



Thursday 3 February 2000

TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 2)

Recital 6

(6) Whereas a document known as an 'EC service provision card', to be issued by the Member State in which the service provider is established, should be the instrument that facilitates postings so that a provider can react with a view to current or potential postings in connection with normal activities even if his staff includes one or more third-country nationals; whereas it should be for the service provider to decide whether to apply for the EC service provision card; whereas this Directive, similarly, does not affect the undertakings of the Community and its Member States, given in the context of the General Agreement on Trade in Services (GATS); whereas the EC service provision card should include only the data required under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(6) Whereas **the 'EU service provision card'**, to be issued by the Member State in which the service provider is established, **is intended to remove the legal uncertainty associated with postings and thus facilitate the free movement of services; whereas, if a posting is contemplated**, the service provider **should therefore be entitled** to apply for **an EU service provision card in his Member State of establishment and to produce the evidence required for the issue of such a card**; whereas this Directive, similarly, does not affect the undertakings of the Community and its Member States, given in the context of the General Agreement on Trade in Services (GATS); whereas the **EU service provision card** should include only the data required under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(Amendment 3)

Recital 9

(9) Whereas each Member State in which a service is provided should be able to make it obligatory to declare, before the entry of the posted worker into the territory, his intended presence and the service or services for which he is to be posted; whereas a compulsory prior declaration should enable the Member State in question to take *measure* in specific cases on grounds of public order, public security or public health, within the limits set by this Directive; whereas each Member State in which a service is provided should also be able to make it obligatory to obtain, after entry, a temporary residence permit if the time required for the service or services for which the posted worker will reside exceeds six months out of a period of twelve months;

(9) Whereas each Member State in which a service is provided should **continue to be able, in the case of workers without an EU service provision card**, to make it obligatory to declare, before the entry of the posted worker into the territory, his intended presence and the service or services for which he is to be posted; whereas a compulsory prior declaration should **in this case** enable the Member State in question to take **measures** in specific cases on grounds of public order, public security or public health, within the limits set by this Directive; whereas each Member State in which a service is provided should **in every case** also be able to make it obligatory to obtain, after entry, a temporary residence permit if the time required for the service or services for which the posted worker will reside exceeds six months out of a period of twelve months;

(Amendment 4)

Recital 10

(10) Whereas each Member State should thus be able to check, particularly if a temporary residence permit is issued, that the residence of the worker posted is for the purpose of providing a service or services in the Member State; whereas the freedom to provide services should always be of a temporary nature which must be determined on the basis of the continuity, frequency, and duration of the service; whereas the validity of the temporary residence permit should be capable of limitation to the period of validity of the EC service provision card on the grounds that the Member State intends to issue, in conformity with the freedom to provide services, a residence permit in accordance with its own national provisions for postings exceeding six or twelve months;

(10) Whereas the freedom to provide services should always be of a temporary nature which must be determined on the basis of the continuity, frequency, and duration of the service; whereas the validity of the temporary residence permit should be capable of limitation to the period of validity of the **EU service provision card** on the grounds that the Member State intends to issue, in conformity with the freedom to provide services, a residence permit in accordance with its own national provisions for postings exceeding six or twelve months;

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TEXT PROPOSED  
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(Amendment 5)

*Recital 13*

(13) Whereas it is vital for the implementation of this Directive to ensure close cooperation between the competent authorities of the Member States; whereas it would be useful for the competent authorities of the Member States to adopt a uniform format for the EC service provision card; whereas the Commission should be empowered to lay down this format and other procedures in connection with the EC service provision card, acting in accordance with the procedure set out in Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas<sup>(1)</sup>;

<sup>(1)</sup> OJ L 164, 14.7.1995, p. 1.

(13) Whereas it is vital for the implementation of this Directive to ensure close cooperation between the competent authorities of the Member States; whereas it would be useful for the competent authorities of the Member States to adopt a uniform format for the EU service provision card; whereas the Commission should be empowered to lay down this format and other procedures in connection with the EU service provision card, acting in accordance with the **advisory** procedure set out in Council **Decision 1999/468/EC of 28 June 1999** laying down **the procedures for the exercise of implementing powers conferred on the Commission** <sup>(1)</sup>;

<sup>(1)</sup> OJ L 184, 17.7.1999, p. 23.

(Amendment 6)

*Recital 15*

(15) Whereas, in accordance with the principle of proportionality as set out in the third paragraph of Article 3b of the EC Treaty, this Directive does not go beyond what is necessary for achieving the objective of the free movement of services; whereas it covers only the checks that precede the provision of cross-border services, but not the checks made *afterwards* in the Member State in which the service is provided; whereas it is limited to postings for periods of not more than twelve months and to the recognition of diplomas, certificates and other qualifications acquired within the Community;

(15) Whereas, in accordance with the principle of proportionality as set out in the third paragraph of Article 5 of the EC Treaty, this Directive does not go beyond what is necessary for achieving the objective of the free movement of services; whereas it covers only the checks that precede the provision of cross-border services, but not the checks made in the Member State in which the service is provided; whereas it is limited to postings for periods of not more than twelve months and to the recognition of diplomas, certificates and other qualifications acquired within the Community;

(Amendment 7)

*Article 1*

This Directive applies to service providers established in a Member State who, in connection with the provision of cross-border services, post workers who are nationals of a third country to the territory of *another* Member State.

