



**2016/0070(COD)**

27.3.2017

# **AMENDMENTS**

## **9 - 241**

**Draft opinion**  
**Christel Schaldemose**  
(PE597.610v01-00)

Posting of workers in the framework of the provision of services

Proposal for a directive  
(COM(2016)128 – C8-0114/2016 – 2016/0070(COD))



**Amendment 9**

**Evelyne Gebhardt, Arndt Kohn**

**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 Articles 53(1), 62, **151**, **153(1)(a) and 153(1)(b)** thereof,

Or. de

**Amendment 10**

**Igor Šoltes**

**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 Articles **46, 53(1), 62 and 153(1)(a) and (b)** thereof,

Or. en

*Justification*

*The Directive aims at balancing free movement of services and the rights of the workers who move for the provision of these services. To balance these two objectives, it is important to broaden the legal basis by adding both free movement of workers and the social policy articles.*

**Amendment 11**

**Eduard Kukan, Ivan Štefanec**

**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 Articles 53(1), **56** and 62 thereof,

Or. en

**Amendment 12**  
**Vicky Ford, Daniel Dalton**

**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 Articles 53(1), **56** and 62 thereof,

Or. en

**Amendment 13**  
**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**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 Articles 53(1), **56** and 62 thereof,

Or. en

**Amendment 14**  
**Ildikó Gáll-Pelcz**

**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 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 15  
Ildikó Gáll-Pelcz**

**Proposal for a directive  
Citation 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Having regard to 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 16  
Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**Proposal for a directive  
Citation 3**

*Text proposed by the Commission*

After transmission of the draft legislative act to the national parliaments,

*Amendment*

After transmission of the draft legislative act to the national parliaments ***and the following 11 reasoned opinions by national parliaments objecting the Commission proposal on grounds of subsidiarity,***

Or. en

**Amendment 17**  
**Vicky Ford, Daniel Dalton**

**Proposal for a directive**  
**Citation 3**

*Text proposed by the Commission*

After transmission of the draft legislative act to the national parliaments,

*Amendment*

After transmission of the draft legislative act to the national parliaments, ***and the subsequent 11 reasoned opinions by the national parliaments,***

Or. en

**Amendment 18**  
**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive**  
**Citation 3**

*Text proposed by the Commission*

After transmission of the draft legislative act to the national parliaments,

*Amendment*

After transmission of the draft legislative act to the national parliaments ***and following the 11 reasoned opinions by national parliaments objecting the Commission proposal,***

Or. en

## Amendment 19

Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein, Ivan Štefanec, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt, Antanas Guoga, Roberta Metsola, Eva Maydell, Antonio López-Istúriz White

### Proposal for a directive

#### Citation 3 a (new)

*Text proposed by the Commission*

*Amendment*

*Having regard to the reasoned opinions issued by national parliaments from 11 Member States objecting the Commission proposal on the grounds of subsidiarity,*

Or. en

## Amendment 20

Dita Charanzová, Jasenko Selimovic, Martina Dlabajová

### Proposal for a directive

#### Citation 4

*Text proposed by the Commission*

*Amendment*

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>5</sup>, *and its counter-opinion*,

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<sup>5</sup> OJ C., p..

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<sup>5</sup> OJ C., p..

Or. en

## Amendment 21

Mylène Troszczynski

### Proposal for a directive

#### Recital 1

*Text proposed by the Commission*

*Amendment*

(1) The free movement of workers, freedom of establishment and freedom to provide services *are fundamental*

(1) The free movement of workers, freedom of establishment and freedom to provide services *form part of the rules* of

*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.

the *single* internal market in the Union *laid down by* the Treaty on the Functioning of the European Union (TFEU). *They have generated and continue to generate serious economic imbalances and are permanently weakening the economies in western Europe by placing entire sectors of the real economy at the mercy of unfair competition and social and wage dumping. The European Union seems to have woken up to this disaster and would like to strengthen* the implementation of *these rules in an attempt to guarantee* a level playing field for businesses and respect for the rights of workers, *which will probably be of no effect.*

Or. fr

## **Amendment 22** **Igor Šoltes**

### **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) *and should therefore provide the combined legal basis for this Directive.* The implementation of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses and *fighting unfair competition as well as ensuring* respect for the rights of workers *and the improvement of the working environment and working conditions.*

Or. en



## *Justification*

*A dual legal basis confirms that this Directive is to be interpreted not only as internal market tool but also as an instrument for the protection of workers.*

### **Amendment 23** **Ildikó Gáll-Pelcz**

#### **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 24** **Igor Šoltes**

#### **Proposal for a directive** **Recital 1 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(1 a) The free movement of workers is to be secured within the Union and is to entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.***

*Justification*

*The directive aims at balancing free movement of services and workers moving for the provision of that service. It seems therefore of importance to quote Article 45 TFEU on free movement for workers.*

**Amendment 25**

**Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein, Ivan Štefanec, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt, Antanas Guoga, Roberta Metsola, Eva Maydell, Antonio López-Istúriz White**

**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, to which they may post their own workers temporarily in order to provide those services there. ***The Treaty on the Functioning of the European Union in Article 56 provides that restrictions on the freedom to provide services are prohibited.***

Or. en

**Amendment 26**

**Vicky Ford, Daniel Dalton**

**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

*Amendment*

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State ***and the right to*** post their own workers temporarily in order to provide those services there. ***The Treaty also provides***

services there.

*that restrictions on the freedom to provide services are prohibited.*

Or. en

#### **Amendment 27**

**Eduard Kukan, Ivan Štefanec**

#### **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, to which they may post their own workers temporarily in order to provide those services there. *The Treaty provides that restrictions on the freedom to provide services are prohibited.*

Or. en

#### **Amendment 28**

**Ildikó Gáll-Pelcz**

#### **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, 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 emphasized 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.*

### Amendment 29

**Mylène Troszczynski**

#### 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 ***purports to include a so-called*** 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; ***this ought to be considered not as a right or a rule, but as a privilege granted by the Member States.***

Or. fr

### Amendment 30

**Mylène Troszczynski**

#### 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; ***it has totally failed in this task, as the European economy has never***

*before experienced such a high level of unemployment, nor European societies such a high level of poverty.*

Or. fr

**Amendment 31**  
**Jiří Pospíšil**

**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 ***through high levels of education, training and protection of human health.***

Or. cs

**Amendment 32**  
**Philippe Juvin**

**Proposal for a directive**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Combating fraud, social dumping, abuse and circumvention of the rules in relation to the posting of workers is a priority. Strengthening European rules on the posting of workers is therefore an absolute imperative.***

Or. fr

**Amendment 33**  
**Ildikó Gáll-Pelcz**

**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 34**  
**Eduard Kukan, Ivan Štefanec**

**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, it is necessary to *enforce the rules and confirm that* 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.

Or. en

**Amendment 35**  
**Philippe Juvin**

**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 ***and in view of the numerous instances of fraud***, the Posting of Workers Directive ***does not yet strike*** the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers.

Or. fr

**Amendment 36**  
**Mylène Troszczynski**

**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 ***consider in a pragmatic and realistic way whether the Posting of Workers Directive has achieved the desired results.***

Or. fr

**Amendment 37**  
**Igor Šoltes**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Recital 4**

*Text proposed by the Commission*

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

*Amendment*

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

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

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

Or. en

**Amendment 38**  
**Dennis de Jong**

**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 *ensure a level playing field for undertakings operating in the internal market* and the need to protect the rights of posted workers.

Or. en

**Amendment 39**  
**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Antanas Guoga, Roberta Metsola, Eva Maydell, Antonio López-Istúriz White**

**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

*Amendment*

(4) Almost twenty years after its adoption, it is necessary to *ensure that* 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.

and the need to protect the rights of posted workers.

Or. en

**Amendment 40**  
**Philippe Juvin**

**Proposal for a directive**  
**Recital 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) The abuse observed in the implementation of the current Directive also derives from the application of Regulation (EC) No 883/2004 on the coordination of social security systems, which must also be amended as quickly as possible.***

Or. fr

**Amendment 41**  
**Philippe Juvin**

**Proposal for a directive**  
**Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4b) To combat wage and tax dumping, the amendment of Regulation (EC) No 883/2004 on the coordination of social security systems must lead to the strict harmonisation of social security contributions systems between Member States.***

Or. fr

**Amendment 42**  
**Mylène Troszczynski**

**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, **although** enshrined in EU law since the founding Treaties, **has become totally inappropriate in the current economic context. European citizens, and French citizens in particular, today wish to be treated preferentially when it comes to hiring and social security benefits in their own countries, as compared with foreign residents, and that in no way constitutes discrimination.** 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.

Or. fr

**Amendment 43**  
**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**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,**

*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, **including for companies providing cross-border services.**

*between part-time and full-time workers  
or between temporary agency workers and  
comparable workers of the user  
undertaking.*

Or. en

*(See ECJ cases Case C-76/90, Manfred Säger v Dennemeyer & Co. Ltd, [1991] ECR I-4221;  
Case C-55/94, Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di  
Milano, [1995] ECR I-04165 and E.g. Joined cases 62 and 63/81, See also Seco SA v.  
Etablissement d'Assurance contre la Vieillesse et l'Invalidité, [1982] ECR 223, para 8,  
including direct and indirect discrimination)*

**Amendment 44**  
**Ildikó Gáll-Pelcz**

**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 jurisprudence 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 45**  
**Jiří Pospíšil**

**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 *indefinite-contract* workers, between part-time and full-time workers or between temporary agency workers and comparable workers of the user undertaking.

Or. cs

**Amendment 46**  
**Vicky Ford, Daniel Dalton**

**Proposal for a directive**  
**Recital 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***(5a) Article 3 and 8 of Rome I Regulation specifies that an individual employment contract shall be governed by the law chosen by that of the parties concerned. Such a choice may not deprive the employee of the protection of the mandatory rules of the law of the country but for the choice of the parties, would have applied.***

Or. en

**Amendment 47**  
**Jiří Pospíšil**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(6) The Rome I Regulation generally permits employers and employees to choose the law applicable to the employment contract. **However, the employee must not be deprived of the protection** of the mandatory rules of the law of the country in which or, failing that, from which the employee habitually carries out his work. In the absence of choice, the contract is governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract.

