



Explanatory Meeting on the Acquis with Albania and North Macedonia

Posting of Workers

These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union.

EU Legal framework

- **Articles 56 and 57 TFEU**
- **Directive 96/71/EC (the Posting of Workers Directive)**
- **Directive 2014/67/EU (the Enforcement Directive on Posting)**
- **Directive 2018/957/EU (revision of the PWD)**

Directive 96/71/EC

Scope

- **Applies to undertakings established in the EU that, in the context of cross-border provision of services post workers through:**
 - a contract of services
 - intra-group posting
 - temporary agencies
- **Applies to workers that “for a limited period” carry their work in another MS.**

Directive 96/71/EC

Terms and conditions of employment of the host MS applicable to posted workers:

- (a) maximum work periods and minimum rest periods;
- (b) minimum paid annual holidays;
- (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- (e) health, safety and hygiene at work;
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- (g) equality of treatment between men and women and other provisions on non-discrimination.

provided by law or by universally applicable collective agreements.

Directive 96/71/EC

Other important provisions

- Article 3(7)

→ Article 3(1 to 6) does not prevent application of terms and conditions of employment which are more favourable to workers

See case C-341/05, *Laval*:

"(...)cannot be interpreted as allowing the host Member State to make the provision of services in its territory conditional on the observance of terms and conditions of employment which go beyond the mandatory rules for minimum protection. (...) Such an interpretation would amount to depriving the directive of its effectiveness.

→ Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

Directive 96/71/EC

Other important provisions

- Article 3(8)

Collective agreements or arbitration awards which have been declared universally applicable' means collective agreements which must be observed by all undertakings in the geographical area and in the profession or industry concerned.

In the absence of a system for declaring collective agreements to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

- collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or
- collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory, provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment. Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:
 - are subject, in the place in question or in the sector concerned, to the same obligations as posting undertakings as regards the matters listed in the first subparagraph of paragraph 1, and
 - are required to fulfil such obligations with the same effects.

Directive 2014/67/EU

Main provisions

- Criteria to determine genuine posting: Art. 4
- Improved access to information – single national website: Art. 5
- Improved administrative cooperation: Art. 6-8
- Administrative requirement and control measures: Art. 9
- Subcontracting liability: Art. 12
- Cross-border enforcement of financial administrative fines: Art. 13 - 19

Directive 2014/67/EU

Article 4 (criteria to determine genuine posting)

- Indicative list of criteria that can be used by MS for the overall assessment on whether the undertaking genuinely performs substantial activities in the home MS and whether a posted worker temporarily carries out the work in the home MS.

Directive 2014/67/EU

Article 5 (single national websites)

Member States have to take appropriate measures:

- to ensure that the **information on the terms and conditions of employment:**
 - is made generally available free of charge
 - in a clear, transparent, comprehensive and easily accessible way at a distance and by electronic means,
 - in formats and in accordance with web accessibility standards that ensure access to persons with disabilities
- Information available in official language(s) of the host MS and the most relevant languages.
- Improve accessibility and clarity of the information.
- Indicate a contact person at the liaison office.

Directive 2014/67/EU

Article 9

1. Member States may only impose administrative requirements and control measures necessary in order to ensure effective monitoring of compliance with the obligations set out in the Directives provided that these are justified and proportionate.

They may in particular impose the following measures:

- an obligation to make a **simple declaration** to the responsible national competent authorities at the latest at the commencement of the service provision
- an obligation to **keep or make available**: the employment contract, payslips, time-sheets and proof of payment of wages, translated into the official language of the host MS
- an obligation to designate a contact person.

2. Member States may impose other administrative requirements and control measures, provided that these are justified and proportionate.

Directive 2014/67/EU

Article 12 (subcontracting liability)

MS must/can take measures on a non-discriminatory and proportionate basis in order to ensure that in subcontracting chains the contractor of which the employer (service provider) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker with respect to any outstanding net remuneration.

Directive 2014/67/EU

Chapter VI (Articles 13 – 19) – Cross-border enforcement of financial administrative penalties

- At the request of a MS, the requested MS must:
 - Recover an administrative penalty not subject to further appeal
 - Notify a decision imposing such a penalty

When the requesting MS is unable to recover or notify such a penalty.
- Requested MS shall recognize the decision without any further formality
- Limited grounds of refusal.

Directive 2018/957

Main changes

- Remuneration
- New elements in the core-rights
- Long-term posting
- Transparency of information
- Transposition and application
- Link with road transport

Remuneration

- **Remuneration**
 - Determined by the **host MS** national law and/or practice
 - Means **all the constituent elements of remuneration** rendered mandatory by national law/practice or universally applicable collective agreements

Core rights

- **Conditions of workers' accommodation**, when provided by the employer in case the worker is away from the regular place of work
- **Allowances or reimbursement of expenditure to cover travel, board and lodging expenses** for workers away from home for professional reasons during the posting assignment

Long-term posting

- When the **effective duration** of a posting **exceeds 12 months...**
- ...the undertakings apply all the remaining terms and conditions of employment set by law or collective agreement.
- Upon **motivated notification** by service provider, the period will **extend to 18 months**

Transparency of information

- Availability of information on the single official national website regarding:
 - **The constituent elements of remuneration,**
 - **All the terms and conditions of employment**
- Obligation of accuracy and update of information
- Proportionality of sanctions in case of inaccurate info

Link with road transport

- **Synchronisation clause** with *lex specialis* currently under negotiation
- **Review clause after 5 years** to assess the need for further measures

Transposition and application

- Transposition and application after 2 years – **30 July 2020**

Thank you for your attention!