Targeted Revision of the Posting of Workers Directive
### Key figures

| How many posted workers? | 2007: **600,000**  
| 2015: **2,049,000** |
| What destinations? | Germany (418,900) – 1.1% of DE workforce  
| | France (177,600) – 0.7% of FR workforce |
| Where from? | Poland (463,000) – 1.6% of PL workforce  
| | Germany (240,800) – 0.6% of DE workforce  
| | France (139,000) – 0.5% of FR workforce |
| Share of total EU employment? | 0.9% of total EU employment |
| In which sectors? | 41.5% construction  
| | 24.6% industry  
| | 32.7% services  
| | 1.2% agriculture |
| Main flows of posted workers? (2014 data, % on total) | Medium/Low- to high wage MS: 47.6%  
| | High- to high/Medium/low -wage MS: 43.3% |
| Where? | 50% in neighbouring countries |
• **Deadline for transposition:** 18 June 2016

• The COM sent letters of formal notice (first stage of the infringement procedure) to 15 MS (NC + CP) (September 2016). MS have two months to reply (November 2016);

• **Situation as of 18/11/2016:** 19 MS have notified measures, including 3 partial transposition

• In case no complete transposition is notified, a reasoned opinion will be sent (second stage). The MS will be given two months to comply (January/February 2017)
## Directive 96/71/EC

- Posting is temporary ("for a limited period")
- No minimum or maximum duration
- Derogations possible for short-term posting
- No specific rule for long-term posting

## Proposal

- Posting is temporary ("for a limited period")
- No minimum or maximum duration
- Derogations possible for short-term posting
- Specific rule for long-term posting: if the posting is envisaged or effectively lasts for more than 24 months, the host MS is deemed to be the country in which the work is **habitually** carried out.
Long Term Posting - process
Applicable legislation

Habitual place is the place of activity if more than 2 years

In absence of choice under ROME I

Company establishment
Other place / contractual link

ROME I
Free choice by the parties

Cannot have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in absence of choice, would have been applicable
## Contract formation

### Performance of the contract

- Linked to wages and remuneration
- Linked to working time
- Linked to work/life balance and leaves
- Linked to Health & Safety at work
- Linked to training
- Etc ...

### Termination of the contract
Long Term Posting - scope

Anticipated duration more than 24 months

- 16 months
- 5 months
- 7 months
### Directive 96/71/EC

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<td>Posted workers should be guaranteed the terms and conditions of employment covering the following matters which are laid down by law and/or by collective agreements which have been declared universally applicable within the meaning of paragraph 8: (c) <strong>the minimum rates of pay</strong>, including overtime rates;</td>
<td>Posted workers should be guaranteed the terms and conditions of employment covering the following matters which are laid down by law and/or by collective agreements which have been declared universally applicable within the meaning of paragraph 8: (c) <strong>remuneration</strong>, including overtime rates. <strong>Remuneration means all the elements of remuneration rendered mandatory in the host MS.</strong></td>
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No change on the calculation process

Home Member State

Wage

Host Member State

Remuneration (all the elements of remuneration rendered mandatory by national law, CA declared universally applicable)

Highest of the two

+ travel, board and lodging
# Remuneration & minimum rates of pay

## Remuneration

### Minimum rates of pay
- Categorisation into pay groups
- Daily allowance
- Compensation for daily travelling time
- Holiday pay longer than 4 weeks

## Allowances and Bonuses

### Seniority allowances
### Supplements for dirty, heavy or dangerous work
### Quality bonuses
### 13th month bonuses
### ...
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| Nothing            | MS have the option to impose that the conditions applied by the **main contractor** are also respected by all the undertakings in a subcontracting relationship with this company.  
*Important condition: this needs to be done in a non-discriminatory way, i.e., it has to apply in the same way to both **national** and **cross-border** subcontractors.* |
Subcontracting

1st Sub contractor
- Application of the elements of remuneration in place / main contractor

Main contractor

Same rule / previous contractor

2nd Sub contractor
### Directive 96/71/EC

| Member States **may** provide that temporary agency workers are guaranteed the terms and conditions which apply to temporary workers at national level. |

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<td>Member States <strong>shall</strong> provide that temporary agency workers are guaranteed the terms and conditions which apply pursuant to Art. 5 of Directive 2008/104/EC.</td>
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### Directive 2008/104/EC: Article 5

The basic working and employment conditions of temporary agency workers shall be, for the duration of their assignment at a user undertaking, **at least those that would apply** if they had been recruited directly by that undertaking to occupy the same job.
A balanced approach

- Ensure and **promote freedom** of provision of services. Prevents risk of eroding support for the Internal Market

- Competition based on quality and fairness. **Non-discriminatory** approach for service providers

- Respect of **national rules** in term of taxes and social security in sending MS. Respect of national wage settings systems
Discussion process

8 March
Adoption Commission proposal

20 July
Commission analysis on subsidiarity
COM(2016)505

10 May
8 weeks feedback
Parliament scrutiny on subsidiarity

Discussion Council & EP
Thank you