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2009 - 2014

Committee on Legal Affairs

2012/0061(COD)

28.1.2013

AMENDMENTS

37 - 134

Draft opinion
Evelyn Regner
(PE502.130v01-00)

on the proposal for a directive of the European Parliament and of the Council
on the enforcement of Directive 96/71/EC concerning the posting of workers in
the framework of the provision of services

Proposal for a directive
(COM(2012)0131 – C7-0086/2012 – 2012/0061(COD))

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EN

United in diversity

EN

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Amendment 37
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Recital 4

Text proposed by the Commission

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved.

Amendment

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved ***and more uniform criteria, facilitating a common interpretation, should be introduced at Union level.***

Or. en

Amendment 38
Cristian Silviu Buşoi

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) All measures introduced by the Directive must be justified, proportionate and non-discriminatory so that they do not create administrative burdens and do not lock the potential that companies, in particular small and medium enterprises, have in creating new jobs, while protecting posted workers.

Or. en

Amendment 39
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Competent authorities should make an overall assessment of all factual elements in order to determine whether the worker is genuinely posted. If the proof cannot be produced, Member States involved should collaborate closely and without delay in order to choose which law is applicable to the employment contract, basing their decision on the Rome I Regulation.

Or. en

Amendment 40
Zbigniew Ziobro

Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(8) Trade unions play an important role in the context of the posting of workers for the provision of services since social partners may, in accordance with national law and/or practice, determine the different levels (alternatively or simultaneously) of the applicable minimum rates of pay.

deleted

Or. pl

Amendment 41
Evelyn Regner

Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The next revision of the IMI regulation should take into account the fact that the IMI incorporates what is currently regulated within bilateral agreements.

Or. en

Amendment 42
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Recital 16

Text proposed by the Commission

Amendment

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only certain control measures or administrative formalities to undertakings posting workers for the provision of services. ***Such*** measures and requirements may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only certain control measures or administrative formalities to undertakings posting workers for the provision of services. ***For the purpose of legal clarity, possible control*** measures and requirements ***should be uniform at the Union level and*** may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.

Amendment 43
Zbigniew Ziobro

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. **The** need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level **should equally be examined**.

Amendment

(22) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. **There is also a** need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level.

Or. pl

Amendment 44
Cecilia Wikström

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is necessary to ensure that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor

Amendment

deleted

shall not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

Or. en

Justification

In order to ensure full legal clarity to posted workers, and to protect undertakings acting in good faith, liability must always remain with the direct employer regardless of their position within the subcontracting chain.

Amendment 45
József Szájer

Proposal for a directive
Recital 24

Text proposed by the Commission

Amendment

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is necessary to ensure that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor shall not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon

deleted

information emanating from national authorities.

Or. en

Amendment 46
Cristian Silviu Buşoi, Małgorzata Handzlik

Proposal for a directive
Recital 24

Text proposed by the Commission

Amendment

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is necessary to ensure that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor shall not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

deleted

Or. en

Justification

In line with the deletion of article 12.

Amendment 47
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is **necessary to ensure** that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor **shall** not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

Amendment

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is **recommended** that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor **may** not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

Or. en

Amendment 48
Cecilia Wikström

Proposal for a directive
Recital 25

Text proposed by the Commission

(25) In specific cases, other contractors may, in accordance with national law and practice, be also held liable for failure to comply with the obligations under this Directive, or their liability may be limited, after consultation of the social partners at

Amendment

deleted

national or sectoral level.

Or. en

Justification

In order to ensure full legal clarity to posted workers and to protect undertakings acting in good faith, liability must always remain with the direct employer regardless of their position within the subcontracting chain.

Amendment 49

József Szájer

Proposal for a directive

Recital 25

Text proposed by the Commission

Amendment

(25) In specific cases, other contractors may, in accordance with national law and practice, be also held liable for failure to comply with the obligations under this Directive, or their liability may be limited, after consultation of the social partners at national or sectoral level.

deleted

Or. en

Amendment 50

Cristian Silviu Buşoi, Malgorzata Handzlik

Proposal for a directive

Recital 25

Text proposed by the Commission

Amendment

(25) In specific cases, other contractors may, in accordance with national law and practice, be also held liable for failure to comply with the obligations under this Directive, or their liability may be limited, after consultation of the social partners at national or sectoral level.

deleted

Justification

In line with the deletion of Article 12.

