



Brussels, 9 June 2017
(OR. en)

9882/17

Interinstitutional File:
2016/0070 (COD)

SOC 456
EMPL 352
MI 472
COMPET 472
CODEC 966
JUSTCIV 136

REPORT

From: Presidency
To: Permanent Representatives Committee / Council

No. prev. doc.: 9434/17 SOC 407 EMPL 319 COMPET 436 MI 426 CODEC 854 JUSTCIV 120
No. Cion doc.: 6987/16 SOC 144 EMPL 97 MI 142 COMPET 118 CODEC 279 - COM(2016) 128 final + ADD 1 - ADD 2

Subject: 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
- Progress report

I. INTRODUCTION

On 8 March 2016, the Commission adopted a proposal amending the Directive 96/71/EC¹ concerning the posting of workers. The proposal is a targeted revision aiming at ensuring a level playing field for service providers and at the same time protecting the posted workers. According to the Commission, the twenty-year old Directive does not any more reflect properly the developments since 1996 and the current situation on the labour markets, such as a considerably increased wage differentiation between Member States.

¹ 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, 21.1.1997, p. 1–6.

The Social Questions Working Party (SQWP) started discussions on the proposal under the NL Presidency, the progress report of which is to be found in doc. 9309/16 + ADD1. On the basis of this exploratory work and building on the five main issues identified in the proposal, the SK Presidency continued on clarifying the main issues and concepts of the Directive and discussing various drafting options; the SK progress report is to be found in doc. 14368/16. Under the Maltese Presidency, the progress achieved in five SQWP meetings is summarised under Part II below.

Since the beginning of the discussions, a group of Member States opposed the Commission proposal to revise the Directive, considering it premature at the stage of implementing the 2014 Enforcement Directive. Another group of Member States welcomed the initiative as a good basis for improving the current outdated rules on posting. A third group considered that closer analysis and discussions were warranted before reaching a definite position at national level.

On the proposed legal basis of Articles 53(1) and 62 of the Treaty on the Functioning of the European Union (TFEU), the Council acts with the European Parliament in accordance with the ordinary legislative procedure.

The European Parliament has not yet delivered its position in first reading.

At its session of 14 December 2016, the Economic and Social Committee delivered its opinion on the proposal, requested by the Commission on an optional basis.

The Committee of Regions delivered an own initiative opinion at its session on 7 December 2016.

II. THE COUNCIL'S WORK UNDER THE MALTESE PRESIDENCY

After initial discussions clarifying further the main issues and concepts of this Directive, the Maltese Presidency narrowed down the options for each of these and moved to negotiations on a single text, amending the Commission proposal on various issues. Successive working parties analysed various compromise texts on the whole proposal suggested by the Presidency.

The discussions centred around the main topics already identified by previous presidencies, as well as on transport and on the possibility of deferred application of the Directive.

(1) Remuneration [Article 3(1)]

The Commission proposal replaces, under Article 3(1)(c), the notion of '*minimum rates of pay*' by the notion of '*remuneration*' in the context of the "hard core" provisions of host Member States that apply to posted workers, thus making the rules and legislation on remuneration provided for in national law or universally applicable collective agreements also applicable to posted workers.

The Presidency suggests to maintain the Commission proposal but complementing it in order to remind that remuneration is defined according to national law and practices. Alongside this change, the Presidency also suggests new recitals clarifying the relation between remuneration and the current concept of minimum rates of pay (recital 12a), as well as on the calculation of remuneration within the meaning of this Directive (recital 12b), and simplifying the recital referring to Member State competence in setting rules on remuneration (recital 12).

A group of delegations supports the Presidency proposal to maintain the notion of remuneration. Another group of delegations cannot yet accept it, considering that greater clarity is still needed on this concept, and that possible alternatives, such as applying minimum rates of pay during the first months of posting (exact length to be determined), should be further looked into. Some other delegations consider that an increased understanding of the concept is still warranted, with some suggesting additional wording is needed regarding the calculation of remuneration.

