



# S&D

## POSITION PAPER

# 10 DEMANDS TO FIGHT SOCIAL DUMPING AND PROTECT ALL WORKERS

*A MORE SOCIALLY JUST EUROPE*

*Decent work for all*

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## INTRODUCTION

Equal work, equal right and fair competition must be at the heart of a well-functioning Single Market, not only to protect workers but also to protect small and medium enterprises, which are the main engine of job creation in Europe. However, the lacking ambition and dedication of the European Commission and some Member States to fight for the European social model is resulting in the spreading of social dumping, unfair competition and market distortions leading to increasing nationalism and protectionism. It is unacceptable that companies increase their profit margins by exploiting (cross-border) workers as cheap labour and depriving them of their labour and social rights. In addition this practice also deprives Member States of tax income and social security contributions. Social dumping is becoming increasingly common in practically all economic sectors. The European Union cannot afford this situation to continue any longer. The S&D group is firmly committed to fight social dumping, discrimination and the exploitation of workers, especially those who are posted. In order to do so we have 10 key demands.

## 1 HIGH SOCIAL AND LABOUR STANDARDS

Economic freedom in the single market must respect labour law and industrial relations standards and practices, including the right of collective representation and bargaining, collective action and equal pay for equal work at the same place. To combat unfair competition and to promote social cohesion we call for a social protocol to ensure the prominence of social rights over economic freedoms. Social clauses must be included in all relevant legislation to ensure equal treatment of all workers and the respect of labour and social law and collective agreements.

We call for the establishment of a minimum wage in legal or conventional form according to national practices, and if necessary as a first step as an enhanced cooperation inside the Eurozone. We also call for an increase of the statutory minimum wage in countries where this is deemed necessary by the trade unions in order to reach decent living wages standards. We are convinced that regarding the evolution of social protection in light of the

third industrial revolution, we need to engage in favour of a minimum income<sup>1</sup>.

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<sup>1</sup> This position of the S&D EMPL Working Group has been supported by the European Parliament in October 2011 in the context of Daerden report on the European Platform against poverty and social exclusion

We are strongly committed to the defence and promotion of workers' rights and protection in terms of working conditions, health and safety, social dialogue as well as the right of collective bargaining, information and consultation. We will fight against any attempt that considers labour and social standards as administrative burdens and tries to undermine them for the sake of competitiveness, like the so called REFIT<sup>2</sup> initiative of the European Commission

## **2 A REVISION OF THE POSTING OF WORKERS DIRECTIVE**

The Posting of Workers Directive (PWD) is now used as an instrument to mistreat workers and undercut labour and social conditions in host Member States. It must go back to its original role of combatting social dumping and guaranteeing full respect of equal rights. The Directive needs a serious revision in order to combat social dumping as originally intended notably through safeguarding the autonomy of social partners, in particular the fundamental right to collective bargaining and collective action, establishing more precise definitions of the type of activities covered by the PWD, strengthening the obligations of MS to monitor and enforce the directive, establishing EU general rules regarding social security provisions (prorate temporis) and establishing a system of double declaration of posting workers (by the enterprise posting the workers and by the contractor), among others. The current loopholes and flaws of the Directive prevent trade unions and Member States from ensuring equal treatment for posted workers. For many years the S&D Group has been calling for a revision of the PWD to guarantee that all workers in Europe enjoy full rights and decent living and working conditions.

## **3 A STRONG ENFORCEMENT DIRECTIVE ON THE POSTING OF WORKERS**

Until the revision of the PWD is achieved, the Enforcement Directive must strengthen the protection of posted workers and their rights, clarify the rules and obligations under which companies can post workers to other Member States and prevent abuses. In particular we demand that Member States have the possibility to impose whatever control measures they find necessary to fight fraud and the circumvention of rules. We

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<sup>2</sup> Commission's Regulatory Fitness and Performance Programme (REFIT)

also demand a compulsory system of joint and several liability that should cover the whole subcontracting chain and all sectors. Finally, host country rules (or the most favourable rules for the worker) should apply for cases falling outside the scope of PWD. In this context, we cannot support a weak Enforcement Directive as proposed by the Commission that will not meet these requirements.

In order to avoid abuses in the use of temporary agency workers in posting situations, a clear definition of "temporarily employed" should be included in the Directive on Temporary Agency Work, together with sanction-mechanisms in case it is not respected.

