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*****I**
REPORT

on the 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
(COM(2012)0131 – C7-0086/2012 – 2012/0061(COD))

Committee on Employment and Social Affairs

Rapporteur: Danuta Jazłowiecka

Symbols for procedures

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

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

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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

(COM(2012)0131 – C7-0086/2012 – 2012/0061(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0131),
 - having regard to Article 294(2) and Articles 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0086/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 19 September 2012¹,
 - having regard to Rule 55 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 Internal Market and Consumer Protection (A7-0000/2013) and of the Committee on Legal Affairs (A7-0000/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C351, 15.11.2012, p. 61.

Amendment 1

Proposal for a directive Citation 1 a (new)

Text proposed by the Commission

Amendment

***Having regard to the Charter of
Fundamental Rights of the European
Union,***

Amendment 2

Proposal for a directive Recital 2

Text proposed by the Commission

Amendment

(2) The free movement of workers gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other working conditions in comparison to nationals of that Member State. It needs to be distinguished from the freedom to provide services, which includes the right of undertakings to provide services in another Member State, for which they may send ('post') their own workers temporarily to carry out the work necessary to provide these services there.

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may send ('post') their own workers temporarily to carry out the work necessary to provide these services there. It is necessary for the purpose of the posting of workers to distinguish this freedom from the free movement of workers, which gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other working conditions in comparison to nationals of that Member State.

Amendment 3

Proposal for a directive Recital 3b (new)

Text proposed by the Commission

Amendment

(3b) In order to ensure compliance with Directive 96/71/EC, whilst not putting an unnecessary administrative burden on the service providers, it is essential that the factual elements referred to in the provisions on preventing abuse and circumvention in this Directive are considered to be indicative and non-exhaustive. In particular, there should be no requirement that each element is to be satisfied in every posting case.

Amendment 4

**Proposal for a directive
Recital 4**

Text proposed by the Commission

Amendment

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved.

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved ***and more uniform elements, facilitating a common interpretation, should be introduced at Union level. In this context, it is important to underline the importance of monitoring tools to ensure compliance with applicable rules, especially minimum terms and conditions of employment, as well as penalising those who circumvent those rules.***

Amendment 5

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

Text proposed by the Commission

Amendment

(4a) In the event of non-compliance, for example the bogus posting of a worker, the rules of Regulation (EC) no 593/2008 on the law applicable to contractual obligations (Rome I Regulation) apply. When determining which law is applicable under Rome I, account should be taken of those provisions which are most favourable to the worker.

Amendment 6

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) All measures introduced by this Directive should be justified, proportionate and non-discriminatory, so as not to create administrative burdens or to limit the potential that companies, in particular small and medium enterprises, have to create new jobs, while protecting posted workers.

Amendment 7

Proposal for a directive Recital 5

Text proposed by the Commission

Amendment

(5) Therefore, the constituent factual elements characterising the temporary nature inherent to the notion of posting, which implies that the employer should be genuinely established in the Member State from which the posting takes place, as well as the relationship between Directive 96/71/EC and Regulation (EC) No 593/2008 on the law applicable to contractual obligations (hereinafter the

(5) Therefore, the constituent factual elements characterising the temporary nature inherent to the notion of posting, which implies that the employer should be genuinely established in the Member State from which the posting takes place, as well as the relationship between Directive 96/71/EC and Regulation (EC) No 593/2008 on the law applicable to contractual obligations (hereinafter the

‘Rome I Regulation’) need to be further clarified.

‘Rome I Regulation’) need to be further clarified *in order to ensure the widest possible implementation of that Directive*

Amendment 8

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The European Parliament and the Council should provide the Commission, as necessary, with support, oversight and feedback concerning the implementation of this Directive.

Amendment 9

Proposal for a directive Recital 6

Text proposed by the Commission

Amendment

(6) As is the case with Directive 96/71/EC, this Directive should not prejudice *the application of the law which, under Article 8 of the Rome I Regulation, applies to individual employment contracts, or* the application of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems *and* Regulation 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.

(6) As is the case with Directive 96/71/EC, this Directive should not prejudice the application of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, Regulation 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, *of Regulation (EU) No 465/2012 of the European Parliament and of the Council of 22 May 2012 or of Articles 45 and 46 TFEU. The provisions of this Directive should be without prejudice to the provision, by Member States, of more favourable conditions for posted workers.*

Amendment 10

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Member States should ensure that necessary resources are available to make the checks efficient and to enable requests for information, as provided for in this Directive, from the host Member State or the Member State of establishment to be responded to without undue delay.

Amendment 11

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

(8) ***Trade unions*** play an important role in the context of the posting of workers for the provision of services since ***social partners*** may, in accordance with national law and/or practice, determine the different levels (alternatively or simultaneously) of the applicable minimum rates of pay.

(8) ***In many Member States, the social partners*** play an important role in the context of the posting of workers for the provision of services since ***they*** may, in accordance with national law and/or practice, determine the different levels (alternatively or simultaneously) of the applicable minimum rates of pay. ***With this right should also come duty, on the part of the social partners, to communicate and inform about those rates.***

Amendment 12

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) The supervisory authorities in the Member States have the most important part to play in enforcing Directive 96/71/EC. Undeclared employment can

only be contained by means of effective and efficient checks on compliance with minimum terms and conditions of employment. Monitoring by Member States should not be hampered in any way.

Amendment 13

Proposal for a directive

Recital 10

Text proposed by the Commission

(10) Adequate and effective implementation and enforcement are key elements in protecting the rights of posted workers, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. *Close cooperation between the Commission and the Member States is therefore essential, without neglecting* the important role of labour inspectorates and the social partners in this respect.

Amendment

(10) Adequate and effective implementation and enforcement are key elements in protecting the rights of posted workers *and in ensuring the right of undertakings to provide services in another Member State*, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. *It is therefore essential to establish and maintain close cooperation between Member States, the Commission and relevant national, regional and local authorities, while underlining* the important role of labour inspectorates and the social partners in this respect.

Amendment 14

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Effective monitoring procedures in Member States are essential and therefore they should be established throughout Europe. Member States should provide adequate funding to enable competent authorities to detect and combat circumvention of applicable rules. Member States are entitled to perform effective, regular and flexible inspections necessary to ensure full compliance with

Directive 96/71/EC and the provisions of this Directive provided they are justified, proportionate and non-discriminatory.

Amendment 15

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) Mutual trust, a spirit of cooperation, continuous dialogue and mutual understanding are essential in this respect.

Amendment

(11) Mutual trust, a spirit of cooperation, continuous dialogue and mutual understanding are essential in this respect. ***Insufficient cooperation between Member States remains a problem on enforcing Directive 96/71/EC and hinders the creation of a level playing field for companies and the protection of workers. Failure of Member States to fully comply with this Directive should be communicated to the European Commission which will decide whether to initiate infringement proceedings in accordance with the Treaty.***

Amendment 16

Proposal for a directive

Recital 12

(12) In order to facilitate better and more uniform application of Directive 96/71/EC, it is appropriate to provide for an electronic information exchange system to facilitate administrative cooperation and competent authorities should use the Internal Market Information System (IMI) as much as possible. ***However, this should not prevent the application of bilateral agreements or arrangements concerning administrative cooperation.***

(12) In order to facilitate better and more uniform application of Directive 96/71/EC, it is appropriate to provide for an electronic information exchange system to facilitate administrative cooperation and competent authorities should use the Internal Market Information System (IMI) as much as possible ***together with other established means of cooperation such as bilateral agreements or arrangements.***

Amendment 17

Proposal for a directive Recital 13

Text proposed by the Commission

(13) Administrative cooperation and mutual assistance between the Member States should comply with the rules on the protection of personal data laid down in Directive 95/46/EC, and with regard to administrative cooperation through the Internal Market Information System (IMI), it should also comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data and Regulation (EU) xxx (IMI Regulation) on administrative cooperation through the Internal Market Information System (IMI).

Amendment

(13) Administrative cooperation and ***prompt and far-reaching*** mutual assistance between the Member States should comply with the rules on the protection of personal data laid down in Directive 95/46/EC, and with regard to administrative cooperation through the Internal Market Information System (IMI), it should also comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data and Regulation (EU) xxx (IMI Regulation) on administrative cooperation through the Internal Market Information System (IMI) .

Amendment 18

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) It is a matter of concern that there are still many difficulties for Member States to recover cross-border administrative fines and penalties and that the mutual recognition of administrative fines and penalties needs to be addressed in future legislation.

Amendment 19

Proposal for a directive Recital 14

Text proposed by the Commission

(14) **Member States obligations to make** information on terms and conditions of employment generally available and **to provide** effective access to it, not only to service providers from other Member States, but also to the posted workers concerned, **should be further concretised..**

Amendment

(14) **Difficulties in accessing** information on terms and conditions of employment **are very often the reason why existing rules are not applied by service providers. Member States should therefore ensure that such information is made** generally available, **free of charge** and **that** effective access to it **is provided**, not only to service providers from other Member States, but also to the posted workers concerned. **Member States should equally establish contact points to enable workers and service providers to exercise their right to information, advice and support.**

Amendment 20

Proposal for a directive

Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Where terms and conditions of employment are laid down in collective agreements which have been declared to be universally applicable, Member States should ensure that those collective agreements are published and accessible.

Amendment 21

Proposal for a directive

Recital 15

Text proposed by the Commission

Amendment

(15) Member States **should determine the way in which providers and recipients are provided with easily accessible relevant information, preferably by making this information accessible through a website**, following web accessibility standards. Such websites should include in particular

(15) **In order to improve accessibility of information, a single source of information should be established in** Member States. **Each Member State should establish a single official national website**, following web accessibility standards, **and other suitable means of**

any website put in place pursuant to *EU* legislation with a view to promote entrepreneurship and/or the development of the cross-border of services.

communication. Such website should include in particular *information on terms and conditions of employment applicable to posted workers in the national territory as well as links to* any website put in place pursuant to *Union* legislation with a view to promote entrepreneurship and/or the development of the cross-border *provision* of services.

Justification

The current situation in which terms and conditions of employment are to be found through different sources, leads to poor awareness of rules and in consequence, their non-application. Establishing a single source of information should contribute to improving its accessibility for both - employers and employees.

Amendment 22

Proposal for a directive Recital 16

Text proposed by the Commission

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply ***only*** certain control measures or administrative formalities to undertakings posting workers for the provision of services. ***Such measures and requirements may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.***

Amendment

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply ***a core set of*** control measures ***and*** administrative formalities to undertakings posting workers for the provision of services ***that effectively prevent and combat fraud and unfair competition. Member States may impose any additional administrative requirements and control measures deemed to be necessary in order to ensure the effective monitoring of and compliance with the obligations set out in Directive 96/71/EC and in this Directive.***

Amendment 23

Proposal for a directive Recital 17

Text proposed by the Commission

(17) A comprehensive system of preventive and control measures, together with deterrent ***penalties to identify and prevent individual instances of bogus self-employed, should contribute to combat concealed employment effectively***

Amendment

(17) ***In order to enforce effectively the terms and conditions of employment all forms of fraudulent use of self-employed status to evade provisions of Directive 96/71/EC should be prohibited through a comprehensive system of preventive and control measures, together with deterrent penalties. Member States should ensure that they have mechanisms in place to identify cases of falsely self-employed.***

Amendment 24

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) ***In order to enforce effectively the terms and conditions of employment it is also necessary to counter bogus self-employment. This is of decisive importance in preventing possible abuses. The responsible authority should have the necessary resources to establish whether workers who are ostensibly self-employed workers are not in fact to a large extent repeatedly working for the same employers or bound to them by some form of hierarchical relationship.***

Amendment 25

Proposal for a directive Recital 19

Text proposed by the Commission

(19) National labour inspectorates, social

Amendment

(19) National labour inspectorates, social

partners and other monitoring bodies are of paramount importance in this respect and should continue to play a crucial role.

partners and other monitoring bodies are of paramount importance in this respect and should continue to play a crucial role. ***The work of the supervisory authority should not be hampered in any way whatsoever.***

Amendment 26

Proposal for a directive Recital 20

Text proposed by the Commission

(20) In order to cope in a flexible way with the diversity of labour markets and industrial relations systems, by way of exception, other ***actors and/or*** bodies may monitor certain terms and conditions of employment of posted workers, provided these offer the persons concerned an equivalent degree of protection and exercise their monitoring in a non-discriminatory and objective manner.

Amendment

(20) In order to cope in a flexible way with the diversity of labour markets and industrial relations systems, ***the social partners, and/or*** by way of exception other ***national*** bodies, may monitor certain terms and conditions of employment of posted workers, provided these offer the persons concerned an equivalent degree of protection and exercise their monitoring in a non-discriminatory and objective manner.

Amendment 27

Proposal for a directive Recital 21

Text proposed by the Commission

(21) Member States' inspection authorities and other relevant monitoring and enforcement bodies should avail themselves of the cooperation and exchange of information provided for in the relevant legislation in order to verify whether the rules applicable to posted workers have been respected.

Amendment

(21) Member States' inspection authorities and other relevant ***national*** monitoring and enforcement bodies should avail themselves of the cooperation and exchange of information provided for in the relevant legislation in order to verify whether the rules applicable to posted workers have been respected.

Amendment 28

Proposal for a directive Recital 22

Text proposed by the Commission

(22) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. The need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level should equally be examined.

Amendment

(22) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. The need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level should equally be examined. ***However, the development of common standards must not result in Member States being hampered in their efforts to combat undeclared employment effectively.***

Amendment 29

**Proposal for a directive
Recital 23**

Text proposed by the Commission

(23) To facilitate the enforcement of Directive 96/71/EC and ensure more effective application of it, effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in proceedings either directly or through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners. This should be without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment

(23) To facilitate the enforcement of Directive 96/71/EC and ensure more effective application of it, effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in proceedings either directly or, ***subject to the approval of those posted workers***, through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners. This should be without prejudice to national rules of procedure concerning representation and defence before the courts.

Justification

It is important to underline that third parties do not have the right to engage in proceedings on behalf of the posted workers only with their approval.

Amendment 30

Proposal for a directive

Recital 24

Text proposed by the Commission

Amendment

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is necessary to ensure that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor shall not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

deleted

Amendment 31

Proposal for a directive

Recital 25

Text proposed by the Commission

Amendment

(25) In specific cases, other contractors may, in accordance with national law and practice, be also held liable for failure to comply with the obligations under this Directive, or their liability may be limited, after consultation of the social partners at national or sectoral level.

deleted

Amendment 32

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim outstanding pay or refunds of taxes or social security contributions unduly withheld.

deleted

Amendment 33

Proposal for a directive

Recital 27

Text proposed by the Commission

Amendment

(27) The disparities between the systems of the Member States for enforcing imposed administrative fines and/or penalties in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.

deleted

Amendment 34

Proposal for a directive

Recital 28

Text proposed by the Commission

Amendment

(28) Effective enforcement of the substantive rules governing the posting of

(28) Effective enforcement of the substantive rules governing the posting of

workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed administrative *fin*es and penalties. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.

workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed *financial* administrative penalties *and/ or fines*. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.

Amendment 35

Proposal for a directive Recital 28 a (new)

Text proposed by the Commission

Amendment

(28a) The disparities between the systems of the Member States for enforcing in cross-border situations administrative fines or penalties imposed are prejudicial to the proper functioning of the internal market. The approximation of the legislation of Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of obedience of law.

Justification

The main aim of penalties and fines imposed through their dissuasive character is to guarantee the respect for law (equivalent level of protection of workers is a secondary and indirect result).

Amendment 36

Proposal for a directive Recital 29

Text proposed by the Commission

Amendment

(29) The adoption of common rules for providing mutual assistance and support for enforcement measures and the

(29) The adoption of common rules for providing mutual assistance and support for enforcement measures and the

associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and fines imposed, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.

associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and fines imposed *with regard to posting of workers situations in accordance with this Directive and with Directive 96/71*, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.

Amendment 37

Proposal for a directive Recital 30

Text proposed by the Commission

(30) Notwithstanding the establishment of more uniform rules with respect to the cross-border enforcement of penalties and fines and the need *for more common criteria for* follow-up procedures in the event of the non-payment of these they should not affect the Member States' competences to determine their system of penalties, sanctions and fines or the recovery measures available under their internal legislation.

