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REFIT Platform

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## **STAKEHOLDER SUGGESTIONS**

### **- EMPLOYMENT AND SOCIAL AFFAIRS -**

#### **DISCLAIMER**

This document contains suggestions from stakeholders (for example citizens, NGOs, companies) or Member State authorities communicated to the Commission and submitted to the REFIT Platform in a particular policy area.

It is provided by the secretariat to the REFIT Platform members to support their deliberations on the relevant submissions by stakeholders and Member States authorities.

The Commission services have complemented relevant quotes from each suggestion with a short factual explanation of the state of play of any recent, relevant ongoing or planned work by the EU institutions.

The document does not contain any official positions of the European Commission unless expressly cited.

## Table of Contents

1. SUMMARY .....	3
2. WORKING TIME DIRECTIVE.....	4
2.1. Submission by the Austrian Federal Economic Chamber (WKÖ).....	4
2.2. Policy Context .....	4
2.3. Submission by the Board of Swedish Industry and Commerce (NNR) .....	6
2.4. Policy Context .....	6
2.5. Submission by the Finnish Survey for better regulation .....	6
2.6. Policy Context .....	6
3. POSTING OF WORKERS .....	6
3.1. Submission by the House of Dutch Provinces for better regulation .....	6
3.2. Policy Context .....	7
4. PROTECTION OF YOUNG PEOPLE AT WORK .....	9
4.1. Submission by the Board of Swedish Industry and Commerce (NNR) .....	9
4.2. Policy Context .....	9
5. ADMISSION OF THIRD-COUNTRY NATIONALS FOR PURPOSES OF STUDIES.....	10
5.1. Submission by the House of Dutch Provinces for better regulation .....	10
5.2. Policy Context .....	11

## 1. SUMMARY

This briefing includes six suggestions in four different areas:

### *Working Time:*

- The Austrian Federal Economic Chamber (WKÖ) suggests that a common definition for information and consultation of Workers is not necessary and that the revision of the Working Time Directive (2003/88/EC) which is scheduled for 2016 and already part of the REFIT programme should not start before the respective enforcement directive has entered into force.
- In two separate submissions the Board of Swedish Industry and Commerce (NIR) and the Finnish Survey for better regulation suggest more flexibility for Member States' implementation.

### *Posting of Workers:*

- The House of Dutch provinces for better regulation suggests better enforcement of the Posting of Workers Directive through more efficient cooperation between Member States.

### *Protection of Young People at Work:*

- The Board of Swedish Industry and Commerce (NIR) suggests simplification and more flexibility for Member States' implementation.

### *Admission of Third-Country Nationals for Purposes of Studies:*

- The House of Dutch Provinces for better regulation suggests improving the effectiveness of EU law for very mobile students and in cross-border situations including bilateral solutions with Germany

Stakeholder suggestions regarding the coherence between Health and Safety at Work legislation and chemicals legislation (REACH) are circulated under separate cover.

## 2. WORKING TIME DIRECTIVE

### 2.1. Submission by the Austrian Federal Economic Chamber (WKÖ)

As expressed in previous opinions as well as during the social partner consultation we do not see the need to find a common definition of "information and consultation". It is much more urgent to amend the Working Time Directive which is provided for in 2016.

The part on the "Enforcement-directive to the posting of workers directive", which was adopted in 2014 and entered into force June 2014 (Art.25), clearly states that the amendments by the European Parliament will increase administrative burden for enterprises. However, any eventual measures should only be taken after the enforcement directive has been transposed (June 2016).

### 2.2. Policy Context

The submission of the WKO touches upon three different issues, each of which will be briefly described below:

- Information and consultation of workers (Directive 2002/14/EC<sup>1</sup>, Directive 98/59/EC<sup>2</sup> and Directive 2001/23/EC<sup>3</sup>)
- Working time directive (Directive 2003/88/EC<sup>4</sup>)
- Enforcement directive (Directive 2014/67/EU<sup>5</sup>) versus review of posting of workers (Directive 96/71/EC<sup>6</sup>).

