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From: The Danish Parliament

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 96/71/EC of The European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services  
[doc. 6987/16 SOC 144 EMPL 97 MI 142 COMPET 118 CODEC 279 - COM(2016) 128 final]  
- *Reasoned opinion on the application of the Principles of Subsidiarity and Proportionality*<sup>1</sup>

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Delegations will find attached the above mentioned opinion.

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<sup>1</sup> For available translations of this opinion see the interparliamentary EU information exchange site (IPEX) at the following address: <http://www.ipex.eu/IPEXL-WEB/dossier/document/COM20160128.do>

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**Begrundet udtalelse om Kommissionens forslag til revision af  
Udstationeringsdirektivet**

11. maj 2016

Folketinget har behandlet Kommissionens forslag til ændring af direktiv 96/71/EF om udstationering af arbejdstagere som led i udveksling af tjenesteydelser, KOM(2016)128.

Et flertal i Folketinget (Socialdemokraterne, Dansk Folkeparti, Enhedslisten, Alternativet og Socialistisk Folkeparti) finder, at forslaget rejser problemer i forhold til nærhedsprincippet.

Flertallet hilser det velkomment, at Kommissionen stiller forslag om en revision af udstationeringsdirektivet med det formål at sikre lige løn for samme arbejde. Flertallet kan bakke op om de positive ændringer af direktivet, der styrker indsatsen mod social dumping.

Men flertallet finder, at forslaget rejser problemer i forhold til nærhedsprincippet på to punkter. For det første fordi den eksplicite passus i det gældende direktiv om, at løn defineres i overensstemmelse med national praksis (artikel 3, stk. 1, sidste sætning), er udgået i Kommissionens forslag til revision.

Det samme gør sig gældende i forhold til art. 3, stk. 9, i det nugældende direktiv, hvorefter en medlemsstat kan fastsætte bestemmelser, som skal sikre, at udstationerede vikarer får samme vilkår, som nationale vikarer. Konsekvensen af, at Kommissionen foreslår denne bestemmelse slettet til fordel for en bestemmelse om, at udstationerede vikarer sikres samme vilkår som nationale vikarer (i overensstemmelse med vikardirektivet 2008/104/EF), er, at der rejses tvivl om den nationale kompetence på dette område.

Definitionen af aflønning samt vilkår for vikarer er medlemsstatskompetence. Det bør i lighed med gældende direktiv fremgå eksplicit af den reviderede udgave af direktivet. I den forbindelse er det ikke tilstrækkeligt, at det fremgår af betragtningerne til forslaget.

Et mindretal i Folketinget (Venstre, Liberal Alliance, Radikale Venstre og Konservativt Folkeparti) anerkender, at EU har kompetence til at fastsætte rammer for vilkår, der skal gælde for udstationerede, jf. det eksisterende udstationeringsdirektiv. Når EU-Kommissionen ønsker at indføre et ligebehandlingsprincip for udstationerede lønmodtagere, forudsætter det formelt en ændring af det eksisterende direktiv.

EU har derimod ikke kompetence til at regulere løn. Det afgørende er dermed ikke, hvorvidt bestemmelsen er i strid med nærhedsprincippet eller ej, men om hvorvidt EU overhovedet kan regulere. Mindretallet finder ikke anledning til at sende en begrundet udtalelse efter protokollen om nærhedsprincippet, men mener i stedet, at der er grund til at sende en politisk udtalelse om, at der stilles spørgsmål ved kompetencen til at regulere, og at der bør indsættes en udtrykkelig passus herom, som i det gældende direktiv.

Kommissionen foreslår, at art. 3, stk. 9, i det nugældende udstationeringsdirektiv slettes. Bestemmelsen betyder, at medlemsstaterne har kompetence til at fastsætte regler for udstationerede vikarer, som ligger ud over de minimumsregler, som ellers følger af direktivet. I stedet foreslår Kommissionen, at der indføres et generelt ligebehandlingsprincip for udstationerede vikarer. Det er uklart, hvad de juridiske konsekvenser af at slette art. 3, stk. 9, er. Det er vigtigt for mindretallet, at medlemsstaternes kompetence til at fastsætte vilkår for udstationerede vikarer ikke indskrænkes med forslaget. Det handler således om at sikre størst muligt råderum og at opretholde national kompetence i forhold til at kunne regulere vikarforhold, hvilket regeringen skal arbejde for at få præciseret i forhandlingerne.

Folketinget forholder sig i denne begrundede udtalelse ikke til de øvrige elementer af forslaget.

Med venlig hilsen



Mette Gjerskov

Formand for Folketingets Europaudvalg

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**Reasoned opinion on the Commission proposal for a revision of the Posting of Workers Directive** 06 May 2016

The Danish Parliament has considered the Commission proposal amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, COM(2016)128.

A majority in the Danish Parliament (the Social Democrats, the Danish People's Party, the Red-Green Alliance, the Alternative and the Socialist People's Party) finds that the proposal involves two problems in connection with the subsidiarity principle.

The majority welcomes the Commission's initiative in proposing a revision of the Posting of Workers Directive with the purpose of ensuring equal pay for equal work. The majority supports the positive amendments of the Directive which enhance the efforts to prevent social dumping.

But the majority finds that the proposal involves a number of problems in connection with the subsidiarity principle in two particular connections. First, because the explicit passage in the current Directive to the effect that pay is defined by the national practice (Article 3(1), last sentence) is not included in the Commission proposal for a revision.

The same applies to Article 3(9) of the current Directive, according to which Member States may lay down provisions to ensure that posted temporary workers are guaranteed the same terms and conditions that apply to national temporary workers. The consequence of the Commission's proposal to delete this provision and replace it by a provision to the effect that posted temporary workers be guaranteed the same terms and conditions that apply to national temporary workers (in compliance with the Agency Workers Directive 2008/104/EC) is that it raises doubts as to the national competence in this area.

The definition of pay and terms and conditions for temporary workers falls under the competence of the Member States. As is the case for the current Directive, this should appear explicitly from the revised Directive. It is not, in this regard, sufficient that it appears from the explanatory memorandum to the proposal.

A minority of the Danish Parliament (the Liberal Party, Liberal Alliance, the Social-Liberal Party and the Conservative People's Party) recognises the EU's competence to establish a framework for terms and conditions applicable to posted workers, see the existing Posting of Workers Directive. When the European Commission wishes to introduce a principle of equal treatment for posted workers, a necessary formal prerequisite is an amendment of the existing Directive.

However, it is not within the EU's competence to regulate pay. What is important is thus not whether the provision is in compliance with the subsidiarity principle or not, but whether the EU has competence to regulate at all. The minority does not find it necessary to submit a reasoned opinion according to the protocol on subsidiarity, but finds instead that there is reason to submit a policy statement to the effect that the competence to regulate is questioned and that an explicit passage to this effect should be included in the current Directive.

The Commission proposes that Article 3(9) of the current Posting of Workers Directive be deleted. The provision stipulates that the Member States have competence to lay down rules governing posted temporary workers that go beyond the minimum rules which otherwise follow from the Directive. Instead, the Commission proposes that a general principle of equal treatment be introduced for posted temporary workers. The legal effects of deleting Article 3(9) are not clear. It is important to the minority that the Member States' competence to lay down terms and conditions governing posted temporary workers is not reduced by the proposal. It is consequently a matter of ensuring as much latitude as possible and of maintaining national competence to be able to regulate temporary worker's terms and conditions, and the government must work to have this specified during the negotiations.

The Danish Parliament does not take any position on the other elements of the proposal in this reasoned opinion.

Yours sincerely

Mette Gjerskov  
Chair of the European Affairs Committee