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## INFORMATION NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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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  
- Outcome of the Parliament's first reading  
(Strasbourg, 28 to 31 May 2018)

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## I. INTRODUCTION

The co-rapporteurs, Ms Elisabeth MORIN-CHARTIER (EPP, FR) and Ms Agnes JONGERIUS (S&D, NL) presented a report consisting of 38 amendments (amendments 1-38) to the proposal for a Directive, on behalf of the Committee on Employment and Social Affairs.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, one compromise amendment was tabled (amendment 39). This amendment had been agreed during the informal contacts referred to above. The Committee also submitted an amendment (amendment 55) for a statement by the Commission to be annexed to the Parliament's legislative resolution.

## II. VOTE

When it voted on 29 May 2018, the Parliament adopted the compromise amendment (amendment 39) to the proposal for a Directive, as well as amendment 55 for a statement to be annexed to the Parliament's legislative resolution<sup>2</sup>.

The Commission proposal as thus amended and the legislative resolution constitute the European Parliament's position at first reading<sup>3</sup>. It reflects what had been previously agreed between the institutions. Consequently, once the legal-linguistic experts have scrutinised the text, the Council should be in a position to approve the position of the European Parliament.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> See page 39 of this document.

<sup>3</sup> The text of the amendments adopted and the European Parliament's legislative resolution are set out in the Annex. The amendments are presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol "■" indicates deleted text.

## **Posting of workers in the framework of the provision of services \*\*\*I**

**European Parliament legislative resolution of 29 May 2018 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 Parliament, by the Czech Chamber of Deputies and the Czech Senate, 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 Sejm and the Polish Senate, by the Romanian Chamber of Deputies and the Romanian Senate and by the Slovak Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- 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 the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council

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

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

representative by letter of 11 April 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

- 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. Takes note of the statement by the Commission annexed to this resolution;
  3. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Position of the European Parliament adopted at first reading on 29 May 2018 with a view to the adoption of Directive (EU) 2018/... of the European Parliament and of the Council 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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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\* TEXT HAS NOT YET UNDERGONE LEGAL-LINGUISTIC FINALISATION.

1 OJ C , , p. .

2 Position of the European Parliament of 29 May 2018.

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 **and enforcement** 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 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.***
- (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 ***and a high level of education, training and protection of human health in defining and implementing its policies and activities.***
- (4) ***In order to ensure that this Directive is correctly applied, coordination between the Member States' competent authorities and/or bodies and cooperation at European level on combating fraud relating to the posting of workers should be strengthened.***

- (5) 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**<sup>2</sup> still strikes the right balance between the need to promote the freedom to provide services and *to ensure a level playing field* and the need to protect the rights of posted workers. *To ensure that the rules are applied uniformly and to bring about genuine 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>3</sup>.
- (6) *Sufficient and accurate data in the area of posted workers is of utmost importance, in particular with regard to information about the number of posted workers in specific employment sectors and Member States. Member States and the Commission should collect and monitor such data.*

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<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, 21.1.1997, p.1)*

<sup>3</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).*

- (7) 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. *These principles include the prohibition of any measures which directly or indirectly discriminate on grounds of nationality. While applying those principles, the relevant case-law of the Court of Justice of the European Union is to be taken into consideration.*

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- (8) *The competent national authorities, in accordance with their national law and/or practice, should be able to verify that the conditions of accommodation for posted workers provided either directly or indirectly by employers are in line with the relevant national provisions in force in the host Member State that might apply also to posted workers.*

- (9) *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 allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons that apply to local workers in that Member State. The same should apply to costs 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. Double payment of travel, board and lodging expenses should be avoided.*
- (10) *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 12 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. **■**That period should be extended upon motivated notification by the service provider.*

- (11) *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 —12 months. Any provision applicable to workers posted in the context of a posting exceeding 12 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.
- (12) *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.*
- (13) *As is the case with Directive 96/71/EC, this Directive should not prejudice the application of Regulation (EC) No 883/2004<sup>4</sup> and Regulation (EC) No 987/2009 of the European Parliament and of the Council<sup>5</sup>.*

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<sup>4</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).*

<sup>5</sup> *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).*

- (14) Because of the highly mobile nature of work in international road transport, the implementation of *this Directive in this sector* raises particular legal questions and difficulties **■**, *which are* to be addressed through *specific rules for road transport also reinforcing the fight against fraud and abuse, in the framework of the mobility package*.
- (15) 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.
- (16) It is within Member States' 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.*

- (17) *When comparing the remuneration paid to the posted worker and the remuneration due in accordance with the laws and/or practices of the Member State to which territory the worker is posted, the gross amount of remuneration should be taken into account. The total gross amounts of remuneration should be compared, rather than individual elements of remuneration rendered mandatory as provided for in Article 3 (1). In order to ensure transparency and assist the competent authorities when carrying out checks and controls, it is nevertheless necessary that the elements, which are part of the remuneration, can be identified in enough detail according to national law and practice of the sending Member State. As provided for in Article 3(7) of Directive 96/71/EC, allowances specific to the posting should be considered to be part of the remuneration. Such allowances should 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.*

