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## TEXTS ADOPTED

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### **P8\_TA(2016)0346**

#### **Social dumping in the EU**

##### **European Parliament resolution of 14 September 2016 on social dumping in the European Union (2015/2255(INI))**

*The European Parliament,*

- having regard to the Treaty on the Functioning of the European Union (TFEU),
- having regard to Article 5 of the Treaty on European Union and to Articles 56, 153(5) and 154 TFEU,
- having regard to the fundamental freedom of movement of workers (Article 45 TFEU) and to the free movement of services (Article 56 TFEU),
- having regard to Articles 151 and 153 TFEU and to Article 9 TFEU, which guarantees adequate social protection,
- having regard to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services<sup>1</sup>,
- having regard to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')<sup>2</sup>,
- having regard to the ongoing implementation of Directive 2014/67/EU,
- having regard to Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems<sup>3</sup>,
- having regard to Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems<sup>4</sup>,

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<sup>1</sup> OJ L 18, 21.1.1997, p. 1.

<sup>2</sup> OJ L 159, 28.5.2014, p. 11.

<sup>3</sup> OJ L 166, 30.4.2004, p. 1.

<sup>4</sup> OJ L 284, 30.10.2009, p. 1.

- having regard to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)<sup>1</sup>,
- having regard to Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market<sup>2</sup>,
- having regard to Regulation (EC) No 1071/2009 of the European Parliament and of the Council of 21 October 2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator and repealing Council Directive 96/26/EC<sup>3</sup>,
- having regard to Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85<sup>4</sup>, and to Directive 2002/15/EC of the European Parliament and of the Council of 11 March 2002 on the organisation of the working time of persons performing mobile road transport activities<sup>5</sup>,
- having regard to Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community<sup>6</sup>,
- having regard to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)<sup>7</sup>,
- having regard to the proposal for a Council directive on manning conditions for regular passenger and ferry services operating between Member States (COM(1998)0251),
- having regard to Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)<sup>8</sup>, as amended by Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006<sup>9</sup>,
- having regard to its resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe<sup>10</sup>,

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<sup>1</sup> OJ L 177, 4.7.2008, p. 6.

<sup>2</sup> OJ L 300, 14.11.2009, p. 72.

<sup>3</sup> OJ L 300, 14.11.2009, p. 51.

<sup>4</sup> OJ L 102, 11.4.2006, p. 1.

<sup>5</sup> OJ L 80, 23.3.2002, p. 35.

<sup>6</sup> OJ L 293, 31.10.2008, p. 3.

<sup>7</sup> OJ L 364, 12.12.1992, p. 7.

<sup>8</sup> OJ L 167, 2.7.1999, p. 33.

<sup>9</sup> OJ L 124, 20.5.2009, p. 30.

<sup>10</sup> Texts adopted, P7\_TA(2014)0012.

- having regard to Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work<sup>1</sup>,
  - having regard to the fundamental labour standards established by the International Labour Organisation (ILO) and to its conventions and recommendations on labour administration and labour inspections, which are an international benchmark for ensuring that legal provisions concerning working conditions and worker protection are applied,
  - having regard to the Eurofound report entitled ‘Posted workers in the European Union (2010)’<sup>2</sup> and to the national reports,
  - having regard to Eurofound’s European Industrial Relations Dictionary<sup>3</sup>,
  - having regard to the Commission communication of 19 May 2015 entitled ‘Better regulation for better results – an EU agenda’ (COM(2015)0215),
  - having regard to Parliament’s 2015 study entitled ‘EU Social and Labour Rights and EU Internal Market Law’,
  - having regard to the Commission’s 2015 ‘Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors’,
  - having regard to the 2015 study, carried out by the University of Ghent and financed by the Commission, entitled ‘Atypical Employment in the Aviation Sector’,
  - having regard to the Commission President’s State of the Union address to Parliament of 9 September 2015,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Transport and Tourism and the Committee on Women’s Rights and Gender Equality (A8-0255/2016),
- A. whereas undeclared work and bogus self-employment can lead to distortions of competition which result in long-term damage to social insurance systems, an increasing number of precarious jobs and deteriorating levels of worker protection and job quality in general, and should therefore be combated; whereas the increasing trend towards outsourcing and subcontracting may create possibilities for the abuse or circumvention of existing labour and social law; whereas it is essential to tackle such abuses in order to maintain freedom of movement in the internal market and solidarity within the Union;

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<sup>1</sup> OJ L 65, 11.3.2016, p. 12.

