²³ The temporary work agency and the user undertaking can be established/operating in the same EEA State or in two different EEA States.

²⁴ The following example of the situation where the agency and the user undertaking are operating in two different EEA States is illustrative: A worker has an employment contract with a temporary work agency established in France. She is then posted to a user undertaking located in Belgium. Subsequently, the Belgian company dispatches that very same worker to a short-term assignment somewhere in Luxembourg. The provision of the Directive seeks to clarify that, in such a case, the French agency remains the "sending company", i.e. the undertaking having made the posting and, thus, bearing the responsibility.

²⁵ See Subgroup's Report, p. 6.

²⁶ See p. 4 of the ToC.

²⁷ By the letter of 10 July 2024, the Authority was informed by the Icelandic Government that it had the intention of reviewing the national legislation in greater detail to determine whether changes to the Posted Workers Act was necessary, see p.1 of said letter. The Authority observes that no such review appears to have taken place and that, at any rate, the Icelandic law at issue remains unamended to this date.

²⁸ Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System.

40. With reference to the above, the Authority must conclude that by failing to adopt the measures necessary to fully implement Article 1(1)(c)(ii) of Directive 2018/957 (Article 1(3) of the PoW Directive), Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 EEA.

5.3 Article 1(2)(a) of Directive 2018/957 (Article 3(1), second indent, point (d) of the PoW Directive): mandatory rules and the case of temporary agency workers

41. It is recalled that, whatever the law applicable to the employment relationship, the PoW Directive seeks to guarantee that posted workers will enjoy the application of certain minimum protective provisions in force in the EEA State to which they are posted.
42. Thus, through Article 1(2)(a) of Directive 2018/957, Article 3(1) PoW Directive continues to require that EEA States ensure that the sending undertakings guarantee workers posted to their territory the terms and conditions of employment established by law, regulation or administrative provision and/or by certain collective agreements in the host EEA State in regard to, inter alia, maximum work periods and minimum rest-periods, minimum paid annual holidays, remuneration and – importantly - the conditions of hiring-out of workers, in particular the supply of workers by temporary work agencies.²⁹
43. It is recalled that, according to the ToC, Article 4 of the Posted Workers Act would be the national provision transposing this rule into Icelandic law.³⁰ The Authority observes that Article 4(1) of the Posted Workers Act stipulates that a posted worker has the rights that follow from the national legislation specifically listed therein, and regulations issued thereunder. The list refers to seven Icelandic acts, in some cases only certain articles or parts of those acts.
44. The Authority notes, with regard to Icelandic legislation specifically, that Article 4 of the Posted Workers Act positively lists which provisions apply to the benefit of posted workers, with the corollary that any provisions not listed do not apply.
45. In response to an inquiry made by the Authority, the Icelandic Government, in its letter of 25 April 2025, maintained that Article 4 of the Posted Workers Act “entails all applicable terms and conditions of employment which are laid down under Icelandic law and could be applicable for a posted worker during their employment in Iceland”.
46. The Authority is not satisfied that this is the case, demonstrated by the following example.
47. As regards posted temporary agency workers specifically, it is recalled that, by virtue of Article 1(2)(a) of Directive 2018/957 (Article 3(1) second indent, point (d) of the PoW Directive), the EEA States remain bound to ensure that generally applicable national rules on the conditions of hiring-out of workers, and in particular the supply of workers by temporary employment undertakings, are applied to posted workers. In that respect, the Authority emphasises that the Icelandic Temporary Work Agencies Act is not on the list of legislation and regulations to be applied to workers posted to Iceland, c.f. Article 4(1) of the Posted Workers Act.
48. Consequently, the Authority submits, the particularly important provision on equal treatment set out in Article 5 (a) of the Icelandic Temporary Work Agencies Act, according

²⁹ Concretely, the provision establishes an obligation on the EEA States to ensure that a company established in Denmark who posts workers to Norway, provides those workers with e.g. the remuneration, minimum paid annual leave and conditions for the hiring-out of workers *laid down under Norwegian law* (not Danish law), see also Introduction.

