

Resolution of the Riigikogu

Reasoned Opinion to the Presidents of the European Parliament, the European Commission and the Council of the European Union on Non-conformity to the Principle of Subsidiary of 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

Under subsection 152⁶(1) of the Riigikogu Rules of Procedure and Internal Rules Act, and taking into consideration the second sentence of Article 5(3) of the Treaty on European Union, and the first sentence of Article 6(1) of the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the Treaty on the Functioning of the European Union, the Riigikogu decided as follows:

1. To submit a Reasoned Opinion to the Presidents of the European Parliament, the European Commission and the Council of the European Union on Non-conformity to the Principle of Subsidiary of 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 for the following reasons:

1.1. With this Proposal for a Directive, the European Commission wishes to complement the framework established in 1996, and to create a better balance between the objectives of promoting and facilitating cross-border provision of services, protecting posted workers, and ensuring equal conditions for foreign and local competitors.

The European Union may act in areas which do not fall within its exclusive competence only if and in so far as the objectives of the action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the action, be better achieved at the Union level. We find that the proposed amendments to the Directive, by which the European Commission wishes to reduce unjust practices in connection with the posting of workers, and to ensure that the work done in one and the same location receives equal pay, may harm the competitiveness of businesses while these are providing services in other European Union Member States, and may limit the free movement of services. It is doubtful whether the scale or the effects of the proposed actions make them better achievable at the Union level.

1.2. The freedom to provide services in all the European Union Member States is one of the foundations of the European Union internal market. The European Union internal market is a common market where the free movement of goods, services, capital, and individuals is guaranteed. Free movement of services means that businesses can provide their services in other Member States without being located there. For this purpose, they must have the possibility to

post their workers in other Member States. In other words, a business can send its workers to other Member States on a temporary basis for the purpose of providing services. The valid Directive provides the basic working conditions in the receiving country that the service providers from other countries have to respect. These include the maximum work periods and minimum rest periods; minimum rates of pay, including overtime rates; minimum paid annual holidays; conditions of hiring-out of workers; health, safety and hygiene at work; protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children, and of young people; equality of treatment between men and women, and other provisions on non-discrimination. The valid Directive already ensures a sufficient protection for posted workers, which is further guaranteed by the measures provided in the new Enforcement Directive 2014/67/EU.

It is doubtful whether the principle of equal pay for equal work in one and the same location is in conformity to the principles of a common market, because the difference in the rates of pay is one of the legitimate elements of the competitive advantage of service providers. Difference in pay is a legal way for service providers to ensure their competitive advantage; in view of the wide pay gap among the Member States, many of these will probably not be able to ensure the posted workers the pay requirements applicable in the target country. This, in turn, may have a negative effect on the posting of workers.

1.3. The Directive 96/71/EC concerning the posting of workers, and its Enforcement Directive 2014/67/EU form a whole, complementing and strengthening one another. The European Commission states in the Explanatory Memorandum of its proposal that the Enforcement Directive should assume its full force in mid-2016, because the Member States must transpose the Directive by 18 June 2016. We fail to understand why a proposal to review the Directive has been made in a situation where the date for transposing the Enforcement Directive has not yet arrived and the impact of the Enforcement Directive has not been thoroughly assessed. The first task would be to efficiently apply the existing rules and to conduct a thorough analysis of the Enforcement Directive. In a situation where no proper impact analysis has been conducted on the Directive, we should not be enforcing new obligations. This does not conform to the European Union principles of the best legislation.

2. The Resolution enters into force upon signature.

Eiki Nestor
President of the Riigikogu

Tallinn, 10 May 2016