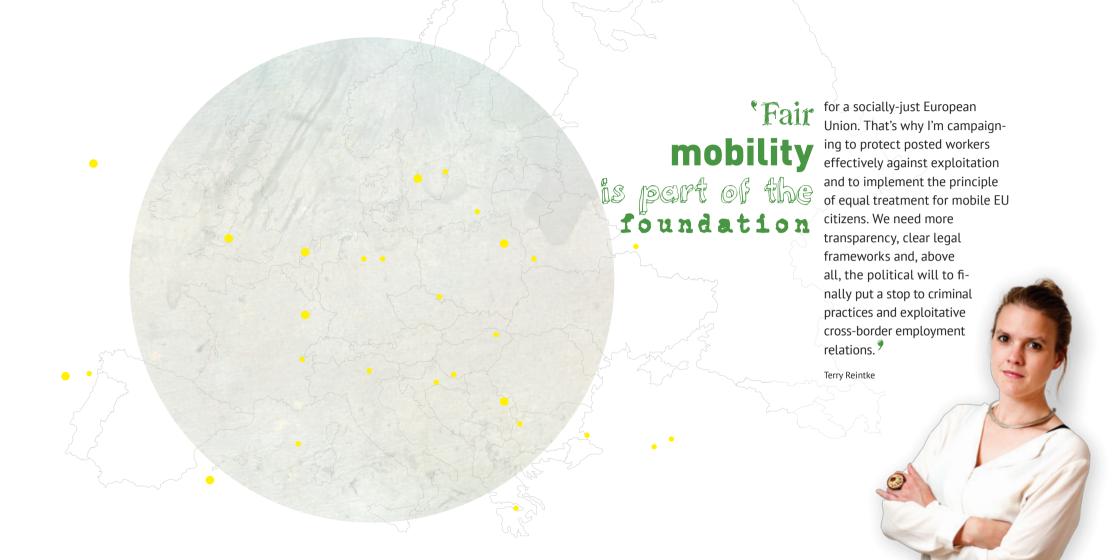
TERRY REINTKE

STICOP EXPLOITATION!

How we're improving protection for posted workers







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Romanian workers toil in a dockyard in Duisburg for weeks on end for all of five euros a day and ultimately stop being paid at all. Polish meat packing workers recruited by a large company south of Oldenburg are exploited for months on end without a written contract - working between 12 and 14 hours a day. Bulgarian drivers, working in Germany but employed under Czech contracts, can often go for weeks without seeing their families.

Workers posted by their firms to work in other Member States all too often become the victims of exploitation. Often, they do not know their rights and hardly speak the local language at all. Shady businessmen have no compunction in exploiting them: loopholes and grey areas are used to circumvent employment law. Minimum

standards on working time, workplace safety or employment protection can then be disregarded, apparently without breaking the law.

The European Union must put a stop to such practices and combat exploitative cross-border employment relationships. The systematic exploitation of mobile workers cannot be a business plan!

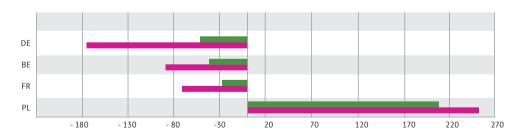


Member State at the behest of their employers in order to provide a service for a limited period of time, we call that 'posting'. The stay in another EU Member State is therefore always closely linked to the provision of a particular service. Posted workers are different from mobile workers in that they remain employed by their company while they are in another

Member State and don't integrate in the labour market of the other Member State permanently. For posted workers, their existing employment contract with their company in their country of origin continues to apply and they also remain linked with its social security system, provided the posting lasts for less than two years.



European Union?



Net balance between postings send and received 2010 and 2104 (in 1,000). Source: EU Commission, Impact Assessment 2016, p. 67

two million postings in the European Union each year. The number of posted workers has risen enormously in recent years: almost 45% between 2010 and 2014. This highlights the urgent need for action.

Most postings are in the construction industry: This sector alone accounts for almost 44% of postings, but postings also play a significant role in manufacturing industry (21.8%), in education, health and social services (13.5%) and in business services (10.3%).

Germany, France and Belgium are the three Member States with the highest number of posted workers: together, they host around 50% of all posted workers. The countries from which the most posted workers come are Poland, Germany and France.



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osting' is all too often misused for criminal purposes: while posted workers are often exploited for months on end and are ultimately left saddled with their expenses without being paid their wages, criminal business operators repeatedly get off scot free. It is high time these criminal machinations were brought to an end.

The Greens are therefore campaigning for better protection for posted workers. Our principal demand is that all workers in the same place of

work should be paid the same. Remuneration for posted workers must be higher than the applicable minimum rates of pay. We are also putting our weight behind a broadening of the legal basis for the Directive, which at the moment covers only the freedom to provide services, to incorporate the protection of workers. In general we want to revise the Directive in order to increase legal certainty, close loopholes for criminal and exploitative business models and improve the prosecution of criminal employers.

Why is a revision of the

Posting of Workers Directive



Green Principles

- The principle of equal treatment is central to Green policies. The Greens stand for protection against discrimination and advocate fully equal rights in all walks of life.
- Freedom of movement must be protected as a fundamental principle of the European Union. Freedom of movement is an important building block for European integration, but the fundamental freedoms of the single market cannot be interpreted in such a way as to subvert social justice.
- Protecting mobile workers benefits everybody. Mobile workers are especially at risk of being victims of exploitative practices, as they often do not know their rights. In strengthening their rights, we strengthen the rights of all workers, and in so doing we protect firms which are already trading fairly against unfair competition,

- The mobility of workers must be voluntary. Workers should always be free to choose whether they want to go to another country to work and should always be afforded the necessary protection.
- All workers in all Member States have the right to appropriate remuneration. Good work, first and foremost, means social security. However, it also means new prospects, the balancing of work and private life and the right to decide when and where to work. This must all go together with appropriate remuneration.

