

Practical guide

The legislation that applies to workers

in the European Union (EU),
the European Economic Area (EEA)
and in Switzerland

Social Europe





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Introduction

Why do we need this guide?

Article 76 of Regulation 883/2004 requires Member States¹ to communicate with each other and promote the exchange of experience and best administrative practice to facilitate the uniform application of Community law. This principle is underpinned by the principle of exchanging information in an efficient manner between institutions and the obligation of citizens and employers to provide accurate and timely information.

This Guide is intended to provide, at the various practical and administrative levels involved in implementing specific Community provisions, a valid working instrument to assist institutions, employers and citizens in the area of determining which Member State's legislation should apply in given circumstances.

The rules at a glance

The guiding principle is that persons to whom the Regulations apply are subject to the legislation of a single Member State only². In the case of employed and self-employed persons the legislation of the Member State where the activity is carried out usually applies. This principle is referred to as *lex loci laboris*. Persons receiving certain short-term cash benefits based on their employment or self-employment are also subject to the legislation of the Member State of activity. Any other person is subject to the legislation of the Member State of residence.

However, in some very specific situations, criteria other than the actual place of employment are justified. Such situations include the posting of workers to another Member State for a temporary period and where a person is working in two or more Member States and certain categories of workers such as civil servants.

The rules for determining which Member State's legislation is to apply are set out in Articles 11 – 16 of Regulation 883/2004³ and the related implementing provisions are set out in Articles 14 - 21 of Regulation 987/2009⁴ (hereinafter referred to as the Regulations). These rules are also interpreted by the Administrative Commission for the Coordination of Social Security Systems (hereinafter called the Administrative Commission) in Decision No A2.

This Guide is divided into three parts:

- Part I dealing with Posting of workers
- Part II dealing with the pursuit of an activity in two or more Member States
- Part III dealing with procedures for resolving disagreements on legislation applicable.

¹ In the following text, the term "Member State" also refers to the EFTA Member States as soon as the Regulation 883/2004 becomes applicable to them.

² Article 11 (1) of Regulation 883/2004

³ Regulation (EC) No 883/2004 of the EP and of the Council of 29 April 2004 on the coordination of social security systems OJ L 166, 30.4.2004, corrigendum OJ L 200, 7.6.2004, amended by Regulation (EC) No 988/2009 OJ L 284, 30.10.2009

⁴ Regulation (EC) No 987/2009 of the EP and of the Council of 16 September 2009 laying down the procedure or implementing Regulation 883/2004, OJ L 284, 30.10.2009



Part I: Posting of workers

1. Which social security system is applicable for employees temporarily posted to another Member State?

Sometimes an employer in one Member State (“the posting State”) will want to send an employee to work in another Member State (“the State of employment”)⁵. Such employees are known as *posted workers*.

Under Community rules, workers moving within the European Union must be subject to a single social security legislation⁶. Under the Regulations the social security scheme applicable to those who for reasons of work move from one Member State to another is, generally speaking, that established by the legislation of the Member State of new employment.

In order to give as much encouragement as possible to the freedom of movement of workers and services, to avoid unnecessary and costly administrative and other complications which would not be in the interests of workers, companies and administrations, the Community provisions in force allow for certain exceptions to the general principle referred to above.

The main exception is the requirement to maintain the attachment of a worker to the social security scheme of the Member State in which the undertaking which employs him normally operates (the posting State), whenever the worker concerned is sent by that undertaking to another Member State (the State of employment) for a period of time which from the outset is limited (a maximum of 24 months), and provided that certain conditions, discussed below in more detail, continue to apply.

These situations – which give exemption from the payment of insurance contributions in the State of employment – better known as **posting of workers**, are governed by Article 12 of Regulation 883/2004.

The rules, which cover both employed people and self-employed people, are described below.

2. How is the posting of workers defined in the specific community legislation?

In line with the above mentioned provisions of the Regulation, a person who works as an employed person in the territory of a Member State on behalf of an employer **which normally carries out its activities in that State** who is sent by that employer to another Member State to perform work there **for that employer** continues to be subject to the legislation of the posting State provided that:

- **the anticipated duration of that work does not exceed 24 months**
and
- **s/he is not sent to replace another posted person.**

The posting arrangements are intended to facilitate employers (and workers) who have a requirement for people to work on a temporary basis in another country. Accordingly, they may not be used to staff enterprises or contracts on an ongoing

⁵“ The State of employment” is the State in which the person goes to pursue an activity as an employed (or self-employed) person as defined in Article 1(a) and 1(b) of the Basic Regulation.

