PARLIAMENT OF ROMANIA

**CHAMBER OF DEPUTIES**

**DECISION**
**On the adoption of an opinion on the Communication from the Commission to the European Parliament, the Council and the national parliaments on the proposal for a Directive amending the Posting of Workers Directive, with regard to the principle of subsidiarity, in accordance with Protocol No 2**
**COM(2016)505**

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

the **Chamber of Deputies** hereby adopts this Decision.

Sole Article.
— Having regard to Opinion No 4c-19/1148, adopted by the Committee for European Affairs at its meeting of 4 October 2016, the Chamber of Deputies:

1. Maintains the objections and observations set out in the reasoned opinion and in its 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.

2. Recalls that within the time limit laid down in Article 6 of Protocol No 2, 14 parliamentary chambers in 11 Member States (Bulgaria, Czech Republic, Croatia, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia) issued reasoned opinions, triggering the 'yellow card' procedure provided for in Article 7(2) of Protocol No 2 and expresses the hope that the text put forward by the Commission will be withdrawn.

3. Recalls that on 20 July 2016 the Commission concluded that its proposal of 8 March 2016 for a targeted revision of Directive 96/71/EC on the posting of workers complied with the principle of subsidiarity enshrined in Article 5(3) TFEU and that a withdrawal or an amendment of that proposal is not required, as had been maintained.

4. Recalls that on 20 July 2016 Frans Timermans, First Vice-President of the European Commission, and Marianne Thyssen, Member of the European Commission, sent the President of the Chamber of Deputies a letter (C(2016)4824), in response to the observations submitted within the reasoned opinion and opinion of the Chamber of Deputies.

5. Welcomes the reaffirmation by the Commission of its prioritising the strengthening of links and creating a new partnership with national parliaments as a way of bringing the European Union closer to its citizens, its interest in creating a climate of mutual understanding and effective channels of communication between the national and European levels, and its commitment to ensuring that national parliaments have a strong voice in European decision-making; expresses its confidence, given the important nature of relations between the

Commission and national parliaments, in the ability of the Commission to translate this objective into reality.

6. Notes the Commission's use of direct talks held with national parliaments during meetings of the Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union (COSAC); recalls, however, that at the meeting of 11 July 2016 Marianne Thyssen failed to put forward arguments in addition to those already found in the explanatory memorandum to the proposal for a Directive or respond to the well-developed arguments against its proposal that were submitted to it by the parliaments of 11 Member States. Indeed, in informal discussions involving the Presidents of the European Affairs Committees of the Romanian Chamber of Deputies and of the Hungarian National Assembly and the Vice-President of the Committee on European Affairs of the Polish Sejm, during the break before her intervention, the Commissioner changed her attitude and partially accepted the arguments of her interlocutors, while in the official session, Ms Thyssen stuck to her system of benchmarks and arguments.

7. Underlines the fact that, as the European Commission stated, this communication is restricted to determining whether the objective of the proposed amending directive could be better realised at the EU level.

Points out that the objectives of EU secondary legislation are not valid if they do not fall within the objectives laid down by primary legislation; considers that this is also the reason the European Commission has to rely on the Articles of the Treaty referring to the EU's commitment to the welfare of its peoples, to promoting social justice and social protection, to completion of the internal market with a high level of competitiveness, full employment and social progress, as well as an alleged need for 'a level playing field for businesses' and an alleged protection of posted workers themselves.

Recalls that in its opinion it contested the idea that the articles referred to support the European Commission's argument, as they actually are more illustrative of criticisms of the Commission's proposal.

Recalls that in its reasoned opinion it contested the idea that Article 15 of the Charter of Fundamental Rights of the European Union, concerning the freedom to choose an occupation and the right to engage in work, was not taken into account by the Commission, although workers cannot exercise their rights under this provision since they are not free, de facto, to accept any payment for services provided; regrets that there is no reference to this issue, either in the Communication or in the Commission letter.

