Posting of workers in the framework of the provision of services

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The Committee on Employment, Social Affairs and Employment adopted the joint report by Elisabeth MORIN-CHARTIER (EPP, FR) and Agnes JONGERIUS (S&D, NL) on the proposal for a directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows:

Need to revise the Directive: the amended text stressed that, in the light of proven cases of fraud, it is necessary to revise the Posting of Workers Directive in order to assess whether it still strikes the right balance between the need to promote the freedom to provide services and ensure a fair business climate and a level playing field for workers and undertakings operating in the internal market, and the need to protect the rights of posted workers. There is an urgent need to clarify the rules, to make sure that they are **applied uniformly and to bring about genuine upward social convergence**.

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.

Postment exceeding 24 months: Members deemed it necessary to stipulate that the posting is of a **temporary nature**. Therefore, all the applicable terms and conditions of employment of the Member State where the worker is posted should be applicable after 24 months, except the conditions relating to the conclusion and termination of the employment contract. This rule does not affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services in circumstances also where the posting exceeds 24 months. For postings that require a longer duration, it shall be possible to grant **extensions** to undertakings based on a reasoned request made to the competent authority of the Member State where the worker is posted.

Conditions of work and employment: undertakings shall ensure that workers posted to their territory enjoy **conditions of employment equal** to those laid down in the Member State in whose territory the work is performed with regard to:

- maximum work periods and minimum rest periods, including specific measures regarding night work, work performed during weekends and public holidays and work performed in shifts;
- remuneration, including overtime rates;
- the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work;
- 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;
- equality of treatment between men and women and other provisions of non-discrimination;
- the conditions of workers' accommodation;
- allowance rates to cover travel, board and lodging expenses for workers away from their habitual place of work.

In order to ensure transparency and access to information, **Member States shall publish the constituent elements of remuneration**, as defined by law and applicable collective agreements, on a dedicated single website.

Double payments of equal or similar nature shall be avoided. The worker shall be subject to the terms and conditions that are more favourable to him or her.

Temporary agency work and subcontracting: with a view to tackling abuses in subcontracting situations and in order to protect posted workers' rights, Member States should ensure, in accordance with national law and practice that posted workers receive all entitlements.

Member States shall ensure **equal treatment between posted temporary agency workers and domestically employed temporary agency workers**.

Information co-operation: this co-operation shall also consist of combating manifest abuses and possible cases of unlawful activities, such as transnational cases of undeclared work and bogus self-employment.

Measures in the event of non-compliance with the Directive: the host Member States and the Member States of establishment shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and shall take appropriate measures in the event of failure to comply with this Directive. The sanctions provided for shall be effective, proportionate and dissuasive.

Member States shall ensure that in the case of non-genuine posting, irrespective of which law applies to the employment relationship, the terms and conditions of the Member State where the service is provided apply.

Road transport: a recital stated that the implementation of the Posting of Workers Directive in this sector raises particular legal questions and difficulties which are addressed in the Commission's proposal for a directive 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, which is intended to provide for sector-specific legislation.