



2016/0070(COD)

2.12.2016

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services
(COM(2016)0128 – C8-0114-2016 – 2016/0070(COD))

Committee on Employment and Social Affairs

Rapporteurs: Elisabeth Morin-Chartier, Agnes Jongerius

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM(2016)0128 – C8-0114-2016 – 2016/0070(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0128),
 - having regard to Article 294(2) and Articles 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0114-2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of the Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Bulgarian National Assembly, by the Czech Senate and the Czech Chamber of Deputies, by the Danish Parliament, by the Estonian Parliament, by the Croatian Parliament, by the Latvian Parliament, by the Lithuanian Parliament, by the Hungarian Parliament, by the Polish Senate and the Polish Sejm, by the Romanian Senate and the Romania Chamber of Deputies and by the Slovak Parliament,
 - after consulting the European Economic and Social Committee,
 - after consulting the Committee of the Regions,
 - having regard to Rules 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on the Internal Market and Consumer Protection and of the Committee on Legal Affairs (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles 53(1) and 62** thereof,

Amendment

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article 53(1), Article 62, Articles 151 and points (a) and (b) of 153(1)** thereof,

Or. en

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.

Amendment

(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses and ***fighting unfair competition as well as ensuring*** respect for the rights of workers ***and the improvement of the working environment and working conditions***.

Or. en

Amendment 3

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Almost twenty years after its adoption, it is necessary to assess whether the Posting of Workers Directive still

Amendment

(4) Almost twenty years after its adoption, it is necessary to assess whether the Posting of Workers Directive still

strikes the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers.

strikes the right balance between the need to promote the freedom to provide services and ***to ensure a level playing field for undertakings operating in the internal market as well as*** the need to protect the rights of posted workers.

Or. en

Amendment 4

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) In view of the long duration of certain posting assignments, it is necessary to provide that, in case of posting lasting for periods higher than 24 months, the host Member State ***is deemed to be the country in which the work is carried out.*** In accordance with the principle of Rome I Regulation, the law of the host Member States therefore applies to the employment contract of such posted workers if no other choice of law was made by the parties. In case a different choice was made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State. This should apply from the start of the posting assignment whenever it is envisaged for more than 24 months and from the first day subsequent to the 24 months when it effectively exceeds this duration. This rule does not affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services in circumstances also where the posting exceeds 24 months. ***The purpose is merely to create legal certainty in the application of the Rome I Regulation to a specific situation, without amending that Regulation in any way. The employee will***

Amendment

(8) In view of the long duration of certain posting assignments, it is necessary to provide that, in case of posting lasting for periods higher than 24 months, the ***applicable terms and conditions of employment should be those established by the*** host Member State, ***without prejudice to terms and conditions of employment which are more favourable to the worker.*** In accordance with the principle of Rome I Regulation, the law of the host Member States therefore applies to the employment contract of such posted workers if no other choice of law was made by the parties. In case a different choice was made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State. This should apply from the start of the posting assignment whenever it is envisaged for more than 24 months and from the first day subsequent to the 24 months when it effectively exceeds this duration. This rule does not affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services in circumstances also where the posting exceeds 24 months.

in particular enjoy the protection and benefits pursuant to the Rome I Regulation.

Or. en

Amendment 5

Proposal for a directive Recital 10

Text proposed by the Commission

(10) Because of the highly mobile nature of work in international road transport, the **implementation of the** posting of workers **directive** raises particular legal questions **and difficulties (especially where the link with the concerned Member State is insufficient)**. **It would be most suited for these challenges to** be addressed through sector-specific legislation **together with other EU initiatives aimed at improving the functioning of the internal road transport market.**

Amendment

(10) Because of the highly mobile nature of work in international road transport, the posting of workers raises particular legal questions **which should** be addressed through sector-specific legislation.

Or. en

Amendment 6

Proposal for a directive Recital 11

Text proposed by the Commission

(11) In a competitive internal market, service providers compete **not only on the basis of a labour costs but also** on factors such as productivity **and** efficiency, **or** the quality and innovation of their goods and services.

Amendment

(11) In a competitive internal market, service providers compete on factors such as productivity, efficiency **as well as** the quality and innovation of their goods and services.

Or. en

Amendment 7

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) It is within Member States' competence to set rules on remuneration in accordance with *their law and practice*. ***However, national rules on remuneration applied to posted workers must be justified by the need to protect posted workers and must not disproportionately restrict the cross-border provision of services.***

Amendment

(12) It is within Member States' ***exclusive*** competence to set rules on remuneration in accordance with national ***law and practice***.

Or. en

Amendment 8

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) The elements of remuneration ***under national law or universally applicable collective agreements*** should be clear and transparent to all service providers. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive.