³⁰ The Authority notes that, for some specific provisions contained in Article 1(2)(a) of Directive 2018/957, see Article 3(1) PoW Directive, the ToC refers, in a general manner, to collective agreements (see p. 6 of the ToC).

to which employees of temporary work agencies enjoy at least the same wages and other terms as they would if they had been directly engaged by the user undertaking, is not extended to posted temporary agency workers. The same issue arises for any other rights established by the Icelandic Temporary Work Agencies Act, insofar as the posted temporary agency workers are not mentioned.

49. The Authority takes note that Article 1 of the Posted Workers Act, setting out its scope of application, in its fourth paragraph refers to the Temporary Work Agencies Act. As such, the scope *ratione personae* of the Posted Workers Act appears, *prima facie*, to apply to workers hired out to Iceland by such agencies.
50. The Authority considers that insofar as the material scope set out in Article 4(1) of the Posted Workers Act does not include the Temporary Work Agencies Act, the obligation to ensure that generally applicable rules with regards to the conditions of hiring-out of workers and in particular the supply of workers by temporary work agencies, has not been sufficiently implemented into the Icelandic legal order.
51. On that basis, the Authority must conclude that by failing to adopt the measures necessary to fully implement Article 1(2)(a) of Directive 2018/957 (Article 3(1), second indent, point (d) of the PoW Directive), Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 EEA.

5.4 Article 1(2)(a) of Directive 2018/957 (Article 3(1)(i) of the PoW Directive): allowances or reimbursement of expenditures

52. The Authority observes that Article 1(2)(a) of Directive 2018/957 introduced two new elements to the list of terms and conditions of employment of the host EEA State that are to be granted to a worker posted to that EEA State. One of those concerns allowances or reimbursement of expenditures to cover travel, board and lodging for workers away from home for professional reasons.
53. The Authority recalls that this provision does not concern any allowances or reimbursement for travel for taking up the posting itself from the home to the host EEA State, but exclusively mobility during the posting assignment for professional reasons. It therefore applies on the one hand where workers are required to travel to and from their regular place of work in the host EEA State, and on the other hand where workers are temporarily sent by their employer from that regular place of work to another place of work. The first situation is limited to mobility within the host State, while the latter may involve different States.
54. The information provided by the Icelandic Government in the ToC as regards the transposition of this provision states that it is transposed in Article 4(3) of the Posted Workers Act and is also “in accordance with Collective Agreements”.³¹ The ToC does not elaborate on which collective agreements are being referred to, or which terms of those agreements ensure the above rights.
55. In its letter of 10 July 2024, the Icelandic Government maintained the statements made in the ToC, while adding that Article 4(3) of the Posted Workers Act specifies, among other things, that an undertaking may not include payments for expenses related to travel, board and lodging as part of the worker’s minimum wage or other wage-related calculations.³²
56. The Authority reiterates that Article 4(3) of the Posted Workers Act is a provision that was introduced into Icelandic legislation in 2005 by an amendment to the then applicable Act No 54/2001 on the working conditions of employees who work temporarily in Iceland on

³¹ See p.6 of the ToC.

³² See p.2 of the letter.

behalf of foreign companies.³³ The provision was intended to implement the second subparagraph of Article 3(7) of the Posting of Workers Directive, which concerns a completely different rule (that is, determining what is to be considered an allowance and what is to be considered remuneration or wages) than that which is covered under Article 1(2)(a) of Directive 2018/957 (Article 3(1)(i) of the PoW Directive).

57. With reference to the above, the Authority must conclude that by failing to adopt the measures necessary to fully implement Article 1(2)(a) of Directive 2018/957 (Article 3(1)(i) of the PoW Directive), Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 EEA.