Amendment

(30) Notwithstanding the establishment of *some* more uniform rules with respect to the cross-border enforcement of penalties and fines and the need *to make the* follow-up procedures *more effective* in the event of the non-payment of these, they should not affect the Member States' competences to determine their system of penalties, sanctions and fines or the recovery measures available under their internal legislation.

Justification

Chapter VI does not create a more uniform system but introduces only some approximations aiming at making the cross border enforcement of penalties and fines possible and effective even under different national provisions.

Amendment 38

Proposal for a directive Article 1

Text proposed by the Commission

1. This Directive establishes a *general*

Amendment

1. This Directive establishes a *set of*

common framework of appropriate provisions, measures and control mechanisms *necessary for* better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules.

This Directive aims to guarantee respect for an appropriate level of *minimum* protection of the rights of posted workers for the cross-border provision of services, while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers.,

2. This Directive shall not affect in any way the exercise of fundamental rights as recognised in Member States *and by Union law*, 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 practices. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practices.

Amendment 39

Proposal for a directive Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) 'competent authority' means an

specific provisions, measures and control mechanisms *to enable Member States to ensure* better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules *and is without prejudice to the scope of Directive 96/71/EC*.

This Directive aims to guarantee respect for an appropriate level of protection of the rights of posted workers for the cross-border provision of services, *especially the enforcement of the terms and conditions of employment that apply in the place where the service is to be performed in accordance with Article 3 of Directive 96/71/EC and to support the functioning of the internal market* while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers.

2. This Directive shall not affect in any way the exercise of fundamental rights as recognised in Member States *and at Union and, where appropriate, at international 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 practices. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practices.

Amendment

(a) 'competent authority' means *authorities*

authority designated by a Member State *to perform* functions under this Directive;

or bodies, including the liaison offices under Article 4 of Directive 96/71/EC, designated by a Member State and entrusted with the performance of public functions under this Directive and under Directive 96/71/EC;

Amendment 40

Proposal for a directive Article 2 – paragraph 1 – point b

Text proposed by the Commission

(b) ‘requesting authority’ means the competent authority of a Member State which makes a request for assistance, information, notification or recovery concerning a penalty or fine as referred to in Chapter V;

Amendment

(b) ‘requesting authority’ means the competent authority of a Member State which makes a request for assistance, information, notification or recovery concerning a penalty or fine, as referred to in Chapter VI;

Justification

The cross-border enforcement is regulated in Chapter VI (not in Chapter V).

Amendment 41

Proposal for a directive Article 2 – paragraph 1 – point c

Text proposed by the Commission

(c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made.

Amendment

(c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made, *as referred to in Chapter VI.*

Justification

It needed further clarification on which authority is intended.

Amendment 42

Proposal for a directive Article 3

Text proposed by the Commission

Preventing abuse and circumvention

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, other than purely internal management and/or administrative activities. Such elements may include:

(a) the place where the undertaking has its registered office and administration, uses

Amendment

Set of enforcement provisions to prevent abuse and circumvention

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC, the competent authorities shall make an overall assessment of all factual elements that are deemed to be necessary, including, in particular, those set out in paragraphs 2 and 3 of this Article. Those elements are intended to assist competent authorities when carrying out checks and controls and where they have reason to believe that a worker may not qualify as a posted worker under Directive 96/71/EC. These elements are indicative factors in the overall assessment to be made and therefore shall not be considered in isolation. Those elements shall be adapted to each specific case and shall take account of the specificities of the situation and the nature of the activities. Failure to satisfy one or more of these elements shall not automatically preclude a situation from being a posting; however it may be used by competent authorities to assist them when assessing, under paragraphs 2 and 3, whether the posting is genuine.

2. In order to determine whether an undertaking genuinely performs activities, other than purely internal management and/ or administrative activities, competent authorities shall make an overall assessment of all factual elements characterising the activities carried out by an undertaking in the Member State of establishment and, where necessary, in the host Member State. Such elements may include *in particular*:

(a) the place where the undertaking has its registered office and administration, uses

office space, pays taxes, has a professional licence or is registered with the chambers of commerce or professional bodies,

(b) the place where posted workers are recruited,

(c) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand,

(d) the place where the undertaking performs its *substantial* business activity *and* where it employs administrative staff,

(e) the *abnormally limited* number of contracts performed and/or size of turnover realised in the Member State of establishment.

The assessment of these elements shall be adapted to each specific case and take account of the nature of the activities carried out by the undertaking in the Member State in which it is established.

2. In order to assess whether a posted worker temporarily carries out his or her work in a Member State other than the one in which he or she normally works, all factual elements characterising such work and the situation of the worker shall be examined.

Such elements may include:

(a) the work is carried out for a limited period of time in another Member State;

office space, pays taxes *and social security contributions and, where applicable, according to national law* has a professional licence or is registered with the chambers of commerce or professional bodies,

(b) the place where posted workers are recruited *and from which they are posted*,

(c) the law applicable to the contracts concluded by the undertaking with its workers, on the one hand, and with its clients, on the other hand,

(d) the place where the undertaking performs its business activity *the assessment of which, in a wider time-frame, is not limited to purely internal management and/or administrative activities*, where it employs administrative staff *and in which sector the posted worker is employed*,

(e) the number of contracts performed and/or *the* size of *the* turnover realised in the Member State of establishment, *taking into account the specific situation of, inter alia, newly established undertakings and SMEs, as well as the differences in the purchasing power of currencies in different Member States;*

3. In order to assess whether a posted worker temporarily carries out his or her work in a Member State other than the one in which he or she normally works, all factual elements characterising such work and the situation of the worker shall be examined.

Such elements *may* include *in particular* :

(a) the work is carried out for a limited period of time in another Member State; *the duration of the posting shall be*

(b) the posting takes place to a Member State other than the one in or from which the posted worker habitually carries out his or her work according to Regulation (EC) No 593/2008 and/or the Rome Convention;

(c) the posted worker returns or is expected to resume working to the Member State from which he/she is posted after completion of the work or the provision of services for which he or she was posted;

(d) travel, board and lodging/accommodation is provided or reimbursed by the employer who posts the worker, *and if so, how this is done; as well as*

(e) any repeated previous periods during which the post was filled by the same or another (posted) worker;

All the factual elements enumerated above are indicative factors in the overall assessment to be made and may not therefore be considered in isolation. The criteria shall be adapted to each specific case and take account of the specificities of the situation.

calculated in accordance with Article 3(6) of Directive 96/71/EC,

(b) the posting takes place to a Member State other than the one in or from which the posted worker habitually carries out his or her work according to Regulation (EC) No 593/2008 and/or the Rome Convention,

(c) the posted worker returns or is expected to resume working to the Member State from which he/she is posted after completion of the work or the provision of services for which he or she was posted,

(d) travel, board and lodging/accommodation is provided or reimbursed by the employer who posts the worker; if so, *the method of reimbursement shall be included,*

(e) any repeated previous periods during which the post was filled by the same or another (posted) worker; *or*

(f) possession of a valid A1 form, issued in respect of the posted worker.

3a. Member States may apply additional elements to be verified by the competent authority provided that they are justified, proportionate and non-discriminatory. Member States shall without delay inform the Commission of any additional elements and shall make them available to the public on a single national website in a precise, clear and accessible way. The Commission shall communicate additional elements to the competent authorities in all Member States.

3b. Member States shall ensure, in accordance with their national law and practice, that posted workers are not

falsely declared as self- employed.

Amendment 43

Proposal for a directive

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Within three years after ..., the necessity and appropriateness of the elements referred to in paragraphs 2 and 3 of this Article shall be reviewed in the light of defining possible new elements to be taken into account in order to determine whether the undertaking is genuine and a posted worker temporarily carries out his or her work, and, where appropriate, a proposal shall be submitted to the European Parliament and to the Council for any necessary amendments.*

** OJ please insert the date two years after the entry into force of this Directive.*

Amendment 44

Proposal for a directive

Article 3 – paragraph 3 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

When verifying the self- employed status of a person in the host Member State, the following elements may in particular be taken into account by the competent authorities:

- (a) Fulfilment of business requirements in the Member State of establishment such as registration as self- employed, maintenance of an office, payment of taxes, possession of a VAT number, registration with chambers of commerce;*
- (b) Remuneration, the existence of a*

relationship of subordination between a self-employed person and an undertaking and the existence of financial responsibility for the undertaking's results;

(c) Self-employment activities before moving to the host Member State.

Amendment 45

Proposal for a directive Article 3 a (new)

Text proposed by the Commission

Amendment

3a. If the competent authority concludes, on the basis of factual elements listed in paragraphs 2 and 3 of Article 3, that there is no genuine posting situation, the terms and conditions of employment applicable to the worker shall be those established by the law determined in accordance with the rules of Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I Regulation). When determining which law is applicable under Rome I account shall be taken of the provisions which are most favourable to the worker.

Amendment 46

Proposal for a directive Article 4

Text proposed by the Commission

Amendment

Role of liaison offices

For the purposes of this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more competent authorities, which may include the liaison office(s) referred to in Article 4 of Directive 96/71/EC.

Competent authorities and liaison offices

For the purposes of this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more competent authorities, which may include the liaison office(s) referred to in Article 4 of Directive 96/71/EC. **The liaison office shall provide information on**

Contact details of the competent authorities shall be communicated to the Commission and the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Amendment 47

Proposal for a directive Article 5

Text proposed by the Commission

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available in a clear, comprehensive and easily accessible way at a distance and by electronic means, in formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

2. In order to bring about further improvements with respect to access to information, member States shall:

(a) indicate clearly, in a detailed and user friendly manner and accessible format on national **websites** which terms and conditions of employment and/or which parts of their (national and/or regional) legislation have to be applied to workers posted to their territory;

terms and conditions of employment and employment rules. The liaison office may also monitor the application of those rules.

Contact details of the competent authorities ***and liaison offices*** shall be communicated to the Commission and the other Member States ***and shall be made available to the public***. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Amendment

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available ***free of charge*** in a clear, ***transparent***, comprehensive and easily accessible way at a distance and by electronic means, in formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

2. In order to bring about further improvements with respect to access to information, Member States shall:

(a) indicate clearly, in a detailed and user-friendly manner and ***in an*** accessible format on ***a single official*** national ***website and by other suitable means***, which terms and conditions of employment and/or which parts of their (national and/or regional) legislation have to be applied to

(b) take the necessary measures to make generally available on *internet sites* information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by service providers from other Member States in accordance with Directive 96/71/EC, whereby, where possible, links to existing internet sites and other contact points, in particular the relevant social partners, shall be provided;

(c) make the information available to workers and service providers in *languages other than* the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable *and upon requests* in formats accessible to persons with disabilities;

(d) improve the accessibility of the information and clarity of the information provided on national websites;

(e) indicate, *if possible*, a contact person at the liaison office in charge of dealing with requests for information;

workers posted to their territory;

(b) take the necessary measures to make generally available on *the single official national website and by other suitable means* information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by service providers from other Member States in accordance with Directive 96/71/EC, whereby, where possible, links to existing internet sites and other contact points, in particular the relevant social partners, shall be provided;

(c) make the information available to workers and service providers *free of charge* in *English and the national language of the Member State of origin of the worker and service provider or upon request in other official languages of the Union, and not only in* the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable, *describing the procedures to lodge complaints and judicial proceedings as well as sanctions applicable in case of non-compliance* in formats accessible to persons with disabilities; *further detailed information on labour and social conditions applicable to posted workers, including occupational health and safety, shall be made easily available, free of charge, by different means of communication including contact points;*

(d) improve the *relevance*, accessibility and clarity of the information, *especially that* provided on *a single official national website, as referred to in point (a);*

(e) indicate a contact person at the liaison office in charge of dealing with requests for information *and take measures to make necessary information available for the posting companies and posted workers;*

(f) keep the information provided for in the country *fishes* up to date.

3. The Commission shall continue to support the Member States in this area.

4. Where, in accordance with national law, traditions and practices, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with article 3 *paragraph* 1 and 8 of that Directive, Member States *should* ensure that the social partners *shall* identify these and make the relevant information, *in particular* concerning the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration *due* and the qualifying criteria for classification in the different wage categories, available in an accessible and transparent way for service providers from other Member States and posted workers.

(f) keep the information provided for in the country *fiches up* to date.

3. The Commission shall continue to support the Member States in this area.

4. Where, in accordance with national law, traditions and practices *including respect for the autonomy of social partners*, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with article 3, *paragraphs* 1 and 8 of that Directive, Member States *shall* ensure that the social partners identify these and make *available* the relevant information, concerning the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration and the qualifying criteria for classification in the different wage categories. *The terms and conditions of employment shall be made* available in an accessible and transparent way for service providers from other Member States *who post workers* and *for* posted workers.

4a. Posted workers shall have the right to receive from the host Member State information on the applicable terms and conditions of employment.

Member States shall establish contact points or indicate other bodies or authorities to which workers and undertakings can turn for information, advice and support concerning their rights and obligations. This applies both to the host Member States and Member States of establishment.

The Commission and Member States shall ensure adequate support for relevant initiatives of the social partners at the Union and national level that aimed to inform undertakings and workers on the applicable terms and conditions laid down in this Directive and in Directive 96/71/EC.

Amendment 48

Proposal for a directive Article 6

Text proposed by the Commission

1. Member States shall work in close cooperation and provide each other mutual assistance in order to facilitate the implementation, application and enforcement in practice of this Directive.

2. The cooperation of the Member States shall in particular consist in replying to reasoned requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC, including investigation of any abuses of applicable rules on the posting of workers **or possible cases of unlawful transnational activities**.

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.

4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a

Amendment

1. Member States shall work in close cooperation and provide each other mutual assistance **without delay** in order to facilitate the implementation, application and enforcement in practice of this Directive.

2. The cooperation of the Member States shall in particular consist in replying **without delay** to reasoned requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC **and any relevant articles of this Directive**, including investigation of any abuses of applicable rules on the posting of workers **and initiating appropriate actions in accordance with national laws and practices and with this Directive**.

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities **without delay** with all the information necessary for supervising their activities in compliance with their national laws **and Directive 96/71/EC. Where service providers fail to provide such information, appropriate action shall be initiated by the relevant competent authorities**.

4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a

view to finding a solution.

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request. A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within 24 hours.

6. Member States shall ensure that registers in which service providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions, by the equivalent competent authorities of the other Member States.

7. Member States shall ensure *the* confidentiality of the information which they exchange. Information exchanged shall be used *only* in respect of the matter(s) for which it was requested.

8. Mutual administrative cooperation and assistance shall be provided free of charge

9. The Commission and the competent

view to finding a solution. *In the event of any persisting problems in the exchange of information or a permanent refusal to supply information, the Commission shall be informed and, where it considers it to be justified, it shall initiate an infringement proceeding. Cases of long-term refusal to provide requested information shall be recorded by the Commission, with a view inter alia to creating a publicly accessible list of authorities reported to have permanently refused to provide information.*

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request. A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within 24 hours. *This shall not preclude competent authorities in the host Member State from taking measures to investigate, prevent and punish fraud.*

6. Member States shall ensure that registers in which service providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with the same conditions by the equivalent competent authorities of the other Member States.

7. Member States shall ensure *the strict* confidentiality of the information which they exchange. Information exchanged shall be used *exclusively* in respect of the matter(s) for which it was requested *and in accordance with national law and practices, and in particular personal data protection law.*

8. Mutual administrative cooperation and assistance shall be provided free of charge

9. The Commission and the competent

authorities shall cooperate closely in order to examine any difficulties which might arise in the application of Article 3(10) of Directive 96/71/EC.

authorities shall cooperate closely in order to examine any difficulties which might arise in the application of Article 3(10) of Directive 96/71/EC.

Amendment 49

Proposal for a directive Article 7

Text proposed by the Commission

Amendment

Role of the Member *State of establishment*

Role of the Member *States*

1. The Member State of establishment of the service provider shall continue to **control**, monitor and take the necessary supervisory or enforcement measures, in accordance with its national law, practice

1. In accordance with the principles established in Articles 4 and 5 of Directive 96/71/EC during the period of posting of a worker to another Member State, the inspection of the terms and conditions of employment that are to be complied with according to Directive 96/71/EC is the responsibility of the authorities of the host Member State in cooperation with the Member State of establishment. The host Member State shall therefore control, monitor and take all the necessary supervisory or enforcement measures, in accordance with Article 10 of this Directive and with its national law and/or practices and its administrative procedures, with respect to workers posted to its territory. Checks and controls shall, where necessary, be carried out by the authorities of the host Member State on their own initiative or at the request of the competent authorities of the Member State of establishment, as provided for in Article 10 and in conformity with the powers of supervision provided for in the host Member State's national law, practice and administrative procedures and which respect Union law.

