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

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concerning the posting of workers in the framework of the provision of services

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

Acting in accordance with the procedure laid down in Article 189b of the Treaty[(3)],

(1) Whereas, pursuant to Article 3 (c) of the Treaty, the abolition, as between Member States, of obstacles to the free movement of persons and services constitutes one of the objectives of the Community;

(2) Whereas, for the provision of services, any restrictions based on nationality or residence requirements are prohibited under the Treaty with effect from the end of the transitional period;

(3) Whereas the completion of the internal market offers a dynamic environment for the transnational provision of services, prompting a growing number of undertakings to post employees abroad temporarily to perform work in the territory of a Member State other than the State in which they are habitually employed;

(4) Whereas the provision of services may take the form either of performance of work by an undertaking on its account and under its direction, under a contract concluded between that undertaking and the party for whom the services are intended, or of the hiring-out of workers for use by an undertaking in the framework of a public or a private contract;

(5) Whereas any such promotion of the transnational provision of services requires a climate of fair competition and measures guaranteeing respect for the rights of workers;

(6) Whereas the transnationalization of the employment relationship raises problems with regard to the legislation applicable to the employment relationship; whereas it is in the interests of the parties to lay down the terms and conditions governing the employment relationship envisaged;

(7) Whereas the Rome Convention of 19 June 1980 on the law applicable to contractual obligations[(4)], signed by 12 Member States, entered into force on 1 April 1991 in the majority of Member States;

(8) Whereas Article 3 of that Convention provides, as a general rule, for the free choice of law made by the parties; whereas, in the absence of choice, the contract is to be governed, according to Article 6 (2), by the law of the country, in which the employee habitually carries out his work in performance of the contract, even if he is temporarily employed in another country, or, if the employee does not habitually carry out his work in any one country, by the law of the country in which the place of business through which he was engaged is situated, unless it appears from the circumstances as a whole that the contract is more closely connected with another country, in which case the contract is to be governed by the law of that country;

(9) Whereas, according to Article 6 (1) of the said Convention, the choice of law made by the parties is not to have the result of depriving the employee of the protection afforded to him by the mandatory rules of the law which would be applicable under paragraph 2 of that Article in the absence of choice;

(10) Whereas Article 7 of the said Convention lays down, subject to certain conditions, that effect may be given, concurrently with the law declared applicable, to the mandatory rules of the law of another country, in particular the law of the Member State within whose territory the worker is temporarily posted;

(11) Whereas, according to the principle of precedence of Community law laid down in its Article 20, the said Convention does not affect the application of provisions which, in relation to a particular matter, lay down choice-of-law rules relating to contractual obligations and which are or will be contained in acts of the institutions of the European Communities or in national laws harmonized in implementation of such acts;

(12) Whereas Community law does not preclude Member States from applying their legislation, or collective agreements entered into by employers and labour, to any person who is employed, even temporarily, within their territory, although his employer is established in another Member State; whereas Community law does not forbid Member States to guarantee the observance of those rules by the appropriate means;

(13) Whereas the laws of the Member States must be coordinated in order to lay down a nucleus of mandatory rules for minimum protection to be observed in the host country by employers who post workers to perform temporary work in the territory of a Member State where the services are provided; whereas such coordination can be achieved only by means of Community law;

(14) Whereas a ‘hard core’ of clearly defined protective rules should be observed by the provider of the services notwithstanding the duration of the worker's posting;

(15) Whereas it should be laid down that, in certain clearly defined cases of assembly and/or installation of goods, the provisions on minimum rates of pay and minimum paid annual holidays do not apply;

(16) Whereas there should also be some flexibility in application of the provisions concerning minimum rates of pay and the minimum length of paid annual holidays; whereas, when the length of the posting is not more than one month, Member States may, under certain conditions, derogate from the provisions concerning minimum rates

of pay or provide for the possibility of derogation by means of collective agreements; whereas, where the amount of work to be done is not significant, Member States may derogate from the provisions concerning minimum rates of pay and the minimum length of paid annual holidays;

