

Basic information	
1991/0346(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Freedom to supply services and workers' rights: posting of workers Amended by 2016/0070(COD) See also 2003/2168(INI) See also 2012/0061(COD) See also 2017/0121(COD) Subject 2.40 Free movement of services, freedom to provide 4.15.12 Workers protection and rights, labour law	

Key players			
Council of the European Union	Council configuration	Meetings	Date
	Social Affairs	1930	1996-06-03
	Social Affairs	1948	1996-09-24
	Social Affairs	1892	1995-12-05
	Social Affairs	1862	1995-06-29
	Social Affairs	1836	1995-03-27
	Social Affairs	1784	1994-09-22
	Social Affairs	1813	1994-12-06
	Social Affairs	1914	1996-03-29

Key events			
Date	Event	Reference	Summary
28/06/1991	Decision by Parliament, 1st reading	COM(1991)0230 	Summary
28/06/1991	Legislative proposal published	COM(1991)0230 	Summary
13/09/1991	Committee referral announced in Parliament, 1st reading		
15/04/1992	Vote in committee, 1st reading		
12/05/1992	Debate in Parliament		
06/07/1992	Report referred back to committee		
26/01/1993	Vote in committee, 1st reading		Summary
08/02/1993	Debate in Parliament		Summary
		COM(1993)0225	Summary

15/06/1993	Modified legislative proposal published		
22/09/1994	Debate in Council		Summary
06/12/1994	Debate in Council		
27/03/1995	Debate in Council		Summary
15/06/1995	Debate in Parliament		
29/06/1995	Debate in Council		Summary
05/12/1995	Debate in Council		Summary
03/06/1996	Council position published	06689/2/1996	Summary
20/06/1996	Committee referral announced in Parliament, 2nd reading		
24/07/1996	Vote in committee, 2nd reading		Summary
24/07/1996	Committee recommendation tabled for plenary, 2nd reading	A4-0265/1996	
17/09/1996	Debate in Parliament		Summary
24/09/1996	Act approved by Council, 2nd reading		Summary
16/12/1996	Final act signed		
16/12/1996	End of procedure in Parliament		
21/01/1997	Final act published in Official Journal		

Technical information	
Procedure reference	1991/0346(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amended by 2016/0070(COD) See also 2003/2168(INI) See also 2012/0061(COD) See also 2017/0121(COD)
Legal basis	EC Treaty (before Amsterdam) E 066 EC Treaty (before Amsterdam) E 057-p2
Stage reached in procedure	Procedure completed
Committee dossier	EMPL/4/07921

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A3-0161/1992 OJ C 150 15.06.1992, p. 0010	15/04/1992	
Text adopted by Parliament, partial vote at 1st reading /single reading		T3-0277/1992 OJ C 150 15.06.1992, p. 0036-0119	13/05/1992	Summary

Committee report tabled for plenary, 1st reading/single reading		A3-0022/1993 OJ C 072 15.03.1993, p. 0004	26/01/1993	
Text adopted by Parliament, 1st reading/single reading		T3-0083/1993 OJ C 072 15.03.1993, p. 0064-0085	10/02/1993	Summary
Oral question/interpellation by Parliament		B4-0510/1995	15/06/1995	
Motion for a resolution		B4-0858/1995 OJ C 166 03.07.1995, p. 0082-0123	15/06/1995	
Text adopted by Parliament, topical subjects		T4-0302/1995 OJ C 166 03.07.1995, p. 0082-0123	15/06/1995	
Committee recommendation tabled for plenary, 2nd reading		A4-0265/1996 OJ C 320 28.10.1996, p. 0004	24/07/1996	
Text adopted by Parliament, 2nd reading		T4-0456/1996 OJ C 320 28.10.1996, p. 0064-0073	18/09/1996	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	06689/2/1996 OJ C 220 29.07.1996, p. 0001	03/06/1996	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(1991)0230  OJ C 225 30.08.1991, p. 0006	28/06/1991	Summary
Modified legislative proposal	COM(1993)0225  OJ C 187 09.07.1993, p. 0005	15/06/1993	Summary
Commission communication on Council's position	SEC(1996)1109 	14/06/1996	Summary
Follow-up document	COM(2003)0458 	25/07/2003	Summary
Follow-up document	COM(2006)0159 	04/04/2006	Summary
Follow-up document	SEC(2006)0439 	04/04/2006	
Follow-up document	COM(2007)0304 	13/06/2007	Summary
Follow-up document	SEC(2007)0747 	13/06/2007	
Follow-up document	SEC(2008)0379 	03/04/2008	

Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1512/1991 OJ C 049 24.02.1992, p. 0041	18/12/1991	Summary

Additional information		
Source	Document	Date
European Commission	EUR-Lex	

Final act	
Directive 1996/0071 OJ L 018 21.01.1997, p. 0001	Summary

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

1991/0346(COD) - 24/09/1996

The Council adopted the Directive, with the UK delegation voting against and the Portuguese delegation abstaining (with explanations of vote).

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

1991/0346(COD) - 03/06/1996

The Council adopted the common position, with the UK delegation voting against the motion and the Portuguese delegation abstaining (with explanations of vote). It was then to be submitted to Parliament for a second reading under the codecision procedure. The Member States were to have three years to transpose the directive into national legislation.

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

1991/0346(COD) - 05/12/1995

The Council discussed the proposal for a directive concerning the posting of workers in the framework of the provision of services. One problem covered by the discussion was that of the time threshold, i.e. the non--application to short-term postings of the host Member State 's provisions regarding the minimum length of paid annual holidays and minimum rates of pay. The Council instructed the Permanent Representatives Committee to continue the discussions and to report back at a meeting in the near future.

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

1991/0346(COD) - 27/03/1995

The debate focused on: - the scope of the Directive; - the exhaustive or non-exhaustive nature of the list of terms and conditions of employment covered by the Directive; - the optional non--application of provisions regarding minimum annual paid holidays and minimum rates of pay to short--term postings of under one month. The Council instructed the Permanent Representatives Committee to continue discussing the matter in the light of this debate with a view to a decision at the Council meeting on 29 June 1995.

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

1991/0346(COD) - 15/06/1993 - Modified legislative proposal

The amended proposal from the Commission took account of a number of Parliament amendments, adopted at first reading, including: - an amendment specifying that the enterprises covered could expressly be established either in the Community or in a third country; - an amendment stepping up the applicability of collective agreements and arbitration rulings in this matter; - amendments introducing specific provisions to ensure cooperation by the public authorities of States of origin and host States in respect of matters connected with the implementation of the directive and the taking of adequate measures in the event of failure to comply with the future directive.

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

1991/0346(COD) - 22/09/1994

The "Labour and Social Affairs" Council held a policy debate on this proposal. The debate in particular related to:

- the scope of the directive;
- the possibility to provide or to allow, an initial period during which the provisions of the directive would not be applicable and, if necessary, the duration of such an initial period.

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

1991/0346(COD) - 10/02/1993 - Text adopted by Parliament, 1st reading/single reading

Parliament adopted by 187 votes to 115 with 18 abstentions the report by Mihail Papayannakis (Soc., GR) on a proposal for a directive concerning the posting of workers in the framework of the provision of services. Parliament also adopted by 231 votes to 131 with 4 abstentions an amendment tabled by the Committee on Social Affairs which provided that Member States should designate the competent authorities to monitor the application of the directive. Parliament wished for Member States to ensure that the competent authorities could apply remedies in order put an end to infringements of the provisions of the directive.

