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On the subsidiarity and proportionality

The participants of the 6th October 2010 Saeima European Affairs Committee of the Republic of Latvia meeting agreed to carry out the subsidiarity check on the proposal for a Directive of the European Parliament and of the Council COM(2010) 379 final on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment.

Accordingly, the Saeima (Parliament) of the Republic of Latvia has carried out a subsidiarity and proportionality check concerning the final wording of the proposal for Directive of the European Parliament and of the Council COM(2010) 379 on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment.

On 14th October 2010 the given issue was examined and the final decision was taken by the Saeima European Affairs Committee. The Saeima European Affairs Committee's initial assessment regarding observance of subsidiarity and proportionality principles is as follows: Saeima European Affairs Committee considers that the proposal complies with the principle of subsidiarity. Regulation of the said issue falls within the competence of the European Union. Considering proportionality, the Saeima European Affairs Committee considered that most of the planned requirements put forward in proposal for Directive of the European Parliament and the Council are adequate and do not exceed the minimum necessary to achieve the aims, with the exception of the current wording of Article 14.

Annex: A copy in English (four pages) of the opinion of the Saeima European Affairs Committee.

Sincerely,

Vaira Paegle

Chairperson of the Saeima
European Affairs Committee

Opinion of the Saeima European Affairs Committee on the subsidiarity and proportionality check for the final wording of the proposal for Directive of the European Parliament and of the Council COM(2010) 379 on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment.

Findings of the Saeima European Affairs Committee:

1. Principle of subsidiarity.

Breaches of the subsidiarity principle were not detected.

Reasoning:

The Saeima European Affairs Committee is of the opinion that the measures set forth in the draft proposal aimed to contribute to the implementation of the EU 2020 Strategy and to effective management of migration flows for the specific category of seasonal temporary migration correspond to principle of subsidiarity. The proposal sets out fair and transparent rules for entry and residence while, at the same time, it provides for incentives and safeguards to prevent a temporary stay from becoming permanent.

The European Affairs Committee considers that European Commission has chosen appropriate legal basis and instrument to meet the objective of the proposed Directive as it sets binding minimum standards but, at the same time, gives Member States the necessary flexibility in respect of labour market needs and the existing legal framework.

European Affairs Committee also concluded that, the objective of the proposed action cannot be sufficiently achieved by the Member States acting alone. So regulation of the said issue falls within the competence of the European Union.

Taking into account the fact that practical problems in entry and residence of third-country nationals for the purposes of seasonal employment have been identified and that solving these problems at the national level would not be possible, as well as the fact that the Treaty on the Functioning of the European Union has a clearly defined objective for action setting conditions and standards of entry and residence of the third-country nationals in the Member States, one can conclude that inaction of the European Union in seeking the solution to the problems would contradict provisions and objectives set forth by the Treaty on the Functioning of the European Union.

2. Principle of proportionality.

Breaches of the proportionality principle were detected in Article 14.

Reasoning:

The Saeima European Affairs Committee is of the opinion that the measures set forth in the draft proposal aimed to contribute to the implementation of the EU 2020

Strategy and to effective management of migration flows for the specific category of seasonal temporary migration are not proportional and appropriate.

First, the draft proposal sets forth uniform rules for condition of admissions, procedures and rights of the seasonal worker which ensure simplified and more efficient settlement of the entry and residence of third-country nationals in Member State for the purposes of seasonal employment, so the EU proposed action reaches its aim. Exception is Article 14 on Accommodation which states, that “Member States shall require employers of seasonal workers to provide evidence that the seasonal worker will benefit from accommodation that ensures an adequate standard of living. If seasonal workers are required to pay rent for such accommodation, its cost shall not be excessive in relation to their remuneration”. Members of the Saeima European Affairs Committee considered that the given Article is redundant to reach the aim of proposal.

Second, most of the measures set forth in the draft proposal are appropriate and proportional with the set goal. Measures set down in Article 14 exceed necessary for ensuring the intended effect and achieving the set aim, namely, to contribute to the implementation of the EU 2020 Strategy and to effective management of migration flows for the specific category of seasonal temporary migration.

