AN EESC PILOT STUDY ON THE WORKINGS OF THE SERVICES DIRECTIVE IN THE CONSTRUCTION SECTOR – STAFF WORKING PAPER
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### REFERENCES AND SOURCES

12.05.2014
DISCLAIMER

This staff working paper is NOT an EESC position paper!
Although this staff working paper also sums up the relevant EESC opinions, it mainly consists of the sum of expert information (from the European social partners, academia, think tanks, etc.) collected by the SMO staff. Points 1 and 2 consist of various staff contributions on the broader issue of Single Market policy. The purpose of this paper is to provide an overview that will hopefully prove useful to the readers of the final report of the study in April 2014.
FOREWORD

The so-called Bolkenstein Directive (2006/123/EC of 12 December 2006) on the liberalisation of services in the Internal Market has had a massive influence on many aspects of cross-border mobility. This is probably one of the most controversial moves in recent EU history as it triggered a very emotional debate among the broader public and between social partners. The Posting of workers Directive (1996/71/EC), which was adopted before the enlargements to Eastern and Central Europe, is intrinsically linked to the provision of services although it. This is especially true in the construction sector. On the one hand, in the context of the crises, both Directives have raised fears and stigmatised immigration from "manpower exporting" Member States ("They're taking our jobs!"). On the other hand, the enlargements have brought diversity, new challenges and opportunities within the Single Market. The social dimension of the Single Market – the European social model – must however remain the very identity of the European Union.

The Single Market Observatory (SMO) was set up within the EESC in 1994 with the support from the European Parliament, the Council of the European Union and the European Commission. Its role is to analyse how the Single Market operates, identify problems and obstacles and propose solutions from the civil society perspective. After his election in April 2013, the President of the European Economic and Social Committee, Henri MALOSSE, asked the Single Market Observatory (SMO) to carry out a study on the working of the Services Directive in the construction sector with a view to producing conclusions before the European elections in May 2014.
1. OBJECTIVES OF THE STUDY AND METHODOLOGY

1.1 BACKGROUND AND LEGAL BASIS

The Single Market Observatory (SMO) was set up within the EESC in 1994 with the support from the European Parliament, the Council of the European Union and the European Commission. Its legal basis is art. 21 of the RP: Assembly decision CES, 14/10/1998, amended by decision of 08.07.1999.

1.2 FUNCTION

The SMO’s role is to analyse how the Single Market operates, identify problems and obstacles and propose solutions. Moreover, the SMO cooperates with the Commission on the Single Market Forum (2011), the Single Market Week (2012) and the Single Market Month (2013). The SMO is also asked by the INT Section to prepare a number of own-initiative opinions or information reports as well as opinions upon referral, when the referral concerns a political document on the implementation of the Single Market. The SMO publishes every year papers on the development of the Single Market.

1.3 THE SINGLE MARKET OBSERVATORY – MODUS OPERANDI

Decision of 08.07.1999 states that the SMO work programme must be set up in line with the Commission work programme (esp. DG MARKT) while the Observatory may adapt its work programme according to problems it has identified. It also states that the SMO sets up small groups to deal with specific opinions, esp. own-initiative opinions with external hearings. Its president and vice-president may meet (in the context of other meetings they might simultaneously attend) and thereby act as a “Steering Committee”.

1.4 STUDIES ON THE WORKING OF THE SERVICES DIRECTIVE IN CERTAIN SECTORS

One of the priorities set by the EESC President, Henri MALOSSE, is producing, through the Observatories, Impact Assessments on European legislation or programmes from the civil society perspective. The principle of the studies is to go on the ground (in line with the "going local" principle) to check facts, measure results, and gather testimonies from the supposed beneficiaries of the European legislation or initiative.¹

The SMO secretariat would accompany this exercise and produce findings and recommendations. The priority must be given to assessing the impact of the Services Directive², starting with a limited number of Member States as well as with specific sectors such as the construction sector (see letter from the European Builders Confederation, dated 15 May 2013), to be followed by other sectors such as agriculture, the catering and beverage sector, food processing, tourism and road transport.

¹ The secretariat of the Single Market Observatory was in charge of collecting and processing the information that was used to draft this report as well as the final shortened version that was finalised on 3 April 2014: Päivi KOIVUNIEMI, Tania STANOVNIK, Jean-Pierre FAURE, Karina KUČIROVA, Aziliz VINCENT and Laura SERRES.
² Cooperating with the IMI (Internal Market Information System) coordinators at national level is a must. The IMCO secretariat should be sounded on this.

12.05.2014
1.5. **HORIZONTAL COOPERATION**

The INT Section president and the SMO president agreed to consider horizontal cooperation on a number of issues involving more than the INT Section. Studying the working of the Services Directive goes beyond the scope of the SMO (e.g. it would also touch upon the posting of workers and the recognition of qualifications) and clearly has a very strong social aspect that calls for cooperation with the SOC Section’s *Labour Market Observatory* (LMO).

1.6 **METHODOLOGY**

The Observatories should work within a general framework providing a methodological template (e.g. small groups of 3 members, missions on the ground, teleconferences\(^3\), etc.) but have enough flexibility to develop their own methodology or instruments according to the topic they deal with. The results of the study are based on a threefold input:

- The evaluation of relevant documents and data from various sources (such as FIEC, EFBWW, Eurochambres, the European Parliament and the European Commission, etc.);
- The evaluation of the replies to the questionnaires sent out late November 2013 to some 90 contacts in the 6 Member States under scrutiny and to Brussels-based institutions and think tanks;
- The evaluation of the interviews carried out in the 6 member States (social partners of the construction sector and public authorities) and with Brussels-based institutions and think tanks.

\(^3\) To avoid agenda collisions, limit costs and use the members’ time better it is suggested to organise teleconferences, video calls (Skype, FaceTime) whenever the members of the delegations are in Brussels (Section and Observatory meetings as well as Plenary Sessions). Should there be a need to meet several stakeholders in the Member States at a time, it is also suggested to ask the Commission Representations to allow them to use their facilities.)
1.7 CHRONOLOGY OF THE STUDY

The detailed timeline.
STEP 1: PREPARATORY WORK

- STARTING MAY 2013
  - Collecting reference material, contact points & attending relevant events

- STARTING SEPTEMBER 2013
  - Briefings for the SMO members, meetings with various actors, drafting of staff working paper

- STARTING NOVEMBER 2013
  - Sending out questionnaire

STEP 2: GETTING INFORMATION STRUCTURED

- STARTING DECEMBER 2013
  - Interviews with national actors (private and public) in the 6 member states under scrutiny

- STARTING FEBRUARY 2014
  - Evaluation of the questionnaire, interviews & staff working with the SMO members

- STARTING MARCH 2014
  - Finalisation of staff working paper

STEP 3: FINAL MOVES

- STARTING MARCH 2014
  - Drafting of final report

- EARLY APRIL 2014
  - Wrap-up event @ EESC

Chronology of the study.
1.8 TARGET MEMBER STATES AND GROUPS

Six Member States are under scrutiny for this particular exercise. The SMO secretariat has informed the EFTA\(^4\) Consultative Committee about the study since Iceland, Lichtenstein and Norway implement the EU’s Single Market rules. See appendix I for the targeted interest groups and public administrations.

The 6 Member States under scrutiny: Belgium, France, Germany, Poland, Portugal and Romania.

\(^4\) The European Free Trade Association.
2. THE SINGLE MARKET

2.1 THE ESSENTIAL ELEMENTS OF A SINGLE MARKET

- Eliminating unnecessary obstacles to make it work effectively;
- A certain degree of harmonisation and/or mutual recognition to create a level playing field, to have a positive impact on competition and to induce efficiency. Cooperation between Member States is a must for the sake of coherence;
- The social dimension of the Single Market must be on a par with economic freedoms and market developments to the Single Market is not an end in itself but a means to improve people's standards of living. See also the heated debate around the Services Directive and the Posting of Workers Directive;
- Going for a digital Single Market will lead to economies of scale (e.g. administrative costs reduction), simplification and more/better integration of resources, potential and ideas as well as better (time) management. A Single Market cannot be achieved by a Member State alone;
- High level quality and level playing field to boost fair competition and allow economy to grow through the advantage of same conditions;
- The involvement of all players is crucial for the Single Market to work effectively, to achieve maximum acceptance and benefit businesses, workers and citizens alike;
- As a corollary, it is essential to accompany the Single Market with a proper (effective) information and communication policy based on verifiable facts and figures which people can identify with/understand.

Chapter 2 is taken from a contribution by the SMO secretariat to the British government's "Call for evidence on the balance of competences between the United Kingdom and the European Union" under the auspice of Malcolm HARBOUR, MEP and Chair of the IMCO Committee of the European Parliament (January 2013).

See also the Mont, Grech and Herzog reports as well as the summary of EESC recommendations (from relevant EESC opinions) related to these reports. A number of obstacles cannot be removed – at least not in the short or medium term. Language barriers are an example though the UK basically benefits from English being THE lingua franca for exchanges worldwide. See the SMO catalogue of obstacles: http://www.eesc.europa.eu/?i=portal.en.publications.24626

All stakeholders must agree on the concept of "unnecessary obstacles" and certain "obstacles" are indeed safeguard mechanisms.

Mutual recognition is only possible if some form of harmonisation has been implemented.

This implies making use of and promoting all existing EU networks and instruments, starting with SOLVIT. In the first half of 2013 the SMO will publish (hard copy and online) a directory of all such online instruments. There should also be equal focus on impact assessments and quality of legislative design.

See e.g. IMI and SOLVIT which, besides, needs more resources.

One should not forget that the Single Market is a means to achieve "full employment and social progress" among others (see art. 3.3, TEU). This includes of course civil society organisations. The beneficiaries of the Single Market should visibly commit themselves to promoting it when they see benefits for themselves. When referring to beneficiaries (or winners) of the Single Market one ought to keep in mind that there are not only winners in the Single Market.

See the EP report on "The 20 main concerns of European citizens and business with the functioning of the Single Market" (2012/2044(INI)).
Another element is needed for the future, namely a more speedy EU legislative process to keep pace with global developments and react to emergency situations; this in turn implies simplification, possibly alternatives to regulation\textsuperscript{18}.

2.2 ECONOMIC BENEFITS OF THE SINGLE MARKET

The current discussion around the Single Market comes to us through the prism of the multiple crises. The 2\% GDP growth\textsuperscript{19} and job creation resulting from EU/Single Market membership are verifiable facts. A Single Market delivering its full potential would yield an annual growth rate of up to 4\%. To achieve this, politics must support the Single Market. Economy and politics are the two sides of the same coin. The partly unregulated financial sector remains a major risk factor. There again, a "climate change" is needed if we are to break the cycle of crises and increase the prospect of our economies growing again. Everything is interconnected. You can't expect economic recovery if you don't deal with systemic risks in the first place.

The overall criteria to measure the benefits of the Single Market are basically the degree of satisfaction of consumers (e.g. the quality/price ratio), of enterprises (e.g. advantageous competitive position, results), of workers (e.g. salaries, working conditions, social benefits). This sums up art. 3.3. TEU. All this requires active participation of all said social and economic actors. A focus on strictly economic issues as might be illustrated by the options taken by certain third countries (e.g. China or India) has heavy consequences in terms of social justice.

The concept of "the cost of non-Europe"\textsuperscript{20} analysed in the Cecchini report has dramatically changed. New parameters have come into play since this report was drafted. As the EESC recently noted\textsuperscript{21}, "not only has the building of the Single Market progressed considerably in the last quarter of a century but, above all, the context has developed substantially and now includes at least five new key factors which were not present in the late eighties:

1) **Globalisation** is much more advanced, with the arrival on the international market of emerging countries (…), whereas Europe's competitors in the 1980s were primarily developed countries;
2) Europe is now made up of \textbf{28 countries} whose levels of development, economic structures and social systems are more disparate than was the case in the 1980s;

\textsuperscript{17} I.e. transpose into facts of everyday life. All multipliers have a responsibility and must display "critical ownership".
\textsuperscript{19} However, growth cannot be infinite and policies must take this "natural limitation" into account. 2.6\% growth is another figure that is widely used – see e.g. Ms A.M. CORAZZA BILDT (MEP) in an interview to [Euractiv](http://www.euractiv.com/node/518507). In this context, Euractiv asked if it was not "a politically impossible task to get Member States to implement services legislation without EU-wide social harmonisation of social security, pay and conditions, etc.".
3) European integration has evolved considerably, with various key institutions such as the Euro\textsuperscript{22} and the ECB now in place (at least for a number of Member States); 
4) An economic crisis worse than any since the 1930s is still ravaging Europe, having now become a sovereign debt crisis; and lastly 
5) The imperative need for the EU Member States to cut their debts in the coming years.

EUROPE’S GROWTH RATE\textsuperscript{23}

![Europe’s Growth Rate](image)


ECONOMIC BENEFITS FROM SERVICES AND THE DIGITAL SINGLE MARKET\textsuperscript{24}

![Economic Benefits](image)


Depending on their economic model, certain Member States (Germany in particular) are coping rather well with the current downturn and rely very much on direct access to EU national markets, esp. within the Eurozone, for their growth and employment. Others are hugely and visibly benefiting from EU

\textsuperscript{22} However, as Milton Friedman put it, one should keep in mind “the political consequences of a monetary area that is not conterminous with a political entity” (http://opinion.financialpost.com/2011/11/from-the-archives-mundell-vs-friedman-on-the-euro/).
\textsuperscript{24} See also http://www.bis.gov.uk/assets/biscore/economics-and-statistics/docs/e/h-517-economic-consequences-of-completing-single-market.
membership (Poland in particular, esp. in terms of infrastructure). Member States, like Estonia, fully going digital\textsuperscript{25}, have triggered a new impetus e.g. in terms of cross-border SME cooperation leading to substantial economies of scale (see footnote 19).

