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Committee on Legal Affairs

2012/0061(COD)

15.5.2013

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

PA_Legam

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

Amendment

(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.

(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

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. ***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.

(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 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 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

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

deleted

**Amendment 12
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

(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.

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***

Amendment

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

in Chapter V;

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

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 Member State in the framework of transnational provision of services.** 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

Amendment

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

(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

Amendment

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

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

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.

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, ***including those laid down in collective agreements***, are made generally available ***free of charge and*** 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.

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,

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

if possible in summarised leaflet form indicating the main labour conditions applicable and upon requests in formats accessible to persons with disabilities;

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

Amendment

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.

deleted

**Amendment 33
Proposal for a directive
Article 6 – paragraph 7**

Text proposed by the Commission

Amendment

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.***

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

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 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.

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 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

(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 36
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) **the possibility to request the** 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 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**

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,

the period in which the services are provided.

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, 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

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 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

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,

Amendment

deleted

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.

Amendment 40
Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

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.

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. ***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

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

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:

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 **finances and penalties** imposed for failure to comply with the applicable rules **in a Member**

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 on a service provider established in another Member State.

*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

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.

Amendment

deleted

Amendment 49
Proposal for a directive
Article 16 – paragraph 3

Text proposed by the Commission

3. ***Notwithstanding the paragraph 2, the***

Amendment

deleted

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 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