



**Parliament of Romania
Chamber of Deputies
Committee for European Affairs**

Bucharest, 5th of April 2016
No. 4 c-19 / 372

**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**

In compliance with the provisions of Article 170(1) of the Regulations of the Chamber of Deputies, reissued, the Committee for European Affairs and the Committee for Labour and Social Protection were requested to examine 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.

Having regard to:

- The Report prepared by Mrs. Ana BIRCHALL, Member of the Parliament, Chairwoman of the Committee,
- The Note of the Ministry of Labour, Social Protection and the Elderly,
- The Note of the Ministry of Economy, Commerce and Relations with Business,
- The Note of the Ministry of Foreign Affairs,
- The Note of the Presidential Administration – Department for European Affairs,
- The Messages of Romania's Representation to the European Union European Union,
- The Draft Report on social dumping in the European Union - (2015/2255(INI)) of the Committee on Employment and Social Affairs of the European Parliament,
- The Study commissioned by the European Parliament "EU Social and Labour Rights and EU Internal Market Law", PE 563.457, published in September 2015,
- The Study commissioned by the European Parliament "Exploring New Avenues for Legislation for Labour Migration to the European Union", PE 563.452, published in 2015,
- The Study commissioned by the European Commission "Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive

96/71/EC in a selected number of Member States and sectors”, published in January 2016,

- The Information Sheet of the Department for the European Union of the Chamber of Deputies,
- Contributions of our own Secretariat,

The Committee for European Affairs:

1. *Supports* all the provisions of the proposed Directive aimed at protecting posted workers against any form of abuse and exploitation and limiting the employers’ possibility to maximise their profits by onerous means, in particular by undeclared work, bogus self-employment, outsourcing and subcontracting;
2. *Points out* that the setting up of “letter box companies” in low taxation countries – indicated in the proposed Directive as an example of abuse – is rather a matter of fighting tax evasion, an area where, despite recent regulatory efforts, the European Union still lags behind;
3. *Supports* the proposal made in the Draft Report (2015/2255(INI)) of the Committee on Employment and Social Affairs of the European Parliament, for a public list to be drawn up of enterprises responsible for serious breaches of EU employment legislation;
4. In the context whereby the underground economy accounts for 9% to 21 % in high-wages Member States and the number of undeclared workers is estimated to be 20 times higher than that of posted workers, *believes* that undeclared work is the most serious form of unfair competition and that, compared to this, certain implementation errors in posting workers are insignificant and would be easier to correct by improved implementation of Directive 96/71/EC, as amended by Directive 2014/67/EU;
5. *Considers* that it is possible to strengthen administrative cooperation and application by the relevant authorities from the Member States of administrative and control measures leading to improved protection of posted workers; relative to fighting abuse and fraud, *reminds* that sufficient instruments have been adopted at European level (in particular Directive 2014/67/EU), which, if fully implemented, would produce the expected results;
6. *Believes* that companies taking advantage of wages gaps between Member States and using posting of workers as a method to exploiting such gaps is not improper, but rather normal behaviour, typical for the market economy (investments are decided based on the same principle of exploiting the differences between various markets); moreover, investors are also looking to take advantage of different taxation regimes, and the recent progress made by the EU in the area are still incipient;
7. *Believes* that a convergence of wage levels can only be achieved through an economic development process and that the proposed Directive will not succeed in implementing “the principle of equal pay” through the proposed measures, but will rather push many businesses from the new Member States out of the internal market and cause serious job losses;

