ENACTING

Enable cooperation and mutual learning for a fair posting of workers

Activity 1.1. National Reviews and Panels

Comparative Report

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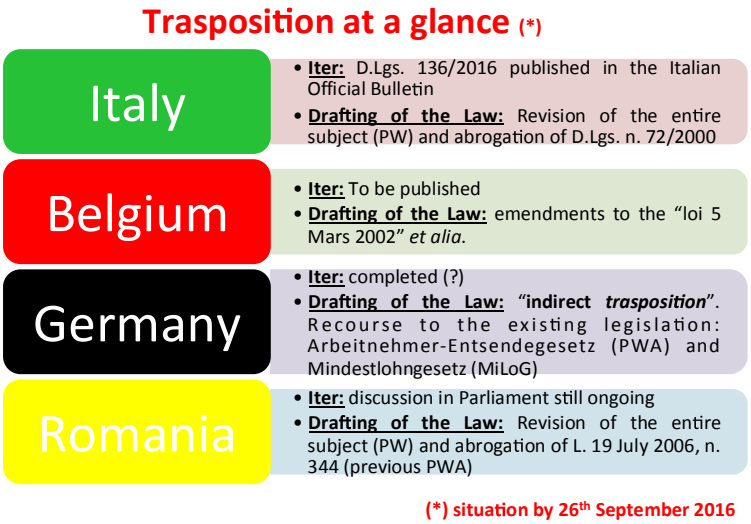
I. INTRODUCTION

The present comparative report is the result of an intensive work of the continuous exchange of information between the partners throughout the entire action.

In fact, both the national administrations and the social partners involved were able to discuss the different national approaches, problems to solve and possible solutions that at national level have been afforded in Belgium, Germany, Italy and Romania in transposing the Directive 2014/67/EU. Specific presentations on the national transposition process were held during the transnational workshops in Florence (17th-18th September 2015) and in Bucharest (8th-9th March 2016). In the end, a presentation of the state of the art of the transposition process in the above mentioned Countries was discussed in the final conference in Rome (14th September 2016) and in the final workshop in Bruxelles (26th September 2016).

At the end of September 2016, the moment the present "comparative report" is concluded, the transposition process is still going on in several EU Member States. In particular, for those investigated during the action, the situation is the following: IT is the only one to have published the transposition law, whereas in BE and RO the process is still ongoing. Nevertheless, the draft transposing laws of BE and RO werealready presented toeach Parliament, and therefore for these Countries the draft laws have been the object of the present comparative report. Finally, Germany made a different choice, by opting for a sort of "indirect transposition" of the Directive 2014/67/EU. In fact Germany combines the AEntG act provisions with the MiLoG act's provisions concerning the application of a statutory minimum wage. The MiLoG act, is applicable to posted workers as well, and the effects of the generally applicable collective agreements declared universally applicable under German law, have been extended to posted workers by the AEntG act; the same happenedwith the legal provisions related to joint and several liability, which are applicable both to German workers and to posted workers. In that



context, at the moment, Germany feels no need of further national legislation in order to transpose the "enforcement directive".

Here following is a comparative table referred to the transposition laws in Belgium (bill), Italy (law) and Romania (bill), showing for each Country which national provisions correspond to the some of the majorissues of the Directive 2014/67/EU.

Item/arts. Dir. 2014/67/EU	**Belgium** *(draft law)*	**Germany** *(indirect transposition)*	**Italy** *(Legislative Decree n. 136/2016)*	**Romania** *(draft law)*
Fraud/abuse (art. 4) *(*)*	Art. 7 contains legal definitions whose content refers to an overall assessment of specific defined factual elements	No direct transposition of this item	In case of fraud/abuse in posting specific administrative sanctions are provided for (art. 3.4). Reference to Rome I is reported in art. 3.4, where conditions are posed for the application, in case of fraud/abuse, of the Italian law to the employment contract.	Art. 7.6 states labour inspectors determine weather there is fraud/abuse and apply, if the case, the Romanian national law. Bogus self-employment is also mentioned as a case of fraud.
Access to information (art. 5)	Art. 15 mentions the Federal Site where information on remuneration is provided for. Information on due remuneration provided by the client is considered as a "due diligence" excluding his involvement in terms of joint and several liability (JSL)	The Customs Authority provides for information in posting. See https://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/foreign-domiciled-employers-posting_node.html	Art. 7 is devoted to access to information. Art. 6 establishes an Observatory with the social partners in order to implement the national website.	Art. 28.3 is referred to access to information. Art. 27.6 also mentions the website to be implemented.
Administrative requirements and inspections	Art. 8 on inspections; art. 9 on the "contact person"	No direct transposition of this item	Art. 10 on administrative requirements for posting companies;	Chapter IV (arts. 23-25) on administrative requirements

