

# Position

## UEAPME<sup>1</sup> position paper in view of triologue negotiations

### EU Parliament report for a directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

UEAPME is in favour of a better enforcement and implementation of Directive 96/71/EC concerning the posting of workers, as the lack of enforcement proved to be one of the main shortcomings of the current directive.

If UEAPME is globally satisfied with the EU Parliament vote results on Article 3 preventing abuse and circumvention and on Article 9, national control measures.

UEAPME is deeply concerned with the vote on Article 12 dealing with subcontracting and joint and several liability. The decision to set up such a joint and several liability system for all Member States and all sectors will increase red tape and bureaucracy, as well as create high costs and legal uncertainty for SMEs. It goes against the principle of subsidiarity, creates discrimination of treatment between domestic and non-domestic service providers, will add costs for small companies and as an end result be an obstacle to the freedom of services.

#### 1- On Article 3: Preventing abuse and circumvention

- UEAPME is broadly satisfied with current the EU Parliament vote which defines a good set of enforcement provisions to prevent abuse and circumvention of the rules on posting of workers. It should support a good level playing field and avoid unfair competition through letter-box companies.
- UEAPME supports the open list containing qualitative and quantitative information as well as factual elements.
- The assessment by the competent authorities of qualitative criteria is important but should remain indicative factors since for example the notion of “temporary” posting is intrinsically linked to the sector and nature of activities performed and should be defined on a case by case basis.
- The assessment of the different factual elements should constitute the core business of competent authorities in the Member State of establishment and/or host country.
- Member States exchange of information and notably social protection documents should contribute to prevent misuse and circumvention. UEAPME supports the possession of a valid A1 form for the posted worker.

<sup>1</sup> UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is [55820581197-35](https://ec.europa.eu/transparency/regexp1/index.html).

- UEAPME welcomes the reference to the specific situation of SMEs concerning the number of contracts performed and the size of turnover realised in relation to newly established small undertakings.
- UEAPME regrets the deletion under Art 3.2d of the notion of “substantial business activity”. This element should belong to the list of criteria to be assessed for determining whether an undertaking performs genuinely performs activities.
- UEAPME welcomes the possibility for Member States to apply additional elements as long as they are justified, proportionate and non discriminatory and as long as they are public, clear and easily accessible through a single national website. One of the main obstacles for SMEs is the legal uncertainty and the lack of clarity of requested information before the posting of workers.
- UEAPME also welcomes the new Art 3.3.2 intending to fight against bogus self-employment.

### **On Article 3a (new)**

- In case of no genuine posting situation, UEAPME disagrees with the application of the Rome I regulation and with the principle of the most favourable provision for the worker.  
For the sake of transparency and legal certainty UEAPME requests for the deletion of the reference to Rome I regulation. Instead in case of false posting situation the working conditions of the **host country** should apply

### **2 - On Article 5: Improved access to information**

Access to information is absolutely crucial for improving a better enforcement and implementation of Directive 96/71/E4C.

- Therefore on accessibility of information UEAPME supports the principle of having a single official national website with the necessary information available in English and the national language for free.
- The same for indicating a contact person at the liaison office.
- Concerning the role of social partners for making available the terms and conditions of employment defined through collective bargaining, they should receive adequate support of the Commission and Member States to fulfil this transparency and information task as mentioned under Art. 5.4a.

### **3 - On Article 6: Mutual assistance**

- UEAPME supports the principle that Member States shall work in close cooperation and provide each other mutual assistance without delay. The need to reply quickly is essential to check the lawfulness of posting activities in a serious and efficient manner.

### **4 - On Article 7: Role of the Member State of establishment**

- UEAPME supports the reinforcement of the role of the authorities of the host Member States for conducting inspections of the terms and conditions of employment and for control and monitoring of enforcement measures with respect of posted workers.
- Further UEAPME insists on the importance that checks and controls are carried out by the authorities of the host Member State on their own initiative or at the request of the member state of establishment.

## **5 - On Article 9: National control measures**

Adequate national controls will highly contribute to limit frauds and combat unlawful activities of posted workers. A limitation of control measures would have substantially reduced the capacity of Member State to adapt and correctly react to new forms of unfair competition in relation to posting activities.

- Therefore UEAPME is satisfied with Article 9 as voted by the EU Parliament foreseeing an open list which allows Member States to set-up adequate control measures deemed necessary for the effective enforcement of Directive 96/71/EC.
- UEAPME considers it as a good decision to give the possibility to Member State to impose other administrative requirements and control measures such as the designation of a contact person or translation of certain documents in one of the official language of the host Member State.
- However in order to keep the right balance and avoid excessive measures, UEAPME considers that these additional administrative measures should be justified, proportionate, non discriminatory.
- UEAPME welcomes the obligation to make a simple declaration 5 working days prior to start a provision of service with the most important information necessary to control a genuine posting activity.
- UEAPME appreciates the obligation to keep or make accessible the most important documents related to the posting.

## **6 – On Article 11: Defence of rights**

- UEAPME is concerned about the proposal to oblige Member States to ensure trade unions and other third parties can engage in judicial or administrative proceedings related to implementing or enforcing the Directive. This decision should be left to the Member States level in accordance with their industrial relation systems.

## **5 - On Article 12 : Subcontracting – Joint and several liability**

- UEAPME requests the deletion of Article 12.  
The introduction of a uniform, one-size-fits-all joint and several liability system for all Member States and all sectors will increase red tape and bureaucracy as well as create legal uncertainty for SMEs. It goes against the principle of subsidiarity, will create discrimination of treatment between domestic and non-domestic service providers, will add costs and can be an obstacle to the freedom of services. The scope of such a liability should remain at national level, as well as the possibility to foresee measures for exemption from liability as it is already the case in some member States without opening door to abuses.

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