*Amendment*

(6) The Rome I Regulation generally permits employers and employees to choose the law applicable to the employment contract. **The level of protection for a posted employee must not fall below the level** of the mandatory rules of the law of the country in which or, failing that, from which the employee habitually carries out his work. In the absence of choice, the contract is governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract.

Or. cs

**Amendment 48**  
**Vicky Ford, Daniel Dalton**

**Proposal for a directive**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

**(6 a) The freedom of employers and workers to choose the applicable law should be one of the cornerstones of both the free movement of workers and the freedom to provide services.**

Or. en

**Amendment 49**  
**Igor Šoltes**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

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

*Amendment*

(7) The Rome I Regulation provides that the country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country. ***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 50**  
**Dennis de Jong**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

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

*Amendment*

(7) The Rome I Regulation provides that the country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country. ***It deems work carried out in another Member State to be temporary if the employee is expected to resume work in his or her Member State of origin after carrying out***

*tasks abroad.*

Or. en

**Amendment 51**  
**Vicky Ford, Daniel Dalton**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

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

*Amendment*

(7) The Rome I Regulation ***further*** 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.

Or. en

**Amendment 52**  
**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive**  
**Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7 a) The ECJ case-law 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.***

Or. en

**Amendment 53**  
**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**Proposal for a directive**  
**Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

**(7 a) *The ECJ case-law 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.***

Or. en

*(Case C- 113/89, Rush Portuguesa Lda v Office national d'immigration, [1990] ECR I-1417, judgment, para 15; Raymond Vander Elst v Office des Migrations Internationales, [1994] ECR I-3803, para. 21)*

#### **Amendment 54**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**Proposal for a directive**

**Recital 7 b (new)**

*Text proposed by the Commission*

*Amendment*

**(7 b) *The ECJ has held that the temporary nature of the provision of services is to be determined in the light of its duration, regularity, periodicity and continuity. The provider of services, within the meaning of the Treaty, may equip himself in the host Member State with the infrastructure necessary for the purposes of performing the services in question.***

Or. en

*(Case C-55/94, Reinhard Gebhard v Consiglio dell'Ordine degli Avvocati e Procuratori di Milano, [1995] ECR I-04165, para. 39; Case C-396/1, Sähköalojen ammattiliitto ry c/ Elektrobudowa Spółka Akcyjna [2015] Case C-396/1)*

#### **Amendment 55**

**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive**

**Recital 7 b (new)**



*Text proposed by the Commission*

*Amendment*

**(7 b) One of the aims of Directive 2014/67/EU is also to identify genuine posting and prevent abuse and circumvention.**

Or. en

#### **Amendment 56**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**Proposal for a directive**

**Recital 7 c (new)**

*Text proposed by the Commission*

*Amendment*

**(7 c) The aim of Article 4 of Directive 2014/67/EU on the Enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services is to identify genuine posting and prevent abuse and circumvention.**

Or. en

#### **Amendment 57**

**Othmar Karas**

**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**

**deleted**

*to the employment contract of such posted workers if no other choice of law was made by the parties. In case a different choice was made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State. This should apply from the start of the posting assignment whenever it is envisaged for more than 24 months and from the first day subsequent to the 24 months when it effectively exceeds this duration. This rule does not affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services in circumstances also where the posting exceeds 24 months. The purpose is merely to create legal certainty in the application of the Rome I Regulation to a specific situation, without amending that Regulation in any way. The employee will in particular enjoy the protection and benefits pursuant to the Rome I Regulation.*

Or. de

#### *Justification*

*In view of the fact that statutory provisions of this Directive may be extended to other economic sectors, automatic adoption of the statutory provisions for employees applicable in the Member State in which the employee is posted, whether on the very first day or after 24 months, should be rejected by deleting the reference to the Annex (Article 3 (2)). The legal aspects of employees' working and employment conditions are regulated in Article 3(1) of Directive 96/71/EC.*

#### **Amendment 58**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

#### **Proposal for a directive Annex 8**

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

*deleted*

Or. ro

**Amendment 59**  
**Ildikó Gáll-Pelcz**

**Proposal for a directive**  
**Recital 8**

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

*deleted*

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 and existing regulation which is against the EU legal order.*

## Amendment 60

Dita Charanzová, Jasenko Selimovic, Martina Dlabajová

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

*deleted*

Or. en

## Amendment 61

Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga, Eva Maydell

### Proposal for a directive

#### Recital 8

##### *Text proposed by the Commission*

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

##### *Amendment*

(8) ***Especially*** in view of the long duration of certain posting assignments, it is necessary to ***closely check and assess whether a posted worker temporarily carries out his or her work in*** the host Member State. ***Article 2 of this Directive defines the nature of posting as having a temporary character therefore temporary character is an indispensable feature of genuine posting. Article 4 paragraph 3 of the Enforcement Directive 2014/67/EU provides a clear list of elements of temporary nature of posting. In addition, the case law provides explanation of the notion of temporary nature of the provision of services, which is to be determined by its duration, regularity, periodicity and continuity. Therefore the temporary character, being the indispensable feature of posting, should be closely monitored and assessed, especially in the case of postings of long duration, in order to avoid abuse and circumvention.***

Or. en

## Justification

*The Treaty provides that restrictions on the freedom to provide services shall be prohibited. In addition there is a case law as well as Enforcement Directive, which clearly determine how temporary nature of a service provision should be assessed and enforced. Therefore, there is no need to put a time-limit, which does not take into account specificities of different sectors and would mean creating a disproportionate barrier within the Internal Market.*

### **Amendment 62** **Dennis de Jong**

#### **Proposal for a directive** **Recital 8**

##### *Text proposed by the Commission*

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

##### *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 ***two*** months, the ***applicable terms and conditions of employment should be those established by the*** host Member State, ***without prejudice to terms and conditions of employment which are more favourable to the worker.*** In accordance with the principle of Rome I Regulation, the law of the host Member States therefore applies to the employment contract of such posted workers if no other choice of law was made by the parties. In case a different choice was made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State. This should apply from the start of the posting assignment whenever it is envisaged for more than ***two*** months and from the first day subsequent to the ***two*** months when it effectively exceeds this duration.

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

Or. en

**Amendment 63**  
**Marc Tarabella**

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

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

*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 terms and conditions of work and employment, and social security coverage, should be those established by the host Member State.***



**Amendment 64**  
**Igor Šoltes**

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

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

*Amendment*

(8) In view of the long duration of certain posting assignments, it is necessary to provide that, in case of posting lasting for periods higher than **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 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 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 65**  
**Vicky Ford, Daniel Dalton**

**Proposal for a directive**  
**Recital 8**

*Text proposed by the Commission*

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

*Amendment*

(8) In view of the long duration of certain posting assignments, it is necessary to provide that, in case of posting lasting for periods higher than 24 months, the host Member State is deemed to be the country in which the work is carried out, ***unless a derogation has been obtained by the employer from the national social security administration in accordance with Regulation 883/2004/EC***. In accordance with the principle of Rome I Regulation, the law of the host Member States therefore applies to the employment contract of such posted workers if no other choice of law was made by the parties. In case a different choice was made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State. This should apply from the start of the posting assignment whenever it is envisaged for more than 24 months and from the first day subsequent to the 24 months when it effectively exceeds this duration. This rule does not affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services in circumstances also where the posting exceeds 24 months. The purpose is merely to create legal certainty in the application of the Rome I Regulation to a specific situation, without amending that

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

Or. en

### *Justification*

*Long-term mobility - beyond 24 months - are commonly used by companies when posting their employees either in the frame of intra-corporate transfer (e.g. for career development, or the opening of a new plant abroad) or major contracts of provision of services which require the employees to stay abroad for long periods. In these cases, companies may obtain from their social security administration the possibility to keep their employees affiliated to the country of origin for periods which can go up to 60 months. In order not to hamper the mobility of these workers and to facilitate the life of companies, a similar provision should be foreseen in the field of labour law, e.g. under the 96/71 directive. This would bring coherence to the posting device.*

## **Amendment 66**

**Eduard Kukan, Ivan Štefanec**

### **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

#### *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 ***uninterrupted*** 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

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.