As an addition to the hard-core provisions in Article 3(1), the Presidency suggests to include the conditions of collective accommodation for workers [Article 3(1)(ga) and recital 7a], in order to guarantee that the same conditions apply to posted and domestic workers. A group of delegations considers that this concept is still imprecise, it requires further clarifications and would be difficult to control. The Presidency also suggests including allowance rates to cover costs incurred for travel, board and lodging expenses for workers away from home for professional reasons when the worker is required to travel to and from his regular place of work in the host Member State, or when he is temporarily sent by his employer from this workplace to another workplace in the host Member State [Article 3(1)(gb) and recital 7b]. This proposal is supported by a few delegations and opposed by a group of others.

(2) Long-Term Posting

The Commission proposal contains, in a new Article 2a, a rule that provides that where the anticipated or effective duration of posting exceeds 24 months, the host Member State is deemed to be the country in which the work is habitually carried out. The intention of the Commission is not to amend the Rome I Regulation, but to create legal certainty in its application to the specific situation of posting.

Having analysed the technical solutions and the support for the various options put forward by the previous presidency, the MT Presidency suggests taking up an amended version of a Finnish proposal: after 24 months, a posted worker is to be granted all the applicable terms and conditions of employment laid down in the legislation and collective agreements in the host Member State, with the explicit exclusion of the procedures, formalities and conditions of the conclusion and termination of the employment contract.

A group of delegations supports this Presidency text. Another group of delegations considers that a list of additional labour rules which would apply after 24 months would be more transparent and legally clearer (positive list) than the list of exclusions proposed by the Presidency (negative list). Some delegations consider that, should there be a list of exclusions, then the exclusion of supplementary occupational retirement pension schemes should be introduced.

Several other matters pertaining to long-term posting have also been the subject of intensive discussions. The Presidency has sought to clarify the concept of 'anticipated duration of posting' by introducing elements as to how this anticipated duration would be determined. However, given the insistence from various delegations that the concept remained unclear and difficult to apply in practice, the Presidency suggests to delete it.

The Presidency also suggests to delete the concept of 'periods of absence' in what regards the effective duration of posting, since it was also contested by various delegations for similar reasons. Regarding the concept of the 'same task at the same place', the Presidency has sought to clarify it with a provision specifying how it is to be determined and another one as regards its relationship with the duration of posting.

With respect to the 'cumulative duration of posting' in the case of replacements, the Commission proposed to apply the rule on the habitual place of work only to workers posted for an effective duration of at least six months. In view of the remarks made by some delegations and the changed approach compared to the Commission's proposal, the Presidency suggests to delete this exclusion.

The Presidency also suggests that the obligation to publish the constituent elements of remuneration in the single official national website referred to in Article 5 of Directive 2014/67/EU, proposed by the Commission, is supplemented by the obligation to also publish all the terms and conditions referred to in Article 3(1)(-a) as regards long-term posting.

(3) Collective Agreements

[Deletion of text in Article 3(1), first subparagraph, second indent, and deletion of Article 3(1), paragraph 10, second indent]

The Commission proposed making national law and universally applicable collective agreements applicable to posted workers in all sectors of the economy. Under the existing Directive 96/71/EC, this is mandatory only for the construction sector and optional for other sectors.

The Presidency is of the view that this is not a controversial issue and suggests to maintain the Commission proposal, although noting that a few delegations prefer that not all sectors be covered but instead only those in which posting is significant and regular.

(4) Subcontracting [new article 3(1a)]

The Commission proposal introduces a new provision on subcontracting. This provision sets out that Member States, which oblige undertakings to subcontract only to those undertakings which grant workers certain conditions on remuneration, including those resulting from non-universally applicable collective agreements, may also provide that this obligation also applies to enterprises posting workers to their territory.

The Presidency suggests deleting this provision, which would mean that the general rules would be applicable in the case of subcontracting. A large group of delegations support the Presidency proposal, considering that this is a solution which is legally more sound and that, if it were included, this provision would have a negative impact on businesses, in particular on SMEs. Another group of delegations supports maintaining the possibility for Member States to ensure that foreign enterprises in subcontracting chains are bound by all rules on remuneration, including those stipulated by company level collective agreements.

(5) Temporary Agency Workers [new Article 3(1b) and deletion of Article 3(9)]

The Commission proposal renders the terms and conditions under Article 5 of Directive 2008/104/EC² (Temporary Agency Work Directive - TAWD) mandatory for posted workers, applying the principle of equal treatment between temporary agency workers and comparable workers of the user undertakings.

