



THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
10TH TERM

416th

RESOLUTION OF THE SENATE

Delivered on the 23rd session held on 27th April 2016

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 /Senate Print no. N 077/10, COM(2016) 128/

The Senate

I.

1. Believes

that the current law regulating the posting of workers is a balanced compromise between the support of free movement of services and the need to ensure adequate protection of workers which are posted in the framework of the cross-border provision of services;

2. Does not consider,

unlike the Commission, the lower wage level of some Member States to be an unfair competitive advantage because it is related to the different living conditions in the Member States; these differences can only be eliminated by gradual economic convergence to which, however, this proposal for a Directive does not contribute;

3. Therefore does not agree

with the proposed revision of the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and supports the position of the Government;

4. Has come to the conclusion

that the proposal for a Directive does not comply, on the grounds set out in Part II. of this Resolution, with the principle of subsidiarity according to Article 5(3) of the Treaty on European Union, because the Commission has not met its obligation to justify the compliance of the proposal with the principle of subsidiarity and has substantiated neither the necessity, nor the actual added value of the proposed changes;

5. Adopts

therefore a **reasoned opinion** on the incompatibility of the proposal for a Directive with the principle of subsidiarity in accordance with Article 6 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality attached to the Treaties;

II.

1. Is of the opinion

that the Commission has not substantiated the necessity of the adoption of proposed measures at Union level:

- submission of the proposal for a Directive is premature and in contradiction with the principles of better regulation since the proposal is submitted in the time when the deadline for the transposition into national law of the previous measures addressing the deficiencies in the current law has not expired yet (Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers); the Commission does not even allege that a significant change of the situation has occurred and an immediate reaction is necessary;
- according to the opinion of the Senate, especially the circumvention and violation of the defined rules in form of undeclared work or bogus self-employment is the problem of the current regime of posting workers and their legal protection; therefore it is necessary rather to consistently verify the compliance with the existing rules, as Senate has already stated in its resolution No. 668 of 14 June 2012 (8th legislative term) on 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;

2. Also is of the opinion

that the Commission has not substantiated the added value of the proposed measures in relation to the EU objectives and in comparison to the current legal situation:

- the European Union's aim is to promote the well-being of its peoples which includes also the equalisation of living conditions and wages across the Member States to which the elimination of obstacles on the internal market should contribute; contrary to Article 56 of the Treaty on the Functioning of the European Union, the proposed Directive creates obstacles of free movement of the services thereby undermining the aforementioned aim;
- the proposed measures will have (as the Commission itself acknowledges) negative impact particularly on small and medium enterprises from the Member States with lower wage level; any possible added value resulting from Commission's alleged clarification of legal provisions will be insignificant in comparison with the higher wage expenses and costs related to the very posting of workers; this will probably result in the creation of an obstacle on the market for services and limitation of posting of workers;
- the proposal for a Directive in its consequences exerts pressure on the Member States with lower wage level to reduce taxes and social contributions in the interest of the competitiveness of their enterprises on the internal market which, however, undermines the fulfilment of the social function of the state;
- the proposal for a Directive interferes in the relations between the employees and employers which are regulated on the national level, particularly by the extension of personal scope of the collective agreements to persons that could not participate in the collective bargaining;

3. Does not consider to be appropriate

that the Commission did not duly consult the proposal for a Directive with the social partners although they jointly invited the Commission several times to do that; this conduct of the Commission is in breach of the Article 2 of the Protocol according to which the Commission shall consult widely before proposing legislative acts;

4. Finds

that the Commission violated Article 5 of the Protocol, according to which the draft shall be justified with regard to the principle of subsidiarity, because the Commission's justification consists in a statement that an amendment to an existing Directive can only be achieved by adopting a new Directive; the Commission therefore does not justify the compliance of the proposed measures with the principle of subsidiarity even though the proposal affects issues which have been, up to now, regulated only at the national level;

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. Authorises

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

Milan Štěch
sign manual
President of the Senate

Jaroslav Malý
sign manual
Senate Verifier