



Ms Marianne Thyssen

Commissioner for Employment, Social Affairs, Skills,
and Mobility

European Commission

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B-1049 Brussels

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Dear Commissioner,

We are writing ahead of the Commission's debate on 6 October 2015 on the Labour Mobility package to express our views on the Posting of Workers Directive (96/71/EC), which is currently being reviewed in the context of the Package.

The freedom to provide services constitutes one of the fundamental principles of the EU internal market. It is an important factor contributing to the economic development, convergence process as well as competitiveness of the European Union.

The 96/71/EC Directive supplemented by the Enforcement Directive provides an appropriate and established EU legal framework for Member States to secure that posting is done in an orderly fashion and strikes the right balance between freedom to provide services and the protection of the rights of workers. However, there are shortcomings in the enforcement of this Directive.

The effective implementation of the 2014 Enforcement Directive is thus the priority if we want to address abuses and irregularities that sometimes happen on the ground, and to help law-abiding companies seize opportunities in the single market. Considerable efforts are now needed in Member States to make this new directive truly effective. This means not only adopting necessary laws, but also devoting adequate resources e.g. to IT systems and enforcement, as well as engaging in genuine cooperation with other Member States.

The reopening of the 96/71/EC Directive would in reality stop the process of implementation of the Enforcement Directive, as resources and time of Member States would be spent on negotiating the new text. Questions would arise on why scarce resources are being dedicated to build up control mechanisms and cross-border cooperation if rules might completely change. Moreover, reopening of the 96/71/EC Directive would lead to a prolonged period of debate bringing uncertainty for companies and their workers on what rules will be applied, harming growth and job creation.



We are aware that the Commission is looking at the A1 procedures and at the issue of maximum duration of posting, also in the context of Social Security Coordination Regulation.

We agree that improving processes linked to issuing and withdrawing A1 forms can increase reliability of the forms and build trust between authorities from different Member States. This is crucial to better address abuses and make inspections more efficient, while keeping in mind that it must work swiftly for companies and employees. Employers are ready to help and support the Commission in this process.

Concerning the length of posting we emphasise that the duration of postings vary significantly between companies, depending e.g. on the sector, the nature of a project or the location of a company.

We are also aware that the Commission is assessing whether the principle of “the same pay for the same job in the same place” could be introduced. We would like to underline that the translation of such a principle into an EU rule for posted workers would mean that – in view of the non-discrimination principle applicable to service providers in the single market, similar rule would have to be introduced in case of national workers. This would be an unacceptable and harmful interference from the EU-level in national wage-setting mechanisms and in the role of the social partners in many Member States.

Employers are responsible for determining wages, including through collective bargaining with trade unions, and taking into account the performance of a worker, productivity or the economic situation of the company. Both in national and cross-border contexts wages can thus differ between workers doing similar jobs and working at the same workplace, whether they are employed within the same or by different companies.

We would also like to recall that all companies operating on the EU single market have to comply with EU social legislation, i.e. about 70 different directives, which provide minimum standards in areas such as health and safety, information and consultation, working time or maternity leave. Part of the rationale behind these directives is to ensure a level playing field between companies in the EU and to ensure that competition between companies will not mean a race to the bottom in terms of social standards.

We therefore appeal to the Commission not to open the Pandora-box of problems and disagreements by proposing a revision of the Posting of Workers Directive, but to strengthen the focus on proper implementation and clear and workable rules and procedures for companies and workers.

Yours sincerely,

Markus J. Beyrer