(17) Whereas the mandatory rules for minimum protection in force in the host country must not prevent the application of terms and conditions of employment which are more favourable to workers;

(18) Whereas the principle that undertakings established outside the Community must not receive more favourable treatment than undertakings established in the territory of a Member State should be upheld;

(19) Whereas, without prejudice to other provisions of Community law, this Directive does not entail the obligation to give legal recognition to the existence of temporary employment undertakings, nor does it prejudice the application by Member States of their laws concerning the hiring-out of workers and temporary employment undertakings to undertakings not established in their territory but operating therein in the framework of the provision of services;

(20) Whereas this Directive does not affect either the agreements concluded by the Community with third countries or the laws of Member States concerning the access to their territory of third-country providers of services; whereas this Directive is also without prejudice to national laws relating to the entry, residence and access to employment of third-country workers;

(21) Whereas Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community[(5)] lays down the provisions applicable with regard to social security benefits and contributions;

(22) Whereas this Directive is without prejudice to the law of the Member States concerning collective action to defend the interests of trades and professions;

(23) Whereas competent bodies in different Member States must cooperate with each other in the application of this Directive; whereas Member States must provide for appropriate remedies in the event of failure to comply with this Directive;

(24) Whereas it is necessary to guarantee proper application of this Directive and to that end to make provision for close collaboration between the Commission and the Member States;

(25) Whereas five years after adoption of this Directive at the latest the Commission must review the detailed rules for implementing this Directive with a view to proposing, where appropriate, the necessary amendments,

HAVE ADOPTED THIS DIRECTIVE:

Status: *EU Directives are being published on this site to aid cross referencing from UK legislation. After exit day no further amendments will be applied to this version.*

Article 1

[F1Subject-matter and scope]

[F2-1 This Directive shall ensure the protection of posted workers during their posting 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.

-1a 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.**]**

1 This Directive shall apply to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers, in accordance with paragraph 3, to the territory of a Member State.

2 This Directive shall not apply to merchant navy undertakings as regards seagoing personnel.

3 This Directive shall apply to the extent that the undertakings referred to in paragraph 1 take one of the following transnational measures:

a post workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

b post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting; or

[F1c 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 that there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.**]**

[F2Where a worker who has been hired out by a temporary employment undertaking or placement agency to a user undertaking as referred to in point (c) is to carry out work in the framework of the transnational provision of services within the meaning of point (a), (b) or (c) by the user undertaking in the territory of a Member State other than where the worker normally works for the temporary employment undertaking or placement agency, or for the user undertaking, the worker shall be considered to be posted to the territory of that Member State by the temporary employment undertaking or placement agency with which the worker is in an employment relationship. The temporary employment undertaking or placement agency shall be considered to be an undertaking as referred to in paragraph 1 and shall fully comply with the relevant provisions of this Directive and Directive 2014/67/EU of the European Parliament and of the Council[(6)].

The user undertaking shall inform the temporary employment undertaking or placement agency which hired out the worker in due time before commencement of the work referred to in the second subparagraph.**]**

4 Undertakings established in a non-member State must not be given more favourable treatment than undertakings established in a Member State.

Textual Amendments

F1 Substituted by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance).

F2 Inserted by Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance).

Article 2

Definition

1 For the purposes of this Directive, 'posted worker' means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.

2 For the purposes of this Directive, the definition of a worker is that which applies in the law of the Member State to whose territory the worker is posted.

Article 3

Terms and conditions of employment

[F1 1 Member States shall ensure, irrespective of which law applies to the employment relationship, that undertakings as referred to in Article 1(1) guarantee, on the basis of equality of treatment, workers who are posted to their territory the terms and conditions of employment covering the following matters which are laid down in the Member State where the work is carried out:

— by law, regulation or administrative provision, and/or

— by collective agreements or arbitration awards which have been declared universally applicable or otherwise apply in accordance with paragraph 8:

(a) maximum work periods and minimum rest periods;

(b) minimum paid annual leave;

(c) remuneration, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;

(d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;

(e) health, safety and hygiene at work;

(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;