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*Plenary sitting*

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**A8-0319/2017**

19.10.2017

**\*\*\*I**  
**REPORT**

on the proposal for a directive of the European Parliament and of the Council amending 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  
(COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))

Committee on Employment and Social Affairs

Rapporteurs: Elisabeth Morin-Chartier, Agnes Jongerius

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending 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 (COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0128),
  - having regard to Article 294(2), and Article 53(1) and Article 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0114/2016),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinions submitted, within the framework of the Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Bulgarian National Assembly, by the Czech Senate and the Czech Chamber of Deputies, by the Danish Parliament, by the Estonian Parliament, by the Croatian Parliament, by the Latvian Parliament, by the Lithuanian Parliament, by the Hungarian Parliament, by the Polish Senate and the Polish Sejm, by the Romanian Senate and the Romania Chamber of Deputies and by the Slovak Parliament,
  - having regard to the opinion of the European Economic and Social Committee of 14 December 2016<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 7 December 2016<sup>2</sup>,
  - having regard to Rules 59 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 the Internal Market and Consumer Protection and of the Committee on Legal Affairs (A8-0319/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 75, 10.3.2017, p. 81.

<sup>2</sup> OJ C 185, 9.6.2017, p. 75.

## Amendment 1

### Proposal for a directive

#### Citation 1

*Text proposed by the Commission*

Having regard to the Treaty on the Functioning of the European Union, and in particular **Articles 53(1) and 62** thereof,

*Amendment*

Having regard to the Treaty on the Functioning of the European Union, and in particular **Article 53(1), Article 62, and Article 153(1)(a) and (b) in conjunction with Article 153(2)** thereof,

## Amendment 2

### 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 essential to a properly functioning internal market**. The implementation **and enforcement** of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses, **combating the circumvention of rules, respecting workers' rights, improving working conditions and enhancing social cohesion among Member States**.

## Amendment 3

### 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. ***In accordance with Article 56 TFEU, restrictions on freedom to provide services within the Union are to be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.***

**Amendment 4**

**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 adequate social protection and to combat social exclusion ***as well as to promote a high level of education, training and protection of human health.***

**Amendment 5**

**Proposal for a directive**

**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) In order to ensure that this Directive is correctly applied, coordination between the Member States' labour inspection services and cooperation at European level on***

*combating fraud relating to the posting of workers should be strengthened, and checks should be carried out to ensure that social contributions for posted workers are paid regularly to the managing authority of the Member State of origin.*

## Amendment 6

### 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 the light of proven cases of fraud*, it is necessary to *revise* the Posting of Workers Directive, *assess whether it* still strikes the right balance between the need to promote the freedom to provide services and *ensure a fair business climate and a level playing field for workers and undertakings operating in the internal market*, and the need to protect the rights of posted workers. *There is an urgent need to clarify the rules, to make sure that they are applied uniformly and to bring about genuine upward social convergence. Alongside the revision of Directive 96/71/EC, priority should also be given to the implementation and enforcement of Directive 2014/67/EU of the European Parliament and of the Council<sup>1a</sup>.*

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<sup>1a</sup>. *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 co-operation through the Internal Market Information System ('the IMI Regulation')* (OJ L 159, 28.5.2014, p. 11).

## Amendment 7

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

*Text proposed by the Commission*

*Amendment*

***(4a) Sufficient and accurate data remains lacking in the area of posted workers, in particular with regard to information about the number of posted workers in particular employment sectors and in particular Member States. It is important that the Commission begin to collect and monitor such data, and carry out an impact assessment in the area of posted workers.***

## Amendment 8

### Proposal for a directive Recital 5

*Text proposed by the Commission*

*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.

(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***. 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. ***This includes the prohibition of any measures which may directly or indirectly discriminate between citizens. While applying those principles, the relevant case-law of the Court of Justice of the European Union should be taken into consideration.***



**Amendment 9 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. 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. *The Rome I Regulation also provides that the country where the work is habitually carried out is not deemed to have changed if the worker is temporarily employed in another country. This Directive creates legal certainty in the application of the Rome I Regulation to a specific situation, without amending the Rome I Regulation in any way. The worker will in particular enjoy the protection and benefits pursuant to the Rome I Regulation.*

**Amendment 10**

**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*

*deleted*

## Amendment 11

### 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 12

### Proposal for a directive Recital 9

*Amendment*

(8) In view of the long duration of certain posting assignments, it is necessary to provide that ***posting is of a temporary nature. Therefore, all the applicable terms and conditions of employment of the Member State where the worker is posted should be applicable after 24 months, except the conditions relating to the conclusion and termination of the employment contract.*** 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. ***For postings that require a longer duration, it should be possible to grant extensions to undertakings based on a reasoned request made to the competent authority of the Member State where the worker is posted.***

*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) 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 **necessary and** proportionate

### **Amendment 13**

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

##### **Recital 10**

*Text proposed by the Commission*

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 **in that sector** raises particular legal questions and difficulties **which are addressed in the Commission's proposal for a directive amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector [COD(2017)0121], which is intended to provide for** sector-specific legislation.

#### **Ex COMP UAmendment 14**

#### **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 and** competitive internal market, service providers compete on **the basis of** factors such as productivity, efficiency, **education and skill level of the labour force, as well as** quality and innovation of their goods and services.

## Amendment 15

### Proposal for a directive

#### Recital 12

*Text proposed by the Commission*

(12) It is within Member States' competence to set rules on remuneration in accordance with their law *and* practice. ***However, national rules on remuneration applied to posted workers must be justified by the need to protect posted workers and must not disproportionately restrict the cross-border provision of services.***

*Amendment*

(12) It is within Member States' ***exclusive*** competence to set rules on remuneration in accordance with their national law *and/or* practice. ***The setting of wages is a matter for the Member States and the social partners alone. Particular care should be taken not to undermine national systems of wage setting and the freedom of the parties involved.***

## Amendment 16

### 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, ***the method used to calculate the remuneration due and where relevant, the qualifying criteria for classification in the different wage categories*** should be clear and transparent to all service providers ***and posted workers. For the calculation of the remuneration, all mandatory elements, laid down by law, applicable collective agreements or arbitration awards, should be taken into account, provided that those elements are also applied at local level.*** It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration ***as defined by the applicable law and collective agreements*** on the single website provided for by Article 5 of the Enforcement Directive ***as transparency and access to information is essential for legal certainty and law enforcement . The information provided on the single official national website should be in line with national law and practice and should***

*respect the autonomy of the social partners. Each Member State should ensure that its website works properly and is updated on a regular basis.*

## **Amendment 17**

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

*Text proposed by the Commission*

*Amendment*

*(13a) Directive 2014/67/EU provides for a number of provisions to ensure that rules on posting of workers are enforced and are respected by all service providers. Article 4 of Directive 2014/67/EU provides a list of elements that are to be assessed in order to identify genuine posting situations and prevent abuse and circumvention.*

## **Amendment 18**

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

*Text proposed by the Commission*

*Amendment*

*(13b) Employers should, before the beginning of the posting, take appropriate measures to provide essential information about the terms and conditions of employment in accordance with Council Directive 91/533/EEC<sup>1a</sup>, as regards the posting.*

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<sup>1a</sup> Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.91, p. 32).

## Amendment 19

### Proposal for a directive Recital 13 c (new)

*Text proposed by the Commission*

*Amendment*

***(13c) This Directive establishes a balanced framework with regard to the freedom to provide services and the protection of posted workers, which is non-discriminatory, transparent and proportionate while respecting the diversity of national industrial relations. This Directive does not prevent application of terms and conditions of employment which are more favourable to posted workers.***

## Amendment 20

### Proposal for a directive Recital 13 d (new)

*Text proposed by the Commission*

*Amendment*

***(13d) This Directive should not in any way affect the exercise of fundamental rights as recognised in the 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 the Member States, in accordance with national law and/or practice. Nor should it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.***

## Amendment 21

### 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.***

(14) Laws, regulations ***and national practice, including*** 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.

## **Amendment 22**

### **Proposal for a directive Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14a) 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 practice that posted workers receive all entitlements.***

## **Amendment 23**

### **Proposal for a directive Recital 14 b (new)**

*Text proposed by the Commission*

*Amendment*

***(14b) Member States should enforce existing rules on subcontracting strictly and consistently.***

## **Amendment 24**

### **Proposal for a directive Recital 15**

*Text proposed by the Commission*

*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.

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

## Amendment 25

### Proposal for a directive

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

Directive 96/71/EC

Article 1 – paragraph 3 – point c

#### *Present text*

“(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.”

#### *Amendment*

***(-1) In Article 1(3), point (c) is replaced by the following:***

“(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided ***that*** there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.”

