



Council of the  
European Union

Brussels, 9 March 2018  
(OR. en)

---

---

**Interinstitutional File:  
2016/0070 (COD)**

---

---

6783/18  
ADD 1

**LIMITE**

**SOC 118  
EMPL 88  
COMPET 131  
MI 139  
CODEC 311  
JUSTCIV 51**

**NOTE**

---

From:	Presidency
To:	Permanent Representatives Committee
Subject:	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

---

Delegations will find attached a four-column-table reflecting the state-of-play of the interinstitutional negotiations on the above-mentioned file.

*Revision of the Posting of Workers Directive*

Comparative table after the 7th trilogue of 28/02/2018

COM Proposal	EP AMs	Council General Approach	Comments	
Proposal for a	=	=	Proposal for a	1
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	=	=	DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	2
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	=	amending Directive 96/71/EC [...] concerning the posting of workers in the framework of the provision of services	<i><u>NOTE</u>: CONS GA are only legal-linguistic modifications.</i>	3
(Text with EEA relevance)	=	=	(Text with EEA relevance)	4
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	=	=	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	5

COM Proposal	EP AMs	Council General Approach	Comments	
Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1) and 62 thereof,	<b>Amendment 1</b> Having regard to the Treaty on the Functioning of the European Union, and in particular <i>Article 53(1), Article 62, and Article 153(1)(a) and (b) in conjunction with Article 153(2)</i> thereof,	=	Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1) and 62 thereof,  NOTE: SEE ROW 47 bis and 47 ter	6
Having regard to the proposal from the European Commission,	=	=	Having regard to the proposal from the European Commission,	7
After transmission of the draft legislative act to the national parliaments,	=	=	After transmission of the draft legislative act to the national parliaments,	8
Having regard to the opinion of the European Economic and Social Committee,	=	=	Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,	9
Acting in accordance with the ordinary legislative procedure,	=	=	Acting in accordance with the ordinary legislative procedure,	10
Whereas:	=	=	Whereas:	11

<sup>1</sup> OJ C , , p . .

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 1</b>				
<p>(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.</p>	<p><b>Amendment 2</b></p> <p>(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market in the Union enshrined in the Treaty on the Functioning of the European Union (TFEU) <b>and essential to a properly functioning internal market.</b> The implementation <b>and enforcement</b> of those principles is further developed by the Union aimed at guaranteeing a level playing field for businesses, <b>combating the circumvention of rules, respecting workers' rights, improving working conditions and enhancing social cohesion among Member States.</b></p>	<p>(1) The free movement of workers, freedom of establishment and freedom to provide services are fundamental principles of the internal market [...] enshrined in the Treaty on the Functioning of the European Union (TFEU). The implementation of those principles is further developed by the Union <b>and is</b> aimed at guaranteeing a level playing field for businesses and respect for the rights of workers.</p>	<p><i>NOTE: CONS GA are only legal-linguistic modifications.</i></p>	12

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 2</b>				
<p>(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there.</p>	<p><b>Amendment 3</b></p> <p>(2) The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide those services there. <i><b>In accordance with Article 56 TFEU, restrictions on freedom to provide services within the Union are to be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.</b></i></p>	<p>(2)The freedom to provide services includes the right of undertakings to provide services in another Member State, to which they may post their own workers temporarily in order to provide [...] services there.</p>	<p><i><u>NOTE</u>: CONS GA are only legal-linguistic modifications.</i></p>	13

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 3</b>				
<p>(3) According to Article 3 TEU, the Union shall promote social justice and protection. Article 9 TFEU gives the Union the task to promote a high level of employment, to guarantee an adequate social protection and to combat social exclusion.</p>	<p><b>Amendment 4</b></p> <p>(3) According to Article 3 TEU, the Union shall promote social justice and protection. Article 9 TFEU gives the Union the task to promote a high level of employment, to guarantee adequate social protection and to combat social exclusion <i>as well as to promote a high level of education, training and protection of human health.</i></p>	<p>(3) According to Article 3 <b>of the Treaty on European Union</b>, the Union <b>is to</b> promote social justice and protection. <b>According to Article 9 of the TFEU, [...] the Union is to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection and the fight against social exclusion in defining and implementing its policies and activities.</b></p>	<p><i>NOTE: CONS GA are only legal-linguistic modifications.</i></p>	14

COM Proposal	EP AMs	Council General Approach	Comments	
	Recital 3a(new)			
	<p><b>Amendment 5</b></p> <p><i>(3a) In order to ensure that this Directive is correctly applied, coordination between the Member States' labour inspection services and cooperation at European level on combating fraud relating to the posting of workers should be strengthened, and checks should be carried out to ensure that social contributions for posted workers are paid regularly to the managing authority of the Member State of origin.</i></p>		<p><b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p><i>In order to ensure that this Directive is correctly applied, coordination between the Member States' competent authorities and/or bodies and cooperation at European level on combating fraud relating to the posting of workers should be strengthened.</i></p>	15

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 4</b>				
<p>(4) Almost twenty years after its adoption, it is necessary to assess whether the Posting of Workers Directive still strikes the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers.</p>	<p><b>Amendment 6</b></p> <p>(4) Almost twenty years after its adoption, <i>and in the light of proven cases of fraud</i>, it is necessary to <i>revise</i> the Posting of Workers Directive, <i>assess whether it</i> still strikes the right balance between the need to promote the freedom to provide services and <i>ensure a fair business climate and a level playing field for workers and undertakings operating in the internal market</i>, and the need to protect the rights of posted workers. <i>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. Alongside the revision of Directive 96/71/EC, priority should also be given to the implementation and enforcement of Directive</i></p>	<p>(4) Almost twenty years after its adoption, it <b>has become</b> necessary to assess whether <b>Directive 96/71/EC of the European Parliament and of the Council</b><sup>3</sup> still strikes the right balance between the need to promote the freedom to provide services and the need to protect the rights of posted workers.</p>	<p><i>NOTE: CONS GA are only legal-linguistic modifications.</i></p>	16



COM Proposal	EP AMs	Council General Approach	Comments	
	<i>2014/67/EU of the European Parliament and of the Council<sup>2</sup>.</i>			
	Recital 4a (new)			
	<p><b>Amendment 7</b></p> <p><i>(4a) Sufficient and accurate data remains lacking in the area of posted workers, in particular with regard to information about the number of posted workers in particular employment sectors and in particular Member States. It is important that the Commission begin to collect and monitor such data, and carry out an impact assessment in the area of posted workers.</i></p>			17

<sup>3</sup> 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 (OJ L 18, 21.1.1997, p.1)

<sup>2</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative co-operation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 5</b>				
<p>(5) The principle of equal treatment and the prohibition of any discrimination based on nationality are enshrined in EU law since the founding Treaties. The principle of equal pay has been implemented through secondary law not only between women and men, but also between employees with fix term contracts and comparable permanent workers, between part-time and full-time workers or between temporary agency workers and comparable workers of the user undertaking.</p>	<p><b>Amendment 8</b></p> <p>(5) The principle of equal treatment and the prohibition of any discrimination based on nationality are enshrined in EU law since the founding Treaties, <b><i>including for companies providing cross-border services.</i></b> The principle of equal pay has been implemented through secondary law not only between women and men, but also between employees with fix term contracts and comparable permanent workers, between part-time and full-time workers or between temporary agency workers and comparable workers of the user undertaking. <b><i>This includes the prohibition of any measures which may directly or indirectly discriminate between citizens. While applying those principles, the relevant case-law of the Court of Justice of the European Union should be</i></b></p>	<p>(5) The principle of equal treatment and the prohibition of any discrimination based on nationality <b>have been</b> enshrined in <b>Union</b> law since the founding Treaties. The principle of equal pay has been implemented through secondary law not only between women and men, but also between employees with <b>fixed</b> term contracts and comparable permanent workers, between part-time and full-time workers <b>and</b> between temporary agency workers and comparable workers of the user undertaking.</p>	<p><i>NOTE: CONS GA are only legal-linguistic modifications.</i></p>	18