<sup>2</sup> <http://www.eurofound.europa.eu/publications/report/2010/working-conditions-industrial-relations/posted-workers-in-the-european-union>

<sup>3</sup> <https://www.eurofound.europa.eu/observatories/eurwork/industrial-relations-dictionary>

- B. whereas the free movement of workers, as laid down in Article 45 of the Treaty on the Functioning of the European Union, freedom of establishment and freedom to provide services are fundamental principles of the internal market;
- C. whereas the Charter of Fundamental Rights of the European Union, to which all the Member States are signatories, stipulates that equality between men and women must be ensured in all areas; whereas, with regard to social dumping, a key challenge for the EU is to increase the level of employment among women, improve the situation of women on the labour market and eliminate gender gaps;
- D. whereas one of the main principles of EU policies is social cohesion, which means the constant and ongoing approximation of wages and guaranteed social security protection for all workers, be they local or mobile; whereas substantial differences in labour conditions and wages persist in the Union, and whereas upward social convergence is key to prosperity and enhanced internal demand throughout the Union; whereas wage differentials are among the main reasons for workers' departure from their home countries;
- E. whereas Article 9 TFEU enshrines the promotion of a high employment rate, the guaranteeing of adequate social protection, the combating of social exclusion, and a high level of education, training and human health protection as fundamental principles of the Union; whereas, as a consequence of the crisis and the high unemployment rates in the majority of the Member States, inequality is deepening;
- F. whereas the gender pay gap still exists and, despite existing EU legislation and soft-law recommendations, progress in this area is extremely limited; whereas the situation is exacerbated by social dumping, together with the gender pay gap, which leads to a gender pension gap that puts elderly women at greater risk of poverty than elderly men;
- G. whereas human trafficking – in particular the trafficking of women, not only from third countries to the EU but also between EU countries – is often associated with false employment contracts;
- H. having regard to the growing scope for 'social dumping' as a result of employment relations presenting extraterritorial features;
- I. whereas in the transport sector, security, passenger safety and appropriate working conditions are to a great extent interlinked;
- J. whereas the creation of a Single European Transport Area was confirmed to be the ultimate objective of the 2011 White Paper on Transport;
- K. whereas the Commission has announced that during 2016 it intends to propose new initiatives concerning road transport, including the social aspects;
- L. whereas the road transport sector is essential to the society and economy of the European Union and accounts for almost three quarters (72 %) of total domestic freight transport; whereas it transports more passengers than over- and underground railways and trams combined, and employs more than 2,2 % of the EU's total working population (5 million people);

- M. whereas good working conditions, which protect physical and mental health, are a fundamental workers' right<sup>1</sup> and have positive value in themselves;
- N. whereas on 15 July 2014 and in his 2015 State of the Union address, Commission President Jean-Claude Juncker highlighted the need for a fairer and more truly pan-European labour market, which can be achieved by promoting and safeguarding the 'free movement of citizens as a fundamental right of our Union, while avoiding cases of abuses and risks of social dumping';
- O. whereas the Court of Justice, in its judgment in case C-341/05 *Laval* of 18 December 2007<sup>2</sup>, highlighted the right to undertake collective action against possible social dumping and emphasised that such action must be proportionate in order not to restrict the fundamental freedoms of the EU, such as the freedom to provide services;
- P. whereas the European Social Charter should be acknowledged as the expression of the consensus among the Member States in the area of fundamental social rights;
- Q. whereas the growth in abusive practices and the increasing exercise of social dumping weaken support for the principle of the internal market and the competitiveness of businesses, in particular SMEs, undermine the rights of European workers and confidence in European integration and make genuine social convergence essential; whereas agriculture, building, construction, catering and food, transport, health, care and domestic services are the main sectors concerned;
- R. whereas the principle of equal treatment of workers within the European Union and essential social convergence in the single market are important; whereas Article 45 TFEU stipulates that freedom of movement shall 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;
- S. whereas dumping, whether social, fiscal or environmental, is contrary to European values, as it endangers the protection of EU citizens' rights<sup>3</sup>;
- T. whereas most Member States have not yet transposed Directive 2014/67/EU, even though the deadline for doing so was 18 June 2016; whereas it is important to assess the impact of the implementation of that directive, once it has been transposed in all the Member States, in order to determine its real impact in the fight against the various types of fraud identified in the context of the posting of workers and the protection of posted workers;
- U. whereas posted workers make up about 0,7 % of the entire EU labour force<sup>4</sup>;

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<sup>1</sup> Article 31(1) of the Charter of Fundamental Rights of the European Union: 'Every worker has the right to working conditions which respect his or her health, safety and dignity.'