Amendment 51
Cecilia Wikström

Proposal for a directive
Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim outstanding pay or refunds of taxes or social security contributions unduly withheld.

deleted

Justification

In order to ensure full legal clarity to posted workers and to protect undertakings acting in good faith, liability must always remain with the direct employer regardless of their position within the subcontracting chain

Amendment 52
József Szájer

Proposal for a directive
Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim outstanding pay or refunds of taxes or social security contributions unduly withheld. *deleted*

Or. en

Amendment 53

Cristian Silviu Buşoi, Malgorzata Handzlik

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim outstanding pay or refunds of taxes or social security contributions unduly withheld. *deleted*

Or. en

Justification

In line with the deletion of Article 12.

Amendment 54

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim outstanding pay or refunds of taxes or social security contributions unduly withheld. **deleted**

Or. en

Amendment 55

Zbigniew Ziobro

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

(27) The disparities between the systems of the Member States for enforcing imposed administrative fines and/or penalties in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it **deleted**

very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.

Or. pl

Amendment 56
Eva Lichtenberger

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

Text proposed by the Commission

This Directive aims to guarantee respect for an appropriate level of minimum protection of the rights of posted workers for the cross-border provision of services, while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers.

Amendment

In accordance with Article 3 of the Directive 96/71/EC, this Directive sets out implementation instruments needed for the equal treatment of posted workers as regards the terms and conditions of employment which apply in the place where the service is to be performed, as defined by national law or practice of Member States and therefore contributes to fair competition in the Single Market.

Or. en

Justification

This amendment aims at guaranteeing a correct and comprehensive application of the implementation instruments needed for the equal treatment of posted workers.

Amendment 57
Giuseppe Gargani

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

Text proposed by the Commission

(a) ‘competent authority’ means an authority designated by a Member State *to perform functions under* this Directive;

Amendment

(a) ‘competent authority’ means an authority designated by a Member State, *in accordance with national laws and/or practices, for the purpose of implementing*

this Directive;

Or. it

Amendment 58

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) ‘competent authority’ means ***an authority*** designated by a Member State to perform functions under this Directive;

Amendment

(a) ‘competent authority’ means ***public authorities*** designated by a Member State to perform functions under this Directive;

Or. en

Amendment 59

Giuseppe Gargani

Proposal for a directive

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

Text proposed by the Commission

Amendment

(aa) The competent authorities may include the liaison offices under Article 4 of Directive 96/71/EC;

Or. it

Amendment 60

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) ‘requesting authority’ means the competent authority of a Member State

Amendment

(b) ‘requesting authority’ means the competent authority of a Member State

which makes a request for assistance, information, notification or recovery concerning a penalty or fine as referred to in Chapter *V*;

which makes a request for assistance, information, notification or recovery concerning a penalty or fine as referred to in Chapter *VI*;

Or. en

Amendment 61
Tadeusz Zwiefka, Piotr Borys

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

Text proposed by the Commission

(c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made.

Amendment

(c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made, **as referred to in Chapter VI**.

Or. en

Amendment 62
Giuseppe Gargani

Proposal for a directive
Article 2 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) Contact details of the competent authorities shall be communicated to the Commission and the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Or. it

Amendment 63
Eva Lichtenberger

Proposal for a directive
Article 2 a (new)

Text proposed by the Commission

Amendment

Article 2a

Link with other European Union acts

1. This Directive is without prejudice to the Rome I Regulation, in particular the application of the law which, under Article 8 of the Rome I Regulation, applies to individual employment contracts, and the application of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.

2. If any provision of this Directive conflicts with another EU act, the provision which ensures the highest standard of protection for workers shall apply.