The Presidency suggests maintaining the Commission proposal but expanding the new Article 3(1b), introducing a second paragraph relating to ensuring that the user undertaking gives to temporary agencies information regarding its terms and conditions on working conditions to the extent they become mandatory applicable to the posted workers through Article 5 of Directive 2008/104/EC. This would come in combination with an amended Article 3(9) of the 96/71 Directive, that the Commission had proposed to delete, such that the principle of equal treatment to the agency workers could be applied, on an optional basis, also with regard to terms and conditions other than those covered by Article 5 of Directive 2008/104/EC.

The Presidency considers there is broad agreement on this text, although noting that a couple of delegations prefer a full mandatory equal treatment of temporary agency workers with the local ones.

² Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, p. 9–14

(6) Transport [recital 10]

The Commission has not suggested any change to the scope of the 1996 Directive and its proposal includes a recital which underlines that the challenges linked to the implementation of the posting of workers directive in the international road transport sector would be best addressed through sector-specific legislation. The Commission has recently made proposals in this regard³.

A group of delegations consider that, given the specificities of the sector and the high mobility of these workers, international road transport should be explicitly excluded from the scope of the Posting Directive and dealt with through sector-specific legislation. Another group of delegations consider that this sector should remain within the scope of this Directive, with possible sector-specific legislation only clarifying and/or improving implementation.

The Presidency considers that this matter needs to be further looked into, particularly in the light of the recent Commission proposals on road transport.

(7) Transposition, application and review [Article 2]

The Presidency suggests amending the proposed provision on transposition and application. It proposes that the transposition measures of the Member States shall be adopted and published within three years from the entry into force of the Directive and that it is to apply from three years after the entry into force. The Commission would then review the application and implementation of the Directive by eight years after its entry into force.

³ The Commission's Road Package of 31/5/2017 (*Europe on the Move*), including a proposal for a Directive of the European Parliament and of the Council 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.

Some delegations have expressed their positive inclination towards these amendments. Other delegations consider it important to assess this in the light of the overall, final agreement. For a few delegations, there is no need for application of the transposing measures on the same day throughout the Union.

The exact timeline is still under discussion, with some delegations requesting more time to transpose and apply all measures to comply with the Directive, whilst others would prefer a shorter period.

III. RESERVATIONS

The latest Presidency compromise proposal can be found in the Annex to this Report. The changes in relation to the Commission proposal (doc. 6987/16) are marked in **bold**, deletions are marked by [...].

At this stage, all delegations are considered to have general scrutiny reservations on the latest Presidency compromise proposal.

DK, HU, NL, MT, RO and UK maintain parliamentary scrutiny reservations.

PL, HU and SE maintain linguistic reservations.

The Presidency understands that even those parts of the text where it has noted a broad agreement depends on an overall agreement covering the whole proposal.

IV. CONCLUSIONS

The Maltese Presidency invested considerable efforts into trying to achieve an overall compromise, including solutions for all the main items of the negotiation. In its view, whilst delegations still have different perceptions on some of the key issues, the positions have bridged closer and an agreement is within reach.

Further technical work and political discussions are still warranted on certain matters which remain of concern to different groups of delegations, such as remuneration or the extension of the list of hard core provisions.

The Presidency considers that the outcome of its work represents a good basis for future discussions and marks a substantial step towards reaching a general approach within Council on the proposal.

[...]

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of...**

**amending Directive 96/71/EC [...] concerning the posting of workers in the framework of the
provision of services**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the ordinary legislative procedure,

⁴ OJ C 75, 10.03.2017, p. 81.

Whereas:

- (1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market [...] enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union **and is** 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 [...] services there.
- (3) According to Article 3 **of the Treaty on European Union**, the Union **is to** promote social justice and protection. **According to** Article 9 **of the** TFEU, [...] the Union **is to take into account requirements linked to the promotion of** a high level of employment, **the** guarantee **of** adequate social protection and **the fight against** social exclusion **in defining and implementing its policies and activities**.
- (4) Almost twenty years after its adoption, it **has become** necessary to assess whether **Directive 96/71/EC of the European Parliament and of the Council**⁵ 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.
- (5) The principle of equal treatment and the prohibition of any discrimination based on nationality **have been** enshrined in **Union** 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 **fixed** term contracts and comparable permanent workers, between part-time and full-time workers **and** between temporary agency workers and comparable workers of the user undertaking.

