



Brussels, 9 January 2020

2020/TD/WB/01/FL

- To the Members of the European parliament - EMPL Committee
  - To the Members of the European Council - Working Party on Social Questions
  - To the members of the European Economic and Social Committee - SOC Section
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Dear Member,

**Incomplete review of the application of the Enforcement of the Posting of Workers Directive 2014/67 and premature conclusions**

Following article 24 of the so-called Enforcement of the Posting of Workers Directive<sup>1</sup>, the European Commission published, on 25.09.2019, its assessment report on the application and implementation of the enforcement Directive<sup>2</sup>.

The Enforcement of the Posting of Workers Directive is unique because it establishes a common framework for the "*enforcement in practice*" (Article 1).

The current Enforcement of the Posting of Workers Directive states in article 24 that the Commission will review the "application" and the "implementation" of the Directive. The EFBWW considers that the Commission's work should strongly focus on an assessment of the effectiveness and practical impact of the Directive at the level of the workers.

Although the Commission has made efforts to identify the application impact of the Directive, the EFBWW considers that the report still lacks fundamental qualitative data and practical facts. The review report and its accompanying staff-working document<sup>3</sup> are primarily focused on the legislative implementation of said Directive. As such, the EFBWW considers that the conclusion of the Commission not to amend the Enforcement of the Posting of Workers Directive is premature. A proper conclusion cannot be taken based on an incomplete review report.

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<sup>1</sup> Directive 2014/67 of 15 May 2014

<sup>2</sup> Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application and implementation of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) 1024/2012 on administrative co-operation through the Internal Market Information System

<sup>3</sup> SWD/2019/337 final

As it is ultimately up to the European legislators to evaluate the review report and to decide whether a review of the Directive is required or not, we kindly ask the European legislators to request the European Commission to present additional qualitative data and practical facts on the practical application of the Enforcement of the Posting Directive, as requested by the European legislators in 2014.

From a practical point of view, the EFBWW considers that the review report should have taken into account many practical matters, which would have allowed us to evaluate properly whether the Directive has achieved its objectives or not.

Hereafter is an indicative list of practical issues which are missing in the review report of the European Commission:

- the increasing number of posted third country national workers and the specific challenges linked to this specific form of posting;
- how many posting companies and workers have been controlled by the national authorities (Article 10.1)?;
- which effective measures have the Member States set up allowing posted workers to file complaints against their employers directly and/or via their representative organisations how has this worked in practice (Article 11.1)?;
- how many workers have actually received a back-payment or refund in case of unduly withheld salaries (article 11.6b)?;
- what kind of adequate support have the Member States given to relevant initiatives at national level to inform workers (Article 8.3) and how is this perceived?;
- what is the practical impact of direct subcontractor liability measures in the construction industry (Article 12.5) or the derogative measures (Article 12.5 and 12.6), and which practical achievements are realized?;
- how many cross-border recoveries of administrative penalties and/or fines were actually made and are there still practical problems to be resolved in this regard?;
- what measures have the MS put in place to prevent fraud and abuse on their labour markets?
- ...

The EFBWW considers that the European Commission and the European legislators should properly involve and listen more to the workers, for which they design EU-legislation. The EU better Regulation agenda clearly states that the Commission “should focus on the things that really need to be done by the EU and ensure that they are done well”.

The EFBWW is strongly committed to ensure that the Enforcement of Posting Directive works properly in reality and that it delivers tangible results according to its aims and objectives. Achieving this is a continuous challenge, which requires all of us to evaluate periodically whether new or additional actions are needed. The current review report and its premature conclusions are mainly focused on the formal legislative implementation of the Enforcement of the Posting Directive. The EFBWW strongly regrets that this report will not enable the European legislators and the concerned social partners to decide whether the current Enforcement Directive has achieved its objectives in practice or not and therefore calls upon the European Commission to add vital qualitative data and practical enforcement information. Only on this basis will the European legislators be able to decide whether further legislative adaptations are needed or not.

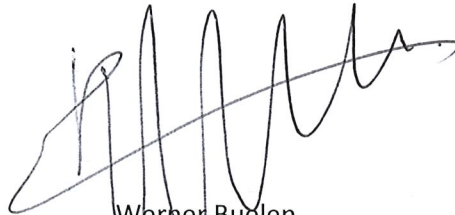
The EFBWW and its affiliated organisations remain at the disposal of the European Institutions to contribute with our experience and know-how to guarantee the protection of the rights of posted workers and at the same time promote fair competition between service providers.

We look forward to receiving your comments to our letter.

Sincerely yours,



Tom Deleu  
General Secretary



Werner Buelen  
Political Secretary

Copy: European Commission

