



*European Economic and Social Committee*  
**Section for the Single Market, Production and Consumption**  
Single Market Observatory

## **PILOT STUDY OF THE WORKING OF THE SERVICES DIRECTIVE IN THE CONSTRUCTION SECTOR: THE CIVIL SOCIETY PERSPECTIVE**

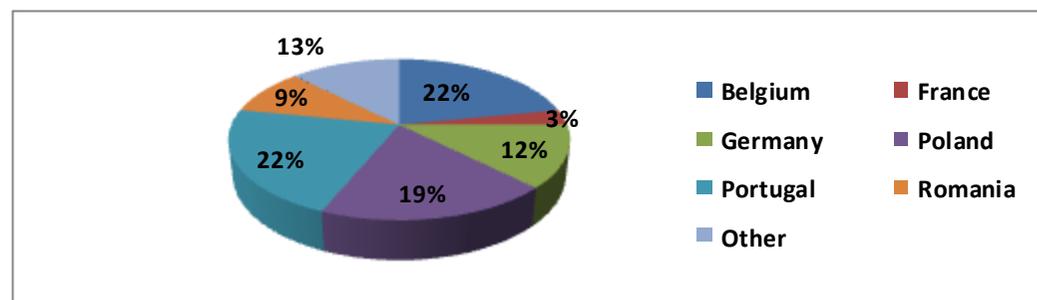
### **SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE**

#### **1. FOREWORD**

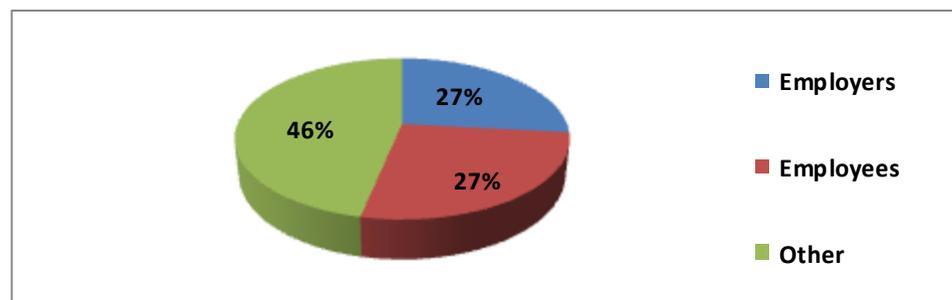
The Member States under scrutiny were Belgium, France and Germany, originally considered to be countries of destination, as well as Poland, Portugal and Romania, originally considered to be countries of origin. Obviously, this distinction has blurred as far as the first three Member States and nowadays France and Germany for example are both – countries of destination AND of origin.

We received 32 replies to the questionnaire, 28 from Member States which were targeted and 4 from other Member States. After each reply there is the abbreviation of the Member State from which the answer is given. A list of replies is in the end of this summary.

The following graphs illustrate how the replies were split up across countries and organisations of civil society.

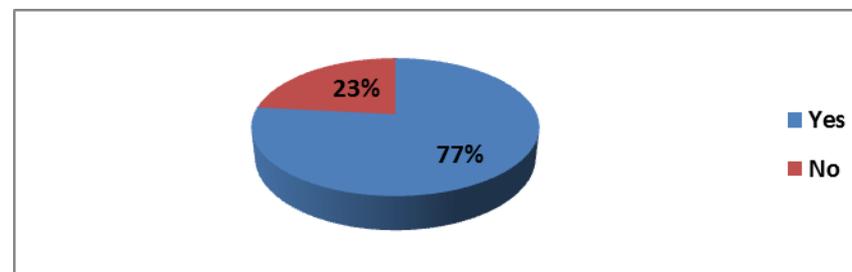
Replies received from following countries<sup>1</sup>

## Replies representing the views as follows:



<sup>1</sup> Member States targeted were: Belgium, France, Germany, Poland, Portugal and Romania. Some additional answers were received from Austria, Italy, Denmark and Lithuania.

## 2. QUESTIONNAIRE

1. IN ORDER TO STIMULATE THE CROSS-BORDER ACTIVITIES OF COMPANIES IN THE EU SO-CALLED "POINTS OF SINGLE CONTACT" HAVE BEEN ESTABLISHED BY THE MEMBER STATES. ARE YOU AWARE OF THE EXISTENCE OF THE "POINTS OF SINGLE CONTACT"?<sup>2</sup>

## If yes, how would you assess its functioning (e.g. in terms of availability and quality of information, electronic procedures, help services)? Do you have suggestions for improvement?

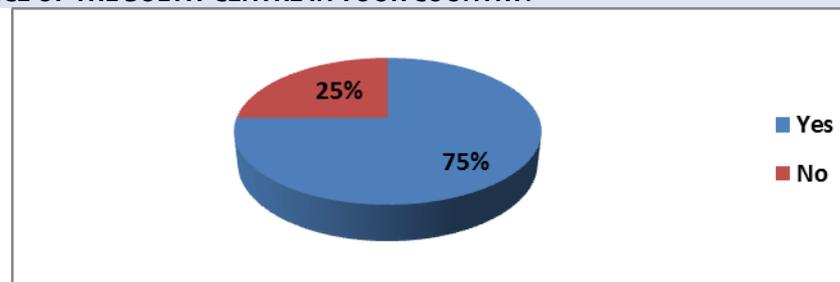
- We have observed progress in recent years. These points of single contact are however still more geared towards the creation of a stable establishment than towards cross-border provision of services. It is not always easy to identify what is necessary for their activity. Services Directive points of single contact generally do not provide any information on providers' social obligations (under the Posting of Workers Directive), even when the information is on offer elsewhere. Some procedures (local or very specific) cannot yet be done electronically or via the points of single contact. Belgian business registration offices are not often used by occasional foreign service providers. (BE)
- In Belgium, the authorities have made vigorous use of e-government and a great deal of information is available on the social security website. As regards the point of single contact, we are aware of its existence but have little information on how it works. (BE)
- Using existing brick-and-mortar networks (authorised business registration offices) as Services Directive points of single contact made it possible to get the system going quickly, but the disadvantage is that it is now difficult to keep the services on offer at the various points of single contact evolving at the same pace. The notion of establishing one electronic point of single contact is therefore now being studied. A feasibility study is ongoing. (BE)
- The points of single contact were set up in France in early 2010. The arrangements whereby EU architects request to register in the Order table via the point of single contact are laid down in the Rules of Procedure of the Order of Architects. In practice, EU architects who register or perform services contact the Order's regional council directly; the council centralises all necessary documents and answers their questions. (FR)
- Not aware. To date we have had no contact, nor has there been any exchange though the single point of contact with participating businesses. (DE)
- There has been no consultation on adhering to the minimum standards of employment and social legislation; employees are not consulted at all, only their employers. This must change. (DE)
- Improve the quality of technical translations in contacts with the contracting party. (PL)

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The "Points of Single Contact" are online e-government portals providing practical information on cross-border trade within the EU: [http://ec.europa.eu/internal\\_market/eu-go/index\\_en.htm](http://ec.europa.eu/internal_market/eu-go/index_en.htm). According to the Services Directive these "Points of Single Contact" are electronic but certain Member States have also set up physical one-stop shops for a better service.

- Publicity regarding the “single contact points” in Portugal has gone unnoticed by workers in the building and construction sectors and their trade union organisations: as a result, there is little knowledge of their existence. Because they are purely a virtual contact point, even if quite straightforward, they are harder to use for workers and others concerned who are not frequent users of the new technologies or do not have access to them. (PT)
- Extremely important role in the simplification of regulations and in bringing the public and businesses closer to a range of services which would otherwise be more difficult/costly/bureaucratic to obtain. (PT)
- The assessment is positive; the fact that it is a virtual contact point facilitates user access. However, it is important to emphasise the difficulties that this portal may pose for people who are unfamiliar with new technologies, despite the fact that it is accessible and user-friendly. (PT)
- No suggestions. The Portuguese Contact Point under article 21 of the Services Directive is performed by the European Consumer Centre and it is functioning well. (PT)
- The Empresa portal ([www.portaldaempresa.pt](http://www.portaldaempresa.pt)) provides easy access to the information required for carrying out different economic activities in Portugal. It makes it possible, for example, to set up a business online.
- They function very well, particularly in EU Member States. The information is up to date, clear and accessible. The problem is that you need to know what you want and how to reach the relevant site. I consider that public radio and television services should do more to promote and systematically provide information of public interest. (RO)
- Their existence has a little dissemination abroad. (IT)
- In my opinion it is functioning very well. (LT)