*uninterrupted* months and from the first day subsequent to the 24 *uninterrupted* 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 *uninterrupted* 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 67** **Philippe Juvin**

### **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

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

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. ***To prevent any risk of the law being circumvented, the aggregate duration of postings should be taken into account.***

Or. fr

**Amendment 68**  
**Igor Šoltés**

**Proposal for a directive**  
**Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8 a) 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 69**

**Dita Charanzová, Martina Dlabajová**

### **Proposal for a directive**

#### **Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

**(8 a) It is the prerogative of the national competent authorities to assess whether the professional activity pursued in the context of provision of services is genuine and whether the provisions of this Directive are applicable in each individual case according to Directive Article 4 of Directive 2014/67/EU.**

Or. en

## **Amendment 70**

**Richard Sulík, Czesław Hoc, Roberts Zile, Angel Dzhambazki, Kosma Złotowski, Zdzisław Krasnodębski, Zigmantas Balčytis, Sandra Kalniete, Ryszard Czarnecki, Bolesław G. Piecha, Marian-Jean Marinescu, Ramona Nicole Mănescu, Ryszard Antoni Legutko, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Stanisław Ożóg, György Schöpflin, Andor Deli, Anna Elżbieta Fotyga, Edward Czesak, Urszula Krupa, Jadwiga Wiśniewska, Traian Ungureanu, Cristian-Silviu Buşoi, József Szájer**

### **Proposal for a directive**

#### **Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 71**

**Richard Sulík, Czesław Hoc, Stanisław Ożóg, Kosma Złotowski, Roberts Zile, Angel Dzhambazki, Zdzisław Krasnodębski, Zigmantas Balčytis, Urszula Krupa, Edward Czesak, Jadwiga Wiśniewska, Sandra Kalniete, Ryszard Antoni Legutko, Tomasz Piotr Poręba, Anna Elżbieta Fotyga, Ramona Nicole Mănescu, György Schöpflin, Bolesław G.**

**Piecha, Beata Gosiewska, Zbigniew Kuźmiuk, Traian Ungureanu, Cristian-Silviu Buşoi, József Szájer, Marian-Jean Marinescu, Ryszard Czarnecki, Andor Deli**

**Proposal for a directive  
Recital 8 b (new)**

*Text proposed by the Commission*

*Amendment*

*(8 b) 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 72**

**Richard Sulík, Czesław Hoc, Kosma Złotowski, Zdzisław Krasnodębski, Roberts Zīle, Angel Dzhambazki, Zigmantas Balčytis, Sandra Kalniete, Ryszard Czarnecki, Beata Gosiewska, Zbigniew Kuźmiuk, Bolesław G. Piecha, Marian-Jean Marinescu, Ramona Nicole Mănescu, Ryszard Antoni Legutko, Tomasz Piotr Poręba, Stanisław Ożóg, Edward Czesak, Anna Elżbieta Fotyga, Urszula Krupa, Jadwiga Wiśniewska, Pavel Svoboda, Traian Ungureanu, Cristian-Silviu Buşoi,**

**Proposal for a directive  
Recital 8 c (new)**

*Text proposed by the Commission*

*Amendment*

*(8 c) 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, are to be taken into account, provided that these elements do not alter the relationship between the service provided by a workers 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 on 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 73**  
**Mylène Troszczynski**

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

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

*Amendment*

(9) *Restrictions to the freedom to provide services are a matter for the national authorities alone, whose most important task is to work daily in the general interest of the public in their areas.*

Or. fr

**Amendment 74**  
**Jasenko Selimovic, Dita Charanzová**

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

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

*Amendment*

(9) *Article 56 of the Treaty on the Functioning of the European Union (TFEU) requires the abolition of any restriction on the freedom to provide services, even if that restriction applies without distinction to national service providers and to those of other Member States, which is liable to prohibit, impede and render less attractive the activities of a service provider established in another Member State where it lawfully provides*



*similar services*. It is settled case law that restrictions to the freedom to provide services are only admissible if justified by overriding reasons *related to* the public interest and must be *appropriate*, proportionate and necessary.

Or. en

#### **Amendment 75**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Anna Maria Corazza Bildt, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White**

**Proposal for a directive  
Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

**(9 a) Directive 2014/67/EU on the enforcement of Directive 96/71/EC provides a number of provisions to make sure that rules on posting of workers are enforced and are respected by all service providers. Article 4 of the enforcement directive provides a list of elements that should be assessed in order to identify the genuine posting and prevent abuse and circumvention.**

Or. en

#### **Amendment 76**

**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive  
Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

**(9 a) Directive 2014/67/EU on the enforcement of Directive 96/71/EC provides a number of provisions to make sure that rules on posting of workers are enforced and are respected by all service**

*providers. Article 4 of the enforcement directive provides a list of elements that should be assessed in order to identify the genuine posting and prevent abuse and circumvention.*

Or. en

**Amendment 77**  
**Igor Šoltes**

**Proposal for a directive**  
**Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

*(9 a) To improve compliance with this Directive and stop circumvention it is of utmost importance that Member States make better use of Article 5 so as to ensure that this Directive is fully complied with. In the case of non-compliance effective, dissuasive and proportionate sanctions must be put into place immediately.*

Or. en

**Amendment 78**  
**Virginie Rozière**

**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*

*deleted*

*sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.*

Or. fr

**Amendment 79**  
**Philippe Juvin**

**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. fr

**Amendment 80**  
**Igor Šoltes**

**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*

*deleted*

*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.*

Or. en

#### *Justification*

*The scope of this Directive applies to all undertakings providing transnational services. Sectoral exclusions would heavily interfere with the aim of this Directive of balancing service provision and workers protection.*

#### **Amendment 81 Dennis de Jong**

#### **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) *This Directive also applies to posted workers working in international road transport. In addition, particular legal questions and difficulties in that sector will have to be addressed through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.*

Or. en

**Amendment 82  
Richard Sulík, Czesław Hoc, Kosma Złotowski, Roberts Zile, Angel Dzhambazki,  
Zdzisław Krasnodębski, Anna Elżbieta Fotyga, Zigmantas Balčytis, Sandra Kalniete,  
Ryszard Czarnecki, Bolesław G. Piecha, Marian-Jean Marinescu, Ramona Nicole**

Mănescu, Ryszard Antoni Legutko, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Stanisław Ożóg, Edward Czesak, Urszula Krupa, Jadwiga Wiśniewska, György Schöpflin, Andor Deli, Cristian-Silviu Buşoi, Traian Ungureanu, József Szájer

**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 83**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**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.

**Amendment 84**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White**

**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.

Or. en

**Amendment 85**

**Othmar Karas**

**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***

*Amendment*

(10) Because of the highly mobile nature of work in international transport, the posting of workers raises particular legal questions and difficulties (especially where ***links*** with the concerned Member State ***are*** insufficient). ***This area should thus be exempt from the provisions of the revision***

*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.*

*of Directive 96/71/EC.*

Or. de

#### *Justification*

*Economic sectors characterised by a high degree of mobility, such as the transport sector, do not involve any postings in the sense laid down in the Posted Workers Directive. This fact must be emphasised.*

#### **Amendment 86**

**Eduard Kukan, Ivan Štefanec**

#### **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.

Or. en

#### **Amendment 87**

**Igor Šoltes**

**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 *truly integrated* internal market, *ideally a level-playing field, service providers should be able to compete with regard to* factors such as productivity, *efficiency as well as* the quality and innovation of their goods and services.

Or. en

**Amendment 88**  
**Anna Hedh, Christel Schaldemose**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 89**  
**Dennis de Jong**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

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

*Amendment*

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



services.

Or. en

**Amendment 90**  
**Ildikó Gáll-Pelcz**

**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.

Or. en

*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 91**  
**Vicky Ford, Daniel Dalton**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

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

*Amendment*

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

services.

*and according to the highly variable costs of providing services in another member state.*

Or. en

#### **Amendment 92**

**Jasenko Selimovic, Dita Charanzová**

#### **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 a labour costs but also on factors such as ***supply of skills***, productivity and efficiency, or the quality and innovation of their goods and services.

Or. en

#### **Amendment 93**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **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 costs but also on factors such as productivity and efficiency, or the quality and innovation of their goods and services.

Or. en

#### **Amendment 94**

**Jasenko Selimovic, Dita Charanzová**

**Proposal for a directive**  
**Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11 a) Respect for the diversity of national industrial relations systems as well as the autonomy of social partners is explicitly recognised by the Treaty on the Functioning of the European Union (TFEU).***

Or. en

**Amendment 95**  
**Evelyne Gebhardt, Arndt Kohn**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

*Amendment*

***(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.***

***deleted***

Or. de

**Amendment 96**  
**Mylène Troszczynski**

**Proposal for a directive**  
**Recital 12**

*Text proposed by the Commission*

*Amendment*

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

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

*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.*

*interest.*

Or. fr

**Amendment 97**  
**Igor Šoltes**

**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 practice.

Or. en

**Amendment 98**  
**Dennis de Jong**

**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 99

Anna Hedh

### 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 100

Dita Charanzová, Jasenko Selimovic, Martina Dlabajová

### 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 ***pay*** in accordance with their law and practice. However, national rules applied to posted workers must be ***proportionate and*** justified by the need to protect posted workers and must not restrict the cross-border provision of services. ***The national measures must not be liable for hindering or making less attractive the exercise of fundamental freedoms guaranteed by the Treaty and be applied in a non-discriminatory manner, they must be justified by imperative requirements in the general interest, and suitable for securing the attainment of the objective which they pursue and they must not go beyond what is necessary in order to attain it.***

*(Gebhard n Consiglio Dell'ordine Degli Avvocati E Procuratori Di Milano para 39)*

## **Amendment 101**

**Ildikó Gáll-Pelcz**

### **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 Article 3(1)(c).**

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 102**

**Morten Løkkegaard**

### **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 their law and practice. ***It is up to each member state to determine which elements of payment that applies to posted workers.*** 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. en

**Amendment 103**

**Eduard Kukan, Ivan Štefanec**

**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 their law and practice ***and in compliance with article 56 of the Treaty on the Functioning of the European Union.*** 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. en

**Amendment 104**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White**

**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** in accordance with their law and practice. However, **these** national rules on **minimum rates of pay** applied to posted workers must be **proportionate, non-discriminatory and** justified by the need to protect posted workers and must not disproportionately restrict the cross-border provision of services.

Or. en

**Amendment 105**  
**Jasenko Selimovic**

**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 their law and practice. However, national rules on remuneration applied to posted workers, **when they exist**, must be justified by the need to protect posted workers and must not disproportionately restrict the cross-border provision of services.