Ironically, the spirit of the Industrial Revolution, or a modern form of ultra-liberalism – with its systemic inequalities - seems to have risen again from the global crisis that itself emerged in 2008 from an economic and financial system feeding on systemic inequities and a systematic denial of institutions, morale and long term thinking... These patterns reproduce themselves over time and sometimes they are altered. “It is indeed difficult for ordinary citizens to acquire real political power and change the way their society works. But it is possible.”\textsuperscript{26}

Quite obviously, the European Union and its Single Market does not only generate winners but also losers. This needs to be addressed. To this end, the methodology of the EU must inevitably change. As the EESC put it in its opinion on Developing a people-oriented, grassroots approach to internal market policy (CES 466/2012), “Civil society quite legitimately has questions regarding the ability of the present EU institutional model as shaped by the Lisbon Treaty to handle this crisis; it doubts that the current economic and financial model is capable of effective and appropriate self-regulation and is greatly concerned at the lack of consistent and effective regulatory measures as well as at the proliferation of isolated and contradictory decisions from all sides; it wonders how stricter and more effective control over the financial system can be achieved, in view of the successive stock market crashes with all the inevitably ensuing social and economic damage; it fears that the deep-rooted symptoms of the crisis, given the imminent danger of world recession, suggest that the European model in its current form may collapse.” In other words, “the arguments in favour of Europe are constantly evolving. Europe is a concept that has to be adapted to the evolution of political and economic circumstances.” (José Manuel Barroso, Expresso, 19 November 2011).

The EU and its SM have historically a simple purpose: create an environment prone to create peace, stability and generate prosperity.

### 2.3 THE (IDEAL) SINGLE MARKET IN A NUTSHELL

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<td>Effective and timely (transposition and) implementation (esp. of directives);</td>
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<td>Social dimension;</td>
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<td>Digital dimension;</td>
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<tr>
<td>High quality and level playing field;</td>
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<td>Involve all players and benefit businesses and citizens;</td>
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<tr>
<td>Information and communication;</td>
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<td>Speedy legislative process.</td>
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\textsuperscript{26} Free after “Why Nations Fail” by D. Acemoglu and J.A. Robinson.
2.3.1 "FINE TUNING" REMARKS

1. Political and functional issues cannot be separated (=> the Single Market suffers from natural, legal AND ideological/political barriers);

2. With 10 % of Europeans benefiting from mobility and some 25 % directly affected by the crises a lot more must be done in terms of information, awareness raising and social justice;

3. Leaving it alone to the market – “a ruthless God” – to sort things out would undermine governance;

4. Civil society actors (i.e. incl. the market) must be involved on a pluralist basis in the design of the Single Market. In parallel, the European Parliament has a pivotal role to play in many respects, also as a democratic monitoring instrument;

5. A regulatory framework is first and foremost a set safeguard mechanisms;

6. To paraphrase M. Friedman, “the Single Market is not conterminous with a political entity”. In this context, political entity equals political will to unleash the full potential of the Single Market for the benefit of all Member States in a fierce global competitive context;

7. “More Europe” (economic, financial, banking, fiscal, social and political union) should definitely mean “better Europe” (more social or grass-root oriented, sustainable, future-proof, reactive to urgencies, implementing simplification measures esp. for SMEs, etc.);

8. One might have “questions regarding the ability of the present EU institutional model as shaped by the Lisbon Treaty to handle (the) crisis; (...) wonder how stricter and more effective control over the financial system can be achieved, in view of the successive stock market crashes with all the inevitably ensuing social and economic damage. (There is an urgent need) to show the necessary ambition and vision to successfully regenerate the European economic and social model in keeping with the values and principles enshrined in the Treaty”.

This is possibly too low a figure esp. if we take tourism into account.

Also to make sure EU citizens know/use their rights and access the relevant online instruments (e.g. SOLVIT is hardly known even by Chambers of commerce, esp. at local level). The EU and its Single Market remain abstract and far away due to lack of information... and disinformation.

Reacting to the British Prime Minister’s plans to hold a referendum on the UK’s EU membership (however, David Cameron recently said that "(...) an in/out referendum (was) the false choice"), ten British business leaders wrote a letter saying that “to call for such a move in these circumstances would be to put our membership of the EU at risk and create damaging uncertainty for British business, which are the last things the prime minister would want to do. We need a strong reformed EU with Britain at the heart of it”. Now, my “safe-or-sorry” question would be: where was the voice of the British business community in the past?

A number of Member States have long negotiated opt-outs that basically make the Single Market look very much like a cafeteria system of preferences.

3. THE SINGLE MARKET FOR SERVICES

3.1 PRELIMINARY REMARKS ON SERVICES

"Services are the driving force behind job creation in Europe: while EU growth averaged 2.1% per year from 1998 to 2008, the services sector grew by an average of 2.8% per year. Employment in the sector grew by 2% per year, compared with 1% for the economy as a whole. To make the most of this asset, the Commission proposes to revise the legislation on the European standardisation system to extend it to services and make standardisation procedures more effective, efficient and inclusive." 

Services cannot be assimilated to goods (esp. in view of standardisation) – this has many consequences;
The Services Directive was drafted under the old treaty, in which economic interests were still the top priority in the Single Market. Under the Lisbon Treaty, other interests are regarded as equivalent, rather than subordinate, to economic interests;
Not all Member States are equally satisfied with the directive and they need to implement it in their own legislation in their own way;
Directives are... directives! Not all Member States are equally advanced in the field of transposition;
The services sector is large and complex, with many different branches, and it will take time to streamline the Single Market for services by means of European legislation;
Further to this consideration, or as a consequence of it, the Services Directive inevitably draws the attention to other key issues of the Single Market in general and free movement in particular such as the posting of workers and the mutual recognition of professional qualifications (see the enlarged scope of IMI);
There are many instruments and information sources available but they are hardly known and used (see the Points of Single Contact), their resources are limited (see SOLVIT) and the Single Market is basically considered by many as an alien construct;
With a few exceptions, no ownership is publicly taken by governments;
Free provision of services is one of the 4 principles of the Single Market (again, it is not comparable to the free movement of goods);
The very raison d’être of the Single Market was and is to make it possible for individuals and businesses to cross borders with a minimum of felt differences and hindrances – to accompany mobility by providing favourable framework conditions;
We know very well that in general Member States will always tend to be protective. Their ownership of the whole European project is not strong enough;
As illustrated by the financial “services”, the market alone is not virtuous enough to make sure that economic freedoms and social requirements coexist to produce a future-proof EU – the market has no social conscience;
Service provision nowadays is characterized by outsourced activities leading to subcontracting chains that rebuild themselves on a permanent basis.

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32 Points 3. and 3.1 are taken from a contribution by the SMO secretariat to the British government’s "Single Market: Free Movement of Services review – Balance of UK Competence Review" under the auspice of Mr Malcolm HARBOUR, MEP and Chair of the IMCO Committee of the European Parliament (November 2013).
33 http://ourbiggestmarket.org/12-ways-to-grow-the-single-market/?utm_content=bufferb6b46&utm_source=buffer&utm_medium=twitter&utm_campaign=Buffer
3.2 SERVICES - THE GORDIAN KNOT OF EU PRESIDENCIES

3.2.1 THE LITHUANIAN PRESIDENCY (01.07.2013-31.12.2013)

The Single Market for Services ranked very high in the to do list of the Lithuanian Presidency (1 July to 31 December 2013) with the declared will to opening services markets and dealing with the Services Directive by focusing on capital ownership and company structure. A Charter of Points of Single Contact (PSCs) was also on the agenda. The Lithuanian action plan included the Posting of Workers Directive, access to markets for professionals, a European retail action plan as well as the Single Transport Area.

On 9 December 2013, the Council of Employment, Social policy, Health and Consumer Affairs (EPSCO) agreed on the Posting of Workers Directive, the enforcement of which would ensure freedom to provide services across borders and better social protection of posted workers in the EU. The Chair of the Council, Minister of Social Security and Labour of Lithuania, Algimanta PABEDINSKIENĖ, said that the agreement would allow Member States to facilitate freedom to provide services, contribute to fair competition between service providers and establish better standards for the social protection of posted workers. She added “I am particularly glad that today in the Council we reached this landmark agreement on the implementation of the Posting of Workers Directive.”

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Directive by succeeding to strike the right balance between facilitating the exercise of economic freedoms and protecting workers’ rights. This is beneficial to all Member States, regardless of whether a Member State is a “country of origin” or a “host country” for posted workers37. Enforcement of this directive will bring more legal certainty and transparency and contribute to functioning of EU Single Market.”

3.2.2 THE GREEK PRESIDENCY

Greek Minister of Labour, Social Security and Welfare, Yannis VROUTSIS, said on 9 December 2013 that “Greece, both through its priorities in general, as well as through the Employment and Social Policy in particular, will seek to highlight the positive development dimension of the European Union that focuses on our common principles and values, social cohesion and employment as prerequisites for its sustainability.”38 Referring to the Proposal for a Directive on the posting of workers, he underscored that “the aim of the Greek Presidency will be the finalization of negotiations with the European Parliament and its adoption”, as well as the establishment of a Quality Framework for Internships, the Proposal for a Regulation on the enhancement and renewal of EURES and the Decision on the cooperation of Public Employment Services. He also noted that “the fight against undeclared work is a horizontal dimension. This is the reason why the Greek Presidency has put high on its agenda the early adoption of the Decision on the establishment of a Platform for undeclared work.” The Presidency “will focus in particular on the implementing Directive on the posting of workers, meant to prevent poorly paid workers from competing unfairly with workers from another Member State.” The European Parliament “backs mandatory joint liability in all sectors and throughout the chain of subcontractors while the Council prefers limit liability to the construction sector or to replace it, as appropriate, with equivalent measures.”39

In the context of strengthening the Social Dimension, “the Greek Presidency aims to enrich the European Agenda with issues such as ensuring adequate and sustainable social protection systems and the existence of minimum safety nets with a view to addressing social challenges such as the aging population, unemployment, undeclared work and poverty.” The results of the present study could hopefully feed the informal EPSCO Council to be held in Athens on 29-30 April 2014.

3.2.3 THE ENFORCEMENT DIRECTIVE OF 9 DECEMBER 2013

“The current text, if adopted by the European Parliament and Council, would help to improve the effective implementation, application and enforcement in practice of the existing Posting of Workers Directive (Directive 96/71/EC) which puts in place a number of safeguards to protect the social rights of posted workers and to prevent social dumping. In particular, the Enforcement Directive would:

- Set more ambitious standards to raise the awareness of workers and companies about their rights and obligations as regards the terms and conditions of employment;

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37 In the meantime, this distinction is becoming less and less clear. France, for instance and among many, is both a country of destination and of origin.
39 Last two quotes from Europolitics, supplement n°4785, Monday 13 January 2014.
Establish rules to **improve cooperation between national authorities** in charge of posting (obligation to respond to requests for assistance from competent authorities of other Member States; a two working day time limit to respond to urgent requests for information and a 25 working day time limit for non-urgent requests);

- **Clarify the definition of posting**, in order to avoid the multiplication of "letter-box" companies that do not exercise any genuine economic activity in the Member State of origin but rather use posting to circumvent the law;
- Define Member States responsibilities to **verify compliance** with the rules laid down in the 1996 Directive (Member States would have to designate specific enforcement authorities responsible for verifying compliance; obligation of Member States where service providers are established to take necessary supervisory and enforcement measures and the inspection measures they should undertake;

- **Require posting companies**:
  - To designate a contact person for liaison with the enforcement authorities to declare their identity, the number of workers to be posted, the starting and ending dates of the posting and its duration, the address of the workplace and the nature of the services;
  - To keep basic documents available such as employment contracts, payslips and time sheets of posted workers;

- **Improve the enforcement of rights, and the handling of complaints**, by requiring both host and home Member States to ensure posted workers, with the support of trade unions and other interested third parties, can lodge complaints and take legal and/or administrative action against their employers if their rights are not respected;

- **Ensure that administrative penalties and fines** imposed on service providers by one Member State’s enforcement authorities for failure to respect the requirements of the 1996 Directive can be enforced and recovered in another Member State. Sanctions for failure to respect the Directive must be **effective, proportionate and dissuasive**.

Opinions are divided as far as the Enforcement Directive is concerned. Negative critics focus on the fact that there is still no definition of what is a posted worker. We defined the operation of posting and the situation of a posted worker although some definitions including time frame and deadlines are available. Such a definition exists in social law but has not been transposed in labour law and the Enforcement Directive remains silent on that point. See also the definition from Regulation 883/2004, art. 12, paragraph 1: "A person who pursues an activity as an employed person in a Member State on behalf of an employer which normally carries out its activities there and who is posted by that employer to another Member State to perform work on that employer’s behalf shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of such work does not exceed twenty-four months and that he is not sent to replace another person.”

On 18 March 2014, the Employment and Social Affairs Committee of the European Parliament adopted the outcome of the trilogues on the Posting of Workers Directive. After approval by the Member States on the 5th of March (25 Member States in favour), it is a second positive signal for the future of the posting of workers. The next and last step is the plenary session in April in Strasbourg. If adopted in the plenary, the Directive will come into force in spring 2016. The vote supports the agreement with regards to two most controversial elements of the Enforcement Directive (of which the main purpose is to improve the implementation of the 1996 Posting of Workers Directive):

- The list of national control measures;

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The system of joint and several liability.

