



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-33/17  
Čepelnik d.o.o. v Michael Vavti

**Legislation of a Member State under which a recipient of services can be ordered to suspend payments and to pay a security to guarantee payment of a possible fine which might be imposed on the provider of services, established in another Member State, for an infringement of the labour law of the first Member State is contrary to EU law**

*Such national measures go beyond what is necessary for attaining the objectives of protecting workers, combating fraud, especially social security fraud, and preventing abuse*

Čepelnik, a company established in Slovenia, provided Mr Michael Vavti with services in the construction sector to the value of €12 200. The services were provided by posted workers in a house in Austria belonging to Mr Vavti. Mr Vavti paid Čepelnik a down payment of €7 000.

In 2016 the Austrian financial police carried out an on-site check and accused Čepelnik of two administrative offences relating to labour legislation. As a result of that finding, the financial police ordered Mr Vavti to suspend payments and requested the competent administrative authority (Bezirkshauptmannschaft Völkermarkt, Völkermarkt district administrative authority ('the BHM Völkermarkt')) to order Mr Vavti to pay a security to guarantee payment of a possible fine that might be imposed on Čepelnik in proceedings to be brought following the check. The financial police asked for the security to be set at an amount equal to the balance due, namely €5 200. The BHM Völkermarkt acceded to that request and Mr Vavti paid a security in that amount.

Proceedings were brought against Čepelnik for the alleged administrative offences. In October 2016 Čepelnik was fined €1000 and €8 000 for the offences.

After completing the work, Čepelnik invoiced Mr Vavti the sum of €5 000. Mr Vavti refused to pay, stating that he had paid a security of €5 200 to the BHM Völkermarkt. Čepelnik thereupon brought proceedings against Mr Vavti for payment of the balance.

The Bezirksgericht Bleiburg/Okrajno Sodišče Pliberk (District Court, Bleiburg, Austria) asks the Court of Justice whether EU law prohibits a Member State from ordering a person who has commissioned works in that Member State to suspend payments and to pay a security in an amount equivalent to the balance due, where the suspension and the security serve solely to guarantee a fine that might subsequently be imposed in separate proceedings on the service provider who carried out the works and is established in another Member State.

In today's judgment **the Court of Justice observes, first, that the Services Directive<sup>1</sup> does not apply to measures such as those provided for by the Austrian legislation in question.** The wording of the directive states that it is not to apply to 'labour law', a term which it defines broadly. The Court observes that that provision does not distinguish between substantive rules of labour law, on the one hand, and rules relating to the measures provided for in order to ensure compliance with those substantive rules and those intended to ensure the effectiveness of the penalties imposed in the event of non-compliance with those rules, on the other.

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

The Court further observes that, by that directive, the EU legislature intended to ensure that a balance was observed between the objective of eliminating obstacles to the freedom of establishment of service providers and the free movement of services, on the one hand, and, on the other, the requirement of ensuring a high level of protection of objectives in the general interest, including the need to comply with labour law. The Court observes that the establishment by national legislation of deterrent measures for the purpose of ensuring compliance with the substantive rules of labour law and with rules intended to ensure the effectiveness of penalties imposed in the event of non-compliance with those substantive rules contributes to ensuring a high level of protection of the objective in the general interest consisting in the need to comply with labour law.

In the light of those factors, the Court concludes that the exception in the directive relating to 'labour law' extends to such national legislation.

After ruling out the application of the Services Directive, the Court considers whether legislation such as that at issue is consistent with the freedom to provide services.<sup>2</sup> It recalls that all measures which prohibit, impede or render less attractive the exercise of the freedom to provide services must be regarded as restrictions of that freedom. It states that measures which require a commissioning party to suspend the payments owed to his contractor and to pay a security in an amount equivalent to the price still owed for the works, where there is reasonable suspicion of an administrative offence by the service provider against the national rules in the field of labour law, are liable, first, to deprive the recipient of services of the possibility of retaining part of that sum as compensation in the event of faulty or late performance of the works and, secondly, to deprive the service provider of the right to claim payment of the price still owed for the works. Those measures therefore entail a restriction of the freedom to provide services.

The Court recalls, however, that such a restriction may be accepted where it serves overriding reasons in the public interest, is appropriate for attaining the objective it pursues, and does not go beyond what is necessary to attain that objective.

As regards the objectives of the social protection of workers and of combating fraud, particularly social security fraud, and preventing abuse, the Court notes that the measures provided for by the Austrian legislation in question, which are intended to ensure the effectiveness of the penalties that might be inflicted on the service provider in the event of an infringement of the legislation on labour law, may be regarded as appropriate for ensuring that those objectives are realised. By contrast, as regards the proportionality of such legislation with respect to those objectives, the Court observes that it makes it possible for such measures to be imposed even before a finding is made by the competent authority of an administrative offence against national legislation in the field of labour law. Moreover, it does not provide that the service provider against whom there is reasonable suspicion of such an offence can, before the adoption of those measures, put forward his observations on the acts of which he is accused. Finally, as the amount of the security that may be required from the recipient of the services may be fixed by the competent authorities without taking account of possible construction faults or other defective performance of the contract for works by the service provider, it could exceed, perhaps substantially, the amount the commissioning party would in principle have to pay on completion of the works.

The Court concludes that **legislation of a Member State under which the competent authorities can order a commissioning party established in that Member State to suspend payments to his contractor established in another Member State, or even to pay a security in an amount equivalent to the price still owed for the works in order to guarantee payment of a fine which might be imposed on that contractor in the event of a proven infringement of the labour law of the first Member State, goes beyond what is necessary for attaining the objectives of protecting workers, combating fraud, in particular social security fraud, and preventing abuse.**

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<sup>2</sup> Article 56 TFEU.

**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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