## 2. ARE YOU AWARE OF THE EXISTENCE OF THE SOLVIT CENTRE IN YOUR COUNTRY?<sup>3</sup>



### If yes, please develop and give, if possible, examples and suggestions for improvement:

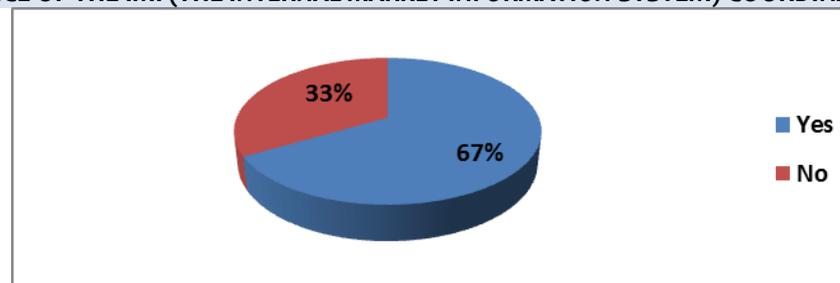
- The SOLVIT centre exists but since the Services Directive came into effect it has only intervened once, in the case of a dispute which was anyway resolved very rapidly. (FR)
- Not aware. To date we have had no contact, nor has there been any exchange though Solvit with participating businesses. (DE)
- SOLVIT passes on the most nonsensical demands of businesses, even if their actual request is basically illegal or based on an anarchistic impression that rules for businesses – at least abroad – should be completely rejected. At the Commission therefore a distorted image has emerged of "red tape", "protectionism" and "bureaucracy-plagued businesses", although in reality businesses operating abroad are allowed to do much more than domestic companies. (DE)
- All information concerning the SOLVIT system can be found on the Economy Ministry website; it is this ministry which is responsible for answering questions on how SOLVIT operates (PL)
- I have a perfect knowledge of the German language and German law in this area (PL)
- Reduce the number of documents needed to begin work (shorten the waiting time for decisions). (PL)
- More information, clarification and publicity targeting potential users. (PT)
- A better awareness-raising campaign is needed for this approach to solving problems related to the incorrect application of Internal Market law by public authorities. (PT)
- These platforms should be better publicised. (PT)
- The functioning of the Portuguese SOLVIT Centre is excellent. It is referred by the European Commission as one of the only two Centres that perform above average in all categories (PT and UK). (PT)
- SOLVIT is now using the IMI application.
- It exists within the Ministry of Foreign Affairs but the public at large is not familiar with it. The general public only calls on it in limited circumstances. A media campaign is necessary to make the existence of this centre known to the general public. (RO)

<sup>3</sup>

The SOLVIT network is an out of court dispute resolution for citizens and businesses involving public administrations of all EEA countries (the 28 EU Member States plus Iceland, Lichtenstein and Norway): <http://ec.europa.eu/solvit/>. The IMI network allows for cooperation between public administrations especially on transposition issues: [http://ec.europa.eu/internal\\_market/imi-net/index\\_en.html](http://ec.europa.eu/internal_market/imi-net/index_en.html).

- SOLVIT Centre is established at INPS (Italian Social Security Institution). A greater synergy is hugely desirable with other Institutions involved in social security matters. (IT)
- Establishing networks of experienced case handlers committed to enforce the EU-legislation behind the national Solvit centres could improve the efforts to support the rights of migrant workers. (DK)

### 3. ARE YOU AWARE OF THE EXISTENCE OF THE IMI (THE INTERNAL MARKET INFORMATION SYSTEM) COORDINATOR IN YOUR COUNTRY?



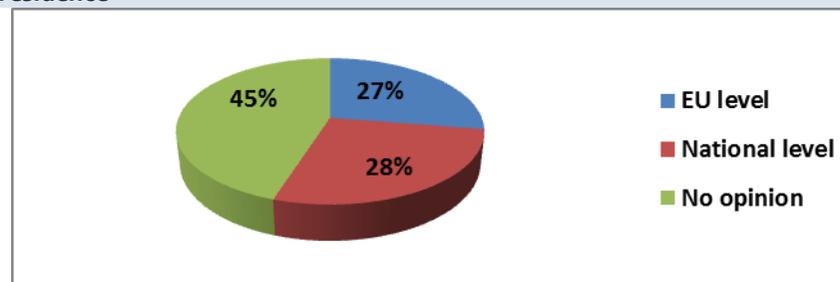
#### If yes, please develop and give, if possible, examples and suggestions for improvement:

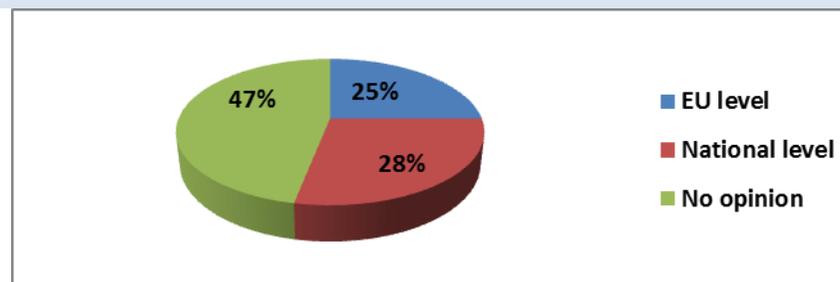
- It would seem that this system works well, particularly with certain countries. However, we are relatively uninvolved as a trade union and would like more information and communication with this system. (BE)
- Belgian Labour Inspectorate is one of the main "hard users". It helps further enhancement for cooperation and mutual assistance with colleagues abroad. It helps clarify a lot of enigmas in the enquiries. (BE)
- The Directorate General Individual Labour Relations is one of the two Belgian authorities appointed as regards the pilot stage concerning the implementation of specific IMI tool regarding Posting of workers. It is important to point out that DG Individual Labour Relations only possibly use the IMI system in this sole regard and therefore will NEVER use the other application tools of this IMI System (among which the tool specifically dedicated to the area of Directive services). (BE)
- An evaluation followed by an adjustment of the existing networks (the Belgian IMI structure complies with Belgium's federal structure) is ongoing. (BE)
- Difficult to access; no response from the competent authorities (when they can be found). Professional organisations of architects, when requesting information, contact their European counterparts that they know well via the Architects' Council of Europe which covers all EU architect organisations. (FR)
- Not aware. To date we have had no contact, nor has there been any exchange through IMI with participating businesses. (DE)
- The IMI System (short for Internal Market Information system) is an electronic tool operating through an online internet browser, enabling the competent body to carry out cooperation in this area. In the IMI system, the role of coordinator of the posted workers module is carried out by the general labour inspectorate/national labour inspectorate. Any questions about how the IMI system functions are systematically discussed with the national IMI system coordinator, i.e. the economy ministry. [www.mg.gov.pl](http://www.mg.gov.pl) (PL)
- I have never encountered unfair competition. (PL)

- It makes our services available in a wider sphere. As regards combined transport transactions, to facilitate the issue of responsibility for transported goods. (PL)
- This feature, which enables national, regional and local authorities to communicate quickly and easily with their counterparts in other countries, has been very poorly publicised. (PT)
- The Working Conditions Authority (ACT) and the IMI Coordinator for the legislative aspects of the Posting of Workers Directive.
- The Commission for the recognition of diplomas and professional qualifications exists within the Ministry of Education, and I consider that it fulfils its remit competently. I do not know how other ministries function. This is partly owing to frequent changes in their structure and also because some departments have moved from one ministry to another. Public opinion is not sufficiently informed. (RO)
- Extend the use of IMI to social security (regulation 883/2004) - the posting of workers directive is connected to the coordination of social security. (DK)

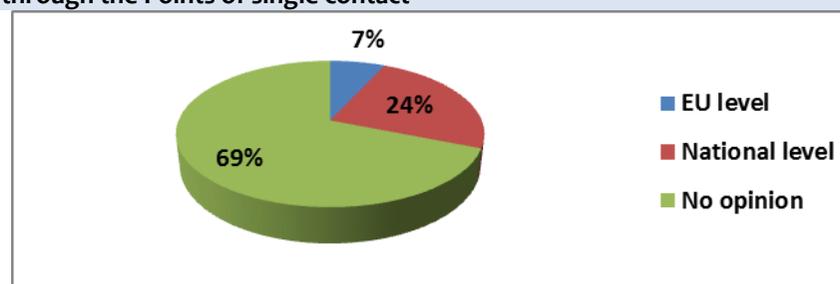
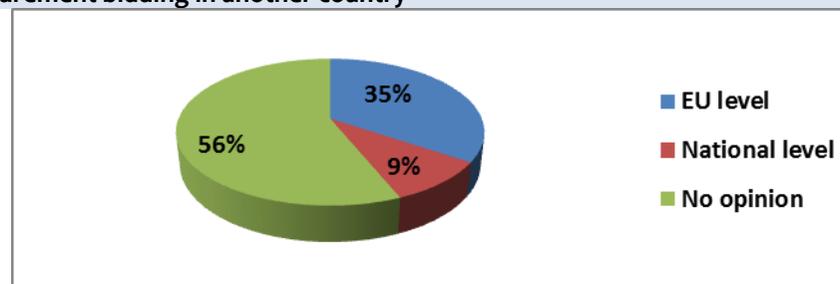
**4. IN CASE YOU PROVIDE CROSS-BORDER SERVICES, WHICH OF THE FOLLOWING DO YOU THINK REPRESENT(S) MAJOR PROBLEMS FOR THE PROVISION OF CROSS-BORDER SERVICES IN THE CONSTRUCTION SECTOR? (SEVERAL ANSWERS POSSIBLE)  
IF YOU CONSIDER THIS AS A PROBLEM, SHOULD IT BE RATHER TACKLED AT THE EU LEVEL OR AT THE NATIONAL LEVEL?**