## Amendment 26

### 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. This Directive shall not in any way affect the exercise of fundamental rights as recognised in the 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/or practice. Nor does it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.”**

## **Amendment 27**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 2 a

*Text proposed by the Commission*

*Amendment*

Article 2a

Article 2a

Posting exceeding twenty-four months

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.***

1. ***The posting of a worker shall be temporary.*** When the anticipated or the effective duration of posting exceeds twenty-four months, ***Member States shall ensure that the undertakings referred to in Article 1(1) guarantee workers posted to their territory, in addition to the terms and conditions of employment referred to in Article 3(1) and irrespective of which law applies to the employment relationship, all the applicable terms and conditions of employment which are applicable in the Member State where the service is provided, provided that those terms and conditions are more favourable to the worker than those pursuant to the law which applies to the employment***

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.***

***relationship, with the exemption of the conditions relating to the conclusion and termination of the employment contract.***

2. For the purpose of paragraph 1, in ***the*** 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.

***2a. The Member State where the service is provided may, on the basis of the reasoned request of a service provider, extend the duration before which the terms and conditions of employment applicable in that Member State are guaranteed as referred to in paragraph 1 on the ground that the services provided by that undertaking are to remain temporary for longer.***

***The Member State shall handle such requests in a proportionate, non-discriminatory and timely manner, providing reasons for its decision. Where the Member State accedes to such a request, the undertaking shall provide an update of the situation every twelve months, until the end of the provision of the services concerned.***

***The competent authority of the host Member State shall take a decision on such requests in accordance with Article 4 of Directive 2014/67/EU, with Regulation 883/2004/EC and in a justified, proportionate and non-discriminatory manner.***

## **Amendment 28**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory *the* terms and conditions of employment *covering* the following matters *which*, in the Member State where the work is carried out, are laid down:

- 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) maximum work periods and minimum rest periods;

(b) minimum paid annual *holidays*;

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

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions of non-discrimination.

*Amendment*

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory *equal* terms and conditions of employment *which cover* the following matters *laid down* in the Member State where the work is carried out:

- by law, regulation or administrative provision, and/or
- by collective agreements or arbitration awards within the meaning of *paragraphs 8 and 8a*:

(a) maximum work periods and minimum rest periods, *including specific measures regarding night work, work performed during weekends and public holidays and work performed in shifts*;

(b) minimum paid annual *leave*;

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

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;

(g) equality of treatment between men and women and other provisions of non-discrimination;

*(ga) the conditions of workers' accommodation;*

*(gb) allowance rates to cover travel,*

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

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

*board and lodging expenses for workers away from their habitual place of work.*

For the purpose of this Directive, *the concept of remuneration shall be defined by the law and/or practice of the Member State to whose territory the worker is posted.*

Member States shall publish, *in accordance with national law and/or practice, without undue delay and in a transparent manner* in the single official national website *and by other suitable means*, referred to in *Article 5(2)* of Directive 2014/67/EU, the constituent elements of remuneration in accordance with point (c) *of this paragraph. Member States shall ensure that the information provided on the single official national website is accurate and up to date. The Commission shall publish on its website the addresses of the single official national websites.*

*An undertaking shall not be responsible for the failure to apply or the incorrect application of such elements if the information is not, or is incorrectly, provided on the single national official website prior to the commencement of the posting.*

*In order to avoid double payment, nothing in this Article shall allow for any element of remuneration, allowances or expenses related to work outside the habitual place of work to be paid more than once to a posted worker. The worker shall be subject to the terms and conditions that are more favourable to him or her.*

## Amendment 29

### 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 conditions of remuneration, the Member State may, on a non-discriminatory and proportionate basis, **place undertakings that post workers to their territory under the same obligations. Such requirements shall be applicable only to the employees of the subcontractor who are being posted to that Member State.**

## Amendment 30

### 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. In the case of subcontracting, the contractor shall inform a service provider from another Member State in writing about the applicable terms and conditions of employment as regards remuneration prior to the commencement of the service contract.”**

## Amendment 31

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2 – point b b (new)

Directive 96/71/EC

Article 3 – paragraph 1 a b (new)

*Text proposed by the Commission*

*Amendment*

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

**“1ab. Member States shall communicate to the Commission any measure referred to in this Article. The Commission shall communicate those measures to the other Member States.”**

## Amendment 32

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 7 – subparagraph 2

*Present text*

*Amendment*

“Allowances specific to the posting shall be considered to be part of ***the minimum wage***, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.”

**(ca) In paragraph 7, the second subparagraph is replaced by the following:**

“Allowances specific to the posting shall be considered to be part of ***remuneration***, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. ***In that case, they shall be provided for by the employer and shall not be deducted from remuneration.***”

## Amendment 33

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 8 a (new)

**(c b) The following paragraph is inserted:**

**8a. Member States may also, if they so decide, in accordance with their 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 offer the most favourable terms and conditions of employment to the worker.**

**Member States shall ensure that information about any such collective agreements or arbitration awards is available on the single official national website. Such collective agreements shall be applicable to posted workers only insofar as they are published on the single official national website.**

**An undertaking shall not be responsible for the failure to apply or the incorrect application of such collective agreements or arbitration awards if the information is not, or is incorrectly, provided on the single national official website prior to the commencement of the posting.”**

## **Amendment 34**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 9

*Text proposed by the Commission*

*Amendment*

(d) Paragraph 9 is *deleted*.

(d) Paragraph 9 is *replaced by the following*:

**“In addition to the terms and conditions referred to in paragraph 1 of this Article, Member States may provide that the**

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

*Temporary employment undertakings or placement agencies established in one Member State may post a worker to a user undertaking established or operating in another Member State provided that the user undertaking is established in the Member State where the worker is posted. If this is not the case, the posted worker's host Member State shall be deemed to be that 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 posted worker."*

## Amendment 35

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 10

#### *Present text*

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

#### *Amendment*

*(da) Paragraph 10 is replaced by the following:*

10. This Directive shall not preclude the application by Member States, in compliance with the Treaty *and in accordance 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.



paragraph 1 in the 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.*

*For the purpose of this Directive, public policy provisions shall refer to non-discriminatory measures taken in the public interest, including measures in the fields of protection of workers, equal treatment, fair competition and the proper functioning of the labour market. Such measures shall not serve economic ends.*

### **Amendment 36**

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

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

*Text proposed by the Commission*

*Amendment*

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

*deleted*

### **Amendment 37**

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

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

Directive 96/71/EC

Article 4 – paragraph 2 – subparagraph 1

*Present text*

*Amendment*

Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3. Such cooperation

*(2a) In Article 4(2), the first subparagraph is replaced by the following:*

“Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3. Such cooperation

shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, **including** manifest abuses or possible cases of unlawful **transnational** activities.

shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, **and in tackling** manifest abuses or possible cases of unlawful activities, **such as transnational cases of undeclared work and bogus self-employment. Such cooperation shall be supported by the European Platform to tackle undeclared work.**

***If the liaison office or the competent authority in the Member State from which the worker is posted does not possess the information requested by the competent authority of the host Member State, it shall seek that information from other authorities or bodies. In the event of persistent delays in providing information to the host Member State, the Commission shall be informed and shall take appropriate measures.”***

## Amendment 38

### Proposal for a directive

#### Article 1 – paragraph 1 – point 2 b (new)

Directive 96/71/EC

Article 5 – paragraph 1

#### *Present text*

Member States shall take appropriate measures in the event of failure to comply with **this Directive**.

They shall in particular ensure that adequate procedures are available to workers and/or **their** representatives for the

#### *Amendment*

***(2b) Article 5 is replaced by the following:***

***“The host Member States and the Member States of establishment shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and shall take appropriate measures in the event of failure to comply with this Directive. The sanctions provided for shall be effective, proportionate and dissuasive.***

They shall in particular ensure that adequate procedures are available to workers and/or **workers'** representatives

enforcement of obligations under this Directive.

for the enforcement of obligations under this Directive.

***Member States shall ensure that in the case of non-genuine posting, irrespective of which law applies to the employment relationship, the terms and conditions of the Member State where the service is provided apply.”***

## EXPLANATORY STATEMENT

Posting is a specific form of temporary labour mobility, based on the freedom to provide services cross-border within the internal market. The 1996 Posting of Workers Directive defines a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. Even though posted workers are employed by a sending company and thereby subject to the law of the 'sending' Member State, they are entitled to a set of core rights in force in the host Member State. This is to guarantee that these rights and working conditions are protected throughout the EU.

According to the Commission, in 2014, there were over 1.9 million postings in the EU, an increase of 10.3% as compared to 2013 and of 44.4% with respect to 2010. The construction sector accounts for 43.7% of the total number of postings, while posting is also significant in manufacturing, education and health services.

Since 1996, the economic and labour market situation in the European Union has changed considerably. Over the last two decades, the Single Market has grown and wage differences have increased.

Although posting is an integral part of the internal market, it can have unintended consequences for certain sectors and regions. According to the Commission, posted workers can earn up to 50% less than local workers in some sectors or Member States, which distorts the level-playing field between companies as well as workers.

In this light, and that of the numerous rulings on the interpretation of the current provisions by the European Court of Justice, the Commission has proposed a revision of the Posting of Workers Directive, which is complementary to the Enforcement Directive adopted in 2014.

