

## PERFORMANCE CHECK

### CONSTRUCTION

A property developer in your Member State intends to have an office building constructed. He is looking for a contractor who can take charge of the full range of tasks involved to have the building constructed including design, preparing and applying for building permits, organising, supervising and carrying out construction and follow-up works. As a part of the construction works, an air conditioning system containing a fluorinated greenhouse gas refrigerant shall be installed in the building. The building site is in a former industrial area and contaminated soil needs to be excavated and disposed of safely.

The property developer receives a brochure sent by the firm Global Construction which is established in another Member State where it legally provides a broad range of construction services going from the design of buildings to their construction and subsequently checks Global Construction's website.

The firm is a limited company, 60% of capital is owned by architects and engineers and 40% by shareholders not having a professional qualification. The firm is an SME with 80 employees, among them constructors (masons, carpenters, electricians, plumbers and tilers - these activities are not a regulated profession in Global Construction's Member State of establishment) who are able to complete the designed works under the supervision of the architects and engineers.

The firm does not have a branch or subsidiary in the territory of your Member State and it wishes to provide the service in a cross-border form. Global construction will bring construction machines with them, including a caterpillar and a crane.

The firm has a promotional campaign targeting property developers based on the comparison of their global offer (involving professional services) with those of other professional firms in the market. This campaign is carried out via newspaper advertising in its Member State of establishment, via the sending of brochures to property developers in your territory and also via the firm's website. It contains a statement that the range of services provided and their price-quality ratio is superior to that of any other competitor and a list of contractors for which the firm has carried out work.

Global Construction would be ready to provide the services demanded by the property developer either themselves or by contracting-in other service providers who are also established in Global Construction's Member State. In particular Global construction would subcontract the installation of the air conditioning to a company which has staff who possess the required certificates for installing the air-conditioning system using these substances under the legislation of their Member State of establishment. These certificates currently valid, comply with the minimum requirements of Article 4 of Commission Regulation 303/2008 and it is recognised by the Member State of issue (i.e. the Member State where Global Construction is established) that they comply with the EU F-gas regulatory framework. Global Construction also holds the required company certificate. Details of the qualification and issuing organisation were notified to the European Commission by Global Construction's Member State of establishment (Article 12 of Commission Regulation 303/2008).

Global Construction would also entrust another company established in its Member State to clean up the soil and to dispose of the resulting dangerous wastes. Once the

construction works completed, Global Construction will make sure that the new building is certified for its energy performance as required by EU Legislation (Directive 2002/91/EC) and make the certificate available to its client. The certificate will be delivered by the certification services provider who is accredited in Global Construction's Member State and who Global Construction contracts habitually.

*Feedback and input at EU level about problems and difficulties encountered in relation to this scenario are welcome and may be sent to the European Commission at the following address, by 15 October 2011:*

[markt.e1@ec.europa.eu](mailto:markt.e1@ec.europa.eu)

*You are free to use any format you deem appropriate without necessarily following the questionnaire. Only public administrations are expected to reply to the detailed list of questions. These are made available to stakeholders to illustrate the issues under review.*

## QUESTIONNAIRE FOR THE CONSTRUCTION SCENARIO

PLEASE NOTE THAT THIS SCENARIO IS ONLY DEALING WITH CROSS-BORDER PROVISION OF SERVICES

*When providing replies to this questionnaire, please indicate the legislation, including if applicable regulation by professional bodies that Global Construction has to comply with in your Member State regarding the issues set out below and indicate whether there are any legal or administrative obstacles to any of the activities or the way Global Construction carries out its business as explained.*

*If you cannot fully reply to the questions for this scenario (for instance because your Member State does not allow a company composed of architects and engineers together with crafts or because Global Construction's legal form or shareholding structure are not possible in your Member State), please indicate so. In that case please choose an alternative set-up (e.g. another legal form or another shareholding structure) compatible with your national rules that would be as close as possible to Global Construction's business model and reply to the questionnaire based on this alternative model.*

### **In case this scenario would not be possible in your Member State**

Please explain which requirements in your Member State's legislation would be problematic regarding this scenario and detail here the alternative set-up (e.g. another legal form or another shareholding structure) that would be compatible with your national rules and be as close as possible to Global Construction's business model (*and then please reply to the questionnaire basing your replies on this alternative model*).

