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SECOND JOINT STATEMENT
of the European Construction Industry's Social Partners

on
the European Commission's Proposal for a Directive

on
SERVICES IN THE INTERNAL MARKET
COM(2004) 002

EFBWW

is the European Federation of Building and Woodworkers, representing via its 57 national member trade unions in 23 countries 2.5 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 34 national Member Federations in 27 countries (24 EU & EFTA, Bulgaria, Romania, Turkey) 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,

Being recognised by the European Commission as the social partners representing the workers and the employers in the European Sectoral Social Dialogue in the Construction Industry, agree, as a complement to their Joint Statement of 2nd April 2004, on the following:

- 1. We confirm all positions contained in our Initial Joint Statement of 2nd April 2004, as well as our individual position papers.**
2. We appreciate the various explanations presented by the European Commission's services in numerous meetings and conferences, but profoundly regret that they are not reflected in the text of the proposed directive, at least as far as we are concerned.
3. We fully support the derogation of the "posting directive" (96/71/EC) from the "Country of Origin Principle" (**Art. 16**), as expressed by **Art. 17 (5)**, and the confirmation, in **Art. 24 (1) 1st sub-paragraph**, that the host country "shall carry out in its territory the checks, inspections and investigations necessary to ensure compliance with the employment and working conditions applicable under Directive 96/71/EC ...".
4. In more general terms, we fear that the application of the "Country of Origin Principle" (**Art. 16**) would create numerous and serious problems in our sector, the likelihood and impact of which for employers, workers and consumers is difficult to anticipate without a serious in depth analysis.
- 5. We fully oppose the interdictions of control measures in Art. 24 (1) 2nd sub-paragraph, items a) - d), because they would jeopardise the practical application and operation of the "posting directive", contrary to the laudable principles expressed in Art. 24 (1) 1st sub-paragraph. Without such control measures, the authorities would be denied any realistic chance of enforcing the principles of the "posting directive".**



6. The interdiction "to obtain authorisation, ... to satisfy any other equivalent requirements" (**item a**) or to "make a declaration" (**item b**) could be interpreted as forbidding, for example, "a priori" notification or information of the host country authorities concerning work to be undertaken on a construction site in their country. Such "a priori" information is, however one of the key elements of effective and efficient checks, inspections and investigations.
7. The interdiction "to have a representative" in the host country (**item c**) would make it impossible to address official documents which have to be served respecting formal procedures or to receive reactions legally binding on the service provider. Such a situation is not acceptable.
8. The interdiction "to hold and keep employment documents" in the host country (**item d**) would make it impossible for the host country authorities to carry out the checks, inspections and investigations necessary to ensure compliance with the "posting directive".
9. Furthermore, the interdiction to require documents in the host country's language, expressed in **Art. 5 (2)**, would also render an efficient control impossible and is, therefore, not acceptable. The directive should clearly spell out that the effective application of the "posting directive" is an "overriding reason relating to the public interest".
10. None of these items can realistically be replaced by a better collaboration of the authorities of the country of origin and the host country. In spite of the clear-cut obligation to cooperate, established by **Art. 4 of the "posting directive"**, which had to be implemented by 16th December 1999, such cooperation, in practice, never took place efficiently. A recent study (CLR, October 2004, financed by the Commission's DG Employment) clearly showed the enormous shortcomings and quasi non-existence of cooperation (5 phone contacts per year, on average).

11. **Conclusion:**

In order not to jeopardise the practical application of the "posting directive" and in order to avoid all misunderstandings, we request that Art. 24 (1) 2nd sub-paragraph with items a) - d) be deleted.

for EFBWW

Harrie Bijen

Secretary General

9th November 2004

for FIEC

Ulrich Paetzold

Director General