



2016/0070(COD)

17.3.2017

AMENDMENTS

14 - 121

Draft opinion
Jean-Marie Cavada
(PE597.398v01-00)

Posting of workers in the framework of the provision of services

Proposal for a directive
(COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))

Amendment 14

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Lidia Joanna Geringer de Oedenberg, Jytte Guteland, Enrico Gasbarra

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, Article 151 and points (a) and (b) of Article 153(1)* thereof,

Or. en

Amendment 15

Max Andersson

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 46, Article 53(1), Article 62 and points (a) and (b) of Article 153(1)* thereof,

Or. en

Amendment 16

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

Proposal for a directive

Citation 1

Text proposed by the Commission

Having regard to the Treaty on the

Amendment

Having regard to the Treaty on the

Functioning of the European Union, and in particular Articles 53(1) and 62 thereof,

Functioning of the European Union, and in particular Articles 54, 56 and 62 thereof,

Or. en

Justification

Article 53 (1) of TFEU refers to self-employment which has no legal relevance when regulating the posting of workers - who are employees of the sender company - in one member state to a host company in the host member state.

Amendment 17 **Jill Seymour**

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 respect for the rights of workers. ***However due to the uncontrolled level of immigration across the EU and the Commission not doing anything in order to look after the welfare of the citizens of Member Countries, this has led to the UK leaving the EU.***

Or. en

Amendment 18 **József Szájer, Ádám Kósa, Andor Deli, László Tőkés, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka**

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 while ensuring the*** respect for the rights of workers.
Neither the difference in wages or salaries nor the access to capital alone can be considered as unfair competition.

Or. en

Amendment 19
Daniel Buda

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 is 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.***

Or. ro

Amendment 20
Angelika Niebler

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.

Or. de

Amendment 21
József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

Proposal for a directive
Recital 2

Text proposed by the Commission

Amendment

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there.

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there.

The temporary nature of providing services is to be determined on a case by case basis by the duration, the regularity, the periodicity and the continuity of the service.

Or. en

Justification

The case law of the CJEU has established that "posted workers do not in any way gain access to the host country's labour market if they return to their country of origin after completion of their work". Moreover, "as the Court has emphasised on several occasions, a Member State may not make the provision of services in its territory subject to compliance with all the conditions required for establishment and thereby deprive of all practical effectiveness the provisions whose object is to guarantee the freedom to provide services (Case C-43/93, para 17, 21) see also the judgments in Case C-154/89 Commission v France [1991] ECR I-659,

paragraph 12, and in Case C-76/90 Saeger, cited above, paragraph 13)". Case C- 113/89, Rush Portuguesa Ld^a v Office national d'immigration, [1990] ECRI-1417, judgment, para 15; Raymond Vander Elst v Office des Migrations Internationales, [1994] ECR I-3803, para. 21) see also the Gebhard case, C-55/94 para 27)

Amendment 22
Jill Seymour

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, **to which** they may post their own workers temporarily in order to provide those services there.

Amendment

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State. ***If necessary this may require that*** they may post their own workers temporarily in order to provide those services there.

Or. en

Amendment 23
Daniel Buda, József Szájer

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) According to Article 3 TEU, the Union shall promote social justice and protection. Article 9 TFEU gives the Union the task to promote a high level of employment, to guarantee an adequate social protection and to combat social exclusion.

Amendment

(3) According to Article 3 TEU, the Union shall promote social justice and protection. Article 9 TFEU gives the Union the task to promote a high level of employment, to guarantee an adequate social protection and to combat social exclusion. ***Under Article 56 TFEU, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.***

Amendment 24
Daniel Buda

Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The European Union must ensure that any changes are in line with Article 56 TFEU, which requires the elimination of any provisions that might restrict or make less attractive the activities of service providers established in a Member State other than that in which the services are provided. The same applies if the provisions in question apply in a non-discriminatory manner to both national service providers and those from other EU Member States;

Or. ro

Amendment 25
Daniel Buda, József Szájer

Proposal for a directive
Recital 4

Text proposed by the Commission

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.

deleted

Or. ro

Amendment 26

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

Proposal for a directive

Recital 4

Text proposed by the Commission

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.*

deleted

Or. en

Justification

The revision of the Posting of Workers Directive is premature due to the lack of legal assessment of the outcome of the execution of the Implementation Directive.

Amendment 27

Constance Le Grip

Proposal for a directive

Recital 4

Text proposed by the Commission

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.

