

Employment and Social Policy Council

Posting of workers: Ministers divided over two key measures

By Sophie Petitjean | Thursday 06 December 2012

The Council is far from reaching an agreement on the proposed directive to improve the implementation of the 1996 rules on the posting of workers. During the Employment and Social Policy Council, on 6 December, ministers were strongly divided over two key measures; the first, on national administrative requirements and control measures (Article 9), and the second on joint and several liability of subcontractors for compliance with minimum wages (Article 12) in the construction sector.

The proposal, presented in March 2012, aims to provide a better legal framework for situations where a worker is sent to work in another member state for a limited period and in the context of a defined provision of services. It provides a clearer definition of what constitutes the notion of 'posting', clarifies rules to promote efficient cooperation between member states, lays out the possibility of applying national control measures and introduces a limited system of joint responsibility in the context of subcontracting at EU level.

According to the current Cyprus Presidency of the EU, considerable progress has been made during the six working meetings that have been held on the general measures (Chapter 1), access to information (Chapter 2), administrative cooperation (Chapter 3), the enforcement of cross-border fines and penalties (Chapter 6), and final measures (Chapter 7). "Nonetheless, a number of questions still need to be resolved, such as national control measures (Article 9), inspections (Article 10), the defence of rights, the facilitation of complaints and payment arrears (Article 11), subcontracting and joint responsibility (Article 12)," emphasised Cyprus' Employment Minister, Sotiroula Charalambous.

During an exchange of views, many ministers supported joint responsibility of subcontractors with regard to the respect for minimum wages in the construction sector. Slovenia and Bulgaria called for this measure to be extended to cover all sectors. However, Lithuania, the United Kingdom, the Czech Republic and Hungary are strongly opposed to the introduction of such a mechanism, which already exists in eight member states and Norway. Among these two blocs of member states, Malta, Portugal, Slovakia, Ireland and Spain have adopted an intermediary solution, saying that this system should be set up at the discretion of member states.

Ministers have debated at length Article 9 in the proposed directive, which provides for national control measures that can be imposed by the host member state. During the discussion, a dozen member states supported the introduction of a closed list of administrative measures, while Italy, Germany, Finland, France, Malta, Denmark, Slovakia, Bulgaria and Spain were in favour of an open list "providing a sufficient margin of manoeuvre to take into account upcoming developments".

The progress report is available at register.consilium.europa.eu/pdf/en/12/st16/st16540-re01.en12.pdf

Parliament equally divided

Parliament appears to be divided over the same issues. During the presentation of an own-initiative report by Polish MEP Danuta Jazłowiecka (EPP), members of the Committee on Employment and

Social Affairs (EMPL) were fiercely divided over the question of joint and several liability. The rapporteur has proposed deleting this measure on the grounds that it would be “disproportionate” and “would have a negative effect on the provision of cross-border services by hindering the competitiveness of foreign companies”. Many MEPs strongly supported this mechanism. The EMPL committee should determine its position on the matter on 21 February next year, while Parliament will take a position during its plenary session on 21 May.