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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels,

Draft

**COMMISSION RECOMMENDATION**

**of [...]**

**on enhanced administrative cooperation in the context of the posting of workers in the  
framework of the provision of services**

**(text with EEA relevance)**

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## COMMISSION RECOMMENDATION

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**on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services**

**(text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

- (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<sup>1</sup> imposes clear obligations as regards cooperation between national administrations, and makes it the responsibility of the Member States to create the necessary conditions for such cooperation. This obligation includes the designation, in accordance with national legislation and/or practice, of one or more monitoring authorities organised and equipped in such a way as to function effectively and to be able to deal promptly with requests of information regarding terms and conditions of employment covered by Directive 96/71/EC.
- (2) Directive 96/71/EC furthermore sets out a clear obligation for the Member States to take the appropriate measures to make the information on the terms and conditions of employment generally available, not only to foreign service providers, but also to the posted workers concerned.
- (3) Notwithstanding improvements in terms of access to information, there are still justified concerns as to the way the Member States have implemented and/or apply in practice the rules on administrative cooperation as provided for by Directive 96/71/EC<sup>2</sup>. Satisfactory implementation, correct application and effective compliance with and enforcement in practice of Directive 96/71/EC do not seem possible unless this situation is corrected<sup>3</sup>.

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<sup>1</sup> OJ L 18, 21.1.1997, p. 1.

<sup>2</sup> Commission's Staff Working Documents SEC (2006) 439 and SEC (2007) 747,, as well as Communication "Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers, in particular part 6 Conclusions, COM (2007) 304 final of 13 June 2007, page 9.

<sup>3</sup> See in this context also Resolution of the European Parliament of 11 July 2007, B6-0266/2007.

- (4) The monitoring exercise launched by the Commission on the basis of its Communication "Guidance on the posting of workers in the framework of the provision of services"<sup>4</sup> furthermore showed that many Member States tend to rely solely on their own national measures and instruments to monitor the compliance with the terms and conditions of employment applicable to posted workers by service providers. This situation may well be related to, if not caused by, the virtual absence of administrative cooperation, the still unsatisfactory access to information as well as cross-border enforcement problems<sup>5</sup>.
- (5) To ensure compliance with their terms and conditions of employment<sup>6</sup>, the authorities of the Member State in which the services are provided apply certain control measures or administrative formalities to posting undertakings. The necessity for preventive actions and appropriate sanctions aimed at protecting posted workers is indisputable. The analysis of the control measures used by the Member States, however, shows their striking diversity and indicates that some of these may not be proportionate and may therefore not be in conformity either with Article 49 of the Treaty as interpreted by the European Court of Justice or with Directive 96/71/EC.
- (6) Legitimate monitoring needs cannot be fulfilled while fully complying with Community law unless the Member States improve, and reinforce if necessary, the way they effectively cooperate with each other and/or unless access to information is improved as stipulated in Directive 96/71/EC<sup>7</sup>.
- (7) Adequate and effective implementation and enforcement are key elements in protecting posted workers rights, whereas poor enforcement undermines the effectiveness of the Community rules applicable in this area. Close co-operation between the Commission and the Member States is therefore essential, without neglecting the important role of labour inspectorates and the social partners in this respect.
- (8) With respect to the posting of workers in the framework of the provision of services different administrative cultures, structures and languages, as well as lack of clearly established procedures and clearly identified actors constitute significant barriers for an efficient working cooperation between Member States in this area. The use of an appropriate and well functioning electronic information system designed to facilitate mutual assistance and information exchange between Member States is a very effective tool to break down many of these barriers and is thus essential for Member States to be able to cooperate closely. Such a system should allow competent authorities and other actors involved, such as social partners, to identify easily their relevant interlocutors in other Member States and to communicate in an efficient way.

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<sup>4</sup> COM (2006) 159 final, 4 April 2006.

