



EUROPEAN COMMISSION

Brussels, 28.5.2013
C(2013) 3079 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services {COM(2012) 131 final} and apologises for the long delay in replying.

The Commission is convinced that the proposal that is now before the co-legislator contains a balanced set of measures confirming the Commission's strong commitment to strengthen the social dimension of the Single Market, restore confidence among all stakeholders – workers, businesses and implementing authorities - and re-launch growth. The Single Market will only work efficiently with the support of all stakeholders and on the basis of fair competition and the respect of fundamental social rights in the framework of the provision of services and the freedom of establishment.

The Commission welcomes the Bundesrat's position that improved access to information for both posted workers and their employers constitutes an important element to improve the implementation, application and enforcement in practice of the Posting of Workers Directive.

The Commission takes note of the Bundesrat's support for Article 11 paragraph 3 of the proposal which allows for the possibility of trade unions or other third parties to get engaged in labour law disputes provided certain conditions are met.

The Commission can assure the Bundesrat that it was never the intention of the proposal to prevent further development, possible adaptations or clarifications of the existing legal framework on posting of workers as is clearly demonstrated by the inclusion of a number of review clauses in the proposal.

The Commission takes note of the Bundesrat's wish to clarify that the provisions in Chapter IV are without prejudice to and do not limit the possibilities of Member States to provide for further actions in the context of inspections or control measures.

*Mr Winfried KRETSCHMANN
President of the Bundesrat
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With respect to joint and several liability, the Commission reiterates that alongside the envisaged introduction of a limited direct subcontractor liability at EU level, the proposal would allow Member States to apply more stringent liability rules which do not have to include due diligence obligations.

The proposal thus would provide for a flexible approach in order to cover the various different systems already existing in a number of Member States. The specific rules on joint and several liability in Germany would according to our analysis be in line with the text of the proposal.

The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*