1. This Directive applies to service providers established in a Member State who, in connection with the provision of cross-border services, **temporarily** post workers who are nationals of a third country

- (a) **under their direction 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, or**
- (b) **to an establishment or an undertaking owned by their group in the territory of a Member State ('posting')** <sup>(1)</sup>;

<sup>(1)</sup> See Directive 96/71/EC, Article 1(3)(a) and (b).

(Amendment 8)

*Article 1(2) (new)*

2. **This Directive shall not apply to undertakings within the meaning of Article 1(3)(c) of Directive 96/71/EC.**

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TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT

(Amendment 9)

Article 2(1), 1st subparagraph

1. When a provider of services proposes, in the ordinary course of his business, to post an employed worker who is a national of a third country to one or more other Member States on account of one of the situations set out in points (a) and (b) of Article 1(3) of Directive 96/71/EC, the Member State in which the service-provider is established shall be obliged to issue to him, at his request, a document to be known as an 'EC service provision card'.

1. When a provider of services proposes **to make a posting** to one or more other Member States, the Member State in which the service provider is established shall be obliged to issue to him, at his request, an **EU service provision card under the conditions laid down in this Directive.**

(Amendment 10)

Article 2(1), 2nd subparagraph

The EC service provision card shall be issued if it is established that:

(a) the worker resides in that Member State, in accordance with its legislation;

(b) he is affiliated to the social security scheme in the Member State responsible for the risk of sickness or industrial accident, or else is insured against the risk of sickness or industrial accident during his posting to one or more other Member States.

The EU service provision card shall be issued **on request for the provision of services in the territory of all or individual Member States**

(a) if **the service provider furnishes proof that during the requested period of validity of the card and for at least three months after its expiry, in accordance with the legislation applying in the Member State in which the service provider is established, the worker**

- (i) normally resides in that Member State;
- (ii) is not obliged, for reasons to do with the right of residence, to leave the territory of that Member State and is lawfully employed there,
- (iii) is insured against the risk of sickness and occupational accident. Adequate proof shall be deemed to be provided if the social insurance institution of the Member State in which the service provider is established, or a private insurance policy, covers such risks when the worker resides in the other Member States in connection with the provision of services,

(b) if the service provider furnishes proof that there is **nothing in the relevant legislation implementing Directive 64/221/EEC in the Member State in which the service is provided to prevent the worker from pursuing an activity there, and**

(c) if no Member State challenges the validity of the service provision card on its territory on the grounds referred to under (a) and (b).

If any one of these conditions ceases to apply after the EU service provision card has been issued, the card shall cease to be valid notwithstanding the continued validity of the insurance protection against sickness and occupational accident. The relevant Member State shall require the service provider to cooperate in the return of the EU service provision card.

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(Amendment 11)

Article 2(2), 1st subparagraph

2. The EC service provision card shall be valid for the period during which the worker is in lawful actual employment, which may not exceed

- (a) twelve months in the case of lawful actual employment for more than twelve months before the card is issued, or
- (b) six months in the case of lawful actual employment for more than six months before the card is issued.

2. **The period of validity of the EU service provision card may not exceed the period during which the worker has already been in lawful and actual employment in the Member State in which the service provider is established, and may in no case exceed twelve months.**

**The minimum requirement for the issue of the EU service provision card shall be three months of proven lawful and actual employment.**

(Amendment 12)

Article 2(2), 2nd subparagraph

'Lawful employment' means work carried out under Community or national regulations, or with the authorisation of the Member State issuing the EC service provision card, which permits access to a job either with the applicant service provider or with another employer established in the Member State in question.

**A worker shall be regarded as lawfully employed if he is permitted to be in paid employment by virtue of a provision of Community law or of laws, regulations or administrative provisions in the Member State in which the service provider is established.**

(Amendment 13)

Article 2(4), 1st subparagraph

4. The EC service provision card shall be a separate document belonging to the service provider, which he puts at the disposal of the posted employed worker described therein. It shall contain the following data:

- (a) details of the service provider and the posted worker;
- (b) the period of validity;
- (c) the issuing authority and issuing Member State.

4. **The service provider shall put the EU service provision card at the disposal of the worker named on the card. The EU service provision card shall contain details of:**

- (a) the service provider, **the provider's field of business** and the posted worker;
- (b) the period of validity;
- (c) the issuing authority and issuing Member State;
- (ca) the Member States for which the card is valid.**

(Amendment 14)

Article 2(4), 2nd subparagraph

The precise details, a specimen of the document to be issued, and the technical specifications designed to prevent falsification shall be laid down in an implementing regulation in accordance with the procedure provided for in Article 6 of Regulation (EC) No 1683/95.

