



CONSTRUCTION FORUM

COMMENTS OF THE UEAPME CONSTRUCTION FORUM¹

regarding the

Commission Communication

“Posting of workers in the framework of the provision of services”

Introduction

The UEAPME Construction Forum

- takes note of the Commission Communication.
- acknowledges the Commission’s will to strike the right balance between the need to ensure on one hand freedom of movement of workers across the EU, which is a fundamental right enshrined in the EU treaties, and, on the other hand, the necessity to tackle social dumping and control illegal employment and undeclared work.
- supports the view that the provision of cross-border construction services needs further facilitation.
- Reiterates its opinion that directive 96/71/EC (hereafter: the Directive) does not need to be revised. Problems relating to its implementation are not due to the text itself, but to the complexity of national circumstances.

A holistic view is needed

The UEAPME Construction Forum

- invites the Commission to take a more holistic view by including in its considerations the directive on services in the Internal Market and, if applicable, the directive on the recognition of professional qualifications.
- stresses that the application of the Directive should be closely linked to the single points of contact to be established under the Services directive. This will significantly facilitate administrative procedures, including those which the Commission may consider as disproportionate today.
- is of the view that the number of regulated professions in the construction industry, which exist to guarantee health and safety of end-users, logically leads to more stringent controls of the quality of services and the qualification of service providers.

¹ The UEAPME Construction Forum is a specialised discussion platform representing the interests of about 1,100,000 construction enterprises across the European Union and beyond. The overwhelming majority of these enterprises are small or medium-sized. It is formed by the following associations: Comité européen des équipements techniques du bâtiment (Génie Climatique International - Union internationale de la Couverture et de la Plomberie), European Builders Confederation, European Metal Union, European Federation of Chimney Sweeps, European window, curtain wall and door manufacturers, European Federation of Timber Construction, Federation of European Tile Fixers’ Associations, International Association of Building Service Contractors, International Association of Roofing Contractors, Union Internationale des Entrepreneurs de Peinture

Interpretation of disproportionate requirements

The UEAPME Construction Forum

- considers that the Commission is not neutral and, hence, tends to interpret arguments of the European Court of Justice in a one-sided manner.
- is of the view that the Commission does not fully take account of the large variety of labour market rules across the EU leading to different instruments to check compliance with the Directive.
- opposes the European Commission's interpretation that prior declarations, the presence of a representative of the posting enterprises with legal capacity in the host country and the obligation to keep certain documents in the host country should be considered as disproportionate. On the other hand, Member States must undertake to organise these measures in an efficient way (see below), so as to allow effective controls without heavy burdens on the service providers.
- invites the Commission to examine the sum of requirements by looking at the real costs for service providers and the duration of all procedures together before determining what is disproportionate and what is not. As there is no one-size-fits-all model in Europe, the real burdens may vary significantly between Member States even for the same type of requirement.

Joint and several liability systems

The UEAPME Construction Forum

- does not support these systems by which the accountability for compliance with employment rights is shared between various parties in case of subcontracting.
- Recalls that, due to the fragmentation of the construction supply chain, these systems may become very burdensome. In particular small businesses do not have the capacity to systematically monitor subcontractors to ensure their social compliance.

Similar rights for third-country nationals

The UEAPME Construction Forum

- supports the Commission's position that posted third-country nationals, who are legally employed in another Member State, should not be subject to additional requirements.

Co-operation between Member States essential

The UEAPME Construction Forum

- Fully supports the Commission's intention to adopt a recommendation on the administrative co-operation between Member States;
- Subscribes to the Commission's view that the administrative co-operation between Member States is unsatisfactory and must be improved. If a Member State requests information from another Member State without receiving a reply within a reasonable period of time, the service provider will be the one to suffer.
- Calls on the European Commission and the Member States to make full use of the Internal Market Information System for the purposes of the Directive. The harmonised "frequently asked questions" and the translation tool will enable Member States to reply very quickly. They should hence be obliged to react quickly.

Information to service providers

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- Calls on Member States and the European Commission to establish and regularly update dedicated national and / or websites containing all relevant information (employment conditions, administrative procedures, time requirements and costs etc.) for service providers (employers and employees) in several languages. These websites should also give access to harmonised forms and allow the submission of electronic forms, where applicable.
- Offers the support of UEAPME members to make these websites known across Europe (links etc.).

Measures to facilitate procedures

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- Calls on the European Commission and the Member States to develop harmonised forms to be used by the Internal Market Information System for the co-operation between administrations and by the service providers for the future single points of contact.
- Calls on Member States to allow the use of electronic forms and declarations wherever possible. In particular, prior declarations could be transmitted easily and quickly by electronic means.

High level committee: the key to successful implementation

The UEAPME Construction Forum

- Welcomes the forthcoming Commission decision to set up a high level Committee, hence institutionalise the current informal Group of Government Experts.
- Supports the Commission's will to formally involve social partners in this Committee. As most of the cross-border service providers are SMEs, the participation of social partners representing SMEs will be of particular importance.
- Sees this Forum as the main instrument to solve remaining problems with the Directive's implementation. As foreseen by the Commission, this Forum should analyse national requirements and disseminate best practice.
- Sees this Forum as a place to put pressure on governments to simplify rules. Burdensome requirements should be put on the agenda and recommendations on their simplification (abolition) should be adopted.
- Calls on the Forum to agree on guidelines to facilitate the electronic submission of documents by service providers.
- Recommends to the Commission that no infringement procedures be launched before a particular requirement has been examined by the Committee and proposals for simplification (abolition) have been ignored. It should be recalled that each requirement should be analysed in the light of the sum of requirements imposed by a Member State and the peculiarities of its labour market.

Brussels, 4 July 2007