The Enforcement Directive has focused mainly on strengthening the practical application and enforcement of the provisions of the 1996 Directive by addressing issues related to fraud and circumvention and improving the exchange of information between Member States. Unfortunately, to date not all Member States have transposed the Directive.

However, the Enforcement Directive does not address the more fundamental questions related to the 1996 framework, with regard to the hard core of working and employment conditions that posted workers can avail of.

The co-rapporteurs' draft report seeks to further build on the Commission's proposal and deliver an effective legal instrument for ensuring a level playing field in the cross-border provision of services, coupled with the sound social protection of posted workers.

## ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPOREUR HAS RECEIVED INPUT

The co-rapporteurs would like to make it known that they were contacted during the preparation of their report amongst others by the following stakeholder representatives and lobbyists.

Entity and/or person
Swedish ministry for Employment and Integration
French ministry of Labour, Employment
Maltese ministry for Social Dialogue, Consumer Affairs and Civil Liberties
Secrétariat Général des Affaires Européennes de la République française
Permanent Representation of Sweden to the European Union
Permanent Representation of the Netherlands to the European Union
Permanent Representation of France to the European Union
Permanent Representation of Malta to the European Union
Permanent Representation of Poland to the European Union
Committee of the Regions
European Economic and Social Committee
Comité Économique, Social et Environnemental de la République française
ETUC - European Trade Union Confederation
BusinessEurope
European Confederation of Private Employment Services   Eurociett / World Employment Confederation
EFBWW - European Federation of Building and Woodworkers
FIEC - European Construction Industry Federation
Labour Mobility Initiative
Konsentio Public Affairs on behalf of the Fair Transport Europe Campaign
ETF - European Transport Workers' Federation
CEEMET - Council of European Employers of the Metal, Engineering and Technology-based Industries
EBC - European Builders Confederation
REIF - Représentation européenne des institutions de la sécurité sociale française
DGB - Confederation of German Trade Unions
Chambre des salariés du Luxembourg
OGBL - Confédération Syndicale Indépendante du Luxembourg
LCGB - Confédération Luxembourgeoise des Syndicats Chrétiens
FinUnions - Finnish Trade Union Representation to the European Union
Danish Trade Union office
Brussels office of the Swedish Trade Unions
Norway Trade Union office
FFB - Fédération Française du Batiment
VNO NCW - Verbond van Nederlandse Ondernemingen - Nederlands Christelijk Werkgeversverbond
FNV - Federatie Nederlandse Vakbeweging
Chambre de Commerce et d'Industrie d'Île de France

ÖGB - Austrian Trade Union Federation
CGPME - General Confederation of French SMEs
Koninklijke Vereniging MKB-Nederland
BDA - Confederation of German Employers' Associations
UPA - Union Professionnelle Artisanale
TBN - Transport Belangen Nederland
MEDEF - Mouvement des entreprises de France
Fédération Nationale des Transports Routiers France
Fédération Nationale des Travaux Publics France
ZDH - Zentralverband Des Deutschen Handwerks
APCMA - Assemblée Permanente des Chambres des Métiers et de l'Artisanat en France

## MINORITY OPINION

pursuant to Rule 52 a (4) of the Rules of procedure  
Martina Dlabajova

As one of the shadow rapporteurs, I voted against the report in the Committee because, in my view, the balance between the free movement of services and the protection of workers was not achieved. As the abstentions and votes against demonstrate, the report did not fully reflect the concerns of various national delegations within the European Parliament.

I welcome the agreement on sector-specific solutions regarding transport sector and the compromise regarding the duration of posting (24 months with a possible extension).

In light of lack of clarity regarding the term “remuneration”, I endorse the safeguard clause for companies which exempts them from liability to apply elements of remuneration in case they are not or are incorrectly provided on the single national website.

I note with concern deletion of references to free movement of services throughout the text and the attempts to limit contractual freedoms under Rome I Regulation.

Furthermore, I believe that the obligation to apply all collective agreements for foreign undertakings is not realistic in practice and can create unjustified obstacles for cross-border provision of services.

I entirely disagree with the extension of the legal base to social chapters, creating legal uncertainty in applying the directive.

## MINORITY OPINION

pursuant to rule 52a(4) of the Rules of Procedure,  
by the ENF Group

A/ whereas this draft European Parliament report introduces some positive changes, including equal treatment of posted temporary agency workers and national temporary agency workers, and the freedom for Member States to decide nationally whether or not they wish to extend the duration of posting;

B/ whereas, however, the revision of this directive is premature, coming even before the 2014 implementing directive has been evaluated, and therefore without any specific information on the current situation;

C/ whereas the change in terminology, from ‘minimum pay’ to ‘remuneration’, given the major differences between Member States’ systems, will not be sufficient to prevent repeated abuse, in particular in terms of the payment of hourly rates;

D/ whereas the promise of extending liability to the contractor in the event of an abusive posting by the subcontractor has not been kept;

E/ whereas the most favourable law should apply from the first day of the posting;

1. The ENF Group distances itself from the work carried out on this report. We recognise that some effort has been made to tighten the legislation, but we believe that this text does not go far enough and we cannot support it.



## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

15.6.2017

Mr Thomas Händel  
Chair  
Committee on Employment and Social Affairs  
BRUSSELS

Subject: Opinion on the legal basis of the Commission proposal for a Directive concerning the posting of workers (COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))

Dear Mr Chair,

By letter of 24 March 2017 you asked the Committee on Legal Affairs pursuant to Rule 39(2) to consider whether the legal basis of the above Commission proposal was appropriate.

The committee considered the above question at its meeting of 12 June 2017.

Posting of workers is regulated by Directive 96/71/EC which was adopted on the basis of Article 57 TEC and Article 66 TEC. These articles now correspond to Article 53(1) TFEU and Article 62 TFEU, on which articles the Commission has based its proposal for amending the directive.

The draft report by the co-rapporteurs in the EMPL committee seeks to introduce Article 151 TFEU and Article 153(1) TFEU, points (a) and (b) as additional legal bases, and amendments have been tabled that seek to add to the legal basis Article 46 TFEU, Article 56 TFEU or Article 153 as a whole or to replace Article 53(1) with 54 and 56 TFEU.

At its meeting of 12 June 2017 the Committee on Legal Affairs accordingly decided, by 13 votes to 11, with 1 abstention<sup>1</sup>, to recommend that you should retain the legal bases proposed by the Commission, Article 53 TFEU and Article 62 TFEU as they are appropriate as legal bases for the proposed amending directive. Article 153(2) TFEU should be considered as an additional legal basis, in particular, if the emphasis on the protection of the rights of posted workers is further reinforced by the Parliament. If Article 153 TFEU would be added as a legal basis it would be recommendable to refer, in this case, to Article 153(1) TFEU, points (a) and

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<sup>1</sup> The following were present for the final vote: Pavel Svoboda (Chair), Lidia Joanna Geringer de Oedenberg (Vice-Chair), Jean-Marie Cavada (Vice-Chair), Laura Ferrara (Vice-Chair), Max Andersson, Joëlle Bergeron, Dominique Bilde (for Marie-Christine Boutonnet, pursuant to Rule 200(2)), Antanas Guoga, Heidi Hautala, Mary Honeyball, Danuta Jazłowiecka (for Tadeusz Zwiefka, pursuant to Rule 200(2)), Sylvia-Yvonne Kaufmann, Katerina Konecná (for Jiří Maštálka, pursuant to Rule 200(2)), Merja Kyllönen (for Kostas Chrysogonos, pursuant to Rule 200(2)), Gilles Lebreton, Victor Negrescu, António Marinho e Pinto, Emil Radev, Dariusz Rosati (for Rosa Estaràs Ferragut, pursuant to Rule 200(2)), Virginie Rozière, Sajjad Karim, Elly Schlein (for Evelyn Regner, pursuant to Rule 200(2)), József Szájer, Axel Voss, Kosma Złotowski.

(b) in conjunction with Article 153(2) TFEU.

## 1. Background

Posting of workers is regulated by Directive 96/71/EC which was adopted on the basis of Article 57 EC and Article 66 EC. These articles now correspond to Article 53(1) TFEU and Article 62 TFEU, that is to say, the articles on which the Commission has based its proposal for amending the directive.

Directive 96/71 sets the EU regulatory framework for promoting and facilitating the cross-border provision of services through the temporary posting of workers in another Member State. More recently the Enforcement Directive 2014/67/EU has been adopted with a view to strengthen the instruments available to fight and sanction circumventions, fraud and abuses in the field of posting of workers.

Under the current rules, posting companies need to comply with a core set of rights of the host country, including *minimum rates* of pay. This provision causes significant wage differentiation between posted and local workers in host countries, estimated to range from 10% up to 50% depending on countries and sectors, thus distort the level playing field among companies, by conferring a labour cost advantage to sending companies over local companies in host Members States.

According to the Explanatory Memorandum to the proposal Directive 96/71 sought to “establish a balance between the objectives of promoting and facilitating the cross-border provision of services, providing protection to posted workers and ensuring a level-playing field between foreign and local competitors”, a balance that was not currently achieved. In order to ‘rebalance’ the directive the proposal would introduce the principle “equal rules on pay for equal work”, and no longer only require the paying of minimum wages and extend to all sectors of the reference to universally binding collective agreements.

