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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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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

Delegations will find attached document COM(2016) 128 final.

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EUROPEAN
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2016/0070 (COD)

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

(Text with EEA relevance)

{SWD(2016) 52 final}
{SWD(2016) 53 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

The Commission announced in its Political Guidelines and confirmed in its Work Programme 2016 a targeted revision of the Posting of Workers Directive to address unfair practices and promote the principle that the same work at the same place should be remunerated in the same manner.

Posting of workers plays an essential role in the Internal Market, particularly in the cross-border provision of services. Directive 96/71/EC¹ (hereafter: 'the Directive') regulates three variants of posting: the direct provision of services by a company under a service contract, posting in the context of an establishment or company belonging to the same group ('intra-group posting'), and posting through hiring out a worker through a temporary work agency established in another Member State.

The EU established an Internal Market which is based on a highly competitive social market economy, aiming at full employment and social progress (Article 3(3) TEU).

The Treaty establishes the right for companies to provide their services in other Member States. It provides that 'restrictions on the freedom to provide services in 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 to whom the services are intended' (Article 56 TFEU). The freedom to provide services may be limited only by rules which are justified by overriding reasons of general interest, provided that these are justified, proportionate and applied in a non-discriminatory way.

Altogether, in 2014 (latest data available), there were over 1.9 million postings in the EU (representing 0.7% of a total EU labour force), up by 10.3% as compared to 2013 and by 44.4% with respect to 2010. The upward trend followed some stagnation during the years 2009 and 2010.

The 1996 Directive sets the EU regulatory framework 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. It stipulates a 'core set' of terms and conditions of employment of the host Member State which are mandatory to be applied by foreign service providers, which include (article 3(1) of the Directive): maximum work periods and minimum rest periods; the minimum rates of pay, including overtime rates; minimum paid annual holidays; the conditions of hiring-out of workers; health, safety and hygiene at work; protective measures in favour of pregnant women, mothers who have recently given birth, children, and young people; equality of treatment between genders; and other provisions of non-discrimination.

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, 21.1.97, p.1.

The 2014 Enforcement Directive² has provided for new and strengthened instruments to fight and sanction circumventions, fraud and abuses. It addresses problems caused by so-called "letter-box companies" and increases the Member States' ability to monitor working conditions and enforce the rules applicable. Inter alia, the Directive lists qualitative criteria characterising the existence of a genuine link between the employer and the Member State of establishment, which can also be used to determine whether a person falls within the applicable definition of a posted worker. The Enforcement Directive also lays down provisions to improve administrative cooperation between national authorities in charge of posting. For instance, it provides for an obligation to respond to requests for assistance from the competent authorities in other Member States within two working days in the case of urgent requests for information and within 25 working days in non-urgent cases. Moreover, the Directive lists national control measures that the Member States may apply when monitoring compliance with the working conditions applicable to posted workers and requires that appropriate and effective checks and monitoring mechanisms are in place and that national authorities carry out effective and adequate inspections on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC. The full effects of the Directive should become tangible as of mid-2016, as Member States have until 18 June 2016 to transpose the Directive.

The current initiative does not address any issue touched upon by the Enforcement Directive. Rather, it focuses on issues which were not addressed by it and pertain to the EU regulatory framework set by the original 1996 Directive. Therefore, the revised posting of Workers Directive and the Enforcement Directive are complementary to each other and mutually reinforcing.

1.2. Consistency with existing policy provisions in the policy area

The Commission has set itself to work towards a deeper and fairer Single Market as one of the chief priorities for its mandate. The proposal of targeted amendments to the Posting of Workers Directive integrates and complements the provisions set in the Enforcement Directive, which is to be transposed by 18 June 2016.

In the preparatory consultations led by the Commission with about 300 stakeholders, mostly SMEs, 30% of companies providing services across borders reported problems with existing rules on posting of workers, such as burdensome administrative requirements, paperwork, fees and registration obligations. The lack of clarity of labour market rules in the country of destination is also considered a relevant hindrance to cross-border service provision, especially among SMEs.

At the same time, the Posting of Workers Directive underpins the initiatives for the road transport sector announced by the Commission in its Work Programme 2016. These measures will aim in particular to further enhance social and working conditions of road transport workers fostering at the same time the efficient and fair provision of road transport services. The two million workers engaged in international road transport operations regularly carry out work on the territory of

² 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.

different Member States, over brief periods of time. In this context, the forthcoming initiatives for the road transport sector should contribute to more clarity and better enforcement of the rules applicable to employment contracts in the transport sector and may address the specific challenges the application of the provisions of the Posting of Workers Directive raises in this specific sector.

