



The 'Equal pay for equal work' conundrum



On July 13th, France and Germany [declared](#) that they would develop a common strategy on the controversial ongoing revision on **posted workers, employed in one Member State and temporarily sent to another by their employer**. This statement was made shortly after the [Employment and Social Policy Council in June](#) during which the Member States did not reach an agreement on the Maltese presidency's compromise, in particular because of the new French government's toughened position. This postpones an agreement at least to the next Council's meeting scheduled on October 23rd.

To **foster social cohesion in the EU**, the Commission proposed in March 2016 to revise the 1996 [directive](#) which establishes the host Member State's terms and conditions of employment that the foreign service providers must apply. This [proposal](#), which aims at making the increasing number of EU posted workers benefit from the same pay and working conditions as local workers, has generated stormy debates. It introduces important changes on four main topics: **long-term posting, posted workers' remuneration, subcontracting** and **rules on temporary agency workers**.

One of the most heated discussions deals with the **maximum duration authorised before the host Member State's labour law applies to the posted worker**. In the Commission's proposal, the current cumulative 36 months would be shortened to 24 months. This is supported by most Member States and by the Parliament's co-rapporteurs (French centre-right MEP Elisabeth Morin-Chartier and Dutch social-democrat MEP Agnes Jongerius) whose [draft report](#) will be voted on by the Employment and Social Affairs committee on September 28th. Yet France relaunched the debate by asking for a maximum duration of 12 months.

Another bone of contention is the **minimum wage**: currently a posted worker must at least be paid the host country's minimum salary but the employer can deduct transport and hosting expenses. Also he is not required to

give the posted worker overtime rates, bonuses and allowances that a local worker is eligible to receive. To rectify this situation, the Commission's proposal replaces the wording 'minimum salary' by 'minimum remuneration'. The Parliament complements the latter by defining it according to national law and to practices. Still, several Member States want to further clarify and discuss this concept of 'remuneration'.

The Commission's proposal gives to Member States the faculty to oblige undertakings to subcontract only to undertakings that grant workers certain conditions on remuneration applicable to the contractor, including those resulting from non-universally applicable collective agreements. Supported by the Parliament's co-rapporteurs, this provision faces the opposition of most Member States which fear a negative impact on SMEs.



Eventually the Commission introduces equal conditions for the workers hired out by a **temporary agency** established in a Member State A to work for a company in a Member

State B, and by temporary agencies established in the Member State B. Member States would favour an optional solution while the Parliament wants additional rules in order to avoid the cascade effect of subcontracting which blurs the lines on which Member states' rules must apply.

Many challenges remain to be addressed in order to ensure a **level playing-field in the European labour market**. In the Parliament, national oppositions divide the political groups but the draft report is considered as a good compromise, not so far from the Maltese presidency's one. As for the Council of the EU, France's flexibility or its ability to convince will be decisive to reach an agreement.

Tasa sõuad, kaugele jõuad (*Steady row, far you'll go*)

On July 1st, Estonia took the lead of the Council of the EU. One of the smallest European countries (1,3 million inhabitants), the Baltic State holds its first presidency and starts the eighteen-month programme it drafted with Bulgaria and Austria. Even more challenging, **its presidency begins six months earlier** than expected, due to Brexit.

Estonia can boast a performing economy and **high profiles in EU institutions**, such as Commission's vice-president for Digital issues Andrus Ansip and MEPs Marju Lauristin and Kaja Kallas, but it leads the Council at a **time of uncertainty** (upcoming general elections in Germany and Czech Republic) **and insecurity** after many terrorist attacks.

Unavoidably, Estonia has to deal with three highly-political issues: the **Brexit** negotiations which started in June but did not progress after two rounds; the **EU budget** for the next seven (or five?) years with the upcoming multiannual financial framework proposals (including the common agricultural policy); and the **future of the Eurozone**.

The Baltic State set four priorities: economic, security, digital and sustainable issues. One of the Union's fastest growing economy, Estonia aims at bringing its GDP per capita into the top 5 by 2022. This business-oriented country will discuss initiatives on company law (mergers, conversions and divisions, services package) and taxation (VAT system, rules on financial intermediaries, common corporate tax base and common consolidated corporate tax

base). It also plans to move forward on free trade agreements, the capital market and the energy unions.

Due to its Slav neighbour, security has always been a main concern for Estonians. With terrorism, it has now become one for the rest of Europe. The Baltic State will seek to **enhance Member States' military capabilities**. Also planned are agreements on legal immigration (entry/exit system, European travel authorisation system) and against the financing of terrorism.

Estonia is the EU's digital spearhead: it made online access a Constitutional right in 2000, it held the first online elections in 2005 and it is the first country to offer an e-residency. The presidency will focus on **the free circulation of data** that some hail as Europe's fifth freedom, the development of e-government, the cybersecurity strategy and the EU Agency for Network and Information Security mandate's updates.

Last but not least, Estonia hopes to successfully conclude the discussions on the **posting of workers** (see page 1) and plans to move forward on **education and youth** (new skills agenda, work-life balance, Europass). It will also work on the circular economy package and on reducing greenhouse gases, taking advantage of cutting its CO2 emissions by more than half since 1990.

To deal with these sensitive issues, Estonians will have to play an honest broker role but they also have room for manoeuvre to advance on a pro-business, secure and digital Union. The stage is theirs...



EU public consultations*

Digital economy	Database directive: application and impact	30.08.2017
Consumers	Targeted revision of EU consumer law directives	08.10.2017
Single market	Retail regulations in a multi-channel environment	08.10.2017
Taxation	Exchange of customs related information with third countries	16.10.2017
Finance	Transparency and fees in cross-border transactions in the EU	30.10.2017

* For an exhaustive list : <http://ec.europa.eu/yourvoice/>

Publication director : J-M. Chassériaux

Editorial staff : J-M. Chassériaux, M-M. Marichal, H. Verbrugge, C. Avenier

Bruxelles (EU)

Square de Meeûs, 35

Paris (FR)

229, Bd Saint-Germain

More information

www.lysios.eu

info@lysios.eu

Tel : +32 2 893 97 27