5.5 Article 1(2)(b) of Directive 2018/957 (Article 3(1b) of the PoW Directive): posted temporary agency workers – the principle of equal treatment

58. Article 1(2)(b) of Directive 2018/957 added a new point (1b) to Article 3 of the PoW Directive concerning temporary agency workers, providing for two distinct rules.
59. The first subparagraph of Article 3(1b) of the PoW Directive, following the adoption of Article 1(2)(b) of Directive 2018/957, stipulates that the terms and conditions of employment of posted agency workers, (that is, the hiring out of a worker to a user undertaking established in another EEA State) are to be those which apply pursuant to Article 5 of Directive 2008/104/EC³⁴ to posted agency workers hired out by temporary work agencies established in the EEA State where the work is carried out.
60. It is recalled that Article 5 of Directive 2008/104 sets out the principle of equal treatment of temporary agency workers.
61. The result is that, with the adoption of Article 1(2)(b) of Directive 2018/957, the EEA States must ensure that the posting temporary work agencies apply the same terms and conditions of employment that would apply if these posted temporary agency workers had been recruited directly by the user undertaking for the same job.
62. The Authority stresses that this new provision of Directive 2018/957 entails that posted agency workers are entitled to more favourable terms and conditions than other categories of posted workers.³⁵
63. In the ToC, the Icelandic Government referred to Chapter II of the Icelandic Temporary Work Agencies Act No. 139/2005 as the relevant implementing measure.³⁶ Moreover, in its letter of 10 July 2024, the Icelandic Government drew the Authority's attention to the fact that Article 1(2) of the Temporary Work Agencies Act specifies that foreign temporary work agencies providing services in Iceland are subject to that act and the rules on the posting of workers (the latter referring to the Posted Workers Act).
64. The Authority observes that the equal treatment principle reflected in Article 5 of Directive 2008/104 appears, *prima facie*, to be implemented in Article 5a of the Temporary Work Agencies Act (which is situated in Chapter III, not II, of the Act).

³³ *Lög nr. 54/2001 um réttarstöðu starfsmanna sem starfa tímabundið á Íslandi á vegum erlendra fyrirtækja*. Act No 54/2001 was repealed and replaced by the Posted Workers Act, which maintains the identical provision in Article 4(3).

³⁴ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

³⁵ As the provision itself stipulates, *posted temporary agency workers* shall benefit from all terms and conditions of employment that are generally applicable in the host EEA State, contrary to regular posted workers who shall benefit from the more limited categories of rights listed in Article 3(1) PoW Directive, c.f. Article 1(2) (a) of the Act.

³⁶ See p. 8 of the ToC.

65. However, as explained under Section 5.3 above, the Temporary Work Agencies Act (and thus the equal treatment principle set out therein) is not on the list of legislation and regulations which are to be applied to workers posted to Iceland, see Article 4(1) of the Posted Workers Act. In other words, Article 4(1) of the Posted Workers Act does not prescribe the application of Article 5a of the Temporary Work Agencies Act.
66. Therefore, the Authority contends that the new rule established by Article 1(2)(b) of Directive 2018/957, whereby the equal treatment principle shall be applied to posted temporary agency workers, has not been sufficiently implemented into Icelandic law.
67. Article 1(2)(b) of Directive 2018/957 (the second subparagraph of Article 3(1b) of the PoW Directive) imposes on user undertakings a duty of information to the temporary work agency of the terms and conditions they apply regarding the working conditions and remuneration to the extent covered by the first subparagraph of Article 3(1b) of the PoW Directive (as it reads following the adoption of Article 1(2)(b) of Directive 2018/957).
68. The Authority notes that, while the Icelandic Government in its letter of 10 July 2024 stated its intention to review whether national law adequately reflected the duty of information prescribed by Article 1(2)(b) of Directive 2018/957, no amendment has been made or notified to the Authority.³⁷
69. With reference to the above, the Authority must conclude that by failing to adopt the measures necessary to fully implement Article 1(2)(b) of Directive 2018/957 (Article 3(1b) of the PoW Directive), Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 EEA.

