

# EUROPEAN ECONOMIC AREA

## STANDING COMMITTEE OF THE EFTA STATES

Ref. 1118273

25 January 2013

### SUBCOMMITTEE IV ON FLANKING AND HORIZONTAL POLICIES

#### EEA EFTA Comment

**on the proposal for a directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services**

#### 1. PREFACE

1. The EEA EFTA States, Iceland, Liechtenstein and Norway, would like to thank the European Commission for the opportunity to comment on the proposal for a directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, presented by the Commission on 21 March 2012. The EEA EFTA States have studied the proposal with great interest and have received feedback from the relevant ministries.
2. The EEA EFTA States welcome the European Union's initiative to strengthen the enforcement of the Posting of Workers Directive, and consider it an important step in the right direction. There is a clear need to strengthen compliance with the Directive, especially to ensure that posted workers' wages and working conditions are in accordance with national law in the receiving country.
3. The following comments represent the views of the EEA EFTA States in relation to the proposed directive on the enforcement of the Posting of Workers Directive.

#### 2. PREVENTING ABUSE AND CIRCUMVENTION

4. The EEA EFTA States are pleased with the effort made in Article 3 of the proposed directive to provide a non-exhaustive list of elements describing the temporary nature of the posting and the genuine link that exists between the employer and the Member State from which the worker is posted. This will indeed contribute to reducing circumvention and abuse of the Posting of Workers Directive. The EEA EFTA States are, however, of the opinion that the provision should be supplemented to indicate what the consequences will be if a worker is not considered a posted worker. The

proposed directive should explicitly state which rules will be applicable in this situation. This would give further clarification and enhance legal certainty.

5. The EEA EFTA States support the aim to improve access to information in order to help ensure easily accessible and widely available information on the terms and conditions to be respected, including where these are laid down in collective agreements. They also welcome the strengthening of administrative cooperation and mutual assistance, especially in Article 7 concerning the role of the Member State from which the worker is posted.

### **3. NATIONAL CONTROL MEASURES**

6. The EEA EFTA States are very concerned about Article 9 of the proposal covering national control measures. This Article provides an exhaustive list of permissible national control mechanisms, which in the EEA EFTA States' opinion is far too restrictive and hampers the purpose of the proposed directive.
7. A proportionally large number of posted workers from other EU countries have been received by some EEA EFTA States. The EEA EFTA States emphasise the importance of ensuring that labour market rules are designed to prevent social dumping and encourage high standards of social protection by applying appropriate measures aimed at protecting domestic and posted workers' rights, and at maintaining high standards in the workplace. It has also been a high priority to develop effective control systems that secure the rights of posted workers, combat social dumping and ensure a level playing field for companies. As the list of national control measures provided in Article 9 does not cover measures taken by some of the EEA EFTA States, they would be obliged to discontinue their current practice. For the EEA EFTA States, this is considered to be problematic and represents a step backwards, as the current measures taken have proven to be effective.
8. The EEA EFTA States have also noticed that the list of measures provided in the proposal only takes into account measures that have already been deemed to be in accordance with EU law by the Commission and the Court of Justice of the European Union, and therefore excludes measures such as controlling and information obligations for trade unions and contractors in subcontracting chains, which have already been assessed and approved by the EFTA Surveillance Authority and the EFTA Court.
9. The EEA EFTA States are of the opinion that national control measures should be viewed against the mutual experience of both the EU Member States and EEA EFTA States. A more dynamic approach is needed, whereby the EU and EEA EFTA States are allowed to establish the necessary national rules on control systems, which are designed to meet the specific challenges of vulnerable industries.

### **4. JOINT AND SEVERAL LIABILITY**

10. The EEA EFTA States welcome Article 12 of the proposal concerning contractors' obligations and joint and several liability in relation to respecting the terms and

conditions of employment of posted workers by subcontractors. As some of the EEA EFTA States have more far-reaching systems of joint and several liability, which have proven to be effective, it is of great importance that the proposed directive does not prevent those States from maintaining their current rules on joint and several liability.

## **5. USE OF INTERNAL MARKET INFORMATION SYSTEM**

11. The EEA EFTA States support the use of the Internal Market Information System for administrative cooperation and mutual assistance (Article 18 of the proposal). It is, however, important that this does not prevent the application of bilateral agreements on cooperation.
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