



Posted Workers

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The *Posting of Workers Directive* (Directive 96/71/EC) was adopted on 24 September 1996. States had until 16 December 1999 to implement it. In the UK there has been no specific legislation. The Government have been content that existing provisions which are in place deal with the requirements under the directive.¹ The European Commission is currently reviewing the application and enforcement of the Directive.

This note gives an outline of the provisions and covers the recent unofficial industrial action as well as concerns expressed in the past by the construction industry that the Directive has not been properly implemented.

One of the main concerns about the operation of the Directive concerns “social dumping”:

As a result of the Treaty rules on the provision of services and the EC Directives on public procurement, transnational subcontracting has burgeoned. Consequently, companies established in one State, having been awarded a contract in another Member State (the host State), have relocated their employees to the host Member State to supply the particular service. For the host State this has raised the spectre of “social dumping” – that service providers take advantage of cheaper labour standards in their own State to win a contract in the host State.²

The controversy over “British Jobs for British Workers” was ignited again in the oil refinery sector when an Italian company won a contract which they supplied using Italian labour. The background to “British Jobs for British Workers” is contained in the following standard note:

[SN/BT/4501 Government policy on “British Jobs for British Workers”, 12 November 2007](#)

Recent judgements of the European Court of Justice have raised various questions and issues that relate to the Directive and worker’s rights in the context of labour mobility in the EU. The main cases are: *Viking-Line* (C-438/05), *Laval* (C-341/05), *Rüffert* (C-346/06) and *The Commission v Luxembourg* (C-319/06).

¹ [Posting of Workers Directive \(Directive 96/71/EC\)](#)

² Catherine Barnard, *EC Employment Law*, (2nd Edition), Oxford University Press 2000, page 170

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1 Background and History

Proposals for a Directive “concerning the posting of workers in the framework of the provision of services” were first published in 1991.³ Their purpose was to protect workers posted to another Member State by ensuring that certain employment laws in the “host” State (i.e. the one to which they are posted) apply to them. The proposals were the subject of much delay, disagreement and revision before their eventual adoption.

The UK government opposed versions of the Directive on the grounds that it might prove costly to UK business. It also objected to the legal base - Articles 57 and 66 of the *Treaty of Rome*. These Articles are designed to eliminate obstacles to the provision of services in the Single European Market. The UK government believed the proposals were “anti-competitive and would impede the operation of the Single Market”.⁴ This legal base only required a Qualified Majority Vote. It also involved the co-decision procedure, introduced by the Maastricht Treaty, which gives the European Parliament the power to reject a proposal by an absolute majority of its Members.

Despite the continued opposition of the UK and Portugal, a *Directive on the posting of workers in the framework of the provision of services* was finally adopted at the Social Affairs Council on 24 September 1996.⁵ The UK and Portugal voted against, but as it was taken under the qualified majority procedure, they were unable to veto it.⁶ States had until 16 December 1999 at the latest to transpose the Directive into national legislation.

The EU Commission explains the intentions of the Directive as follows:

³ EC Doc 7322/91, COM (91) 230

⁴ Letter from Ann Widdecombe to Jimmy Hood, MP, 29 November 1994

⁵ *Council Directive 96/71/EC*

⁶ HL Deb 16 October 1996, c 217W

The free movement of workers is one of the fundamental freedoms guaranteed by the Treaty of the European Union.

We say a worker is "a posted worker" when he is employed in one EU Member State but sent by his employer on a temporary basis to carry out his work in another Member State. For example, a service provider may win a contract in another country and send his employees there to carry out the contract. This trans-national provision of services, where employees are sent to work in a Member State other than the one they usually work in, gives rise to a distinctive category, namely that of "posted workers". This category does not include migrant workers to go to another Member State to seek work and are employed there.

To guarantee that the rights and working conditions of a posted worker are protected throughout the European Union, and to avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower, the European Community law has established a core of mandatory rules regarding the terms and conditions of employment to be applied to an employee posted to work in another Member State. These rules will reflect the standards of local workers in the host Member State (that is, where the employee is sent to work).

