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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Posting of workers in the framework of the provision of services:

maximising its benefits and potential while guaranteeing the protection of workers

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1. INTRODUCTION

On 4 April 2006 the Commission adopted the Communication 'Guidance on the posting of workers in the framework of the provision of services'[1], as well as a Staff working document[2] on the implementation of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services[3] (hereinafter "the Directive"). The aim of this Communication was to assist Member States in achieving the results required by this Directive in a more effective manner (in particular as regards access to information and administrative cooperation), as well as ensuring full compliance with the prevailing Community *acquis,* notably with Article 49 EC on the freedom to provide services, as interpreted by the European Court of Justice (ECJ), as regards administrative requirements and control measures imposed on service providers.

The present Communication (and the attached Staff working document) responds to the commitment taken by the Commission in its Communication of April 2006 to monitor developments in the Member States[4] with respect to all matters addressed in that Communication. Its purpose is:

- to present an objective view of the situation;
- to assess whether progress was achieved since April 2006, reflecting the guidelines issued by the Commission;
- to draw operational conclusions from the monitoring exercise;
- to indicate the appropriate steps and measures to rectify the situation, if necessary.

The present Communication is based on a detailed examination of the situation in the Member States, described in the attached Staff working document. This examination draws mainly, but not exclusively, on information given by Member States and Social Partners at EU level (both

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1 COM(2006) 159.

2 SEC(2006) 439.

3 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 (OJ L 18, 21.1.1997, p. 1).

4 The analysis is limited to the 25 Member States of the Union in 2006. The implementation of the *acquis* in Romania and Bulgaria as regards posting of workers, including the issues discussed in the communication adopted on 4 April 2006, will be assessed separately in the general context of assessment of implementation measures following enlargement.

cross-industry and sectoral) in reply to questionnaires submitted to them in October 2006[5]. It 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[6]. 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). Furthermore, posting of workers enhances international trade in services with all the known advantages linked to the single market (higher competition, efficiency gains etc.).

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[7].

2. CONTROL MEASURES – THE LEGAL FRAMEWORK AT EU-LEVEL

2.1. Key role and importance of Directive 96/71/CE

The Directive aims to reconcile the exercise of companies' fundamental freedom to provide cross border services under Article 49 EC, on the one hand, with the appropriate protection of the rights of workers temporarily posted abroad to provide them, on the other. In order to do that it identifies the mandatory rules of general interest at Community level that must be applied to posted workers in the host country. The Directive establishes a hard core of clearly defined terms and conditions of work and employment for minimum protection of workers that must be complied with by the service provider in the host country. The Directive thus provides a significant level of protection for workers, who may be vulnerable given their situation (temporary employment in a foreign country, difficulty to obtain proper representation, lack of knowledge of local laws, institutions and language). The Directive also plays a key role in promoting the necessary climate of fair competition between all service providers (including those from other Member States) by guaranteeing a level playing field, as well as legal certainty for service providers, service recipients, and workers posted within the context of the provision of services.

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5 The Commission made also available a form through its website, allowing users to set out their experience.

6 The most reliable and up-to-date statistical data presently available are based on the number of E101 certificates delivered by the social security institutions of the sending countries for every posting not exceeding 12 months.

7 As indicated in the Commission report on the functioning of the transitional arrangements set out in the 2003 Accession Treaty - COM(2006) 48, 8.2.2006, paragraph 20.

2.2. Contents and pertinence of case law of the Court of Justice

According to well established ECJ case law[8], Article 49 EC on the freedom to provide services requires not only the elimination of any discrimination against a service provider established in another Member State by reason of its nationality, but also the elimination of any restriction, even if it applies indiscriminately to national service providers and to those from other Member States, which is likely to prevent, hamper or make less attractive the activities of a service provider established in another Member State where it lawfully provides similar services.

