Freedom to supply services and workers' rights: posting of workers

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This Communication concerns the right of a service provider established in a Member State to temporarily post workers to another Member State in order to provide a service. Directive 96/71/EC identifies the mandatory rules in force in the host country that are to be applied to posted workers by establishing a core of terms and conditions of work and employment and making them binding on undertakings posting workers to a Member State other than the State in whose territory these workers habitually work. The Directive has a clear social objective: that posted workers are guaranteed during the period of posting the respect by their employer of certain protective rules of the Member State to which they are posted.

Following the adoption by the European Parliament on 16 February 2006 of a legislative resolution on the proposal for a directive on services in the internal market, the Commission presented an amended proposal, in which Articles 24 and 25 of the initial proposal setting out specific provisions on the posting of workers are deleted. In these Articles, the Commission proposed the scrapping of certain administrative obligations concerning the posting of workers, accompanied by measures to reinforce administrative cooperation between Member States.

The Commission undertook to draw up guidelines to clarify the prevailing Community law on the administrative procedures dealt with in Articles 24 and 25. This Communication tells the Member States how to observe the Community *acquis* as interpreted by the European Court of Justice with reference to Article 49 EC (the principle that Member States should ensure the freedom to provide services within the Community) and how to achieve the results required by the Directive in a more effective manner. It also refers to the Commission's report SEC(2006)0439.

Control measures: the Commission points out that, when performing inspections as part of the implementation of the Directive Member States must abide by Article 49 EC and refrain from creating or upholding unjustified and disproportionate restrictions to the free provision of services within the Community. The Court has underlined several times that these inspections must be suitable for achieving the objectives pursued without restricting this freedom any more than necessary, in accordance with the principle of proportionality. The Commission goes on to discuss and give guidance on the following topics, which urgently required clarification on the basis of the case law of the ECJ based on Article 49 EC:

– the requirement to have a representative on the territory of the host Member State;

– the requirement to obtain authorisation from the competent authorities of the host Member State or to be registered with them, or any other equivalent obligation;

– the requirement to make a declaration;

– the requirement to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory.

It also gives guidance on measures which apply to posted workers who are nationals of third countries

Cooperation on information: on the question of access to information, Member States are asked to redouble their efforts to enhance, and improve 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. The Commission will continue to support the Member States in this area, especially through the expert group, and will monitor their efforts in order to make sure that they contribute to progress towards best practices. Member States are also asked to take the necessary measures to ensure that their liaison offices and/or monitoring authorities have the necessary equipment and resources to respond effectively to requests for information and cross-border cooperation from the competent authorities of the other Member States. The Commission will continue to support the Member States in this area, especially by making more appropriate electronic systems available, and will monitor their progress closely.

Monitoring of compliance with the Directive and measures in the event of failure to comply: Member States are asked to re-examine their systems for monitoring and implementing the Directive. They are asked, in particular, to ensure that there is a mechanism in place to remedy any deficiencies; that appropriate and proportionate monitoring measures are in place; and that service providers who do not comply can be effectively sanctioned. The Commission undertakes to work with the Member States in order to improve transnational cooperation of labour inspectorates in the subject areas covered by the Directive on the posting of workers.

In order to assess progress, the Commission will adopt within 12 months a report which will examine the situation in all Member States with regard to all aspects covered by the Communication.