

**SEIMAS OF THE REPUBLIC OF LITHUANIA
COMMITTEE ON EUROPEAN AFFAIRS**

CONCLUSION

ON POTENTIAL NON-COMPLIANCE WITH THE PRINCIPLE OF SUBSIDIARITY OF THE PROPOSAL OF THE EUROPEAN COMMISSION 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

Document No COM (2016) 128

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Vilnius

Relevance of the Proposal to Lithuania: **very relevant**

8. Decision of the Committee:

<p>On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:</p>	<p>The Committee on European Affairs,</p> <p><i>having considered</i> the Proposal of the European Commission 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 (hereinafter referred to as the Posting of Workers Directive) concerning the posting of workers in the framework of the provision of services COM(2016) 128 final (hereinafter referred to as the Proposal), the main objective of which is to establish the principle of equal pay for equal work in the same place;</p> <p><i>having heard</i> the information provided by the Ministry of Social Security and Labour of the Republic of Lithuania on the conditions of the posting of Lithuanian citizens and practical aspects of implementation of the Proposal in Lithuania;</p> <p><i>having learnt</i> Position No POZ-165 of the Republic of Lithuania on the Proposal, which was submitted by the Government of the Republic of Lithuania on 30 March 2016;</p> <p><i>having assessed</i> the opinion given in letter No SD-79 of 11 April 2016 of the European Law Department under the Ministry</p>
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of Justice of the Republic of Lithuania and the opinion given in letter No V-2016-2361 of 7 April 2016 of the Legal Department of the Office of the Seimas of the Republic of Lithuania on the Proposal;

having taken into account Conclusion No 103-P-24 of 20 April 2016 of the Seimas Committee on Social Affairs and Labour on possible non-compliance of the Proposal with the principle of subsidiarity, which states that that the Proposal is in possible conflict with the principles of subsidiarity and proportionality;

consistently supporting the strengthening of the single market of the European Union and the removal of yet existing barriers;

underlining that the provisions of Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (hereinafter referred to as the Enforcement Directive), which have to be transposed into national law by 18 June 2016, have not yet been transposed and that, first and foremost, the impact of these provisions must be assessed;

taking the view that:

1. The Proposal does not take sufficient account of objective differences among Member States such as the level of economic development. Convergence of wages is brought about by the economic growth of less-developed Member States of the European Union, and wage differences are determined by local factors affecting an undertaking posting workers, including demand for labour, staff qualifications, productivity, and a financial situation of an undertaking.
2. The Court of Justice has held that the situation of local and posted workers is different and differences in their remuneration cannot be regarded as discrimination. Moreover, the European Commission rightly observes in the context of the European Semester that there is a gap between wage growth and productivity growth in some Member States and this reduces the economic growth potential.
3. Amendments to Posting of Workers Directive 96/71/EU must be proposed only after the transposition of Enforcement Directive 2014/67/EU and the review, by the European Commission, of its application and implementation. The balance between the freedom to provide services and the protection of the rights of posted workers is ensured by these and other legal acts allowing for more favourable conditions for posted workers.
4. The impact assessment accompanying the Proposal lacks a detailed and objective evaluation of the impact of the Proposal on economic and social sectors, including migration, and small and medium enterprises and administrative burden. The

impact assessment performed is not founded on reliable data, does not include the financial impact of implementing the Proposal, and is not based on qualitative or quantitative indicators.

5. The European Commission did not ensure adequate consultations, which should, inter alia, include the regional and local scale of the action envisaged, as well as underestimated the abovementioned objective differences and arguments of socio-economic partners, and did not point out tangible benefits for workers. Therefore, the Proposal does not create any added value.

6. The Proposal will not ensure greater transparency and equal and clear conditions for activities of undertakings and will complicate the application of legal acts, in particular when the duration of posting exceeds 24 months, thus possibly disrupting the functioning of the single market.

The above reasons lead to the conclusion that the legal regulation proposed might be contrary to the principle of subsidiarity enshrined in Article 5(3) of the Treaty on European Union and Protocol No 2 on the Application of the Principles of Subsidiarity and Proportionality by unreasonably restricting the opportunities and incentives for businesses to provide cross-border services, thus possibly working against consumers' interests,

has therefore decided as follows:

1. The Proposal of the European Commission 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 **is potentially non-compliant with the principle of subsidiarity.**

2. The Proposal of the European Commission 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 **is potentially non-compliant with the principle of proportionality.**

Gediminas Kirkilas

Chair of the Committee