(4) Almost twenty years after its adoption, *and in the light of proven cases of fraud and social dumping, it is clear that* the Posting of Workers Directive still *does not strike exactly* the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers *properly. Against this backdrop of skewed and unfair competition for firms, there is an urgent need to clarify the rules, make sure that they are applied uniformly and bring about genuine social convergence.*

Amendment 28
Victor Negrescu

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. ***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 29
Daniel Buda

Proposal for a directive
Recital 5

Text proposed by the Commission

(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***

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 ***and the EU encourages compliance with these principles, ensuring their implementation in all Member States.***

comparable workers of the user undertaking.

Or. ro

Amendment 30

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka

Proposal for a directive

Recital 5

Text proposed by the Commission

(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.

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. ***While applying these principles the related case-law of the Court of Justice of the European Union must be respected and taken into consideration.***

Or. en

Justification

See inter alia C-341/05, Laval case para 60, Case C-490/04, para 19., Joined Cases C-49/98, C-50/98, C-52/98 to C-54/98 and C-68/98 to C-71/98

Amendment 31

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) It is also necessary to take account of the reasoned opinions issued by the national parliaments of 11 Member States objecting the Commission's proposal based on the ground of the principle of subsidiarity,

Or. en

Justification

Due to the high number of Member States expressing their concern about the main purpose and the means the Commission's proposal is willing to achieve, the arguments of these 11 Member States cannot be disregarded.

Amendment 32

Max Andersson

Proposal for a directive

Recital 7

Text proposed by the Commission

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.

(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. ***The Rome I Regulation 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.***

Or. en

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 33
Daniel Buda, József Szájer

Proposal for a directive
Recital 8

Text proposed by the Commission

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 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*

deleted

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

Or. ro

Amendment 34
Jytte Guteland

Proposal for a directive
Recital 8

Text proposed by the Commission

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 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*

deleted

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

Or. en

Amendment 35

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

Proposal for a directive

Recital 8

Text proposed by the Commission

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 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

deleted

Regulation in any way. The employee will in particular enjoy the protection and benefits pursuant to the Rome I Regulation.

Or. en

Justification

The Rome I regulation is clear about the applicable law in case of the posting of workers to another member state. The 24-month limitation and the legal consequences attached to that in the proposal, are, however, in collision with the provisions of Article 3 and 8 of Rome I since the proposal would change the applicable law, i.e. a directive would amend an existing regulation which is against the EU legal order.

Amendment 36

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Lidia Joanna Geringer de Oedenberg, Enrico Gasbarra

**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*

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 **6** months, the *applicable terms and conditions of employment should be those established by the host Member State, without prejudice to more favourable terms and conditions of employment afforded to the worker under provisions from which the parties cannot derogate* by agreement under the *national law which would have applied otherwise*. 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.

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.***

Or. en

Amendment 37
Max Andersson

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

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 **12** months, the host Member State is deemed to be the country ***of habitual employment, 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 24 months and

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.

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.

Or. en

Amendment 38
Max Andersson

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) In the event that the posting is found not to be genuine, the applicable terms and conditions of employment should, in order to protect the worker, be those established by the Member State to whose territory the worker is posted, without prejudice to any terms and conditions of employment that are more favourable to the worker.

Or. en

Justification

This recital corresponds to the Article specifying the applicable law in situations of non-genuine posting.

Amendment 39
Constance Le Grip

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) *In order to rule out any risk of the law being circumvented through the use of a series of short postings during which the same task is carried out, the aggregate duration of postings should be taken into account.*

Or. fr

Amendment 40
Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive
Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) *When calculating the duration of posting, only postings within the same contract concluded by the undertaking referred to in Article 1 (1) should be taken into account.*

Or. en

Amendment 41
Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive
Recital 8 b (new)

Text proposed by the Commission

Amendment

(8b) *When assessing working place for the purpose of calculating the duration of posting in the context of replacement, the working place should be understood as the very same working place where the worker is posted to the same working*

position to perform the same tasks.

Or. en

Amendment 42

Kosma Złotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

Recital 8 c (new)

Text proposed by the Commission

Amendment

(8c) For the calculation of the remuneration within the meaning of this Directive, minimum rates of pay and other mandatory elements, laid down by law or universally applicable collective agreements or arbitration awards, should be taken into account, provided that these elements do not alter the relationship between the service provided by a worker and the consideration which the worker receives in return. The mandatory elements are the elements which apply to all workers and that are not optional or dependent on certain events or factors. Member States should specify in a transparent way the different elements of remuneration applicable in their territory. Posted worker should be entitled to the gross amount of remuneration which does not have to comply with the all mandatory elements but to the amount required.

Or. en

Amendment 43

Tadeusz Zwiefka

Proposal for a directive

Recital 9

Text proposed by the Commission

Amendment

(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.

