

# ***EU labour mobility: avenues for workable solutions***

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## **A functioning single market for provision of services**

A strong single market with its four fundamental freedoms is the greatest achievement of European integration. Free movement of goods, services, persons and capital provides the basis for employment and competitiveness in the EU. The single market is the world's largest economic area but it is far from complete. Uncoordinated national actions and protectionist tendencies threaten the ability of the single market to function in this area. Hence the importance of dismantling remaining obstacles on a targeted basis – this applies in the areas of both social insurance and labour law.

## **A1 certificate requirements in accordance with regulation 883/2004**

### Problem

Broadly speaking, workers are subject to the social insurance provisions of the Member State in which they are employed. Insofar as workers pursue their activities in another Member State (posting or business trip), the social insurance law of the State from which they are posted may continue to be applicable in exceptional cases. This status is demonstrated by an A1 certificate. However, the issuance of such A1 certificates across the EU where activities are performed in another Member State on a temporary basis is not always optimal – despite the widespread availability of IT-supported tools. It may be the case that issuing a certificate involves days or even weeks of administrative work whereas the deployment abroad lasts just a few hours. This makes it impossible for a worker to present the necessary A1 certificate in the event of an inspection by the relevant national authorities during the posting or business trip.

### Solution

The ongoing revision of regulation 883/2004 on coordination of social security systems, should provide that all business trips together with brief and short-term employment postings are completely exempted from the need to apply for an A1 certificate. To prevent abuse, sectoral derogations should be allowed, for example in the construction industry. Furthermore, an application for the issuance of an A1 certificate should suffice as proof.



## **Notification and documentation obligations under the posting of workers directive**

### Problem

As part of the national transposition of the directive on enforcement of the posting of workers directive, Member States have introduced a wide range of different notification and documentation obligations. The requirements regarding notifiable activities, timing, specific addressees and content of the notification, documents which workers must carry and obligations after the deployment terminates vary widely from one Member State to the next, a situation which is difficult for companies and workers to manage, often requiring recourse to foreign legal experts.

### Solution

Administrative difficulties surrounding posting of workers must be dismantled. In the framework of the updated industrial strategy, the European Commission has announced that it will design a common voluntary electronic form for the necessary notifications. The objective is to identify shared elements and to demonstrate to the Member States whether their additional national requirements are proportionate and justified (article 9 para 2 enforcement directive). If the solution is to be practical, the electronic form must be binding for all Member States and not merely voluntary. In the longer term, the administrative requirements in the enforcement directive must be streamlined and the open-ended list in article 9 para 2 needs to be revisited – on the condition that effective national controls continue to be implemented for particular sectors. It is also important for electronic notification procedures in this area to take into account cross-connections with the notification obligations in regulation 883/2004, in order to avoid two parallel electronic procedures for one and the same posting.

## **Digitalisation of notification procedures**

### Problem

Across the EU, there are countless notification and documentation obligations for workers, companies and authorities arising from worker mobility. In practice, many administrative rules are still analog and struggle to keep up with deadlines. The formalities associated with posting of workers have yet to be brought into the digital age.

### Solution

The exchange of social security data across the EU needs to be simplified and digitalised. Whereas German employers apply for an A1 certificate electronically, workers often carry a printed A1 certificate as proof of social insurance cover if their workplace is inspected. As a first step, such insistence on a physical format should be scrapped: an electronic copy of an A1 application should suffice. Looking to the future, the administrative rules governing application for an A1 certificate should be superseded by a harmonised digital solution in the framework of the existing electronic exchange of social security information (EESSI) IT system, not least because the current different national rules regarding presentation of A1 certificates cause considerable legal uncertainties. In this way, an inspection in the country of posting



could in future ascertain rapidly whether the worker in question has social insurance coverage and which Member State is responsible for social insurance. The initiative to create a framework for a European digital identity could facilitate the exchange between workers and authorities and provide an impetus for development of a European social security pass.

## **Fundamental review of posting of workers legislation**

### Problem

The 2018 revision of the posting of workers directive led to tighter rules and greater complexity. For instance, instead of the relevant minimum wage, it is now necessary to establish the pay applicable for a comparable worker in the host country as stipulated in a generally applicable collective pay agreement or by law. In practice, this is a difficult task which can often be managed only with the help of foreign experts. By way of example, around 600 sectors in France conclude their own collective pay agreements, all of which are declared to be generally applicable. Moreover, any posting which lasts longer than twelve or eighteen months is covered by the entire corpus of labour law in the host country which means that a favourability comparison between German and the relevant foreign labour law has to be carried out.

