



# EFBWW NEWSLETTER

## Posting of workers

More than 500 amendments have been tabled in the European parliament to the report by the rapporteurs Mrs Morin-Chartier and Mrs Jongerius. The EFBWW organized on 6 April a meeting with its Strategic group to discuss the amendments, and on 7 April the ETUC organized its Posting Task force to do the same. In both groups it was stressed that the trade union movement needs to focus on the key priority areas with key amendments to improve the Directive, and that in other areas the trade union movement needs to be ready to make compromises to get the key amendments approved. Both meetings agreed on some top priority areas and preferred amendments within these areas;

### *Restoring the minimum character of the Directive*

From 1996 to 2007 the Directive had a “minimum character”, meaning that the expression “more favourable conditions” in Article 3.7 referred to both the home state and the host state. This was changed with the Laval judgment from 2007 which transformed the Directive into a “maximum directive”. A preferred amendment in this area is **473 by Jongerius et al**, which explicitly refers Article 3.7 to both home and host state. Another good amendment in this area is **272 by Rina Ronja Kari et al**, which refers to more favourable conditions in laws, regulations or administrative provisions, and also collective agreements. Another way to strengthen the minimum character of the Directive is introducing a dual legal base, adding Articles 151 and 153. This is proposed in amendments **27 by Agea et al**, **28 by Ulvskog** and **30 by Rina Ronja Kari et al**.

### *The concept of remuneration*

In the proposed Directive, the concept of “remuneration” is introduced to replace the concept of “minimum rates of pay”, which comes from the original Directive. This is a positive development, but unfortunately the sentence that the host state can define what is meant by remuneration is deleted. The preferred amendment here is **395 by Jongerius and Morin-Chartier**, which underlines the role of the host state in determining the concept of remuneration. Another amendment with the same intention but with a slightly different wording is **394 by Christensen**.

### *Travel, board and lodging*

The trade union movement has been pushing for the incorporation of an obligation for the posting employer to pay for workers’ travel, board and lodging expenses in connection with the posting, and moreover, that this payment cannot be deducted from “remuneration” as understood by the Directive. The preferred amendments here are the combination of amendment **381 by Jongerius et al**, which puts the travel, board and lodging expenses in the “hard core” of the Directive, and amendment **477 by Jongerius et al**, which explicitly prohibits employers from deducting these expenses from “remuneration”.

### *Making the Directive compatible with the social models of the Member states*

The three judgments of the European Court of Justice in 2007 and 2008 – the Laval, Rüffert and Commission vs Luxembourg judgments – made the social models of Sweden, Germany and Luxembourg incompatible with the Directive. One of the aims with the revision has been to restore the compatibility of the Directive with these social models, as well as with other social models with similar features. Regarding reversing the Laval judgment, the preferred amendments are **395 by Jongerius and Morin-Chartier** combined with **473 by Jongerius et al.** Regarding reversing the Rüffert judgment, the preferred amendments are either amendment **21 from the report by Morin-Chartier and Jongerius**, or amendment **272 by Rina Ronja Kari et al** combined with amendment **395 by Jongerius et al.** Regarding reversing the Luxembourg judgment, the preferred amendment is either amendment **498 by Jongerius and Morin-Chartier**, or **497 by Jongerius et al.**

### *Genuine posting*

One of the aims with the revision from a trade union point of view has also been to exclude all kinds of “fake posting”, without thereby depriving any worker of any rights combined with posting. Two preferred amendments are **314 by Steinruch**, which provides that the conditions of the host state shall apply in non-genuine posting, as long as they are more favourable than the home state conditions, and amendment **317 by Steinruch**, which provides that workers should not be deprived of more favourable conditions afforded to them by home country law.

In addition to these areas, the EFBWW and the ETUC groups also discussed amendments concerning time limits, temporary works agencies, subcontracting etc, but these areas were seen to be of lower priority than the above mentioned, and could thus serve as areas of negotiation in the process that will follow.

## **E-card for construction sector**

At the Executive Committee meeting of the ETUC in Malta on 15-16 March, a statement was adopted which rejected the proposed services e-card.

The EFBWW has written several joint letters together with FIEC, rejecting the e-card proposal, and currently the two organisations are working on a joint assessment of the proposal.

The EFBWW, ETUC, UNI Europa and EFFAT have also sent a joint letter to Members of the European parliament IMCO and EMPL committees, as well as to Members of the COMPET Council Working Group, calling for the rejection of the e-card proposal. The letter also mentions that the points of view of both social partners of the construction and the insurance sectors have not been taken into account by the Commission.

The next steps of the e-card proceedings are a public hearing on 21 June 2017, consideration of the draft report in IMCO on 4 September, deadline for tabling amendments on 13 September, and vote in IMCO on 4 December 2017.

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