Item/arts. Dir. 2014/67/EU	**Belgium** *(draft law)*	**Germany** *(indirect transposition)*	**Italy** *(Legislative Decree n. 136/2016)*	**Romania** *(draft law)*
(arts. 9, 10)	of posting undertakings; arts. 11 and 20 on the documents to be kept and showed to labour inspectors		Art. 11 on inspections	for posting companies and inspections
Subcontracting liability (art. 12)*(*)*	Law 12 April 1965 provides for JSL as a general rule in selected fraud-sensible sectors. Provisions applicable to posting too. Art. 12 provides for a specific system of JSL in the construction sector.	See art. 14 AEntG on JSL, whose application is extended to posting	Art. 4.3-5 are devoted to JSL in posting. National legislation extended to posting	Art. 27. JSL limited to the sectors of Annex 1 of the Directive 96/71/EC. "Due diligence" always possible.
Defence of rights (art. 11)	Art. 17 gives the power to the social partners to represent workers and undertakings in judicial lawsuits referred to posting.	No direct transposition of this item	Art. 5 extends the rights of judicial and administrative claims to posting	Art. 26.4 basically repeats the provisions of art. 11.3 of the Directive

(*) See the specific paragraph below.

This comparative report focuses on two of the major aspects related to the concrete enforcement of the directives on posting, which have been pointed out as crucial by all the members of the project. In fact, *(para. II)*fraud and abuse and*(para. III)* joint and several liability, are two of the major items of Directive 2014/67/EU the Enacting group have considered in depth during the works of the entire action.A more comprehensive and detailed Country Report for each of the Countries involved is provided for as a separate output of the action.

II. FRAUD, ABUSE AND CIRCUMVENTION

II.1. Fraud abuse and circumvention: the progressive affirmation of a general principle of prohibition of abuse of EU Law by the ECJ.

The prohibition of fraudulent and abusive practices meant at getting illicit advantages from the application of freedoms and rights established by EU Law has been a constant concern of the European Court of Justice since 1974. Though the existing rulings of the ECJ on this subject are not directly referred to labour law, as they concern cases of transnational commercial law and tax law, nevertheless, the arguments referred to the prohibition of abusive practices meant at taking illicit advantages of EU law, as established by the ECJ in the fields of commerce and taxation, are perfectly suitable for tackling abusive practices related to PW too. That is because the principle of prohibition of the abuse of rights is more and more widely considered as a general principle of EU law.

Hereafter are reported a few of the pivotal judicial steps and principles, meant at identifying and contrasting abusive practices, as established by the ECJ. These principles have been considered by the Partners of the Project as key elements in order to tackle the concept of fraud and abuse in PW.

1.1 in the ***Van Binsbergen case C-33/74***, point 13, the Court states: «*a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State; such a situation may be subject to judicial control under the provisions of the chapter relating to the right of establishment and not of that on the provision of services*».The case is referred to a professional who, establishing his/her office in a Member State, pursues his/her entire/prevalent activity in a different Member State, whose restrictive legislation he/she intends to avoid. The ECJ establishes it is not against European law that this Member State has a law for combating such a fraudulent practice.This is a case of "circumvention" of a Member State legislation through transnational practices, taking illicit (as contrasting with Member State law) advantages from circumventing EU law based rights.

The Van Binsbergen case is also important because for the first time it points out one of the major type of abusive practices: the so called "**U turn"**situations, where persons or goods move from one MS to another in order to come back to the original MS, and, because of that practice, some benefits established by EU law are claimed for. Obviously not all "U turn" practices, after being attentively regarded by National Authorities, turn out to be abusive practices under EU law, as they can be considered so only in case they are carried out in order to circumvent some restrictive national legislation, unduly benefiting of the freedoms and rights granted by EU law. Anyhow, "U

turn" situations are actually very common practices in posting, as it was pointed out by the National Authorities represented in the Enacting project.