Or. en

**Amendment 106**  
**Evelyne Gebhardt, Arndt Kohn**

**Proposal for a directive**  
**Recital 12 a (new)**



*Text proposed by the Commission*

*Amendment*

***(12a) This Directive establishes a protective framework for posted workers. The framework is non-discriminatory, transparent and proportionate and at the same time, it honours the diversity of national industrial relations. It does not prevent the application of terms and conditions of employment which are more favourable to posted workers.***

Or. de

#### **Amendment 107**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **Proposal for a directive**

#### **Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) It is established by the ECJ case-law that social protection of workers can be acknowledged as overriding requirement justifying imposition of obligations capable of constituting restrictions on freedom to provide services, however, it is not the case where the workers employed by the employer are temporarily engaged in carrying out works in the host Member State and enjoy the same or essentially similar protection, by virtue of the obligations to which the employer is already subject in the Member State in which he is established. This is in particular important in preventing additional obligations for which the undertakings are already liable for the same periods of employment in the Member State where they are established. The ECJ has also excluded the legality of national provisions which make it more onerous to provide service for undertakings from other Member States than those established within the national***

*territory, therefore hindering the free movement of services.*

Or. en

*(Arblade, Joined cases 369/96 and 376/96 (para 51) Seco, Joined cases 62 and 63/81, Seco SA v. Etablissement d'Assurance contre la Vieillesse et l'Invalidité and Raymond Vander Elst v Office des Migrations Internationales Case C-43/93.)*

#### **Amendment 108**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **Proposal for a directive**

#### **Recital 12 b (new)**

*Text proposed by the Commission*

*Amendment*

*(12b) The ECJ has further clarified that provisions concerning collective agreements cannot per se constitute a public policy exception within the meaning of Article 3(10) of Directive 96/71.*

Or. en

*(C-319/06, Commission of the European Communities v Grand Duchy of Luxemburg, para 64)*

#### **Amendment 109**

**Mylène Troszczynski**

#### **Proposal for a directive**

#### **Recital 13**

*Text proposed by the Commission*

*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 therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website*

(13) The elements of remuneration under national law or universally applicable collective agreements *are, in general,* clear and transparent to all service providers.

*provided for by Article 5 of the Enforcement Directive.*

Or. fr

#### **Amendment 110**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White**

#### **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* 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 generally applicable collective agreements should be also accompanied by clear information on applicable minimum rates of pay. 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 111**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **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** elements of **minimum rates of pay** under national law or **collective agreements or arbitration awards which have been declared** universally applicable **within the meaning of Article 3 (8)** should be clear, **transparent and publicly accessible** to all service providers. It is therefore justified to impose on Member States the obligation to publish **obligations deriving from Article 3 (1) of the Directive** on the single website provided for by Article 5 of the Enforcement Directive.

Or. en

**Amendment 112**

**Ildikó Gáll-Pelcz**

**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 113**  
**Dennis de Jong**

**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

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

*Amendment*

(13) The elements of remuneration should be clear and transparent to all service providers ***and posted workers***. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive ***as transparency and access to information are key elements for service providers. The provision of information on the single website should be in line with International Labour Organisation standards, the Council of Europe's European Social Charter, and the law and practice of the host Member State, and should respect the autonomy of the social partners. Travel, board, lodging and accommodation expenses should not be considered to be part of service providers' or the posted workers' remuneration, and expenses should not be deducted from their salaries.***

Or. en

**Amendment 114**  
**Eduard Kukan, Ivan Štefanec**

**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

*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 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.

clear and transparent to all service providers **and posted workers**. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive **as transparency and access to information are crucial for both service providers and posted workers. A single information point established by the Member State shall provide information on national labour laws pertaining to posting companies. This single information point shall be ready to assist by email or personal support in several EU languages in order to support and encourage free movement of services across the EU.**

Or. en

## **Amendment 115** **Igor Šoltes**

### **Proposal for a directive** **Recital 13**

#### *Text proposed by the Commission*

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

#### *Amendment*

(13) The elements of remuneration should be clear and transparent to all service providers **and posted workers**. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive, **because transparency and access to information are essential for legal certainty and for the proper functioning and enforcement of law.**

Or. en

## **Amendment 116**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

### **Proposal for a directive Annex 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 96/71/EC.

#### *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 therefore justified to impose on Member States the obligation to publish the constituent elements of **a minimum wage** on the single website provided for by Article 5 of the Enforcement Directive 96/71/EC.

Or. ro

## **Amendment 117**

**Marc Tarabella**

### **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 **and posted workers**. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive.

Or. fr

## **Amendment 118**

**Anna Hedh, Christel Schaldemose**

**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 119**  
**Jasenko Selimovic, Dita Charanzová**

**Proposal for a directive**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) All measures introduced by this Directive should be justified and proportionate so as not to create administrative burdens or to limit the potential that undertakings, in particular small and medium-sized enterprises (SMEs), have to create new jobs, while protecting posted workers.***

Or. en

**Amendment 120**  
**Pascal Arimont**

**Proposal for a directive**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) In case of non-genuine posting as defined in Article 4 of Directive***



*2014/67/EU, the posted worker shall be deemed to be employed in the country to which the worker is posted.*

Or. en

#### **Amendment 121**

**Richard Sulík, Czesław Hoc, Stanisław Ożóg, Andor Deli, György Schöpflin, Jadwiga Wiśniewska, Edward Czesak, Zdzisław Krasnodębski, Kosma Złotowski, Roberts Zile, Angel Dzhambazki, Zigmantas Balčytis, Ryszard Czarnecki, Bolesław G. Piecha, Sandra Kalniete, Marian-Jean Marinescu, Ramona Nicole Mănescu, Ryszard Antoni Legutko, Zbigniew Kuźmiuk, Beata Gosiewska, Tomasz Piotr Poręba, Anna Elżbieta Fotyga, Urszula Krupa, Traian Ungureanu, Cristian-Silviu Buşoi, József Szájer**

#### **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 122**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **Proposal for a directive**

##### **Recital 14**

*Text proposed by the Commission*

*Amendment*

*(14) Laws, regulations, administrative*

*(14) Member States have the freedom to*

*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.*

*establish and enforce on their territory appropriate measures applicable to local and foreign service providers in order to ensure compliance with the applicable rules to subcontracting chains.*

Or. en

### **Amendment 123**

**Vicky Ford, Daniel Dalton**

#### **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) ***Member States have the freedom to establish on their territory appropriate measures applicable to service providers including service providers from another Member State in order to ensure compliance with the applicable rules concerning posting in the case of subcontracting chains. In the case of the construction sector Member States are already obliged, by the Directive 2014/67/EU, to introduce appropriate liability measures in order to ensure fair competition and workers rights. Therefore, laws, regulations, administrative provisions or collective agreements **universally** 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.

Or. en

#### **Amendment 124**

**Adam Szejnfeld, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White**

#### **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) *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. In the case of the construction sector Member States are obliged, by the Directive 2014/67/EU, to introduce appropriate liability measures in order to ensure fair competition and workers rights. Therefore laws, regulations, administrative provisions or universally applicable 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.*

Or. en

#### **Amendment 125**

**Ildikó Gáll-Pelcz**

#### **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 126**

**Igor Šoltes**

### **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) Laws, regulations, administrative provisions or collective agreements applicable in Member States ***should*** 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 ***should*** apply them in a non-discriminatory manner to undertakings posting workers to its territory.

Or. en

**Amendment 127**

**Sergio Gaetano Cofferati, Lucy Anderson, Christel Schaldemose**

**Proposal for a directive**

**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14 a) In the interests of transparency and in accordance with Directive 2014/67/EU of the European Parliament and of the Council, the continuity of the undertaking which posts the workers must be ensured in order to combat 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 before posting him or her.***

Or. en

**Amendment 128**

**Anna Hedh**

**Proposal for a directive**

**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 129**

**Liisa Jaakonsaari, Christel Schaldemose**

**Proposal for a directive**

**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

**(14a) *The Member States and the Commission should continue to tackle undeclared work in the EU. The Member States are urged to carry out the cross-border cooperation in the European platform against undeclared work.***

Or. en

### **Amendment 130**

**Dita Charanzová, Martina Dlabajová**

#### **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 ***regulates*** employment conditions applicable to temporary agency workers.

Or. en

### **Amendment 131**

**Igor Šoltes**

#### **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

*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.

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. ***Member States should ensure at least equal treatment between posted temporary agency workers and domestically employed temporary agency workers.***

Or. en

**Amendment 132**  
**Jiří Pospíšil**

**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 ***a comparable*** job. This principle should also apply to temporary agency workers posted to another Member State.

Or. cs

**Amendment 133**  
**Dennis de Jong**

**Proposal for a directive**  
**Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) Undertakings providing cross-border services may post their workers in another Member State provided that the posted worker was employed by the undertaking concerned in his or her Member State of origin for 90 days during the 12-month period prior to the posting, and provided that those undertakings prove that they have substantial economic activities in that Member State.***

Or. en

**Amendment 134**  
**Lucy Anderson**

**Proposal for a directive**  
**Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) 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 135**  
**Virginie Rozière**



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

*Text proposed by the Commission*

*Amendment*

**(-1) The following paragraph is added:**

**‘1a. For the purpose of this Directive, an employee working in the Member State in which the employer on whose behalf he or she has been assigned for a period of at least 120 days full-time in the 12 months preceding the first day of the posting is established shall be considered to be habitually working in the territory of that Member State.**

**With regard to temporary workers within the meaning of Article 1(3)(c), the length of service condition provided for in the preceding subparagraph shall be assessed in the territory of the Member State in which their employer is established. ’**

Or. fr

**Amendment 136**  
**Virginie Rozière**

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

*Text proposed by the Commission*

*Amendment*

**(-1a) The following paragraph is added:**

**‘1b. Workers can only be considered to have been posted within the meaning of this Directive if their employer meets the following cumulative conditions in relation to the Member State in which it is established:**

**- its principal place of business, e.g. its registered office or a subsidiary,**

*branch or agency, is located in that Member State;*

*- it is liable for applicable direct taxes or turnover taxes in that Member State;*

*- it is registered as an employer and for payment of social security contributions in that Member State;*

*- its operating authorisation is issued by that Member State;*

*- in the preceding year it generated, in the country of origin, a turnover of at least 33.3% of the total turnover generated in the country of establishment and in the country to which the employee is posted. '*

Or. fr

#### **Amendment 137**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 1 – paragraph 2

#### *Present text*

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

#### *Amendment*

**(-1) in Article 1, paragraph 2 is replaced by the following:**

“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

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

## *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 138**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 1 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

