



Council of the
European Union

Brussels, 10 May 2016
(OR. en, lt)

8762/16

**Interinstitutional File:
2016/0070 (COD)**

**SOC 240
EMPL 148
MI 316
COMPET 225
CODEC 628
JUSTCIV 100
INST 203
PARLNAT 140**

COVER NOTE

From: The Parliament of the Republic of Lithuania
date of receipt: 6 May 2016
To: President of the Council of the European Union

Subject: 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
[doc. 6987/16 SOC 144 EMPL 97 MI 142 COMPET 118 CODEC 279 - COM(2016) 128 final]
- *Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality*¹

Delegations will find attached the above mentioned opinion.

¹ For available translations of this opinion see the interparliamentary EU information exchange site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160128.do>



LIETUVOS RESPUBLIKOS SEIMO PIRMININKAS
SPEAKER OF THE SEIMAS OF THE REPUBLIC OF LITHUANIA

Gedimino pr. 53, LT-01109 Vilnius, LITHUANIA Tel. + 370 5 239 6002 Fax + 370 5 239 6400 E-mail: Loreta.Grauziniene@lrs.lt

p. Donald Tusk
Europos Vadovų Tarybos Pirmininkui

2016-05-05 Nr. S-2016-3143

Gerbiamasis Pirmininke,

Šių metų gegužės 3 d. Lietuvos Respublikos Seimo plenariniame posėdyje buvo svarstomas Seimo rezoliucijos „Dėl pagrįstos nuomonės dėl Europos Komisijos pasiūlymo dėl Europos Parlamento ir Tarybos direktyvos, kuria iš dalies keičiama 1996 m. gruodžio 16 d. Europos Parlamento ir Tarybos direktyva 96/71/EB dėl darbuotojų komandiravimo paslaugų teikimo sistemoje, KOM (2016) 128 galimo prieštaravimo subsidiarumo principui“ projektas.

Norėčiau Jus informuoti, kad Lietuvos Respublikos Seimas šiuo klausimu priėmė Seimo rezoliuciją (pagrįstą nuomonę), kurioje konstatuojama, kad šis pasiūlymas prieštarauja subsidiarumo principui.

PRIDEDAMA:

1. Lietuvos Respublikos Seimo Europos reikalų komiteto 2016 m. balandžio 20 d. išvados Nr. 100-P-43 ištrauka, 3 lapai.

2. Lietuvos Respublikos Seimo 2016 m. gegužės 3 d. rezoliucija Nr. XII-2327 „Dėl pagrįstos nuomonės dėl Europos Komisijos pasiūlymo dėl Europos Parlamento ir Tarybos direktyvos, kuria iš dalies keičiama 1996 m. gruodžio 16 d. Europos Parlamento ir Tarybos direktyva 96/71/EB dėl darbuotojų komandiravimo paslaugų teikimo sistemoje, KOM (2016) 128 galimo prieštaravimo subsidiarumo principui“, 1 lapas.

Pagarbiai

Seimo Pirmininkė

Loreta Grauzinienė

Kontaktams:

J. Šedauskienė, tel. (8-5) 239 68 60, faks. (8 5) 239 6409, el. p. jolita.sedauskiene@lrs.lt

Courtesy translation

Mr Donald Tusk
President of the European Council

May 2016 No S-2016

Dear Mr President,

At its plenary sitting of 3 May 2016, the Seimas of the Republic of Lithuania discussed the draft Resolution of the Seimas regarding a reasoned opinion on a possible breach of the principle of subsidiarity by 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.

I would like to inform you that the Seimas of the Republic of Lithuania adopted the Seimas Resolution (reasoned opinion) stating that the Proposal breaches the principle of subsidiarity.

Please find attached:

1. Extract of Conclusion No 100-P-43 of 20 April 2016 of the Committee on European Affairs of the Seimas of the Republic of Lithuania, 3 pages.
2. Resolution No XII-2327 of 3 May 2016 of the Seimas of the Republic of Lithuania regarding a reasoned opinion on a possible breach of the principle of subsidiarity by 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, 1 page.

Yours sincerely,

Loreta Graužinienė

Speaker of the Seimas

For contacts:

J. Šedauskienė, tel. +370 5 239 68 60, e-mail: jolita.sedauskienc@lrs.lt

SEIMAS OF THE REPUBLIC OF LITHUANIA
COMMITTEE ON EUROPEAN AFFAIRS

CONCLUSION

ON POSSIBLE BREACH OF THE PRINCIPLE OF SUBSIDIARITY BY 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

20 April 2016 No 100-P-43
Vilnius

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

8. Decision of the Committee:

On possible non-compliance of the legislative proposal of the EU with the principle of subsidiarity:

The Committee on European Affairs,

having considered 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;

having heard 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;

having examined 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;

having assessed the opinion given in letter No SD-79 of 11 April 2016 of the European Law Department under the Ministry

<p>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;</p> <p><i>having taken into account</i> 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 the Proposal is in possible conflict with the principles of subsidiarity and proportionality;</p> <p><i>consistently supporting</i> the strengthening of the single market of the European Union and the removal of yet existing barriers;</p> <p><i>underlining</i> 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;</p> <p>taking the view that:</p> <ol style="list-style-type: none"> 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 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 **possibly fails to comply 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 **possibly fails to comply with the principle of proportionality.**



Gediminas Kirkilas

Chair of the Committee



SEIMAS OF THE REPUBLIC OF LITHUANIA

**RESOLUTION
REGARDING A REASONED OPINION ON A POSSIBLE BREACH OF THE
PRINCIPLE OF SUBSIDIARITY BY 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**

3 May 2016 No XII-2327
Vilnius

The Seimas of the Republic of Lithuania,

pursuant to Article 180⁶ of the Statute of the Seimas of the Republic of Lithuania, having debated the conclusion of the Seimas Committee on European Affairs on a possible breach of the principle of subsidiarity by 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,

approves the conclusion of the Seimas Committee on European Affairs on a possible breach of the principle of subsidiarity by 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.

Speaker of the Seimas



Loreta Graužinienė