COM Proposal	EP AMs	Council General Approach	Comments	
	<i>taken into consideration.</i>			
<b>Recital 6</b>				
<p>(6) The Rome I Regulation generally permits employers and employees to choose the law applicable to the employment contract. However, the employee must not be deprived of the protection of the mandatory rules of the law of the country in which or, failing that, from which the employee habitually carries out his work. In the absence of choice, the contract is governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract.</p>	<p><b>Amendment 9</b></p> <p>(6) The Rome I Regulation generally permits employers and employees to choose the law applicable to the employment contract. However, the employee must not be deprived of the protection of the mandatory rules of the law of the country in which or, failing that, from which the employee habitually carries out his work. In the absence of choice, the contract is governed by the law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract. <i><b>The Rome I Regulation also provides that the country where the work is habitually carried out is not deemed to have changed if the worker is temporarily employed in another country. This Directive creates legal certainty in the</b></i></p>	<p><b>DELETED</b></p>	<p><i><u>NOTE:</u> EP shifts the content of recital 7 into recital 6.</i></p>	<p>19</p>

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><i>application of the Rome I Regulation to a specific situation, without amending the Rome I Regulation in any way. The worker will in particular enjoy the protection and benefits pursuant to the Rome I Regulation.</i></p>			
<b>Recital 7</b>				
<p>(7) The Rome I Regulation provides that the country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.</p>	<p><b>Amendment 10</b> <b>DELETED</b></p>	<p><b>DELETED</b></p>	<p><i>NOTE: EP shifts the content of recital 7 into recital 6.</i></p>	20

COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 7a (new)		
		(7a) The competent national authorities, in accordance with their national law and/or practice, should be able to verify that the conditions of accommodation for posted workers provided by employers are in line with the relevant national provisions in force in the host Member State that might apply also to posted workers.	(7a) The competent national authorities, in accordance with their national law and/or practice, should be able to verify that the conditions of accommodation for posted workers provided by employers are in line with the relevant national provisions in force in the host Member State that might apply also to posted workers.	21

COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 7b (new)		
		<p><b>(7b) Posted workers that are temporarily sent from their regular place of work, in the territory of the Member State to which they have been posted, to another place of work, should receive at least the same allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons that apply to local workers in that Member State. The same should apply to costs incurred by a posted worker when he is required to travel to and from his regular place of work in the Member State to which territory he is posted.</b></p> <p><b>However, the hard core of protective rights should not be extended to allowances or reimbursement of expenditure related to the fact that a worker who is posted within the meaning of Article 1 (3) of</b></p>	<p><b>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</b></p> <p><b>Posted workers that are temporarily sent from their regular place of work, in the territory of the Member State to which they have been posted, to another place of work, should receive at least the same allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons that apply to local workers in that Member State. The same should apply to costs incurred by a posted worker when he is required to travel to and from his regular place of work in the Member State to which territory he is posted.</b></p> <p><del>However, the hard core of protective rights should not be extended to allowances or reimbursement of expenditure</del></p>	22

COM Proposal	EP AMs	Council General Approach	Comments	
		<p>Directive 96/71/EC is away from the Member State in which he normally works. Double payment of travel, board and lodging expenses should be avoided.</p>	<p><del>related to the fact that a worker who is posted within the meaning of Article 1 (3) of Directive 96/71/EC is away from the Member State in which he normally works.</del> Double payment of travel, board and lodging expenses should be avoided.</p>	

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 8</b>				
<p>(8) In view of the long duration of certain posting assignments, it is necessary to provide that, in case of posting lasting for periods higher than 24 months, the host Member State is deemed to be the country in which the work is carried out. In accordance with the principle of Rome I Regulation, the law of the host Member States therefore applies 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. This should apply from the start of the posting assignment whenever it is envisaged for more than 24 months and from the first day subsequent to the 24 months when it effectively exceeds this</p>	<p><b>Amendment 11</b></p> <p>(8) In view of the long duration of certain posting assignments, it is necessary to provide that <i>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.</i> 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. <i>For postings that require a longer duration, it should be possible to grant extensions to undertakings based on a reasoned request made to the competent authority of the Member State</i></p>	<p>(8) <b>Posting is of a temporary nature and the posted worker usually returns to the country of origin after the completion of the work for which he has been posted. However,</b> in view of the long duration of certain postings, <b>and in acknowledgment of the link between the labour market of the host country and the workers posted for such long periods, it is necessary to provide that, in case of posting lasting for periods longer than 12 months, host countries should ensure that undertakings posting workers to their territory guarantee an additional set of terms and conditions that are mandatorily applicable to workers in the Member State where the work is carried out.</b></p>		23



COM Proposal	EP AMs	Council General Approach	Comments	
<p>duration. 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. The purpose is merely to create legal certainty in the application of the Rome I Regulation to a specific situation, without amending that Regulation in any way. The employee will in particular enjoy the protection and benefits pursuant to the Rome I Regulation.</p>	<p><i>where the worker is posted.</i></p>			

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 9</b>				
<p>(9) It is settled case law that restrictions to the freedom to provide services are only admissible if justified by overriding reasons in the public interest and must be proportionate and necessary.</p>	<p><b>Amendment 12</b></p> <p>(9) It is settled case law that restrictions to the freedom to provide services are only admissible if justified by overriding reasons in the public interest and must be <i>necessary and</i> proportionate</p>	<p>(9) <b>Ensuring greater protection of workers is necessary to safeguard the freedom to provide services on a fair basis in both the short and the long term, notably by preventing abuse of the rights guaranteed by the Treaties. Rules ensuring such protection of workers, however, cannot affect the right of undertakings posting workers to the territory of another Member State to invoke the freedom to provide services also in cases where the posting exceeds 12 months. Any provision applicable to workers posted in the context of a posting exceeding 12 months must thus be compatible with that freedom.</b></p> <p>It is settled case law that restrictions to the freedom to provide services are [...] admissible <b>only</b> if justified by overriding reasons in the public</p>		24

COM Proposal	EP AMs	Council General Approach	Comments	
		interest and <b>if they are</b> proportionate and necessary.		
		<b>Recital 9a (new)</b>		
		<b>(9a) The additional set of terms and conditions to be guaranteed by the undertaking posting workers to another Member State should also cover workers who are posted to replace other posted workers, to ensure that such replacements are not used to circumvent the otherwise applicable rules.</b>		25

COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 9b (new)		
		<b>(9b) As is the case with Directive 96/71/EC, this Directive should not prejudice the application of Regulation (EC) No 883/2004<sup>4</sup> and Regulation (EC) No 987/2009 of the European Parliament and of the Council<sup>5</sup>.</b>		26

<sup>4</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

<sup>5</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 10</b>				
<p>(10) Because of the highly mobile nature of work in international road transport, the implementation of the posting of workers directive raises particular legal questions and difficulties (especially where the link with the concerned Member State is insufficient). It would be most suited for these challenges to be addressed through sector-specific legislation together with other EU initiatives aimed at improving the functioning of the internal road transport market.</p>	<p><b>Amendment 13</b></p> <p>(10) Because of the highly mobile nature of work in international road transport, the implementation of the posting of workers directive <i>in that sector</i> raises particular legal questions and difficulties <i>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 [COD(2017)0121], which is intended to provide for</i> sector-specific legislation.</p>	<p>(10) <b>Because of</b> the highly mobile nature of work in international road transport, the implementation of <b>this Directive in this sector</b> raises particular legal questions and difficulties,[...] <b>which will be addressed through specific rules for road transport also reinforcing the fight against fraud and abuse, in the framework of the mobility package.</b></p>		27