The proposal would establish that labour law of the host Member State would apply to long-term postings over 24 months through a presumption that this would be the habitual place of work. The choice of 24 months is justified, i.e., by this being in line with social security coordination rules. The proposal also seeks to establish equal remuneration between posted workers in subcontracting chains and workers at the main contractor through applying the latter’s working conditions, including from company-level agreements, if any, and the compulsory application of equal terms and conditions to posted temporary agency workers as agency workers recruited locally.

## 2. Relevant treaty articles

The Commission’s proposal is based on Articles 53 and 62 TFEU, which read as follows:

*Article 53*

*(ex Article 47 TEC)*

*1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.*

## Article 62

*(ex Article 55 TEC)*

*The provisions of Articles 51 to 54 shall apply to the matters covered by this Chapter.*

The draft report seeks to add Articles 151 and 153(1), which read as follows:

### Article 151

*(ex Article 136 TEC)*

*The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.*

*To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.*

### Article 153

*(ex Article 137 TEC)*

*1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:*

- (a) improvement in particular of the working environment to protect workers' health and safety;*
- (b) working conditions;*
- (c) social security and social protection of workers;*
- (d) protection of workers where their employment contract is terminated;*
- (e) the information and consultation of workers;*
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;*
- (g) conditions of employment for third-country nationals legally residing in Union territory;*
- (h) the integration of persons excluded from the labour market, without prejudice to Article 166;*
- (i) equality between men and women with regard to labour market opportunities and treatment at work;*
- (j) the combating of social exclusion;*
- (k) the modernisation of social protection systems without prejudice to point (c).*

*2. To this end, the European Parliament and the Council:*

- (a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;*

*(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.*

*The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.*

*In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees.*

*The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g).*

*3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 155.*

*In this case, it shall ensure that, no later than the date on which a directive or a decision must be transposed or implemented, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive or that decision.*

Amendments tabled in the lead committee seek to introduce Articles 46, 54, 56 TFEU as additional or alternative legal bases, which articles read as follows:

#### *Article 46*

*(ex Article 40 TEC)*

*The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular:*

*(a) by ensuring close cooperation between national employment services;*

*(b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;*

*(c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;*

*(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.*

## Article 54

(ex Article 48 TEC)

*Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.*

*‘Companies or firms’ means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.)*

## Article 56

(ex Article 49 TEC)

*Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.*

*The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.*

### 3. The case-law on legal basis

It is settled case law of the Court of Justice that: “the choice of legal basis for a Community (now Union) measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure”<sup>1</sup>. The choice of an incorrect legal basis may therefore justify the annulment of the act in question.<sup>2</sup>

As regards multiple legal bases, if examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis, namely that required by the main or predominant purpose or component.<sup>3</sup> However, where a measure has several contemporaneous objectives or components which are indissolubly linked with each other without one being secondary and indirect in relation to the other(s), the measure must be based on the various relevant Treaty provisions.<sup>4</sup>

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<sup>1</sup> Case C 411/06 *Commission v Parliament and Council* [2009] E.C.R. I 7585, para. 45 and Case C 130/10 *Parliament v Council* [2012] E.C.R., para. 42, and the case law cited therein.

<sup>2</sup> Opinion 2/00 on the *Cartagena Protocol* [2001] E.C.R. I-9713, para. 5.

<sup>3</sup> Case C-137/12 *Commission v Council* EU:C:2013:675, para. 53; Case C-411/06 *Commission v Parliament and Council*, [2009] E.C.R. I-7585, para.46 and the case-law cited there; C-490/10 *Parliament v Council* EU:C:2012:525, para. 45; C-155/07 *Parliament v Council* [2008] ECR I-08103, para. 34.

<sup>4</sup> Case C-211/01 *Commission v Council* [2003] ECR I-08913, para. 40; Case C-411/06 *Commission v Parliament and Council*, [2009] E.C.R. I-7585, para. 47; Case C-178/03 *Commission v European Parliament and Council* [2006] E.C.R. I-107, paras 43-56.

Recourse to a dual legal basis is nevertheless not possible where the procedures laid down for each legal basis are incompatible with each other or where the use of two legal bases is liable to undermine the rights of the Parliament.<sup>1</sup>

#### **4. The aim and content of the proposal**

Directive 96/71/EC does not contain an article which would make the aim and purpose of the directive explicit, neither does the Commission propose to introduce any changes in this respect. However, in particular the first four recitals of the proposal can be used as an indication. They read as follows:

(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.*

(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.*

(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.*

(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.*

Whereas the first and second recitals emphasise the aspect of the freedom to provide services, the third and fourth recitals add the aspects of social justice and the need to 'assess' whether the 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."

An analysis of the content of the proposal shows that the aim of the proposal effectively at least includes the aspect of 'rebalancing' the promotion of the freedom to provide services with the protection of workers' rights.

As outlined above, proposal aims to introduce equal rules on remuneration for long-term posting and to extend to all sectors of reference to universally binding collective agreements.

Equal rules on remuneration will contribute to increase the wages earned by posted workers, reduce pay differentials with local workers, and establish a level playing field between companies in the host countries.

In addition, equal treatment rules on long-term postings over 24 months and on sub-contracting chains can also reduce the role of labour costs as a competition factor by reducing the

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<sup>1</sup> Case C-178/03 *Commission v European Parliament and Council* [2006] E.C.R. I-107, para. 57; Joined Cases C-164/97 and C-165/97 *Parliament v Council* [1999] E.C.R. I-1139, para. 14; Case C-300/89 *Commission v Council* ("Titanium dioxide") [1991] E.C.R. I-2867, paras. 17-25; Case C-338/01 *Commission v Council* [2004] E.C.R. I-4829 (Recovery of Indirect Taxes), para. 57.

competitiveness of companies located in Member States with lower wage conditions, especially in labour-intensive sectors.

Specifically, the new Article 2a added to the Directive 96/71/EC -as the proposal states- “deals with the labour law to be applied to posted workers when the anticipated or the effective duration of posting exceeds twenty-four months”, and furthermore stresses that “(t)he Court of Justice has consistently held that the distinction between the freedom of establishment and the freedom to provide services on a temporary basis needs to be made on a case by case basis, taking into account not only the duration but also the regularity, periodicity and continuity of the provision of services.”

Furthermore, as the aim of the proposal Directive is also to “prevent the circumvention of the rule set out in paragraph 1, paragraph 2 clarifies that, in case of replacement of a worker regarding the same task, calculation of the duration of posting must take into account the cumulative duration of the posting of workers concerned. The rule of paragraph 1 will apply whenever the accumulated duration exceeds 24 months but, in order to respect the principle of proportionality, only to the workers posted for at least six months.

The proposal also introduces several changes to Article 3, point (a) of the Directive namely when it comes to “impos(ing) an obligation to publish information on the constituent elements of remuneration”, and a new rule at point (b) is added in order to offer “the faculty to Member States to oblige undertakings to subcontract that grant workers certain conditions on remuneration applicable to the contractor, including those resulting from non-universally applicable collective agreements.”

As per the new paragraph in Article 1(3)(c) of the Directive, it “specifies that the conditions to be applied to cross-border agencies hiring out workers must be those that are, pursuant to Article 5 of Directive 2008/104/EC, applied to national agencies hiring out workers. Contrary to Article 3(9) of the Directive, this would be a legal obligation imposed on Member States.”

## **5. Determination of the appropriate legal basis**

As mentioned above, the choice of legal basis for an EU measure must rest on objective factors that are amenable to judicial review; these include in particular the aim and content of that measure. In addition, recourse to a dual legal basis is not possible where the procedures laid down for each legal basis are incompatible with each other or where the use of two legal bases is liable to undermine the rights of the Parliament.

Beyond and before this it has to be verified that a proposed treaty provision actually qualifies as a legal basis. It follows from the principle of conferral, enshrined in Article 5 TEU that the Union shall act only when the treaties provide it with the competence to do so. Furthermore, Article 289 TFEU must be understood as requiring that the procedure for the adoption by the Union of a legal act covering a specific field is explicitly referred to in a treaty provision. A provision in the treaties which does not refer to a procedure for the adoption of an act cannot, therefore, constitute a legal basis for a directive. Furthermore, the provision in the treaties used as a legal basis must, obviously, also permit the adoption of a measure, the aim and content of which corresponds to the competence conferred in the provision used as a legal basis for the act.

The provisions proposed by the Commission clearly satisfies not only the general requirements of legal bases but are also appropriate with a view to the aim and content of the proposal, in so

far as this remains - as is the case with Directive 96/71/EC - the promotion of the freedom to provide services with the help of the posting of workers.

