



POSTING OF WORKERS

A 'posted worker' is a worker who is sent by his or her employer to provide a service in another EU Member State on a temporary basis. Freedom of establishment and freedom to provide services are fundamental freedoms enshrined in the Treaty on the Functioning of the European Union (TFEU). The principle governing the status of posted workers is 'equal pay for the same work in the same place'.

LEGAL BASIS

Articles 54 and 56 to 62 of the TFEU.

OBJECTIVES

A 'posted worker' is an employee sent by his or her employer to carry out a service in another EU Member State on a temporary basis. EU law on posted workers is generally regarded as a targeted effort to regulate and balance the following two principles:

- Creating a level playing field for cross-border service provision in a way that is as unrestricted as possible;
- Protecting the rights of posted workers by guaranteeing a common set of social rights in order to prevent unfair treatment and the creation of a low-cost workforce.

ACHIEVEMENTS

A. History of the Posting of Workers Directive

The Posting of Workers Directive (PWD) stems from the freedom to provide services (Article 56 of the TFEU) and the EU's commitment to removing obstacles to the free cross-border movement of services within the internal market. As the European Union expanded in 1986 with the accession of Spain and Portugal, the issue of the cross-border provision of services was brought to the forefront of the internal market debate. Following a decade of legislative gridlock, it was a judgment by the Court of Justice of the European Union (CJEU) (C-113/89), coupled with the accession of Austria, Finland and Sweden, that eventually triggered the adoption of a directive to regulate the situation of posted workers.

The first directive was adopted on 16 December 1996. It established a set of 'hard core' minimum terms of employment and working conditions (such as maximum work periods, minimum paid annual holidays, minimum rates of pay, health and safety at work, etc.). For the rest of the employment relationship, the labour law rules of the



sending country would continue to apply. As regards social security, posted workers remained insured in the social security system in their home country provided the posting lasted – in general – for less than two years. As far as taxation was concerned, the right to levy income tax remained with the sending country for 183 days, moving to the receiving country only after that period had elapsed.

Consequently, labour cost differentials between local and posted workers could be significant, depending on wage levels, social security contributions and income tax to be paid.

In the years following the adoption of the first PWD, the implementation, legal interpretation and regulation of the special case of posted workers brought three specific challenges:

- Increasing wage gaps and divergence in labour costs, which made it more attractive for businesses to use posted workers; as a consequence, between 2010 and 2014 the number of postings went up by 44.4%;
- An environment conducive to malpractice, such as rotational posting or the practices of ‘letter-box companies’, which exploited loopholes in the directive to circumvent employment and social security legislation and engage in operations in other Member States;
- A lack of clarity in the established standards, and weaknesses in the cooperation between authorities, both within Member States and across borders, which created problems for enforcement bodies.

In view of the social policy provisions introduced into the European Treaties since the 2007 Lisbon Treaty revision, it was questionable whether the 1996 PWD provided an adequate legal instrument for ensuring a level playing field for free cross-border service provision while at the same time delivering an adequate foundation for the social rights of workers. In cases where the PWD left implementation and enforcement of minimum standards of employment to Member States, it relied on CJEU rulings to interpret the terminology in the PWD. However, CJEU rulings after the adoption of the PWD did not provide the necessary legal clarity. As the Commission rightfully noted, the lack of a clear standard generated uncertainty about rules and practical difficulties for the bodies responsible for the enforcement of the rules in the host Member State; for the service provider when determining the wage due to a posted worker; and for the posted workers themselves in terms of their awareness of their entitlements. In addition, with its four judgments in 2007/2008 in the cases Viking (C-438/05), Laval (C-341/05), Ruffert (C-346/06) and Commission vs Luxembourg (C-319/06), the CJEU turned employment standards originally conceived as minimum standards in the PWD into a ‘maximum ceiling’ of terms and conditions of employment. Since then, however, the CJEU has issued two judgments with a more protective effect for posted workers: in the Sähköalojen ammattiliittory case (C-396/13), it ruled that categorising workers in different pay groups which are universally binding and transparent in a collective agreement must also be applied to posted workers. More recently, it ruled in the Regio-Post case (C-115/14) that Member States can require tenderers of public procurements and their subcontractors to pay their employees a set minimum wage.



B. Reforms to improve performance

In the light of these shortcomings, the Commission pursued reform in an effort to update the original PWD and strengthen enforcement. These reforms took account of updates to the European Treaties and the strong upward trend in the use of posting.

The two main legislative proposals:

1. Enforcement Directive 2014/67/EU

The [Enforcement Directive 2014/67/EU](#) creates a common legal framework for identifying a genuine posting of workers and allows for a more uniform implementation, application and enforcement of common standards. It clarifies the definition of posting and defines the responsibilities incumbent on Member States to verify compliance with the PWD, especially in sectors with a greater risk of malpractice, such as construction or road haulage. It seeks to achieve better cooperation between national authorities in charge of posting, by enforcing the obligation to respond to requests for assistance and setting time limits for responses to information requests. Finally, administrative penalties and fines imposed on service providers by one Member State can now be enforced and recovered in another Member State.