2. The Member State of establishment of the service provider shall **also** continue to **control**, monitor and take the necessary supervisory or enforcement measures, in accordance with its national law, practice

and administrative procedures, with respect to workers posted to another Member State.

2. *In the circumstances referred to in Article 3(1) and (2) and Article 9(1), the Member State of establishment of the service provider shall assist the Member State **to which the posting takes place** to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. The Member State of establishment of the service provider shall, on its own initiative, communicate to the **Member State to which the posting takes place** any relevant information as specified in **Articles 3(1) and (2) and 9(1), where the Member State of establishment of the service provider is aware of specific facts which indicate possible irregularities.***

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

and administrative procedures, with respect to workers posted to another Member State. ***This obligation shall not result in a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the host Member State where the service is provided.***

3. *For the purpose of enforcing Directive 96/71/EC, in the circumstances referred to in Article 3(1) and (2) and Article 9(1), the Member State of establishment of the service provider shall assist the **host** Member State to ensure **full** compliance with the conditions applicable under Directive 96/71/EC and this Directive. The Member State of establishment of the service provider shall **without** delay, on its own initiative **or at the request of the host Member State**, communicate to the **competent authority of the host Member State** any relevant information as specified in **this Directive or required for compliance with Article 3 of Directive 96/71/EC.***

4. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information **to verify full compliance with both Directive 96/71/EC and this directive, including** as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules. ***The competent authorities of the host Member State may also request additional information for overriding reasons of public interest. Such requests shall be supported by an adequate statement of reasons, in particular by specifying the reason of the request.*** The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

4. The obligation laid down in paragraphs 1 and 2 shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the host Member State where the service is provided. Such checks and controls shall, if need be, be carried out by the authorities of the host Member State at the request of the competent authorities of the Member State of establishment, in accordance with Article 10 and in conformity with the powers of supervision provided for in the host Member State's national law, practice and administrative procedures and which respect Union law.

4a. Member States which discover that workers are being recruited to work, falsely, as self-employed persons shall inform the competent authorities in the host Member State without delay.

4b. Any information received by the competent authorities shall be treated as confidential.

In accordance with Union and national law on data protection, Member States shall remain ultimately responsible for safeguarding data and the legal rights of affected persons and shall put in place appropriate protection mechanisms in this respect.

4c. Member States shall provide the necessary resources in order to ensure effective checks and controls.

Amendment 50

Proposal for a directive Article 8

Text proposed by the Commission

1. Member States shall, with the assistance of the Commission, take accompanying measures to develop, facilitate and promote

Amendment

1. Member States shall, with the assistance of the Commission, take accompanying measures to develop, facilitate and promote

the exchange between officials in charge of the implementation of administrative cooperation and mutual assistance as well as monitoring the compliance with and enforcement of the applicable rules.

2. The Commission shall assess the ***necessity*** for financial support in order to further improve administrative cooperation and increase mutual trust through projects, including promoting exchanges of relevant officials and training, as well as developing, facilitating and promoting best practice initiatives, including those of social partners at Union level, such as the development and updating of databases or joint websites containing general or sector-specific information concerning terms and conditions of employment to be respected.

Amendment 51

Proposal for a directive Article 9

Text proposed by the Commission

1. Member States may ***only*** impose ***the following*** administrative requirements and control measures:

the exchange between officials in charge of the implementation of administrative cooperation and mutual assistance as well as monitoring the compliance with and enforcement of the applicable rules.

Member States may also take accompanying measures to support organisations providing information to posted workers.

1a. The competent authorities in the host Member State and in the Member State of establishment shall be encouraged to collect data specific to the posting process and evaluate it, while respecting Union and national law on data protection. Member States are equally encouraged to forward the collected data to the Commission for summaries.

2. The Commission shall assess the ***need*** for financial support in order to further improve administrative cooperation and increase mutual trust through projects, including promoting exchanges of relevant officials and training, as well as developing, facilitating and promoting best practice initiatives, including those of social partners at Union level, such as the development and updating of databases or joint websites containing general or sector-specific information concerning terms and conditions of employment to be respected. ***Where it concludes that such need exists, the Commission shall ensure adequate funding.***

Amendment

1. Member States may impose ***any*** administrative requirements and control measures that ***they deem to be necessary for the effective enforcement of Directive***

96/71/EC and this Directive, including in particular:

(a) an obligation to designate a contact person in the host Member State, acting as the mandated representative of the posting company, who can be contacted by the competent authorities of the host Member State, who is authorised to receive any official notices and documents and who is also authorised to negotiate and conclude binding agreements, if necessary, on behalf of the employer with the relevant social partners in the host Member State, in accordance with national legislation and practice, within the period in which the services are provided.

(b) measures aiming at combating undeclared labour;

(c) a translation of the documents referred to in paragraph 2 in one of the official languages of the Union that is also an official language of the host Member State;

(c) a translation of the documents referred to under (b), may be justified provided these documents are not excessively long and standardised forms are generally used for such documents;

(d) an obligation to designate a contact person to negotiate, if necessary, on behalf of the employer with the relevant social partners in the Member State to which the posting takes place, in accordance with national legislation and practice, during the period in which the services are provided.

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 as far as possible.

(a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at the latest at the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more

2. Without prejudice to paragraph 1, Member States shall impose the following administrative requirements and control measures:

(a) an obligation for a service provider established in another Member State to make a simple declaration to the responsible national competent authorities at least five working days prior to the commencement of the service provision, in an official language of the Union that is also an official language of the host

clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;

Member State or in another language, if accepted, by the host Member State, whereby the declaration covers in particular the identity of the service provider, the anticipated number of posted workers and their personal identification data, where applicable, the designated contact person as specified in paragraph 1 (a), the beginning and the anticipated duration and the place where the service is to be provided and the services justifying the posting;

that declaration shall state that the service provider has been made aware of the applicable minimum working conditions in the host Member State and has agreed to comply with them in accordance with Article 3 of Directive 96/71/EC;

a service provider established in another Member State shall inform the competent authorities in the host Member State without delay of any changes to the information contained in the declaration prior to or during the service provision.

(b) an obligation throughout the period of posting to keep or make available, in an accessible and clearly identified place such as the workplace or the building site, or for mobile workers in the transport sector the operations base in the host Member State or the vehicle with which the service is provided, copies in paper or electronic form of the following documents:

- proof of identity of the posted worker,*
- the employment contract (or an equivalent document indicating terms of employment such as a 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 and proof of payment of wages,*
- time-sheets,*

- *social security documentation referred to in Regulation (EC) No 883/2004 (e.g. the A1 form),*

- *work and residence permits in the Member State of establishment in the case of third country nationals or copies of equivalent documents, issued according to the national law of the Member State of establishment,*

- *an assessment pursuant to Directive 89/391/EC of the occupational health and safety risks.*

These documents shall also be kept or made available for a period of at least two years after the period of posting.

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 as far as possible.

3. Within three years after the date referred to in Article 20, *the necessity and appropriateness of the application* of national control measures *shall be reviewed* in the light of the experiences with and effectiveness of the system for 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.

3. Member States shall ensure that the procedures and formalities relating to the posting of workers can be completed by undertakings, at a distance and by electronic means as far as possible.

4. Within three years after ...* *the Commission shall review the effectiveness of national control measures and of their application* in the light of the experiences with and effectiveness of the system for 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.

** OJ please insert the date two years after the entry into force of this Directive.*

Amendment 52

Proposal for a directive Article 10

Inspections

1. Member States shall ensure that appropriate checks and monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC and to guarantee *its* proper application and enforcement. Such inspections *shall* be based *primarily* on a risk assessment to be drawn up regularly by the competent authorities. The risk assessment *shall* identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such risk assessment the realisation of big infrastructural projects, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers *shall* be taken into account.

2. Member States shall ensure that inspections and controls of compliance with Directive 96/71/EC are not discriminatory and/or disproportionate.

3. If information is needed in the course of the inspections and in the light of the *criteria in* Article 3, the Member State *where the service is provided* and the Member State of establishment shall act in accordance with the rules on administrative

Controls and inspections

1. Member States shall ensure that appropriate **and effective** checks and monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC and **in this Directive and** to guarantee **their** proper application and enforcement, **as well as to combat undeclared employment**. Such inspections **may** be based on a risk assessment to be drawn up regularly by the competent authorities. The risk assessment **may** identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such risk assessment the realisation of big infrastructural projects, **the existence of long chains of subcontractors**, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers **may** be taken into **particular** account.

2. Member States shall ensure that inspections and controls of compliance with **this Directive and** Directive 96/71/EC are not discriminatory and/or disproportionate **and shall allocate the necessary resources for such inspections and controls. In accordance with its own practice, the competent authority shall provide the inspected or controlled undertaking with a post inspection or control document which includes any relevant information.**

3. If information is needed in the course of the inspections and in the light of Article 3 **of this Directive**, the **host** Member State and the Member State of establishment shall act in accordance with the rules on administrative cooperation. **In** particular,

cooperation, *i.e.* the competent authorities shall cooperate pursuant to the rules and principles laid down in Articles 6 and 7.

4. ***In*** Member States where, in accordance with national law and practice, the setting of the terms and conditions of employment of posted workers referred to in Article 3 of Directive 96/71/EC, and in particular the minimum rates of pay, ***including*** working time, is left to ***management and labour*** ***they*** may, at the appropriate level and subject to the conditions laid down by ***the*** Member States, also ***the*** monitor the application of the relevant terms and conditions of employment of posted workers, ***provided that an adequate level of protection equivalent to that resulting from Directive 96/71/EC and this Directive is guaranteed.***

5. Member States where labour inspectorates have no competence with respect to the control and monitoring of the working conditions and/or terms and conditions of employment of posted workers may, by way of exception, after consulting the social partners at national level, establish or maintain ***arrangements*** guaranteeing the respect of these terms and conditions of employment, provided that ***the arrangements offer the persons concerned an adequate degree of protection equivalent to that resulting from Directive 96/71/EC and this Directive.***

Amendment 53

Proposal for a directive Article 11

Text proposed by the Commission

1. For the enforcement of the obligations under ***Article 6 of Directive 96/71/EC and this Directive***, Member States shall ensure

the competent authorities shall cooperate pursuant to the rules and principles laid down in Articles 6 and 7 ***of this Directive.***

4. In Member States where, in accordance with national law and practice, the setting of the terms and conditions of employment of posted workers referred to in Article 3 of Directive 96/71/EC, and in particular the minimum rates of pay ***and*** working time, is left to ***social partners, those social partners*** may, at the appropriate level and subject to the conditions laid down by ***those*** Member States, also monitor the application of the relevant terms and conditions of employment of posted workers ***in accordance with the existing legal national provisions, provided that those terms and conditions have been duly communicated, pursuant to Article 5 of this Directive.***

5. Member States where labour inspectorates have no competence with respect to the control and monitoring of the working conditions and/or terms and conditions of employment of posted workers may, by way of exception, after consulting the social partners at national level, establish, ***modify*** or maintain ***procedures and mechanisms*** guaranteeing the respect of these terms and conditions of employment, provided that ***they are not discriminatory or disproportionate as specified in Article 10(2) of this Directive.***

Amendment

1. For the enforcement of the obligations under ***this Directive and under Directive 96/71/EC***, Member States shall ensure that

that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the Member State in whose territory the workers are or were posted, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended.

2. Paragraph 1 shall apply without prejudice to the jurisdiction of the courts in the Member States as laid down, in particular, in the relevant instruments of Union law and/or international conventions.

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, on behalf or in support of the posted workers or their employer, with their approval in any judicial or administrative proceedings provided for with the objective of implementing this Directive and/or enforcing the obligations under this Directive.

4. Paragraphs 1 and 3 shall apply without prejudice to national rules on prescription deadlines or time limits for bringing similar actions and to national rules of procedure concerning representation and defence before the courts.

there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, also in the Member State in whose territory the workers are or were posted, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended.

2. Paragraph 1 shall apply without prejudice to the jurisdiction of the courts in the Member States as laid down, in particular, in the relevant instruments of Union law and/or international conventions.

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive *and of Directive 96/71/EC* are complied with, may engage, on behalf or in support of the posted workers or their employer, with their approval, in any judicial or administrative proceedings provided for with the objective of implementing this Directive *and Directive 96/71/EC* and/or enforcing the obligations under this Directive *and Directive 96/71/EC*.

4. Paragraphs 1 and 3 shall apply without prejudice to national rules on prescription deadlines or time limits for bringing similar actions and to national rules of procedure concerning representation and defence before the courts. ***However, Member States shall provide for a period of at least six months during which a claimant can file a claim under national rules of procedure.***

4a. Posted workers bringing judicial or administrative proceedings within the meaning of Article 11(1) shall not receive

5. Member States shall ensure that the necessary mechanisms are in place to ensure that posted workers are able to receive.

- (a) any outstanding remuneration which, under the applicable terms and conditions of employment covered by Article 3 of Directive 96/71/EC, would have been due;
- (b) refund of excessive costs, in relation to net remuneration or to the quality of the accommodation, withheld or deducted from wages for accommodation provided by the employer.

This paragraph shall also apply in cases where the posted workers have returned from the Member State to which the posting took place.

any unfavourable treatment by the employer. Member States shall also define under national law the conditions under which the duration of the residence permit of posted workers from third countries may be extended until these proceedings are terminated.

5. Member States shall ensure that the necessary mechanisms are in place to ensure that posted workers *or third parties acting with their approval and on their behalf* are able to *claim and that posted workers* are able to receive *at least the following:*

- (a) any outstanding remuneration which, under the applicable terms and conditions of employment covered by Article 3 of Directive 96/71/EC, would have been due;
- (b) refund of excessive costs, in relation to net remuneration or to the quality of the accommodation, withheld or deducted from wages for accommodation provided by the employer.

(c) any back- payments or refund of taxes or social security contributions unduly withheld from the worker's salary. Member States shall also ensure that the necessary mechanisms are in place to ensure the payment of due taxes, social security contributions and contributions due to common funds or institutions of social partners.

This paragraph shall also apply in cases where the posted workers have returned from the Member State to which the posting took place *and to those posted workers who, in accordance with Article 3(3b) of this Directive, have been identified as falsely declared to be self-employed.*

Amendment 54

Proposal for a directive Article 12

Text proposed by the Commission

Amendment

Subcontracting – *Joint and several liability*

Subcontracting

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

(a) any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners in so far as covered by Article 3 (1) of Directive 96/71/EC;

(b) any back-payments or refund of taxes or social security contributions unduly withheld from his/her salary.

The liability referred to in the present paragraph shall be limited to worker's rights acquired under the contractual relationship between the contractor and his subcontractor.

2. Member States shall provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems shall be applied in a transparent, non-discriminatory and proportionate way.

1. Member States shall take measures on a non-discriminatory basis, to ensure that a company that instructs another company directly or indirectly to provide services on its behalf can be held liable in addition to or in place of any subcontractor for due

They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.

entitlements to employees and/or due social security contributions to common funds or institutions of social partners.

3. Member States may, in conformity with Union law, provide for more stringent 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. Member States may in these cases provide that a contractor that has undertaken due diligence as defined by national law shall not be liable.

The liability referred to in this paragraph shall be limited to workers' rights acquired during the contractual relationship between the contractor and his subcontractors.

2. Paragraph 1 shall be without prejudice to more stringent liability rules under national law.

4. Within three years after the date referred to in Article 20, the Commission shall, in consultation with the Member States and social partners at EU level, review the application of this Article with a view to proposing, where appropriate, any necessary amendments or modifications.

Amendment 55

Proposal for a directive Article 13

Text proposed by the Commission

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this **Article** shall apply to the cross-border enforcement of administrative **finances and** penalties imposed for failure to comply with the applicable rules in another Member State on a service provider established in another Member State.