The precise details, a specimen of the document to be issued, and the technical specifications designed to prevent falsification shall be laid down in accordance with the following procedure:

- **The Commission shall be assisted by an advisory committee as referred to in Article 3 of Decision 1999/468/EC. Article 8 of the Decision shall apply.**

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- **The European Parliament shall be informed by the Commission of committee proceedings on a regular basis, pursuant to Article 7(3) of the Decision. The principles and conditions on public access to documents applicable to the Commission shall apply to the committee.**

(Amendment 15)

*Article 2(5)*

5. The Member State issuing the EC service provision card may not regard posting for the provision of services in another Member State as being an interruption of the posted worker's period of residence or paid activity.

5. The Member State issuing the EU service provision card may not regard posting for the provision of services in another Member State as being an interruption of the posted worker's period of residence or paid activity.

**Should the contract between the service provider and the posted worker come to an end, the service provider shall immediately inform the authorities of the Member State in which the services are being provided.**

The issuing Member State may not refuse, under national regulations, the readmission to its territory of the posted worker, for any reason whatsoever.

The issuing Member State may not refuse, under national regulations, the readmission to its territory of the posted worker, for any reason whatsoever, **including that of the termination of the contract between the service provider and the posted worker.**

(Amendment 16)

*Article 3(1)*

1. Any Member State in which services are provided shall permit the entry and residence of a worker who is a third-country national to its territory for the purpose of one or more provisions of services, if such person is in possession of the EC service provision card, and of an identity card or passport valid for the period during which the services are to be provided.

1. Any Member State in which services are provided shall permit the entry and residence of a worker who is a third-country national **on** its territory for the purpose of one or more provisions of services, if such person is in possession, for the period during which the services are to be provided, of a valid EU service provision card, **a copy of the order form for the specific service to be provided, showing the expected duration of the person's presence, and a valid identity card or passport.**

(Amendment 17)

*Article 3(3)*

3. Any Member State in which a service is provided may require the service provider to declare, before the worker enters the territory, the intended presence of the posted worker, the period of presence provided for and the service provision or provisions for which he is to be posted. If the total period required for the service provision or provisions in question exceeds six months out of a period of twelve months, the Member State shall issue, after entry of the posted worker, a temporary residence permit showing that residence is authorised.

3. Any Member State in which a service is provided may require the service provider, **if the posted worker is not in possession of a valid EU service provision card,** to declare, before the worker enters the territory, the intended presence of the posted worker, the period of presence provided for and the service provision or provisions for which he is to **have entry.** If the total period required for the service provision or provisions in question exceeds six months out of a period of twelve months, the Member State shall issue, after entry of the posted worker, a temporary residence permit showing that residence is authorised.

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TEXT PROPOSED  
BY THE COMMISSIONAMENDMENTS  
BY PARLIAMENT(Amendment 18)  
*Article 4(2a) (new)***2a. The provisions of Directive 96/71/EC shall apply in full to beneficiaries of this Directive.**(Amendment 19)  
*Article 5*

1. *The Member States shall designate the authorities responsible for issuing the EC service provision card and the temporary residence permit, and for receiving the information referred to in Article 3(3). They shall provide the Commission and the other Member States with a list of such authorities. They shall take the necessary measures for simplifying as far as possible the formalities, deadlines and procedures for obtaining the above-mentioned documents, which shall be issued free of charge or on payment of a sum not exceeding the duties and taxes payable for the issuing of identity cards to national citizens.*

2. *Member States shall provide for cooperation between the public administrations responsible under national legislation for matters connected with the implementation of this Directive.*

*Cooperation shall in particular entail replying to any reasoned request for information. Such cooperation shall be provided free of charge and without delay.*

1. **Each Member State shall designate the authority responsible for issuing the EU service provision card and the temporary residence permit.**

2. **The authority shall grant access to the service cards issued, and the information contained therein pursuant to Article 2(4), first subparagraph, to the authorities of the other Member States.**

**2a. A common system may be used for this purpose.**

**European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the posting of workers who are third-country nationals for the provision of cross-border services (COM(1999) 3 – C4-0095/1999 – 1999/0012(COD))**

(Codecision procedure: first reading)

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(1999) 3) <sup>(1)</sup>,
- having regard to Articles 251(2), 47(2) and 55 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C4-0095/1999),
- having regard to Rule 67 of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the Internal Market and the opinions of the Committee on Employment and Social Affairs and the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0007/2000),

1. Approves the Commission proposal as amended;
2. Asks to be consulted again should the Commission intend to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council and Commission.

<sup>(1)</sup> OJ C 67, 10.3.1999, p. 12.