



30.8.2019

NOTICE TO MEMBERS

Subject: Petition 0547/2018 by M.L. (German) on problems with implementing the Posting of Workers Directive

1. Summary of petition

The petitioner runs a trade fair company. He bemoans the poor implementation of the Posting of Workers Directive in certain Member States. He gives some examples: Websites for registering posted workers crash; many are only in the language of the destination country; different countries have different conditions. In Denmark, a Danish employer's details must be given, which is impossible for a client who comes from Germany. The petitioner urges the establishment of a central European register.

2. Admissibility

Declared admissible on 17 October 2018. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 15 April 2019

The petitioner raises several issues related to the implementation of the Enforcement Directive on Posting of Workers¹. Firstly, regarding the obligation to register posted workers and a suggestion to create a European register. Secondly, about a notification obligation of posting in Denmark, where a Danish client has to be identified.

Firstly, the Commission notes that the Enforcement Directive on Posting of Workers allows a Member State to require a declaration of posted workers in its official language(s).

¹ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 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 ('the IMI Regulation') Text with EEA relevance, *OJ L 159*, 28.5.2014, p. 11–31.

In particular, Article 9 (1) (a) of the Enforcement Directive allows Member States to impose “an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow factual controls at the workplace, including:

- (i) the identity of the service provider;
- (ii) the anticipated number of clearly identifiable posted workers;
- (iii) the persons referred to under points (e) and (f);
- (iv) the anticipated duration, envisaged beginning and end date of the posting;
- (v) the address(es) of the workplace; and
- (vi) the nature of the services justifying the posting”.

The persons referred to under points (e) and (f) concern obligations to designate a contact person to liaise with the competent authorities in the host Member State and a contact person to act as a representative through whom the social partners may seek to engage the service provider to enter into collective bargaining.

Article 9 (4) further specifies that “Member States shall ensure that the procedures and formalities relating to the posting of workers pursuant to this Article can be completed in a user-friendly way by undertakings, at a distance and by electronic means as far as possible”.

Furthermore, the Directive does not foresee a possibility for the Commission to set up a European register or declaration system of posted workers.

The second issue raised by the petitioner concerns an obligation to inform about a service recipient in that Member State.

This obligation stems from the Danish law on posting of workers, where according to Section 7a Paragraph 1:

A foreign undertaking which posts workers to Denmark in the context of the provision of services shall notify the following information to the *Erhvervsstyrelsen* [Danish Business Authority]:

- 1) the company name, address and contact details;
- 2) the dates of commencement and termination of its services;
- 3) the location where the services are being provided;
- 4) the contact person for the company; the contact person shall be appointed by the company from among the persons working in Denmark in connection with the provision of the service;
- 5) the company’s sectoral code;
- 6) the identity of the posted workers, and the duration of the posting;
- 7) details of any Value Added Tax (VAT) registration in the home Member State;
- 8) information on social security conditions for the workers for whom information has been declared in accordance with paragraph 6;
- 9) information on the Danish client for whom the service is being provided, where the client is not a private individual.

The Commission services have been in contact with the Danish authorities and received information that in case a service is notified within certain industries and it occurs that there is no Danish client, the Register for Foreign Service Providers (RUT) will present the possibility to register “no Danish assignor (client)”. Trade fair installations, the sector concerned by the petitioner, is indeed considered as one of the industries where there is no Danish client in the supply chain. However, should a situation occur, where the service provider in another industry does not have a Danish client and therefore the option of “no Danish assignor (client)” is not presented, the service provider can contact the Danish Business Authority to get advice on how to complete the notification.

Although the information concerning the service recipient is not explicitly listed amongst the information mentioned in Article 9 (1) (a) of the Enforcement Directive on Posting of Workers, Member States may according to Article 9 (2) take other administrative requirements and control measures, provided that they are justified and proportionate.