(9) It is settled case law that restrictions to the freedom to provide services are only admissible if justified by overriding reasons *of* 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.*

Or. en

Amendment 44

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky

Proposal for a directive

Recital 10

Text proposed by the Commission

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). 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.

deleted

Or. en

Justification

The transportation is not within the scope of the Directive, therefore this recital is redundant.

Amendment 45

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

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 it would be most suited ***to address this topic*** through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.

Or. en

Amendment 46

Tadeusz Zwiefka, Pavel Svoboda

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 excluded from the scope of this Directive and should*** be addressed through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.

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 47

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

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 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 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 48

Constance Le Grip

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 not only on the basis of labour costs, ***giving rise to social dumping which undermines the competitiveness of firms, and in particular SMEs***, but also on factors such as productivity and efficiency, or the quality and innovation of their goods and services.

Or. fr

Amendment 49

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka

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' competence to set rules on ***minimum rates of pay, bonuses and allowances*** in accordance with their ***national*** law. However, national rules applied to posted workers must be ***proportionate and*** justified by the need to protect posted workers and must not disproportionately restrict the cross-border provision of services. ***Hence the Member States should ensure that workers posted to their territory are entitled to minimum rates of pay as well as specific categories of bonuses and allowances as specified in point (c) of Article 3(1).***

Or. en

Justification

Minimum rates of pay, bonuses and allowances are, indeed, within the competence of the Member States but they will never be the single factor to consider in relation to a possible restriction on the cross-border provision of services. This provision cannot be legally explained within the EU framework and especially in relation to the rules of the internal market.

Amendment 50
Daniel Buda

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 their law and practice.

Or. ro

Amendment 51
Jytte Guteland

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 52
Max Andersson

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' competence to set rules on remuneration in accordance with ***national law and/or*** practice.

Or. en

Amendment 53

Evelyn Regner

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' competence to ***establish provisions on and to define*** remuneration in accordance with ***national law and/or*** practice.

Or. en

Amendment 54

Angelika Niebler

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.

Amendment

(12) It is within the ***exclusive*** competence ***of the Member States and social partners*** to set rules on

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.

remuneration, *in particular minimum pay*, 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.

Or. de

Amendment 55
Tadeusz Zwiefka

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 *information on minimum rates of pay and applicable bonuses and allowances* under national law or universally applicable collective agreements should be clear, *up to date* and transparent to all service providers. It is therefore justified to impose on Member States the obligation to publish *this information* on the single website provided for by Article 5 of the Enforcement Directive. *In order to provide more transparency and clarity universally applicable collective agreements should be also accompanied by clear information on applicable minimum rates of pay, bonuses and allowances and their method of calculation. Social partners are also obliged to make public all collective agreements, which are applicable according to this Directive. Similarly, foreign subcontractors should be informed in writing about terms and conditions of employment that they should apply towards posted workers.*

Or. en

Amendment 56
Daniel Buda

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 under national law or universally applicable collective agreements should be clear and transparent to all service providers. ***It is possible for Member States to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive; provision of this information must take account, in particular, of the need to respect national law and practice, as well as the autonomy of the social partners.***

Or. ro

Amendment 57

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda

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 ***minimum rate of pay, bonuses and other allowances under national law*** 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 ***minimum rates of pay, bonuses and other allowances*** on the single website provided for by Article 5 of the Enforcement Directive.

Or. en

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 58 **Jytte Guteland**

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 59 **Daniel Buda**

Proposal for a directive **Recital 14**

Text proposed by the Commission

Amendment

(14) Laws, regulations, administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules guaranteeing certain terms and conditions of employment covering remuneration. Where such rules on remuneration exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings ***deleted***

posting workers to its territory provided that they do not disproportionately restrict the cross-border provision of services.

Or. ro

Amendment 60

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

Recital 14

Text proposed by the Commission

Amendment

(14) Laws, regulations, administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules guaranteeing certain terms and conditions of employment covering remuneration. Where such rules on remuneration exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings posting workers to its territory provided that they do not disproportionately restrict the cross-border provision of services.

deleted

Or. en

Amendment 61

Aldo Patriciello

Proposal for a directive

Recital 14

Text proposed by the Commission

Amendment

(14) Laws, regulations, administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules

(14) Laws, regulations, administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules

guaranteeing certain terms and conditions of employment covering remuneration.

Where such rules on remuneration exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings posting workers to its territory provided that they do not disproportionately restrict the cross-border provision of services.

guaranteeing certain terms and conditions of employment covering remuneration.

Or. it

Amendment 62

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) *Laws, regulations, administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules guaranteeing certain terms and conditions of employment covering remuneration.* Where such rules on *remuneration* exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings posting workers to its territory provided that they do not disproportionately restrict the cross-border provision of services.