<sup>5</sup> Communication "Posting of workers in the framework of the provision of services: maximising its benefits and potential while guaranteeing the protection of workers, in particular part 6 Conclusions, COM (2007) 304 final of 13 June 2007, as well as the accompanying Staff working document, SEC (2007)747.

<sup>6</sup> Idem Resolution of the European Parliament on the Schroedter report of 26 October 2006.

<sup>7</sup> The same point is stressed in the Resolution of the European Parliament, see in particular points 21 and 32 et seq. From the replies received in the context of the public consultation launched on the modernisation of labour law, COM (2006) 708 of 22.11.2006, it resulted also that the need for better and improved cooperation was also largely supported by the Member States (see COM(2007) 627 final of 24.10.2007) and the accompanying Staff Working Document, SEC (2007) 1373.

Furthermore, it should help in creating a climate of mutual trust and confidence, fundamental for administrative cooperation to function effectively.

- (9) Providing easily accessible, accurate and up to date information to undertakings and workers about the terms and conditions of employment that will apply to posted workers in the host Member State is a fundamental condition contributing to preventing the emergence of conflicts, problematic situations and abuses. Therefore, the necessary measures should be taken to provide effective access to information for posted workers and their employers.<sup>8</sup>
- (10) Urgent action is required to remedy shortcomings in the implementation, application and enforcement of the legislation pertaining to the posting of workers, by reinforcing administrative cooperation between the Member States, through using more effective systems of exchange of information, improving access to information and promoting exchange of information and on best practices.

HEREBY RECOMMENDS:

### **1. Information exchange system**

**Member States should take the necessary measures and make the required efforts to put in place an electronic information exchange system, such as the Internal Market Information System ('IMI')<sup>9</sup>, and in particular to develop, in close cooperation with Commission services, first of all a – specific - application to support the administrative cooperation necessary to improve the practical implementation of Directive 96/71/EC.**

The development of such an electronic information exchange system for the administrative cooperation in the context of Directive 96/71/EC would imply the following for Member States:

- (1) identifying the main issues and questions on which information will have to be exchanged and which thus should be included in the exchange system;
- (2) identifying the competent authorities and, if necessary, other actors involved in the monitoring and control of the employment conditions of posted workers that will take part in the exchange system;
- (3) clarifying of the role of liaison offices;

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<sup>8</sup> The same point and call for action was stressed by the European Parliament in its Resolution of 11 July 2007, see point 18.

<sup>9</sup> IMI is an information system designed to facilitate mutual assistance and information exchange between Member States. It provides a tool for secure and fast data exchange among European authorities, allowing them to work together effectively despite barriers due to different languages and administrative procedures and structures. The first applications developed will support the revised Professional Qualifications Directive (2005/36/EC) and the Services Directive (2006/123/EC).

- (4) examining the issue of adequate safeguards for the protection of personal data exchanged during an information exchange between Member States authorities and, if necessary, other actors involved<sup>10</sup>.

**Member States should, on the basis of the results of these preliminary examinations, furthermore assess and decide, in cooperation with Commission services, whether IMI provides the most suitable support for the information exchange as set out in Article 4 of Directive 96/71/EC.**

The Commission will provide support and assistance to the Member States in this respect and undertakes to work very closely with them in order to achieve the necessary progress in due time. In particular, it will facilitate and coordinate the work of an operational task force, to be set up on a voluntary basis, and provide external technical assistance if appropriate, throughout the development of the specific application.

## **2. Access to information**

**Member States should increase their efforts to enhance access to the information on the terms and conditions of employment that must be applied by service providers, and to ensure that their liaison offices are in a position to carry out their tasks effectively.**

In order to bring about further improvements with respect to the access to information, Member States should:

- (1) avoid referring to or providing general information on labour law only, but instead to indicate clearly which terms and conditions of employment and/or which part of their (national and/or regional) legislation have to be applied to workers posted to their territory;
- (2) take the necessary measures to make generally available the information on which collective agreements are applicable (and to whom), and which terms and conditions of employment have to be applied by foreign service providers; where possible, links to existing Internet sites and other contact points, in particular the relevant Social Partners, should be provided;
- (3) make this information available to workers and service providers in languages other than the national language(s) of the country in which the services are provided; if possible, in a summarised leaflet form indicating the main labour conditions applicable;
- (4) make better use of possibilities offered by the Internet and to improve the accessibility and clarity of the information provided on the national websites<sup>11</sup>.