### Solution

In the long term, it is necessary to create a new European posting system with clear and non-bureaucratic rules which are applied uniformly across Europe. A sensible and balanced posting system which ensures both flexible worker mobility and protection against clandestine work and social hardship can be developed through an EU regulation. Following the example of article 3 para 2 of the 1996 posting of workers directive, short-term foreign deployments of up to eight days should be exempt from the scope of the posting requirements in most sectors. In addition, there must be better intermeshing between the requirements of European labour and social law. If short-term postings are excluded from the scope of the posting of workers directive, aspects of social law must also be taken into account. If not, the posting of workers system will continue to be too complex and associated with many legal uncertainties.

## **Mobile work and regulation 883/2004**

### Problem

Once the COVID-19 pandemic has passed, many people will still wish to be mobile workers in varying degrees, for example as cross-border workers or in connection with a private visit abroad. Yet, the current legal situation regarding cross-border mobile work poses many open questions about social insurance issues for workers and employers alike.

### Solution

As part of the ongoing revision of regulation 883/2004 and implementing regulation 987/2009, the ideal solution would be to incorporate a stand-alone coordination rule for



cross-border mobile work. It is absolutely essential that both sides have legal certainty here.

## **Support from ELA**

### Problem

Differences in the national transposition of European requirements have resulted in an enormous administrative effort in the area of posting of workers. National websites and Internet portals providing information for employers and workers are structured differently, the various layers of information are sometimes given only in the national language. In addition, the information available is often insufficient to communicate the applicable national rules to posted workers in a legally certain manner.

### Solution

In accordance with article 5 of the ELA regulation, the European Labour Agency is intended to improve the availability, quality and accessibility of information on labour mobility. A single Union-wide website acting as a single portal for accessing relevant information in all official languages is explicitly mentioned as an example. Moreover, the Agency is expected to support Member States in improving the accuracy, completeness and user-friendliness of relevant national information sources and services. Uniform national Internet portals must now be constructed in all Member States and also made available at least in English – and where possible in all official EU languages. Close coordination with national authorities is also required, because that is where expertise on the intricacies of national labour law and social systems is to be found. In this context, ELA must finally meet the obligations imposed on it by the regulation and also function as a helpdesk. The Agency must provide practical information on current EU law, point to further information about current national rules and ideally help with pay comparisons.

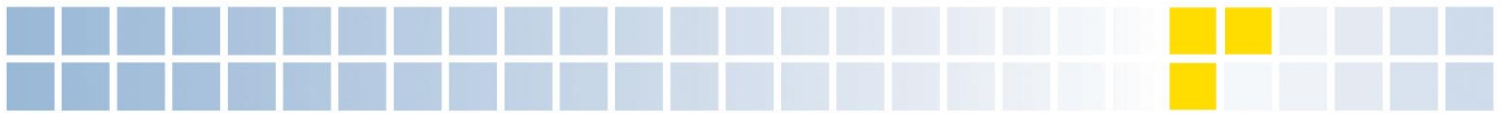
## **Dismantling of obstacles in the single market**

### Problem

A functioning single market presupposes that single market rules are complied with and enforced, and also that no new obstacles are introduced. In the area of posting of workers, coordination between Member States has hitherto been lacking.

### Solution

In March 2020 the Commission established a Single Market Enforcement Taskforce (SMET) in the framework of its industrial strategy. The taskforce will assess compliance with single market rules in national law, identify the most urgent barriers and instances of over-regulation, and look at horizontal enforcement issues. If SMET is to make an important contribution, it must be more than a talking shop where Member States do little more than discuss single market barriers. It must draw up solutions for dismantling those barriers.



## Border controls in the Schengen area

### Problem

Border closures, uncoordinated measures and constantly changing travel restrictions have severely compromised the single market during the COVID-19 crisis. Free movement of goods, services and persons must be maintained, also in the event of cross-border crises. Member States should not close open borders in the Schengen area unilaterally or impose unilateral travel bans.

### Solution

Crisis-induced solutions such as green lanes or the digital Covid certificate were good examples of the initial necessary coordination. It is intended that the emergency instrument for the single market announced by the Commission for spring 2022 will create a structural solution for crisis-related measures and strengthen information exchange and coordination between the Member States. The review of the Schengen borders code must reflect the lessons of the crisis and establish clear common rules for the introduction of border controls which must also guarantee the necessary worker mobility. Any illegal border closures should be pursued with an infringement procedure.

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