

September 1996

**SUMMARY OF STATEMENT BY U.E.P.C.
ON THE DRAFT EU-DIRECTIVE CONCERNING POSTING OF
WORKERS
IN THE FRAMEWORK OF THE PROVISION OF SERVICES**

Inappropriateness of posting directive to combat unrecorded employment

The main cause for the wage and social dumping seen in some of the so-called high-wage countries is the disturbing increase in illegal employment. It is apparent that the administration bodies for social affairs and the criminal prosecution authorities in charge of combating unrecorded employment cannot control this deplorable state of affairs.

The draft directive concerning posting of workers, however, strives to make legal posting of workers from low-cost countries to high-cost countries uneconomical by introducing higher remuneration. Such a restriction on legal posting would not be able to do the slightest to combat the main evil of the widespread forms of illegal employment even in accordance with existing legislation. In such cases it is not a lack of legal foundation, but rather of efficient practical enforcement of existing laws. By introducing regulatory restrictions on market laws, as the draft directive plans, this would only create additional incentives to try to evade the law. This would in turn distort competition to the detriment of enterprises acting legally even more than before. In view of the serious shortcomings in enforcing existing laws it also appears impossible to implement additional posting regulations effectively. So a joint concept by the member states for practical combating of forms of employment, which are illegal even in accordance with the current laws, has absolute priority over new legal regulations defined by a directive on posting.

Job losses and slump in economic activity as the result of a directive on posting

Legal posting of workers from low-cost to high-cost countries, unlike illegal forms of employment, does not distort competition and does not constitute wage and social dumping, but exploits comparative competitive advantages and increases affluence. This could only be considered to be dumping if construction services were quoted in the host country at a much lower rate than in the posting country or if the applicable laws concerning wage levels and social security benefits in the posting country are disregarded when posting.

A directive on posting would cause a serious drop in employment on a European level and a slump in the overall construction activity. Such regulations would impede the economic conversion between the member states desired by the European Union for the smooth functioning of the single market especially in the construction sector by establishing wage protectionism. All experience made to date in delimiting economic sectors supposedly in need of protection proves this. Protective measures such as the planned directive on posting always start expensive intervention spirals, which can scarcely be curbed, due to the loss of flexibility in the branches of industry concerned. The positive effects on employment and cuts in social security expenditure aimed for in high-wage countries will not only fail to materialise but will have the opposite effect. Increasing construction prices, inevitably caused by a directive on posting, will first of all cause demand and then investment activity and employment numbers in the construction sector to fall drastically. In addition it is not possible to compensate for the decline in employment in the low-wage countries caused directly by discrimination of comparative competitive advantages of lower wage costs and the concomitant economic losses caused by a drop in purchasing power and demand.

Dangers for free movement of labour and freedom of services provided by companies

Admission of agreed wage rates or national minimum wages does not only have the effect of abolishing the labour cost advantage of posting workers from low-wage countries to high-wage countries. It will thus become impossible or at least much more difficult to find employment for posted workers in host countries with a higher wage level. However, Art. 48 of the EC Treaty in conjunction with Art. 7a Clause 2 of the EC Treaty protects the freedom of workers to work in all member states under conditions they determine themselves. This right of free movement of labour is one of the cornerstones for fulfilment of the European single market and is also applicable for posted workers working in another country under the working conditions applicable in their home country. The actual application of this right will be rendered impossible to a large extent or will at least be widely restricted if a draft directive on posting is implemented. Preventing or impeding this application is unacceptable as it erodes the right of free movement of labour. Quite apart from this, the possibility of applying collective agreements, which have not been collectively negotiated by their trade unions and employers' organisations, to workers posted abroad, among other measures, is not compatible with the European social order.

At the same time, however, scarcely surmountable obstacles are also being erected against cross-border activities by those companies wishing to use their workers to provide services in another member state. The draft directive, therefore, also endangers the basic principle of European services. Priority social or economic aims, which could justify this infringement both of posted workers' rights and also of the posting companies' rights, are not achieved for the reasons stated. For this reason we must reject the draft directive also in view of these legal aspects.