1.2 In the ***Centros ltd. case, C-212/97***, the Court, while affirming the principle that no barrier (denial of permits) can be allowed to a Member State in case a Company established in another MS means to open a branch in that State, in point n. 24 holds that «*it is true that according to the case-law of the Court a Member State is entitled to take measures designed to prevent certain of its nationals from attempting, under cover of the rights created by the Treaty, improperly to circumvent their national legislation or to prevent individuals from improperly or fraudulently taking advantage of provisions of Community law*». Prohibition of fraudulent practices and circumvention of State law cannot be pursued by general regulatory barriers, but these practices need to be tackled by national anti-fraud measures directly taken to prohibit specific conducts to be proved as fraudulent in concrete, case by case.

1.3 For the first time, in the ***Emsland-Stärke GmbH case, C-110/99***, the ECJ clearly affirms **the principle of "abuse of rights"** in EU law, whose juridical notion is composed of objective and subjective factual elements, as follows: « *A finding of an abuse requires, first, a combination of objective circumstances in which, despite formal observance of the conditions laid down by the Community rules, the purpose of those rules has not been achieved.*

It requires, second, a subjective element consisting in the intention to obtain an advantage from the Community rules by creating artificially the conditions laid down for obtaining it. The existence of that subjective element can be established, inter alia, by evidence of collusion between the Community exporter receiving the refunds and the importer of the goods in the non-member country».

1.4 It is with the ***Halifax plccase, C-255/02***, that a major step forward is made. In fact, in this case, the ECJ clearly affirms the prohibition of abusive practices as a general principle of EU law. In n. 69 it sais «*The application of Community legislation cannot be extended to cover abusive practices by economic operators, that is to say transactions carried out not in the context of normal commercial operations, but solely for the purpose of wrongfully obtaining advantages provided for by Community law*».

A very important point in the legal definition of "abusive practices" is the following: they are transactions which are not carried out *bona fide*, meaning "in the context of normal commercial operations"; therefore they are not even understandable and justified on a commercial basis, but only on "the purpose of wrongfully obtaining advantages" or specific rights granted by EU law.

Another central point of the Halifax ruling is that the ECJ explains what are the consequences of fraudulent and abusive practices. The consequence of abuse is the "**re-establishment**" of facts and regulation that would have been applicable without these illicit practices. More precisely, «*Where an abusive practice has been found to exist, the transactions involved must be redefined so as*

to re-establish the situation that would have prevailed in the absence of the transactions constituting that abusive practice».

The Enacting group agrees in considering this principle as very relevant in order to reasoning on the consequences of fraudulent posting. In fact, this principle seems very much in tune with the similar principle established in Regulation 593/2008 (Rome 1), art. 8.1, in the following part: «*Such a choice of law may not, 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 that, in the absence of choice, would have been applicable*». More particularly referred to PW, a very similar concept to the one above mentioned, even expressed almost in the same wording,is provided by Recital 11 of Directive 2014/67/EU, where it refers to norms «*that are aimed at ensuring that employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by an agreement or which can only be derogated from to their benefit*».

1.5 In the ***Cadbury Schweppes case, C-196/04***, in point n. 75 the ECJ states «*articles 43 EC and 48 EC must be interpreted as precluding the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, where those profits are subject in that State to a lower level of taxation than that applicable in the first State, unless such inclusion relates only to wholly artificial arrangements intended to escape the national tax normally payable*». This is not a case of "U turn" like in *Van Binsbergen*, but a case where a multinational chooses to move its interests from one MS to another. But even in that situation, abusive practices can occur when profits are artificially subjected, circumventing EU law, to a different and more favourable national taxation through "artificial arrangements", without whom the national taxation applicable would have been the one of another MS.

Moreover, that ruling points out what the proof of the existence of abusive practices should be. It is the concept of "**objective evidence**", which is based on objective facts, documents and any other element of proof that, if all analysed by a third party, that third party would come to the same conclusion that fraudulent practices were carried out. In fact, in that case the ECJ holds «*accordingly, such a tax measure must not be applied where it is proven, on the basis of objective factors which are ascertainable by third parties, thatdespite the existence of tax motives that controlled company is actually established in the host Member State and carries on genuine economic activities there*».

II.2. The principle of prohibition of abusive practices and the EU norms, in particular the Directive 2014/67/EU

Once defined by the ECJ, the principle of prohibition of abusive practices carried out in order to get improper advantages provided by EU law has been taken up in the secondary legislation.

