



BRIEFING #87

The revised Posted Workers Directive (PWD) and the European Labour Authority (ELA) - Protecting Mobility through Improving Labour Rights Enforcement in Europe

Background

A posted worker is an employee who is sent by his employer to carry out a service in another EU Member State for a limited period of time.

In 2014, there were 1.92 million posted workers in the EU with the top three posting countries being Luxembourg, Belgium and Austria. The numbers of posted workers are increasing with the majority of postings being done in the EU-15, often from low to high wage countries. Sectors with high levels of posting are the construction sector (42%), especially in small and medium-sized businesses; the manufacturing industry (21.8%); service sectors including personal services, such as education, health and social work (13.5%); and business services, like administrative, professional, and financial services (10.3%).





STATE OF PLAY

In March 2016, the European Commission (EC) presented a proposal for a revision of the Posted Workers Directive. Originally meant to be part of a more comprehensive Mobility Package, due to the Brexit vote in the UK back in 2016, the EC restrained itself to the Revision of the PWD. The dossier has since been followed in the European Parliament (EP) by two rapporteurs: Elisabeth Morin-Chartier (EPP, France) and Agnes Jongerius (S&D, the Netherlands). After two years of negotiating, at the beginning of March 2018, the three EU institutions (Council, Parliament and Commission) reached a deal on the ongoing Review of the Posted Workers Directive.

Afterwards, on Wednesday, 25 April 2018, the EP's EMPL committee voted on the outcome of the inter-institutional agreement. The proposal was adopted by a large majority.

On 29 May 2018, the Directive was finally discussed and voted in the plenary of the EP. A large majority of S&D, EPP, Greens/EFA and GUE/NGL voted in favour and thereby led to adoption of the Directive. The final vote in Council is foreseen for mid-June. Then, the Directive can be officially published, and thereby enter into force and must be transposed into national law within two years of its entry into force. In addition, within five years of its entry into force, the EU Commission will have to assess the impact of the Directive on the transport sector and subcontracting, to see how the situation of truckers and temporary workers can be improved.

EQUAL PAY FOR EQUAL WORK CARRIED OUT AT THE SAME PLACE - A QUESTION OF JUSTICE

SOLIDAR welcomes the agreement as a step towards a more social Europe and a fairer European labour market. Such actions at European level are urgently needed to show our citizens that Europe does care about their working and living conditions and not only about competitiveness in the internal market.

Positive elements of the deal are:

- Introducing the concept of «pay» rather than «minimum wage rates», whereby posted workers can also benefit from certain supplements and per diem allowances, classification rules and special payments;
- entitlement to allowances for travel, accommodation and subsistence costs incurred as a result of the posting;
- right to adequate accommodation;
- the possibility for Member States to incorporate the application of regional and sectoral collective agreements to posted workers in their national legislation, thus going beyond universally binding collective agreements;
- legal certainty for “bogus” posted workers who are to be employed under the protection of the Directive, which also entitles them to workers’ rights at the place of work;
- Setting a deadline of less than 24 months, under which the labor protection legislation of the host Member State is to apply under certain conditions
- A commitment to equal treatment of local and seconded temporary agency workers.

SOLIDAR regrets that no agreement could be reached on enlarging the legal basis to protection of workers (to give it a true social dimension and not only an internal market one).





‘PROTECTING MOBILITY THROUGH IMPROVING LABOUR RIGHTS ENFORCEMENTS IN EUROPE’

In the framework of the EaSI-funded project ‘**Protecting Mobility through Improving Labour Rights Enforcement in Europe**’, that aims to enhance administrative cooperation and information sharing between relevant stakeholders engaged with the posting of workers, a series of policy briefings is being developed looking more closely at certain issues related to Posting. The first set of papers and country studies has been published recently:

- [“Transnational Cooperation among Labour Regulation Enforcement Agencies in Europe: Challenges and Opportunities Related to the Posting of Workers”](#)
- [Country Study Austria](#)
- [Country Study Czech Republic](#)
- [Country Study Estonia](#)
- [Country Study Finland](#)
- [Country Study Italy](#)
- [Country Study Norway](#)

A [conference](#) “ENHANCING ECONOMIC DEMOCRACY FOR POSTED WORKERS” will be organised on 14 and 15 June in Padova.

THE PROPOSAL FOR A EUROPEAN LABOUR AUTHORITY

One of the key recommendations within the first policy brief is the establishment of a European Labour Authority. With the presentation of the long-awaited Social Fairness Package on 13 March 2018, the Commission released its proposal for a so-called “European Labour Authority”.

The tasks to be undertaken by the new EU labour authority are quite extensive, ranging from information tasks, support for cross-border work to checks on serious labour market disturbances affecting several Member States. The purpose of the Authority is therefore to ensure that European

legislation regulating cross-border employment can be easily and effectively applied.

Therefore, the Authority should, on the one hand, undertake information tasks for cross-border workers: for example, the regulation proposal mentions the aim of informing companies which labour law should be applied in cross-border work. Member States should therefore be assisted in providing the necessary information. In addition, the Authority should provide assistance and mediation in cross-border conflicts of national authorities and in cases of serious distortions in the labour market, including the possibility of joint inspections.

On the other hand, European workers should benefit from cross-border mobility: the authorities will provide them with a platform on which they can find out about job opportunities in other Member States.

SOLIDAR stresses the fact that mobile workers, especially posted workers, are facing a multitude of problems such as labour rights violations and difficult access to social insurance. Many of these problems can be attributed to the fact that posted workers move between national systems: they are vulnerable to exploitation, and their complaints often slip through the cracks between national systems of social security and labour rights enforcement.

The proposal of a European Labour Authority is a step in the right direction. To be effective, it needs a strong mandate and sufficient funding. Like EU institutions and bodies generally, however, it will have to depend on relations with national authorities. In order for it to help improve the situation of posted workers, it must have direct access to workers at their different workplaces as well as to national databases - with the collaboration of the different national inspection authorities. The ELA should also be the place where workers can go when they experience difficulties and national authorities will not or cannot help.





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A way forward though could be an EU inspector network, with labour inspectors employed by both the EU and by national authorities, perhaps half-and-half. This would make them bridge builders between the EU and their own countries' labour inspectorates, allowing them both to operate effectively in their home state as well as to handle the complaints of mobile workers, whose work arrangements span across borders. It would allow inspectors to leverage relations with national agencies effectively, while still providing the capacity for independent action – a capacity which would be crucial to ensure that the ELA has the ability to effectively resolve issues that national enforcement agencies can no longer effectively address.¹

1. Read more in the PROMO Policy Brief: [http://www.solidar.org/system/downloads/attachments/000/000/776/original/TNC_Report - Challenges and Opportunities Related to the Posting of Workers Attachements.pdf?1527502331](http://www.solidar.org/system/downloads/attachments/000/000/776/original/TNC_Report_-_Challenges_and_Opportunities_Related_to_the_Posting_of_Workers_Attachements.pdf?1527502331) ▶▶▶

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