⁵ **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, 21.1.1997, p.1)**

(6) [...]

(7) [...]

(7a) The protection of posted workers is more effective if the hard core of the protective rules is extended to cover the conditions of collective accommodation for workers which are in place in the host country as such workers are [...] required to work, for a limited period, in the territory of a Member State other than the State in which they normally work. Verifications of such conditions should be made by the competent national authorities in accordance with national law and / or practice.

(7b) Posted workers that are temporarily sent from their regular place of work, in the territory of the Member State to which they have been posted, to another place of work, should receive at least the same allowance rates to cover travel, board and lodging expenses for workers away from home for professional reasons that apply to local workers in that Member State.

(8) Posting is of a temporary nature and the posted worker usually returns to the country of origin after the completion of the work for which he [...] has been posted. However, in view of the long duration of certain postings, and in acknowledgment of the link between the labour market of the host country and the workers posted for such long periods, it is necessary to provide that, in case of posting lasting for periods longer than 24 months, host countries should ensure that undertakings posting workers to their territory guarantee an additional set of terms and conditions that are mandatorily applicable to workers in the Member State where the work is carried out.

- (9) **Ensuring greater protection of workers is necessary to safeguard the freedom to provide services on a fair basis in both the short and the long term, notably by preventing abuse of the rights guaranteed by the Treaties. Rules ensuring such protection of workers, however, cannot affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services also in cases where the posting exceeds 24 months. Any provision applicable to workers posted in the context of a posting exceeding 24 months must thus be compatible with that freedom.** It is settled case law that restrictions to the freedom to provide services are [...] admissible **only** if justified by overriding reasons in the public interest and **if they are** proportionate and necessary.
- (9a) **The additional set of terms and conditions to be guaranteed by the undertaking posting workers to another Member State should also cover workers who are posted to replace other posted workers, to ensure that such replacements are not used to circumvent the otherwise applicable rules. [...]**
- (9b) [...]
- (9c) **As is the case with Directive 96/71/EC, this Directive should not prejudice the application of Regulation (EC) No 883/2004⁶ and Regulation (EC) No 987/2009 of the European Parliament and of the Council⁷.**

⁶ **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).**

⁷ **Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).**

- (10) **Due to** the highly mobile nature of work in international road transport, the implementation of the **Directive 96/71/EC** raises particular legal questions and difficulties, especially where the link with the concerned Member State is insufficient. It would be most suited for **those** challenges to be addressed through sector-specific legislation together with other **Union** initiatives aimed at improving the functioning of the internal road transport market.
- (11) In a competitive internal market, service providers compete not only on the basis of labour costs but also on **the basis of** factors such as productivity and efficiency, or the quality and innovation of their goods and services.
- (11a) **This Directive should not affect in any way the exercise of fundamental rights as recognised in Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor should this Directive affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and /or practice.**
- (12) It is within Member States' competence to set rules on remuneration in accordance with their law and / or practice. [...]
- (12a) **The concept of 'remuneration' should include, but should not be limited to, all the elements of minimum rates of pay developed by the Court of Justice of the European Union.**

- (12b) **Remuneration to be paid to posted workers during the period of posting should be determined in accordance with national law and/or practice and in conformity with this Directive. When comparing the remuneration paid to the posted worker and the remuneration due in accordance with those laws and/or practices, the gross amount of remuneration should be taken into account. As provided for in Article 3(7) of Directive 96/71/EC, allowances specific to the posting shall be considered to be part of [...] the remuneration. Such allowances must therefore be taken into account for the comparison, unless they concern expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.**
- (13) The elements of remuneration **and other terms and conditions of employment** under national law or universally applicable collective agreements should be clear and transparent to all service providers **and posted workers. In addition to the requirements under Article 5 of Directive 2014/67/EU of the European Parliament and of the Council**⁸, it is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration, **and the additional set of terms and conditions applicable to long term posting [...]**, on the single website provided for by **that Article.**
- (14) [...]

