



22.6.2017

# **OPINION**

of the Committee on Legal Affairs

for the Committee on Employment and Social Affairs

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))

Rapporteur for opinion: Jean-Marie Cavada

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## SHORT JUSTIFICATION

### Introduction

The Commission adopted on 8 March 2016<sup>1</sup> a proposal for a revision of Directive 96/71/EC on Posting of Workers.<sup>2</sup> An impact assessment accompanied the proposal.<sup>3</sup> The Commission notes that 20 years after its adoption, Directive 96/71/EC no longer ensures this under the current economic and social conditions in the Member States, wherefore it tabled the current proposal for a targeted revision of the Directive. The proposal seeks to remedy specific problems that it has identified by a limited number of amendments.

According to the Commission, the aim of the proposal is to facilitate the provision of services across borders within a climate of fair competition and respect for the rights of posted workers, who are employed in one Member State and sent to work temporarily in another by their employer. In particular, the proposal seeks to ensure fair wage conditions and a level playing field between posting and local companies in the host country.

### Reasoned opinions and a ‘yellow card’

Within the deadline laid down in Article 6 of Protocol No 2, fourteen chambers of national Parliaments sent reasoned opinions to the Commission stating that the proposal does not comply with the principle of subsidiarity, thus triggering the so called ‘yellow card’ procedure. Main arguments raised in the reasoned opinions were that the existing rules are sufficient and adequate, the Union is not the adequate level of the action, the proposal fails to recognise explicitly Member States' competences on remuneration and conditions of employment and that the justification contained in the proposal with regard to the subsidiarity principle is too succinct. However, after examining the arguments, the Commission decided to maintain the proposal, considering in its Communication to the European Parliament, the Council and National Parliaments of 20 July 2016 that the proposal complies with the principle of subsidiarity.

### Compatibility with EU law

Besides the objections raised by national Parliaments, questions have also been raised in the committee concerning the compatibility of the proposal with certain elements of EU law. These have mainly concerned the relation of the proposal with the following legal acts and norms:

- Regulation (EC) No 593/2008 (hereinafter, ‘Rome I’)<sup>4</sup>, which superseded, with regard to contracts concluded as from 17 December 2009, the Convention on the law applicable to

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<sup>1</sup> Document COM(2016) 128 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0128&qid=1459769597959&from=EN>.

<sup>2</sup> 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, OJ L 18, 21.01.97, p. 1.

<sup>3</sup> Document SWD(2016) 52 final.

<sup>4</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177 4.7.2008, p.6.

contractual obligations (the ‘Rome Convention’<sup>1</sup>),

- Regulation No 1215/2012<sup>2</sup> (hereinafter, Brussels I), which set the rules on jurisdiction over individual contracts of employment,

- Directive 2014/67/EU on the enforcement of Directive 96/71/EC (hereinafter, the ‘Enforcement Directive’)<sup>3</sup>, and

- The freedom to provide services provided for in Article 26 and Article 56 of the TFEU.

Concerning the Rome I Regulation questions have been raised, in particular, about the compatibility of Article 2a of the proposal with Article 8 of the Regulation and whether the proposal could be seen as amending the Regulation, and whether, in that case, it is appropriate to amend a regulation through a directive.

Concerning the Brussels I Regulation the main issue that has been raised is whether Article 2a of the proposal would have an impact on the application of jurisdiction rules in Articles 20 to 23 of the Regulation.

Finally, whether the introduction of a 24-month period, after which the labour law of the host country would apply to a posted worker, could be considered as a violation of the principle of freedom to provide services in the Internal Market through restricting the cross-border provision of services by means of posted workers.

JURI is the committee responsible for the respect for the principles of subsidiarity and proportionality, as well as for the interpretation of Union law and for the compliance of Union acts with primary law. In this capacity, the committee has examined the arguments raised in the reasoned opinions. On 29 November 2016, the committee heard the Legal Service of the Parliament on questions raised by Members concerning the compatibility of the proposal with the *acquis* and the Treaties.

### **Rapporteur’s position**

After having carefully examined the issues raised, your rapporteur has come to the conclusions briefly presented below, which also are reflected in the amendments proposed to the Commission’s proposal.