**(-1) Article 1(2) is amended as follows:**

‘2. This Directive shall not apply to merchant navy undertakings as regards seagoing personnel **or to road or rail transport.**’

Or. ro

### **Amendment 139**

**Richard Sulík, Andor Deli, György Schöpflin, Stanisław Ożóg, Czesław Hoc, Roberts Zile, Angel Dzhabazki, Edward Czesak, Jadwiga Wiśniewska, Traian Ungureanu, Pavel Svoboda, Cristian-Silviu Buşoi, Urszula Krupa, Anna Elżbieta Fotyga, Tomasz Piotr Poręba, Zbigniew Kuźmiuk, Beata Gosiewska, Ryszard Antoni Legutko, Sandra Kalniete, Ramona Nicole Mănescu, Marian-Jean Marinescu, Bolesław G. Piecha, Ryszard Czarnecki, Zigmantas Balčytis, Zdzisław Krasnodębski, Kosma Złotowski, József Szájer**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 1 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**(-1) in Article 1, the following paragraph is added:**

***“2a. This Directive shall not apply to transport undertakings.”***

Or. en

#### **Amendment 140**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 1 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1) in Article 1, the following paragraph is added:***

***2a. This Directive shall not apply to transport services such as transit, international transport and cabotage.***

Or. en

#### **Amendment 141**

**Czesław Hoc, Zdzisław Krasnodębski, Kosma Złotowski, Ryszard Czarnecki, Bolesław G. Piecha, Jadwiga Wiśniewska, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Stanisław Ożóg, Anna Elżbieta Fotyga, Urszula Krupa, Ryszard Antoni Legutko, Richard Sulík**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 1 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(-1) in Article 1, the following paragraph is added:***

***“2a. 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 a one month reference period.”***

**Amendment 142**

**Czesław Hoc, Zdzisław Krasnodębski, Kosma Złotowski, Ryszard Czarnecki, Bolesław G. Piecha, Jadwiga Wiśniewska, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Stanisław Ożóg, Anna Elżbieta Fotyga, Urszula Krupa, Ryszard Antoni Legutko, Richard Sulík**

**Proposal for a directive**

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

Directive 96/71/EC

Article 1 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**(-1a) in Article 1, the following paragraph is added:**

**“4a. Undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State.”**

Or. en

**Amendment 143**

**Lucy Anderson**

**Proposal for a directive**

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

Directive 96/71/EC

Article 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(-1) The following article is added:**

**“Article 1 a**

***Preventing chain posting***

**1. If a posting situation falls under more than two national jurisdictions, the Member State to whose territory a worker is posted and where the service is provided, shall be deemed to be the country where the work is habitually**

*carried out by the worker.*

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

Or. en

#### **Amendment 144**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

#### **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

## **Amendment 145**

**Othmar Karas**

### **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. de

#### *Justification*

*See justification to Recital 8. Additionally, the provisions on ‘the same task at the same place’ incorporated into the Commission’s proposal may be bypassed.*

## **Amendment 146**

**Richard Sulík, Czesław Hoc, Urszula Krupa, Anna Elżbieta Fotyga, Tomasz Piotr Poręba, Beata Gosiewska, Zbigniew Kuźmiuk, Ryszard Antoni Legutko, Ramona Nicole Mănescu, Sandra Kalniete, Marian-Jean Marinescu, Kosma Złotowski, Roberts Zīle, Angel Dzhambazki, Zdzisław Krasnodębski, Zigmantas Balčytis, Ryszard Czarnecki, Bolesław G. Piecha, Stanisław Ożóg, György Schöpflin, Andor Deli, Edward Czesak, Jadwiga Wiśniewska, Traian Ungureanu, Cristian-Silviu Buşoi, József Szájer**

### **Proposal for a directive**

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

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**EN**

Directive 96/71/EC  
Article 2a

*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 147**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga**

#### **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*

*The Treaty provides that restrictions on the freedom to provide services shall be prohibited. There is also a case law as well as Enforcement Directive, which clearly determine how temporary nature of a service provision should be assessed and enforced. Therefore, there is no need to put a time-limit, which does not take into account specificities of different sectors and would mean creating a disproportionate barrier within the Internal Market.*

#### **Amendment 148**

**Robert Jarosław Iwaszkiewicz**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 2a

*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 149**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga, Eva Maydell**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 2a

*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*

*The Treaty provides that restrictions on the freedom to provide services shall be prohibited. There is also a case law as well as Enforcement Directive, which clearly determine how temporary nature of a service provision should be assessed and enforced. Therefore, there is no need to put a time-limit, which does not take into account specificities of different sectors and would mean creating a disproportionate barrier within the Internal Market.*

**Amendment 150**  
**Dennis de Jong**

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

*Text proposed by the Commission*

Posting exceeding *twenty-four* months

*Amendment*

Posting exceeding *two* months

Or. en

**Amendment 151**  
**Igor Šoltes**

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

*Text proposed by the Commission*

Posting exceeding *twenty-four* months

*Amendment*

Posting exceeding *twelve* months

Or. en

**Amendment 152**  
**Morten Løkkegaard, Jasenko Selimovic**

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

*Text proposed by the Commission*

Posting exceeding twenty-four months

*Amendment*

Posting exceeding twenty-four months  
*covered by Article 1, paragraph 3, a)*

Or. en

*Justification*

*The amendment limits the proposal of the Commission to only regulate ordinary postings leaving inter-corporate postings and postings from a temporary work agency excluded from the 24 months rule.*

**Amendment 153**

**Dita Charanzová, Martina Dlabajová**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2a – title

*Text proposed by the Commission*

*Amendment*

***Posting exceeding twenty-four months***

***Duration of posting***

Or. en

**Amendment 154**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2a – 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.***

***deleted***

Or. en

*Justification*

*Article 2 A of the Commission proposal uses time limits to address the problem of bogus postings. A set time limit is not going to address the real concern relating to ingenuine postings. Bogus posting can be addressed via Articles 3 and 4 of the Enforcement Directive which gives the competent national authorities the prerogative to identify ingenuine posting*

and abuse. This amendment also provides coherence between PWD and Rome I Regulation.

## **Amendment 155**

**Dennis de Jong**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 2a – paragraph 1

#### *Text proposed by the Commission*

1. When the anticipated or the effective duration of posting exceeds **twenty-four** months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.

#### *Amendment*

1. When the anticipated or the effective duration of posting exceeds **two** 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.

Or. en

## **Amendment 156**

**Lucy Anderson**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 2a – paragraph 1

#### *Text proposed by the Commission*

1. When the anticipated or the effective duration of posting exceeds **twenty-four** months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.

#### *Amendment*

1. When the anticipated or the effective duration of posting exceeds **six** months **or when the posting is not considered to be genuine under Directive 2014/67/EU**, the Member State to whose territory a worker is posted **and where the service is provided** shall be deemed to be the country in which his or her work is habitually carried out.

Or. en

## Amendment 157

Igor Šoltes

### Proposal for a directive

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

Directive 96/71/EC

Article 2a – paragraph 1

#### *Text proposed by the Commission*

1. When the anticipated or the effective duration of posting exceeds **twenty-four** months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.

#### *Amendment*

1. When the anticipated or the effective duration of posting exceeds **twelve** months, the Member State to whose territory a worker is posted **or where the service is provided** shall be deemed to be the country in which his or her work is habitually carried out, **without prejudice to any terms and conditions of employment that are more favourable to the worker.**

Or. en

#### *Justification*

*Art. 2.1 defines a posted worker someone carrying out their work for a limited period of time. If someone is posted for a very long period of time, their habitual place of work changes. Therefore, the applicable law should change to the place of habitual work. It is important to specify the Rome I provisions on applicable law to protect the workers concerned, to avoid law-shopping, and to end the abusive practice of endless posting.*

## Amendment 158

Andreas Schwab, Sabine Verheyen, Antonio López-Istúriz White

### Proposal for a directive

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

Directive 96/71/EC

Article 2a – paragraph 1

#### *Text proposed by the Commission*

(1) When the anticipated or the effective duration of posting exceeds twenty-four months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.

#### *Amendment*

(1) When the anticipated or the effective duration of posting exceeds 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 to apply a different law in accordance with Article 3(1) of the Rome I Regulation.*

Or. de

**Amendment 159**

**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2a – paragraph 1

*Text proposed by the Commission*

1. When the anticipated or the effective duration of posting exceeds twenty-four months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.

*Amendment*

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

Or. en

**Amendment 160**

**Vicky Ford, Daniel Dalton**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2a – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*1a. Where an employer has obtained from its national social security administration a derogation to the 24 months within the meaning of Article 16 of Regulation 883/2004/EC, the duration mentioned in paragraph 1 shall be that of the derogation.*

Or. en

## *Justification*

*Long-term mobility - beyond 24 months - are commonly used by companies when posting their employees either in the frame of intra-corporate transfer (e.g. for career development, or the opening of a new plant abroad) or major contracts of provision of services which require the employees to stay abroad for long periods. In these cases, companies may obtain from their social security administrations the possibility to keep their employees affiliated to the country of origin for periods which can go up to 60 months. In order not to hamper the mobility of these workers and to facilitate the life of companies, a similar provision should be foreseen in the field of labour law, e.g. under the 96/71 directive. This would bring coherence to the posting device.*

### **Amendment 161**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 2a – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. To evaluate whether the employment contract falls under Art 8 (4) of Rome I Regulation, the national competent authorities will rely on Article 4 of the Enforcement Directive 2014/67/EU.***

Or. en

*(Article 8 (4) of Enforcement Directive: Where it appears from the circumstances as a whole that the contract is more closely connected with a country other than that indicated in paragraphs 2 or 3, the law of that other country shall apply.)*

### **Amendment 162**

**Igor Šoltes**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 2a – 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 163**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **Proposal for a directive**

**Article 1 – paragraph 1 – point 1**

Directive 96/71/EC

Article 2a – 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

#### *Justification*

*Article 2 A of the Commission proposal uses time limits to address the problem of bogus postings. A set time limit is not going to address the real concern relating to ingenuine postings. Bogus posting can be addressed via Articles 3 and 4 of the Enforcement Directive which gives the competent national authorities the prerogative to identify ingenuine posting and abuse. This amendment also provides coherence between PWD and Rome I Regulation*

**Amendment 164**  
**Virginie Rozière**

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

*Text proposed by the Commission*

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.***

*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.

