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THE EUROPEAN PARLIAMENT

THE COUNCIL

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: **DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 96/71/EC concerning the posting of workers in the
framework of the provision of services**

DIRECTIVE (EU) 2018/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

**amending Directive 96/71/EC concerning the posting of workers
in the framework of the provision of services**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

¹ OJ C 75, 10.3.2017, p. 81.

² OJ C 185, 9.6.2017, p. 75.

³ Position of the European Parliament of 29 May 2018 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (1) The freedom of movement for workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation and enforcement of those principles are further developed by the Union and aim to guarantee a level playing field for businesses and respect for the rights of workers.
- (2) The freedom to provide services includes the right of undertakings to provide services in the territory of another Member State and to post their own workers temporarily to the territory of that Member State for that purpose. In accordance with Article 56 TFEU, restrictions on the freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.
- (3) According to Article 3 of the Treaty on European Union, the Union is to promote social justice and protection. According to Article 9 TFEU, in defining and implementing its policies and activities, the Union is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

- (4) More than twenty years after its adoption, it has become necessary to assess whether Directive 96/71/EC of the European Parliament and of the Council¹ still strikes the right balance between the need to promote the freedom to provide services and ensure a level playing field on the one hand and the need to protect the rights of posted workers on the other. To ensure that the rules are applied uniformly and to bring about genuine social convergence, alongside the revision of Directive 96/71/EC, priority should be given to the implementation and enforcement of Directive 2014/67/EU of the European Parliament and of the Council².
- (5) Sufficient and accurate statistical data in the area of posted workers is of utmost importance, in particular with regard to the number of posted workers in specific employment sectors and per Member State. The Member States and the Commission should collect and monitor such data.

¹ Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, 21.1.1997, p. 1).

² Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

- (6) The principle of equal treatment and the prohibition of any discrimination on grounds of nationality have been enshrined in Union law since the founding Treaties. The principle of equal pay has been implemented through secondary law not only between women and men, but also between workers with fixed term contracts and comparable permanent workers, between part-time and full-time workers and between temporary agency workers and comparable workers of the user undertaking. Those principles include the prohibition of any measures which directly or indirectly discriminate on grounds of nationality. In applying those principles, the relevant case-law of the Court of Justice of the European Union is to be taken into consideration.
- (7) The competent authorities and bodies, in accordance with national law and/or practice, should be able to verify whether the conditions of accommodation for posted workers directly or indirectly provided by the employer comply with the national rules in the Member State to whose territory the workers are posted (host Member State) that also apply to posted workers.
- (8) Posted workers who are temporarily sent from their regular place of work in the host Member State to another place of work, should receive at least the same allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons that apply to local workers in that Member State. The same should apply as regards the expenditure incurred by posted workers required to travel to and from their regular place of work in the host Member State. Double payment of travel, board and lodging expenses should be avoided.

- (9) Posting is temporary in nature. Posted workers usually return to the Member State from which they were posted after completion of the work for which they were posted. However, in view of the long duration of some postings and in acknowledgment of the link between the labour market of the host Member State and the workers posted for such long periods, where posting lasts for periods longer than 12 months host Member States should ensure that undertakings which post workers to their territory guarantee those workers an additional set of terms and conditions of employment that are mandatorily applicable to workers in the Member State where the work is carried out. That period should be extended where the service provider submits a motivated notification.
- (10) Ensuring greater protection for workers is necessary to safeguard the freedom to provide, in both the short and the long term, services on a fair basis, in particular by preventing abuse of the rights guaranteed by the Treaties. However, the rules ensuring such protection for workers cannot affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services, including in cases where a posting exceeds 12 or, where applicable, 18 months. Any provision applicable to posted workers in the context of a posting exceeding 12 or, where applicable, 18 months must thus be compatible with that freedom. In accordance with settled case law, restrictions to the freedom to provide services are permissible only if they are justified by overriding reasons in the public interest and if they are proportionate and necessary.