Concerning the relation between Article 8 of the Rome I Regulation and Article 2a of the proposal one must take Article 23 of the Regulation into consideration, which reads as follows: *With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.* Article 23 clarifies that Rome I is intended to

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<sup>1</sup> Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980, OJ L 266, 9.10.1980, p.1.

<sup>2</sup> Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) OJ L 351, 20.12.2012, p. 1.

<sup>3</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System OJ L 159, 28.5.2014, p. 11–31.

provide for the general rules of private international contract law within the EU. This is further clarified regarding the Posting of Workers Directive in Recital 34 of the Regulation. Your rapporteur's conclusion is that the proposal clearly would constitute a *lex specialis*, which takes precedence over Rome I.

As regards the Brussels I Regulation, it does not appear that the proposal would be in conflict or introduce any substantial changes to the choice of court rules in the Regulation. Article 21 of the Regulation lists the courts before which employees may bring proceedings against their employer. One of the possible choices available to the employee is "the courts for the place where or from which the employee habitually carries out his work". It follows that if the place where the employee subject to the Posting of Workers Directive changes from the home Member State to the host Member State after 24 months, the courts of the host Member State will be competent to examine the dispute, should the employee choose this forum.

Whereas the freedom to provide services is one of the fundamental principles of EU law, it is not unlimited. The Court of Justice has held that a measure with a restrictive effect on the freedom to provide services can be justified "*where it meets an overriding requirement relating to the public interest and that interest is not already safeguarded by the rules to which the service provider is subject in the Member State in which he is established, and in so far as it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it*".<sup>1</sup> Furthermore, the Court of Justice has recognised the social protection of posted workers as a requirement of public interest that is capable of justifying a restriction on the freedom to provide services.<sup>2</sup>

Your rapporteur's conclusion is, therefore, that the proposal constitutes an appropriate measure for the attainment of the objectives it pursues and that it does not go further than necessary wherefore it also complies with the principle of proportionality.

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<sup>1</sup> See judgments of 30 November 1995, Gebhard, C 55/94, EU:C:1995:411, paragraph 37; of 23 November 1999, Arblade and Others, C 369/96 and C 376/96, EU:C:1999:575, paragraphs 34 and 35; of 7 October 2010, dos Santos Palhota and Others, C-515/08, EU:C:2010:589, paragraph 45 and cited case-law; and of 3 December 2014, De Clercq and others, C 315/13, EU:C:2014:2408, paragraph 62.

<sup>2</sup> See, inter alia, judgments of 23 November 1999, Arblade and Others, C 369/96 and C 376/96, EU:C:1999:575, paragraph 36; of 15 March 2001, Mazzoleni and ISA, C 165/98, EU:C:2001:162, paragraph 27; of 25 October 2001, Finalarte and Others, C 49/98, C 50/98, C 52/98 to C 54/98 and C 68/98 to C 71/98, EU:C:2001:564, paragraph 33; of 7 October 2010, dos Santos Palhota and Others, C-515/08, EU:C:2010:589, paragraph 47 and cited case-law; and 3 December 2014, De Clercq and others, C 315/13, EU:C:2014:2408, paragraph 65.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### 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 ***and enforcement*** of those principles ***are*** further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers ***and ensuring freedom of labour mobility in the internal market.***

### Amendment 2

#### Proposal for a directive

##### Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) Under Article 153(5) TFEU, the Union does not have the power to regulate pay.***

### Amendment 3

#### Proposal for a directive

##### Recital 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) In order to ensure that this Directive is correctly applied,***

*coordination between the Member States' labour inspection services and European cooperation on combating posting fraud should be strengthened, and checks should be carried out to ensure that social contributions for posted workers are paid regularly to the managing authority of the Member State of origin.*

## Amendment 4

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

#### *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 *properly. Therefore, new and stronger instruments are needed to promote fair competition between EU companies, facilitate the cross-border provision of services and fight fraud and abuses in this area in line with the implementation of Directive 2014/67/EU. It is also necessary to create a European information portal in all languages of the Member States to explain the relevant legislation, national differences and further action to be taken by placement services, possible beneficiaries and workers.*

