JOINT POSITION
of the European Construction Industry's Social Partners
on
THE COMMUNICATION FROM THE COMMISSION
Regarding the
"POSTING OF WORKERS WITHIN THE FRAMEWORK OF THE PROVISION OF SERVICES:
MAXIMISING ITS BENEFITS AND POTENTIAL WHILE GUARANTEEING THE PROTECTION
OF WORKERS"
(COM(2007)304 FINAL)

EFBWW
is the European Federation of Building and
Woodworkers, representing via its 59 national
member trade unions in 26 countries 2.4 million
workers from the building and woodworking
sector. In its capacity as a European Federation,
the EFBWW occupies a key position as
observer of the social and economic situation in
the construction sector.

FIEC
is the European Construction Industry
Federation, representing via its 33 national
Member Federations in 28 countries
construction enterprises of all sizes, i.e. small
and medium-sized enterprises as well as "global
players", performing all kinds of building and civil
engineering activities.

EFBWW and FIEC,
recognized by the European Commission as the social partners representing the workers and
the employers in the European Sectoral Social Dialogue in the Construction Industry, fully
agree, on the following:

Confirming that,

- the Posting of Workers Directive aims at reaching two main and fundamental objectives
  mentioned by Articles 49 and 50 of the EC Treaty, meaning guaranteeing the free movement
  of services and persons while ensuring that the service provider posting workers in another
  Member State will realise this "under the same conditions as imposed by that State on its
  nationals". In order to do so, it's essential that the posted workers benefit from the working
  conditions in place in the host Member State;

- the Commission, following the EP decision, deleted the Articles 24 and 25 of the Services
  Directive which would have significantly affected the efficiency of controls ensuring respect of
  the minimum framework of working conditions in place in the host Member State;

- the Posting of Workers Directive is a necessary legal tool in order to bring legal safety to
  companies and guaranteeing posted workers. FIEC and EFBWW highlight that it's the role of
  the European Commission, but also of the Member States, to do their maximum for such tool
  to be functioning in a more effective way in order to fight against risks of dumping social which
  may come from the development of the European internal market.
Considering the specificities of the construction sector which differs from other sectors due to:

- tangible, immobile products, which in contrast to other industrial sectors cannot be produced in one country and then exported to another where they are actually required;
- a mobile workforce, which implies the posting of workers is regular practice in the construction sector;
- the increasing number of cross-border services providers in the construction industry in particular since the entry of 10 new member states on 1st May 2004;
- the requirement for an efficient system such that the authorities of the host Member States can check that foreign services providers operate legally on construction sites.

FIEC and EFBWW, the European Construction Industry’s Social Partners:

- Reaffirm their joint position of 1st June 2006 concerning the previous Communication of the Commission regarding the “Guidance on the posting of workers within the framework of the provision of services”;
- Reconfirm that the Posting of Workers Directive does not need to be revised, and is a well balanced instrument for achieving the objectives of articles 49 and 50 of the EC Treaty, including fair competition and social protection;
- Are pleased, as well as the Commission, with the progress made by some Member States regarding the access to information relative to posting and the diversity of the tools developed in order to make such information known to everyone, even if transnational administrative cooperation still needs to be improved;
- Declare that the use of expressions such as “perceived risks” or general presumption, when speaking of risks of social dumping or fraud and abuse, is inadequate, considering that the non-respect of social and labour law rules is an existing phenomenon which is confirmed by the findings of control actions.
- Regret that the European Commission never expressly mentions that prior declarations are adequate and proportionate formalities to ensure that the host Member State’s social law is respected, and on the contrary considers such formality as a suspicious control measure (point 3.2) and not as a tool aiming at reinforcing the control of the disposals of the posting Directive (point 5). In fact, prior declarations are not synonymous with prior controls but allow the authorities of the host countries to be properly informed of the existence of posted workers on their territories. and to organize controls, if and when necessary;
- State that the European social partners of the construction industry would like to be involved in further “examination and reflection” of the European Commission on the subsidiary liability (point 5 of the Communication)
- Welcome in this regard the judgment of the European Court of Justice issued on 18/7/2007 (Case C-490/04, Commission v. Germany) which decided that certain control measures (such as providing some key documents in local languages or paying subscription into the local paid leave fund, provided there is no equivalent cover in the home country) are in line to the “freedom to provide services” principle of the EU-Treaty.
- Reaffirm that it would be helpful to have a harmonized EU standard form for such “prior declaration” and offer their assistance for developing it.

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