8. *Points out* that wage reduction in strong economy countries is mainly driven by the need to maintain the competitiveness of European companies in the context of a global economy, which has nothing to do with the posting of workers from EU Member States;
9. *Reminds* that the European Union enlargement with former “iron curtain” states represented a historic reparation for these states and a commitment made at the highest level by the Union and its Member States that the convergence process would be substantial and continuous; *Believes* that, once the European Union has demonstrated it can overcome extraordinary crises, such as the financial crisis of 2008, no other reasons exist to disrupt the convergence process;
10. *Is surprised to find out, expresses its concern and regrets* that some highly developed Member States have insisted on revising Directive 96/71/CE, even before the full implementation of the Enforcement Directive 2014/67/; *believes* that such insistence is due to domestic policy difficulties and public pressure, yet this transfer of domestic issues to the level of the European Union, and from the Union to less developed Member States, **cannot be accepted**; therefore, **welcomes the efforts of Member States opposing the revision of Directive 96/71/CE**;
11. *Recalling* the contents of Article 3(1) TEU: “*The Union's aim is to promote peace, its values and the well-being of its peoples*”, *observes* that, in reality, the proposed Directive is *de facto* aimed at increasing the wellbeing of the developed Member States, where wages are higher, to the detriment of the citizens of the less developed Member States, where wages are lower;
12. *Recalling* the contents of Article 3(3) TEU: “*The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress...*”, *believes* that the proposed Directive meets neither the high competitiveness, nor the full employment or the social progress requirement;
13. *Observes* that, though correctly refers to Article 3 of the TEU (stating that the Union promotes social justice and protection) and Article 9 of the TFUE (stating that the Union has the task of promoting high levels of employment), the **European Commission is biased in interpreting the meaning of these provisions**, to the extent to which higher employment rates can also be achieved by hiring workers who are then posted, not only by hiring local workers; in consequence, **believes that the proposed Directive's stated objective to develop a deeper and fairer single market is not achieved**;
14. *Recalling* the contents of Article 27 TFUE on the internal market: “*... Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market...*”, *believes* that these provisions are being breached, given that **the European Commission did not consider in its initiative the situation of less developed Member States**;

15. **Believes that the principle of “equal pay for equal work” is incompatible with the single market, and that pay rate differences constitute one legitimate element of competitive advantage for service providers;**
16. *Believes* that introducing the so-called “equal pay for equal work” is not the right solution for dealing with abuses; *believes* that this principle is politically disuniting, counter-productive in terms of the freedom to providing services across the EU and, furthermore, it poses highly contentious problems as to its practical applicability, interpretation and compatibility with existing regulations;
17. *Points out* that the disappearance of many job offers may generate severe social impacts in the states that post workers on a large scale, and may cause social unrest and imbalances, at a time when the Union is already confronted with a number of acute crises and with the rise of anti-European populist politics;
18. *Points out* that less developed Member States are also confronted with domestic issues, in particular caused by the migration of highly-skilled workforce to strong economies that pay higher wages, thus solving their labour shortage and economic development issues; *notes* that the Member States subject to “*brain drain*” never insisted for the Union to regulate to stop this phenomenon or to instate a fair compensation system, not even when they held the rotating presidency of the Council;
19. *Points out that* the European Commission’s argument that “*significant differences in wages distort fair competition between companies, thus undermining the good functioning of the single market*” could alternatively be read: “by cancelling wage-based competition, the protection of high-pay workers may lead to an increased wages gap between various states or regions of the European Union, thus affecting the convergence process”; *believes* that the increase rather than reduction of gaps in pay rates is a failure of the convergence process and the cohesion policy, therefore workers and companies should not be penalized for this;
20. *Acknowledges* that, in 2015, at least 50,000 Romanian workers were temporarily posted in European Union Member States and the European Economic Area. Thus, Romania ranks among the Member States that send significant numbers of workers; *acknowledges* that this activity generates significant contributions to the state budget and contributes to the economic development;
21. ***Objects*** to the use in the Draft Report 2015/2255(INI) of the Committee on Employment and Social Affairs of the European Parliament of the words “social dumping” for posted European workers, since the pressure to reduce pay rates may be generated by any type of competition; ***proposes the replacement of the phrase “social dumping” with “wages gap”, in order to avoid confusion and negative connotations;***
22. *Points out* that the objective to ensure “social dumping” is not tolerated in the European Union may be compliant or in compliant with the Union’s Treaties, depending on the definition and interpretation of the phrase “social dumping”: a) an onerous organised action, with the features of a crime or speculation or b) an individual, natural action to search for better employment opportunities on a free internal market; *finds* that this

differing interpretation is also a source of legal uncertainty;

