

**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 (COM(2016)128 final)**

FINAL DOCUMENT APPROVED BY THE COMMITTEE

The Standing Committee on Public and Private Employment of Italy's Chamber of Deputies,

Having examined pursuant to Rule of Procedure 127.1 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 (COM(2016)128 final);

Considering that the Proposal aims to resolve a number of the shortcomings that emerged from the implementation of Directive 96/71/EC, one of which is a pay gap that may exist between posted workers and local workers to the benefit of undertakings posting employees, and aims also to tighten the rules on the cross-border provision of temporary workers;

Aware that full agreement has not been reached among Member States on the best ways of addressing the shortcomings mentioned above, nor even on the need for the adoption of a specific measure: whereas some Member States are convinced of the need for prompt action to ensure equal treatment between posted workers and the workers of the host country, others would prefer to defer any action in this area, arguing that the more useful course is to continue assessing the effects of the regulations that are already in force;

Welcoming the position of the Italian Government as expressed in its Planning Report on Italy's participation in the European Union for 2016 (Doc. LXXXVII-bis, No. 4), in which it agrees to take part in the revision of Directive 96/71/EC with the aim of preventing "social dumping";

Considering that the report that the Government submitted to the Chamber of Deputies (in accordance with article 6.4 of Law 234 of 24 December 2012) is on the whole favourable to the proposed Directive, even though it does make several critical observations concerning its wording, and considering that the evident aim of the Proposal is to reinforce the rules against unfair work practices and promote the principle of the equal treatment of workers;

Taking note of the approval in 2014 of Directive 2014/67/EU (the so-called "Enforcement Directive"), the purpose of which was to strengthen the effectiveness of the rules on the posting of workers through measures to combat

fraud, reduce opportunities for regulatory non-compliance and enhance the exchange of information between Member States;

Noting that this Committee is currently examining a draft legislative decree (Document no. 296) for the transposition of the aforementioned Directive into law, that the draft legislative decree is the result of a delegation of legislative powers under Law 114 of 9 July 2015, and must be issued by 18 June 2016;

Believing that the transposition into national law of Directive 2014/67/EU and the adoption of the Proposal for a Directive can make a synergistic contribution to legislative efforts to curtail the abuse by undertakings of their right to post workers to other Member States;

Drawing attention to the findings of the European Commission's impact assessment report appended to the Proposal for a Directive, which suggest that the phenomenon of the posting of workers is continuing to grow;

Observing that the diminution of the rights of posted workers not only weakens the domestic protections in place in the host Member State, but also confers an unfair competitive advantage on the undertaking that is doing the posting, with distorting effects on the European single market;

Considering that article 1.1 of the Proposal would introduce a new article, 2a, into Directive 96/71/EC to prevent undertakings from exploiting their right to post workers to gain unfair competitive advantage by specifying that if a posting is longer than twenty-four months, the Member State in whose territory the worker is posted shall be deemed to be the country in which the work is habitually carried out. To prevent the circumvention of this new rule, article 2a further clarifies that if a posted worker is replaced by another carrying out the same task, the calculation of the length of the posting must take into account the cumulative duration of the posting of all workers whose posting lasted at least six months;

Noting that the above-mentioned duration is longer than the length of an average posting, which (as also indicated in the documentation attached to the Proposal for a Directive) is about four months;

Welcoming that letter a) of paragraph 2 of article 1 of the Proposal for a Directive provides for the extension of the applicability of collective agreements to include posted workers in all economic sectors rather than just in the construction industry as is now the case, including legislative and regulatory provisions as well as contractual arrangements determining the remuneration rates for local workers;

Considering that, as a consequence of this new provision, posted workers who were eligible for only minimum rates of remuneration will become entitled to guarantees on remuneration packages that also include additional items, such as bonuses or benefits, where applicable;