⁸ **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).**

- (15) Directive 2008/104/EC of the European Parliament and of the Council⁹ 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. **That principle should also apply to temporary agency workers posted to another Member State. Where that principle applies, the user undertaking should inform the temporary-work agency about the working conditions and remuneration it applies to its workers. Member States can under certain conditions provide for exceptions from the equal treatment/equal pay principle pursuant to Art. 5(2) and Art. 5(3) of the temporary agency work directive. When such an exception applies, the temporary work agency has no need for the information about the user undertaking's working conditions and the information requirement should therefore not apply.**
- (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁰, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

⁹ **Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).**

¹⁰ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 96/71/EC

Directive 96/71/EC is [...] amended as follows:

(1) [...]

(2) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

1. Member States shall ensure, **irrespective of which law applies** to the employment relationship, **that** the undertakings referred to in Article 1 (1) guarantee workers **who are** 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 on non-discrimination;
- (ga) conditions of collective accommodation for workers;**
- (gb) allowance rates to cover travel, board and lodging expenses for workers away from home for professional reasons; this point applies exclusively to travel, board and lodging incurred by a posted worker when he is required to travel to and from his regular place of work in the Member State to which territory he is posted, or when he is temporarily sent by his employer from this workplace to another workplace.**

For the purposes of this Directive, **the concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and 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 **that** Member State [...].

Without prejudice to Article 5 of Directive 2014/67/EU, Member States shall publish in the single official national website [...], referred to in that Article, information on:

- (a) the constituent elements of remuneration in accordance with point c) of the first subparagraph of Article 3(1); and**
- (b) all the terms and conditions of employment in accordance with Article 3(1)-a).**
- (c) [...]**

(aa) The following paragraph is added:

"1(-a) When the [...] effective duration of a posting exceeds 24 months, Member States shall ensure, irrespective of which law applies to the employment relationship, 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 paragraph 1 of this Article, all the applicable terms and conditions of employment which are laid down, in the Member State where the work is carried out [...]:

- (a) by law, regulation or administrative provision, and/or**
- (b) by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8.**

The first subparagraph of this paragraph does not apply to [...] the procedures, formalities and conditions of the conclusion and termination of the employment contract.

[...]

Where the undertaking referred to in Article 1(1) replaces a posted worker by another posted worker performing the same task at the same place [...], the duration of the posting shall, for the purposes of this paragraph, be the cumulative duration of the posting periods of the individual workers concerned. [...]

For the purposes of this Article, the concept 'the same task at the same place' shall be determined taking into consideration inter alia the nature of the service to be provided, the work to be performed and the address(es) of the workplace."

(b) [...]

(c) The following paragraph is added

"1b. Member States shall provide that the undertakings referred to in point (c) of Article 1(3) guarantee posted workers the terms and conditions which apply pursuant to Article 5 of Directive 2008/104/EC [...] to temporary workers hired-out by temporary agencies established in the Member State where the work is carried out.

Member States shall ensure that the user undertaking informs the undertakings referred to in point (c) of Article 1(3) of the terms and conditions that it applies regarding the working conditions and remuneration to the extent covered by the first sub-paragraph of this paragraph."

(ca) [...]

(cb) Paragraph 7 is replaced by the following:

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

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."

(d) Paragraph 9 is amended as follows:

"Without prejudice to Article 3(1b), Member States may provide that the undertakings referred to in Article 1 (1) shall guarantee workers referred to in point (c) of Article 1 (3) the terms and conditions, other than those referred to in paragraph 3(1b), which apply to temporary workers in the Member State where the work is carried out."

(e) [...] Paragraph 10 is replaced by the following:

"10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions."

(3) The first paragraph of the Annex is amended as follows:

"The activities mentioned in Article 3 include all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:"

Article 2

1. Member States shall **adopt and publish, by 3 years after the entry into force of this Directive**, the laws, regulations and administrative provisions necessary to comply with this Directive [...]. They shall **immediately** communicate [...] the text of those **measures to the Commission**.

[...] **They shall apply those measures from 3 years after the entry into force of this Directive. Until that date, [...] Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.**

When Member States adopt those *measures*, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.
3. **The Commission shall review the application and implementation of this Directive. By 8 years after the entry into force of this Directive, the Commission shall present a report on the application and implementation of this Directive to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments and modifications to this Directive.**

Article 3

This Directive shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament

The President

For the Council

The President
