

Topic: Posting of Workers

Brief description and main aims:

The “Posting” Directive defines the rules that apply when a company provides services, for a limited period, in a country other than the one where it usually operates. As the provision of services is temporary, some of the rules that apply are the ones of the “host” country (minimum wage, working time, health and safety...), whilst others (for example “Social security”) remain the ones of the “home” country.

Latest revision to date, Directive (EU) 2018/957 of 28 June 2018 amended the original Directive from 1996 on the “posting of workers in the framework of the provision of services”, with the aim to address the problem of unfair practices and to promote the principle that the same work at the same place should be remunerated in the same manner. Member States must apply the new rules since 30 July 2020.

At present, the European Commission is following the implementation of both this new Posting Directive, as well as the “Enforcement Directive” (2014/67/EU) by the Member States.

Adopted in 2014, this later Directive aims at strengthening the practical application of the Posting Directive by addressing the inspections and monitoring or the exchange of information between Member States, for instance. To date, infringements have been identified by the European Commission in most Member States, because of non-compliance of their national legislation with this Directive (in particular regarding articles 9, 12 and 20).

In parallel, the European Commission is also working on a single e-declaration form that Member States could use on a voluntary basis, in order to harmonise the declaration procedures.

It has also launched a broad study on cross-border workers in subcontracting chains, in order to assess the overall functioning of the posting legislation.

Why FIEC is dealing with this topic:

Approximately half of the postings within the Internal Market are in construction activities and therefore these new rules can have a significant impact for construction companies.

FIEC is following the implementation phase and the related activities and keeps a close look at the newly introduced provisions such as, for example: the reference to “remuneration” instead of “minimum wage”; a limitation in time (max 12 months, plus 6 possible additional months) beyond which the terms and conditions of employment that are mandatorily applicable to workers will be the ones of the Member State where the work is carried out; a clarification of the rules applicable to the reimbursement by the employer of the expenditures incurred on account of the posting, such as on travel, board and lodging.

FIEC is also advocating that sectoral initiatives, like national social ID cards, should not be put at risk by the ongoing infringement procedures.

Actions and key dates:

28/6/2018 – Adoption of the new “Posting” Directive 2018/957/EC

30/7/2020 – Deadline for implementation by the Member States

Ongoing – European Commission undertakes infringement procedures against most EU Member States (related to the “Enforcement” Directive)

Ongoing – European Commission prepares single e-declaration form

Ongoing – European Commission undertakes broad study on “cross-border workers in subcontracting chains”