



20.6.2016

NATIONAL PARLIAMENT REASONED OPINION ON SUBSIDIARITY

Subject: Reasoned opinion of the Czech Senate 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)0128 – C8-0114/2016 – 2016/0070(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, national parliaments may, within eight weeks of the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why they consider that the draft in question does not comply with the principle of subsidiarity.

The Czech Senate has sent the attached reasoned opinion on the aforementioned proposal for a directive.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for matters relating to compliance with the subsidiarity principle.

PARLIAMENT OF THE CZECH REPUBLIC
SENATE
MILAN ŠTĚCH
PRESIDENT

Prague, 28 April 2016

Dear Sir,

Please find attached the reasoned opinion of the Czech Senate adopted on 27 April 2016 in accordance with Article 6 of Protocol No 2 to the Treaty of Lisbon 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.

Yours sincerely,

SENATE
PARLIAMENT OF THE CZECH REPUBLIC

TENTH PARLIAMENTARY TERM
416th RESOLUTION OF THE SENATE

adopted at its 23rd session held on 27 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 Press No N 77/10/

The Senate

I.

1. Considers:

that the current legislation on the posting of workers is a balanced compromise between a commitment to free movement of services and the need to ensure adequate protection of workers posted in the framework of the cross-border provision of services;

2. Does not consider,

unlike the Commission, that the lower wage levels in some Member States are an unfair competitive advantage, since they go hand in hand with differences in the living conditions in the Member States, which can only be eliminated by means of gradual economic convergence, to which the proposal for a directive does not contribute;

3. Does not therefore agree

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

4. Has come to the conclusion

that the proposal for a directive, for the reasons set out below in Part II of this resolution, violates the subsidiarity principle within the meaning of Article 5(3) of the Treaty on European Union, because the Commission has failed to fulfil its obligation to establish that the proposal complies with the principle of subsidiarity and has failed to show the need for and the actual added value of the proposed changes;

5. Adopts

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

II.

1. Takes the view

that the Commission has not demonstrated that it is necessary to adopt the proposed measures at Union level:

- This proposal for a directive as now presented is premature and is contrary the principle of Better Regulation since the proposal has been presented before expiry of the deadline for transposition into national law of the earlier measures to tackle the shortcomings in the current legislation (Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers); in making its proposal, the Commission does not indicate that the situation has significantly changed in the meantime and that there is a need to respond immediately;
- in the Senate's opinion the primary problem with the current arrangements for the posting of workers and their legal protection is the circumvention and infringement of the established rules in the form of undeclared work or covert exercise of a profession; there is therefore rather a need for strict monitoring of compliance with the prescribed rules, which the Senate has already referred to in its Resolution No 668 of 14 June 2012 (8th 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. Furthermore takes the view

that the Commission has not provided evidence of the added value of the proposed actions in relation to the objectives of the European Union and in comparison with the current legal situation:

- The objective of the European Union is to promote the well-being of its people, which includes the balancing of living standards and wages across Member States, to which the removal of obstacles in the internal market is intended to contribute; the proposed directive, contrary to Article 56 of the Treaty on the Functioning of the European Union, places obstacles in the way of freedom to provide services, whereby it undermines this objective;
- the proposed measures (as the Commission itself admits) will have a negative impact notably on SMEs from Member States which offer lower wage levels; weighed against higher wage costs and the overall cost of posting workers, any potential benefits that could be derived from the Commission's claim that it is clarifying the legal situation will be insignificant; the likely consequences are the development of barriers in the market for

services and restrictions on the posting of workers;

- the proposal for a directive will in turn put pressure on countries with lower wage levels to reduce taxes and social charges in the interest of the competitiveness of their companies in the internal market, and this will hinder States in the fulfilment of their social duty;
- the proposal for a directive impinges on the relations between employees and employers regulated at national level, particularly with regard to widening the scope of collective agreements to persons who have been unable to take part in the collective bargaining process;

3. Considers it inappropriate

that the Commission did not duly consult the social partners, although the social partners jointly called on it several times to do so; such an approach by the Commission is contrary to Article 2 of the Protocol, under which the Commission should have conducted a broad consultation before presenting its legislative proposal;

4. Observes

that the Commission has breached Article 5 of the Protocol, whereby a proposal must include the grounds for its compliance with the principle of subsidiarity, as these grounds reside in establishing the fact that the change to the directive can only be implemented through the adoption of a new directive; the Commission does not give grounds for the compliance of the proposed measures with the principle of subsidiarity although the proposal concerns matters hitherto regulated only at national level;

III.

1. Requests the Government

to inform the Senate about the way this position is taken into account, and about the 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.

(signed) Milan Štěch
President of the Senate

(signed) Jaroslav Malý
Senate Verifier