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REPORT

on the implementation of Directive 96/71/EC in the Member States
(COM(2003) 458 - 2003/2168(INI))

Committee on Employment and Social Affairs

Rapporteur: Anne-Karin Glase

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CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	5
EXPLANATORY STATEMENT	8

PROCEDURAL PAGE

By letter of 25 July 2003 the Commission forwarded to Parliament its communication on the implementation of Directive 96/71/EC (COM(2003) 458), which had been referred to the Committee on Employment and Social Affairs and the Committee on Women's Rights and Equal Opportunities for information.

At the sitting of 4 September 2003 the President of Parliament announced that the Committee on Employment and Social Affairs had been authorised to draw up an own-initiative report under Rule 163 on the implementation of Directive 96/71/EC in the Member States, and the Committee on Legal Affairs and the Internal Market and the Committee on Women's Rights and Equal Opportunities had been asked for their opinions.

The Committee on Employment and Social Affairs had appointed Anne-Karin Glase rapporteur at its meeting of 11 June 2003.

The committee considered the draft report at its meetings of 3/4 and 26/27 November 2003.

At the latter meeting it adopted the motion for a resolution by 33 votes to 0, with 5 abstentions.

The following were present for the vote: Theodorus J.J. Bouwman (chairman), Marie-Hélène Gillig (vice-chairwoman), Marie-Thérèse Hermange (vice-chairwoman), Anne-Karin Glase (rapporteur), Jan Andersson, Elspeth Attwooll, Regina Bastos, Johanna L.A. Boogerd-Quaak (for Anne André-Léonard), André Brie (for Arlette Laguiller), Hans Udo Bullmann (for Enrico Boselli), Philip Bushill-Matthews, Chantal Cauquil, Proinsias De Rossa, Harald Ettl, Carlo Fatuzzo, Ilda Figueiredo, Fiorella Ghilardotti (for Alejandro Cercas), Robert Goebbels (for Elisa Maria Damião), Roger Helmer, Richard Howitt (for Karin Jöns), Stephen Hughes, Anne Elisabet Jensen (for Marco Formentini), Rodi Kratsa-Tsagaropoulou, Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Bartho Pronk, Lennart Sacrédeus, Elisabeth Schroedter (for Jillian Evans), Peter William Skinner (for Anna Karamanou), Miet Smet, Helle Thorning-Schmidt, Ieke van den Burg, Anne E.M. Van Lancker, Barbara Weiler and Sabine Zissener (for Luigi Cocilovo)

The Committee on Women's Rights and Equal Opportunities and the Committee on Legal Affairs and the Internal Market decided on 24 September and 1 October 2003 not to deliver an opinion.

The report was tabled on 2 December 2003.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of Directive 96/71/EC in the Member States (COM(2003) 458 - 2003/2168(INI))

The European Parliament,

- having regard to the Commission communication on the implementation of Directive 96/71/EC in the Member States (COM(2003) 458),
 - having regard to Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs (A5-0448/2003),
- A. whereas the free movement of services in the single market has made a new form of worker mobility possible, quite distinct from the mobility of migrant workers, as it is restricted to work carried out temporarily in a Member State other than the State whose legislation governs the employment relationship,
- B. whereas there are three groups of scenarios to which the Directive applies: the posting of workers under a contract concluded between the undertaking making the posting and the party for whom the services are intended, the posting of workers to a workplace or an undertaking owned by the group and the posting of workers by a temporary employment agency which hires them out to a user undertaking operating in a Member State separate from that of the agency,
- C. whereas the free movement of services will be facilitated if the Member States agree on a common nucleus of mandatory minimum protection rules for the posting of workers, which appears, on the basis of experience hitherto, as being in dire need of improvement,
- D. whereas employees in the branches concerned are often exposed to particularly dangerous working conditions,
- E.—whereas Directive 96/71/EC on the posting of workers in the framework of the provision of services contains a Community catalogue of such minimum protection rules, the purpose of which is to increase legal certainty and make it possible to identify the working conditions applicable to employees carrying out work temporarily in a Member State other than the State whose legislation governs the employment relationship,-
- F.—whereas there exist interfaces between the EU directive and national implementation,
- G. whereas negotiations on the adoption of Directive 96/71/EC lasted over five years (first Commission proposal on 28 June 1991 and final adoption of the Directive on 16 December 1996),
- H. whereas the deadline for implementing the Directive in the Member States only expired on 16 December 1999,

- I. whereas Directive 96/71/EC does not apply to social security,
- J. whereas the Commission Decision of 27 March 2002 provided for the creation of a Group of Directors-General for Industrial Relations, which has already set up a working group of experts to discuss problems related to the implementation and application of the Directive in the Member States,
- K. whereas the first meeting of this group of experts, with representatives from the 15 Member States, 10 future Member States and three candidate countries is planned for the end of October 2003,
- L. whereas, as has been shown from experience hitherto, the implementation, as intended by the Directive, of core labour standards in the free movement of services and the prevention of social dumping, in particular in the construction and building-services sectors, often fails to be achieved in practice (*rest deleted*);
1. Considers that the Directive continues to be necessary in order to provide legal certainty for posted workers and the companies involved;
 - 2.—Considers that not only adequate judicial transposition of the Directive, but also its application on the shop-floor and monitoring of its implementation are fundamental importance for assessing the effectiveness of the legislation, and that the significance of this will increase in the light of Union enlargement; asks the Commission to arrange for fundamental additional research to be conducted, and for that to be done in cooperation with the social partners in the sectors most affected;
 - 3.—Considers that a number of problems affecting implementation of the Directive can also be overcome by means of better information and administrative and operational cooperation between bodies concerned (authorities, inspectorates, social partners, etc) in the Member States; asks the Commission to submit practical proposals for strengthening such cooperation, not least with a view to combating moonlighting and other abuses;
 - 4.—Calls on the Commission to collect better and more concrete data on the effects of national implementation;
 - 5.—Calls on the Commission to consider problems resulting from the different options which are allowed by the EU-Directive e.g.
 - a) unfair competition
 - b) different social protection
 - c) clear definition of workers' status;
 - 6.—Calls on the Commission to examine constructive legislative solutions which could lead to the prevention and elimination of unfair competition and social dumping as a consequence of the abuse of posting of workers; in addition, a European legislative framework or other forms of provision governing liability in the case of subcontracting should be examined;
 7. Calls on the Commission to support the work of the group of experts, and for parties to wage agreements, the European Parliament, governments and parliaments of Member

