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20 October 2010

The President
European Commission
rue de la Loi 200
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Your 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



HOUSE OF LORDS

European Union Committee

1st Report of Session 2010–11

**Subsidiarity assessment:
admission of third-
country nationals as
seasonal workers**

Report

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The European Union Committee

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

The Committee has seven Sub-Committees which are:

Economic and Financial Affairs and International Trade (Sub-Committee A)

Internal Market, Energy and Transport (Sub-Committee B)

Foreign Affairs, Defence and Development Policy (Sub-Committee C)

Agriculture, Fisheries and Environment (Sub-Committee D)

Justice and Institutions (Sub-Committee E)

Home Affairs (Sub-Committee F)

Social Policies and Consumer Protection (Sub-Committee G)

Our Membership

The Members of the European Union Committee are:

Lord Bowness

Lord Carter of Coles

Lord Dear

Lord Dykes

Lord Hannay of Chiswick

Lord Harrison

Baroness Howarth of Breckland

Lord Jopling

Baroness O'Cathain

Lord Paul

Lord Plumb

Lord Richard

Lord Roper (Chairman)

The Earl of Sandwich

Baroness Sharp of Guildford

Lord Teverson

Lord Tomlinson

Lord Trimble

Baroness Young of Hornsey

The Members of the Sub-Committee which prepared this report are listed in Appendix 1.

Information about the Committee

The reports and evidence of the Committee are published by TSO. For information freely available on the web, our homepage is <http://www.parliament.uk/hleu>

There you will find many of our publications, along with press notices, details of membership and forthcoming meetings, and other information about the ongoing work of the Committee and its Sub-Committees, each of which has its own homepage.

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at http://www.parliament.uk/about_lords/about_lords.cfm

Sub-Committee Staff

The current staff of the Sub-Committee are Michael Collon (Clerk), Michael Torrance (Policy Analyst) and Joanna Lukens (Committee Assistant).

Contacts for the European Union Committee

Contact details for individual Sub-Committees are given on the website.

General correspondence should be addressed to the Clerk of the European Union Committee, Committee Office, House of Lords, London, SW1A 0PW

General enquiries 020 7219 5791. The Committee's email address is euclords@parliament.uk

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.

APPENDIX 1: HOME AFFAIRS SUB-COMMITTEE

The members of the Sub-Committee which prepared this report were:

Lord Avebury
Lord Dear
Baroness Eccles of Moulton
Baroness Garden of Frognal
Lord Hannay of Chiswick (Chairman)
Lord Hodgson of Astley Abbotts
Lord Judd
Lord Mackenzie of Framwellgate
Lord Mawson
Lord Naseby
Lord Richard
Lord Tomlinson

Declarations of Interests:

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>