Regrets that the recent political history of the European continent was disregarded by the European Commission, because it is well known that after 45 years of Soviet dominance the economies of the six Member States from behind the old 'Iron Curtain' and of the three Member States of the USSR were left devastated while companies from free and prosperous counties had a 45-year start in which they increased their experience and expertise on the free market, built reputations, established business relations, and identified pathways to markets, etc. It is also well known that the low standard of living and low salaries in some Member States are also due to Soviet occupation and interventions and that, at least in the logic of solidarity with the oppressed populations of the East, it is not right to encourage rejection from the prosperous countries of the West.

Regrets that its argument that the enlargement of the European Union to include countries from behind the old 'Iron Curtain' was a historical redress for those countries and a promise made at the highest political level by the Union and the Member States that the process of convergence would be substantial and continuous was not analysed by the Commission either in the Communication or in the accompanying letter.

Regrets furthermore that its argument that the main problem of the proposal to amend the Posting of Workers Directive is that it has drawn a dividing line between Member States of the East and of the West was also not accepted and commented upon by the Commission in its dialogue with national parliaments.

Recalls that in his State of the Union speech on 14 September 2016 the President of the European Commission mentioned the need to overcome '[…] the tragic divisions between East and West which have opened up in recent months […]' and believes that this statement suggests that the Commission had nevertheless analysed arguments of the type set out above, without that being sufficiently reflected in specific actions of the Commission.

8. Expresses the view that the value-added criterion cannot be considered as met if an EU proposal merely makes a minor contribution to improving the situation, but is in fact met only if it makes sufficient contribution to justify spending from the EU and national budgets and if its economic impact is sufficiently large; considers that the differences arising from bonuses, allowances, pay increases etc. are not so large as to justify the Commission's regulatory measures.

Notes also that the impact assessment has not demonstrated the presence of a wide-ranging phenomenon requiring action at EU level.

9. Reiterates its objections, pending clarification from the European Commission, to the legal basis of the proposal, which does not correspond fully with the content of the Regulation, since the amendments are based on Articles 56 and 59 TFEU, which is intended to abolish restrictions on the freedom to provide services within the Union of Member State nationals established in another Member State, while the proposal itself is aimed, at least at the declarative level, at the protection of workers.

10. Notes that the European Commission's invoking of decisions of the Court of Justice of the European Union (CJEU), where there is evidence that compliance with the obligation to state reasons regarding compliance with the subsidiarity principle should be assessed not only in the light of the wording of the contested measure but also in the light of its context and the circumstances of each individual case. Emphasises that both the historical arguments above and most of those already set out in the reasoned opinion and in its opinion of April 2016 correspond to the requirements of the CJEU; therefore, it contests the approach of the European Commission to limit its reply to establishing whether the proposed amending Directive's objective can be better achieved at Union level.

11. Considers that the degradation over recent years of conditions for local workers in Member States with developed economies should be among the circumstances of the review of Directive 96/71/EC.

Expresses its concern at the exponential increase over recent years in employment contracts with limited hours, also known as 'zero-hours' contracts, fixed-term contracts, and

agreements between employers and employees in which employees waive some of their rights in order to save their jobs.

Recalls the argument presented in its opinion that wage cuts in countries with strong economies are caused mainly by the need to preserve the competitiveness of European companies in a globalised economy, while the posting of workers from EU Member States does not play a role in this situation, as is erroneously claimed by employers in more developed Member States.

12. Recalls the argument, set out in its opinion, that Member States with less developed economies have internal social and economic problems, in particular the emigration of highly skilled workers to countries with stronger economies that offer higher wages and hence solve their own problems of labour and economic development, and that Member States subject to the 'brain drain' phenomenon have not insisted, even when holding the rotating Presidency of the Council of the EU, that the Union regulates an end to this phenomenon, nor have they proposed a system of fair compensation.

13. Recalls the argument set out in its opinion that it would be inconsistent for the EU to launch a comprehensive policy to encourage investment and create benefits for investors at the same time as obstructing investors' access to a cheaper workforce.