- (11) Where a posting exceeds 12 or, where applicable, 18 months, the additional set of terms and conditions of employment to be guaranteed by the undertaking posting workers to the territory of another Member State should also cover workers who are posted to replace other posted workers performing the same task at the same place, to ensure that such replacements are not used to circumvent the otherwise applicable rules.
- (12) Directive 2008/104/EC of the European Parliament and of the Council¹ gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. That principle should also apply to temporary agency workers posted to the territory of another Member State. Where that principle applies, the user undertaking should inform the temporary-work agency about the working conditions and remuneration it applies to its workers. Member States are able, under certain conditions to derogate from the principles of equal treatment and equal pay pursuant to Article 5(2) and (3) of Directive 2008/104/EC. Where such a derogation applies, the temporary-work agency has no need for the information about the user undertaking's working conditions and the information requirement should therefore not apply.

¹ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

- (13) Experience shows that workers who have been hired out by a temporary employment undertaking or placement agency to a user undertaking are sometimes sent to the territory of another Member State in the framework of the transnational provision of services. The protection of those workers should be ensured. Member States should ensure that the user undertaking informs the temporary employment undertaking or placement agency about the posted workers who are temporarily working in the territory of a Member State other than the Member State in which they normally work for the temporary employment undertaking or placement agency or for the user undertaking, in order to allow the employer to apply, as appropriate, the terms and conditions of employment that are more favourable to the posted worker.
- (14) This Directive, in the same way as Directive 96/71/EC, should not prejudice the application of Regulations (EC) No 883/2004¹ and No 987/2009² of the European Parliament and of the Council.
- (15) Because of the highly mobile nature of work in international road transport, the implementation of this Directive in that sector raises particular legal questions and difficulties, which are to be addressed, in the framework of the mobility package, through specific rules for road transport also reinforcing the combating of fraud and abuse.

¹ Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

² Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

- (16) In a truly integrated and competitive internal market, undertakings compete on the basis of factors such as productivity, efficiency, and the education and skill level of the labour force, as well as the quality of their goods and services and the degree of innovation thereof.
- (17) It is within Member States' competence to set rules on remuneration in accordance with national law and/or practice. The setting of wages is a matter for the Member States and the social partners alone. Particular care should be taken not to undermine national systems of wage setting or the freedom of the parties involved.
- (18) When comparing the remuneration paid to a posted worker and the remuneration due in accordance with the national law and/or practice of the host Member State, the gross amount of remuneration should be taken into account. The total gross amounts of remuneration should be compared, rather than the individual constituent elements of remuneration which are rendered mandatory as provided for by this Directive. Nevertheless, in order to ensure transparency and to assist the competent authorities and bodies in carrying out checks and controls it is necessary that the constituent elements of remuneration can be identified in enough detail according to the national law and/or practice of the Member State from which the worker was posted. Unless the allowances specific to the posting concern expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging, they should be considered to be part of the remuneration and should be taken into account for the purposes of comparing the total gross amounts of remuneration.

- (19) Allowances specific to posting often serve several purposes. Insofar as their purpose is the reimbursement of expenditure incurred on account of the posting, such as expenditure on travel, board and lodging, they should not be considered to be part of remuneration. It is for Member States, in accordance with their national law and/or practice, to set rules with regard to the reimbursement of such expenditure. The employer should reimburse posted workers for such expenditure in accordance with the national law and/or practice applicable to the employment relationship.
- (20) In view of the relevance of allowances specific to posting, uncertainty as to which elements of such allowances are allocated to the reimbursement of expenditure incurred on account of the posting should be avoided. The entire allowance should be considered to be paid in reimbursement of expenditure unless the terms and conditions of employment resulting from the law, regulation or administrative provision, collective agreements, arbitration awards or contractual agreements that apply to the employment relationship determine which elements of the allowance are allocated to the reimbursement of expenditure incurred on account of the posting and which are part of remuneration.

