

*Reasoned opinion of the European Affairs Committee of the Saeima on the application of the principle of subsidiarity in the proposal for Regulation COM(2012)130 final of 21 March 2012 on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services*

The European Affairs Committee of the Saeima decided to conduct a detailed review of the proposal for Regulation COM(2012) 130 final of 21 March 2012 on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services.

In accordance with paragraph 1 of Article 185<sup>1</sup> of the Rules of Procedure of the Saeima, which stipulates that the Saeima shall participate in EU affairs through the European Affairs Committee unless the Saeima has ruled otherwise, in its meeting of 18 May 2012 the European Affairs Committee approved a reasoned opinion on the application of the principle of subsidiarity in the draft Regulation COM(2012) 130 of 21 March 2012; it based its opinion on the norms set forth in the Treaty on the European Union, the Treaty on the Functioning of the European Union and the 2<sup>nd</sup> Protocol on the Application of the Principles of Subsidiarity and Proportionality.

In evaluating the application of the principle of subsidiarity in the draft Regulation COM(2012) 130, the European Affairs Committee concluded the following:

- 1) Article 5(3) of the Treaty on the European Union stipulates that under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member states either at the central level or at the regional and local level, but, by reason of the scale or effects of the proposed action, can be better achieved at the Union level.
- 2) In justifying the proposal for the Regulation, the European Commission indicates that EU Treaties do not clearly provide the necessary powers; therefore, the legal basis for the proposal is Article 352 of the Treaty on the Functioning of the

European Union, which allows the Council in exceptional cases to implement actions necessary to attain one of the objectives of the Treaties also when with regard to relevant policies necessary powers are not set forth in the Treaties. Furthermore, the European Commission indicates that Article 153(5) of the Treaty on the Functioning of the European Union excludes the right to strike from the range of matters that can be regulated across the European Union by way of minimum standards through Directives. However, the Court of Justice of the European Union rulings have shown that although Article 153 does not apply to the right to strike, it does not exclude collective action as such from the scope of the European Union.

- 3) The European Affairs Committee is not convinced that the justification given by the European Commission is appropriate. Although the European Affairs Committee does not question the rulings made by the Court of Justice of the European Union, it is not convinced that adoption of the Regulation as a secondary legal act in this matter can be derived from these Court rulings. Namely, if the Treaty on the Functioning of the European Union sets forth that the right to strike is not a matter that can be regulated by directives, which are binding only as to the result to be achieved, it is not certain whether this matter can be regulated by a legal act that is directly applicable in all member states. Furthermore, the European Affairs Committee cannot identify exactly which of the objectives that are set forth by the Treaties the European Commission wants to attain and thus justify application of Article 352 of the Treaty on the Functioning of the European Union.
- 4) The explanatory memorandum contains the aim of the proposal for the Regulation – to clarify the general principles and applicable rules at the EU level with respect to the exercise of the fundamental right to take collective action within the context of the freedom to provide services and the freedom of establishment, including the need to reconcile them in practice in cross-border situations.
- 5) A matter on the right to engage in collective action as such, including the right to exercise the freedom of establishment and to provide services, as well as drafting of a relevant legal framework, are not in the competence of the European Union because there is no reason to think that the member states cannot sufficiently

achieve the objectives of the proposed action and that thus the European Union needs to establish a uniform legal framework.

- 6) Article 288 of the Treaty on the Functioning of the European Union sets forth that regulations have a general application. They are binding in their entirety and directly applicable in all member states. Adoption of the regulation as a secondary legal act, as the Commission proposes, is not sufficiently justified because the text of the proposal for the Regulation is not unmistakably clear and definite. As the Regulation is directly applicable, its wording should be clear in order to ensure that all member states are able to apply it uniformly without any misunderstandings. For example, Article 2 of the proposal for the Regulation, which actually is intended to be the most significant contribution to improving the current situation and solving the identified problem, sets forth that the freedom of establishment and the freedom to provide services, as well as the fundamental right to take collective action, including the right to strike are equally important, per se can create new problems in legal interpreting. In addition, the proposed Regulation also affects the international commitments, such as human rights and fundamental rights issues in the context of the Council of Europe.
- 7) Within the context of the freedom to provide services, it is in the interests of the Union to ensure both equal treatment of service providers from all the member states and protection of employees' rights. The European Affairs Committee is not convinced that the proposal for the Regulation achieves these objectives.

With reference to the above considerations and notwithstanding the valuable proposals regarding the early warning system, the European Affairs Committee thinks that in its present wording the proposal for the Regulation COM(2012)130 final of 21 March 2012 on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services infringes on the principle of subsidiarity as defined in Article 5 of the Treaty on the European Union.