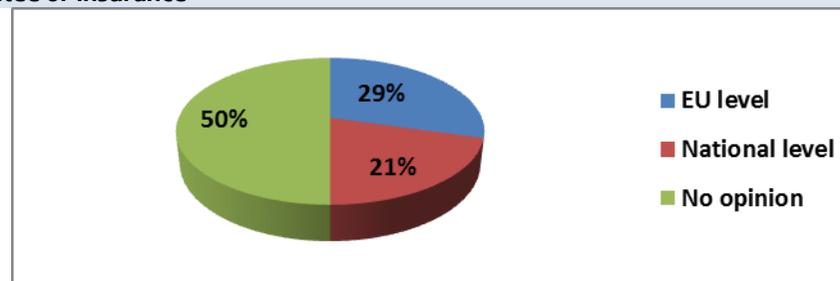
**Requirements based on nationality or residence**



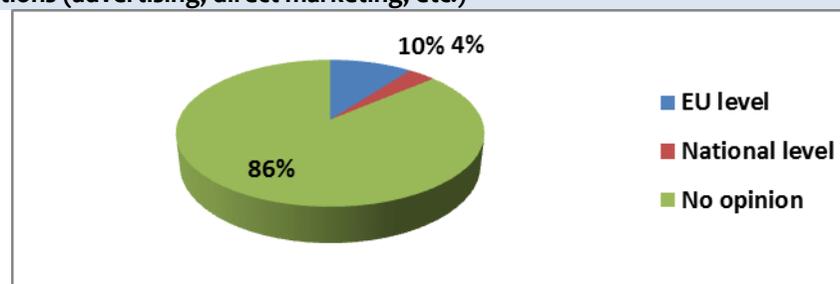
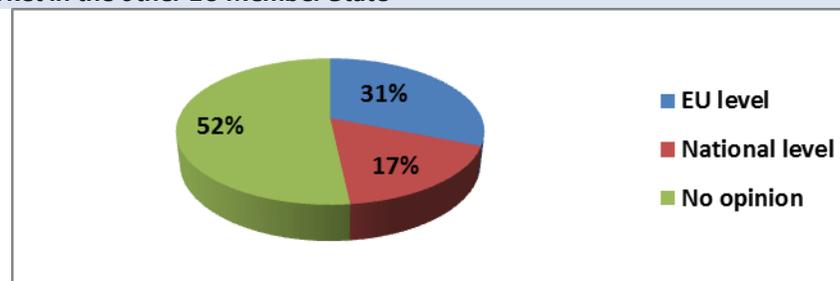
**Authorisation schemes and other regulations of the host country that are in contradiction with rules related to the recognition of professional qualifications and standards**

- Luxembourg: Authorisation to operate in this country is obtained only once administrative formalities in the different departments are completed. (BE)

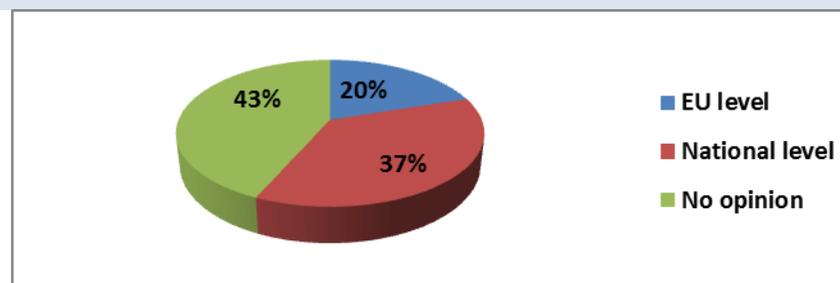
**Difficulties to complete all formalities through the Points of single contact****Barriers to participation in public procurement bidding in another country**

**Obligation to obtain a financial guarantee or insurance**

- France: *la décennale* - 10-year professional liability insurance guarantee. (BE)

**Prohibition of commercial communications (advertising, direct marketing, etc.)****Lack of knowledge about the local market in the other EU Member State**

## Language problems



### Please develop and/or give examples:

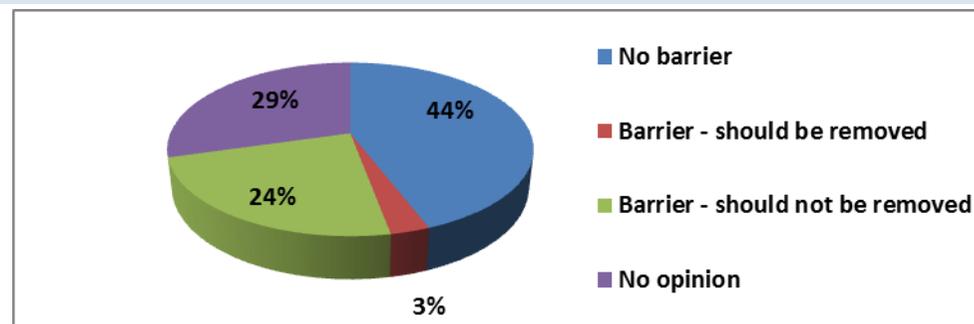
- The answers given above relate to problems encountered by our companies in other Member States, not in Belgium. As regards financial guarantees and insurance, only some insurance schemes are a problem. We feel that lack of knowledge about the local market and the language are barriers; action by public authorities here is welcome but will certainly remain marginal. (BE)
- Safety problems on construction sites (communication in various languages but also non-compliance of equipment and the safety standards of the host country – Belgium in this case). (BE)
- The difficulties encountered are never the work of one single Member State. Moreover, a barrier necessarily tends to be linked to national concerns, whether legitimate or not. Tackling issues at European level is an effective means of forcing national authorities to assess the relevance of the existing regulatory framework. (BE)
- It is unfortunate that it is impossible to comment on each of the items. Firstly, restrictions based on residence and nationality are forbidden and so of course do not exist in France. Authorisation schemes and other rules comply with the directive on recognition of professional qualifications (Law 77-2 of 3 January 1977, Decree of 2/12/2009 and decisions of 17/12 2009 on the recognition of professional qualifications as regards the profession of architect). There is no difficulty in contacting the point of single contact set up by the government in 2010, but as stated above, EU architects prefer to have direct contact with the Order of Architects. As regards public procurement, we have had no particular feedback from French architects encountering difficulties in participating in public procurement in another country. In France, service providers must have insurance. The insurance company may be European provided it covers architects' liability in France, in accordance with French legislation, and is authorised by the French Ministry of Finance. Advertising has been open to architects in France since 1992 in line with common law. As regards knowledge of the local market, that is subjective; the Order provides all architects who so request with the information available to it regarding carrying out the profession in other countries. (FR)
- Both domestic and foreign providers in general complain about the considerable barrier to freedom to provide services in connection with the reporting requirements vis-a-vis various authorities (financial authorities, various social insurance providers, chambers of skilled trades, etc.). The social protection of workers, as well as adherence to legal provisions, protection requirements, etc. in the construction industry can only be guaranteed if the reporting requirements continue to remain in place. (DE)
- Both of these problems must be solved by the business itself, namely through canvassing the market locally or establishing a branch office with local market knowledge and language learning. All of the abovementioned problems either do not exist in reality or in general have an objective substantive

basis. As regards the internal market, in our view it is simply a question of genuine equal treatment, not the preferential treatment of foreign businesses. Those who have no idea how the market in the neighbouring country is structured, should first and foremost invest in acquiring better market knowledge and adapting what they offer to local demand. In general, entrepreneurs should do more instead of always just moaning. (DE)