## Amendment 5

### Proposal for a directive Recital 5

#### *Text proposed by the Commission*

(5) The principle of equal treatment and the prohibition of any discrimination

#### *Amendment*

(5) The principle of equal treatment and the prohibition of any discrimination

based on nationality are enshrined in EU law since the founding Treaties. The principle of equal pay has been implemented through secondary law not only between women and men, but also between employees with fix term contracts and comparable permanent workers, between part-time and full-time workers or between temporary agency workers and comparable workers of the user undertaking.

based on nationality are enshrined in EU law since the founding Treaties ***and the EU encourages compliance with these principles, ensuring their implementation in all Member States.*** The principle of equal pay has been implemented through secondary law not only between women and men, but also between employees with fix term contracts and comparable permanent workers, between part-time and full-time workers or between temporary agency workers and comparable workers of the user undertaking. ***While applying these principles the related case-law of the Court of Justice of the European Union on the interpretation of the Treaties must be taken into consideration.***

## Amendment 6

### Proposal for a directive Recital 7

#### *Text proposed by the Commission*

(7) The Rome I Regulation provides that the country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.

#### *Amendment*

(7) The Rome I Regulation provides that the country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country. ***It does not specify or define the term "temporarily employed". It is therefore essential that for posted workers who are, by definition, carrying out work in another Member State for a limited period of time, a specific provision is introduced in this Directive in order to provide for a period after which the country of service provision is deemed to become the habitual place of employment. It should be specified that this specific provision is non-discriminatory, transparent, proportionate and without prejudice to any terms and conditions of employment that are more favourable to the worker.***



## Justification

*The introduction of a defined period of time after which the country of service provision is deemed to be the habitual place of employment remains without prejudice to the possible duration of a temporary provision of services.*

### Amendment 7

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

##### *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 **18** months, the host Member State is deemed to be the country in which the work is carried out, *without prejudice to any 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 **18** months and from the first day subsequent to the **18** months when it effectively exceeds this duration, *unless a derogation has been obtained by the employer from the competent authority of the host Member State in accordance with the administrative procedures and provisions laid down in Article 4, 6 and 7 of Directive 2014/67/EU of the European Parliament and of the Council<sup>1a</sup> and in line with Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>1b</sup>.* 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 18 months.

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*<sup>1a</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).*

*<sup>1b</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).*

## Amendment 8

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) It is settled case law that restrictions to the freedom to provide services are only admissible if justified by overriding reasons in the public interest and must be proportionate and necessary.

#### *Amendment*

(9) ***This proposal, given that it introduces a limitation on the posting period, could be perceived as a restriction on the freedom to provide services laid down in Article 56 TFEU. It is settled case law that restrictions to the freedom to provide services are only admissible if justified by overriding reasons in the public interest and must be proportionate and necessary. The overriding reasons relating to the public interest which have been acknowledged by the Court include the protection of workers and in particular the social protection of workers in the construction industry. In view of its aim of protecting workers' rights and its***

*temporary and rebuttable nature, the limitation complies in full with the aforementioned conditions and is not contrary to the principle of the freedom to provide services.*

## **Amendment 9**

### **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 implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). ***Therefore transport services such as transit, international transport and linked cabotage are covered by another legislative proposal within the framework of the European Mobility and Transport package.***

##### *Justification*

*Sector-specific provisions are needed in order to provide legal clarity. The European Commission has already clearly stated, that transit should not be treated as posting. According to the Report of the High Level Working Group on the Development of the EU Road haulage Market linked cabotage should be regarded as an international operation. Subsequently, international transport and linked cabotage should not be subject to pre-registration nor to Directive 96/71/EC.*

## **Amendment 10**

### **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

##### *Amendment*

(11) In a competitive internal market, service providers compete not only on the basis of labour costs but also on factors such as productivity and efficiency, ***and wages are always based on a series of***

services.

*parameters, including experience, profile, level of responsibilities, labour market conditions or on the quality and innovation of their goods and services.*

#### *Justification*

*In accordance to the answer to a written question given by Commissioner Oettinger on behalf of the Commission (E-008821/2016, 25.1.2017). "In the EU institutions as in any organisation remuneration is based on a series of parameters, including experience, profile, level of responsibilities, labour market conditions etc."*

### **Amendment 11**

#### **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 **the exclusive** competence **of Member States** to set rules on remuneration in accordance with **national** law and practice.