Member States should have freedom in choosing control instruments to be used when inspecting foreign companies, provided that these instruments are justified and proportionate. Member States will be obliged to communicate to the European Commission which control instruments they apply, but this should not be understood as an ex-ante authorisation. With regards to joint and several liability, Member States are obliged to introduce direct liability in the construction sector. At the same time, they will also be able to apply alternative solutions, such as e.g. sanctions against the contractor. New provisions will not threaten systems already in place in 8 Member States. The Enforcement Directive contains a number of provisions that should in the future improve the functioning of the posting of workers’ process. When checking whether posting is genuine, national labour inspectors will use common lists of clearly identified elements. In addition, national authorities will have to take measures to exclude cases of persons falsely declared as self-employed. Agreement has been reached on improved access to information on applicable terms and conditions of employment which will have to be published on a single national website. Countries will have to indicate institutions to which workers and undertakings can address additional questions. Member States will also be obliged to put in place mechanisms enabling posted workers to lodge complaints against dishonest companies and receive from their employer e.g. outstanding net remuneration, or back payment, or a refund of taxes or social security contributions unduly withheld from their salaries as well as a refund of excessive costs with regards to accommodation. Also, administrative cooperation between Member States as well as cross-border enforcement of financial penalties and fines will be improved.41

3.3 FUTURE CHALLENGES

Certain practices in services sectors such as construction or food processing show the limits of a system based on trust. “Trust is good, control is better!”; Challenges may well go beyond services:

- The fundamental challenge – especially if we are to bring about a reconciliation of citizens with the Single Market (or rather the EU) – will be to make sure that people are at the core of the whole thing. People’s trust is essential and the crises have had a massively negative impact;
- Armies of lawyers are paid to bypass EU regulations (that are safeguard mechanisms in an ever more complex society);
- Social dumping, bogus self-employment, lack of corporate social responsibility, emergence of the “working poor” (see the industrial revolution – one of the causes of revolutions!...) cannot be tolerated in the 21st century. These are the real challenges for a future-proof Single Market;
- The issue of the shadow economy42 or black market is rarely pointed at though it is a reality that has also gained momentum in the wake of the liberalisation of services;

These last three paragraphs are taken from a Euractiv press release of 18 March 2014: http://pr.euractiv.com/node/105151.

The London Economics study "From Shadow to Formal Economy – Levelling the Playing Field in the Single Market" (June 2013, http://londoneconomics.co.uk/wp-content/uploads/2013/10/Levelling-the-playing-field-in-the-single-market-27.06.13.pdf) defines shadow economy as "comprising activities of businesses and individuals who fail to comply with taxations laws and/or regulations and laws governing business activities. It includes illegal activities involving the supply of legal goods and services (for example smuggling) but excludes illegal activities involving the supply of illegal goods and services (such as for example drugs). Tax evasion is included in the shadow economy but legal tax avoidance is not."
In another broader context, the concept of public interest at European level has not yet established itself in the political mind-set of national politicians. There is a blatant lack of support, ownership, promotion and pedagogy. This is a fatal vicious circle that has gained such momentum that euro- scepticism has become a force that might place the EU and its achievement (e.g. the Single Market) at risk after the 2014 European elections.

3.4 SERVICES AND MORE...

Scrubbing the implementation of the Services Directive (e.g. enterprises providing services on a building site) also implies looking at other related issues such as the posting of workers (individual workers provided by third companies including letter box companies), public procurement in general (e.g. the criterion of the lowest bid) and even the social clause in public procurement in particular.

In its opinion on the social and environmental dimension of the Single Market[^1], the European Economic and Social Committee (EESC) insisted that "labour market integration is the best safeguard against social exclusion. The Commission should work together with the social partners to make better use of Europe’s labour force potential in our rapidly changing societies. One problem which still needs to be resolved is that of the mutual recognition of qualifications."[^2] On labour market integration, one may add that if the market is international by definition, labour remains national to-date. This logically enough raises the issue of consistency and coherence, or lack thereof, within the Single Market: EU policies targeting integration are bound to be problematic (or fail) if they lack a homogeneous cross-border base.[^3]

The Committee added that "(...) controversies resulting from the (...) judgements of the European Court of Justice relating to the legal interpretation of the Posting of Workers Directive appear to legitimise the requirement to review the directive or conclude an additional agreement between the social partners."[^4]

The market is international but labour (and tax) remains national – this discrepancy creates a "legal loophole" for EU-made social dumping!

<table>
<thead>
<tr>
<th>(Less than 10%)</th>
<th>AT, LU, NL</th>
<th>TAX</th>
<th>SIZE OF THE EU 27 TAX GAP</th>
</tr>
</thead>
<tbody>
<tr>
<td>10% to less than 15%</td>
<td>UK, FR, IE, FI, DE, DK, SE</td>
<td>All taxes in the economy</td>
<td>€ 850 billion</td>
</tr>
<tr>
<td>15% to less than 20%</td>
<td>SK, CZ, BE, ES, PT</td>
<td>Total taxes (VAT, income tax, etc.) in the services sector</td>
<td>€ 297 billion in 2011</td>
</tr>
<tr>
<td>20% or more</td>
<td>IT, HU, SL, EL, PL, MT, CY, LV, EE, LT, RO, BG</td>
<td>Customs</td>
<td>€ 387 million in 2011 (only identified irregularities and fraud, EC report)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>VAT</td>
<td>€ 120 billion in 2011</td>
</tr>
</tbody>
</table>

[^3]: This, in turn, raises the issue of national competences and Member State ownership of European integration.
A few questions still await the right answers. Is social dumping systemic or is it a consequence of the 2008 crises? Is it a European phenomenon or is it a (global) corollary of the (global) market? In a recent own-initiative opinion on "Social impact measurement"46 (rapp. A. RODERT), the EESC notes that, in the ambiguous context of rebuilding the social dimension of Europe47 with changing welfare models, "economic outcomes have for a long time been the main indicator to measure the development of organisations and countries (...) A more holistic perspective considering social, environmental and economic consequences must come to the fore".

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46 CESE 6135/2013, not yet published in the OJ.
4. CIVIL SOCIETY ON SERVICES (INCL. THE POSTING OF WORKERS)

4.1 SERVICES VS POSTING OF WORKERS?

Although the Services Directive (2006/123/CE) did not cover the posting of workers, our interlocutors in the Member States under scrutiny agreed that it was at least very difficult if not impossible to deal with the Services Directive without touching upon the Posting of Workers Directive (96/71/EC). “Posting is key in such sectors as construction, agriculture and transport as well as in service activities that require specialized, highly skilled workforce such as the IT sector.” The very way the Lithuanian Presidency announced the 9 December 2013 agreement in Council on the posting of workers said it all: “The main achievement of today’s Council of Employment, Social policy, Health and Consumer Affairs (EPSCO) is the agreement on the Posting of Workers Directive, the enforcement of which will ensure freedom to provide services across borders and better social protection of posted workers in the EU.”

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49 See footnote 34
4.2 THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE’S CONTRIBUTION

In its opinion on the posting of workers in the framework of the provision of services\textsuperscript{58}, the EESC had "called for strengthening of the rules regarding posting of workers, by among other things clarifying and improving the provisions of the directive on posting of workers and by enhancing cooperation between the authorities of the Member States." It also stated that there was still a blatant need for "better implementation and effective administrative cooperation

\textsuperscript{58} CESE 1387/2012.
among Member States” in particular to prevent unnecessary administrative costs. “In order to promote transnational provision of services in a climate of fair competition, it is important to have equal minimum conditions of employment according to national laws and collective agreements.”

The EESC has issued a number of opinions in relation to services and the posting of workers. Others raise interesting questions in the wake of these two major considerations:

<table>
<thead>
<tr>
<th>Topics of the EESC opinions</th>
<th>References</th>
<th>Rapporteurs</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Services Directive</td>
<td>CESE 137/2005</td>
<td>A. METZLER</td>
</tr>
<tr>
<td>The Internal Market in Services – Requirements as regards the labour market and consumer protection</td>
<td>CESE 793/2007</td>
<td>K. ALLEWELDT</td>
</tr>
<tr>
<td>The social dimension of the Single Market</td>
<td>CESE36/2009</td>
<td>A. ADAMCZYK</td>
</tr>
<tr>
<td>The social dimension of the Single Market</td>
<td>CESE 970/2010</td>
<td>T. JANSON</td>
</tr>
<tr>
<td>The Single Market for services</td>
<td>CESE 1161/2011</td>
<td>M. SIECKER</td>
</tr>
<tr>
<td>Professional qualifications</td>
<td>CESE 1046/2012</td>
<td>A. METZLER</td>
</tr>
<tr>
<td>The posting of workers</td>
<td>CESE 1387/2012</td>
<td>T. JANSON</td>
</tr>
<tr>
<td>The European social mark</td>
<td>CESE 1820/2012</td>
<td>A. RODERT</td>
</tr>
<tr>
<td>The abuse of the statute of self-employed</td>
<td>CESE2063/2012</td>
<td>M. SIECKER</td>
</tr>
<tr>
<td>New trends in self-employed work: the specific case of economically dependent self-employed work</td>
<td>CESE 639/2010</td>
<td>J.M. ZUFIAUR NARVAIZA</td>
</tr>
</tbody>
</table>

The EESC states in the same opinion (see footnote 38) that “the controversies surrounding (...) judgments of the European Court of Justice (Viking52, Laval53, Rüffert54, Commission v Luxembourg55), the earlier debate on the Services Directive as well as the problems concerning the opening up of labour markets, social dumping, unfair competition and the impact of the internal market on the functioning of the European social model certainly require analysis and, perhaps, decisions concerning new legislation or co-regulation.” Indeed, this in turn requires that the impact of the Services Directive be studied first on the basis of fact-related findings, dialogue with the relevant civil society organisations on the ground and the public authorities.

The EESC has been closely involved in the European Commission's Single Market Acts and its opinions also referred to the core issue of services, workers mobility and posting:

<table>
<thead>
<tr>
<th>Topics of the EESC opinions</th>
<th>References</th>
<th>Rapporteurs</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Single Market Act - identifying missing measures</td>
<td>CESE 3154/2013</td>
<td>B. FEDERSPIEL, I. VOLEŠ &amp; M. SIECKER</td>
</tr>
<tr>
<td>Key Actions towards a Single Market Act II</td>
<td>CESE 1575/2012</td>
<td>I. VOLEŠ, B. FEDERSPIEL &amp; M. SIECKER</td>
</tr>
</tbody>
</table>

51 Interestingly, political parties and social partners in Germany are currently debating upon the question of a minimum wage.
52 OJ C 51, 23.2.2008, case C-438/05.
53 OJ C 51, 23.2.2008, case C-341/05.
54 OJ C 128, 24.5.2008, case C-346/06.
55 OJ C 209, 15.8.2008, case C-319/06.
Towards a Single Market Act - For a highly competitive social market

In this particular context, it is certainly worth mentioning the EESC opinion on the internationalisation of SME, *Small Business, Big World – a new partnership to help SMEs seize global opportunities* (CESE 1293/2012, rapporteur I. VOLEŠ). Finally, at a broader scale, it is worth quoting the EESC’s Group I insisting on the fact that "Member States should determine best practices and share them (...). There is obviously no universal solution in view of the very different national and regional contexts." Finally, the opinion of the EESC’s Consultative Commission for Industrial Change adopted an opinion on *The competitiveness of the construction sector* (CESE 2295/2012, rapporteur L. PLOSCEANU).

4.3 POSSIBLE AVENUES

4.3.1 DEALING WITH PROBLEMS AT EUROPEAN LEVEL

Fraud, especially on posting, is a massive problem across the EU. The Belgian *Conseil central de l'économie (Centrale Raad voor het Bedrijfsleven)* has issued an opinion suggesting a threefold approach in a nutshell:

<table>
<thead>
<tr>
<th>Improving and updating legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>- More efficient, flexible and simple framework for overtime in the construction sector;</td>
</tr>
<tr>
<td>- Systematic use of invoices for construction materials;</td>
</tr>
<tr>
<td>- Identification badge on works;</td>
</tr>
<tr>
<td>- Departing from the sole criterion of the lowest bid in public procurement;</td>
</tr>
<tr>
<td>- Linking public databases and fraud fighting;</td>
</tr>
<tr>
<td>- Accompanying the reduction of social and fiscal charges with adequate alternatives for the sake of budgetary balance;</td>
</tr>
<tr>
<td>- Foster sustainable construction and tax rebates.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Organising inspections</th>
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</thead>
<tbody>
<tr>
<td>- Better cooperation between all relevant public administrations;</td>
</tr>
<tr>
<td>- Systematic use of databases and training policy for the inspection services;</td>
</tr>
<tr>
<td>- Enhanced cooperation between social partners.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>European approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Coherent EU-wide strategy to fight internationally operating fraud networks;</td>
</tr>
<tr>
<td>- Revision of certain basic pieces of legislation wherever necessary (e.g. the Posting of Workers Directive, the Social Security Regulation, the Services Directive);</td>
</tr>
<tr>
<td>- European minimum standards for inspection services;</td>
</tr>
<tr>
<td>- A European thesaurus of tax and social concepts;</td>
</tr>
<tr>
<td>- Shared web applications;</td>
</tr>
<tr>
<td>- A European social security number.</td>
</tr>
</tbody>
</table>


The European Commission's EU anti-corruption report (COM(2014) 38 final, 3 February 2014) highlights a few sectors of economic activity, including the construction sector, that are vulnerable to corruption. On page 17 it says that "urban development and construction are sectors where corruption vulnerabilities are usually high across the EU. They are identified (...) as being particularly susceptible to corruption in some Member States where many corruption cases have been investigated and prosecuted in recent years. In response to this risk area, one Member established a specialised prosecution service for combating environment and urban planning crime, covering a wide range of offences including corruption." The report obviously sees a link between corruption and organised crime (p. 19 of the report). Certain practices in the services sector in general and construction and public procurement in particular are reminiscent of such criminal activities as human trafficking or modern slavery where workers are exploited, live in extreme poverty and are at times simply not paid...

There again, genuine cooperation between public authorities and economic operators is key to addressing such issues decisively (see in Germany the cooperation between the German Association of towns and Municipalities and the Federal Association of Medium-Sized building Contractors). A number of measures have been set (p. 28 of the report), including "awareness raising and codes of conduct; rotation of staff; strict observance of the ‘four eyes’ rules; clear regulations on sponsoring and the prohibition on accepting gifts; establishing centralised authorities for tender/awarding; precise description of the tender and control of estimates; organisation of tender procedures, including secrecy of bids and prevention of belated manipulation of the bids; increased use of e-procurement; documentation of adjudication and careful control by supervisory bodies; exclusion of enterprises found guilty of corruption offences and establishing black lists/corruption registers."