2. Revised Posting of Workers Directive

In March 2016, the Commission proposed a revision of the original PWD (96/71/EC) with a view to ensuring the application of the host Member State's labour law in the case of long-term posting, and addressing issues such as equal pay, the applicability of collective agreements and the treatment of temporary agency workers.

Upon publication of this proposal, 11 Member State parliamentary chambers submitted a reasoned opinion, thereby triggering a subsidiarity check – the so-called yellow card procedure. Most opinions deplored the fact that the proposal would cause competitive disadvantage for their workers and that Member States would lose their right to decide on the basic working and employment conditions of posted temporary agency workers as provided for in the 2008 Temporary Agency Work Directive.

Following intensive negotiations between the Commission, the Council and the European Parliament, the Council adopted the revised directive on 21 June 2018. Effective from 30 July 2020, the revised Posted Workers Directive ([Directive EU 2018/957](#)) affects the following areas:

- Long-term posting: Posting can last up to 12 months, with a possible extension of six months (the Commission had originally proposed 24 months). After this period, the provisions of the host Member State's labour law will apply;
- Remuneration: All host country rules applicable to local workers will also apply to all posted workers from day one, i.e. the principle of equal pay for the same work in the same place will apply. As regards other elements of remuneration, the revision introduces clearer rules for allowances, while travel, board and accommodation costs are not deductible from workers' salaries. As stipulated by the Enforcement Directive, the mandatory elements that constitute remuneration in a Member State must be available on a single national website;



- Working conditions: Member States may apply large, representative regional or sectoral collective agreements. Previously this was valid only for universally applicable collective agreements in the construction sector. As regards accommodation conditions in the host country, existing national rules for local workers away from home for work must be applied;
- Posted temporary agency workers: The revised PWD ensures equal treatment of posted temporary agency workers. The same conditions applicable to national temporary employment agencies will also apply to those cross-border agencies hiring out workers;
- Transport: [Directive \(EU\) 2020/1057](#) lays down specific rules for posting drivers in the road transport sector. In the *Dobersberger* judgment (C-16/18) of 19 December 2019, the CJEU excluded workers performing on-board services on international trains from the PWD's scope of application.

C. Other initiatives

In 2019, the Commission established the European Labour Authority (ELA) to guarantee the correct application of the rules on labour mobility and social security. In 2023, the ELA, together with the Commission, launched the 'Posting 360 Programme', a framework for cooperation between relevant stakeholders with a view to improving the exchange of information, enhancing administrative cooperation and increasing knowledge of the EU and national rules on the posting of workers.

ROLE OF THE EUROPEAN PARLIAMENT

The European Parliament has been a driving force in legislating on freedom of movement of people and services.

Since 2014, Parliament has recalled the need to improve the PWD in several resolutions. During the negotiations on the revision of the PWD, Parliament specifically pushed for 'equal pay for equal work' and for Member States to be able to apply regional, sectoral or industry agreements. In addition, it sought to enable Member States, by means of a review clause, to place foreign undertakings under the same national obligations in the event of sub-contracting.

In March 2021, Parliament expressed concern about the current lack of harmonised interpretation of the recently revised PWD, calling on the Commission to directly assist Member States during the entire transposition process so as to ensure a uniform interpretation of European law. In a [resolution of 20 May 2021 on impacts of EU rules on the free movements of workers and services: intra-EU labour mobility as a tool to match labour market needs and skills](#), Parliament drew attention to the particularly vulnerable situation of mobile workers, including posted workers, during the COVID-19 pandemic and called for structural shortcomings in the European and national regulatory frameworks to be addressed. To this end, Parliament called for improved implementation, enforcement and monitoring of the revised Posting of Workers Directive and the establishment of a one-stop shop where workers and employers can access digital services regarding labour mobility and the posting of workers.



In 2016, the Commission proposed a [regulation of the European Parliament and of the Council amending Regulation \(EC\) No 883/2004 on the coordination of social security systems and Regulation \(EC\) No 987/2009 laying down the procedure for implementing Regulation \(EC\) No 883/2004](#). One of the objectives of the proposal was to clarify the conflict rules on applicable legislation and the relationship between the Regulation on social security coordination and the Posted Workers Directive. In December 2021, the Council and the European Parliament reached a provisional agreement on the file. However, this agreement was not confirmed and the file is now on hold.

In [a resolution of 25 November 2021](#) on the introduction of a European social security pass for improving the digital enforcement of social security rights and fair mobility, Parliament emphasised the need for an EU-wide digital instrument for all mobile workers, including posted workers. Such an instrument would ensure effective identification, traceability, aggregation and portability of social security rights and improve enforcement of EU rules on labour mobility and social security coordination in the labour market in a fair and effective way. On 6 September 2023, the Commission presented a [communication on digitalisation in social security coordination](#). The communication sets out the various projects being developed in the area of digitalisation, including the European social security pass (ESSPASS) project. The ESSPASS project focuses on digitalising the process of requesting and receiving entitlement documents, and real-time verification to allow social security institutions, labour inspectorates, healthcare providers and other relevant entities to verify these documents instantly across Europe.

For more information on this topic please consult the [website](#) of the Committee on Employment and Social Affairs.

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10/2023