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

1991/0346(COD) - 03/06/1996 - Council position

The Council Common Position has been considerably influenced by the amendments adopted by Parliament at first reading and incorporates the main elements of the list of terms and conditions of employment applicable to workers posted in the framework of the provision of services. This list, which already featured in the Commission amended proposal, includes: - minimum rates of pay; - minimum paid holidays; - maximum hours of work and minimum rest periods; - conditions of hiring out of workers, in particular by temporary employment businesses; - health, safety and hygiene at work; - protective measures with regard to the working conditions of pregnant women or women who have recently given birth, children and young people; - equality of treatment between men and women. The Common Position introduces the possibility of allowing the Member States, within certain limits, to expand the list of terms and conditions of work (principle of the non-exhaustive list), in the case of public policy provisions. The Council also goes beyond the Commission and Parliament position by adding new provisions on the following points: - equal treatment between undertakings established in a Member State and in a third country; - non-application of the Directive to merchant navy undertakings as regards seagoing personnel; - the concept of a 'posted worker', the definition being that which applies in the law of the Member State to whose territory the worker is posted; - with regard to the possibility of waiving the right to minimum pay rates and/or minimum paid annual holidays, three derogations are provided: (1) when the length of the posting does not exceed one month, Member States may, after consulting employers and labour, in accordance with the traditions, decide not to impose a minimum rate of pay; (2) in the context of a contract for supply of goods (apart from building services), application of the provisions on a minimum salary and minimum paid annual holidays may be suspended if the workers (not temporary workers) are engaged in initial assembly and/or first installation of goods if the period of posting does not exceed eight days; (3) in general, the provisions on minimum paid holidays and the minimum salary may be suspended if the work to be done is not significant. The Directive may not oblige Member States who do not or do not wish to do so to apply a regulated minimum wage. However, all other national provisions must be applied to posted workers, respecting the principle of non-discrimination and the standards set by the Directive (eg safety at work, working hours etc.). The Common Position also specifies the following points: - the worker must be posted in the context of a transnational supply of services, which implies the existence of a contract concluded between the undertaking making the posting and the party for whom the services are intended; - in the building sector, provisions under collective agreements or arbitration awards will be applicable in the event of posting, to the extent that they have been declared universally applicable (Member States may include other sectors); - sectoral social institutions (e.g. building sector holiday funds) will be authorized to receive contributions and pay out benefits; they will be able to uphold their rights in the national courts; - posted workers will also have access to the relevant national jurisdiction for the place of work, during or after their period of posting. The Council has put back the proposed date for implementing the Directive from two to three years after adoption.

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

1991/0346(COD) - 16/12/1996 - Final act

OBJECTIVE: to coordinate existing national legislation concerning the law applicable to the temporary posting of workers to States other than their State of origin. COMMUNITY MEASURE: European Parliament and Council Directive 96/71/EC on the posting of workers carried out in the framework of the provision of services. SUBSTANCE: -scope: the Directive applies to undertakings established in a Member State which, in the framework of the transnational provision of services, post workers to the territory of another Member State. -definition: for the purposes of the Directive, the term 'posted

worker' means a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works. -the Directive applies when undertakings: .post workers to the territory of a Member State under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State, provided there is an employment relationship between the undertaking of origin and the worker during the period of posting; .post workers to an establishment or to an undertaking owned by the group in the territory of a Member State, provided there is an employment relationship between the undertaking of origin and the worker during the period of posting; .being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting. -terms and conditions of employment: Member States must guarantee workers posted to their territory the terms and conditions of employment laid down by law, regulation or administrative provision or by collective agreements concerning: .maximum work periods and minimum rest periods; .minimum paid annual holidays; .minimum rates of pay, including overtime rates; .conditions of hiring-out of workers, in particular the supply of workers by temporary employment agencies; .health, safety and hygiene at work; .protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people; .equality of treatment between men and women and other provisions on non-discrimination. -derogations: .in certain limited cases of initial assembly and/or first installation of goods, the provisions concerning minimum rates of pay and minimum paid annual holidays do not apply; .when the length of posting does not exceed one month, Member States may, under certain conditions, derogate from the provisions concerning minimum rates of pay or provide that exemptions may be made by means of collective agreements; .on the grounds that the amount of work to be done is not significant, Member States may derogate from the provisions concerning minimum rates of pay and minimum paid annual holidays (Member States availing themselves of this option must lay down the criteria which the work to be performed must meet in order to be considered as 'non-significant'). ENTRY INTO FORCE: Member States must adopt the necessary provisions to comply with the Directive not later than 16.12.1999.

