

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) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (Text with EEA relevance)

## CHAPTER IV

### MONITORING COMPLIANCE

#### *Article 9*

#### **Administrative requirements and control measures**

1 Member States may only impose administrative requirements and control measures necessary in order to ensure effective monitoring of compliance with the obligations set out in this Directive and Directive 96/71/EC, provided that these are justified and proportionate in accordance with Union law.

For these purposes Member States may in particular impose the following measures:

- a an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the host Member State, containing the relevant information necessary in order to allow factual controls at the workplace, including:
  - (i) the identity of the service provider;
  - (ii) the anticipated number of clearly identifiable posted workers;
  - (iii) the persons referred to under points (e) and (f);
  - (iv) the anticipated duration, envisaged beginning and end date of the posting;
  - (v) the address(es) of the workplace; and
  - (vi) the nature of the services justifying the posting;
- b an obligation to keep or make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document within the meaning of Council Directive 91/533/EEC<sup>(1)</sup>, including, where appropriate or relevant, the additional information referred to in Article 4 of that Directive, payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;
- c an obligation to deliver the documents referred to under point (b), after the period of posting, at the request of the authorities of the host Member State, within a reasonable period of time;

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- d an obligation to provide a translation of the documents referred to under point (b) into (one of) the official language(s) of the host Member State, or into (an) other language(s) accepted by the host Member State;
- e an obligation to designate a person to liaise with the competent authorities in the host Member State in which the services are provided and to send out and receive documents and/or notices, if need be;
- f an obligation to designate a contact person, if necessary, acting as a representative through whom the relevant social partners may seek to engage the service provider to enter into collective bargaining within the host Member State, in accordance with national law and/or practice, during the period in which the services are provided. That person may be different from the person referred to under point (e) and does not have to be present in the host Member State, but has to be available on a reasonable and justified request;

2 Member States may impose other administrative requirements and control measures, in the event that situations or new developments arise from which it appears that existing administrative requirements and control measures are not sufficient or efficient to ensure effective monitoring of compliance with the obligations set out in Directive 96/71/EC and this Directive, provided that these are justified and proportionate.

3 Nothing in this Article shall affect other obligations deriving from the Union legislation, including those deriving from Council Directive 89/391/EEC<sup>(2)</sup> and the Regulation (EC) No 883/2004, and/or those under national law regarding the protection or employment of workers provided that the latter are equally applicable to undertakings established in the Member State concerned and that they are justified and proportionate.

4 Member States shall ensure that the procedures and formalities relating to the posting of workers pursuant to this Article can be completed in a user-friendly way by undertakings, at a distance and by electronic means as far as possible.

5 Member States shall communicate to the Commission and inform service providers of any measures referred to in paragraphs 1 and 2 that they apply or that have been implemented by them. The Commission shall communicate those measures to the other Member States. The information for the service providers shall be made generally available on a single national website in the most relevant language(s), as determined by the Member State.

The Commission shall monitor the application of the measures referred to in paragraphs 1 and 2 closely, evaluate their compliance with Union law and shall, where appropriate, take the necessary measures in accordance with its competences under the TFEU.

The Commission shall report regularly to the Council on measures communicated by Member States and, where appropriate, on the state of play of its analysis and/or assessment.

#### *Article 10*

### **Inspections**

1 Member States shall ensure that appropriate and effective checks and monitoring mechanisms provided in accordance with national law and practice are put in place and that the authorities designated under national law carry out effective and adequate inspections on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC, taking into account the relevant provisions of this Directive and thus guarantee their proper application and enforcement. Notwithstanding the possibility of

conducting random checks, inspections shall be based primarily on a risk assessment by the competent authorities. The risk assessment may identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such a risk assessment, the carrying out of large infrastructural projects, the existence of long chains of subcontractors, geographic proximity, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers may in particular be taken into account.

2 Member States shall ensure that inspections and controls of compliance under this Article are not discriminatory and/or disproportionate, whilst taking into account the relevant provisions of this Directive.

3 If information is needed in the course of the inspections and in the light of Article 4, the host Member State and the Member State of establishment shall act in accordance with the rules on administrative cooperation. In particular, the competent authorities shall cooperate pursuant to the rules and principles laid down in Articles 6 and 7.

4 In Member States where, in accordance with national law and/or practice, the setting of the terms and conditions of employment of posted workers referred to in Article 3 of Directive 96/71/EC, and in particular the minimum rates of pay, including working time, is left to management and labour they may, at the appropriate level and subject to the conditions laid down by the Member States, also monitor the application of the relevant terms and conditions of employment of posted workers, provided that an adequate level of protection equivalent to that resulting from Directive 96/71/EC and this Directive is guaranteed.

5 Member States where labour inspectorates have no competence with respect to the control and monitoring of the working conditions and/or terms and conditions of employment of posted workers may, in accordance with national law and/or practice, establish, modify or maintain arrangements, procedures and mechanisms guaranteeing the respect of these terms and conditions of employment, provided that the arrangements offer the persons concerned an adequate degree of protection equivalent to that resulting from Directive 96/71/EC and this Directive.

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- (1) Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship ([OJ L 288, 18.10.1991, p. 32](#)).
- (2) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work ([OJ L 183, 29.6.1989, p. 1](#)).