⁶ (Article 11 (1) of Regulation 883/2004



basis through repeated postings of different workers to the same positions and for the same purposes.

Accordingly, in addition to the temporary nature of the posting and the fact that it is not designed to replace another worker, there are several important points to note about this special rule.

In the first instance, the employer must **normally carry out its activities** in the posting State. Additionally, the rule that the worker ‘pursues an activity on behalf of an employer’ means that there must exist throughout the period of posting a **direct relationship** between the posting employer and the posted worker.

3. What criteria apply to determine if an employer normally carries out its activities in the ‘posting’ state?

The expression “which normally carries out its activities there” means an undertaking which ordinarily carries out **substantial activities** in the territory of the Member State in which it is established. If the undertaking’s activities are confined to internal management, the undertaking will not be regarded as normally carrying out its activities in that Member State. In determining whether an undertaking carries out substantial activities, account must be taken of all criteria characterising the activities carried out by the undertaking in question. The criteria must be suited to the specific characteristics of each undertaking and the real nature of the activities carried out.

The existence of substantial activities in the posting State can be checked via a series of objective factors and the following are of particular importance. **It should be noted that this is not an exhaustive list, as the criteria should be adapted to each specific case and take account of the nature of the activities carried out by the undertaking in the State in which it is established. It may also be necessary to take into account other criteria suited to the specific characteristics of the undertaking and the real nature of the activities of the undertaking in the State in which it is established:**

- the place where the posting undertaking has its registered office and its administration;
- the number of administrative staff of the posting undertaking present in the posting State and in the State of employment – the presence of only administrative staff in the posting State rules out *per se* the applicability to the undertaking of the provisions governing posting;
- the place of recruitment of the posted worker;
- the place where the majority of contracts with clients are concluded
- the law applicable to the contracts signed by the posting undertaking with its clients and with its workers;
- the number of contracts executed in the posting State and the State of employment;
- the turnover achieved by the posting undertaking in the posting State and in the State of employment during an appropriate typical period (e.g. turnover of approximately 25% of total turnover in the posting State could be a sufficient indicator, but cases where turnover is under 25% would warrant greater scrutiny)⁷.
- the length of time an undertaking is established in the posting Member State.

When assessing substantial activity in the Posting State it is also necessary for institutions to check that the employer requesting a posting is the actual employer of

⁷ In principle, the turnover can be assessed on the basis of the published accounts of the undertaking for the previous 12 months. However, in the case of a newly established undertaking turnover from the time they commenced business (or a shorter period, if that would be more representative of their business) would be more appropriate.



the workers involved. This would be particularly important in situations where an employer is using a mix of permanent staff and agency staff.

Example:

Company A from Member State X has an order to do painting work in Member State Y. The work is expected to take two months. Along with seven members of its permanent staff company A needs in addition three temporary workers from temporary work agency B to be sent to Member State Y; these temporary workers have already been working in company A. Company A requests work agency B to post these three temporary workers to Member State Y along with its seven workers.

Provided that all the other conditions of posting are met, the legislation of Member State X will continue to apply to the temporary agency workers – as to the permanent staff members. Temporary work agency B is, of course, the employer of the temporary workers.

4. When is it possible to speak of a direct relationship between the posting undertaking and the posted worker?

A number of principles emerge from the interpretation of the provisions and from Community case law and daily practice governing when a **direct relationship** exists between the posting undertaking and the posted worker. These include the following:

- responsibility for recruitment;
- it must be evident that the contract was and still is applicable throughout the posting period to the parties involved in drawing it up and stems from the negotiations that led to recruitment;
- the power to terminate the contract of employment (dismissal) must remain exclusively with the 'posting' undertaking;
- the 'posting' undertaking must retain the power to determine the "nature" of the work performed by the posted worker, not in terms of defining the details of the type of work to be performed and the way it is to be performed, but in the more general terms of determining the end product of that work or the basic service to be provided;
- the obligation with regard to the remuneration of the worker rests with the undertaking which concluded the employment contract. This is without prejudice to any possible agreements between the employer in the posting State and the undertaking in the State of employment on the manner by which the actual payments are made to the employee;
- the power to impose disciplinary action on the employee remains with the posting undertaking.

Some examples:

- a) Company A based in Member State A sends a worker temporarily abroad to perform work in company B situated in Member State B. The worker continues to hold a contract with company A only from which he is entitled to claim remuneration.