DETAILED REPLY:

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### **1. PROCEDURES THAT THE FIRM NEEDS TO FOLLOW CONCERNING CARRYING OUT CONSTRUCTION WORK AND THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS OF THE PROFESSIONALS PROVIDING THE SERVICE ON ITS BEHALF**

*Regarding article 16 of Directive 2006/123/EC on Services in the Internal Market*

1.1	<b>Would Global Construction have to apply for a general authorisation to</b>
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	<b>carry out construction work in your Member State?</b>
	Please reply
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 1.1 (including if applicable regulation by professional bodies)</b></p>
	<p>In case there is a general authorisation to carry out construction work in your Member State, please provide here details as to the procedure and describe who would be the competent authority.</p> <p>DETAILED REPLY:</p>

*Regarding article 5 of Directive 2005/36 on Professional qualifications and article 16 of Directive 2006/123/EC on services in the Internal Market*

1.2	<b>How does your Member State distinguish in practice between cross-border service provision and establishment?</b> (in particular referring to the information given above on the continuity, frequency and duration of construction activities in your Member State)
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>In this context, please provide detailed references (articles, sections etc.) to substantiate the reply (including if applicable regulation by professional bodies)</b></p>
	<p><b>Please detail</b></p> <p>DETAILED REPLY:</p>

*Regarding article 7 of Directive 2005/36 on Professional qualifications*

1.3	<p><b>Are there any formalities to be complied with regarding the recognition of professional qualifications for the design and construction services Global Construction intends to provide (i.e. for services provided by architects, engineers, masons, carpenters, electricians, plumbers and tilers)?</b></p> <p>If so, please detail which formalities are imposed on each of these professions.</p>
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	Please reply
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 1.3 (including if applicable regulation by professional bodies)</b></p>
1.3.1	<b>In particular, is there any annual prior declaration to be sent? Which documents should be sent with this declaration? Which information must the prior declaration contain?</b>
	Please reply
	<p>MEMBER STATE'S LEGISLATION APPLICABLE</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that the firm has to comply within your Member State regarding the issues set out in question 1.3.1 (including if applicable regulation by professional bodies)</b></p>
	<p>If an annual prior declaration is required, please detail which documents should be sent with this declaration and which information must the prior declaration contain.</p> <p>DETAILED REPLY:</p>

*Regarding article 6 of Directive 2005/36 on Professional qualifications*

1.3.2	<b>Is there any obligation for the professional to register pro forma with a professional Chamber? Which formalities have to be completed by the professional? Which documents have to be sent?</b>
	Please reply
	<p>MEMBER STATE'S LEGISLATION APPLICABLE</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that the professional has to comply within your Member State regarding the issues set out in question 1.3.2 (including if applicable regulation by professional bodies)</b></p>
	If such an obligation is imposed and formalities and/or documents required, please detail.

	DETAILED REPLY:
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*Regarding article 5 of Directive 2005/36 on Professional qualifications*

1.3.3	<b>What happens if the profession is not regulated in the Member State of establishment of the firm? Do you require that the professional has exercised the same profession in his Member State of establishment for at least 2 years within the last 10 years before allowing any provision of services?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that the professional has to comply within your Member State regarding the issues set out in question 1.3.3 (including if applicable regulation by professional bodies)</b>
	Please detail your procedures. DETAILED REPLY:
1.3.4	<b>If reply to question 1.3.3 is positive, how do you control that the professional has exercised the same profession in his Member State of establishment? Please detail the criteria/procedures you apply.</b>  DETAILED REPLY:
	MEMBER STATE'S LEGISLATION APPLICABLE  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that the firm has to comply within your Member State regarding the issues set out in question 1.3.4 (including if applicable regulation by professional bodies)</b>
1.3.5	<b>Do you foresee an exemption to the requirement of two years prior experience in case of regulated education and training in the Member State of establishment?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE

	<b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that the firm has to comply within your Member State regarding the issues set out in question 1.3.5 (including if applicable regulation by professional bodies)</b>
	Please detail. DETAILED REPLY:

1.3.6	<b>For federal or quasi federal countries, please specify what happens if the activity is a regulated profession at regional level. Does one declaration (see question 1.3.1 above) or one registration (see question 1.3.2 above) allow for the provision of services in the entire national territory?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE:  <b>In this context, please provide detailed references (articles, sections etc.) regarding the relevant legislation that the professionals have to comply within your Member State regarding the issues set out in question 1.3.6 (including if applicable regulation by professional bodies)</b>

1.3.7	<b>Please explain how compliance with the above-mentioned obligations is checked on the ground by authorities in your Member State.</b>
	DETAILED REPLY:

1.4	<b>Are there any formalities to be complied with regarding qualification or aptitude of the personnel to operate the construction machines?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE:  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 1.4 (including if applicable regulation by professional bodies)</b>

	DETAILED REPLY:

**2. PROFESSIONAL LIABILITY INSURANCE:**

*Regarding article 16 of Directive 2006/123/EC on Services in the Internal Market*

2.1	<b>Are there obligations regarding professional liability insurance applied to the firm or to the professional and means of evidence that have to be submitted to prove that they are complied with?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE:  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 2.1 (including if applicable regulation by professional bodies)</b>
	In case there are such obligations regarding professional liability insurance and means of evidence that have to be submitted, please provide details here:  DETAILED REPLY:

2.2	<b>Does the firm/professional need to acquire additional professional liability insurance in order to perform the cross-border service?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE:  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 2.2 (including if applicable regulation by professional bodies)</b>



	<p>In case such an additional professional liability insurance in order to perform the cross-border service is necessary, please provide details here:</p> <p>DETAILED REPLY:</p>
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2.3	<p><b>Does the firm need to acquire additional insurance for the performance of the construction work?</b></p>
	<p>Please reply</p>
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 2.3 (including if applicable regulation by professional bodies)</b></p>
	<p>In case such an additional insurance in order to perform the cross-border service is necessary, please provide details here:</p> <p>DETAILED REPLY:</p>

### 3. MULTIDISCIPLINARY OR CAPITAL OWNERSHIP REQUIREMENTS:

*Regarding articles 15 and 25 of Directive 2006/123/EC on Services in the Internal Market*

3.1	<p><b>Are there multidisciplinary and/or capital ownership requirements laid down by the legislation of your Member State that would be applied to the firm providing cross-border services?</b></p>
	<p>Please reply</p>
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 3.1 (including if applicable regulation by professional bodies)</b></p>

	<p>In case such multidisciplinary or capital ownership requirements are imposed in order to perform the cross-border service is necessary, please provide details here:</p> <p>DETAILED REPLY:</p>
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**4. ADVERTISING:**

*Regarding Directive 2006/114/EC concerning misleading and comparative advertising indicates in its Article 8(1) that this Directive "shall not preclude Member States from retaining or adopting provisions with a view to ensuring more extensive protection, with regard to misleading advertising, for traders and competitors". Directive 2000/31/EC on e-commerce. Article 24 of Directive 2006/123/EC on Services in the Internal Market*

4.1	<p><b>Would the way or the content of the advertising for property developers as described be permitted in your Member States?</b> (taking into account any limitations or regulations in your legislation that could apply to Global Construction's advertising campaign)</p>
	<p>Please reply</p>
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 4.1 (including if applicable regulation by professional bodies)</b></p>
	<p>In case the way or the content of the advertising for property developers as described here would not be permitted, please provide details here on what would be the limitations:</p> <p>DETAILED REPLY:</p>

**5. CERTIFICATION OF COMPANIES AND PERSONNEL USING EQUIPMENT CONTAINING FLUORINATED GASES (F-GASES) COVERED BY EU INSTRUMENTS ON CLIMATE CHANGE**