- (21) The constituent elements of remuneration and other terms and conditions of employment under national law or collective agreements as referred to in this Directive should be clear and transparent to all undertakings and posted workers. As transparency of, and access to, information are essential for legal certainty and law enforcement, it is, with regard to Article 5 of Directive 2014/67/EU, justified to extend Member States' obligation to publish the information on the terms and conditions of employment, on the single official national website, to the constituent elements of remuneration rendered mandatory as well as to the additional set of terms and conditions of employment applicable to postings exceeding 12 or, where applicable, 18 months under this Directive. Each Member State should ensure that the information provided on the single official national website is accurate and is updated on a regular basis. Any penalty imposed on an undertaking for non-compliance with the terms and conditions of employment to be ensured to posted workers should be proportionate, and the determination of the penalty should take into account, in particular, whether the information on the single official national website on the terms and conditions of employment was provided in accordance with Article 5 of Directive 2014/67/EU, respecting the autonomy of the social partners.
- (22) Directive 2014/67/EU lays down a number of provisions to ensure that rules on the posting of workers are enforced and are respected by all undertakings. Article 4 of that Directive provides for factual elements that may be taken into account in the overall assessment of the specific situations in order to identify genuine posting situations and to prevent abuse and circumvention of the rules.

- (23) Employers should, before the beginning of a posting, take appropriate measures to provide essential information to the worker about the terms and conditions of employment as regards the posting in accordance with Council Directive 91/533/EEC¹.
- (24) This Directive establishes a balanced framework with regard to the freedom to provide services and the protection of posted workers, which is non-discriminatory, transparent and proportionate while respecting the diversity of national industrial relations. This Directive does not prevent the application of terms and conditions of employment which are more favourable to posted workers.
- (25) With a view to tackling abuses in subcontracting situations and in order to protect the rights of posted workers, Member States should take appropriate measures, in accordance with Article 12 of Directive 2014/67/EU, to ensure subcontracting liability.
- (26) In order to ensure that Directive 96/71/EC is correctly applied, coordination between the Member States' competent authorities and/or bodies and cooperation at Union level on combating fraud relating to the posting of workers should be strengthened.

¹ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.1991, p. 32).

- (27) In the context of combating fraud related to the posting of workers, the European Platform to enhance cooperation in tackling undeclared work (the ‘Platform’), established by Decision (EU) 2016/344 of the European Parliament and the Council¹, should, in accordance with its mandate, participate in the monitoring and the evaluation of cases of fraud, improve the implementation and efficiency of administrative cooperation between Member States, develop alert mechanisms and bring assistance and support to reinforced administrative cooperation and information exchanges between the competent authorities or bodies. In doing so, the Platform is to work in close cooperation with the Committee of Experts on Posting of Workers, established by Commission Decision 2009/17/EC².
- (28) The transnational nature of certain situations of fraud or abuses related to the posting of workers justifies concrete measures aiming to reinforce the transnational dimension of inspections, inquiries and exchanges of information between the competent authorities or bodies of the Member States concerned. To that end, in the framework of administrative cooperation provided for in Directives 96/71/EC and 2014/67/EU, in particular Article 7(4) of Directive 2014/67/EU, the competent authorities or bodies should have the necessary means for alerting on such situations and exchanging information aiming to prevent and combat fraud and abuses.

¹ Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.3.2016, p. 12).

² Commission Decision 2009/17/EC of 19 December 2008 setting up the Committee of Experts on Posting of Workers (OJ L 8, 13.1.2009, p. 26).

- (29) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (30) Directive 96/71/EC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹ OJ C 369, 17.12.2011, p. 14.

Article 1
Amendments to Directive 96/71/EC

Directive 96/71/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) the title is replaced by ‘Subject-matter and scope’;

(b) the following paragraphs are inserted:

‘(-1) This Directive shall ensure the protection of posted workers during their posting in relation to the freedom to provide services, by laying down mandatory provisions regarding working conditions and the protection of workers’ health and safety that must be respected.