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine, **in so far as the relevant laws, regulations and administrative practices in force in the requested authority's Member State allow such action for similar claims or decisions.**

The competent authority in the requesting Member State shall ensure that the request for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine is made in accordance with the rules in force in that Member State, whereas the competent requested authority shall ensure that such recovery or notification in the requested Member State is effected in accordance with the national laws, regulations and administrative practices in force in the latter.

The requesting authority may not make a request for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine if and as long as the fine or

Amendment

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this **Chapter** shall apply to the cross-border enforcement of **financial** administrative penalties **and /or fines** imposed for failure to comply with the applicable rules **provided for in Directive 96/71/EC** in another Member State on a service provider established in another Member State.

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine **or retroactive social security contributions in accordance with Regulation (EC) No 987/2009** or notify a decision imposing a penalty or a fine **or retroactive payment of social security contributions.**

The competent authority in the requesting Member State shall ensure that the request for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine is made in accordance with the rules in force in that Member State, whereas the competent requested authority shall ensure that such recovery or notification in the requested Member State is **recognised without any further formality being required and** is effected in accordance with the national laws, regulations and administrative practices in force in the latter **applying to the same or similar requests** .

The requesting authority may not make a request for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine if and as long as the fine or

penalty, as well the underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested in that Member State.

penalty, as well the underlying claim and/or the instrument permitting its enforcement in the requesting Member State, are contested in that Member State ***in accordance with its national law and practice.***

If it emerges that the service provider is indeed not established in the Member State of alleged establishment or the address or that the company data are false, the competent authorities shall not terminate the procedure on formal grounds but shall investigate the matter further in order to establish the identity of the natural or legal person responsible for the posting.

Amendment 56

Proposal for a directive Article 14

Text proposed by the Commission

1. Further to the request by the requesting authority for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine, the requested authority shall provide any information and mutual assistance which would be useful to the requesting authority in the recovery of a fine and/or penalty, as well as, to the extent possible, for the underlying claim.

The request for information concerning the recovery of penalty or fine as well as the notification of a decision concerning such matters shall at least indicate:

- (a) the name and known address of the addressee, as well as any other relevant data or information for the identification of the addressee,
- (b) the purpose of the notification or request for recovery, the period within which it shall be effected and any dates of

Amendment

1. Further to the request by the requesting authority for recovery of a penalty or a fine or notification of a decision imposing a penalty or fine, the requested authority shall ***without delay*** provide any information and mutual assistance ***requested*** which would be useful to the requesting authority in the recovery of a fine and/or penalty, as well as, to the extent possible, for the underlying claim.

The request for information concerning the recovery of penalty or fine as well as the notification of a decision concerning such matters shall at least indicate:

- (a) the name and known address of the addressee, as well as any other relevant data or information for the identification of the addressee,
- (b) the purpose of the notification or request for recovery, the period within which it shall be effected and any dates of

relevance to the enforcement process;

(c) a description of the nature and amount of the fine or penalty, as well as the underlying claim in respect of which the request is made, and its different components;

(d) all other relevant information or documents, including those of a judicial nature, concerning the claim, fine or penalty; and

(e) the name, address and other contact details regarding the competent authority responsible for the assessment of the fine and/or penalty, and, if different, the competent body where further information can be obtained concerning the penalty or fine or the possibilities for contesting the payment obligation or decision imposing it.

2. For the purpose of recovery of a penalty or fine or notification of a decision imposing a penalty or fine in the requested Member State, any fine or penalty in respect of which a request for recovery or notification has been made shall be treated as if it were a fine or penalty of the requested Member State.

3. The requested authority shall promptly inform the requesting authority of the action taken on its request for notification or recovery and, more specifically, of the date on which the instrument or decision was forwarded or notified to the addressee.

The requested authority shall likewise inform the requesting authority of the grounds for refusing a request for information, recovery or notification.

relevance to the enforcement process;

(c) a description of the nature and amount of the fine or penalty, as well as the underlying claim in respect of which the request is made, and its different components;

(d) all other relevant information or documents, including those of a judicial nature, concerning the claim, fine or penalty; and

(e) the name, address and other contact details regarding the competent authority responsible for the assessment of the fine and/or penalty, and, if different, the competent body where further information can be obtained concerning the penalty or fine or the possibilities for contesting the payment obligation or decision imposing it.

2. For the purpose of recovery of a penalty or fine ***or retroactive social security contributions*** or notification of a decision imposing a penalty or fine ***or retroactive payment of social security contributions*** in the requested Member State, any fine or penalty ***or retroactive social security contributions*** in respect of which a request for recovery or notification has been made shall be treated as if it were a fine or penalty ***or retroactive social security contributions*** of the requested Member State.

3. The requested authority shall promptly inform the requesting authority of the action taken on its request for ***information***, notification or recovery and, more specifically, of the date on which the instrument or decision was forwarded or notified to the addressee. ***The same shall apply if there are substantial obstacles to the successful processing of the request .***

The requested authority shall likewise inform the requesting authority of the grounds for refusing a request for information, recovery or notification.

3a. The provisions on recovery of fines or penalties shall also apply to fines imposed as part of enforceable statutory decisions by national courts and such decisions resulting from industrial proceedings.

Amendment 57

Proposal for a directive Article 15

Text proposed by the Commission

1. If, in the course of the recovery or notification procedure, the fine, penalty and/or underlying claim is ***contested*** by the service provider concerned or an interested party, the cross-border enforcement procedure of the fine or penalty imposed shall be suspended pending the decision of the appropriate national authority in the matter.

The requesting authority shall without delay notify the requested authority of the contestation.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body or judicial authority of that Member State in accordance with its laws and regulations.

Amendment 58

Proposal for a directive Article 16

Text proposed by the Commission

1. The ***requested authority shall remit to the requesting authority the*** amounts

Amendment

1. If, in the course of the recovery or notification procedure, the fine, penalty and/or underlying claim is ***challenged in the requesting Member State*** by the service provider concerned or an interested party ***in compliance with the applicable rules***, the cross-border enforcement procedure of the fine or penalty imposed shall be suspended pending the decision of the appropriate national authority ***in the requesting Member State*** in the matter.

The requesting authority shall without delay notify the requested authority of the contestation.

2. Disputes concerning the enforcement measures taken in the requested Member State or concerning the validity of a notification made by a competent authority of the requested Member State shall be brought before the competent body or judicial authority of that Member State in accordance with its laws and regulations.

Amendment

1. The amounts recovered with respect to the ***penalties and/ or*** fines referred to in

recovered with respect to the fines *or penalties* referred to in this Chapter.

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and administrative procedures or practices of the requested Member State which apply to similar claims.

2. Member States shall not claim from each other the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Directive or resulting from its application.

Where recovery creates a specific problem or concerns a very large amount, the requesting and requested authorities may agree reimbursement arrangements specific to the case(s) in question.

3. Notwithstanding the paragraph 2, the competent authority in the requesting Member State shall remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded, in terms of the substance of the fine or penalty, the validity of the instrument issued by the requesting authority for the purpose of enforcement and/or any precautionary measures taken by the requesting authority.

Amendment 59

Proposal for a directive Article 16 a (new)

Text proposed by the Commission

this Chapter *shall remain with the requested authority.*

2. Member States shall not claim from each other the reimbursement of costs arising from any mutual assistance they grant each other pursuant to this Directive or resulting from its application.

Amendment

16a. Within three years after ..., the Commission shall, after consulting Member States, review the application of this Chapter, in particular in the light of the experiences with and effectiveness of*

the system of cross-border enforcement of administrative penalties and/or fines with a view to proposing, where appropriate, any necessary amendments or modifications.

** OJ please insert the date two years after the entry into force of this Directive.*

Amendment 60

Proposal for a directive Article 18

Text proposed by the Commission

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13, 14 and 15 shall be implemented through the Internal Market Information System (IMI), established by [reference to IMI Regulation].
2. Member States *may continue* to apply bilateral arrangements concerning administrative cooperation between their competent authorities as regards the application and monitoring of the terms and conditions of employment applicable to posted workers referred to in Article 3 of Directive 96/71/EC, in so far as these arrangements do not adversely affect the rights and obligations of the workers and companies concerned.
3. In the context of bilateral *agreements* referred to in paragraph 2, competent authorities of the Member States *shall* use IMI *as much as* possible. In any event, where a competent authority in one of the Member States concerned has used IMI, it *shall be* used for any follow-up required

Amendment

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13, 14 and 15 shall be implemented *as far as possible* through the Internal Market Information System (IMI), established by [reference to IMI Regulation] *and other established means of cooperation such as bilateral agreements.*
2. Member States *are free* to apply *existing, and to conclude new*, bilateral arrangements concerning administrative cooperation *and mutual assistance* between their competent authorities as regards the application and monitoring of the terms and conditions of employment applicable to posted workers referred to in Article 3 of Directive 96/71/EC, in so far as these arrangements do not adversely affect the rights and obligations of the workers and companies concerned.
3. In the context of bilateral *arrangements* referred to in paragraph 2, competent authorities of the Member States *may* use IMI *where* possible. In any event, where a competent authority in one of the Member States concerned has used IMI, it *may where possible* be used for any follow-up

and shall take precedence over the mechanism(s) foreseen in such a bilateral agreement with respect to administrative cooperation and mutual assistance.

required.

Amendment 61

Proposal for a directive Article 21 – paragraph 1

Text proposed by the Commission

1. No later than **5** years after the expiry of the deadline for transposition, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

Amendment

1. No later than **three** years after the expiry of the deadline for transposition, the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive, making appropriate proposals where necessary.

EXPLANATORY STATEMENT

Posting of workers plays a crucial role in the context of cross-border provision of services and the development of the internal market. Every year around one million EU citizens are posted to work in another Member State. This category of workers needs to be protected especially in the time of crisis, when their potential and competitiveness allow maintaining a certain level of employment or even helping generating new jobs. We shall act in order to develop and improve the mobility of European undertakings in the internal market. This will definitely contribute to economic growth and stability of the European Union.

The freedom to provide services (it needs to be distinguished from the free movement of workers), under which posting takes place, is one of the pillars of the internal market and constitutes a basis of cross-border mobility of thousands of European undertakings. The guarantee of freedom to provide services has to come together with the guarantee of workers' rights. In this context, a balanced approach is indispensable when it comes to measures and instruments proposed. The cooperation between Member States must be further enforced to better protect and survey this special category of posted workers on the European internal market.

ENFORCEMENT DIRECTIVE

The experience of the past years shows clearly that there is an urgent need of improvements in order to secure a better implementation, application and enforcement of the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. There is a series of problems that range from disrespect of workers' rights and lack or inaccessibility of information to persisting obstacles in the cooperation between Member States or lack of execution of fines and penalties in the cross-border context. Moreover, in the past years there were several ECJ's judgments resulting in delimitation of certain measures in the legal framework concerning the posting of workers. Therefore, on the 21st of March 2012 the European Commission proposed an Enforcement Directive with new solutions and measures. The Enforcement Directive is based on Articles 53(1) and 62 TFEU which, for the sake of legal clarity, should be maintained.

The rapporteur acknowledges the need for improvements in order to secure a better implementation, application and enforcement of the Directive 96/71/EC and therefore welcomes the European Commission's proposal. In the rapporteur's view the Enforcement Directive shall in general:

- contain balanced measures in order to protect both, posted workers and freedom to provide services;
- set a clear legal framework for the category of posted workers so that their potential and competitiveness is used, especially in the time of crisis, to combat the growing unemployment;
- improve the access to information, both for companies and employers, to make posting easier and safer;
- improve cooperation between Member States in order to better secure employers' rights;

- avoid unnecessary bureaucratic burdens for the companies (especially SMEs) which could hamper their mobility in the internal market and their capacity to create new jobs.

Accessibility of information (art. 5)

Taking into account that problems with accessibility, transparency and exhaustiveness of information on terms and conditions of employment are very often a cause of inapplication of rules, there is an urgent need to improve access to and communication of information. The existence of different labour market models and industrial relation systems in the EU, where generally binding rules are established alternatively or simultaneously by national authorities or social partners, creates problems in identifying the terms and conditions of employment to be applied. In order to solve the problem the rapporteur proposes to introduce a single national website per Member State with all the necessary information on binding terms and conditions of employment. The rapporteur insists also on ensuring the accessibility of information at EU level through updated, exact and exhaustive information in the country fiches published on the EC website. Improving the accessibility of information, also by making it available to workers and service providers in English and other most relevant languages, will help eliminating a series of problems, which, as today's experience shows, can cause serious consequences to both undertakings and posted workers.

Legal clarity and proportionality of the proposed measures (art. 3, 9)

In order to guarantee a legal clarity and certainty a list of uniform measures at EU level must be established. Two articles in the Enforcement Directive are of paramount importance here - articles 3 and 9.

The rapporteur proposes to maintain the indicative character of the lists in Articles. The two lists of criteria in article 3 shall combat and prevent the circumvention of law but cannot lead to situations where honest undertakings are excluded from certain national markets. Posting of workers is not a national phenomenon, it is a cross-border activity which requires a common legal framework and a common approach. Therefore the lists have to contain common indications at EU level.

Establishing a common list of criteria in article 3 is directly linked to the introduction of a common list of control measures in article 9. The rapporteur firmly opts for clarity in the context of controls, what can only be guaranteed by a common list of possible control measures. The legal certainty should be obtained by a clear communication of what is to be controlled.

The proportionality of proposed measures is a fundamental requirement for their acceptance at EU level.

Cooperation between Member States (art. 6, 7, 18)

Having regard to the fact that posting of workers is a cross-border activity, proper and effective cooperation between the competent authorities from the Member State of establishment and the host Member State is necessary.

In order to improve administrative cooperation between Member States, a better use of the IMI system has to be secured. Thus, the rapporteur proposes the obligatory use of the IMI system always when it is possible and the revision of deadlines proposed by the EC, in order to make them more feasible. Additionally, the matter of data protection is to be guaranteed.

4.3.2013

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
(COM(2012)0131 – C7-0086/2012 – 2012/0061(COD))

Rapporteur: Malcolm Harbour

SHORT JUSTIFICATION

The free movement of workers and the freedom to provide services are fundamental pillars of the internal market. When an undertaking sends workers to another Member State in the context of a service provision, the Posted Workers Directive 96/71/EC aims to protect the rights of such workers and prevent social dumping. This Directive has proven to be heavily circumvented and insufficiently enforced. In response, the Commission proposed an enforcement Directive.

The purpose of the enforcement Directive must be to create feasibility of the provision laid down Directive 96/71/EC, to ensure a level playing field for companies, to create disincentives for circumvention and to safeguard the protection of workers rights.

Your Rapporteur has proposed additional text to underline the objectives of 96/71/EC, focussing on no discrimination between employees on the basis of nationality, and stressing that the proposed enforcement Directive should respect the principles laid down in 96/71/EC while improving enforcement and effectively sanctioning circumvention.

Your Rapporteur has introduced a clarifying text in a number of areas. These include clearer definitions and clarification of the roles and responsibilities of Member States and service providers, such as the evidence that an employer-employee relationship existed prior to posting. Your Rapporteur proposes a minimum set of enforcement measures and an open list in Article 9 that is essential to allow Member States the necessary flexibility to take additional measures to ensure the proper enforcement of 96/71/EC

In order to combat circumvention, your Rapporteur has made 3 key proposals. Firstly, that in case of non-compliance with Directive 96/71/EC and this directive, the concerned

undertaking shall be covered by the relevant legislation applicable in the country of service provision, and all concerned workers shall be deemed workers exercising their freedom of movement within the Union in accordance with Article 45 of the TFEU which stresses non-discrimination.

Secondly, an amendment of the legal base of the proposal to clarify this Directive concerns the free movement of workers and services. Thirdly, a strong sanction for those Member States who do not cooperate when asked to provide the necessary information to verify a posting situation.

Abuse of subcontracting chains is not unique to the construction sector. Therefore joint and several liability should be extended to all sectors. The requirement for due diligence would be difficult to implement in practice, thus it has been deleted. Member States should take the necessary measures, according to their own experiences and procedures, to ensure implementation of joint and several liability. The introduction, or continued application of more stringent rules on the national level should also be permitted. The Commission, in cooperation with the European Parliament and Council should review the application of this Article with a view to proposing, where appropriate, modifications.