5.6 Article 1(2)(c) of Directive 2018/957 (Article 3(7) second subparagraph of the PoW Directive): reimbursement of travel, board and lodging expenses incurred on account of the posting itself

5.6.1 The PoW Directive's provisions on posting allowances and reimbursement of expenses following the amendments introduced by the adoption of Directive 2018/957

70. By way of introduction, it is useful to recall that posted workers benefit from the “remuneration” applicable to local workers in the host EEA State, following the principle of equal pay for equal work at the same workplace, see Article 3(1) second indent, point (c) of the PoW Directive.³⁸
71. The Authority notes that the principle according to which allowances specific to posting are to be considered as part of remuneration unless they are paid in reimbursement of expenditure actually incurred, such as expenditure on travel, board and lodging, was already expressed in the second subparagraph of Article 3(7) of the original text of the PoW Directive.
72. Article 1(2)(c) of Directive 2018/957 introduced an amendment whereby an “allowance” will only be considered part of remuneration if this clearly results from the terms and conditions applicable to the employment relationship. If the parts of the allowance constituting either reimbursement of expenditure or remuneration are not defined in the applicable legislation, collective agreement or contractual arrangements, the entire allowance will be considered to be paid in reimbursement.

³⁷ See p.3 of the letter.

³⁸ *The Revised Posting of Workers Directive: Curbing or Ensuring Free Movement*, Van Nuffel and Afanasjeva, p. 290.

73. Second, as regards expenses incurred by the worker related to the displacement from the usual place of work in the home EEA State to the working place in the host EEA State,³⁹ Article 1(2)(c) of Directive 2018/957 also introduced a provision according to which the employer must reimburse the posted worker for travel, board and lodging expenditure in accordance with the national law and/or practice applicable to the employment relationship.⁴⁰ This is, in general, the home EEA State's law and/or practice.⁴¹
74. Thus, while expressing the principle according to which such expenses must be supported by the employer, Article 1(2)(c) of Directive 2018/957, leaves it to the national law and/or the practice (including collective agreements at any level) of the home EEA State to regulate the issue.⁴²

5.6.2 The Authority's assessment of Iceland's implementation of the new rules on posting allowances and reimbursement of expenses

75. Information provided in the ToC indicates that the amendments introduced by Article 1(2)(c) of Directive 2018/957, are implemented by Article 4(2) and (3) of the Posted Workers Act. In its letter of 10 July 2024, the Icelandic Government maintained this position.⁴³
76. The Authority recognises that Article 4(3) of the Posted Workers Act, *prima facie*, implements the principle according to which allowances specific to posting are to be considered as part of remuneration unless they are paid in reimbursement of expenditure actually incurred, such as expenditure on travel, board and lodging. That principle was already expressed in the original text of the PoW Directive.
77. However, the Authority recalls that the two new provisions introduced by Article 1(2)(c) of Directive 2018/957 and described above, clearly confer new rights to the benefit of posted workers and entail the corresponding obligations on employers. First, an "allowance" is only to be considered part of remuneration if this clearly results from the terms and conditions applicable to the employment relationship and, moreover, that the entire allowance is to be considered as paid in reimbursement of expenses if the parts of the allowance constituting either reimbursement of expenditure or remuneration are not defined in the applicable legislation, collective agreement or contractual arrangements. Secondly, that the employer must reimburse the posted worker for travel, board and lodging expenditure.
78. The Authority submits that the current, non-amended wording of Article 4 (2) and (3) of the Posted Workers Act cannot reasonably be interpreted in such a way that it encompasses either of the amendments introduced by Article 1(2)(c) of Directive 2018/957, such as the practically important rule whereby posting allowances are presumed to be compensation for expenditure actually incurred.
79. That is, Article 4(2) of the Posted Workers Act provides that Article 4(1) of that Act (which lists the national legislation and regulations that shall apply to posted workers) shall apply without prejudice to more favourable terms and conditions of employment for a worker according to his employment contract, among others. The Authority submits that this does not relate to either of the two new provisions introduced by Article 1(2)(c) of the Directive.
80. Moreover, as regards Article 4(3) of the Posted Workers Act (also referred to by Iceland as a relevant implementing measure for Article 1(2)(c) of the Directive, see above), the Authority notes that its first sentence merely states that payments relating specifically to

³⁹ As opposed to the issue of reimbursement of expenses incurred by the worker during the posting assignment, see Article 3(1)(i) of the PoW Directive, addressed under header 5.4 above.

