(*Courtesy translation)*

PARLIAMENT OF ROMANIA

CHAMBER OF DEPUTIES

DECISION

regarding the adoption of the reasoned opinion on the Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services

COM(2016) 128

Pursuant to the provisions of Articles 67 and 148 of the Romanian Constitution, republished, of Law No. 373/2013 on cooperation between the Parliament and the Government in the area of European affairs and of Article 160 – 185 of the Regulations of the Chamber of Deputies, republished,

The Chamber of Deputies hereby adopts the present Decision.

Sole Article. – Having regard to the draft Opinion 4c-19/371 adopted by the Committee for European Affairs at its meeting of 5 April 2016, the Chamber of Deputies:

1. Notes that the conditions established by the treaties are accomplished so that the proposal should make the object of the parliamentary control of subsidiarity: it has a legislative character and belongs to the category of competences which are not exclusive to the EU according to the stipulations of Article 4, para (1), Article 5, para (2) of the Treaty on the European Union and respectively, Article 2, para (6) of the Treaty on the Functioning of the European Union.

2. Finds that the transnational aspects are obvious, which would justify an action, at the level of the European Union, to achieve the objectives, if they were, in real terms, in agreement with the values, principles, the treaties of the Union as well as with the political commitments assumed by the Member States, in order to achieve the economic and social convergence in the entire Union.

3. Takes note of the valid and substantial considerations regarding the usefulness of the proposal, from the perspective of the criterion of the deficient national action, but not from the perspective of the criterion of added value.

4. Notes that the legal basis of the proposal does not suit entirely the contents of the regulation, as the modifications are based on Articles 56 and 59 of the Treaty on the Functioning of the European Union which aim at eliminating the restrictions on the

freedom to provide services within the Union, in respect of nationals of Member States who are established in a Member State other than that of the person to whom the services are intended, and the proposal itself concerns, at least at declarative level, the workers' protection.

5. Considers that any modification of the current regulations must observe the stipulations of Article 56 of the TFEU, which imposes the elimination of any provisions which could prevent or make less attractive the activities of the services provider established in another Member State than that where he/she supplies services, a situation which is also valid when the respective provisions apply, without discrimination, both to the national providers of services and to those of other EU Member States.

6. Reminds the fact that the decisions of the EU Justice Court which acknowledged that the workers' protection is an imperative objective, of general interest, which could justify obstacles on the way of service providing, but only on condition that they should be appropriate and proportional so that to ensure the achievement of the pursued legitimate objectives, respectively, not to exceed what is necessary for their attainment.
   In this context it considers that first of all, it would be necessary to evaluate the effects of the transposition of the stipulations of the Directive 2014/67/EU, by the EU Member States, and subsequently, on account of the conclusions of this evaluation, modifications and/or completions of the text of the Directive 96/71/EC should be proposed.

7. Reminds that the jurisprudence of the EU Justice Court established that discrimination means that persons who are in comparable situations are treated differently and that the posted workers are in a different situation as compared to the local workers. Therefore, it underlines that the differences of wages between the posted workers and the local ones cannot be treated as discrimination.

8. Reminds that the posted workers' percentage is of only 13% of the total number of the mobile workers and most of them are legally posted. It also reminds that out of the total number of workers, those who are posted from states whose wages are under the Union's average represent only 0.3% and the posted workers from low wages states represent only 50% of the posted workers' total number. That is why serious doubts are expressed as to the European Commission's arguments regarding the necessity of the regulation and therefore, regarding its added value.

9. Reminds the fact that the current provisions of the Directive 96/71/EC on the minimum wages settle already a necessary framework for ensuring a loyal competence between the employer who posts workers and other providers of the host country.

It appreciates the fact that the differences brought about by bonus payments, allowances, pay-rises and others are not as high as to justify the regulation action of the European Commission, which is translated by a deficit of added value.

10. Notes that although the European Commission motivates its proposal on Article 31 of the Charter of Fundamental Rights which stipulates the right to working conditions which should observe the worker's health, safety and dignity, a limitation of the maximum duration of work, the daily and weekly rest time and the annual period of paid holiday, however it ignores article 15 of the Charter which refers to the freedom to choose an occupation and the right to engage in work.

    It also draws the attention on the fact that the workers cannot exercise the rights stipulated at Art. 15, as *de facto* they are not permitted to accept a certain payment for the delivered services.

11. Considers that the stipulations of Art. 2 and of Art. 5 of Protocol 2 on the application of the principles of subsidiarity and proportionality, regarding the obligation of the European Commission to organize large consultations with the interested parties and to take into account the regional and local dimension of the stipulated actions and respectively, the obligation to found its arguments which prove the observance of the subsidiarity principle on qualitative and quantitative indices, are not entirely observed.