Amendment

(14) *Via their national legislation, Member States have the freedom to establish on their territory appropriate measures applicable to local and foreign service providers in order to ensure compliance with the applicable rules concerning posting in case of subcontracting chains.* Where such rules on *pays, bonuses and allowances* exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings posting workers to its territory provided that they do not disproportionately restrict the cross-border provision of services.

Or. en

Amendment 63

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Lidia Joanna Geringer de Oedenberg, Virginie Rozière, Enrico Gasbarra, Victor Negrescu

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^{1a} of the European Parliament and of the Council, the continuity of the undertaking which posts the workers should be ensured in order to fight against the 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.

^{1a} 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).

Or. en

Amendment 64

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Jytte Guteland, Enrico Gasbarra

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.

Or. en

Amendment 65
Daniel Buda

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. 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.*

Or. ro

Amendment 66
Tadeusz Zwiefka, József Szájer, Pavel Svoboda

Proposal for a directive
Article 1 – point 1
Directive 96/71/EC

Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.

(-1) In Article 1, paragraph 2 is amended as follows:

2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel ***as well as transport services such as transit, international transport and linked cabotage.***

Or. en

Amendment 67

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

Article 1 – paragraph 1 – point -1 (new)

Directive 96/71/EC

Article 1 – paragraph 2 a (new)

Present text

Amendment

(-1a) In Article 1, the following paragraph is inserted:

2a. This Directive shall not apply to transport undertakings.

Or. en

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:en:HTML>)

Amendment 68

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

Article 1 – paragraph 1 – point -1 b (new)

Directive 96/71/EC

Article 1 – paragraph 2 b (new)

Present text

Amendment

(-1b) In Article 1, the following paragraph is inserted:

2b. This Directive shall not apply to undertakings referred to in Article 1 (1) which post workers, if the period of posting does not exceed three days within one month reference period.

Or. en

(<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0071:en:HTML>)

Amendment 69

Kosma Zlotowski, Angel Dzhambazki, Boleslaw G. Piecha

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 96/71/EC

Article 2 a

Text proposed by the Commission

Amendment

(1) The following Article 2a is added: *deleted*

‘Article 2a

Posting exceeding twenty-four months

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.

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.’

Or. en

Amendment 70

József Szájer, Ádám Kósa, Andor Deli, László Tőkés, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 96/71/EC

Article 2 a

Text proposed by the Commission

Amendment

(1) The following Article 2a is added: deleted

‘Article 2a

Posting exceeding twenty-four months

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.

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.’

Or. en

Justification

It is not possible to set out a lex specialis in the area of posting as posting is an area already covered by Rome I, in its Article 8 (2). The Practice Guide of the European Judicial Network in Civil and Commercial matters on Jurisdiction and applicable law in international disputes between the employee and the employer set up by the ministries and legal practitioners of all Member States clearly discusses posting as an area covered by Rome I Regulation. If another, different legal provision is created for posting, then consequently the rule in the Rome I Regulation would be inconsistent with that new provision. The only possible way to circumvent this problem is to modify the Regulation itself. The idea of cumulative duration creates legal inequality and goes right against to the purpose of this proposal since it will result in a different treatment of the workers posted to the same post, for the same work in the same place. The rules applying to them would be based exclusively on the time their predecessor(s) had spent in the same posted position. The duration of the work, however, based on settled case law - see above - never can be the only factor to consider. Moreover, again, based on the settled case law the duration is only a factor and not a legal term when

considering posting, since there is no such thing as long or short term posting but posting only.

Amendment 71

Daniel Buda, József Szájer

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 96/71/EC

Article 2 a

Text proposed by the Commission

Amendment

(1) The following Article 2a is added: deleted

Article 2a

Posting exceeding twenty-four months

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.

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.

Or. ro

Article 2a

Justification

In order to achieve legal clarity and avoid duplication with the Rome I regulation, the reference to the anticipated period of posting should be removed.

Amendment 72

Jiří Maštálka

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

Text proposed by the Commission

Amendment

(1) The following Article 2a is added: *deleted*
‘Article 2a

Posting exceeding twenty-four months

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.

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.’

Or. en

Amendment 73Jytte Guteland

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

Text proposed by the Commission

Amendment

(1) The following Article 2a is added: *deleted*
‘Article 2a

Posting exceeding twenty-four months

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.

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.'

Or. en

Amendment 74
Jytte Guteland

Proposal for a directive

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

Directive 96/71/EC

Article 2 a

Text proposed by the Commission

Amendment

(1) The following Article is added:

'Article 2 a

1. When the anticipated or the effective duration of posting exceeds twelve months in the same Member State, the Member State to whose territory the undertaking posts workers shall be deemed to be the country where the posting undertaking is established.