4.3.2 SELF-REGULATION AND THE CONSTRUCTION SECTOR

The State has traditionally made use of "standard rule-making" to try to modify behaviour. Whether to tackle a problem or undertake an action or change an actual state of affairs, the response has always resulted in a "need for regulation". However, since the 1980s, a new type of rule-making has increasingly appeared to be an alternative to this traditional approach. The advantages of self-regulation – which is not de-regulation – are well known58, as are its limits and the risks that it involves. The biggest advantage is that companies accept responsibility for the social and environmental impact of their activities (CSR59). This opens up new prospects in terms of behaviour and promotes an interaction with suppliers, workers, consumers and society in general. In addition, there is a reduction of the costs of information and of the legislative process, greater compliance on a voluntary basis, a limitation of conflicts to small groups and less heavy-handed action on the part of the public authorities. Steps have to be taken to ensure that the codes (see also p. 28 of the European Commission's EU anti-corruption report (COM(2014) 38 final, pt. 4.3.1 above) are more than just general statements of professional ethics and that their implementation is followed up and verified. In addition, the absence of independent checks and sanctions can give the impression that they are simply promotional instruments without any real potential for practical application.

59 Corporate Social Responsibility. Corporate governance may be another area where self-regulation can be envisaged as this was advocated at an EESC public hearing on the European Corporate Governance Framework on 2 September 2011 in Sofia, Bulgaria. DG CONNECT and their Director General, Robert Madelin, also launched an initiative early 2012 to which the SMO is associated.
Self-regulation has proved useful and efficient in a number of sectors such as advertising or alcoholic beverages. It also allows for the type of flexibility and reactivity which legislation lacks. There certainly are lessons to be learnt from such schemes which basically require a "climate change" in terms of political courage and "positive self-determination". However, self-regulation in the construction sector is probably an illusion in view of the current characteristics of this particular activity, e.g.:

- The intervention of interim agencies\(^6\) or letter box companies\(^6\) for the provision of workforce;
- The fact that certain big players in the construction sector are no longer directly involved in the building operations and are more project management platforms than anything else. De facto trades such as masons have become small service providers for big service providers – a shift towards service provision has radically altered construction activities;
- The generalised principle of the cheapest bid leading to a race to the bottom in terms of price and working conditions;
- The fight for economic survival that makes morale look like a luxury most firms cannot afford, etc.;
- In more general terms, such an initiative as labelling, based on cooperation between social partners (and the public hand), on say ILO standards and in compliance with labour laws would mean higher prices due to higher quality, which in turn would become another Pandora box…

Some of the above-mentioned parameters that would make it for such a complex sector to go for self- and co-regulation and make it look certainly more "virtuous" than it is could be put together in the form of a graph:

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\(^6\) A 2013 survey of the French association of interim professionals (PRISME) and the Observatoire des métiers et de l’emploi (OME) shows that in view of the current crises many citizens (esp. Non-qualified workers and the over-fifty) opt for a fast track access to work.

\(^6\) The case of letter box companies cannot be dealt with on an ad hoc basis. It is a question of principle since their "intervention" results in conditions that are blatantly in contradiction with the European social model.
A "virtuous circle" for the market in general and the construction sector in particular?

*: "Vertrauen ist gut, Kontrolle ist besser" (trust is fine but control is better)

**: or how to make sure an economic activity is fair (i.e. free of fraud, risks such as social dumping and becoming a "working poor", etc.). How can we change behaviour patterns (e.g. people no longer smoking in public places, which most probably was unconceivable some 20 years ago...).

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62 This is an attempt to visually summarize the "after taste" of the meeting between the SMO delegation and the German social partners of the construction sector on 29 January 2014. This received a slight push during a conference organised by EuroChambres on "What next for Better Law-Making in Europe – Getting the Quality and Quantity Right" at the European Parliament on 30 January 2014.
5. THE NATIONAL PERSPECTIVE

The Single Market Observatory had selected 6 Member States (Belgium, France, Germany, Poland, Portugal and Romania) to be scrutinized by way of a questionnaire and interviews of representative organisations and public authorities from (and in) the said countries. For the sake of comparability the "national fiches" below follow the same pattern. Bullet points are used with a view to avoiding too much text and hopefully improving the legibility of the information provided. If the questionnaire was sent to a larger number of national (and European) contacts, the interviews in the Members States focused on the social partners in the construction sector and the national public authorities dealing with both services and posting of workers – essentially the national Labour Inspectorates.

5.1 BELGIUM

The meeting with the Belgian interlocutors took place on Tuesday 17 December at the headquarters of the European Economic and Social Committee in Brussels. The SMO delegation (Mr Ulrich SCHRÖDER, Mr Denis MEYNENT and Mr Jorge PEGADO LIZ) met representatives of the Belgian Labour Inspectorate, of Bouwunie (the Flemish organisation for SMEs in the construction sector), of the Conseil central de l’économie as well as of the Confédération Construction (the Belgian employers in the building sector).

5.1.1 GENERAL STATEMENTS

- The right degree of integration or harmonisation involving subsidiarity – instead of one size fits all policies – should be the overarching principle for the EU’s political sustainability. This would remedy the existing conflict between EU and national laws;
- Proportionality is another necessary corollary together with administrative simplification. This suggests that the EU’s stance should be more flexible and less legalistic;
- The Posting of Workers Directive became an issue in the wake of the 2008 crisis and in the context of the current economic downturn;
- Problems are felt now but finding a remedy is always a lengthy process;
- The Services Directive has been transposed into Belgian law but most issues are related to posting (art. 3.1 a) creates a conflict between both Directives. Both Directives are de facto interconnected (e.g. the preamble of the Posting of Workers Directive refers to the free provision of services);
- Large companies can better cope with challenges due to their having diversified portfolios but they are outnumbered by SMEs. In brief, the Think Small First principle should always apply – as well as the Small Business Act.

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63 DG MARKT in this particular instance.
64 The services Directive is seen as being less problematic although it implied abolishing the registration system for companies to enter the Belgian market. This deprived the State from it control mechanisms. This has led to a form of "nostalgia" over the old system. The temporary provision of services is still an issue while cross-border temporary work is not regulated at EU level.
65 See remark under pt. 1.1.
5.1.2 SPECIFIC COMMENTS

- Remedy the discrepancy between the market, which is international, and labour, which is not;
- Better controls simply means more revenue (more posted workers also mean less revenue for the State while putting the national social security system under major strain);
- The Council agreed on a deadline of 5 weeks to solve problems while the Commission suggested 2 weeks;
- Implementation is – as always – a core issue especially in relation with the words "freedom" or "liberalisation": a market without rules (or with no proper implementation of existing rules) is bound to be chaotic;
- Existing EU rules are prone to fraud (respecting EU rule may mean infringing national laws);
- The Belgian government, responding to complaints from the construction sector, has set up an action plan against social dumping involving the Ministry for Justice, the Ministry for Economic Affairs and the social partners;
- The nearly "sanction-free" environment in which fraud thrives is a real problem;
- Self-employment, for example as a substitute to employment contracts, is an issue because of the number of people involved and because it is difficult to control it;
- Control instruments or organs are understaffed and overrun while bona fide companies disappear from the market;
- Black labour not significantly increasing due to such developments in the construction sector as energy efficiency, which requires specialists and involves e.g. renovation grants based on invoices;
- Belgium imposes liability on the main contractor;
- The Belgian social partners favour the country of destination principle even though employers are mitigated on this issue while obviously approving of social charges being paid in the country of origin with efficient control over this particular process;
- The abolition of the registration system for companies entering the Belgian market through the Services Directive resulted in abolishing the Belgian control mechanisms and subsequently in certain nostalgia over the old system.

5.1.3 FIGURES

- In one year the price war with no apparent rules (or EU rules being abused) has led some 1,000 firms to go bankrupt and to some 10,000 workers to lose their job in Belgium;
- Bogus self-employment amounts to over 50% of all fraud cases.

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67 E.g. the ridiculously low 25,- € fine per worker who is exploited...

68 See also the recent documentation on the self-employed in Germany, many of whom earn less than the minimum wage (http://www.heute.de/zahlreiche-selbststaendige-arbeiten-fuer-weniger-als-850-euro-pro-stunde-31356984.html, 05.01.2014).

69 This critical mass will reach the tipping point where the number of self-employed exceeds that of workers.
• Employers' charges amount to 33% in Belgium as opposed to 10% in Poland. This obviously enough creates a distortion of competition;
• In Belgium 31% of fraud cases are in the construction sector;

5.1.4 PROBLEMATIC ISSUES

A number of problems or necessary improvements to existing measures and instruments were pinpointed by the Belgian participants:

| PSCS | PSCs are underused and little known. A single EU portal would be helpful (this could help overcoming the potential problems resulting from the disparity of competences and approaches – esp. in relation to health and safety at work – or standards – for example concerning technical equipment such as cranes, large construction engines, homologation, licences, etc. – at national level);
|------|----------------------------------------------------------------------------------|
|      | Implement fast, user-friendly (esp. SME-friendly as well as multilingual70) and cheaper e-government solutions using the full potential of ICT;
|      | Improve information on the temporary provision of services and on technical aspects;
|      | Make a selection of the pieces of information that are effectively needed;
|      | PSCs should not only be online but also be physical;
| CONTROLS | Create an EU Labour inspection agency to deal with cross-border fraud and provide case-based stimuli for the legislator while improving cooperation between national authorities (esp. with those Member States that have structural problems);
|      | The Belgian LIMOSA system71 could be used as best practice (create a European LIMOSA);
|      | An EU wage document would be helpful if based on a database allowing Member States to control the veracity of data;
|      | A multilevel approach involving harmonisation, subsidiarity (and proportionality) as well as allowing the respective relevant national instruments to work72 without being in conflict with EU rules;
|      | Enhanced cooperation between Member States similar to Schengen or the euro;
|      | "Name and shame" using the VIES database73 as a tool for choosing a subcontractor;
|      | The declaration of activity should be generalised;
| POSTING | Create a database to follow workers – IMI could be further developed to deal with this;
|      | The A1 form should be delivered before the works start;

70 National PSC cannot be only available in the national language(s).
71 The LIMOSA declaration covers the posting of workers, services, the self-employed, i.e. cross-border labour in general.
72 Art. 9 does not seem to bring much as it stands now.
73 The EU VAT database: [http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_number/index_en.htm](http://ec.europa.eu/taxation_customs/taxation/vat/traders/vat_number/index_en.htm). This would mean paperless environment, user-friendliness (with e.g. red/green light) and national public administrations (e.g. Labour inspectorates) being in charge of back office procedures. The "name and shame" scheme has proved to be useful in other sectors such as advertising (see [http://www.easa-alliance.org/](http://www.easa-alliance.org)).
Belgium regulates interim agencies while other Member States do not. An EU approach is needed;
Advertising illegal practices through interim agencies must be forbidden;

<table>
<thead>
<tr>
<th>SANCTIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apart from their being too low (see pt. 4.1.2), fines are also disparate due to the different national systems (i.e. instruments, competences)\textsuperscript{74},</td>
</tr>
</tbody>
</table>

5.2 FRANCE

The meetings with the French interlocutors took place on Friday 6 December 2013 at the French Economic, Social and Environmental Council, 1 place d'Iéna, in Paris. The Single Market Observatory would like to thank the Council, Ms Anne POUEUR, Secretary General of the Council, as well as Ms Evelyne PICHENOT, member of the EESC and of the French Council, for their support. The SMO delegation (Mr Ivan VOLES and Mr Denis MEYENENT) met representatives of the French Direction générale du travail (DGT), of the Confédération de l'artisanat et des petites entreprises du bâtiment (CAPEB), of the Fédération française du bâtiment (FFB) and of the Institut national du travail, de l'emploi et de la formation professionnelle (INTEFP). Further meetings were held at the headquarters of the EESC in Brussels with the Confédération general du travail (CGT), the Entreprises générales de France – Bâtiments et travaux publics (EGF/BTP).

The 9 December Council agreement on the Directive on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services touched upon certain issues which France, among other Member States, ranked high in their wish list. Subcontracting liability in particular (art. 12) was considered by these Member States as a principle to be binding in the construction sector so as to thwart sophisticated fraudulent strategies which are widespread in this sector. The other aspect in the agreement that actually matches expectations expressed by the interlocutors from the construction sector is that of the freedom for Member States to determine what documents are to be produced and checked in the context of posting (art. 9).\textsuperscript{75}

5.2.1 GENERAL STATEMENTS

- Directive 96/71 EC on the posting of workers is prone to social dumping. This has become a very emotional and very topical issue;
- The "Polish plumber" is back (see the emotional campaign of 2005 and the rejection of the Constitutional treaty in France and the Netherlands);
- Trade unions are against closing the European labour market;
- The posting of workers falls within the overall framework of the provision of services\textsuperscript{76};

\textsuperscript{74} Interestingly, art. 17 of the Posting of Workers Directive states that "Member States shall lay down rules on penalties in the event of infringement (...) pursuant to this Directive (...). The penalties provided for shall be effective, proportionate and dissuasive."


\textsuperscript{76} "Someone – i.e. a physical person – has to provide those services"...
5.2.2 SPECIFIC COMMENTS
- There is an overlapping between the posting rules and the provisions of Rome I on contractual obligations;\(^7\)
- Plans to organise an online posting declaration portal;
- Training schemes for relevant officials (Direction générale du travail, DGT, is involved);
- Fraud has shifted from border areas to the entire territory, incl. very rural areas;\(^8\)
- The core of the posting provisions is not being respected.