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 11</b>				
<p>(11) In a competitive internal market, service providers compete not only on the basis of a labour costs but also on factors such as productivity and efficiency, or the quality and innovation of their goods and services.</p>	<p><b>Amendment 14</b></p> <p>(11) In a <i>truly integrated and</i> competitive internal market, service providers compete on <i>the basis of</i> factors such as productivity, efficiency, <i>education and skill level of the labour force, as well as</i> quality and innovation of their goods and services.</p>	<p>(11) In a competitive internal market, service providers compete not only on the basis of labour costs but also on <b>the basis of</b> factors such as productivity and efficiency, or the quality and innovation of their goods and services.</p>	<p><i><u>NOTE:</u> CONS GA are only legal-linguistic modifications.</i></p>	28

COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 11a (new)		
		<p><b>(11a) This Directive should not affect in any way the exercise of fundamental rights as recognised in Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor should this Directive affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and /or practice.</b></p>	<p><i>NOTE: Council GA on recital 11a (new) corresponds with EP AM 20 on recital 13d (new) / EP AM 26 on Article 4a.</i></p>	29

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 12</b>				
<p>(12) It is within Member States' competence to set rules on remuneration in accordance with their law and practice. However, national rules on remuneration applied to posted workers must be justified by the need to protect posted workers and must not disproportionately restrict the cross-border provision of services.</p>	<p><b>Amendment 15</b></p> <p>(12) It is within Member States' <i>exclusive</i> competence to set rules on remuneration in accordance with their national law <i>and/or</i> practice. <i>The setting of wages is a matter for the Member States and the social partners alone. Particular care should be taken not to undermine national systems of wage setting and the freedom of the parties involved.</i></p>	<p>(12) It is within Member States' competence to set rules on remuneration in accordance with their law and / <b>or</b> practice. [...]</p>	<p><b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p>(12) It is within Member States' competence to set rules on remuneration in accordance with their national law <b>and/or</b> practice. <b>The setting of wages is a matter for the Member States and the social partners alone. Particular care should be taken not to undermine national systems of wage setting and the freedom of the parties involved.</b></p>	30



COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 12a (new)		
		(12a) The concept of ‘remuneration’ should include, but should not be limited to, all the elements of minimum rates of pay developed by the Court of Justice of the European Union.	<b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</i></b>  <i>deletion</i>	31
		Recital 12b (new)		
		(12b) When comparing the remuneration paid to the posted worker and the remuneration due in accordance with the laws and/or practices of the Member State to which territory the worker is posted, the gross amount of remuneration should be taken into account. The total gross amounts of remuneration should be compared, rather than individual elements of remuneration rendered mandatory as provided for in Article 3 (1). In order to ensure transparency and assist	<b><i>EP to take stance once there is a finalised position on allowances</i></b>	32

COM Proposal	EP AMs	Council General Approach	Comments	
		<p><b>the competent authorities when carrying out checks and controls, it is nevertheless necessary that the elements, which are part of the remuneration, can be identified in enough detail according to national law and practice of the sending Member State. As provided for in Article 3(7) of Directive 96/71/EC, 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.</b></p>		

COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 12c (new)		
		<p><b>(12c) Allowances specific to posting often serve several purposes. Insofar as their purpose is the reimbursement of expenditure incurred on account of the posting, such as expenditure on travel, board and lodging, Directive 96/71/EC provides that they shall not be considered as part of remuneration. In view of the relevance of allowances specific to posting, uncertainty as to which parts of allowances specific to posting are allocated to reimbursement of expenditure should be avoided. Such allowances should be considered to be paid in reimbursement of expenditure unless the terms and conditions resulting from law, regulation or administrative provision, collective agreements or contractual agreements that apply to the employment relationship define which parts</b></p>		33

COM Proposal	EP AMs	Council General Approach	Comments	
		of the allowance are allocated to the reimbursement of expenditure.		
<b>Recital 13</b>				
(13) The elements of remuneration under national law or universally applicable collective agreements should be clear and transparent to all service providers. It is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration on the single website provided for by Article 5 of the Enforcement Directive.	<b>Amendment 16</b> (13) The elements of remuneration, <i>the method used to calculate the remuneration due and where relevant, the qualifying criteria for classification in the different wage categories</i> should be clear and transparent to all service providers <i>and posted workers</i> . <i>For the calculation of the remuneration, all mandatory elements, laid down by law, applicable collective agreements or arbitration awards, should be taken into account, provided that those elements are also applied at local level.</i> It is therefore justified to impose on Member States the obligation to	(13) The elements of remuneration <b>and other terms and conditions of employment</b> under national law or universally applicable collective agreements should be clear and transparent to all service providers <b>and posted workers. In addition to the requirements under Article 5 of Directive 2014/67/EU of the European Parliament and of the Council</b> <sup>6</sup> , it is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration, <b>and the additional set of terms and conditions applicable to long</b>	<b>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</b> <i>The elements of remuneration and other terms and conditions of employment under national law or collective agreements as referred to in Article 3.8 should be clear and transparent to all service providers and posted workers. In addition to the requirements under Article 5 of Directive 2014/67/EU of the European Parliament and of the Council, it is therefore justified to impose on Member States the obligation to publish the constituent elements of remuneration, and the additional set of terms and</i>	34

<sup>6</sup> Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation') (OJ L 159, 28.5.2014, p. 11).

COM Proposal	EP AMs	Council General Approach	Comments
	<p>publish the constituent elements of remuneration <i>as defined by the applicable law and collective agreements</i> on the single website provided for by Article 5 of the Enforcement Directive <i>as transparency and access to information is essential for legal certainty and law enforcement . The information provided on the single official national website should be in line with national law and practice and should respect the autonomy of the social partners. Each Member State should ensure that its website works properly and is updated on a regular basis.</i></p>	<p><b>term posting</b>, on the single website provided for by <b>that Article. The proportionality of any sanctions to a service provider for non-compliance with the terms and conditions of employment to be ensured to posted workers might take into account, in particular, whether the information in the single national website on the terms and conditions of employment is provided in conformity with Article 5 of Directive 2014/67/EU, including respecting the autonomy of the social partners.</b></p>	<p><i>conditions in accordance with Article 3.1-a, on the single website provided for by Article 5 of Directive 2014/67/EU as transparency and access to information is essential for legal certainty and law enforcement. Each Member State should ensure that its website contains accurate information and is updated on a regular basis. Any sanctions to a service provider for non-compliance with the terms and conditions of employment to be ensured to posted workers should be determined in a proportionate manner, taking into account, in particular, whether the information on the single national website on the terms and conditions of employment is provided in conformity with Article 5 of Directive 2014/67/EU, respecting the autonomy of the social partners.</i></p>

COM Proposal	EP AMs	Council General Approach	Comments	
	Recital 13a (new)			
	<p><b>Amendment 17</b></p> <p><i>(13a) Directive 2014/67/EU provides for a number of provisions to ensure that rules on posting of workers are enforced and are respected by all service providers. Article 4 of Directive 2014/67/EU provides a list of elements that are to be assessed in order to identify genuine posting situations and prevent abuse and circumvention.</i></p>			35

COM Proposal	EP AMs	Council General Approach	Comments	
	Recital 13b (new)			
	<p><b>Amendment 18</b></p> <p><i>(13b) Employers should, before the beginning of the posting, take appropriate measures to provide essential information about the terms and conditions of employment in accordance with Council Directive 91/533/EEC<sup>7</sup>, as regards the posting.</i></p>			36

<sup>7</sup> *Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288, 18.10.91, p. 32).*

COM Proposal	EP AMs	Council General Approach	Comments	
	Recital 13c (new)			
	<p><b>Amendment 19</b></p> <p><i>(13c) 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. This Directive does not prevent application of terms and conditions of employment which are more favourable to posted workers.</i></p>			37



COM Proposal	EP AMs	Council General Approach	Comments	
	Recital 13d (new)			
	<p><b>Amendment 20</b></p> <p><i>(13d) This Directive should not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in the Member States, in accordance with national law and/or practice. Nor should it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.</i></p>		<p><i>NOTE: EP AM 20 on recital 13d (new) corresponds to Council GA on recital 11a (new). See also EP AM 26 on Article 4a.</i></p>	38

