



Alain Saich, President and Chairman of Mobilitas, says it is not possible for operators to follow separate procedures in each EU country



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# Crossing the line

The ongoing rollout of new European Union rules covering the cross-border movement of workers could have a significant impact on international movers. **Phil Lattimore** reports

**B**rexit might be grabbing the headlines, but the implementation of a new EU directive will also result in challenges for both European Affiliates and the major movers outside the continent that contract large numbers of moves to FIDI members within the EU.

Whether your organisation operates solely in Europe or is based outside the union, the EU's Posted Workers Enforcement Directive – and the way it is implemented in member states – could have a significant impact on the way you do business across European borders, both directly and indirectly.

So, what has this piece of EU law got to do with your operation?

## DIRECTIVE ACTION

In 2014, the EU's **Posted Workers Enforcement**

**Directive** (Directive 2014/67/EU) was approved for future implementation by member states, with the aim of strengthening the practical application of the 20-year-old EU Posting of Workers Directive (Directive 2014/67/EU) – in particular, tackling abuses of the system such as 'social dumping' of labour, where cheaper workers from a low-wage state are employed in a higher-wage economy for temporary work postings.

This was to be achieved by addressing issues related to:

- Fraud
- Circumvention of rules
- Exchange of information between the member states

The directive puts a number of conditions on temporary postings of workers to other countries. It also ensures that member states are applying these so posted workers can enforce their rights, and that the appropriate mechanisms are in place to support cross-border enforcement.

Each EU member state was required to transpose the directive into its national legislation by 18 June

CONTINUES OVER



The uneven implementation of the Posted Workers Enforcement Directive has the potential to increase costs and administration for movers working across national borders

2016. At the time of writing, most member states have done so, or are committed to doing so, but several members – including the Czech Republic, Cyprus, Spain, Croatia, Portugal, Romania, Sweden and Slovenia (whose laws come into force on January 2018) – have yet to do so. The European Commission has warned national authorities that are overdue in transposing the regulation into law that they face possible referral to the EU Court of Justice if they do not comply.

### MOVING AHEAD

Because the new rules are imposed by a directive, rather than a regulation, they are considered to be a minimum standard – members states can decide whether to create more rigorous regulatory, administrative and enforcement regimes in a practice known as ‘gold plating’. With respect to this particular directive, some member states have focused more stringent measures on particular labour markets where social dumping and other abuse is an issue – for instance, the transport sector in the UK and France.

On the other hand, some member states are not even transposing the minimum standards, which may cause them to be taken to the Court of Justice by the Commission.

So, at present, some EU countries do not follow the directive at all, some apply the agreed minimum standards, and some are imposing higher standards. This is clearly a confusing situation for FIDI members.

### SIGNIFICANT ISSUES

For the moving industry, the transposition of the directive is a complex issue, having a mixed impact across the sector. For instance, some operators in higher-wage countries that believe they are being undercut by companies from lower-wage companies operating in their territory have welcomed the move towards greater enforcement of EU rules. Others who



Sabine Hartmann

use subcontractors or workers from eastern European nations could see increased difficulties and costs incurred in using them.

The increased bureaucracy and administrative costs resulting from tougher enforcement regimes – and the possible penalties for contravention of the rules – has the potential to create significant issues for other moving businesses operating across borders.

Sabine Hartmann, of German-based Affiliate Hartmann International, recognises this as a problem: ‘The administrative burden is heavy for everyone who is carrying out international road transport in Europe,’ she says. ‘It is so time consuming, and you have to find out how the country you are travelling to is interpreting the EU directive. Every country has different rules. Going to France implies reporting immediately, having your working contract in French on board, etc.’

Alain Taieb is President/Chairman of Mobilitas, an international moving group that includes many FIDI-affiliated offices under the AGS brand. He believes the implementation of the directive by individual member states across the EU doesn’t take into account the specific needs and realities of the moving industry. Consequently, it creates a complicated administrative burden for many companies that do transnational business in Europe – including firms who arrange moves from outside the EU.

‘There are many smaller firms that won’t have the resources to face the huge bureaucratic demands of this directive, as it’s applied in different ways by

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member states across the continent,' he said.

As a prime example, Taieb highlights the way the directive has been transposed into French law, applying stringent controls on any vehicle and crew coming from a foreign country that performs a service of transportation or removals on French soil. Every transportation company posting employees on French territory for more than three days per month must file an extensive declaration on the administration's website – costing, on average, €40 per declaration and per employee (from 1 January 2018 at the latest).

Employees are required to carry a copy of their work contract with them, as well as a copy of their secondment declaration certificate in the vehicle. In addition, the foreign employer has to have designated a referent on the national territory; in the case of a check, the referent has to be able to quickly supply all the documents showing that the rules concerning minimal welfare benefits and compensation are being followed.

Breaches could result in significant penalties of up to €500,000 and, ultimately, the project owner and the prime contractor are jointly liable for any contraventions along the subcontracting supply chain

**NOT ONLY FOR EU MOVERS**

'It is not something that only affects movers or transporters in Europe,' says Taieb. 'A large international booking agent from America could have a division in Prague that pilots all its intra-European moves. It could be carrying out a large corporate move from Prague to Paris, to be done by a subcontracted transport company. When this move takes place and is going to be delivered in France, the EU Directive applies, and the booker could be liable if checks find any contravention by any of the subcontractors.'

'So even non-EU firms can, potentially, face a highly complex administrative situation across the whole supply chain to ensure subcontractors and their employees are not in contravention of the rules – either through working for them or as a result of another, unrelated, subcontracted move.'

Taieb believes the more rigorous application of the directive in French law – and in other EU member states – comes from a protectionist viewpoint, to counter what is perceived as unfair competition from low-wage member states. Foreign movers have to follow the rules implemented in member states or they may incur penalties for the period when they second workers on the specific territory. However, the implications for the wider removal industry go much further.

'While operators in EU countries are first in line to have to deal with the French implementation, it concerns all FIDI members in Europe,' Taieb says. 'It also concerns the large – mainly American – companies that are based outside of the EU, who contract tens of thousands of international and intra-European moves to FIDI members within the EU.'

'Every one of these moves raises an issue that can strike all of these big companies from outside Europe head on, which means they have to be involved – they

have to be informed, and put in place new processes and procedures to be sure that at the first, second, third and last level of the subcontracting transport chain they comply with the law. And that is not easy.'

**INDUSTRY ACTION**

Across Europe, implementation and enforcement rules vary. For example, in Spain, the rules apply after eight days' secondment per month, compared with three in France – minimising the administrative burden to only a small percentage of operators.

'It is not possible for each operator to follow separate procedures for each country,' says Taieb. 'We should be realistic; we should have a system that is achievable for every company.'

'The Spanish example is a good one; an eight-day period would eliminate the administrative requirement for 95-98 per cent of trucks and people, and – for the rest – it will be understandable because it would almost certainly be because of a large moving job.'

'This is something we need to study as an industry through FIDI and FEDEMAG, to protect members and allow them to continue their activity under the best conditions and with the best information.'

Hartmann agrees that there is a need to tackle the issue on an industry basis: 'FEDEMAG is already heavily involved in lobbying work, and is in contact with MEPs. It might help to send joint letters from FEDEMAG and FIDI.'

'Every Association of our industry in Europe should now be lobbying for its members at a national level.' 