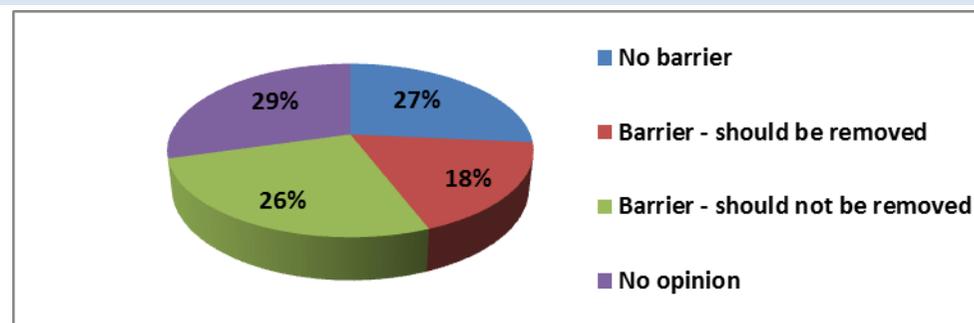
- No recognition of licenses for using equipment and professional qualifications (PL)
- Not ensuring that posted workers have the appropriate standards of employment based on the laws of the host country (PL)
- Operator licences to use construction equipment, especially supervisory licences (cranes, forklifts) are not recognised in all countries. Courses and exams need to be retaken. Neither is formal education in building trades recognised (crafts-based and manual). (PL)
- The experience of the national labour inspectorate shows that there are cases when employers do not ensure that posted workers have appropriate standards of employment based on the laws of the host country, in particular the national minimum wage. (PL)
- People translating documents and plans are not familiar with the technical vocabulary. (PL)
- RUT system in Denmark requires registering all foreign provisions of services even in the event of self-employment. It also makes publicly available online information regarding a workplace in Denmark, dates of a provision of a service and its NACE code, while it is not required for Danish firms to have the same data registered and displayed. (PL)
- Consumer safety complaints are registered in the Consumer Markets Scoreboard. (PT)
- Informing workers from the EU who work in Romania in construction. (RO)
- Problems in the mutual recognition of education – in part different country-specific qualifications and education; problems regarding the comparability of the content of professional qualifications. (AT)

5. IN CASE YOU PROVIDE CROSS-BORDER SERVICES, HOW DO YOU CONSIDER THE FOLLOWING NATIONAL MEASURES REGARDING CROSS-BORDER PROVISION OF SERVICES? (SEVERAL ANSWERS POSSIBLE)

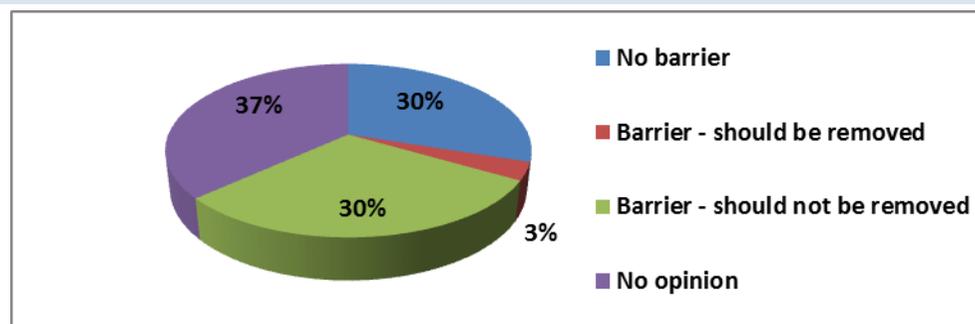
Obligation to give a timely notification



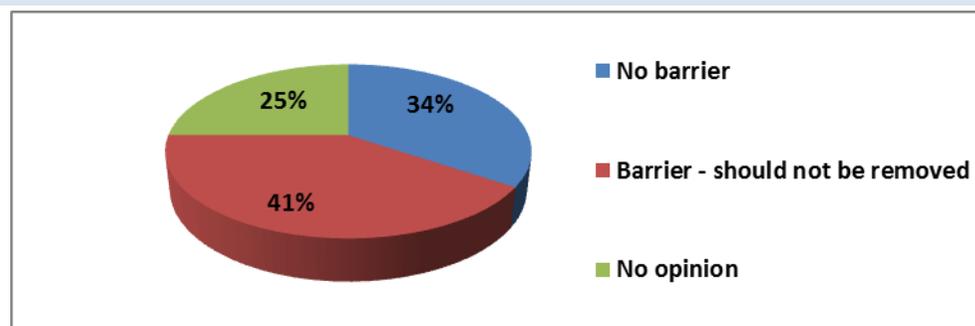
Obligation for the services provider to register in the host country

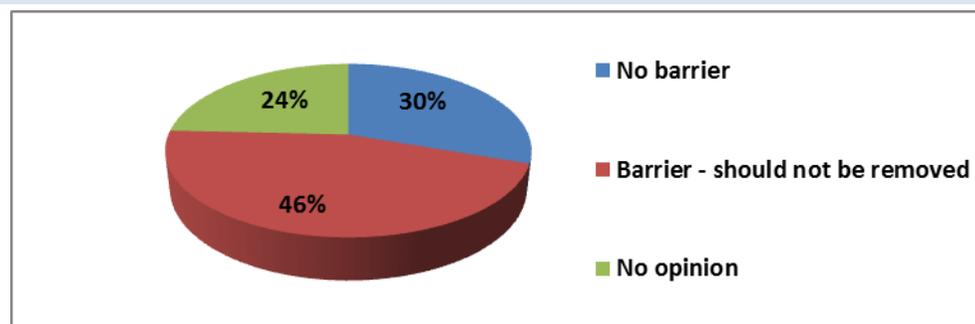
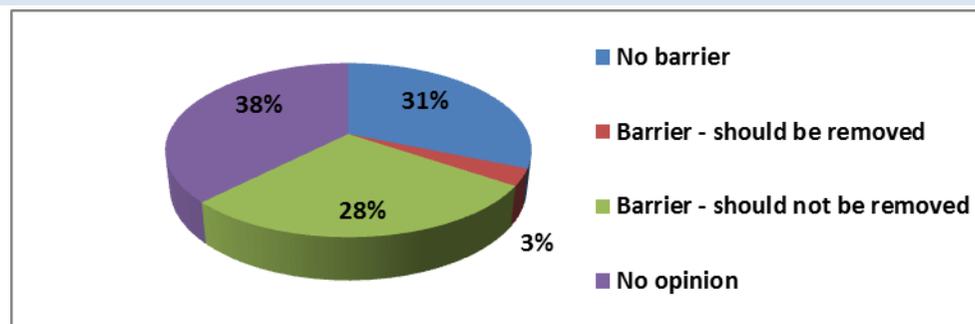


- Mandatory timely notification may be sufficient, and should be able to exclude tendering. (BE)

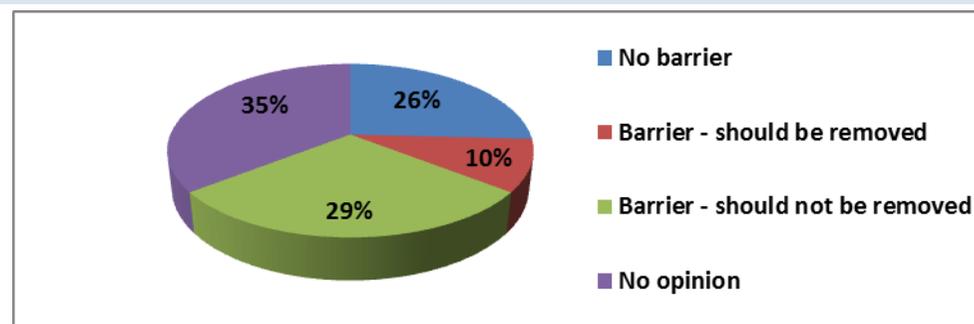
**Obligation to register in the host country of the involved workforce**

As above, notification should be sufficient. (BE)

**Obligation to respect the working conditions applicable in the host country**

**Obligation to apply rules regarding liability (towards creditors, workers, users)****Obligations regarding accounting and reporting**

### Obligation to provide certificates of good standing



### Other (please specify)

- The differing social security provided in the different countries is a barrier. This requires harmonisation. An additional problem: the lack of possibilities for penalties and monitoring to tackle fraud in the host country (see also below). (BE)

### Please develop and/or give examples:

- We do not see the abovementioned national measures as a barrier but rather a good practice which makes it possible to regulate free movement and ensure that it is to everyone's benefit and not subject to fraudulent networks or even human trafficking networks. (BE)
- It is not the obligations themselves which are a problem but rather sometimes the way that they are put into practice; IMI here is a tool which can keep controls moving. (BE)
- In France, architect service providers are not registered in the Order's table. They must make a declaration of provision of services to the Order's regional council at the place of provision on the occasion of the first provision of services, and only renew this declaration should their circumstances change. The declaration is accompanied by the necessary documentation: qualification, attestation from the competent authority certifying that the service provider has not been struck off, even temporarily, in his/her country of origin, certificate of professional indemnity insurance. (FR)
- Any reporting requirement can be viewed by the service provider subjectively as a barrier. These obligations cannot therefore be abolished per se. For their part, the participating authorities must ensure, by providing relevant information and support, that service providers are not hindered by fees. (DE)
- All of these requirements are easy to fulfil for genuine and serious businesses; in general they serve useful purposes. What is more, some of your questions relate to matters concerning directive 96/71 EC, which are specifically exempt from the services directive! (DE)
- The replies set out in point 5 refer to the temporary cross-border provision of services. For more permanent services, responses may be different. (PT)
- As to an obligation to register in the host country of the involved workforce is a barrier and needs to be proportionate. When it is not, it should be removed. As to respecting working conditions applicable in the host country: not all should be respected. They should not lead to double burden and the Posting of Workers Directive should be applied. (PL)

