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from: Michael Pownall, Clerk of the Parliaments, House of Lords of the United Kingdom

date of receipt: 26 October 2010

to: Yves Leterme, President of the Council of the European Union

Subject: Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the seasonal employment
[doc. 12208/10 MIGR 66 SOC 461 CODEC 689 - COM (2010) 379 final]
- Opinion¹ on the application of the Principles of Subsidiarity and Proportionality

Delegations will find attached a copy of the above letter.

¹ This opinion is available in English on the Interparliamentary EU information exchange Internet site (IPEX) at the following address: <http://www.ipex.eu/ipex/cms/home/Documents/pid/10>



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20 October 2010

The President
Council of the European Union
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Belgium

Dear President,

COM(2010)379, Council Document 12208/10 Commission proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment

On 20 October 2010 the House of Lords of the United Kingdom Parliament resolved as follows:

“that this House considers that the Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010)379, Council Document 12208/10) does not comply with the principle of subsidiarity, for the reasons set out in the 1st Report of the European Union Committee, Session 2010-11 (HL Paper 35); and instructs the Clerk of the Parliaments to forward this reasoned opinion to the Presidents of the European institutions.”

I have the honour so to do. I enclose the report referred to, with a translation.

Yours sincerely
Michael Pownall

Michael Pownall
Clerk of the Parliaments

SECRET	DU CONSEIL
DE	BRUXELLES
SGE10/11761	
26. 10. 2010	
RECEIVED	M. CLOOS
RECEIVED	M. BIZJAK

Subsidiarity assessment: admission of third country nationals as seasonal workers

Commission proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010)379; Council doc. 12208/10)

Recommendation

1. We recommend that the House of Lords should issue the reasoned opinion set out below to the effect that the draft Directive does not comply with the principle of subsidiarity; and should send it to the Presidents of the European Parliament, the Council and the Commission, in accordance with the provisions of the EU Treaties.¹

Scrutiny reserve

2. This report does not complete our scrutiny of this proposal.

Our inquiry

3. This report was prepared by the Home Affairs Sub-Committee whose members are listed in Appendix 1.

Reasoned opinion

4. The Hague Programme² requested the Commission to present a policy plan on legal migration “including admission procedures, capable of responding promptly to fluctuating demands for migrant labour in the labour market”. This *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment* is part of the Commission’s response to that request.
5. The Commission summarises its proposal as follows:³

The proposal establishes a fast-track procedure for the admission of third-country seasonal workers, based on a common definition and common criteria, in particular the existence of a work contract or a binding job offer that specifies a salary equal to or above a minimum level. Seasonal workers will be issued with a residence permit allowing them to work for a specified maximum period per calendar year. Provision is also made for facilitating the re-entry of a seasonal worker in a subsequent season.

¹ Article 5(3) of the Treaty on European Union and Article 6 of the Protocol on the application of the principles of subsidiarity and proportionality

² The five-year programme for justice and home affairs adopted by the European Council on 4-5 November 2004

³ COM(2010)379, page 5.

In order to prevent exploitation and protect the safety and health of third-country seasonal workers, legal provisions applying to working conditions are clearly defined. Also, employers are required to provide evidence that the seasonal worker will have appropriate accommodation during his/her stay and that provision is made for facilitation of complaints.

To prevent overstaying of third-country seasonal workers, a maximum duration of stay per calendar year is laid down as well as the explicit obligation to return after that period; there is no possibility of status change.

6. In areas, like immigration, which do not fall within the exclusive competence of the European Union, but where competence is shared with the Member States, the Union can act “only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States”.⁴ This is the principle of subsidiarity. Our scrutiny has so far been confined to an assessment of whether the proposal complies with that principle. We have concluded that it is inconsistent with that principle.
7. The need for seasonal workers is, as the Commission says, “a common occurrence in most Member States”. However the needs of Member States all differ as regards the numbers of workers needed, the times at which and for which they are needed, the work for which they are needed, and many other matters. Additionally there are differences between Member States as to whether their needs for seasonal workers can be satisfied primarily by workers from other Member States (as is the case with the United Kingdom), or whether they need to rely mainly on third country nationals. Article 79(5) of the Treaty on the Functioning of the European Union recognises that the volume of admissions to their territory of third country nationals is a matter for determination by the Member States.
8. Because of these differences, we believe that the entry to and residence in each Member State of third country nationals as seasonal workers can be and should be governed primarily by a combination of these market factors and of the policy of each State towards the admission of such workers. Action at EU level does not seem to be necessary.
9. The Commission gives four specific reasons for believing that the principle of subsidiarity is complied with.⁵ The first of these is that “a Member State’s decision on the rights of third-country nationals could affect other Member States, and possibly cause distortions of migratory flows”. We can see that if one Member State grants seasonal workers better minimum working conditions, this may make migration to that State more attractive. This however would also happen under the Directive, since (a) the rights granted under it are not absolute, but are simply the minimal rights granted to nationals of that State, and those rights of course vary from State to State; and (b) the Member States remain in control of admissions to their territory.
10. The Commission’s second reason is that the Schengen area requires common minimum rules to reduce the risk of overstaying and illegal entries. We do not see why having common rules for seasonal workers should necessarily reduce this risk.

⁴ Article 5(3) of the Treaty on European Union.

⁵ COM(2010)379, page 6.

11. The third reason is that exploitation and sub-standard working conditions need to be overcome by “a binding, and thus enforceable, EU-level instrument”. Measures of national law are of course binding and enforceable, and are at least as effective as EU measures in overcoming exploitation.
12. The Commission’s last reason is that “an EU instrument on seasonal workers is crucial for effective cooperation with third countries and for further deepening of the global approach.” We simply do not see why this should be so; the two arguments advanced by the Commission seem to us unpersuasive.