

**Question for written answer P-001218/2016/rev.1
to the Commission**

Rule 130

Bogusław Liberadzki (S&D)

Subject: Circumvention of Directive 2003/88/EC by employing nurses and midwives on the basis of civil law contracts

All nurses and midwives are employees according to the definition of the European Court of Justice (ECJ): they provide services during a given time and under the direction of another person (hospital or clinic) in return for remuneration. All nurses and midwives are protected under Directive 2003/88/EC, inter alia in terms of working time (Article 6) and annual leave (Article 7). Under Article 5 of the Polish Act of 14 April 2011 on Therapeutic Activity and Article 19 of the Polish Act of 15 July 2011 on the Occupation of Nurses and Midwives, these professions may be carried out on the basis of civil law contracts. Hospitals and clinics in Poland, for example, generally replace employment contracts with service agreements, meaning that nurses and midwives are increasingly forced to work more than 300 hours a month. Without employment contracts, they have virtually no power to seek protection via the courts because they have to prove that they are employees in the first place.

1. Will the Commission tolerate actions by Member States designed solely to circumvent the rules of Directive 2003/88/EC?
2. Has Poland correctly transposed Directive 2003/88/EC, and what instruments does the Commission have at its disposal to verify and to combat incorrect practices in order to avoid service agreements being used to circumvent the Working Time Directive?