



Ms. Elżbieta Bieńkowska

Commissioner for Internal Market, Industry, Entrepreneurship and SMEs

Brussels, 4 December 2017

Dear Ms. Commissioner,

We are addressing you with the request to investigate the matter of the practices of Austrian authorities vis-à-vis service providers from other member states (including the Czech Republic), which was brought to your attention in the written question E-004738-17 submitted by MEP Michaela Šojdrová on the 4th of September.

These practices consist of inspections which in our opinion may be contrary to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC regarding posting of workers.

Based on information which we have from Czech authorities and enterprises, we are concerned about several aspects of the current situation. The inspections may breach the principle of legal certainty, as inspectors evaluate comparable or even identical situations differently. When inspectors qualify service providers as posted workers, the providers are deprived of the possibility of proving that they are genuine service providers. They cannot request the presence of an interpreter nor do they have the possibility to provide additional documents in case inspectors consider the existing ones as insufficient. Furthermore, when inspectors assume that posting workers rules have been breached, they often impose a deposit for the fine in the maximum anticipated amount, which is 20.000€ per person. If the service providers are unable to pay the deposit on the spot, their valuable things are seized. The obligation to pay the deposit usually leads to the service providers' immediate bankruptcy; consequently, the service providers cannot seek judicial review. Moreover, such practices are often deliberately aimed at service providers which are not considered as highly skilled.

In short, the inspections fail to take into consideration the circumstances of each individual case, contravene the principle of legal certainty, and the sanctions are disproportionate and imposed within a single instance administrative procedure without the possibility of administrative recourse. For these reasons we are convinced that the inspections constitute an obstacle to the free movement of services within the internal market and therefore breach EU law.

In its response to written question E-004738-17, the European Commission claimed to be assessing whether the relevant Austrian act on wage and social dumping (LSD-BG) transposes the above mentioned directive correctly. However, the problem persists and we have thus decided to address the European Commission once again, particularly with the following questions:

- 1) In which specific ways is the European Commission investigating the practices of Austrian authorities vis-à-vis Czech cross-border service providers, which it was notified of in the written question E-004738-17?
- 2) Which specific conclusions did the European Commission come to in regard to the assessment of whether or not Austria correctly transposed Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC?
- 3) Which steps does the European Commission intend to take in order to remove this particular obstacle to the internal market?
- 4) For what reason has the European Commission not clarified the situation yet?

We would like to add that the investigation of obstacles to the internal market and their removal should be of utmost priority, especially when the obstacles in question are systematic. For this reason, we would welcome this matter being solved as soon as possible. We are looking forward to receiving your response soon.

Best regards

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