<sup>2</sup> EU:C:2007:809.

<sup>3</sup> See texts adopted, P8\_TA(2015)0252.

<sup>4</sup> See Pacolet, Jozef, and De Wispelaere, Frederic, 'Posting of workers: Report on A1 portable documents issued in 2012 and 2013', p. 15. According to Eurostat data, the entire EU labour force in 2013 amounted to 243 million people (Labour Force Survey Overview 2013, Eurostat ([http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Labour\\_force\\_survey\\_overview\\_2013](http://ec.europa.eu/eurostat/statistics-explained/index.php/Archive:Labour_force_survey_overview_2013))).

- V. whereas the number of posted workers in the Union stands at 1,92 million, mainly in the sectors of construction (43,7 % of all posted workers), services, transport, communication and agriculture;
- W. whereas the free movement of persons is essential to the European project, and is also a prerequisite for achieving economic, social and territorial cohesion goals in order to bring about a solid and sustainable level of competitiveness in all Member States;
- X. whereas the Court of Justice has highlighted, in its judgment in Case C-396/13, that Directive 96/71/EC is intended, on the one hand, to ensure fair competition between domestic businesses and businesses which provide transnational services, and, on the other, to ensure that a nucleus of mandatory rules laying down minimum protection in the host Member State apply to posted workers;
- Y. whereas the posting of workers should facilitate the sharing of skills and professional experience, and not be a cause of social dumping;
- Z. whereas European employers' federations and trade unions can play an important role in the fight against social dumping;
- AA. whereas a commitment has been made not to increase the financial burden for business, in particular SMEs;
- AB. whereas the setting of wages is a Member State competence;
- AC. whereas the Court of Justice has highlighted, in its judgment in Case C-396/13, that the host Member State is competent to determine the level of the minimum wage and the method of calculation and to assess the criteria applied;
- AD. whereas the President of the Commission has stated that 'the same work at the same place should be remunerated in the same manner'<sup>1</sup>; whereas legal clarification of this statement and of its application is required;

### ***I. Reinforcing controls and coordination between and by Member States***

1. Considers that, while there is no legally recognised and universally shared definition of social dumping, the concept covers a wide range of intentionally abusive practices and the circumvention of existing European and national legislation (including laws and universally applicable collective agreements), which enable the development of unfair competition by unlawfully minimising labour and operation costs and lead to violations of workers' rights and exploitation of workers; considers that the consequences of these practices and situations can have an impact as regards three main dimensions:
  - the economic aspect: the use by certain economic actors of illegal practices such as undeclared work or of abusive practices such as bogus self-employment can lead to major market distortions which are detrimental to bona fide companies, in particular SMEs;
  - the social aspect: social dumping could lead to a situation of discrimination and unfair treatment between workers in the EU and deprive them of the effective

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<sup>1</sup> [https://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines\\_en.pdf](https://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines_en.pdf)

exercise of their social and labour rights, including in respect of pay and social protection;

