



Brussels, 24 March 2017

EFCI position on the European Commission proposal and the EMPL-Committee draft report on the targeted review of the Posting of Workers Directive 1996/71/EC

The EFCI (European Federation of Cleaning Industries) has taken note of the European Commission proposal for a targeted review of the Posting of Workers Directive 1996/71/EC (PWD) and the EMPL-Committee draft report and would herewith like to submit its comments to this important piece of EU legislation. Through the present position paper, the EFCI wishes to draw the attention to a series of elements, which are of high importance to companies providing cleaning services.

The EFCI unifies the representative national employers' associations of the Cleaning Industry in 15 European countries and wishes to advise that more than 171.000 companies, which are in majority small and very small organisations, employ more than 3.39 million workers and generate an annual turnover of about 74 billion Euros. It is a highly labour intensive sector where personnel costs (wages, social security contributions, taxes, etc.) represent about 80% of the total costs. The EFCI is recognised by the European Commission (DG Employment, Social Affairs and Equal Opportunities) as a European sectoral social partner in accordance with the European Treaties. Further information can through our website: www.efci.eu

General comments

In general terms, the EFCI has a strong interest in all European legislation that affects employment, competitiveness and working conditions of the sectors' companies and employees. As for a highly labour intensive sector, any fraud on wages, social insurance contributions and tax payments leads to a massive distortion of competition at the expense of law-abiding companies. As a consequence, this unfair competition strongly puts at risk the regular employment within these law-abiding companies.

Since the adoption of the PWD Directive in 1996, the Internal Market for services has strongly evolved through different pieces of legislation (for ex. the Services Directive 2006/123/EC). Furthermore, the technical progress (digitalisation, automatization, flow of data etc.) is revolutionising the existing business models as well as the labour market. Finally, the EU geographical scope has shifted from 15 Member States in 1996 to currently 28 Member States. In parallel to these fundamental changes, the reality of Posting within the EU has drastically changed.

Key messages:

The EFCI¹ welcomes the Commission proposal for a targeted review of the PWD as a necessary effort to address the abuses induced by the current Directive which is not anymore in line with the evolutions described above. Therefore, the EFCI is requesting the following modifications:

- Reduce the duration limit of posting to 3 months
- Clarify the constituent elements of the term "remuneration"
- Only foresee the application of universally applicable collective agreements for posted workers and thus guarantee respect of the autonomy of social partners in the negotiation of collective agreements

¹ This position is not supported by our Danish member association SBA-DI. However, SBA-DI strongly recommends that the proposal for a targeted review of the PWD respect the autonomy of social partners in the negotiations of collective agreements.

Specific remarks:

1.) On the duration of the posting

The proposed new article 2a, par.1 foresees that in case a posting exceeds twenty-four months, the host Member State is deemed to be the country in which the work is habitually carried out. Thus, in application of the rules of the Rome I Regulation, the entire labour law of the host Member State should apply to the employment contract of such posted worker.

Even though the EFCI welcomes the ambition of the Commission to limit the duration of posting, it demands to reduce this limit to 3 months. Indeed, a European Parliament study elaborated for the EMPL-Committee in June 2016² demonstrated that the average duration of posting is inferior to 4 months and consequently, the 24-month-limit will have no practical impact on cases of abuse.

Moreover, the new article 2a, par.2 states that in case of replacement of a worker regarding the same task, the calculation of the duration of posting must take into account the cumulative duration of the posted workers concerned, but only for those workers posted at least 6 months. With a view to an average duration of posting inferior to 4 months, this provision will be inefficient and could furthermore create further opportunities for circumvention.

2.) The replacement of “minimum rates of pay” by “remuneration”

The EFCI fully supports the principle of “*equal pay of equal work at the same place*” in posting situations. Therefore, it welcomes the replacement of the term “*minimum rates of pay*” by the term “*remuneration*”, as set out in the new article 3, par.1, point (c).

This change of term implies that all rules on remuneration applicable to local workers (and not only the minimum rates of pay) would be also applicable to posted workers. As a consequence, this provision will guarantee that companies posting workers to another Member State will have to remunerate these workers as much as companies established in the host Member State have to.

In addition, Member States would be obliged to define the constituent elements of remuneration applicable to posted workers and to publish these elements on the specific website mentioned in article 5 of the Enforcement Directive of the PWD 2014/67/EU.

This provision however could lead to legal uncertainties and create important divergences between Member States. Companies will have more difficulties to understand the scope of the term “*remuneration*” in the different Member States, as these elements would be determined at national level. As a consequence, the EFCI stresses that it should be clarified in the amending Directive, which are the constituent elements of the term “*remuneration*” in order to protect companies from legal uncertainties.

3.) The option for Member States to require companies to subcontract only to companies granting certain remuneration conditions applicable to the (main) contractor

The new article 3, par 2, point (b), gives the faculty to Member States to oblige companies to subcontract only to companies that guarantee workers “*certain terms and conditions of employment covering remuneration*” that are also applied by the (main) contractor, including those resulting from non-universally applicable collective agreements.

The proposed provision clearly interferes with national industrial relations systems and wage setting mechanisms. The EFCI firmly opposes to this provision, as it will oblige companies to apply non-universally applicable collective agreements. We therefore demand that the autonomy of social partners in the negotiation of collective agreements will be respected.

Furthermore, the provision contains imprecise and unclear terms (“...certain terms and conditions of employment covering remuneration...”). These will render controls regarding the effective application by posting companies extremely complicated and will pose an obstacle to contractual freedom.

² European Parliament, Directorate-General for Internal Policies, *Posting of workers-current situation and challenges*, study for EMPL-Committee, June 2016, p.17