### **Amendment 12**

#### **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, **up to date** and transparent to all service providers. **Within the meaning of this Directive, these elements include notably and where applicable, minimum rates of pay, all the bonuses and allowances which are mandatory under the national law, regulation, administrative provision and/or universally applicable collective agreements and arbitration awards.** 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.

*Justification*

*Remuneration is a vague and uncertain legal category in this form and, therefore, it is counterproductive to introduce such a new definition. It can consist of non-comparable elements varying member state by member state and so the very purpose of the definition would cease to exist.*

**Amendment 13**

**Proposal for a directive**  
**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14a) In the interests of transparency and in accordance with Directive 2014/67/EU, the continuity of the undertaking which posts the workers must be ensured in order to combat the artificial creation of letterbox companies. In addition, every employer should be able to demonstrate that a worker has an adequate length of service with the undertaking posting him or her.***

**Amendment 14**

**Proposal for a directive**  
**Recital 14 b (new)**

*Text proposed by the Commission*

*Amendment*

***(14b) Abuse and legal uncertainty in cases of chain postings and postings involving several jurisdictions should be prevented. Therefore, in cases where a posting situation falls under more than two national jurisdictions, the applicable terms and conditions of employment should be those established by the host Member State where the service is***

*provided, without prejudice to more favourable conditions afforded to the worker under provisions from which the parties cannot derogate by agreement under the national law which would have applied otherwise.*

## **Amendment 15**

### **Proposal for a directive Recital 15**

#### *Text proposed by the Commission*

(15) Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. This principle should also apply to temporary agency workers posted to another Member State.

#### *Amendment*

(15) Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. *It should be pointed out that fraud is now being uncovered in the form of ‘double posting’ of temporary agency workers. Increasing the number of agency workers makes the controls more complicated to carry out and dilutes the responsibilities. Therefore, this principle should also apply to temporary agency workers posted to another Member State. The user/supplier company shall accordingly provide the temporary agency in writing with clear, transparent and unambiguous information regarding the rules it applies in respect of working conditions and pay.*

## **Amendment 16**

### **Proposal for a directive Article 1 – paragraph 1 – point 1 Directive 96/71/EC Article 2a – paragraph 1**

*Text proposed by the Commission*

1. When the anticipated or the effective duration of posting exceeds **twenty-four** months, 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.

*Amendment*

1. When the anticipated or the effective duration of posting exceeds **eighteen** months, 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, ***unless the parties have agreed on the application of a different law in accordance with Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council<sup>1a</sup>. This agreement shall be without prejudice to any terms and conditions of employment which are more favourable to the worker.***

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***<sup>1a</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p.6).***

**Amendment 17**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2 a – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. For the purposes of paragraph 2, the concept of ‘the same task at the same place’ shall be determined by taking into account the nature of the service to be provided, the work to be performed and, where applicable, the address or addresses of the workplaces as defined in points (a)(v) and (a)(vi) of Article 9(1) of Directive 2014/67/EU.***

## **Amendment 18**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2 a – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

**2b.** *A derogation request to the 18 - month period could exceptionally be requested by the employer on reasoned grounds and awarded by the competent authority of the host Member State. The competent authority of the host Member State shall base its decision to grant such a derogation on objective reasons, such as the time-frame of the mission for which the worker has been posted, after checking full compliance with Directive 2014/67/EU and Regulation (EC) No 883/2004. Any decision shall be justified, proportionate, non-discriminatory and circumstance-based. Prior to taking a decision on such request for derogation, the competent authority of the host Member State shall consult the competent authorities of the home Member State of the employer, in accordance with Articles 6 and 7 of Directive 2014/67/EU. Every six months from the beginning of the derogation period, the service provider shall prove to the competent authorities of the host Member State that the derogation is still justified.*

## **Amendment 19**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 – point a**

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in

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

Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment **which cover** the following matters **laid down** in the Member State where the work is carried out:

## Amendment 20

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 1 – indent 2 – point c

#### *Text proposed by the Commission*

(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

#### *Amendment*

(c) remuneration **within the meaning of this Directive**, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

## Amendment 21

### 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*

***Remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and includes*** all the elements rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable.