In addition, as a fundamental principle of the EC Treaty, the freedom to provide services may be limited only by rules which are justified by overriding reasons of general interest, provided that these apply without distinction, and insofar as that interest is not already protected by the rules to which the service provider is subject in the Member State in which he is established The ECJ has accepted worker protection[9], including protection of workers in the construction sector[10], as an overriding reason of general interest. Moreover, application of such national rules of a Member State to service providers established in another Member State must be necessary to ensure attainment of the objective pursued and must not exceed what is necessary to attain the objective. Purely administrative considerations can not be evoked by Member States in order to derogate from Community law[11].

Furthermore, the ECJ has accepted that Member States have the power to verify compliance with national and Community provisions in respect of the provision of services. Thus it recognizes that inspection measures may be justified to monitor the observance of obligations justified by imperative reasons of general interest[12].

When performing inspections related to the implementation of the Directive, Member States must, however, abide by Article 49 EC and refrain from creating or upholding unjustified and disproportionate restrictions to service providers within the Community. The ECJ has underlined several times that these inspections must be suitable for achieving the objectives pursued without restricting this freedom any more than necessary[13], in accordance with the principle of proportionality.

It should also be recalled in this context that a Member State may not base itself, according to existing case law of the ECJ, on a general presumption of fraud or abuse by a person or

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8 As summarised in, for instance, the judgment of 23.11.1999, joined cases C-369/96 and 376/96, Arblade e.a., paragraphs 33-39 (and the case law referred to herein).

9 See the Webb judgment of 17.12.1981, case 279/80, paragraph 19, and judgments of 3.2.1982, joined cases 62 and 63/81, Seco and Desquenne & Giral, paragraph 14, and of 27.3.1990, C-113/89, Rush Portuguesa, paragraph 18.

10 Guiot judgment of 28.3.1996, case C-272/94, paragraph 16.

11 See, in particular, the judgment of 26.1.1999, Terhoeve, Case C-18/95, ECR p. I-345, paragraph 45.

12 In this context, see the Rush Portuguesa judgment of 27.3.1990, case C-113/89, paragraph 18, and the Arblade judgment, cited above, paragraphs 38, 61 to 63 and 74.

13 See, in this context, the Rush Portuguesa judgment, cited above, paragraph 17, as well as the judgments of 21.10.2004, Commission v Luxembourg, case C-445/03, paragraph 40, and of 19.1.2006, Commission v Germany, C-224/04, paragraph 36.

company exercising a fundamental freedom guaranteed by the Treaty to justify a restriction of this fundamental freedom[14].

2.3. 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; as well as
- measures which apply specifically to posted workers who are nationals of third countries.

3. OVERVIEW OF THE SITUATION

3.1. Control measures used - reasons evoked to justify the necessity to impose such measures

According to the information supplied by the Member States[15], nearly all impose at least one category of the above requirements:

- The requirement imposed on the posting undertaking to have a representative in the host country is explicitly made in 6 Member States[16] (and implicitly in 3 others[17]);
- A specific authorisation/registration regime for posting of workers exists in two Member States[18];

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14 See for instance judgments of 15.9.2005, Commission v Denmark, C-464/02, paragraph 81, of 15.6.2006, C-255/04, Commission v France, paragraph 52, and of 9.11.2006, case C-433/04, Commission v Belgium, paragraph 35.

15 See for further details the services report, as well as the schematic overview provided for in Annex 1 of this report.

16 I.e. Germany, Greece, Luxemburg, Austria, Finland and Sweden.

17 I.e. Estonia, France and Latvia.

18 Malta and Luxembourg (the latter requires an authorization only for posting of third country nationals).

- The requirement to make a declaration prior to the commencement of the work by the service provider exists in 16 Member States[19]; whereas one Member State[20] 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[21].

It results from the replies to the questionnaires and the general debate on the Communication of April 2006, that 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[22] 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.

3.2. Assessment

The inventory of control measures used by Member States shows their striking diversity.

As a matter of principle, it is not intended 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. Last but not least, Member States have the obligation to ensure that minimum rates of pay, where relevant, are applied to employers providing services within their territory, regardless of the country in which the employer is established and Community law thus does not prohibit Member States from enforcing those rules by appropriate means.