States and the social partners, both at European and national level, and across occupational and sectoral divisions, to be involved in the activities; calls for the European Parliament (or the committee responsible) to be kept regularly informed about the progress of work;

8. Calls for a fundamental assessment - in the light of both national and European case law - of the Directive's implementation, in relation in particular to the practical interpretation of certain concepts and definitions from the Directive (such as minimum wage inclusive of overtime, minimum number of paid holidays and of work and rest periods, and workers subject to posting), as well as the Directive's implementation through collective labour agreements, and the effect thereof on relations of competition between undertakings and employees from different Member States; calls, in that connection, for consideration also to be given to the impact of solutions being urged in Member States for certain problems in relation to subcontractors and the system of ultimate liability for the payment of taxes and other contributions;—
9. Calls on the Commission to conduct more in-depth research in close cooperation with the social partners, and to submit proposals to simplify and improve the existing directive with a view to obtaining better implementation and application of the Directive in practice, as well as better achieving the goals of the Directive (i.e. the dual goals of fair competition and respect for the rights of workers within EU-15 and EU-25);
10. Calls on the Commission to examine the extent to which, in line with the recommendations of the group of experts, its departments could facilitate the work of the competent authorities in the Member States by means of improved provision of information, above all in the form of websites and the creation of relevant links;
11. Calls on the Commission to consider the consequences regarding enlargement in the 15 Member States and in the acceding countries;
12. Calls on the Commission to consider the judgments of the European Court of Justice, and to incorporate the judgments handed down by national courts into the analysis;
13. Calls on the Commission to submit a second report to the Council and Parliament on the implementation of the Directive as soon as specific results obtained by the group of experts, the social partners and the Commission have been made available, and measures on improving administrative cooperation have been implemented, not later than by the end of the year following adoption of this resolution;
14. Calls on the Member States to ratify the Migrant Workers Convention (C143) by the International Labour Organisation (ILO) and the 'Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers', in order to resolve basic human rights of all migrant workers;
15. Instructs its President to forward this resolution to the Council and Commission, the Economic and Social Committee and the Parliaments of the Member States.

EXPLANATORY STATEMENT

The common position on Directive 96/71/EC was approved by the European Parliament without amendment at second reading in 1996, and Directive 96/71/EC was adopted on 16 December 1996. The aim of the Directive is to eliminate obstacles and uncertainties concerning the posting of workers in the framework of the provision of services by improving legal certainty and making it possible to identify the working conditions that apply to workers temporarily working in a Member State other than the State whose legislation governs the employment relationship.

As provided for in Article 8 of Directive 96/71/EC, in the current communication the Commission has summarised the results of its review of the implementation of the Directive in the 15 Member States and its practical application, in order to decide whether it is necessary to revise the Directive.

The communication shows that implementation of the Directive has, generally speaking, been satisfactory (Great Britain and Ireland have not yet adopted specific implementing provisions). Difficulties have arisen in that the Directive obliges the companies affected to comply with the legislation in force in a State other than the State in which they are established, and this legislation can sometimes be difficult to obtain and understand. These problems need to be resolved at national level, as they are problems related to the transposition of the Directive into Member States' legislation, which can result in difficulties in monitoring compliance with legislation. The Commission will contact the Member States concerned regarding these matters.

Under Article 4(3) of Directive 96/71/EC, each Member State is obliged to take measures to ensure that the necessary information on relevant working and employment conditions is generally available. Measures have already been taken by some Member States, e.g. publishing information brochures and creating websites with useful information. However difficulties still arise in the Member States with regard to seeking information, monitoring compliance with national implementing provisions and enforcing penalties, and these difficulties could limit the effectiveness of the Directive.

A group of experts has been set up by the Commission, made up of officials from the Member States, with the aim of finding solutions to the above problems. However as the difficulties relating to the implementation and application of Directive 96/71/EC are of a practical rather than legal nature, it appears premature to consider amending the Directive at present. Given that the Directive has not long been implemented in some Member States (the law in Luxembourg was adopted in December 2002), there is not yet enough experience available. Instead, it is necessary to continue collecting and exchanging practical experience gained in working with the Directive.

In this connection, the group of experts set up by the Commission should help to find solutions to difficulties related to monitoring and application, and to draw up measures on improving implementation, particularly in relation to information and monitoring. It is clear that building up the necessary information channels and cooperation networks will take some time.

A comprehensive evaluation and, if necessary, amendment of the Directive should not be carried out until the work of the group of experts is complete and their recommendations have been implemented in all Member States.