In this case the use of a double legal basis is a purely technical issue, the reason being that the Chapter 3 of Title IV on services in the TFEU does not include an appropriate legal basis for the kind of measures that Directive 96/71/EC regulates and that the proposal seeks to regulate. However, Article 62 TFEU extends the applicability of Articles 51 to 54 TFEU to the chapter on services, thus making it possible to use the provisions in Article 53 TFEU, read in conjunction with Article 62 TFEU, as the legal basis.

As the request from the Committee on Employment and Social Affairs for an opinion on the legal basis mentioned not only the amendments in this respect proposed in the draft report but also in amendments tabled in the lead committee these will also be considered. Two of the provisions proposed as legal basis, Article 54 TFEU and Article 151 TFEU cannot be used as legal basis due to the fact that they do not contain any reference to a legislative procedure, wherefore they do not need further consideration.

Article 46 TFEU and Article 56 TFEU do refer to the ordinary legislative procedure. However, an examination of the measures that said articles allow the Union to adopt shows that they do not correspond to the aim and content of the proposal. Article 46 TFEU lists a number of actions which aim at the promotion of the free movement of workers through facilitating the functioning of a common labour market, none of which correspond to the aim and content of the directive in force, nor to the aim and content of the proposal. Article 56 TFEU allows for the extension of the freedom to provide services to nationals of third countries who are established within the Union, which clearly is not the subject of the proposal. In order for either article to be applicable as legal basis, a wholly different piece of legislation would have to be envisaged.

The remaining question is whether Article 153 TFEU could be added as what essentially would be a second legal basis. Paragraph 2 of the article provides the legal basis for adopting directives laying down “minimum requirements” in the fields of social policy which enumerated in paragraph 1 of the article. Points (a) and (b) of paragraph 1, which have been proposed as an additional legal basis refer to the “improvement in particular of the working environment to protect workers' health and safety” and to “working conditions”, respectively. Directives pursuing the objectives defined in points (a) and (b) are to be adopted in the ordinary legislative procedure.

Having regard to the aim of the proposal, as expressed, notably, in the introductory recitals, as well as to the content of the amendments proposed to the articles of Directive 96/71/EC, one can conclude that there is an increased emphasis on the protection of workers' rights in the proposal compared to the directive in force, which, if adopted, would shift the “balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers” referred to in recital 4 of the proposal towards the protection of the rights of posted workers.

The reference in recital 4 of the proposal to the necessity “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” also appears to signal that the latter aspect has been one of the reasons behind the Commission's decision to propose the amendments to the directive, although the ensuring of a “level playing field for businesses” referred to in recital 1 is also likely to have been relevant in this respect.



Thus, while the promotion of the freedom to provide services through the posting of workers remains an objective of the proposal which justifies the legal bases proposed by the Commission, it could be argued that the proposal's increased emphasis on the protection of the rights of posted workers justifies considering this as a separate and equally important aim, reflected in the content of the proposal, in which case a dual legal basis could be appropriate.

However, the evaluation of the appropriateness of adding Article 153 TFEU as a, *de facto*, second legal basis would also need to take the position adopted by the Parliament into account. The draft report by the co-rapporteurs in the lead committee obviously gives an indication in this respect, and it arguably seeks to shift the balance further towards the protection of the rights of posted workers. There are, nevertheless, almost 500 amendments to the draft report, with two committees providing opinions to the report, wherefore a final opinion would need to consider also the adopted report.

As regards Article 153 TFEU as a legal basis it should be noticed that paragraph 1 of the article cannot, as such, be referred to alone, as the procedural references are to be found in paragraph 2 of the article. Thus, if Article 153 is used, a reference should be made to paragraph 2 of the article.<sup>1</sup> It should also be noted that paragraph 2 refers to two different procedures, the ordinary legislative procedure and a special legislative procedure, depending on which objective(s), specified in the points in paragraph 1 of the article, an act pursues. Therefore, it would not be recommendable to refer to Article 153 TFEU as whole, and if the objectives pursued are those expressed in point (a) and (b) of paragraph 1 of the article, it should be clear that those provisions must be read in conjunction with paragraph 2 of the article.

## 6. Conclusion

The legal bases proposed by the Commission, Article 53 TFEU and Article 62 TFEU are appropriate as legal bases for the proposed amending directive. Article 153(2) TFEU should be considered as an additional legal basis, in particular, if the emphasis on the protection of the rights of posted workers is further reinforced by the Parliament. If Article 153 TFEU would be added as a legal basis it would be recommendable to refer, in this case, to Article 153(1) TFEU, points (a) and (b) in conjunction with Article 153(2) TFEU.

Yours sincerely,

Pavel Svoboda

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<sup>1</sup> The Commission traditionally has referred just to paragraph 2. As a recent example see, for instance, the proposal for amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (COM(2016) 248 final).

15.5.2017

## OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))

Rapporteur: Vicky Ford

### AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Employment and Social Affairs, as the committee responsible, to take into account the following amendments:

#### Amendment 1

##### 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. ***The difference in wages or salaries and the access to capital should not, alone, be considered to be unfair***

*competition.*

## **Amendment 2**

### **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. Article 56 TFEU provides that restrictions on the freedom to provide services are prohibited.***

## **Amendment 3**

### **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.***

## **Amendment 4**

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

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

## Amendment 5

### 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, as well as of unsuitable national law**, 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.

## Amendment 6

### 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 those principles, the relevant case-law of the**

***Court of Justice of the European Union  
(the Court of Justice) must be taken into  
consideration and respected.***

*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 7**

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

*Text proposed by the Commission*

*Amendment*

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

**Amendment 8**

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

*Text proposed by the Commission*

*Amendment*

***(6a) 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.***

**Amendment 9**

**Proposal for a directive  
Recital 7**

*Text proposed by the Commission*

*Amendment*

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

(7) The Rome I Regulation *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.

## **Amendment 10**

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

*Text proposed by the Commission*

*Amendment*

*(7a) The case-law of the Court of Justice 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.*

## **Amendment 11**

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

*Text proposed by the Commission*

*Amendment*

*(7b) The Court of Justice 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 of the service. 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.*

*(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 12**

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

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

### **Amendment 13**

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

#### **Recital 8**

*Text proposed by the Commission*

*Amendment*

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

**deleted**

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

## **Amendment 14**

### **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 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.

## **Amendment 15**

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

*Text proposed by the Commission*

*Amendment*

(9a) ***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.***



## Amendment 16

### 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 transport, the posting of workers raises particular legal questions and difficulties (especially where **links** with the concerned Member State **are** insufficient). **The Commission has announced that it will address this issue** through sector-specific legislation **and by that means exempt this sector from the provisions of Directive 96/71/EC. Therefore, transport services such as transit, international transport and linked cabotage are excluded from the scope of this Directive.**

## Amendment 17

### 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 **supply of skills**, productivity and efficiency, **and wages are always based on a series of parameters, including experience, profile, level of responsibilities, labour market conditions or on** the quality and innovation of their goods and services.

### *Justification*

*In accordance to the answer to a written question given by Commissioner Oettinger on behalf of the Commission (E-008821/2016, 25.1.2017). "In the EU institutions as in any organisation remuneration is based on a series of parameters, including experience, profile, level of responsibilities, labour market conditions etc."*

## Amendment 18

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

*Text proposed by the Commission*

*Amendment*

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

## Amendment 19

### 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.

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

## Amendment 20

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

*Text proposed by the Commission*

*Amendment*

***(12a) It is established by the case-law of the Court of Justice that social protection of workers can be acknowledged as an overriding requirement justifying the imposition of obligations capable of constituting restrictions on the freedom to provide services. However, this 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 it 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 Court of Justice 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.*

*(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 21**

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

*Text proposed by the Commission*

*Amendment*

*(12b) The Court of Justice 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/EC.*

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

## **Amendment 22**

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

(13) The ***information on constituent*** elements of remuneration 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, ***up to date***, transparent ***and publicly available*** 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. ***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.***

#### **Amendment 23**

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

*Text proposed by the Commission*

*Amendment*

***(13a) All measures introduced by this Directive are 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.***

#### **Amendment 24**

##### **Proposal for a directive Recital 14**

*Text proposed by the Commission*

*Amendment*

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

***(14) 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***

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.