2. An undertaking shall also be deemed to be established in the state of the posting if the company posts workers or anticipate posting workers on two or more assignments in the same Member State, if the cumulative duration of the posting periods of the workers exceeds or is anticipated to exceed 12 months during a period of 36 months.

3. If an undertaking that posts workers for more than 12 months to a Member State does not want to be deemed

to be established in that state, it will have to show that is not established in that Member State.'

Or. en

Amendment 75

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Enrico Gasbarra

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 96/71/EC

Article 2 a – title

Text proposed by the Commission

Amendment

Posting exceeding *twenty-four* months

Posting exceeding *six* months

Or. en

Amendment 76

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Enrico Gasbarra

Proposal for a directive

Article 1 – paragraph 1 – point 1

Directive 96/71/EC

Article 2 a – paragraph 1

Text proposed by the Commission

Amendment

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.*

1. When the effective duration of posting exceeds *six* months, *or when the posting is not considered to be genuine under Directive 2014/67/EU, 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 77
Max Andersson

Proposal for a directive
Article 1 – paragraph 1 – point 1
Directive 96/71/EC
Article 2 a - 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 **12** months, the Member State to whose territory a worker is posted **or where the service is provided** shall be deemed to be the country **where the posting undertaking is established, without prejudice to any terms and conditions of employment that are more favourable to the worker**.

Or. en

Justification

Art. 2.1 of the 1996 Directive defines a posted worker as someone carrying out his/her work for a limited period of time. If someone is posted for a very long period of time, their habitual place of work should be deemed to change. Therefore, the applicable law should change according to the place of habitual work. It is important to specify that the Rome I provisions on applicable law aim to protect workers. The purpose is to avoid forum-shopping and end abusive practices of endless/non-genuine posting.

Amendment 78
Angelika Niebler

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

Text proposed by the Commission

(1) When the anticipated or the effective duration of posting exceeds

Amendment

(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.

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, ***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 (Rome I)***^{1a}.

^{1a}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).

Or. de

Justification

Many projects last longer than 24 months.

If the need for an extension cannot be foreseen at the outset, the applicable law may change. This makes things unnecessarily complicated. Therefore, the choice of the applicable law by agreement between the parties to the employment contract must take precedence.

Amendment 79 **Angelika Niebler**

Proposal for a directive
Article 1 – paragraph 1 – point 1
Directive 96/71/EC
Article 2 a - paragraph 1 a (new)

Text proposed by the Commission

Amendment

(1a) Should the parties fail to reach agreement under Article 3(1) of the Rome I Regulation, the Member State authorities or bodies designated by them may, by mutual agreement, provide for exemptions from Article 2a(1) in the interests of certain persons or groups of persons.

Or. de

Amendment 80
Max Andersson

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

Text proposed by the Commission

Amendment

2. *For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.*

deleted

Or. en

Amendment 81
Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Enrico Gasbarra

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

Text proposed by the Commission

Amendment

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task at the same place, *the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.*

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same *or a similar* task at the same place - *be it by another posted worker or the same posted worker returning after a break - the cumulative duration of the posting periods of the workers concerned shall be taken into account.*

Or. en

Amendment 82
Max Andersson

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. *An undertaking shall also be deemed to be established in the state of the posting if the company posts workers or anticipate posting workers on two or more assignments in the same Member State, if the cumulative duration of the posting periods of the workers exceeds or is anticipated to exceed 12 months during a period of 36 months.*

Or. en

Amendment 83
Max Andersson

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. *If an undertaking that posts workers for more than 12 months to a Member State does not want to be deemed to be established in that state, it will have to show that is not established in that Member State.*

Or. en

Amendment 84

Max Andersson

Proposal for a directive

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

Directive 96/71/EC

Article 2 b (new)

Text proposed by the Commission

Amendment

(1a). The following Article is inserted:

'Article 2b

Law applicable where a posting is found not to be genuine

1. Where it is established that a posted worker is not only temporarily carrying out work in the host Member State, in accordance with Article 3(2), the law of the host Member State is presumed to apply in full.

The employer and the employee may, however, provide evidence that the law of another Member State applies to the contract by virtue of Article 8 of the Rome I Regulation. If so, the host Member State shall nevertheless ensure that the worker is guaranteed the minimum protection offered by this Directive and may, in accordance with Union law, extend that protection to other overriding mandatory provisions within the meaning of Article 9 of the Rome I Regulation.

2. Where the law of the host Member State applies pursuant to Article 8 of the Rome I Regulation, whether or not as a result of the choice of the employer and the employee, nothing in this Directive shall prevent the full application of that Member State's law.

3. Paragraphs 1 and 2 shall be without prejudice to any terms and

conditions of employment of the sending Member State that are more favourable to the worker.'