For example, according to **art. 11 of Directive 90/434/EEC** (the so called "Merger Tax Directive"),Member States may refuse to apply or withdraw the benefits of all or any part of the provisions in case a transaction «has *as its principal objective or as one of its principal objectives tax evasion or tax avoidance*». Interpreting this legal provision, inthe ***Leur-Bloem case, C-28/95***, the ECJ, though never directly referring to abusive practices, follows a legal argument falling in the same scope of the prohibition of abuse, concluding that «*the Member States may stipulate that the fact that the planned operation is not carried out for valid commercial reasons constitutes a presumption of tax evasion or tax avoidance*».

More directly intended to affirm the principle of abuse of EU law, **art. 35 of Directive 2004/38/EC** on the rights of the citizens to move and reside freely in all MS, is titled «*abuse of rights*» holding that «*Member States may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience*».

Finally coming to posting, following the same pathway the EU secondary legislation is being undertaking, **Directive 2014/67/EU** clearly refers to the principle of abuse of the EU law, excluding that abusive practices may grant the advantagesprovided forby the PW norms.

In particular, the partners of Enacting highlighted the followings as some of the major concepts referred to abuse contained in the Enforcement Directive, which have undoubtedly directed the transposition process of MSs:

- «*In order to prevent, avoid and combat abuse and circumvention of the applicable rules by undertakings taking improper or fraudulent advantage of the freedom to provide services enshrined in the TFEU and/or of the application of Directive 96/71/EC*» (*recital 7*);
- Defining the Subject of the Directive it includes «measures to prevent and sanction any abuse and circumvention of the applicable rules» (art. 1.1);
- Art. 4, drawing a common framework for all MS for defining and identifying genuine posting, is titled «*Identification of a genuine posting and prevention of abuse and circumvention*»;
- In providing a sort of identification of the possible consequences of fraudulent/abusive posting, recital 11 holds «*where there is no genuine posting situation and a conflict of law arises, due regard should be given to the provisions of Regulation (EC) No 593/2008 of the European Parliament and of the Council ('Rome I') or the Rome Convention that are aimed at ensuring that employees should not be deprived of the protection afforded to them by provisions which cannot be derogated from by an agreement or which can only be derogated from to their benefit*» (See in particular art. 8.1 of Regulation 593/2008, as mentioned above).

II.3. The principle of prohibition of abusive practices in transposing Directive 2014/67/EU: the case of BE, DE, IT, RO

The question of how to transpose into national law the EU principle of the abuse of rights is rather differently approached among the MSs of the Enacting partners: Belgium, Germany, Italy and Romania. The first point to be addressed is whether, according to the Directive, the discipline of the abuse of rights necessarily needed specific transposition. The Enacting partners consider this as a major point and it is quite a shared view among them that, though a specific provision of national law regulating the consequences of fraudulent and abusive practices in posting would be absolutely recommendable and worthy in order to let national interpreters have a clearer framework of the enforcement measures concretely applicable at national level, the provisions of art. 4 of the directive, interpreted with the reference to Rome 1 indicated in Recital 11 of Directive 2014/67/EU, could probably be considered as clear enough for the interpreters even if not expressly transposed.

In fact, the indicators provided by art. 4 are sufficiently clear and directly applicable at national level by the competent administrative Authorities and by judges, through the indicated method of the "overall assessment". And the legal consequence of fraud, as clearly pointed out by Recital 11, cannot be anything else but the application of Rome 1, provided that «*where there is no genuine posting situation and a conflict of law arises, due regard should be given to the provisions of Regulation (EC) No 593/2008*».

Anyhow, **Germany**, for example, did not directly transpose the provisions referred to art. 4 of the directive in a new law. In that respect, Germany seems to consider that its national legal system related to abusive practices is already adequate enough for tackling fraud in posting.

The specific choice of Germany was to concentrate on the new law on minimum salary (MiLoG), introduced on 1.1.2015 (for more information on the German legal system, see the specific Country Report which is a separate product of this action), which made joint and several liability applicable to posting as well. Obviously this provision does not directly face the case of abuse referred to PW (letter-box companies, workers not genuinely posted, etc.), and nevertheless it does provide posted workers of some forms of protection (JSL rights), so that the norms applicable to posted workers are the same as those applicable to German workers whose employment contracts are covered by the MiloG system (minimum salary).