Or. en

Justification

It is indispensable to clarify the link between the Directive and Rome I Regulation. Paragraph 2 aims at avoiding circumvention by companies by ensuring the application of the highest standard of protection for workers.

Amendment 64
Giuseppe Gargani

Proposal for a directive
Article 3 – title

Text proposed by the Commission

Amendment

Preventing abuse and circumvention

Elements relating to posting

Or. it

Amendment 65

Cristian Silviu Buşoi

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements **may** include:

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements include:

Or. en

Justification

In order to have a uniform approach across the EU, it is desirable to have a closed list of factual elements to be taken into consideration in order to establish whether an undertaking genuinely performs activities in the Member State in which it is established.

Amendment 66

József Szájer

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC

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the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements may include:

the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements may **only** include:

Or. en

Amendment 67
Eva Lichtenberger

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities ***shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities.*** Such elements may include:

Amendment

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC ***an undertaking posting workers shall supply to the competent authorities upon request proof that it genuinely performs substantial activities, other than purely internal management activities, in the territory of the Member State of establishment.***

The competent authorities shall take into account all factual elements characterising these activities. Such elements may include ***but are not limited to:***

Or. en

Justification

It is essential to address a broad range of factual elements to be able to assess the individual posting situation.

Amendment 68
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely *performs substantial activities, other than purely internal management and/or administrative activities*. Such elements may include:

Amendment

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely *posts workers to the territory of another Member State in the framework of transnational provision of services*. Such elements may *only* include:

Or. en

Amendment 69
Giuseppe Gargani

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements *may* include:

Amendment

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements *shall* include:

Or. en

Amendment 70
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the place where posted workers are recruited,

(b) the place where posted workers are recruited ***and from which they are posted***

Or. en

Amendment 71
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – point d

Text proposed by the Commission

Amendment

(d) the place where the undertaking performs its ***substantial*** business activity ***and where it employs administrative staff,***

(d) the place where the undertaking performs its business activity, ***which in a wider time-frame assessment is not limited to purely internal management and/or administrative activities***

Or. en

Amendment 72
Cristian Silviu Buşoi

Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the abnormally limited number of contracts performed and/or size of turnover realised in the Member State of establishment.

deleted

Or. en

Justification

Deletion aiming at taking into account the situation of newly established SMEs which may from the beginning get a contract and use posted workers. In such a situation, they would automatically have a lower turnover in the Member State of establishment but this would not affect the genuine nature of the company of the establishment situation.

Amendment 73

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the abnormally limited number of contracts performed and/or size of turnover realised in the Member State of establishment.

deleted

Or. en

Amendment 74

Cristian Silviu Buşoi

Proposal for a directive

Article 3 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Such elements *may* include:

Such elements include:

Or. en

Justification

Member States should assess the same elements in order to establish whether a posted worker temporarily carries out activities in another Member State than the one in which he/she is established.

Amendment 75

József Szájer

Proposal for a directive
Article 3 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Such elements may include:

Such elements may **only** include:

Or. en

Amendment 76
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 3 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Such elements may include:

Such elements may **only** include :

Or. en

Amendment 77
Cristian Silviu Buşoi

Proposal for a directive
Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Within three years after the date referred to in Article 20, the necessity and appropriateness of the elements enumerated in paragraphs 1 and 2 of this article shall be reviewed in the light of defining possible new elements which shall be taken into account in order to determine whether the undertaking is genuine and posted worker temporarily carries out his or her work, with a view to proposing, where appropriate, any necessary amendments or modifications.

Or. en

Amendment 78
Giuseppe Gargani

Proposal for a directive
Article 4

Text proposed by the Commission

Amendment

Article 4

deleted

Role of liaison offices

For the purposes of this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more competent authorities, which may include the liaison office(s) referred to in Article 4 of Directive 96/71/EC.