Or. en

Justification

If labour inspectors discover a violation of this Directive or Directive 2014/67/EC and conclude that this is a situation of non-genuine posting, the respective worker(s) must be protected by the law of the country where they provide their work, without prejudice to the terms and conditions of employment that are more favourable to the worker. In order to ensure the protective nature of this provision, both the company and the worker(s) may provide for evidence to prove another habitual place of employment.

Amendment 85

Max Andersson

Proposal for a directive

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

Directive 96/71/EC

Article 2 c (new)

Text proposed by the Commission

Amendment

***(1b). The following Article is inserted:
Rule against derogation***

'Article 2c

Rule against derogation

The application of this Directive shall not result in depriving workers of the terms and conditions of employment under provisions that cannot be derogated from by agreement under the law that applies in the country of service provision.'

Or. en

Justification

There are significant national variations in the application of this Directive in Member States, which result from provisions within the Directive that allow for flexibility in terms of modes of regulation, scope of sectors covered, further provisions or derogations. It needs, however, to be ensured that the workers may never be deprived of the protection afforded to them under

provisions that cannot be derogated from by agreement under the law that applies in the country of service provision.

Amendment 86

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Enrico Gasbarra

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

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

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 **at least** the 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 87

Victor Negrescu

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 1 – indent -1 (new)

Text proposed by the Commission

Amendment

– **by introducing transparent monitoring and management procedures and provisions for the posting of workers through information campaigns in the Member States**

Or. ro

Amendment 88
Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/CE

Article 3 - paragraph 1 - subparagraph 1 - indent 2

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, ***where they relate to areas of activity with significant levels of posting on a regular basis:***

Or. ro

(Article 1 - paragraph 2 - point a)

Justification

It is important to include the areas of activity with significant levels of posting on a regular basis in the case of collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8.

Amendment 89
Tadeusz Zwiefka

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 - paragraph 1 - subparagraph 1 - 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) ***the minimum rates of pay***, including overtime rates; ***allowances for work carried out on public holidays and Sundays; sector-specific allowances and bonuses with regards to specific working***

*conditions as well as health and safety; seniority allowances; end of year bonuses; daily allowances including board and lodging allowances with regard to assignment within the Member State to which a worker is posted; this point does not apply to supplementary occupational retirement pension schemes, **benefits in kind as well as bonuses and allowances which are not directly paid to posted workers;***

Or. en

Amendment 90

Kosma Złotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 1 - 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) **minimum rates of pay**, including overtime rates, **unless the Member State fails to publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of minimum rates of pay, their geographic and personal scope and the method of calculation;** this point does not apply to supplementary occupational retirement pension schemes;

Or. en

Amendment 91

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 - paragraph 1 - subparagraph 1 - 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) **minimum rates of pay, bonuses and allowances** including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

Or. en

Amendment 92

Jiří Maštálka, Kostas Chrysogonos

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 - paragraph 1 - subparagraph 1 - 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) **minimum rates of pay**, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

Or. en

Amendment 93

Angelika Niebler

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 - paragraph 1 - subparagraph 1 - 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) **minimum pay**, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

Or. de

Justification

The original aim of the Directive is to make the basic conditions of work and employment of the host country binding on foreign service providers.

This also applies to minimum pay.

Amendment 94
Victor Negrescu

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 1 – point f a (new)

Text proposed by the Commission

Amendment

(fa) no discriminatory or protectionist measures imposed by Member States on workers from other Member States

Or. ro

Amendment 95

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Lidia Joanna Geringer de Oedenberg, Virginie Rozière, Jytte Guteland, Enrico Gasbarra, Victor Negrescu

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

Article 3 – paragraph 1 - subparagraph 1 - point g a (new)

Text proposed by the Commission

Amendment

(ga) allowances associated with the posting including reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

Or. en

Amendment 96

József Szájer, Ádám Kósa, Andor Deli, László Tőkés, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka

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

Amendment

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.

deleted

Or. en

Justification

Remuneration is a vague and uncertain legal category in this form, hence 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 97

Tadeusz Zwiefka, József Szájer

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

Amendment

For the purpose of this Directive, remuneration means all the elements of

The minimum rates of pay as well as bonuses and allowances are defined by

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.

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.

For the purpose of calculating the sums due to a posted worker double payment of applicable bonuses and allowances of equal or similar nature shall be avoided. In case of a conflict a common decision shall be taken jointly by competent authorities of the host and of the home member state.

Miscalculation of sums due to a posted worker resulting from wrong or insufficient information published in the single official national website or transmitted to subcontractors in written form should not be sanctioned.

