

Open Letter to: Ms. Marianne Thyssen
Commissioner for Employment, Social Affairs, Skills and
Labour Mobility
European Commission
Rue de la Loi 200
1049 Brussels

13 March 2019

Dear Commissioner Thyssen,

EARTO represents the interests of more than 350 Research and Technology organisations (RTOs) in more than 20 European countries. EARTO members represent more than 150.000 of highly skilled researchers and engineers managing a wide range of innovation infrastructures.

EARTO as the representative of European RTOs is strongly committed to improve international researchers' mobility supporting the enhancement of a European single market. RTOs in Europe have identified three very important EU dialogues that if not treated carefully will hinder theirs as well as the Commission's efforts to increase researchers' mobility across EU borders:

- Trilogue discussions between Commission, Council and EP on proposed revision of EU social security coordination rules e.g. regulation 883/04 and 987/2009;
- Evaluation of implementation of 2014 enforcement directive on posting of workers (2014/67/EU);
- National transposition of the revised posting directive (2018/957/EU).

Accordingly, EARTO would like to kindly ask your support for the following issues:

1. Regarding the Regulations 883/04 and 987/09: Clarification & Amendments are needed with regard to A1 forms for business trips

Regarding the trilogue on regulation 883/04, we strongly support the proposal made in the European Parliament report that people participating in short duration business trips are exempted from the need to apply for an A1-form or any other obligations such as notifications etc (Article 12). The administrative requirement by some Member States to demand an A1 form for every single business trip is in clear contradiction with article 4 and recital 12 of the Enforcement Directive clearly specifying that the competent authorities must make an overall assessment of all factual elements and that each element listed in article 4 is only indicative and cannot be used in isolation. Business trips should therefore not be considered postings, this clarification is essential. This will facilitate the process for RTOs to send researchers to other Member States for business trips through reducing the immense administrative burden and providing clarity on when A1 forms are required. Please note that part of those business trips is made with EU support thanks to the EU RD&I Funding Programme such as Horizon 2020. Such requirements would bring additional administrative burden also to such programmes, while today those programmes are looking at simplification and reduction of such administrative burden.

We therefore demand the publication of a clear interpretation note that will guarantee a consistent and uniform understanding of the difference between business trip and posting as well as the exemption of short duration business trips from the need to apply for an A1-form and notifications obligations.

In this context, we also strongly advise to reject the shortening of the regular stay in the domestic social security system from 24 to 18 months. This would add again another barrier to the free movement of researchers within the EU being then in complete contradiction with current EU RD&I Funding Programmes aiming at removing such barriers.

2. Regarding the evaluation of implementation of the Enforcement Directive on Posting of workers 2014/67/EU: Definition of a clear framework for local notifications at EU-level needed

RTOs face a lack of information on which rules apply in each country due to inadequate and insufficient single national websites on the one hand. On the other, the enormous administrative differences of local notification requirements in each country produce grave uncertainty and administrative burdens for RTOs. Finally, RTOs face burdensome administrative requirements and control measures put in place by Member States.

These administrative requirements and control measures put in place by the member States have overshoot the objective and content of the Directive 2014/67/EU (Art. 9). Very different notification requirements in Member States have led to protectionist regulations that clearly will hinder international researcher mobility. Accordingly, EARTO hereby would like to ask your services to define a clear framework for local notifications on EU-level, considering that the administrative requirements should be as simple as possible. It must be possible for RTOs to create EU-wide valid instructions available to those organisations who send their researchers to European RTOs on different projects.

3. Regarding the transposition of the revised Directive of Posting of Workers 2018/957/EU: EC statement needed to avoid legal uncertainty for researchers

With the transposition of the revised Directive of Posting of Workers 2018/957/EU, European RTOs legitimately fear that the situation will worsen. The free choice of the employment contract statute granted in the Rome I Regulation would thus be unacceptably restricted, resulting in great legal uncertainty for RTOs – and their researchers – who would find it much more difficult to find out about their rights, not knowing the local employment law that is applicable in detail.

In addition, all remuneration rules and components in the host country, which are applicable by law or by a collective agreement, declared generally binding shall apply to all secondments or business trips from the first day. Implementing such regulation would require a very complex comparison of all remuneration elements of the posted researcher with her/his hypothetical remuneration package in the host country. In the case of secondments from high-wage countries, the expenditure is free of charge, as the remuneration package of the posted researcher is generally higher. RTOs expect a heavier administrative burden in this context. The positive outcomes envisaged by this revised Directive in terms of creating a leveled playing-field for posted and national employees should not be outweighed by negative ones.

Hoping for your support on those key issues for the future of mobility of researchers in Europe, we hope for your support in the trilogue discussions on proposed revision of EU social security coordination rules, your assessment of the application and implementation of the Enforcement Directive on posting of workers as well as a possible statement on the revised posting directive.

Our network remains at your disposal for any further inputs you may require on those issues.

Yours sincerely,



Frank Treppe
EARTO President