



**COUNCIL OF
THE EUROPEAN UNION**



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Posting of workers directive

The Permanent Representatives Committee (Coreper) today approved a compromise text on an enforcement directive on the posting of workers directive 96/71¹, provisionally agreed between the Greek Presidency of the Council and the European Parliament.

In particular, the overall compromise agreement provides:

- With regard to **administrative requirements and national control measures** (article 9), the text strikes a balance between the necessity of guaranteeing legal certainty and transparency for service providers, while acknowledging member states' competence. The directive provides that member states may only impose justified and proportionate administrative requirements and control measures in order to ensure effective compliance with this directive and directive 96/71/EC.

The member states may also impose other justified and proportionate administrative requirements and control measures should situations or new developments arise from which it appears that existing administrative requirements and control measures are not sufficient or efficient. All measures taken will have to be communicated to the Commission and service providers will have to be informed about these measures through a single national website. This monitoring process does not constitute an ex-ante authorisation.

¹ 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 ([OJL 18, 21.1.1997](#))

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- With regard to **subcontracting liability** (article 12), the text provides that, as regards the activities mentioned in the annex to directive 96/71/EC, i.e. the construction sector, member states take measures so that posted workers can hold the contractor of which the employer is a direct subcontractor liable for the respect of posted workers' rights regarding any outstanding net remuneration. Instead of these liability rules, member states may take other appropriate enforcement measures which enable in a direct subcontracting relationship effective and proportionate sanctions against the contractor in situations where workers have difficulties in obtaining their rights.
- Regarding the **identification of a genuine posting and prevention of abuse and circumvention** (article 3), the factual elements enumerated in this article should serve the competent authorities to make an overall assessment of a situation as a genuine posting. The competent authorities may also consider these elements when assessing whether a person falls within the applicable definition of a worker as well as in identifying workers falsely declared as self-employed. The directive also deals, in a recital, with a situation where, following the overall assessment by competent authorities under article 3, there is no genuine posting situation and conflict of laws arises.
- As a part of the compromise on article 3, the three institutions also agreed on making a joint declaration to be published together with the directive in the Official Journal.
- With regard to **improved access to information** (article 5), the directive aims at increasing the transparency by providing that information on the terms and conditions of employment and on collective agreements applicable to posted workers should be made generally available free of charge via a single official national website or by other suitable means.
- As for the **mutual assistance** (article 6), the text lays down specific time-limits for the supply of information, which is as soon as possible and up to a maximum of two working days for urgent cases and up to a maximum of 25 working days for all other requests for information.
- Concerning Chapter VI on **cross-border enforcement of administrative fines and penalties**, the directive builds on the principle of mutual assistance and mutual recognition when enforcing administrative fines and penalties imposed on a service provider established in a member state for failure to comply with the applicable rules on posting of workers in another member state.

- Moreover, the overall provisional agreement addresses important issues, as is the fight against undeclared work, which is referred in the recitals, and also includes a horizontal three-years review clause (article 21 regarding the key articles of the directive, including articles 3, 9 and 12);

Parliament's employment and social affairs committee is expected to approve the compromise text in March and the Parliament at first reading in its plenary session in April. The Council will then formally adopt the directive at a later stage.
