



CALL TO THE EU

TO ADDRESS DISPROPORTIONATE ADMINISTRATIVE BURDENS AND LEGAL GAPS IN CONTEXT OF POSTING OF WORKERS

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Pearle*-Live Performance Europe, the sector and employers association representing over 10000 organisations across Europe discussed at the 57th General Assembly meeting in Plovdiv, Bulgaria, on 24 and 25 May the state of play regarding posting in the sector.

Pearle* members concluded that **the sector is heavily impacted by Member State enforcement rules on posting**, where they are required to provide disproportionate number of documents in particular compared to the nature and duration of posting in the sector. Live performance organisations are often on tour to perform abroad for as short as one day up to a number of days.

Touring of performances is part of the DNA of the sector to bring the diversity of culture to audiences all across Europe. In other words the reason for posting is motivated on the basis of the reputation of the artist or group or the unique show or performance. This is quite different to the motivation that rules in other sectors where posting is primarily related to pricing.

Pearle* members also call to address legal gaps where employers in the sector are confronted with genuine legal uncertainty in situation where the **social security coordination regulation** does not take into account the reality of highly mobile persons. This is a particular problem when artists are contracted to take part in a tour where one has one or two days of rehearsals in the country of the employer before going on tour. This means that in such case the employee is only subject to the social security regime of the country of the employer for one or two days, before being posted. This creates difficulties to obtain A1 form in such cases and leads to legal uncertainty.

Pearle* observes that in the context of the Commission's and Member States' goals to combat fraud and abuse, the sector is struggling to be able to continue touring and performing abroad.

Directive 2014/67/EC on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending regulation No 1024/2012 on administrative cooperation through the Internal Market Information System, says in article 24 – paragraph 1: *"No later than 18 June 2019, the Commission shall present report on its application and implementation to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments and modifications"*.

As it is mentioned in recital 4: *"All measures by this Directive should be **justified and proportionate so as not to create administrative burdens** or to limit the potential that undertakings, in particular small and medium sized (SMEs), have to create new jobs, while protecting posted workers."*

Therefore Pearle* calls the European Commission to urgently address the following issues:

1) All Member States should be obliged to introduce light administrative regimes for very short term posting.

Concretely, article 9 on 'administrative requirements and control measures' should be **amended by introducing the following sentence** in paragraph 1:

This means that Member States may exempt service providers undertaking posting of a duration less than 1 month. In any case, Member States shall limit the administrative requirements for posting shorter than 1 month to the provisions laid down under (a)

2) To urge Member States to improve and refine the information provided on the portal websites so that the information is user-friendly and complete on all items presented with at least a translation into English (in particular of collective agreements), in a machine-readable format to facilitate efficient use.

The following observations and experiences based on daily reality in the sector are made:

- It is observed that currently the **process** to find information and the accessibility is unsatisfactory, extremely time-consuming and non-transparent due to the fact that information is often not available in another language than of those of the country.
- It is reported that **information is often limited** to what is in the Directive and does not provide a real information service to employers.

- In cases where online registration is required it is learned that the **IT-systems** used in certain countries can **get blocked** when one has to submit a relatively long list of workers to be posted (for example on orchestra of 100 musicians or a dance company of 30 persons).
- It is also observed that online registration systems are **not compatible** to develop API (application programming interface) which could help users to facilitate registration, where required.

As a result, *Member States fail to provide the information and tools that service providers need* in order to be able to comply with the Posting Directive. Regrettably, the Revised Posting Directive is not sufficiently instrumental in stimulating Member States to provide comprehensive information on national legislation related to posting. Article 3, par 1 (new) in reference to the Enforcement Directive only envisages that where the information on a portal website of a Member State is incomplete that this will only be taken into account in determining the penalties in the event of infringements of the national provisions [...]. Hence, the Directive does not foresee responsibility or administrative liability with Member States when falling short in the provision of information on the administrative formalities and sector-related information.

- 3) Therefore, Pearle* **calls the Commission for a thorough screening of the conditions set in art 5, par 4** which require Member States to 'ensure that those terms and conditions are made available in an accessible and transparent way to service providers from other Member States and to posted workers and shall seek the involvement of the social partners in that respect'.
- 4) In view of the setting up of the **European Labour Authority (ELA)** Pearle* underlines the importance to be attached to support service providers (employers) and workers alike. There is an urgent need to shift from a focus on enforcement towards an approach where the focus is on **providing measures and tools which accompany employers** in accessing all necessary information and support to questions or other difficulties which are expected to arise after the implementation of the Revised Posting Directive.
- 5) Pearle* reminds the Commission and the Member States that the Posting Directive 96/71/EC, allows according to art 3, par 4 that : "*Member States may, in accordance with national laws and/or practices, **provide that exemptions may be made, where the length of the posting does not exceed one month***". See also recital 16 on this matter.

Moreover, the EU recognises de facto the incompatibility of applying posting rules and the duration of the posting in art 3, par 2 on **initial assembly and/or first installation of goods**.

Therefore Pearle* calls upon the Member States when implementing the Revised Posting Directive to **introduce exemptions** for the live performance sector in national law in line with art 3, par 4 for posting less than a month bearing in mind that tours of live performance organisations are very short and limited in time.

- 6) Finally, in the context of the proposal of the EC to revise the **Social Security Coordination regulation 883/2004 and regulation 987/2009**, Pearle members are particularly worried about the Council and EP proposal to change article 12 (883/2004 regulation) to 3 months **prior affiliation to the social security regime of the country where the employer is based**. In the live performance it is common practice that people work in more than one Member State, as they choose one country as resident country and take assignments for productions and tours with different music groups or theatre and dance companies. They are often employed for just a few days following which they go on tour.

In this regard, Pearle* calls for **an exemption or a further clarification in article 12** where it would be made possible that the Member State where the employer is registered accepts a shorter affiliation period as long as the person concerned can proof that he or she has been subject to a social security regime in another country before the employment.

- 7) In relation to administrative processes on posting in the context of social security, it is reported that the procedure in several Member States to deliver the portable document A1 for a posted worker takes a too long time (sometimes several weeks) when considering the dynamics of the live performance. This is for example the case when a touring group is invited for an extra performance added to its tour schedule. Pearle* therefore calls on **Member States to urgently reduce time laps between the request for deliverance of A1 and the actual date of deliverance**.

Conclusion

Pearle* calls upon the Commission and the Member States to:

- ✓ Introduce lighter administrative regimes for posting shorter than one month
- ✓ Highly improve the information available on Member State portals so that service providers access all necessary information needed and that they can rely on user-friendly and operational registration systems
- ✓ To make sure that the European labour authority will provide fully-fledged information portal to employers and individuals and access to user-friendly tools to help and support employers in their obligations
- ✓ Introduce the exemption for posting less than a month in national legislation
- ✓ Solve the legal uncertainty in the social security regulation regarding prior affiliation to the social security regime of the employer

PEARLE* - Live Performance Europe, is the European employers' federation of performing arts organizations. Pearle* represents through its members associations the interests of more than 10,000 theatres, theatre production companies, bands and music ensembles, orchestras, opera houses, ballet, dance companies, festivals, concert venues, producers, promoters, agents, comedy, variété, circus and others within the performing arts and music sector across Europe. The Live Performance sector is the biggest employer of the cultural industries with over 1,2 million employees.