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

1991/0346(COD) - 13/05/1992 - Text adopted by Parliament, partial vote at 1st reading/single reading

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

1991/0346(COD) - 18/12/1991 - Economic and Social Committee: opinion, report

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

1991/0346(COD) - 29/06/1995

At the request of the Commission, the Council had a brief discussion on the proposal for a directive concerning the posting of workers in the framework of the provision of services. Commissioner FLYNN said he was prepared to make one last effort to help reach agreement on this important directive. The Council instructed the Permanent Representatives Committee to continue the discussion under the Spanish Presidency.

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

1991/0346(COD) - 18/09/1996 - Text adopted by Parliament, 2nd reading

In adopting the report by Mr Helwin PETER (PSE, D), Parliament approved the common position without amendment.

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

1991/0346(COD) - 25/07/2003 - Follow-up document

PURPOSE : to present the report on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. CONTENT : Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services was adopted on 16 December 1996. It aims to abolish the obstacles and uncertainties that impede implementation of the freedom to supply services, by improving legal certainty and facilitating identification of the employment conditions that apply to workers temporarily employed in a Member State other than the Member State whose legislation governs the employment relationship. Since the Directive is a supranational legal instrument whose transposal in one Member State directly affects employers and workers in other countries, the manner in which it is actually implemented is particularly important for all Member States. Article 8 provides that the Commission shall review the operation of the Directive with a view to proposing the necessary amendments to the Council where appropriate. In preparation for this review, the Commission services have taken a number of steps: the first was to draft a report on the transposal of the Directive in the 15 Member States, designed to ascertain the present situation as regards national legislations and collective agreements. At the same time, the national administrations were sent a questionnaire asking them to describe the practicalities of applying the Directive and any difficulties encountered. The results of the transposal study and the replies to the questionnaire were discussed by a group of government experts. The purpose of this Communication is to draw the conclusions from all this preparatory work concerning the transposal and practical implementation of Directive 96/71/EC in the Member States, and to define the Commission's position as to whether the 1996 Directive needs revising. The Communication does not seek to judge the compatibility with the Directive and the Treaty of the national transposing measures mentioned herein, nor does it prejudice what position the Commission will take in its monitoring of the application of Community law. The purpose of this Communication is to draw the conclusions from all this preparatory work concerning the transposal and practical implementation of Directive 96/71/EC in the Member States, and to define the Commission's position as to whether the 1996 Directive needs

revising. The Communication does not seek to judge the compatibility with the Directive and the Treaty of the national transposing measures mentioned herein, nor does it prejudice what position the Commission will take in its monitoring of the application of Community law. The results of the studies of the transposition of Directive 96/71/EC, as outlined above, are broadly corroborated by the Member States' answers to a questionnaire on the practical application of the provisions arising from the Directive, and by the conclusions of the group of government experts. This group's conclusions can be summarised as follows: - None of the Member States has encountered any particular legal difficulties in transposing the Directive. - It seems premature to consider amending the Directive. These opinions and positions indicate to the Commission that it is not necessary to amend the Directive. The difficulties encountered in implementing it have so far tended to be more of a practical nature than a legal nature. Consequently, as things stand at present the Commission will not be presenting a proposal for a directive amending the arrangements for implementing the posted workers Directive.

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

1991/0346(COD) - 28/06/1991 - Legislative proposal

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

1991/0346(COD) - 13/06/2007 - Follow-up document

PURPOSE: to assess the application of Directive 96/71/EC on the posting of workers in the framework of the provision of services.