Solution: Company A is the employer of the posted worker since the worker's claim for remuneration is directed at company A only. This is true even if company B refunds the remuneration in part or in full to company A deducting it as operating expenses from tax in Member State B.



- b) Company A based in Member State A sends a worker temporarily abroad to perform work in company B situated in Member State B. The worker continues to have a contract with company A. His corresponding claims to remuneration are also directed at undertaking A. However, the worker concludes an additional work contract with company B and receives also remuneration from company B.

Solution a): For the duration of his employment in Member State B the worker has two employers. When he works exclusively in Member State B, the legislation of Member State B applies to him pursuant to Article 11 (3) (a) of Regulation 883/2004. This implies that the remuneration paid by company A is taken into account for determining the social insurance contributions payable in Member State B.

Solution b): If from time to time the worker works also in Member State A, the provisions of Article 13 (1) of Regulation 883/2004 must be used to assess whether the legislation of Member State A or that of Member State B is applicable.

- c) Company A based in Member State A sends a worker temporarily abroad to perform work in company B situated in Member State B. The employment contract with company A is suspended for the period of the worker's activity in Member State B. The worker concludes an employment contract with company B for the period of his activity in Member State B and claims his remuneration from that company. Solution: This is not a case of posting since a suspended employment relationship does not contain sufficient labour law ties to warrant the continued application of the legislation of the posting State. Pursuant to Article 11 (3) (a) of Regulation 883/2004 the worker is subject to the legislation of Member State B.

If the social security legislation of Member State B applies in principle, an exception may be agreed in both cases (examples 2 and 3) in accordance with Article 16 of Regulation (EC) No. 833/2004 taking account of the fact that the employment in Member State B is of a temporary nature, provided that such an exception is in the interest of the worker and an application to this effect is made. Such an agreement requires the approval of both of the Member States involved.

5. What about workers recruited in one Member State for posting in another?

The rules on posting of workers can include a person who is recruited with a view to be posted to another Member State. However, the Regulations do require that a person being posted to another Member State is attached to the social insurance system of the Member State in which his employer is established immediately before the start of his employment⁸. A period of at least **one month** can be considered as meeting this requirement, with shorter periods requiring a case by case evaluation taking account of all the factors involved⁹. Employment with any employer in the posting State meets this requirement. It is not necessary that during this period the person worked for the employer requesting his posting. The condition is also fulfilled by students or pensioners or someone who is insured due to residence and attached to the social security scheme of the posting State.

⁸ Article 14 (1) of Regulation (EC) No 987/2009

⁹ Administrative Commission Decision A2



All the normal conditions that apply to the posting of workers in general, also apply to such workers.

Some examples to clarify what the term attachment to the social security scheme "immediately before" the start of the employment means in particular cases:

- a) On 1 June, employer A based in Member State A posts among others workers X, Y and Z to Member State B for a period of ten months to perform work on behalf of employer A.
- b) Worker X started his employment with employer A on 1 June. Immediately before the start of his employment he had been living in Member State A being subject to the legislation of Member State A since he attended a course at university.
- c) Worker Y started his employment with employer A also on 1 June. He had lived in Member State A immediately before the start of his employment; he was a frontier worker and as such had been subject to the legislation of Member State C.
- d) Worker Z who also started his employment with employer A on 1 June had worked in Member State A since 1 May. As a result of this employment he was subject to the legislation of Member State A. However, immediately before 1 May worker Z had been subject to the legislation of Member State B for ten years as a result of an employment relationship.

Solution: One of the requirements for the continued application of the legislation of the posting State is that the social security legislation of the posting State must have applied to the worker immediately before his posting. But it is not required that the worker was employed in the posting undertaking immediately before his posting. Workers X and Z were subject to the legislation of Member State A immediately before 1 June and hence meet the requirement for the continued application of the legislation of the posting State in this respect. Worker Y, however, was subject to the legislation of Member State C immediately before 1 June. Since he was not subject to the legislation of the posting State immediately before his posting, he will in principle be subject to the legislation of Member State B, in which he actually works.

6. What if a worker is posted to work in several undertakings?

The fact that a posted person works at various times or during the same period in several undertakings in the same Member State of employment does not rule out the application of the provisions governing posting. The essential and decisive element in this case is that the work must continue to be carried out on behalf of the posting undertaking. Consequently, it is necessary always to check the existence and continuation throughout the posting period of the direct relationship between the posted worker and the posting undertaking

Posting to different Member States which immediately follow each other shall in each case give rise to a new posting within the meaning of Article 12 (1). The posting provisions do not apply in cases where a person is normally simultaneously employed in different Member States. Such arrangements would fall to be considered under the provisions of Article 13 of the basic Regulation.