(-1a) This Directive shall not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor does it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.’;

(c) paragraph 3 is amended as follows:

(i) point (c) is replaced by the following:

‘(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.’;

(ii) the following subparagraphs are added:

‘Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking as referred to in point (c) is to carry out work in the framework of the transnational provision of services within the meaning of point (a), (b) or (c) by the user undertaking in the territory of a Member State other than where the worker normally works for the temporary employment undertaking or placement agency, or for the user undertaking, the worker shall be considered to be posted to the territory of that Member State by the temporary employment undertaking or placement agency with which the worker is in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be an undertaking as referred to in paragraph 1 and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU of the European Parliament and of the Council*.

The user undertaking shall inform the temporary employment undertaking or placement agency which hired out the worker in due time before commencement of the work referred to in the second subparagraph.

* Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (“the IMI Regulation”) (OJ L 159, 28.5.2014, p. 11).’;

(2) Article 3 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out:

– by law, regulation or administrative provision, and/or

- by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:
 - (a) maximum work periods and minimum rest periods;
 - (b) minimum paid annual leave;
 - (c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
 - (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
 - (e) health, safety and hygiene at work;
 - (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
 - (g) equality of treatment between men and women and other provisions on non-discrimination;

- (h) the conditions of workers' accommodation where provided by the employer to workers away from their regular place of work;
- (i) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

Point (i) shall apply exclusively to travel, board and lodging expenditure incurred by posted workers where they are required to travel to and from their regular place of work in the Member State to whose territory they are posted, or where they are temporarily sent by their employer from that regular place of work to another place of work.

For the purposes of this Directive, the concept of remuneration shall be determined by the national law and/or practice of the Member State to whose territory the worker is posted and means all the constituent elements of remuneration rendered mandatory by national law, regulation or administrative provision, or by collective agreements or arbitration awards which, in that Member State, have been declared universally applicable or otherwise apply in accordance with paragraph 8.

Without prejudice to Article 5 of Directive 2014/67/EU, Member States shall publish the information on the terms and conditions of employment, in accordance with national law and/or practice, without undue delay and in a transparent manner, on the single official national website referred to in that Article, including the constituent elements of remuneration as referred to in the third subparagraph of this paragraph and all the terms and conditions of employment in accordance with paragraph 1a of this Article.

Member States shall ensure that the information provided on the single official national website is accurate and up to date. The Commission shall publish on its website the addresses of the single official national websites.

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

(b) the following paragraphs are inserted:

‘1a. Where the effective duration of a posting exceeds 12 months, Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory, in addition to the terms and conditions of employment referred to in paragraph 1 of this Article, all the applicable terms and conditions of employment which are laid down in the Member State where the work is carried out:

- by law, regulation or administrative provision, and/or
- by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8.

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

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

Where the service provider submits a motivated notification, the Member State where the service is provided shall extend the period referred to in the first subparagraph to 18 months.

Where an undertaking as referred to in Article 1(1) replaces a posted worker by another posted worker performing the same task at the same place, the duration of the posting shall, for the purposes of this paragraph, be the cumulative duration of the posting periods of the individual posted workers concerned.

The concept of ‘the same task at the same place’ referred to in the fourth subparagraph of this paragraph shall be determined taking into consideration *inter alia* the nature of the service to be provided, the work to be performed and the address(es) of the workplace.

- 1b. Member States shall provide that the undertakings referred to in point (c) of Article 1(3) guarantee posted workers the terms and conditions of employment which apply pursuant to Article 5 of Directive 2008/104/EC of the European Parliament and of the Council* to temporary agency workers hired-out by temporary-work agencies established in the Member State where the work is carried out.

The user undertaking shall inform the undertakings referred to in point (c) of Article 1(3) of the terms and conditions of employment that it applies regarding the working conditions and remuneration to the extent covered by the first subparagraph of this paragraph.

* Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).’;

(c) paragraph 7 is replaced by the following:

‘7. Paragraphs 1 to 6 shall not prevent the application of terms and conditions of employment which are more favourable to workers.

Allowances specific to the posting shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. The employer shall, without prejudice to point (h) of the first subparagraph of paragraph 1, reimburse the posted worker for such expenditure in accordance with the national law and/or practice applicable to the employment relationship.

