

Joint statement

of the European Social partners of the Construction Industry (EFBWW and FIEC)
on
proposed compromise amendments(2012/0061(COD– PE498.030v01-00).

17/06/2013

The European social partners of the construction industry, FIEC, for the employers, and the EFBWW, for the workers, took note of the proposed compromise amendments on the proposal for a Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, which should be voted at the EMPL Committee of the European Parliament on 20 June 2013.

The proposed amendments were discussed amongst the EFBWW and FIEC at the meeting of the European Sectoral Social Dialogue Committee of the construction industry on 30 May 2013. Based on the joint proposed amendments, that both organisations have introduced, two very worrying elements were observed in the proposed compromise amendments:

Firstly, the draft amendment DD (article 3 a new). This proposed amendment would as a matter of fact re-introduce the so-called country-of-origin principle in the PWD 96/71/EC. We would like to recall that the PWD 96/71/EC was introduced in order to ensure legal clarity with regard to the applicable terms and conditions of employment in relation to the Rome I Regulation (EC N° 593/2008). In order to avoid cross-border unfair competition and social dumping, the PWD 96/71/EC explicitly stipulates that in case of temporary posting a core set of the working conditions of the host country, as defined in Art. 3 §1 of the PWD 96/71/EC, would be applicable.

According to the proposed amendment DD, in case of fake or non-genuine posting it is the Rome I Regulation that would be applicable, which is based on the country of origin principle. EFBWW and FIEC consider that in case of fake or non-genuine posting the full working conditions of the host country must be applied.

Secondly, the draft amendment 9.1 (and in particular the wordings “may in particular”. The proposed amendment presents only a list of voluntary control measures to the Member States, which will certainly not resolve the problems observed in the current situation, but reconfirm the ineffectiveness of missing minimum mandatory control measures applicable in all the Member States. In order to resolve this issue the EFBWW and FIEC had proposed a mixed approach, with a minimum set of mandatory control measures, which included a prior notification of posting, complemented by an open list of possible additional control measures.

Based on the above assessment, we would like to propose the following corrections:

1. The proposed compromise amendment DD must be replaced by a provision, which clearly states that in case of fake or non-genuine posting, the rules of the host country are applicable. Fake or non-genuine posting is used to circumvent the principle of free movement of services and should therefore rather be considered as being under the scope of the free movement of workers, for which the whole rules of the host country are applicable.

2. The proposed compromise amendments on Art. 9 need a more balanced approach with a minimum set of mandatory control measures, applicable to all Member States, which can be complemented by an open list of possible additional control measures. In particular, EFBWW and FIEC consider that a prior mandatory notification before the posting takes place is a very efficient control instrument, which can be introduced in a simple way without any red tape.

These two proposals do not affect the other individual proposed amendments introduced by the EFBWW and FIEC.

In case you wish any additional information or clarification, regarding the proposed amendment proposals, please do not hesitate to contact one of the signatory parties.

Brussels,



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