Application of Directive 96/71/EC on the posting of workers

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This recommendation proposed by the European Commission presents a draft recommendation on improving administrative cooperation in the context of the posting of workers in the framework of the provision of services.

It recalls that Directive 96/71/EC of the European Parliament and of the Council on the posting of workers in the framework of the provision of services imposes clear obligations regarding 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.

Furthermore, Directive 96/71/EC compels Member States to take appropriate measures to ensure that information on conditions of work and employment is generally made available, not only to foreign service providers but also to posted workers.

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 the Directive. Satisfactory implementation, correct application and effective compliance with and enforcement in practice of the Directive do not seem possible unless this situation is corrected.

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" (see the summary of the initial non-legislative document of 04/04/2006 in this procedure file) 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

To ensure adequate implementation of the legislation and effective monitoring of its application, close cooperation between the Commission and the Member States must be clearly established, without neglecting the important role of labour inspectorates and social partners.

To facilitate the establishment of this cooperation, the Commission considers that a well-functioning electronic information system, designed to facilitate mutual assistance and the exchange of information between Member States, would be an effective tool to overcome the problem of information exchange. Such a system would enable the competent authorities and social partners to identify easily their relevant interlocutors in other Member States and to communicate in an efficient way. Furthermore, it should help in creating a climate of mutual trust and confidence, fundamental for administrative cooperation to function effectively.

It is in this context that the Commission recommends the following measures:

- **the establishment of an information exchange system**: Member States should take the necessary measures to put in place an electronic information exchange system, such as the Internal Market Information System ('IMI'), and in particular to develop, in close cooperation with Commission services, a – specific - application to support the administrative cooperation necessary to improve the practical implementation of Directive 96/71/EC. Member States should also 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. In this context, the Commission will provide assistance to the Member States that undertake to work very closely with them in order to achieve the necessary progress;
- **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 this respect, a series of measures have been proposed, including more intensive use of the internet to improve the accessibility of information on applicable national legislation;
- **exchange of good practice**: lastly, 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 whose tasks and responsibilities are proposed in the annex to the draft recommendation.