CONTENT: on 4 April 2006 the Commission adopted the Communication 'Guidance on the posting of

workers in the framework of the provision of services' (see [INI/2006/2038](#)) which aimed to assist Member States in achieving the results required by the Directive and in particular as regards administrative requirements and control measures imposed on service providers.

The present Communication responds to the commitment taken by the Commission in its Communication to monitor developments in the Member States⁴ with respect to all matters addressed in that Communication.

The present Communication is based on a detailed examination of the situation in the Member

States and also takes into account the information provided and the concerns expressed by the European

Parliament in its Resolution of 26 October 2006 on the application of the Directive.

There are no precise figures or estimates of posted workers in the EU. However, the overall number of posted workers is estimated to be just under 1 million or about 0.4% of the EU working age population in 2005. They represent significant numbers in some Member States (Germany, France, Luxembourg, Belgium or Poland) but the phenomenon is increasingly widespread and affects now all Member States as sending and/or as receiving countries. The economic importance of posting exceeds by far its quantitative size, as it can play a crucial economic role in filling temporary shortfalls in the labour supply in certain professions or sectors (e.g. construction, transport). On the other hand, employment conditions, wages in particular, offered to posted workers, if not subject to proper control and enforcement, may diverge from the minimal conditions established by law or negotiated under generally applicable collective agreements. If such divergence takes place on a large scale this might undermine the organization and functioning of local labour markets. At the same time, on a more general level, restrictions on labour market access may exacerbate resort to undeclared work. When accompanied by lacunae in enforcement of Community legislation already in place, this phenomenon leads to undesirable social consequences both for undeclared workers and the regular labour force.

Guidelines provided for in the Commission's Communication of April 2006

In its Communication of April 2006, the Commission explained and clarified how the Community acquis, and in particular Article 49 EC as interpreted by the ECJ, had to be observed and how the results required by the Directive could be achieved in a more effective manner. Among the control measures applied by Member States in the context of supervising the posting of workers, it explicitly focussed upon the following types of administrative requirements:

- to have a representative established on the territory of the host Member State ;
- to obtain a prior authorisation in the host Member State or to be registered with them, or any other equivalent obligation;
- to make a prior declaration to the authorities of the host Member State;
- to keep and maintain social documents on the territory of the host country and/or under the conditions which apply in its territory;
- measures which apply specifically to posted workers who are nationals of third countries.

Control measures applied by the Member States: in the light of the available information and pending further assessment, a number of control measures applied by Member States do not seem to be in conformity with Article 49 EC as interpreted by the ECJ. A final assessment of the situation will, however, depend on an assessment as to whether certain legitimate monitoring needs can be fulfilled by improved access to information and/or more effective administrative cooperation between the host Member State and the Member State of origin.

Control measures used: the main categories of control measures used by the Member States are as follows:

- the requirement imposed on the posting undertaking to have a representative in the host country is explicitly made in 6 Member States (and implicitly in 3 others);
- a specific authorisation/registration regime for posting of workers exists in two Member States;

- the requirement to make a declaration prior to the commencement of the work by the service provider exists in 16 Member States¹⁹; whereas one Member State imposes such an obligation on the recipient of the service;
- requirements to keep and maintain certain social documents on the territory of the host country and/or under the conditions which apply in its territory are imposed in 14 Member States in varying ways and concerning different types of documents.

Member States and Social Partners have divergent views as to whether certain control measures are needed as well as to whether these are compatible with Community law. In October 2006, the European Parliament adopted a Resolution which alleges the right of the host Member State to impose certain formalities to employers that post workers so as to make it possible for the authorities of that country to ensure compliance with the terms and conditions of employment. For a number of Member States this constitutes a highly sensitive issue, touching upon key characteristics of their social model. Control measures imposed by Member States are embedded in their legal and institutional frameworks, and in some Social Partners can also be entrusted with control and monitoring tasks of terms and conditions of employment. Lack of information on the identity and/or legitimacy of service providers, the temporary and often very short-term nature of posting operations, the perceived risks of "social dumping" or distortion of competition, as well as the cultural and physical distance between controlling authorities, are mentioned as justification for the use of certain control measures by host country authorities. On the other hand, these are often perceived as excessive by service providers and authorities in sending countries, and pursuing goals that go beyond the protection of posted workers' rights.

