



Mrs / Mr
Member of the Parliamentary Committee
Employment and Social Affairs

European Parliament
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Joint position by the European social partners of the Cleaning Industry regarding the European Commission proposal for a draft directive on the enforcement of the Posting of Workers' directive {COM (2012) 131final} as well as the draft report of Mrs Danuta Jazłowiecka (2012/0061(COD))

The EFCI (European Federation of Cleaning Industries)¹ and UNI Europa² have taken note of the European Commission draft directive on the enforcement of the Posting of Workers Directive (PWD) as well as the draft report of Mrs Danuta Jazłowiecka (2012/0061(COD)) and would herewith like to submit their comments to this important piece of EU legislation. Through the present position paper, the European social partners wish to draw the attention to a series of elements, which are of high importance to companies and workers providing cleaning services.

The EFCI and UNI Europa represent more than 160.000 companies with an annual turnover of about 65 billion Euros as well as more than 3.75 million workers. It is a highly labour intensive sector where personnel costs (wages, social security contributions, etc.) represent about 80% of the total costs. They are recognised by the European Commission (DG Employment, Social Affairs and Equal Opportunities) as European sectoral social partners in accordance with the European Treaties. Further information can be found on the respective websites: www.efci.eu and www.uni-europa.org.

General comments

In general terms, the EFCI and UNI Europa have a strong interest in all European legislation that affects employment, competitiveness and working conditions of the sectors' companies and employees. They therefore highly welcome the Commission's intention to enforce the right application of the PWD by establishing a general common framework of appropriate provisions and measures to prevent any circumvention or abuse of the rules. To this end, they strongly support the aim of improving the way in which the PWD is applied throughout the EU. Indeed, its diverse implementation at national level is source of legal uncertainty and consequently source of tensions between social partners as seen in the recent case laws of the European Court of Justice (ECJ). Through this position paper, they wish to highlight in particular the issue of "Monitoring Compliance", elaborated in chapter IV (articles 9 and 10) of the Directive proposal.

¹ The European Federation of Cleaning Industries (EFCI) represents and promotes the interests of cleaning contractors in 18 Member States of the European Union

² UNI Europa is a European trade union federation. It unites national trade unions organising in service and skills sectors. It has 320 affiliated trade union organizations and represents 7 million workers in 50 countries

Specific comments

1) Administrative cooperation (articles 6 – 8)

The proposal presents the general principles for an efficient administrative cooperation and mutual assistance between the Member State of establishment and the host Member State. The EFCI and UNI Europa strongly support a reinforced administrative cooperation between Member States and interested parties to allow for a better implementation of the directive as described in Articles 6, 7 and 8 of the proposal. Especially, they see as a positive stage that Member States shall submit the information requested by other Member States or the Commission within a maximum of two weeks from the reception of a request, or in case of particular circumstances requiring urgent action, within 24 hours (article 6, paragraph 5). This urgency mechanism shall be especially applied where it is suspected that the undertaking does not genuinely perform substantial activities in the Member State of establishment in accordance with Article 3 of the draft Directive.

→The EFCI and UNI Europa therefore stress that a better administrative cooperation and mutual assistance between Member States is **promoted and put in practice as far as possible**.

2) Monitoring compliance (articles 9 – 10)

The proposal aims to provide more uniform rules for national control measures and inspections applied by the competent national authorities in charge of posting. The social partners consider national control measures and inspections as crucial to monitor the respect of legal obligations in the host Member State, and finally to ensure a fair competition between all companies and equal treatment of all employees operating in this host Member State.

a.) Article 9 paragraph 1 of the Directive proposal as well as the Rapporteurs' draft report does however provide an exhaustive list of possible administrative requirements and control measures, which significantly reduce Member States possibilities to carry out effective inspections. This limitation restricts to an excessive extent the Member States control options without tangible need. Particularly in labour intensive sectors, such as also cleaning, it can be seen in practice that new "innovative" forms of circumventing minimum working conditions and minimum wages are regularly being found. Therefore, national control authorities must be granted a broad margin of discretion in order to adapt their control measures promptly and flexibly. Finally, such an exhaustive list will prevent any far-reaching control measures and thus the further development of the monitoring mechanisms themselves. This is not compatible with the aim of the draft directive.

