

EU Labour Mobility Package:

**Posting of agency workers and the cross-border provision of services**

Priority should be laid on a better implementation of the Directive 96/71, using the options offered by the Directive and the 2014 enforcement Directive

9 November 2015



Labour mobility, including the posting of agency workers, is a key pillar of the EU single market. The posting of workers offers opportunities for companies to meet economic needs and for workers to explore new professional opportunities.

Eurociett is convinced that there is no need to revise the Posting of Workers Directive (96/71/EC), but that focus should be laid on its better implementation, using existing provisions.

**Main issues related to the posting of agency workers that need to be addressed based on appropriate EU and national policy implementation measures:**

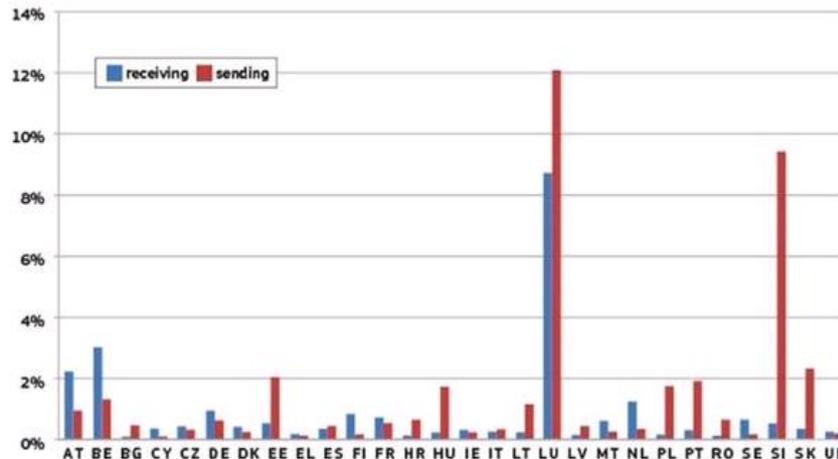
-  **Need to improve access to information** on the conditions for providing cross-border agency work services and the employment conditions of agency workers.
-  There is a need for **proportionate, effective, non-discriminatory and (where needed) more controls** to ensure regulatory compliance.
-  Action should be taken at national level to address and **prevent abusive practices linked to letterbox companies**.
-  **Administrative cooperation** between EU Member States needs to be enhanced, including the harmonised and efficient delivery of A1 forms.
-  Eurociett calls for a legal analysis on the **interrelation between the Directive 2008/104/EC on Temporary Agency Work and the Posting of Workers Directive (96/71/EC)**.
-  Eurociett supports the **principle of equal pay for equal work** for posted agency workers and the option provided under Article 3, paragraph 1 (d) and Article 3, paragraph 9 of the Posting of Workers Directive. This presupposes that the **applicable regulation on equal pay should be the same as that applied to agency workers assigned at national level** as defined by Article 5 of the Directive on temporary agency work (**including options of derogations as provided by that Directive, in particular derogations by collective labour agreements**).
-  Eurociett supports the **effective coordination of social security systems** within the EU.

## 1. The benefits of work mobility and the posting of workers in the EU single market

1.1. Labour mobility is a key pillar of European integration granted by the EU treaty, which contributes substantially to better functioning and more inclusive labour markets. Work mobility and the posting of workers is in the interest of companies to better match skills and demand for labour, to respond to economic needs and to increase competitiveness. It simultaneously helps workers to explore new labour market opportunities, benefit from the EU single market and develop their skills based on work assignments in other EU Member States. The economic sector most affected by the posting of workers is the construction

industry (accounting for 25% of the posting of workers). Other sectors include services, financial and business sectors, transport and communication and agriculture. The number of posted workers in the EU is estimated to be 1.2 million

Share of posted workers in national employment (receiving and sending)



(corresponding to less than 1% of the EU working age population). As part of the business services sectors, posting of workers also plays a significant role in the agency work industry.<sup>1</sup>

1.2. Work mobility and the posting of workers affects the EU Member States in different ways, with Austria, Belgium, France and Germany being mainly receiving countries, whereas the most important sending countries are Estonia, Hungary, Luxembourg, Poland, Slovenia and Slovakia (based on most recent data published by the EU Commission).

