



Brussels, 20.07.2016
C(2016) 4827 final

Dear President,

The Commission would like to thank the Sejm for its reasoned opinion on the proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services {COM(2016) 128 final}.

As the Commission received reasoned opinions from fourteen chambers in eleven Member States, it confirmed on 11 May 2016 the triggering of the procedure laid down in Article 7(2) of Protocol No 2 to the Treaties.

The Commission attaches great importance to its relationship with national Parliaments, notably when it comes to the principle of subsidiarity. Forging a new partnership with national Parliaments and ensuring that their voice is strong in European decision-making is a priority for this Commission.

In line with this commitment, the Commission carefully analysed the reasoned opinions received, including that submitted by the Sejm. It engaged directly with representatives of the national Parliaments at the COSAC meetings of 13 June 2016 and 11 July 2016 before drawing its conclusions.

The procedure laid down in Article 7(2) of Protocol No 2 is exclusively focused on the principle of subsidiarity. Therefore, the Commission has adopted on 20 July 2016 a Communication to the European Parliament, the Council and the national Parliaments on the proposal {COM(2016) 505 final}, in which it addressed the different concerns and arguments on subsidiarity raised by the Sejm as well as by other national Parliaments in their reasoned opinions. The Commission concluded that its proposal complies with the principle of subsidiarity enshrined in Article 5(3) of the Treaty on European Union and decided therefore to maintain the proposal.

The Sejm included in its reasoned opinion also other arguments and concerns not related to subsidiarity. Given their political relevance, the Commission has analysed those arguments in detail as well and wishes to provide some elements in this regard. This letter should hence be read in conjunction with the Communication of 20 July 2016.

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In its reasoned opinion, the Sejm underlines that further alignment of wage levels in the Member States should come as a consequence of further economic development of individual Member States and not from the European Union's legislative action.

However, as indicated in the Communication of 20 July 2016, the objective of the Commission proposal is not to align wages across Member States. The problem which the Commission proposal is addressing is not that wage levels in the home and the host Member State are different. The problem is that the rules on remuneration applicable to local workers and posted workers in the host Member State are different: local workers are protected by comprehensive sets of mandatory rules on remuneration laid down by law and applicable collective agreements, while posted workers are only entitled the "minimum rates of pay" applicable in the host country. The Commission considers the existing situation unfair as posted workers are not protected by the same mandatory rules on remuneration as local workers, for the same work carried out on the same location.

In other words, the aim of the proposal is not to ensure that work in Poland and work in other Member States are remunerated with the same wages or according to the same rules. The objective is to ensure that work carried out within a Member State is remunerated according to the same rules, irrespective of whether that work is carried out by a local worker or by a posted worker. Wages and rules on remuneration may and will hence continue to differ between Member States.

The Commission would also like to underline that the proposal does not equalise pay between local and posted workers. Instead of an equalisation of pay, the proposal retains the option of applying to posted workers the rules on remuneration that are mandatory to all national workers, i.e., rules stemming from law or collective agreements made universally applicable. The proposal therefore strictly avoids any discrimination against cross-border service providers and improves the level playing field in the provision of services.

By doing so, the proposal does not in any way interfere with the social partners' competence to engage and eventually agree on a collective agreement or with the national Government's competence to make such a collective agreement universally applicable or not.

Specific EU policies are in place to promote the economic development of individual Member States and to promote upwards convergence in economic and social conditions across the Union, such as the cohesion policy, social and employment policy and the European Semester. The Commission will continue to pursue these policies with vigour, in close cooperation with the Member States. However, the fact that economic development will bring more convergence in wages over time does not remove the necessity to ensure - also in the interim - a level playing field for businesses and appropriate protection of posted workers.

In its reasoned opinion, the Sejm furthermore questions the necessity of obliging Member States to extend to posted workers the mandatory rules of remuneration contained in universally applicable collective agreements irrespective of the sector of the economy concerned, as well as the necessity of obliging Member States to align the basic working and

employment conditions applicable to workers hired out by a temporary work agency in a domestic context with those applicable to posted temporary agency workers. The existing option for Member States to do so would be sufficient, in the Sejm's opinion, without a need to regulate this in a uniform way in all Member States. The Sejm points out, with reference to the Commission's impact assessment report, that a significant number of Member States have made use of these options.

The Commission is of the view that the current rules are not sufficient to provide a level playing field between national and cross-border service providers, or to provide adequate protection for posted workers in all circumstances. A Member State may not have the same interest in protecting workers posted from other Member States to its territory, as it has to protect its own local workers. Analysis has shown that not all Member States have made use of the options on a voluntary basis.

The Commission considers that for a deeper and fairer internal market to exist in the European Union, the option not to protect posted workers to the same extent as local workers when it comes to the applicable rules on remuneration, should no longer be available to Member States. Posted workers, including posted temporary agency workers, should in the Commission's view be guaranteed that, across the EU, they will always be able to rely on the same mandatory rules on remuneration as local workers.

The points made in this reply and in the Communication are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which the Polish government is represented.

The Commission hopes that the clarifications provided in the Communication and in this reply address the issues raised by Sejm of the Republic of Poland and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Marianne Thyssen
Member of the Commission*