***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 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.***

## **Amendment 25**

### **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.***”

## **Amendment 26**

### **Proposal for a directive**

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

*Text proposed by the Commission*

Article 2a

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.***

*Amendment*

Article 2a

1. When the effective duration of ***uninterrupted posting of an individual worker*** 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.***

***1a. An employer may, on the basis of reasonable grounds, request a derogation to the twenty-four months, to be awarded by the competent authority in the host Member State.***

***The competent authority of the host Member State shall take a decision on any requests for derogations in accordance with Article 4 of Directive 2014/67/EU and in line with Regulation 883/2004/EC and in a justified, proportionate and non-discriminatory manner.***

***Prior to taking a decision on such a request for derogation, the competent authority of the host Member State shall consult the competent authorities of the home Member State of the employer, in accordance with Articles 6 and 7 of Directive 2014/67/EU.***

## Amendment 27

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 – indent 2 – introductory part

*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 ***provided that they are published on the single official national website referred to in Article 5 of Directive 2014/67/EU:***

## Amendment 28

### 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***

## Amendment 29

### 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.***

## Amendment 30

### Proposal for a directive

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

*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*

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

***For the calculation of the remuneration within the meaning of this Directive minimum rates of pay, including pay for hourly work and/or piecework according to pay groups and overtime rates, allowances, bonuses as well as other mandatory elements shall be taken into account. The elements used for the calculation of the remuneration need to constitute elements that are paid to locally hired workers according to the provisions of this Article.***

***If expenses incur on account of the posting, such as travel, board and lodging and are provided by the employer, these expenses paid as a compensation shall not be considered to be part of the minimum rates of pay.***

**Amendment 31**

**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 (c).

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

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

**Amendment 32**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the following paragraph is added:***  
***‘1-a. 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 single official national website provided for in Article 5 of Directive 2014/67/EU the constituent elements of remuneration, in accordance with point (c), or the information is not provided in a clear, transparent and unambiguous manner.***

## Amendment 33

### 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 Article 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.**

## Amendment 34

### 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 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**

*remuneration as per paragraph 1 established within the entrepreneur's undertaking where there is evidence that the entrepreneur was not properly informed by the contractor.'*

## **Amendment 35**

### **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.'*

## **Amendment 36**

### **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:  
'1bb. Cooperation between the national employment inspection bodies and European cooperation to combat fraud relating to the posting of workers shall be stepped up.'*

## **Amendment 37**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 7 – subparagraph 2

**(cc) in paragraph 7, the second subparagraph is deleted.**

### **Amendment 38**

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

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

Directive 96/71/EC

Article 3 – paragraph 10 a (new)

**(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 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 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 one or more Member 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 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 Union citizens.*

#### *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 39**

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

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

Directive 96/71/EC

Article 3 – paragraph 10 b (new)

*Text proposed by the Commission*

*Amendment*

*(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.*

### *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.*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Posting of workers in the framework of the provision of services		
<b>References</b>	COM(2016)0128 – C8-0114/2016 – 2016/0070(COD)		
<b>Committee responsible</b> Date announced in plenary	EMPL 11.4.2016		
<b>Opinion by</b> Date announced in plenary	IMCO 11.4.2016		
<b>Rapporteur</b> Date appointed	Vicky Ford 20.4.2016		
<b>Discussed in committee</b>	28.11.2016	6.3.2017	25.4.2017
<b>Date adopted</b>	11.5.2017		
<b>Result of final vote</b>	+: 21	–: 14	0: 2
<b>Members present for the final vote</b>	Dita Charanzová, Carlos Coelho, Anna Maria Corazza Bildt, Daniel Dalton, Nicola Danti, Dennis de Jong, Pascal Durand, Ildikó Gáll-Pelcz, Evelyne Gebhardt, Sergio Gutiérrez Prieto, Robert Jarosław Iwaszkiewicz, Antonio López-Istúriz White, Eva Maydell, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Andreas Schwab, Olga Sehnalová, Jasenko Selimovic, Ivan Štefanec, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo		
<b>Substitutes present for the final vote</b>	Lucy Anderson, Pascal Arimont, Birgit Collin-Langen, Edward Czesak, Lidia Joanna Geringer de Oedenberg, Kaja Kallas, Othmar Karas, Arndt Kohn, Julia Reda, Marc Tarabella, Ulrike Trebesius		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Anne-Marie Mineur		

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

21	+
ALDE	Dita Charanzová, Kaja Kallas, Jasenko Selimovic
ECR	Edward Czesak, Daniel Dalton, Ulrike Trebesius
EFDD	Robert Jarosław Iwaszkiewicz
GUE/NGL	Anne-Marie Mineur
PPE	Pascal Arimont, Carlos Coelho, Birgit Collin-Langen, Anna Maria Corazza Bildt, Ildikó Gáll-Pelcz, Othmar Karas, Antonio López-Istúriz White, Eva Maydell, Jiří Pospíšil, Andreas Schwab, Ivan Štefanec, Róza Gräfin von Thun und Hohenstein
S&D	Lidia Joanna Geringer de Oedenberg

14	-
EFDD	Marco Zullo
GUE/NGL	Dennis de Jong
S&D	Lucy Anderson, Nicola Danti, Evelyne Gebhardt, , Sergio Gutiérrez Prieto, Arndt Kohn, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Catherine Stihler, Marc Tarabella
Verts/ALE	Pascal Durand, Julia Reda

2	0
ECR	Anneleen Van Bossuyt
ENF	Mylène Troszczynski

Corrections to vote	
+	
-	Anne-Marie Mineur
0	

Key to symbols:

+ : in favour

- : against

0 : abstention



## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council amending 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 (COM(2016)0128 – C8-0114/2016 – 2016/0070(COD))

Rapporteur for opinion: Jean-Marie Cavada

### SHORT JUSTIFICATION

#### Introduction

The Commission adopted on 8 March 2016<sup>1</sup> a proposal for a revision of Directive 96/71/EC on Posting of Workers.<sup>2</sup> An impact assessment accompanied the proposal.<sup>3</sup> The Commission notes that 20 years after its adoption, Directive 96/71/EC no longer ensures this under the current economic and social conditions in the Member States, wherefore it tabled the current proposal for a targeted revision of the Directive. The proposal seeks to remedy specific problems that it has identified by a limited number of amendments.

According to the Commission, the aim of the proposal is to facilitate the provision of services across borders within a climate of fair competition and respect for the rights of posted workers, who are employed in one Member State and sent to work temporarily in another by their employer. In particular, the proposal seeks to ensure fair wage conditions and a level playing field between posting and local companies in the host country.

#### Reasoned opinions and a ‘yellow card’

Within the deadline laid down in Article 6 of Protocol No 2, fourteen chambers of national Parliaments sent reasoned opinions to the Commission stating that the proposal does not comply with the principle of subsidiarity, thus triggering the so called ‘yellow card’ procedure. Main arguments raised in the reasoned opinions were that the existing rules are sufficient and adequate, the Union is not the adequate level of the action, the proposal fails to recognise explicitly Member States' competences on remuneration and conditions of

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<sup>1</sup> Document COM(2016) 128 final, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0128&qid=1459769597959&from=EN>.

<sup>2</sup> 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, OJ L 18, 21.01.97, p. 1.

<sup>3</sup> Document SWD(2016) 52 final.

employment and that the justification contained in the proposal with regard to the subsidiarity principle is too succinct. However, after examining the arguments, the Commission decided to maintain the proposal, considering in its Communication to the European Parliament, the Council and National Parliaments of 20 July 2016 that the proposal complies with the principle of subsidiarity.

### **Compatibility with EU law**

Besides the objections raised by national Parliaments, questions have also been raised in the committee concerning the compatibility of the proposal with certain elements of EU law. These have mainly concerned the relation of the proposal with the following legal acts and norms:

- Regulation (EC) No 593/2008 (hereinafter, ‘Rome I’)<sup>1</sup>, which superseded, with regard to contracts concluded as from 17 December 2009, the Convention on the law applicable to contractual obligations (the ‘Rome Convention’)<sup>2</sup>,
- Regulation No 1215/2012<sup>3</sup> (hereinafter, Brussels I), which set the rules on jurisdiction over individual contracts of employment,
- Directive 2014/67/EU on the enforcement of Directive 96/71/EC (hereinafter, the ‘Enforcement Directive’)<sup>4</sup>, and
- The freedom to provide services provided for in Article 26 and Article 56 of the TFEU.

Concerning the Rome I Regulation questions have been raised, in particular, about the compatibility of Article 2a of the proposal with Article 8 of the Regulation and whether the proposal could be seen as amending the Regulation, and whether, in that case, it is appropriate to amend a regulation through a directive.

Concerning the Brussels I Regulation the main issue that has been raised is whether Article 2a of the proposal would have an impact on the application of jurisdiction rules in Articles 20 to 23 of the Regulation.

Finally, whether the introduction of a 24-month period, after which the labour law of the host country would apply to a posted worker, could be considered as a violation of the principle of freedom to provide services in the Internal Market through restricting the cross-border provision of services by means of posted workers.

JURI is the committee responsible for the respect for the principles of subsidiarity and

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<sup>1</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177 4.7.2008, p.6.

<sup>2</sup> Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980, OJ L 266, 9.10.1980, p.1.

<sup>3</sup> Regulation No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) OJ L 351, 20.12.2012, p. 1.

<sup>4</sup> 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 OJ L 159, 28.5.2014, p. 11–31.

proportionality, as well as for the interpretation of Union law and for the compliance of Union acts with primary law. In this capacity, the committee has examined the arguments raised in the reasoned opinions. On 29 November 2016, the committee heard the Legal Service of the Parliament on questions raised by Members concerning the compatibility of the proposal with the *acquis* and the Treaties.

### **Rapporteur's position**

After having carefully examined the issues raised, your rapporteur has come to the conclusions briefly presented below, which also are reflected in the amendments proposed to the Commission's proposal.

