



Directive 96/71

The Main interpretation issues

**Frans Pennings – Teun Jaspers
(Utrecht University, Pays Bas)**



Contents

- the personal scope of the Directive;
- de duration of posting;
- the core provisions;
- the applicability of collective agreements.



Personal scope

- The posted worker = a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works.
- The definition of worker depends on the law of the Member States to whose territory the worker is posted.

Posting situations

- (a) a company brings workers under its direction to another Member State, under a contract concluded between this company and the party for which the services are intended, and operates in that Member State (as for example in the Rush Portuguesa case),
- (b) intra-company or intra-group secondments (the expatriation of workers, for example of key personnel) and
- (c) the cross-border hiring out of workers by temporary employment agencies.



Coordination problems

- differences between the legal status of the person in the State where he normally works and the host State.
- Within the national system the term employee may not cover all dependent work relationships (problem of sham self employed)

Possible solution

- 1. Definition in the directive
- See Preamble: the laws of the Member States must be coordinated in order to lay down a nucleus of mandatory rules for minimum protection to be observed in the host country by employers who post workers to perform temporary work in the territory of a Member State where the services are provided; such coordination can be achieved only by means of Community law
- 2. MS have to undertake measures



Lack of definition of duration

The problem of the lack of the definition

Possible solution: reference to Regulation 883/2004

hard core provisions

- a) maximum work periods and minimum rest periods;
- (b) minimum paid annual holidays;
- (c) the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes;
- (d) the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings;
- (e) health, safety and hygiene at work;
- (f) protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;
- (g) equality of treatment between men and women and other provisions on non-discrimination.



core provisions which are missing

- Travelling costs
- extra insurance costs
- lodging costs



increasing protection by collective agreements

- collective agreements are declared generally binding,
- the Member State declares that the collective agreement is generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned;
- The collective agreement has been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory.

conclusions

- Clarification the meaning of worker, preferably in directive itself
- Definition of time limit of posting
- Inclusion of travel costs/ lodging costs in Article 3
- Strict supervision of full implementation by Member States