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19 Belgium, Germany, Greece, Spain, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Austria, Portugal, Slovenia, Slovakia and Finland.

20 Czech Republic.

21 Belgium, Germany, Estonia, Greece, Spain, France, Italy, Luxembourg, Malta, Austria, Portugal, Slovakia, Finland and Sweden.

22 Resolution European Parliament on the Schroedter report of 26 October 2006.

When monitoring compliance with the nucleus of mandatory rules applicable, 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. In particular the principle of proportionality, including the question whether the legitimate aim can not be achieved in a less restrictive but equally effective manner, is to be observed. The particularities inherent to the situation of posting (such as its temporary and often very short-term nature, the perceived risk of "social dumping" or of serious distortion to competition, the cultural and physical distance between controlling authorities and posting undertakings), need to be sufficiently taken into account, with the result that a case by case assessment of the compatibility is required. While striking the balance, the controls and monitoring already carried out in the Member State of origin, as well as the effectiveness of administrative cooperation will also have to be taken into consideration[23].

Even if a measure appears to be acceptable in itself, such as the use of a declaration by the time the work starts, indicating how many workers will be posted, where and for how long, additional formalities[24] may be attached to it which may make its use so costly or difficult as to hamper unnecessarily the provision of services. The requirement of a representative established in the host Member State and the obligation to keep certain social documents on its territory, without any exception and/or time limitation, and/or the obligation to draw up documents in accordance with the rules in the host country[25], is unjustified and disproportionate for the monitoring of working conditions of posted workers when information can be obtained via the employer or the authorities in the Member State of origin within a reasonable delay. The effective protection of workers, however, may require that certain documents, particularly as regards health and safety matters and working hours, are kept on site or within the territory of the host Member State[26]. Moreover, if and in so far as control measures do not significantly add to the protection of the posted workers, their justification, necessity and proportionality is questionable. Furthermore, measures which apply in an automatic and unconditional manner, on the basis of a general presumption of fraud or abuse by a person or company exercising a fundamental freedom guaranteed by the Treaty, constitute an unjustified restriction[27].

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

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23 For the European Parliament, in the Resolution mentioned above, host Member States should be able in all circumstances to require the documents needed to verify compliance, and the availability of a person who could act as a representative of the posting company is deemed necessary.

24 Some Member States also require that the prior declaration needs to be accompanied by an E-101 form used for social security purposes in the context of Regulation (EEC) No 1408/71 (which may, as such, not be in line with the case law of the ECJ in this respect).

25 Arblade judgement, cited above, paragraph 66.

26 Arblade judgement, cited above, paragraph 61.

27 See for instance the judgments of the ECJ of 15.9.2005, Commission v Denmark, C-464/02, paragraph 81, of 15.6.2006, Commission v France, C-255/04, paragraph 52, and of 9.11.2006, Commission v Belgium, C-433/04, paragraphs 35-38.

access to information and/or more effective administrative cooperation between the host Member State and the Member State of origin (which will be the subject of chapter 4 below).

3.3. Measures applied to posted workers who are nationals of third countries

The information received shows that a considerable number of Member States (15[28]) require a work permit or impose access-to-the-labour-market related visa requirements for posted third country nationals who are legally staying and are legally employed in another Member State. Additional conditions are still applied with regard to residence permits and/or visa requirements, which may hamper the effective exercise of a fundamental freedom by the service provider. Among such conditions figure minimum employment periods or type of contracts in the country of origin, or a minimum duration of the residence permit in the country of establishment of the employer.

Such measures are not in conformity with the Treaty rules on the freedom to provide services as interpreted by the European Court of Justice. In its Communication of April 2006[29], the Commission concluded that on the basis of existing case law[30] a host Member State may not impose administrative formalities or additional conditions on posted workers who are third country nationals when they are lawfully employed by a service provider established in another Member State, without prejudice, however, to the right of the host Member State to check that these conditions are complied within the Member State where the service provider is established. Therefore, there is still a considerable number of Member States which do not completely or correctly respect this case law, or do not apply it at all.