⁴⁰ See also Article 3(7) second subparagraph, last sentence of the PoW Directive.

⁴¹ Practical guide on posting, European Commission, 2019, point 2.20. [Practical guide on posting - Publications Office of the EU](#).

⁴² *Idem*, point 3.6.

⁴³ See p.2 of the letter.

the employment are to be considered part of the posted worker's minimum wages. That, the Authority contends, does not relate to either of the two new provisions introduced by Article 1(2)(c) of the Directive.

81. Furthermore, the second sentence of Article 4(3) of the Posted Workers Act makes clear that the undertaking cannot include its reimbursement of the worker's expenses as part of his minimum wage. While its wording may have some connection with the rules established by the two new provisions introduced by Article 1(2)(c) of the Directive, the Authority submits that it does not have the precision or clarity necessary to sufficiently implement the said new provisions.
82. In fact, Article 4(3) of the Posted Workers Act was adopted with a view to implementing the principle according to which allowances specific to posting are to be considered as part of remuneration unless they are paid in reimbursement of expenditure actually incurred, such as expenditure on travel, board and lodging, a principle that was already expressed in the second subparagraph of Article 3(7) of the original text of the PoW Directive.
83. The Authority further submits that the references made by the Icelandic Government to the collective agreements such as that between SGS (Federation of General and Special Workers in Iceland) and SA (Confederation of Icelandic Enterprise)⁴⁴ and in particular its chapter 3.5 concerning wages on journeys,⁴⁵ are immaterial in that respect. Notably, the two, specific new rules introduced by Article 1(2)(c) of Directive 2018/957 are not reflected in that collective agreement.
84. With reference to the above, the Authority must conclude that by failing to adopt the measures necessary to fully implement Article 1(2)(c) of Directive 2018/957 (Article 3(7) second subparagraph of the PoW Directive), Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 EEA.

5.7 Article 1(4) of Directive 2018/957 (Article 5, fourth and fifth subparagraphs of the PoW Directive): monitoring, control and enforcement including non-genuine posting

5.7.1 The PoW Directive's provisions following the amendments introduced by the adoption of Directive 2018/957

85. Article 1(4) of Directive 2018/957 introduced two new, specific obligations on the EEA States, briefly explained in the following.
86. The fourth and fifth subparagraphs of Article 5 of the PoW Directive, introduced by the adoption of Article 1(4) of Directive 2018/957, concern non-genuine posting. A common example is that of the creation of "letterbox" entities in countries with lower social security costs to avoid paying proper contributions in the country where the work is actually performed (the former country being considered as the EEA home state and the latter as the EEA host state).⁴⁶
87. Article 4 of the Enforcement Directive already provided the EEA States with criteria for assessing whether the relationship between an undertaking and a worker is a genuine employment relationship. Article 1(4) of Directive 2018/957 introduced a new provision (see

⁴⁴ See Collective Agreement between SGS (Federation of General and Special Workers in Iceland) and SA (Confederation of Icelandic Enterprise) 2024-2028, available on the website of the SGS: [Collective agreement between SGS and SA 2024-2028 - Starfsgreinasamband Íslands](#)

⁴⁵ See p.3 of Iceland's letter of 10 July 2024.

⁴⁶ Genuinely posted workers remain subject to the social security system of the home EEA State which, consequently, is where the employer is liable for social security contributions.

the fourth subparagraph of Article 5 of the PoW Directive) stipulating what is to be the consequence when such an assessment leads to the conclusion that the worker in question is not genuinely posted. In that case, to ensure that workers that are not genuinely posted are not left without any protection⁴⁷, the EEA States are to ensure that the worker benefits from “relevant law and practice”.

