



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Camera Deputaților 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 Camera Deputaților. It engaged directly with representatives of 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 Camera Deputaților 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 Camera Deputaților 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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The Camera Deputaţilor argues that a convergence of the wages levels can be only achieved by a process of economic development. The proposal would not result in equal pay but would eliminate from the internal market several economic agents of the new Member States.

The Commission recalls that Directive 96/71/EC already requires that posted workers are granted the minimum rates of pay set in the host Member State by law or universally applicable collective agreement. This provision has not led to a harmonisation of minimum wages in Europe, and this was certainly not the intention. Posting is temporary and the minimum wage of the host Member State is only granted during the posting period. It should be clear that granting to posted workers all the elements of remuneration mandatory at national level would equally not harmonise or approximate remuneration in Europe. The Commission entirely shares the view of the Camera Deputaţilor that such a convergence cannot be determined by a directive.

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 the appropriate protection of posted workers.

Concerning the alleged distortion of competition, the Commission would like to underline that the impact of the proposal has been addressed in the impact assessment report. The proposal may indeed reduce, but will not entirely remove, the total labour cost advantages of small and medium-sized enterprises (SMEs) in low wage countries given the 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. It is also to be noted that the proposal will not add any administrative requirements to the ones foreseen in the 2014 Enforcement Directive. Moreover, under the 1996 Directive posting firms are already obliged to verify the minimum rates of pay applicable in the sector concerned in the host country. Under the new proposal, posting firms will have to verify which rules on remuneration apply in the sector concerned in the host country, but it would be easy for them to do so as the host country would be obliged to publish those rules on a single national website on posting.

Concerning the timing of the proposal and the argument concerning the need to implement the Enforcement Directive before envisaging legislative changes, the Commission recalls that, 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 current 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 Romanian government is represented.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Marianne Thyssen
Member of the Commission*