



HOTREC position paper on the Revision of the Posting of Workers Directive

HOTREC welcomes the Commission proposal for a revision of the Posting of Workers Directive ([COM \(2016\)128final](#)), amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services ([link](#)).

It is important to facilitate the posting of workers within a fair competition environment and respect for the rights of workers, who are employed in one Member State and sent to work temporarily in another by their employer. Namely fair wage conditions and a level playing field between posting and local companies in the host country should be ensured.

Nevertheless, HOTREC would like to highlight the following points:

- **Principle of equal pay to equal work**: HOTREC proposes to replace “remuneration” by “compulsory payments” defined by law and/or universally applicable collective agreements in order to decrease the wage gap between local workers and posted workers. In fact, differences between domestic workers already exist (productivity, competences, seniority, etc.). Therefore, the principle as proposed by the European Commission might be difficult to achieve also taking into account that social security contributions and taxes will continue to be paid at different rates at the country of origin;
- **Rules set by universally applicable collective agreements**: HOTREC believes that the extension of the scope of the application of universally applicable collective agreements to all sectors is not justified. For instance, so far, no main problems with posted workers in the hospitality sector have been registered. The principle would be unproportioned. Furthermore, the current Directive 96/71/EC already foresees this possibility (Art 3/10) and several Member States have introduced the principle in their national legislation. The principle should remain optional;
- **Posting for more than 24 months**: It is not clear if all working conditions of the host country would apply from the first day of the posting or after the 24 months period. There should be legal certainty for companies posting workers to know which rules apply;

- **Subcontracting**
 - An impact assessment of this rule should have been presented by the Commission (especially focusing on SMEs). These measures could have a substantial economic consequences;
 - The expression “certain terms and conditions of employment covering remuneration” is unclear and does not bring legal certainty to companies;
 - By introducing this principle, the Directive would go against any form of competition in subcontracting chains. This would not take into account different productivity levels and the different workers themselves;
 - This rule could discriminate the posting employers;
 - The principle, if Member States are willing to introduce it, should only be applied to companies covered by the same sectoral or branch collective agreement;

- **Temporary Agency** - Art. 3/9 of Directive 96/71/EC already foresees the possibility of Member States to provide that temporary work undertakings must guarantee to posted agency workers the terms and conditions which apply to temporary workers in the Member State where the work is carried out.

Fifteen Member States are already applying this possibility. This possibility should remain optional to Member States, as they are best placed to adapt the rules to their own labour market situation.

HOTREC hopes that the aforementioned considerations may be taken into account by both the European Parliament and the Council of the EU.

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