

## Revision of the Posting of Workers Directive 96/71/EC of 16 December 1996

### European Commission proposals, DGB positions and ETUC amendments in tabular overview

(authors' selection and composition, not a complete representation)

European Commission proposals	DGB positions	ETUC amendments
<b>Principle of Equal Pay</b>		
<p>Member states should ensure that posted workers in their country of employment are guaranteed not only the »minimum wage rates«, as hitherto, but the »remuneration« that applies to all on the basis of law, regulation or administrative provision or binding collective agreement.</p> <p>The member states are responsible for defining the remuneration provisions, but in doing so they should »not disproportionately restrict cross-border service provision«.</p>	<p>The DGB welcomes the amendment, but sees a need for further regulation with regard to the issue of what exactly comes under remuneration, as well as what, the employer may be able to take into account, in order to guarantee remuneration under German law.</p> <p>The DGB is calling for the deletion of the sentence declaring that national remuneration provisions may not disproportionately restrict cross-border service provision.</p> <p>Furthermore, the DGB is demanding that not only generally binding collective agreements should apply in this connection, but that there should be a fundamental extension of their scope of application, which in particular would enable the application of representative collective agreements.</p>	<p>The ETUC is demanding also that non-generally binding collective agreements that are defined as representative by the member state in which the work is performed may be applied in relation to the remuneration to be guaranteed (along with other minimum conditions).</p> <p>The ETUC is demanding that provisions on reimbursement of expenses in connection with posting of workers (for example, travel costs, accommodation costs) should apply to posted workers. In that way it would be clarified that such payments must be granted on top of remuneration and may not be deducted from the remuneration to which they are entitled.</p>
<b>Time Limit</b>		
<p>The Commission would like to introduce a time limitation on posting of workers to 24 months. After that</p>	<p>The DGB is calling for a substantially shorter maximum duration for postings and also that postings of less than six months be taken into account in calculations.</p>	<p>The ETUC is demanding a time limitation on postings of six months. At the same time, it is calling for the deletion of the exemption of postings of less than six months from calculations of total posting duration.</p>

<p>the labour law of the host country would apply, insofar as the parties have not agreed on the application of some other law.</p> <p>If a posting is planned from the outset to last more than 24 months the law of the host country should apply from the beginning of the posting; in the case of an unplanned exceeding of the limit, however, it should commence only from the expiry of 24 months.</p> <p>If posted workers are replaced by new posted workers in their workplace a restriction of a total of 24 months should likewise apply to this workplace (totaling up working periods). However, only postings of a minimum duration of six months should be taken into account.</p>	<p>The DGB advocates that in principle the labour law of the host country shall apply after the expiry of the maximum posting duration. However, the DGB would like to prevent less favourable treatment arising from the choice of applicable law also after the expiry of the 24 months.</p> <p>Furthermore, in cases in which individual regulations in the country of origin are more favourable for employees they should continue to apply. The DGB is thus calling for a reference to the favourability principle.</p> <p>The DGB is also demanding protection against abuse of »unplanned exceeding«. Thus firms should not be able to terminate postings that were intended from the beginning to last longer than 24 months when the 24 month deadline comes up and then to prolong them from that point.</p>	<p>Postings that replace another posting and perform »similar« work should also be included in calculations of total posting duration.</p> <p>When a posting exceeds the maximum duration then, in principle, the law of the member state should apply in which the employee is posted (unless this affects conditions that are favourable for the employee).</p>
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**Subcontracting**

<p>The European Commission proposes to allow member states in the case of subcontracting (whether in the private or the public sector) to make it a condition that the same working and wage conditions shall apply as those that domestic companies have to comply with. These working and wage conditions could also be regulated in collective agreements that are not generally binding.</p>	<p>The DGB welcomes this proposal, but is opposed to it being diluted by a formulation that cross-border service provision may not be disproportionately restricted in this way (see above).</p>	<p>The ETUC would also like to stipulate a general company liability in the case of subcontracting (in Germany and some other EU member states this already exists).</p>
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**Posting of Temporary Workers**

Member states should ensure that posted temporary workers are granted equal treatment with permanent employees in the host country in accordance with Art. 5 of the Temporary Agency Workers Directive.	The DGB supports this.	The ETUC would also like to clarify that temporary agency workers who do not stand in a stable employment relationship with the hirer during the period of the posting should in principle be subject to the labour law of the host country.
<b>International Road Transport</b>		
For the regulation of work in international road transport the Commission recommends »sector-specific legal provisions and other EU initiatives« because of the high mobility of workers.	The DGB rejects this and demands that the so-called highly mobile domain should be regulated in the posting of workers directive in such a way that »that place should be regarded as the place of posting in whose national market the service is performed«.	The ETUC rejects the Commission's proposal.

**Sources:**

Compiled by the Fair Mobility project on the basis of the following documents:

European Commission (8.3.2016):

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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.

DGB (7.6.2016):

Opinion of the DGB on the proposal for a directive 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.

ETUC (21.10.2016):

Proposal for a Directive amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. ETUC suggestions for amendments.

*Fair Mobility project, October 2016*