## Amendment 22

### 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 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). ***The provided information shall be up to date, clear and transparent.***

## Amendment 23

### 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. ***Member States shall insure that the provisions laid down in the present Directive are applicable to all undertakings when posting workers, whether they act as a main-contractor or as a sub-contractor.***

***It is important that the subcontractors make available to the main contractor the information on the genuine nature of the posting.***

## Amendment 24

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2 – point c

Directive 96/71/EC

Article 3 – paragraph 1b

#### *Text proposed by the Commission*

1b. Member States shall provide that the undertakings referred to in Article 1(3)(c) guarantee posted workers the terms and conditions which apply pursuant to Art. 5 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work to temporary workers hired-out by temporary agencies established in the Member State where the work is carried out.”

#### *Amendment*

1b. Member States shall provide that the undertakings referred to in Article 1(3)(c) guarantee posted workers the terms and conditions which apply pursuant to Art. 5 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work to temporary workers hired-out by temporary agencies established in the Member State where the work is carried out. ***In so doing, the Member States shall guarantee equality of treatment between these temporary agency workers and national temporary agency workers.***

## Amendment 25

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 c (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(ca) the following paragraph is added:***

***‘1c. The hiring out of a worker, by a temporary work agency or a placement agency, in a Member State of which the worker in question is a national should not be considered a posting within the meaning of this Directive, unless justified by objective reasons, such as the worker having a different habitual residence.’***

## **Amendment 26**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 d (new)

*Text proposed by the Commission*

*Amendment*

**(cb) the following paragraph is added:**

**‘1d. Since temporary work agencies and placement agencies are only able to hire workers under a temporary work contract, Member States shall ensure that such undertakings only post workers under a temporary work contract.’**

## **Amendment 27**

### **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*

*Amendment*

**(d) Paragraph 9 is deleted.**

**deleted**

## **Amendment 28**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 – point d a**

Directive 96/71/EC

Article 3 – paragraph 9 a (new)

*Text proposed by the Commission*

*Amendment*

**(da) The following paragraph is inserted:**

**‘9a. If a posting situation falls under more than two national jurisdictions, the terms and conditions of employment of the Member State to whose territory a worker is posted and where the service is provided, shall apply as long as they are more favourable for the worker than**

*those pursuant to the law under which the individual employment contract was agreed.'*

## **Amendment 29**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 2 a (new)**

Directive 96/71/EC

Article 5 a (new)

*Text proposed by the Commission*

*Amendment*

**(2a) The following article is inserted:**

***'Article 5a***

***Member States shall ensure that undertakings which post workers to another Member State are able to demonstrate that a sufficiently reasonable share of their turnover is generated in the Member State in which they are legally established.'***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Posting of workers in the framework of the provision of services		
References	COM(2016)0128 – C8-0114/2016 – 2016/0070(COD)		
Committee responsible Date announced in plenary	EMPL 11.4.2016		
Opinion by Date announced in plenary	JURI 11.4.2016		
Rapporteur Date appointed	Jean-Marie Cavada 23.5.2016		
Discussed in committee	12.10.2016	28.11.2016	12.4.2017
Date adopted	20.6.2017		
Result of final vote	+: 12 -: 9 0: 2		
Members present for the final vote	Max Andersson, Joëlle Bergeron, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss		
Substitutes present for the final vote	Daniel Buda, Angel Dzhambazki, Angelika Niebler, Jens Rohde, Virginie Rozière, Tiemo Wölken, Kosma Złotowski		
Substitutes under Rule 200(2) present for the final vote	Gerolf Annemans, Mylène Troszczynski		

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

12	+
ALDE	António Marinho e Pinto, Jens Rohde
EFDD	Joëlle Bergeron, Laura Ferrara
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
Verts/ALE	Max Andersson, Julia Reda

9	-
ECR	Angel Dzhambazki, Kosma Złotowski
PPE	Daniel Buda, Rosa Estaràs Ferragut, Angelika Niebler, Emil Radev, Pavel Svoboda, József Szájer, Axel Voss

2	0
ENF	Gerolf Annemans, Mylène Troszczynski

Key to symbols:

+ : in favour

- : against

0 : abstention