**6. IN THE CONTEXT OF CROSS-BORDER SERVICES, POSTED WORKERS ARE PROTECTED BY THE EU PROVISIONS ON THE POSTING OF WORKERS. ON THE BASIS OF YOUR EXPERIENCE, HOW DO YOU CONSIDER THIS PROTECTION AND HOW WOULD YOU EVALUATE THE NATIONAL IMPLEMENTATION OF THE POSTING OF WORKERS' DIRECTIVE?**

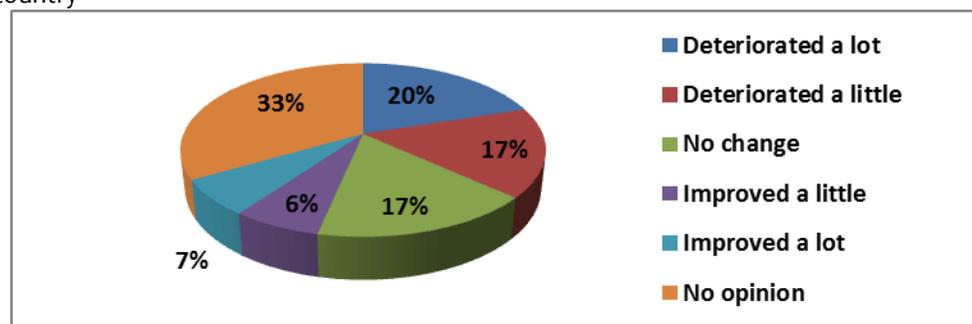
**Please develop and/or give examples:**

- EU rules actually encourage abuse. Host-country inspectorates have too few powers to tackle fraudulent construction projects. Due to the lack of an EU database on which foreigners can be checked, it is impossible to tell whether one is dealing with rogue subcontractors. The absence of uniform rules on pay, social security and fiscal contributions, it is not possible to verify whether all labour- and wage-related conditions are being met. (BE)
- Compliance with the rules on posted workers is crucial for fair competition in Europe. Fraud is unfortunately common and inadequately tackled. To date, the Commission has shown much more enthusiasm in pursuing violations of the Services Directive than in combatting large-scale cross-border social fraud which abuses posted-worker mechanisms and the status of self-employed. This results in unfair competition and an inefficient labour market. Organising a Europe-wide inspection would make it possible to act more effectively and to avoid national measures against fraudulent companies penalising companies which act in good faith. We consider that the Posted Workers Directive has been transposed appropriately into Belgian law. (BE)
- Protection is not adequate. Abuses of posted workers occur every day: failure to comply with working and rest time, failure to comply with health and safety rules, unsatisfactory housing of posted workers in camp sites or ill-equipped worksite caravans, failure to comply with minimum salaries (or compliance on paper, followed by exaggerated deductions of expenses for housing and transport), failure to declare full salaries to the social security authority of the country of origin, etc. (BE)
- The national implementation in Belgium is a real guarantee for protection of the posted workers right. This means at least the legislation which results from it. In practice however this protective legislation is object of infringements way too much. Service providers too often don't comply for example with minimum wages and maximum labour time. Especially in the construction sector this is really dramatic. (BE)
- This issue does not concern architects who in most cases provide services on an individual basis. (FR)
- As providers of statutory accident insurance, we regard worker protection as being of fundamental importance. The best possible protection and social welfare should be guaranteed in all Member States. Accordingly, BG BAU guarantees social protection of workers in the area of accident prevention, medical care following occupational accidents and in the case of occupational illnesses. The problem is gaining the acceptance of employers regarding oversight and checks to see whether workers have actually been posted or whether there has been some kind of circumvention of rules. According to the experiences of BG BAU, "chain posting" and other circumventions continue to occur. In the construction sector, there is a very strong tendency to force potential workers into bogus self-employment. In the construction business in particular, assessments and checks are essential and help protect workers and honest/law-abiding providers. Accounting and reporting obligations must not therefore be reduced. (DE)
- Your question deals with matters associated with Directive 96/71 EC, which are specifically excluded from the services directive. The protection of posted workers against exploitation and deception by employers is absolutely necessary; the application of the relevant rules has so far been too lax. (DE)
- The directive on posted workers gives workers the right to the minimum labour conditions of the host country, especially the local minimum wage and paid annual leave. The German law on posted workers forms the basis for targeted measures to guarantee these employee rights. The rules of the services directive should be seen as subordinate to this and be clearly separated. (DE)

- In the case of registration of firms outside Poland, workers are not subject to Polish labour law. Neither can they be supervised by the Polish labour inspectorate (PL)
- Thanks to the IMI system's module on posted workers, which was introduced on 16 May 2011, exchange of information on posted workers has improved significantly, mainly in terms of a quicker procedure for exchanging information and system flexibility. However, the Polish labour inspectorate has learnt of difficulties in the recovery of claims by the labour court linked to the court's difficulties in obtaining information about foreign law (these difficulties make the judicial process longer). In addition, the Polish labour inspectorate has encountered problems while carrying out checks of employers posting workers to Poland on account of the absence of an obligation on the foreign employer to appoint a representative in Poland to work with the supervisory authorities. There are no remarks about the implementation of the directive (through the labour code and legislation on the Polish labour inspectorate) (PL)
- Reduce the number of documents needed for the posting of workers, facilitate swift exchange. (PL)
- In countries where trade unions de facto share the power to establish national levels of protection it is difficult to see the Posting of Workers Directive fully effective. Unions' requirements often go beyond it and companies are put under enormous pressure to abide, even when it hinders their own economic performance and benefits for their workers are illusive. (PL)
- The situations of which we are aware, mainly in Northern Portugal (Minho) and some in the south (Algarve), suggest that there has been no effective protection or surveillance and that situations of discrimination, unequal treatment and poor working conditions have been common and abusive. (PT)
- The most serious problem lies in the interpretation by the various Member States, which clearly harms workers. It is also important to improve the effectiveness of surveillance in order to prevent abuse. (PT)
- Where cross-border service provision is concerned, fraud sometimes takes place, and the protection of posted workers is therefore essential. Throughout Portugal, the ACT monitors the terms and conditions of employment of posted workers there, applying the appropriate administrative penalties for irregularities found in the posting of workers. (PT)
- Posted workers are protected under Law 344 of 2006 on the posting of employees in the context of the provision of cross-border services, which transposes Directive 96/71/EC of the European Parliament and of the Council. (RO)
- The Directive on the posting of workers (Directive 96/71/EC) was transposed into Romanian legislation by Law 344/2006 and Government Decision 104/2007. National legislation establishes mandatory rules which must be applied in the case of workers posted to Romania; it also establishes a fundamental set of well-defined working conditions which must be met by the service provider in order to ensure minimum protection for workers. National legislation therefore provides a high level of protection for workers, who can be vulnerable as a result of their situation (temporary job in a foreign country, difficulties in securing adequate representation, lack of knowledge of local legislation, institutions and language). (RO)
- The protection of posted workers is very complex. For instance, labour costs of Romanian companies which post workers to Germany are much higher than for local German companies. This means that Romanian companies are not competitive in terms of wage costs and other labour expenses, which is why many companies give up on this aspect or have legal problems. (RO)
- Particular attention should be paid to the question of the cases falsely reported as "posted workers" in order to elude the application of the regulation in force in the sending country. (IT)
- Based on experience from actual cases of work accidents many workers are hired under cover of pro forma posting or other kinds of irregular schemes aimed at circumventing the rules. The result is often that workers have no or very little social protection. Posting of workers and social security are interconnected and consequently the posting of workers directive and the regulation on social security coordination should be viewed as two sides of the same coin so that the situation can be assessed as a whole. (DK)

