



EUROPEAN COMMISSION

DG EMPLOYMENT, SOCIAL AFFAIRS AND EQUAL OPPORTUNITIES

Social Dialogue, Social Rights, Working Conditions, Adaptation to Change
Social Dialogue, Industrial Relations

Social Dialogue in the construction sector EFBWW-FIEC Employment Working Group Minutes of the meeting held on 19 November 2010 in Brussels (09.30-13.00)

1. Welcome and introduction

Mr Clappier (FIEC) is chairing this meeting due to the absence of Mr Kerstens (EFBWW). He welcomes the participants and reads out the agenda which is adopted.

2. Approval of the minutes of the meeting held on 11 May 2010

The minutes are approved unanimously.

Item 4 and 5 are moved before item 3, item 6 is moved before item 9.

4. "Posting" Directive- Enforcement:

- Discussion on possible joint actions

Mr Buelen (EFBWW) gives a short overview about the current situation. The European Commission has requested proposals from the social partners. The debate between the social partners is still going on; it will be difficult to reach a common position regarding "joint liability". The EFBWW would like to continue the debate by leaving aside this item. A list of additional issues to be discussed has been proposed by EFBWW.

Mr Campogrande (FIEC) explains that FIEC is of course willing to resume the discussions aiming at elaborating joint proposals to be addressed to DG EMPL. As regards the new list of additional issues to be discussed proposed by EFBWW, FIEC does not reject it a priori but it needs some time to examine it .

5. "Posting" Directive:

- Updates of the website

Mr Campogrande (FIEC) reports on the current situation. In the first year, the updating was done by the social partners themselves. The input provided by the affiliates has varied significantly from country to country; some reports need to be revised due to a change in the legislation, and there are also new countries to be added.

For the next year a grant has been awarded by DG EMPL for the updating.

Promotion activities will also be undertaken (e.g. meetings in Bucharest, creation of a small leaflet). The number of visits of the website is satisfactory (about 3000 hits every month).

The chair insists upon the necessity to keep the database regularly updated. The secretariats of FIEC and EFBWW will discuss how the updating will be organized.

3. "Posting" Directive:

- Presentation and discussion on the DG EMPL studies

Mr Jan Cremers reports on two large research projects on "Posting of workers" which are based on reports from national experts, some new studies as well as some earlier ones.

In January/February 2011 a very large conference will be organized. The social partners will be invited to this conference and will have the possibility to supervise its outcome.

There exists a wide range of practices within the EU. Some countries have a well-developed and clear registration system of posted workers (e.g. France, Belgium, Germany); in the majority of countries systematic registration is lacking. For that reason we do not know how many workers are exactly posted. A second complicated element is the definition of who is a "worker": This is up to the host country and can lead to many contradictions.

There exist 4 forms of appearances of labour recruitment related to posting:

- 1) The first model of posting are classic "posted contract workers" in its original concept of the PWD (Posting of Workers Directive) and has never been a problem for workers and service providers, when it was correctly applied.
- 2) The second form of labour recruitment is posting "stricto sensu", this kind of posting goes often hand in hand with a lessening of social security in the country of origin and paying strict minimum wages in the country of employment;
- 3) Within the third category of posting there is a situation where workers are formally posted into another Member State, but with many severe infractions.
- 4) Within the fourth category there is no factual posting. Virtually no legislative or conventional provisions are respected. This type of situation is generally linked to false self-employment, cross-border social fraud, etc.

In answering a question from Mr Hägglund (EFBWW) Mr Cremers explains that the European Commission could immediately start several infringement procedures against Member States. But in fact it is very difficult to see where countries stand (sometimes Member States act like "lemmings"). Mr Hägglund (EFBWW) points out that the host country (the country of destination) should define who is a worker. FIEC agreed already on this principle in the joint study on "Self-employment and bogus self-employment".

Mr Campogrande (FIEC) indicates that some of FIEC's affiliates have raised concerns regarding this draft study, which gives a biased and an extremely negative picture of "posting" on the basis of opinions which are not supported by any reliable figure. The study generalises some conclusions on the basis of problems identified but without being able to indicate and to prove whether such cases are exceptions or the majority of the cases. Mr Campogrande also mentions that the Spanish report contains some errors and that the points of view expressed by the employers' representatives interviewed have not been taken into account. Mr Cremers explains that there is no possibility to change essential parts in the research report except for things which are really wrong. If there is a problem with the Spanish report, FIEC is invited to send its comments and it will be checked with the expert.

Mr Schmidt-Hullmann (EFBWW) explains the German situation and insists upon the need for efficient answers to the different forms of posting. Mr Buelen (EFBWW) suggests organizing a small meeting of the social partners in order to have an open discussion and to see on which issues a common position could be reached. FIEC agrees.

