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The Commission Work Programme for 2016 states that the Commission will present a targeted revision of the Posting of Workers Directive "...ensuring that the same work in the same place is rewarded by the same pay".

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As social partners from Finland, Iceland, Norway, Sweden and Denmark we are deeply concerned about the far-reaching consequences both at European level and at national level of introducing such a principle.

The following background is crucial to understand our concerns regarding the proposal.

In our countries we have strong trade unions and employers' organizations which negotiate and enter into agreements on wages and working conditions through collective bargaining procedures. This secures orderly conditions for employees including those seconded to our countries.

These agreements allow companies to negotiate the wages with the employees at company level. In our countries the wages are not fixed to a certain figure by the collective agreement, except in a very limited number of branches. What is normally guaranteed in our countries is a - very high - minimum wage compared to the minimum wages in other EU Member States.

The wages therefore differ from company to company within the same branch and also differ between companies working at the same place and covered by the same collective agreement.

On top of that there can be different collective agreements in the same place. The fact that companies actually apply different collective agreements in the same place makes the application of the same pay principle without destroying the collective system an impossible thing to do.

Wages often also differ between employees doing the same job in the same place depending on how the work is being performed by the individual worker.

Some employees are paid the minimum wage, others a wage between the minimum wage and the average and some workers above the average. The possibility to do so is crucial for the productivity and competitiveness in our companies and increases the motivation for the employees to improve their skills.

In the light of this context, we want to highlight three issues of special concern to us:

1. The issue of **comparison**: Which company are you going to compare the wages with – the company with the highest or the one with the lowest wages?

The existing principles of equal pay for equal work for men and women and of non-discrimination because of nationality are relatively easy to enforce since comparison is made within the company and since the responsibility lies with the individual employer. This is also guaranteed by article 3 in the existing directive. The Commission's new initiative seems to introduce a whole new principle for posted workers where the conditions of workers in one company are to be compared with conditions in other companies.

The introduction into EU law of a principle of same pay for same work in the same place for posted workers will in our view require the introduction of a similar system for national wage setting mechanisms.

Without a mechanism for national wages it will be practically impossible in our countries to compare the wages paid to posted workers with the wages paid to the workers in a member state. This requirement may also follow from the EU principle of non-discrimination.

In other words we will not only have to make legislation for posted workers. We will also be forced to legislate for our nationally based workers in order to be able to compare.

The whole idea of the same pay principle with regard to posted workers is jeopardizing the market based wage setting mechanisms of our countries thus seriously harming our collective bargaining system and our competitiveness.

Furthermore, we represent countries with a high wage level also posting workers to countries with lower wages. Do we have to decrease the wages for our posted worker which will make it impossible to post? Or shall the receiving country increase their wages thus decreasing the attractiveness of postings from high wage countries?

2. The issue of **equal treatment**: Why should foreign service providers not continue to have the same right as national service providers to pay the minimum wage according to the applicable collective agreement or a wage between the minimum wage and the average?

In this context it is important to emphasize that pay rate differences between Member States do not by definition constitute unfair competition. They are often a reflection of different levels of productivity in sectors and countries in different stages of the evolution of the economy in the various Member States.

Our opinion is that the present role of minimum wages in the present wording of the Posting of Workers Directive strikes the right balance as it secures the minimum wage which is seen by the country of destination as a decent wage for domestic workers and adequate to secure against also domestic unfair competition.

To oblige foreign service providers to pay their posted workers, i.e. the average paid to domestic workers at a given workplace – in most cases well above the minimum wage –, would often have the effect of deteriorating the providers' competitiveness and drastically reducing the internal market for services. It would also induce employers to enter into contracts with domestic companies only as the employer in that case can pay as low as the minimum wage. This would in our opinion create unfair conditions for foreign service providers.

3. The issue of **interpretation of the Treaty**: Why should the European Union change the interpretation of the Treaty as it has no legal competence regarding general wage formation?

To cut it short, we are of the opinion that the Treaty should be respected by all stakeholders and we see no added value in a new interpretation of the Treaty.

We also have concerns as to whether the proposal would be reconcilable with art 56 TFEU or not, and do not in any event believe that it would constitute a proportional limitation of the freedom enshrined in the aforementioned article.

To sum up, we are of the opinion that the introduction of a principle that the same work in the same place should be rewarded by the same pay would:

- change the very foundation of collective bargaining and wage-setting systems not only in our countries but most probably in all other Member States as well.

In addition it would:

- discriminate foreign service providers in relation to national service providers and therefore also deteriorate the functioning of the Internal Market of Services.

It would also result in the fact that:

- The European Union would regulate wages in a general way which is not in accordance with the Treaty.

Instead of introducing the principle that the same work in the same place should be rewarded by the same pay, we believe that the best way forward would be to ensure proper implementation of the enforcement directive. The same pay principle will greatly harm the mobility we need so much in Europe and therefore harm our competitiveness, growth and employment. We ask you and the Commission to rethink this initiative.

We stand ready to discuss these matters with you.

Yours sincerely



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