

Member states split over cross-border workforces

By Nicholas Hirst - 10 October 2013

Proposal limits controls on posting of workers but some member states say measures are inflexible.

Member states are deeply divided over how to verify that employers posting workers from one European Union country to another do not undermine the social protection of the host country.

Employment ministers will meet on Tuesday (15 October) in Luxembourg to discuss a proposal made last year by the European Commission to strengthen the 1996 posting-of-workers directive, which requires companies that post workers abroad to give them some core social rights.

The legislation has become a battleground in the long-running contest between the single market's freedoms and social protection.

The Commission made its proposal in response to allegations of social dumping, and suggestions that companies were undercutting the host country's workforce by bringing in workers from another EU country with fewer social rights and lower wages.

The Commission is also attempting to counter the practice of businesses avoiding employment rules by using letterbox companies to register their business seat in another member state with lower social protection.

The Commission wanted to limit the measures that a host country could take to control whether a company was giving its posted workers the minimum social rights guaranteed under long-standing EU rules. These measures were limited to requiring posting companies to provide certain details about their activities and copies of their workers' contracts, and ordering them to designate a person responsible for negotiating with local social partners.

Inflexible

But several of the countries that habitually receive posted workers rejected the Commission's proposed "closed list" of measures as too inflexible, arguing that it would allow companies to escape oversight and undercut local workers.

Together with the Commission, they have rallied behind a compromise advanced by Lithuania, which holds the rotating presidency of the European Union's Council of Ministers.

That would guarantee host countries the freedom to impose requirements on posting companies, subject to oversight by the Commission. An earlier compromise put forward by Ireland, during its presidency of the Council, failed to win support.

The Lithuanian compromise proposal is strongly opposed by 11 countries, including Hungary, Poland, Ireland and the UK, and others where the practice of posting workers abroad is commonplace.

They have proposed their own amendments that would allow host countries to introduce additional measures, provided that they conform with principles of proportionality and non-discrimination and are subject to approval by the Commission. It also includes a provision on mutual recognition.

The practice of posting workers is unpopular with countries that have a strong welfare state. They consider that the free movement of workers is undermining social legislation.

The two camps are also split over a provision that would make construction companies that post workers abroad liable for any salaries or social contributions that are not paid by sub-contractors in the host member state.

Several EU diplomats said that the outcome of the debate in the employment and social affairs council was too close to call. They predicted that the issue might for the first time in several years be put to a formal vote.

The Parliament's Employment and Social Affairs Committee adopted a report in June 2013 that changed the Commission's proposals, setting minimum controls that member states had to undertake, while giving them the freedom to go further.