

BETTER COORDINATION OF SOCIAL SECURITY SYSTEMS TO FIGHT SOCIAL DUMPING IN THE CONSTRUCTION SECTOR

EBC Position on the Revision of Regulations 883/2004 and 987/2009 on the coordination of social security systems

While the Posting of Workers Directive deals with the terms and conditions of employment of posted workers, the social security coordination rules aim to determine which social security system applies, in an overall framework of EU labour mobility. **The European Builders Confederation (EBC) supports the revision of the Regulations on coordination of social security systems (883/2004 and 987/2009)** to give national authorities the appropriate means to check the social security status of the posted employees and to remedy any practice that might be unfair or abusive, considering that **several abuses of the social security contribution come from posting activities.**

The impact of the posting of workers in construction is bigger than in any other sector. 44% of the total posted workers are in construction, which means that this phenomenon represents 5% of the active workforce of the sector. The rules on social security coordination for posted workers do not replace national systems with a single European one: all Member States are free to decide who is to be insured under their legislation, which benefits are granted and under what conditions. Thus, European rules only aim at coordinating social security systems in order to determine which system a posted worker is subject to.

Nevertheless, the current European framework for the coordination of social security systems offers leeway for unfair competition for construction SMEs and unfair treatment for workers that are deprived of the effective exercise of their social and labour rights. Moreover, the non-payment of due social security contributions and taxes represents a threat to the financial sustainability of social security systems and overall public finances of the Member States. This is due to the lack of coordination within and between Member States, the lack of transparency and understanding of the existing rules, and their uneven and inadequate application.

For all these reasons, **EBC supports the revision of the Regulations on coordination of social security systems and, in particular,** welcomes that the revision:

- Includes several amendments related to the fight against fraud and error;
- Strengthens the administrative rules regarding the exchange of information and the verification of the social security status of posted workers;
- Introduces clearer procedures for issuing and withdrawing PD A1 forms, including an accelerated withdrawal procedure in case of serious indications of error or fraud;
- Promotes the cooperation between European and national institutions and labour inspectorates;

- Extends the prohibition on replacement to posted self-employed persons.

EBC considers that the measures proposed by the Commission will help the fight against social dumping and ensure workers' right in the European Union. However, **the current Commission proposal should be improved in order to ensure fully coordinated social security systems amongst Member States**. In particular, EBC would like to make the following proposals:

1. Social security rules for posted workers should reflect labour market reality

The process of modernisation of EU law on social security coordination needs to respond to the social and economic reality of the labour market. In the construction sector, average duration of a posting activity is 4 months and also involves workers from non-EU countries. Moreover, temporary work agencies hire workers on an ad-hoc basis just for the sake of posting them to another country creating a disruptive effect on the labour market. To face these challenges, EBC proposes that:

- **The social security rules of the hosting country should apply after 6 months of the start of the posting activity and possible derogations should follow the rules of Posting of Workers Directive:** in the construction sector, average duration of a posting activity is 4 months. Thus a limit of 24 months is too long and only creates a time frame offering several opportunities to play on different levels of social contributions.
- **The posted employee should have been affiliated to social security system of his country of origin for at least 6 months before the beginning of the posting activity:** this provision would discourage undertakings but also temporary work agencies to hire workers just for posting them to another Member State;
- **The “substantial activity” of the employer in the Member State of origin should be better defined and any threshold should be settled at least at 25% of the total turnover:** this would reduce the risk of letter-box companies, often utilised to circumvent the rules. The current Commission proposal foresees that the legislation of the Member State of the employer should only apply if that employer carries out a substantial activity in the Member State where it is established. However, there is no specification on how to verify the location, the level of activity and the threshold to determine the substantial activity of the employer.
- **As regards workers active in two or more Member States (Art.13 883/2004), a maximum time limit should be introduced after which the situation of the worker has to be reviewed:** the difficulties of distinguishing between posted workers (Art. 12) and persons active in two or more Member States (Art. 13) have led to risks of social fraud and abuses. In particular, fraudulent switching of workers status is favored by the fact that the regime of pluriactivity offers more favourable conditions (no time limit) compared to the posting of workers regime (24-months' time limit).
- **Social security rules must be applicable to posted workers from non-EU countries that do not have their legal place of residence within the EU:** this measure should be introduced on the basis

of WTO Mode 4 regulation and within the framework of trade agreements, in order to guard against more favourable treatment of enterprises and workers from third countries than of those from Member States;

2. More reliable and transparent information on A1 forms is needed

A Portable Document A1 form (PD A1) concerns the social security legislation which applies to a person and confirms that this person has no obligations to pay contributions in another Member State. It establishes a presumption that the holder is properly affiliated to the social security system of the Member State which has issued the certificate.