1.3. Work mobility and the posting of workers are at the centre of the EU political agenda at present. In 2014, Directive 2014/67/EU on the enforcement of the Posting of Workers Directive was adopted,<sup>2</sup> which aims at addressing existing weakness and challenges linked to the posting of workers, especially in the areas of access to information, administrative cooperation and controls.

However, despite the changes agreed with regard to EU rules on the posting of workers, political discussions and controversies have intensified, fuelled by difficult economic environment in some countries and claims that workers rights are being undermined by using the option of the posting of workers. EU Commission President Juncker and Commissioner Thyssen have identified work mobility and the posting of workers as one of the core priorities of the current EU Commission. In December 2015, a Labour Mobility Package will be proposed, addressing the posting of workers and the EU

<sup>1</sup> In France, there have for example been 212 000 posted workers in 2014 with 19 % of them working through agency work. In Poland 26,006 agency workers have been posted in 2014 to 4517 companies in other EU Member States.

<sup>2</sup> In further parts of this position paper, this Directive is being referred to as the enforcement Directive of 2014.

Regulation on the coordination of social security. With this position paper, Eurociett aims to comment on key elements of the current political debate.

### **2. There is no need to revise the Directive on the posting of workers, which fully and adequately covers agency work activities**

- 2.1. Eurociett is convinced that there is no need to revise or amend the Posting of Workers Directive of 1996 or the enforcement Directive of 2014. The focus should be laid on the implementation and enforcement of current EU rules on the posting of workers at national level. Current challenges linked to the posting of workers are not inappropriate EU legislation, but a lack of enforcement of the existing rules. The Posting of Workers Directive requires Member States to put in place a range of minimum employment and working conditions, ensuring fair competition and offering a framework for providing services in the single market.
- 2.2. Reopening the Posting of Workers Directive of 1996 will furthermore most certainly delay or stop the implementation efforts of EU Member States of the 2014 enforcement Directive which should be swiftly implemented at national level and help to prevent abuses and irregularities. Also administrative cooperation between Member States shall be strengthened based on the enforcement Directive. A revision of the Posting of Workers Directive of 1996 would in practice delay significant efforts to ensure a better application and enforcement of existing regulation on the posting of workers. It would also lead to increased legal uncertainty regarding the rules that will have to be complied with. Once the transposition phase of the posting of 2014 enforcement Directive is completed, Eurociett calls for an evaluation of this Directive and its effect in practice, as foreseen for (no later than) 2019 under Article 24 of the enforcement Directive.
- 2.3. Eurociett fully supports the fact that temporary agency work is covered under the scope of the Posting of Workers Directive, as stipulated by Article 3, paragraph 1 (f). Also in that respect, there is therefore no need to revise the Posting of Workers Directive of 1996. Excluding temporary agency work from the scope of the Posting of Workers Directive will not solve any of the current challenges discussed at EU level regarding the posting of agency workers, but on the contrary weaken the protection of agency workers and create legal uncertainty for companies, who aim to post an agency worker to another country. Excluding temporary agency work from the scope of the Posting of Workers Directive is furthermore not legally possible under the EU treaty and based on existing case law.

### **3. Need for improved access to information on the posting of agency workers**

- 3.1. An important challenge in the context of the posting of agency workers is the insufficient access to information for both companies and workers. Information on the posting of agency workers needs to cover the requirements, conditions and restrictions for posting agency workers, but also information on the applicable employment and working conditions for posted agency workers. There is also a need for better data collection and statistics on the number of posted agency workers in Europe.
- 3.2. This information should be made available by electronic means via a single national website and be made available free of charge in the official language of the host Member States and the most relevant languages taking into account demands in the labour market. It is in this context that Eurociett calls for a shift and effective implementation of Article 5 of the enforcement Directive of 2014.

3.3. Initiatives of European and/or national social partners to improve access to information on the terms and conditions of the posting of workers, such as the Eurociett/Uni-Europa Observatory<sup>3</sup> on cross-border activities should be encouraged and supported. National information and awareness raising campaigns should include public and private information sources on the posting of workers.

