



EUROPEAN COMMISSION

Brussels, 20.7.2016
C(2016) 4820 final

Dear President,

The Commission would like to thank the Országgyűlés 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 Országgyűlés. 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 has 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 Országgyűlés, 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 Országgyűlés 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 Commission Communication of 20 July 2016.

The Országgyűlés argues that the proposal would significantly limit the freedom to provide services and would artificially distort competition among companies.

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The Commission would like to make it clear that the problem which the proposal aims to address 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". The proposal aims to address this imbalance.

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-sized enterprises (SME's), 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, it 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 therefore believes its proposal is balanced and restricted to what is needed to ensure a better level-playing field for national and cross-border service providers.

The Országgyűlés finds that the notion of "remuneration" is less unambiguous and certain than the current notion of "minimum rates of pay".

The Commission would like to recall that, under the 1996 Directive, posting firms are 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 what are the rules on remuneration applicable in the sector concerned in the host country, but it will be easy for them to do so as the host country is obliged to publish those rules in a single national website on posting.

Finally, the Országgyűlés regrets the lack of public consultation prior to the publication of the proposal.

On this issue, the Commission would like to draw the Országgyűlés' 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 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 Hungarian government is represented.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Marianne Thyssen
Member of the Commission*