On the other hand, it should be pointed out that Germany has always based its labour inspection system solely on the competences of controls referred to occupational safety and health, and therefore inspections on regular posting are basically left to Tax and Customs Authorities, whose major concern is in recovering taxes more than in providing for protection to workers, or more precisely to posted workers. Anyhow, it should be noted that specific sanctions may be issued by the German Customs Authority, Office for Financial Control of Illegal Work (FSK), to the employer in case of not genuine posting.

In **Belgium**, at the moment of the conclusion of Enacting, the law of transposition of Directive 2014/67/EU has already been approved but still not published. The Belgian draft law regulates the principle of abuse in posting and its consequences in art. 7, which replaces art.2 of the law 5 Mars 2002 of transposition of Directive 96/71/EC. These provisions, referred to the definition of "posted worker" and of "employer" are very much based on the provisions of art. 4.3 and 4.2 of the "enforcement directive". The consequence of not genuine posting, in both cases referred to alleged "posted worker" or alleged posting "employer", is the disapplication of the rules referred to posting and as a consequence, it should be argued, the application of Regulation 593/2008. It should be also noted that no reference has been made by the Belgian transposition law to the provisions of art. 23-24 of the "*loi-programme anti-abus 27.12.2012*", which was object of a procedure of infraction in 2013 and, though that controversial norm was never formally abrogated, it has never been applied by the Belgian Authorities, following the principle of "good administration" aimed at avoiding dual social security taxation.

Legislative Decree 136/2016 transposes the "Enforcement directive" in **Italy**, and having actually abrogated previous Legislative Decree 72/2000, it is at the moment the unique national legislation on posted workers, providing for transposition of both directive 96/71/EC and directive 2014/67/EU.

Art. 3.4 of Legislative Decree 136/2016 holds that in case of non genuine posting practices «*employees [alleged posted workers, ed.]are considered in all respects as employed by the subject who have benefited of their work*». This specific provision, which is very close to the Italian general law enforcing the prohibition of abusive provision of services, is probably understandable considering that in case of abuse/fraud the contract of transnational provision of services is to be considered null and void because of contractual fraud. That contractual nullity has consequences even for the activities of the posted workers whose protection is granted either by the intervention of the Labour Inspectorate, or by the initiative of the workers involved, by directly claiming their rights in Court against the subject they are considered employers of.

Anyhow, the expression "in all respects" does not seem to be able to granting the "employees" involved to be immediately registered to the Italian Social Security system in case a "model A1" has been produced by their sending Country. That is because "models A1" may only be challenged by following the procedures between the "requiring authority" and the "requested authority" of the posting Country defined and regulated by Decision A1 of 12 June 2009.

In any case, due to the provision of art. 3.4 above mentioned, in case of abusive posting, Italian law seems to provide for, in respect of the subject benefiting of the abusive transnational provision of services, a sort of shift from "joint and several liability" to "direct liability", as, due to abuse, his condition turns from "client" of a transnational provision of services to "employer" of falsely posted workers. Joint and Several Liability, in fact, is provided for (art. 4.3, 4.4 and 4.5 of Legislative Decree 136/2016) in case of genuine posting only.

At the moment of the end of this action, the transposing law in **Romania** is still in front of the Parliament, and therefore the text of the draft law is still subject to changes. Article 7 of the law is devoted to contrasting fraud in posting and it basically refers to the indicators provided by art. 4 of the "Enforcement Directive".Nevertheless, art. 7.6 contains a provision which is somehow similar to the one above described for the case of Italy, holding that these indicators «*may be taken into account by labour inspectorates in order to determine whether a person has the status of employee under national law [of Romania, ed.], including to identify possible cases of false self-employment*».

III. JOINT AND SEVERAL LIABILITY: AN INTRODUCTION BY THE ENACTING WORKING GROUP

III.1. Joint and several liability under art. 12 of Directive 2014/67/EU

Art. 12 of Directive 2014/67/EU, titled "subcontracting liability", provides for some measures that the Member States respectively "shall" (art. 12.2) or "may" (art. 12.1, 12.4 and 12.5) provide for in strengthening the posted worker's rights in the Country where posting takes place.