A modernised legislative framework for posting of workers will contribute to creating transparent and fair conditions for the implementation of the Investment Plan for Europe. The Investment Plan will provide an additional boost to cross-border service provision and thereby lead to increased demand for skilled labour to be fulfilled. As strategic infrastructural projects are realised across the Member States, companies will require appropriate skills for the job, and adequate conditions need to be set for that demand to be satisfied with adequate supply across borders. A modernised Posting of Workers Directive will contribute to investments taking place within conditions of undistorted competition and protection of workers' rights.

The EU Platform against Undeclared Work may positively interact with a view to tackling fraudulent aspects of the phenomenon of posting of workers. Posting is exposed to the risk of being subject of undeclared work practices, such as "envelope wages" or "cash-in-hand", whereby only part of the salary is paid officially, while the rest is given to the employee unofficially, bogus self-employment, and circumvention of relevant EU and national legislation. The EU has stepped action to fight undeclared work and continues to act against letter box companies. The Commission proposed in April 2014 the establishment of a Platform for the prevention and deterrence of undeclared work. The Platform will bring together the enforcement authorities of all Member States. It will facilitate the exchange of best practices, develop expertise and analysis and support cross-border cooperation of Member States in order to fight undeclared work more efficiently and effectively.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

2.1. Legal basis

This proposal amends Directive 96/71/EC and is therefore based on the same legal basis, Articles 53(1) and 62 TFEU.

2.2. Subsidiarity (for non-exclusive competence)

An amendment to an existing Directive can only be achieved by adopting a new Directive.

2.3. Proportionality

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, relating in particular to the protection of workers, and must be proportionate and necessary.

The present proposal complies with this requirement since it does not harmonise the labour costs in Europe and is limited to what is necessary to guarantee conditions adapted to living costs and standards of the host Member State for the duration of the assignment of the posted workers.

In a highly competitive internal market, competition is based on quality of the service, productivity, costs (of which labour costs are but one part) and innovation. The present proposal does not therefore go beyond what is necessary to achieve its objective.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

3.1. Stakeholder consultations

By a joint letter, Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Sweden have claimed support for a modernisation of the Posting of Workers Directive establishing the principle of 'equal pay for equal work in the same place'. These Member States suggested that the provisions regarding working and social conditions, most notably including remuneration, applicable to posted workers should be amended and widened; the set-up of a maximum duration limit to postings should be considered, with particular regard to aligning provisions with the EU Regulation on coordination of social security; the applicable conditions to the road transport sector should be clarified; the information basis contained in the Portable Documents A1 should be strengthened in its reliability; cross-border cooperation between inspection services should be improved; and a study on the extent and impact of bogus self-employment in the context of posting should be promoted.

Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania, by a joint letter, have argued that a review of the 1996 Directive is premature and should be postponed after the deadline for the transposition of the Enforcement Directive has elapsed and its effects carefully evaluated and assessed. These Member States have expressed the concern that the principle of equal pay for equal work in the same place may be incompatible with the single market, as pay rate differences constitute one legitimate element of competitive advantage for service providers. Moreover, they have taken the position that posted workers should remain under the legislation of the sending Member State for social security purposes, and no measure should thus be taken to revise the linkages between the posting of workers and the social security coordination in this sense. Finally, they called upon the Commission to consider action only insofar as evidence is rigorously analysed concerning the challenges and specificities of cross-border service provision.

ETUC has expressed support for a revision to ensure the principle of equal treatment. In this context, however, the ETUC called the Commission upon respecting the principle of autonomy of the social partners to negotiate wages and the plurality of national industrial relation systems, by establishing provisions on the constituent elements of pay having the effect of favouring company-level over sector-level collective agreements. In turn, the ETUC advised that the Commission proposes measures regarding the requirement of a previous period of employment in the country of origin to be especially applied to posted temporary agency workers, new rules on combatting bogus self-employment, and better enforcement measures, in particular inspections and more reliable social security forms.

The European Builders Confederation (EBC), representing SMEs in the construction sector, has expressed support for reopening the 1996 Directive in line with the

principle "equal pay for equal work in the same place". Favourable to revising the Directive have also been the EU Trade Union of Building and Woodworkers (EFBWW), the Dutch Trade Union Confederation (FNV), the Estonian Trade Union Confederation and the Council of Nordic Trade Unions. The EU social partners in the construction industry (FIEC and EFBWW) have also taken a joint position asking the Commission to assess a number of issues related to posting..

BUSINESSEUROPE has considered a priority to ensure the correct transposition of the Enforcement Directive as it deems that most of the challenges with posting of workers are related to poor enforcement and lack of controls in the Member States. BusinessEurope has also suggested that the reopening of the Directive may reduce posting activities because of the uncertainty that the negotiation would create among companies. While supportive of measures to increase the reliability and transparency of Portable Documents, Business Europe has considered that the principle of "equal pay for equal work" would create an undue interference of the EU in the free determination of wage levels by the social partners and recalls that a level playing field for competition is created by a large body of EU law addressing various aspects of labour law. These arguments were also shared by the representatives of employers of the metal, engineering and technology industries (CEEMET), by the Confederation of European Managers (CEC). The Confederation of Industry of the Czech Republic and the Industry Associations from Finland, Sweden, Denmark, Iceland and Norway have in a joint letter also expressed concerns about introducing the principle of equal pay for equal work in the Posting of Workers Directive.