Your Rapporteur considers that sound administrative cooperation and mutual assistance key to the success of the proposed Directive. Whilst your Rapporteur sees the potential of the IMI system for rapid exchange of information which overcomes language barriers, some Member States already have highly effective non-IMI based methods of administrative cooperation. Member States should be free to apply bilateral agreements outside of IMI. Competent Authorities must provide information requested without delay and where information is not available, officially declare the absence of such information.

In order to increase information available to workers, contact details of competent authorities should be publically available. In addition, information on terms and conditions of employment should be generally available, free of charge in a clear, transparent, comprehensive and easily understandable way.

In order to improve the administrative cooperation and mutual assistance, the Commission should present the results of an Impact Assessment on the feasibility of an EU-wide notification or registration system based on and compatible with existing systems in Member States. Secondly, the Commission should propose a European register for serious offenders (a "black list") of companies proven to flout the provisions of 96/71/EC and other relevant Union legislation.

The success of the proposed Enforcement Directive and 96/71/EC depends on not only political will but also on the allocation of sufficient resources which is why your Rapporteur proposes text obliging Member States and Commission to dedicate the necessary resources in order to make proper enforcement of 96/71/EC a reality.

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 2

Text proposed by the Commission

(2) The free movement of workers gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other working conditions in comparison to nationals of that Member State. It needs to be distinguished from the freedom to provide services, which includes the right of undertakings to provide services in another Member State, for which they may send ('post') their own workers temporarily to carry out the work necessary to provide these services there.

Amendment

(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, for which they may send ('post') their own workers temporarily to carry out the work necessary to provide these services there. It is necessary for the purpose of the posting of workers to distinguish this freedom from the free movement of workers, which gives every citizen the right to move freely to another Member State to work and reside there for that purpose and protects them against discrimination as regards employment, remuneration and other working conditions in comparison to nationals of that Member State.

Amendment 2

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) This Directive should not affect the exercise of the fundamental rights as recognised by the Member States and International Labour Organization Conventions, where applicable, and by the Charter of Fundamental Rights of the European Union.

Amendment 3

Proposal for a directive Recital 3

Text proposed by the Commission

(3) With respect to workers temporarily posted to carry out work in order to provide services in another Member State than the one in which they habitually carry out their work, 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 establishes a core set of clearly defined terms and conditions of work and employment which must be complied with by the service provider in the Member State to which the posting takes place to ensure the minimum protection of the posted workers concerned.

Amendment

(3) With respect to workers temporarily posted to carry out work in order to provide services in another Member State than the one in which they habitually carry out their work, 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 establishes a core set of clearly defined terms and conditions of work and employment which must be complied with by the service provider in the Member State to which the posting takes place to ensure the minimum protection of the posted workers concerned. ***This Directive should not prevent legal or collectively agreed standards from providing the posted workers with more favourable conditions, as long as equal treatment and non-discrimination of local and foreign companies and workers is ensured. This Directive aims at improving the implementation of the Directive 96/17/EC while fully respecting Articles 26(2), 45(1), 45(2), 53(1) and 62 TFEU and the Charter of Fundamental Rights of the European Union***

Amendment 4

Proposal for a directive Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This directive aims at better enforcement of Directive 96/71/EC. Therefore, the provision laid down in this directive shall be applicable without

prejudice to the provisions laid down in Directive 96/71/EC.

Amendment 5

Proposal for a directive Recital 3b (new)

Text proposed by the Commission

Amendment

(3b) In order to ensure compliance with Directive 96/71/EC without putting on the service providers unnecessary administrative burden it is essential that the factual elements in Article 3 of this Directive should be considered as indicative and non-exhaustive. There should not be a requirement that each element must be satisfied in every posting case.

Amendment 6

Proposal for a directive Recital 4

Text proposed by the Commission

Amendment

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved.

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting ***must be enforceable and*** should be improved, ***taking into consideration the principles of proportionality and non-discrimination. This core set of clearly defined terms and conditions of work and employment set out Directive 96/71/EC may not be adversely affected by this Directive. Any circumvention of these rules must entail sanctions, in particular as regards the terms and conditions of***

employment.

Amendment 7

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) All measures introduced by this Directive must be justified, proportionate and non-discriminatory in order not to create administrative burden and not to lock the potential that companies, in particular small and medium enterprises, have in creating new jobs, while protecting posted workers.

Amendment 8

Proposal for a directive

Recital 5

Text proposed by the Commission

Amendment

(5) Therefore, the constituent factual elements characterising the temporary nature inherent to the notion of posting, which implies that the employer should be genuinely established in the Member State from which the posting takes place, as well as the relationship between Directive 96/71/EC and Regulation (EC) No 593/2008 on the law applicable to contractual obligations (hereinafter the ‘Rome I Regulation’) need to be further clarified.

(5) Therefore, the constituent factual elements characterising the temporary nature inherent to the notion of posting, which implies that the employer should be genuinely established in the Member State from which the posting takes place, as well as the relationship between Directive 96/71/EC and Regulation (EC) No 593/2008 on the law applicable to contractual obligations (hereinafter the ‘Rome I Regulation’) need to be further clarified, ***in order to ensure a broad application of that Directive.***

Amendment 9

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The European Parliament and the Council should provide to the Commission, when necessary, support, oversight and feedback concerning the implementation of this Directive.

Amendment 10

Proposal for a directive Recital 6

Text proposed by the Commission

(6) As is the case with Directive 96/71/EC, this Directive should not prejudice the application of the law which, under Article 8 of the Rome I Regulation, applies to individual employment contracts, or the application of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation 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.

Amendment

(6) As is the case with Directive 96/71/EC, this Directive should not prejudice the application of the law which, under Article 8 of the Rome I Regulation, applies to individual employment contracts, or the application of Regulation No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems and Regulation 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. ***The provisions of this Directive should be without prejudice to Member States national law providing for and enforcing more favourable conditions for posted workers.***

Amendment 11

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Member States should ensure that necessary resources are available to make the checks efficient and to be able to respond without undue delay to requests for information as provided for in this Directive from the host Member State or the Member State of establishment.

Amendment 12

Proposal for a directive Recital 8

Text proposed by the Commission

(8) **Trade unions** play an important role in the context of the posting of workers for the provision of services since **social partners** may, in accordance with national law and/or practice, determine the different levels (alternatively or simultaneously) of the applicable minimum rates of pay .

Amendment

(8) **Social partners** play an important role in the context of the posting of workers for the provision of services since **they** may, in accordance with national law and/or practice, determine the different levels (alternatively or simultaneously) of the applicable minimum rates of pay. **Social partners should take the responsibility for communicating and informing about those rates.**

Amendment 13

Proposal for a directive Recital 10

Text proposed by the Commission

(10) Adequate and effective implementation and enforcement are key elements in protecting the rights of posted workers, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. Close cooperation between **the Commission and the Member States is therefore essential, without neglecting the important role of** labour inspectorates and the social partners in this respect.

Amendment

(10) Adequate and effective implementation and enforcement are key elements in protecting the rights of posted workers, whereas poor enforcement undermines the effectiveness of the Union rules applicable in this area. **It is therefore essential to establish and maintain** close cooperation between Member States, **the Commission, and relevant national, regional, and local actors including** labour inspectorates and the social partners in this respect.

Amendment 14

Proposal for a directive Recital 11

Text proposed by the Commission

Amendment

(11) Mutual trust, a spirit of *cooperation*, continuous dialogue and mutual understanding are essential in this respect.

(11) *Taking into account that the ability of the host Member State to establish factual elements regarding the undertaking established in another Member State is limited, cooperation with the Member State of establishment is crucial and should be further improved.* Mutual trust, a spirit of *assistance*, continuous dialogue and mutual understanding are essential in this respect.

Amendment 15

Proposal for a directive Recital 12

Text proposed by the Commission

(12) In order to facilitate better and more uniform application of Directive 96/71/EC, it is appropriate to provide for an electronic information exchange system to facilitate administrative cooperation and competent authorities should use the Internal Market Information System (IMI) as much as possible. However, this *should* not prevent the application of bilateral agreements or arrangements concerning administrative cooperation.

Amendment

(12) In order to facilitate better and more uniform application of Directive 96/71/EC, it is appropriate to provide for an electronic information exchange system to facilitate administrative cooperation and competent authorities should use the Internal Market Information System (IMI) as much as possible. However, this *does* not prevent the application of bilateral agreements or arrangements concerning administrative cooperation. *Arrangements for application of electronic information exchange by means of the IMI should be tested to ensure that they work in practice.*

Amendment 16

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) *It is noted with concern that there are still many difficulties for the Member States to recover cross-border administrative fines and penalties and recognises that the mutual recognition of administrative fines and sanctions need to*

be addressed in future legislation.

Amendment 17

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) Member States ***obligations*** to make information on terms and conditions of employment generally available ***and to provide effective access to it, not only to service providers from other Member States, but also to the posted workers concerned, should be further concretised.***

Amendment

(14) Member States ***should inform the Commission of how they intend*** to make information on terms and conditions of employment generally available ***and accessible to posted workers and*** service providers from other Member States.

Amendment 18

Proposal for a directive

Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Where terms and conditions of employment are laid down in collective agreements which have been declared universally applicable, Member States should ensure that those collective agreements are officially published and accessible.

Amendment 19

Proposal for a directive

Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In order to improve and facilitate mutual assistance and cross-border cooperation between the competent authorities in the Member States, an Union wide notification or registration system based on and compatible with existing systems in the Member States

should be developed in accordance with the rules on the protection of personal data. In order for such system to be compatible with the principle of non-discrimination and fair competition the Commission should present to the European Parliament and the Council an impact assessment for the feasibility of such system.

Amendment 20

Proposal for a directive Recital 16

Text proposed by the Commission

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only *certain* control measures or administrative formalities to undertakings posting workers for the provision of services. Such measures and requirements may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.

Amendment

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only *such* control measures or administrative formalities to undertakings posting workers for the provision of services. ***Such control measures or administrative formalities should be proportionate and not entail unjustified, excessive administrative burdens.*** Such measures and requirements may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.

Amendment 21

Proposal for a directive Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Any risk assessment drawn up by the competent authorities should aim at identifying the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such risk assessment the special problems and needs of specific sectors, the past record of infringement, the information provided by social partners on the ground, the practices of circumvention as well as the vulnerability of certain groups of workers should be taken into account.

Amendment 22

Proposal for a directive Recital 18

Text proposed by the Commission

Amendment

(18) To ensure better and more uniform application of Directive 96/71/EC as well as its enforcement in practice, and to reduce, as far as possible, differences in the level of application and enforcement across the Union, Member States should ensure that effective and adequate inspections are carried out on their territory.

(18) To ensure better and more uniform application of Directive 96/71/EC as well as its enforcement in practice, and to reduce, as far as possible, differences in the level of application and enforcement across the Union, Member States should ensure that effective and adequate inspections are carried out on their territory. ***Such inspections shall be based primarily on a risk assessment to be drawn up by the competent authorities and which should take into account elements such as the realisation of big infrastructural projects, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers.***

Amendment 23

Proposal for a directive Recital 19

Text proposed by the Commission

(19) National labour inspectorates, social partners and other monitoring **bodies** are of paramount importance in this respect and should continue to play a crucial role.

Amendment

(19) National labour inspectorates, social partners and other monitoring **authorities** are of paramount importance in this respect and should continue to play a crucial role.

Amendment 24

Proposal for a directive Recital 23

Text proposed by the Commission

(23) To facilitate the enforcement of Directive 96/71/EC and ensure more effective application of it, effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in proceedings either directly or through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners. This should be without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment

(23) To facilitate the enforcement of Directive 96/71/EC and ensure more effective application of it, effective complaint mechanisms should exist through which posted workers may lodge complaints or engage in proceedings either directly or, **where applicable with their approval**, through relevant designated third parties, such as trade unions or other associations as well as common institutions of social partners. This should be without prejudice to national rules of procedure concerning representation and defence before the courts.

Amendment 25

Proposal for a directive Recital 24

Text proposed by the Commission

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is necessary to ensure that in such sector at least the contractor of which the employer is a direct

Amendment

deleted

subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor shall not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

Amendment 26

Proposal for a directive Recital 25

Text proposed by the Commission

Amendment

(25) In specific cases, other contractors may, in accordance with national law and practice, be also held liable for failure to comply with the obligations under this Directive, or their liability may be limited, after consultation of the social partners at national or sectoral level.

deleted

Amendment 27

Proposal for a directive Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted

deleted

workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim outstanding pay or refunds of taxes or social security contributions unduly withheld.

Amendment 28
Proposal for a directive
Recital 27

Text proposed by the Commission

(27) The disparities between the systems of the Member States for enforcing imposed administrative fines and/or penalties in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.

Amendment

(27) The disparities between the systems of the Member States for enforcing imposed administrative fines and/or penalties ***with regard to posting of workers situations as defined in Directive 96/71/EC and this Directive***, in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union. ***Where such fines and penalties are imposed due to non-compliance with the employment conditions established by labour courts or collective agreements, those fines and penalties must be enforceable.***

Amendment 29
Proposal for a directive
Recital 28

Text proposed by the Commission

(28) Effective enforcement of the substantive rules governing the posting of workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed administrative fines and penalties. Approximation of the legislation of the Member States in this field is

Amendment

(28) Effective enforcement of the substantive rules governing the posting of workers for the provision of services should be ensured by specific action focusing on the cross-border enforcement of imposed administrative fines and penalties ***with regard to posting of workers situations, as defined in Directive***

therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.

Amendment 30
Proposal for a directive
Recital 29

Text proposed by the Commission

(29) The adoption of common rules for providing mutual assistance and support for enforcement measures and the associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and fines imposed, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.

Amendment 31
Proposal for a directive
Recital 30

Text proposed by the Commission

(30) Notwithstanding the establishment of more uniform rules with respect to the cross-border enforcement of penalties and fines and the need for more common criteria for follow-up procedures in the event of the non-payment of these they should not affect the Member States' competences to determine their system of penalties, sanctions and fines or the recovery measures available under their internal legislation.

96/71/EC and this Directive.

Approximation of the legislation of the Member States in this field is therefore an essential prerequisite in order to ensure a higher, more equivalent and comparable level of protection necessary for the proper functioning of the internal market.

Amendment

(29) The adoption of common rules for providing mutual assistance and support for enforcement measures and the associated costs, as well as the adoption of uniform requirements for the notification of decisions relating to administrative penalties and fines imposed ***with regard to posting of workers situations, as defined in Directive 96/71/EC and this Directive***, should resolve a number of practical cross-border enforcement problems and guarantee better communication and better enforcement of such decisions emanating from another Member State.

Amendment

(30) Notwithstanding the establishment of more uniform rules with respect to the cross-border enforcement of penalties and fines ***with regard to posting of workers situations, as defined in Directive 96/71/EC and this Directive*** and the need for more common criteria for follow-up procedures in the event of the non-payment of these they should not affect the Member States' competences to determine their system of penalties, sanctions and fines or

the recovery measures available under their internal legislation.

Amendment 32
Proposal for a directive
Article 1 – paragraph 1 – subparagraph 1

Text proposed by the Commission

This Directive establishes a **general common framework of appropriate** provisions, measures and control mechanisms **necessary for better and more uniform** implementation, application and enforcement **in practice** of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules.

Amendment

This Directive establishes a **set of specific** provisions, measures and control mechanisms **in order to provide assistance to the Member States in the** implementation, application and enforcement of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules.

Amendment 33
Proposal for a directive
Article 1 – paragraph 1 – subparagraph 2

Text proposed by the Commission

This Directive **aims to guarantee respect for an appropriate level of minimum protection of the rights** of posted workers **for the cross-border provision of services, while facilitating** the exercise of the freedom to provide services for service providers and **promoting** fair competition **between** service providers.

Amendment

This Directive **sets out enforcement measures needed for the equal treatment** of posted workers **as regards terms and conditions of employment, defined in Article 3 of Directive 96/71/EC. Those enforcement measures aim to facilitate and improve** the exercise of the freedom to provide services and **to promote** fair competition **for** service providers **in the internal market.**

Amendment 34
Proposal for a directive
Article 1 – paragraph 2

Text proposed by the Commission

2. This Directive shall not affect in any way the exercise of fundamental rights as recognised in Member States and **by Union**

Amendment

2. This Directive shall not affect in any way the exercise of fundamental rights as recognised in Member States, including the

law, 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 practices. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practices.