In particular, **art. 12.1** allows the MSs to provide national measures, which may apply to one/more or even all economic sectors, in order to ensure, in case of fraudulent and abusive practices, that «*the contractor of which the employer (service provider) covered by Article 1(3) of Directive 96/71/EC is a direct subcontractor can be held liable*» for «*any outstanding net remuneration*» they would be entitled to under the legal/contractual system (universally) applied in that Country. This type of liability may be held «*in addition to or in place of the employer*».

Having discussed this subject, the partners of the Enacting group understand this EU provision as follows (though not necessarily reflecting the official opinion of the National Authorities some of the members of the Enacting group belong to):

a) This provision is aimed at tackling fraud and abuse;
b) MSs have no legal obligation of applying art. 12.1 to their national legislation (see the wording «Member States may»);
c) Under this provision, MSs may provide for either direct liability (see the wording «*in place of*»), or for joint and several liability measures (see the wording «*in addition to*»);
d) This provision is tailored for subcontracting chains and for the direct contractual relationship between contractor and subcontractor (contractual liability, not necessarily "chain liability" engaging all the sub-contractors of the contractual chain), whose posted employees need to be protected by national provisions (see art. 12.3);
e) Under art. 12.4, Member States «*may*» also provide for «*more stringent liability rules*» with reference to «*the scope and range*» of liability. However, these national rules have to be compatible with the general principles of non-discrimination and proportionality;
f) Under art. 12.5, it is up to Member States (see thee wording «*may*») to provide for due diligence measures or not, which, if fulfilled, may exclude liability to the contractor. In that case, the posting company (employer) could be the sole subject to be considered as liable under this provision.

For the construction sector (see Annex 1 to Directive 96/71/EC), **art. 12.2**of Directive 2014/67/EU holds that «*Member States shall provide for measures ensuring that in subcontracting chains, posted workers can hold the contractor of which the employer is a direct subcontractor liable, in addition to or in place of the employer, for the respect of the posted workers' rights referred to in paragraph 1*».

Right from the first glance it is quite clear that art. 12.2 is similar and at the same time different from art. 12.1. In fact, it should be noted that art. 12.2 establishes that the national measures to be held in transposing the directive «shall» (and not just «may») be held by the Member States who seem not to be free to transpose or not this provision, though these measures – like for art. 12.1 – "may" be provided for «*in addition to or in place of the employer*».

Having treated this subject quite in depth, the partners of the Enacting group understand this EU provision as follows (though not necessarily reflecting the official opinion of the National Authorities some of the members of the Enacting group belong to):

a) MSs have a legal obligation of applying art. 12.2 to their national legislation (see the wording «Member States shall»);
b) Under this provision, MSs may provide for either direct liability (see the wording «*in place of*»), or for joint and several liability measures (see the wording «*in addition to*»);
c) This provision is tailored for subcontracting chains and for the direct contractual relationship between contractor and subcontractor (contractual liability, not necessarily "chain liability" engaging all the sub-contractors of the contractual chain), whose posted employees need to be protected by national provisions (see art. 12.3);
d) Under art. 12.4, Member States «*may*» also provide for «*more stringent liability rules*» with reference to «*the scope and range*» of liability. However, these national rules have to be compatible with the general principles of non-discrimination and proportionality;
e) Under art. 12.5, it is up to Member States (see thee wording «*may*») to provide for due diligence measures or not, which, if fulfilled, may exclude liability to the contractor. In that case, the posting company (employer) could be the sole subject to be considered as liable under this provision.

III.2. Joint and Several Liability and other measures for the protection of posted workers in some EU Countries: BE, DE, IT, RO

Reflecting the existing differences among all the Member States, some of the Countries interested in the works of the Enacting group had already, even before the transposition of Directive 2014/67/EU, a general and strong JSL national system applying to outsourcing practices (BE, DE, IT), while others had not (RO).

The major points of national legislation of BE, DE, IT and RO, treated in depth in the next paragraphs, may be summarized as follows.

