



Administrative requirements for short-term postings of workers and business trips

This paper concerns barriers to free movement of services and posting of workers due to national measures implemented by Member States.

CONTEXT

Companies are facing an increasing number of barriers when posting workers in the EU, due to accumulation of legislation at the European level, combined with different national implementation measures and a tightening of the rules. Some requirements and sanctions put in place by Member States are in violation of EU law, as they are disproportionate and/or discriminatory. This creates obstacles to workers travelling on simple business trips and to companies posting workers, in particular in case of short-term postings, as well as uncertainties for the workers themselves.

Whilst posted workers for example need to request an A1 form certifying which social security legislation applies to them, issued by their Member State of origin, A1 forms are not useful in case of business trips. Nevertheless, various EU countries require workers travelling abroad in the framework of business trips to be in possession of such a form, which is disproportionate and therefore creates barriers to the freedom of movement.

LEGAL FRAMEWORK

Directive 2014/67/EU on the Enforcement of the Posting of Workers Directive ('Enforcement Directive') came into force in June 2016. The revision of the Posting of Workers Directive 96/71 was adopted in July 2018. It will make the rules more complex and generate additional administrative burdens for companies. It had a transposition deadline of 31 July 2020 and all Member States had to transpose at the same time, to ensure a level playing field. However, a large number of Member States have not yet implemented it. This will add to the problems for companies. These two new directives are the EU's effort to strike a balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers. Another key objective of both directives is to harmonise rules across the EU and foster genuine social convergence between Member States.

Considering the current economic crisis induced by Covid-19, BusinessEurope called on the Commission to initiate a fast procedure in order to postpone the date of application of Directive 2018/957, to the time when it could be effectively implemented by business and national administrations. Meanwhile, the existing rules on posting of workers (Directive 96/71/EC), with which all operators are already familiar, would have remained applicable. As required by Article 24 of the Enforcement Directive, the Commission



published a report reviewing this directive in September 2019 in which it stated that the directive was properly implemented in all Member States and consequently, it did not recommend any amendments.

Regulations 883/2004 and 987/2009 provide rules on coordination of social security systems and A1 forms. The regulations are currently under review as the Commission submitted a proposal to amend these regulations in 2016. The Council and the European Parliament have been negotiating since 2018 to finalise a compromise text.

EXAMPLE

A German company, specialised in precision tools, sends around one hundred employees in foreign assignments across Europe per week, and is therefore obliged to request one hundred different A1 forms from the German authorities weekly. The company's travel department has estimated that the cost of each A1 request is approximately fifty euros, which induces a cost of two hundred and fifty thousand euros annually. On top of the unnecessary financial costs generated by A1 form requests for business trips, the company underlined incoherence with the system of some countries. Thus, if a German employee goes on a business trip for one week in France, arriving each day in the morning on French territory and leaving each day in the evening, the employee has to hold five different A1 forms and cannot apply for a one-week-form. In addition, if the trip is supposed to last for an entire week, but in the end the employee only stays for three days because his assignment is shorter than expected, the A1 form is no longer valid, and a new request should be made to the authority.

HOW TO ACHIEVE BETTER RESULTS

BusinessEurope suggests ensuring that **business trips are not considered as posting**, and that national implementation of posting legislation **avoids disproportionate burdens for companies**.

Further recommendations:

1. The Parliament and Council should quickly agree on a revision of regulations 883/2004 and 987/2009 to **introduce a mandatory exemption for A1 forms** in case of business trips. A possible exemption should also be considered for short-term posting under one month. However, the special characteristics and different needs of the economic branches and sectors should be taken into account. Therefore, certain sectors such as the construction sector, should not be covered by this latter exemption. In parallel, Member States should consider additional ways to relieve administrative burden for companies.
2. A medium to longer-term approach to simplifying the administrative requirements for companies in relation to business trips and short-term postings could be achieved through a common digitalised process. While this has potential and should be further explored, it is unlikely to provide the facilitated approach that companies require in the here and now and which the inclusion of the afore-mentioned exemptions in the regulation could bring.
3. The Commission should **take action against Member States that have not implemented the mandatory exemption for short-term posting** foreseen in the directive 96/71 (Article 3 paragraph 2).
4. Member States should **implement the possible exemptions for posting that does not exceed one month**, if the amount of work to be done is not significant or in case of internal transfer as suggested in directive 96/71 (article 3, paragraph 4,5 and 6).



5. The Commission should **develop an EU-wide A1 form** that would be valid in all EU Member States for a specific period of time and would cover several work trips.
6. The Commission, in the framework of the European Labour Agency, should **set up a European “help desk”** to provide information to companies and workers on the legislation applicable in cross-border situations.
7. Member States should make sure that **all necessary information on posting is available on their single national websites** which is a legal obligation under the enforcement directive. Links to all single national websites could be available on the Single Digital Gateway that is currently being set up to facilitate accessibility.
8. The Commission should **take action against Member States that have implemented discriminatory and not proportionate measures** in the framework of the Directive 2014/67.

CONTACT INFORMATION

Robert Plummer, Senior Advisor, Social Affairs Department,
r.plummer@businessseurope.eu

Anna Kwiatkiewicz-Mory, Advisor, Social Affairs Department,
a.kwiatkiewicz@businessseurope.eu