

RESOLUTION
of the Sejm of the Republic of Poland

of 11 May 2012

**on declaring the proposal for a Council Regulation on the
exercise of the right to take collective action within the context of the freedom of
establishment and the freedom to provide services to be incompatible with the principle
of subsidiarity**

Pursuant to Article 148cc of the Standing Orders of the Sejm, the Sejm of the Republic of Poland declares that the proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (COM(2012) 130 final) is incompatible with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union. The proposal infringes the principle of subsidiarity inasmuch as the proposed Regulation – as a legal act binding in its entirety and directly applicable in all Member States – does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than as a result of actions taken at national level. The reasoned opinion, stating the reasons why the Sejm considers that the proposal does not comply with the principle of subsidiarity, is annexed to this Resolution.

MARSHAL OF THE SEJM

Ewa Kopacz

Reasoned opinion of the Sejm of the Republic of Poland of 11 May 2012 stating the reasons why the Sejm considers that the proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services does not comply with the principle of subsidiarity

Having considered the proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services (COM(2012) 130 final), the Sejm of the Republic of Poland declares that the proposal does not comply with the principle of subsidiarity referred to in Article 5(3) of the Treaty on European Union (TEU). The proposal infringes the principle of subsidiarity inasmuch as the proposed Regulation – as a legal act binding in its entirety and directly applicable in all Member States – does not guarantee that the objectives of the proposed action would be better achieved at the European Union level than as a result of actions taken at national level.

Pursuant to Article 5(2) of the TEU, the European Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States. The proposed Regulation aims to clarify the general principles and applicable rules at the European Union level with respect to the exercise of the fundamental right to take collective action, including the right to strike, within the context of the freedom to provide services and the freedom of establishment, including the need to reconcile them in practise in cross-border situations. According to the European Commission, this objective requires action at the European Union level and cannot be achieved by the Member States alone. When submitting the proposal for a Council Regulation, the European Commission assumed that a regulation would be the most appropriate legal instrument to clarify the general principles and applicable rules at the European Union in order to reconcile the exercise of fundamental rights with economic freedoms in cross-border situations.

The Sejm expresses its reservations concerning the possibility to achieve the objective pursued under the proposal for a Council Regulation. The Regulation proposed by the

European Commission may not be regarded as a draft legal act that would sufficiently “clarify” the mutual relationship that should exist between the above-mentioned economic freedoms and social rights. To a considerable extent, the proposed Regulation is a declaration reiterating the settled case-law of the Court of Justice of the European Union. According to the case-law of the Court, the right to take collective action should be recognised as a fundamental right, forming an integral part of the general principles of EU law which the Court ensures, although the exercise of this right may be subjected to certain limitations e.g. in terms of the freedom to provide services. Therefore, the proposed Regulation does not provide any added value in that respect, but only confirms the current legal status. Consequently, the Regulation is not going to contribute to achieving the pursued objective, i.e. clarifying (establishing) the relationship between the right to take collective action and the principles of freedom of establishment and freedom to provide services.

The Sejm has doubts as to whether a regulation is an appropriate legal instrument to provide a general “clarification” of the complex subject-matter referred to in the case-law of the Court of Justice of the European Union. A non-binding act would be a more favourable measure in that respect. It should also be stressed that mechanisms for settlement of collective disputes exist and function in the Member States of the European Union. Regulating the matter by means of a European Union regulation would impose mandatory rules which cannot be arguably justified as being more effective than actions taken at national level. On that basis, the Sejm contests the compatibility of the proposed legal act with the principle of subsidiarity.