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European Subcontractors and Service Providers in Construction, Industry and Services
The Independent Voice for Cross-Border Businesses in Europe

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POSITION PAPER ON POSTING OF WORKERS



The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.

The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there. It is necessary for the purpose of the posting of workers to distinguish this freedom from the free movement of workers, which gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other conditions of work and employment in comparison to nationals of that Member State.

With respect to workers temporarily posted to carry out work in order to provide services in another Member State than the one in which they habitually carry out their work, Directive 96/71/EC of the European Parliament and of the Council establishes a core set of clearly defined terms and conditions of employment which are required to be complied with by the service provider in the Member State to which the posting takes place to ensure the minimum protection of the posted workers concerned.

All measures introduced by this Directive should be justified and proportionate so as not to create administrative burdens or to limit the potential that undertakings, in particular small and medium-sized enterprises (SMEs), have to create new jobs, while protecting posted workers.

Since its adoption in 1996, European-Employers.eu has always considered the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services as an adequate and balanced instrument for addressing the issue of temporary mobility of workers in the framework of the provision of services, whilst at the same time avoiding social dumping.

Following the judgments of the European Court of Justice in the Laval (C-341/05), Rüffert (C-346/06) and Luxembourg (C-319/06) cases, European-Employers.eu continued to consider that the Posting of Workers Directive does not need to be revised and is a well balanced instrument for achieving the objectives of articles 56 and 57 of the TFEU, including fair competition and social protection.

One of the key elements for an adequate application and enforcement of the Posting of Workers Directive is the availability of information to enterprises, workers and public authorities concerning the provisions to be applied. In this respect, the European-Employers.eu, have jointly developed a website and information service for cross border businesses.

In 2014 the European Parliament and the Council adopted the Directive 2014/67/EU (of 15 May 2014) on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

In particular, the Enforcement Directive:

- increases the awareness of workers and companies about their rights and obligations as regards the terms and conditions of employment
- **improves cooperation between national authorities** in charge of posting (obligation to respond to requests for assistance from competent authorities of other Member States - a two working day time limit to respond to urgent requests for information and a 25 working day time limit for non-urgent requests)
- clarifies the **definition of posting** so as to increase legal certainty for posted workers and service providers, while at the same time tackling 'letter-box' companies that use posting to circumvent the law
- defines Member States responsibilities to **verify compliance** with the rules laid down in the 1996 Directive (Member States designate specific enforcement authorities responsible for verifying compliance; and Member States where service providers are established need to take necessary supervisory and enforcement measures)
- requires posting companies to:
 - designate a contact person for liaison with the enforcement authorities
 - declare their identity, the number of workers to be posted, the starting and ending dates of the posting, the address of the workplace and the nature of the services
 - keep basic documents available such as employment contracts, payslips and time sheets of posted workers
- improves the **enforcement of rights, and the handling of complaints**, by requiring both host and home Member States to ensure posted workers, with the support of trade unions and other interested third parties, can lodge complaints and take legal and/or administrative action against their employers if their rights are not respected
- ensures that **administrative penalties and fines** imposed on service providers by one Member State for failure to respect the requirements of the 1996 Directive can be enforced and recovered in another Member State. Sanctions for failure to respect the Directive must be **effective, proportionate and dissuasive**.

In our opinion there is no need to revise the Posting of Workers Directive of 1996 and the EU-Regulation 883/2004, but a need to apply the current legislation correct and without any discrimination of cross border acting companies.

REFORM OF POSTING OF WORKERS DIRECTIVE



(/reform-of-posting-of-workers)

[Official Proposal \(Draft\) for a Directive amending Directive 96/71/EC \(/en/article/official-proposal-draft-directive-amending-directive-9671ec\)](#)

[Directive amending Directive 96/71/EC: Detailed explanation of the specific provisions of the proposal \(/en/article/directive-amending-directive-9671ec-detailed-explanation-specific-provisions-proposal\)](#)

[Directive amending Directive 96/71/EC: Explanatory memorandum \(/en/article/directive-amending-directive-9671ec-explanatory-memorandum\)](#)

[MORE \(/REFORM-OF-POSTING-OF-WORKERS\)](#)

POSTING OF WORKERS – LAW AND PRACTICE IN THE EU



law-and-practice-eu)

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POLICIES

EU SINGLE MARKET

European-Employers.eu pleads for a renewed focus on making the single market work better. We need to **remove remaining barriers to free movement urgently**.

FREE MOVEMENT OF SERVICES

Services are crucial to the EU economy. They account for over 70% of the EU's GDP and an equal share of its employment. European-Employers.eu pleads for removing all barriers for companies looking to offer cross-border services and to make it easier for them to do business.

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MEMBERSHIP

SERVICES FOR OUR MEMBERS