5.2.3 FIGURES
- Increase of 32% in posting declarations in 2012 in comparison with 2011 (official figure);
- In reality, this figure could be twice as high;
- Declared posted workers:

<table>
<thead>
<tr>
<th>Year</th>
<th>Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>110,000</td>
</tr>
<tr>
<td>2011</td>
<td>145,000</td>
</tr>
<tr>
<td>2012</td>
<td>170,000</td>
</tr>
<tr>
<td>2013 (projection)</td>
<td>210,000</td>
</tr>
</tbody>
</table>

- 35% of all infringements are in the construction sector;
- 45% of all foreign workers without a declaration are to be found in the construction sector;

5.2.4 PROBLEMATIC ISSUES
A number of problems were pinpointed by the French participants in a context of increasingly blurred differences between Member State of destination and of origin (France, for instance, is now both). This shift requires a global and systematic approach. At the same time, there is a clear cleavage between economic development, posting of workers and social regulation.

<table>
<thead>
<tr>
<th>CARD SCHEME(^79)</th>
<th>Does not prevent fraud e.g. counterfeiting or duplication;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Has limited advantages as many posted workers have very short contracts;</td>
</tr>
<tr>
<td></td>
<td>Requires computer based declaration but they are on paper;(^80);</td>
</tr>
</tbody>
</table>

\(^8\) Tracking the whole chain of information/data, coping with language barriers, lack of documents and proof implies massive work…
\(^79\) See recent proposal for a law by Gilles SAVARY.
\(^80\) This is a case for developing e-public services. Estonia and other Member States could be examples to follow.
### CONTROLS

<table>
<thead>
<tr>
<th>Purpose</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhaustive inquiries to trace back fraud;</td>
<td>Subsequent problems such as language, lack of documents on sites, proof of employment, etc.;</td>
</tr>
<tr>
<td>Transnational operators are active in a heterogeneous legal environment due to diverging national laws;</td>
<td>Lack of resources and means for on-site controls in the Member State of destination;</td>
</tr>
<tr>
<td>Unlike national enterprises, companies from other Member States are not known by the authorities of the Member State of destination;</td>
<td>Systematic (i.e. undifferentiated) on-site controls create a feeling of unfair treatment on the part of enterprises that abide by the law;</td>
</tr>
<tr>
<td>Upstream cooperation (incl. social partners) and anticipation still lacking, esp. in view of the importance of fraud;</td>
<td>Cooperation between national authorities incl. training schemes to be further developed esp. because of diverging legal systems and references</td>
</tr>
</tbody>
</table>

### MOBILITY

<table>
<thead>
<tr>
<th>Problem</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of an EU-wide approach;</td>
<td>Mobility is theoretical when a) rural VSMEs have a social function, b) the unemployed do not want to leave their social environment;</td>
</tr>
<tr>
<td>Obvious social dumping has a negative impact of the EU's image;</td>
<td>Revival of suspicion towards non-nationals to the detriment of the primacy of law;</td>
</tr>
</tbody>
</table>

### SMES

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pressure on SMEs and VSMEs in the construction sector with long time employees through low cost workers from Eastern Member States (except in regulated professions such as funerals);</td>
<td>Excessively high social costs pave the way to fraud;</td>
</tr>
<tr>
<td>Do not access cross-border markets (language, insurance, etc.);</td>
<td>Brussels seems to favour large players but SMEs account for most economic activities;</td>
</tr>
<tr>
<td>Face complex national labour laws and European legislation;</td>
<td></td>
</tr>
</tbody>
</table>

### PSCS

<table>
<thead>
<tr>
<th>Issue</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vary from one Member State to the next;</td>
<td>Are too generic and offer too complex menus – therefore lacking coherence (incl. look and feel), user-friendliness and system;</td>
</tr>
<tr>
<td>The language issue remains unsolved (multilingualism);</td>
<td>Differences between centralised and federal Member States;</td>
</tr>
</tbody>
</table>

### COMPETITION

<table>
<thead>
<tr>
<th>Challenge</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owners or contracting authorities always in search of the cheapest offer =&gt; leads to fraud;</td>
<td>The exclusive criterion of the cheapest offer (esp. in public procurement) is a major source of fraud;</td>
</tr>
</tbody>
</table>

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81 The Fédération française du bâtiment (FFB) is carrying out a study on the 8 Member States concerned.
82 Based on equal treatment by the law.
83 Also to be understood in the literal sense (i.e. “working together”).
84 This is not alien to the political pressure that has lead to the rise of populism, radical anti-European feelings and nationalism (see the prerequisites of 1933).
The market is NOT virtuous…

<table>
<thead>
<tr>
<th>POSTING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Declaration prior to posting does not exist in all Member States;</td>
</tr>
<tr>
<td>Proof of qualifications are not compulsory in all Member States</td>
</tr>
</tbody>
</table>

5.3 GERMANY

The meeting with the German interlocutors took place at the headquarters of the SOKA-BAU (the German leave scheme for building workers) in Wiesbaden on Wednesday 29 January 2014. The EESC was represented by Ulrich SCHRÖDER, Martin SIECKER and Eugen LUCAN. The German interlocutors were representatives of the German leave scheme for building workers (SOKA-BAU), the German Construction Confederation (Zentralverband Deutsches Baugewerbe, ZDB), the Confederation of the German Building Industry (Hauptverband der Deutschen Bauindustrie, HDB) and the German construction trade union IG-BAU.

5.3.1 GENERAL STATEMENTS

The German approach involving cooperation between the social partners of the construction sector within a set or institutionalised framework (i.e. SOKA-BAU as a common institution as well as a joint platform) makes it possible for the trade unions and the employers' organisations to meet regularly and discuss relevant problems of the sector independently from collective bargaining. Furthermore, the social partners are constitutive parts of SOKA-BAU:

- SOKA-BAU guarantees continuity of social benefits in case a worker changes contractors. Foreign building companies operating in Germany are obliged to participate in the leave scheme of SOKA-BAU;
- Fraud cases are frequently not the result of a lack of information but of clearly and intentional fraudulent behaviour (see for example correct looking declarations of companies that have a double accounting) or total neglect; when due diligence is applied by a foreign company before posting their workers the company will be able to learn about and to follow the existing rules as the information is easily available for free and multilingual not only via the Internet and in printed form but also by phone and e-mail through the multilingual staff of the European dpt. of SOKA BAU.
- Some fraud strategies are based on immediate profit (e.g. cash without invoice). There are also many cases at the end of long subcontracting chains on bigger projects but here different patterns are in place (e.g. only 40hrs or a part-time job on the payslip but an actual weekly working time of 50-55 hrs.)

85 Self-regulation in the construction sector is supposedly an illusion unless it is on an ad hoc basis – to be determined but involving cooperation between all actors on-site with a clear transnational dimension through the variety of actors/nationalities (including e.g. trade unions from the Member States of origin).

86 They are in France and Poland.


88 This means that the basics of the social acquis in Germany also apply to posted workers

89 Real construction workers will know what their rights are.

90 See also the Belgian "Data Mentalist" system: http://www.deredactie.be/cm/vrtnieuws.english/News/1.1757575 and the demo video: http://www.youtube.com/watch?v=T0xJfM3U8.
• The Posting of Workers Directive focuses on the "country A vs. country B" aspect and does not take into account the complexity of multiple State fraudulent companies;
• Due to the federal set-up of Germany the 16 Points of Single Contact are heterogeneous (however, the German Ministry of economy has a portal) and they do only inform the foreign entrepreneurs but not the workers of those foreign service providers labour law information has to be gathered from other sources, e.g. the FKS website. That is why FIEC and EFBWW run their own European website www.posting-workers.eu.
• Critical position as regards the Enforcement Directive. This induces a limitation of the control mechanisms;
• Services and the posting of workers are partly linked.

5.3.2 SPECIFIC COMMENTS
• The so-called Finanzkontrolle Schwarzarbeit\(^{91}\), as an integral part of the German customs authority, is in charge of most controls on building sites;
• The European social partners of the construction sector, EFBWW and FIEC, cooperate with the German social partners\(^{92}\). Distortion of competition is a common threat to the construction businesses and trade unions and both sides cooperate on the grounds of a common interest.

5.3.3 FIGURES
• There are over 4,500 posting building firms active in the construction sector of Germany, almost half of which are from Poland, Austria and the Netherlands (2013);
• Almost 89,000 posted building workers are employed in Germany, more than half of whom are from Poland, Hungary, Austria and Romania (2013);
• Employers vs. employees benefits in the German construction sector:

<table>
<thead>
<tr>
<th>EMPLOYERS</th>
<th>WORKERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Information for employers:</td>
<td>Information for workers:</td>
</tr>
<tr>
<td>Refunding of leave entitlements</td>
<td>Full declaration and payment</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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\(^{92}\) See the joint FIEC/EFBWW survey on the posting of workers in the EU: [http://www.posting-workers.eu](http://www.posting-workers.eu). FIEC/EFBWW will launch a study of the building site-related card system.
### 5.3.4 PROBLEMATIC ISSUES

A number of problems were pinpointed by the German participants in a context of increasingly blurred differences between Member State of destination and of origin (Germany, for instance, is now both). This shift requires a global and systematic approach. At the same time, there is a clear cleavage between economic development, posting of workers and social regulation.

<table>
<thead>
<tr>
<th><strong>Tenders/Liability</strong></th>
<th><strong>Regulated professions</strong></th>
<th><strong>Cards</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Lowest bidders should be imposed extra responsibility (or burden of proof); The cheapest bid principle is the core of the problem; Public authorities are also responsible for the perversion of the market as they often turn a blind eye on what is happening on their sites; Public authorities are not integrated in the system of liability; Unfortunately, there is a confusion on the part of public authorities regarding the &quot;economic bid principle&quot; and the &quot;cheapest bid principle&quot;;</td>
<td>The European Commission's stance to facilitate access to regulated professions (i.e. a form of deregulation) would jeopardize a number of sectors of activity, incl. the construction sector;</td>
<td>ID cards or passport should help the customs authorities in charge of on site controls though they would only be a partial solution since they would not provide any data on working hours, etc.; The data protection issue appears to be problematic (or a vicious circle) since it might prevent access to certain pieces of information;</td>
</tr>
</tbody>
</table>

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#### 5.4 PORTUGAL

The meetings with the Portuguese interlocutors were held at the premises of the Portuguese Economic and Social Council in Lisbon on Monday 17 and Tuesday 18 February 2014. The EESC delegation was composed of Ms Ana BONTEA (Group I, Employers – Romania), Mr Christoph LECHNER (Group II,  

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93 This deviation from agreed practices goes to the point where trade unions are sometimes not allowed to access building sites. This is basically reminiscent of industrial revolution times...
Employees – Austria) and Mr Jorge PEGADO LIZ (Group II, Various Interests – Portugal). Mr Martin SIECKER, president of the Section for the Single Market, Production and Consumption attended the meeting as an observer. The participants were, in chronological order, ACT (the Portuguese government’s Labour Inspectorate: Direção de Apoio à Actividade Inspectiva), FEVICCOM (Federação Portuguesa dos Sindicatos da Construção, Cerâmica e Vidro, construction trade union), AECOPS (Associação de Empresas de Construção, Obras Publicas e Serviços, employers federation), SETACCOP (Sindicato da Construção, Obras Públicas e Serviços, construction trade union) and the Portal do Consumidor (from the Portuguese government’s Consumers Directorate General, DGC).

It became soon clear that the content of the discussions would be different from that in the first three Member States (that were originally clearly countries of destination).

5.4.1 GENERAL STATEMENTS

There was a clear cut distinction in the perception of certain aspects of the current situation between interlocutors from public authorities on the one hand and from the social partners on the other. All agreed however that information and communication were a core issue that needed to be urgently addressed. This lack of information is perceived both at national level and across borders, especially in view of the mass emigration (or the mass posting) of Portuguese workers to other EU Member States. In view of the visible and publicly discussed deterioration of working conditions in the framework of the provision of services and the posting of workers (providing services) there is a growing feeling of unease and a diffuse correlation between the regression of public presence (e.g. through underfunding and understaffing) in areas where it was always expected to be providing directions and the regression of the general working, living and business conditions is being perceived. At the same time, the construction sector is characterised by hard working conditions to which an extra strain has been added by way of extreme social and wage conditions due to fraud and criminal practices. Subsequently, the "same work same pay" principle does not apply across borders in the sector.

5.4.2 SPECIFIC COMMENTS

- If they welcomed the Services Directive (in its improved version and provided it was properly implemented), Portuguese stakeholders regretted that they had not been involved in the transposition process;
- National Labour Inspectortes cooperate e.g. on the posting of workers issue and use the Internal Market Information system (IMI) to this end;
- However, there seems to be no system for the flow of information on posted workers between Member States;
- There seems to be a controversy concerning the decentralisation of the Internal Market Information system (IMI) with the alleged opening of 32 office across the country;
- The extreme complexity of the market makes it difficult for public authorities to control and easy for fraudulent firms to bypass laws or to push away any form of responsibility or liability;
- The Internal Market Information system (IMI) is being used a central level for instance to check on the compliance of companies from other Member States;
Foreign construction firms in Portugal (especially Spanish firms) are in a better starting position than Portuguese companies while the latter have the greatest difficulties entering the Spanish construction market, esp. due to red tape being imposed on them;

Portuguese employers call for transitory measures to relieve construction companies from certain costs (art. 3.1.c of the Posting of Workers Directive states what needs to be paid);

Companies go for the lowest bid (with all the risks it entails) to simply survive and guarantee employment for their workers;

There are three types of Portuguese workers abroad:
  o Workers going to work abroad on their own;
  o Workers employed by a Portuguese firm abroad;
  o Workers employed by a company based in another EU Member State (essentially Belgium, the Netherlands, and Luxembourg);

The transposition and implementation of EU legislation in general and the Services Directive in particular are being closely scrutinized by the Troika:
  o The European Consumer Centres and the European Enterprise Network are the platforms that act as contact points for the Services Directive

It matters that Portuguese workers abroad benefit from the same framework conditions as in Portugal;

There is a discrepancy between Member States in terms of compliance requirements of the Services Directive. This needs to be corrected.

