



New regulations on posting of workers in the European Union

To strengthen the protection of posted workers and to increase access to the common market of the European Union for entrepreneurs – these are the main goals of the latest directive concerning posted workers, adopted by the European Parliament.

During the plenary session of 16 April 2014, the European Parliament adopted a legislative resolution on the enforcement of Directive 96/71/EC concerning posting of workers in the framework of the provision of services.

In force since 1996, Directive 96/71/EC provides for conditions of posting workers to work in a Member State other than the one they usually work in, due to trans-national provision of services (the so-called “posting of workers”). In particular, the directive lays down conditions of employment of posted workers. Implementation of the directive to Polish employment law was made by enacting articles 67¹ – 67⁴ of the Labor Code.

The main purpose of the new directive is to clarify the way of application of provisions of Directive 96/71/EC. The new directive adopted by the European Parliament is to strengthen the level of protection of rights of posted workers and, at the same time, to facilitate providers of services (employers) to use of the freedom of service provision and to promote fair competition among entrepreneurs.

The directive establishes a sample list of prerequisites which should help assess whether a posted worker does indeed work in a Member State other than the one he usually works in on a temporary basis only (e.g. arrangement by the employer of transportation, accommodation and meals for posted workers or a return of posted workers to their Home State after the period of posting).

Moreover, employers who post workers will be obliged to file a statement including essential information to facilitate inspections by the competent authorities of the host Member State. The statement will encompass, without limitation: the expected number of posted workers, the expected duration of posting, the expected date of beginning and ending of posting, the address (addresses) of the place of work, the nature of services that justifies the posting of workers. The posting employer will also be obliged to nominate a person responsible to contact the authorities of the host Member State in which the trans-national services are rendered.

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The directive enables Member States to establish joint liability of contractors and direct sub-contractors (i.e. the entrepreneur of the host Member State and the entrepreneur rendering trans-national services) in their national legal systems. The joint liability concerns payment of wages to posted staff. However, pursuant to the directive, such joint liability will be compulsory in the construction sector.

Furthermore, in order to improve access to information on terms and conditions of employment in Member States, each Member State will be obliged to run a national website, on which information regarding terms and conditions of employment (concerning both – the content of legal provisions and their use in practice) should be presented. Access to information presented on such website should be free. Surely, creation by each Member State of a website with information on terms and conditions of employment in a Member State will be helpful for entrepreneurs planning to post workers to another EU Member State in order to provide services there.

Accordingly, the directive prescribes a procedure for enforcing fines and other administrative pecuniary penalties to be imposed on the employer who posts workers. The competent authority in the Home State will be able to enforce such fines and penalties, upon prior request from the competent authority of the Member State in which posted workers worked in the framework of provision of services (and due to irregularities related to performance of work, the fine or the administrative pecuniary penalty has been imposed).

To sum up, in order to finalize the legislation process, the formal acceptance of a legislative resolution by the Council of the European Union is required. Subsequently, after signing by the Chairmen of the European Parliament and the Council of the European Union, the directive will be published in the Official Journal of the EU and will enter in force on the twentieth day of publishing. Member States will be obliged to implement the directive to their national legal systems within 2 years from the date of its entry in force.

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If you wish to be provided with additional information in this respect, please contact us.

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