Or. fr

**Amendment 165**  
**Lucy Anderson**

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

*Text proposed by the Commission*

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.***

*Amendment*

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, the cumulative duration of the posting periods of the workers concerned shall be taken into account.

Or. en

**Amendment 166**  
**Eduard Kukan, Ivan Štefanec**

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

*Text proposed by the Commission*

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.

*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 *eight* months.

Or. en

**Amendment 167**  
**Marc Tarabella**

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

*Text proposed by the Commission*

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.

*Amendment*

2. For the purpose of paragraph 1, in case of replacement of posted workers performing the same task *or a similar 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. fr

**Amendment 168**  
**Vicky Ford, Daniel Dalton**

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

Directive 96/71/EC  
Article 2 a – paragraph 2

*Text proposed by the Commission*

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.

*Amendment*

2. For the purpose of paragraph 1, in case of replacement of posted workers **undertaking** the same **activities** at the same place **of work**, 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 169**  
**Lucy Anderson**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

**Amendment 170**  
**Robert Jarosław Iwaszkiewicz**

**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*

**(1) The following Article is added:**

**"Article 2b**

***Habitual place of work***

***A Member State to whose territory a worker is posted shall be deemed to be a country in which his work is habitually carried out if he is subject to social security legislation of that country."***

Or. en

## **Amendment 171**

**Igor Šoltes**

### **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 term 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 yield evidence to prove another habitual place of employment.*

#### **Amendment 172** **Igor Šoltes**

**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:***

***"Article 2c***

***Rule against derogation***

***The application of this Directive shall not result in depriving workers 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."***

*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 173****Eduard Kukan, Ivan Štefanec****Proposal for a directive****Article 1 – paragraph 1 – point 2 – point a**

Directive 96/71/EC

Article 3 – paragraph 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 ***as long as they are published on the single official national website referred to in Article 5 of Directive 2014/67/EU:***

Or. en

**Amendment 174****Sergio Gaetano Cofferati, Lucy Anderson****Proposal for a directive****Article 1 – paragraph 1 – point 2 – point a**

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2

*Text proposed by the Commission*

- by collective agreements or arbitration awards which have been declared universally applicable within the

*Amendment*

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

meaning of paragraph 8:

*agreements within the meaning of paragraph 8a:*

Or. en

**Amendment 175**  
**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 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 *all types of* collective agreements or arbitration awards within the meaning of *paragraphs 8 and 8a*:

Or. en

*Justification*

*The restriction regarding collective agreements does not seem appropriate here. It can hinder a Member State's approach in which terms and conditions of employment are defined via different types of collective agreements which apply non-discriminatory to all service providers and their workers.*

**Amendment 176**  
**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – point b

*Text proposed by the Commission*

(b) minimum paid annual *holidays*

*Amendment*

(b) minimum paid annual *leave*

Or. en



## Amendment 177

Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Antanas Guoga, Eva Maydell, Antonio López-Istúriz White

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – point c

*Text proposed by the Commission*

*Amendment*

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

(c) **minimum rates of pay**

Or. en

### *Justification*

*The concept of remuneration is vague and will provide companies and workers with legal uncertainty. In comparison the concept of minimum rates of pay, due to 20 years of existence and experience, as well as extensive case law, is well known among MSs. The application of minimum rates of pay as requested by Directive 96/71/EC effectively prevents from social dumping. Therefore there is no need to change this rule.*

## Amendment 178

Richard Sulík, Czesław Hoc, Jadwiga Wiśniewska, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Stanisław Ozóg, Anna Elżbieta Fotyga, Urszula Krupa, Ryszard Antoni Legutko, Kosma Złotowski, Zdzisław Krasnodębski, Roberts Zīle, Angel Dzhambazki, György Schöpflin, Andor Deli, Traian Ungureanu, Cristian-Silviu Buşoi, Zigmantas Balčytis, Sandra Kalniete, Ryszard Czarnecki, Marian-Jean Marinescu, Ramona Nicole Mănescu, Edward Czesak, József Szájer, Bolesław G. Piecha

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – point c

*Text proposed by the Commission*

*Amendment*

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

(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 179**

**Dita Charanzová, Martina Dlabajová**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – point c

*Text proposed by the Commission*

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

*Amendment*

(c) *the minimum rates of pay*, including *pay for hourly work and/or piecework according to pay groups* and overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

Or. en

#### **Amendment 180**

**Ildikó Gáll-Pelcz**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – point indent 2 – 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 181**  
**Jasenko Selimovic**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – point c

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 182**  
**Philippe Juvin**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

***‘(ga) equal social protection at work, including with regard to the prevention of and compensation for accidents at work;’***

Or. fr

**Amendment 183**  
**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

***(ga) reimbursement of expenditure incurred as a result of the posting, such as***

*expenditure with regard to travel, board and lodging.*

Or. en

**Amendment 184**

**Sergio Gaetano Cofferati, Lucy Anderson**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

*(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 185**

**Pascal Arimont**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

*(ga) allowance rates to cover travel, board and lodging expenses for workers away from home for professional reasons.*

Or. en

**Amendment 186**

**Marc Tarabella**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

*‘(ga) provisions to cover the travel, subsistence and accommodation costs of posted workers.’*

Or. fr

**Amendment 187**

**Evelyne Gebhardt, Arndt Kohn**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

*(ga) through legislation that governs the reimbursement of travel and accommodation expenses for the worker posted.*

Or. de

**Amendment 188**

**Philippe Juvin**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

*(gb) the same level of contributions and old-age pensions;*

Or. fr

**Amendment 189**

**Eduard Kukan, Ivan Štefanec**

**Proposal for a directive**

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

Directive 96/71/EC

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

*Text proposed by the Commission*

*Amendment*

***The subparagraph of paragraph 1(b) and (c) shall not apply if the period of posting does not exceed eight days.***

Or. en

**Amendment 190**

**Vicky Ford, Daniel Dalton**

**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.***

***In the context of this Directive, remuneration and social security contributions shall be defined in accordance with the national law and/or practice of the Member State on whose territory the worker is posted unless a derogation has been obtained by the employer from the national social security administration in accordance with Regulation 883/2004/EC.***

Or. en

**Amendment 191**  
**Igor Šoltes**

**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 remuneration *is defined by the* national law *and/or practice of* the Member State to whose territory the worker is posted.

Or. en

*Justification*

*It is and should remain within the Member States' competence to define the concept and elements of remuneration. By virtue of the Enforcement Directive, Member States have the obligation to inform all service providers of their definition and composition, thus ensuring transparency.*

**Amendment 192**  
**Anna Hedh**

**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,

*Amendment*

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 193

Richard Sulík, Czesław Hoc, Cristian-Silviu Buşoi, Zigmantas Balčytis, Sandra Kalniete, Ryszard Czarnecki, Marian-Jean Marinescu, Ramona Nicole Mănescu, Edward Czesak, Kosma Złotowski, Zdzisław Krasnodębski, Roberts Zīle, Angel Dzhambazki, Ryszard Antoni Legutko, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Stanisław Ożóg, György Schöpflin, Anna Elżbieta Fotyga, Urszula Krupa, Jadwiga Wiśniewska, Traian Ungureanu, Andor Deli, József Szájer, 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*

*Amendment*

For the *purposes* of this Directive, *the concept of minimum rates of pay referred to in paragraph 1 (c) is defined by the national law and/or practice of the Member State to whose territory the worker is posted.*



posted.

Or. en

## **Amendment 194**

**Dennis de Jong**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

For the purpose of this Directive, **the concept of remuneration shall be determined by the national law and practice of the Member State where the worker is posted. Travel, board, lodging and accommodation expenses shall not be considered to be part of remuneration, and expenses shall not be deducted from salary.**

Or. en

## **Amendment 195**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

### **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**

#### *Amendment*

For the purpose of this Directive, **the concept of 'minimum wage' shall be defined by the national law and/or**

*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.*

*practice of the Member State to whose territory the worker is posted.*

Or. ro

### **Amendment 196**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **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 paragraph 1 (c) is defined* 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.

Or. en

### **Amendment 197**

**Morten Løkkegaard**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

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

*Amendment*

For the purpose of this Directive, remuneration means all the elements of remuneration, **as defined in the jurisprudence from the ECJ C-396/13 *Sähköalojen ammattiliitto***, 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.

Or. en

*Justification*

*Hereby the proposal does not go further than the existing jurisprudence from the ECJ in relation to the definition of remuneration. The amendment should be read in conjunction with the amendment to recital 12.*

**Amendment 198**

**Jasenko Selimovic**

**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

*Amendment*

For the purpose of this Directive, remuneration means all the **minimum rules on** 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.

Or. en

### **Amendment 199**

**Dita Charanzová, Jasenko Selimovic, Martina Dlabajová**

#### **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 as established 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**.