COM Proposal	EP AMs	Council General Approach	Comments	
<b>Recital 14</b>				
<p>(14) Laws, regulations, administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules guaranteeing certain terms and conditions of employment covering remuneration. Where such rules on remuneration exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings posting workers to its territory provided that they do not disproportionately restrict the cross-border provision of services.</p>	<p><b>Amendment 21</b></p> <p>(14) Laws, regulations <i>and national practice, including</i> administrative provisions or collective agreements applicable in Member States may ensure that subcontracting does not confer on undertakings the possibility to avoid rules guaranteeing certain terms and conditions of employment covering remuneration. Where such rules on remuneration exist at national level, the Member State may apply them in a non-discriminatory manner to undertakings posting workers to its territory.</p>	<p><b>deleted</b></p>		<p>39</p>

COM Proposal	EP AMs	Council General Approach	Comments	
	<b>Recital 14a (new) (EP)</b>			
	<b>Amendment 22</b> <i>(14a) 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.</i>			40
	<b>Recital 14b (new) (EP)</b>			
	<b>Amendment 23</b> <i>(14b) Member States should enforce existing rules on subcontracting strictly and consistently.</i>			41

COM Proposal	EP AMs	Council General Approach	Comments	
		Recital 14a (new) (CONS)		
		<p><b>(14a) In the context of fighting fraud related to posting, the European Platform to enhance cooperation in tackling undeclared<sup>8</sup> work created by Decision (EU) 2016/344 should, within its mandate, participate in the monitoring and the evaluation of cases of fraud, which should be anonymised as appropriate, improve the implementation and efficiency of administrative cooperation between Member States, develop alert mechanisms and bring assistance and support to reinforced administrative cooperation and information exchanges between the liaison offices. In doing so, the Platform is to work in close cooperation with the</b></p>	<p><b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p><b>In the context of fighting fraud related to posting, the European Platform to enhance cooperation in tackling undeclared<sup>9</sup> work created by Decision (EU) 2016/344 should, within its mandate, participate in the monitoring and the evaluation of cases of fraud, improve the implementation and efficiency of administrative cooperation between Member States, develop alert mechanisms and bring assistance and support to reinforced administrative cooperation and information exchanges between the liaison offices. In doing so, the Platform is to work in close</b></p>	42

<sup>8</sup> Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.03.2016, p.12).

<sup>9</sup> Decision (EU) 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work (OJ L 65, 11.03.2016, p.12).

COM Proposal	EP AMs	Council General Approach	Comments	
		Committee of Experts on Posting of Workers.	cooperation with the Committee of Experts on Posting of Workers.	
		Recital 14b (new) (CONS)		
		(14b) The transnational nature of certain situations of fraud or abuses related to posting justifies concrete measures aiming at reinforcing the transnational dimension of inspections, inquiries and exchanges of information between the competent authorities of the concerned Member States. To this end, in the framework of administrative cooperation provided for in Directive 96/71 and in Directive 2014/67/EU, in particular Article 7 paragraph 4, the national competent authorities should have the necessary means for alerting on such situations and exchanging information aiming at preventing and repressing these frauds. The European Platform is, within its mandate, the relevant	<b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</i></b>  (14b) The transnational nature of certain situations of fraud or abuses related to posting justifies concrete measures aiming at reinforcing the transnational dimension of inspections, inquiries and exchanges of information between the competent authorities of the concerned Member States. To this end, in the framework of administrative cooperation provided for in Directive 96/71 and in Directive 2014/67/EU, in particular Article 7 paragraph 4, the national competent authorities should have the necessary means for alerting on such situations and exchanging information	43

COM Proposal	EP AMs	Council General Approach	Comments	
		framework for facilitating the exchange of information and cooperation between Member States.	aiming at preventing and repressing these frauds. <del>The European Platform is, within its mandate, the relevant framework for facilitating the exchange of information and cooperation between Member States.</del>	
<b>Recital 15</b>				
(15) Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. This principle should also apply to temporary agency workers posted to another Member State.	<b>Amendment 24</b> (15) Directive 2008/104/EC of the European Parliament and of the Council on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. This principle should also apply to temporary agency workers posted to another	(15) Directive 2008/104/EC of the European Parliament and of the Council <sup>10</sup> on temporary agency work gives expression to the principle that the basic working and employment conditions applicable to temporary agency workers should be at least those which would apply to such workers if they were recruited by the user undertaking to occupy the same job. <b>That</b> principle should also apply to temporary agency workers posted to another		44

<sup>10</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ L 327, 5.12.2008, p. 9).

COM Proposal	EP AMs	Council General Approach	Comments	
	<p>Member State. <i>Member States should ensure equal treatment between posted temporary agency workers and domestically employed temporary agency workers.</i></p>	<p>Member State. <b>Where that principle applies, the user undertaking should inform the temporary-work agency about the working conditions and remuneration it applies to its workers. Member States can under certain conditions provide for exceptions from the equal treatment/equal pay principle pursuant to Art. 5(2) and Art. 5(3) of the temporary agency work directive. When such an exception applies, the temporary work agency has no need for the information about the user undertaking's working conditions and the information requirement should therefore not apply. Member States should ensure that the user undertaking informs the temporary work agency about the posted workers that are temporarily working in a Member State other than the Member State to which they have been posted, in order to allow the employer to apply, as appropriate, the terms and</b></p>		

COM Proposal	EP AMs	Council General Approach	Comments	
		conditions of employment that are more favourable to the posted worker.		
<b>Recital 16</b>				
(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>11</sup> , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	=	=	(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>12</sup> , Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,	45
HAVE ADOPTED THIS DIRECTIVE:	=	=	HAVE ADOPTED THIS DIRECTIVE:	46

<sup>11</sup> OJ C 369, 17.12.2011, p. 14.

<sup>12</sup> OJ C 369, 17.12.2011, p. 14.



COM Proposal	EP AMs	Council General Approach	Comments	
<i>Article 1 Amendments to Directive 96/71/EC</i>				
Directive 96/71/EC is hereby amended as follows:	=	Directive 96/71/EC is [...] amended as follows:	<i>NOTE: CONS GA are only legal-linguistic modifications.</i>	47
			<i>In Article 1 (1996 Directive), the title becomes "Subject matter and scope"</i>	47 bis
			<i>In Article 1 (1996 Directive), a paragraph 1 bis is added:</i>  <b>This Directive shall ensure the protection of posted workers during their posting assignment in relation to the freedom to provide services, by laying down mandatory provisions regarding working conditions and the protection of workers' health and safety that must be respected.</b>	47 ter

COM Proposal	EP AMs	Council General Approach	Comments	
<p><u>PRESENT TEXT OF DIRECTIVE 96/71/EC,</u> Article 1- paragraph 3 - point c: “(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.”</p>	<p><b>Amendment 25</b> <b>(-1) In Article 1(3), point (c) is replaced by the following:</b> “(c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided <b>that</b> there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.”</p>		<p><i>NOTE: EP linguistic amendment to DIR 96/71.</i></p>	48

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 26</b></p> <p><i>(-1a) In Article 1, the following paragraph is added:</i></p> <p><i>“4a. This Directive shall not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor does it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.”</i></p>		<p><i>In Article 1 (1996 Directive), a paragraph 5 or second subparagraph to paragraph 1 bis is added (exact paragraph to be decided):</i></p> <p><i>“This Directive shall not in any way affect the exercise of fundamental rights as recognised in the Member States and at Union level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in Member States, in accordance with national law and/or practice. Nor does it affect the right to negotiate, to conclude and enforce collective agreements, or to take collective action in accordance with national law and/or practice.”</i></p>	49

COM Proposal	EP AMs	Council General Approach	Comments	
(1) The following Article 2a is added:		deleted	<p><b>NOTE:</b> <i>In the Council GA and provisionally agreed text, the new article 2a is deleted, and the substance of its content regarding long-term posting is dealt with under Article 3.1.(-a) i.e. following paragraph 1 and preceding paragraph 1a (new) of Article 3 - it would thus fall in ROW 74 bis in this table.</i></p> <p><i>Therefore, the provisional agreement on long-term posting implies keeping the Council's general approach, and thus:</i></p> <ul style="list-style-type: none"> <li>- <i>deletion of ROWS 50, 51, 52, 56</i></li> <li>- <i>keeping Council's text on ROWS 53, 54, 55</i></li> <li>- <i>moving the content of ROWS 53, 54, 55 to ROW 74 bis.</i></li> </ul> <p><i>deleted</i></p>	50

