



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 10 October 2013**

**14708/13**

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**Interinstitutional File:  
2012/0061 (COD)**

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**SOC 801  
MI 869  
COMPET 717  
CODEC 2255**

**COVER NOTE**

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from: General Secretariat  
to: Delegations

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No. Cion prop.: 8040/12 + COR 1 - COM(2012) 131 final

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Subject: 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

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Delegations will find attached a text proposal by the Danish delegation on the above subject.

### Text proposal by DK delegation

#### *Amendment of recital 24 in the presidency proposal and proposal for recital 25*

- (24) Compliance with the applicable rules in the field of posting in practice and the effective protection of workers' rights in this respect is a matter of particular concern in subcontracting chains and should be ensured through appropriate measures in accordance with national law and/or practice and complying with Union law. Such measures may include the introduction on a voluntary basis , after consultation of the relevant social partners, of a mechanism of direct subcontractor liability, in addition to or in place of the employer, with respect of any outstanding net remuneration corresponding to the minimum rates of pay and/or contributions due to common funds or institutions of social partners regulated by law or collective agreements insofar as these are covered by Article 3(1) of Directive 96/71/EC. However, Member States remain free to provide for more stringent liability rules under national law or to go further under national law on a non-discriminatory and proportionate basis. [...]
- (25) **Member states that have introduced measures to ensure compliance with the applicable rules in subcontracting chains should have the possibility to provide that a (sub) contractor shall not be liable in specific circumstances or that their liability may be limited in cases where they take due dilligence measures. These measures should be defined by national law, taking into account the specific circumstances of the Member State concerned, and they may include inter alia measures taken by the contractor concerning documentation of compliance with administrative requirements and control measures in order to ensure effective monitoring of compliance with the applicable rules on posting of workers.**

***Justification:***

Denmark welcomes the proposal on article 12(3) of the presidency to leave it to national law to define due diligence and Denmark can support this very general wording. In a clarifying recital we would like to have an example of due diligence mentioned.

In Denmark service providers have to send a simple declaration to the Danish authorities as stipulated in Article 9. Danish contractors have to make sure that their direct subcontractors have made such declaration. This is a less restrictive measure than joint and several liability for outstanding claims. The government have agreed with the social partners in Denmark, that in case joint and several liability should be introduced in Denmark, it must be considered due diligence if the contractor has fulfilled the obligation to check that the simple declaration has been made.

Even though joint and several liability is not mandatory in the presidency proposal and even though due diligence can be defined by the Member States we would like to have made crystal clear that the practice in Denmark can be considered as due diligence.

As it is just an example of what due diligence can be, it does not affect other Member States right to define due diligence in other ways.