Where the terms and conditions of employment applicable to the employment relationship do not determine whether and, if so, which elements of the allowance specific to the posting are paid in reimbursement of expenditure actually incurred on account of the posting or which are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure.’;

(d) in paragraph 8, the second and third subparagraphs are replaced by the following:

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

- collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or
- collective agreements which have been concluded by the most representative employers’ and labour organizations at national level and which are applied throughout national territory,

provided that their application to undertakings as referred to in Article 1(1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article and, where applicable, with regard to the terms and conditions of employment to be guaranteed posted workers in accordance with paragraph 1a of this Article, between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.

Equality of treatment, within the meaning of this Article, shall be deemed to exist where national undertakings in a similar position:

- are subject, in the place in question or in the sector concerned, to the same obligations as undertakings as referred to in Article 1(1) as regards the matters listed in the first subparagraph of paragraph 1 of this Article and, where applicable, as regards the terms and conditions of employment to be guaranteed posted workers in accordance with paragraph 1a of this Article, and
- are required to fulfil such obligations with the same effects.’;

(e) paragraphs 9 and 10 are replaced by the following:

‘9. Member States may require undertakings as referred to in Article 1(1) to guarantee workers referred to in point (c) of Article 1(3), in addition to the terms and conditions of employment referred to in paragraph 1b of this Article, other terms and conditions that apply to temporary agency workers in the Member State where the work is carried out.

10. This Directive shall not preclude the application by Member States, in compliance with the Treaties, to national undertakings and to the undertakings of other Member States, on the basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions.’;

(3) in Article 4(2), the first subparagraph is replaced by the following:

‘2. Member States shall make provision for cooperation between the competent authorities or bodies, including public authorities, which, in accordance with national law, are responsible for monitoring the terms and conditions of employment referred to in Article 3, including at Union level. Such cooperation shall in particular consist in replying to reasoned requests from those authorities or bodies for information on the transnational hiring-out of workers, and in tackling manifest abuses or possible cases of unlawful activities, such as transnational cases of undeclared work and bogus self-employment linked to the posting of workers. Where the competent authority or body in the Member State from which the worker is posted does not possess the information requested by the competent authority or body of the Member State to whose territory the worker is posted, it shall seek to obtain that information from other authorities or bodies in that Member State. In the event of persistent delays in the provision of such information to the Member State to whose territory the worker is posted, the Commission shall be informed and shall take appropriate measures.’;

(4) Article 5 is replaced by the following:

‘Article 5

Monitoring, control and enforcement

The Member State to whose territory the worker is posted and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and in Directive 2014/67/EU and shall take appropriate measures in the event of failure to comply with this Directive.

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

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

Where, following an overall assessment made pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of this Directive, that Member State shall ensure that the worker benefits from relevant law and practice.

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

- (5) the introductory wording of the Annex is replaced by the following:

‘The activities referred to in Article 3(2) include all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:’.

Article 2

Review

1. The Commission shall review the application and implementation of this Directive. By ... [five years after the date of entry into force of this amending Directive], the Commission shall submit a report on the application and implementation of this Directive to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments to this Directive and to Directive 96/71/EC.
2. The report referred to in paragraph 1 shall include an assessment of whether further measures to ensure a level playing field and protect workers are required:
 - (a) in the case of subcontracting;

- (b) in the light of Article 3(3) of this Directive, taking into account the developments concerning the legislative act amending Directive 2006/22/EC of the European Parliament and of the Council¹ as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

Article 3

Transposition and application

1. Member States shall adopt and publish, by ... [two years after the date of entry into force of this amending Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from ... [two years after the date of entry into force of this amending Directive]. Until that date, Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

¹ Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC (OJ L 102, 11.4.2006, p. 35).

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.
3. This Directive shall apply to the road transport sector from the date of application of a legislative act amending Directive 2006/22/EC as regards enforcement requirements and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EU for posting drivers in the road transport sector.

Article 4

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