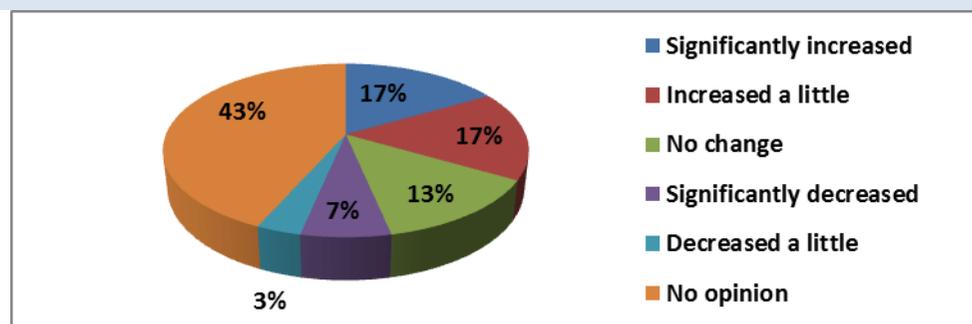
## 7. PLEASE RATE THE IMPACT ON YOUR SECTOR OF THE SERVICES DIRECTIVE ON THE FOLLOWING:

**Working conditions** in the host country



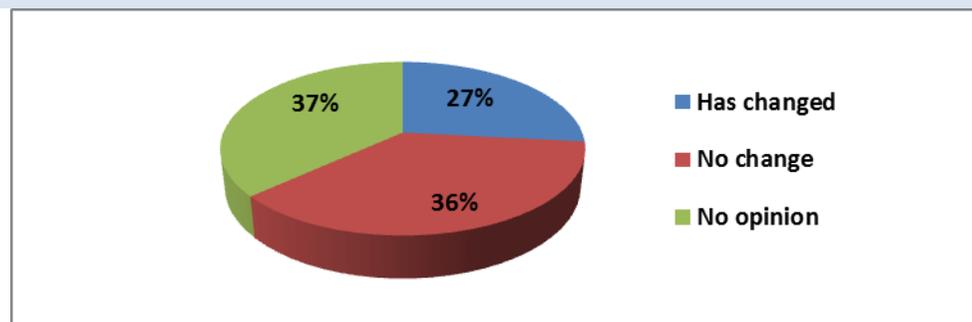
- Reason: foreign employers do not respect safety requirements, working conditions or the obligation to provide decent accommodation. (BE)

Developments in **the number of temporary contracts and other forms of flexible work** in the host country, which can be attributed to the implementation of the Services directive

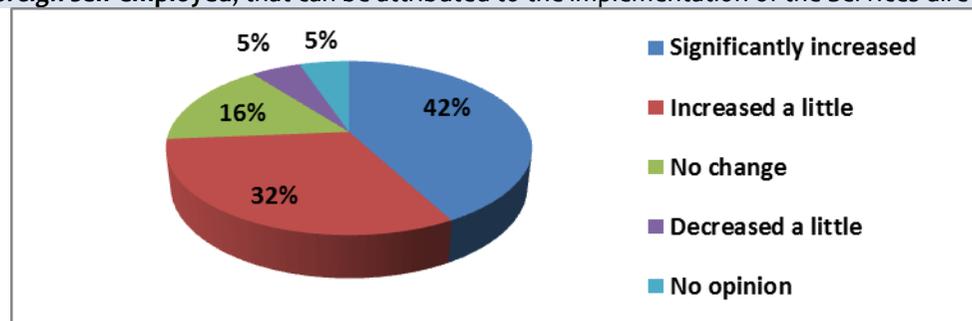


- The market is flooded due to unfair competition, which often involves the illegal provision of services or bogus subcontracting. (BE)

Developments regarding **the legal status of workers** (employee, self-employed) in the host country, that can be attributed to the implementation of the Services directive



Development in **the number of foreign self-employed**, that can be attributed to the implementation of the Services directive



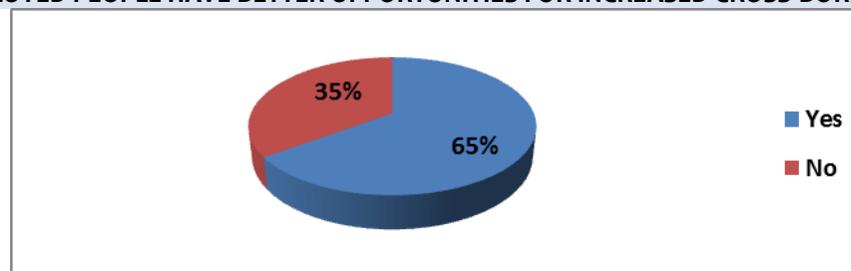
- Exploitation of employees and self-employed workers from abroad. (BE)
- Concerning Belgian employees: precarious employment situations be (they are priced out of the labour market). (Figures available on request) (BE)

**Please develop:**

- In law, working conditions have not been affected by the Services Directive, but the influx of posted and self-employed workers (or bogus self-employed) from other Member States to construction sites has an effect on practical working conditions. (BE)
- There have been several changes:
  - Exacerbated by the crisis, working conditions of construction workers have worsened: higher unemployment, difficulty for national workers to find work given the unfair competition arising from much lower hourly wages than apply in the host country.
  - Drop in the number of (Belgian) labourers in this sector and rise in the number of self-employed and white-collar workers (management, consultancies). (BE)

- Mainly Dutch bogus self-employed workers flooding the Belgian construction market, but we are also seeing an increase in self-employed workers of French, Polish, Romanian and Bulgarian origin. (BE)
- Bogus self-employment! Fictitious action shareholders in companies. (BE)
- Gauging the impact of the Services Directive is speculative. I believe that it is impossible to distinguish the Services Directive from many other factors which influence economic activity. On the other hand, it is clear that the directive has had a positive impact simply because it has imposed the detailed evaluation of national regulatory frameworks (simplification, consistency, comprehensibility and accessibility, etc. Thanks to the Services Directive, there is now a guide to the procedures to be carried out before being able to provide a service). (BE)
- For BG BAU, it is not clear that the directive will mean an increase in employment status. It is equally unclear whether there is a connection between the services directive and the high number of (foreign) self-employed workers (without their own employees). (DE)
- The employer-employee relationship for posted workers is increasingly being replaced by group-based bogus self-employment, which exploits the liberalisation brought about by the services directive. Domestic companies are increasingly using precarious sub-contractors. (DE)
- According to information I have received externally, workers complain that upon departing for work in Germany, they have to register their economic activities. According to them, most workers in the construction industry are self-employed. (PL)
- The national labour inspectorate is the body responsible for overseeing and monitoring adherence to labour law, especially the rules and principles concerning occupational safety and hygiene, as well as the rules concerning legality of employment and other paid work in the area defined in the law on the national labour inspectorate. However, most questions in point 7 of the questionnaire are outside the remit of the national labour inspectorate. (PL)
- There has been an increase in the number of people from the EU and beyond working for lower rates. (PL)
- In the North Portugal-Galicia cross-border region, the crisis in Spain has clearly resulted in poorer working conditions for Portuguese workers providing services in the region of Galicia. The number of employees has fallen and the flow of migrants has slowed substantially. (PT)
- The high cost of posting workers has led to an increased number of self-employed workers. (RO)

#### 8. DO YOU EXPECT THAT SELF-EMPLOYED PEOPLE HAVE BETTER OPPORTUNITIES FOR INCREASED CROSS-BORDER EMPLOYMENT?<sup>4</sup>



<sup>4</sup>

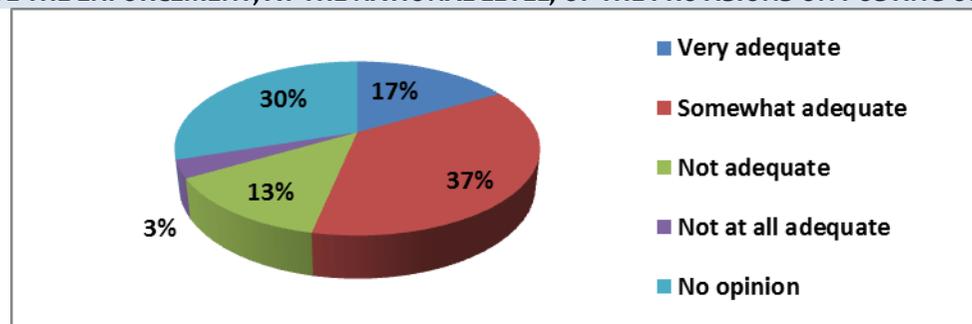
See the EESC opinion on "*The abuse of the status of self-employed*": OJ C 161, 6.6.2013, p. 14, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012IE2063:EN:NOT>.

