

Posting of workers in the EU- Obstacles in the Internal Market

The EU Internal Market is one of the biggest achievements of the European Union. Especially in the small and medium-sized mechanical and plant engineering sector, the close integration within the EU is evident. A prerequisite for this is a frictionless Internal Market – not just for goods and capital but also for workers and services. No purchase of machines in the highly export-oriented mechanical engineering and plant engineering sector is possible without their installation, operationalisation, servicing and maintenance. Highly qualified specialist workers, who are not suspected of being involved in social dumping, are therefore active daily in EU cross-border postings.

VDMA welcomes the goal of prohibiting social dumping in postings: however, the pursuit of this must not be at the expense of the EU's Internal Market. From VDMA's point of view, the transposition of the Posting of Workers Directive in some EU Member States already clashed with the fundamental principles of the freedom to provide services as well as with the free movement of workers in the past and, therefore, hindered the Internal Market's ability to function. Moreover, the revised Posting of Workers Directive, which in the meantime has been transposed by the Member States, leads now to further legal uncertainty and additional obstacles in the Internal Market. The signs do not point to a reduction in bureaucracy but to even more bureaucracy!

The following problems are particularly burdensome concerning EU postings:

A patchwork of national reporting obligations is creating extreme bureaucracy

In the process of transposing the Enforcement Directive on Posted Workers, different reporting obligations were introduced in EU Member States for postings of workers abroad. SMEs can only navigate this patchwork of national reporting obligations with the input of additional staff or by resorting to external service providers, incurring extra costs for the company.

VDMA estimates the additional bureaucratic costs for EU postings of workers yearly at a minimum of EUR 31 million for the German mechanical engineering industry (based on 205,000 registered postings). However, the overall costs for the companies that post workers are much higher due to excessive reporting obligations in many Member States.

Time delays in the posting of specialist workers that damage business

Postings for customers are frequently only possible with an unreasonably long period of advanced planning as they are required to fulfil these reporting obligations. However, customers require a quick response (e. g. 24-hour service). This time delay is, in particular in border regions, hard to explain to customers.

Language requirements – documentation demanded in the national language

Many documents such as a pay slip, work contract etc. must be taken with the posted worker in the national language of the host country. There will be translation costs, alongside the cost in terms of time for obtaining the documents. In addition, online platforms are often only available in the language of the EU Member State. The accessibility of national information offices is still insufficient.

Compulsory contact in the EU Member State required

Numerous EU Member States (e. g. France and Italy) demand a contact in the country for the duration of the posting. Companies that do not have a branch office have to purchase external services for this purpose.

Major confusion as activities that have to be reported are defined in different ways

Clarifying whether postings in a particular EU Member State do or do not have to be reported requires additional time and effort. While in some Member States the traditional postings involving installation, maintenance and servicing have to be reported, in others, sales meetings and visits to companies also have to be reported. The different extension of reporting obligations regarding tele-working abroad also creates additional confusion.

“Equal pay for equal work in the same place” means disorientation in the collective agreement jungle

The principle of “equal pay for equal work in the same place” applies with the transposition of the revised Posting of Workers Directive without restriction from the first day of the posting. The statutory minimum wage that was applicable in the past, which in many cases could still be determined at a proportionate cost, is no longer always sufficient!

In most cases, laborious research into wage policies in complex and local collective agreements that can be difficult to access and that are only available in the national language(s) of the EU Member State will now be necessary. In this context, there are numerous issues relating to interpretation and delineation, and therefore legal risks for companies.

Determining the correct wage has, in every case, become considerably more difficult and expensive. The designated tool of a website with general information cannot, due to its abstract nature and its limited scope, capture the specificities of individual cases in practice and is therefore inadequate for the calculation of the wage.

The application of the complete labour legislation to long-term postings leads to legal uncertainty

According to the revised Posting of Workers Directive, the principle also applies that for long-term assignments, lasting in general more than one year, the complete labour legislation of the receiving Member State applies. For this purpose, comprehensive orientations are needed, as every labour law will be given priority over possible agreements arising from (e. g. German) employment contracts in all cases where there is a conflict. It is not reasonable for SMEs to keep the required expertise in the company on standby for all EU Member States.

The EU institutions and the EU Member States are urgently requested to remedy these flaws by harmonising and coordinating rules as well as by preparing tools that are fit for daily use!

Concrete VDMA demands to the European Commission and EU Member States:

1. Exemption periods

The first ten days of a posting should generally not require notification and should be possible according to the labour law of the posting EU Member State.

2. Harmonised reporting obligations in EU Member States

The differing obligations in the individual EU Member States lead to a very high level of administrative burden. Therefore, harmonised procedures (reporting procedures, documents etc.) must be introduced. The eDeclaration, as announced by the European Commission in May 2021, is a step in the right direction. However, the use of this electronic form is on a voluntary basis. We hope that as many Member States as possible will use it.

3. Limit the reporting obligations to postings for technical services only

The definition of activities that have to be reported should relate uniformly in all EU Member States to activities in the area of installation and service postings. In particular sales, meetings, trade fair activities etc. must be exempted from reporting requirements.

4. Uniform language requirements

Streamlined and uniform online reporting platforms, legal frameworks and collective agreements should be available in English. Required documents or as the case may be communication with authorities should be possible in English.

5. Abolition of the mandatory contact in an EU Member State

There should be no requirement to have a local contact during the posting. Instead, it is sufficient if the posted workers bring with them information on the current posting or, as the case may be, the employer answers additional questions in the posting country.

6. Transparent and binding labour law tools

The possibilities offered by digitalisation must be used to determine comparable wages. Standardised national wage calculators, through which comparable wages can be calculated in an unbureaucratic and binding manner, must be introduced by EU Member States. The other labour law policies shall be presented exhaustively in a transparent and understandable form. It must be clear in every Member State at any given time which wage has to be paid and which rules must be applied, particularly with regard to the applicability of collective agreements.

Contacts at VDMA

Yvonne Heidler

Foreign Trade Department

Phone +49 69 6603-1400

E-Mail yvonne.heidler@vdma.org

Niels Karssen

European Office, Brussels

Phone +32 2 706-8207

E-Mail niels.karssen@vdma.org

Fabian Seus

Legal Department

Phone +49 69 6603-1350

E-Mail fabian.seus@vdma.org

Dr. Christian Hess

Legal Department

Phone +49 69 6603-1268

E-Mail christian.hess@vdma.org

Monika Weltin

Taxation Department

Phone +49 69 6603-1417

E-Mail monika.weltin@vdma.org