

Posting of workers

Joint and several liability: Support in CoR, division in EP

By Sophie Petitjean | Friday 30 November 2012

Revision of Directive 96/71/EC on the posting of workers is far from over: after the withdrawal of the associated Monti II text, Parliament is now considering deleting one of the proposal's most innovative provisions, concerning joint and several liability. This is what rapporteur Danuta Jazlowiecka (EPP, Poland) proposed, as she presented her report to the Committee on Employment and Social Affairs (EMPL), on 28 November ⁽¹⁾. The EU Committee of the Regions (CoR), meeting in plenary session on 29 November, defended and added to this provision, which permits legal action against a contractor whose employer is a direct subcontractor in the event of non-compliance with legislation.

A 'posted worker' is any worker who, for a limited period and in the context of service provision, carries out his work in the territory of a member state other than the state in which he normally works. This phenomenon concerns one million European citizens every year (0.4% of the EU workforce).

STRENGTHENING INTERNAL MARKET...

The report by Jazlowiecka concentrates on freedom to provide services. The Polish MEP aims to improve the legal clarity and proportionality of the measures proposed, cooperation between member states, the availability of information and collaboration by enterprises.

Unlike the Commission, she suggests that the list of criteria determining what posting is (Article 3) as well as control measures (Article 9) should be a closed list. She also proposes to delete the concept of joint and several liability. "Introducing the joint and several liability system at the European level only for companies which post workers in the countries where this system does not exist is highly disproportionate and will have a negative effect on cross-border provision of service," she explained, sparking division in the EP committee. In her explanatory statement, she notes that "only when introduced for all companies on the internal market can [this system] have beneficial features, however, it is impossible to introduce this system on such a wide scale since the enforcement directive is legally limited to the category of posted workers".

The rapporteur then proposes mandatory use of the Internal Market Information (IMI) system wherever possible and revision of the time limits proposed by the Commission to improve cooperation between member states. For Jazlowiecka, the member states should meet a two-week deadline for providing information requested from other member states or the Commission, two working days in urgent situations and one month if the response requires an on-the-spot inspection. To make information more accessible, the rapporteur suggests that each state set up a single website with all the necessary information on binding terms and conditions of employment.

Finally, Jazlowiecka proposes to introduce – on top of sanctions, fines and control measures - "white lists" of honest undertakings to offer a visible recognition of their reliability.

... AND PROTECTING WORKERS

The CoR focuses its opinion on worker protection. The Union's assembly of representatives of local and regional authorities suggests covering "posting from non-EU countries" and introducing a non-regression clause to guarantee that transposition of the directive does not have the effect of reducing the highest levels of protection existing in states. The CoR also calls for better recognition of the territorial dimension of the posting of workers by means of closer cooperation between the public authorities of different member states, in particular in the case of border regions. The 29 November plenary session also endorsed the proposal by rapporteur Alain Hutchinson (PES, Belgium) to set a limit on successive sub-contracting and to ensure better referencing of sub-contracting companies.

The opinion applauds the European Commission's withdrawal of the Monti II proposal aimed at regulating the right to take collective action for these workers. The CoR nevertheless notes that there is a legal vacuum and urges the European Commission to present a new legislative proposal explicitly giving priority to fundamental social rights.

"Only when introduced for all companies on the internal market can [this system] have beneficial features," said Jazlowiecka

Background

The European Commission presented, on 21 March, a package of two texts meant to modernise EU rules on the posting of workers: an implementing directive and a regulation clarifying exercise of the right to take collective actions in the context of economic freedoms. The executive withdrew the second text, on 11 September, due to the lack of support expressed by stakeholders (12 national parliaments presented reasoned opinions).

Work is still under way on the draft directive: the EP's EMPL committee is scheduled to vote on 21 February 2013 and the plenary on 21 May. The Council will examine the proposal, take stock of progress and give guidance for the next steps at its meeting, on 6 December.

⁽¹⁾ The report is available at www.europolitics.info > Search = 325643