



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

UEAPME response to the consultation on the Commission's service report on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

UEAPME has carefully read the report proposed by the European Commission.

Generally speaking, it seems that the directive has been transposed in a satisfactory manner, by each Member State.

On this basis, UEAPME considers that there is no need for amending the text of the directive.

However, even if the legal framework exists, it does not solve all the practical problems for a concrete implementation in the workplace, and its monitoring.

UEAPME shares the view of the European Commission, that the majority of existing questions does not originate from legal problems or from problems of transposition, but from the practical application.

The initiatives proposed and taken by the Commission to set up a group of governmental experts and a website with a lot of practical information is a good start and an adequate solution for tackling the practical problems and above all the lack of information, but much remains to be done.

For the specific situation of the implementation of the directive in the new Member States, it seems to be premature to draw conclusions before having the result of the several studies initiated by the European Commission.

Furthermore, the current application of transitional measures on the posting of workers from part of some old and new neighbour Member States, could create some trouble in terms of correct evaluation.

The current report aims to:

- identify and examine certain problems of interpretation and practical implementation of the directive 96/71/EC
- Provide information and clarification needed to tackle these difficulties
- Take stock of the work and deliberation undertaken.

Generally speaking, UEAPME welcomes the report which gives a good overview of the most frequent problems arising in the various members states. It provides clear explanations and helps to clarify some misinterpretations of the directive.

General comments:

Most of the problems that were raised, are linked to a lack of communication, transparency, accessibility and delivery of information, as well as better administrative cooperation among the member states.

The Commission addressed the specific questions put forward by the Parliament very well and therefore there is no need for further comments by UEAPME, particularly on:

- the effect of optional exemptions provided for in the directive in order to prevent unfair competition
- the concept of “relevant workers”
- the temporary nature of posting
- clarity of some terms and definitions used in the directive

Specific comments:

1. On minimum wage rates

It is essential, as stated in the directive, that the host Member State has the sole responsibility of defining the concept of minimum wage, either through specific provisions or in universally applicable collective agreements. By definition, this will vary from one member state to another and sometimes from one region to another, because of the differences in the various systems of industrial relations and practices in the member states.

The comparison for the minimum wage rate made on the basis of gross pay can end in important distortions. Even if the directive does not deal with social security or taxation, it is important to be aware that different tax systems (systems of direct withholding versus systems which do not deduct income tax at the source but a payment the year after) can lead to important discrepancies on the competitiveness of companies.

2. On collective agreements

In many countries, collective agreements play a crucial role for the establishment of terms and conditions of employment (particularly on wages, paid leave, working time). Therefore, when collective agreements are not universally applicable, it is up to member states according to Article 8 of the directive to eventually define if and how other collective agreements can be applicable at national level for posted workers.

3. Information on the terms and conditions of employment in the host country

The access to information and the quality of information still need to be improved. The website developed by the Commission is a good start, but the information delivered, is often neither sufficient nor precise enough, particularly for small businesses.

The nomination of national liaison offices is a huge step forward but they need to be more proactive in order to facilitate the practical implementation of the directive. The

nomination of one specific contact person would help considerably to solve administrative problems.

The second aspect is about accessibility of the information in the different languages. As mentioned in the report, 'country factsheets' or leaflets would be very useful particularly if they are available in several languages. In addition, it could be very useful if some complementary information concerning specific sectors like construction would also be available in several languages.

4. Administrative cooperation: liaison offices and monitoring authorities

This is an important issue, because many practical problems and complaints could be avoided through a better administrative cooperation. Nevertheless, as stated by the Commission, it is up to the member states to create the necessary conditions for such cooperation in order to lift many of the still existing obstacles.

This may help a lot in combating illegal cross-border activities and unfair competition through a better control.

Moreover, instruments put in place in order to facilitate controls of compliance with the relevant laws – such as advance declarations and the necessity to have a representative or an address in the host country – should not be disproportionate and used as a new form of protectionism.

There should be more transparency and administrative bodies should be really operational services, able to provide quick and precise information on request.

Language problems still remain a true challenge for the administration of the host member state and for the company as well, particularly small firms, when they want to post a worker abroad.

One solution could be a standardised form for certain documents.

Following the discussions, which have taken place on the Services Directive, a new system is currently under development, called IMI – Internal Market Information System-. IMI is based on the SOLVIT Technology, using an automatic translation system. The application of the IMI to the administrative obligations within the context of the posting of workers may be very useful.

UEAPME strongly supports this very promising initiative.

The exchange of information within the group of national experts concerning the organisation and functioning of the different labour inspection systems is important and useful, but it would be useful to spread out this type of information more largely.

5. Judicial recourse and penalties: measures in the event of non-compliance with the Directive and transnational enforcement of fines

The issue of penalties and enforcement of fines is a real problem. The new framework decision of the Council 2005/214/JHA on the application of mutual recognition to financial penalties would help to improve the situation. However this would only be in the mid term run, as the decision gives the possibility for member states to limit its application concerning financial penalties until March 2010.

Another problem is the disproportionate amount of financial penalties in relation to the nature and gravity of the offence certain countries tend to apply (for example, when the advance declaration is not accurately filled in, or when the duration of the service takes more time than originally foreseen).

6. Joint and several liability

UEAPME defends the principle of general or principal contractors having joint and/or multiple liability(ies) for subcontractor's obligations towards their workers.

7. Posting declarations

Some member states require the submission of advance declarations with their authorities before posting a worker abroad. This allows for targeted inspections of the working conditions of posted workers, which is essential for the correct application of the directive. However, the system could be made more flexible for occasional cross-border services such as repair service in the construction area.

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