- the financial and budgetary aspect: the non-payment of due social security contributions and taxes as a result of social dumping represents a threat to the financial sustainability of social security systems and the public finances of the Member States;
2. Believes that it is crucial to ensure a level playing field and fair competition across the EU and to eliminate social dumping; stresses that labour inspectorates and/or the social partners play a key role in enforcing workers' rights, in defining decent pay in accordance with Member States' law and practice, and in providing consultation and guidance to employers; points out that 28 Member States have ratified ILO Convention No 81 on labour inspection, and calls on the Member States to ensure that all its provisions are implemented; calls on the Commission to support the Member States in establishing effective and efficient labour inspectorates and to draft a recommendation based on ILO Convention No 81 on labour inspection in order to ensure compliance with labour standards and the protection of workers, including provisions relating to working time, safety, and health; recalls the important role played by the social partners in ensuring compliance with existing legislation;
  3. Calls on the Member States to increase efficiency and to secure appropriate staffing levels and resources for their control bodies (including social and/or labour inspectorates, agencies and liaison offices), including for interpretation and translation, inter alia through the exchange of best practices; urges the Member States to meet the benchmark of one labour inspector for every 10 000 workers, as recommended by the ILO, and to make sure that they are adequately equipped to enforce European legislation in the area of free movement of workers and services;
  4. Calls on the Member States to improve cross-border cooperation between inspection services and the electronic exchange of information and data, in order to improve the efficiency of controls intended to combat and prevent social fraud, bogus self-employment and undeclared work, while recognising the importance of data protection, and with a view to mandatory cooperation and mutual assistance between Member States; encourages the Member States to draw up Union-wide in-service training programmes for inspectors, to identify new techniques used to circumvent the rules, and to organise cross-border cooperation; acknowledges the Commission's work in financing mutual learning programmes for labour inspectors in the Member States; stresses the importance of ensuring access for national labour inspectorates and/or the social partners to all effective working places and associated living places provided by the employer, where this is allowed by national law and with due respect for privacy, given that this is a prerequisite to enable them to do their job and check for cases of social dumping; recommends that the Commission consider turning the Eurodetachment projects into a permanent platform for exchange, joint training and collaboration for labour inspectors (and public officials in liaison offices for posted workers) involved in control and monitoring – a platform which could be included in, or work in coordination with, the European Platform Tackling Undeclared Work;
  5. Encourages the Member States to create, where applicable, ad hoc bilateral task forces and, where needed, a multilateral task force including national competent authorities and labour inspectors, to carry out, subject to the approval of all the Member States concerned, on-the-spot cross-border checks, in accordance with the national law of the

Member States in which the controls take place, in suspected cases of social dumping, work under illegal conditions or fraud, and to identify ‘letterbox companies’, fraudulent recruitment agencies and abuses of the rules that result in exploitation of workers; points out that these task forces could work in coordination with the European Platform Tackling Undeclared Work and with the Senior Labour Inspectors Committee in order to limit the financial burden involved, and that they could create a network of national social inspection services to promote information exchange; regards effective cooperation between national authorities and the social partners as a vital part of the effort to end social dumping and ensure that competition in the single market is fair;

6. Calls on the Commission and the Member States to ensure more effective implementation of existing legislation and to enhance the cooperation between Member State entities responsible for labour inspections, especially as regards cross-border labour inspections; welcomes the launch of the European Platform Tackling Undeclared Work and the goals it has laid down with a view to enhancing cooperation in the prevention and deterrence of undeclared work; hopes that this platform will help to detect and address cases of infringement of national and EU labour law and of EU provisions on free movement of workers, freedom of establishment and freedom to provide services;
7. Stresses the need to complement action against breaches of social rights by combating tax fraud and tax evasion, in order to guarantee fair competition and a level playing field for enterprises;
8. Notes that non-declaration or irregular declarations are among the most common forms of circumvention of the rules on posting; recommends that, in the case of posting, it should be made mandatory in all Member States to submit a declaration when the provision of services commences, at the latest, and that such declarations should be entered in a European register which would make it easier to consult them, to facilitate coordination between Member States and to limit the current legal uncertainties arising from the differences between procedures and documents from one country to another;
9. Stresses that the competent authorities of the host Member State, in cooperation with those of the sending state, should be able to check the reliability of the A1 form in the event of serious doubts as to whether a posting is genuine; calls on the ad hoc administrative working group on the A1 form to step up its efforts by improving the reliability of A1 forms, and to explore the possibility of facilitating oversight by collecting the A1 forms in a single digital system; calls on the Commission and the Member States to take all the requisite measures to ensure that the Electronic Exchange of Social Security Information (EESSI) is fully operational, used by all Member States and tailored to the needs of SMEs; stresses that improved access to information for workers, employers and labour inspectors, for instance through a single national website, is one of the key tools in the fight against breaches of the rules;
10. Calls on the Member States to ratify and implement ILO Convention No 189 on domestic workers; calls on the Member States to establish legal frameworks allowing the lawful employment of domestic workers and carers, in order to provide legal certainty for employers and fair terms of employment as well as decent working conditions for workers; calls on the Commission and the Member States to assess the terms and conditions of employment of domestic workers and, if necessary, to submit recommendations for improvement in accordance with the current Treaties (in particular