7. Are there situations in which it is absolutely impossible to apply the provisions on posting?

There are a number of situations in which the Community rules *a priori* rule out the application of the provisions on posting.

In particular, when:

- the undertaking to which the worker has been posted places him/her at the disposal of another undertaking in the Member State in which it is situated;
- the undertaking to which the worker is posted places him/her at the disposal of an undertaking situated in another Member State;
- the worker is recruited in a Member State in order to be sent by an undertaking situated in a second Member State to an undertaking in a third Member State without the requirements of prior attachment to the social security system of the posting State being satisfied;
- the worker is recruited in one Member State by an undertaking situated in a second Member State in order to work in the first Member State;
- the worker is being posted to replace another posted person;
- the worker has concluded a labour contract with the undertaking to which he is posted.

In such cases the reasons which prompted stringent exclusion of the applicability of posting are clear: the complexity of the relations stemming from some of these situations, as well as offering no guarantee as to the existence of a **direct relationship** between the worker and the posting undertaking, contrasts starkly with the objective of avoiding administrative complications and fragmentation of the existing insurance history which is the *raison d'être* of the provisions governing posting. It is also necessary to prevent wrongful use of the posting provisions.

In exceptional circumstances it would be possible to replace a person who has already been posted, provided the period allowed for the posting has not been completed. An example where this might arise would be a situation where a worker was posted for 20 months, became seriously ill after 10 months and needed to be replaced. In that situation it would be reasonable to allow another person to be posted for the remaining 10 months of the agreed period.

8. What about self-employed people temporarily working in another Member State?

Sometimes a person who is normally self-employed in one Member State ("the posting State") will want to go to work temporarily in another Member State ("the State of employment").

Like posted employees, it would cause administrative difficulties and confusion if a self-employed person temporarily working in another Member State became subject to the legislation of the State of employment. Also, the self-employed person might lose out on benefit.

The Regulations therefore provide a special rule for self-employed persons working temporarily in another Member State which resembles - but is not identical to - the rule for posted employees.



This rule provides that a person **normally self-employed in the posting Member State** who pursues a **similar** activity in the Member State of employment continues to be

subject to the legislation of the posting State provided that the anticipated duration of that work does not exceed 24 months¹⁰.

9. What criteria apply to determine if a person is normally self-employed in the posting state?

The Regulations provide that a person “who normally pursues an activity as a self-employed person” means a person who habitually carries out substantial activities in the territory of the Member State in which he/she is established. In particular this applies to a person who

- has pursued his/her self-employed activity for some time before the date when he/she moves to another Member State, and
- fulfils any necessary requirements for his/her business in the Member State in which he/she is established and continues to maintain there the means to enable him/her to exercise his/her activity on his/her return.

When determining whether a person is normally self-employed in the posting Member State it is important to examine the above criteria. Such examination could involve assessing if the person;

- keeps an office in the posting State;
- pays taxes in the posting State;
- maintains a VAT number in the posting State;
- is registered with chambers of commerce or professional bodies in the posting State;
- has a professional card in the posting State.

The Regulations require that a self-employed person wishing to avail of the posting arrangements “must have already pursued his activity for some time” before the date of posting. In this regard a period of two months can be considered as satisfying this requirement, with shorter periods requiring a case by case evaluation¹¹.

10. What does ‘similar’ activity mean?

When determining whether a person is going to another Member State to pursue a “similar” activity to that pursued in the posting State, account must be taken of the actual nature of the activity. It does not matter how this type of activity is categorised in the State of employment i.e. whether it is designated as employment or self-employment.

In order to determine if the work is “similar”, the work which the person sets out to perform must be determined in advance, before departure from the posting State. The self-employed person should be able to prove this, for example by producing contracts regarding the work.

¹⁰ Article 12.2 of Regulation 883/2004

¹¹ Administrative Commission Decision A2



In general, self employed activity in the same sector would be regarded as pursuing a similar activity. However, it must be recognised that even within sectors, work can be very diverse and it may not always be possible to apply this general rule.

