



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2011)

Opinion

Title

DG EMPL - Impact Assessment on the revision of the legislative framework on the posting of workers in the context of the provision of services

(draft version of 12 October 2011)

(A) Context

The freedom to provide services is a fundamental right enshrined in the Treaty. It includes the right of a service provider established in a Member State to temporarily post its workers to another Member State in order to provide a service. Directive 96/71/EC facilitates the cross-border provision of services while ensuring an adequate level of protection of workers' rights. It does so by defining the core working conditions of the host country that are guaranteed to workers posted to its territory whenever they are more favourable to the worker than the provisions of the sending country. Since 2006, the Commission has adopted several Communications and a Recommendation addressing problems of implementation and enforcement of the Directive. In 2007, the decisions of the Court of Justice brought about a debate on the balance between the exercise of the right of collective bargaining and action on the one hand, and the freedom to provide services on the other. The present report accompanies two legislative initiatives aiming at resolving these problems.

(B) Overall assessment

The report should be significantly improved in several important respects. It should better explain the problems and substantiate them with evidence, while clearly acknowledging the diverging views of stakeholders. The report should present the set of problems related to the right of collective bargaining and action separately from the set related to posting of workers and should design and assess alternative policy solutions. With respect to both sets of problems, the report should establish a clear intervention logic by designing options that address the full set of problem drivers and correspond to specific objectives. On that basis the report should better assess the proportionality and the impacts of policy options, particularly with respect to compliance costs and their distribution among Member States, impacts on SMEs and on sector competitiveness. Finally, plausible monitoring indicators should be identified.

Given the nature of these recommendations, the Board asks DG EMPL to submit a revised version of the report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Better explain the main problems and support them with robust evidence. The report should better explain that the problems are primarily related to unclear legal provisions on implementation and enforcement of the Directive. Previous attempts by the Commission to improve the implementation and enforcement of the Directive should be recalled and their effectiveness in solving the implementation problems explained. The report should clearly separate the problem drivers related primarily to unclear legal definitions in the Directive from those related to its implementation (Article 4) and enforcement (Articles 5 and 6). All problems addressed by the policy options should be described in the problem definition section. The report should illustrate the magnitude of the problems and should better explain the negative consequences for particular sectors, groups of workers, regions and/or Member States. The problems should be supported by credible evidence, drawing on the results of evaluations and consultation of stakeholders, further illustrative examples and available statistical data. In this respect, an overview of relevant administrative and judicial elements in Member States should be provided.

(2) Present the problem related to the right of collective bargaining and action separately, and design and assess corresponding policy options. The report should present the problem related to the right of collective bargaining and action separately, explain why it cannot be addressed in the Directive (e.g. establishment of an alert mechanism) but is nevertheless being dealt with at the same time. Consequently, the necessity of EU intervention in this matter should be clearly demonstrated. The report should explicitly state which measures are included in the "Monti II Regulation" option and describe them in detail. It should also justify the proportionality of this option and present and analyse alternative policy options.

(3) Strengthen the intervention logic. Policy options should better correspond to the specific objectives and the problem drivers they aim to address. Objectives should be defined in SMART terms (i.e. Specific, Measurable, Achievable, Realistic and Time-dependent). The design of policy options should be significantly improved by presenting: plausible packages of options (including appropriate sub-options for regulatory intervention) upfront to ensure that they address all problem drivers. The discussion on the preferred type of delivery instrument (i.e. amendment of the existing Directive versus a separate Enforcement Directive) should be separated from the issues of policy substance. The report should describe the content of policy options in concrete terms and demonstrate that the proposed regulatory measures are proportionate to the identified problems, taking into account the different nature of problem drivers (i.e. unclear legal definitions versus vague implementation and enforcement provisions in the Directive).

(4) Better assess impacts and identify plausible monitoring indicators. The report should provide the key estimates of compliance costs in the main text and should present the overall costs of the preferred policy solution. Where robust estimates are not available (e.g. additional staff costs for Member States), the report should explain why this is the case and should make an attempt to indicate a range of costs based on the case studies and overview of the existing (relevant) administrative elements in Member States. The report should also describe the distribution of costs and benefits across Member States and should substantiate the impacts on SMEs, given the fact that SMEs are particularly affected by the existing deficiencies. The report should explain how sector competitiveness will be affected by the proposed changes and justify the conclusion that consumers would benefit from lower prices. Finally, the report should identify plausible monitoring indicators and more concrete evaluation arrangements.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

(D) Procedure and presentation

The different views of stakeholders (Member States, employers and workers' representatives) should be better reflected throughout the text. Policy options should be compared against the baseline, and the scores in the comparison tables should be aligned with the main text. As the report assumes a thorough knowledge of the text of the Directive, relevant Articles proposed for amendment should be annexed to the report. The report should be streamlined to avoid duplications. The executive summary should summarise all the main chapters of the impact assessment report.

(E) IAB scrutiny process

Reference number	2011/EMPL/001
External expertise used	No
Date of Board Meeting	9 November 2011