



**The European Affairs Committee
of the National Council of the Slovak Republic**

Courtesy translation

6th Meeting
CRD-894-1/2016-VEZ

9.

R e s o l u t i o n

of the European Affairs Committee of the National Council of the Slovak Republic

on 10 May 2016

regarding the proposal for a directive of the European Parliament and the Council amending the 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

The European Affairs Committee of the National Council of the Slovak Republic

with regard to the Treaty on European Union, in particular the Article 5,

with regard to the Treaty on Functioning of the European Union, in particular the Article 78 (2) e),

acting in accordance with the Protocol on the Application of the Principles of Subsidiarity and Proportionality,

positively perceiving the long-term efforts by the Commission to strengthen the social dimension of the European Union and appreciating the steps taken in this direction,

supporting the preservation of values of the European social model and the development of a single labour market as tools for strengthening the unity of the European Union,

being aware of the problems related to the posting of workers, the severity and the need to address the problems;

A. Takes note

of the proposal for a directive of the European Parliament and the Council amending the Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the provision of services, and amending the regulation of the European Parliament and of the Council (EU);

B. Approves

pursuant to § 58a (3) c) of Act no. 350/1996 Coll. on Rules of Procedure of the National Council of the Slovak Republic as amended **the reasoned opinion** in the following terms:

Submitting of the proposal of the directive is premature as the deadline for transposing the Directive 2014/67/EU of 1996 on implementation of the posting of workers has not expired yet, nor could the assessment of its operation have been carried out.

Justification for applying the legal basis chosen (Art. 53 (1) and Art. 62 of Treaty on Functioning of the EU) is vague and the legal basis is not completely equivalent to the content of the proposal. The legal basis of the proposal is identical to the one amending the Directive 96/71/EC. Meanwhile, there has been a shift in the objectives of the directive. The 1996 Directive is primarily concerned with removing obstacles to the free movement of persons and services between Member States, while the submitted proposal is aimed at social protection and the fight against social exclusion.

Article 352 (1) of the Treaty on Functioning of the European Union states: "*Shall it be proven, within the framework of policies defined in the Treaties, that in order to attain one of the objectives set out in the Treaties, an activity of the Union is inevitable while the Treaties are not providing the powers necessary, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures*". This article in fact enables the Union to act beyond its defined competences. The actions are however limited in paragraph 3 stating: "*Measures based on this Article shall not entail harmonization of Member States' laws or regulations in cases where the Treaties exclude such harmonization.*" The Article 153 paragraph 1 of the Treaty on Functioning of the European Union names the areas of social policy in where the Union supports and complements the activities of Member States, and simultaneously, as stated in paragraph 5, it explicitly indicates which areas are not covered: "*The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lockouts.*" The Article 153 paragraph 5 of the Treaty on Functioning of the European Union thus excludes determining the remuneration from the circuit of affairs that could be solemnly modified for the whole EU, i.e. the EU has not set-out the necessary powers for the procedure and cannot act within this matter. **Setting the compensation of workers is within the exclusive power of Member States.**

The Commission infringed the Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality because the Commission had not justified the compliance of the proposal with the principle of subsidiarity; neither had it demonstrated the necessity of the proposed changes. The Commission had not

submitted reasons substantiated by the qualitative and quantitative indicators leading to a conclusion that an objective of the Union could be achieved better at the Union level.

The Commission violated its obligation under Art. 2 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality, according to which it is obliged, prior to proposing a legislative act, to carry out extensive consultations taking into account the regional and local dimension of the intended measures.

The Committee would welcome a more-balanced approach, while crafting the proposal, taking into account the different level of development of individual Member States and the specificities of the new Member States. Concurrently it deems necessary to view postings of workers from a broader perspective while considering globalization, technological change, and aging of the population.

Pursuant to the Article 152 of the Treaty on Functioning of the European Union “*The Union recognizes and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.*” The proposal does not sufficiently respect the autonomy of social partners and their relations within the collective negotiation, and it ignores the diversity of collective labour relations in the EU. Conditions of employment of posted workers shall be adjusted only according to the generally binding collective agreements, except for the collective agreements of a lesser degree - sectorial or company collective agreements are excluded from the proposal, while some sectors do not at all have the generally binding collective agreements, therefore they will be discriminated.

It is necessary to note that the posting of workers is only one way of indulging in the wage disparities between Member States. Other ways include the import of goods from countries with lower wages and production transfer into these countries. This so-called “social dumping” will be happening until the wage differences between Member States remain high. The Committee believes that the convergence of wage levels can be achieved only through economic development and not just with legal instruments.

The Committee recognizes the need to maintain fair competitive conditions for all service providers, but does not consider it fair to limit them to one-sided alignment of wage levels while other differences remain unaffected. It bases its view on the opinion that the enterprises profiting from the wage disparities between Member States and the posting of workers as a way of using these disparities has never been known as discriminating, on the contrary, considered as behaviour typical for the market economy. In this regard, the Committee would welcome a Europe-wide discussion on defining the social dumping and compensation discrimination in order to avoid legal uncertainty of their use.

C. Authorises

The Chairman of the Committee

to inform the Speaker of the National Council of the Slovak Republic, European Parliament, European Commission and the Council of the European Union about the approved reasoned opinion.

Edita Pfundtner
Jozef Viskupič
Verifier

Ľuboš Blaha
Chairman