

POSTED WORKERS

The ESEC considers the posting of workers to be representative of the need to renew the European project, which must itself revive its objective of harmonisation of living standards and social security levels.

Without challenging the principle of freedom to provide services, the ESEC has observed that insufficient control over the exercising of this freedom has resulted in the weakening of the protection provided for workers (be they resident workers or posted workers), unfair competition between companies and insufficient cooperation between Member States. Such an imbalance may be perceived as symptomatic of the difficulties Member States are experiencing in ensuring that their economies converge for the purposes of social progress.

There is far more to tackling the issue of posting than is covered by the 2014 implementing directive granting greater leeway to enable host States to implement the necessary controls. Imbalances associated with this practice that have been observed in employment markets in European countries stem from shortcomings and a lack of consistency in European legislation.

Prospects for reforming the worker posting system at European level could take one of two non-mutually exclusive paths. The issue of revising the source directive, which left many Member States dissatisfied, was recently rekindled by a joint initiative on the part of seven European Union Ministries of Work and Employment, who approached the European Commissioner for Employment, Social Affairs, Skills and Labour Mobility. The ESEC believes this option to be a matter of priority. Aside from this initiative, however, it highlights the need to consolidate the legal systems relating to the

posting of workers, which are currently split between European employment law and social security law.

On a national scale, meanwhile, there is still room to improve posting conditions, on an independent level, with regard to the way in which the information and control system is structured and encouraging greater involvement on the part of social partners and economic players in preventing fraud and abuse. Some of the following recommendations reflect this approach. Following the measures adopted by the legislator over the past year, they are designed to reflect the expectations of both social (employer organisations and labour organisations) and economic players who have taken action, in the most heavily affected of sectors, to condemn particularly unfair competitive conditions, social "optimisation" strategies and the resulting losses of both jobs and skills.



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ENCOURAGING A REFORM OF EUROPEAN LAW GOVERNING THE POSTING OF WORKERS

- 1° to introduce a rule on the equal treatment of posted workers and other workers with regard to remuneration in accordance with the “equal pay for equal work in the same workplace” principle;
- 2° to make the production of form “A1” certifying that the worker is covered by the social security system in their home State a prerequisite to them being posted;
- 3° to enable European social partners to set a maximum duration for the period of posting to reflect the characteristics of the sector in question;
- 4° to limit the possibility of a worker being posted within the country in which they usually live;
- 5° to make a company’s right to post workers dependent upon a “real activity in a real activity” (substantial) in the home country;
- 6° to extend the minimum period for which the worker must have been covered by the Social Security system to three months, in the framework of an employment contract and in the home country, prior to their posting;
- 7° to strengthen administrative cooperation between Member States based on the pooling of data gathered at national level;
- 8° to introduce a European posted worker’s card.

TAKING ACTION ON A NATIONAL SCALE

- 1° by reforming the regulations outlined in the Public Procurement Code regarding abnormally low tenders for the purposes of effectively imposing the obligation for contracting authorities to reject such tenders;
- 2° by ensuring that service providers and ordering parties are efficiently and comprehensively informed of their obligations with regard to the declaration and remuneration of posted workers, notably through the creation of an informative website;
- 3° by ensuring the efficient coordination of government departments with a view to effectively monitoring the working times, working conditions and accommodation provided for posted workers;
- 4° by imposing an administrative fine on ordering parties that fail to fulfil their obligation to declare an occupational accident of which the victim is a posted worker;
- 5° by demanding better administrative monitoring of accidents involving posted workers on the part of healthcare and social security systems;
- 6° by creating a service with national jurisdiction and responsible for gathering and centralising preliminary statements from companies based on the Belgian Limosa system;
- 7° by increasing the workforces of regional illegal labour support and control units (URACTIs);
- 8° by reinforcing criminal policy against the employment of posted workers working illegally by means of a circular from the Keeper of the Seals;
- 9° by reinforcing the role of social partners by including the terms of pay that apply to posted workers in collective agreements and by introducing trade union executives responsible for informing and defending the rights of posted workers.