14. Recalls also the argument set out in its opinion that, in the Commission's view, the need to maintain a level-playing field for all service providers is limited to ensuring equal treatment of workers in relation to work-related income gaps, and neglects, to the benefit of companies in more developed countries, issues such as the economic know-how of specialised workers in areas of high-tech, higher qualifications, easier adaptation to the working environment, including labour relations, company reputation, relations with the business environment, access to markets, etc.

Regrets that the arguments set out above (points 9 to 14) did not receive a reply from the Commission.

15. Recalls that compliance with the principle of subsidiarity is a political decision, which is not as thorough as a legal analysis, so different interpretations can exist of the elements that contribute to determining that compliance.

16. Recalls also that the early warning mechanism for subsidiarity control, as laid down in the Treaties, gives the European Commission discretionary power, and that national parliaments have no way of challenging a Commission decision to reject a yellow card; considers that, in this case, the European Commission made a mistake in its political positioning by rejecting the complaint of national parliaments without appeal, in a context where growing centrifugal forces are threatening to unravel the Union; emphasises that given the low number of posted workers from countries with salaries below the EU average (0.3 % of the total number of employees) and given the modest nature of the bonuses, allowances and similar, increased for that 0.3 %, 'it would have been normal for there to be little resistance to the withdrawal of the proposed Directive; expresses concern about the development of anti-European populist movements whose propaganda makes use of posted workers, and warns that giving in to such pressures legitimises anti-European populism and contributes to the resurgence of such political movements.

17. Points out that compared to the current state of affairs and the results to date of the early warning mechanism for subsidiarity control, where since 1 December 2009 and the entry into force of the Treaty of Lisbon there has not been a single 'orange card' while of the three 'yellow cards' only one resulted in the withdrawal of a proposal from the Commission, could lead to requests for an evaluation of the mechanism, in terms of its usefulness and its contribution to reducing the democratic deficit; regrets that the European Commission's annual report fails to mention this aspect.

18. Notes that in its letter the Commission admits that the proposal will reduce the advantage in labour costs for small and medium-sized businesses, but surprisingly still states that this advantage will be maintained in part given lower costs from social security contributions and taxes; points out that social security and taxation falls not within the Commission's area of competence but that of Member States, so it is inappropriate to make such calculations in the given context.

19. Reiterates its other arguments concerning a breach of subsidiary that the European Commission has not responded to:

– Member States may implement appropriate measures to ensure that temporarily posted workers receive the same treatment as national temporary workers; according to the impact assessment, to date 15 Member States have decided to make use of this option;

– a host Member State already has the possibility of imposing the same rules on temporary work agencies from other Member States as those that apply to national temporary work agencies;

– Member States have the possibility to extend the scope of collective agreements or arbitration awards that have been declared as universally applicable to all sectors; the impact assessment indicates that only four Member States have decided not to use this option.

20. In connection with the European Commission's obligation to hold extensive consultations with stakeholders and to take into account the regional and local dimension of planned actions and the obligation to base its arguments demonstrating compliance with the principle of subsidiarity on qualitative and quantitative indicators, reiterates its finding that the impact assessment itself shows that there is not sufficient and comparable statistical data on many of the proposals, such as the number of workers posted for longer than 24 months nor with regard to the measures proposed for subcontracting, with estimates alone being available.

Recalls that in the reasoned opinion we noted that the impact assessment has ignored the additional costs relating to transport, housing, providing information on applicable rules, translation of documents, etc., which are to be covered by the service providers who post workers.

Recalls that in the reasoned opinion we noted that the impact assessment showed that the Proposal may have adverse effects, especially with regard to the loss of services contracts for providers from low-wage countries, or a general increase in the cost of transnational services, but it does not examine such aspects and does not provide a comprehensive analysis of the financial implications for the internal market of the EU.

Regrets that the Commission cannot be expected to recognise the inadequacy of its own impact assessment, since this too would be an infringement of the subsidiarity principle.

*This decision was adopted by the Chamber of Deputies at its sitting of 18 October 2016 in compliance with Article 76(2) of the Romanian Constitution, republished.*

**PRESIDENT OF THE**
**CHAMBER OF DEPUTIES**

**Florin Iordache**

Bucharest, 18 October 2016
No 110