



SEIMAS OF THE REPUBLIC OF LITHUANIA  
COMMITTEE ON SOCIAL AFFAIRS AND LABOUR  
CONCLUSION  
OF THE SPECIALISED COMMITTEE

ON 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 final

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Vilnius

[...]

**8. Decision of the Committee:**

<p><b>On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:</b></p>	<p><u>having regard to the fact that:</u></p> <ul style="list-style-type: none"><li>- Article 5(3) of the <i>Treaty on European Union</i> provides that “under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed 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 proposed action, be better achieved at Union level”;</li><li>- Article 5(4) of the <i>Treaty on European Union</i> provides that “under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties”;</li><li>- <i>the EC’s 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 final (hereinafter referred to as the Proposal)</i> is related to the area of the internal market, where the Union and the Member States have shared competence according to Article 4(2)(a) of <i>the Treaty on the Functioning of the European Union</i>;</li><li>- <i>the Proposal</i> seeks, first and foremost, to establish the principle of equal pay for equal work in the same place by providing for payment of all the constituent elements of remuneration to posted workers, imposition of an obligation on Member States to publish information on the constituent elements of remuneration, and payment of equal remuneration in undertakings of a contractor and sub-contractor; however,</li></ul>
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Member States have exclusive competence to determine the size of remuneration;

- pursuant to the case-law handed down by the Court of Justice in Case C-396/13 and applicable to posted workers, differences in remuneration in Member States do not necessarily mean unfair competition with regard to freedom to provide services, because no obstacles should be posed for service providers to make use of the competitive advantage brought by differences in remuneration;

- *the Proposal* restricts business opportunities for providing transnational services, weakens competition and development of the EU single market, and leads to more expensive services thus reducing the scope for implementing the essential principles of the Union's internal market, which are enshrined in the *Treaty on the Functioning of the European Union* (freedom of movement for workers, freedom of establishment, and freedom to provide services), and for achieving the objectives of the Treaties (consolidation and convergence of economies of Member States, etc.);

- it is unclear for what reasons the Proposal has been withdrawn from the *Labour Mobility Package* and submitted for consideration separately;

- it is unclear for what reasons the Proposal has been submitted for consideration before the end of the transposition 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 (the IMI Regulation)* (Member States are obliged to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 June 2016) and before the review of the application and implementation of the aforementioned Directive (no later than 18 June 2019, the Commission is obliged to present a report on the application and implementation of the Directive to the European Parliament, the Council and the European Economic and Social Committee and to propose, where appropriate, necessary amendments and modifications);

- doubts arise over the procedures of adequate consultation with social partners and over the completeness and validity of the impact assessment;

- doubts arise over the necessity to establish, at the Union's level, the provision of the *Proposal* concerning the application of collective agreements or arbitration awards, which have been declared universally applicable, to all sectors of the economy rather than only to the construction sector (only four Member States—Germany, Ireland, Luxembourg and Cyprus—do not avail themselves of the option to extend the application of this provision to all sectors);

[The Committee] has decided that the Proposal is in possible conflict with the principles of subsidiarity and proportionality.

[...]

Chair of the Committee Kristina Miškinienė