Posted workers shall be entitled to the gross amount which does not have to comply with all the mandatory elements but with the amount required

Or. en

Amendment 98

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Lidia Joanna Geringer de Oedenberg, Virginie Rozière, Jytte Guteland, Enrico Gasbarra

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

Amendment

For the purpose of this Directive,

For the purpose of this Directive, ***the***

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.

concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted.

Or. en

Amendment 99

Jiří Maštálka, Kostas Chrysogonos

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

Amendment

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.*

For the purpose of this Directive, *the concept of minimum rates of pay referred to in point (c) of the first subparagraph is defined by the national law and/or practice of the Member State to whose territory the worker is posted.*

Or. en

Amendment 100

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

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 *purposes* of this Directive, *the concept of minimum rates of pay referred to in point (c) of the first subparagraph is defined by the national law and/or practice of the Member State to whose territory the worker is posted.*

Or. en

Amendment 101

Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/CE

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*

Amendment

For the purposes of this Directive, *all payments by the service provider to posted workers, including reimbursement of expenses incurred in this connection such as travel, meals and accommodation, shall be considered by the host Member State as remuneration. For the first nine months, remuneration for posted workers shall be*

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.

the minimum wage in the host Member State.

Or. ro

Article 3 (1);

Justification

It is important for the host Member State to set up a mechanism to take account of all payments actually made by the service provider by way of remuneration in accordance with the rules of the Member State of establishment.

In the first nine months of the posting, the minimum wage rule should be applied because posting is considered to be temporary and an exception to normal activity.

Amendment 102
Jiří Maštálka

Proposal for a directive
Article 1 – paragraph 1 – point 2 – point a (new)
Directive 96/71/EC
Article 3 - paragraph 1 - subparagraph 2 a (new)

Text proposed by the Commission

Amendment

For the purpose of this Directive, remuneration means all the elements of remuneration rendered mandatory by national law or/and collective agreements in the Member State to whose territory the worker is posted.

Or. en

Amendment 103
Daniel Buda

Proposal for a directive
Article 1 – paragraph 1 – point 2 – point a

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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). ***Service providers shall be exempt from payment of a fine for remuneration below that set by the host Member State if they can prove that the host Member State failed to fulfil its obligation to publish on 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 if the information is not given in a clear, transparent and unambiguous manner.***

Or. ro

Article 3 (1);

Justification

It is important for the host Member State to set up a mechanism to take into account all the constituent elements of remuneration actually paid by the service provider in accordance with the rules of the Member State of establishment.

In the first nine months of the posting, the minimum wage rule should be applied because posting is considered to be temporary and an exception to normal activity.

Amendment 104
Tadeusz Zwiefka

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

Amendment

Member States shall ***specify in a transparent way minimum rates of pay as***

Article 5 of Directive 2014/67/EU *the constituent elements of remuneration in accordance with point (c).*

well as allowances and bonuses as listed in point (c) of the first subparagraph that are applicable in their territory. They shall publish this information in the single official national website referred to in Article 5 of Directive 2014/67/EU. In case of universally applicable collective agreements a separate clear information on the applicable minimum rates of pay as well as bonuses and allowances shall be published.

In case of subcontracting the national contractors should be obliged to inform their subcontractors in writing about applicable terms and condition of employment including minimum rates of pay, applicable bonuses and allowances.

Or. en

Amendment 105

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

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 *minimum rates of pay, their geographic and personal scope and the method of calculation* in accordance with point (c) *of the first subparagraph.*

Or. en

Amendment 106

Jiří Maštálka, Kostas Chrysogonos

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 **minimum rates of pay and the method of calculation** in accordance with point (c) **of the first subparagraph**.

Or. en

Amendment 107

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point a

Directive 96/71/EC

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

Text proposed by the Commission

Amendment

If the payment received by the posted worker is at least equal to the minimum rates of pay, it shall be deemed that this posted worker has received the minimum rates of pay provided for in this Directive.

Or. en

Amendment 108

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph -1 a (new)

Text proposed by the Commission

Amendment

aa. The following paragraph is added:

-1a. When the effective duration of posting exceeds 24 months Member States shall ensure, whatever the law applicable to the employment relationship, that the undertaking referred to in Article 1(1) guarantee workers posted to their territory, in addition to the terms and conditions of employment referred to in paragraph 1 of this Article, the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

– by law, regulation or administrative provision, and/or

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

(a) other mandatory rules relating to leave and holiday entitlements, in addition paragraph 1(b) ;

(b) parental and paternal leave;

(c) other mandatory rules relating to working hours and rest periods, in addition to paragraph 1(a)

(d) remuneration, including overtime rates, in addition to paragraph 1(c), unless the Member State fails to publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of the remuneration, their geographic and personal scope and the method of calculation; this point does not apply to supplementary occupational retirement pension schemes;

Where a posted worker is replaced by another posted worker performing the same task at the same working place [by the undertaking referred to in Article 1(1)], the duration of the posting shall for the purposes of this paragraph be the

cumulative duration of the posting periods of the individual workers concerned.

