

**Ms. Marianne THYSSEN**  
European Commissioner for  
Employment, Social Affairs, Skills and  
Labour Mobility

Brussels, 5<sup>th</sup> October 2015

**Subject: EBC open letter on the issue of posting of workers**

Dear Commissioner Thyssen,

We, the European Builders Confederation (EBC), write to you as the representative of the micro, small and medium-sized enterprises of the construction sector in Europe, to share our concerns and positions on the topic of posted workers. We intend to do this in the framework of the current discussions on the Labour Mobility package and in preparation to tomorrow's debate in the College of Commissioners. We indeed consider it necessary to share our position on such an important topic for our sector, its overwhelming majority of SMEs and their workers, the main victims of the abuses committed in relation to posting.

In their everyday life, our construction SMEs suffer from the lack of efficiency of the 1996 directive on the posting of workers. On the ground, the EU posting of workers legislation is too often and too easily abused! In addition, even legal posting of workers lead to a distortion of competition in some countries. Finally, there are workers of different status, a situation that has a perverse effect on labour costs and thus competitiveness. For these reasons, we are convinced that a "targeted review" of the initial directive is crucial to ensure a level playing field for construction enterprises and to protect the rights of posted workers by applying equal principles for all workers across the EU Member States.

**Implementation of the Enforcement directive**

With high hopes, EBC contributed to the process leading to the Enforcement directive 2014/67, by notably proposing the creation of an **online database of companies wishing to post to allow the verification of potential subcontractors**. EBC welcomed the adoption of this directive in 2014 after long and laborious negotiations, which divided Member States. We however had – and still have – considerable doubts on its efficiency as a new tool to tackle problems and conditions of posted workers. Nevertheless, we consider that, as the Enforcement directive 2014/67 was a compromise hardly reached, its implementation must be carried on to its full completion until June 2016, as a first step. In this framework, we believe that the principle of subsidiarity should really be applied to give Member States real possibilities to fight against social fraud and posting abuses.

**Reopening the 96/71/EC directive**

The construction sector is very sensitive to different levels of labour costs. Law-abiding SMEs are tormented by the effects of "grey areas" where controls are lacking and social dumping becomes possible. The current unfair competition, with the SMEs working in compliance with the rules and respecting the social rights of their workers bearing higher costs and burdens, must be addressed by a "targeted review" of the 1996 Posting of workers directive: debates should start in early 2016, with concrete actions starting no later than July 2016.

Following this line, we consider that **"Equal pay for equal work in the same place"** must be the key principle and rule for the modernisation of the Posting of workers legislation. We must avoid the creation

of different classes of workers, which could only be reached by introducing rules that prevent any possible discrimination between posted workers and regular workers.

Going even beyond this principle, one of the major long term objectives of EBC is the **harmonisation of the social security systems in the European Union**. Indeed, we do believe that this is the solution to a distorted competition, an unlevelled playing field and exploited workers in the European Union. When labour costs will be aligned, competition will be based on fair characteristics, such as delivery speed, skills, technology, and design. Meanwhile, regarding the **fight against fiscal fraud and social security losses**, EBC proposes:

- ❖ To set a minimum duration of social security affiliation in the country of origin for workers as a prior condition to her/his posting in another country
- ❖ The creation of a common electronic database of A1 forms for all Member States, with compulsory participation
- ❖ To monitor that the minimum wage at the national level is applied appropriately and effectively to all workers

We are concerned by how **Eastern and Central Europe Member States lose social security contributions**. Indeed, fraudulent posting practices make them lose big amounts of useful money. We believe that this may be compensated by more cooperation and trust between Member States; to this end we propose that:

- ❖ The host country collects the social security of all workers operating in its territory and then transfers the social security contributions collected from posted workers to their country of origin.

Regarding **how to improve controls and inspections**, we consider that **the effectiveness of current resources must be improved**. For this we suggest the following measures:

- ❖ Compulsory exchange of data between Member States in the framework of the European platform against undeclared work
- ❖ Cross checking of information and databases at EU level on posted workers and posting enterprises on which to base the inspection decisions of the public authorities
- ❖ All expenditure generated by public authorities to carry out new initiatives regarding implementation, controls and inspections of posting situations should be deducted from the calculations of the Growth and Stability Pact

Regarding **the legal foundations**, we consider that more clarifications and accurate definitions are needed as today posted workers are covered by an obscure mix of labour law and social security regulation. To this end, we request:

- ❖ More coherence between the future Posting of workers legislation and the Social security regulation (EC) 883/2004.
- ❖ More coherence between the future Posting of workers legislation and the Services directive 2006/123/EC.

Regarding **posting time limits**, it is common knowledge that temporary workplaces are the rule in the construction sector, building sites very seldom last longer than 6 months; therefore, posting should be limited in time too. In this sense, we consider that:

- ❖ The European sectorial social partners must have a key role. The European social partners must be in charge of limiting the maximum period of posting according to each sector characteristics.

Regarding **the role of interim work agencies**, we are aware of situations where these agencies take benefit of the loopholes in the EU legislation to exploit workers in cross-border situations. For this reason, we request:

- ❖ Stricter rules on the role of work agencies in construction sector posting, such as the obligation for work agencies to provide periodic declarations on posted workers and their salary levels
- ❖ To take into consideration the exclusion of work agencies from posting activities in the construction sector if the risks of exploitation are too high.

Regarding **bogus self-employment**, we consider that:

- ❖ Member States must be allowed to reclassify the status of a posted worker if her/his activity in the host country is not of the same nature as the one she/he had in the country of origin.

We call upon the European Commission to integrate these comments and proposals into its debates on Posting of workers. Our requests come from the experience of the micro, small and medium-sized enterprises of the construction sector, which represents around 99% of the enterprises in the sector.

We look forward to further collaborate with you and your team in the process of preparing a “targeted review” of the Posting of workers directive. We are ready to engage into a constructive discussion to guarantee free movement of services, a level playing field and the protection of worker’s rights.

Best regards,



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EBC Secretary General



Patrick LIÉBUS  
EBC President