#### **4. Controls should be effective, proportionate and effective and administrative cooperation between countries should be enhanced**

4.1. Eurociett fully agrees that proportionate, effective and non-discriminatory controls are essential to secure compliance with existing regulation and prevent abuses linked to the posting of workers.

4.2. Controls in the context of the posting of workers have been adequately addressed in the enforcement Directive of 2014, which addresses administrative cooperation, controls and inspections in the Articles 9 and 10. Against this background, there is no need for changing the EU norms on national controls on the posting of workers.

4.3. Priority should be given to a fully and adequate implementation of the enforcement Directive of 2014. Eurociett underlines that there are large differences in the actual practice of national controls and the administrative capacities of the control authorities. In Belgium, an effective approach of control and enforcement has been established based on the Limosa system of a prior declaration and authorisation. However, some problems linked to controls and enforcement still need to be addressed. The Belgian Eurociett member is actively engaged in addressing these. In France, a prior declaration scheme has been introduced to improve supervision and compliance. Given the heterogeneity of national practice, there might be in some cases the need for more controls, for making them more effective and for improving the cooperation between labour inspectorates, control authorities and other administrations, while other countries have already established appropriate systems.

4.4. A national best-practice has been established in the Netherlands, where the sectoral social partners for the agency work industry have set up a private enforcement body (“CLA police”)<sup>4</sup> to ensure compliance with the collective labour agreements applicable to agency workers. The CLA police plays a central role in ensuring regulatory compliance and preventing abusive practices. Given the fact that agency work in the Netherlands is largely regulated by collective labour agreements, the CLA for the agency work sector also covers specific provisions on the posting of agency workers.

4.5. Eurociett is convinced that there is a need to differentiate clearly between the established, well-organised and recognised actors on the labour market and certain mala fide companies, who are at the centre of cases of non-compliance and abuses. The agency work industry represented by Eurociett is bound by the confederations Code of Conduct, which aims at promote fair and ethical recruitment and employment practices and includes a clear commitment on the respect for the worker’s rights and the compliance with regulation.

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<sup>3</sup> The Eurociett/Uni-Europa observatory on cross-border activities was established in 2009 by the EU Sectoral Social Partners of the temporary agency work sector. An important activity of the sectoral social partners is the preparation of factsheets on the posting of workers, which are made available [online](#).

<sup>4</sup> For further information, please consult the “CLA police” (SNCU) website: [www.sncu.nl](http://www.sncu.nl)

- 4.6. To facilitate controls and the provision of cross-border services, administrative cooperation between EU Member States, especially between sending and receiving countries needs to be enhanced in line with the Articles 16 and 17 of the 2014 enforcement Directive.
- 4.7. A special focus should be laid in the context of enhanced administrative cooperation on improved and efficient A1 forms, which should be handed out quickly and in a unified way to the requesting service provider. A1 forms should also clearly specify whether the posted worker is an agency worker.

## **5. Eurociett supports actions at national level to prevent abusive practice of letterbox companies**

- 5.1. Experience in the EU Member States and also gathered in the context of the EU Committee of Experts, in which Eurociett has an observer status, shows that abusive practices are often linked to so-called letterbox companies. This was for example the case with regard to the company Atlanco Rimec, which used a letterbox construct to circumvent regulation on the protection of agency workers.
- 5.2. Against the background of these limited, but well-documented cases, Eurociett supports action at national level to prevent letterbox companies and abusive practices linked to them. Eurociett supports a regulatory approach that a company aiming to post agency workers to other EU countries needs to be an employer ordinarily performing substantial activities in the territory of the Member State in which he/she is established. Corresponding, proportionate actions against letterbox companies will help to prevent abusive practices in the context of the posting of workers.

## **6. Eurociett calls for a legal analysis on the interrelation between the Directive on temporary agency work and the posting of workers Directive**

- 6.1. The Directive 96/711/EC on the posting of workers was adopted in December 1996 and thus long time before discussions on general EU minimum employment and working conditions for agency workers were started.
- 6.2. With the adoption of the Directive 2008/104/EC on temporary agency work in 2008 and its implementation at national level until 2011, there are now two main Directives regulating sectoral employment and working conditions for temporary agency workers. The implementation of the Directive 2008/104/EC had a significant impact on the applicable national regulation on temporary agency work, based on the principle of equal pay for comparable work and the option of derogations by collective labour agreements and for open-ended contracts providing pay between assignments.
- 6.3. Against the background of this important regulatory development in the past years, Eurociett calls for an in-depth legal analysis on the interrelation between the Directive 2008/104/EC on temporary agency work and the Directive 96/71 on the posting of workers in the context of the provision of services, as both Directives address the employment and working conditions of agency workers.

