

**REPORT 5/2012 BY THE JOINT COMMITTEE FOR EU AFFAIRS, DATED MAY 8, 2012, ON THE COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY BY THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ENFORCEMENT OF DIRECTIVE 96/71/EC CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES (TEXT WITH EEA RELEVANCE) [COM (2012) 131 FINAL] [2012/0061 (COD)] {SWD (2012) 63 FINAL} {SWD (2012) 64 FINAL}.**

**BACKGROUND**

**A.** The Protocol on the application of the principles of subsidiarity and proportionality attached to the Lisbon Treaty of 2007, in force since December 1st, 2009, establishes a procedure allowing national parliaments to verify European legislative initiatives' compliance with the subsidiarity principle. The said Protocol has been developed in Spain by Act 24/2009, of December 22, amending Act 8/1994, of May 19. In particular, new articles 3 j), 5 and 6 of Act 8/1994 are the legal basis for this report.

**B.** The Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, has been adopted by the European Commission and conveyed to national Parliaments, which have a period of eight weeks to verify the subsidiarity check of the initiative, being the deadline May 22, 2012.

**C.** The Bureau and the Spokespersons of the Joint Committee for EU Affairs agreed on April 17, 2012, to examine the said European legislative initiative, appointing to that end Senator Mr. Ramón Ortiz Molina as rapporteur and requesting the Government the report envisaged in section 3 j) of act 8/1994.

**D.** So far written reports have been received from the Government and from the Regional Parliaments of Aragón, the Basque Country, Extremadura and Castilla y León, in which they considered the European legislative initiative examined to be in compliance with the subsidiarity principle.

The Government's report underlines that the principle of subsidiarity is complied with since the differences and disparities in the implementation and enforcement of Directive 96/71/CE have hindered the fulfilment of the its goals. Hence, the necessary intervention of the Union in this regard. Moreover, the principle of proportionality is likewise guaranteed since this initiative is based on the Member States' action without imposing unnecessary or excessive administrative burdens on the Member States.

E. The Joint Committee for EU Affairs, in its meeting held on May 8, 2012, adopted the following

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1.- Article 5.1 of the Treaty on the European Union indicates that *“the use of Union competences is governed by the principles of subsidiarity and proportionality”*. According to Article 5.3 of the same Treaty, *“under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall only act in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”*.

2.- The examined legislative proposal is based on Articles 53 (1) and 62 of the Treaty on the Functioning of the European Union.

*“Article 53 (1) : In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as selfemployed persons.*

*Article 62: “The provisions of Articles 51 to 54 shall apply to the matters covered by this Chapter”*

3.- The problems detected with regards to the enforcement of Directive 96/71/CE are related to the provisions of Article 3 (3) of the Treaty on the European Union (according to which, the Union shall establish an internal market, based on a highly competitive social market economy, aiming at full employment and social progress); and with the provisions of Articles 56 (prohibiting restrictions on freedom to provide services within the Union in respect of national of Member States) and 151 (setting as an objective proper social protection) of the TFEU.

The differences and disparities in the implementation and enforcement of Directive 96/71/CE among different Member States are detrimental to its efficiency and good functioning. Moreover, they make it very difficult, and even impossible, to set up the necessary framework of loyal competence for service providers, and therefore it is not guaranteed that workers posted for a provision of services enjoy the same level of protection established in the Directive.

Therefore, and given that the objectives of the proposed action cannot be sufficiently achieved by the Member States, it is necessary for the Union to act as proposed by the examined proposal for a Directive.

## **CONCLUSION**

**For the aforementioned reasons, the Joint Committee for EU Affairs considers that the Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the Framework of the provision of services complies with the subsidiarity principle laid down in the Treaty on the European Union in force.**