



Press and Information

Court of Justice of the European Union
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Advocate General's Opinion in Case C-33/17
Čepelnik d.o.o. v Michael Vavti

Advocate General Wahl proposes that the Court holds that national legislation requiring a recipient of services to provide security in order to secure a fine that might be imposed on a service provider established in another Member State for breach of a provision of national labour legislation is contrary to EU law

Such a measure is precluded by the Services Directive and, in any event, it would go beyond what is necessary to enable the national authorities to verify and enforce compliance with national labour legislation enacted to protect workers and avoid unfair competition and social dumping

Čepelnik is a limited liability company established in Slovenia. It provided Mr Vavti with services in the construction sector for a value of €12,200. The services were performed on a house owned by Mr Vavti, situated in Austria near the border with Slovenia, through the posting of workers. Mr Vavti made an advance payment to Čepelnik of €7,000.

In 2016 the Austrian Finance Police carried out an inspection at the building site, and charged Čepelnik with two administrative offences. Firstly, for two posted workers, Čepelnik had failed to give correct notice of the commencement of work under the Law adapting the law on employment contracts (AVRAG). Secondly, Čepelnik had not made wage documents for four posted workers available in German. Immediately after the inspection, the Finance Police required Mr Vavti to suspend payments and applied to the competent administrative authority, the Bezirksmannschaft Völkermarkt (District Administrative Authority of Völkermarkt, 'the BHM Völkermarkt', Austria) for an order that he provide security. That security was intended to secure the payment of any fine that might be ordered in proceedings to be instituted against Čepelnik on the basis of the outcome of the inspection. The Finance Police applied for the security to be set at an amount equal to the outstanding balance, namely, €5,200. The BHM Völkermarkt ordered the requested security to be provided, on the ground that 'on the basis of the place of [establishment] of ... the service provider, which is in Slovenia, ... it can be presumed that prosecution and enforcement would be very difficult if not impossible'. Mr Vavti lodged the security.

Proceedings were opened against Čepelnik in respect of the alleged administrative offences. By judgments of October 2016 Čepelnik was fined €1,000 and €8,000, for having allegedly contravened the AVRAG.

Upon completion of the work, Čepelnik billed Mr Vavti €5,000 to settle the outstanding balance. The latter refused payment, claiming to have paid the outstanding balance to the BHM Völkermarkt, in accordance with the administrative decision of that authority. Čepelnik then brought proceedings against Mr Vavti in order to recover the outstanding balance.

The Services Directive¹ provides in particular that Member States shall respect the right of providers to provide services in a Member State other than the one in which they are established. Moreover, Member States may not impose on a recipient requirements which restrict the use of a service supplied by a provider established in another Member State. This directive does not affect national labour law (...) which respects [EU] law.

¹ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market ('the Services Directive') (OJ 2006 L 376, p. 36)

It is in that context that the Bezirksgericht Bleiburg/Okrajno sodišče Pliberk (District Court, Bleiburg, Austria) asks the Court of Justice whether the EU law prohibits a Member State from ordering a person in that State who has commissioned work to suspend payments and provide security in a sum equal to the amount outstanding, if the suspension of payments and the provision of the security serve solely to secure a possible fine, to be imposed only subsequently in separate proceedings against a service provider established in another Member State.

In today's Opinion, Advocate General Nils Wahl considers, first, that the Services Directive is applicable in the case at hand. As the statutory objective of this measure is rather to secure, to the benefit of the treasury, the execution of penalties that the public authorities may in the future impose upon a service provider, and the measure is imposed not on the perpetrator of the alleged infringement, but on his contractual partner, it cannot be considered to fall within the 'labour law' exception in the Services Directive. The Advocate General then observes that such a measure, regardless of whether or not it is discriminatory, is by its very nature capable of, on the one hand, discouraging Austrian customers from obtaining services from providers established abroad and, on the other hand, discouraging providers established in other Member States from offering, on a temporary basis, their services in Austria. Therefore, this measure constitutes a restriction that is in principle prohibited by the Services Directive. Next, the Advocate General examines whether such a measure can be justified and he states that national measures restricting the rights of *service providers* may be justified only under certain conditions set out in the same directive. However, national measures that restrict the rights of *recipients of services* may not, in principle, be justified.

For all those reasons, **the Advocate General concludes that such a measure is incompatible with the Services Directive.**

That conclusion would be no different even if the Court were to examine the compatibility of such a measure with Article 56 TFEU on freedom to provide services.

Indeed, a restriction of a freedom to provide services is warranted only if it pursues a legitimate objective compatible with the Treaties and is justified by overriding reasons of public interest; if that is the case, it must be suitable for securing the attainment of the objective which it pursues and not go beyond what is necessary in order to attain it.

According to the Advocate General, the aim of enabling the national authorities to verify and enforce compliance with national labour legislation enacted to protect workers and avoid unfair competition and social dumping (which is the justification invoked by the Austrian Government) constitutes an *overriding reason* of public interest that may justify a restriction to the freedom to provide services. However, it may be doubted whether the measure *genuinely* and *coherently* pursues the objective. He is of the opinion that the measure is in any event not proportionate, as it *goes beyond* what is necessary to attain the stated objective.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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