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F.a.o.:

Mr. Nicolas Schmit

Commissioner of Jobs and Social Rights

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Dear Mr. Schmit,
Dear Commissioner,

Posted workers deserve better protection

The European Federation of Building and Woodworkers (EFBWW) has been informed that the European Commission will soon publish its interpretation of the new Posting of Workers Directive 2018/957¹. We would like to point out that this document was prepared before the corona crisis. Meanwhile, the corona crisis provided new evidence, clearly demonstrating that the current system of temporary posting needs to be thoroughly reconsidered or at least requires significant improvements. New important insights for fair and decent posting, which we have recently learned from the corona crisis, are not taken up in the EPWC report. For this reason, we ask you to postpone the publication of the interpretation and amend the report on several important points.

For many years, we have repeatedly pointed out that the widespread use of temporary posting - as a business model for cheap labour - has exceeded its original aim by far. The original concept of exceptionally sending construction workers for a short period to a user company in another country, is now a permanent business model for cheap labour, organized by intermediary companies such as temporary agency companies, contracting firms or even letterbox companies.

The many problems of cross-border social fraud and abuse are meanwhile widely known and documented: posted workers are rarely (better never) being paid correct wages; working time and leave rules are not complied with on a large scale; social security is almost never in order; posted workers are under pressure, illegal payroll deductions are common, and so on.

In addition to this, we are once again confronted with major shortcomings and vulnerabilities in the existing European posting of workers system, namely regarding the housing and transport arrangements of the posted workers and the rules on dismissals.

As to the 'accommodation', the EFBWW welcomes that the European Commission's interpretation note refers to the "quality and the decency of the accommodation". We are disappointed though that these criteria are not referred to with regard to the transportation arrangements for the posted workers.

Over the last months it has become abundantly clear that posting companies (often temporary employment agencies) earn good money from cheap accommodation and transport. Unfortunately, we observe that many posted workers have been infected with the COVID-19 virus, because the posted workers are packed together during their accommodation and transport. There is no question of "social distancing" at all.

¹ EPWC final report of the subgroup on the transposition of Directive (EU) 2018/957

It is well known that most posting companies and agencies also provide transport and housing. In this way they can maximize their profit. As mentioned earlier posting is a “cheap labour business model”.

During the previous EPWC meetings, the EFBWW repeatedly called for a clear interpretation, application and enforcement of quality accommodation and transportation for posted workers. During the meetings we provided several concrete examples of quality housing and transport. These are for example:

- Personal bedrooms of at least 12m² per person;
- Personal laundry and toilet facilities per person;
- Well-ventilated rooms with direct daylight;
- Sufficient personal space during transportation;
- Regular rest periods during transport;
- ...

Now we note that the interpretation of the European Commission of Directive 2019/957 is vague and provides no clear and practical guidance, control and compliance provisions on accommodation and transportation. Without these provisions we will quickly see the counterproductive effects, with major consequences for the new Directive.

According to the EFBWW the EU interpretation of Directive 2018/957, note should clearly call the host Member States to define clear “quality criteria” as to the accommodation and transportation of the posted workers and ensure its enforcement. Without these provisions the lives of the posted workers are at risk.

Due to the covid-19 crisis, many posted workers were simply informed that there was no work for them and their working contracts were either suspended (for an undetermined period) or simply terminated. Some posted workers were sent home collectively (in packed transportation), others had to wait in their collective accommodation for further instructions. The covid-19 crisis clearly demonstrated how dependent posted workers are from their employers.

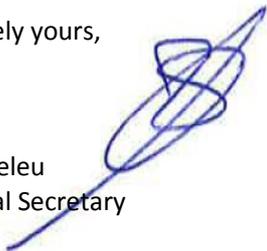
Although many Member States implemented temporary unemployment measures or specific reduced working time arrangements to cope with the exceptional circumstances, posted workers only very seldom benefited from these arrangements. In most occasions the posted workers were not even informed of the specific provisions put in place by the national authorities. To put it simple, most posted workers, were left to their own devices.

For these reasons, we expressly ask you to sharpen the existing interpretation / implementation / application of the new Posting of Workers Directive. In addition to equal pay and working conditions and good social protection, all posted workers are entitled to quality housing and transport and fair dismissal rules.

We look forward to receiving your comments on our letter and to discussing our concerns with you.

Sincerely yours,

Tom Deleu
General Secretary



Werner Buelen
Political Secretary



Copy: EPWC Members