Contact details of the competent authorities shall be communicated to the Commission and the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Or. it

Amendment 79
Giuseppe Gargani

Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available in a clear, comprehensive and easily accessible way at a distance and by electronic means, in

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers, ***including those laid down in collective agreements***, are made generally available in a clear, comprehensive and easily

formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

accessible way at a distance and by electronic means, in formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

Or. it

Amendment 80

József Szájer

Proposal for a directive

Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) make the information available to workers and service providers in languages other than the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities;

Amendment

(c) make the information available to workers and service providers in ***the most relevant*** languages other than the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities;

Or. en

Amendment 81

Giuseppe Gargani

Proposal for a directive

Article 5 – paragraph 4

Text proposed by the Commission

4. Where, in accordance with national law, traditions and practices, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in

Amendment

deleted

accordance with article 3 paragraph 1 and 8 of that Directive, Member States should ensure that the social partners shall identify these and make the relevant information, in particular concerning the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration due and the qualifying criteria for classification in the different wage categories, , available in an accessible and transparent way for service providers from other Member States and posted workers.

Or. it

Amendment 82
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

2. The cooperation of the Member States shall in particular consist in replying to reasoned requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC, including investigation of any abuses of applicable rules on the posting of workers *or possible cases of unlawful transnational activities.*

Amendment

2. The cooperation of the Member States shall in particular consist in replying *without delay* to reasoned requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC, including investigation of any abuses of applicable rules on the posting of workers.

Or. en

Amendment 83
Cecilia Wikström

Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.

Amendment

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws. ***Where service providers fail to provide such information, appropriate action must be initiated by the competent authorities within the host state and where appropriate in cooperation with the competent authorities of the state of establishment.***

Or. en

Justification

Competent Authorities within host states must enforce EU and national employment laws effectively. Where a breach is identified, and for any reason legal action is not possible in the host state, both states must cooperate to ensure that the service provider is held accountable, provides the appropriate remuneration to posted workers, and faces the relevant criminal sanctions.

Amendment 84

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 6 – paragraph 4

Text proposed by the Commission

4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.

Amendment

4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution. ***In the event of any persisting problems in the exchange of information, the Commission should***

intervene in order to assist Member States in solving the problem.

Or. en

Amendment 85
Eva Lichtenberger

Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Any long-term refusal to supply the data requested shall entitle the requesting Member State to draw up a publicly accessible list of authorities that have refused to cooperate and to inform the Commission thereof. The Commission shall set up a publicly accessible list of those authorities reported to have not been willing to cooperate.

Or. en

Justification

The amendment aims to improve administrative cooperation which is seriously hindered in cases of non-cooperative Member States.

Amendment 86
Evelyn Regner

Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Any long-term refusal to supply the data requested shall entitle the requesting Member State to draw up a publicly accessible list of authorities that have refused to cooperate and to inform the

Commission thereof. The Commission shall keep a publicly accessible list of those authorities reported to it which have not been willing to cooperate.

Or. en

Amendment 87
József Szájer

Proposal for a directive
Article 6 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request.

Amendment

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request *or within one month if the answer requires an on-the-spot inspection.*

Or. en

Amendment 88
Giuseppe Gargani

Proposal for a directive
Article 6 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request.

Amendment

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request. *Where the request is of an urgent nature, the information must be sent within three days of the reception of the request.*

Or. it

Amendment 89
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 6 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request.

Amendment

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request *or within one month if the answer requires an on-the-spot inspection.*

Or. en

Amendment 90
Giuseppe Gargani

Proposal for a directive
Article 6 – paragraph 5 – subparagraph 2

Text proposed by the Commission

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within 24 hours.

Amendment

deleted

Or. it

Amendment 91
József Szájer

Proposal for a directive
Article 6 – paragraph 5 – subparagraph 2

Text proposed by the Commission

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within **24 hours**.

Amendment

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within **five working days**.

Or. en

Amendment 92

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 6 – paragraph 5 – subparagraph 2

Text proposed by the Commission

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within **24 hours**.

Amendment

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within **two working days**.

Or. en

Amendment 93

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 6 – paragraph 7

Text proposed by the Commission

7. Member States shall ensure the confidentiality of the information which they exchange. Information exchanged shall be used only in respect of the matter(s) for which it was requested.