7) "Seasonal workers"- Proposal for a Directive:

- Exchange of views on a possible joint position paper

Mr Campogrande (FIEC) briefly explains the current situation. FIEC and EFBWW have already sent a joint letter to the former Commissioner regarding the initial draft proposal. Some of their concerns have been taken into account: The new proposal does not explicitly mention the construction sector and the length of seasonal work has been diminished. According to the EC proposal it is up to each Member State to decide which activities could be considered as seasonal. The social partners at the national level could be involved in this decision making process. FIEC would like this to be mentioned in the directive.

Mr Schmidt-Hullmann (EFBWW) makes reference to possible cases of social dumping. Mr Hägglund (EFBWW) explains that the EFBWW is – like a number of Member States- against this proposal. His basic point is that this proposal is supporting two kinds of labour markets. The EFBWW does not want a divided labour market. Mr Buelen (EFBWW) insists upon the necessity to have serious controls and labour inspection and suggests drafting a joint position. FIEC agrees to take into consideration the possibility of a joint position.

8) "Intra-corporate transfers"- Proposal for a Directive:

- Exchange of views on a possible joint position paper

Mr Buelen (EFBWW) makes reference to the arguments of the EFBWW regarding the proposal for a directive on seasonal work. Mr Schmidt-Hullmann (EFBWW) points out that the problem is not the opening of the labour market for third country nationals but the illicit working conditions and social dumping. FIEC decided not to oppose the proposal as such but to work on solutions in order to avoid its misuse, in particular as regards the definition of “specialists” and the possibility of mobility between Member States (Art.16). For EFBWW the basic points are the posting element, the definition and the controls. FIEC and EFBWW agree to look for common points and to try reaching a common position, possibly to be finalized at the plenary meeting to be held on 15 December.

6) Conference on paritarian social funds in Bucharest:

- Feedback

Mr Campogrande (FIEC) briefly reports on the project and the conference held in Bucharest in October 2010. The conference is part of a project aiming at promoting paritarian social funds. 150 participants from 27 countries attended the conference. Another element of this project is a website presenting the existing paritarian funds in the construction industry that is currently being developed. FIEC and EFBWW will continue working with the European Association of Paritarian Institutions (AEIP – Association Européenne des Institutions Paritaires) in order to promote paritarian social funds.

9) "Flexicurity":

- Discussion on possible joint actions

For the time being EFBWW prefers to work on other issues. The term "Flexicurity" has different meanings in different countries. It is therefore difficult to tackle this item at the European level.

FIEC will continue to look for practical applications in the Member States.

10) Any other business

- Joint declaration on "Third country enterprises and workers in the EU"

Mr Campogrande (FIEC) makes reference to the joint declaration. He points out that it is important to get as much information as possible on what is going on on the worksite in Poland. Protectionism is not FIEC's approach; the main problem is the unfair competition from state-owned (Chinese) companies entering the European market. Mr Hägglund (EFBWW) insists upon the fact that EFBWW is not against the entry of third country nationals into the EU, but that the working conditions for these workers have to be the same as for the European workers.

Mr Detemmermann (FIEC) makes reference to the recent Communication on the EU Trade Policy and to the fact that the main issues raised by the construction social partners are now tackled by the European Commission – DG Markt.

- FIEC Annual Congress

Mr Campogrande (FIEC) explains that the annual FIEC congress to be held in June 2011 in Sofia will focus on third country workers/enterprises entering the European market and invites EFBWW to speak at the conference.

11) Meeting dates for 2011

The sectoral social dialogue committee employment working group meetings will take place on 12 May and on 17 November, the plenary meetings on 30 June and on 15 December 2011.

The chair thanks the interpreters and the participants and closes the meeting.

List of participants:

Expert:

Mr Jan Cremers, NL

EFBWW:

Mr Sam Hägglund, EU

Mr Werner Buelen, EU

Mr Tomasz Nagórka, PL

Mr Frank Schmidt-Hullmann, DE

Mr Fabrice Marion, FR

Mr Jean-Luc Plumelet, FR

Mr Kevin Williamson, GB

Mr Baldo Romano, IT

Mr Mattias Landgren, SE

FIEC:

Mr Domenico Campogrande, EU

Mr André Clappier, FR

Ms Nathalie de Girodon, FR

Mr Sebastian Richter, DE
Mr Jørgen Hulsmans, NL
Ms Katrin Kandaouroff, DE
Ms Pascale Dessen, FR
Mr Vincent Detemmermann, BE
Ms Linda Nilsson, DK
Mr Mats Åkerlind, DK
Mr Constantin Balinisteanu, RO
Mr Jose Costa Tavares, PT

Guests:

Mr Riccardo Viaggi, EU
Mr Robert Hoedemakers, BE