



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 21 June 2012

11729/12

**Interinstitutional File:
2012/0064 (APP)**

**SOC 598
MI 448
COMPET 457
INST 425
PARLNAT 279**

COVER NOTE

from: The Senate of the Republic of Poland
date of receipt: 18 June 2012
to: Ms Helle Thorning-Schmidt, President of the Council of the European Union
Subject: Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services
[doc. 8042/12 SOC 226 MI 194 COMPET 169 - COM(2012) 130 final]
- *Opinion on the application of the Principles of Subsidiarity and Proportionality*¹

Delegations will find attached the above mentioned opinion.

¹ For available translations of this opinion see the interparliamentary EU information exchange site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/search.do>



**THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
8TH TERM**

RESOLUTION OF THE SENATE

669th RESOLUTION
delivered on the 23rd meeting held on 14th June 2012

on the Proposal for a Council Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services

(Senate Press no. N 160/08)

I.

1. Recalls

that the measures taken by the Union on the basis of Article 352 of the Treaty on the Functioning of the European Union (the so-called flexibility clause) must not harmonize the legislation of the Member States in cases where the Treaties exclude such a harmonization;

2. Points out

that Article 153, (2) and (5) of the Treaty on the Functioning of the European Union exclude the right to strike from the areas which can be harmonized, based on the Treaties;

3. Finds

that the draft Regulation modifies in a restrictive manner the conditions of the exercise of the right to strike and, therefore, with regard to the abovementioned, cannot be adopted on the basis of Article 352 of the Treaty on the Functioning of the European Union;

4. Finds moreover

that the main declared purpose of the proposal is to clarify the relationship between market freedoms (freedom of establishment and free movement of services) and the right to take collective action, including the right to strike;

5. Is however of the opinion

that the proposal does not provide any clarification, as it only states that the exercise of the market freedoms shall respect the right to take collective action, and conversely, the exercise of the right to take collective action shall respect market freedoms; the proposal therefore does not alter or clarify the current situation and, as such, is redundant;

6. States

that the Commission did not provide enough evidence on how the measures in the proposal contribute to achieving the declared goal; hence, neither the necessity of the proposal, its suitability, nor its added value compared to the activities of the Member States have been proven;

7. Comes therefore to the conclusion

that the draft Regulation is not consistent with the principle of conferral according to Article 5 paragraph 2 of the Treaty on European Union and with the principle of subsidiarity according to Article 5 paragraph 3 of the Treaty on the European Union;

8. Issues

therefore a **reasoned opinion** on the draft Regulation according to Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality attached to the Treaties, although the Senate is aware of the fact that the deadline for issuing of a reasoned opinion stated in the mentioned protocol has already expired;

II.

1. Also rejects

the attempt to give superiority to the market freedoms (freedom of establishment and free movement of services) over the right to take collective action, which is guaranteed by the conventions of the International Labour Organisation (ILO) and the Charter of Fundamental Rights of the EU;

2. Points out

to a possible discrepancy of the draft Regulation with the international legal commitments of the Czech Republic in the field of economic and social rights, such as the International Labour Organisation Convention No. 87 (on the freedom of association) and No. 98 (on the protection of the right to organise and to collective bargaining), and the right to take collective action;

3. Finds

that the draft Regulation transgresses the framework of the Single Market, since it interferes in the regulation of the fundamental economic and social rights, and with regard to the facts mentioned in part I. of this resolution does not represent a measure necessary for the functioning of the Single Market;

4. Therefore states

that the consent of the Czech government with the draft Regulation requires a prior consent of the Senate according to Section 119k letter d) of the Act No. 107/1999 Coll. on the Senate's Rules of Procedure;

5. Deems appropriate

that the Government's opinion to the Parliament explicitly include the Government's opinion on the character of the draft Regulation with regard to Section 119k letter d) of the Act No. 107/1999 Coll. on the Senate's Rules of Procedure;

III.

1. Requests

the Government to inform the Senate about the way this position was taken into account, and about further development of negotiations;

2. Calls upon the Government

that, shall it intend to express consent to the final wording of the Regulation on behalf of the Czech Republic in the Council vote, to submit to the Senate a proposal for prior approval by the Senate according to Act No. 107/1999 Coll. on the Senate's Rules of Procedure;

3. Authorises

the President of the Senate to forward this reasoned opinion to the presidents of the European Parliament, Council and European Commission.

Milan Štěch
sign manual
President of the Senate

Josef Táborský
sign manual
Senate Verifier