The idea is that where a Member State has certain minimum terms and conditions of employment, these must also apply to workers posted to that State. However, there is nothing to stop the employer applying working conditions which are more favourable to workers such as, for instance, those of the sending member State (that is, where the employee usually works).⁷

2 Implementation

2.1 Main provisions of the Directive

Where states have in place laws or mandatory collective agreements on terms and conditions of employment covered by the Directive, they must ensure that these apply to workers temporarily posted to their territory. Member States may also apply certain other collective agreements to posted workers and have the option not to apply some terms and conditions to certain groups of workers. In Britain there are no legislative provisions to apply the terms of mandatory or other collective agreements, nor has the Government taken up the options not to apply specified minimum conditions to certain categories of posted workers.

The following information is given by the Department for Business (BERR):⁸

Measures to Implement the Directive in Great Britain

The Posting of Workers Directive (Directive 96/71/EC) broadly requires that where a Member State has certain minimum terms and conditions of employment, these must also apply to workers posted temporarily by their employer to work in that state. The Directive does not prevent workers benefiting from minimum terms and conditions, which are more favourable and are applied in the state from which they are posted.

The Directive also establishes the principle that undertakings from non-member countries must not be given more favourable treatment than similar undertakings in Member States (i.e. that workers from such undertakings must benefit from the same

⁷ EU Commission, Employment, Social affairs and Equal Opportunities, [Workers posted temporarily to another EU country](#)

⁸ BERR, [Posting of Workers Directive URN No: 05/1673](#) (retrieved 24 October 2007)

minimum terms and conditions of employment to those applicable to workers posted from undertakings in Member States).

What is a posted worker?

Broadly a posted worker is one who, for a limited period, carries out his work in the territory of a European Community Member State other than the State in which he normally works. The Directive applies to undertakings which:

- post workers to another Member State under a contract between them and a party in the other State for whom the services are intended;
- make intra-company postings;
- are employment businesses who post workers and maintain an employment relationship during the posting.

What terms and conditions of employment are covered by the Directive?

These are:

- maximum work periods and minimum rest periods;
- minimum paid annual holidays;
- minimum rates of pay, including overtime rates;
- conditions of hiring out workers, in particular the supply of workers by temporary employment undertakings;
- health, safety and hygiene at work;
- protective measures in the terms and conditions of employment of pregnant women or those who have recently given birth, of children and of young people;
- equal treatment between men and women and other provisions on non-discrimination.

2.2 Legislation

In Britain, principal legislation relevant to the Directive is:

- the *Working Time Regulations 1998*
- the *National Minimum Wage Act and Regulations 1998*
- the *Sex Discrimination Act 1975*
- the *Race Relations Act 1976*
- the *Disability Discrimination Act 1995*
- the *Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000*
- the *Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002*
- the *Employment Equality (Sexual Orientation) Regulations 2003*
- the *Employment Equality (Religion or Belief) Regulations 2003*
- health and safety legislation
- legislation on the employment of children

The primary health and safety legislation is the *Health and Safety at Work etc. Act 1974*. Other cornerstone health and safety legislation, which also contains special provisions for young people, is the *Management of Health and Safety at Work Regulations 1999*. There are also particular protections related to age in specific health and safety legislation. The *Employment of Women, Young Persons and Children Act 1920* prohibits the employment of children of compulsory school leaving age in any industrial undertaking except in certain circumstances on approved work experience programmes. The *Children and Young Persons Act 1933* (as amended) regulates the part-time employment of children generally and the *Children and Young Persons Act 1963* covers work by children within the entertainment industry.

Although most existing legislation already applied to all employees or workers whether working here permanently or temporarily, and thus applied to posted workers, minor changes to legislation have been made to implement the Directive. First, provisions in the *Employment Relations Act 1999* have removed territorial limits from provisions in the *Employment Rights Act 1996*, so that the rights affected apply to all employees in Britain, including those temporarily posted here. These include protective measures for pregnant women and those who have just given birth.

Second, legislation to counter discrimination on the grounds of sex, race and disability was amended so that those employed mainly outside Britain are no longer excluded from its scope. These changes were made by the *Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations 1999*. Previously, anti-discrimination provisions did not apply where employment was wholly or mainly outside Great Britain. The changes will not affect employees of British employers working in Britain. However, British employers posting workers to other European Union States may be affected and may also have to comply with measures to implement the Directive taken by other states.

