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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2016) 53 final
Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

Delegations will find attached document SWD(2016) 53 final.

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Strasbourg, 8.3.2016
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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

**Proposal for a Directive of the European Parliament and of the Council
amending Directive 96/71/EC concerning the posting of workers in the framework of the
provision of services**

{COM(2016) 128 final}
{SWD(2016) 52 final}

Executive Summary Sheet
Impact assessment on Proposal for a Directive amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services
A. Need for action
Why? What is the problem being addressed?
Posting of workers involved 1.9 million European workers in 2014. Although it represents 0.7% of total EU employment, posting of workers supports the cross-border provision of services in the Internal Market, particularly in construction and some personal and business services sectors. Under the current rules, posting companies need to comply with a core set of rights of the host country, including <i>minimum rates</i> of pay. This provision causes significant wage differentiation between posted and local workers in host countries, estimated to range from 10% up to 50% depending on countries and sectors. Differentiated pay rules distort the level playing field among companies, by conferring a labour cost advantage to sending companies over local companies in host Member States. Mismatches between the Directive and other pieces of EU legislation create legal uncertainties with respect to equal treatment of posted workers in the EU regulatory framework in the case of long-term posting. On the other hand, the general rules on posting might not be adequate to deal with specific situations like posting in the context of sub-contracting chains, temporary agency work and intra-group posting.
What is this initiative expected to achieve?
The revision of the 1996 Directive aims at strengthening the original objectives of encouraging the exercise of the freedom to provide services across borders within a climate of fair competition and respect of the rights of workers by adapting to the new economic and labour market conditions. In particular, the initiative aims at ensuring fair wage conditions to posted workers and a level playing field between posting and local companies in the host country; and at improving the clarity of EU legislation.
What is the value added of action at the EU level?
A regulative framework for posting of workers between Member States can only be established at EU level. Member States and the social partners at the appropriate level remain responsible for establishing their legislation and setting wages, in accordance with national law and practices.
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
The Commission considers the introduction of equal rules on remuneration and the extension to all sectors of the reference to universally binding collective agreements, a more effective option to attain the policy objectives of fair wage conditions for posted workers, a more level playing field for companies, and improved legal clarity than non-action. Also, the Commission considers efficient in terms of improved legal clarity the options of applying the labour law of the host Member State to long-term postings over 24 months, in line with social security coordination rules; the establishment of equal remuneration between posted workers in subcontracting chains and workers at the main contractor through applying the latter's working conditions, including from company-level agreements, if any; the compulsory application of equal terms and conditions to posted temporary agency workers as agency workers recruited locally..
Who supports which option?
The options of introducing the principle of "equal rules on pay for equal work" and applying the host Member States's labour law for long-term posting go in the direction favoured by seven Member States (AT, BE, FR, DE, LU, NL, SE), the European Trade Union Confederation, and the European Builders' Confederation. Eurociett supports the revision of the Directive on posted temporary agency workers to ensure equal treatment between cross-border and national temporary agency workers. Nine member States (BG, CZ, EE, HU, LT, LV, PL, SK, RO), Business Europe, UEAPME and CEEMET have expressed a position in favour of waiting for a sufficient period of implementation of the Enforcement Directive before acting.

C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise main ones)?
Equal rules on remuneration will contribute to increase the wages earned by posted workers, reduce pay differentials with local workers, and establish a level playing field between companies in the host countries. By reducing the scope of labour cost competition, posting of workers will foster the provision of cross-border services based on specialisation, innovation and skills. The fine-tuning of elements of mismatch between the Directive and other EU legislation will improve legal clarity for businesses, workers, and authorities, and reduce the costs of potential judicial litigation. In the case of sub-contracting chains and long-term postings, the application of the principle of equal treatment is expected to raise the wage conditions of posted workers, thus enhancing their social protection.
What are the costs of the preferred option (if any, otherwise main ones)?
Equal rules on wage can increase wage costs for such sending undertakings which are in the low wage segment (1/3 of the situations), even though total labour costs may still be lower than local companies in host Member States because of cross-country differentials in social security charges and corporate taxes. The diminished role of labour costs as the main competition factor can reduce the competitiveness of companies located in Member States with lower wage conditions, especially in labour-intensive sectors, such as construction. Equal treatment rules on long-term postings over 24 months and on sub-contracting chains can also reduce the role of labour costs as a competition factor with similar effects as above, although long-term postings seem to be a low share of total postings. The application of equal treatment to posted temporary agency workers may also lead to an increase in wage costs for companies, even though the option does not provide for additional conditions than those currently in place for locally-recruited agency workers.
How will businesses, SMEs and micro-enterprises be affected? <u>Maximum 8 lines</u>
No special regime for SMEs is envisaged. In the first place, SMEs will benefit from improved legal clarity and decreasing administrative burden originating from risks of judicial litigation. Equal rules on pay, as well as equal treatment on long-term postings and in sub-contracting chains may particularly affect SMEs providing cross-border services through posting of workers in low-wage market segments as a consequence of possible increases in wage costs. However, cross-country differentials in social security charges and other taxes, including special regimes for SMEs in some Member States, may mitigate the impact. In turn, SMEs operating in high-wage market segments through posting of workers will benefit from a climate of fair competition based on a level playing field as regards to wage rules. The effect of the proposed options may increase their business opportunities and job creation potential.
Will there be significant impacts on national budgets and administrations?
No particular cost is expected for national budgets and administration. The costs of information and enforcement are already provided for by the 2014 Enforcement Directive, currently under transposition.
Will there be other significant impacts?
The improvement of the information contained in the Portable Documents A1, as well as the transposition of the Enforcement Directive will enhance the reliability of the information on the dynamics of posting of workers.
D. Follow up
When will the policy be reviewed?
The Commission will evaluate the impact of the Directive five years after the deadline for transposition. The evaluation report will be developed by the Commission with the assistance of external experts and in consultation with the social partners and other stakeholders.