*Regarding Regulation 842/2006 on certain fluorinated greenhouse gases foresees (in Article 5) that companies involved in installation, maintenance or servicing of equipment and systems containing fluorinated greenhouse gases as well as their personnel, have to be certified in order to ensure that they are qualified for the activities they undertake.*

*Pursuant to paragraph 2 of Article 5, Member States must give recognition to the certificates issued in other Member States and may not restrict the freedom to provide services or the freedom of establishment for reasons relating to the certification issued in another Member State. As foreseen in Regulation 842/2006 the Commission has adopted a number of Regulations establishing minimum requirements for the certification of companies and personnel as well as the conditions for the mutual recognition of certificates issued in accordance with these requirements. Commission Regulation 303/2008, in particular, applies to activities involving refrigeration, air conditioning and heat pump equipment and in its Article 13 lays down the principle of mutual recognition of certificates issued in other Member States (a similar mutual recognition clause is contained in other Commission Regulations, in particular in Regulation 304/2008 on fire protection systems and fire extinguishers). Articles 5 and 16 of Directive 2006/123/EC on Services in the Internal Market*

5.1	<b>Would Global Construction be allowed to carry out construction activities involving the installation of air conditioning systems containing F-gases on the basis of the certificates acquired in its country of establishment?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE:  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 5.1 (including if applicable regulation by professional bodies)</b>

5.2	<b>Do you apply any procedure to verify the possession of the certificates and its content?</b>
	Please reply
	MEMBER STATE'S LEGISLATION APPLICABLE:  <b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 5.2 (including if applicable regulation by professional bodies)</b>
	If yes, please describe it in detail (specifying the requirements imposed on the cross-border providers, the checks carried out, etc) here:  DETAILED REPLY:

## 6. ENERGY PERFORMANCE OF BUILDINGS

*Regarding article 10 of Directive 2002/91/EC on the energy performance of buildings requires Member States to ensure that the certification of buildings, the drafting of the accompanying recommendations and the inspection of boilers and air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts. Articles 5 and 16 of Directive 2006/123/EC on Services in the Internal Market*

6.1	<p><b>Would Global Construction be allowed, under your legislation, to bring in for the task of establishing the energy performance certificate an accredited expert established in its Member State of establishment for the certification of the new building's energy performance?</b></p>
	Please reply
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 6.1 (including if applicable regulation by professional bodies)</b></p>

6.2	<p><b><i>[TO BE FILLED IN ONLY IF REPLY TO QUESTION 6.1 IS POSITIVE]</i></b></p> <p>If yes, Global Construction would be allowed to bring in for the task of establishing the energy performance certificate an accredited expert established in its Member State of establishment for the certification of the new building's energy performance (see Question 6.1), <b>would your authorities apply any procedure to check the accreditation of such experts/make them subject to specific rules laid down in your legislation (e.g., require additional training on the national energy performance calculation method)?</b></p> <p>Please reply</p>
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 6.2 (including if applicable regulation by professional bodies)</b></p>
	<p>If your authorities apply a procedure to check the accreditation of such experts or make them subject to specific rules laid down in your legislation (e.g., require additional training on the national energy performance calculation method), please provide details here:</p>

	DETAILED REPLY:
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**7. TREATMENT OF WASTE**

*Regarding article 23 on Issue of Permits and Article 26 on Registration of Directive 2008/98/EC on waste and repealing certain Directives – Articles 5 and 16 of Directive 2006/123/EC on Services in the Internal Market*

7.1	<b>Would a service provider established in another Member State be allowed to carry out the activities consisting in cleaning up the soil and in disposing and shipping the resulting dangerous wastes?</b>
	Please reply
	<p>MEMBER STATE'S LEGISLATION APPLICABLE:</p> <p><b>Please provide detailed references (articles, sections etc.) regarding the relevant legislation that Global Construction has to comply with in your Member State regarding the issues set out in question 7.1 (including if applicable regulation by professional bodies)</b></p>
	<p>In case a service provider established in another Member State would be allowed to carry out such activities, please specify what requirements would you apply to such a cross border provider:</p> <p>DETAILED REPLY:</p>