Joint and Several Liability National Systems (JSL)			
Country	**JSL: national provisions**	**JSL: transposition of art. 12**	**Comments**
BE	L. 12 April 1965, Section VI/1: - Applying to selected fraud-sensible sectors: constructions, metal and electrical works, agriculture, food industry, cleaning, transports, etc.; - It is "chain liability" as all the subjects of the chain are interested to JSL: commissioner, main contractor and all subcontractors; - "due diligence", as such is not possible; - JSL applies when labour inspectors issue a "notice" to the interested subjects (commissioner and main contractor). The subjects being notified are held for jointly liable, but they can lodge an appeal to a judge against this notice. JLS starts running virtually after 14 working days since the notice of the labour inspector has been submitted. JSL applies when labour inspectors issue a "notice" to the interested subjects (commissioner and main contractor). The subjects being notified are held for jointly liable, but they can lodge an appeal to a judge against this notice. JLS starts running virtually after 14 working days since the notice of the labour inspector has been submitted.	Art. 15 Draft Transposition Law -applicable to the constructions sector, and extended to the related fields of metal works, woodworks and elecrical works; - this special JSL applies to all undertakings; both to established and to posting undertakings; - contractual JSL (between the two subjects of the contract), repeated between all the "direct" contractors of the chain, but not extended towards all the subjects of the chain; - "due diligence" is possible (art. 15, paragraph 2), through an *affidavit* produced by the employer to the subject/s who would be liable, but JSL is always working even in case of due diligence, after 14 working days the liable subject is informed that his counterpart does not pay the due salary, or part of it, to his workers; - there is no necessity of a labour inspector "notice" to bypass "due diligence", but it may be helpful.	- L. 12 April 1965, Sec. VI/1 is the "general system" of JSL in Belgium, whereas art. 12 of the draft law is a "special system" of JSL protecting also posted workers whose activities are those listed in Annex 1 of Directive 96/71/EC. - For the "general System" of JSL, originated by a Labour Inspection "notice", JSL applies only "*pro futuro*", for credits matured from 14 working days after the notification of the notice onwards. This type of JSL does not cover the workers' credits matured before. It applies to posted workers too. - Though for the "special system" of JSL it is not required to recur to an administrative "notice" by labour inspection to bypass "due diligence" (but it should be noted that this notice might help for overruling the due diligence), even in

Joint and Several Liability National Systems (JSL)			
Country	**JSL: national provisions**	**JSL: transposition of art. 12**	**Comments**
			this case JSL works only "*pro futuro*", the same as in the "general system".
DE	§ 14 AEntG (posted workers act) extends, to the benefit of posted workers, the main contractor's liability (JSL) for not paid wages. This provision applies both: - in the sectors where universally applicable collective agreements apply (minimum wage there provided applies to posting companies too); - from 1.1.2015 to all the sectors (nearly all safe some few temporary exceptions) covered by the Minimum Wage Act (MiLoG).	While approving the Minimum Wage Act, whose provisions are directly applicable to PW, Germany chose not to need further specific legislation in order to grant transposition to Directive 2014/67/EU.	The same rules on JSL apply both to undertakings and workers established in Germany and to posting undertakings and posted workers; The JSL of the main contractor goes throughout the contractual chain, covering not only the sub-contractor's workers, but also all the workers of all the sub-contractors of the chain; No "due diligence" applies, and so there is no remedy/exception to JSL.
IT	Art. 29.2 of Legislative decree 276/2003 provides for JSL in commercial contracts of provision of services. Due diligence is allowed only if provided for by specified National Collective Agreements; Art. 35.1 of Legislative Decree 81/2015 provides for JSL in favour of "temporary workers"; Art. 83-bis, paragraphs from 4-	Art. 4.3-5 of Legislative Decree 136/2016 (transposition law) extends to PW all the forms of JSL applicable to the undertakings established in Italy.	JSL provided by art. 29.2 of Legislative Decree 276/2003 goes throughout the entire subcontracting chain, and covers all the subjects of the chain (client, main contractor, and sub-contractors).

Joint and Several Liability National Systems (JSL)			
Country	**JSL: national provisions**	**JSL: transposition of art. 12**	**Comments**
	bis to 4-sexies, of L. 133/2008 provides for JSL for the "contract of transport". In this specific case, "due diligence" is always possible, not needing any provision by collective agreements.		
RO	No general rule on JSL is provided for in Romania.	Art. 27 of the Draft Transposition Law - JSL limited to the sectors of Annex 1 of Directive 96/71/EC; - the provision holds a form of JSL limited to direct contractual liability, and no extension of such liability to chain liability is provided for; - "due diligence" is always possible, by means of an affidavit signed by the employer.	JSL seems to be strictly limited to the mandatory provisions of art. 12.2 of Directive 2014/67/EU.