Article 153(1) TFEU), including appropriate training and the provision of information on the rights and obligations of this category of workers;

11. Notes that women are those most affected by social dumping in certain sectors, in particular housekeeping and care (especially home care); calls on the Commission, in cooperation with the Member States, to evaluate all situations in which women experience social and wage dumping or are engaged in undeclared work, as well as existing related EU legislation;
12. Calls on the Member States to improve transnational and local cooperation between public institutions, trade unions and NGOs with a view to addressing the often very complex problems facing migrant workers, and to take into account labour conditions as well as all other elements related to quality of life, including general health, social inclusion and accommodation;
13. Highlights the importance of the provisions of Directive 2014/67/EU on the cross-border enforcement of financial administrative penalties and/or fines, which will help to eliminate breaches of the legislation; takes the view that the competent authorities should be able to impose effective, proportionate and dissuasive sanctions, including the possibility of suspending the provision of services in the event of serious breaches of the legislation on postings or of applicable collective agreements; considers that the amount of such fines should serve as a deterrent, and that the provision of information for SMEs on the applicable legislation on posting should be improved;
14. Calls on the Member States to improve considerably information exchange concerning social security for posted workers, with a view to improving the enforcement of existing legislation; recalls its appeal to the Commission to look into the benefits of introducing, and if appropriate to provide, a forgery-proof European social security card or other EU-wide electronic document, on which could be stored all the data needed to verify the bearer's social security status on the basis of his or her employment relationship<sup>1</sup>, as well as the necessary information associated with the worker's postings, in strict compliance with data protection rules, in particular where sensitive personal data are processed; emphasises, however, that this must not restrict or undermine in any way the right of the host countries' authorities and social partners, in accordance with national law and practice, to review, and to carry out controls and verifications of, the data content of such a card;
15. Calls for an EU-wide list of enterprises, including letterbox companies, responsible for serious breaches of European labour and social legislation to be drawn up – after they have received prior warning – which can be consulted only by the relevant inspection authorities; calls for these enterprises to be denied access to public contracts, public subsidies and EU funds for a statutory period;
16. Calls for the EU and its Member States to cooperate across borders in relation to enforcement information, to give monitoring authorities better access to data recorded in the Member States' national electronic registers and in the European Register of Road Transport Undertakings (ERRU) and to consolidate the list of infringements leading to the loss of good repute of road transport operators, by including non-

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<sup>1</sup> European Parliament resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe (Texts adopted, P7\_TA(2014)0012).

compliance with any relevant EU legislation; stresses that responsibility for breaching rules should lie with those giving orders to employees;

**II. *Addressing regulatory gaps in order to enforce national and European labour and social law, and addressing the principle of equal treatment and non-discrimination***

17. Calls on the Commission to take action to eliminate shortcomings which have been identified in the current rules, in order to combat social dumping and social and fiscal fraud effectively;
18. Calls on the Commission to monitor carefully the implementation of Directive 2014/67/EU and the effectiveness of the Platform Tackling Undeclared Work in combating the phenomenon of letterbox companies by applying more generally the principle that each company should have one main corporate headquarters and ensuring that in cases of free provision of services using posted workers, each service provider involved should perform a ‘genuine activity’ in the Member State of establishment, and therefore be a genuine undertaking; recalls the importance of enterprises having a ‘genuine activity’ in their Member State of origin as a justification for the posting of workers; recalls the rejection by its Committee on Employment and Social Affairs of the proposal for a directive on single-person limited liability companies, as some of the proposed provisions could facilitate the creation of the kind of entities whose social and economic activities are bogus, constitute a breach of their obligations under agreements and the law, and result in the loss of billions of euros in tax revenue; calls for the Commission to consider the possibility of proposing a transparent and accessible business register of all EU companies and the mandatory use of the EESSI;
19. Calls on the Commission to launch a new report on the Member States’ progress in making the necessary improvements to their national tax administrations and systems for the purpose of tackling tax fraud, as proposed in the Commission communication entitled ‘An Action Plan to strengthen the fight against tax fraud and tax evasion’ (COM(2012)0722);
20. Notes that Directive 96/71/EC refers only to Articles 64 and 74 TFEU relating to freedom to provide services and freedom of establishment whilst one of the main aims of the directive is to protect workers; draws attention, further, to the importance of Articles 151 and 153 TFEU, which set goals for the EU and its Member States concerning the promotion of employment, the improvement of living and working conditions, adequate social protection, the promotion of social dialogue and the fight against exclusion;
21. Recognises the risks associated with long subcontracting chains; recalls that Member States can set up, in consultation with the relevant social partners, ‘joint and several liability’ mechanisms at national level which are applicable to local and foreign companies, in order to enable local and foreign workers to exercise their rights; recalls that this possibility was confirmed by Directive 2014/67/EU; asks the Commission to monitor carefully the application of the obligation placed on Member States by that directive to provide for measures ensuring that, in the construction sector, posted workers in subcontracting chains can hold the contractor of which their employer is a direct subcontractor liable as regards respect for their rights as workers;
22. Notes the problems related to Directive 96/71/EC and its implementation; highlights the importance of addressing these problems in order to ensure fair working conditions,