Likewise, UAPME has taken the view that the Posting of Workers Directive should not be modified before the transposition of the Enforcement Directive is completed and its effects evaluated.

EUROCIETT, representing the temporary work agency industry, has found that there is in general no need for reopening the 1996 Directive. Eurociett has nevertheless supported the principle of equal pay for equal work for posted agency workers and the application of the full set of rules provided for by the Temporary Agency Work Directive to posted agency workers.

4. COLLECTION AND USE OF EXPERTISE

Several studies, reports and articles were used during the preparation of this initiative. The references are to be found in the Impact Assessment Report accompanying the present proposal.

5. IMPACT ASSESSMENT

This proposal is accompanied by an Impact Assessment Report which analysis the phenomenon of posting, describes the problem with the current legal framework, envisages different policy options to address it and finally assesses the social and economic impact of the policy options.

6. FUNDAMENTAL RIGHTS

This Directive respects the fundamental rights and complies with the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it is designed to ensure full compliance with Article 31 of the Charter, which provides that every worker has the right to working conditions which respect his or her health, safety and dignity, and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

7. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

Article 1 of the proposal introduces several changes to Directive 96/71/EC.

7.1. Paragraph 1

Paragraph 1 adds a new Article 2bis to the Directive. This Article deals with the labour law to be applied to posted workers when the anticipated or the effective duration of posting exceeds twenty-four months. This is without prejudice to the possible duration of a temporary provision of services. The 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.

Paragraph 1 of the new Article 2bis applies when it is anticipated that the duration of posting will be superior to 24 months or when the effective duration of posting exceeds 24 months. In both cases, the host Member State is deemed to be the country in which the work is habitually carried out. In application of the rules of the Rome I Regulation³, the labour law of the host Member State will therefore apply 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.

In order 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 the 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.

7.2. Paragraph 2

Paragraph 2 introduces several changes to Article 3 of the Directive.

Point (a)

Point (a) replaces paragraph 1 of Article 3 of the Directive.

³

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.

The new text introduces three main changes:

- it suppresses the reference to the "activities referred to in the Annex" in the second indent;
- it replaces the reference to "minimum rates of pay" by a reference to "remuneration"⁴;
- it adds a new subparagraph imposing on Member States an obligation to publish information on the constituent elements of remuneration.

The first change makes the collective agreements universally applicable within the meaning of Article 3(8) applicable to posted workers in all sectors of the economy, irrespective of whether the activities are referred to in the annex to the Directive (which currently is the case only for the construction sector).

It is within Member States' competence to set rules on remuneration in accordance with their law and practice. The second amendment implies that the rules on remuneration applicable to local workers, stemming from the law or collective agreements universally applicable within the meaning of Article 3(8), are also applicable to posted workers.

Finally, the new subparagraph imposes on Member States an obligation to publish in the website referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration applicable to posted workers.

Point (b)

A new paragraph is added which deals with situations of subcontracting chains. This new rule gives the faculty to Member States to oblige undertakings to subcontract only to undertakings that grant workers certain conditions on remuneration applicable to the contractor, including those resulting from non-universally applicable collective agreements. This is only possible on a proportionate and non-discriminatory basis and would thus in particular require that the same obligations be imposed on all national sub-contractors.

Point (c)

It adds a new paragraph which sets the conditions applicable to the workers referred to in Article 1(3)(c) of the Directive, i.e. workers hired out by a temporary agency established in a Member State other than the Member State of establishment of the user undertaking. This new paragraph corresponds to Article 3(9) 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 is now a legal obligation imposed on Member States.

⁴ Building on case law of the Court in Case C-396/13.

7.3. Paragraph 3

Paragraph 3 amends the Annex to the Directive following the changes made to Article 3(1).

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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

(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 Committee⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (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.

⁵ OJ C , , p. .

- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.

- (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.
- (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.
- (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.
- (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.
- (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶, 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 96/71/EC

Directive 96/71/EC is hereby amended as follows:

- (1) The following Article 2a is added:

Article 2a

Posting exceeding twenty-four months

⁶ OJ C 369, 17.12.2011, p. 14.

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.

(2) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

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 on non-discrimination.

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).

(b) The following paragraph is added:

1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement, to subcontract 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.

(c) The following paragraph is added

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.

(d) Paragraph 9 is deleted.

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

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

When Member States adopt those provisions, 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.

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