



Ms. Marianne Thyssen

Commissioner for Employment, Social Affairs, Skills
and Labour Mobility
European Commission
Rue de la Loi 200
1049 Brussels

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Dear Commissioner,

The freedom to provide services constitutes one of the fundamental principles of the EU internal market. The possibility for companies to do business across Member States including postings is an essential part of this. In a Europe with increasing demographic challenges and skills mismatches, postings are becoming ever more important.

EU rules on posting are rightly set out in EU law as single market legislation to be followed by Member States. Administrative measures taken by Member States have to be non-discriminatory and proportionate.

We are deeply worried that companies are facing an increasing number of barriers that are in violation of EU law and that create obstacles to business trips or uncertainty for posted workers. Therefore, we urge the Commission to take strong action, by giving clear guidance and support to Member States, and, where violation of EU rules persists, by taking legal action.

We hereby describe blatant violations of EU rules and examples on how postings could be facilitated. We will feed more examples into the ongoing work of the Expert Committee.

1. Commission's clarification needed on the issuance of A1 forms by Member States' Authorities

One particularly itching problem is the confusion regarding the distinction between business trips and posting. It is clear that business trips are not a posting within the meaning of the Directive, as they are normally not linked to a provision of a service to a third party. However, the Member States' interpretation of the respective EU rules is incoherent, and it is therefore unclear which documents are necessary for business trips. This uncertainty is causing serious problems and burdens for companies to evaluate for each and every simple business trip if an A1 form is needed or not. The administrative requirement and interpretation of the respective legislation by some Member States to demand an A1 form for business trips is in clear contradiction to the existing legislation.

We therefore call on the Commission to publish a clear interpretation note that will guarantee a consistent and uniform understanding of the differentiation between business trips and posting of workers and take legal action if necessary.

In addition, BusinessEurope believes that an additional clarification is necessary in Regulation 883/2004 on the coordination of social security systems. In this respect, we support the exemption of people participating in short duration business trips from the need to apply for an A1 form as part of the ongoing trilogue negotiations on the revision of the regulation.

2. Commission action needed on lack of use of the exemptions

At least four Member States have not implemented the important exemptions from the rule on remuneration for initial assembly where the work does not exceed eight days. This exemption is already in the directive from 1996. We urge the Commission to take action.

Several Member States have applied the possibilities in the directive for other exemptions for short term postings for example in case of internal transfers within a company or where the amount of work is not significant. Thus, we encourage the Commission to promote a wider utilisation of these possibilities and an extension to cover as well modern digital services, and other relevant sectors.

3. Stepping up the work on national websites and towards a single European website

Businesses also face a lack of information on which rules apply in each country due to a number of Member States having inadequate and insufficient single national websites.

The information needs to be easily accessible, up-to-date and available in English and in the most relevant languages. It should contain the needed information for companies and workers. BusinessEurope is therefore in favour of strictly applying and, where appropriate, improving the agreed criteria for single national websites.

We also support the setting up of a European "Help Desk", in the form of a web portal. This would aim to provide information for companies and workers about what it means to be mobile when it comes to issues such as working, social security coordination, including the essential information for doing postings in all languages and with links to all single national websites. This helpdesk should also provide guidance and assistance to mobile enterprises and workers in response to their demands, including those of a legal nature, in the context of specific situations.

The new European Labour Authority, that was recently agreed by the co-legislators and should be up and running by the end of 2019, would be well placed to create and manage such a European website, as part of its mission to support labour mobility across the EU and ensure adequate access to information for both companies and workers.

All Member States must fully transpose the new provision whereby any penalties have to take into account insufficient information. This will also provide an incentive for Member States to live up to the requirements concerning national websites.



4. Screening national control measures

Businesses encounter in a number of Member States burdensome administrative requirements, sanctions and control measures, which clearly are discriminatory and not proportionate.

With the transposition of the revised Directive of Posting of Workers 2018/957/EU, European employers fear that the situation will worsen in the coming years, with the exacerbation of current challenges and the emergence of new issues, notably on long-term posting and remuneration.

As part of its ongoing reporting exercise, we call on the Commission to conduct a comprehensive screening of the measures taken at the national level and to assess them not only based on Directive 2014/67/EC but also in view of the need for Member States to comply with other relevant single market legislation.

Our examples demonstrate that many, often unlawful, barriers exist for reaping the benefits of postings. We therefore count on the Commission to ensure that Member States apply EU law correctly and work to facilitate postings. Where this is not the case, we strongly support appropriate remedial actions, including infringement proceedings. The Commission should ensure that the newly created ELA makes a substantial contribution to removing barriers for postings.

Yours sincerely,

Markus J. Beyrer