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& P A R T N E R S

*“As for the future, your task is not to foresee it,  
but to enable it”.*

Antoine de Saint-Exupéry

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POSTED WORKERS: APRIL 2020,

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## CALL ON THE POSTPONEMENT OF APPLICATION OF REVISED POSTING RULES

On 28 April 2020, 12 organisations called to postpone the date of applicability of the revised posting rules. 12 organisations from Poland, Germany, France, Netherlands and Spain representing various sectors have called on the European Parliament, European Commission and the Croatian Presidency of the Council of the EU to postpone the date of applicability of the revised rules on posting of workers by a year – till 30th July 2021. The organisations are:

- Labour Mobility Initiative
- Confederation Lewiatan
- Verband für häusliche Betreuung und Pflege e.V. (VHBP)
- The Polish HR Forum
- The Nationwide Convent of Employment Agencies
- Nationwide Federation of Entrepreneurs and Employers
- Corporation of Construction Entrepreneurs UNI-BUD
- Chambre de Commerce et d'Industrie Polonaise en France
- Polnische Wirtschaftskammer in Deutschland e.V.
- Polish Chamber of Commerce in the Netherlands
- Spanish-Polish Chamber of Commerce
- PolChambers – Polish Chambers of Commerce Abroad

The initiative to postpone the date is due to the belief that both EU countries and businesses will not be ready for new posting rules as a result of the Covid-19 pandemic.

### **Covid-19 pandemic vs. legal changes**

Due to Covid-19 pandemic neither the governments, nor the companies or the workers will be ready for the new legal reality after 30 July 2020. The date of applicability of new posting rules was set almost two years ago (on 30th July 2020), however changing the rules of game during a period where companies will fight for survival and try to protect workers from unemployment does not seem to be a good anti-crisis measure.

Hundreds of contracts in various sectors of services have been suspended or terminated. Restrictions on crossing the internal borders, combined with the preventive two weeks quarantine and with limited transport of persons, especially by air, have led to stagnation of cross-border services. These days, posting of workers is extremely difficult, if not impossible at all.

EU countries are busy with combatting the outbreak of Covid-19 and designing interim safety restrictions and financial support measures for the economy. Their ability on implementing the revised posting of workers directive before July 30th 2020 is unlikely, not to mention the publication in advance of new rules and information on remuneration as well as employment conditions on the single official national website, to give time for companies to prepare.

Taking the above into consideration, it is justified to consider postponing the date of applicability of the revised posting rules. This is in the interest of EU workers, employers and governments.

### **ANSWER BY COMMISSIONER SCHMIT CONCERNING THE ISSUING OF A1 DOCUMENTS**

#### **Question for written answer E-001216/20 to the Commission Cindy Franssen (2 March 2020)**

Subject: Monitoring of the issuing of A1 documents for posted workers

Posted workers remain affiliated to the social security system of the country where they normally work. If a worker is posted to another EU Member State by his or her employer, the social security authorities must be informed and an A1 document must be applied for. This document is then valid at home and abroad as proof of affiliation to the social security system in the habitual Member State of employment. In this way, gaps in the worker's coverage and payment of double contributions by the employer are avoided. The Member State to which the worker is posted is required to check whether the worker in question is indeed in possession of an A1 document. These checks are further facilitated by the European Labour Authority. The issuing of the A1 document is an exclusive competence of the Member State from which the worker is posted. Nevertheless, a recent Eurofound report (1) revealed that the conditions applicable to posting are not thoroughly checked by all Member States before an A1 document is issued.

1. Can the Commission indicate which national or European authorities are responsible for monitoring the correct issuing of A1 documents?
2. How does the Commission monitor the correct issuing of A1 documents? Has the Commission carried out a review in this regard in the context of the revision of the Social Security Coordination Regulation?

**Answer given by Mr Schmit on behalf of the European Commission (29 April 2020)**

A list of national competent institutions responsible for issuing the Portable Document (PD) A1 is available online (2). These institutions are primarily responsible to ensure that the conditions for issuing a PD A1 are satisfied in accordance with the rules on the coordination of social security systems. In particular, this includes the verification by the competent institution that the conditions, stipulated in Article 12 of Regulation (EC) No 883/2004 (3) and Articles 14 and 15 of Regulation (EC) No 987/2009 (4), are fulfilled. To assist Member States in the uniform interpretation of Article 12, the Administrative Commission for the coordination of social security systems has issued a decision (5) as well as a recommendation (6) concerning the issuance of the PD A1. In 2016, the Commission launched a proposal to revise Regulations (EC) No 883/2004 and 987/2009 (7). In the course of the legislative process, a provisional agreement was reached between the co-legislators in March 2019 (8) on parts of the regulations. One issue covered by this provisional agreement concerns the empowerment of the Commission to adopt implementing acts to establish standard procedures, including on the elements to be verified before the PD A1 can be issued. The legislative process is still ongoing (9). The standard procedures, established by the Commission, would ensure that the relevant conditions for the PD A1 are thoroughly verified by all Member States, in a uniform manner. This should also lead to further transparency for employers and mobile workers as regards the format and requirements for documents to be submitted when requesting a PD A1.