Amendment

7. Member States shall ensure the confidentiality of the information which they exchange. Information exchanged shall be used only in respect of the matter(s) for which it was requested **and in accordance with data protection rules**.

Amendment 94
Giuseppe Gargani

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. In the circumstances referred to in Article 3 (1) and (2) and Article 9(1), the Member State of establishment of the service provider shall assist the Member State to which the posting takes place to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. ***The Member State of establishment of the service provider shall, on its own initiative, communicate to the Member State to which the posting takes place any relevant information as specified in Articles 3 (1) and (2) and 9(1), where the Member State of establishment of the service provider is aware of specific facts which indicate possible irregularities.***

Amendment

2. In the circumstances referred to in Article 3 (1) and (2) and Article 9(1), the Member State of establishment of the service provider shall assist the Member State to which the posting takes place to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive.

Or. it

Amendment 95
Giuseppe Gargani

Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the

Amendment

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the

legality of the service provider's establishment, *the service provider's good conduct, and the absence of any infringement of the applicable rules*. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

legality of the service provider's establishment. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

Or. it

Amendment 96
Eva Lichtenberger

Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States *may only impose the following administrative requirements and control measures:*

Amendment

1. *In order to improve the enforcement of Directive 96/71/EC, Member States, fully respecting the principle of non-discrimination, may control all elements necessary to verify compliance with Articles 3 and 5 of Directive 96/71/EC and Article 3 of this directive*

Or. en

Justification

The amendment aims at ensuring that Member States maintain their right and responsibility to control labour conditions while ensuring that these controls remain non-discriminatory and proportionate. A closed list of administrative requirements as given by COM will not make it possible to update control practice to either new technologies or new requirements.

Amendment 97
Giuseppe Gargani

Proposal for a directive
Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States **may only** impose the following administrative requirements and control measures:

Amendment

1. Member States **shall** impose the following administrative requirements and control measures:

Or. it

Amendment 98
József Szájer

Proposal for a directive
Article 9 – paragraph 1 – point a

Text proposed by the Commission

(a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;

Amendment

deleted

Or. en

Amendment 99
Giuseppe Gargani

Proposal for a directive
Article 9 – paragraph 1 – point q

Text proposed by the Commission

(a) an obligation for a service provider established in another Member State to make a **simple** declaration to the

Amendment

(a) an obligation for a service provider established in another Member State to make a declaration to the responsible

responsible national competent authorities **at the latest at** the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;

national competent authorities **by** the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;

Or. it

Amendment 100

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) **a** translation of the documents referred to under (b), **may be justified** provided these documents are not excessively long and standardised forms are **generally** used for **such** documents;

Amendment

(c) **the possibility to request the** translation of the documents referred to under (b), provided these documents are not excessively long and/or standardised forms are used for **these** documents

Or. en

Amendment 101

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 9 – paragraph 1 – point d

Text proposed by the Commission

(d) **an obligation to designate** a contact person to negotiate, if necessary, on behalf of the employer with the relevant social partners in the Member State **to which the posting takes place**, in accordance with national legislation and practice, **during** the period in which the services are provided.

Amendment

(d) **the possibility to request the designation of** a contact person to negotiate, if necessary, on behalf of the employer with the relevant social partners in the **host** Member State, in accordance with national legislation and practice, **within** the period in which the services are provided.

Amendment 102
Giuseppe Gargani

Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that inspections and controls of compliance with Directive 96/71/EC are not discriminatory and/or disproportionate.

(Does not affect English version)

Or. it

Amendment 103
Giuseppe Gargani

Proposal for a directive
Article 10 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States where labour inspectorates have no competence with respect to the control and monitoring of the working conditions and/or terms and conditions of employment of posted workers may, by way of exception, after consulting the social partners at national level, establish or maintain arrangements guaranteeing the respect of these terms and conditions of employment, provided that the arrangements offer the persons concerned an adequate degree of protection equivalent to that resulting from Directive 96/71/EC and this Directive.

deleted

Or. it

Amendment 104
Giuseppe Gargani

Proposal for a directive
Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, on behalf or in support of the posted workers or their employer, with their approval in any judicial or administrative proceedings provided for with the objective of implementing this Directive and/or enforcing the obligations under this Directive.

deleted

Or. it

Amendment 105
Eva Lichtenberger

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. Paragraphs 1 and 3 shall apply without prejudice to national rules on prescription deadlines or time limits for bringing similar actions and to national rules of procedure concerning representation and defence before the courts.

