Posting of workers in the framework of the provision of services

2016/0070(COD) - 20/07/2016 - Document attached to the procedure

The Commission presented a 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 to the Treaties.

Within this context, the Commission adopted on 8 March 2016 a proposal for a targeted revision of Directive 96/71/EC on Posting of Workers with a view to ensuring that the implementation of the freedom to provide services in the Union takes place under conditions that guarantee a level playing field for businesses and respect for the rights of workers.

Protocol No 2 to the Treaties on the application of the principles of subsidiarity and proportionality allows national Parliaments to issue reasoned opinions when they consider that a legislative proposal does not comply with the principle of subsidiarity.

Fourteen chambers of national Parliaments sent reasoned opinions to the Commission stating that the Commission proposal does not comply with the principle of subsidiarity.

Subsidiarity concerns raised by the national Parliaments: the subsidiarity arguments raised in the reasoned opinions of national Parliaments are the following:

1. The existing rules are sufficient and adequate: the Commission recalled that the 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 worker or posted workers, in all sectors of the economy.

Member States having the option, but not the obligation, to apply such rules in sectors other than the construction sector does not fully achieve this objective. Indeed, Member States can under such circumstances choose not to do so, hence failing to provide a level playing field and an adequate protection of posted workers in such other sectors.

The obligation for all Member States to apply the rules in all sectors of the economy cannot be established at national level but must be laid down at Union level. Therefore the Commission considers that the objective of the proposal on this point can be better achieved at Union level.

2. The Union is not the adequate level of the action: the objectives of the proposal are to facilitate the correct functioning of the Internal Market, in particular to facilitate the freedom to provide services, while ensuring a better level-playing field between national and cross-border service providers, an adequate protection of posted workers and clarity and predictability in the legal framework applicable to posted workers. The Commission considers that these objectives are interdependent and can be better achieved at Union level.

Individual action by the Member States could not achieve another important objective of the measures: bringing legal consistency throughout the Internal Market and clarity to the legal framework applicable to posted workers since the protection afforded to them would vary depending on the host Member State's approach.

3. The proposal fails to recognise explicitly Member States' competences on remuneration and conditions of employment: the Commission proposal fully and unequivocally respects the competence of the Member States to set the remuneration and other terms and conditions of employment, in accordance with their national law and practice and it states this explicitly. Recital No 12 confirms that "it is within Member States' competence to set rules on remuneration in accordance with their law and practice". The proposal hence does not regulate remuneration, nor does it define remuneration or the constituent elements of remuneration at Union level. It merely provides that mandatory rules on remuneration, as set by the Member States, should apply in a non-discriminatory manner to local and cross-border service providers and to local and posted workers.

4. The justification contained in the proposal with regard to the subsidiarity principle is too succinct : the Commission noted that the recitals of the draft Directive make clear why action at Union level is required to improve the Union regulatory framework concerning the posting of workers in some regards. Moreover, the Impact Assessment Report, which accompanies the proposal, gives a more detailed assessment of respect for the principle of the subsidiarity and proportionality of the proposal.

Conclusions: in line with its commitment to ensure that national Parliaments have a strong voice in European decision-making, the Commission carefully analysed the reasoned opinions. Before drawing its conclusions, it engaged directly with national Parliaments on the issues raised.

After having carefully analysed the reasoned opinions, **the Commission concluded that the proposed revision of the Directive complies with the principle of subsidiarity**.

Considering that all arguments raised by national Parliaments will play a role in the context of the legislative process, the Commission intends to address them in detail and separately by way of **letters** to the Parliaments concerned, under the “political dialogue”.