Amendment

(13) The elements of remuneration should be clear and transparent to all service providers ***and posted workers***. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive ***as transparency and access to information are key elements for service providers. The provision of information on the single website should be in line with national law and practice and should respect the autonomy of the social partners.***

Or. en

Amendment 9

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) This Directive establishes a protective framework for posted workers, which is non-discriminatory, transparent and proportionate while respecting the diversity of national industrial relations. It does not prevent application of terms and conditions of employment which are more favourable to posted workers.

Or. en

Amendment 10

Proposal for a directive Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) This Directive should not affect the exercise of fundamental rights as recognised in Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States in accordance with national law and practice. This Directive should not affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practice.

Or. en

Amendment 11

Proposal for a directive Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) With a view to tackling abuses in subcontracting situations and in order to protect posted workers' rights, Member States should ensure that posted workers receive all due entitlements.

Or. en

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 96/71/EC

Article 2a – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The application of this Article may not have the result of depriving the workers of the protection afforded to them under provisions from which the parties cannot derogate by agreement under the national law which would have applied in the absence of the situation referred to in paragraph 1.

Or. en

Amendment 13

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory ***at least*** the

and conditions of employment *covering* the following matters *which*, in the Member State where the work is carried out, *are laid down*:

terms and conditions of employment *which cover* the following matters *laid down* in the Member State where the work is carried out:

Or. en

Amendment 14

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – introductory part

Text proposed by the Commission

- by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8:

Amendment

- by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8 *or by collective agreements within the meaning of paragraph 8a*:

Or. en

Amendment 15

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – point g a (new)

Text proposed by the Commission

Amendment

(g a) conditions of workers' accommodation.

Or. en

Amendment 16

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC
Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

For the purpose of this Directive, **remuneration means all the elements** of remuneration **rendered mandatory** by national law, **regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable and/or, in the absence of a system for declaring collective agreements or arbitration awards to be of universal application, other collective agreements or arbitration awards within the meaning of paragraph 8 second subparagraph, in** the Member State to whose territory the worker is posted.

Amendment

For the purpose of this Directive, **the concept** of remuneration **shall be determined by the national law and practice of** the Member State to whose territory the worker is posted.

Or. en

Amendment 17

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In the context of remuneration, elements of equal or a similar nature, which are mandatory in both the host and the home Member State, shall be offset to avoid double payment.

Or. en

Amendment 18

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC
Article 3 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States shall publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration in accordance with point (c).

Amendment

Member States shall **take appropriate measures, in line with national law and practice, to** publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration in accordance with point (c).

Or. en

Amendment 19

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point b

Directive 96/71/EC

Article 3 – paragraph 1 a

Text proposed by the Commission

1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement, to sub-contract in the context of their contractual obligations only to undertakings that guarantee certain terms and conditions of employment covering remuneration, , the Member State may, **on a non-discriminatory and proportionate basis**, provide that such undertakings shall be under the same obligation regarding subcontracts with undertakings referred to in Article 1 (1) posting workers to its territory.

Amendment

1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement, **referred to in paragraphs 8 and 8a**, to sub-contract in the context of their contractual obligations only to undertakings that guarantee certain terms and conditions of employment covering remuneration, the Member State may provide that such undertakings shall be under the same obligation regarding subcontracts with undertakings referred to in Article 1 (1) posting workers to its territory, **provided that such a measure is proportionate and applied in a non-discriminatory manner.**

Without prejudice to Article 5 of Directive 2014/67/EU, Member States making use of the option provided for in this paragraph shall ensure that an undertaking concluding subcontracts with another undertaking as referred to in Article 1(1) of this Directive informs that

undertaking in writing about the terms and conditions of employment covering remuneration which have to be guaranteed before the parties enters into relevant contractual relationship.

Or. en

Amendment 20

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point c a (new)

Directive 96/71/EC

Article 3 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

(c a) The following paragraph is inserted:

7a. This Directive shall not affect the exercise of fundamental rights as recognised at national and Union level.

Or. en

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point c b (new)

Directive 96/71/EC

Article 3 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

(c b) The following paragraph is inserted:

8a. Member States may also, in accordance with national law and practice and on a non-discriminatory basis, base themselves on collective agreements or arbitration awards which are, as defined by the Member State where the work is carried out, representative in the geographical area, the profession or

industry concerned and which offer the most favourable terms and conditions of employment to the worker.

Or. en

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d

Directive 96/71/EC

Article 3 – paragraph 9

Text proposed by the Commission

(d) Paragraph 9 is *deleted*.

Amendment

(d) Paragraph 9 is *amended as follows*:

9. *Without prejudice to point (b) of the second indent in Article 3(1), Member States may provide for the undertakings referred to in Article 1(1) to guarantee workers referred to in point (c) of that indent, the terms and conditions which apply to temporary workers in the Member State where the work is carried out.*

Temporary employment undertakings or placement agencies established in one Member State may hire out a worker to a user undertaking established or operating in the territory of another Member State, provided that the Member State where the user undertaking is established or operating is the same Member State as that to which the worker is posted.