Assessment: the inventory of control measures used by Member States shows their striking diversity. As a matter of principle, the Commission does not intend to put into question the different social models chosen by Member States nor the way they organise their system of labour relations and collective bargaining, provided that it is implemented and applied in a way which is fully compatible with the obligations under the Treaty.

Furthermore, the necessity for preventive actions and appropriate sanctions aimed at countering illegal employment and undeclared work, including in the form of disguised self-employment, as well as combating unlawful activities by fictitious foreign temporary employment agencies, is indisputable. In this context, Member States need to strike the right balance between, on one side, the necessity to provide and safeguard the effective protection of workers and, on the other, the need to ensure that the formal requirements and control measures used or imposed in order to guarantee the respect of overriding reasons of general interest (such as protection of posted workers), including the way these are effectively applied, exercised or performed in practice, are justified and proportionate in view of the objectives pursued and aims to be achieved. 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. These problems cannot be solved unless Member States improve the way they cooperate with each other and, in particular comply with their obligations regarding administrative cooperation and access to information as stipulated in the Directive. In complying with their obligations, Member States would substantially contribute to a reduction of administrative burdens in line with the objectives set by the European Council. Improved administrative cooperation could also constitute an important element when aiming to improve and increase effective compliance with and enforcement of Community law. Adequate and effective implementation and enforcement are key elements in the protection of posted workers rights.

Future measures: the Commission considers that urgent action is required and envisages the following measures:

- adopt a Commission Recommendation (on the basis of Article 211 EC), to be endorsed by Council conclusions in order to reinforce administrative cooperation amongst Member States through the use of the Internal Market Information System (IMI)⁴³ and to clarify the role of liaison offices;
- adopt a Commission Decision setting up a high level Committee, in order to support and assist the Member States in identifying and exchanging good practices, to institutionalise the current, informal Group of Government Experts by identifying with greater precision its role, tasks and responsibilities, and to formally involve social partners regularly;
- ensure effective compliance with the fundamental freedoms of the EC-Treaty, as interpreted by the ECJ, by those Member States which impose administrative requirements and control measures considered incompatible with prevailing Community law (such as the requirement to have a representative established in the host Member State, or an obligation to keep certain social documents on its territory, without any exception and/or time limitation, when information can be obtained via the employer or the authorities in the Member State of origin within a reasonable delay) on a case by case basis, including, if necessary, launching infringement proceedings under Article 226 EC;
- ensure the conformity with Community law, as interpreted by the ECJ notably in the judgement "Vander Elst", with respect to those Member States which still require work permits and other conditions to posted third country nationals who are legally staying and are legally employed in another Member State, by launching infringement procedures under Article 226 EC;
- continue monitoring the Member States' national transposition measures and their application on all other matters not dealt with in this Communication, including those situations where, contrary to Article 4(3), accessibility and transparency of information remains a problem, and, if necessary, take the appropriate measures, including launching infringement procedures under Article 226 EC;
- engage, for example in the above-mentioned high level Committee, with the Member States and Social Partners in an in-depth examination of cross-border enforcement problems (sanctions, fines, joint and several liability).

On the basis of this examination, the Commission will take appropriate action.

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

1991/0346(COD) - 14/06/1996 - Commission communication on Council's position

In its opinion on the Council's common position, the Commission considered that the text adopted by the Council was an excellent balance between the various elements provided for, substantially improved the content of the amended proposal and represented real Community added value. The Commission considered that this text made a full contribution to progress with the social dimension of the European Union.

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

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.