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Home Office  
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4 September 2013

Dear Minister

**9124/I3: Proposal for a Directive of the European Parliament and of the Council on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers**

Thank you for your Explanatory Memorandum (EM) of 7 June 2013 on the above proposal. The Internal Market, Infrastructure and Employment Sub-Committee of the House of Lords Select Committee on the European Union decided that the proposal was of sufficient importance to justify a process of further scrutiny. The Committee heard oral evidence from the Centre for European Reform (CER); University of Edinburgh; Migrants Rights Network, and the National Institute of Economic and Social Research (NIESR) on 15 July, and heard oral evidence from you on 22 July. The transcripts of both evidence sessions are available via the Committee's website.

This letter summarises the Committee's deliberations on the Commission's proposal and also sets out the Committee's position on the merits of the proposal. It also requests the Government's response on a number of points.

**On balance, we support the Commission's aims to consolidate existing rights of EU citizens to live and work in another Member State.**

We would like to make the following points about specific provisions in the proposal:

***Existing situation and need for a new Directive***

The Commission documents accompanying the proposal give concrete examples of where existing rights are not being respected in Member States, such as public authorities, employers and legal advisers not complying with EU law, and EU migrant workers having limited access to information and the means to ensure their rights. The documents suggest that these problems have contributed to only 3.1 per cent of working-age individuals in the

EU living in a Member State other than their own.<sup>1</sup> We agree with the Commission that this is a surprisingly low figure which indicates that there are important issues which need to be addressed. However, like you, we are not convinced that a new Directive is the best way of tackling the problem, and suggest that it is more appropriate for the Commission to use existing mechanisms to address the various issues raised in its Communication. We propose that this could be done through non-legislative action, such as proper enforcement through the European Court of Justice, the imposition of penalties where appropriate, and the EU and Member States working together to provide greater information to EU workers.<sup>2</sup> We urge you to seek greater clarity in negotiations on the rationale behind the introduction of a new Directive to solidify existing rights rather than using existing enforcement procedures. **We have therefore reached the view that, while there is scope for non-legislative action at EU level, the proposal for a Directive is not necessary, and the Commission should concentrate its efforts on enforcing existing legislation.**

### ***Subsidiarity***

We thank you for your clarification of the Government's concerns on subsidiarity during the 22 July evidence session, which expanded on the points made in your EM.<sup>3</sup> We acknowledge your view that existing structures such as the EURES jobs portal and SOLVIT already help EU workers to move between Member States and that there is little evidence that further action at EU level would be any better than action at Member State level. We considered the subsidiarity point with reference to the two guiding principles derived from the definition of subsidiarity set down in Article 5 TEU, namely; whether action at EU level is 'necessary', and whether action at EU level would provide 'added value', as compared to action at Member State level. In this case, the important point is necessity.

The Commission's impact assessment provides convincing evidence to suggest a significant number of instances where Member States have not been applying EU law correctly.<sup>4</sup> It shows that infringement procedures have been taken against a high number of Member States, including the UK, suggesting an inability or unwillingness from some Member States to adhere to EU legislation on free movement of workers.<sup>5</sup> In order to enable the free movement of workers in the EU, and safeguard the ability of UK citizens to work in other EU Member States, we believe that some EU level action is necessary to overcome these issues. The question of whether or not action taken to address this should be non-legislative is not an easy one, although as already suggested, we tend to agree that (at least as far as the UK is concerned) non-legislative action through more effective use of existing enforcement mechanisms, and better provision of information to EU workers, is sufficient. Therefore, while we agree with your assertion that non-legislative action is preferable to the use of a Directive, **we do not feel that the case against legislative action is strong enough to justify a formal subsidiarity complaint.**

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<sup>1</sup> COM (2013) 236

<sup>2</sup> Q 20

<sup>3</sup> Q 22

<sup>4</sup> SWD (2013) 149 final

<sup>5</sup> Over 2010 and 2011, the Commission dealt with 15 petitions and has launched 80 infringement procedures in this same field. Nearly half of the latter concern Italy (36 cases), other countries concerned are Greece (10 cases), Spain and the United Kingdom (6 cases), Luxembourg and France (4 cases), Malta, Belgium and the Netherlands (3 cases), Sweden (2 cases), Cyprus, Slovenia and Portugal (1 case).

### **Free movement in the current economic climate**

Your EM did not express a clear view on what you consider to be the impact of free movement of workers in the context of the current difficult economic climate. In its Communication and Impact Assessment, the Commission referenced ‘brain drain’ (the loss of skilled workers to other countries) as a concern for Member States in the area of free movement. We note that the problem of ‘brain drain’ is exacerbated by the economic crisis, which has led to high levels of unemployment in some Member States, prompting the unemployed to seek work in other countries.