**For the purpose of calculating the sums due to a posted worker, double payments of equal or similar nature shall be avoided.**

**Miscalculation or omission of payments to a posted worker resulting from not accessible, incorrect or insufficient information published in the single official national website will not be sanctioned by national authorities.**

Or. en

## Justification

*Recital 12: national measures must not be liable for hindering or making less attractive the exercise of fundamental freedoms guaranteed by the Treaty and be applied in a non-discriminatory manner, they must be justified by imperative requirements in the general interest, and suitable for securing the attainment of the objective which they pursue and they must not go beyond what is necessary in order to attain it;*

### Amendment 200

**Richard Sulík, Stanisław Ożóg, Urszula Krupa, Anna Elżbieta Fotyga, György Schöpflin, Andor Deli, Traian Ungureanu, Jadwiga Wiśniewska, Angel Dzhambazki, Zdzisław Krasnodębski, Roberts Zīle, Kosma Złotowski, Zigmantas Balčytis, Sandra Kalniete, Ramona Nicole Mănescu, Marian-Jean Marinescu, Bolesław G. Piecha, Ryszard Czarnecki, Ryszard Antoni Legutko, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poręba, Edward Czesak, Cristian-Silviu Buşoi, Czesław Hoc, József Szájer**

### 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).

***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 201

**Richard Sulík, Czesław Hoc, Kosma Złotowski, Zdzisław Krasnodębski, Roberts Zīle, Angel Dzhambazki, Zigmantas Balčytis, Sandra Kalniete, Ryszard Czarnecki, Bolesław G. Piecha, Tomasz Piotr Poręba, Marian-Jean Marinescu, Ramona Nicole Mănescu, Ryszard Antoni Legutko, Beata Gosiewska, Zbigniew Kuźmiuk, Stanisław Ożóg, Anna Elżbieta Fotyga, Edward Czesak, Urszula Krupa, Jadwiga Wiśniewska, Cristian-Silviu Buşoi, Traian Ungureanu, Pavel Svoboda**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

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

*Amendment*

Member States shall publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration, ***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 202**

**Pascal Arimont**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

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

*Amendment*

Member States shall publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration ***as defined by national law and applicable collective agreements*** in accordance with point (c).

Or. en

## **Amendment 203**

**Igor Šoltes**

### **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 **and by other suitable means** referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration.

Or. en

#### *Justification*

*Directive 2014/67/EC explicitly invites Member States to go beyond a single official national website to publish information. The original wording of Article 5 should also be mirrored in this Directive.*

## **Amendment 204**

**Eduard Kukan, Ivan Štefanec**

### **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*

**Member States shall establish single information points providing information and advice for posting companies on their national labour law.**

Or. en

## **Amendment 205**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

**Proposal for a directive**

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

Directive 96/71

Article 3 – paragraph -1 a (new)

*Text proposed by the Commission*

*Amendment*

*(aa) the following paragraph is added:*

*‘-1a. Service providers are exempted from the obligation to settle the fine for paying less than the minimum wage as set by the law of the host Member State where there is evidence that the host Member State has not met the obligation to publish on the national official single website provided for in Article 5 of Directive 2014/67/EU the constituent elements of remuneration, as per letter (c), or the information is not provided in a clear, transparent and unambiguous manner.*

*Subparagraph 2 of paragraph 7 in Article 3 of Directive 96/71/EC is deleted.’*

Or. ro

**Amendment 206**

**Dita Charanzová, Morten Løkkegaard, Jasenko Selimovic, Martina Dlabajová**

**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*

*It is for the national authorities to verify at the national level whether the terms and conditions of employment are in compliance. Article 3, paragraph 1 a, implies a restriction on the free delivery of services and may result in service providers having to respect different rules and regulations in the same member state depending on the obligations of the main contractor. Furthermore the article does not specify the term collective agreements in the article, which renders the obligations even more unclear.*

#### **Amendment 207**

**Vicky Ford, Daniel Dalton**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1a

*Text proposed by the Commission*

*Amendment*

*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.*

*deleted*

Or. en

*Justification*

*The Commission's proposal would impose disproportionate and an unlawful limitation of the freedom to provide services.*

**Amendment 208**

**Adam Szejnfeld, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein, Dariusz Rosati, Jiří Pospíšil, Ildikó Gáll-Pelcz, Antanas Guoga, Eva Maydell**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point b**

Directive 96/71/EC

Article 3 – paragraph 1a

*Text proposed by the Commission*

*Amendment*

***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.*** ***deleted***

Or. en

*Justification*

*Nowadays subcontractors are already obliged to follow rules with regards to terms and conditions of employment as established by Directive 96/71/EC. Text proposed by the Commission would mean that companies would have to apply not only generally applicable collective agreements but also these concluded at company- level. This would create discrimination as well as lack of legal clarity.*

**Amendment 209**

**Eduard Kukan, Ivan Štefanec**

**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*

*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.*

*deleted*

Or. en

**Amendment 210**

**Richard Sulík, Czesław Hoc, Traian Ungureanu, Cristian-Silviu Buşoi, Edward Czesak, Stanisław Ożóg, Tomasz Piotr Poręba, Zbigniew Kuźmiuk, Ryszard Antoni Legutko, Beata Gosiewska, Roberts Zīle, Angel Dzhabazki, Kosma Złotowski, Zdzisław Krasnodębski, Sandra Kalniete, Ramona Nicole Mănescu, Marian-Jean Marinescu, Urszula Krupa, Zigmantas Balčytis, Ryszard Czarnecki, Bolesław G. Piecha, Andor Deli, György Schöpflin, Anna Elżbieta Fotyga, Jadwiga Wiśniewska, 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*

*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*

*deleted*

*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 211**

**Andreas Schwab, Sabine Verheyen, Eva Maydell, Antonio López-Istúriz White**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1a

#### *Text proposed by the Commission*

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

#### *Amendment*

1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement, 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 *making use of the option provided for in this paragraph shall ensure that an undertaking concluding subcontracts with another undertaking as referred to in Art. 1(1) of this Directive informs that undertaking in writing about the terms and conditions of employment covering remuneration which have to be guaranteed before the parties enter into relevant contractual relationships.*

Or. en

#### **Amendment 212**

**Igor Šoltes**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 2 – point b**  
Directive 96/71/EC  
Article 3 – paragraph 1a

*Text proposed by the Commission*

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

*Amendment*

1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision, **contract** 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 **shall** provide that such undertakings shall be under the same **non-discriminatory** obligation regarding subcontracts with undertakings referred to in Article 1 (1) posting workers to its territory.

Or. en

*Justification*

*It is a matter of fairness and legal certainty that subcontractors are fulfilling the same rules as their main contractor with regard to remuneration.*

**Amendment 213**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

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

*Text proposed by the Commission*

*Amendment*

**(ba) the following paragraph is added:**  
**‘1aa. The contractor is required to provide the subcontractor with information on working conditions, including remuneration, which apply in a clear, transparent and unambiguous manner.**

*The subcontractor is exempted from the obligation to guarantee certain terms and conditions of employment, to cover the minimum wage as per paragraph 1 established within the entrepreneur's undertaking where there is evidence that the entrepreneur was not properly informed by the contractor.'*

Or. ro

**Amendment 214**

**Richard Sulík, Czesław Hoc, Zdzisław Krasnodębski, Kosma Złotowski, Angel Dzhambazki, Zigmantas Balčytis, Sandra Kalniete, Ryszard Czarnecki, Bolesław G. Piecha, Marian-Jean Marinescu, Ramona Nicole Mănescu, Ryszard Antoni Legutko, Beata Gosiewska, Zbigniew Kuźmiuk, Tomasz Piotr Poreba, Stanisław Ożóg, Anna Elżbieta Fotyga, Edward Czesak, Urszula Krupa, Jadwiga Wiśniewska, Cristian-Silviu Buşoi, Traian Ungureanu**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 a a (new)

*Text proposed by the Commission*

*Amendment*

*(ba) The following paragraph is added:*

*"1aa. 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."*

**Amendment 215**

**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1a a (new)

*Text proposed by the Commission*

*Amendment*

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

***“1aa. Member States shall take the necessary measures to ensure that an undertaking, which appoints a subcontractor to provide services, is liable, in addition to or in place of the employer, for the obligations of that subcontractor and any other intermediary.***

***This paragraph shall not preclude the application or introduction of more stringent rules at national level.”***

Or. en

*Justification*

*The most abusive cases of posting are frequently reported in long subcontracting chains. The further down the chain the more difficult to identify the company, making it almost impossible for any enforcement to take place. Therefore, we introduce a simple joint and several liability mechanism for the full subcontracting chain.*

**Amendment 216**

**Dennis de Jong**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point c**

Directive 96/71/EC

Article 3 – paragraph 1b



*Text proposed by the Commission*

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

*Amendment*

1b. Member States shall **ensure** that the undertakings referred to in Article 1(3)(c) guarantee posted workers the terms and conditions which apply pursuant to **Article 5 of** Directive 2008/104/EC of the European Parliament and of the Council to temporary workers **employed** by temporary agencies established in the Member State where the work is carried out.  
**Undertakings providing cross-border services may post their workers in another Member State provided that the posted worker was employed by the undertaking concerned in his or her Member State of origin for 90 days during the 12-month period prior to the posting, and provided that those undertakings prove that they have substantial economic activities in that Member State.**

Or. en

**Amendment 217**

**Maria Grapini, Emilian Pavel, Claudia Țapardel, Doru-Claudian Frunzulică**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1b a (new)

*Text proposed by the Commission*

*Amendment*

**(ca) the following paragraph is added:**  
**‘1ba. The undertaking user shall inform in a clear, transparent and unambiguous manner the temporary work agency of the regulation applied as regards working conditions and wages.’**

Or. ro

**Amendment 218**

**Evelyne Gebhardt, Arndt Kohn**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1b a (new)

*Text proposed by the Commission*

*Amendment*

**(ca) The following paragraph shall be inserted:**

***“1ba. In accordance with their national laws and practices and on a non-discriminatory basis, Member States may also base themselves on collective agreements or arbitration awards determined by the Member State in which the work is carried out, to be representative of the geographical area, the profession or industry concerned, and on the agreements or awards which offer the most favourable terms and conditions of employment to the worker.”***

Or. de

**Amendment 219**

**Philippe Juvin**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1b a (new)

*Text proposed by the Commission*

*Amendment*

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

***‘1aa. The employer in the Member State of origin must be able to provide evidence of substantial activities in its country of origin, by generating at least 50 % of its turnover in that Member State.’***

