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**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:

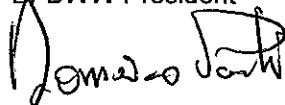
- tangible, immobile products, which in contrast to other industrial sectors cannot be produced in one country and then exported to another where they are actually required;
- a mobile workforce, which implies the posting of workers is regular practice in the construction sector;
- the increasing number of cross-border services providers in the construction industry in particular since the entry of 10 new member states on 1<sup>st</sup> 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 1<sup>st</sup> 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.

Domenico PESENTI

EFBWW President



Daniel Tardy

FIEC President

