

Freedom to supply services and workers' rights: posting of workers

1991/0346(COD) - 03/06/1996 - Council position

The Council Common Position has been considerably influenced by the amendments adopted by Parliament at first reading and incorporates the main elements of the list of terms and conditions of employment applicable to workers posted in the framework of the provision of services. This list, which already featured in the Commission amended proposal, includes: - minimum rates of pay; - minimum paid holidays; - maximum hours of work and minimum rest periods; - conditions of hiring out of workers, in particular by temporary employment businesses; - health, safety and hygiene at work; - protective measures with regard to the working conditions of pregnant women or women who have recently given birth, children and young people; - equality of treatment between men and women. The Common Position introduces the possibility of allowing the Member States, within certain limits, to expand the list of terms and conditions of work (principle of the non-exhaustive list), in the case of public policy provisions. The Council also goes beyond the Commission and Parliament position by adding new provisions on the following points: - equal treatment between undertakings established in a Member State and in a third country; - non-application of the Directive to merchant navy undertakings as regards seagoing personnel; - the concept of a 'posted worker', the definition being that which applies in the law of the Member State to whose territory the worker is posted; - with regard to the possibility of waiving the right to minimum pay rates and/or minimum paid annual holidays, three derogations are provided: (1) when the length of the posting does not exceed one month, Member States may, after consulting employers and labour, in accordance with the traditions, decide not to impose a minimum rate of pay; (2) in the context of a contract for supply of goods (apart from building services), application of the provisions on a minimum salary and minimum paid annual holidays may be suspended if the workers (not temporary workers) are engaged in initial assembly and/or first installation of goods if the period of posting does not exceed eight days; (3) in general, the provisions on minimum paid holidays and the minimum salary may be suspended if the work to be done is not significant. The Directive may not oblige Member States who do not or do not wish to do so to apply a regulated minimum wage. However, all other national provisions must be applied to posted workers, respecting the principle of non-discrimination and the standards set by the Directive (eg safety at work, working hours etc.). The Common Position also specifies the following points: - the worker must be posted in the context of a transnational supply of services, which implies the existence of a contract concluded between the undertaking making the posting and the party for whom the services are intended; - in the building sector, provisions under collective agreements or arbitration awards will be applicable in the event of posting, to the extent that they have been declared universally applicable (Member States may include other sectors); - sectoral social institutions (e.g. building sector holiday funds) will be authorized to receive contributions and pay out benefits; they will be able to uphold their rights in the national courts; - posted workers will also have access to the relevant national jurisdiction for the place of work, during or after their period of posting. The Council has put back the proposed date for implementing the Directive from two to three years after adoption.