In addition Member States should:

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<sup>10</sup> See in this context also Commission Decision of 12 December 2007 concerning the implementation of the Internal Market Information System (IMI) as regards the protection of personal data, OJ L 13/18, 16.1.2008.

<sup>11</sup> The national websites have links in the Commission website on posting of workers: [http://europa.eu.int/comm/employment\\_social/labour\\_law/postingofworkers\\_en.htm](http://europa.eu.int/comm/employment_social/labour_law/postingofworkers_en.htm)

- (5) enable liaison offices to have an efficiently organised structure at their disposal and be equipped with appropriate staff and other resources to fulfil their duties to provide information;
- (6) indicate, if possible, a contact person within the liaison office in charge of dealing with requests for information.

The Commission will continue to support the Member States in this area, especially through the existing portal on the EUROPA website with links to national websites on the posting of workers.

### *3. Exchange of good practice*

**Member States should participate actively in a systematic and formal process of identification and exchange of good practice in the field of posting of workers through any forums of cooperation established by the Commission to that end, such as the envisaged High-Level Committee (for further details see the annex).**

Done at Brussels,

*For the Commission*

*Member of the Commission*

## ANNEX

### **High-Level Committee in the field of posting of workers (to be established):**

#### **envisaged role, tasks and responsibilities**

The exchanges of information that have taken place so far on a voluntary basis within the informal group of governmental experts on the posting of workers, have shown that the group was effective in improving the available means of exchange of information on the terms and conditions of employment for posted workers. Furthermore, it has provided useful information to the Commission with respect to the implementation and application of Directive 96/71/EC.

Enhanced administrative cooperation requires also developing effective means for identifying and exchanging good practice in all matters relevant to the correct application and enforcement in practice of Directive 96/71/EC. It will thus be possible to greatly improve administrative cooperation and prevent the emergence of conflicts and the frequent recourse to jurisdictional dispute settlement.

Therefore, as already announced in its Communication of 13 June 2007, the Commission envisages setting up a High-Level Committee, with the following intended tasks and objectives:

- (1) Identify and promote the exchange of experience and best practices;
- (2) Promote the exchange of relevant information, including information on existing forms of (bilateral) administrative cooperation between the Member States and/or Social Partners;
- (3) Examine (administrative) questions, difficulties and specific issues concerning the implementation, application, as well as effective compliance with and enforcement of Directive 96/71/EC or the national implementing measures, relevant for the posting of workers;
- (4) Examine any difficulties which might arise in the application of Article 3 (10) of Directive 96/71/EC;
- (5) Monitor progress achieved in improving administrative cooperation, in particular the development of the –specific- application to support the administrative cooperation, and the adaptation and implementation of the IMI, as well as improvement of access to information and, if necessary, suggest steps or actions to be taken;
- (6) Examine possibilities to increase effective compliance with and enforcement of workers rights and protection of their position, if necessary;
- (7) Engage in an in-depth examination of practical cross-border enforcement problems.

In order to reach these objectives, the High-level Committee should closely involve the public bodies responsible for the control of the legislation in Member States that applies to posted workers, such as labour inspectorates. It should also, in accordance with national law and/or



practice, formally involve social partners regularly, in particular representatives of sectoral social partners in sectors with a high incidence of recourse to posted workers.

The Commission is ready to adopt a Commission Decision setting up such a High-level Committee in the near future, where its composition, objectives and working methods will be defined. To this effect, it will take into account the outcome of the debate in the Council following this Recommendation.