



## EUROPEAN COMMISSION

Brussels, 20.7.2016  
C(2016) 4812 final

*Dear President,*

*The Commission would like to thank the Senat 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 Senat. 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 Senat 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 Senat 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 Călin POPESCU-TĂRICEANU  
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*The Senat argues that the Commission has not complied with the obligation to carry out extensive consultation before adopting a legislative proposal.*

*On this issue, the Commission would like to draw the attention to point 1.2 of the impact assessment report concerning the consultation process, as well as to Annex III to the report. The Commission's intention to propose a targeted revision of the Posting of Workers Directive was announced well in advance, was discussed with social partners and was extensively commented upon by stakeholders. The Commission has taken those comments into account in drawing up its proposal.*

*The Senat also considers that the Commission has not provided a proper social impact assessment in terms of job losses due to the elimination of service providers from certain markets and that the lack of reliable data on the number of posted workers, in particular for periods over 24 months, originates an "inadequate regulation".*

*The Commission has, in a transparent way, recognised in the impact assessment report the limitations of the available data on the number of posted workers, but also, for instance, on the earnings of posted workers. This being said, we should not overestimate such limitations. For example, the data on the number of postings are not as precise as we would like, but the comparison with the data at national level (in the few cases where they are available) shows that they not distort the reality.*

*It should be noted that the impact of the proposal on small and medium-sized enterprises (SMEs) has been addressed in the impact assessment report. The proposal may indeed reduce, but will not entirely remove, the total labour cost advantages of 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 would 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.*

*Concerning the timing of the proposal and the argument concerning the need to implement the 2014 Enforcement Directive before envisaging legislative changes, the Commission would like to underline 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 the 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. 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 proposal and the 2014 Enforcement Directive are therefore complementary 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 Senat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Marianne Thyssen  
Member of the Commission*