



*Brussels, 31.1.2017  
C(2017) 311 final*

*Dear President,*

*The Commission would like to thank the Camera Deputaților for its Opinion concerning the Commission Communication on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2 {COM(2016) 505 final}.*

*The Commission has taken good note of the many concerns expressed by the Camera Deputaților as regards the Communication and takes them very seriously. We are pleased to have this opportunity to provide a number of clarifications regarding the Commission's proposal and hope that these will allay some of the Camera Deputaților's concerns.*

*The Camera Deputaților is of the opinion that the Commission did not, in its Communication, reply to some of the arguments concerning subsidiarity, namely:*

- that Member States may already under the current rules implement appropriate measures to ensure that temporarily posted workers receive the same treatment as national temporary workers;*
- that host Member States already have the possibility of imposing the same rules on temporary work agencies from other Member States as those that apply to national temporary work agencies; and*
- that Member States already have the possibility to extend the scope of collective agreements or arbitration awards that have been declared as universally applicable to all sectors.*

*As a general remark, the Commission would like to recall that when the procedure laid down in Protocol No 2 to the Treaties was triggered, the Commission carefully analysed all reasoned opinions received. On that basis it replied to all the arguments concerning subsidiarity in its Communication of 20 July 2016.*

*Mr Liviu DRAGNAE  
President of the Camera Deputaților  
Palace of the Parliament  
Str. Izvor nr. 2-4, sector 5  
RO – 050563 BUCHAREST*

*This was particularly the case for the arguments pointing out that existing rules were sufficient and adequate since they already entitle Member States to go beyond the general rules, as is the case for the extension of collective agreements beyond the construction sector and the rules applicable to temporary agency workers. The Communication (in Point 4.2.1.) specifically addresses this line of argument, which was made by several national Parliaments. The Commission notes that the overall objective of the proposal is to provide a more level playing field between national and cross-border service providers and to ensure that workers carrying out work at the same location are protected by the same mandatory rules, irrespective of whether they are local workers or posted workers, in all sectors of the economy. If Member States only had the possibility, but not the obligation, to apply these rules, the proposal would not fully achieve this objective.*

*In response to the specific comments not directly related to subsidiarity, the Commission would like to refer to the attached annex.*

*The points made in this reply are based on the initial proposal amending the Posting of Workers Directive as presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council.*

*The Commission hopes that the clarifications provided 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*

## ANNEX

*The Commission has carefully considered each of the issues raised by the Camera Deputaților in its Opinion and is pleased to offer the following clarifications.*

*The Camera Deputaților regrets that the Commission did not respond, either in the Communication, or in its reply to the Camera Deputaților, to the following arguments not directly related to subsidiarity:*

- that the legal basis does not correspond to the aim of the proposal, i.e., the protection of workers;*
- that the Commission should take into account the degradation over the recent years of the conditions for local workers of the most developed economies;*
- that the less developed economies are faced with specific problems, notably the emigration of highly skilled workers to Member States with stronger economies and have nevertheless not insisted in regulating this brain drain;*
- that the Commission limits the need to maintain a level-playing field to ensuring equal treatment of workers and neglects that companies from more developed economies benefit from the economic know-how of specialised workers in areas of high-tech, higher qualifications, easier adaption to the working environment, company reputation, access to markets, etc.*

*The Commission would like to recall that the procedure laid down in Article 7(2) of Protocol No 2 exclusively relates to the principle of subsidiarity as defined in Article 5(3) of the Treaty on European Union (TEU). Therefore it consists mainly in assessing whether the objective of the proposed action could be better achieved at Union level.*

*Concerning the political concerns mentioned in points 9 to 14 of the Opinion and summarised above, the Commission would like to make the following remarks:*

*According to the settled case-law of the European Court of Justice, the choice of the legal basis for a Union measure must be based on objective factors which are amenable to judicial review and include in particular the aim and content of the measure. If examination of a Community measure reveals that it pursues a twofold purpose or that it has a twofold component and if one of those is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component.*

*Furthermore, the proposal on Posting of Workers amends an existing Directive which was based on an equivalent legal basis. In any case, the main purpose of the Directive is still to facilitate the cross-border provision of services by regulating the terms and conditions of employment of the workers posted in this context. The Commission therefore maintains that the legal basis is adequate to the aim and content of its proposal.*

*Concerning the alleged degradation of the conditions for local workers of the most developed economies, the Commission remains unconvinced that this represents an accurate overall description of the development of these conditions. However, even if, for the sake of the argument, one were to describe the conditions in this manner, it is not clear to the Commission how the proposal would possibly contribute to such a situation. The Directive from 1996 and the proposal to amend it define which conditions set by the home Member State by law or collective agreement universally applicable should be granted to workers posted to their territory. The proposal does not touch upon the material content of the terms and conditions of employment in the home Member State. It merely provides that, whatever these terms and conditions are, in the matters covered by the proposal they must also be granted to posted workers.*

*The mobility of workers in the European Union has overall a positive impact as it can help matching skills with needs. It goes without saying that there are challenges, including for Member States whose many high skilled workers are employed in other Member States. The posting of workers, being of a temporary nature, allows the EU economies to better deal with asymmetric shocks while leading to skills exchanges and circulation rather than to a drain of the skilled workforce.*

*Finally, concerning the argument that equal treatment between national and cross-border companies should be seen in a broader context than employment conditions, the Commission would like to recall that the aim of the Directive from 1996 and also of the proposal amending it is to set the conditions for a better functioning of the internal market, in particular as regards the freedom to provide services, by a limited and targeted harmonisation of the terms and conditions of employment of posted workers during their posting assignment. The Commission believes that such a harmonisation is in the interest of the companies posting workers, as they can anticipate the staff costs during posting.*