



Parlamentul României

Bucharest, 4th May 2016

Courtesy translation

REASONED OPINION

of the SENATE OF ROMANIA

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 final

The Romanian Senate:

I **Appreciates** the efforts of the European Commission to combat unfair practices, to provide workers in the European Union a decent living, an increased social protection and higher level of wages and to promote the principle of "equal work carried out in the same place it should be paid in the same mode".

II. **Considers** that:

- a. The proposal violates the article 2 of the Protocol No. 2 on subsidiarity and proportionality annexed to the Lisbon Treaty.
Before proposing the legislative acts, the European Commission should propose a large consultation and should analyse the regional and local dimension of the envisaged action.
These deficiencies have been reported by several Member States:
 - the lack of a social impact assessment in terms of job losses and the elimination of providers of services, on different labor markets; the need to clarify the impact on SME's and to reflect the interests of all stakeholders;
 - the lack of any reliable data on the number of posted workers for periods longer than 24 months. Thus, an proposal of the European Commission to amend Directive 96/71 / EC could create the effect of an inadequate regulation which may interfere with the process of posting in the EU, implicitly with the freedom in providing the services and the labor mobility.
- b. The proposal infringes the article 5 of the Protocol no. 2 annexed to the Lisbon Treaty, which mentions that any draft legislative act should contain a detailed statement in order to assess the compliance with the principle of subsidiarity and proportionality.

This sheet must include the assessment of the proposal in terms of financial impact. In addition, the preparation of such legislation should take into account the need to minimize any financial or administrative burden falling upon the Union, national governments, regional or local authorities, economic operators or citizens. The impact assessment issued by the European Commission does not contain a rigorous analysis of the financial implications of the project for the EU internal market, including companies that post workers and recipients of such services. EC has not proved that the administrative burden of the proposed Directive is proportionate to the aim pursued.

- c. Although the changes are based formally on Articles 56 and 59 TFEU , given that it aims to eliminate the restrictions on freedom to provide services within the Union in respect of nationals of Member States established in another Member State, the proposal itself aims more protection of workers , resulting in a mismatch between the legal basis of the proposal and the aims of the proposed measures.
- d. The Directive on the enforced application of the Directive 96/71/EC, more exactly the Directive 2014/67/EU, already provides more drastic new tools , in order to combat and punish any circumvention, fraud and abuse , and to increase the capacity of Member States to monitor the working conditions and to ensure compliance with the applicable rules. Consequently , the proposal to amend the Directive 96/71 / EC is premature and there is convenient to be postpone any proposal to amend it until the deadline for transposing the Directive on the enforcement application of Directive 96/71/EC, after performing a serious and careful evaluation of its effects .

III. Given the above, the Senate considers that the proposal does not comply with the principles of subsidiarity and proportionality.

p. President of the Senate



Ioan CHELARU