    In this respect, it notes that even the impact study shows that there are not enough statistic and comparable data regarding a great part of the proposals, as for example, the number of the posted workers for more than 24 months and also regarding the proposed measures for subcontracting, being thus presented only estimations.

    Notes that the impact study does not demonstrate the existence of an ample phenomenon which should require an action at the EU level.

    Takes note and is surprised that, in spite of the repeated requests of the European social partners to be consulted before the adoption of the proposal, the Commission has not given an answer yet.

    Notes that the impact study shows that some adverse effects of the proposal may exist, especially regarding the loss of some contracts for services for the providers of low wages states or a general increase of the cost of services which are cross-border rendered, without however, deepening these aspects and without making a rigorous analysis of the financial implications for the EU internal market.

    It notes that the impact study omitted the additional costs involved by the transport, accommodation, information on the applicable regulations, translation of some documents, etc., which must be borne by the service provider who posts workers.

It notes that although the impact study makes reference to the intention of ensuring an equal treatment between the posted workers and the national ones so that the posted worker should be treated like an EU mobile worker in the host Member State, according to Art. 45 of the TFEU, there is not an analysis of the way these modifications will interfere with the stipulations of Regulations 492/2011/EU on the workers' free circulation or with the Directive 2014/54/EU on improving the application of their rights. It is not explained either how a posted worker could be equal to a national one, if the posted one is refused, by an act of will, to accept certain salary rights.

12. Notes that in agreement with the current regulations, the Member States can take adequate measures in order to ensure the equal treatment of the temporary posted workers with that of the national temporary ones.

    Takes note of the fact that according to the impact evaluation, a number of 15 Member States have decided to use this option so far. That is why it considers that modifying the legal stipulations of the European Union in this matter is not justified and it is not necessary.

13. Considers that the new regulation on sub contraction will have as an effect the use of collective conventions which do not meet the criteria of universal application; also it could be necessary to use non-universal collective conventions in the Member States which have already declared to use collective conventions universally applicable. That is why it considers that the intervention at the EU level, in order to widen the applicability domain of the Directive proposal is not justified and it is not necessary either.

14. Reminds the fact that regarding the compulsory application of the general posting regulations when the posting is achieved by temporary working agents, the host Member State has, at present, the possibility to impose the temporary working agents of other Member States, the same regulations as those which are applicable to the national ones. That is why it considers that the impact of the Directive proposal is unclear and does not seem to fit the purpose.

15. Takes note that, in accordance with the current provisions of the Directive 96/71/EC, the Member States have the possibility to extend the applicability domain of the collective conventions or of the arbitral sentences which have been declared as being universally applicable to all sectors; the impact study notices that only 4 member States have decided not to use this option.

    Considers that, under these circumstances, it is not necessary to impose such an obligation at the level of the European Union.

16. Underlines the fact that replacing the phrase "*minimum salary*" by that of "*remuneration*" can entail legal uncertainty, as this is a notion which can be

extensively interpreted and it does not come out clearly whether the remuneration is considered an amount which resulted from the obligatory elements of remuneration which the worker has to receive or as an imposed obligation to observe the salary structure of the host state for the providers of services of other Member States.

It considers that in the first situation the conclusions of the study and the relevant jurisprudence of the EU Court of Justice are not fully used and in the second situation, the services provider must obligatorily observe other remuneration elements.

Draws the attention on the fact that discrepancies would appear among the Member States, taking into consideration that each Member State will have to indicate the definition and the composition of this remuneration, within its own legislation.

Notices the fact that it is not enough clarified the notion of calculus basis which will be established for the payment of the social fees, taxes and contribution by the entrepreneurs who post workers in other Member States.

17. To conclude, it considers that if the proposals formulated by the Commission were adopted, barriers would be created on the way of the free provision of services and of the labor force mobility.

18. Underlines that the remarks and doubts expressed in the adopted Decision, further to the analysis, completes the current reasoned opinion.

19. Considers that the Directive proposal does not have enough added value and consequently, it decides that the principle of subsidiarity is infringed, mainly from the perspective of the usefulness of the regulation.

This Decision was adopted by the Chamber of Deputies at the session of 13 April 2016, in compliance with the provisions of Art. 76 (2) of the Romanian Constitution, republished.

PRESIDENT
OF THE CHAMBER OF DEPUTIES

Valeriu Ştefan ZGONEA

Bucharest, 13 April 2016
No. 38