



Brussels,  
D(2016)

## **Opinion**

**Title: DG EMPL - Impact Assessment on amending the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services**

**(Resubmitted version of 15 February 2016)\***

### **(A) Context**

Posting of workers plays an important role in cross border trade in services in the internal market. In 2014, there were over 1.45 million postings in the EU, up by 37.5% since 2010.

The 1996 Posting of Workers Directive aims to promote and facilitate the cross-border provision of services, provide protection to posted workers and ensure a level-playing field between foreign and local competitors. It stipulates a 'core set' of terms and conditions of employment of the host Member State, which are mandatory to be applied by cross-border service providers. However, after the enlargement, wage differentials between Member States have increased and with increasing numbers of posted workers, the social balance as well as the level playing field for businesses have been brought into question.

The 2014 Enforcement Directive provides for new and strengthened instruments to fight and sanction circumventions, fraud and abuses of posting of workers and lays down provisions to improve administrative cooperation between national authorities. Member States have until 18 June 2016 to transpose the Directive. In addition, there have been developments in the case law of the European Court of Justice.

This impact assessment concerns options for a targeted review of the 1996 posting of workers directive.

### **(B) Overall opinion: POSITIVE**

**The Board gives a positive opinion to the resubmitted version of the impact assessment report on the posting directive.**

**Overall, the report has been revised to take account of the Board's recommendations. The problem description has been improved, notably on the origins of the wage gaps, as well as the presentation of the enforcement directive and of case law in the baseline and elsewhere in the report. The subsidiarity issue has been better justified. A section on SMEs, including on their administrative burdens, has been added (although very brief). The objectives are now more clearly put into the context of the internal market and the problem of unfair competition.**

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\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

**The wage simulation has been improved (in annex IV) to take account of after-tax issues.**

**However, there are still a number of issues which should be further improved:**

- 1) The competition issue related to excessive wage gaps needs to be further underpinned with evidence and stakeholder views;**
- 2) The preferred option needs to be presented more clearly and a separate table summarising the envisaged impacts of the preferred option should be added.**

### **(C) Main recommendations for improvements**

**1) Competition issue.** The link between wage gaps and competition problems should be better substantiated. While the report argues that wage gaps translate into a competitive advantage for posting companies, it also states that evidence suggests that posted workers generally complement rather than substitute local workers. The report should bring forward more evidence on the degree of competition between posting companies and local ones and include stakeholder views on this. The report mentions in several places the risk of downward pressure on wage-setting on local low skilled workers of the current regime, but should present evidence or stakeholder views to support whether this is actually happening. The consistency between the problem tree and the elements discussed in the report should be ensured.

**2) Preferred option.** While the report now better describes the impact of specific options, it still needs to summarise and clarify the elements of the preferred option (the preferred option presumably combines several of the options, though this is not clearly stated) and summarise its impacts in a table, drawing on the impacts of the individual options. The report estimates limited impacts on market integration, productivity and employment based on the argumentation that posting firms will remain cost competitive, albeit to a lesser extent. The summary table should clarify all impacts on relevant issues, even if deemed to be modest or negligible. The budget impacts should also be presented in the overall summary table for the preferred option. Section 6.1 should also make clear where the proposal will apply fully and where only partially (DK and SE and in specific sectors in other countries) and where, for that reason, large pay gaps may persist. The section of SME impacts should better draw on stakeholder views and elaborate further on likely administrative consequences for SMEs.

**3) Other clarifications.** The following issues should be improved as well: First, the report should explain better why activities done by posted workers can generally not be delocalised. Second, the report should explain why no exemption is considered for short term posting, since changing wage regime for a posting lasting only a few weeks may seem disproportional. Third, the after tax issue which is addressed by the new simulations provided in annex IV should be better reflected in the report itself.

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

### **(D) Procedure and presentation**

The report has been improved to give charts, tables and graphs proper labels and source indication. Charts on page 68 still need a title. Some charts like no. 6 and 7 are difficult to read in black and white. A clearer presentation of the preferred option and its elements in section 6.1 including a summary table illustrating envisaged impacts would improve

readability. The report should also state that no evaluation or designated public stakeholder consultation has taken place.

**(E) RSB scrutiny process**

Reference number	2015/EMPL/010
External expertise used	No
Date of RSB meeting	20 January 2016