Concerning the relation between Article 8 of the Rome I Regulation and Article 2a of the proposal one must take Article 23 of the Regulation into consideration, which reads as follows: *With the exception of Article 7, this Regulation shall not prejudice the application of provisions of Community law which, in relation to particular matters, lay down conflict-of-law rules relating to contractual obligations.* Article 23 clarifies that Rome I is intended to provide for the general rules of private international contract law within the EU. This is further clarified regarding the Posting of Workers Directive in Recital 34 of the Regulation. Your rapporteur's conclusion is that the proposal clearly would constitute a *lex specialis*, which takes precedence over Rome I.

As regards the Brussels I Regulation, it does not appear that the proposal would be in conflict or introduce any substantial changes to the choice of court rules in the Regulation. Article 21 of the Regulation lists the courts before which employees may bring proceedings against their employer. One of the possible choices available to the employee is "the courts for the place where or from which the employee habitually carries out his work". It follows that if the place where the employee subject to the Posting of Workers Directive changes from the home Member State to the host Member State after 24 months, the courts of the host Member State will be competent to examine the dispute, should the employee choose this forum.

Whereas the freedom to provide services is one of the fundamental principles of EU law, it is not unlimited. The Court of Justice has held that a measure with a restrictive effect on the freedom to provide services can be justified "*where it meets an overriding requirement relating to the public interest and that interest is not already safeguarded by the rules to which the service provider is subject in the Member State in which he is established, and in so far as it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it*".<sup>1</sup> Furthermore, the Court of Justice has recognised the social protection of posted workers as a requirement of public interest that is capable of justifying a restriction on the freedom to provide services.<sup>2</sup>

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<sup>1</sup> See judgments of 30 November 1995, Gebhard, C 55/94, EU:C:1995:411, paragraph 37; of 23 November 1999, Arblade and Others, C 369/96 and C 376/96, EU:C:1999:575, paragraphs 34 and 35; of 7 October 2010, dos Santos Palhota and Others, C-515/08, EU:C:2010:589, paragraph 45 and cited case-law; and of 3 December 2014, De Clercq and others, C 315/13, EU:C:2014:2408, paragraph 62.

<sup>2</sup> See, inter alia, judgments of 23 November 1999, Arblade and Others, C 369/96 and C 376/96, EU:C:1999:575, paragraph 36; of 15 March 2001, Mazzoleni and ISA, C 165/98, EU:C:2001:162, paragraph 27; of 25 October 2001, Finalarte and Others, C 49/98, C 50/98, C 52/98 to C 54/98 and C 68/98 to C 71/98, EU:C:2001:564, paragraph 33; of 7 October 2010, dos Santos Palhota and Others, C-515/08, EU:C:2010:589, paragraph 47 and cited case-law; and 3 December 2014, De Clercq and others, C 315/13, EU:C:2014:2408, paragraph 65.

Your rapporteur's conclusion is, therefore, that the proposal constitutes an appropriate measure for the attainment of the objectives it pursues and that it does not go further than necessary wherefore it also complies with the principle of proportionality.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a directive

##### Recital 1

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

(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles *is* further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.

###### *Amendment*

(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation ***and enforcement*** of those principles ***are*** further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers ***and ensuring freedom of labour mobility in the internal market.***

### Amendment 2

#### Proposal for a directive

##### Recital 1 a (new)

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

###### *Amendment*

***(1a) Under Article 153(5) TFEU, the Union does not have the power to regulate pay.***

### Amendment 3

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

*Text proposed by the Commission*

*Amendment*

**(3a) In order to ensure that this Directive is correctly applied, coordination between the Member States' labour inspection services and European cooperation on combating posting fraud should be strengthened, and checks should be carried out to ensure that social contributions for posted workers are paid regularly to the managing authority of the Member State of origin.**

### Amendment 4

#### 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 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 **properly. Therefore, new and stronger instruments are needed to promote fair competition between EU companies, facilitate the cross-border provision of services and fight fraud and abuses in this area in line with the implementation of Directive 2014/67/EU. It is also necessary to create a European information portal in all languages of the Member States to explain the relevant legislation, national differences and further action to be taken by placement services, possible beneficiaries and workers.**

## Amendment 5

### 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 ***and the EU encourages compliance with these principles, ensuring their implementation in all Member States.*** The principle of equal pay has been implemented through secondary law not only between women and men, but also between employees with fix term contracts and comparable permanent workers, between part-time and full-time workers or between temporary agency workers and comparable workers of the user undertaking. ***While applying these principles the related case-law of the Court of Justice of the European Union on the interpretation of the Treaties must be taken into consideration.***

## Amendment 6

### 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 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. It should be specified that this specific provision is non-discriminatory, transparent, proportionate and without prejudice to any terms and conditions of employment that are more favourable to the worker.***

#### *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 7**

#### **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***

##### *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 **18** months, the host Member State is deemed to be the country in which the work is carried out, ***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 **18** months and from the first day subsequent to the **18** months when it effectively exceeds this duration, ***unless a derogation has been obtained by the employer from the competent authority of the host Member State in accordance with 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.*

*administrative procedures and provisions laid down in Article 4, 6 and 7 of Directive 2014/67/EU of the European Parliament and of the Council<sup>1a</sup> and in line with Regulation (EC) No 883/2004 of the European Parliament and of the Council<sup>1b</sup>. 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 18 months.*

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*<sup>1a</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).*

*<sup>1b</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).*

## **Amendment 8**

### **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) ***This proposal, given that it introduces a limitation on the posting period, could be perceived as a restriction on the freedom to provide services laid down in Article 56 TFEU.*** 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. *The overriding reasons relating to the public interest which have been acknowledged by the Court include the protection of workers and in particular the social protection of workers in the construction industry. In view of its aim of protecting workers' rights and its temporary and rebuttable nature, the limitation complies in full with the aforementioned conditions and is not contrary to the principle of the freedom to provide services.*

## **Amendment 9**

### **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 covered by another legislative proposal within the framework of the European Mobility and Transport package.*

#### *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 10**

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

*Text proposed by the Commission*

*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 productivity and efficiency, **or** the quality and innovation of their goods and services.

(11) In a competitive internal market, service providers compete not only on the basis of labour costs but also on factors such as productivity and efficiency, **and wages are always based on a series of parameters, including experience, profile, level of responsibilities, labour market conditions or on** the quality and innovation of their goods and services.

*Justification*

*In accordance to the answer to a written question given by Commissioner Oettinger on behalf of the Commission (E-008821/2016, 25.1.2017). "In the EU institutions as in any organisation remuneration is based on a series of parameters, including experience, profile, level of responsibilities, labour market conditions etc."*

**Amendment 11**

**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.**

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

**Amendment 12**

**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

(13) The elements of remuneration should be clear, **up to date** and transparent to all service providers. **Within the meaning of this Directive, these elements include notably and where applicable,**

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.

*minimum rates of pay, all the bonuses and allowances which are mandatory under the national law, regulation, administrative provision and/or universally applicable collective agreements and arbitration awards.* 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.

#### *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 13**

#### **Proposal for a directive Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

*(14a) In the interests of transparency and in accordance with Directive 2014/67/EU, the continuity of the undertaking which posts the workers must be ensured in order to combat the artificial creation of letterbox companies. In addition, every employer should be able to demonstrate that a worker has an adequate length of service with the undertaking posting him or her.*

### **Amendment 14**

#### **Proposal for a directive Recital 14 b (new)**

*Text proposed by the Commission*

*Amendment*

*(14b) Abuse and legal uncertainty in cases of chain postings and postings*

*involving several jurisdictions should be prevented. Therefore, in cases where a posting situation falls under more than two national jurisdictions, the applicable terms and conditions of employment should be those established by the host Member State where the service is provided, without prejudice to more favourable conditions afforded to the worker under provisions from which the parties cannot derogate by agreement under the national law which would have applied otherwise.*

## Amendment 15

### Proposal for a directive

#### Recital 15

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

(15) Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. This principle should also apply to temporary agency workers posted to another Member State.

##### *Amendment*

(15) Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. ***It should be pointed out that fraud is now being uncovered in the form of 'double posting' of temporary agency workers. Increasing the number of agency workers makes the controls more complicated to carry out and dilutes the responsibilities. Therefore, this principle should also apply to temporary agency workers posted to another Member State. The user/supplier company shall accordingly provide the temporary agency in writing with clear, transparent and unambiguous information regarding the rules it applies in respect of working conditions and pay.***

## Amendment 16

### 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 **eighteen** months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out, **unless the parties have agreed on the application of a different law in accordance with Article 3 of Regulation (EC) No 593/2008 of the European Parliament and of the Council<sup>1a</sup>. This agreement shall be without prejudice to any terms and conditions of employment which are more favourable to the worker.**

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<sup>1a</sup> Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p.6).

