



## EUROPEAN COMMISSION

Brussels, 20.7.2016  
C(2016) 4826 final

*Dear President,*

*The Commission would like to thank the Hrvatski sabor 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 Hrvatski sabor. 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 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 Hrvatski sabor, 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 Hrvatski sabor 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.*

*The Hrvatski sabor argues that the proposal raises concerns about restrictions on freedom to provide services within the European Union and stresses that labour cost is a legitimate element of companies' competitiveness in the EU internal market.*

*Mr Željko REINER  
Speaker of the Hrvatski sabor  
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*The Commission would like to make it clear that the problem the Commission is addressing is not that minimum wages in the home and the host Member State are different. The problem is that the rules applicable to local workers and posted workers in the host Member State are divergent: local workers need to be granted at least the rules on remuneration that are laid down by law and the applicable collective agreement, while posted workers are granted the "minimum rates of pay". This is the imbalance the revision is aiming to address.*

*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.*

*Concerning the alleged distortion of competition, the impact assessment report states that "by increasing the reach of equal rules on wages to workers posted from low-wage countries, the main economic impact of options 3a and 3b would principally be on labour-intensive services in low value chains but will remain limited. From the receiving perspective, local companies in high-wage Member States, especially cost-sensitive small and medium enterprises (SMEs), would benefit from a more balanced level playing field vis-à-vis posting companies from lower-wage countries, thus increasing their cost competitiveness. However, it should be emphasised that equal rules on wages would translate neither into equal nominal wages between posted and local workers, nor into equal levels of labour costs". Nevertheless, the report also points out that "while the current gap in wage outcomes would narrow down, pay structures would remain differentiated more in line with wage distribution in the domestic labour market of the receiving Member State. Furthermore, social security and other tax differentials would still generate an advantage on total labour costs for companies established in countries with lower nominal rates than those in the receiving one". Against this background, the Commission considers that the proposal is balanced and limits itself to what is needed to ensure a better level playing field for national and cross-border service providers.*

*The Commission would like to underline that the proposal does not equalise pay between local and posted workers. Such an option was envisaged and discarded during the impact assessment stage (see point 4.5.2 of the impact assessment report, p. 27). The Commission concluded that such a proposal would risk failing the test of proportionality and compatibility with the Internal Market, as it would create more obligation for companies posting workers from other Member States than on local companies in the host Member State.*

*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.*

*It should be noted that equal rules on wages would translate neither into equal nominal wages between posted and local workers, nor into equal levels of labour costs. As stated in the impact assessment report (see pp. 37-38) while the current gap in wage outcomes would narrow down, pay structures would remain differentiated more in line with wage distribution in the domestic labour market of the receiving Member State. Wage competition will therefore continue to be possible, within the boundaries of the mandatory rules on remuneration set in the host Member State.*

*Furthermore, social security and other tax differentials would still generate an advantage on total labour costs for companies established in countries with lower nominal rates than those in the receiving one.*

*Finally, the Hrvatski sabor believes that proposing amendments to Directive 96/71/EC when the deadline for transposition into national law of Directive 2014/67/EU [...] has not yet expired leads to overregulation and creates an environment of legal uncertainty for employees and companies, contravening the principles of the internal market".*

*As the Commission makes clear in the impact assessment report (see point 2.2, p. 9), the proposal "does not address any issue touched upon by the Enforcement Directive. Neither the Enforcement Directive nor the measures taken to transpose it into national laws will be in any way affected by the present initiative. Rather, it focuses on issues which were not addressed by it and pertain to the EU regulatory framework set by the original 1996 Directive. Therefore, the revised posting of Workers Directive and the Enforcement Directive are complementary to each other and mutually reinforcing". Because they deal with different matters, the proposal sheds no legal uncertainty in this period of finalisation of the transposition of the 2014 Enforcement Directive.*

*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 Croatian government is represented.*

*The Commission hopes that the clarifications provided in the Communication and in this reply address the issues raised by the Hrvatski sabor and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Marianne Thyssen  
Member of the Commission*