#### **Information and consultation of workers**

The EU Directive establishing a general framework for informing and consulting employees (2002/14/EC) is intended to play a key role in promoting social dialogue. It sets minimum principles, definitions and arrangements for information and consultation of employees at the enterprise level within each country. Given the range of industrial relations practices across the Member States, they enjoy substantial flexibility in applying the Directive's key concepts (employees' representatives, employer, employees etc.) and implementing the arrangements for information and consultation.

Related directives are Directive 98/59/EC on collective redundancies and Directive 2001/23/EC on transfers of undertakings. Recently, all three directives were subject to a Fitness Check (SWD (2013)293 final). The Fitness Check concluded that the Directives are generally relevant, effective, coherent and efficient. However, the effectiveness and coherence of certain wordings and definitions have been questioned.

As a follow-up, the Commission launched a consultation of social partners on the possible consolidation of the three directives as part of REFIT. The first-stage consultation of EU Social Partners was launched on 10 April 2015 and ended on 30 June 2015. The results of the consultation showed diverging views between management and

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002L0014>

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0059>

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0023>

<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32003L0088>

<sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0067>

<sup>6</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31996L0071>

labour representatives. Most respondents were of the opinion that the Directives should not be consolidated into one single act. Employer representatives considered that the three Directives work well in practice and did not find any reasons to amend them, while the workers' organisations supported changes to the Directives taken separately in order to improve their effectiveness and ensure "upwards convergence" between them. The workers' side could envisage an alignment of the notion of "information", but not of "consultation", in the Directives.

In parallel, the European social partners for central government administrations negotiated and signed an agreement on 21 December with a view to achieving before the end of 2015 a binding agreement on information and consultation in their sector, which is currently excluded from the scope of the three Directives.

### **Working Time Directive**

The EU's Working Time Directive (2003/88/EC) requires EU countries to guarantee specific rights to all workers, such as for examples a weekly limit of 48 working hours on average, paid annual leave of at least 4 weeks per year or a minimum daily rest period of 11 consecutive hours in every 24 hours. The Directive also sets out special rules on working hours for workers in a limited number of sectors, including doctors in training, offshore workers, sea fishing workers and people working in urban passenger transport.

The Commission carried out a 2-stage consultation of EU-level workers' and employers' representatives and a public consultation.

Most European workers' and employers' organisations agreed in the first stage of consultation that EU rules on working hours needed to be reviewed. However, views diverged on the kind of changes needed; business called for more flexibility, while the unions wanted more effective protection.

The main outcome of the second stage of consultation, launched in December 2010, was that all the main cross-sectoral workers' and employers' representatives favoured the option – set out in Article 155 of the Treaty on the Functioning of the European Union (TFEU) - of negotiating on the Working Time review themselves. In November 2011 they took a joint decision to start negotiations. Extensive talks were held throughout 2012, but no agreement was reached.

A new implementation report is also under preparation (to follow the latest report presented late in 2010 (ref. COM(2010) 802 final).

### **Enforcement Directive (posting of workers)**

An enforcement Directive for posting of workers entered into force in June 2014. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 June 2016. (Art. 23)

In comparison with the original Commission proposal, the final text of the Directive adopted by the co-legislator contains a number of modifications increasing administrative burden on companies and imposing a number of new obligations on public authorities.

The Commission, as announced in its 2016 Work Program, intends to propose a targeted revision of the Posting of Workers Directive, aimed at striking the right balance between the free provision of services across borders and an adequate protection of posted workers. The revision will address key issues such as how to implement the principle of equal pay for equal work in the same place.

### 2.3. Submission by the Board of Swedish Industry and Commerce (NNR)

#### **Legislation**

Directive 2003/88/EC – Working Time Directive

#### **Burden on business**

The directive demands that all the regulations in detail are implemented in the member states, without prejudice to the level of protection that already exists at national level. A detailed implementation, together with existing national regulations, makes it difficult for the enterprise to full fill all of the obligations. In a Swedish context regulations about night work and compensatory rest are burdensome to comply with.

#### **Simplification proposal**

Allow for implementation of the directive to be done in a way that complies with the demands at national level without the need to implement every detail. The Commission should reconsider the so called” non-step back clause” in favour of appropriate protection of health and safety, but at the same time compatible with better regulation.

#### **Effects of the simplification proposal**

Reduced costs, reduced uncertainty

### 2.4. Policy Context

See under point 2.2.

