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### **DIFFICULTIES WITH THE ENFORCEMENT OF THE DIRECTIVE ON THE POSTING OF WORKERS – EP CONFERENCE**

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- For many years BUSINESSEUROPE have recognised that the implementation and enforcement of the Posting of Workers Directive (PWD) needs to be improved in practice. We appreciate the EU level discussion on how to achieve this.
- For BUSINESSEUROPE, ensuring better application and enforcement of the PWD requires action at both national and EU level:

*1. PWD needs to be correctly implemented at national level*

- The ECJ rulings in the Laval, Rüffert and Luxembourg cases have raised a number of implementation problems, most of which have been addressed at national level.
- Action in this domain should be taken by Member States in accordance with their national industrial relations systems.

*2. Access to information for companies and workers needs to be improved*

- Ensuring an easy access for companies and workers to up-to-date, reliable information on the terms of employment which must be observed with respect to posted workers in all EU countries is the key to improving compliance with the PWD.
- BUSINESSEUROPE welcomes Commission's proposals to improve access to information, including through further development of national web portals and administrative cooperation.

*3. Situations when applicable rules are not observed shall be remedied*

- There might be situations when some employers do not respect labour laws applicable to posted workers. Remedying these situations is essential in order to ensure a climate of fair competition between national and foreign companies.
- Action in this domain is mainly the responsibility of Member States in accordance with their national judicial and administrative practices.



- We also recognise the need to strengthen cooperation between Member States' administrations, including labour inspectorates where they exist, to make cross-border enforcement of administrative fines and penalties easier in case of non-compliance with the PWD.
- By contrast, BUSINESSEUROPE is deeply concerned with Commission's intention to oblige Member States to establish a system of joint and several liability in subcontracting in the construction sector. This is for a number of reasons:

### *1. Reasons of principle against joint and several liability*

- This system shifts the duty to enforce rights from public authorities to private companies, which is unacceptable.
- It runs high risk of putting disproportionate burdens on companies e.g. administrative costs involved in scrutinising subcontractors; exposure to liability even though they may not have the means, authority or expertise to monitor whether their subcontractors use posted workers and whether these workers are granted what the Posting of Workers Directive entitle them to.
- Such a system would not achieve the stated goal of deterring fraudulent contractors. Companies not complying with legislation would be able to escape the consequences of their abuses, while the virtuous ones would have to bear the costs.

### *2. Such a proposal would run counter the single market*

- In the European context, such a system would go against EU growth agenda and the goal of strengthening the single market. As the Directive applies only to cross-border situations, it will lead to new risks and costs only for companies that engage in contractual relationships with foreign services providers and/or national contractors who are using intra-corporate posted workers. Thus, it will likely limit cross border services provision.
- This is clearly at odds with the Commission's commitment to facilitate development of single market in services as well as March European Council conclusions.

### *3. EU action should respect subsidiarity and proportionality principles*

- Only a limited number of Member States have introduced some form of joint and several liability in subcontracting in their national legislation. Where it exists, an essential element is to ensure broad exemption possibilities which do not create unnecessary red tape for companies.
- A majority of European countries where joint and several liability does not exist may not see the added value of such an EU initiative. Especially, as



available evidence raises doubts as to the effectiveness of joint and several liability in resolving problems with enforcement of the Posting of Workers Directive.

- We also believe the Commission Impact Assessment underestimates costs entailed by the proposed EU joint and several liability system. According to the Impact Assessment new annual compliance costs for companies will amount to EUR 2 million. This is based on the assumption that a contractor will spend 15 minutes per posting to scrutinise subcontractors. This is unrealistic especially given the wide scope of liability (minimum rates of pay, unduly withheld social security contributions and taxes on wages) and the fact that it will concern cross-border situations (often requiring communication in different languages).
- To conclude, while BUSINESSEUROPE welcomes the Commission intention to improve implementation and enforcement of PWD and supports many provisions of the proposed Directive, we are against obliging Member States to introduce joint and several liability in subcontracting. Such a proposal does not respect subsidiarity and proportionality principles, it will hamper economic growth at a time when Europe desperately needs it, and will not help in practice to achieve better compliance with the Posting of Workers Directive.