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 practices. Nor does it affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and practices.

Amendment 35
Proposal for a directive
Article 2 – paragraph 1 – point a

Text proposed by the Commission

(a) ‘competent authority’ means *an authority* designated by a Member State to perform functions under this Directive;

Amendment

(a) ‘competent authority’ means *authorities or bodies* designated by a Member State *and entrusted* to perform *public* functions under this Directive;

Amendment 36
Proposal for a directive
Article 2 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) ‘host Member State’ means the Member State to which the worker is temporarily posted within the meaning of this Directive and Directive 96/71/EC.

Amendment 37
Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall *take into account* factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities, *other than purely*

For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall *make an overall assessment of* factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely performs substantial activities.

internal management and/or administrative activities. Such elements may include:

During the assessment the account shall be taken in particular of the following factual elements, which shall where applicable be demonstrated to the competent authorities by the undertaking posting the workers:

Amendment 38

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

Amendment

(a) the place where *the* undertaking has its *registered office and* administration, *uses office space*, pays taxes, has a professional licence or is registered with the chambers of commerce or professional bodies,

(a) the place where *an* undertaking *carries out its substantial business activity*, has its administration, pays taxes *and social contributions*, has *in accordance with national law* a professional licence or is registered with the chambers of commerce or professional bodies,

Amendment 39

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) the place where posted workers are recruited

(b) the place where posted workers are recruited *and the place from which workers are posted*,

Amendment 40

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – point c

Text proposed by the Commission

Amendment

(c) the law applicable to the contracts concluded by the undertaking *with its workers, on the one hand, and* with its clients,

(c) the law applicable to the contracts concluded by the undertaking with its clients,

Amendment 41

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) the abnormally limited number of contracts performed and/or size of turnover realised in the Member State of establishment.

(e) the abnormally limited number of contracts performed and/or size of turnover realised in the Member State of establishment, ***taking into account the specific situation of newly established undertakings.***

Amendment 42

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) the posted worker has a valid A1 form to certify which social security legislation applies and this is one of several indications that this is a posting situation.

Amendment 43

Proposal for a directive

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The assessment of these elements shall be adapted to each specific case and take account of the nature of the activities carried out by the undertaking in the Member State in which it is established.

deleted

Amendment 44

Proposal for a directive

Article 3 – paragraph 2 – subparagraph 1 and subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

In order to assess whether a posted worker temporarily carries out his or her work in a Member State ***other than the one in which he or she normally works***, all factual elements characterising such work and the situation of the worker shall be examined.

In order to ***better implement Articles 3 and 5 of Directive 96/71/EC and to*** assess whether a posted worker temporarily carries out his or her work in a ***host*** Member State, all factual elements characterising such work and the situation

Such elements may include:

of the worker shall be examined.
Account shall be taken in particular of the following elements,

Amendment 45
Proposal for a directive
Article 3 – paragraph 2 – subparagraph 2 – point c

Text proposed by the Commission

Amendment

(c) the posted worker returns **or** is expected to resume ***working to the Member State from which he/she is posted*** after completion of the work or the provision of services for which he or she was posted;

(c) the posted worker ***is habitually employed and*** is expected to ***return to his habitual place of employment*** after completion of the work or the provision of services for which he or she was posted;

Amendment 46
Proposal for a directive
Article 3 – paragraph 2 – subparagraph 2 – point e

Text proposed by the Commission

Amendment

(e) ***any repeated previous periods during which the post was filled by the same or another (posted) worker.***

(e) ***the posted worker is not replacing another posted worker, except in the case of illness or resignation;***

Amendment 47
Proposal for a directive
Article 3 – paragraph 2 – subparagraph 2 – point e a–e c (new)

Text proposed by the Commission

Amendment

(ea) the posted worker is not replacing a striking worker;
(eb) the worker is organisationally and financially dependent on his employer;
(ec) the obligation with regard to the remuneration of the worker rests with the undertaking which concluded the employment contract.

Amendment 48
Proposal for a directive
Article 3 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

All the factual elements enumerated *above* are indicative *factors in the overall assessment to be made and may not therefore* be considered in isolation. *The criteria* shall be adapted to each specific case and take account of the specificities of the situation.

The Member States shall take appropriate action to prevent, avoid and combat circumvention and/or abuse of this Directive by undertakings seeking deliberately to deny posted workers their rights or to deprive them of those rights.

The list of elements enumerated *in paragraph 1 and 2* are indicative *and non-exhaustive and shall never* be considered in isolation. *The assessment of these elements* shall be adapted to each specific case and take account of the specificities of the situation.

Amendment 49
Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Contact details of the competent authorities shall be communicated to the Commission and the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Amendment

Contact details of the competent authorities shall be communicated to the Commission and the other Member States *and be available to the public*. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Amendment 50
Proposal for a directive
Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available in a clear, comprehensive and easily accessible way at a distance and by electronic means, in

Amendment

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available *free of charge* in a clear, *transparent* comprehensive and easily accessible way at a distance and by

formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

electronic means, in formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

Amendment 51
Proposal for a directive
Article 5 – paragraph 2 – introductory part

Text proposed by the Commission

2. In order to bring about further improvements with respect to access to information, Member States shall:

Amendment

2. In order to bring about further improvements with respect to access to information, Member States shall ***in accordance with the principles established in Article 4 of Directive 96/71/EC:***

Amendment 52
Proposal for a directive
Article 5 – paragraph 2 – point b

Text proposed by the Commission

(b) take the necessary measures to make generally available on internet sites information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by service providers from other Member States in accordance with Directive 96/71/EC, whereby, where possible, links to existing internet sites and other contact points, in particular the relevant social partners, shall be provided;

Amendment

(b) take the necessary measures to make generally available on internet sites ***and by other means*** information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by service providers from other Member States in accordance with Directive 96/71/EC, whereby, where possible, links to existing internet sites and other contact points, in particular the relevant social partners, shall be provided;

Amendment 53
Proposal for a directive
Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) make the information available to

Amendment

(c) make the information available to

workers and service providers in ***languages other than*** the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities;

workers and service providers in ***the national language(s) of the Member State from which the posting is made, the language of the Member State of origin of the worker and service provider, and not only in*** the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable ***as well as describing the procedures to lodge complaints and initiate judicial or administrative proceedings and sanctions applicable in case of non-compliance*** and upon requests in formats accessible to persons with disabilities; ***Information about other contact points such as those provided by social partners shall also be made available;***

Amendment 54
Proposal for a directive
Article 5 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) further detailed information on labour and social conditions including health and safety at the workplace shall be easily made available by different means of communication including contact points;

Amendment 55
Proposal for a directive
Article 5 – paragraph 2 – point e a (new)

Text proposed by the Commission

Amendment

(ea) improve or set up structures to inform, advise and support workers; where applicable, Member States shall make use of existing infrastructure such as the liaison offices, single points of contact and advice centres.

Amendment 56
Proposal for a directive
Article 5 – paragraph 4

Text proposed by the Commission

4. Where, in accordance with national law, traditions and practices, the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with article 3 paragraph 1 and 8 of that Directive, Member States *should* ensure that *the social partners shall identify these and make the* relevant information, in particular *concerning* the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration *due* and the qualifying criteria *for classification in the different wage categories, , available in an accessible and transparent way for service providers from other Member States and posted workers.*

Amendment 57
Proposal for a directive
Article 5 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

4. Where, in accordance with national law, traditions and practices, *and with full respect to the autonomy of the social partners* the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC are laid down in collective agreements in accordance with article 3 paragraph 1 and 8 of that Directive, Member States *shall* ensure that *these terms and conditions are made publically available in an accessible and transparent way to services providers from host Member States and to posted workers and may involve social partners in that respect. The* relevant information *shall*, in particular *cover* the different minimum rates of pay and their constituent elements, the method used to calculate the remuneration and the qualifying criteria *as well as terms and conditions of employment, available to national competent authorities. To this end,* Member States *may provide a official register.*

Member States shall ensure that collective agreements referred to in paragraphs 1 and 8 of Article 3 of Directive 96/71 are subject to registration in official registers and publication. Terms and conditions of employment referred to in Article 3 of the Directive 96/71 laid down in those collective agreements shall be applicable to an undertakings posting workers only from the moment of official registration

and publication of those agreements.

Amendment 58
Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

2. The cooperation of the Member States shall in particular consist *in replying to reasoned* requests for information and to carry out checks, inspections and investigations *from* competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC, including investigation of any abuses of applicable rules on the posting of workers or possible cases of unlawful transnational activities.

Amendment

2. *In compliance with the principles established in Article 4 and 5 of Directive 96/71/EC*, the cooperation of the Member States shall in particular consist *of an obligation to reply without undue delay in a swift and effective manner to* requests for information and to carry out checks, inspections and investigations *by their* competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC *and relevant articles of this Directive*, including investigation of any abuses of applicable rules on the posting of workers or possible cases of unlawful transnational activities *and initiating appropriate actions in accordance with with applicable national laws and practices.*

Amendment 59
Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.

Amendment

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws *and Directive 96/71/EC. Where service providers fail to provide such information, the competent authorities shall initiate appropriate action.*

Amendment 60
Proposal for a directive
Article 6 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Any long-term refusal to supply the information requested shall entitle the requesting Member State to draw up a list of competent authorities that have refused to cooperate and to inform the Commission thereof. The Commission shall after verification keep a publicly accessible list of those authorities reported by Member States to it which have not been willing to cooperate.

Amendment 61
Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

Amendment

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request.

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within 24 hours.

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request ***or within 3 weeks if the answer requires an inspection on the spot.***

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within 24 hours.

Without prejudice to subparagraphs 1 and 2, the competent authorities and/or inspectorates of the host Member State shall not be precluded from taking immediate measures preventing, investigating and sanctioning fraud.

Amendment 62
Proposal for a directive
Article 6 – paragraph 6

Text proposed by the Commission

6. Member States shall ensure that registers in which service providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with *the same* conditions, by the equivalent competent authorities of the other Member States.

Amendment 63
Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

7. Member States shall ensure the confidentiality of the information which they exchange. *Information exchanged shall be used only in respect of the matter(s) for which it was requested.*

Amendment 64
Proposal for a directive
Article 6 – paragraph 9

Text proposed by the Commission

9. The Commission and the competent authorities shall cooperate closely in order to examine any difficulties which might arise in the *application of Article 3(10) of Directive 96/71/EC.*

Amendment 65
Proposal for a directive
Article 6 – paragraph 9 a (new)

Amendment

6. Member States shall ensure that registers in which service providers have been entered, and which may be consulted by the competent authorities in their territory, may also be consulted, in accordance with *comparable* conditions, by the equivalent competent authorities of the other Member States.

Amendment

7. Member States shall ensure the confidentiality of the information which they exchange, *in accordance with Union law and national law and practices.*

Amendment

9. *In accordance with the principle established in Article 4 of the Directive 96/71/EC* the Commission and the competent authorities shall cooperate closely in order to examine any difficulties which might arise in the *implementation of the Directive 96/71/EC.*

Text proposed by the Commission

Amendment

9a. In order to facilitate mutual assistance and cross-border cooperation the Commission shall not later than ... * present to the European Parliament and the Council an impact assessment for the feasibility of a Union wide notification or registration system based on and compatible with existing systems in Member States.

****OJ: please insert the date: two years after the entry into force of this Directive.***

Amendment 66
Proposal for a directive
Article 7 – title

Text proposed by the Commission

Amendment

Role of the Member State of establishment

Cooperation between the Member State of establishment ***and the host Member State***

Amendment 67
Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

Amendment

1. ***The*** Member State of establishment of the service provider shall continue to control, monitor and take the necessary supervisory or enforcement measures, in accordance with its national law, practice and administrative procedures, with respect to workers posted to another Member State.

1. ***In accordance with the principles established in Articles 4 and 5 of the Directive 96/71/EC, the*** Member State of establishment of the service provider shall continue to control, monitor and take the necessary supervisory or enforcement measures, in accordance with its national law, practice and administrative procedures, with respect to workers posted to another Member State. ***That responsibility shall not in any way reduce the possibilities for the host Member State, on their own initiative, to control, monitor and take necessary supervisory or enforcement measures including as***

regards the inspections of the working conditions.

Amendment 68
Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

2. In the circumstances referred to in Article 3 (1) and (2) and Article 9(1), the Member State of establishment of the service provider shall assist the Member State *to which the posting takes place* to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. The Member State of establishment of the service provider shall, on its own initiative, *communicate to* the Member State *to which the posting takes place* any relevant information as specified in Articles 3 (1) and (2) and 9(1), *where the Member State of establishment of the service provider is aware of specific facts which indicate possible irregularities.*

Amendment

2. In the circumstances referred to in Article 3 (1) and (2) and Article 9(1) *of this Directive*, the Member State of establishment of the service provider shall assist the *host* Member State to ensure compliance with the conditions applicable under Directive 96/71/EC and this Directive. The Member State of establishment of the service provider shall, on its own initiative, *or following a request from* the *host* Member State, *communicate to the host* Member State any relevant information as specified in Articles 3 (1) and (2) and 9(1). *The Member State of establishment shall in the spirit of Article 6(1) of this Directive, support the competent authorities of the host Member State by providing information on compliance with Article 3 of this Directive in due time.*

Amendment 69
Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the legality of the service provider's establishment, the service provider's good conduct, and the absence of any infringement of the applicable rules. The

Amendment

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information *to verify full compliance with Directive 96/71/EC and this directive, including* as to the legality of the service provider's establishment, the service provider's good

competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

conduct, and the absence of any infringement of the applicable rules. . The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

Amendment 70
Proposal for a directive
Article 7 – paragraph 4

Text proposed by the Commission

4. *The obligation laid down in paragraphs 1 and 2 shall not entail a duty on the part of the Member State of establishment to carry out factual checks and controls in the territory of the host Member State where the service is provided. Such checks and controls shall, if need be, be carried out by the authorities of the host Member State at the request of the competent authorities of the Member State of establishment, in accordance with Article 10 and in conformity with the powers of supervision provided for in the host Member State's national law, practice and administrative procedures and which respect Union law.*

Amendment 71
Proposal for a directive
Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

4. Checks and controls shall be carried out, **where needed**, by the authorities of the host Member State in accordance with Article 10 and in conformity with the powers of supervision provided for in the host Member State's national law, practice and administrative procedures.

1a. Member States shall, with the assistance of the Commission, take accompanying measures to develop, facilitate and promote the exchange between social partners as well as to ensure that organisations providing information to posted workers are supported.

Amendment 72
Proposal for a directive
Article 9 – paragraph 1 – point b

Text proposed by the Commission

(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 and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;

Amendment

(b) an obligation to keep or make available ***within a reasonable period of time*** and/or retain, ***at the choice of the services provider***, 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 and proof of payment of wages or copies of equivalent documents, ***issued in accordance with the national law of the Member State of establishment***, during the period of posting in an accessible and clearly identified place in its territory, such as the workplace or the building site, or for mobile workers in the transport sector the operations base or the vehicle with which the service is provided;

Amendment 73
Proposal for a directive
Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) a translation of the documents referred to under (b), may be justified provided these documents are not excessively long and standardised forms are generally used for such documents;

Amendment

(c) a translation of the documents referred to under (b), may be justified provided these documents are ***important in order to establish the nature of posting and the compliance with Directive 96/71/EC*** not excessively long and standardised forms are generally used for such documents;

Amendment 74
Proposal for a directive
Article 9 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that all administrative requirements and control measures are publicly available to the service providers and regularly updated.

Amendment 75
Proposal for a directive
Article 9 – paragraph 3

Text proposed by the Commission

Amendment

3. Within three years after the date referred to in Article 20, the necessity **and** appropriateness of the application of national control measures shall be reviewed in the light of the experiences with and effectiveness of the system for 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.

3. Within three years after the date referred to in Article 20, the necessity, appropriateness **and sufficient effectiveness** of the application of national control measures shall be reviewed in the light of the experiences with and effectiveness of the system for 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, **social and economic** developments **of posting**, with a view to proposing, where appropriate, any necessary amendments or modifications **to ensure effective controls of employment conditions by the competent authorities of the host Member State.**

Amendment 76
Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that appropriate checks and monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory in order to

1. Member States shall ensure that **effective and** appropriate checks and monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory in order to

control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC and to guarantee its proper application and enforcement. Such inspections shall be based primarily on a risk assessment to be drawn up **regularly** by the competent authorities. The risk assessment shall identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. ***When making such risk assessment the realisation of big infrastructural projects, the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers shall be taken into account.***

Amendment 77
Proposal for a directive
Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that inspections and controls of compliance with Directive 96/71/EC are not discriminatory and/or disproportionate.

