



## EUROPEAN COMMISSION

Brussels, 20.07.2016  
C(2016) 4825 final

*Dear President,*

*The Commission would like to thank the Riigikogu 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 Riigikogu. 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 Riigikogu, 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 of the European Union and decided therefore to maintain the proposal.*

*The Riigikogu 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.*

*Mr Eiki NESTOR  
President of the Riigikogu  
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*The Riigikogu argues that it is doubtful whether the principle of equal pay for equal work in one and the same location is in conformity to the principles of a common market, because the difference in the rates of pay is one of the legitimate elements of the competitive advantage of service providers.*

*As indicated in the Communication of 20 July 2016, the objective of the proposal is not to align wages across Member States. The problem which the 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 Estonia and work in other Member States are remunerated equally 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 mandatory 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 Riigikogu argues that the proposal will have negative impact in terms of the competitiveness of the undertakings and "in turn, may have a negative effect on the posting of workers".*

*The impact of the proposal on companies posting workers has been addressed in the impact assessment report. The proposal may indeed reduce, but would not entirely remove, the total labour cost advantages of small and medium-sized enterprises (SMEs) in low wage countries in view of differences which will continue to exist in social security contributions and taxation. In addition to the remaining scope for labour costs competition, SMEs will continue to be able to compete on quality of service, specialization and innovation and their services will continue to be required because of skills shortages and labour shortages in other Member States.*

*Finally, the Riigikogu fails to understand "why a proposal to review the Directive has been made in a situation where the date for the transposition of the Enforcement Directive has not yet arrived and the impact of the Enforcement Directive has not been thoroughly assessed".*

*As indicated in the explanatory memorandum and in the impact assessment report (see point 2.2 of the report, p. 9), the 2014 Enforcement Directive has provided for new and strengthened instruments to fight and sanction circumvention, fraud and abuses. It addresses problems caused by so-called "letter-box companies" and increases the Member States'*

*ability to monitor working conditions and enforce rules applicable. The deadline for Member States to transpose the Enforcement Directive into national law expired on 18 June 2016.*

*The European Platform for the fight against undeclared work, which has recently been established and held its first meeting on 27 May 2016, provides national enforcement authorities with a new forum to exchange information and best practices and coordinate actions to tackle undeclared work and bogus self-employment, including in the context of posting.*

*Whilst those instruments help to ensure that the rules on posting are complied with, they do not remedy the specific problems which the Commission identified in its impact assessment and which pertain to the rules laid down in the original 1996 Directive themselves. Against the background of the current economic and social conditions in the Member States, the existing rules no longer ensure that the freedom to provide services in the EU takes place under conditions that guarantee a level playing field for businesses and appropriate protection of the rights of workers. As indicated in the impact assessment report (see point 2.3 of the report, p. 13), the gap between Member States on minimum wages has constantly increased since 1996, from a ratio between the lowest and the highest minimum wage of 1:3 to 1:10. The structural differences in wage rules applying to posted and local workers are under certain circumstances substantial, which is a source of an un-level playing field and does not grant fair treatment to posted workers who are paid less for the same work at the same location. Moreover, the rules laid down in the 1996 Directive have proved not always to provide sufficient legal certainty, for example as regards the question when a posted worker is deemed to have moved his habitual place of work to the host Member State.*

*The Commission proposal and the 2014 Enforcement Directive are therefore complementary to each other and mutually reinforcing.*

*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 Estonian government is represented.*

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

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Marianne Thyssen  
Member of the Commission*