### FIGURES

- The number of labour inspectors in Portugal is being reduced (between 350 and 400 with some 80 retiring in 2014 without being replaced);
- Currently, the construction sector in Portugal has come to a standstill while trade unions have lost some 2/5 of their members;
- The Portuguese construction sector is operated by 6 major companies with some 220,000 workers employed in SMEs or very small companies.

### PROBLEMATIC ISSUES

The following issues were pinpointed by the Portuguese participants. If the situation of construction workers in Portugal may have improved in relative terms over the last 10 years, the crises have put an enormous competitive strain on the sector. As so often, it is felt that proper implementation and abiding to the rules would alleviate the situation considerably.

| Information and cooperation | The lack of information on workers posted in another Member State (e.g. accidents at the work place) is due to the absence of cross-border system (e.g. on accidents, health and safety at work);
|                           | An e-card could prove useful in this respect;
|                           | Improve access to information on qualifications through IMI;
|                           | SOLVIT, IMI and the Points of Single Contact (PSCs) are hardly known and little used. All "Lojas do Cidadão" have been closed. The cutting down of resources in public services have undermined the good concept behind the SIMPLEX online portal;
|                           | There is at times a lack of comparable structures and institutions among Member States. Cross-references and cross-checks are difficult and lead to a lack of response to problems. An online system would be helpful (in other words, e-government... |
solutions across the Single Market);
Dwindling resources of public authorities (ever fewer people to do an ever more complex job);
Governments should carry out awareness-raising campaigns targeted at workers so as to inform them on framework conditions before they enter a work contract;
Institutional communication greatly suffers from a massive information fatigue on the part of citizens;

Permits to operate
Once the permit for companies to operate in another Member State is not necessary, some system providing information e.g. on working conditions, financial capacity etc. to national agencies;

Liability
Due to intense competitive pressure, complexity and lack of transparency liability and responsibility are diluted – esp. along the cascading structure of companies;

Criminal practices
Certain sector of construction (e.g. ceramics) have no collective bargaining and use individual contracts;
There are known cases of workers having either their passport withheld (a current practice in human trafficking) or parts of the wages retained to keep them on the site;
The relative impunity of companies (whereby the multinational market plays a major part) leads to a dismantling of the social and societal fabric;
SMEs in particular are under tense competitive pressure and have to cheat to survive;
It is felt the EU is not forcing governments to act against illegal situations with system and rigour;

Transposition, implementation, enforcement and compliance
This is a leitmotiv of EU integration… As illustrated by EU legislation on health and safety at the workplace, EU laws can make a difference and bring about a change of mentality!
Existing legislation is not properly implemented for market reasons;
Enforcement is poor and controls are insufficient.

5.5 ROMANIA
The meeting with the Romanian interlocutors took place at the headquarters of the Economic and Social Council of Romania, in Bucharest, on Wednesday 5 March 2014. The EESC was represented by Ana BONTEA (Group I, Employers – Romania), Christoph LECHNER (Group II, Employees – Austria). The president of the Section for the Single Market, Production and Consumption, Martin SIECKER, attended as an observer. The Romanian interlocutors were the national Construction Employers Federation (ARACO), the FAMILIA trade union, the Romanian Labour Inspectorate, the Ministry of Labour and the Worldwide Romanians’ Union.

94 In Austria, the Customs are in charge of market surveillance and kick out those construction companies that do not abide by the law.
95 The FAMILIA trade union was involved in the INTEFP comparative study on the posting of workers, Eurodétachement (see Technical Fiches below).
5.5.1 GENERAL STATEMENTS

Currently, some 3 million Romanian citizens live abroad. They are facing such problems as the absence of work contract or the misuse of part-time contracts for full-time work, the lack of information on their rights. There are currently 1.1 million Romanian workers in Italy, some 900,000 in Spain and just over 205,000 in Germany.  

Foreign construction firms are present in Romania but their aggressive commercial practices are contrary to fair competition as they employ non-EU workers and bypass certain EU standards. This too is contrary to the spirit and purpose of EU integration. At the same time, Romania has lost many skilled workers and experienced widespread insolvency of SMEs put under intense pressure by larger companies and by the difficulty in getting the necessary financial support. Not unlike Germany, the social partners in Romania cooperate and often share opinions and positions, especially when dealing with issues such as combatting fraud, corruption and the undermining of collective agreements. They see the following challenges for the building sector in Romania as priority areas:

- The recovery of debts (the thorny issue of late payment, with 9 months delays as a rule as opposed to 1 month in theory);
- VAT, which must be paid in advance, i.e. when issuing the invoice;
- Access to finance;
- The questionable competence of those firms set up for the sole purpose of winning public procurement tenders, and
- Corruption in contract awarding (e.g. through political interference).

The social partners agree on the fact that the Troika is putting Romania under pressure to keep salaries low. The consequence of this policy is a vicious circle that sees many workers, especially qualified workers across all sectors, leave the country to find better conditions abroad, thus contributing to keeping Romania’s productive resources low and to a shortage of qualified workforce (e.g. as in the health sector). They also deplore the strain resulting from the policy of the American Chamber of Commerce (AmCham) and the Foreign Investors Council (http://www.fic.ro/) and the strong negative impact this has on the social dialogue.

The Romanian law on social dialogue is being revised in view of a shift from the traditional tripartite dialogue over to sectoral dialogue. Civil society lacks clear criteria for an effective involvement and suffers from the reluctance of the traditional components of social dialogue towards their participation.

5.5.2 SPECIFIC COMMENTS

- The social partners deplored the lack of consultation in the design of legislative proposals. They hoped that the new European Commission would set up specific structures to foster consultation with the relevant actors of the construction sector;

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97 For example it is therefore impossible to conclude collective agreements.
• The card system was approved especially if it included information on the holder’s professional qualifications;\textsuperscript{98}
• In view of the ARACO’s stance on codes of conduct, self-regulation based on a parity system could be envisaged in the European building sector;
• The Romanian social partners agree on applying the principle of the country of destination;
• The Romanian Labour inspectorate cooperates with counterparts in the other Member States through the IMI system, is in charge of the exchange of information with other EU countries and sets up information campaigns on risks related to posting;
• The national authorities can verify the information provided by the A1 form through the IMI system (a few hundreds of requests in 2013);
• Contingents of posted workers must be approved by the Romanian government;
• There are no indications as to the number of labour inspectors in Romania. However, the Labour Inspectorate is being restructured and downsized.

5.5.3 FIGURES
• The volume of the Romanian building industry has gone from 15.3 bn € (with some 480.000 employed) before the 2008 crisis to currently 9.3 bn € (with some 350.000 employed) and a continuous decline;
• Private investment has fallen from 70 to 20%;
• Main countries of origin of EU non-nationals in the EU-27 on 01.01.2012 (source: Eurostat):

\begin{figure}
\centering
\includegraphics[width=0.5\textwidth]{chart.png}
\caption{Citizens of other EU-27 Member States}
\end{figure}

\textsuperscript{98} C. LECHNER, member of the EESC delegation pointed at the issue of guaranteeing posted workers their retirement benefits without putting too heavy a strain on the social systems of the sending countries. He thought that a card system providing all necessary data and authentication would be an avenue to pursue. This meant that national public authorities needed to cooperate in all relevant areas (from tax to pensions, etc.) thanks to an appropriate efficient network involving all actors.
5.5.4 PROBLEMATIC ISSUES

The participants following pinpointed the following issues either in the context of their initial interventions or in reaction to questions raised by the EESC delegation.

<table>
<thead>
<tr>
<th>Points of Single Contact</th>
<th>Lacking updates on how to do business abroad; Firms will use other channels to retrieve the information they need (incl. the social partners).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social dumping</td>
<td>Laws are needed to regulate those firms that bypass collective agreements;</td>
</tr>
<tr>
<td>Work accidents</td>
<td>There definitions of work accident vary between Member States. This has an impact on the level of indemnities and on certain national health systems; The correct implementation of the Posting of Workers Directive would be helpful; Posted workers should be duly informed about the relevant legislation in the country of destination;</td>
</tr>
<tr>
<td>Information</td>
<td>A European code of conduct based on best practices would help setting standards on the information/data to be supplied (see the card system); This raises the question of the collection and management of data, etc.</td>
</tr>
</tbody>
</table>

5.6. POLAND

The meeting with the Polish interlocutors took place at the headquarters Polish Crafts Association in Warsaw on 20 March 2014. The EESC was represented by Ivan VOLEŠ, Martin SIECKER and Eugen LUCAN. The Polish interlocutors were representatives of the Polish Crafts Association (Tadeusz KLIŠ, member of the Single Market Observatory), the trade union 'Budowlani', the Polish Labour Inspectorate and the Polish Chamber of Architects.

5.6.1 GENERAL STATEMENTS

Poland is primarily a sending country. In this respect, it receives many requests for information from such Member States as France, Belgium, the Netherlands and Austria (e.g. on). Generally speaking, both employers and workers organisations in Poland share the view that the Single Market for services and the posting of workers is operational but that barriers still limit the application of European standards. At the same time, Polish trade unions are critical towards the Services Directive – especially when it comes to the principles of the country of origin and destination. The Single Market still suffers from "primary protectionism" or "defence mechanisms" such as administrative restrictions that impact negatively on the quality of movement. Grey zones, especially as regards free movement and professional qualifications, pave the way for illegal practices.

99 Most work accidents occur in the construction and transport sectors.
100 See also the EURES website.
101 E.g. on terms of employment in Poland, business registration, minimum wage, effective pay and pay structure, resting time, holiday, etc.).
EU-wide standard conditions should make sure free movement is "safe". Polish service providers or suppliers (or else operators) tend to be subcontractors and this relates to the Posting of Workers Directive. In view of grey zones or gaps with the Directives (that are not filled by national laws), the intervention of so-called intermediaries poses problems: employment agencies, some of which have specialised in low standards, are basically business operators under the Posting of Workers Directive.

5.6.2 SPECIFIC COMMENTS

Poland and Germany signed a bilateral agreement in the 1990's, which in a way prepared Poland to EU membership. A survey by the Polish Craft Association revealed that cross-border service provision along the Polish-German border worked smoothly. The agreement made it possible to solve certain conflicts but new problems arose when employment agencies came into play – these subsequent problems might be of a structural nature. As for liability, the situation is blurred when complex vertical structures involve many subcontractors. Polish trade unions therefore call for a limitation in the liability chain.


The Polish social partners agree on the fact that public procurement law needs some improving (see also the EESC opinions on this issue). The cheapest bid principle there again is considered to be a major problem. Poland is in the lead in terms of self-employment. At the same time there is a rapid growth of bogus self-employment in the wake of the crisis in the Polish construction sector around 1999-2000. From the employers' viewpoint, the Polish government's new law aiming at raising social security contributions risks hitting the real self-employed and backfiring on the Polish labour market. However, all agree that this particular issue needs to be addressed. The current crisis context obviously encourages cost-cutting strategies and the increase in bogus self-employment. If there are grey zones, there is also a "rainbow" of formulas, most of which involve minimum wage and cash that is not accounted for (i.e. black labour).

Poland has no information system on individual workers as opposed to a number of other EU member States. The Labour Inspectorate is not just a guardian of legal issues but it can also take action against perpetrators. Where it has no competence it must notify the relevant competent public authorities. As for the card, the principle is generally approved of and the example of major works involving posted construction workers ahead of such events as football cups and the like call for such a monitoring and information instrument.

5.6.3 FIGURES

- Some 2.1 million Polish citizens are currently living in other EU Member States (both as temporary migrants and economic migrants) with approximately 200,000 working in the building sector;
- 98% of the Polish construction sector are dominated by SMEs under 9 employees (an unstable situation in view of the current difficulties);
- Looking at SMEs, there are 2 main categories:
  - SMEs operating essentially on the home market;
  - Self-employed (incl. micro-enterprises) with a certain proportion of bogus self-employment;
Some 25% of the Polish construction market is run by a few major international players who operate through subcontractors and besides bring their own architects as part of comprehensive building strategies;
Self-employment amounts to some 30% in the construction sector (again, with strong bogus self-employment);
Numbers of the National Labour Inspectorate’s employees, who perform inspection activities:
  - 2011: 1573 inspectors;
  - 2012: 1586 inspectors;
  - 2013: 1567 inspectors;
46.5% of the total number of the A1/E101 certificates were issued in 2013 for employees posted from Poland to work in the construction sector in other EU/EEA countries;¹⁰²;
There are some 1,500 labour inspectors in Poland. The IMI system is used to communicate with other public authorities in other Member States;
60% of architects in Poland are single persons (i.e. with modest income – many architects leave Poland to work abroad for a better pay);

5.6.4 PROBLEMATIC ISSUES

<table>
<thead>
<tr>
<th>Points of Single Contact</th>
<th>Underused, not providing enough information and lacking multilingualism;</th>
</tr>
</thead>
<tbody>
<tr>
<td>The building sector would want to develop its own solutions;</td>
<td></td>
</tr>
<tr>
<td>Collecting the necessary information still implies going through various channels. For SMEs this poses a problem of time and resources;</td>
<td></td>
</tr>
<tr>
<td>Information</td>
<td>Details of the Directives are essentially known to public administrations;</td>
</tr>
<tr>
<td>SMEs and workers cannot use the Directives directly;</td>
<td></td>
</tr>
<tr>
<td>Card system</td>
<td>Although basically approved of, an EU social card system would need to be based on parity and simplicity;</td>
</tr>
<tr>
<td>Social dumping</td>
<td>Minimum requirements in the context of workers’ posting should be the same as in the country of destination;</td>
</tr>
<tr>
<td>In spite of disparities between Member States, it is hoped to determine certain common denominators through agreements between the social partners;</td>
<td></td>
</tr>
<tr>
<td>Employment agencies</td>
<td>Are based on cheap substandard labour;</td>
</tr>
<tr>
<td>Need to be regulated (e.g. transparency, common guidelines, etc.);</td>
<td></td>
</tr>
<tr>
<td>Posting of workers</td>
<td>There is no information system/scheme on working conditions abroad and communication on this between Labour Inspectorates seems complicated;</td>
</tr>
</tbody>
</table>

¹⁰² However, it should be noted that more than one certificate in a year can be issued for one employee.
<table>
<thead>
<tr>
<th>Regulated professions</th>
<th>Easy access to regulated professions will inevitably impact negatively on quality;</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>There is pressure from developers to shorten works duration. Architects oppose to this;</td>
</tr>
<tr>
<td></td>
<td>The Polish Chamber of Architects has drawn the Commission’s attention a) on the three year limitation imposed to the profession in public procurement and b) on the need to remove the cheapest bid principle.</td>
</tr>
</tbody>
</table>
6. SUMMARY OF THE RELEVANT EESC OPINIONS

The European Economic and Social Committee adopted a number of opinions directly and indirectly related to the subject of this study. Many of the recommendations made in these opinions have been taken on board in the final report. However, it may be useful to provide a comprehensive overview of the EESC positions. The summaries are in English but the following link to the Committee's opinion search engine (http://www.eesc.europa.eu/?i=portal.en.opinions-search) will make it possible for the reader to retrieve their own linguistic versions e.g. by using such references as the opinion number:

6.1 RELEVANT EESC OPINIONS

THE SERVICES DIRECTIVE
CESE 137/2005, OJ C 221, 8.9.2005, p. 113
A. METZLER, H.-E. EHNMARK

Harmonisation of specific services over a two-stage transition period: The Committee therefore believes the blanket application of the country-of-origin principle in the cross-border provision of services is premature. (...) The Committee is concerned that immediate application of the country-of-origin
principle would result in a “watering down” of standards. The new provisions must be as easy to apply, and as clearly structured as possible in order to ensure that the implementation is achieved smoothly and without complication. The same applies to co-regulatory and self-regulatory mechanisms.