Amendment 78
Proposal for a directive
Article 10 – paragraph 5

Text proposed by the Commission

5. Member States ***where labour inspectorates have no competence with respect to the control and monitoring of the working conditions and/or terms and conditions of employment of posted***

control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC and to guarantee its proper application and enforcement. Such inspections shall be based primarily on a risk assessment to be drawn up by the competent authorities. The risk assessment shall identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory.

Amendment

2. Member States shall ensure that inspections and controls of compliance with Directive 96/71/EC are not discriminatory and/or disproportionate. ***According to its own practice, the competent authority shall provide the inspected or controlled undertaking with a post inspection or control document which includes any relevant information.***

Amendment

5. In accordance with Article 5 of Directive 96/71/EC Member States are entitled to use arrangements in line with their national law and practice to ensure compliance with Directive 96/71/EC in

workers may, by way of exception, after consulting the social partners at national level, establish or maintain arrangements guaranteeing the respect of these terms and conditions of employment, provided that the arrangements offer the persons concerned an adequate degree of protection equivalent to that resulting from Directive 96/71/EC and this Directive.

order to guarantee the persons concerned an adequate degree of protection as defined by Directive 96/71/EC and this Directive.

Amendment 79
Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

1. For the enforcement of the obligations under Article 6 of Directive 96/71/EC and this Directive, Member States shall ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, *also* in the Member State *in whose territory the workers are or were posted*, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended.

Amendment

1. For the enforcement of the obligations under Article 6 of Directive 96/71/EC and this Directive, Member States shall ensure that there are effective mechanisms for posted workers to lodge complaints against their employers directly, as well as the right to institute judicial or administrative proceedings, *irrespective of it is the Member State of establishment of the undertaking or the host Member State*, where such workers consider they have sustained loss or damage as a result of a failure to apply the applicable rules, even after the relationship in which the failure is alleged to have occurred has ended.

Amendment 80
Proposal for a directive
Article 11 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, on behalf or in support

Amendment

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of *Directive 96/71/EC and this Directive* are complied with, may engage,

of the posted workers or their employer, with their approval in any judicial or administrative proceedings provided for with the objective of implementing this Directive and/or enforcing the obligations under this Directive.

on behalf or in support of the posted workers or their employer, **where applicable** with their approval in any judicial or administrative proceedings provided for with the objective of implementing **Directive 96/71/EC and** this Directive and/or enforcing the obligations under **Directive 96/71/EC and** this Directive.

Amendment 81

Proposal for a directive

Article 11 – paragraph 5 – subparagraph 1 – introductory part

Text proposed by the Commission

Member States shall ensure that the necessary mechanisms are in place to ensure that posted workers are able to receive

Amendment

Member States shall ensure that the necessary mechanisms are in place to ensure that **posted workers or those acting on their behalf are able to claim and that** posted workers are able to receive:

Amendment 82

Proposal for a directive

Article 11 – paragraph 5 – subparagraph 1 – point b

Text proposed by the Commission

(b) refund of excessive costs, **in relation to net remuneration or to the quality of the accommodation, withheld or deducted from wages for accommodation** provided by the employer.

Amendment

(b) refund of excessive costs **or costs relating to travel, board and accommodation, automatically deducted from wages for which no reimbursement was** provided by the employer;

Amendment 83

Proposal for a directive

Article 11 – paragraph 5 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(ba) any back payments or refund of taxes or social security contributions unduly withheld from the worker's salary.

Amendment 84
Proposal for a directive
Article 11 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Posted workers initiating judicial or administrative proceedings shall not receive any unfavourable treatment by their employer.

Amendment 85
Proposal for a directive
Article 12

Text proposed by the Commission

Amendment

[...]

deleted

Amendment 86
Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

Amendment

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this Article shall apply to the cross-border enforcement of administrative fines and penalties imposed for failure to comply with the applicable rules in a Member State on a service provider established in another Member State.

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this Article shall apply to the cross-border enforcement of administrative fines and penalties ***regarding posting of workers situations in accordance with Directive 96/71 and this Directive***, imposed for failure to comply with the applicable rules in a Member State on a service provider established in another Member State.

Amendment 87
Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. The requesting authority may, in

2. The requesting authority may, in

accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine, in so far as the relevant laws, regulations and administrative practices in force in the requested authority's Member State allow such action for similar claims or decisions.

accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or ***retroactive social security contributions in accordance with Regulation (EC) No 987/2009/EC*** or notify a decision imposing a penalty or a fine ***or retroactive social security in accordance with Regulation (EC) No 987/2009/EC***, in so far as the relevant laws, regulations and administrative practices in force in the requested authority's Member State allow such action for similar claims or decisions.

Amendment 88
Proposal for a directive
Article 14 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The provisions on recovery of fines or penalties or retroactive social security contributions shall also apply to fines imposed as part of enforceable statutory decisions by national courts.

Amendment 89
Proposal for a directive
Article 16 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and administrative procedures or practices of the requested Member State which apply to similar claims.

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and administrative procedures or practices of the requested Member State which apply to similar claims. ***If the requested authority retains any costs incurred in connection with recovery, it shall inform the requesting authority and provide a justification of those costs.***

Amendment 90
Proposal for a directive
Article 18 – paragraph 1

Text proposed by the Commission

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13, 14 and 15 shall be implemented through the Internal Market Information System (IMI), established by *[reference to IMI Regulation]* .

Amendment 91
Proposal for a directive
Article 18 – paragraph 2

Text proposed by the Commission

2. Member States *may continue* to apply bilateral arrangements concerning administrative cooperation between their competent authorities as regards the *application and monitoring of the terms and conditions of employment applicable to posted workers referred to in Article 3* of Directive 96/71/EC, in so far as these arrangements do not adversely affect the rights and obligations of the workers and companies concerned.

Amendment

1. The administrative cooperation and mutual assistance between the competent authorities of the Member States provided for in Articles 6, 7, 10(3), 13, 14 and 15 shall be implemented through the Internal Market Information System (IMI), established by *Regulation (EU) No 1024/2012 and where deemed necessary by the concerned Member State be accompanied by other established means of cooperation such as bilateral agreements.*

Amendment

2. *Where appropriate and in accordance with the principles established in Directive 96/71/EC, Member States are free* to apply bilateral arrangements concerning administrative cooperation and mutual assistance between their competent authorities as regards the *enforcement* of Directive 96/71/EC and this Directive, in so far as these arrangements do not adversely affect the rights and obligations of the workers and companies concerned. *Not later than ... * the European Commission will evaluate the interaction between the IMI and the bilateral agreements.*

**OJ: please insert the date: 5 years after the entry into force of this Directive.*

Amendment 92
Proposal for a directive
Article 18 – paragraph 3

Text proposed by the Commission

3. In the context of bilateral agreements referred to in paragraph 2, competent authorities of the Member States shall use IMI as much as possible. In any event, where a competent authority in one of the Member States concerned has used IMI, it shall be used for any follow-up required ***and shall take precedence over the mechanism(s) foreseen in such a bilateral agreement with respect to administrative cooperation and mutual assistance.***

Amendment

3. In the context of bilateral agreements referred to in paragraph 2, competent authorities of the Member States shall use IMI as much as possible. In any event, where a competent authority in one of the Member States concerned has used IMI, it shall ***where possible*** be used for any follow-up required.

PROCEDURE

Title	Enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services		
References	COM(2012)0131 – C7-0086/2012 – 2012/0061(COD)		
Committee responsible Date announced in plenary	EMPL 18.4.2012		
Opinion by Date announced in plenary	IMCO 18.4.2012		
Rapporteur Date appointed	Emilie Turunen 8.5.2012		
Discussed in committee	18.9.2012	10.10.2012	28.11.2012
Date adopted	21.2.2013		
Result of final vote	+: 20	–: 15	0: 4
Members present for the final vote	Pablo Arias Echeverría, Adam Bielan, Preslav Borissov, Birgit Collin-Langen, Lara Comi, Anna Maria Corazza Bildt, Cornelis de Jong, Christian Engström, Vicente Miguel Garcés Ramón, Evelyne Gebhardt, Małgorzata Handzlik, Malcolm Harbour, Philippe Juvin, Sandra Kalniete, Edvard Kožušník, Toine Manders, Hans-Peter Mayer, Franz Obermayr, Sirpa Pietikäinen, Phil Prendergast, Mitro Repo, Heide Rühle, Christel Schaldemose, Andreas Schwab, Catherine Stihler, Róza Gräfin von Thun und Hohenstein, Emilie Turunen, Bernadette Vergnaud, Barbara Weiler		
Substitute(s) present for the final vote	Jürgen Creutzmann, Ildikó Gáll-Pelcz, María Irigoyen Pérez, Constance Le Grip, Antonyia Parvanova, Marc Tarabella, Kyriacos Triantaphyllides, Rafał Trzaskowski, Patricia van der Kammen		
Substitute(s) under Rule 187(2) present for the final vote	Norbert Glante		

29.4.2013

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Employment and Social Affairs

on the proposal for a directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
(COM(2012)0131 – C7-0086/2012 – 2012/0061(COD))

Rapporteur: Klaus-Heiner Lehne

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Employment and Social Affairs, as the committee responsible, to incorporate the following amendments into its report:

Amendment 1 **Proposal for a directive** **Recital 4**

Text proposed by the Commission

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved.

Amendment

(4) In order to prevent, avoid and combat circumvention and/or abuse of the applicable rules by companies taking improper or fraudulent advantage of the freedom to provide services enshrined in the Treaty and/or the application of Directive 96/71/EC the implementation and monitoring of the notion of posting should be improved ***and more uniform criteria, facilitating a common interpretation, should be introduced at***

Union level.

Amendment 2
Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) All measures introduced by this Directive must be justified, proportionate and non-discriminatory so that they do not create administrative burdens and do not lock the potential that companies, in particular small and medium enterprises, have for creating new jobs, while protecting posted workers.

Amendment 3
Proposal for a directive
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) Competent authorities should make an overall assessment of all factual elements in order to determine whether the worker is genuinely posted. If the proof cannot be produced, Member States involved should collaborate closely and without delay in order to choose which law is applicable to the employment contract, basing their decision on the Rome I Regulation.

Amendment 4
Proposal for a directive
Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) The next revision of the IMI regulation should take into account the fact that the IMI incorporates what is currently regulated within bilateral

agreements.

Amendment 5
Proposal for a directive
Recital 14

Text proposed by the Commission

(14) Member States obligations to make information on terms and conditions of employment generally available and to provide effective access to it, not only to service providers from other Member States, but also to the posted workers concerned, should be further concretised.

Amendment

(14) Member States obligations to make information on terms and conditions of employment generally available ***free of charge*** and to provide effective access to it, not only to service providers from other Member States, but also to the posted workers concerned, should be further concretised.

Amendment 6
Proposal for a directive
Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) Posted workers should have an individual right to information and advice about their rights, obligations and applicable working conditions and terms of employment.

Amendment 7
Proposal for a directive
Recital 16

Text proposed by the Commission

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only certain control measures or administrative formalities to undertakings posting workers for the provision of services. ***Such*** measures and

Amendment

(16) In order to ensure the correct application of, and to monitor compliance with, the substantive rules on the terms and conditions of employment to be respected with regard to posted workers, Member States should apply only certain control measures or administrative formalities to undertakings posting workers for the provision of services. ***For the purpose of***

requirements may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.

legal clarity, possible control measures and requirements *should be uniform at Union level and* may only be imposed provided that the competent authorities cannot carry out their supervisory task effectively without the requested information and the necessary information cannot be obtained easily from the employer of posted workers or the authorities in the Member State of establishment of the service provider within a reasonable delay and/or less restrictive measures would not ensure that the objectives of the national controls measures deemed necessary are attained.

Amendment 8
Proposal for a directive
Recital 22

Text proposed by the Commission

(22) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. *The* need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level *should equally be examined*.

Amendment

(22) Member States are particularly encouraged to introduce a more integrated approach to labour inspections. *There is also a* need to develop common standards in order to establish comparable methods, practices and minimum standards at Union level.

Amendment 9
Proposal for a directive
Recital 24

Text proposed by the Commission

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is *necessary to ensure* that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration

Amendment

(24) In view of the prevalence of subcontracting in the construction sector, and in order to protect posted workers' rights, it is *recommended* that in such sector at least the contractor of which the employer is a direct subcontractor can be held liable to pay to posted workers the net minimum rates of pay due, any back-payments of outstanding remuneration

and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor **shall** not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

and/or contributions due to common funds or institutions of social partners regulated by law or collective agreement in so far as these are covered by Article 3 (1) of Directive 96/71/EC in addition to or in place of the employer. The contractor **may** not be held liable if he/she has undertaken due diligence. The latter may imply preventive measures concerning proof provided by the subcontractor, including where relevant based upon information emanating from national authorities.

Amendment 10
Proposal for a directive
Recital 25

Text proposed by the Commission

Amendment

(25) In specific cases, other contractors may, in accordance with national law and practice, be also held liable for failure to comply with the obligations under this Directive, or their liability may be limited, after consultation of the social partners at national or sectoral level.

deleted

Amendment 11
Proposal for a directive
Recital 26

Text proposed by the Commission

Amendment

(26) The obligation to impose a liability requirement on the contractor where the direct subcontractor is a service provider, established in another Member State, posting workers is justified in the overriding public interest of the social protection of workers. Such posted workers may not be in the same situation as workers employed by a direct subcontractor established in the Member State of establishment of the contractor with regard to the possibility to claim

deleted

outstanding pay or refunds of taxes or social security contributions unduly withheld.

Amendment 12
Proposal for a directive
Recital 27

Text proposed by the Commission

(27) The disparities between the systems of the Member States for enforcing imposed administrative fines and/or penalties in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.

Amendment

(27) The disparities between the systems of the Member States for enforcing imposed administrative fines and/or penalties in cross-border situations are prejudicial to the proper functioning of the internal market and risk making it very difficult, if not impossible, to ensure that posted workers enjoy an equivalent level of protection throughout the Union.
Nevertheless, Member States should ensure that efficient administrative fines and/or penalties to ensure compliance with Directive 96/71/EC and this Directive are provided for.

Amendment 13
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive, including administrative and judicial procedures, and should provide for effective, dissuasive and proportionate penalties for any breaches of the obligations under this Directive.

Amendment

(32) Member States should take appropriate measures in the event of failure to comply with the obligations laid down in this Directive, including administrative and judicial procedures, and should provide for effective, dissuasive and proportionate penalties for any breaches of the obligations under this Directive. ***Good cooperation between the Member States is essential for a correct enforcement of Directive 96/71/EC and for creating a level playing field for companies and workers.***

Amendment 14
Proposal for a directive
Article 1 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. This Directive *establishes a general common framework of appropriate* provisions, measures and control mechanisms *necessary for* better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules.

Amendment

1. This Directive *sets up* provisions, measures and control mechanisms *to ensure a* better and more uniform implementation, application and enforcement *by the Member States* in practice of Directive 96/71/EC, including measures to prevent and sanction any abuse and circumvention of the applicable rules.

Amendment 15
Proposal for a directive
Article 2 – point a

Text proposed by the Commission

(a) ‘competent authority’ means *an authority* designated by a Member State to perform functions under this Directive;

Amendment

(a) ‘competent authority’ means *public authorities* designated by a Member State to perform functions under this Directive;

Amendment 16
Proposal for a directive
Article 2 – point a – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The competent authorities may include the liaison offices under Article 4 of Directive 96/71/EC;

Amendment 17
Proposal for a directive
Article 2 – point a – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Contact details of the competent authorities shall be communicated to the

Commission and the other Member States. The Commission shall publish and regularly update the list of the competent authorities and liaison offices.

Amendment 18
Proposal for a directive
Article 2 – point b

Text proposed by the Commission

(b) ‘requesting authority’ means the competent authority of a Member State which makes a request for assistance, information, notification or recovery *concerning a penalty or fine as referred to in Chapter V;*

Amendment

(b) ‘requesting authority’ means the competent authority of a Member State which makes a request for assistance, information, notification or recovery;

Amendment 19
Proposal for a directive
Article 2 – point c

Text proposed by the Commission

(c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made.

