Posting of workers in the framework of the provision of services

2016/0070(COD) - 29/05/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 456 votes to 147, with 49 abstentions, a legislative resolution 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 of 16 December 1996 concerning the posting of workers in the framework of the provision of services (posted workers).

The revised Directive seeks to **facilitate the transnational provision of services while ensuring fair competition and to ensure the protection of posted workers** during their posting assignment by means of mandatory provisions on working conditions and the protection of workers' health and safety, which should be respected.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Working and employment conditions: undertakings shall guarantee workers who are posted to their territory on a **basis of equality of treatment** the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

- maximum work periods and minimum rest periods;
- minimum paid annual leave;
- **remuneration**, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- 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 on non-discrimination;
- the **conditions of workers' accommodation**
- when provided by the employer to workers away from their regular place of work;
- allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons.

In order to ensure **transparency** and access to information, Member States shall publish the elements of remuneration and all working and employment conditions on a single dedicated website.
Remuneration: 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 elements of remuneration **rendered mandatory** by national law, regulation or administrative provision, collective agreements or arbitration awards which in that Member State have been declared universally applicable or otherwise apply.
Allowances specific to the posting should be considered to be part of the remuneration. Such allowances should therefore be taken into account for the comparison, unless they concern expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.

Duration of posting: when the effective **duration of a posting exceeds 12 months** (with a possibility for extension of 6 months on the basis of a motivated notification of a service provider), Member States shall

ensure, irrespective of which law applies to the employment relationship, that the undertakings guarantee workers posted to their territory on a basis of equality of treatment, in addition to the terms and conditions of employment, **all the applicable terms and conditions of employment** which are laid down, in the Member State where the work is carried out.

In addition to the legal provisions, 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.

Cooperation on fraud and abuse: Member States shall make provision for cooperation between the public authorities which are responsible for monitoring the terms and conditions of employment. Such cooperation shall in particular consist in replying to reasoned requests from those authorities 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.

International road transport: the provisions of the revised Directive shall apply to the road transport sector from the date of application of the forthcoming sectoral legislation.