

EBC position on the proposal for amending Directive 96/71/EC on the posting of workers

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. 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.

Background

The European Commission (EC) released a legislative proposal amending Directive 96/71/EC on the posting of workers in the framework of the provision of services in March 2016. Two months later, National Parliaments of 11 EU Member States (Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia) tried to block this proposal under a process known as the “yellow card” procedure as most of them were worried that the proposal constitute a breach of the subsidiary principle. In July 2016, as a reply to the concerns, the European Commissioner for Social Affairs Marianne Thyssen concluded that the EC will go ahead with its proposal as posting is a cross-border issue by nature, opening the way for further progress on the topic in the European Council and in the European Parliament.

Key messages

- A. Construction small and medium-sized enterprises in Europe consider crucial for their sector to revise the 1996 directive on the posting of workers. The **construction industry represents more than 40% of all posted workers** in the EU.
- B. EBC proposes some amendments regarding the duration of posting, on temporary agencies and the levels of remuneration as the Directive 96/71/EC needs to be updated to face today's work practices in the EU-28.
 1. **Interim work agencies**
 2. **Duration of posting**
 3. **Levels of remuneration**

Specific Remarks

After almost 20 years since the original directive, EBC considers that it is high time to face the changing reality of the posting situations in the EU-28 with a pragmatic approach. Micro, small and medium construction firms in some countries are losing local jobs, while posted workers are facing lower salaries and social protection in spite of the 2014 enforcement directive. Although the adoption of the enforcement directive 2014/67/EU was an important response to the challenges of combating fraudulent practices and strengthening the protection of posted workers, posting still remains conducted by performances based mostly on downwards salary competition.

According to EC data, the construction sector represents more than 40% of all posted workers in the EU, which were more than 1.9 million in 2014. In France and Belgium, two of the top three countries receiving posted workers, this puts the sector at risk. Between 2011 and 2014 in Belgium over 8% of construction workers, close to 15.000 people, lost their job in construction due to unfair competition showed by a constant increase of posted workers by exactly the same figures, proving that there is a clear substitution effect. The situation in the French construction sector is very similar.

EBC appreciates the effort of addressing the fundamental issues raised by this sensitive topic. But the current EC proposal is not enough to ensure a level playing field for European companies. The European Institutions have to be more courageous and provide the appropriate tools to create a new culture of posting and competitiveness, based on innovation or specialization, not just on wage differentials. As the EC proposal is not ambitious enough, EBC makes the following proposals:

■ On the **duration of posting**

When the effective duration of a posting situation exceeds 24 months, the worker should be considered to be based in the country where the work is carried out. This must also apply to cases where a posted worker is replaced by someone else performing the same task, with a retroactive calculation of the effective duration of posting.

Accumulating only postings as from an effective duration of 6 months creates further opportunities for circumvention of the provisions. Especially for the construction sector, where genuine posting lasts on average 4 months, **posting activities must not be limited to 6 months** to avoid additional legal uncertainties.

The European sectoral social dialogue committees must play a key role regarding the conditions of posting. EBC considers that **the sectoral social partners should fix the periods according to the real situation in their sector of activity** to avoid an arbitrary stipulated duration.

In addition, workers must be in a **pre-existing employment relationship with the posting company of at least 6 months** prior to their posting in another country as a tool to avoid further abuse.

■ On the **levels of remuneration**

EBC is fully supportive of the principle ‘equal pay for equal work at the same place’ in posting situations. This is why we welcome the introduction of the concept of “remuneration”. However, in order to be fully applicable and concretely visible, a better consideration must be made of the proper levels of collective bargaining.

Indeed, in some countries salary levels are not set in the national level collective agreements, but at regional or local levels, EBC asks for ***the inclusion of wage agreements set at sub-national level***. It is notably the case in France where salaries are fixed at the regional/departmental levels. Including lower-level agreements may also have the added value of taking into consideration the specific situation of Scandinavian countries as salaries are mostly fixed through company level-agreements. It is necessary to avoid leaving out functioning wage systems only because they are at the sub-national level.

■ On **interim work agencies**

The relationship between the posting of workers directive and the directive on temporary workers has to be clarified to avoid loopholes and additional possibilities to circumvent the rules on agency workers. Indeed, their effect on posting situation has been totally disruptive, making it possible – and very profitable – to hire workers on an ad-hoc basis from interim agencies just for the sake of posting them to another country.

For EBC, the proposals on temporary agencies fall short of addressing the issues: ***interim work agencies must be excluded from provision of workers in posting situations*** as they are not construction companies and thus shouldn’t enter into subcontracting chains.