23. *Points out* that the “anti-social dumping” measures may impact on the EU’s investment policy, since investors will not be persuaded to invest in Member States or strongly developed regions, but continue to go for those Member States and regions where they can obtain competitive advantages; **reminds that the EU has launched ample policies encouraging investment and it would not be consistent to create advantages for investors, on the one hand, and to block their access to cheaper labour, on the other hand**; for this particular reason, *believes* that the European Commission’s opinion that “A modernised legislative framework for posting of workers will contribute to creating transparent and fair conditions for the implementation of the Investment Plan for Europe” is not supported;
24. *Notes* that the aim of ensuring a level-playing field for all competing services providers is unilaterally achieved, by the levelling of wages, though other types of professional gaps are permitted, such as superior *know-how* of high-tech experts, higher qualifications, easier adaptation to the professional environment, including in relation to employment relations;
25. *Reminds* that the so-called unfair competition between posted workers and the better paid local workers equally affects workers on standard employment agreements from sending Member States and the workers posted for more than 24 months who, by the limitation to 24 months of their legal status as posted worker, become local workers *de facto*;
26. *Reminds* the Member States that support the proposed Directive that workforce gaps exist in some sectors or sub-sectors of their own economies and that it would be regrettable to favour the closure of this gap with workers from outside the European Union;
27. *Welcomes* the fact that the revised version of the Directive concerning the posting of workers will continue to provide that “companies established in a non-EU state should not receive a better treatment than the companies established in a Member State”; *believes* that it is indeed fair for the Member States to apply to sending companies established in third countries at least the same requirements as applied to sending companies established in a Member State;
28. *Points out* that, lately, the number of part-time and fixed-term contracts (dubbed “zero hours” contracts) has increased exponentially, and that these contracts that afford limited rights to local workers are by no means superior to the posting contracts, except, perhaps, by the pay levels provided;
29. *Considers* that the investment-shyness caused by persisting risks in the financial markets and inconclusive economic development perspectives in the case of many developed Member States will persist and this will perpetuate and even amplify the number of employees – employers agreements whereby employees waive certain rights in order to safeguard their jobs; **underlines that, in this context, revising Directive 96/71/CE is not justified or, in other words, the added value of the proposed amendment of Directive 96/71/CE is insufficient to support the Commission’s regulatory efforts**;

30. *Recalling* the principle that no new mechanisms should be created before fully using the old ones, *believes* that, before initiating any discussions on modifying the rules established by Directive 96/71/CE, it is adequate to first implement Directive 2014/67/EU of the European Parliament and the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, followed by an effective assessment of the applicable regulatory framework;
31. **To conclude, *believes* that, in the wider context of encouraging investment, economic growth and ensuring well-being of all European citizens, the European Commission’s initiative is inopportune and introduces separation lines between the Member States, contrary to the European spirit and the Union Treaties; *draws attention* to the danger that, by introducing supplementary barriers, the European Commission’s initiative may impact upon the free provision of services and workers’ mobility and, implicitly, upon the good functioning of the internal market;**
32. **In consideration of the above, *believes* that the proposed Directive does not meet the requirements of subsidiarity and proportionality and, for this reason, has adopted a Reasoned Opinion that supplements the observations and reservations formulated in the Opinion.**

The Committee for European Affairs, meeting in session on the 5th of April 2016, with the participation of 14 of its 22 members, unanimously decided to adopt the Opinion herein and have it transmitted to the Standing Bureau of the Chamber of Deputies, in order to complete the Parliamentary examination procedure.

Proposes forwarding the Opinion to the Government of Romania for the application of Article 3(2) of Law no. 373/2013 on the cooperation between the Government and the Parliament in European affairs.

Proposes informing the European Union’s institutions on the Committee’s observations and recommendations, as a contribution to the process of formulating efficient policies in this area.

Furthermore, proposes forwarding its observations/recommendations to the European Commission, as part of the informal political dialogue proposed by the European Commission in its Communication “Delivering the results for Europe”, COM (2006) 211.

Chairwoman,

Ana BIRCHALL

Red. DM