3 The Oil Sector

On 30 January 2009, it was reported that several thousand contract workers at around a dozen oil refineries, gas terminals and power stations had staged a series of walk-outs in sympathy with a protest at Total's oil refinery at Killinghome, Lincolnshire.⁹ The protests were triggered by the award of a contract by Total to IREM, an Italian engineering company, which is claimed will use its own workforce from Portugal and Italy.

The *Financial Times* reported that the Business Secretary, Lord Mandelson had promised to make sure that domestic and European law was being applied "properly and fairly", but had also said that companies must be allowed to continue to employ workers from overseas:

Peter Mandelson, business secretary, assured workers that he would make sure that "domestic UK law and European rules are being applied properly and fairly."

"But it would be a huge mistake to retreat from a policy where, within the rules, UK companies can operate in Europe and European companies can operate here," Lord Mandelson said in a statement

"Protectionism would be a sure fire way of turning recession into depression."¹⁰

The *Independent*, on 2 February, reported that a statement from Total has provided the Business Secretary with "full reassurance" that British companies and British workers were not discriminated against:

⁹ "ACAS called in as wildcat strikes spread" *Financial Times*, 30 January 2009

¹⁰ "ACAS called in as wildcat strikes spread" *Financial Times*, 30 January 2009

The oil firm, Total, which owns the refinery, said: "It is legal for sub-contractors to supply their own employees but where vacancies are advertised we will be working with our sub-contractors to ensure that British workers are considered in the same way as anyone else."

Lord Mandelson said: "This should give full reassurance to people who are understandably concerned about jobs that there will be no policy of discrimination against British companies, and where vacancies are advertised at these plants, British workers will be free to apply. I welcome this statement. It establishes the facts and makes it clear that British law will be fully upheld."¹¹

Lord Mandelson is also reported to have said that there was "no problem" with EU rules on the free movement of labour.¹²

This is in contrast to comments made by former union leader, now Secretary of State for Health, Alan Johnson, who suggested in a BBC interview that recent judgements by the ECJ had "undermined" some of these EU rules and he called for a new EU Directive.¹³ His comments were set out further in an article in the *Guardian*:

In an interview on the BBC's Andrew Marr show, Johnson said he could understand the anger of the protesters.

"If workers are being brought across here on worse terms and conditions to actually get jobs in front of British workers ... that would be wrong and I can understand the anger about that," he said.

Foreign contractors who employ their own staff on a temporary project are bound by the EU's "posted workers" directive, which stipulates that the foreign employees must enjoy the same rights as local workers. But Johnson suggested this was being undermined by rulings from the European court of justice.

"These various judgments have distorted the original intention and we need to bring in fresh directives to make it absolutely clear that people cannot be undercut in this way," he said.¹⁴

Justice Secretary Jack Straw and Peter Hain are also reported to have commented on the application of EU law:

In a separate interview, Straw said it was important to establish whether "British firms and British workers had a fair crack of the whip" in relation to the contract awarded by Total at the Lindsey refinery that sparked protests around the country.

Peter Hain, the former work and pensions secretary, said today he thought something had gone "badly wrong" with the way EU legislation was being enforced.

"I do not believe that those Italian and other workers [at the Lindsey refinery] can be getting the same conditions and rights and pay as the British workers who would have filled those jobs would be entitled to," Hain told the BBC's World this Weekend.

"I just cannot see it, given the extra cost of bringing them over, of housing them in temporary accommodation, of transporting them to and from work. Clearly something fishy is going on."¹⁵

The *Financial Times* reports that Downing Street had "distanced" itself from Mr Johnson's comments:

Downing Street quickly distanced itself from the remarks, and Mr Johnson's aides admitted he "slightly overstated" his point.¹⁶

The Guardian reported that Lord Mandelson has disagreed with the suggestions that British workers had been excluded from the bid to win the contract and that foreign workers were being paid less than "the going rate":

¹¹ "Wildcat strikes over foreign workers expected to spread" *The Independent*, 2 February 2009

