



Rue de l'Hôpital 31, box 1
B - 1000 Bruxelles

Tel.: +32-2-227 10 40
Fax: +32-2-219 82 28
E-mail : info@efbh.be



Avenue Louise, 225
B - 1050 Bruxelles

Tel.: +32-2-514.55.35
Fax: +32-2-511.02.76
E-mail : info@fiec.eu

Brussels, 26 November 2013

Letter to : The National Ministers of Employment and Social Affairs

Dear Madam, dear Sir,
Your Excellencies,

Proposed Enforcement Directive COM(2012) 131 final : Joint requests of the European social partners of the construction industry, FIEC and EFBWW, to the EPSCO Council

At the last EPSCO meeting of 15.10.2013 the Lithuanian Presidency announced that the upcoming EPSCO in December should find a political compromise on the proposed "Enforcement" Directive. Since the issue of "Posting" is of particular concern for the construction industry, the European social partners of the construction industry have a specific interest in this debate.

On 29 November 2012 the EFBWW and FIEC already agreed on some joint key amendments, which we would like to include in the final version of the proposed Directive. For your information they are enclosed in the annex to this letter.

In preparation for the upcoming EPSCO meeting, we would like to stress and emphasise our joint concerns on three key issues, which are absolutely vital to our industry:

- 1) At the moment, in the case of fake posting it is not clear whether it is the Posting of Workers Directive or the Rome I Regulation that should define the applicable wages and working conditions, thereby creating a dangerous legal uncertainty. The choice of leaving it up to the CJEU to resolve the question of which legislation will be applicable in the case of fake posting is not acceptable. The EFBWW and FIEC consider that this issue should be resolved within the framework of the "Enforcement" Directive. Under no circumstances can we accept that the proposed "Enforcement" Directive directly or indirectly re-introduces the country-of-origin-principle. In practice there can only be two situations:

- a) the workers are effectively posted : in this case the provisions of the Posting of Workers Directive must be applied;
- b) it is a fake posting : in this case the workers must be considered as exercising their freedom of movement across Europe and therefore the entire legislation of the host country shall apply.

FIEC and EFBWW therefore ask that Art.3 of the proposed Directive clearly states that all forms of fake posting be explicitly covered by the entire legislation of the host country.

- 2) In order to ensure better application and enforcement of the “Posting” Directive, each Member State should be able to impose control measures and to conduct all required checks and inspections that are deemed necessary to prevent, control and sanction fraudulent cross-border activities and social dumping via posting. An “open list” of control measures would allow each Member State to adapt them according to the different and changing forms that social fraud can take. Therefore, the EFBWW and FIEC cannot accept that the national control measures are being restricted via a “closed list”. The aim of the proposed Enforcement Directive is to improve the enforcement of the Posting of Workers Directive and not to restrict or reduce the control measures at national level.

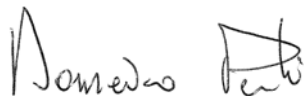
FIEC and EFBWW therefore ask that Art.9 of the proposed Directive foresees an “open list” of possible control measures.

- 3) In addition to such an open list of control measures, the European social partners of the construction industry ask that the following two measures be made mandatory in all the Member States , namely:
 - a) A mandatory prior notification of posting, so that labour inspectorates in the host country can better organise their controls. This would definitely increase the efficiency of the national control measures and thus have a preventive impact against social fraud.
 - b) An obligation to keep or make available and/or retain copies in paper or electronic form of the employment contract (or an equivalent document within the meaning of Directive 91/533, including, where appropriate or relevant, the additional information referred to in Article 4 of that Directive), A1 forms, work and residence permits for third-country nationals, payslips, timesheets and proof of payment of wages or copies of equivalent documents during the period of posting in an accessible and clearly identified place within its territory, such as the workplace or the building site.

We urge the Council of Ministers to use the opportunity of the proposed “Enforcement” Directive to provide clear and effective answers to the problems of cases of social fraud, social dumping and unfair practices in the framework of posting, which seriously threatens the sustainability of the construction industry. By doing so, you have the possibility to restore some confidence amongst workers and enterprises and to effectively contribute to the fight against illegal practices and social dumping.

The European social partners of the construction industry will certainly follow with concern and attention the outcome of this debate in the EPSCO.

With our best regards,



Domenico Pesenti
President EFBWW



Thomas Schleicher
FIEC President

Created in 1905, FIEC is the European Construction Industry Federation, representing via its 33 national Member Federations in 29 countries construction enterprises of all sizes, i.e. small and medium-sized enterprises as well as “global players”,

The EFBWW is the European trade Union Federation for the construction, wood, furniture and forestry sector.
The EFBWW represents blue and white collar workers from 72 national trade unions in 31 countries