COM Proposal	EP AMs	Council General Approach	Comments	
<i>Article 2a</i>		<i>deleted</i>	<i>deleted</i>	51
Posting exceeding twenty-four months		<i>deleted</i>	<i>deleted</i>	52
1. When the anticipated or the effective duration of posting exceeds twenty-four months, the Member State to whose territory a worker is posted shall be deemed to be the country in which his or her work is habitually carried out.	<b>Amendment 27</b> 1. <i>The posting of a worker shall be temporary.</i> When the anticipated or the effective duration of posting exceeds twenty-four months, <i>Member States shall ensure that the undertakings referred to in Article 1(1) guarantee workers posted to their territory, in addition to the terms and conditions of employment referred to in Article 3(1) and irrespective of which law applies to the employment relationship, all the applicable terms and conditions of employment which are applicable in the Member State where the service is provided, provided that those terms and conditions are more favourable to the worker than those pursuant to the law which applies to the employment</i>	(aa) The following paragraph is added: "1(-a) When the effective duration of a posting exceeds 12 months, Member States shall ensure, irrespective of which law applies to the employment relationship, that the undertakings referred to in Article 1(1) guarantee workers posted to their territory, in addition to the terms and conditions of employment referred to in paragraph 1 of this Article, all the applicable terms and conditions of employment which are laid down, in the Member State where the work is carried out: (a) by law, regulation or administrative provision, and/or (b) by collective agreements or arbitration awards which have	(aa) The following paragraph is added to Article 3 as in General approach: "1(-a) When the effective duration of a posting exceeds 12 months, Member States shall ensure, irrespective of which law applies to the employment relationship, that the undertakings referred to in Article 1(1) guarantee workers posted to their territory, in addition to the terms and conditions of employment referred to in paragraph 1 of this Article, all the applicable terms and conditions of employment which are laid down, in the Member State where the work is carried out: (a) by law, regulation or administrative provision, and/or (b) by collective agreements or	53

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><i>relationship, with the exemption of the conditions relating to the conclusion and termination of the employment contract.</i></p>	<p>been declared universally applicable within the meaning of paragraph 8.</p> <p>The first subparagraph of this paragraph does not apply to the following matters:</p> <p>(a) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses;</p> <p>(b) supplementary occupational retirement pension schemes.</p> <p>The Member State in which the service is provided shall, on the basis of a motivated notification of a service provider, extend to 18 months the period before which the provisions of this paragraph apply.</p>	<p>arbitration awards which have been declared universally applicable within the meaning of paragraph 8.</p> <p>The first subparagraph of this paragraph does not apply to the following matters:</p> <p>(a) procedures, formalities and conditions of the conclusion and termination of the employment contract, including non-competition clauses;</p> <p>(b) supplementary occupational retirement pension schemes.</p> <p>The Member State in which the service is provided shall, on the basis of a motivated notification of a service provider, extend to 18 months the period before which the provisions of this paragraph apply.</p>	

COM Proposal	EP AMs	Council General Approach	Comments	
<p>2. For the purpose of paragraph 1, 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.</p>	<p><b>Amendment 27 (continued)</b></p> <p>2. For the purpose of paragraph 1, in <i>the</i> 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. [...]</p>	<p><b>Where the undertaking referred to in Article 1(1) replaces a posted worker by another posted worker performing the same task at the same place, the duration of the posting shall, for the purposes of this paragraph, be the cumulative duration of the posting periods of the individual workers concerned.</b></p>	<p><b>Where the undertaking referred to in Article 1(1) replaces a posted worker by another posted worker performing the same task at the same place, the duration of the posting shall, for the purposes of this paragraph, be the cumulative duration of the posting periods of the individual workers concerned.</b></p>	54
		<p><b>For the purposes of this Article, the concept 'the same task at the same place' shall be determined taking into consideration inter alia the nature of the service to be provided, the work to be performed and the address(es) of the workplace."</b></p>	<p><b>For the purposes of this Article, the concept 'the same task at the same place' shall be determined taking into consideration inter alia the nature of the service to be provided, the work to be performed and the address(es) of the workplace."</b></p>	55

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 27 (continued)</b></p> <p><i>2a. The Member State where the service is provided may, on the basis of the reasoned request of a service provider, extend the duration before which the terms and conditions of employment applicable in that Member State are guaranteed as referred to in paragraph 1 on the ground that the services provided by that undertaking are to remain temporary for longer.</i></p> <p><i>The Member State shall handle such requests in a proportionate, non-discriminatory and timely manner, providing reasons for its decision. Where the Member State accedes to such a request, the undertaking shall provide an update of the situation every twelve months, until the end of the provision of the services concerned.</i></p> <p><i>The competent authority of the host Member State shall take a decision on such requests in</i></p>		<i>deleted</i>	56



COM Proposal	EP AMs	Council General Approach	Comments	
	<i>accordance with Article 4 of Directive 2014/67/EU, with Regulation 883/2004/EC and in a justified, proportionate and non-discriminatory manner.</i>			
(2) Article 3 is amended as follows:	=	=	(2) Article 3 is amended as follows:	57
(a) Paragraph 1 is replaced by the following:	=	=	(a) Paragraph 1 is replaced by the following:	58
1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:	<b>Amendment 28</b> 1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory <i>equal</i> terms and conditions of employment <i>which cover</i> the following matters <i>laid down</i> in the Member State where the work is carried out:	1. Member States shall ensure, <b>irrespective of which law applies</b> to the employment relationship, <b>that</b> the undertakings referred to in Article 1 (1) guarantee workers <b>who are</b> posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:	<b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</i></b>  Member States shall ensure, <b>irrespective of which law applies</b> to the employment relationship, <b>that</b> the undertakings referred to in Article 1 (1) guarantee workers <b>who are</b> posted to their territory <b>on a basis of equality of treatment</b> the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:	59

COM Proposal	EP AMs	Council General Approach	Comments	
– by law, regulation or administrative provision, and/or	=	=	– by law, regulation or administrative provision, and/or	60
– by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8:	<p><b>Amendment 28 (continued)</b></p> <p>– by collective agreements or arbitration awards [...] within the meaning of <i>paragraphs 8 and 8a</i>:</p>	=	<p><i>To be further discussed and assessed, in particular when necessary follow-up changes regarding references to universally applicable collective agreements, mainly in paragraph 8, have been assessed.</i></p> <p><i>Note that all sides agreed that there was no political disagreement and that the most appropriate wording should be used horizontally throughout the Directive."</i></p>	61

COM Proposal	EP AMs	Council General Approach	Comments	
(a) maximum work periods and minimum rest periods;	<b>Amendment 28 (continued)</b> a) maximum work periods and minimum rest periods, <i>including specific measures regarding night work, work performed during weekends and public holidays and work performed in shifts</i> ;	=	(a) maximum work periods and minimum rest periods;	62
(b) minimum paid annual holidays	<b>Amendment 28 (continued)</b> (b) minimum paid annual <i>leave</i> ;	=	(b) minimum paid annual <i>leave</i> ;	63
(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;	=	=	(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;	64
(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;	=	=	(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;	65
(e) health, safety and hygiene at work;	=	=	(e) health, safety and hygiene at work;	66

COM Proposal	EP AMs	Council General Approach	Comments	
(f) 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;	=	=	(f) 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;	67
(g) equality of treatment between men and women and other provisions on non-discrimination.	=	=	(g) equality of treatment between men and women and other provisions on non-discrimination.	68
	<b>Amendment 28 (continued)</b> <i>(ga) the conditions of workers' accommodation;</i>		<b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL</i></b>  <i>(ga) the conditions of workers' accommodation when provided by the employer to workers away from their regular place of work;</i>	69

