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A yellow card and the political damage

Valentin Kreilinger

Research Fellow at the Jacques Delors Institut – Berlin



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The European Commission made a proposal to revise the Posted Workers Directive, but a “yellow card” was triggered by national parliaments, mainly from Central and Eastern Europe: The decision of the European Commission whether to maintain, amend or withdraw the proposal will be announced on 20 July 2016. EU Commissioner Marianne Thyssen is widely expected to keep the initial proposal intact and overrule the concerns expressed by national parliaments from eleven Member states.

1 The Commission proposal: A revision of the posted workers' directive

Posted workers are posted by their employer in another country and work there temporarily. These workers are covered by the social security regulations of their home country. The employer must pay them only the national minimum wage which is often lower than the industry-specific minimum wages and the wages of local workers. The European Commission's [proposal to amend Directive 96/71/EC](#) tries to clarify working conditions for posted workers and includes, inter alia, an obligation to grant them the same bonuses as domestic workers.

2 The instrument to try to stop the proposal: a “yellow card”

This is only the third “yellow card” since the Early Warning Mechanism entered into force in 2009. This procedure allows national parliaments to submit “reasoned opinions” to the European Commission [in case of subsidiarity concerns about a legislative proposal](#). Reasoned opinions from one third of the EU’s national parliaments are necessary to reach the threshold for a “yellow card”. The European Commission must then reconsider its proposal, but there is no obligation to take the concerns into account and withdraw or amend the proposal.

One reason for the low number of cards is the difficulty to reach the threshold within the given timeframe of eight weeks. In 2012 the first “yellow card” was triggered on the Proposal for a regulation on the exercise of the right to take collective action. The Commission withdrew the proposal, but rejected the subsidiarity concerns. One year later the second “yellow card” was triggered on the proposal for a regulation on the establishment of the European Public Prosecutor’s Office. In that case the Commission decided to maintain the proposal.

3 The old conflict that was stirred up

Ten national parliaments from Central and Eastern Europe (Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia) managed to [form a “regional block”](#) that together with Denmark reached the threshold for a yellow card in the Early Warning Mechanism. As a consequence they stirred up an old conflict between old and new Member states.

4 The Commission between the devil and the deep blue sea

The issue of the Posted Workers Directive has not only been a test for the relationship between national parliaments and the European Parliament (the latter has generally been supportive of the Commission's proposal), but by maintaining the proposal the European Commission also seriously damages its relationship with those national parliaments from Eastern and Central European countries that had issued "reasoned opinions".

In a [recent speech in Bratislava](#), Commissioner Thyssen summarised their most common objections: Firstly, that no EU action would be required (which the EU Commission rejects because of the inherent cross-border nature of posting), secondly, that it would interfere with national competences on remuneration and organising industrial relations (which the EU Commission rejects because the proposal does not harmonize wages or wage setting systems), and thirdly, that it would restrict the freedom to provide services and remove the competitive advantage of lower wage countries (which is not related to subsidiarity).

Dropping the proposal, however, would have infuriated countries like France, where Prime Minister Manuel Valls recently [threatened to stop applying the Directive](#).

There has been no escape for the European Commission from the dilemma. The legislative process will continue now.