



Warsaw, 14 April 2016

SEJM
OF THE REPUBLIC OF POLAND
EUROPEAN UNION AFFAIRS COMMITTEE
CHAIRPERSON
Izabela Kloc

Ms Mette GJERSKOV

Chairwoman
of the European Affairs Committee
Folketing
Copenhagen

Dear Colleague,

I would like to inform you that on 13 April 2016 the Sejm of the Republic of Poland adopted a resolution on the recognition of the 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 (COM(2016) 128) as incompatible with the principle of subsidiarity. A reasoned opinion of the Sejm of the Republic of Poland containing grounds why the Parliament recognises the Proposal as incompatible with the principle of subsidiarity constitutes an annex to the Resolution of the Sejm.

Herein below I would like to share with you the main objections of the Sejm as to the compliance of the proposal with the principle of subsidiarity. The full text of the reasoned opinion is attached to this letter.

According to the Sejm, the proposal violates the principle of subsidiarity because the proposed Directive does not assure that the objectives of the intended action at the EU level will be better attained than by way of actions taken at national level.

The Sejm also claims that the proposal includes no justification for the compatibility of the proposed directive with the principle of subsidiarity. In no way has the Commission justified that the objectives to be achieved by the proposed amendments to the Directive cannot be better regulated at a national level. No such justification, in particular lack of any qualitative and quantitative indicators, constitutes a violation of Article 5 of Protocol No. 2. Moreover, the directive to a large extent impedes, if not completely prevents national parliaments from the exercise of their right to control the compliance with the principle of subsidiarity under Article 5 (3), Article 12, point (b) of the Treaty on European Union and Article 6 of Protocol No. 2.

Furthermore, in the opinion of the Sejm, the principle of subsidiarity is violated by the proposed amendments to Article 3 (1) and Article 3 (1b) of the Directive 96/71/EC.

In the case of Article 3(1) of the Directive relating to collective agreements, the Sejm takes note of the fact that the adoption of the proposed law will result in the obligatory extension of the scope of the commonly-used collective agreements on all posted workers, in all economy sectors. Meanwhile, the existing Directive gives Member States freedom to decide whether to introduce common use of collective agreements and whether to apply their provisions - in relation to the posted workers – in all economy sectors, or only with reference to the sectors set out in the annex to the Directive. Moreover, the information provided in the impact assessment shows that states benefit from such possibilities. The Commission has not proven that the purpose of its action cannot be sufficiently achieved by the Member States.

However, in the case of Article 3 (1b) of the Directive, in the view of the Sejm it must be stated that Member States can with better effect than the European Commission assess whether it is necessary to equate the rights of posted temporary workers. There is no need for this issue to be regulated uniformly in all European Union Member States. The more so that the current EU law gives Member States the possibility of equating the rights of temporary workers posted to work in another Member State with the rights of temporary workers hired through temporary employment agencies established in the Member State where work is performed.

With this letter, I wish to draw your attention to the European Commission's propositions, contained in the proposal COM(2016) 128, which both the Sejm and the government of the Republic of Poland assess as highly controversial, and to encourage you to carefully scrutinise the proposal and its consequences, and in the context of its compliance with the principle of subsidiarity, to take action in your parliaments aiming at the adoption of reasoned opinions in this regard.

Sincerely,

A handwritten signature in black ink, reading "Jolanta Ullrich". The signature is written in a cursive, flowing style with a large initial 'J'.