



**COUNCIL OF
THE EUROPEAN UNION**



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

*2876th EMPLOYMENT, SOCIAL POLICY, HEALTH AND
CONSUMER AFFAIRS Council meeting*

Luxembourg, 9 June 2008

The Council adopted the following conclusions:

"THE COUNCIL:

RECALLING that Directive 96/71/EC of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services¹ aims to reconcile, on the one hand, the exercise of the fundamental freedom to provide cross border services under Article 49 EC for service providers, with the need, on the other hand, to guarantee workers temporarily posted to the territory of another Member State to provide these services the nucleus of mandatory rules regarding the terms and conditions of employment to be complied with in that Member State;

REAFFIRMING that the Directive thus provides guarantees for the respect of a significant level of protection of the rights of posted workers, but also plays a key role in establishing a climate of fair competition between all service providers by guaranteeing a level playing field;

NOTING in this context the relevant European Court of Justice jurisprudence regarding the posting of workers;

¹ Of 16 December 1996, published OJ L 18 of 21.1.1997, p. 1.

P R E S S

WELCOMING the improvements in a number of Member States with respect to the availability of information dedicated specifically to posting, although a number of deficiencies still need to be addressed;

UNDERLINING that adequate and effective implementation and enforcement of the legislation applicable to the posting of workers in the framework of the provision of services are key elements in the protection of posted workers' rights;

STRESSING in this context the importance of administrative cooperation between the competent authorities of the Member States for the effective implementation of and compliance with the Community legislation concerning the posting of workers, as well as its application and enforcement in practice, and of creating the necessary conditions for such cooperation, as provided for in Article 4(2) of Directive 96/71/EC; noting also that the Member States, while respecting the prevailing Community law, remain responsible for the control, monitoring and enforcement systems that meet the needs of their respective labour markets;

ACKNOWLEDGING, however, that enhanced administrative cooperation complements national measures, taken in accordance with Community law, for monitoring the respect of the terms and conditions of employment applicable to posted workers, and adds to the effectiveness of these measures; noting also that this enhanced administrative cooperation should take into account the role of the social partners in the Member States;

WELCOMES against this background the Commission Recommendation on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services² and, in particular, its call for better administrative cooperation between Member States through using more effective systems of exchange of information, improving access to information, and promoting the exchange of good practices;

IS CONVINCED that the Recommendation provides useful tools for enhanced protection of workers' rights;

INVITES THE COMMISSION AND THE MEMBER STATES, IN ACCORDANCE WITH THEIR RESPECTIVE COMPETENCES, TO

1. further enhance their cooperation in the area of the posting of workers, including by closely involving the social partners, at appropriate levels and in accordance with national law and/or practice, and, where applicable, labour inspectorates or other bodies carrying out controls;

CALLS UPON THE MEMBER STATES TO

1. examine, in close cooperation with the Commission, how information exchange should be reinforced in order to enhance the administrative cooperation necessary to improve the practical implementation of Directive 96/71/EC;

² Of 3 April 2008, published OJ C 85 of 4.4.2008, p. 1 and OJ C 89 of 10.4.2008, p. 18.

2. assess the different options for a suitable technical support for the information exchange, including an electronic information exchange system, while taking account of cost-effectiveness, the objectives concerning the reduction of administrative burdens, links with other existing systems or initiatives and personal data protection requirements, and, based on this assessment, decide on a specific application;
3. clarify the role of the liaison offices, and strengthen them where needed, ensuring that they are in a position to carry out their tasks effectively;
4. take appropriate measures to further improve in practice the accessibility and transparency of the information on the terms and conditions of employment that should be applied and make it generally available to all the parties concerned;
5. increase their efforts to identify and exchange good practice in the field of the posting of workers and participate actively in this respect;

INVITES THE COMMISSION

1. to provide the necessary support and (financial) assistance to the Member States in order to improve, and where necessary reinforce, the information exchange in the context of the administrative cooperation;
2. to set up, as soon as possible, an operational task force, first of all to carry out preliminary examinations in order to develop possible options for a specific information exchange system and, secondly, to provide advice on the most appropriate and cost-effective technical support for the information exchange system, including the possibility of using a specific application of the Internal Market Information System (IMI);
3. to institutionalise the informal group on the posting of workers by setting up a committee of experts to, inter alia:
 - support and assist the Member States in identifying and exchanging experience and good practice,
 - promote the exchange of relevant information,
 - examine any questions and difficulties which might arise in the practical application of the posting of workers legislation, as well as in its enforcement in practice, and
 - closely follow the progress achieved in improving both access to information and administrative cooperation, including the development of a possible electronic information exchange system.

The Committee should engage with the public bodies responsible for control, such as labour inspectorates, as well as, at appropriate levels and in accordance with national law and practice, formally and regularly involve the social partners, in particular representatives of the social partners in sectors with a high incidence of recourse to posted workers;

4. to report regularly on progress made towards enhanced administrative cooperation in the context of the posting of workers, in particular on the results of the preliminary examination concerning the most appropriate technical support for an electronic information exchange system."
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