The **current Directive 96/71/EC** concerning the posting of workers in the framework of the provision of services was enacted in 1996 and has not been revised since then. It sets out the rights which posted workers can invoke in the Member State to which they have been posted.

These rights include:

- * maximum work periods and minimum rest periods,
- minimum paid annual holidays,
- * minimum rates of pay,
- the conditions governing the hiring out of workers by employment agencies,
- health, safety and hygiene at work,
- * equal treatment between men and women.

The current Directive is a Directive on the freedom to provide services, as emphasised by a series of Court of Justice judgments on this issue. Member States therefore do not dare use the Directive to increase protection for workers as they fear that this could be interpreted as a restriction on the freedom to provide services.



What needs to change?

In March 2016, the Commission set out its proposals for a targeted revision of the Posting of Workers Directive. Here is an overview of the most important proposed changes:



Current Directive

Commission proposal

'minimum rates of pay'

generally binding labour agreements only binding for posted workers in the construction sector

principal contractor's labour agreements cannot be applied to posted workers within chains of subcontractors

'limited period' of postings, but no defined length for this period

no obligation for equal treatment between local and posted temporary workers 'remuneration'

generally binding labour agreements binding for posted workers in all sectors

principal contractor's labour agreements of all sorts can be applied to posted workers within chains of subcontractors

host Member State's laws apply after 24 months

obligation for equal treatment between local and posted temporary workers



We welcome the proposed replacement of the term 'minimum rates of pay' with the broader term 'remuneration', as this can include additional wage components, such as allowances or bonuses. It's also welcome that Member States will continue to be responsible for determining wage components.

We also fundamentally welcome the move to set a **time limit** on postings. The Commission's proposal that the labour protection law in the host Member State should apply after 24 months

would be consistent with the provisions of EU law on coordinating social security systems. Nevertheless, due account should be taken of the fact that the average duration of postings is less than four months.

We also welcome the proposed requirement of equal treatment between local and **posted temporary** workers. This would mean that posted temporary workers enjoy a higher level of protection under Directive 2008/104/EC.

We want to go a step further than the Commission: as well as just the right to the national minimum wage, posted workers should have the **right** to the same minimum conditions that all the other workers in the same place of work are afforded. These minimum conditions could mean higher standards depending on the sector concerned, for example, or the region, or professional experience.

Moreover, the Directive must be based more closely on Article 9 of the

Treaty on the Functioning of the European Union. This article stipulates that, in defining and implementing its policies, the European Union shall take into account the quarantee of adequate social protection and the fight against social exclusion. Instead, the Commission's proposal reflects a tendency to pit the freedom to provide services before the protection of workers. To counteract this, we advocate strengthening workers' rights.



Key demands of the Greens

Equal remuneration for all workers in the same place of work



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Broadening of the legal basis: the freedom to provide services must go hand in hand with the protection of workers





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Better law enforcement in the Member States



Equal remuneration for all works in the same place of work

The Greens want to ensure that, in addition to the national minimum wage, posted workers have the right to the same minimum conditions that all the other workers in the same workplace enjoy. This might, for example, include certain bonuses and daily allowances, grading or special

payments. We regard this right as important in connection with the principle of equal treatment, as equal opportunities must be created between posted, local and other workers: if a local standard applies, it must apply equally to everybody.

Broadening of the legal basis:

the freedom to provide services MUST 90 and in hand with the protection of workers

We want to broaden the legal basis of the Posting of Workers Directive, so that the current Directive, which is intended simply to be a single market instrument governing the cross-border provision of services, also has the overarching objective of protecting posted workers. Steps must be taken to ensure that posted workers are protected effectively

against exploitative practices. As both the current Directive and the Commission proposal for a revision tend to place the freedom to provide services above the protection of workers, legal certainty in this area must be established and improved. Therefore, we suggest a broadening of the legal basis to strengthen the rights of workers.

Prosecution of criminals and effective protection of victims

The Greens are campaigning for effective protection for posted workers who have become the victims of criminal exploitation. We say: No more blaming the victims! We firmly believe that posted workers are not to blame, the people exploiting them are. The criminals who grow fat on exploitative practices must face prosecution.

The European Platform for tackling undeclared work, which started work in 2016, can also contribute here. The platform represents a coalition of na-

tional enforcement agencies, such as job centres, regulatory authorities, tax and migration authorities and social partner organisations at European level. It seeks to foster exchanges of information and best practices in tackling undeclared work and to strengthen European cooperation in this area. Its declared goal is to change undeclared work into declared, gainful employment and to create social protection for millions of Europeans.

Better law enforcement

in the Member States

We need good, clear and effective laws. We can set the rules at EU level, but it falls to the Member States to implement them. Therefore, we insist that the Member States take all necessary steps to tackle the exploitation of posted workers effectively.

Directive 2014/67/EU on the enforcement of the Posting of Workers Directive will help the Member States to improve the practical application of the rules on posted workers and to combat illegal practices where they occur. It also gives the Member States effective

tools which they can use to distinguish genuine postings from cases in which the rules are being misused or circumvented, for example by means of shell companies, bogus self-employment and subcontracting. We appeal to the Member States, and particularly to the German Government, to swiftly push through the implementation of the enforcement Directive. If particular Member States fail to implement the Directive, or do not implement it properly, the Commission must open infringement proceedings.

Publisher:

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May 2017

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