4. ACCESS TO INFORMATION – ADMINISTRATIVE COOPERATION

Article 4 of the Directive outlines two axes of cooperation with respect to information in the context of posting of workers:

- Article 4(1) and (2) of the Directive imposes clear obligations as regards cooperation between national administrations, and makes it the responsibility of Member States to create the necessary conditions for such cooperation. This obligation includes the designation of a monitoring authority organised and equipped in such a way as to function effectively and to be able to deal promptly with respect to requests regarding terms and conditions covered by the Directive.

- Furthermore, Article 4(3) of the Directive sets out a clear obligation for 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[31].

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28 Belgium, Denmark, Germany, Estonia, Ireland, Italy, Cyprus, Latvia, Luxembourg, Malta, Netherlands, Austria, Portugal, Slovakia and Finland. There are ECJ judgments regarding such requirements against Belgium, Germany and Luxembourg, and an open infringement procedure against Italy.

29 See in particular point 2.2, page 8.

30 See judgments of 9.8.1994, Vander Elst, case C-43/93, of 21.10.2004, Commission v Luxembourg, case C-445/03, and of 19.1.2006, Commission v Germany, case C-224/04. Idem judgment of 21.9.2006, Commission v Austria, case C-168/04.

31 Thus, different types of cooperation and access to information are mentioned in Article 4: cooperation between the public authorities responsible for monitoring the terms and conditions of employment

The evidence gathered in the Commission's Staff working document SEC(2006) 439 showed that there was considerable scope for improved access to information, administrative cooperation and compliance monitoring, *inter alia* by identifying and disseminating best practices. The European Parliament resolution stressed that a large number of posted workers are not even aware of their rights according to the directive; it called for the necessary measures to provide effective access to information for posted workers and their employers[32].

The Commission's own investigation and the replies to the questionnaires show encouraging improvements in a large number of Member States of the availability of information dedicated specifically to posting, be it via websites, contact points, brochures, leaflets, vade-mecums or other means.

However, a number of deficiencies were still noticed[33]. Some countries only publish information in their national language. The information provided appears also often too limited and/or complex, in particular in situations where different collective agreements at regional level are applicable, more than one monitoring authority exists or other parties than labour inspections are involved.

As to the cooperation among Member States, the very small number of contacts made through liaison offices, established in Article 4 of the Directive, indicates that Member States either ignore this form of cooperation or have sought other forms, for instance through bilateral contacts between monitoring authorities of neighbouring countries. In practice the 'Cooperation standards' laid down in the Code of Conduct agreed in the group of government experts on posting of workers[34] seem to have been implemented and respected when dealing with requests from other Member States, but the 4 week deadline for replies is reported as being rarely met. The use of the multilingual form is not widespread and a number of criticisms have been formulated as to its effectiveness. Several replies indicate that the role and responsibilities of the liaison offices merit clarification, and may even have to be revised.

To sum up, notwithstanding improvements in terms of access to information, there are justified concerns as to the way Member States implement and/or apply the rules on administrative cooperation as provided for by the Directive. Successful implementation and application of the Directive does not seem possible unless this situation is corrected. Access to advance information about the terms and conditions of employment applicable in the host country is a prerequisite for interested parties to be able to perform the services required in compliance with the provisions resulting from the Directive and its transposition in national law. The proper functioning of administrative cooperation among Member States is an essential instrument for compliance control; its virtual absence may explain why Member States revert to control measures, which appear unnecessary and/or disproportionate in the light of the interpretation by the ECJ of Article 49 EC.

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referred to in the Directive; close cooperation between the Commission and the public authorities to examine any difficulties which might arise in the application of Article 3(10); and the necessity to ensure that the information on the terms and conditions of employment is generally available (Idem Communication: The implementation of Directive 96/71/EC in the Member States - COM(2003) 458, 25.7.2003, p. 10.

32 See point 18 of the Resolution.

33 See for more details the Services Report.

34 Set up under the Commission Decision concerning the creation of a group of Directors-General for Industrial Relations (2002/260/EC) of 27 March 2002 (OJ L 91, 6.4.2002, p. 30).