The evidence we heard from witnesses acknowledged this issue, but also highlighted the benefits of free movement of workers in this context. NIESR observed that for countries such as Latvia and Spain who have experienced high unemployment, the ability for skilled workers to move freely between Member States has provided an economic “safety valve”, providing support while the country recovers from the crisis.<sup>6</sup> The CER and Migrants Rights Network highlighted the phenomenon of “brain gain”, whereby highly skilled young professionals move to other Member States temporarily and gain new skills, which they are able to bring back to their home countries.<sup>7</sup> **Overall, the evidence received indicated that free movement of workers in the UK is particularly important in the current difficult economic and employment climate, and should not be curtailed.**

### **Data collection on social welfare**

In the 22 July evidence session, you reiterated the Government’s concerns about ‘social benefits tourism’ as expressed in your joint letter to the Commission with Ministers from Germany, Austria and the Netherlands.<sup>8</sup> The letter stated that some cities in the UK were being put “under a considerable strain by certain immigrants from other Member States”. You also mentioned that, “there are significant numbers of sham marriages in which non-EEA nationals are seeking to gain an immigration advantage by marrying an EEA national”<sup>9</sup> and that “There is some very clear documented evidence of the abuse of free movement rights”.<sup>10</sup>

NIESR highlighted a recent study<sup>11</sup> by Professor Christian Dustmann at UCL which examined the payments in taxes and other contributions to the UK public purse made by immigrants from the accession countries in comparison to the their consumption of services in the form of health, education and social benefits. It found that on average immigrants from the accession countries paid in somewhere between 30 per cent and 40 per cent more than they took out.<sup>12</sup> However, both NIESR and CER accepted that it was very difficult to assess the existence of extent of ‘social benefit tourism’.<sup>13</sup> Given that you have taken a strong position on this matter along with other Member States, we were concerned with the lack of information you were able to provide on the extent of the abuse of free movement of workers. We are aware that the Commission has responded to the joint letter asking for

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<sup>6</sup> Q 4

<sup>7</sup> Q 9

<sup>8</sup> Q19 & Q24

<sup>9</sup> Q 19

<sup>10</sup> Q 19

<sup>11</sup> Dustmann, Frattini, and Halls (2010) *Assessing the Fiscal Costs and Benefits of A8 Migration to the UK*  
<http://www.ucl.ac.uk/~uctpb21/Cpapers/DustmannFrattiniHalls2010.pdf>

<sup>12</sup> Q 10

<sup>13</sup> Q 11

data to back up the claims made in the letter, and we believe that it is important to provide the Commission with data that is more than anecdotal, in order to render any position on 'social benefit tourism' tenable. We observe that the Home Secretary is currently working on a joint report with EU partners to gather further information on this,<sup>14</sup> and ask for confirmation as to when you expect this to be completed, and to be sent a copy when it is available. We note that in the evidence session, you mentioned that you would set out in your letter how universal credit will improve matters by recording the nationality of benefit claimants in the information system.<sup>15</sup> We look forward to receiving this, and ask whether in the context of your report, you are considering any further changes to the current data collection system, to improve the accuracy of data on social benefits? **We would be grateful for further information from you about the present scale of abuse of the social welfare system, and on plans to improve the accuracy of the data on social benefits.**

### ***Impact on businesses***

The CER said that a big problem for businesses looking to establish themselves in other Member States is a lack of clarity on their rights and their responsibilities to their employees.<sup>16</sup> Should it be approved, Article 5 of the proposal would require Member States to set up institutions at national level which act as one-stop-shops, making clear to individuals and organisations with a relevant interest, the rules on freedom of movement for workers.<sup>17</sup> Article 5 of the proposed Directive provides that Member States would be able to use existing bodies or agencies at national level for this purpose, so long as they are able to ensure that these bodies are sufficiently resourced to carry out any additional tasks required by the Directive. We note from paragraph 16 of your EM, that the Equality and Human Rights Commission (EHRC)<sup>18</sup> already has competence in some, although not all, of the areas listed but that you believe it might be necessary to identify another body to carry out some of the activities that the EHRC does not currently undertake. We suggest that the extension of the functions of the EHRC or another body may have significant benefits to businesses in terms of enabling them to easily adhere to the rules on freedom of movement for workers. Since the Commission cites a lack of legal compliance from employers as one of the key barriers to the ability of EU workers to exercise their right to freedom of movement, a focus on providing clarity to businesses is of critical importance. We ask what you would estimate to be the cost of an extension to the administrative function of the EHRC or another UK body? **We believe that the extension of the powers of existing bodies to create a national one-stop-shop for businesses would have clear benefits to business, and subsequently to individuals. We ask for your view on any costs to Member State authorities and businesses, and the potential benefits of this aspect of the Directive.**

### ***Next Steps***

We raised a number of important points in the evidence session of 22 July upon which you undertook to follow-up in writing.<sup>19</sup> We regret that we have still not received a response

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<sup>14</sup> Q 19

<sup>15</sup> Q 29

<sup>16</sup> Q 3

<sup>17</sup> COM (2013) 236

<sup>18</sup> <http://www.equalityhumanrights.com/>

<sup>19</sup> Q 25, Q 29, Q 30, Q 31, Q 33

from you on this, despite the fact that negotiations on this proposal continue, with a working group scheduled in early September. This letter represents our initial view of the proposal, in lieu of the data on free movement and social benefits that you undertook to provide. We look forward to receiving your response to the points raised in the evidence session, and those outlined above **within the standard 10 working days**. On receipt of your response we may wish to comment further. We also look forward to receiving updates about the progress of the negotiations on the Commission's proposal in due course.

I am copying this letter to William Cash MP, Chair of the House of Commons European Scrutiny Committee; Sarah Davies, Clerk to the Commons Committee; Les Saunders, Cabinet Office; and Deborah Maggs, Departmental Scrutiny Co-ordinator.

Yours Sincerely



Baroness O'Cathain  
Chairman  
EU Sub-Committee B  
Internal Market, Infrastructure and Employment