¹² "Mandelson backs refinery over staff" *Press Association*, 2 February 2009

¹³ "Nuclear workers join strikes wave", *BBC online*, 2 February 2009

¹⁴ "Ministers to look at 'distorted' EU employment law", *guardian.co.uk*, 1 February 2009

¹⁵ "Ministers to look at 'distorted' EU employment law", *guardian.co.uk*, 1 February 2009

¹⁶ "Cabinet at odds amid threat of new strikes" *Financial Times*, 2 February 2009

Unions claim British workers were denied any opportunity to apply for the posts. Lord Mandelson, however, said the contract at the centre of the dispute had originally been awarded to a British firm, but that the company had failed to fulfil it so it was given to an Italian rival, which then drew on its own workforce.

He stressed that under EU law companies had the right to subcontract work to those companies "best suited" for the job.

He told BBC Radio 4's Today programme that claims that British workers had been excluded from the disputed contract, or that foreign workers were being paid less than the going rate, were both unfounded.

He conceded few people from Teesside took advantage of work opportunities across Europe, but denied that he was suggesting Britons should "get on their bike" to look for work.¹⁷

The *Times* suggested that Lord Mandelson had "rebuffed" Alan Johnson's comments:

Mr Johnson, a former union leader, said: "We need to bring in fresh directives to make it absolutely clear that people cannot be undercut in this way." This was firmly rebuffed, however, by Lord Mandelson, the Business Secretary, who said that it would be a huge mistake. He questioned the influence of the court rulings, saying that they were generating debate among lawyers.

[...]Lord Mandelson urged workers to call off the industrial action. He appeared to side with Total to insist that the subcontractors were operating within the law. "The law is not being broken and it will not be broken and I hope this message is now carried across all those workforces that have been understandably concerned."¹⁸

4 The Construction Sector

The construction industry has lobbied the government about what they see as a failure to properly implement the directive. This industry has seen growing levels of geographical mobility, leading to the posting of workers across national frontiers, and raising the issue of the application of national provisions and collectively agreed social systems. If a Member State has legislation or collective agreements in place that cover any of the terms and conditions outlined in the Directive, these apply to any worker temporarily posted in that State. However, if the terms and conditions of employment in the 'home' country are more favourable, then the Directive allows for these to continue to be applied to posted workers.

The Directive has already been implemented in Member States. The European Commission's report on its implementation¹⁹ says that even before the adoption of the Directive, Germany, Austria and France 'had already introduced their own national legislation on the posting of workers in order to address distortions to competition and the adverse effects on the protection of workers resulting from the transnational provision of services'. Others adopted measures transposing it afterwards. In the UK,

the authorities have not deemed it necessary to adopt any specific instrument to transpose the Directive, since domestic law applies to all workers regardless of their situation. All that has been done is to amend certain more restrictive texts in order to extend their scope to posted workers.

On collective agreements,

In certain countries, such as Denmark, the United Kingdom and Sweden, there is no procedure for declaring the universal applicability of collective agreements or any system of universally applicable arbitration awards and it has not been considered necessary to devise a specific procedure for applying collective agreements to posted workers. Hence the only rules which these countries apply to posted workers are those enshrined in the law or in other regulatory or administrative instruments.

¹⁷ "[Sellafield workers join wildcat strike action over foreign labour](http://www.guardian.co.uk)" *www.guardian.co.uk*, 2 February 2009

¹⁸ "More strikes loom in row over hiring foreign workers at low wages", *The Times*, 2 February 2009

¹⁹ [Posting of Workers Implementation Report](#), January 2003 (retrieved October 2007)

Lobby material from the construction industry says the result of the way the UK implemented the Directive is that collective agreements are not deemed universally applicable, so not all workers benefit from them. At the same time the lobby note says that this means cheap non-UK labour can be exploited, taking jobs away from British workers:

A crisis is threatening the fabric of the UK engineering construction industry. The importing of cheap non-UK labour is undermining the skills and job security of the UK engineering construction workforce. We are seeking a full commitment from the UK Government to the European Posted Workers Directive.

Advanced European economies like Germany and Belgium are fully signed up domestically to the Posted Workers Directive – they have highly regulated domestic construction industries but companies from these countries operate on cheap exploitive arrangements in the UK. The joint unions that make up the NECC — Amicus, GMB and TGWU — are campaigning for full implementation of the Directive.