Where the first or second subparagraphs do not apply, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.

Or. en

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point e

Directive 96/71/EC

Article 3 – paragraph 10

Text proposed by the Commission

(e) *The second subparagraph of paragraph 10 is deleted.*

Amendment

(e) Paragraph 10 *is replaced by the following:*

10. This Directive shall not preclude the application by Member States, in compliance with the Treaty and in line with national law and practice, of terms and conditions of employment to national undertakings and to the undertakings of other States operating on their territory on matters other than those referred to in the first subparagraph of paragraph 1, in the case of public policy provisions including non-discriminatory measures to ensure the protection of workers.

Or. en

EXPLANATORY STATEMENT

Posting is a specific form of temporary labour mobility, based on the freedom to provide services cross-border within the internal market. The 1996 Posting of Workers Directive defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. Even though posted workers are employed by a sending company and thereby subject to the law of the ‘sending’ Member State, they are entitled to a set of core rights in force in the host Member State. This is to guarantee that these rights and working conditions are protected throughout the EU.

According to the Commission, in 2014, there were over 1.9 million postings in the EU, an increase of 10.3% as compared to 2013 and of 44.4% with respect to 2010. The construction sector accounts for 43.7% of the total number of postings, while posting is also significant in manufacturing, education and health services.

Since 1996, the economic and labour market situation in the European Union has changed considerably. Over the last two decades, the Single Market has grown and wage differences have increased.

Although posting is an integral part of the internal market, it can have unintended consequences for certain sectors and regions. According to the Commission, posted workers can earn up to 50% less than local workers in some sectors or Member States, which distorts the level-playing field between companies as well as workers.

In this light, and that of the numerous rulings on the interpretation of the current provisions by the European Court of Justice, the Commission has proposed a revision of the Posting of Workers Directive, which is complementary to the Enforcement Directive adopted in 2014.

The Enforcement Directive has focused mainly on strengthening the practical application and enforcement of the provisions of the 1996 Directive by addressing issues related to fraud and circumvention and improving the exchange of information between Member States. Unfortunately, to date not all Member States have transposed the Directive.

However, the Enforcement Directive does not address the more fundamental questions related to the 1996 framework, with regard to the hard core of working and employment conditions that posted workers can avail of.

The co-rapporteurs’ draft report seeks to further build on the Commission’s proposal and deliver an effective legal instrument for ensuring a level playing field in the cross-border provision of services, coupled with the sound social protection of posted workers.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPOREUR HAS RECEIVED INPUT

The co-rapporteurs would like to make it known that they were contacted during the preparation of their report amongst others by the following stakeholder representatives and lobbyists.

Entity and/or person
Swedish ministry for Employment and Integration
French ministry of Labour, Employment
Maltese ministry for Social Dialogue, Consumer Affairs and Civil Liberties
Secrétariat Général des Affaires Européennes de la République française
Permanent Representation of Sweden to the European Union
Permanent Representation of the Netherlands to the European Union
Permanent Representation of France to the European Union
Permanent Representation of Malta to the European Union
Permanent Representation of Poland to the European Union
Committee of the Regions
European Economic and Social Committee
Comité Économique, Social et Environnemental de la République française
ETUC - European Trade Union Confederation
BusinessEurope
European Confederation of Private Employment Services Eurociett / World Employment Confederation
EFBWW - European Federation of Building and Woodworkers
FIEC - European Construction Industry Federation
Labour Mobility Initiative
Konsentio Public Affairs on behalf of the Fair Transport Europe Campaign
ETF - European Transport Workers' Federation
CEEMET - Council of European Employers of the Metal, Engineering and Technology-based Industries
EBC - European Builders Confederation
REIF - Représentation européenne des institutions de la sécurité sociale française
DGB - Confederation of German Trade Unions
Chambre des salariés du Luxembourg
OGBL - Confédération Syndicale Indépendante du Luxembourg
LCGB - Confédération Luxembourgeoise des Syndicats Chrétiens
FinUnions - Finnish Trade Union Representation to the European Union
Danish Trade Union office
Brussels office of the Swedish Trade Unions
Norway Trade Union office
FFB - Fédération Française du Batiment
VNO NCW - Verbond van Nederlandse Ondernemingen - Nederlands Christelijk Werkgeversverbond
FNV - Federatie Nederlandse Vakbeweging
Chambre de Commerce et d'Industrie d'Île de France
ÖGB - Austrian Trade Union Federation

CGPME - General Confederation of French SMEs
Koninklijke Vereniging MKB-Nederland
BDA - Confederation of German Employers' Associations
UPA - Union Professionnelle Artisanale
TBN - Transport Belangen Nederland
MEDEF - Mouvement des entreprises de France
Fédération Nationale des Transports Routiers France
Fédération Nationale des Travaux Publics France
ZDH - Zentralverband Des Deutschen Handwerks
APCMA - Assemblée Permanente des Chambres des Métiers et de l'Artisanat en France