

Abstract

Analysis of costs and benefits of new duties for employers posting their employees, liability of service consumers in the territory of the SR for not paying subcontractors' guest employees wages and absolute objective liability of entrepreneurs for illegal employments for small and medium enterprises

Starting with its effective date of 18 June 2016, **Act No. 351/2015 Coll. on Cross-border Cooperation concerning the Posting of Workers in the Framework of the Provision of Services and on modification of and amendment to certain acts** (hereinafter referred to as Act) approved by the National Council of the SR on 11 November 2015 sets new kinds of duties **for Slovak entrepreneurs in the field of posting employees, accepting works and services from suppliers, and against guest employees.**

The Ministry of Labour, Social Affairs and Family of the SR (hereinafter referred to as Ministry) explained the new revision by the duty of the SR **to transpose the Directive No. 2014/67/EU of the European Parliament and of the Council of 15 May 2014¹**, hereinafter referred to as Directive 2014/67). The role of the Better Regulation Center is **to perform evaluation and quantification of impacts** not only of proposed legal regulations that did not yet come into effect, but also **of the existing and effective ones with the accent on micro-, small, and medium enterprises (SMEs)**. This process also includes the evaluation of **the so-called gold-plating effect**, i.e. overlap of the transposition of EU legal requirements in the Slovak law beyond the scope required by the Directive. Even though Ministry explains adoption of the new regulation by the duty of transposing the Directive 2014/67, **most of the new duties for SMEs set by the Act do not originate in EU regulations at all.**

In compliance with its mission, the Better Regulation Center therefore elaborated **an ex-post evaluation** in the form of **the Analysis of costs and benefits for SMEs**, within which it concluded that up to **99% of costs of the new duties for entrepreneurs resulted from gold-plating.**

What is the regulation overlap specifically based on?

1. In accordance with the Directive, **liability of service consumers in the territory of the SR for not paying subcontractors' employees wages** shall only be stipulated for employers in the construction industry and one can also get rid of such liability; the Slovak law sets such liability for any and all cases and it cannot be got rid of.
2. the Directive sets no **duty of domestic employers to inform domestic employees of work and employment conditions in the country**, employees are posted in, **prior to such posting**; the Slovak law has implemented such duty deliberately;
3. the Directive sets no **duty of domestic employers to conclude written agreements with posted domestic employees**; the Slovak law has implemented such duty deliberately;
4. the Directive sets no **absolute objective liability of entrepreneurs in the case when services providers or work suppliers accept works or services for illegal employments of natural persons**; the Slovak law has implemented such duty deliberately and it brings a lot of

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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') (EU OJ L 159, 28 May 2014).

bureaucracy in the form of new administrative actions, risk of high penalties of up to 200,000 Euros, and a potential of serious violation of business relations among entrepreneurs;

The analysis of costs and benefits for SMEs contains a detailed analysis of provisions of Act versus the revision according to Directive 2014/67 setting particular duties of SMEs and **quantification of their impacts on SMEs**, and, at the same time, **offering alternative solutions** in the form of specific revisions of articoli **that could reduce such burden**.