Many engineering construction workers will live in your constituency. The industry is responsible for the building, repair and maintenance of key elements of Britain's infrastructure including Energy sources, Nuclear, Gas and Coal fired power stations, Petro-Chemical refineries, Chemical Plants, Pharmaceuticals, Steel and other industrial output centres, Structural Steel for public and commercial building, Major water treatment and steel bridge construction.

If properly implemented this Directive would guarantee collective agreements for the construction industry such as the NAECI (National Agreement for the Engineering Construction Industry) which safeguards health and safety, competency, wages and benefits of the workforce as a national minimum standard.

As it stands, the UK government's failure to adhere to the spirit of the Directive threatens the livelihoods, safety and craft's of our engineering construction workers.²⁰

However, the government says:

The UK fully implemented the Posting of Workers Directive in 1999, providing all workers temporarily posted to the UK from another state with certain minimum conditions of employment as laid down by law. We have no reason to believe that its implementation has adversely affected the job prospects of British workers in the UK. ... UK employment rights are applicable to all workers, regardless of country of origin, so migrant workers are protected in the same way as other workers by the National Minimum Wage.²¹

An article from the European Industrial Relations Observatory sets out these concerns as follows:

How can free movement of labour within the European Union be prevented from causing distortions of competition and bringing forms of "social dumping"? This question has been raised on a number of occasions, not least in the context of the "posting" of workers from countries with lower labour costs to countries with higher labour costs. Such situations bring a double risk: that workers will not be covered by the protective rules in the host country; and that companies will be faced with "unfair competition", notably in the areas of labour costs and the respect of rules governing working conditions.²²

²⁰ Material for lobby held on 2 December 2003: http://www.brickman.dircon.co.uk/cons_lobby.htm

²¹ HC Deb 7 January 2004 c380w

²² European Industrial Relations Observatory (EIRO) *Posted workers and the implementation of the Directive* <http://www.eiro.eurofound.eu.int/1999/09/study/tn9909201s.html>

An article from the same source from June 2003 gives information on the UK including the number of posted workers, and a range of reactions to the directive:

UK construction trade unions supported the Directive primarily as a means of regularising the employment conditions of UK construction workers working in other EU countries, particularly Germany. No specific initiatives by construction employers and/or unions have been reported in relation to construction workers posted to the UK. The Transport and General Workers' Union (TGWU) told EIRO that 'the use of foreign labour is prevalent' in the UK construction industry '... but we seek to ensure a rate for the job rather than be drawn on the nationality or employment status of workers'.

...

The previous Conservative Party government opposed the adoption of the posted workers Directive on the grounds that it could prove costly to UK business and was 'anti-competitive and would impede the operation of the single market'. The present Labour Party government has made no official statement about the desirability of the Directive but, as already outlined, has introduced the limited amendments to UK legislation necessary to achieve compliance.

In its comments on the original, 1991 European Commission proposal for the posted workers Directive, the Confederation of British Industry (CBI) argued that the Directive was unlikely to have a beneficial effect on competition in the single market or the free movement of labour and services within the EU. The CBI believed that the Directive could deter companies from supplying services to Member States where labour costs are significantly higher than their own. The CBI also argued that the 'essentially protectionist' approach of the Directive could work to the disadvantage of the UK compared with other, more regulated economies because of the absence of universally applicable collective agreements in the UK and, at that time, the absence of legal regulation in the key areas of pay, working time and holidays.

The Trades Union Congress 'welcomed the Directive as it would mean that UK workers posted abroad, especially building workers, would have access to the terms and conditions (concerning working time, minimum wage, health and safety, etc) of the host country'.

Among the three main construction unions in the UK, the Union of Construction, Allied Trades and Technicians argued that the Directive should give all employees the right to the terms of sectoral collective agreements in preference to any national legal minimum wage, regardless of the legal status of the agreement, and that it should cover the self-employed.

...