**Please develop (if yes, why? If no, why not?):**

- The posting of workers Directive is not binding and is therefore often abused. (BE)
- The cost differential between employee and subcontracting by low-cost self-employed workers from other Member States is not conducive to recruitment in general, irrespective of the employee's country of origin. (BE)
- There was no restriction on free movement (of employees) when the new Member States joined and they are able to set their own price without having to comply with the labour law which applies to employees. They are often bogus self-employed and until now the Belgian authorities had little scope for taking action against this purported status (requelifying it). (BE)
- Because employers can as a result markedly reduce wages. At the same time, pressure increases considerably on conventional employment in the host country. (BE)
- Too many so-called self-employed don't have any choice. They are put under pressure to accept willingly this status. (BE)
- Instituting transparency regarding conditions for accessing service activities in other Member States helps establish a risk-friendly environment. (BE)
- More transparency, improvement in administrative cooperation (DE)
- For statutory accident insurance, there is no differentiation between foreign and national activity. Through BG BAU, provision of services in the construction sector is not limited, rather the service providers who employ workers are freed from impending liability risks. In so far as statutory accident insurance is perceived by workers as a limitation, a "pre/post comparison" cannot take place, because in this case the services directive has not introduced any changes. The opportunities of self-employed workers (without their own employees) to work abroad have apparently become better as a result of improved Europe-wide networking in recent years. Rights, obligations and opportunities are communicated in various ways. The main factor in overcoming existing obstacles or lack of awareness is the personal motivation which leads people to consider working abroad (labour market/economic situation in home country). We still believe that there are limited possibilities of becoming a paid employee in the construction industry abroad. (DE)
- Nowadays businesses do not want to employ workers, only companies. This is clearly reprehensible because it is "a bogus economic activity" (PL)
- See above. (PL)
- The same are responsible for the quality of work carried out. (PL)
- Access to information on applicable requirements is better. However, in my view, there is little improvement of substantive economic opportunities. (PL)
- They have greater freedom to act. (PT)
- Because poor working conditions (low wages, little social protection, employers blocking collective bargaining, limitations on the right of association and the right to strike, poor health and safety conditions, etc.) now frequently occur both within and beyond countries' borders. When we talk about 'self-employed workers', we are generally speaking of bogus self-employed workers, in the same way that there are false "green slip workers", because these are usually employees, forming part of a vast network of precarious employment links. (PT)
- Constraints in terms of tools (e.g.: training) that facilitate entrepreneurship. (PT)
- Many "self-employed workers" are in fact bogus self-employed. The diversity of social security schemes is also a factor that harms the prospects of these workers. (PT)
- Self-employed people do not seem to have better opportunities because normally they are not so easily aware of working conditions in the host country. (PT)
- There is a range of job opportunities in the EU. (RO)

- Language problems, more vulnerable to dismissal, weaker social protection. (RO)

#### 9. HOW WOULD YOU EVALUATE THE ENFORCEMENT, AT THE NATIONAL LEVEL, OF THE PROVISIONS ON POSTING OF WORKERS?

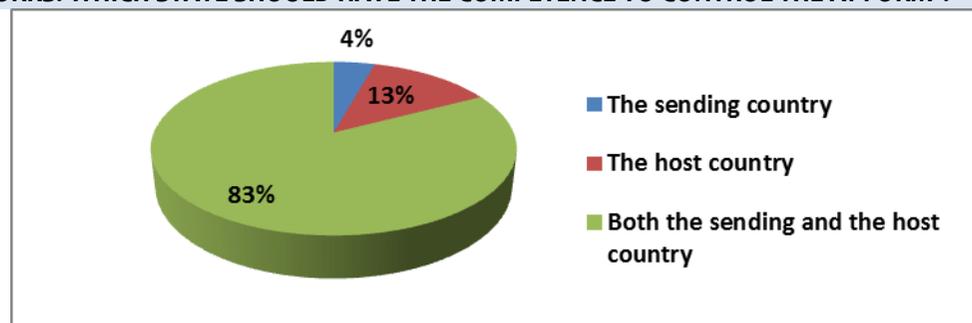


#### If yes, please develop and give, if possible, examples and suggestions for improvement:

- An EU database, social security payments in the country of posting (pending harmonisation). Checks by local inspectorates are virtually impossible. EU rules restrict the individual freedom of the host State to take action. Application of the principle of subsidiarity in order to combat fraud and abuse. (BE)
- The rules are clear but implementation is inadequate. National authorities are not given the means to enforce these rules. Penalties are not effective (legal proceedings). This results in impunity which only encourages fraudulent behaviour. (BE)
- The issue of the charges workers face for accommodation is extremely serious, and bogus self-employed workers distort the system of supply and demand on the labour market. (BE)
- The remaining problem is executing penal or administrative fines in the host countries which leads to a no-sanction perception. (BE)
- Directive 96/71/EC has been transposed in Belgian legal order by the Act of 5 March 2002 concerning posting of workers. (BE)
- In the view of BG BAU, national implementation regarding the desired freedom of movement is guaranteed. What is questionable is implementation regarding the social welfare of workers in so far as the social protection provided by the home country and the country of work is actively and consciously removed from them by exploiting the freedom of movement. The supervisory mechanisms of the country of work quickly come up against their limits especially when workers consensually contribute to the evasion of the law. (DE)
- SOKA-BAU checks adherence to the provisions of the directive on posted workers. An important aspect is the presentation of documents, which provide the basis for ensuring holidays and payment of the German minimum wage. Customs control on the building site also facilitates implementation and must be retained and consolidated. (DE)
- Workers on civil law employment contracts and employed in other countries should be supervised by the national labour inspectorate. The inspectorate needs to be given the relevant competencies. (PL)
- Not adequate in all Member States - see question 16. (PL)
- Effective implementation of the principles and provisions relating to the posting of workers and the existence of decent work are out of touch with

- today's reality. (PT)
- Generally speaking, implementation of the provisions on the posting of workers is lagging behind and monitoring of how posting is carried out is also extremely poor. (PT)
  - EU Member-State legislation is being harmonised. (RO)

**10. THE A1 FORM CERTIFIES THAT ITS HOLDER, THE POSTED WORKER, IS REGISTERED IN THE SOCIAL SECURITY SYSTEM IN THE HOME COUNTRY IN WHICH HE/SHE USUALLY WORKS. WHICH STATE SHOULD HAVE THE COMPETENCE TO CONTROL THE A1-FORM<sup>5</sup>?**

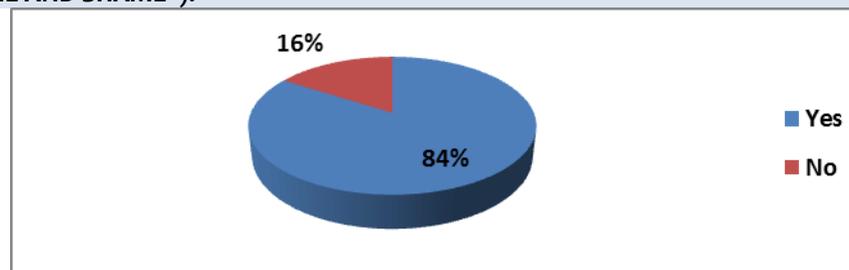


<sup>5</sup> Workers involved in cross border service provision can stay in the social security system of their home country if all conditions are fulfilled. The form is issued in the home country. The competence to control whether the form is correct and genuine also goes back to the home country.

**Please develop and/or give examples:**

- Currently the host Member State does not have the right to verify and prosecute abuse of the rules. (BE)
- Membership of one or other social security scheme depends on the overall situation of the person concerned, not just the country of origin. The validity of the membership must be jointly verifiable by all Member States, i.e. those where the person concerned carries out an activity which will be cause for levies and social rights. (BE)
- Knowledge of the use of this form is important for both countries. However, given the situation on the ground (bogus self-employed, A1 forms recorded in certain Member States, letter-box companies, etc.), the host country alone must be competent to check on the A1 forms and if necessary to amend them. (BE)
- In too many cases Labour Inspectorate found abuse of the A1 form, meaning being used as a pretext for letterbox companies, undertakings with no real substantial activity in the host state etc. (BE)
- A1 forms are particularly prone to forgery and misuse. Countries of origin do not concern themselves with the use or misuse of their forms abroad. The countries of work, however, have until now had no choice but to believe everything. (DE)
- The provider of the host country and the country where the workers are posted should be entitled to declare a document invalid under Art. 5 of Regulation (EC) No. 987/09 (DE)
- Joint monitoring of the company's credibility. (PL)
- Social security institutions need a system of communication asap (EESSI or alternatively IMI). In order to support the rights of workers it is necessary to separate posted workers from workers employed in the country of stay at an early stage before they are being posted or employed. This calls for quick access to information and communication between the sending country and the receiving country. (DK)

11. IN ORDER TO PROTECT THE INTERESTS OF BOTH EMPLOYEES AND BONA FIDE EMPLOYERS AND TO PREVENT UNFAIR COMPETITION, WOULD YOU FAVOUR THE SETTING UP OF A DATABASE LISTING COMPANIES THAT HAVE BEEN FOUND LIABLE FOR BREAKING RULES THAT APPLY IN THE FRAME OF POSTING OF WORKERS ("NAME AND SHAME")?<sup>6</sup>