### 2.5. Submission by the Finnish Survey for better regulation

Implementation of the interpretations of the provisions concerning the definition of working time (article 2) and compensatory rest (article 17) given in the working time directive (2003/88/EC) would result in significant additional costs for the Finnish healthcare system, for example when physicians and other staff are hired. It is imperative to find a solution to this issue that will not question the working time directive as such, but enable the provision of healthcare services throughout the country. Included in the REFIT review.

### 2.6. Policy Context

See under point 2.2.

## 3. POSTING OF WORKERS

### 3.1. Submission by the House of Dutch Provinces for better regulation

#### **Legislation:**

Posting of workers Directive 96/71/EC, Enforcement Directive 2014/67/EU, Regulation

883/2004 and its application order Regulation 987/2009, decision A2.

**Problem description/burden on citizens and business:**

In respect of the Secondment Directive, there are a number of bottlenecks. The question arises as to what should be taken to mean by 'provision of services' and 'secondment'. Enforcing bodies can be reticent in terms of qualifying a given situation, as a result of which employees do not always receive what they are entitled to on the basis of applicable law. The same applies to compliance with conditions of employment in the Secondment Directive. According to the directive, a number of minimum conditions should be complied with. The Enforcement Directive aims to harmonise the enforcement instruments.

All declarations issued by the competent bodies from the seconding country must be respected by the receiving Member State. These statements can only be withdrawn by the bodies from the seconding Member State. As a result of the A1 declarations, social security premiums can be levied in the country of employment. The question is whether the premiums are actually paid to the seconding country. This can result in falsification of competition.

**Simplification measure/suggestion:**

1. Better and stricter compliance with the Secondment Directive must be enforced. To ensure correct implementation of the Secondment Directive and the Enforcement Directive, there must be more efficient transnational cooperation. Focus should be placed on promoting transnational cooperation instead of harmonising enforcement instruments (Enforcement Directive). This applies both to government bodies and to social partners. As a consequence, the Member States can be brought on board, so that more (bottom-up) support is created.
2. A simplified revision of the A1 declaration by the receiving (employing) country.

### 3.2. Policy Context

**Ad 1)** *The Posting of Workers Directive (Directive 96/71/EC)* covers employees being sent to another Member State in situations when an employer posts a worker to another Member States on his own account and under his direction, under a contract which the employer has concluded with the party in the State for whom the services are intended; when an employer posts a worker to an establishment or to an undertaking owned by the group in the territory of a Member State; and/or when the employer, being a temporary employment undertaking or placement agency, hires out a worker to a user undertaking established or operating in another Member States. The employment relationship between the employer and the posted worker must be maintained during the period of posting.

The core of mandatory rules on posting covers a wide range of issues such as maximum work periods and minimum rest periods, minimum paid annual leave, minimum rates of pay, equal treatment between men and women and the conditions of hiring out workers, in particular the supply of workers by temporary employment undertakings. The legislation also tackles issues such as health and safety at work and includes protective measures in the terms and conditions of employment of pregnant women, of children and of young people. By guaranteeing fair competition and respect for the rights of posted works, the EC legislation provides a clear framework so that businesses and workers can take full advantage of the opportunities offered by the internal market. Furthermore, the

Posting of Workers directive lays down the obligation for Member States to cooperate among themselves and to grant public access to information on national employment conditions.

Possible changes to the legislative framework on the posting of workers were considered throughout 2009 – 2011. The Commission identified issues for which it was found most appropriate to concentrate on better enforcement of compliance, improving legal certainty and strengthening administrative cooperation. The proposal for an Enforcement Directive, tabled in March 2012, set out a range of new measures to improve the implementation, application and enforcement in practice of Directive 96/71/EC. *The Enforcement Directive (2014/67/EU)* adopted in May 2014 thus:

- sets more ambitious standards to raise the awareness of workers and companies about their rights and obligations as regards the terms and conditions of employment;
- improves cooperation between national authorities in charge of posting;
- clarifies the definition of posting, increasing legal certainty for posted workers and service providers, while at the same time providing Member States with tools to fight circumvention or abuse of the applicable rules precisely by so-called "letter-box companies";
- establishes a list of national control measures that the Member States may apply in order to monitor the compliance of Directive 96/71/EC and the Enforcement Directive itself;
- provides for measures ensuring that posted workers in the construction sector can hold the contractor in a direct subcontractor relationship liable for any outstanding net remuneration corresponding to the minimum rates of pay, in addition to or in place of the employer. Alternatively, Member States may take other appropriate enforcement measures, in accordance with EU and national law, which enable in a direct subcontracting relationship, effective and proportionate sanctions against the contractor;
- ensures that administrative penalties and fines imposed on service providers by one Member State's enforcement authorities for failure to respect the requirements of the 1996 Directive can be enforced and recovered in another Member State.

