EU Commission President Juncker has declared that the principle of “equal pay for equal work in the same place” should be the guiding principle in Europe for cross-border work. Since equal treatment for posted workers is long overdue, the European trade union movement awaited the announced proposal for a revision of the Posting of Workers Directive (PWD) with great expectations.

During the summer and autumn of 2015, a multitude of letters on the revision of PWD were sent to the Commission, showing a deep division in Europe on fundamental issues. The governments of 7 Western Member States stated that the revision of the PWD must be based on the equal treatment principle. As a reply to this, 9 CEE Member States stated that equal treatment is “incompatible” with the Internal Market. And Business Europe stated that equal treatment would damage the competitiveness of European industry. The stage was set for a dramatic endgame.

One week before the announced launching of the proposed revised Directive, several versions of a leaked text were intercepted by different stakeholders. From a trade union point of view these versions would have been a political disaster. The Member States would have lost their competence to define minimum wages; posted workers would have had the right only to a kind of European minimum in terms of wages; the right to strike would have been restricted above this level; and international conventions adopted by the ILO and the Council of Europe would have been undermined.

This resulted in a frenzy of lobbying actions towards the Commission during the weekend of 5-6 March 2016. The main actors were Scandinavian trade union representatives, helped by friendly governments. All of this resulted in a U-turn by the Commission, making the launched text on 8 March fundamentally different than the leaked versions some days earlier. Even though the final text also has shortcomings, the outcome of the lobbying actions on 5-6 March is probably unique in the history of European trade union lobbying.

The most important points of the final text are that it replaced the concept of “minimum rates of pay” for the concept of “remuneration”, defined as “all elements of remuneration” as laid down in the host Member States' laws, regulations, universally applicable collective agreements and other generally applicable collective agreements. Secondly, a new paragraph is introduced dealing with subcontracting chains, allowing Member States to oblige subcontractors to respect applicable host Member States conditions for remuneration. Thirdly, a connection between the Temporary Agency Workers’ Directive and PWD is created, meaning that posted agency workers must be treated equally to comparable workers in the user undertaking.

With such a politically high-powered issue as posting of workers, this battle is far from won. The trade unions have to work closely with groups in the European Parliament to introduce amendments which will remove inconsistencies in the text, and which will ensure that no worker is excluded from equal treatment due to the social model of the host state being incompatible with the definitions in the directive. Most importantly, the trade union movement must form alliances to prevent the text from reverting to the earlier leaked version, which is likely to be advocated by CEE Member States and Business Europe. This will be a battle to protect the fundamental values and rights of workers and trade unions within the Internal Market.