- 7. Between posted and non-posted agency workers in the country of destination Eurociett supports the application of the principle of equal pay for equal work as defined by the Directive 2008/104/EC on temporary agency work and implemented in the country of destination (including the option of derogations).**

**Eurociett stresses that no revision of the Posting of Workers Directive is needed to achieve that goal.**

7.1. Eurociett aims to highlight that achieving equal pay for equal work for posted agency workers as defined by the Directive on temporary agency work and implemented in the country of destination can be implemented via Article 3 paragraph 9 or collective labour agreements (based on Article 3, paragraph 1 d). It does not require any revision of the Posting of Workers Directive.

7.2. Where appropriate, Eurociett calls for the option provided under Article 3, paragraph 9 of the Posting of Workers Directive to be used at the national level.

Article 3, paragraph 9 of the Posting of Workers Directive allows EU Member States to go beyond the minimum requirements of the Directive 96/71 with regard to the basic employment and working conditions for posted agency workers and to apply conditions that are comparable to the agency workers in the country of destination.

This presupposes that the applicable regulation on equal pay should be the same as that applied to agency workers assigned at national level as defined in Article 5 of the Directive on temporary agency work, including the options of derogations from equal pay, in particular derogations by collective labour agreements.

Based on information available to Eurociett, several EU Member States, including Belgium, France, Ireland, Italy and Poland have transposed Article 3, paragraph 9 into national law, thus providing equal pay for equal work for posted agency workers, while there is no legal obligation for Member States to do so.

7.3. An alternative, equally effective way to ensure equal pay for equal work for posted agency workers in the country of destination and as defined by the Directive on temporary agency work (including the option for derogations) is to put in place a generally binding Collective Labour Agreement for agency workers, covering also posted agency workers.

The Directive 96/71/EC on the Posting of Workers allows for this option under Article 3, paragraph 1 d.

National implementation legislation on the Posting of Workers Directive should allow for this option. This approach is for example being applied in the Netherlands, Germany and Sweden to regulate pay for posted agency workers.

7.4. Establishing equal pay for equal work for posted agency workers (as defined by the Directive on temporary agency work and implemented in the country of destination) is an important instrument to establish a level-playing field between domestic and posted agency workers and to avoid unfair competition for companies and workers. At the same time, Article 3, paragraph 9 of the Posting of Workers Directive should not be used as a tool to introduce new restrictions to the posting of agency workers, which would lead to market distortions.

## 8. Eurociett calls for an effective coordination of social security schemes in the EU

8.1. In order to enhance labour mobility, Eurociett is convinced that an effective and efficient coordination of social security systems in the EU is essential. This coordination shall ensure that workers benefit from adequate social protection, also when they take up employment opportunities in other EU Member States. The coordination of social security should focus on sickness, maternity benefits, old-age pensions, pre-retirement and invalidity benefits, survivors' benefits and death grants, unemployment benefits, family benefits and benefits in respect of accidents at work and occupational diseases.

8.2. Eurociett supports an effective coordination of social security schemes within the EU, which should fully respect the national competences with regard to determining the level of social security protection. Eurociett considers that there is a need to consolidate EU Regulations on social security coordination to ensure and improve consistency, also with regard to social security provisions on the posting of workers in the Regulation 884. Agency workers should not be discriminated against with regard to their access to social security and the portability of the rights they acquired.

**About Eurociett:** As the European Confederation of Private Employment Services, Eurociett is the authoritative voice representing the common interests of the agency work industry in Europe. Eurociett gathers 28 national federations from European countries, and 7 of the largest international staffing companies as corporate members. Its main objectives are twofold: to seek greater recognition for the positive role of the employment and recruitment industry plays in better functioning labour markets; to help its members conduct their businesses in a legal and regulatory environment that is positive and supportive.