Examples:

- a) A is a person who normally works as a self employed carpenter in State X and moves to State Y where he works as a self-employed butcher. He would not be regarded as pursuing a "similar activity" as the employment in State Y bears no similarity to his work in State X.
- b) B runs a construction company in State X and accepts commissions relating to the installation of piping and wiring systems. B signed a contract in the State Y for the works consisting in installing the wiring system and repairing the foundation.
- c) B may take advantage of the provisions of Article 12(2) because he/she is intending to move to the State Y to take up a similar activity, that is, an activity within the same sector (construction).
- d) C pursues activities as a self-employed person in the State X which consists in providing transport services. C temporarily moves to the State Y to perform a contract installing the wiring system and repairing the foundation. Due to the fact that the activity performed in the State Y differs from the activity pursued in the State X (different sectors: X – transport, Y – construction), C cannot take advantage of the provisions of Article 12(2) of the basic Regulation.
- e) D is a self-employed solicitor specialising in criminal law in State X. He secures an assignment in State Y advising a large undertaking on corporate governance. While the area he is working in is different, nevertheless, he is still active in the legal area and so can avail of the posting provisions.

11. What procedures must be followed in the case of a posting?

An undertaking which posts a worker to another Member State, or in the case of a self-employed person the person himself/herself, must contact the competent institution in the posting State and wherever possible this should be done in advance of the posting.

The competent institution in the posting State shall without delay make information available to the institution in the State of employment on the legislation that is to apply. The competent institution in the posting State must also inform the person concerned, and his/her employer in the case of an employed person, of the conditions under which they may continue to be subject to its legislation and the possibility of checks being made throughout the posting period to ensure these conditions are met.

An employee or self-employed person to be posted to another Member State or his employer shall be provided with an attestation A1 (formerly E 101 certificate) from the competent institution. This attestation certifies that the worker comes within the special rule for posted workers up to a specific date. It should also indicate, where appropriate, under what conditions the worker comes within the special rules for posted workers.



12. Agreements on exceptions to the legislation governing posting

The Regulations provide that a posting period may not last any longer than 24 months.

However, Article 16 of Regulation 883/2004 permits the competent authorities of two or more Member States to reach agreements providing for exceptions to the rules governing applicable legislation, and that includes the *special rules* governing posting already outlined above. Article 16 agreements require the consent of the institutions of both the Member States involved and can only be used in the interests of a person or category of persons. Accordingly, while administrative convenience may well result from agreements between Member States, the achievement of this cannot be the sole motivating factor in such agreements, the interests of the person or persons concerned must be the primary focus in any considerations.

For example, if it is known that the anticipated duration of a posting for a worker will extend beyond 24 months, an Article 16 agreement must be reached between the posting State and State/s of employment if a worker is to remain subject to the legislation applicable of the posting State. Article 16 agreements might also be used to permit a posting retrospectively where this is in the interest of the worker concerned, e.g. where the wrong Member State's legislation was applied. However, retrospection should only be used in very exceptional cases.

When it can be foreseen (or becomes clear after the posting period has already commenced) that the activity will take more than 24 months, the employer or the person concerned shall submit, without delay, a request to the competent authority in the Member State whose legislation the person concerned wishes to apply to him/her. This request should be sent wherever possible in advance. If a request for an extension of the posting period beyond 24 months is not submitted or if, having submitted a request, the States concerned do not make an agreement under Article 16 of the Regulations to extend the application of the legislation of the posting State, the legislation of the Member State where the person is actually working will become applicable as soon as the posting period ended.

13. Once a posting has been completed when can a person apply for another posting?

Once a worker has ended a period of posting, no fresh period of posting for the same worker, the same undertakings and the same Member State can be authorized until at least two months have elapsed from the date of expiry of the previous posting period. Derogation from this principle is, however, permissible in specific circumstances¹².

On the other hand, if the posted worker could not complete the work due to unforeseen circumstances, he, or his employer, may request an extension of the initial posting period until the completion of such work (up to 24 months in total) without taking into account the necessary break of at least two months. Such request must be submitted and substantiated before the end of the initial posting period.

Examples:

- a) Worker A is posted from Member State A to Member State B for 12 months. During that period he falls seriously ill for three months and cannot pursue and

¹² See also Administrative Commission Decision A2



complete the anticipated work in Member State B. Because he could not complete the work due to unforeseen circumstances, he, or his employer, can request a three month extension of the initial posting period continuing immediately after the original 12 months have elapsed.