88. The Authority submits that the worker’s right to benefit from “relevant law and practice”, in a situation where a national competent authority establishes that the alleged posting is fraudulent, merely (but, importantly) clarifies that the worker is then entitled to all relevant rights and not just the more limited categories of rights listed in Article 1(2)(a) of Directive 2018/957 (Article 3(1) of the PoW Directive).
89. Moreover, as provided for by Article 1(4) of Directive 2018/957 (Article 5, fifth subparagraph of the PoW Directive), the EEA States are to ensure that the worker, in such a situation, will not be subject to “less favourable conditions than those applicable to posted workers.” Whereas this provision does not set out which conditions should be applied to a worker who, by definition, falls outside the scope of the PoW Directive, it nonetheless requires EEA States to ensure that such workers do not find themselves in a disadvantaged situation as compared to posted workers.⁴⁸

5.7.2 The Authority’s assessment of Iceland’s implementation of the new rules on monitoring, control and enforcement including non-genuine posting

90. According to the information provided by the Icelandic Government in the ToC, Article 5, fourth subparagraph of the PoW Directive, introduced by the adoption of Article 1(4) of Directive 2018/957 (overall assessment establishing non-genuine posting) is implemented by Articles 13, 14, 15, 15a, 15b and 16 of the Posted Workers Act (Chapter V), and Article 5, fifth subparagraph of the PoW Directive, also introduced by the adoption of Article 1(4) of Directive 2018/957, is implemented by Article 1a(1) of the Posted Workers Act.⁴⁹
91. In its letter of 10 July 2024, the Icelandic Government highlighted that Chapter V of the Posted Workers Act contains provisions ensuring that [posted] workers benefit from the application of that Act. Reference was made to specific provisions set out therein (Articles 13, 14, 15, 15a, 15b and 16 of the Posted Workers Act, as referred to on p. 11 of the ToC). Moreover, it was put forward that in cases where the posted worker has not been remunerated according to collective agreements, the relevant union could also address such cases through traditional channels, in line with the labour market in Iceland.⁵⁰
92. The Authority respectfully disagrees and maintains that none of the Articles referred to by the Icelandic Government address the situation of a non-genuine posting and the legal effects thereof.
93. On that point, the Authority would emphasise that the provisions contained in the fourth and fifth subparagraphs of Article 5 of the PoW Directive, introduced by the adoption of Article 1(4) of Directive 2018/957, establish specific rights to protect workers. The provisions at issue were adopted with the objective of ensuring that workers, in a situation of non-genuine posting, are not left without any protection. A reference to general information and enforcement obligations, as referred to by the Icelandic Government, cannot in the Authority’s view constitute sufficient transposition measures for such specific rights, adopted with a view to protecting a vulnerable group of workers.

⁴⁷ *The Revised Posting of Workers Directive: Curbing or Ensuring Free Movement*, Van Nuffel and Afanasjeva, p. 297.

⁴⁸ *Idem* p. 298.

⁴⁹ See p. 11 of the ToC.

⁵⁰ See p. 3 of the letter.

94. The Authority recalls that the Subgroup's Report clearly states that the fourth and fifth subparagraphs of the new Article 5 of the Posting of Workers Directive should be implemented into national law.⁵¹
95. With reference to the above, the Authority must conclude that by failing to adopt the measures necessary to fully implement Article 1(4) of Directive 2018/957 (Article 5 fourth and fifth subparagraphs of the PoW Directive), Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 EEA.

6 Conclusion

96. Accordingly, as its information presently stands, the Authority must conclude that, by failing to adopt the measures necessary to fully implement Articles 1(1)(c)(ii), 1(2)(a), 1(2)(b), 1(2)(c) and 1(4) of Directive 2018/957, Iceland has failed to fulfil its obligations under Directive 2018/957 and under Article 7 of the EEA Agreement.
97. In these circumstances, and acting under Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Authority requests that the Icelandic Government submits its observations on the content of this letter within two months of its receipt.
98. After the time limit has expired, the Authority will consider, in the light of any observations received from the Icelandic Government, whether to deliver a reasoned opinion in accordance with Article 31 of the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice.

For the EFTA Surveillance Authority,

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⁵¹ Subgroup's Report, p. 19.