respect for workers' rights and a level playing field for posting and local companies in the host country, which is particularly important for SMEs; calls for timely implementation of Directive 2014/67/EU; notes the Commission proposal to revise Directive 96/71/EC by including a limitation on posting periods, introducing provisions on remuneration and defining terms and conditions of employment so as to ensure respect for the principle of equal treatment and the prohibition of any discrimination based on nationality, as enshrined in EU law since the founding Treaties; insists that the rules on posting should be clear, proportional and justified; stresses the need to comply with the collective agreements and industrial relations systems of the host country;

*Mobile workers: combating social dumping in the transport industry*

23. Calls for increased monitoring of the implementation of working time and rest time rules in the road transport industry; calls for the improvement of monitoring devices and the timely introduction of smart tachographs for professional use with a view to ensuring proper, efficient and non-discriminatory implementation of existing legislation by Member States without creating any undue administrative burden; calls on the Commission to assess the creation of an 'electronic and integrated operator file' for all operators operating under the Community licence, with the aim of gathering all relevant carrier, vehicle and driver data collected during roadside checks;
24. Calls for the stepping-up of checks in relation to compliance with work, standby, driving and rest times in all relevant sectors, such as construction, catering, health and transport, and for the imposition of penalties for serious non-compliance;
25. Invites the Commission to consider creating a European Road Transport Agency to ensure proper implementation of EU legislation and promote standardisation and cooperation among all Member States as regards road transport;
26. Calls on the Commission to coordinate and reinforce cooperation on road transport legislation among national authorities, including through information exchange, and on other efforts aimed at supporting the implementation of legislation and ensuring a level playing field for operators; notes that the enforcement of legislation in this area is primarily the responsibility of the Member States; urges the Member States to cooperate more closely with Euro Contrôle Route and the European Traffic Police Network (TISPOL) in order to improve the execution of EU road transport legislation by ensuring its equal and appropriate implementation;
27. Calls on the Commission to apply in a collective manner, to mobile personnel in the road transport industry, Article 8(2) of Regulation (EC) No 593/2008 (Rome I) as interpreted by the Court of Justice ruling in the *Koelzsch* case (C-29/10, judgment of the Court (Grand Chamber) of 15 March 2011);
28. Asks the Commission and the Member States to exchange views in order to clarify the relevant provisions so that a distinction can be drawn between employees and self-employed workers with a view to combating 'bogus self-employment', and asks Commission to propose specific recommendations based on indicators of the existence of an employment relationship according to ILO Recommendation No 198 concerning the employment relationship, while not discriminating against genuinely self-employed workers with a small number of clients; emphasises the need to monitor the employment status of workers such as airline pilots and train drivers and their employment relationship with the companies for which they work; stresses that the

problem of bogus self-employment has significant consequences with regard to the social protection of workers and safety, and could have an effect on fair competition;

