

ADMINISTRATIVE REQUIREMENTS

FOR POSTING OF WORKERS

This paper highlights difficulties faced by businesses in the European Single Market in the context of posting of workers.

CONTEXT

The freedom to provide services constitutes one of the fundamental principles of our single market and the possibility for companies to do business across Member States including postings is an essential part of this. Having clear rules in place which can be effectively implemented by national administrations and companies is important for business, governments and workers, in order to create a level playing field and to ensure that the single market functions well, enabling higher levels of worker mobility.

To date, all Member States have transposed the Revised Posting of Workers Directive (Directive 2018/957) and have already an over a year-long experience in applying it while posting workers across the EU. Nevertheless, companies continue facing an increasing number of barriers when posting workers in the EU, due to different practices, transposition, and systems at national level. In this challenging context, there is a welcomed growing focus at EU level on achieving greater digitalisation within the processes of social security coordination and positing of workers.

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/EC was adopted in July 2018 and by this date, all Member States have transposed the Directive.

These two directives are the EU's effort to strike a balance between the need to promote the freedom to provide services and the need to ensure the protection of the rights of posted workers during their posting. Businesses have long challenged the complexity of the rules as well as the additional administrative burden for companies, often related to introducing additional requirements by Member States as regards notification in posting situations (so-called "gold plating"). On 13 November, the Commission has [proposed](#) to establish a single digital declaration portal for companies providing services and posting workers to another Member State (so-called "eDeclaration"). The aim of this EU digital tool is to reduce burdens for companies related to handling multiple and diverse notification processes while posting workers. Member States will be able to use the public interface on a voluntary basis.

[Regulation 883/04](#) on the coordination of social security is also subject to an ongoing revision and on which an agreement still needs to be found. It is welcome that the latest Council mandate includes provisions exempting the need for prior notification for business trips and other activities of a short duration, including short-term postings of up to 3 days. BusinessEurope also supports the proposal for a digital solution in cases when notification is needed and considers that an automatic acknowledgement of receipt is sufficient.

EXAMPLE

The most common challenges faced by companies posting workers across the EU include:

- **Lack of a single EU digital notification procedure** and lack of possibility to notify multiple postings as one action: companies need to submit separate notification forms for multiple postings (a group of workers) to the same location. The same concerns multiple trips of a single posted worker: each trip requires separate notification procedure.
- **Diversity of national websites:** they are the primary source of information about the posting of workers in the absence of an EU dedicated website/service. Not all of them have an English version, and their logic and design are very different. This makes navigating them and extracting information difficult and time-consuming. Furthermore, national websites need to be updated at all times in order to be reliable.
- **Lack of guidelines how to interpret rules:** it is not always easy to understand how to apply the rules stipulated by the revised Directive, which makes complying with the Directive difficult, time-consuming and increases the risk of non-compliance. Companies faced with a lack of clear interpretation of the applicable rules and a threat of high sanctions, often not proportionate, may choose to refrain from posting or reduce the number of postings.
- **Diverse remuneration calculation:** it is difficult and time-consuming to calculate the total remuneration for the posted workers and the total cost of posting for a company as workers are entitled to diverse in-work benefits in different Member States.

HOW TO ACHIEVE BETTER RESULTS

Removing obstacles to posting of workers is a key priority for a well-functioning internal market for services. The following solutions are instrumental to this objective:

- **European social security pass (ESSPass):** ESSPass has good potential to reduce companies' administrative burdens related to the issuance of A1 forms for their mobile workers. Interoperability is key. Building on the Electronic Exchange of Social Security Information (EESSI), a true European data network is needed to enable the registration, submission, exchange and validation of data completely digitally and in real time, taking into account the applicable data protection requirements.
- **Adopting the Regulation on a public interface for declaration of posting of workers (eDeclaration)** published by the Commission. This simple digital tool should allow to safeguard the introduced data, modify them easily if needed, and use them for future postings. The eDeclaration should enable to process group and multiple notifications for a single worker. Moreover, the eDeclaration should focus on improving administrative cooperation between the Member States by widening the remit of the Single Market electronic information exchange system (IMI), as well as reducing the administrative cost for business. During the upcoming EU legislative debate on the eDeclaration, it is essential to keep the focus on simplification and encourage as many Member States as possible to swiftly implement the initiative.
- **EU Help Desk:** parallel to adopting a Regulation on eDeclaration, a progress is necessary on establishing a new EU Help Desk under the European Labour Authority (ELA) to provide on-demand, practical and individualised help, advice and guidance to employers, particularly regarding the posting of workers. National practical guides on posting would also be helpful in providing relevant information on applicable rules across the EU27 (country sheets). An EU Help Desk would greatly contribute to clear interpretation of existing rules and facilitate compliance. It is welcome that ELA is launching a feasibility study towards setting up a helpdesk and it will be important that concrete action is then taken in follow-up.
- **Single National Website (SNW):** introducing the European universal template for SNW would be the best solution. The second best would be introducing the EU-logo to be "pinned" to those national websites offering the core functions (effectiveness, accessibility, accuracy and user-friendliness).
- **EU/national remuneration calculator:** it would enable calculation of a due salary and it could be linked to national Single National Websites; EU database of national in-work benefits as well as easily accessible information on applicable collective agreements would be helpful.
- **Exempting short duration activities, such as postings (and business trips) from the need for prior notification:** would bring legal certainty for companies and greatly reduce the administrative burden that they face.

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