The deadline for Member States to transpose the Enforcement Directive into national law is 18 June 2016. The Commission is working closely with the Member States to support them in achieving a timely and qualitative transposition.

To further contribute to the objective of having a fairer and better functioning EU labour market, the Commission, as announced in its 2016 Work Program, intends to propose a targeted revision of the Posting of Workers Directive, aimed at striking the right balance between the free provision of services across borders and an adequate protection of posted workers. The revision will address key issues such as how to implement the principle of equal pay for equal work in the same place.

**Ad 2)** A worker who leaves on a short assignment to another [EU country](#) (maximum 2 years) while staying covered by his home country's social security system is considered a posted worker. Such a person can be either an employee posted by his employer, or a self-employed person.

To remain covered by his home social security system, the posted worker needs an [A1](#)

[form \(formerly the E 101 form\)](#) to prove that he and his dependents are still covered by his home system while abroad - for up to 2 years. The posted worker should be able to present the A1 form to the authorities at any time during his stay abroad. If he's unable to, he might have to pay social security contributions there. If he is checked and has a valid A1 form, his host country must recognise it.

#### **4. PROTECTION OF YOUNG PEOPLE AT WORK**

##### **4.1. Submission by the Board of Swedish Industry and Commerce (NNR)**

###### **Legislation**

Council Directive 94/33/EC on the protection of young people at work

###### **Burden on business**

The directive contains regulations on child labour, protection of children, youth work and working time. However, the directive is far too complex and detailed and should leave more to the member states to decide.

###### **Simplification proposal**

Make the regulations less detailed. It is, for example, better to regulate the working time per week instead of per day.

###### **Effects of the simplification proposal**

Time-saving  
Reduced costs

##### **4.2. Policy Context**

Directive 94/33/EC on the protection of young people at work is one of the directives of the Occupational Health and Safety (OSH) acquis. The main objectives of the directive are to prohibit work by children, safeguarding at the same time their schooling obligations, and to protect young people against economic exploitation and against any work likely to harm their safety, health, development or education.

The directive gives legal definitions for the terms "child", "adolescent", "young person", "light work", "working time" and "rest period".

Member States shall take the necessary measures to prohibit work by children. They shall ensure, under the conditions laid down by this Directive, that the minimum working or employment age is not lower than the minimum age at which compulsory full-time schooling - as imposed by national law - ends or 15 years in any event. The directive lays down provisions on health and safety and working hours.

Implementation reports were published in 2004 (Commission Report - [Application of Directive 94/33/EC on the Protection of Young People at Work & Annexes COM \(2004\) 105](#)) and 2010 (Commission Staff Working Document - [Application of Council Directive 94/33/EC on the Protection of Young People at Work SEC \(2010\) 1339](#)). The 2010 report concludes that "The legal framework provided by the Directive is considered generally satisfactory, and only a few proposals have been made for revising

it. However, such proposals do not follow a common or convergent trend. "According to the report "the most common concerns raised by Member States as well as the social partners have to do with the perceived deficiencies in the implementation of monitoring and control systems".

The OSH acquis – including this Directive - is currently being evaluated in line with requirement of ex-post evaluation in the OSH Framework Directive in the context of the REFIT Programme. The evaluation assesses the relevance, effectiveness and coherence of the legislation as well as administrative burden it creates. The evaluation results are expected in the first half of 2016 and the Commission announced in its 2016 Work Programme<sup>7</sup>, that appropriate follow-up action will be taken to reflect the evaluation results and recommendations.