29. Rejects any further liberalisation of cabotage until the implementation of the current legal framework has been strengthened; encourages the Commission to propose improved rules with a view to ensuring better implementation and facilitating monitoring; calls on the Commission to revise the Combined Transport Directive (92/106/EEC)<sup>1</sup> in order to eliminate unfair practices, and calls for further measures to ensure compliance with the social legislation relating to combined transport;
30. Calls on those Member States which have a toll system in place to make the toll data gathered available to the monitoring authorities for evaluation so that cabotage operations can be scrutinised more effectively;
31. Recommends that, in the event of acquisitions or the transfer of company property, it be clearly stated which requirements are not disregarded but carried over into the new contracts, within the meaning of Directive 2001/23/EC<sup>2</sup> as regards safeguarding employees' rights in the event of transfers of undertakings;
32. Calls for Regulation (EC) No 1008/2008 to be improved in order to ensure the binding application of national labour legislation for airlines which have operational bases in the EU and to enhance the definition and concept of the term 'principal place of business', and also, in the context of the coordination of social security systems and labour law, for alignment of the definition of 'home base' for crew members as per Regulation (EU) No 83/2014<sup>3</sup> and Regulation (EU) No 465/2012<sup>4</sup>;
33. Strongly urges the Commission and the Member States, with regard to the European Aviation Safety Agency (EASA) Regulation and other relevant legislation, to support direct employment contracts as the standard model and to restrict the use of atypical employment contracts;
34. Calls for the social rights of flight and cabin crew to be protected;
35. Calls on Member States to review their laws to make sure that all contracts in the aviation sector provide quality employment and good working conditions; believes that precarious working conditions are an additional safety risk; stresses that

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<sup>1</sup> Council Directive 92/106/EEC of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States (OJ L 368, 17.12.1992, p. 38).

<sup>2</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82, 22.3.2001, p. 16).

<sup>3</sup> Commission Regulation (EU) No 83/2014 of 29 January 2014 amending Regulation (EU) No 965/2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 28, 31.1.2014, p. 17).

<sup>4</sup> Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 amending Regulation (EC) No 883/2004 on the coordination of social security systems and Regulation (EC) No 987/2009 laying down the procedure for implementing Regulation (EC) No 883/2004 (OJ L 149, 8.6.2012, p. 4).

competitiveness should not come at the price of ‘selling off’ social safeguards for workers and the quality of services;

36. Stresses that the social dimension of the Aviation Strategy for Europe published by the Commission on 7 December 2015 should be strengthened, as quality employment and good working conditions are directly linked to maintenance of the safety and security of both passengers and staff; stresses, furthermore, the need for the Commission and the Member States to monitor and ensure proper enforcement of national social legislation and collective agreements for airlines having operational bases on EU territory; recalls, in this connection, the link between social and environmental standards and quality of service, as well as safety; recognises the importance of establishing minimum training for maintenance personnel in civil aviation sectors; asks the Commission to propose a review of Regulation (EC) No 868/2004 of the European Parliament and of the Council of 21 April 2004 concerning protection against subsidisation and unfair pricing practices causing injury to Community air carriers in the supply of air services from countries not members of the European Community<sup>1</sup>, and to analyse the causes of its non-implementation; calls on the Commission and the Member States to review rules on initial training and on the licensing of aircrew with a view to eliminating shortcomings leading to the exploitation of pilots, such as pay-to-fly contracts;
37. Calls on the Commission to examine the possibility of an additional proposal on applicable working conditions in the shipping industry, including with regard to the crews of vessels;
38. Considers that, in the maritime sector, the Commission should ensure the full implementation of social legislation, including the 2006 Maritime Labour Convention; calls on the Commission and the Member States to look into measures encouraging the recruitment and retention of skilled European-based seafarers;

#### *Anticipating challenges linked to the digitisation of the economy*

39. Recalls the importance of tying the development of the digital and sharing economy to the protection of workers in this new sector, where more flexible working practices may result in forms of employment with lower standards as regards social security, working time, working location, training, worker participation and employment protection; stresses that freedom of association and the right to collective bargaining must be applicable in the context of these new forms of employment, in accordance with the EU Charter of Fundamental Rights and national practice; emphasises that the Member States must adapt their legislation to the digital and sharing economy, and calls on the Commission, the Member States and the social partners to evaluate rapidly the provisions of European legislation applying to this sector and, if necessary, to draw up proposals to regulate the digital, sharing and collaborative economy in order to ensure fair competition and protection of workers’ rights;
40. Notes that digitisation has a crucial impact on European labour markets; emphasises that, on the one hand, digitisation can generate new business models and new jobs (especially for high-skilled workers, but also for low-skilled workers), but that, on the other hand, it can also lead to insecure forms of employment; stresses the need for the social dimension to be taken on board in the Digital Single Market Strategy so as to take full advantage of the associated employment and growth potential while ensuring a high