Noting that, as the Government has also highlighted in the report it submitted pursuant to article 6.4 of Law 234 of 24 December 2012, the rules on remuneration could be hard to apply because in Italy there is no single definition of remuneration that may be used as a benchmark against which to calculate the full and effective equality of treatment for posted workers in respect of all the

elements referred to in the proposed Directive, but reference is made only to wages determined by collective bargaining;

Observing, moreover, that there are difficulties in the definition of minimum rates of pay, which, in the absence of statutorily valid collective agreements, are determined on the basis of judicial interpretations that refer to article 36 of the Constitution;

Noting that letter b) of paragraph 2 of article 1 of the Proposal accords Member States the power to require undertakings, on a non-discriminatory and proportionate basis, to subcontract only to other undertakings that guarantee workers posted to their territory certain terms and conditions relating to work and employment, including those deriving from collective agreements that are not generally applicable, as long as the implicit obligations are applicable to all domestic subcontractors;

Observing that, as is also evidenced in the Government report submitted pursuant to article 6.4 of Law 234 of 24 December 2012, Italian national law lacks any provisions obliging subcontractors to fulfil certain conditions relating to work or employment;

Recognising that letters c) and d) of paragraph 2 of article 1 would make it mandatory rather than merely optional (as now) for Member States to ensure that cross-border undertakings offering temporary employment guarantee their posted workers the same terms and conditions used by the national temporary employment agencies for workers employed in the national territory;

Considering that the principle of equal treatment is already fully assimilated into our legal system and forms part of the regulations for national and international posting and service provision, as set out in articles 3 and 4 of Legislative Decree 72 of 25 February 2000 and in article 35 of Legislative Decree 81 of 15 June 2015;

Taking note that the Proposal for a Directive contains no detailed provisions relating to cross-border services in the road transport sector, which is one of the areas in which the current legislation has been shown to be inadequate;

Taking account also of the opinion of the Standing Committee on European Union Policies adopted on 11 May 2016, which, along with this final document, shall be sent to the European institutions as part of the so-called political dialogue;

expresses a

FAVOURABLE OPINION

with the following remarks:

At the EU level:

1) We welcome that the report appended to the Proposal for a Directive expressly asserts the principle that the same work at the same place should be remunerated in the same manner, and welcome the consequent decision to revise

the Directive with specific reference to the posting of workers so as to counter unfair practices;

2) A smaller time duration for postings than provided for in article 1 paragraph 1 of the Proposal for a Directive is required, because the twenty-four-month limit does not seem adequate to the aim of limiting the scope of undertakings to circumvent European Union laws;

3) With reference to the provisions of article 1 paragraph 1, it would be opportune to add a specification to the effect that even below the limit indicated in the new article 2a of Directive 96/71/EC, it should be possible to ascertain the temporary nature of a posting with reference to the various assessment criteria set out in article 4 paragraph 3 of Directive 2014/67/EU;

4) Also in relation to the proposed reduction of the limit of twenty-four months provided for by the new article 2a of Directive 96/71/EC, consideration should be given to reducing the period of six months referred to in paragraph 2 of the same article so as to discourage non-compliance ;

5) A definite course of action needs to be taken for the adoption in the near future of specific provisions for road transport;

b) At the national level:

1) Given that article 1 paragraph 2 of the Proposal for a Directive refers to all the components of remuneration that are mandatory under national laws, regulations or administrative rules, it is therefore necessary, at a national level, to identify which of these components are to be considered effectively mandatory, to which end reference should be made to collective labour agreements, as defined in article 51 of Legislative Decree 81 of 15 June 2015;

2) Every precaution should be taken to ensure that the posting of workers is done on appropriate grounds, which will entail strengthening the effectiveness of the national rules that are already in force by introducing the necessary administrative arrangements to facilitate checks and inspections, which would include preparing Italian-language copies of the pay slips of foreign workers posted to Italy;

3) Consideration should be given to whether additional legislative action is needed, particularly the revision of Legislative Decree 276 of 10 September 2003, which regulates the system for the authorisation of employment agencies, so that agencies that are licensed to operate in various European Union states must report first to the relevant authorities before they begin providing cross-border workers.