- b) Worker B is posted from Member State A to Member State B for 24 months in order to perform construction work there. During that period it becomes evident that, because of difficulties with the project, the work cannot be completed by the end of the 24 months. Even though worker B is unable to complete the work due to unforeseen circumstances, an extension of the initial posting period continuing immediately after the 24 months have elapsed cannot be granted by the posting State. The only way in which this can be dealt with is if the institutions concerned conclude an Article 16 agreement (see point 12). In the absence of such an agreement the posting will finish after 24 months.

14. What is the position in relation to postings already authorised and started under regulation 1408/71? Do these periods count towards the 24 months period allowed under regulation 883/2004?

Regulation 883/2004 does not contain any explicit provision on aggregation of posting periods completed under the old and new Regulations. However, the clear intention of the legislator was to extend the maximum possible period of posting to 24 months.

Therefore, under the new Regulations, once the worker has ended a posting period of 24 months in total, no fresh period of posting for the same worker, the same undertakings and the same Member State can be granted (except in the context of an Article 16 agreement)¹³.

The following examples illustrate how periods completed under both Regulations should be treated.

- a) Posting E 101 form issued from 1.5.2009 until 30.4.2010 → continued posting under Regulation 883/2004 until 30.4.2011 possible.
- b) Posting E 101 form issued from 1.3.2010 until 28.2.2011 → continued posting under Reg. 883/2004 until 28.2.2012 possible.
- c) Posting E 101 form issued from 1.5.2008 until 30.4.2009 + E 102 form from 1.5.2009 until 30.4.2010 → no continued posting possible under Reg. 883/2004 as the maximum posting period of 24 months is already completed.
- d) Posting E 101 form issued from 1.3.2009 until 28.2.2010 + E 102 from 1.3.2010 until 28.2.2011 → no further extension possible under Reg. 883/2004 as the maximum posting period of 24 months has already been completed.
- e) Request for a posting on 1.4.2010 until 31.3.2012. This period cannot fall under the posting provisions of Reg. 1408/71 because it is longer than 12 months. An Article 17 agreement is therefore necessary.

¹³ See also Administrative Commission Decision A3



15. Suspension or interruption of the posting period

Suspension of work during the posting period, whatever the reason (holidays, illness, training at the posting undertaking etc.) does not constitute a reason which would justify an extension of the posting period for an equivalent period. Therefore the posting will end precisely upon expiry of the programmed period, irrespective of the number and duration of events which prompted the suspension of activity.

Derogation from this principle is, however, permissible according to Decision No A2 in specific circumstances if the posting period does not exceed 24 months in total (see point 13).

In case of sickness of 1 month a posting period which was initially programmed to take 24 months cannot be extended to 25 months from the beginning of the posting.

In case of longer suspension of work it is up to the persons concerned either to stick to the previously programmed period of posting or to end the posting with a view to arranging a new posting by the same person, taking into account the necessary break of at least two months as mentioned under point 13, or another person if the relevant criteria are met.

16. Notification of changes occurring during the posting period

The posted worker and his employer must inform the authorities in the posting State of any change occurring during the posting period, in particular:

- if the posting applied for has, in the end, not taken place or was terminated ahead of schedule.
- if the activity is interrupted other than in the case of brief interruptions arising from illness, holidays, training etc. (see under point 13 and 15)
- if the posted worker has been assigned by his employer to another undertaking in the posting State, in particular in the event of a merger or a transfer of undertaking.

The competent institution in the posting State should, where appropriate and upon request, inform the authorities in the State of employment in the event of any of the above occurring.

17. Provision of information and monitoring of compliance

In order to ensure proper use of the posting rules, the competent institutions in the Member State to whose legislation the workers remain subject, must ensure that appropriate information is made available to both employers and posted workers of the conditions which apply to the posting (e.g. via information leaflets, websites), alerting them to the possibility that they may be subject to direct controls designed to check that the conditions which permitted the posting continue to exist.

While providing undertakings and workers with every guarantee to avoid obstacles to the freedom of movement of workers and the free provision of services, the competent institutions of the posting and the employment States, individually or in cooperation, shall take responsibility for all initiatives designed to check the existence and the continuation of the conditions which characterize the specific nature of



posting (direct relationship, substantial activities, similar activity, maintenance in the State of residence of the means to pursue self-employed activity etc.).

The procedures to be followed where competent authorities disagree on the validity of posting arrangements, or the appropriate legislation which should be applied in particular cases, are set out in Decision A1 of the Administrative Commission. These procedures are summarized in Part III of this document.