→Such an exhaustive list is incompatible with the objectives of the Directive proposal, as it would negatively affect the proper application and enforcement of the PWD. **The list of possible administrative requirements and control measures must therefore be non-exhaustive, as it would otherwise reduce the possibilities of controls compared to what is possible today.**

b.) Article 9, paragraph 1, point c of the Directive proposal foresees that a translation of the relevant documents enumerated in point b can only be required as long as "*these documents are not excessively long and standardised forms are generally used for such documents*". In this regard, the Rapporteurs' draft report does not provide for any substantial improvement.

The fact that, in future, a translation of the relevant documents can only be required if they are not excessively long and involve standardised forms threatens to undermine the provision in practice and to unduly hinder control measures. As a consequence, it would be sufficient not to keep the relevant documents in the envisaged format, i.e. not to use standardised forms or to make the documents excessively long in order to circumvent the translation requirement. Moreover, as it is rather unusual for SME's to use standardised forms, they could (even) easier avoid inspections.

As a consequence, the competent national authorities would not be in a position to effectively ensure compliance with the legal provisions of the host Member State. This is again going against the objectives of the Directive proposal, which are to ensure a better access of information concerning the control and monitoring of the working conditions and/or terms and conditions of employment of posted workers.

If this translation requirement is to be omitted, effective and adequate controls would become almost impossible. Fair competition is ensured through the respect of minimum wages and working conditions laid down by law or collective agreement. If the national authorities of the host Member State are not able to check whether the working conditions of posted workers are in accordance with existing legal provisions or collective agreements in place it will not be possible to guarantee the respect of the terms and conditions of employment set out in article 3 of the PWD. As a result, this provision would lead to social dumping and this to the detriment of posted workers, social security systems and fair competition between companies.

→The social partners of the cleaning industry therefore strongly reject article 9, paragraph 1, point c in its current wording. They call upon the European Parliament **to ensure that a translation of the relevant documents can always be requested by the national authorities in order to control and monitor compliance with the PWD.**

c.) Article 10, paragraph 1 of the Directive proposal states that, in the future, inspections have to be primarily based on a risk assessment to be drawn up by the competent authorities. At present, the competent authorities can carry out inspections unconditionally and without any given suspicion. This national practice must be ensured as well in the future. Otherwise it would significantly reduce the possibilities of controls compared to what is possible today and would harm the effectiveness inspections to a massive extent.

→As a consequence, the second part of article 10, paragraph 1 has to be deleted **in order to maintain the status quo and to guarantee effective inspections also in the future.**

d.) Article 10, paragraph 2 in connection with recital 16 of the Directive proposal states that inspections and controls of compliance with the PWD must not be disproportionate. This means that control measures should only be allowed if less restrictive measures aren't possible. It is however unclear how Member States are supposed to ensure the proportionality of control measures. If national authorities have to check for each individual case whether the purpose of a control measure can be achieved with less restrictive means, inspections would be unnecessarily delayed and their effectiveness threatened. Experience demonstrates that an on-site inspection frequently requires rapid intervention in order to be able to achieve the greatest possible success against undeclared work and bogus self-employment. Complicated weighing-up procedures between the freedom to provide services and the enforcement of the legislation would, however, significantly reduce the possibilities and the efficiency of any inspections and controls.

→Article 10, paragraph 2 and recital 16 must be modified **in order to ensure the correct application of the legislation.** To this end, the national authorities must be able to apply efficient and enough control measures according the situation in each Member State.

Signed in Brussels on 6 December 2012



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