

Increasing barriers to the posting of workers – Member states implementation of the EU’s Posted Workers Directive (96/71/EC) hinders performance of services

With an export rate of 79% (2017), the mechanical engineering industry is particularly dependent on access to third markets. The member states of the European Union are by far the largest export market for the German mechanical engineering industry, occupying eight of the ten largest market positions. Mechanical engineering and plant manufacturing companies not only export goods but, in most cases, also perform assembly, commissioning, servicing and maintenance for the machines, components and plants. Postings of skilled workers, most of them highly qualified, form a core element in our business model. This is something that not only major companies operating at an international level depend on, but also small and medium-sized enterprises (SMEs), which lack a sales network in their respective importing countries.

The reporting requirements for employee postings are implemented completely differently in the various EU member countries. The different regulations have led to a huge rise in the bureaucratic cost of postings in recent years. In VDMA’s view, the current implementation of reporting obligations in some EU member states violates the principle of freedom to provide services and hinders the ability of the Single European Market to function. Art. 4 of the implementing directive 2014/67/EU refers expressly to the need for such measures to be reasonable: “All measures introduced by this Directive should be justified and proportionate so as not to create administrative burdens or to limit the potential that undertakings, in particular small and medium-sized enterprises (SMEs), have to create new jobs, while protecting posted workers.”

The European Union and the member states of the EU are therefore called upon urgently to remove the excessive bureaucratic reporting requirements by harmonising and coordinating their reporting regulations.

VDMA estimates the additional bureaucratic costs for the posting of workers yearly at € 51 Million at least for the German mechanical engineering Industry.

VDMA considers that the Implementing Directive 2014/67/EU is being applied excessively in some member states. Reporting obligations for non-domiciled companies that differ from member state to member state are increasingly impeding the ability to plan reliably and flexibly organise employee postings. In many member states, too, different types of service performance are treated as equal.

As a high-tech industry that relies on highly qualified skilled workers, the mechanical engineering and plant construction industry is not open to suspicion of social dumping. On the contrary, skilled workers in this industry are often posted with above-average remuneration.

VDMA therefore welcomes the goal of preventing undeclared work and social dumping in the context of job postings – but this must not come at the expense of freedom to provide services in the Single European Market.

The following points are particularly problematic for VDMA member companies:

- **Absence of uniform reporting obligations in the EU member states:**
There are no uniform regulations in terms of either form or the requirements governing the documents to be submitted.
- **Language provision:**
Communication with the competent authorities often takes place solely in the national language of the host country (e.g. in Spain). On-line forms are in some, but not all countries available in English. In addition, many documents such as salary statements, employment contracts and purchase agreements with the customer must be translated into the national language before being submitted. These requirements impose major challenges on German mechanical engineering companies. External service companies usually have to be engaged to provide the translations.
- **Mandatory contact/contact point in the country:**
Some EU member states (e.g. France and Italy) require a contact or contact point within the country for the duration of the posting. Member companies that do not have a branch office in the country in question have to purchase external services for this purpose. This creates additional bureaucratic hurdles and costs. Sensitive personal data covered by the General Data Protection Regulation (e.g. salary statements) must also be made available to the contact point, and thus be disclosed to third parties. For many companies, this is an unacceptable requirement that is disproportionate to the goals of the reporting obligations.
- **Delays affecting assembly work that prove detrimental to business:**
Because of the documentation obligations that are imposed, and the many administrative steps these involve, postings to the customer's premises are often subject to unreasonably long lead times. This conflicts with the customer's requirement to be able to obtain a service in the Single European Market quickly at all times, especially from companies with which a business relationship is already in place (e.g. via a service contract). Companies in border regions, in particular, find it difficult to justify to customers that lengthy bureaucratic application processes must be completed before their machine can be repaired. This is especially true in cases where one machine might potentially be responsible for putting an entire operating plant out of service.
- **Increased costs incurred by external service companies:**
Because the procedures to observe reporting obligations are becoming more and more labour-intensive, SMEs in particular (especially in the case of one-off contracts in a destination country) have to engage external service companies to perform the reporting component of work postings. This can sometimes incur very high costs.

- **Absence of national liaison offices:**
Article 5 of Directive 2014/67/EU obliges member states to ensure that information on national reporting obligations is made accessible. This refers expressly to the creation of national liaison offices to deal with requests for information. Such liaison offices have not been established in all member states, and in France particularly, there is no opportunity to make direct contact (e.g. with respect to problems with the on-line reporting platform).
- **The different member states reporting requirements confuse companies:**
Reporting obligations on professional activities vary significantly between member states. Some require companies to report the general kind of postings such as assembly or maintenance assignments. In contrast, others, particularly France and Italy, overburden companies with reporting requirements about sales staff business trips, intracompany meetings and trade fair activities. Due to this, companies and particularly SMEs face additional administrative burdens and a high level of uncertainty, whether they fulfil the posting requirements correctly or not.

VDMA requirements to the European Commission and EU member states

1. **Short Posting:** In general, posting should not require reporting within the first 10 working days.
2. **Uniform reporting requirements in the EU member states:** The differing regulations in the individual EU member states incur huge bureaucratic cost. Uniform regulations governing procedures (e.g. identical documents) must be introduced.
3. **Uniform language regulation:** To enter the required information, there should be lean online reporting platforms available with a comparable structure, to make entries easier in the case of deployments to multiple countries. In an ideal situation, there would be a single, common on-line reporting platform covering all member states. This(these) reporting platform(s) should be available not only in the local national languages but also in English as a minimum (including the explanatory notes). Further communication with the local authorities should be possible in English, at least for written correspondence.
4. **Abolition of the mandatory contact/contact point in the country:** To observe the requirement to appoint a local contact that must maintain comprehensive information about the home company and the various job postings, SMEs in particular must engage a third-party service firm at a cost. A less expensive alternative would be for the posted employees to carry information about their posting (details of the nature and duration of their posting, a reference to the purchase agreement in question, salary statement etc.) on them in English and for the employer to be contacted in case of further questions.
5. **Limit the reporting obligations to postings for assembly and maintenance assignments:** Especially regarding the purpose of the posting of workers directive – preventing social dumping and respecting minimum wages in all member states – the reporting requirements should focus solely on assembly and maintenance tasks. The same narrow definition of postings to be reported should apply in all member states.

Date: 20. June 2018

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