(18) *Allowances specific to posting often serve several purposes. Insofar as their purpose is the reimbursement of expenditure incurred on account of the posting, such as expenditure on travel, board and lodging, Directive 96/71/EC provides that they shall not be considered as part of remuneration. It is for Member States, in accordance with their national law and/or practice, to set rules on the reimbursement of these expenditures. The employer should reimburse posted workers for such expenditure in accordance with national law and/or practice applicable to the employment relationship.*

*In view of the relevance of allowances specific to posting, uncertainty as to which parts of allowances specific to posting are allocated to reimbursement of expenditure should be avoided. Such allowances should be considered to be paid in reimbursement of expenditure unless the terms and conditions resulting from law, regulation or administrative provision, collective agreements or contractual agreements that apply to the employment relationship define which parts of the allowance are allocated to the reimbursement of expenditure.*



(19) The elements of remuneration *and other terms and conditions of employment* under national law or **■**-collective agreements *as referred to in Article 3 (8)* 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, 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 in accordance with Article 3 (1a)*, on the single website provided for by Article 5 of Directive 2014/67/EU *as transparency and access to information is essential for legal certainty and law enforcement*. *Each Member State should ensure that its website contains accurate information and is updated on a regular basis. Any sanctions to a service provider for non-compliance with the terms and conditions of employment to be ensured to posted workers should be determined in a proportionate manner, taking into account, in particular, whether the information on the single national website on the terms and conditions of employment is provided in conformity with Article 5 of Directive 2014/67/EU, respecting the autonomy of the social partners.*

- (20) *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 for elements that may be taken into account in the overall assessment of the specific situations in order to identify genuine posting situations and prevent abuse and circumvention.*
- (21) *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>6</sup>, as regards the posting.*
- (22) *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.*
- (23) *With a view to tackling abuses in subcontracting situations and in order to protect posted workers' rights, Member States should take appropriate measures in accordance with Article 12 of Directive 2014/67/EU to ensure subcontracting liability.*

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<sup>6</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).*

- (24) *In the context of fighting fraud related to posting, the European Platform to enhance cooperation in tackling undeclared<sup>7</sup> work created by Decision (EU) 2016/344 should, within its mandate, participate in the monitoring and the evaluation of cases of fraud, improve the implementation and efficiency of administrative cooperation between Member States, develop alert mechanisms and bring assistance and support to reinforced administrative cooperation and information exchanges between the liaison offices. In doing so, the Platform is to work in close cooperation with the Committee of Experts on Posting of Workers.*
- (25) *The transnational nature of certain situations of fraud or abuses related to posting justifies concrete measures aiming at reinforcing the transnational dimension of inspections, inquiries and exchanges of information between the competent authorities of the concerned Member States. To this end, in the framework of administrative cooperation provided for in Directive 96/71 and in Directive 2014/67/EU, in particular Article 7 paragraph 4, the national competent authorities should have the necessary means for alerting on such situations and exchanging information aiming at preventing and combatting fraud and abuses.*

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<sup>7</sup> *Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling*

*undeclared work (OJ L 65, 11.03.2016, p.12).*

(26) Directive 2008/104/EC of the European Parliament and of the Council<sup>8</sup> 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.*

*Experience shows that workers that have been hired out by a temporary agency to a user undertaking are sometimes sent to another Member State in the context of the provision of services. The protection of those workers should be ensured.*

*Member States should ensure that the user undertaking informs the temporary work agency about the posted workers that are temporarily working in a Member State other than the Member State to which they have been posted, in order to allow the employer to apply, as appropriate, the terms and conditions of employment that are more favourable to the posted worker.*

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<sup>8</sup> *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).*

(27) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>9</sup>, 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:

<sup>9</sup> OJ C 369, 17.12.2011, p. 14.



Article 1 Amendments to  
Directive 96/71/EC

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

(1) *Article 1 is amended as follows:*

(a) *the title becomes "Subject matter and scope"*

~~is~~

(b) *In Article 1, a paragraph 1a is added:*

*This Directive shall ensure the protection of posted workers during their posting assignment in relation to the freedom to provide services, by laying down mandatory provisions regarding working conditions and the protection of workers' health and safety that must be respected.*

(c) *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.”*

(d) *In Article 1(3), the following is added after point (c):*

*Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking is to carry out work within the context of a transnational provision of a service in the meaning of Article 1(3)(a) to (c) by the user undertaking in a Member State other than the one in which he normally works for either the temporary employment undertaking or placement agency or user undertaking, the worker shall be considered to be posted to that Member State by the temporary employment undertaking or placement agency with which the worker has been in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be the undertaking referred to in Article 1(1) and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU.*

*A user undertaking shall inform the temporary employment undertaking or placement agency from which a worker has been hired out in due time before the commencement of work referred to in the second sub-paragraph of Article 1(3).*

(e) *In Article 1, a paragraph 5 is added:*

*“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.”*

(2) Article 3 is amended as follows:

(a) Paragraph 1 is replaced by the following:

█-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 *on a basis of equality of treatment* 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 *or otherwise apply in accordance with Article 3 (8)*.
- (a) maximum work periods and minimum rest periods;
- (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 on non-discrimination.
- (h) *the conditions of workers' accommodation when provided by the employer to workers away from their regular place of work;*
- (i) *allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons; this point applies exclusively to travel, board and lodging costs incurred by a posted worker when he/she is required to travel to and from his/her regular place of work in the Member State to which territory he/she is posted, or when he/she is temporarily sent by his/her 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 *in that Member State* have been declared universally applicable ~~—~~ *or otherwise apply in accordance with Article 3 (8).*

*Without prejudice to Article 5 of Directive 2014/67/EU*, 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 referred to in *that Article*, the constituent elements of remuneration in accordance with point (c) *of this paragraph and all the terms and conditions of employment in accordance with Article 3(1a).*

*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.*

*Where the information on the single official national website does not indicate, in conformity with Article 5 of Directive 2014/67/EU, which terms and conditions of employment are to be applied, this circumstance shall be taken into account, in accordance with national law and/or practice, in determining penalties in the event of infringements of the national provisions adopted pursuant to this Directive, to the extent necessary to ensure the proportionality thereof.*

(b) *The following paragraph is added to Article 3:*

**I**

*"1a. When the effective duration of a posting exceeds 12 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 on a basis of equality of treatment, 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 or otherwise apply in accordance with Article 3 (8).*

*The first subparagraph of this paragraph does not apply to the following matters:*

- (a) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses;*
- (b) supplementary occupational retirement pension schemes.*

*The Member State in which the service is provided shall, on the basis of a motivated notification of a service provider, extend to 18 months the period before which the provisions of this paragraph apply.*

*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."*

(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.

*The user undertaking shall inform 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.*

(d) *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. The employer shall, without prejudice to paragraph 1(h), reimburse the worker for such expenditure in accordance with national law and/or practice applicable to the employment relationship of the posted worker.*

*If it does not result from the terms and conditions of employment applicable to the employment relationship whether and in that case which elements of an allowance specific to the posting are paid in reimbursement of expenditure or are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure actually incurred on account of the posting.*



- (e) *In Paragraph 8, the terms "or in addition to" are added to Article 3 (8), such that the second paragraph now reads:*

*In the absence of, or in addition to, a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:*

*- collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or*

*- collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory,*

*provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.*

- (f) Paragraph 9 is replaced by the following:

*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."*

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

*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) *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, including at Union level. Such cooperation 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 linked to the posting of workers.*

*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.*

(4) *Article 5 is replaced by the following:*

*The host Member State and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and Directive 2014/67/EC and shall take appropriate measures in the event of failure to comply with this Directive. The penalties provided for shall be effective, proportionate and dissuasive.*

*They shall in particular ensure that adequate procedures are available to workers and/or workers' representatives for the enforcement of obligations under this Directive.*

*Member States shall ensure that, where following an overall assessment carried out pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of Directive 96/71/EC, that Member State shall ensure that the worker benefits from relevant legislation and collective agreements.*

*Member States shall ensure that this Article does not lead to the worker concerned being subject to less favourable conditions than those applicable to posted workers.*

(5) 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 2 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 2 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. ***This Directive shall apply to the road transport sector from the date of application of a legislative act 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.***

3. 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.
4. ***The Commission shall review the application and implementation of this Directive. By 5 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.***

***That report shall include an assessment of whether further measures to ensure a level-playing field and protect workers are required:***

1. ***in the case of sub-contracting;***
2. ***in the light of Article 2(2), taking into account the developments concerning the legislative act amending directive 2006/22/EC and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EC for posting drivers in the road transport sector.***

### 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 ...

,

*For the European Parliament*

*For the Council*

*The President*

*The President*

## ANNEX TO THE LEGISLATIVE RESOLUTION

### STATEMENT BY THE COMMISSION

Article 3(7), second subparagraph, of Directive 96/71/EC as amended by the Directive adopted today, lays down that 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. It also provides that “[t]he employer shall, without prejudice to point (h) of the first subparagraph of paragraph 1, reimburse the posted worker for such expenditure in accordance with the national law and/or practice applicable to the employment relationship”.

The Commission understands that the “national law and/or practice applicable to the employment relationship” is in principle the national law and /or practice of the home Member State, unless otherwise determined in accordance with EU rules on private international law. In the light of the Court's judgment in Case C-396/13 (paragraph 59), reimbursement also covers the situation where the employer defrays costs of the workers without the latter having first to pay them and then seek to have them reimbursed.

The Commission notes that the Directive adopted today foresees that, because of the highly mobile nature of work in international road transport, the revised rules on posting will apply to that sector only from the date of application of a legislative act 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/EC for posting drivers in the road transport sector.

The Commission calls on the European Parliament and the Council to adopt that act swiftly in order to adapt the rules to the specific needs of posted workers in the sector while ensuring proper functioning of the internal road transport market.

Until the date of application of the sector-specific legislative act, Directive 96/71/EC and Directive 2014/67/EU remain in force in road transport. These legislative acts do not apply to road transport operations which do not constitute posting.

The Commission will continue to closely monitor the proper enforcement of the current rules in particular in the road transport sector and where appropriate take action.

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