Amendment

(c) ‘requested authority’ means the competent authority of a Member State to which a request for assistance, information, notification or recovery is made, *as referred to in Chapter VI.*

Amendment 20
Proposal for a directive
Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the State in which it is established in order to determine whether it genuinely *performs substantial activities, other than purely*

Amendment

1. For the purpose of implementing, applying and enforcing Directive 96/71/EC the competent authorities shall take into account factual elements characterising the activities carried out by an undertaking in the *Member* State in which it is established in order to determine whether it genuinely *posts workers to the territory of another*

internal management and/or administrative activities. Such elements may include:

Member State in the framework of transnational provision of services. performs substantial activities, other than purely internal management and/or administrative activities. Such elements may **only** include:

Amendment 21
Proposal for a directive
Article 3 – paragraph 1 – point b

Text proposed by the Commission

(b) the place where posted workers are recruited,

Amendment

(b) the place where posted workers are recruited **and from which they are posted**,

Amendment 22
Proposal for a directive
Article 3 – paragraph 1 – point d

Text proposed by the Commission

(d) the place where the undertaking performs its *substantial* business activity **and where it employs administrative staff**,

Amendment

(d) the place where the undertaking performs its business activity, **which in a wider time-frame assessment is not limited to purely internal management and/or administrative activities**,

Amendment 23
Proposal for a directive
Article 3 – paragraph 1 – point e

Text proposed by the Commission

(e) the abnormally limited number of contracts performed and/or size of turnover realised in the Member State of establishment.

Amendment

deleted

Justification

Deletion aiming at taking into account the situation of newly established SMEs which may from the beginning get a contract and use posted workers. In such a situation, they would automatically have a lower turnover in the Member State of establishment but this would not

affect the genuine nature of the company of the establishment situation.

Amendment 24

Proposal for a directive

Article 3 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

Such elements may include:

Such elements may **only** include:

Amendment 25

Proposal for a directive

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Within three years after the date referred to in Article 20, the necessity and appropriateness of the elements enumerated in paragraphs 1 and 2 of this article shall be reviewed in the light of defining possible new elements which shall be taken into account in order to determine whether the undertaking is genuine and a posted worker temporarily carries out his or her work, with a view to proposing, where appropriate, any necessary amendments or modifications.

Amendment 26

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers are made generally available in a clear, comprehensive and easily accessible way at a distance and by electronic means, in formats and by web standards that ensure

1. Member States shall take the appropriate measures to ensure that the information on the terms and conditions of employment referred to in Article 3 of Directive 96/71/EC which are to be applied and complied with by service providers, ***including those laid down in collective agreements***, are made generally available ***free of charge and*** in a clear, comprehensive and easily accessible way

access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

at a distance and by electronic means, in formats and by web standards that ensure access to persons with disabilities and to ensure that the liaison offices or the other competent national bodies referred to in Article 4 of Directive 96/71/EC are in a position to carry out their tasks effectively.

Amendment 27
Proposal for a directive
Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) make the information available to workers and service providers in languages other than the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities;

Amendment

(c) make the information available to workers and service providers in ***the most relevant*** languages other than the national language(s) of the country in which the services are provided, if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities;

Amendment 28
Proposal for a directive
Article 6 – paragraph 2

Text proposed by the Commission

2. The cooperation of the Member States shall in particular consist in replying to ***reasoned*** requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC, including investigation of any abuses of applicable rules on the posting of workers ***or possible cases of unlawful transnational activities.***

Amendment

2. The cooperation of the Member States shall in particular consist in replying ***without delay*** to requests for information and to carry out checks, inspections and investigations from competent authorities with respect to the situations of posting referred to in Article 1 (3) of Directive 96/71/EC, including investigation of any abuses of applicable rules on the posting of workers.

Amendment 29
Proposal for a directive
Article 6 – paragraph 3

Text proposed by the Commission

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws.

Amendment

3. For the purpose of responding to a request for assistance from competent authorities in another Member State, Member States shall ensure that service providers established in their territory supply their competent authorities with all the information necessary for supervising their activities in compliance with their national laws. ***Where service providers fail to provide such information, appropriate action must be initiated by the competent authorities within the host state and where appropriate in cooperation with the competent authorities of the state of establishment.***

Justification

Competent Authorities within host states must enforce EU and national employment laws effectively. Where a breach is identified, and for any reason legal action is not possible in the host state, both states must cooperate to ensure that the service provider is held accountable, provides the appropriate remuneration to posted workers, and faces the relevant criminal sanctions.

Amendment 30
Proposal for a directive
Article 6 – paragraph 4

Text proposed by the Commission

4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution.

Amendment

4. In the event of difficulty in meeting a request for information or in carrying out checks, inspections or investigations, the Member State in question shall rapidly inform the requesting Member State with a view to finding a solution. ***In the event of any persisting problems in the exchange of information, the Commission should intervene in order to assist Member States in solving the problem.***

Amendment 31
Proposal for a directive
Article 6 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request.

Amendment

5. Member States shall supply the information requested by other Member States or the Commission by electronic means as soon as possible and at the latest within 2 weeks from the reception of a request ***or within one month if the answer requires an on-the-spot inspection. Where the request is of an urgent nature, the information must be sent within three days of the reception of the request.***

Amendment 32
Proposal for a directive
Article 6 – paragraph 5 – subparagraph 2

Text proposed by the Commission

A specific urgency mechanism shall be used for special situations where a Member State becomes aware of particular circumstances requiring urgent action. In such circumstances, the information shall be submitted within 24 hours.

Amendment

deleted

Amendment 33
Proposal for a directive
Article 6 – paragraph 7

Text proposed by the Commission

7. Member States shall ensure the confidentiality of the information which they exchange. ***Information exchanged shall be used only in respect of the matter(s) for which it was requested.***

Amendment

7. Member States shall ensure the confidentiality of the information which they exchange ***in accordance with Union data protection rules as well as their national law and practice.***

Amendment 34
Proposal for a directive
Article 7 – paragraph 3

Text proposed by the Commission

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the legality of the service provider's establishment, ***the service provider's good conduct, and the absence of any infringement of the applicable rules***. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

Amendment 35
Proposal for a directive
Article 9 – paragraph 1 – point a

Text proposed by the Commission

(a) an obligation for a service provider established in another Member State to make a ***simple*** declaration to the responsible national competent authorities ***at the latest at*** the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;

Amendment 36
Proposal for a directive
Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) ***a*** translation of the documents referred

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Amendment

3. Competent authorities of the host Member State may equally ask the competent authorities of the Member State of establishment, for each instance where services are provided or for each service provider, to provide information as to the legality of the service provider's establishment. The competent authorities of the Member State of establishment shall provide this information in accordance with Article 6.

Amendment

(a) an obligation for a service provider established in another Member State to make a declaration to the responsible national competent authorities ***by*** the commencement of the service provision, whereby the declaration may only cover the identity of the service provider, the presence of one or more clearly identifiable posted workers, their anticipated number, the anticipated duration and location of their presence, and the services justifying the posting;

Amendment

(c) ***the possibility to request the*** translation

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to under (b), may be justified provided these documents are not excessively long and standardised forms are generally used for such documents;

of the documents referred to under (b), may be justified provided these documents are not excessively long and standardised forms are generally used for such documents;

Amendment 37
Proposal for a directive
Article 9 – paragraph 1 – point d

Text proposed by the Commission

(d) ***an obligation to designate*** a contact person to negotiate, if necessary, on behalf of the employer with the relevant social partners in the Member State ***to which the posting takes place***, in accordance with national legislation and practice, ***during*** the period in which the services are provided.

Amendment

(d) ***the possibility to request the designation of*** a contact person to negotiate, if necessary, on behalf of the employer with the relevant social partners in the ***host*** Member State, in accordance with national legislation and practice, ***within*** the period in which the services are provided.

Amendment 38
Proposal for a directive
Article 10 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that ***appropriate*** checks and monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC and to guarantee its proper application and enforcement. Such inspections shall be based primarily on a risk assessment to be drawn up regularly by the competent authorities. The risk assessment shall identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such risk assessment the realisation of big infrastructural projects,

Amendment

1. Member States shall ensure that ***effective*** checks and monitoring mechanisms are put in place and that effective and adequate inspections are carried out on their territory in order to control and monitor compliance with the provisions and rules laid down in Directive 96/71/EC ***and in this Directive*** and to guarantee its proper application and enforcement. Such inspections shall be based primarily on a risk assessment to be drawn up regularly by the competent authorities. The risk assessment shall identify the sectors of activity in which the employment of workers posted for the provision of services is concentrated on their territory. When making such risk assessment the realisation of big infrastructural projects, the special

the special problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers shall be taken into account.

problems and needs of specific sectors, the past record of infringement, as well as the vulnerability of certain groups of workers shall be taken into account.

Amendment 39
Proposal for a directive
Article 11 – paragraph 3

Text proposed by the Commission

Amendment

3. Member States shall ensure that trade unions and other third parties, such as associations, organisations and other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, on behalf or in support of the posted workers or their employer, with their approval in any judicial or administrative proceedings provided for with the objective of implementing this Directive and/or enforcing the obligations under this Directive.

deleted

Amendment 40
Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. Paragraphs 1 and 3 shall apply without prejudice to national rules on prescription deadlines or time limits for bringing similar actions and to national rules of procedure concerning representation and defence before the courts.

4. Paragraphs 1 and 3 shall apply without prejudice to national rules on prescription deadlines or time limits for bringing similar actions and to national rules of procedure concerning representation and defence before the courts. ***However, a minimum period of at least six months for filing a claim shall be provided for under national rules of procedure.***

Amendment 41

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1 – introductory part

Text proposed by the Commission

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States **shall ensure on a non-discriminatory basis with regard to the protection of the equivalent rights of employees of direct subcontractors established in its territory, that** the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

Amendment

1. With respect to the construction activities referred to in the Annex to Directive 96/71/EC, for all posting situations covered by Article 1(3) of Directive 96/71/EC, the Member States **are encouraged to introduce a system in which** the contractor of which the employer (service provider or temporary employment undertaking or placement agency) is a direct subcontractor can, in addition to or in place of the employer, be held liable by the posted worker and/or common funds or institutions of social partners for non-payment of the following:

Amendment 42

Proposal for a directive

Article 12 – paragraph 2

Text proposed by the Commission

2. Member States **shall** provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems shall be applied in a transparent, non discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with the applicable rules on posting of workers.

Amendment

2. Member States **may** provide that a contractor who has undertaken due diligence shall not be liable in accordance with paragraph 1. Such systems, **if introduced**, shall be applied in a transparent, non discriminatory and proportionate way. They may imply preventive measures taken by the contractor concerning proof provided by the subcontractor of the main working conditions applied to the posted workers as referred to in Article 3 (1) of Directive 96/71/EC, including pay slips and payment of wages, the respect of social security and/or taxation obligations in the Member State of establishment and compliance with

the applicable rules on posting of workers.

Amendment 43
Proposal for a directive
Article 13 – paragraph 1

Text proposed by the Commission

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this **Article** shall apply to the cross-border enforcement of administrative **fin***es and penalties* imposed for failure to comply with the applicable rules **in a Member State on a service provider established** in another Member State.

Amendment

1. Without prejudice to the means which are or may be provided for in Union legislation, the principles of mutual assistance and recognition as well as the measures and procedures provided for in this **Chapter** shall apply to the cross-border enforcement of **financial** administrative **penalties and/or fines** imposed **on a service provider established in a Member State**, for failure to comply with the applicable rules **on posting of workers** in another Member State.

Amendment 44
Proposal for a directive
Article 13 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine, **in so far as the relevant laws, regulations and administrative practices in force in the requested authority's Member State allow such action for similar claims or decisions**.

Amendment

2. The requesting authority may, in accordance with the laws, regulations and administrative practices in force in its own Member State, request the competent authority in another Member State to recover a penalty or fine or notify a decision imposing a penalty or a fine.

Amendment 45
Proposal for a directive
Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

Grounds for refusal

The competent authorities in the requested Member State may refuse a request for recovery or notification of a decision if the request is incomplete or manifestly does not correspond to the underlying decision or the costs required to recover the penalty/fine are disproportionate in relation to the amount to be recovered.

Amendment 46

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The requested authority shall remit to the requesting authority the amounts recovered with respect to the **fin**es or **penalties** referred to in this Chapter.

Amendment

1. The amounts recovered with respect to the **penalties and/or fines** referred to in this Chapter **shall remain at the requested authority**.

Amendment 47

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The requested authority may recover amounts from the natural or legal person concerned and retain any costs which it incurs in connection with recovery, in accordance with the laws, regulations and administrative procedures or practices of the requested Member State which apply to similar claims.

Amendment

deleted

Amendment 48
Proposal for a directive
Article 16 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

Where recovery creates a specific problem or concerns a very large amount, the requesting and requested authorities may agree reimbursement arrangements specific to the case(s) in question. *deleted*

Amendment 49
Proposal for a directive
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. Notwithstanding the paragraph 2, the competent authority in the requesting Member State shall remain liable to the requested Member State for any costs and any losses incurred as a result of actions held to be unfounded, in terms of the substance of the fine or penalty, the validity of the instrument issued by the requesting authority for the purpose of enforcement and/or any precautionary measures taken by the requesting authority. *deleted*

Amendment 50
Proposal for a directive
Article 16 a (new)

Text proposed by the Commission

Amendment

Article 16a

Review clause

Within three years after the date referred to in Article 20, the Commission shall, in consultation with the Member States, review the application of this Chapter in particular in light of the experiences with and effectiveness of the system of cross-

border enforcement of administrative penalties and/or fines with a view to proposing, where appropriate, any necessary amendments or modifications.

PROCEDURE

Title	Enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
References	COM(2012)0131 – C7-0086/2012 – 2012/0061(COD)
Committee responsible Date announced in plenary	EMPL 18.4.2012
Opinion by Date announced in plenary	JURI 26.10.2012
Rapporteur Date appointed	Evelyn Regner 26.11.2012
Discussed in committee	21.1.2013
Date adopted	25.4.2013
Result of final vote	+: 16 -: 7 0: 0
Members present for the final vote	Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Angelika Niebler, József Szájer
Substitute(s) under Rule 187(2) present for the final vote	Sylvie Guillaume, Jürgen Klute, Jacek Olgierd Kurski

PROCEDURE

Title	Enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services			
References	COM(2012)0131 – C7-0086/2012 – 2012/0061(COD)			
Date submitted to Parliament	21.3.2012			
Committee responsible Date announced in plenary	EMPL 18.4.2012			
Committee(s) asked for opinion(s) Date announced in plenary	IMCO 18.4.2012	JURI 26.10.2012		
Rapporteur(s) Date appointed	Danuta Jazłowiecka 16.2.2012			
Discussed in committee	28.11.2012	20.2.2013	29.5.2013	19.6.2013
Date adopted	20.6.2013			
Result of final vote	+: –: 0:	23 18 6		
Members present for the final vote	Regina Bastos, Edit Bauer, Heinz K. Becker, Jean-Luc Bennahmias, Phil Bennion, Pervenche Berès, Milan Cabrnoch, David Casa, Alejandro Cercas, Ole Christensen, Derek Roland Clark, Marije Cornelissen, Emer Costello, Frédéric Daerden, Karima Delli, Sari Essayah, Richard Falbr, Thomas Händel, Marian Harkin, Nadja Hirsch, Stephen Hughes, Danuta Jazłowiecka, Martin Kastler, Ádám Kósa, Jean Lambert, Verónica Lope Fontagné, Olle Ludvigsson, Thomas Mann, Elisabeth Morin-Chartier, Csaba Óry, Licia Ronzulli, Elisabeth Schroedter, Joanna Katarzyna Skrzydlewska, Jutta Steinruck, Traian Ungureanu, Inês Cristina Zuber			
Substitute(s) present for the final vote	Georges Bach, Jürgen Creutzmann, Ria Oomen-Ruijten, Evelyn Regner, Birgit Sippel, Sampo Terho			
Substitute(s) under Rule 187(2) present for the final vote	Ricardo Cortés Lastra, Jürgen Klute, Alexander Graf Lambsdorff, Marita Ulvskog, Jacek Włosowicz			