Or. fr

**Amendment 220**

**Philippe Juvin**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1b b (new)

*Text proposed by the Commission*

*Amendment*

*(cb) The following paragraph is added:  
‘1ab. There must be a period of service of at least six months in the contractual relationship between the posted worker and his or her employer prior to any posting.’*

Or. fr

**Amendment 221**

**Philippe Juvin**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1b c (new)

*Text proposed by the Commission*

*Amendment*

*(cc) The following paragraph is added:  
‘1ac. There must be a prohibition on posting by a company which is hiring a temporary worker provided by a temporary work agency of another Member State.’*

Or. fr

**Amendment 222**

**Philippe Juvin**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point c d (new)**

Directive 96/71/EC  
Article 3 – paragraph 1 b d (new)

*Text proposed by the Commission*

*Amendment*

*(cd) The following paragraph is added:  
‘1ad. Coordination between the national  
employment inspection bodies and  
European cooperation to combat fraud  
relating to the posting of workers must be  
stepped up.’*

Or. fr

**Amendment 223**  
**Anna Hedh**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 2 – point c a (new)**  
Directive 96/71/EC  
Article 3 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

*(ca) The following paragraph is added:  
"7a. 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 224**  
**Dennis de Jong**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 7a (new)

*Text proposed by the Commission*

*Amendment*

*(ca) the following paragraph is inserted:*

*"7a. This Directive shall not affect the exercise of fundamental rights as recognised in the Council of Europe's European Social Charter, the International Labour Organisation's conventions and the law and practice of the host Member State."*

Or. en

**Amendment 225**

**Pascal Arimont**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

*(ca) The following paragraph is added:*

*"7a. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers.*

*Expenses incurred on account of the posting, such as travel, board and lodging expenses, are provided by the employer. The allowances paid as a compensation for these expenses cannot be considered to be part of the minimum wage."*

Or. en

**Amendment 226**  
**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

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

**"7a. Expenses incurred on the account of the posting, including with regard to travel, board and lodging, shall be provided for by the employer and shall not be deducted from the remuneration referred to in Article 3(1)(c)."**

Or. en

*Justification*

*Postings are not individual journeys for the sake of pleasure but done on behalf of the employer. Thus, the employer must be responsible for the reimbursement of the expenses incurred on account of the posting. We seek to improve legal certainty by clarifying that the deduction of these additional expenditures must never be deducted from their remuneration.*

**Amendment 227**  
**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 8

*Present text*

*Amendment*

"In the **absence of** a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base

**(cb) In the second subparagraph of paragraph 8, the introductory wording is replaced by the following:**

**"In addition to** a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base

themselves on:"

themselves on:"

Or. en

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

### **Amendment 228**

**Sergio Gaetano Cofferati, Lucy Anderson**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 8 a (new)

*Text proposed by the Commission*

*Amendment*

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

**"8a. Member States may also, in accordance with national law and practice and on a non-discriminatory basis, base themselves on collective agreements or arbitration awards which are, as defined by the Member State where the work is carried out, representative in the geographical area, the profession or industry concerned and which offer the most favourable terms and conditions of employment to the worker"**

Or. en

### **Amendment 229**

**Igor Šoltes**

#### **Proposal for a directive**

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

*Text proposed by the Commission*

*Amendment*

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

**deleted**

Or. en

**Amendment 230**  
**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 9

*Present text*

"Member States *may* provide that the undertakings referred to in Article 1 (1) must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out."

*Amendment*

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

"Member States *shall* provide that the undertakings referred to in Article 1 (1) must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out."

Or. en

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

**Amendment 231**  
**Anna Hedh**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point e**

Directive 96/71/EG

Article 3 – paragraph 10

*Text proposed by the Commission*

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

"10. This Directive shall not preclude the application by Member States, in ***compliance*** with the *Treaty*, to national undertakings and to the undertakings of other States, ***on a basis of equality of treatment***, of:

- terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the

*Amendment*

(e) ***Paragraph 10 is amended as follows:***

"10. This Directive shall not preclude the application by Member States, ***or***, in ***accordance*** with the ***practice in the Member State, by management and labour***, to national undertakings and to the undertakings of other States, of:

- terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of social and public policy provisions,



case of public policy provisions,

*including provisions which are appropriate to the attainment of the protection of workers, equal treatment, the prevention of social dumping, fair competition or the proper functioning of the labour market."*

*- terms and conditions of employment laid down in the collective agreements or arbitration awards within the meaning of paragraph 8 and concerning activities other than those referred to in the Annex."*

Or. en

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

## **Amendment 232**

**Lucy Anderson**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – Paragraph 10

#### *Text proposed by the Commission*

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

“10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, *on a basis of equality of treatment*, of:

*- terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the*

#### *Amendment*

(e) Paragraph 10 is amended as follows:

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

*case of public policy provisions,  
- terms and conditions of employment laid  
down in the collective agreements or  
arbitration awards within the meaning of  
paragraph 8 and concerning activities  
other than those referred to in the  
Annex.”*

Or. en

**Amendment 233**  
**Vicky Ford**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 2 – point e a (new)**  
Directive 96/71/EC  
Article 3 – paragraph 10 a (new)

*Text proposed by the Commission*

*Amendment*

*(ea) The following paragraph is added:*

*“10a. Member States shall, after consulting the social partners, in accordance with traditions and practices of each Member State, exempt employers and workers from the requirements contained in Article 3(1) (a), (b) and (c) above where the activities of the employer and the workers take place in the following sectors,*

*a) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products to organisations providing medical treatment to citizens of the European Union,*

*b) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products in the defence sector or in any other areas necessary for the defence of a Member State or the European Union,*

*c) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products in the*

*aero-space sector,*

*d) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products in the rail transport sector,*

*e) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products of importance to the critical national infrastructure of a Member State or States, including the supply of energy and telecommunications services*

*f) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products of importance to the preservation of the border security of a Member State or the European Union,*

*g) The manufacture, supply, servicing or maintenance of machinery, equipment and any other products of importance to the health and safety of workers or citizens of the European Union.*

Or. en

#### *Justification*

*Many manufactures throughout the EU sell their goods (for example medical scanners) with a life time servicing and maintenance contract for the product. This Article seeks to enable Member States to exempt posted worker from certain requirements which if applied would restrict their ability to freely provide a service in another Member State.*

#### **Amendment 234**

**Lucy Anderson**

#### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 10 a (new)

*Text proposed by the Commission*

*Amendment*

*(ea) The following paragraph is added:*

*"10a. In the context of remuneration and allowances related to work outside the regular working place, elements which are mandatory in both the host Member State and the home Member State and which are essentially similar, shall only be paid once to avoid double payment whereby the worker shall always receive the amount which is more favourable."*

Or. en

**Amendment 235**

**Virginie Rozière**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 10 a (new)

*Text proposed by the Commission*

*Amendment*

*(ea) The following paragraph is added:*

*"10 a. Member States shall ensure that, prior to the start of the posting period, the posted worker and the employer are linked by a work relationship of at least 3 months."*

Or. en

**Amendment 236**

**Vicky Ford**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 – point e b (new)**

Directive 96/71/EC

Article 3 – paragraph 10 b (new)

***(eb) The following paragraph is added:***

***10b. Member States shall, after consulting the social partners, in accordance with traditions and practices of each Member State, exempt employers and workers from the requirements contained in Article 3(1) (a), (b) and (c) above where the activities of the employer and the workers are for the purpose of facilitating the education and training of the workers or others.***

Or. en

*Justification*

*Many manufactures throughout the EU sell their goods (for example medical scanners) with a life time servicing and maintenance contract for the product. This Article seeks to enable Member States to exempt posted worker from certain requirements which if applied would restrict their ability to freely provide a service in another Member State.*

**Amendment 237**  
**Virginie Rozière**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 2 a (new)**  
Directive 96/71/EC  
Article 4 – paragraph 2 – subparagraph 2 a (new)

***(2a) In Article 4(2), the following point is added:***

***‘Where the liaison office or competent national authority in the country from which the worker is posted is unable to provide the information sought by the labour administration in the host country, the administration in the country from which the worker is posted shall seek that information from the administration or body able to provide it.’***

**Amendment 238**

**Virginie Rozière**

**Proposal for a directive**

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

Directive 96/71/EC

Article 4 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) In Article 4, the following paragraph is added:***

***‘4a. In order to enhance the cooperation referred to in paragraph 2 and to examine clear abuses and fraud in relation to the posting of workers, a coordination body shall be established comprising representatives of each Member State. It shall have the power to recall liaison offices or competent national authorities in the event of a failure to reply or an incomplete reply on their part. In the event of a persistent delay in providing information to the competent authority, that authority shall refer the matter to the competent body or administration where the liaison office from which the information is sought is unable to provide it.’***

Or. fr

**Amendment 239**

**Igor Šoltes**

**Proposal for a directive**

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

Directive 96/71/EC

Article 5 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**(2a) in Article 5 the following paragraph is added:**

**"Member States shall lay down rules on sanctions applicable in the event of infringements of national provisions adopted pursuant to this Directive and shall take all the necessary measures to ensure that they are implemented and complied with. The sanctions provided for shall be effective, proportionate and dissuasive."**

Or. en

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

*Justification*

*This Directive should explicitly call on the Member States to lay down rules on sanctions in the event of infringements.*

## **Amendment 240**

**Philippe Juvin**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 7 a (new)

*Text proposed by the Commission*

*Amendment*

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

**'Article 7 a**

**The application of this Directive is suspended pending the revision of Regulation (EC) No 883/2004 on the coordination of social security systems and the implementation by that regulation of the homogenisation of the social security contributions, both by employers and others, relating to work performed by workers posted between Member States,**

*within five years of the adoption of this Directive.'*

Or. fr

**Amendment 241**

**Lucy Anderson**

**Proposal for a directive**

**Article 2 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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

Or. en