



Position Paper

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Revision of the Posting of Workers Directive 96/71/EC

The European Commission presented a proposal to amend the Posting of Workers Directive (PWD) 96/71/EC on March 8 2016, with the stated aim of achieving synergies with its strategy for improving the internal market, Investment Plan for Europe, Platform for undeclared work and upcoming transportation package, as well as to improve the directive's transparency and benefit to small and medium-sized enterprises (SMEs).

The main purpose of the revision of the directive is to replace the existing obligation to provide a posted worker the minimum wage with the obligation to provide remuneration in accordance with general conditions of guaranteed remuneration in the hosting country. Remuneration includes many different components and it would be necessary for each country to specify which of its components will be a mandatory part of the remuneration of posted workers. Compliance will to a large extent depend on the transparent publication of these rules by the host countries. This would be in total contradiction with the stated aim of easing administrative burdens for SMEs.

The provision that an *anticipated* duration of more than 24 months will already lead to the application of the law of the country to which the worker is posted as being the country where work is habitually carried out is unacceptable to EUROCHAMBRES. It would create legal uncertainty and is not in line with Regulation 883/04. According to that regulation, the social security of the Member State to which the worker is posted becomes applicable after 24 months, unless agreed otherwise between the respective social security administrations. It does not provide for an application from day one.

EUROCHAMBRES is convinced that the proposed revision of the PWD is currently unnecessary. We consider the existing level of social protection in EU Member States, based on European social legislation, sufficient. It is more important to ensure better control of undeclared work and better enforcement of the PWD at national level.

Existing shortcomings in the implementation of the PWD, especially ineffective administrative cooperation between Member States' labour inspection offices, insufficient exchange of information and low levels of enforcement of existing rules, should be addressed by the Enforcement Directive 2014/67/EU, which will be transposed into national legislation by 18 June 2016. In coherence with the principles of evidence based policy-making that the Commission, Parliament and Council endorse, the effects of the implementing legislation should be awaited and evaluated in order to judge if revised measures in this field are necessary.

In its justification, the Commission does not mention any relevant data proving that the free movement of services under the current rules for posting has led to a reduction in wages of domestic workers or has caused their unemployment. Moreover, the accompanying impact assessment lacks a thorough analysis of the proposal's impact on the cross-border provision of services in different sectors and on the internal market as a whole. It focuses only on the impact on labour markets of hosting and receiving countries.

The arguments of the Commission for the proposed revision raise the question: what is the difference between free trade in goods, which is generally considered acceptable even in the presence of significant wage differences between countries producing the goods and free trade in services, where wage differences are referred to as social dumping? This argument strikes us as a pretext for protectionist measures for local service providers against fair competition.

EUROCHAMBRES fears that the proposal will create barriers to the single market, as well as increasing costs and legal uncertainty for businesses that post workers. We dispute the claim in the Commission's impact assessment (chapter 5.4) that the envisaged initiative does not increase the administrative burden or costs to cross-border service providers and to SMEs in particular. On the contrary, we are convinced that it would increase administrative burdens and cause job losses. We are also concerned that perversely, the proposal would create a greater incentive to circumvent the restrictive provisions through undeclared work or bogus self-employment.

EUROCHAMBRES is surprised that the Commission submitted a proposal despite being well aware of the principled objections of many member states and business organisations. The proposal for the review is also inconsistent with the stated objective of the current Commission to address only essential matters and to submit only legislative proposals with a large degree of consensus.

For the reasons set out above, we urge the Commission to reconsider its proposal, withdraw it from the work programme and analyse carefully future results of the implementation of the Enforcement Directive 2014/67/EU before taking any further action.ⁱ

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EUROCHAMBRES, the Association of European Chambers of Commerce and Industry, represents over 20 million enterprises in Europe – 98% of which are SMEs – through members in 43 countries and a European network of 1700 regional and local Chambers.

ⁱ As CCI France has no competence in the field of labour law, this position paper does not reflect their official view.