



Ms Algimanta Pabedinskiene
Minister for social security and Labour
Chair EPSCO Council
Lithuanian EU Presidency

4 December 2013

Dear Minister,

On 9-10 December 2013, the EPSCO Council will discuss the Commission's proposal for the Posting of Workers Enforcement Directive (COM(2012) 131 final). With this letter BUSINESSEUROPE would like to offer views on several aspects of this draft directive.

BUSINESSEUROPE welcomes the progress made by the Council on a number of important issues, including the cooperation between national authorities and cross-border enforcement of fines and penalties. These instruments have potential to facilitate cross-border services provision and strengthen the protection of posted workers' rights.

By contrast, BUSINESSEUROPE is convinced that an obligatory introduction of joint and several liability in subcontracting in the context of posting of workers would harm development of the single market in services and distort competition between companies operating in the EU. In this light, we are against a recently discussed proposal to oblige Member States to provide for joint and several liability in subcontracting in case of contracts above a certain value. The decision to introduce joint and several liability for wages or other employment conditions should remain at the discretion of Member States. Member States' diverse labour market contexts, control needs, control mechanisms and institutions, as well as problems encountered, need to be taken into account.

Also importantly, cross-border provision of services requires that host country authorities have in place control measures to be able to carry out inspections and supervisory tasks effectively. At the same time, these measures must be proportionate and in compliance with the Treaty not to hinder cross-border service provision. In principle, that points to defining in the enforcement directive an exhaustive list of allowed national measures. However, in practice, drawing up such a list is difficult given the diversity of existing national control measures. What matters is that the enforcement directive gives Member States sufficient scope to put in place proportionate control measures that allow them to carry out control duties effectively.

A Council agreement in December which respects the above would be positive. Therefore, we thank you in advance for taking our views into account in upcoming Council discussions.

Yours sincerely,



Markus J. Beyrer