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 28 (continued)</b></p> <p><i>(gb) allowance rates to cover travel, board and lodging expenses for workers away from their habitual place of work.</i></p>	<p>(gb) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons; this point applies exclusively to travel, board and lodging costs incurred by a posted worker when he is required to travel to and from his regular place of work in the Member State to which territory he is posted, or when he is temporarily sent by his employer from this workplace to another workplace. It shall not apply to allowances or reimbursement of expenditure related to the fact that the worker, during the posting referred to in Article 1(3), is away from the Member State in which he normally works.</p>	<p><b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL</i></b></p> <p>(gb) allowances or reimbursement of expenditure to cover travel, board and lodging expenses for workers away from home for professional reasons; this point applies exclusively to travel, board and lodging costs incurred by a posted worker when he/she is required to travel to and from his/her regular place of work in the Member State to which territory he/she is posted, or when he/she is temporarily sent by his/her employer from this workplace to another workplace. <del>It shall not apply to allowances or reimbursement of expenditure related to the fact that the worker, during the posting referred to in Article 1(3), is away from the Member State in which he normally works.</del></p>	70

COM Proposal	EP AMs	Council General Approach	Comments	
<p>For the purpose of this Directive, remuneration means all the elements of remuneration rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable and/or, in the absence of a system for declaring collective agreements or arbitration awards to be of universal application, other collective agreements or arbitration awards within the meaning of paragraph 8 second subparagraph, in the Member State to whose territory the worker is posted.</p>	<p><b>Amendment 28 (continued)</b></p> <p>For the purpose of this Directive, <i>the concept of remuneration shall be defined</i> by <i>the law and/or practice of [...]</i> the Member State to whose territory the worker is posted.</p>	<p>For the purposes of this Directive, <b>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</b> all the elements of remuneration rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable and/or, in the absence of a system for declaring collective agreements or arbitration awards to be of universal application, other collective agreements or arbitration awards within the meaning of paragraph 8 second subparagraph, in <b>that</b> Member State [...].</p>	<p><b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p>For the purposes of this Directive, <b>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</b> all the elements of remuneration rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards [...] <i>as referred to in paragraph 8</i> in that Member State.</p>	71

COM Proposal	EP AMs	Council General Approach	Comments	
<p>Member States shall publish in the single official national website referred to in Article 5 of Directive 2014/67/EU the constituent elements of remuneration in accordance with point (c).</p>	<p><b>Amendment 28 (continued)</b></p> <p>Member States shall publish, <i>in accordance with national law and/or practice, without undue delay and in a transparent manner</i> in the single official national website <i>and by other suitable means</i>, referred to in <i>Article 5(2)</i> of Directive 2014/67/EU, the constituent elements of remuneration in accordance with point (c) <i>of this paragraph. Member States shall ensure that the information provided on the single official national website is accurate and up to date. The Commission shall publish on its website the addresses of the single official national websites.</i></p>	<p><b>Without prejudice to Article 5 of Directive 2014/67/EU,</b> Member States shall publish in the single official national website [...], referred to in that <b>Article, information on:</b></p> <p><b>a. the constituent elements of remuneration in accordance with point c) of the first subparagraph of Article 3(1); and</b></p> <p><b>b. all the terms and conditions of employment in accordance with Article 3(1)(-a).</b></p>	<p><b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p><b>Without prejudice to Article 5 of Directive 2014/67/EU,</b> Member States shall publish, <b>in accordance with national law and/or practice, without undue delay and in a transparent manner,</b> in the single official national website referred to in that <b>Article, the constituent elements of remuneration in accordance with point (c) of this paragraph and all the terms and conditions of employment in accordance with Article 3(1)(-a).</b></p> <p><b>Member States shall ensure that the information provided on the single official national website is accurate and up to date. The Commission shall publish on its website the addresses of the single official national websites.</b></p>	<p>72</p>

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 28 (continued)</b></p> <p><i>An undertaking shall not be responsible for the failure to apply or the incorrect application of such elements if the information is not, or is incorrectly, provided on the single national official website prior to the commencement of the posting.</i></p>	<p>Where the information on the single official national website does not indicate, in conformity with Article 5 of Directive 2014/67/EU, which terms and conditions of employment are to be applied, this circumstance may be taken into account, in accordance with national law and practice, in determining penalties in the event of infringements of the national provisions adopted pursuant to this Directive.</p>	<p><b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p>Where the information on the single official national website does not indicate, in conformity with Article 5 of Directive 2014/67/EU, which terms and conditions of employment are to be applied, this circumstance <u>shall</u> be taken into account, in accordance with national law and/or practice, in determining penalties in the event of infringements of the national provisions adopted pursuant to this Directive, <u>to the extent necessary to ensure the proportionality thereof.</u></p>	73



COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 28 (continued)</b></p> <p><i>In order to avoid double payment, nothing in this Article shall allow for any element of remuneration, allowances or expenses related to work outside the habitual place of work to be paid more than once to a posted worker. The worker shall be subject to the terms and conditions that are more favourable to him or her.</i></p>		<i>deleted</i>	74
			<i>NOTE: In the CONS GA, Article 3.1.(-a) on long-term posting would be located here.</i>	74 bis
(b) The following paragraph is added:	=	<b>DELETED</b>	<i>deleted</i>	75

COM Proposal	EP AMs	Council General Approach	Comments	
<p>1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement, to sub-contract in the context of their contractual obligations only to undertakings that guarantee certain terms and conditions of employment covering remuneration, the Member State may, on a non-discriminatory and proportionate basis, provide that such undertakings shall be under the same obligation regarding subcontracts with undertakings referred to in Article 1 (1) posting workers to its territory.</p>	<p><b>Amendment 29</b></p> <p>1a. If undertakings established in the territory of a Member State are obliged by law, regulation, administrative provision or collective agreement to sub-contract in the context of their contractual obligations only to undertakings that guarantee certain [...] conditions of [...] remuneration, the Member State may, on a non-discriminatory and proportionate basis, <i>place undertakings that post workers to their territory under the same obligations. Such requirements shall be applicable only to the employees of the subcontractor who are being posted to that Member State.</i></p>	<p><i>deleted</i></p>	<p><i>deleted</i></p>	<p>76</p>

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 30</b></p> <p><i>(ba) The following paragraph is inserted:</i></p> <p><i>“1aa. In the case of subcontracting, the contractor shall inform a service provider from another Member State in writing about the applicable terms and conditions of employment as regards remuneration prior to the commencement of the service contract.”</i></p>		<i>deleted</i>	77
	<p><b>Amendment 31</b></p> <p><i>(bb) The following paragraph is inserted:</i></p> <p><i>“1ab. Member States shall communicate to the Commission any measure referred to in this Article. The Commission shall communicate those measures to the other Member States.”</i></p>		<i>deleted</i>	78

COM Proposal	EP AMs	Council General Approach	Comments	
(c) The following paragraph is added	=	=	(c) The following paragraph is added	79
1b. Member States shall provide that the undertakings referred to in Article 1(3)(c) guarantee posted workers the terms and conditions which apply pursuant to Art. 5 Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work to temporary workers hired-out by temporary agencies established in the Member State where the work is carried out.	=	"1b. Member States shall provide that the undertakings referred to in <b>point (c) of</b> Article 1(3) guarantee posted workers the terms and conditions which apply pursuant to <b>Article 5 of</b> Directive 2008/104/EC [...] to temporary workers hired-out by temporary agencies established in the Member State where the work is carried out.	<i>The EP looks favourably upon the Council's proposed modifications but there was no conclusion at the trilogue.</i>  <i>NOTE: CONS GA are only legal-linguistic modifications.</i>	80
		<b>Member States shall ensure that the user undertaking informs the undertakings referred to in point (c) of Article 1(3) of:</b>	<b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</i></b>  <b>The user undertaking shall inform the undertakings referred to in point (c) of Article 1(3) of the terms and conditions that it applies regarding the working conditions and remuneration to the extent covered by the first sub-paragraph of this</b>	81

