



To: Members and Substitutes of the Employment and Social Affairs Committee (EMPL) of the European Parliament

11 June 2013

Dear Member of the European Parliament,

On 29 May 2013, the Employment and Social Affairs Committee discussed compromise amendments to the Commission's proposal for the Posting of Workers Enforcement Directive. With this letter BUSINESSEUROPE would like to offer views on several aspects of this directive, which we hope will be helpful in your further work.

On Article 12 on subcontracting

BUSINESSEUROPE welcomes the recognition by a large number of MEPs that the Commission's proposal for an obligatory introduction of a 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.

BUSINESSEUROPE is convinced the decision to introduce joint and several liability for wages or other employment conditions should remain at the discretion of Member States.

An EU set of rules for voluntary introduction of joint and several liability in the context of posting of workers is not needed. This would prescribe a specific system while Member States should be free to decide and reconsider if and in what form to introduce a liability system. When doing so, Member States' diverse labour market contexts, control needs, control mechanisms and institutions, and problems encountered, need to be taken into account.

On Article 9 on control measures

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 line with the March 2013 European Council Conclusions, BUSINESSEUROPE urges MEPs to avoid introducing overly burdensome obligations on services providers, especially SMEs. The enlisted control measures should not be mandatory as certain risk being superfluous in some Member States or some posting situations.



On Article 3 on preventing abuse and circumvention

The Commission proposal lists a number of qualitative criteria to assist Member States' authorities in determining whether a posting is genuine. For BUSINESSEUROPE it is crucial that:

- the list remains indicative, and an overall assessment is made by competent authorities on a case-by-case basis,
- the list does not de facto narrow a definition of a posting contained in the Directive 96/71/EC as this would create legal uncertainty and would not lead to any improvement in the situation of the posted workers.

Yours sincerely,

Markus J. Beyrer