



**Group of the Progressive Alliance of
Socialists & Democrats
in the European Parliament**

European Parliament
Rue Wiertz 60
B-1047 Bruxelles
T +32 2 284 2111
F +32 2 230 6664
www.socialistsanddemocrats.eu

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Fair Competition instead of Social Dumping

Equal pay for equal work

The S&D Group stands for a Europe in which fundamental rights are protected and the internal market means rising not falling social and environmental standards. Therefore we call for a revision of the Posting of Workers Directive in order to stop the abuse of posted workers to circumvent working conditions and social rights. The S&D Group fights for a Europe that ensures the same rights as well as decent living and working conditions for all workers. Social and labour legislation, collective agreements, industrial relations systems, equal treatment and the principle of "equal pay for equal work" have to be respected.

No race to the bottom

A series of rulings by the European Court of Justice in 2007 and 2008 raised alarm among European workers and revealed ambiguities in EU laws, allowing single market rules to over-ride employees' rights to equal treatment and to breach ILO conventions on rights of collective bargaining and industrial action. These rulings - known as the Viking, Laval, Rüffert and Luxembourg judgements¹ - also called into question a key principle of subsidiarity, which is supposed to guarantee that Member States are responsible, without interference, for defining their national collective bargaining systems. In response to these rulings, the Group launched a campaign for revision and clarification of the European legal framework.

In October 2008 the S&D Group ensured the adoption of a report by a commanding majority of the Parliament calling on the Commission to review the EU's Posted Workers Directive and to bring forward legislation to set a clear legal framework, in line with the following principles:

- Economic freedoms, such as the freedom to provide services, are not superior to fundamental social rights, such as the right of trade unions to take collective action.
- Trade unions have a right to take action to ensure non-discrimination, equal treatment, and the improvement of their members' living and working conditions.

¹ In December 2007, the ECJ found that collective actions by trade unions against the Viking company - which had reflagged a vessel in order to bypass collective bargaining agreements - restricted the Viking's freedom to operate across borders. In the second case, a trade union took industrial action to uphold a collective agreement which the Laval construction company had refused to recognise. In the third, Rüffert Case, the right of public authorities to demand tendering companies to pay wages in line with local collective agreements was ruled to be a restriction on the freedom to provide services. In the latest Case, the Commission took Luxembourg to court for insisting that foreign service providers meet certain local employment standards.

The report also calls for a re-assertion in primary law of the balance between fundamental rights and economic freedoms, to prevent a race to lower social standards. In particular, the exercise of fundamental rights as recognised by the Member States and the Charter of Fundamental Rights should not be put at risk.

Revision or enforcement?

When running for his second term in office in 2009, Commission President Barroso pledged to come forward with an 'implementing regulation' on the Posting of Workers Directive. During a meeting with the S&D Group in July 2009 he went even a step further. He claimed not to exclude the possibility of a revision of the Posted Workers Directive itself. However, the latter was soon forgotten and it took the Commission until March 2012 to come forward with a proposal for an Enforcement Directive concerning the Posting of Workers in the Framework of the Provision of Services which was finally voted in the Employment and Social Affairs Committee on 20th June 2013.

Prevent social dumping - assure fair competition

The S&D Group has two principal objectives when it comes to the posting of workers: to prevent social dumping and to assure fair competition (this includes the fight against letterbox companies and bogus self-employment). This is reflected in the over 130 amendments tabled by the S&D to the report on the Enforcement Directive drafted by the Conservatives. Amongst others the focus is on clear definitions of posted workers and posting companies as well as legal consequences if they are not met. Another important issue is effective control measures to detect and prevent unfair competition. The Commission proposal and the report by the Conservatives are clearly not ambitious enough in this respect. Last but not least the S&D Group calls for clear liability rules also in the case of subcontracting to ensure that posted workers receive their pay and social contributions are paid. Let us be clear once and for all, the Enforcement Directive is not about protectionism, it's about the protection of posted workers regardless of their origin. We want the Single Market and the free provision of services, but they must be based on the principle of fair competition and the respect of social and labour laws.

A missed opportunity

The negotiations with the conservative Rapporteur and the other shadows were painfully slow and the results of the negotiations often not reflected in the documents circulated afterwards. In the end compromise proposals by the Rapporteur were not acceptable for the S&D Group. As a consequence the S&D produced a comprehensive and coherent set of alternative compromise proposals. This led to major improvements with regard to control measures and liability rules during the vote in Committee. On the other hand there was no majority for clear definitions, effective legal consequences, strong trade union rights or better provisions to fight social dumping and undeclared labour. In order to further improve the report in plenary the S&D voted against the report in Committee. A coalition of Conservatives and Greens, however, adopted the report and supported by the Liberals even paved the way to start negotiations with Council and Commission (Trilogue) right away. The bypassing of a debate and vote in plenary is a major blow for the interests of posted workers in Europe and a missed opportunity to further improve the Commission proposal. The S&D Group will participate in the upcoming Trilogue negotiations with a critical eye.