Issues connected with the social dimension: The draft directive should not lead to any watering down of existing social protection, wage, and safety standards in the workplace, particularly those laid down in the Directive on the posting of workers. National arrangements for collective negotiations and agreements, including the national implementation of the associated Directive on the posting of workers (Directive 96/71/EC), should not be adversely affected. Member States must be in a position to apply set definitions to the terms "employees", the "self-employed", and the "false self-employed", in order to establish clear principles for application within the scope of the Directive on posting workers, limiting the scope of the country-of-origin principle. In addition, it should be up to the Member States to lay down employment conditions which would generally apply in their countries to the relevant employees, as well as to immigrants and posted workers.

Clarification is needed as to whether and how, for example, to avoid conflicts between the country-of-origin principle – to which the draft directive gives precedence in each case – and the social, tax and criminal law standards of the host country. Legal incompatibilities vis-à-vis existing legislation must be avoided at all cost.

In the Committee's view, consideration should be given to whether setting up a central EU-wide register to record requirements and infringements noted in the course of supervision could be an effective and useful means of fulfilling the requirements set out in the draft directive for the monitoring of specific service providers, such as members of the liberal professions.

Improvements in empirical record keeping: Mechanisms to record trade flows within the Single Market for services need to be reviewed and improved, so that the reason for – and impact of – measures can be better identified and evaluated.

Alignment of tax regulation: In addition to many minor obstacles, both real and perceived, the main obstacle to the implementation of the Single Market is a matter for Member States and local authorities: diverse and inconsistent implementation of the legislation on social security contributions and on taxation.

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**THE INTERNAL MARKET IN SERVICES – REQUIREMENTS AS REGARDS THE LABOUR MARKET AND CONSUMER PROTECTION**

Information on the possible impact on employment of the new Internal Market strategy is inadequate, according to 90% of respondents. 60% expected a beneficial effect on employment, while 44% foresaw job losses. Above all, people expected job relocations. It would be helpful to have a sector-specific and differentiated approach for future monitoring of the Internal Market in services by the SMO, focusing on areas such as industry-related services, education, selected liberalised public services, personalised services and crafts. The pointers to those who will gain the most are significant here. It would be useful to examine closely the question of skilled vs. unskilled work and the opportunities for skilled workers with the flexibility to relocate vs. workers with less mobility. The former is expected to be an issue both between Member States and within individual sectors. The latter is a particular challenge for
labour markets and social security systems.

Some believe that framework conditions should be further harmonised to counteract the new pressure of competition. It was feared that local and cultural specialities could lose out in future if big providers cornered the markets.

A majority (82%) expected the future deepening of the Internal Market in services to result in changes in national work and employment conditions. This was not because of ignorance of the EU services Directive, but in view of the lack of harmonisation and new market influences. A majority anticipated an increase in short-term and flexible modes of working. Expected benefits included improved employment opportunities, language training and training generally.

The current provisions on posting play an important role in this context. Inadequate implementation of the rules was often presented as a problem. However, half of those surveyed thought the present regulations were insufficient to ensure social protection in the light of the new challenges. Close examination at company level makes this clear. The greater the non-harmonised sphere, the greater the scope for unequal treatment for the same work. In part, this was also seen as an opportunity, if contact with "better practices" acted as an incentive to better working conditions in the country of origin. Generally speaking, unequal working conditions or legal provisions in a company or workplace also constituted a challenge for businesses. This is not the place to discuss the posted workers Directive. What matters here is to note that inequality and hence conflict will increase. This is a task for EU and national legislators, especially in the context of the forthcoming implementation of the EU services Directive, as well as being a challenge for social dialogue in the EU.

The increased worker mobility involved in providing cross-border services and the increasing difficulty of knowing one's rights will create more demand for consultation services. These services must be provided throughout the EU. The work done by the Euro Info Centres and the creation of a database of employees' questions, in which the EESC is taking a keen interest, would be an important source of information.

The EESC's Single Market Observatory will work closely with the Section for Employment, Social Affairs and Citizenship in continuing to look at the effect of the Internal Market in services on the growth in trade in services between Member States, employment and consumer protection. The findings of the present opinion suggest that it would make sense to take a closer look at individual sectors and, in the process, to make use of the main findings from the questionnaire.

THE SOCIAL AND ENVIRONMENTAL DIMENSION OF THE SINGLE MARKET

The final goal is to significantly improve the functioning of the Internal Market within a social market economy, i.e. to ensure a level playing field for all stakeholders and make sure they operate in the same legal environment. This is crucial for creating conditions of fair competition, creating more and better jobs by incorporating the social and environmental dimensions into the Internal Market in order to strengthen European competitiveness.
The proper functioning of the Internal Market requires the resolution of certain ambiguities related to the application of EU law. A straightforward and predictable legal framework is a precondition for the further development and deepening of the Internal Market.

More specifically, controversies resulting from the (...) judgements of the European Court of Justice relating to the legal interpretation of the Posting of Workers Directive appear to legitimise the requirement to review the directive or conclude an additional agreement between the social partners.

In this respect, SOLVIT network, as a mediator between the institutions and the public, might potentially play an important role. However, the network is heavily underfinanced and understaffed and its role and operations must be reassessed.

A number of adverse developments have, among other factors, put the social dimension in jeopardy. The European economy is facing its most serious challenge in decades. Financial bubbles have been allowed to grow and control mechanisms and traditional risk assessments have been sidestepped. As a result unemployment has risen and labour markets and the social situation will continue to deteriorate. Therefore employment must remain at the top of the EU's agenda. Europe needs sustainable growth and a high employment rate combined with a high quality labour market in order to finance welfare systems.

Over the last decade, welfare systems have been the target of reforms aimed at promoting more effective work incentives in social protection systems, in order to strengthen the value of work and to re-integrate people in the labour market. One result has, however, been a growth in inequality, thus aggravating social problems. Employment and welfare systems are crucial to alleviating poverty and without social benefits the rise of inequality and the social impact of the crisis would be much more rapid and severe.

The Internal Market is an arena in which both the social dimension and other dimensions find their expression. To flourish, sustainable economic growth and jobs must be created which in turn generate tax revenues which are the basis for social entitlements. The levels of unemployment and the fiscal imbalances show that much can be done to remedy the current situation.

In the short term the EESC calls for the posting of workers directive to be implemented more effectively. The EESC proposes that the idea of the creation of a "European Social Interpol" be explored, supporting the activities of the Labour Inspectorates of the various Member States.

The EESC urges the Commission to assess the situation in the EU in light of the ECHR's recent judgements. The EESC also supports measures by the Commission that seek to strengthen social dialogue, including:

- The promotion of a higher quality social dialogue and a European mechanism for dispute resolution and conciliation;
- Further development of the macroeconomic dialogue with a view to preventing another financial crisis;
- Promotion of the European social model in international relations.

In the medium term the EESC supports a Commission initiative which clarifies the legal obligations for national authorities, business and workers when
implementing the Posting of Workers Directive and which ensures that these rules are universally applicable. The EESC finds the proposal in the Monti report, where the right to strike is exempted from the Internal Market, interesting and believes that it might resolve some of the problems. This should, however, not exclude a partial revision of the Posting of Workers Directive in order to apply the place of work principle consistently, making it possible to establish by law that the same working and remuneration conditions must always apply for the same work at the same location.

In the longer term the European Union should strive to strengthen the social dimension and realise the full potential of the Internal Market. The Lisbon Treaty and the annexed Charter of Fundamental Rights have not yet had their full impact on the balance between fundamental rights and economic rights. Strengthening the social dimension requires that the fundamental social rights be strengthened and that any limitation of fundamental rights which includes social rights be very restrictive. A Treaty change could be pursued to achieve this objective.

There are thus four fundamental reasons for the social dimension:
• The free movement of persons;
• There are indivisible social rights to which any society should adhere and with which it must comply under all circumstances; these are the right to collective action, trade union and collective bargaining freedoms and the other rights set out in fundamental ILO conventions and international and European conventions on social and personal rights;
• To strengthen the functioning of the Internal Market and to mitigate the negative consequences of the same, in order to create acceptance for political and economic projects and boost social cohesion;
• Social policy is also one major component of improved competitiveness.

The Committee supports the Commission's desire to improve the functioning of the Single Market for services: it goes without saying that obstacles in the form of discriminatory, unjustified or disproportionate requirements should be removed. The Committee therefore welcomes the initiative to modernise public administrations by setting up "points of single contact", and can only applaud the development of administrative cooperation in cross-border matters. However, this cooperation also needs to be extended to policy areas where compliance with obligations is at stake.

The EESC considers the Commission's conclusions on the impact of the Services Directive and on the functioning of the services sector to be premature. The directive has been in force for only a few years. Not all the Member States are equally satisfied with the directive and they need to implement it in their own legislation in their own way; these are complicating factors that are not taken into account in the communication. The services sector is large and complex, with many different branches, and it will take time to streamline the Single Market for services by means of European legislation.

The Services Directive was drafted under the old treaty, in which economic interests were still the top priority in the Single Market. Under the Lisbon Treaty, other interests are regarded as equivalent, rather than subordinate, to economic interests. It is interesting to look at how legislation and case-law developed under the old treaty relates to the new treaty. In its opinion on the Single Market Act, the EESC recommended that the Posting of Workers Directive should be examined in the light of the new treaty. It would be interesting to see whether an examination of the judgments of the ECJ that give
primacy to the Single Market (old Article 49) could shed new light on the matter.

**PROFESSIONAL QUALIFICATIONS**

Recognition of professional qualifications from other Member States is a key instrument for promoting the mobility of EU citizens and thereby implementing the Single Market. It will strengthen the competitiveness of Member States, support sustainable growth and reduce unemployment. National economies will benefit from the varied professional experiences acquired by their citizens while working in different Member States.

The potential offered by EU citizens interested in working in another Member State has not yet been exhausted. This is a result of various obstacles to recognition of professional qualifications obtained in other Member States. EU citizens see the existing procedures as protracted and unclear.

That is why in principle the EESC welcomes the proposal to amend Directive 2005/36/EC, which should eliminate these problems recognising professional qualifications by simplifying procedures and making them more transparent for EU citizens. The proposal makes a real contribution to achieving the targets for increasing EU citizens' mobility set by Agenda 2020.

The EESC welcomes the European Professional Card as a clear simplification of procedures. However, it considers that certain stipulations could end up putting the safety and health of consumers and patients at risk. The proposed rules for the European Professional Card, in particular, should therefore be revised:

- The generic and main criteria and procedural rules governing introduction of the European Professional Card should be determined in the Directive itself;
- Abuse of hard copy cards should be ruled out by placing limits on their validity and taking special steps to protect against forgery;
- The EESC has strong reservations about any provision that sees a European Professional Card deemed valid when a host country fails to issue a decision on the matter. Other forms of legal recourse against unmet deadlines, such as the right to an official decision or compensation, are preferable.

In view of the multitude of systems for recognising qualifications in Europe, the EESC is concerned about overlaps, conflicting regulations or even contradictions. The Directive therefore necessitates clarification of the order of priority of the Directive on the Recognition of Professional Qualifications vis-à-vis the instruments of the European Qualifications Framework and European standards.

**THE POSTING OF WORKERS**

The EESC has called for strengthening of the rules regarding posting (…) among other things by clarifying and improving the provisions of the Posting of Workers Directive and by enhancing cooperation between the authorities of the Member States. The EESC (…) stresses the importance of guaranteeing the protection of posted workers, respecting the various labour market models in the Member States and discouraging social dumping and unfair competition. The (…) EU should put more emphasis on social aspects.
In the EESC’s view, it is important for the proposal to guarantee protection for posted workers and respect the Member States’ different labour market models, but at the same time to increase the scope for cross-border trade, in particular by preventing unnecessary administrative costs. In order to promote transnational provision of services in a climate of fair competition, it is important to have equal minimum conditions of employment according to national laws and collective agreements.