However, the posted workers Directive has not excited a great deal of discussion in the UK. It is in the nature of the provisions of the Directive that the resulting changes to UK law will affect only employers and workers from outside the UK. Trade unions in this country seem to have been primarily interested in the Directive's potential for improving the position of UK construction workers in other EU countries rather than as a mechanism for protecting UK labour market standards against being undercut by posted workers with inferior terms and conditions (perhaps reflecting the absence of 'universally applicable' collective agreements in the UK context).²³

5 Review of the Directive

According to the European Commission, the implementation of the *Posting of Workers Directive* has given rise to three major types of problem:

²³ <http://www.eiro.eurofound.eu.int/2003/06/tfeature/uk0306106t.html>

- The insufficient access of workers and companies to information and the poor quality of some of this information as made available by national authorities, as well as insufficient administrative co-operation between national authorities;
- The use by national authorities of control measures that in some cases go beyond what is strictly necessary and justifiable to verify compliance with the Directive and ensure protection of posted workers. As a result concerns have been raised about the hindrance that such measures may pose to the free provision of services;
- Problems of interpretation of specific provisions of the Directive, such as the nature of public policy provisions, the temporary nature of posting, the distinction between self-employed workers and employees, the rules to be followed when collective agreements are not universally applicable etc. which have given rise to a number of cases brought before national tribunals and the European Court of Justice.

The Commission is currently reviewing the application and enforcement of Directive 96/71 on the posting of workers. A mini-hearing took place on 21 February 2006. Following the publication of *Guidance on the Posting of Workers in the framework of the provision of services* in 2006, the Commission sought feedback and has now published its report assessing the enforcement of the Directive.

The 2007 report states that the Commission intends to remind Member States of their obligations towards posted workers. Although progress has been made since 2006 in line with the guidance issued by the Commission, for those Member States which have measures which do not comply with Article 49 of the Treaty, the Commission may bring infringement proceedings.

The main developments of the review have been as follows:

- [Commission published guidance report on 4 April 2006](#)
- [Resolution adopted by European Parliament 26 October 2006](#)
- [Commission seeking online feedback](#)
- [Report published 13 June 2007](#)

On 3 April 2008, the European Commission adopted a [Recommendation](#) on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services.

6 European Court of Justice judgements

Recent ECJ case law raises some complex issues on the interface between:

- Worker's rights to take industrial action in cases where foreign workers undercut wages and terms of domestic workers following transnational subcontracting.
- The companies' right to exercise their fundamental freedom to provide cross-border services in accordance with Article 49 of the EC Treaty.
- The operation of the *Posting of Workers Directive* in relation to concerns about the possibility of "social dumping".

These issues arise in the context of rapid change in most EU labour markets as a result of increasing mobility among workers from outside the Union as well as from EU Member States. In the *Laval*, *Rüffert* and *Commission v Luxembourg* cases, the Court interpreted and further clarified a number of important points, such as:

- the Directive's objective;
- options and methods open to the Member States for fixing the rate of minimum pay;²⁴
- the possibilities for applying more favourable conditions to posted workers;²⁵ and
- the concept of public policy.²⁶

According to the Commission, labour mobility is the necessary outcome of a fundamental freedom guaranteed by the Treaty, and benefits business, citizens and workers exercising those freedoms, as well as the economy in the Member States as a whole. It is acknowledged that at the same time it also exposes some workers to “keener competition in some sections of the labour markets”.

A forum on workers' rights and economic freedoms took place in Brussels on 9 October 2008. This was intended to offer politicians and experts the opportunity to debate the consequences of European Court of Justice rulings relevant to the posting of workers and the relationship between economic freedoms and fundamental social rights. In terms of the relationship between these issues the report from the forum gave the following background:

The recent judgments handed down by the Court of Justice of the European Communities in response to the requests for preliminary rulings on the Viking-Line (C-438/05), *Laval* (C-341/05) and *Rüffert* (C-346/06) cases and on the Commission versus Luxembourg (C-319/06) case are fuelling debate in a number of Member States on the consequences and possible impact of those judgments for the protection of workers' rights. This debate is taking place against an economic and social background of far-reaching change due to globalisation in which worker mobility is playing a growing role.