4. Paragraphs 1 and 3 shall apply without prejudice to national rules on prescription deadlines or time limits for bringing similar actions and to national rules of procedure concerning representation and defence before the courts, ***if they are more favourable than the stipulation in paragraph a) and to national provisions according to which the parties to the collective agreements enforce these agreements.***

Amendment 106
József Szájer

Proposal for a directive
Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Subcontracting — Joint and several liability

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

(a) any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 (1) of Directive 96/71/EC;

(b) any back-payments or refund of taxes or social security contributions unduly withheld from his/her salary.

The liability referred to in the present paragraph shall be limited to workers' rights acquired under the contractual relationship between the contractor and

his subcontractor.

2. Member States shall provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems shall be applied in a transparent, non discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.

3. Member States may, in conformity with Union law, provide for more stringent liability rules under national law on a non-discriminatory and proportionate basis in regard to the scope and range of subcontractor liability. Member States may also, in conformity with Union law, provide for such liability in sectors other than those contained in the Annex to Directive 96/71/EC. Member States may in these cases provide that a contractor that has undertaken due diligence as defined by national law shall not be liable.

4. Within three years after the date referred to in Article 20, the Commission shall, in consultation with the Member States and social partners at EU level, review the application of this Article with a view to proposing, where appropriate, any necessary amendments or modifications.

Or. en

Amendment 107
Cristian Silviu Buşoi, Małgorzata Handzlik

**Proposal for a directive
Article 12**

Text proposed by the Commission

Amendment

Article 12

deleted

Subcontracting — Joint and several liability

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

(a) any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 (1) of Directive 96/71/EC;

(b) any back-payments or refund of taxes or social security contributions unduly withheld from his/her salary.

The liability referred to in the present paragraph shall be limited to workers' rights acquired under the contractual relationship between the contractor and his subcontractor.

2. Member States shall provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems shall be

applied in a transparent, non discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.

3. Member States may, in conformity with Union law, provide for more stringent liability rules under national law on a non-discriminatory and proportionate basis in regard to the scope and range of subcontractor liability. Member States may also, in conformity with Union law, provide for such liability in sectors other than those contained in the Annex to Directive 96/71/EC. Member States may in these cases provide that a contractor that has undertaken due diligence as defined by national law shall not be liable.

4. Within three years after the date referred to in Article 20, the Commission shall, in consultation with the Member States and social partners at EU level, review the application of this Article with a view to proposing, where appropriate, any necessary amendments or modifications.

Or. en

Justification

Joint and several liability is not the rule in the EU as it only exists in some Member States. This unnecessarily interferes with the liability rules of the Member States which depend on their legal culture. Such a system would create burdens for SMEs and could discourage subcontracting to companies using posted workers. This provision should therefore be deleted, which would also allow Member States who have such a system to maintain it.

Amendment 108
Cecilia Wikström

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

(a) any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 (1) of Directive 96/71/EC;

(b) any back-payments or refund of taxes or social security contributions unduly withheld from his/her salary.

Amendment

1. Member States shall ensure that the direct employer shall be liable to pay any outstanding remuneration as covered by Article 11 paragraph 5 a, the refund of excessive costs according to Article 11 paragraph 5 b, any back-payments or refund of taxes or social security contributions. This shall also be ensured after the employee has returned to his/her home country or another Member State. Member States may apply more stringent rules at national level or introduce such rules.

Or. en

Amendment 109
Eva Lichtenberger

Proposal for a directive
Article 12 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

1. ***With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:***

1. Member ***State*** shall on a non-discriminatory basis ***take the necessary measures to ensure that an*** undertaking ***can be held liable***, in addition to ***and/or*** in place of the employer, ***for the obligations of their subcontractors regarding*** the following:

Or. en

Justification

This amendment provide for a comprehensive joint and several liabilities clause.