COM Proposal	EP AMs	Council General Approach	Comments	
			paragraph.	
		1) the terms and conditions that it applies regarding the working conditions and remuneration to the extent covered by the first subparagraph of this paragraph and	Integrated in ROW 81	82
		2) posted workers that are temporarily carrying out work in a Member State other than the Member State to which they have been posted."	Move to ROW 89	83
		(ca) Paragraph 7 is <u>replaced</u> by the following:		84
		"7. Paragraphs 1 to 6 shall not prevent application of terms and conditions of employment which are more favourable to workers.		85

COM Proposal	EP AMs	Council General Approach	Comments	
<p><u>PRESENT TEXT OF DIRECTIVE 96/71/EC,</u> Article 3-paragraph 7-subparagraph 2</p> <p><i>“Allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.”</i></p>	<p><b>Amendment 32</b></p> <p><i><b>(ca) In paragraph 7, the second subparagraph is replaced by the following:</b></i></p> <p><i>“Allowances specific to the posting shall be considered to be part of <b>remuneration</b>, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.</i></p> <p><i><b>In that case, they shall be provided for by the employer and shall not be deducted from remuneration.”</b></i></p>	<p>Allowances specific to the posting shall be considered to be part of <b>remuneration</b>, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.</p> <p><b>If it does not result from the terms and conditions of employment applicable to the employment relationship whether and in that case which elements of an allowance specific to the posting are paid in reimbursement of expenditure or are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure actually incurred on account of the posting.</b></p>	<p><b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p>Allowances specific to the posting, <b><i>other than those referred to in Paragraph 1 (gb)</i></b>, shall be considered to be part of remuneration, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. <b><i>The employer shall reimburse the worker for such expenditure in accordance with national law and/or practice.</i></b></p> <p><b>If it does not result from the terms and conditions of employment applicable to the employment relationship whether and in that case which elements of an allowance specific to the posting are paid in reimbursement of expenditure or are part of remuneration, then the entire allowance shall be considered to be paid in reimbursement of expenditure actually incurred</b></p>	86

COM Proposal	EP AMs	Council General Approach	Comments	
			<p><b>on account of the posting.</b></p> <p><b>INTERPRETATIVE DECLARATION FROM THE COMMISSION:</b></p> <p>Article 3(7), second subparagraph, of the Directive lays down that allowances specific to the posting shall be considered to be part of the minimum wage [“remuneration” after the revision], unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging.</p> <p>The co-legislators are considering adding to that subparagraph the following sentence: “The employer shall reimburse the worker for such expenditure in accordance with national law and/or practice”.</p> <p>The Commission understands the words “national law and/or practice” to refer to the national law and /or practice applicable</p>	

COM Proposal	EP AMs	Council General Approach	Comments	
			<p>to the employment relationship. When a worker is posted under the Directive this is in principle the home Member State's law, unless otherwise determined, in accordance with EU rules on private international law.</p> <p>In the light of the Court's judgment in Case C-396/13 (paragraph 59), reimbursement also covers the situation where the employer defrays costs of the workers without the latter having first to pay them and then seek to have them reimbursed.</p>	
	<p><b>Amendment 33</b></p> <p><i>(c b) The following paragraph is inserted:</i></p> <p><i>8a. Member States may also, if they so decide, in accordance with their national law and practice and on a non-discriminatory basis, base themselves on collective agreements or arbitration awards which are, as defined by the Member State where the work is carried out,</i></p>		<p><b><i>PROVISIONALLY AGREED, SUBJECT TO CHECK BY THE COUNCIL:</i></b></p> <p><b><i>Withdrawal of AM33.</i></b></p> <p>Article 3.8 - the terms "or in addition to" are added to article 3.8 of Directive 96/71, such that the second paragraph now reads:</p> <p>In the absence of, <b><u>or in addition to,</u></b> a system for declaring</p>	87



COM Proposal	EP AMs	Council General Approach	Comments
	<p><i>representative in the geographical area, the profession or industry concerned and offer the most favourable terms and conditions of employment to the worker.</i></p> <p><i>Member States shall ensure that information about any such collective agreements or arbitration awards is available on the single official national website. Such collective agreements shall be applicable to posted workers only insofar as they are published on the single official national website.</i></p> <p><i>An undertaking shall not be responsible for the failure to apply or the incorrect application of such collective agreements or arbitration awards if the information is not, or is incorrectly, provided on the single national official website prior to the commencement of the posting.”</i></p>		<p>collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:</p>

COM Proposal	EP AMs	Council General Approach	Comments	
(d) Paragraph 9 is <b>deleted</b> .	<b>Amendment 34</b> (d) Paragraph 9 is <b>replaced by the following:</b>	(d) Paragraph 9 is <b>amended as follows:</b>		88
<u>PRESENT TEXT OF DIRECTIVE 96/71/EC</u> Article 3- paragraph 9  Member States may provide that the undertakings referred to in Article 1 (1) must guarantee workers referred to in Article 1 (3) (c) the terms and conditions which apply to temporary workers in the Member State where the work is carried out.	<i>"In addition to the terms and conditions referred to in paragraph 1 of this Article, Member States may provide that the undertakings referred to in Article 1(1) must guarantee workers referred to in Article 1(3)(c) the same terms and conditions that apply to temporary agency workers in the Member State where the work is carried out.</i>  <i>Temporary employment undertakings or placement agencies established in one Member State may post a worker to a user undertaking established or operating in another Member State provided that the user undertaking is established in the Member State where the worker is posted. If this is not the case, the posted worker's host Member State shall be deemed to be that in</i>	<b>"Without prejudice to Article 3(1b),</b> Member States may provide that the undertakings referred to in Article 1 (1) shall guarantee workers referred to in <b>point (c) of Article 1 (3)</b> the terms and conditions, <b>other than those referred to in paragraph 3(1b),</b> which apply to temporary workers in the Member State where the work is carried out."	<b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL</i></b>  [additional conditions TAW] exact wording to be discussed  [chain posting and info obligations]  <b><u>To be added to Article 1(3)</u></b>  Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking is to carry out work within the context of a transnational provision of a service in the meaning of Article	89

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><i>which his or her work is habitually carried out, without prejudice to any terms and conditions of employment that are more favourable to the posted worker.”</i></p>		<p>1(3)(a) to (c) by the user undertaking in a Member State other than the one in which he normally works for either the temporary employment undertaking or placement agency or user undertaking, the worker shall be considered to be posted to that Member State by the temporary employment undertaking or placement agency with which the worker has been in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be the undertaking referred to in Article 1(1) and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU.</p> <p>A user undertaking shall inform the temporary employment undertaking or placement agency from which a worker has been hired out in due time before the commencement of work referred to in the second subparagraph of Article 1(3).</p>	

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><b>Amendment 35</b></p> <p><i>(da) Paragraph 10 is <u>replaced</u> by the following:</i></p>	<p>[...] Paragraph 10 is <u>replaced</u> by the following:</p>	<p>[...] Paragraph 10 is <u>replaced</u> by the following:</p>	90
<p><u>PRESENT TEXT OF DIRECTIVE 96/71/EC,</u></p> <p>Article 3 - paragraph 10:</p> <p><i>“This Directive shall not preclude the application by Member States, in compliance with the Treaty to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of:</i></p> <p><i>- terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions,</i></p> <p><i>- terms and conditions of employment laid down in the collective agreements or arbitration awards within the meaning of paragraph 8 and concerning the activities other than those referred to in the Annex.”</i></p>	<p><b>Amendment 35</b></p> <p>10. This Directive shall not preclude the application by Member States, in compliance with the Treaty <b>and in accordance with national law and practice, of terms and conditions of employment</b> to national undertakings and to the undertakings of other States <b>operating on their territory</b> on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions.</p> <p><b><i>For the purpose of this Directive, public policy provisions shall refer to non-discriminatory measures taken in the public interest, including measures in the fields of protection of workers, equal treatment, fair competition and the proper functioning of the labour market. Such measures</i></b></p>	<p><b>"10. This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions."</b></p>	<p><b>This Directive shall not preclude the application by Member States, in compliance with the Treaty, to national undertakings and to the undertakings of other States, on a basis of equality of treatment, of terms and conditions of employment on matters other than those referred to in the first subparagraph of paragraph 1 in the case of public policy provisions."</b></p>	91

