

Brussels, 13 February 2014

2014/WB/13/FL

To the participants in the trilogue negotiations regarding an  
EU Posting Enforcement Directive

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Dear members of the European Parliament,  
Dear members of the Council,  
Dear members of the European Commission,

**Proposed Enforcement Directive COM(2012) 131 final**

Some time ago, the European trilogue negotiations regarding an EU Directive to improve enforcement of the Posting Directive were launched. This Directive is of substantial importance for workers because it can provide a solution for many forms of abuse and social fraud that occur in relation to cross-border posting of workers.

However, the undersigned European Trade Union Federations are concerned that the discussions are being sped up in view of the imminent European Parliament elections. Such an approach is extremely dangerous because it can lead to a feeling that an agreement must be in place before the elections, regardless of the benefits of the Directive. In this regard we would like to stress that the implementation and application of the Directive in the Member States will have major long-term implications. For this reason we ask all the negotiators to proceed with the utmost caution and not make their top priority simply reaching a quick agreement.

By way of reminder, we would like to reiterate our minimum demands:

1. Article 9 of the Enforcement Directive must not in any way restrict national supervisory powers on the grounds of 'proportionality' or an obligation to 'notify the European Commission' or other limitative measures. After all, the purpose of the Enforcement Directive is to improve enforcement, rather than limit such enforcement in the Member States.

2. Article 3 must provide a clear solution for two persistent problems.

- a. The problem of bogus self-employment must be resolved. At the moment, the Posting Directive is circumvented on a massive scale by “inventing” fictional employment relationships. Bogus self-employment is a means of deception which costs the national authorities many billions of euro in lost social security revenues each year, causes unfair competition and exploits workers without providing them with any social protection.
- b. It is still unclear which pay and employment conditions apply to workers who have been inappropriately posted to another Member State. This is not a legal decision but a political choice. We ask you, in your role as a legislator, to provide a clear resolution for this problem in Article 3, instead of including any vague provisions in the recitals of the Directive. We demand, of course, that the Directive clearly states that in case of inappropriate or deceitful posting, the full pay and employment conditions of the host country will apply.

3. Social fraud at the bottom of the subcontracting chain is a universally acknowledged problem. To resolve this, we ask that Article 12 of the Enforcement Directive makes principal contractors unconditionally liable for social fraud for the whole subcontracting chain right down to the bottom link of the chain. The European Parliament’s position is a reasonable compromise, whereas the Council’s compromise will have few, if any, benefits in practice.

The undersigned parties have to face cross-border social fraud and exploitation of workers on a daily basis. Therefore, the Enforcement Directive is a key instrument for us, and we will continue to carefully monitor every step in the process of bringing it about. Given its substantial importance, we urge the negotiators to bear in mind the original objectives of the Directive. We want a good agreement, while flatly rejecting the idea of a quick but badly thought-out agreement.

However, the signals we have been getting make us fear that various parties are doing all they can to reach a quick agreement and are prepared to make major and fundamental concessions to achieve that goal. The undersigned parties stress that the Enforcement Directive must resolve the problems mentioned above. It would be better to take sufficient time to reach an agreement that will solve these problems, rather than rushing through the negotiations to reach a political deal before the European elections.

Looking forward to a positive response from you,

Yours faithfully,



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EFBWW



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