This paragraph shall not apply to workers that are posted for an effective duration of 6 months or less.

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.

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, their geographic and personal scope and the method of calculation in accordance with point (d).

If the payment received by the posted worker is at least equal to the amount of constituent elements of remuneration, it shall be deemed that this posted worker has received the remuneration provided for in this Directive.

Or. en

Amendment 109
Angelika Niebler

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

Amendment

(b) The following paragraph is added **deleted**

‘(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.

Or. de

Justification

This text should be deleted because it could impinge on negative freedom of association (Article 9(3) of the German Basic Law) and it is currently quite unclear how such a provision would be implemented in practice.

Amendment 110

Kosma Zlotowski, Angel Dzhambazki, Bolesław G. Piecha

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

Amendment

(b) The following paragraph is added: **deleted**

‘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.'

Or. en

Amendment 111
Daniel Buda, József Szájer

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

Amendment

(b) The following paragraph is added deleted

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.

Or. ro

Article 3(1)(a);

Justification

Requiring sub-contractors to comply with basic collective agreements that are not universally applicable to them raises serious doubts regarding their consistency, especially in a cross-border context, given the difficulty of imposing contractual terms applicable at company level on a third party to a contractual relationship.

Amendment 112

József Szájer, Ádám Kósa, Andor Deli, László Tóké, Tamás Deutsch, György Hölvényi, Kinga Gál, Andrea Bocskor, Pál Csáky, Pavel Svoboda, Tadeusz Zwiefka, Daniel Buda

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

Amendment

(b) The following paragraph is added: deleted

‘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.’

Or. en

Justification

This provision might impede the freedom to provide services, putting disproportionate obligation on sub-contractors which might have the most crucial effect on SME's while providing cross-border services.

Amendment 113

Daniel Buda

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point c

Directive 96/71/EC

Article 3 – paragraph 1 b

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. ***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.***

Or. ro

Article 1;

Justification

To ensure compliance with working conditions, transparency and proper functioning of the relationship between employers, workers and temporary agencies, it is necessary for the supplier / user to inform the temporary agency in writing about working conditions and pay.

Amendment 114

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Jytte Guteland, Enrico Gasbarra, Victor Negrescu

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point c

Directive 96/71/EC

Article 3 – paragraph 1 b

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

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.

temporary agencies established in the Member State where the work is carried out. *In so doing, equality of treatment shall be guaranteed between these temporary agency workers and national temporary agency workers.*

Or. en

Amendment 115

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Jytte Guteland, Enrico Gasbarra, Victor Negrescu

Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 c

Text proposed by the Commission

Amendment

(ca) The following paragraph is inserted:

"1c. 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 116

Evelyn Regner

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

Or. en

Amendment 117

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Enrico Gasbarra

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”.’

Or. en

Amendment 118

Jytte Guteland

Proposal for a directive

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

Directive 96/71/EC

Article 6 a (new)

Text proposed by the Commission

Amendment

(2a) The following Article is inserted:

'Article 6a

Fundamental rights and freedoms

This Directive shall 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 shall 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 119

Mady Delvaux, Evelyn Regner, Sylvia-Yvonne Kaufmann, Sergio Gaetano Cofferati, Virginie Rozière, Jytte Guteland, Enrico Gasbarra

Proposal for a directive Article 2 – paragraph 1 – point 2 b (new) Directive 96/71/EC Article 6 b (new)

Text proposed by the Commission

Amendment

(2b) The following Article is inserted:

"Article 6 b

This Directive shall be without prejudice to the Member States' ability to apply or introduce laws and administrative provisions which are more favourable to workers or allow to promote the use of collective agreement provisions that are more favourable to workers".'

Or. en

Amendment 120

Lidia Joanna Geringer de Oedenberg

Proposal for a directive
Article 2 – paragraph 1 – point 2 c
Directive 96/71/EC
Article 6 c (new)

Text proposed by the Commission

Amendment

(2c) *The following Article 6c is inserted:*

‘Article 6c

Habitual place of work

The Member State to which a worker is posted shall be deemed to be the country in which he or she periodically works, with social security arrangements subject to the legislation of the country of origin.’

Or. pl

Amendment 121
Jill Seymour

Proposal for a directive
Article 2 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***by [two years after adoption] at the latest.*** They shall forthwith communicate to the Commission the text of those provisions.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***as soon as is legally possible dependent upon the legislative timetable of the Member States.*** They shall forthwith communicate to the Commission the text of those provisions.

Or. en