The seriousness and scale of the issues tackled in those judgments call for an in-depth analysis and a careful consideration of their consequences across the European Union. On the one hand, issues warranting analysis concern the balance between the fundamental right of trade unions to take collective action, including the right to strike, in support of the interests of their members and the fundamental economic freedoms guaranteed by the EC Treaty, and in particular the freedom of establishment and the freedom to provide services. On the other hand, the judgments contain important points of interpretation regarding certain crucial aspects of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, such as the methods for setting the minimum rates of pay, the concept of public policy and the possibilities of applying more favourable conditions to workers posted in the host country.

The Commission has always been very attentive to the issues relating to the implementation and application of Directive 96/71/EC and to the case law stemming from Article 49 of the Treaty in this context. In 2006 it adopted a set of guidelines clarifying the control measures which the Member States could employ to guarantee the protection of posted workers while respecting companies' fundamental freedom to provide services on the Internal Market. In 2007 the Commission assessed the situation in the Member States. It noted that the establishment of effective

²⁴ Article 3(1) and (8)

²⁵ Article 3(7)

²⁶ Article 3(10)

administrative cooperation between the Member States and ease of access to information for workers and undertakings were necessary for effective, proper implementation of Directive 96/71/EC. The Commission therefore announced measures to that end in order to enable the rights of posted workers to be properly safeguarded.

By adopting the Recommendation of 3 April 2008 on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services, the Commission demonstrated its readiness to help the Member States to find remedies to the difficulties of applying the Directive both in the host countries and in the countries from which the workers are posted, in particular through the introduction of an effective system for exchanging information. The Commission is currently preparing a decision setting up an expert committee on the posting of workers in line with the conclusions of the EPSCO Council meeting of 9 June.

As Commissioner Špidla stated in his declaration to the European Parliament on 22 April and as the renewed Social Agenda adopted on 2 July confirmed, the Commission wishes to foster an open debate and in-depth analysis of the consequences of the Court's judgments involving the main stakeholders. Such a debate should reflect the range of views already put forward by the social partners, experts and the representatives of Member State governments. It should also help to clarify the legal situation, which will enable the Member States in particular to make proper use of the opportunities offered by the existing legislation as interpreted by the Court of Justice in collaboration with the national courts.²⁷

The ECJ cases relevant to worker's rights are called *Viking* and *Laval*.²⁸ These two decisions are widely seen as imposing new restrictions on the lawfulness of industrial action. Following these cases, UK courts must adopt a new approach to granting injunctions halting strikes in circumstances where there is a direct international element. Trade unions worry that they could also apply where there is very little or even no direct international element, and believe that the cases have provided employers with a potent new weapon with which to oppose industrial action.²⁹

7 Further information

Further information about the Directive is available from BERR on 020 7215 5000. For more details on the specific items of legislation involved the relevant government body can be contacted direct.

A guide to the National Minimum Wage (NMW) legislation is available from:

NMW Enquiries
Freepost PHQ1
Newcastle Upon Tyne
NE98 1ZH
Telephone enquiries: 0845 6000 678

A guide to the Working Time Regulations can be obtained free of charge by telephoning 0845 6000 925 and on the [BERR website](#)

Health and Safety publications (priced and free) are available by mail order from:

²⁷ EU Commission, [Forum on workers' rights and economic freedoms](#), Brussels, 9 October 2008

²⁸ *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet & ors* Case C-341/05; *International Transport Workers' Federation & anor v Viking Line ABP & anor* Case C-438/05

²⁹ Amicus, Daniel Ornstein, Herbert Smith, [Laval, Viking and the Limited Right to Strike](#), 1 November 2008

HSE Books
PO Box 1999
Sudbury
Suffolk CO10 6FS
Or by telephoning 01787 881165 Fax 01787 313995

Further Health and Safety enquiries:

Telephone the HSE Infoline on 08701 545500 or write to:
HSE Information Centre
Broad Lane
Sheffield S3 7HQ

For information on Maternity leave and parental leave and on employment rights generally, contact the Acas helpline on 08457 474747

For information on the *Children and Young Persons Act 1933* and *Children and Young Persons Act 1963*, contact the Department for Children, Schools and Families, Public Enquiry Office on 0870 000 2288. For information on child employment in your area, contact your local authority Education Welfare Service.

For guidance on discrimination legislation contact:

[Equality and Human Rights Commission](#)

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