

Position paper



on the proposal for a regulation of the European Parliament and of the Council on a public interface connected to the Internal Market Information System for the declaration of posting of workers (COM(2024) 531 final)

1. General remarks

If companies post employees to another Member State to provide a service there, they must submit a posting declaration at the request of the host Member State. Without such a declaration, checks would be largely impossible because it would not be clear which posted workers are currently working where in the country. As poor working conditions and even labour exploitation occur with above-average frequency in the case of posting, controls are very important – both to protect employees and to support companies that prioritise quality over wage and social dumping.

However, business associations have been complaining for years that declaration obligations are one of the greatest obstacles to the cross-border provision of services, as each Member State requires different information to be declared and has different procedures. The European Commission is now seeking to address this through a standardised digital declaration portal that will enable declarations to be made in all official languages and with only 30 data points, which are identical everywhere. The declaration portal is to operate via the Internal Market Information System and thus also facilitate administrative cooperation between the Member States and ease controls. Participation is voluntary for the Member States.

The Commission is presenting its proposal as part of the "Better Regulation" agenda, which aims to reduce the administrative burden on companies by 25%. This limits the focus to the direct costs incurred by companies. It also does not present an impact assessment – although that is usually the case for legislative proposals and is actually essential for better regulation – and instead only analyses (using questionable calculations) the effort and costs for companies in connection with the posting declaration. This approach is unacceptable because it ignores any other implications of the proposal, particularly with regard to controls and the protection of employees.

It would have been more logical to start by analysing the needs of the labour inspectorate and design the legislation accordingly. By doing so, an instrument could have been created that would have simplified matters for companies, while also enabling more effective and targeted controls and thus better protection for employees.

In the view of the German Trade Union Confederation (DGB), the proposal urgently needs to be improved.

14 April 2025

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2. More detailed evaluation

a) Potential risks

Sufficient information forms the basis for effective controls. The announcement by the Commission that the previous 300 information points will be reduced to 30 raises the question of which information will be omitted. The Enforcement Directive on the Posting of Workers Directive refers to examples of information to be declared. Information of this type is also mentioned in the draft regulation (although the contact person for collective bargaining has already been omitted). However, the exact list of information that companies will have to declare in future is to be defined solely by the Commission in an implementing act at a later stage. This list will be binding for the participating countries and may not be adapted to the situation in the Member States – except through the omission of certain information points. Additions are prohibited.

This is problematic for various reasons.

During the legislative process for the Enforcement Directive, there were lengthy negotiations as to whether the information required to be provided in the declaration should be limited to the information specified in the Directive. Ultimately, the European Parliament prevailed with its position of an open list, meaning that the Member States are allowed to add to it. However, the planned regulation would now reintroduce the closed list through the back door – excluding Parliament from the process of drawing it up. According to the intention of the Commission, even the Member States are only allowed to issue a non-binding opinion; the decision rests solely with the Commission. This is undemocratic! A minimum list of common information must be defined as part of the regulation through the ordinary legislative procedure.

Moreover, the Member States must be allowed to add further information points. This would also enable broader participation in the digital declaration portal and thus actually help to reduce fragmentation in this area. Under the current version, Member States with more extensive information requirements would only have the option of retaining their own systems – which would then come under greater pressure. The Commission argues that the Enforcement Directive restricts the collection of information to that which "allows factual controls at the workplace", with all other information only able to be requested in the course of the relevant checks. However, checks at the workplace are only feasible if there are prior indications suggesting the need for a check – and more rather than less information is required to that end. Comprehensive, random checks are not in the interest of either the authorities or companies.

It is also of great importance that Member States do not use the regulation as a pretext to reduce their national reporting obligations (as the Czech Republic has already done, citing the European initiative). The omission of information points from the common minimum list should therefore be ruled out.

Finally, the proposed regulation is problematic with regard to the retention periods for the information. The information is to be automatically deleted 36 months after the end of the posting, and personal data can even be deleted by the company directly after the end of the posting. However, in order to enable criminal prosecution, the data must be stored for much longer – ten years would be

reasonable. Larger cases are often only dealt with years later, with the first cases dating back much longer than 36 months. Changes during the posting must also be made transparent.

b) Potential opportunities

If properly designed, the proposed regulation would certainly offer opportunities to improve the working conditions of posted workers by making checks easier and more effective.

This includes the possibility provided for in the proposal for the Member States to send a copy of the posting declaration to the posted workers. They would then know who their employer is and how they can contact them – which is often not the case for posted workers in reality. This optional provision should be converted into a mandatory provision. It would also be desirable for posted workers to automatically receive additional explanatory information on rights and counseling centres in the host country.

The planned facilitated administrative cooperation is also to be welcomed, as it speeds up cross-border requests for information. However, IMI would have to be improved to this end, especially the search functions. It should be added that national administrations should be able to communicate directly with the posting companies via the new portal in order to facilitate checks.

The greatest improvement under the new portal could be the collection of high-quality and comparable data. Analysis of data of this type would make it possible to establish cross-references and identify trends. This would enable the labour inspectorate to monitor much more effectively and put a stop to fraudulent companies and networks more quickly. To this end, however, it is necessary to enable access to this data not only nationally, but also across borders and across Europe, including by setting up a corresponding database. The analysis at European level should be carried out by the European Labour Authority, which should be tasked with and granted the authority to do so under this regulation.