COM Proposal	EP AMs	Council General Approach	Comments	
	<i>shall not serve economic ends.</i>			
(e) The second subparagraph of paragraph 10 is deleted.	<b>Amendment 36</b> <b>DELETED</b>	=	<i>deleted</i> as the whole paragraph is replaced (see ROWs 90-91)	92
<u><i>PRESENT TEXT OF DIRECTIVE 96/71/EC,</i></u> <i>Article 4 - paragraph 2 - subparagraph 1:</i>  <i>“Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3. Such cooperation shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, including manifest abuses or possible cases of unlawful transnational activities.”</i>	<b>Amendment 37</b> <i>(2a) In Article 4(2), the first subparagraph is <u>replaced</u> by the following:</i>  <i>“Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3. Such cooperation shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, <b>and in tackling</b> manifest abuses or possible cases of unlawful activities, <b>such as transnational cases of undeclared work and bogus self-employment. Such cooperation shall be supported</b></i>		<b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL</i></b>  Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are responsible for monitoring the terms and conditions of employment referred to in Article 3, including at Union level. Such cooperation shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, <b>and in tackling</b> manifest abuses or possible cases of unlawful activities, <b>such as transnational cases of undeclared work and bogus self-employment linked to the</b>	93

COM Proposal	EP AMs	Council General Approach	Comments	
	<p><i>by the European Platform to tackle undeclared work.</i></p> <p><i>If the liaison office or the competent authority in the Member State from which the worker is posted does not possess the information requested by the competent authority of the host Member State, it shall seek that information from other authorities or bodies. In the event of persistent delays in providing information to the host Member State, the Commission shall be informed and shall take appropriate measures.”</i></p>		<p><i>posting of workers.</i></p> <p><i>If the liaison office or the competent authority in the Member State from which the worker is posted does not possess the information requested by the competent authority of the host Member State, it shall seek that information from other authorities or bodies. In the event of persistent delays in providing information to the host Member State, the Commission shall be informed and shall take appropriate measures.</i></p>	

COM Proposal	EP AMs	Council General Approach	Comments	
<p><u><i>PRESENT TEXT OF DIRECTIVE 96/71/EC,</i></u>  <i>Article 5 - paragraph 1:</i>  <i>“Member States shall take appropriate measures in the event of failure to comply with this Directive.</i>  <i>They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive.”</i></p>	<p><b>Amendment 38</b>  <i>(2b) Article 5 is replaced by the following:</i>  <b><i>“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.</i></b>  They shall in particular ensure that adequate procedures are available to workers and/or <b><i>workers'</i></b> representatives for the enforcement of obligations under this Directive.  <b><i>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</i></b></p>		<p><b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL</i></b></p> <p><b><i>[monitoring and sanctions]</i></b>  <b><i>The host Member State and the Member State from which the worker is posted shall be responsible for the monitoring, control and enforcement of the obligations laid down in this Directive and Directive 2014/67/EC and shall take appropriate measures in the event of failure to comply with this Directive. The penalties provided for shall be effective, proportionate and dissuasive.</i></b>  They shall in particular ensure that adequate procedures are available to workers and/or <b><i>workers'</i></b> representatives for the enforcement of obligations under this Directive.</p> <p><b><i>[non-genuine posting]</i></b>  <b>Member States shall ensure</b></p>	94

COM Proposal	EP AMs	Council General Approach	Comments	
	<i>apply.”</i>		<p>that, where following an overall assessment carried out pursuant to Article 4 of Directive 2014/67/EU by a Member State, it is established that an undertaking is improperly or fraudulently creating the impression that the situation of a worker falls within the scope of Directive 96/71/EC, that Member State shall ensure that the worker benefits from relevant legislation and collective agreements.</p> <p>Member States shall ensure that this Article does not lead to the worker concerned being subject to less favourable conditions than those applicable to posted workers.</p>	
(3) The first paragraph of the Annex is amended as follows:	=	=	(3) The first paragraph of the Annex is amended as follows:	95



COM Proposal	EP AMs	Council General Approach	Comments	
The activities mentioned in Article 3 include all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:.	=	=	The activities mentioned in Article 3 include all building work related to the construction, repair, upkeep, alteration or demolition of buildings, and in particular the following work:	96
<i>Article 2</i>				
1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after adoption] at the latest. They shall forthwith communicate to the Commission the text of those provisions.	=	Member States shall <b>adopt and publish, by 3 years after the entry into force of this Directive</b> , the laws, regulations and administrative provisions necessary to comply with this Directive [...]. They shall <b>immediately</b> communicate [...] the text of those <b>measures to the Commission</b> .	<b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL</i></b>  Member States shall <b>adopt and publish, by 2 years after the entry into force of this Directive</b> , the laws, regulations and administrative provisions necessary to comply with this Directive [...]. They shall <b>immediately</b> communicate [...] the text of those <b>measures to the Commission</b> .	97

COM Proposal	EP AMs	Council General Approach	Comments	
		<p>They shall apply those measures from 4 years after the entry into force of this Directive. Until that date, Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.</p>	<p><b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL</i></b></p> <p>They shall apply those measures from <u>2</u> years after the entry into force of this Directive. Until that date, Directive 96/71/EC shall remain applicable in its wording prior to the amendments introduced by this Directive.</p>	98
<p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	=	<p>When Member States adopt those <b>measures</b>, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p><i>NOTE: CONS GA are only legal-linguistic modifications.</i></p>	99

COM Proposal	EP AMs	Council General Approach	Comments	
		<b>2(-a)(new) This Directive shall apply to the road transport sector from the date of entry into force of a legislative act 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.</b>	<b>2(-a)(new) This Directive shall apply to the road transport sector from the date of entry into force of a legislative act 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.</b>	100
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	=	=	2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	101

COM Proposal	EP AMs	Council General Approach	Comments	
		<p><b>3. The Commission shall review the application and implementation of this Directive. By 8 years after the entry into force of this Directive, the Commission shall present a report on the application and implementation of this Directive to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments and modifications to this Directive.</b></p>	<p><b><i>PROVISIONALLY AGREED TEXT, SUBJECT TO CHECK BY THE COUNCIL</i></b></p> <p><b>3. The Commission shall review the application and implementation of this Directive. By <u>5</u> years after the entry into force of this Directive, the Commission shall present a report on the application and implementation of this Directive to the European Parliament, the Council and the European Economic and Social Committee and propose, where appropriate, necessary amendments and modifications to this Directive.</b></p> <p><b><u>That report shall include an assessment of whether further measures to ensure a level-playing field and protect workers are required:</u></b></p> <p><b><u>1. in the case of sub-contracting;</u></b></p> <p><b><u>2. in the light of Article 2(-a) (new), taking into account the</u></b></p>	102

COM Proposal	EP AMs	Council General Approach	Comments	
			<u>developments concerning the legislative act amending directive 2006/22/EC and laying down specific rules with respect to Directive 96/71/EC and Directive 2014/67/EC for posting drivers in the road transport sector.</u>	
<i>Article 3</i>				
This Directive shall enter into force on the [twentieth] day following that of its publication in the <i>Official Journal of the European Union</i> .	=	=	This Directive shall enter into force on the [twentieth] day following that of its publication in the <i>Official Journal of the European Union</i> .	103
<i>Article 4</i>				
This Directive is addressed to the Member States.	=	=	This Directive is addressed to the Member States.	104
Done at Strasbourg,	=	=	Done at Strasbourg,	105
For the European Parliament For the Council	=	=	For the European Parliament For the Council	106
The President The President	=	=	The President The President	107