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<sup>1</sup> OJ L 162, 30.4.2004, p. 1.

level of employment protection; calls on the Commission to shape the digital single market in a socially just and sustainable way; takes the view that existing social protection schemes should be adapted to the needs of workers in the digital and sharing economy in order to ensure adequate social protection for those workers;

41. Recalls that in some economic sectors, such as agriculture, working hours vary according to seasonal constraints;

### ***III. Towards upward social convergence***

42. Stresses the primacy of fundamental rights; calls on the Commission and the Member States to support and enhance social dialogue, which plays a critical role in achieving high-level working conditions; emphasises that labour law and high social standards have a crucial role to play in rebalancing economies, supporting incomes and encouraging investment in capacity; stresses that, in this context, EU law and policy documents must respect trade union rights and freedoms, comply with collective agreements and uphold equal treatment of workers;
43. Calls on the Commission to take specific measures to help women affected by social dumping, by focusing all general policies and measures on the achievement of equality, taking into account ongoing labour market segregation and inequality in employment contracts, as reflected in the ongoing significant pay differentials between women and men;
44. Emphasises that inequality is deepening in Europe, thus undermining the achievement of the Europe 2020 targets on poverty and employment;
45. Underlines the importance of establishing economic, fiscal and social mechanisms in the territory of the Union and/or the euro area, which will improve the living standards of EU citizens by reducing economic and social imbalances; urges, in addition, the Commission to take into account opinions on social issues with a view to enhancing worker protection through convergence;
46. Recalls the Commission's commitment to establishing a pillar of social rights and stresses the need for upward social convergence in order to achieve the objectives set out in Article 151 TFEU; emphasises that the establishment of criteria for comparing the various national social systems cannot provide such a pillar, but can only serve as a preliminary analytical framework; stresses that the adoption of a pillar of social rights should not lead to the lowering of existing labour and social standards;
47. Notes the differing levels of employee and employer social security contributions in the Member States; asks the Commission to evaluate the economic and social impact of those differences in the context of the single market;
48. Considers that wages which enable workers to lead a decent life are important for social cohesion and for maintaining a productive economy; calls for respect for, and the promotion of, collective bargaining; also recommends the establishment of wage floors in the form of a national minimum wage, where applicable, with due respect for the practices of each Member State and after consulting the social partners, with the objective of gradually attaining at least 60 % of the respective national average wage, if possible, so as to avoid excessive wage disparities, to support aggregate demand and economic recovery and to underpin upward social convergence;

49. Notes the potential value of automatic stabilisers; stresses the need to accompany these stabilisers with effective employment policies whose main aim is to create quality jobs;
50. Calls on the Commission, together with the Member States, to consider the need to take action at EU level to address various aspects of outsourcing, including the extension of joint and several liability in the subcontracting chain;
51. Stresses that all subcontractors, including temporary agencies that mostly send women to other Member States to perform domestic work and provide home care, must be made liable for unpaid wages, social security contributions, accident insurance and illness and injury provisions; stresses that subcontractors must also be able to assist employees in the event of mistreatment and abuse by clients, and with repatriation;
52. Calls on the Commission to examine the possibility of establishing an instrument whereby companies can be subject to a greater duty of care for which they may be held liable, in respect of both their subsidiaries and their subcontractors operating in third countries, in order to prevent human rights violations, corruption, severe physical injury or environmental damage and the violation of ILO conventions;
53. Considers that Directive 96/71/EC and the rules coordinating social security systems must be applicable to the employment of posted workers from a third country, on the basis of WTO Mode 4 regulation and within the framework of trade agreements, in order to guard against more favourable treatment of enterprises and workers from third countries than of those from Member States;
54. Asks the Commission to take the recommendations in this resolution into account as far as possible;
55. Stresses the need for better coordination of the various European policies;
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56. Instructs its President to forward this resolution to the Council and the Commission.