Amendment 110

Tadeusz Zwiefka, Piotr Borys

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States ***shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory,***

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States ***are encouraged to introduce a system in which*** the contractor of which the employer (service provider or temporary employment undertaking or placement

that the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

Or. en

Amendment 111
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

2. Member States **shall** provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems shall be applied in a transparent, non discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.

Amendment

2. Member States **may** provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems, **if introduced**, shall be applied in a transparent, non discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.

Or. en

Amendment 112
Giuseppe Gargani

Proposal for a directive
Chapter 6 – title

Text proposed by the Commission

Amendment

CROSS-BORDER ENFORCEMENT OF
ADMINISTRATIVE FINES AND
PENALTIES

(Does not affect English version)

Or. it

Amendment 113
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this *Article* shall apply to the cross-border enforcement of administrative *fin****es and penalties*** imposed for failure to comply with the applicable rules *in a Member State on a service provider established* in another Member State.

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this *Chapter* shall apply to the cross-border enforcement of *financial* administrative ***penalties and/or fines*** imposed *on a service provider established in a Member State*, for failure to comply with the applicable rules *on posting of workers* in another Member State.

Or. en

Amendment 114
Giuseppe Gargani

Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the

(Does not affect English version.)

measures and procedures provided for in this Article shall apply to the cross-border enforcement of administrative fines and penalties imposed for failure to comply with the applicable rules in a Member State on a service provider established in another Member State.

Or. it

Amendment 115
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine, ***in so far as the relevant laws, regulations and administrative practices in force in the requested authority's Member State allow such action for similar claims or decisions.***

Amendment

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine.

Or. en

Amendment 116
Giuseppe Gargani

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own

Amendment

(Does not affect English version)

Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine, in so far as the relevant laws, regulations and administrative practices in force in the requested authority's Member State allow such action for similar claims or decisions.

Or. it

Amendment 117
Giuseppe Gargani

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 2

Text proposed by the Commission

The competent authority in the requesting Member State shall ensure that the request for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine is made in accordance with the rules in force in that Member State, whereas the competent requested authority shall ensure that such recovery or notification in the requested Member State is effected in accordance with the national laws, regulations and administrative practices in force in the latter.

Amendment

(Does not affect English version)

Or. it

Amendment 118
Giuseppe Gargani

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The requesting authority may not make a request for recovery of a penalty or a fine

Amendment

(Does not affect English version)

or notification of a decision imposing a penalty or fine if and as long as the fine or penalty, as well the underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested in that Member State.

Or. it

Amendment 119
Evelyn Regner

Proposal for a directive
Article 13 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The requesting authority may ***not make a request for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine if and as long as the fine or penalty, as well the*** underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested in that Member State.

Amendment

The requesting authority may ***request the precautionary freezing and confiscation of assets to limit the risk of non-recovery*** as long as the underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested in that ***Member State, except if execution is possible in the requested Member State before the decision is final in accordance with Directive (...) on the freezing and confiscation of proceeds of crime in the European Union"***. ***The host Member States may additionally allow for an automatic affiliation of concerned workers into the social security system of the host*** Member State.

Or. en

Amendment 120
Giuseppe Gargani

Proposal for a directive
Article 14 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Further to the request by the requesting authority for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine, the requested authority shall provide any information and mutual assistance which would be useful to the requesting authority in the recovery of a fine and/or penalty, as well as, to the extent possible, for the underlying claim.

(Does not affect English version)

Or. it

Amendment 121
Giuseppe Gargani

Proposal for a directive
Article 14 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

The request for information concerning the recovery of penalty or fine as well as the notification of a decision concerning such matters shall at least indicate:

(Does not affect English version)

Or. it

Amendment 122
Giuseppe Gargani

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

Amendment

2. For the purpose of recovery of a penalty or fine or notification of a decision imposing a penalty or fine in the requested Member State, any fine or penalty in respect of which a request for recovery or notification has been made shall be treated

(Does not affect English version)

as if it were a fine or penalty of the requested Member State.