PD A1 forms should guarantee legal certainty to the workers/employers as well as the institutions involved, in order to assess if the posting conditions are met. Today, the competent institution of the host State must contact the competent institution of the sending State, submit its positions and ask to review or withdraw the certificate in case the posting conditions are not met. In case of major disagreement, the case is referred to an Administrative Commission for a dialogue and conciliation procedure. However, this procedure often implies long periods for obtaining replies, or no replies at all, compared to short periods of posting in the construction sector (posted workers are often meanwhile already working elsewhere). Moreover, the quality of the data exchange could be low with partial or confusing data. For these reasons, EBC proposes that:

- **The PD A1 form should be standardised, developed under electronic format and social partners should be consulted on its details:** rationalisation is necessary to facilitate the quality of the information flow on posting conditions. Moreover, sectorial social partners should be consulted when fixing details of PD A1 form, accordingly to the needs of their industry, and not established unilaterally by the Commission through implementing acts, as the current proposal foresees.
- **PD A1 forms have to be issued before the start of the posting activity, with no retroactive effect,:** some posted workers begin to work in the host Member State before a PD A1 form has even been issued. In order to avoid this legal uncertainty, PD A1 forms have to be issued before the start of the posting activity, especially in the construction sector given the short periods of posting activities. In case a worker is posted before the submission of a PD A1 form by the sending Member State, the posted worker will be covered by the social security system of the hosting State from the first day of posting activity.
- **The hosting Member State should be entitled to assess if the PD A1 form is genuine and reverse it in some circumstances:** this should occur if there is no reaction or statement of content by the issuing authority within 3 month after the first complaint of the hosting state, or if the activity is a manifest fraud or involves human trafficking;
- **A common European electronic database of PD A1 forms should be created to facilitate the cooperation between labour inspectorates and Member States:** this European register would facilitate coordination between Member States and limit the current legal uncertainties arising from the differences between procedures and documents from one country to another;

3. Enforcement of social security rules should be improved at the national level

Coordination of social security systems only works with a functioning system of information, control and inspection at the national level. This is not always the case in some Member States given the complexity of the systems, the lack of resources and information, etc. For example, issuing a A1 PD involves different institutions and actors at the national level: those who receive social security contributions, those who deliver the benefits (medical, pension, unemployment, etc.), those who control the respect of rules. Institutional barriers and division of the areas of expertise often impede a fully effective cooperation system at the national level. Member States should ensure proper coordination between the systems of control, inspection, and information in order to ensure an efficient enforcement of social security rules. For this reason, EBC proposes that:

- **Member States should ensure that a high-quality and successful inspection system is in place:** a key problem in many Member States is the low quality and/or the low number of inspections for the proper verification of A1 declarations, leading to situations of fraud or non-payment of social contributions to the issuing country of the A1 form. Inspectors must be encouraged to tackle and check complex schemes, not only regular or usual situations. To this end, they must be properly equipped by the Member states with legislative and operative tools;
- **Member states should ensure that fines and sanctions are proportional and appropriate:** sanctions and fines produce a deterrent effect for potential breaches of the law. In some cases, fines from authorities for breaching social security rules are too low, not enough dissuasive and thus do not play a preventive role;
- **The creation of a EU-wide list of enterprises responsible for serious breaches of European labour and social legislation, including letterbox companies:** this list would be drawn up after companies have received prior warning and do not react as required. This list could only be consulted by the relevant inspection authorities. These enterprises would be denied access to public procurement, public subsidies and EU funds as long as they have not corrected their situation and upon agreement of national authorities;
- **The Commission should monitor and disseminate best practices on fraud prevention and controls in private dwellings:** when works are carried out in private homes, to verify the respect of social security rules results more difficult because of privacy reasons. A better knowledge is needed to understand how to face this challenge (efficient control methods, campaigns on the risks for the clients, etc.).

About EBC

Established in 1990, the European Builders Confederation - EBC - is a European professional organisation representing national associations of micro, small and medium-sized enterprises working in the construction sector. EBC sits on the European Social Dialogue Committee of Construction as an Observer. EBC is a member of UEAPME (the European association of micro-enterprises and SMEs), on behalf of which it chairs the UEAPME Construction Forum.

The construction sector is of vital importance to the European economy. With 3 million enterprises and a total direct workforce of 18 million, the construction sector contributes at around 9% to the GDP of the European Union.

99.9% of the European construction sector is composed of small and medium-sized companies, which produce 80% of the construction industry's output. Small enterprises (less than 50 employees) are responsible for 60% of the production and employ 70% of the sector's working population.