## **5. ADMISSION OF THIRD-COUNTRY NATIONALS FOR PURPOSES OF STUDIES**

### **5.1. Submission by the House of Dutch Provinces for better regulation**

#### **Legislation:**

General: Article 3, paragraph 2 of the Treaty on European Union (VEU); Articles 165 and 166 of the Treaty on the functioning of the European Union (VWEU); Regulation 1288/2013 (Erasmus+). For Union citizens and their family members: Articles 21, 45, 49 VWEU, Directive 2004/38 (Union Citizens Directive), Regulation 492/2011 (free movement of workers). For so-called Third country citizens (non-EU citizens): Directive 2004/114 (Student Directive).

#### **Problem description/burden on citizens and business:**

1. Germany admits third country nationals on the basis of Directive 2004/114 to attend the RWTH in Aachen. However, Aachen is facing a shortage of student accommodation, while just over the border in the Kerkrade/Heerlen area, there is huge house vacancy. The residents' permit issued by Germany on the basis of Directive 2004/114 however offers no entitlement to 'free movement' to the student: in principle they may therefore not become established in the Netherlands.

2. The mobile student is not always entitled to a grant for his studies: 'home member states' are not required to provide exportable student grants (the Elrick case), and 'guest member states' can deny foreign students who study on their territory access to student grants for the first five years of the residence (Förster case). Even if 'Home member states' do provide exportable student grants, conditions can be imposed which sometimes make life very difficult for a student with a very mobile past.

3. Inflexible Erasmus financing for internships: the Erasmus+ programme offers travel and expenses payments for students who follow an internship abroad as part of their educational programme. However, this payment applies only if the student actually moves to another EU country; students in border regions who wish to follow an internship abroad but who do not move abroad are exempted.

#### **Simplification measure/suggestion:**

1. In this case, a bilateral solution: Germany monitors whether the student actually studies

<sup>7</sup> [http://ec.europa.eu/atwork/pdf/cwp\\_2016\\_annex\\_ii\\_en.pdf](http://ec.europa.eu/atwork/pdf/cwp_2016_annex_ii_en.pdf)

(in accordance with the Student Directive) (monitoring study progress). On the basis of a valid (German) residence permit for study purposes, the Netherlands then issues a special residence permit, so that the students can move into housing in the Netherlands. In the longer term, consideration could be given to a thorough revision of Directive 2004/114 (that goes beyond the current proposal), in which this solution is structurally embedded: following admission (and subject to continuous monitoring) by one Member State, students are entitled to free movement during the course of their studies.

2. A possible solution would be to consider a system of coordination, such as perhaps inclusion of student grants in Regulation 883/2004. Another possibility is to create financing opportunities for students at European level and/or to expand those possibilities (for a starting point, see: Erasmus+, Regulation 1288/2013).

3. A possible solution would be to not make travel and expenses allowances strictly dependent on changed place of residence, but to assume a change in learning and working environment abroad.

## 5.2. Policy Context

*Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service* sets out mandatory provisions for the admission of students who are third-country nationals. It was left optional to Member States to apply the Directive to school pupils, volunteers and unremunerated trainees. If they meet the conditions, students are entitled to a residence permit and they have certain rights with regard to employment or self-employment, which allows them to cover part of the cost of their studies and move between different Member States to pursue their studies.

Primary EU law (Article 48 TFEU) and secondary legal acts, set out in *Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009*, fall within the framework of free movement of persons and coordinate the Member States' social security schemes to contribute towards improving the standard of living and employment conditions of mobile EU workers and their dependants by ensuring that persons do not lose their social security rights when moving to another Member State. The social coordination regulations are currently going through a revision.

*Regulation (EU) No 1288/2013 establishes 'Erasmus+'*: the Union programme for education, training, youth and sport. The Erasmus+ 2014-2020 aims to boost skills and employability, as well as modernising education, training, and youth work. The seven year programme has a budget of €14.7 billion; it will provide opportunities for over 4 million Europeans to study, train, gain work experience and volunteer abroad. The programme supports transnational partnerships among Education, Training, and Youth institutions and organisations to foster cooperation and bridge the worlds of Education and work in order to tackle the skills gaps we are facing in Europe. It also supports national efforts to modernise Education, Training, and Youth systems. In the field of sport, there is support for grassroots projects and cross-border challenges such as combating match-fixing, doping, violence and discrimination.