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NATIONAL ASSEMBLY

CONSTITUTION OF 4 OCTOBER 1958

FIFTEENTH LEGISLATURE

Recorded in the Presidency of the National Assembly on 19 October 2017.

MOTION FOR A EUROPEAN RESOLUTION

on the posting of workers within the European Union,

(Referred to the Social Affairs Committee, failing the appointment of a special committee
in the time period set down by Articles 30 and 31 of the Rules of Procedure)

INTRODUCED,

ON BEHALF OF THE EUROPEAN AFFAIRS COMMITTEE,

BY MRS. TYPHANIE DEGOIS,

Rapporteure,

MOTION FOR A EUROPEAN RESOLUTION

Single Article

The National Assembly,

Having regard to Article 88-4 of the Constitution,

Having regard to Articles 53, 57 and 62 of the Treaty on the functioning of the European Union (TFEU),

Having regard to Articles 151 and 153 of the Treaty on the functioning of the European Union,

Having regard to 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,

Having regard to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 concerning the implementation of Directive 96/71/EC on 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 (“the IMI Regulation”),

Having regard to Regulation (EC) n° 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of the social security systems,

Having regard to Regulation (EC) n° 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) n° 883/2004 on the coordination of the social security systems,

Having regard to a proposal for a European Parliament and Council Directive amending Directive 96/71/EC of 16 December 1996 of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services, (COM(2016) 128 final),

Considering that, in an internal market where the freedom of establishment and the freedom to provide services are guaranteed, the posting of workers, a corollary of these freedoms and an instrument for promoting European mobility, can help improve the matching of labour supply and demand within the Union;

Whereas the objectives of the European Union in the area of social issues calls for a framework governing the terms for the posting of workers in order to guarantee, on the one hand, conditions for fair competition and to protect, on the other hand, posted workers;

Whereas the European Union's intervention on this issue represented, in 1996, significant progress in the harmonisation of practices observed in each Member State, and although the principles set out in the Directive are still valid today, the economic, social and legal contexts have changed considerably and require an update of the reference Directive;

Whereas in this perspective, it is important to maintain a fair balance between the need to preserve the framework for a free and fair competition between economic players and the need to achieve effective minimum protection of European workers pursuing, on a temporary basis, their professional activity in another Member State than their own;

• *On the proposal for revision of the Directive submitted by the European Commission*

Considers that if the posting of workers brings economic potential, both for businesses and European workers, use of this scheme for unfair competition purposes within the internal market must be opposed, and the principle of fair cooperation between Member States reaffirmed and implemented;

Regrets, in this respect, that the enlargement of the European Union to Eastern and Central European States was not accompanied by an amendment to the Directive so as to adapt it to reflect the new economic conditions arising from this enlargement;

Welcomes, therefore, the European Commission's initiative of March 2016 to modify the applicable framework for the posting of workers and supports the purpose of the proposed revision of Directive 96/71/EC;

- On the legal basis of the Directive

Supports extending the legal basis of the Directive to add to Articles 53 and 62 of the TFEU on the free movement of persons, services and capital - on the basis of which the 1996 Directive was adopted - Articles 151 and 153 relating to the European Union's social policy;

Recalls that the legal basis of a legislative act by the European Union provides the basis for the analysis carried out by the Court of Justice of the European Union when it is asked to rule on a dispute relating to the application of the act; underlines that, in this perspective, the social dimension introduced by the extension of this legal basis is likely to make it easier to reconcile the need for the internal market to function satisfactorily and the need for worker protection;

- On the management of posting periods

Endorses the reaffirmation by the European Commission of the temporary nature of the posting and welcomes the introduction of a maximum period, at the end of which the scheme set out in the 1996 Directive ceases to apply to the worker;

Stresses, however, the inherent methodological difficulties in setting a threshold and underlines the diversity of posting contexts as well as the average time periods observed according to areas of work and/or worker profiles;

Notes that Member State positions on this issue vary greatly but believes that the proposal from the French authorities to set the maximum posting period to twelve months deserves to be supported, because it gives full meaning to the temporary nature of the posting;

- On the Directive's scope

Supports the proposal of the European Union to widen the scope of the 1996 Directive to all areas of activity;

Recognises that, although road transportation should not be excluded from the scope of the Directive, consideration should be given to the specific characteristics of international road transport conditions, and the implementing provisions of the Directive for this sector should be set out in a specific text;

- On the amendments submitted by the European Commission concerning remuneration, temporary labour and subcontracting

Highlights the essential nature of the proposals submitted concerning remuneration and especially welcomes replacing the words “remuneration” by “minimum rates of pay”, as well as applying the national regulatory and legislative provisions or generally applicable collective agreements on remuneration;

Notes with pleasure that the proposal helps to better define the components of remuneration paid to workers and, given its wider scope, limits certain practices consisting of abusive deductions;

Calls however European institutions to go a step further by giving careful consideration to the housing conditions of posted workers and, given the findings from control operations, supports the request to include, in the “set core” provided for in Article 3 of the 1996 Directive, a reference to decent housing conditions;

Endorses the proposal submitted by the European Commission on temporary work, which provides substance to the principle of “equal pay for equal work” and reaffirms the necessary guarantee of equal treatment of workers within the internal market, a condition for fair competition between European companies;

Welcomes the provisions introduced on subcontracting but regrets that the implementation of the suggested obligations in the proposal is left to the discretion of Member States, with the risk that competition between European companies may be distorted;

- On the need to strengthen the monitoring and the fight against fraudulent postings and to improve the cooperation framework between Member States

Considers that the posting of workers can represent an economic opportunity, both for companies and workers, and that it is important that principles set out at the European level be applied in a systematic and standard fashion in each Member State;

Notes that the principles set out in Directive 96/71/EC are not always respected and that the most common infringements of this Directive relate to its fundamental principles and undermine workers' rights guaranteed in its "set core";

Underlines that strengthening the framework and the means to fight abuses is a pressing need but notes that the provisions relating to fighting fraud, circumventions and abuses are specified in the 2014 implementing directive and therefore do not fall under the scope of the 1996 Directive, the revision of which is proposed by the European Commission;

Supports the proposal submitted by the French authorities to use the European Platform Tackling Undeclared Work in order to improve administrative cooperation between Member States and make employer obligations easier to understand;

Invites the European Commission to specify, expeditiously, the form, the missions and the operating principles that could be used for the proposed European Labour Authority, especially as regards the scheme for posted workers;

Expresses its confidence in the European institutions so these can ensure the complete effectiveness of the proposed directive by respecting, on the one hand, the principles of fair cooperation and non-discrimination and, on the other hand, the principles of justice and social protection embodied in the treaties.