## **4 AN ANTI-SOCIAL DUMPING LAW**

Social dumping is an integral part of unfair competition and therefore provisions to combat social dumping must be included in the EU competition law. For their implementation the Commission should be empowered to investigate social dumping and to impose fines on undertakings which violate the European rules to prevent social dumping. These rules should be laid down in a Regulation<sup>3</sup>.

## **5 CLEAR LIABILITY AND LIMITS TO SUBCONTRACTING**

There must be a European regulation establishing binding joint and several liability rules for subcontracting chains, limiting subcontracting, banning the use of letter box companies and ensuring equal rights for workers in subcontracting chains. Companies which violate working and employment conditions should be sanctioned and centrally recorded at national and Union level to allow for better control in the future. A register of undertakings which seriously violated labour laws and working conditions should be established and those companies should then be excluded from public procurement. We also ask for the definition of main activity of a company that cannot be externalised or subcontracted.

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<sup>3</sup> This position of the S&D EMPL Working Group was supported by the EMPL committee in November 2013 in the context of Steinruck report on Labour Inspections.

## **6 EFFECTIVE LABOUR INSPECTIONS**

Labour inspections must be coordinated at European level and a European labour inspectorate for cross- border cases should be put in place to ensure the enforcement of labour and social legislation in the Single Market. A special focus needs to be on cases of trafficking for labour exploitation. A permanent European platform must be created for cross-border cooperation between government agencies, together with social partners, to fight abusive employment practices. In order to facilitate control by labour inspections on the respect of labour and social rights of posted workers, a European electronic document containing professional and social security details of the worker must be established. In order to combat the rising phenomenon of bogus-self-employment we call for a clear definition of employee at the European level.

## **7 EXTENDED INFORMATION AND CONSULTATION RIGHTS**

In line with the European Works Councils (EWC) Directive, a European Directive must be adopted allowing for the creation of inter-enterprises social dialogue structures, where workers from all the subcontracted companies are represented in order to deal with common problems. This Directive should also focus on the cross-border dimension of big projects as well as projects in cross-border regions, where subcontractors and posted workers are involved. Workers' representatives must have the right to be informed about the use of posted workers in subcontracting chains and to contact these workers in order to provide them with the appropriate information and advice. The Directive on Temporary Agency Work states that an undertaking must provide suitable information on the use of temporary agency workers to workers' representatives. However, when temporary agency workers are used in the second line of subcontracting, workers' representatives of the main company do not have to be informed. As a consequence there is frequently a lack of information and control. Neither the Posting of Workers Directive nor the Directive on Information and Consultation establish any provision on this matter. Therefore we call for legislation to ensure adequate information and consultation rights also in subcontracting chains.

## 8 BETTER PROTECTION OF WORKERS

According to the TEU and the European Charter of Fundamental Rights, the Union must promote social dialogue and the right of collective bargaining, the right of information and consultation of workers as well as the right to fair and just working conditions. The European Union should therefore promote the unionization of workers, in order to protect them from abusive employment practices. This is particularly important for vulnerable workers in atypical employment situations and posted workers. Unionization is essential to empower workers, to protect them against abuses and exploitation and to enable them to better exercise their rights. In addition structures providing advice and support for posted and migrant workers must be created in all Member States with the support of the European Union and the participation of trade unions.

## 9 A FAIR MIGRATION POLICY

The principle of **equal treatment** for third country nationals is fundamental in order to tackle both the non-discrimination and integration paths of migrant workers, as well as to avoid social dumping and to support the regularization processes. The shorter the permit to stay and work is, the lower the chances for migrants to have their rights recognized and respected or for social dumping to be prevented. Factors of vulnerability of migrants in the labour market should be removed, especially when they result from precarious short-term work/residence permits. This objective could be better achieved through a proposal for a framework directive on conditions of work and equal treatment for third country nationals. All the existing and future EU legal tools in the area of migration should be better coordinated and should implement the equal treatment principle in a coherent and homogeneous way.

Trade agreements entered into by the EU which include temporary labour migration schemes must allow for the effective enforcement of the equal treatment principle, including making cross-border mobility conditional on equal treatment in terms of wages and working conditions.

## 10MORE CORPORATE SOCIAL RESPONSIBILITY

The corporate sector must support high social standards and practices through its management and business practices. By applying high standards of corporate social responsibility, undertakings can play an essential role in achieving an economic model that is socially just and can help fight against trafficking for labour exploitation. In this respect, compulsory European legislation on corporate social responsibility would provide a far more effective solution than voluntary schemes.