## Amendment 17

### Proposal for a directive

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

Directive 96/71/EC

Article 2 a – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

2a. **For the purposes of paragraph 2, the concept of ‘the same task at the same place’ shall be determined by taking into account the nature of the service to be provided, the work to be performed and, where applicable, the address or addresses of the workplaces as defined in points (a)(v) and (a)(vi) of Article 9(1) of**

## Amendment 18

### Proposal for a directive

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

Directive 96/71/EC

Article 2 a – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

**2b.** *A derogation request to the 18 - month period could exceptionally be requested by the employer on reasoned grounds and awarded by the competent authority of the host Member State. The competent authority of the host Member State shall base its decision to grant such a derogation on objective reasons, such as the time-frame of the mission for which the worker has been posted, after checking full compliance with Directive 2014/67/EU and Regulation (EC) No 883/2004. Any decision shall be justified, proportionate, non-discriminatory and circumstance-based. Prior to taking a decision on such request for derogation, the competent authority of the host Member State shall consult the competent authorities of the home Member State of the employer, in accordance with Articles 6 and 7 of Directive 2014/67/EU. Every six months from the beginning of the derogation period, the service provider shall prove to the competent authorities of the host Member State that the derogation is still justified.*

## Amendment 19

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 1 – introductory part

*Text proposed by the Commission*

Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

*Amendment*

Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment **which cover** the following matters **laid down** in the Member State where the work is carried out:

**Amendment 20**

**Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 – subparagraph 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) remuneration **within the meaning of this Directive**, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

**Amendment 21**

**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***

*Amendment*

***Remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and includes*** all the elements rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable.

*8 second subparagraph, in the Member State to whose territory the worker is posted.*

## **Amendment 22**

### **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 in accordance with point (c). ***The provided information shall be up to date, clear and transparent.***

## **Amendment 23**

### **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*

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. ***Member States shall insure that the provisions laid down in the present Directive are applicable to all undertakings when posting workers, whether they act as a main-contractor or as a sub-contractor.***

***It is important that the subcontractors***



*make available to the main contractor the information on the genuine nature of the posting.*

## **Amendment 24**

### **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 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. ***In so doing, the Member States shall guarantee equality of treatment between these temporary agency workers and national temporary agency workers.***

## **Amendment 25**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 3 – paragraph 1 c (new)

#### *Text proposed by the Commission*

#### *Amendment*

***(ca) the following paragraph is added:***  
***‘1c. The hiring out of a worker, by a temporary work agency or a placement agency, in a Member State of which the worker in question is a national should not be considered a posting within the meaning of this Directive, unless justified by objective reasons, such as the worker having a different habitual residence.’***

## Amendment 26

### Proposal for a directive

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

Directive 96/71/EC

Article 3 – paragraph 1 d (new)

*Text proposed by the Commission*

*Amendment*

**(cb) the following paragraph is added:**

**‘1d. Since temporary work agencies and placement agencies are only able to hire workers under a temporary work contract, Member States shall ensure that such undertakings only post workers under a temporary work contract.’**

## Amendment 27

### Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d

Directive 96/71/EC

Article 3 – paragraph 9

*Text proposed by the Commission*

*Amendment*

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

**deleted**

## Amendment 28

### Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d a

Directive 96/71/EC

Article 3 – paragraph 9 a (new)

*Text proposed by the Commission*

*Amendment*

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

**‘9a. If a posting situation falls under more than two national jurisdictions, the terms and conditions of employment of the Member State to whose territory a worker is posted and where the service is**

*provided, shall apply as long as they are more favourable for the worker than those pursuant to the law under which the individual employment contract was agreed.'*

## **Amendment 29**

### **Proposal for a directive**

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

Directive 96/71/EC

Article 5 a (new)

*Text proposed by the Commission*

*Amendment*

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

**'Article 5a**

***Member States shall ensure that undertakings which post workers to another Member State are able to demonstrate that a sufficiently reasonable share of their turnover is generated in the Member State in which they are legally established.'***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Posting of workers in the framework of the provision of services		
References	COM(2016)0128 – C8-0114/2016 – 2016/0070(COD)		
Committee responsible Date announced in plenary	EMPL 11.4.2016		
Opinion by Date announced in plenary	JURI 11.4.2016		
Rapporteur Date appointed	Jean-Marie Cavada 23.5.2016		
Discussed in committee	12.10.2016	28.11.2016	12.4.2017
Date adopted	20.6.2017		
Result of final vote	+: -: 0:	12 9 2	
Members present for the final vote	Max Andersson, Joëlle Bergeron, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss		
Substitutes present for the final vote	Daniel Buda, Angel Dzhambazki, Angelika Niebler, Jens Rohde, Virginie Rozière, Tiemo Wölken, Kosma Złotowski		
Substitutes under Rule 200(2) present for the final vote	Gerolf Annemans, Mylène Troszczynski		

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

12	+
ALDE	António Marinho e Pinto, Jens Rohde
EFDD	Joëlle Bergeron, Laura Ferrara
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
Verts/ALE	Max Andersson, Julia Reda

9	-
ECR	Angel Dzhambazki, Kosma Złotowski
PPE	Daniel Buda, Rosa Estaràs Ferragut, Angelika Niebler, Emil Radev, Pavel Svoboda, József Szájer, Axel Voss

2	0
ENF	Gerolf Annemans, Mylène Troszczynski

**Key to symbols:**

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Posting of workers in the framework of the provision of services			
<b>References</b>	COM(2016)0128 – C8-0114/2016 – 2016/0070(COD)			
<b>Date submitted to Parliament</b>	8.3.2016			
<b>Committee responsible</b> Date announced in plenary	EMPL 11.4.2016			
<b>Committees asked for opinions</b> Date announced in plenary	IMCO 11.4.2016	JURI 11.4.2016		
<b>Rapporteurs</b> Date appointed	Elisabeth Morin-Chartier 10.5.2016	Agnes Jongerius 10.5.2016		
<b>Legal basis disputed</b> Date of JURI opinion	JURI 12.6.2017			
<b>Discussed in committee</b>	12.10.2016	8.11.2016	26.1.2017	16.2.2017
	23.3.2017			
<b>Date adopted</b>	16.10.2017			
<b>Result of final vote</b>	+: -: 0:	32 8 13		
<b>Members present for the final vote</b>	Laura Agea, Guillaume Balas, Brando Benifei, Enrique Calvet Chambon, Ole Christensen, Martina Dlabajová, Lampros Fountoulis, Danuta Jazłowiecka, Agnes Jongerius, Rina Ronja Kari, Jan Keller, Adam Kósa, Jérôme Lavrilleux, Jeroen Lenaers, Verónica Lope Fontagné, Thomas Mann, Dominique Martin, Anthea McIntyre, Elisabeth Morin-Chartier, Emilian Pavel, João Pimenta Lopes, Georgi Pirinski, Dennis Radtke, Terry Reintke, Robert Rochefort, Claude Rolin, Ulrike Trebesius, Marita Ulvskog, Tatjana Ždanoka			
<b>Substitutes present for the final vote</b>	Georges Bach, Karima Delli, Mircea Diaconu, Zdzisław Krasnodębski, Marju Lauristin, Edouard Martin, Anne Sander, Sven Schulze, Jasenko Selimovic, Michaela Šojdřová, Helga Stevens, Kosma Złotowski			
<b>Substitutes under Rule 200(2) present for the final vote</b>	Malin Björk, Dita Charanzová, Ismail Ertug, Eider Gardiazabal Rubial, Jens Geier, Sylvie Goddyn, John Howarth, Merja Kyllönen, Julia Pitera, Barbara Spinelli, Mylène Troszczynski, Elżbieta Katarzyna Łukacijewska			
<b>Date tabled</b>	23.10.2017			

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

32	+
ALDE	Robert Rochefort
EFDD	Laura Agea
GUE/NGL	Malin Björk, Rina Ronja Kari, Merja Kyllönen, Barbara Spinelli
PPE	Georges Bach, Jérôme Lavrilleux, Jeroen Lenaers, Veronica Lope Fontagné, Thomas Mann, Elisabeth Morin-Chartier, Dennis Radtke, Claude Rolin, Anne Sander, Sven Schulze
S&D	Guillaume Balas, Brando Benifei, Ole Christensen, Ismail Ertug, Eider Gardiazabal Rubial, Jens Geier, John Howarth, Agnes Jongerius, Jan Keller, Marju Lauristin, Edouard Martin, Georgi Pirinski, Marita Ulvskog
Verts/ALE	Karima Delli, Terry Reintke, Tatjana Ždanoka

8	-
ALDE	Enrique Calvet-Chambon, Dita Charanzová, Mircea Diaconu, Martina Dlabajová, Jasenko Selimovic,
ECR	Zdzislaw Krasnodebski, Kosma Zlotowski
PPE	Michaela Šojdrová

13	0
ECR	Anthea McIntyre, Helga Stevens, Ulrike Trebesius
ENF	Sylvie Goddin, Dominique Martin, Mylène Troszczynski
GUE/NGL	Joao Pimenta Lopes
NI	Lampros Fountoulis
PPE	Danuta Jazłowiecka, Adam Kósa, Elżbieta Katarzyna Łukacijewska, Julia Pitera
S&D	Emilian Pavel

Key to symbols:

+ : in favour

- : against

0 : abstention