Please develop and/or give examples:

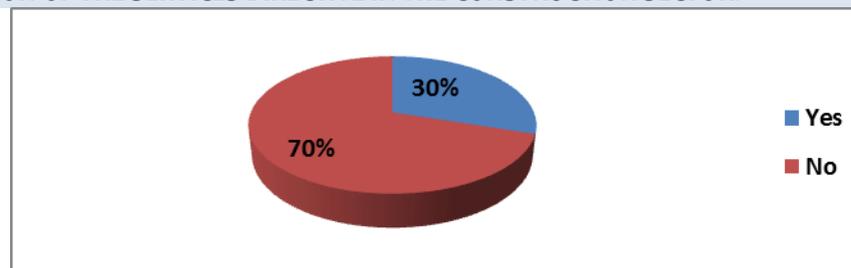
- Yes, with some qualification: support an EU database with a “red and green light” after the name of the service provider, with “green” meaning OK and “red” meaning: administration not yet OK, offences detected, etc. without giving further details. A red light does not mean that it is prohibited to work with them, but that as a user of their services, you could be held liable for any infringements. (BE)
- We are in favour of a database enabling companies, public authorities and consumers to check that they are about to work with companies which meet their legal obligations in their home and host countries. (BE)
- Absolutely and definitely! Bona fide undertakings are asking for such a web site list daily! (BE)
- Although data protection and legal ethical concerns must not be overlooked. (DE)
- Such a list should be introduced to complement the current national monitoring and operating mechanisms. It would benefit both sides, both employees and law-abiding companies. (DE)
- There are companies recruiting people to work abroad who notoriously break the law and still operate on the market. Workers and customers should be warned about them. (PL)
- This issue should be regulated by the national rules of individual Member States. In Poland, the body responsible for issuing responses in this area is the general inspector for personal data protection. (PL)
- It would protect small subcontracting firms against risky contracts. (PL)
- It raises my serious concerns as to modalities of setting up such a register or list and populating it with data. It would need to be very precisely defined under what conditions a company can be inscribed and for how long. (PL)

6

In its opinion *Towards a better functioning of the Single Market for services*, the EESC states that “in order to avoid cowboy operators, to guarantee service quality and to provide the option of legal redress if a service provider fails to meet its obligations, recognised professionals in each sector need to be listed in a publicly accessible register. The qualifications of service providers included in this register must meet set criteria and their vocational skills must be checked periodically. This will enable consumers to make safe and informed choices, which will increase confidence in the single market.” In pt. 4.11 of this opinion the EESC refers to “letterbox companies in cross-border trade, which abuse the single market for services to evade or side-step regulations in a number of countries. A similar problem arises where self-employed status is widely used in cases that are in fact pseudo-self-employment.” OJ C 318, 29.10.2011, p. 109, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011AE1161:EN:NOT>.

- Seen from the point of view of social security it is more likely that public information and dialogue with employers and workers organisations about the risk for workers of losing social security rights (or decent wages) or for employers of having to pay extra costs if postings are not done according to rules will have an effect. (DK)

**12. DO YOU SEE ANY RISK FOR CONSUMERS (RANGING FROM SAY ELECTRICAL APPLIANCES TO MORE GENERAL SAFETY REQUIREMENTS) IN THE CONTEXT OF THE IMPLEMENTATION OF THE SERVICES DIRECTIVE IN THE CONSTRUCTION SECTOR?**



**If yes, please develop and/or give examples:**

- The low prices they charge mean that these providers cannot possibly meet all relevant safety standards on construction sites. (BE)
- Provided there are clear procedures for appealing against the decision and declassification. (BE)
- Compliance with rules on the art of construction, compliance with technical specifications and completion of work – given the various national "habits", this could cause quality problems for buildings. We can also stress difficulties in coordinating work and quality problems which could arise given that more people will be involved (chain of subcontracting). (BE)
- In order to prevent construction faults, it is better to adopt a system of private and public evaluation, under which all aspects of construction (design, consultation and implementation) are subject to a comprehensive system of checks, whereby everyone performing a function in the construction process is verified in more than one way via system checks, procedural checks and product checks. (BE)
- In case of fraud oriented companies: less or no guarantees at all. (BE)
- Qualification problems, lowering of standards (retention of qualification assurance instruments necessary, such as the master craftsman diploma) (DE)
- As long as national rules on protection, the law on trades and other relevant laws are not limited by freedom of movement and the freedom to provide services, and all service providers are obliged to adhere to them and relevant checks take place, there are no causes for concern. (DE)
- Construction and construction products always entail risks for third parties. Not only in connection with the construction itself, but also afterwards. (DE)
- Failure to observe occupational safety standards. (PL)

**13. DO YOU HAVE ANY OTHER COMMENTS?**

- Proposal to introduce a European notification in the form of an EU-Limosa [declaration of self-employment] and an EU A1database. (BE)
- The rules on the recognition of professional qualifications are very lax for construction professions, particularly with regard to temporary services. This results in generalised lower qualifications and thus, lower service quality (or the danger of lack of quality). (BE)
- We believe that it is urgent to improve regulation of free movement flows in Europe and in Belgium and to re-establish fair competition, taking account of working conditions and advantages offered in the host country. Otherwise, we expect the sector and its manual labourers to disappear in Belgium. Consultancies and property masters will remain. The actual labour will be subcontracted out at ever worsening social conditions (see the major construction sites in Dubai, Qatar, etc.) and lower quality at every level. The current discussion on the directive is an opportunity to adopt stricter rules and to enable host countries to implement the means to enforce these rules and where necessary to apply penalties. At political level, the very credibility of the European venture is at stake. The directive is creating huge tensions among workers and Europe is being questioned. (BE)
- We should reject the Commission's approach of creating a special privilege for foreign business activity just for foreign service providers by specifically removing as many general rules as possible. It puts at risk all employees, the health and rights of consumers, welfare budgets, fair competition and approval of the EU. It also puts at risk the general concept of the rule of law, under which all citizens and businesses are equal before the law and should be treated equally, because it creates unjustified privileges for foreign service providers only. There is no reference to this in the EU treaties. (DE)
- Free movement of services is used in the case of dishonest businesses in order to avoid employing people on contracts and to offload onto them the safety costs. (PL)
- This pilot study should also target other groups of EU Member States. (RO)

## LIST OF RESPONDENTS

|    |    |   |
|----|----|---|
| 1  | BE | Bouwunie  |
| 2  | BE | Confédération Construction  |
| 3  | BE | CSC Bâtiment Industrie et Energie   |
| 4  | BE | De Algemene Centrale ABVV   |
| 5  | BE | Labour Inspectorate – Federal Ministry of Labour                              |
| 6  | BE | Directorate General Individual Labour Relation                                |
| 7  | BE | SPF Economie  |
| 8  | FR | Conseil National de l'Ordre des Architectes (CNOA)                            |
| 9  | DE | Bundesarchitektenkammer e.V   |
| 10 | DE | Berufsgenossenschaft der Bauwirtschaft (BG BAU)                               |
| 11 | DE | Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU)                             |
| 12 | DE | Sozialkasse der Bauwirtschaft (SOKA BAU)                                      |
| 13 | PL | NSZZ Solidarność  |
| 14 | PL | Państwowa Inspekcja Pracy   |
| 15 | PL | Association of Polish Craft   |
| 16 | PL | Pracownia Sztukatorska  |
| 17 | PL | Ministry of Economy   |
| 18 | PL | Krajowy Sekretariat Budownictwa i Przemysłu Drzewnego                         |
| 19 | PT | Autoridade para as Condições do Trabalho                                      |
| 20 | PT | Associação de Empresas de Construção e Obras Públicas e Serviços (AECOPS)     |
| 21 | PT | Confederação Geral dos Trabalhadores Portugueses (CGTP-IN)                    |
| 22 | PT | Confederação do Turismo Português (CTP)                                       |
| 23 | PT | União Geral de Trabalhadores (UGT)  |
| 24 | PT | Mr Costa Almeida  |
| 25 | PT | Ministry of Economy, Consumer Directorate-General                             |
| 26 | RO | Casa Nationala de Pensii Publice - DG Accidente de Munca si Boli Profesionale |
| 27 | RO | Inspectia Muncii  |

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| 28 | RO | Sindicatul Romanilor din Strainatate                                     |
| 29 | AT | Allgemeine Unfallversicherungsanstalt                                    |
| 30 | IT | Istituto Nazionale Assicurazione contro gli Infortuni sul Lavoro (INAIL) |
| 31 | DK | National Board of Industrial Injuries                                    |
| 32 | LT | Lithuanian Labour Federation   |

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