Posting of workers in the framework of the provision of services: enforcement of Directive 96 /71/EC

2012/0061(COD) - 25/09/2019 - Follow-up document

This report from the Commission concerns the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council 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) 1024 /2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation').

The Enforcement Directive 2014/67/EU requires the Commission to review the application and implementation of this Directive to present a report and propose, where appropriate, the necessary amendments no later than 18 June 2019.

It specifies certain provisions of the Directive that have to be assessed in particular, namely those regarding identification of a genuine posting and prevention of abuse and circumvention, mutual assistance, administrative requirements and control measures and cross-border enforcement of financial administrative penalties and/or fines.

Transposition process

The Member States had to transpose the Directive by 18 June 2016. All Member States have by now transposed the Directive.

To that effect, all Member States, but Germany, which considered its legislation to be in line with the Directive, passed new laws or administrative acts or amended existing acts. By the deadline of 18 June 2016, in ten Member States (Denmark, Finland, France, Hungary, Malta, the Netherlands, Poland, Slovakia, Slovenia and the UK) laws transposing the Directive entered into force.

Later in 2016, after the deadline, in another six Member States (Belgium, Estonia, Greece, Ireland, Italy, Latvia) relevant legislation entered into force. In 2017, new legislation came into force in Austria, Bulgaria, Croatia, the Czech Republic, Cyprus, Lithuania, Luxembourg, Portugal, Romania, Spain and Sweden.

All Member States have implemented a system of sanctions applicable in the event of administrative violations.

Bilateral agreements

Most Member States (Austria, Belgium, Bulgaria, Czech Republic, Germany, Spain, Finland, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Estonia, Denmark, Croatia, France, the Netherlands) have bilateral agreements or joint statements in place with other Member States covering the area of posting of workers when it comes to administrative cooperation between different authorities. A majority of these Member States has reported that they have made use of these agreements instead of or in addition to the Internal Market Information System, and this for various reasons. According to Member States

replies, in Croatia and Netherlands the first contact is made bilaterally, to collect more information, and after that the Internal Market Information System is used for exchanges. In Estonia, information exchange is considered to be faster over the phone and e-mail.

However, there is also a large number of Member States (Czech Republic, Germany, Hungary, Ireland, Italy, Lithuania, Latvia, Malta, Portugal, Sweden, Slovakia, Cyprus and the Netherlands) who use only the Internal Market Information System for the administrative cooperation because it is considered more convenient or in the absence of any applicable bilateral agreements.

Possible amendments

There are some areas that have been brought to the attention of the Commission by different stakeholders and where improvements could be necessary. These include the simplification of the administrative control systems by, for example, introducing a single EU-wide declaration system or a common template for websites. These issues could be solved by common work in the Expert Committee on Posting of Workers or in the framework of the European Labour Authority, once it becomes operational and thus do not require amending of the Directive.

In the light of the above and taking into account the limited period of time the Directive has been in force and the fact that no further problems were indicated that would require amendments to the Directive the Commission does not consider it necessary to propose any amendments to the Directive at this stage.

Conclusions and follow-up

The Commission notes that the transposition by all Member States of the Directive has improved the enforcement of the Posting of Workers Directive in the Member States, in particular through administrative cooperation through the Internal Market Information System. By introducing administrative requirements and control measures, Member States are in a better position to monitor compliance with the rules and ensure that the rights of posted workers are guaranteed.

The Commission will continue working with the Member States to ensure that the Directive continues to be correctly transposed and applied, in particular as regards the administrative requirements and control measures and subcontracting liability.

Furthermore, to ensure a greater coherence in the interpretation and application of the posting rules throughout the EU, the Commission has also published the Practical Guide on Posting, after consulting the Member States representatives and the European level social partners organisations. The document aims at assisting employers, workers and national authorities in understanding the rules on posting of workers. It will be regularly updated to take into account new developments. This will be the case in particular concerning the application of posting rules to mobile international transport workers to integrate the changes in the legal framework.

The Commission will also continue to provide support, together with the European Labour Authority, as soon as it becomes operational, to all actors involved. In particular, it will promote cooperation between the authorities in charge of the administrative cooperation and mutual assistance in order to ensure synergies between all information and assistance services and to facilitate compliance with administrative requirements and support cross-border enforcement procedures relating to penalties and fines.