Finally, Members of the Saeima European Affairs Committee considered that Article 14 could lead to new administrative costs with higher risk of corruption. More over Members of the Saeima European Affairs Committee deemed that current wording of the Article 14 could lead to higher level of protection of seasonal workers from third countries than of the citizens from the Member States.

In view of the afore-mentioned facts, the Saeima European Affairs Committee’s initial assessment about observance of subsidiarity and proportionality principles is as follows: the European Commission has chosen an adequate framework for developing the legislative act. Cause aims put forward in the proposal for Directive of the European Parliament and of the Council can not be fully achieved by Member States acting alone.

Considering proportionality, the Saeima European Affairs Committee considered that most of the planned requirements put forward in proposal for Directive of the European Parliament and the Council are adequate and do not exceed the minimum necessary to achieve the aims, with the exception of the current wording of Article 14. Taking into consideration the above-mentioned, the Saeima European Affairs Committee considers that the final wording of the proposal for Directive of the European Parliament and of the Council COM(2010) 379 on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment comply with the principle of subsidiarity and proportionality, with the exception of the current wording of Article 14.

In light of the above-mentioned, the Saeima European Affairs Committee of the Parliament of Latvia asks the European Commission, European Parliament and Council to reconsider necessity of the current wording of Article 14 in the proposed Directive.

Procedure for evaluating principles of subsidiarity and proportionality:

1. Which parliamentary committees were involved in the subsidiarity?

The Saeima European Affairs Committee considered the proposal.

2. Was the plenary involved?

The given issue has not been on the agenda of Saeima plenary meetings.

3. At which level the final decision was taken and who signed it?

Rules of Procedure of the Saeima Article 185¹. (1) state, that “the Saeima shall participate in EU affairs through the European Affairs Committee unless the Saeima has ruled otherwise”.

Accordingly final decision was taken by Saeima European Affairs Committee and covering letter signed by Chairperson of the Saeima European Affairs Committee.

4. Which administrative services of your parliament were involved and how? Please specify?

The Saeima European Affairs Committee. Other administrative services of the Saeima were not involved in the scrutiny process.

5. In case of a bicameral parliament, did you coordinate the subsidiarity check with the other chamber?

Latvia has a unicameral parliament.

6. Did your government provide any information on the compliance of the proposal with the principle of subsidiarity?

On the part of the Latvian government, the Ministry of the Interior was involved in the scrutiny process. Ministry of the Interior provided an opinion regarding the observation of the principles of subsidiarity and proportionality in the given item.

7. Did you consult your regional parliaments with legislative powers?

Since the given proposal does not lie within the competence of Latvian local governments, local governments were not consulted on this issue.

8. Did you consult any non-governmental organisations, interest groups, external experts or other stakeholders??

In view of the specific nature of the issue, other external actors were not involved in the examination.

9. What was the chronology of events? Please specify the dates.

On 6 October 2010, participants of the Saeima European Affairs Committee meeting considered that in order to fully formulate Latvian national position on the given proposal, additional assessment of proportionality has to be made.

On 6 October 2010, the Saeima European Affairs Committee transmitted a letter to the Ministry of the Interior of the Republic of Latvia with a request to assess the compatibility of the given proposal with the principles of subsidiarity and proportionality.

On 13 October 2010, the Saeima European Affairs Committee received the opinion of the Ministry of the Interior regarding the observation of the principles of subsidiarity and proportionality in the given proposal.

On 14 October 2010, the issue was examined and final decision was taken by the Saeima European Affairs Committee. Members of Legal Affairs Committee participate in European Affairs Committee meeting and contributed their views to the European Affairs Committee.

10. Did you cooperate with other national parliaments in the process? If so, by what means?

While preparing its opinion on subsidiarity and proportionality check the Saeima European Affairs Committee did not directly cooperate with other EU national parliaments. European Affairs Committee followed subsidiarity and proportionality checks in other EU parliaments through IPEX and Permanent Representative to the EU of the Parliament of Latvia.

11. Did you publicise your findings? If so, by what means?

The conclusions were not published; however, a press release on the last meeting of the European Affairs Committee during which the subsidiarity and proportionality check was discussed was prepared and sent to the Latvian news agencies.