



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Narodno Sabranie 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 Narodno Sabranie. 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 Narodno Sabranie, 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 Narodno Sabranie 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 Commission is pleased that the Narodno Sabranie welcomes the Commission's effort to improving the protection of posted workers. Nevertheless, it argues that introducing equal pay cannot be achieved by an administrative act and that it would remove the existing competitive advantage of certain service providers, thus restricting their access to the Internal Market.

The Commission would like to underline that the proposal does not equalise pay between local and posted workers. Such an option was envisaged and discarded during the impact assessment stage (see point 4.5.2 of the impact assessment report, p. 27). The Commission concluded that such a proposal would risk failing the test of proportionality and compatibility with the Internal Market, as it would create more obligations on companies posting workers from other Member States than on local companies in the host Member State.

Instead of an equalisation of pay, the proposal retains the option of applying to posted workers the rules on remuneration that are mandatory to all national workers, i.e., rules stemming from law or collective agreements made universally applicable. The proposal therefore strictly avoids any discrimination against cross-border service providers and improves the level playing field in the provision of services.

It should be noted that equal rules on wages would translate neither into equal nominal wages between posted and local workers, nor into equal levels of labour costs. Wage competition will continue to be possible, within the boundaries of the mandatory rules on remuneration set in the host 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.

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.

The Narodno Sabranie also argues that the proposal introduces additional administrative burden for companies without clarifying what could be the actual benefit for posted workers.

The Commission would like to stress that the proposal would not add any administrative requirements to the ones foreseen in the 2014 Enforcement Directive. 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 would 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 is obliged to publish those rules on a single national website on posting.

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 Bulgarian government is represented.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Marianne Thyssen
Member of the Commission*