Posting of workers in the framework of the provision of services

2016/0070(COD) - 08/03/2016 - Legislative proposal

PURPOSE: to 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 to address unfair practices.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: posting of workers supports the cross-border provision of services in the Internal Market, particularly in construction and some personal and business services sectors. Altogether, in 2014, there were over 1.9 million postings in the EU (representing 0.7% of a total EU labour force), up by 10.3% as compared to 2013 and by 44.4% with respect to 2010. The upward trend followed some stagnation during the years 2009 and 2010.

Directive 96/71/EC sets the EU regulatory framework to establish a balance between the objectives of promoting and facilitating the cross-border provision of services, providing protection to posted workers and ensuring a level-playing field between foreign and local competitors. It stipulates a 'core set' of terms and conditions of employment of the host Member State which are mandatory to be applied by foreign service providers, which include:

- maximum work periods and minimum rest periods;
- the minimum rates of pay, including overtime rates;
- minimum paid annual holidays;
- the conditions of hiring-out of workers;
- health, safety and hygiene at work;
- protective measures in favour of pregnant women, mothers who have recently given birth, children, and young people;
- equality of treatment between genders.

The 2014 Enforcement Directive has provided for new and strengthened instruments to fight and sanction circumventions, fraud and abuses. It addresses problems caused by so-called "letter-box companies" and increases the Member States ability to monitor working conditions and enforce the rules applicable. It also lays down provisions to improve administrative cooperation between national authorities in charge of posting. Moreover, Member States have until 18 June 2016 to transpose the Directive.

The current initiative does not address any issue touched upon by the Enforcement Directive. Rather, it focuses on issues which were not addressed by it and pertain to the EU regulatory framework set by the original 1996 Directive.

IMPACT ASSESSMENT: this proposal is accompanied by an Impact Assessment Report which analysis the phenomenon of posting, describes the problem with the current legal framework, envisages different policy options to address it and finally assesses the social and economic impact of the policy options.

CONTENT: the proposal of targeted amendments to the Posting of Workers Directive integrates and complements the provisions set in the Enforcement Directive, which is to be transposed by 18 June 2016. It seeks to ensure fair wage conditions to posted workers and a level playing field between posting and local companies in the host country.

The new text introduces three main changes:

Posting exceeds twenty-four months: the proposal provides the following:

when it is anticipated that the duration of posting will be superior to 24 months or when the effective duration of posting exceeds 24 months, the host Member State is deemed to be the country in which the work is habitually carried out;

in application of the rules of the Rome I Regulation, the labour law of the host Member Sate will therefore apply to the employment contract of such posted workers if no other choice of law was made by the parties. In case a different choice was made, it cannot, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law of the host Member State;

in case of replacement of posted workers performing the same task at the same place, the cumulative duration of the posting periods of the workers concerned shall be taken into account, with regard to workers that are posted for an effective duration of at least six months.

Work and employment conditions, including in situations of sub-contracting: the proposed revision:

makes the collective agreements universally applicable to posted workers in all sectors of the economy, irrespective of whether the activities are referred to in the annex to the Directive 96/71/EC (which currently is the case only for the construction sector);

implies that the rules on remuneration applicable to local workers, stemming from the law or collective agreements universally applicable, are also applicable to posted workers;

imposes on Member States an obligation to publish in the website the constituent elements of remuneration applicable to posted workers;

gives the faculty to Member States to oblige undertakings to subcontract only to undertakings that grant workers certain conditions on remuneration applicable to the contractor, including those resulting from non-universally applicable collective agreements. This is only possible on a proportionate and non-discriminatory basis and would thus in particular require that the same obligations be imposed on all national sub-contractors.

Rules for temporary agency workers: a new provision sets the conditions applicable to the workers hired out by a temporary agency established in a Member State other than the Member State of establishment of the user undertaking.

This new measure specifies that the conditions to be applied to cross-border agencies hiring out workers must be those that are applied to national agencies hiring out workers. Contrary to the current Directive, this is now a legal obligation imposed on Member States.