Or. it

Amendment 123
Eva Lichtenberger

Proposal for a directive
Article 14 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The provisions on recovery of fines or penalties shall also apply to fines imposed as part of enforceable statutory decisions by labour courts.

Or. en

Justification

The amendment aims at covering the cases of those countries where, for example, labour authorities are not proper public bodies.

Amendment 124
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Grounds for refusal

The competent authorities in the requested Member State may refuse a request for recovery or notification of a decision if the request is incomplete or manifestly does not correspond to the underlying decision or the costs required to recover the penalty/fine are disproportionate in relation to the amount

to be recovered.

Or. en

Amendment 125
Giuseppe Gargani

Proposal for a directive
Article 15 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. If, in the course of the recovery or notification procedure, the fine, penalty and/or underlying claim is contested by the service provider concerned or an interested party, the cross-border enforcement procedure of the fine or penalty imposed shall be suspended pending the decision of the appropriate national authority in the matter.

Amendment

(Does not affect English version)

Or. it

Amendment 126
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 16 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. ***The requested authority shall remit to the requesting authority*** the amounts recovered with respect to the ***fin***es or ***penalties*** referred to in this Chapter.

Amendment

1. The amounts recovered with respect to the ***penalties and/or fines*** referred to in this Chapter ***shall remain at the requested authority***.

Or. en

Amendment 127
Giuseppe Gargani

Proposal for a directive
Article 16 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The requested authority shall remit to the requesting authority the amounts recovered with respect to the fines or penalties referred to in this Chapter.

Amendment

(Does not affect English version)

Or. it

Amendment 128
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 16 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and administrative procedures or practices of the requested Member State which apply to similar claims.

Amendment

deleted

Or. en

Amendment 129
Cristian Silviu Buşoi

Proposal for a directive
Article 16 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and

Amendment

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and

administrative procedures or practices of the requested Member State which apply to similar claims.

administrative procedures or practices of the requested Member State which apply to similar claims. ***If the requested authority retains any costs incurred in connection with recovery, it shall inform the requesting authority and provide a justification of those costs.***

Or. en

Amendment 130
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 16 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where recovery creates a specific problem or concerns a very large amount, the requesting and requested authorities may agree reimbursement arrangements specific to the case(s) in question.

deleted

Or. en

Amendment 131
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. Notwithstanding the paragraph 2, the competent authority in the requesting Member State shall remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded, in terms of the substance of the fine or penalty, the validity of the instrument issued by the requesting authority for the purpose of enforcement and/or any precautionary

deleted

measures taken by the requesting authority.

Or. en

Amendment 132
Giuseppe Gargani

Proposal for a directive
Article 16 – paragraph 3

Text proposed by the Commission

3. Notwithstanding the paragraph 2, the competent authority in the requesting Member State shall remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded, in terms of the substance of the fine or penalty, the validity of the instrument issued by the requesting authority for the purpose of enforcement and/or any precautionary measures taken by the requesting authority.

Amendment

(Does not affect English version)

Or. it

Amendment 133
Tadeusz Zwiefka, Piotr Borys

Proposal for a directive
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Review clause

Within three years after the date referred to in Article 20, the Commission shall, in consultation with the Member States, review the application of this Chapter in particular in light of the experiences with and effectiveness of the system of cross-border enforcement of administrative

penalties and/or fines with a view to proposing, where appropriate, any necessary amendments or modifications.

Or. en

Amendment 134
Evelyn Regner

Proposal for a directive
Article 18 – paragraph 1

Text proposed by the Commission

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13, 14 and 15 shall be implemented through the Internal Market Information System (IMI), established by [reference to IMI Regulation].

Amendment

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13, 14 and 15 shall be implemented through the Internal Market Information System (IMI), established by [reference to IMI Regulation] ***or by other established methods of cooperation on which the Member States agree on a case-by-case basis or by means of bilateral agreements.***

Or. en