Conclusion

Firstly, taking into account the provisions of the Enforcement Directive on Posting of Workers as described above, the fact that a Member State requires a declaration of posted workers via web platforms in its official language(s) is in line with the Enforcement Directive.

Secondly, the EU legislator chose to enable Member States to adapt the administrative requirements and control measures, including the declaration prior to posting, to their needs. The Directive does not foresee a possibility for the Commission to set up a European register or declaration system of posted workers.

Thirdly, regarding the information to be provided about the service recipient in Denmark, the Commission has acquired information that the sector concerned (trade fair installations) is considered to be one of the sectors where the Danish client does not need to be indicated.

Finally, a European Labour Authority² will soon be established following the agreement of the co-legislators. The Authority will improve the quality and access of information about the rights and obligations in the field of labour mobility offered to individuals and employers. This should help Member States put in place adequate information systems in the field of posting of workers.

4. Commission reply (REV.), received on 30 August 2019

In his reply the petitioner describes a couple of cases related to measures taken following Article 9 of the Enforcement Directive on Posting of Workers³ in Switzerland and the duration of a PD A1 form.

² COM(2018) 131 final

³ Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 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 (‘the IMI Regulation’), OJ L 159, 28.5.2014, p. 11.

As regards the situation in Switzerland, the free movement of workers and the right to provide services for Union citizens and Swiss nationals is guaranteed under the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons (1999) ('Agreement'). Given that the Enforcement Directive on Posting of Workers was adopted following the signature of the Agreement, it is not applicable to Switzerland.

Since 2004, Switzerland unilaterally introduced and subsequently reinforced so-called 'flanking measures' on companies providing services in Switzerland. These measures include the obligation for EU companies to notify provision of service 8 days in advance, the obligation to provide a bank guarantee prior to the supply of service in Switzerland and heavy, discriminatory controls of service providers etc. These measures seriously hamper the provision of services as guaranteed by the Agreement. Since 2007 the EU has raised within the EU-Swiss Joint Committee established by the Agreement which is responsible for the management and proper application of the Agreement in a reiterated manner its concerns about their disproportionate, unjustified and discriminative character. The EU has repeatedly required Switzerland to revise such measures in line with the Agreement, however, without considerable success.

In May 2014, negotiations on the Institutional Framework Agreement (IFA) were launched to ensure homogeneity and legal certainty for both Swiss and EU citizens and businesses. The EU and Swiss negotiators agreed on the text of the agreement in November 2018. In particular, the IFA provides that Switzerland takes over the Enforcement Posting of Workers Directive and ensures that controls are appropriate, efficient and non-discriminatory. However, the Swiss Federal Council has not yet accepted the text of the IFA.

As regards the comments on the duration of a PD A1, it should be noted that the PD A1 is issued under Regulation (EC) No 883/2004 on the coordination of social security systems⁴, and its purpose is to certify the social security legislation which applies to the holder. This form is issued by the institution in the competent Member State (the institution where the person is insured) and presented in the Member State where he/she performs the activity in order to be exempted from being insured also in that Member State. The PD A1 is issued under certain strict conditions, and the time-limit for which it is issued is clearly indicated in box 2 of the PD A1. For posted workers, Article 12 of Regulation (EC) No 883/2004 allows for a maximum period of 24 months, whereas no time limit is specified for persons who pursue an activity in two or more Member States covered by Article 13 of Regulation (EC) No 883/2004. In this case, a PD A1 may be issued for a period of time (to be determined by the competent institutions), taking into account the situation projected for the following 12 calendar months. The duration for which the PD A1 is issued under Article 13 is also indicated in box 2 of the PD A1.

Conclusion

⁴ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJ L 166*, 30.4.2004.

In the light of the information provided previously and the additional information above, the Commission believes the concerns raised by the petitioner do not constitute a breach of EU law. The Commission and the EU legislature have taken initiatives to improve the situation, in particular through the setting up of the European Labour Authority and the negotiation with Switzerland of the Institutional Framework Agreement.