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from: General Secretariat

to: Council (EPSCO)

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Subject: Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

- General approach
  - = Joint proposal by the UK, Poland, Hungary, Romania, Latvia, Estonia, the Czech Republic, Slovenia, Ireland, Slovakia and Croatia (Article 9).
  - = Proposal by FI (Article 12).

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Delegations will find attached the above mentioned proposals as presented in the Permanent Representatives Committee's meeting on 4 October 2013.

**Joint Proposal of the UK, Poland, Hungary, Romania, Latvia, Estonia, the Czech Republic,  
Slovenia, Ireland, Slovakia and Croatia**

*Article 9*

*Administrative requirements and control measures*

0. Member States may only impose administrative requirements and control measures in order to ensure effective monitoring of compliance with the obligations set out in this Directive and Directive 96/71/EC in accordance with Union law.

Member States shall verify that administrative requirements and control measures introduced in accordance with this Article satisfy the following requirements:

- non-discrimination: administrative requirements and control measures must be neither directly nor indirectly discriminatory according to nationality nor according to the location of the service provider's registered office;
- necessity: the justification for the measure and requirement must be related to the protection of posted workers;
- proportionality: requirements and control measures must be suitable for securing the attainment of the objective pursued; they must not go beyond what is necessary to attain that objective and it must not be possible to replace those requirements and measures with other, less restrictive requirements and measures which attain the same result.

1. For these purposes Member States may only impose the following measures, with regard to the requirements and measures in paragraph 0:

- (a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities, whereby the declaration may only cover:
  - i) the identity of the service provider;
  - ii) the anticipated number of clearly identifiable posted workers;
  - iii) the contact persons referred to under (ca) and (d);
  - iv) the anticipated duration, envisaged beginning and end date of the posting;
  - v) the address(es) of the workplace; [and
  - vi) the nature of services];
- (b) an obligation to keep or make available and/or retain copies in paper or electronic form of the employment contract (or an equivalent document within the meaning of Directive 91/533, including, where appropriate or relevant, the additional information referred to in Article 4 of that Directive), payslips, time-sheets indicating the beginning, end and duration of the daily working time and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;
- (c) an obligation to provide a translation of the documents referred to under (b) into (one of) the official language(s) of the host Member State, or into (an)other language(s) accepted by the Member State, provided that these documents are not excessively long and standardised forms are generally used where possible for such documents;
- ca) an obligation to designate a person to liaise with the competent authorities.

- (d) an obligation to designate a contact person, if necessary, with whom the relevant social partners may seek to induce the service provider to enter into collective bargaining within the host Member State, in accordance with national legislation and practice, during the period in which the services are provided. This person may be a different person than the person referred to under (ca) and does not have to be present in the host Member State.

1a. Member States shall notify the Commission of

- any new laws, regulations or administrative provisions which set administrative requirements and control measures they intend to introduce,
- the already existing requirements and control measures they intend to maintain,

together with the reasons for those requirements and measures, providing that new and existing requirements and control measures satisfy the requirements deriving from paragraph 0 and 1. The Commission shall communicate the provisions concerned to the other Member States.

Within a period of 3 months from the date of receipt of the notification, the Commission shall examine the compatibility of any new and existing requirements and control measures as stated above with EU law and, where appropriate, shall adopt a decision requesting the Member State in question to amend or to refrain from adopting them.

1b. In the mutual evaluation report provided for in Article 17a, Member States shall specify the following:

- (a) the administrative requirements and control measures that they intend to maintain and the reasons why they consider that those requirements and measures comply with the conditions set out in the second subparagraph of paragraph (1);

- (b) the requirements and control measures which have been abolished or made less stringent.
- 1c. Prior to implementation Member States shall not introduce any new administrative requirement and control measures within the meaning of paragraph 0 and 1, unless it satisfies the conditions laid down in this Article.
  - 2. Member States shall ensure that the procedures and formalities relating to the posting of workers can be completed easily by undertakings, at a distance and by electronic means.
  - 2a. Member States shall inform the Commission and service providers of any measures referred to in paragraphs 0 and 1 that have been implemented by them. The information for the service providers shall be made generally available in the most relevant language(s), the choice being left to the Member State.
  - 3. Within three years after the date referred to in Article 20, the appropriateness and adequacy of the application of national control measures shall be reviewed in the light of the experiences with and effectiveness of the system for administrative cooperation and exchange of information, the development of more uniform, standardised documents, the establishment of common principles or standards for inspections in the field of the posting of workers as well as technological developments, with a view to proposing, where appropriate, any necessary amendments or modifications.

*Article 17a*

**Mutual evaluation**

- 1. By 31 December 2014 and after that every three years, Member States shall present a report to the Commission, containing the information specified in the following provisions:
  - (a) Article 3, on criteria used for the assessment of temporary movement; and

(b) Article 9, on administrative requirements and control measures.

[(c) Article 12, on liability requirements;]

The purpose of the reports shall be to ensure that Member States have not introduced requirements and measures contrary to the criteria set out by Art. 3 and 9 to discourage service providers from posting workers.

2. The Commission shall forward the reports provided for in paragraph 1 to the Member States, which shall submit any observation on each of the reports within six months of receipt.
3. In the light of the observations provided for in paragraph 2, the Commission shall, by 31 December 2015 (...) and after that adequately to paragraph 1, present a summary report to the European Parliament and to the Council, accompanied where appropriate by proposals for additional initiatives.

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Proposal by the Finnish delegation

Article 12

Finland has some concerns as regards the deletion of Article 12.3a. This article allowed those Member States who do not have a severe system of liability as described in Articles 12.1 and 12.3 to take other measures with a view to preventing misuse or circumvention in subcontracting chains. The recognition of these other measures is important for Finland as our own system of contractor's liability is not a severe liability and it does not concern the liability with respect to remuneration, social security contributions or taxes, f.ex. We consider it important to recognize also the value of these "softer" measures in the text of this Article in spite of the voluntary nature of it.

*Therefore we would like propose to restore the text of Article 12.3a (with a reference to paragraph 3 as well):*

*3a Instead of liability rules referred to in paragraph 1 [ and 3...] of this Article, Member States may also take other appropriate measures in accordance with national law and/or practice, with a view to preventing misuse or circumvention of the protection of workers' rights in subcontracting chains.*

In addition, Finland considers it important to recognize in Article 12.3 the possibility for more lenient, and not only for more stringent, provisions in relation to Article 12.1. Therefore we propose a small addition to Article 12.3:

*3. Member States may, in conformity with Union law, equally provide for more stringent or more lenient liability rules under national law on a non-discriminatory and proportionate basis in regard to the scope and range of subcontractor liability. Member States may also, in conformity with Union law, provide for such liability in sectors other than those contained in the Annex to Directive 96/71/EC.*