5. REINFORCING MONITORING OF COMPLIANCE AND ENFORCEMENT

According to the Directive, Member States have to ensure compliance with the provisions of the Directive by taking appropriate measures, in particular to ensure adequate procedures for enforcement of obligations under the Directive. As provided for by Article 6 of the Directive, Member States have made it possible to institute judicial proceedings in their territory in order to allow enforcement of the right to the terms and conditions of employment guaranteed by the Directive.

Although the application of the Directive does not seem to have given rise to many formal complaints or legal proceedings, the European Parliament[35], as well as a number of replies to the questionnaires, in particular from social partners, regret that the mechanisms put in place to remedy deficiencies would not be sufficient and would offer neither appropriate nor proportionate measures to monitor effectively compliance with the Directive. Social partners stress the lack of collective legal actions, whereas some Member States stress the need for EU-instruments for the effective cross-border sanctioning of infringements by non-national service providers.

Enforcement of fines imposed abroad is often mentioned as problematic. A number of reactions question the usefulness for administrative sanctions imposed in the context of posting of workers of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties[36]. Although the latter should be considered to apply to posting of workers, its pertinence is contested: the procedures leading to an enforceable decision are considered too long to cover the majority of cross border situations, taking also in consideration the temporary and often short nature of posting. Furthermore, some Member States indicate that their national procedural rules sometimes make it overly difficult (or even prohibit) to launch administrative procedures against companies established in another Member State.

Replies to the questionnaires show that a variety of joint and several liability systems exist in some Member States[37], which impose the monitoring obligation directly on the receiving company or contractor in the host country. This is seen by the Member States concerned as offering a direct, effective and feasible method of control and verification, compared to lengthy procedures with respect to a company or subcontractor established in another Member State.

The ECJ held[38] that Article 5 of the Directive, interpreted in the light of Article 49 EC, did in principle not preclude the use of a system of joint and several liability for general or principal contractors as an appropriate measure in the event of failure to comply with the Directive. The Court, however, also indicated that such a measure must not go beyond what is necessary to attain the objective pursued (referring the assessment of the proportionality of this measure to the national court). In a more recent judgment[39] it considered a specific joint liability system disproportionate and contrary to Article 49 EC among other reasons because of its automatic and unconditional nature and excessive scope.

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35 See Resolution on Schroedter report under I, and points 29 et seq.

36 JO L 76, 22.3.2005, p. 17.

37 In particular: Austria, Belgium, France, the Netherlands, and more recently Finland.

38 Case C-60/03 (Wolff & Müller GmbH & Co. KG v. José Felipe Pereira Félix), judgment of 12.11.2004, paragraph 37.

39 Judgment of 9.11.2006, Commission v Belgium, case C-433/04, in particular paragraphs 37-41.

Whether subsidiary liability could constitute an effective and proportionate way to increase the monitoring and enforcement of compliance with Community law merits further examination and reflection. A similar question was included in the Commission's Green Paper "Modernising labour law to meet the challenges of the 21st century"[40].

6. CONCLUSIONS

The monitoring exercise launched on the basis of the Commission's Communication of April 2006 shows that many Member States rely solely on their own national measures and instruments to control service providers and in a way which does not always appear to be in conformity neither with Article 49 EC as interpreted by the ECJ nor with the Directive. 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[41,42]. 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, whereas poor enforcement undermines the effectiveness of the Community rules applicable in this area. Close, if necessary reinforced, co-operation between the Commission and the Member States is therefore primordial, but the important role of Social Partners in this respect should not be neglected. The Commission will use all instruments at its disposal to remedy the shortcomings in the implementation of the legislation pertaining to posting of workers which have been identified in the Communication.

Therefore, 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

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40 COM(2006) 708, 22.11.2006.

41 This point is also stressed in the Resolution of the European Parliament. See in particular points 21 and 32 et seq.

42 In any case, the lack of effective cooperation which would be due to a refusal or reluctance from the part of Member States to make use of such an instrument cannot just by itself justify that control measures are maintained.

43 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).

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.