1. [https://www.eurofound.europa.eu/sites/default/files/ef\\_publication/field\\_ef\\_document/ef19054en.pdf](https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef19054en.pdf)
2. [https://europa.eu/youreurope/citizens/work/social-security-forms/contact\\_points\\_pd\\_a1.pdf](https://europa.eu/youreurope/citizens/work/social-security-forms/contact_points_pd_a1.pdf)
3. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems OJ L 166, 30.4.2004, p. 1.
4. Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems OJ L 284, 30.10.2009, p. 1-42.
5. Decision No A2 of 12 June 2009 concerning the interpretation of Article 12 of Regulation (EC) No 883/2004 of the European Parliament and of the Council on the legislation applicable to posted workers and self-employed workers temporarily working outside the competent State OJ C 106, 24.4.2010, p. 5-8.
6. Recommendation No A1 of 18 October 2017 concerning the issuance of the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council OJ C 183, 29.5.2018, p. 5-14.
7. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0815>

8. <https://data.consilium.europa.eu/doc/document/ST-7698-2019-ADD-1-REV-1/en/pdf>
9. [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0397\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2016/0397(COD)&l=en)

### **AMENDED RULES ON POSTING OF WORKERS: BUSINESSEUROPE CALLS FOR POSTPONEMENT**

On 14 April 2020, BusinessEurope sent a letter to the European Commissioner for Jobs and Social Rights, Nicolas Schmit, asking the Commission to postpone the date of entry into force of Directive 2018/957 on Posting of Workers, until a time when it can be effectively implemented by business and national administrations. This will allow businesses, social partners and public authorities to focus on what is essential in overcoming the COVID-19 sanitary crisis, whilst preserving growth and employment and the integrity of the single market, as lockdown provisions are gradually lifted. Meanwhile the existing rules on posting of workers (Directive 96/71/EC) with which all operators are already familiar would remain applicable.

### **POSTED WORKERS IN THE ROAD SECTOR: DIRECTIVE AT THE SECOND READING OF THE EUROPEAN PARLIAMENT**

The EU has established a range of social measures applicable to the road transport sector, which aim at improving drivers' working conditions, road safety and competition. To give real substance to these measures, compliance is key. The 2006 Enforcement Directive was therefore adopted to effectively implement the social provisions of the Driving Time Regulation. **The current proposal, published in the context of the European Commission's 2017 'Europe on the move' initiative**, seeks to remedy some shortcomings of the Enforcement Directive, such as non-uniform implementation. Additionally, it puts forward specific rules on the posting of workers in the road sector, to respond to concerns raised regarding the inadequacy of the Posting of Workers Directive, when applied to the road transport sector. **The European Parliament's Committee on Transport and Tourism (TRAN) adopted its report in June 2018.** After further debates and procedural developments, **the Parliament adopted its first-reading position on 4 April 2019. The Council agreed a general approach in December 2018**, under the Austrian Presidency. After four rounds of negotiations, Parliament and Council reached **provisional agreement on the proposal on 12 December 2019, subsequently approved by Coreper on 20 December, by a narrow majority, and by the TRAN committee on 21 January 2020.** **The Council formally adopted its first-reading position on 7 April**, and the agreed

text thus returns to Parliament for second reading first in the TRAN committee and then in plenary vote, enabling its formal adoption. Following that, Member States will have 18 months to introduce the directive's provisions in their national law.

- [Proposal for a directive of the European Parliament and of the Council amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector](#)
- a) Committee responsible: Transport and Tourism (TRAN)
  - b) Rapporteur: Kateřina Konečná (GUE/NGL, Czechia)
  - c) Shadow rapporteurs: Andor Deli (EPP, Hungary), Petar Vitanov (S&D, Bulgaria), Izaskun Bilbao Barandica (Renew, Spain), Paolo Borchia (ID, Italy), Karima Delli (Greens/EFA, France), Kosma Złotowski (ECR, Poland).