COUNCIL OF THE EUROPEAN UNION

Brussels, 18 October 2010

15058/10

Interinstitutional File: 2010/0210 (COD)

MIGR	**99**
SOC	**668**
CODEC	**1071**
INST	**411**
PARLNAT	**100**

COVER NOTE

from:	William Cash MP, European Scrutiny Committee, House of Commons of the United Kingdom
date of receipt:	14 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] - Opinion[1] 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

European Scrutiny Committee
House of Commons 7 Millbank London SW1P 3JA
Tel (020) 7219 5465/3292 Fax (020) 7219 2509 Email escom@parliament.uk Website www.parliament.uk/escom

From: Mr William Cash MP

13 October 2010

Mr Yves Leterme
President of the Council of Ministers

Dear President,

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

I am writing as the Chairman of the European Scrutiny Committee in the House of Commons to inform you of the outcome of the Committee's consideration of the Commission's proposal for a Directive on the conditions of entry and residence of third country nationals for the purposes of seasonal employment.

The Committee examines EU documents and reports to the House on their legal and political importance. We first considered the draft Directive at our meeting on 15 September and questioned whether the proposal complied with the principle of subsidiarity set out in Article 5(3) of the Treaty on European Union. We invited the Government to reconsider its own assessment of the subsidiarity implications of the draft Directive in light of the Committee's concerns.

The Committee considered the Government's response at its meeting on 13 October and concluded that there were continuing reasons to doubt whether the draft Directive complied with the principle of subsidiarity and to question whether the Commission had adduced the evidence required under Article 5 of the Protocol on the Application of the Principles of Subsidiarity and Proportionality to justify EU action in this case. I set out the relevant extract from the Committee's report below:

The Committee's Conclusion on the Seasonal Workers' Directive

"We note the Minister's view that the draft Directive would appear to be consistent with the principle of subsidiarity so have looked again at the reasons advanced by the Commission to justify EU action.

> *There is a continuing need for seasonal workers in most Member States but differences in the treatment of those admitted to a Member State can affect other Member States and distort migratory flows.*

"We understand the Commission to mean that the conferral of more generous rights and entitlements in one Member State may operate as a 'pull factor' and draw seasonal workers to the Member State offering the most favourable employment conditions rather than to the Member State/s where their labour is most needed. However, the Commission's impact assessment (ADD 1) merely refers to "anecdotal evidence of competition among Member States for the most attractive conditions in terms of salary, travel arrangements, accommodation or working conditions".[1] We doubt whether anecdotal evidence constitutes the qualitative indicator required under the Subsidiarity Protocol.

"We also question what practical difference the draft Directive would make as the employment and equal treatment rights it confers are based on those provided for by law in the Member State to which seasonal workers are admitted and are thus largely determined at a national level. Moreover, competition between Member States to improve the conditions of employment for temporary seasonal workers strikes us as a sign of a healthy labour market, not one that requires further regulatory intervention.

> *Common rules are needed within the Schengen free movement area to reduce the risk of overstaying or illegal entry which may result from differing rules on the admission of seasonal workers or lax enforcement.*

"We understand that there is a correlation between the sectors most likely to employ seasonal workers, for example, agriculture and tourism, and the incidence of illegal employment. Opportunities for overstaying or for taking up illegal employment, possibly in a different Member State from the one that first admitted a seasonal worker, are likely to be greater within the Schengen area than, for example, in the UK where border controls remain.

"The Minister suggests that Schengen introduces a collective dimension sufficient to justify EU action to regulate the conditions of entry of seasonal workers. He notes that the draft Directive includes a provision – Article 11 – which expressly requires seasonal workers to leave the EU after a maximum

[1] See paragraph 2.2.1 of the Commission's impact assessment (ADD 1).

of six months' residence and another – Article 12 – which encourages circular migration by facilitating the re-entry of seasonal workers who have a good record of compliance. We perceive two difficulties with this justification. The first is that each Member State remains at liberty to determine the number of third country nationals (if any) it will admit for the purposes of seeking or taking up employment.[2] This will inevitably affect migratory flows within the EU to a far greater extent than divergent national rules in those Member States that do admit seasonal workers. The second difficulty, as noted in the Commission's impact assessment and in our previous report, is that the legal framework for entry and employment in a particular Member State is only one of a number of 'pull' factors influencing the decision to migrate. The Commission says that the relative importance of these factors is difficult to measure and that they are "outside the remit and impact of EU legislation".[3] While we acknowledge the difficulty, we also question how the Commission can assert that common rules on entry and residence will have a beneficial impact on reducing illegal immigration without attempting to weigh the importance of other contributory factors.

Only EU legislation can ensure that third country seasonal workers employed within the EU are accorded a minimum core of employment and social rights to prevent exploitation

"We do not contest the Commission's assertion that there is significant evidence of poor working conditions and exploitation of migrant seasonal workers in some Member States, although it is somewhat at odds with the first justification advanced by the Commission that Member States are competing with each other to offer more attractive conditions. However, as the Commission acknowledges in its impact assessment, poor working conditions are largely a result of deficiencies in national legislation and lax enforcement and so it is not clear why the appropriate remedy can be better achieved at EU level than at national level.[4]

EU legislation on seasonal workers is crucial to ensure effective co-operation with third countries to tackle illegal immigration, not least by removing obstacles to the legal migration of unskilled workers.

"We understand the argument that opening up opportunities for legal migration, particularly of low skilled workers, may make it easier to secure co-operation on illegal immigration from source countries. However, the Treaty on the Functioning of the European Union does not empower the EU to determine how many labour migrants to admit. Decisions on the volumes of admissions remain in the hands of Member States. EU legislation on seasonal workers cannot alter that fact and so we do not accept the

[2] See Article 79(5) TFEU.

[3] See paragraph 2.2.1 of the Commission's impact assessment (ADD 1).

[4] See paragraph 2.2.2 of the Commission's impact assessment (ADD 1).

Commission's assertion that the draft Directive is crucial for securing effective co-operation with third countries."

The Committee noted that the Lisbon Treaty confers a new power to issue a "reasoned opinion" if a national parliament, or chamber thereof, considers that draft EU legislation breaches the principle of subsidiarity. However, the Parliamentary timetable does not permit the House of Commons to issue a reasoned opinion by 15 October, when the eight-week deadline expires, even if my Committee were minded to recommend that it should do so in this case.

In our Inquiry on *Subsidiarity, National Parliaments and the Lisbon Treaty* the former Commissioner for Institutional Relations and Communications Strategy (Mrs Margot Wallström) said that the Commission would listen to the views of national parliaments even if there was an insufficient number of reasoned opinions to require the Commission formally to review its draft legislation.[5] It is in this spirit of a consensus-seeking approach by the EU institutions that I am informing you of the views of my Committee on the subsidiarity implications of this draft Directive. I am writing in similar terms to the Presidents of the European Parliament and the European Commission.

CHAIRMAN

[5] See HC 563 (2007-08),paragraph 24, p.8.