The directive should ensure greater respect for the autonomy of the social partners and the role played by them in various labour market models. The EESC reminds Member States of the responsibilities in terms of securing effective controls and considers it very important to review the list of measures after three years. To protect the rights of workers the Member States should be able to oblige foreign service providers to designate a contact person with the necessary powers to negotiate on behalf of the company, and Article 11(3) should ensure that host country trade unions and other parties can defend the rights of posted workers in line with national practices.

The EESC finds the proposal on joint and several liability in subcontracting situations to be a crucial point in the proposed directive. It provides for protection of workers in the sector where subcontracting is most prevalent, while at the same time respecting employers’ need for certainty with respect to their liabilities. The EESC stresses, however, that the proposal must respect existing systems for several and joint liability in the Member States. The EESC strongly recommends Member States that do not have such systems to introduce them after consultation with the social partners. The EESC encourages the Commission, together with the social partners, to provide a more precise definition of due diligence, as has been done in some Member States. The EESC understands the concept of due diligence to mean, without prejudice to the social dialogue at the national level, that companies that perform adequate checks and controls of subcontractors should not be held liable.

**The European Social Mark**

The EESC welcomes the opportunity to give its opinion on the proposal from the European Parliament’s Employment and Social Affairs Committee for a pilot project on a European social mark in 2013. However, the situation has changed since the opinion was requested, as the European Parliament’s Budgets Committee text from 4 October 2012 was adopted without any reference to this pilot project.

In principle, the EESC supports the idea of boosting the social dimension in Europe and agrees that corporate social responsibility (CSR) should be recognised and encouraged. It is important, however, to stress that CSR must not under any circumstances be used as a substitute for social rights guaranteed in legal or international instruments, in which social dialogue has a central role.

It is therefore necessary, as a first step, to further clarify the added value, timing and focus of this proposal in relation to its policy goals. Those goals are important, but in the current circumstances they would be more effectively achieved above all by means of tougher and better-implemented social legislation.

The EESC would also point out that although the initiative is important, the proposal might be too complicated at a time when the EU is undergoing a
crisis, with high unemployment and a rising number of bankruptcies. A social mark for CSR purposes only illustrates social activities that are voluntary, but these differ as a result of differences in legislation between Member States, because European legislation only provides for minimum standards. It would be undesirable to introduce additional commitments for businesses that risk at this point creating wider gulls rather than increasing cohesion between different sized businesses and EU countries.

Account also needs to be taken of parallel initiatives such as social labelling in the field of social entrepreneurship (as referred to in the Social Business Initiative) to avoid confusion. In this connection, the EESC recommends waiting for the results of, and learning lessons from, the Commission’s forthcoming exercise to map social labelling in the field of social enterprise. Other overlapping initiatives such as the new CSR awards, social considerations in procurement, etc., should also be taken into account in relation to this proposal.

The EESC also feels that the credibility, legitimacy and feasibility of a voluntary social mark need to be better demonstrated. Building trust in and awareness of a new labelling system at European level requires a comprehensive accreditation and monitoring system, which needs to be weighed up against the benefits of an additional labelling system. In this context, before considering the introduction of a new European social mark, the EESC recommends exhaustively mapping existing labelling systems in the different Member States, identifying best practice and learning from non-successful ones. The EESC therefore rather recommends improving and expanding existing labelling systems to cover social responsibility (where they do not already do so).

Awareness should also be raised of the systems that already exist and of the businesses that use them, and other businesses should be encouraged to use them, instead of creating an additional system for consumers and businesses to deal with. In addition, a European communication action on the European labels should be considered, at least in the medium term, to build awareness among consumers and citizens. However, if a label were to be launched at some point, in order to avoid distortions, a European social labelling should not deviate too much from internationally recognised standardisations, but it should add a typically European touch: the respect for social rights.

**THE ABUSE OF THE STATUTE OF SELF-EMPLOYED**  
M. SIECKER  
CESE2063/2012, OJ C 161, 6.6.2013, p. 14 (see also table p. 100)

There is currently no unambiguous, EU-wide definition making a clear distinction between bona fide self-employed people working on their own account and bogus self-employed. Each competent authority and each individual body uses its own legal or regulatory framework, which can differ according to their jurisdiction and policy field (tax legislation, social security, business law, labour market, insurance). These abuses range from evasion of social security contributions, through tax evasion and undermining labour rights to undeclared work. This is a serious distortion of competition for the genuinely self-employed, micro businesses and SMEs.

In its 2006 Green Paper on Modernising labour law to meet the challenges of the 21st century, the European Commission raised the question of whether the Member States’ legal definitions of salaried work and self-employed work should be made clearer, to ease bona fide transitions from salaried to self-employed work and vice versa. In the consultation that followed the Green Paper, it was acknowledged that the absence of an EU-wide definition could
lead to problems, particularly in situations involving cross-border work (and supply of services).

The 2006 ILO recommendation takes a broad approach to the notion of "employment relationship" to allow action against bogus self-employment. In determining whether or not there is an employment relationship, the primary focus should be on the facts concerning the activities and the remuneration of the employee, irrespective of how the relationship is characterised in, for example, contractual terms. A hidden employment relationship exists where the employer treats a worker in such a way as to conceal his or her true legal status as an employee, and where contractual terms can have the effect of taking away the protection to which employees are entitled.

Several Member States have already attempted to come up with a precise definition of the difference between employees and self-employed people, based on a set of criteria laid down in advance. The complex variety of people's actual situations means that, in practice, it has often proven difficult to produce such a definition. The EESC is aware of this issue, and therefore suggests evaluating the different experiences of the Member States with a view to drawing conclusions and making recommendations for a more effective approach.

Reliable regulation, and a definition of bogus self-employment, would help bona fide self-employed and micro businesses. Bogus self-employment should be combated through better registration and monitoring of the real position in the labour market. Economic dependence on a client (often the former employer) points to the continuation of an employment relationship. Developing a good social security system for the self-employed in all Member States, taking account of the specific features of self-employed status, will help to combat and prevent possible abuses.

Employees who become genuinely self-employed are a normal part of the labour market and the economy. Therefore, consideration should be given to how they can benefit from joint facilities like integration into existing SME organisations, business organisations, chambers and labour market organisations, as well as inclusion in different parts of the social security systems and pension schemes. Also health and safety in the workplace should apply in full, and vocational training institutions should be made accessible.

The EESC emphasises the societal and socio-economic value and importance of self-employment. It is, however, important for individuals to be able to make a free, informed choice as to whether or not they wish to be self-employed.

NEW TRENDS IN SELF-EMPLOYED WORK: THE SPECIFIC CASE OF ECONOMICALLY DEPENDENT SELF-EMPLOYED WORK

This opinion looks at the definitions that various European organisations have given to the different forms of self-employed work. In particular, it provides a specific analysis of the most recent trends affecting "para-subordinate work", also known as "economically dependent self-employed work". Economically dependent self-employed work is coming under the spotlight in response to the need for a better understanding of the changing nature of self-employment which, affected by profound economic and social change, has moved beyond the forms of independent work traditionally recognised in the countries of the European Union. Only some European countries have legally recognised a new, intermediate category of workers, in between
employees and the self-employed. The main objective of the existing national legislation is to afford particular categories of workers better protection, without classing them as employees. In the countries which recognise an intermediate category between employee and self-employed status, economic dependency is the basis for specific rights not recognised for other types of self-employed workers, but less extensive than the rights accorded to employees. The coverage accorded to economically dependent self-employed workers varies considerably from one country to another. The rights of economically dependent self-employed workers may therefore be related to social protection. They may also derive from the guarantees that labour law lays down for workers. To that extent, they may apply to the individual relations between the worker and his client (minimum income, duration of work, etc.), but may also extend to the recognition of the rights of economically dependent self-employed workers to form organisations and act jointly to defend and pursue their professional interests.

Above and beyond differing economic and social realities in the various countries, the diversity of legislation from one country to the next may be explained by the challenges deriving from the legal recognition of economically dependent self-employed work. Intermediate statuses of this kind may in fact lead to legitimate reservations. There is reason to fear that, even with clarification if the legal categories, any recognition of economically dependent self-employed work might lead to people hitherto defined as employees being transferred to the category of economically dependent self-employed work, in connection, for example with companies' outsourcing strategies. It is true, therefore, that analysis of the issues surrounding the recognition of economically dependent self-employed work cannot be entirely separated from issues of "bogus self-employment", a reality which can be testified to in a number of EU countries. It is particularly evident in sectors such as construction, where this illegal practice is so widespread as to have warranted the recent adoption of a common position by the sector's European social partners. There are, undeniably, cases of workers who are formally self-employed (with both parties defining their relationship in these terms) but who work under the same conditions as employees. These cases tend to fit the hypothesis of employers qualifying work as self-employment to avoid the application of labour and/or social security legislation. In fact, in many cases the switch to economically dependent self-employed work is not strictly a voluntary choice, but rather one that has been imposed by external factors such as outsourcing of production or the company restructuring, with the resulting layoffs.

Above and beyond the risks that it brings, recognition of the status of economically dependent self-employed worker has nonetheless been a means of extending greater legal protection to workers who are not employees in the legal sense of the term, but self-employed, albeit in a situation where they cannot take advantage of the economic protection they would be afforded were they able to work for a number of different clients. In this respect, as well as extending protection with regard to social security and professional status, recognition of economically dependent self-employed work can also be a means of strengthening entrepreneurship. Moreover, recognising economically dependent self-employed work to balance the contractual relationship binding worker and principal would reduce the economic pressure on the worker and help to ensure a better quality of service to the final consumer.

With the development of cross-border services, the variety of legislation in this area is an issue that concerns the European Union as a whole. Community harmonisation of employment statuses, starting with an actual European definition of economically dependent self-employed work, is clearly not a straightforward matter. No discussion of this issue can ignore the diversity of national regulations and practices: under European social legislation, the definition of worker and entrepreneur is established at national level.

However, the pressing need to gain a better understanding of the developments in independent work must not be ignored either: otherwise, in countries
where economically dependent self-employed workers are not defined as employees, a growing sector of European workers risk being left without protection. Means of drawing up an accurate statistical picture of economically dependent self-employed work in the European Union should be developed. Studies permitting detailed analysis of national experiences in the area of economically dependent self-employed work should be promoted.

The issue of economically dependent self-employed work should be integrated explicitly into the Integrated Guidelines for Growth and Jobs, in ways to be determined. The European social partners should be encouraged to include economically dependent self-employed work in their work programmes, at cross-sectoral and sectoral level. The joint analysis of European social partners published in October 2007 illustrates how important the issue of professional status is for those involved in the European social dialogue. In this context, it could be helpful to assess the opportunities for developing links between the European social partners and organisations (particularly national bodies) representing independent workers.

The aspects common to the definitions of employed persons in the different EU Member States should be identified, not least on the basis of the information and analyses gathered as a result of the above recommendations. Such an approach would be useful not only to help ensure the proper application of the existing European Labour Law Directives but also to gain a better insight into the increases in cross-border employment in Europe. It would also make it possible to obtain the information needed to gain a better understanding of what economically dependent self-employment work might cover. Before any attempt is made to gain a better insight into self-employed but economically dependent work, a clear, accurate definition of employees needs to be established.

THE COMPETITIVENESS OF THE CONSTRUCTION SECTOR

The EESC welcomes the Commission's Action Plan on the Sustainable Competitiveness of the Construction Sector released in July 2012. The EESC (...) considers the construction sector to be a vital player in bringing down the EU's demand for energy, reducing mankind's ecological footprint and helping to mitigate and adapt to the effects of climate change. The EESC expects that the Action Plan will facilitate the sector in taking on these important challenges for society.

The (...) construction sector does not need direct financial support such as subsidies, but the Action Plan should seek to create a policy and regulatory framework that will enable the sector to optimally perform its role as a contributor to economic growth, social well-being and environmental stewardship, this includes ensuring the adequate flow of public investment and private financing to sustain viable projects; with Member States' economies being financed primarily through bank loans, immediate and effective measures are needed to improve SMEs' access to credit, inter alia by developing specific guarantee and counter-guarantee mechanisms.

Simplicity, stability and coherence of the EU regulatory and standardisation framework are also a crucial factor in both the internal and external competitiveness of the construction sector in Europe. The EESC is acutely aware that whilst austerity is rebalancing structural gaps, it is not leading to renewed growth; rather, it is exacerbating the economic crisis in many countries. Investment in sustainable buildings and infrastructure is necessary in order to secure Europe's future growth and job prospects.
Organised civil society invites the Commission, the European Parliament, the Council and the governments of the Member States to see investment in sustainable buildings and vital infrastructure as a strategic contributor to future economic growth and jobs and not simply as another form of public spending. Furthermore, the EESC recommends that such investment should not be used in the calculation of a country’s performance with relation to the Stability and Growth Pact.

Demographic change poses new challenges for the built environment that the sector will need to address. These include the effects of an ageing population on access to the built environment. The EESC takes note of ongoing work within the European Committee for Standardisation (CEN), under mandate from the European Commission, to adapt relevant standards to “Design for All” principles. Moreover, the construction sector is faced with the challenge of an ageing labour force. In this connection, the EESC recalls the Europe 2020 Strategy for Smart, Sustainable and Inclusive Growth and the challenge for the economy as a whole.

Many companies in the construction sector, especially SMEs, are feeling intense pressure due to late payments by public and private sector clients. Directive 2011/7/EU on combating late payment in commercial transactions must be properly enforced to ensure the survival of companies. In order to fully implement the provisions of Directive 2011/7/EU and achieve its objectives, the EESC would stress in particular the need to reduce payment/receipt terms in public procurement contracts to a maximum of 30 days and to ensure that those terms are respected and the invoices paid, with the adoption of appropriate budgetary and administrative measures (including bank loans for the payment of arrears). The EESC believes that the problem of arrears registered before the transposition of Directive 2011/7/EU should be resolved as a matter of priority; very significant delays in payment of invoices for public procurement contracts seriously affect the competitiveness, profitability and viability of companies. Those countries that have hitherto had shorter payment periods should not use the directive’s derogations to increase these periods. In this framework, the EESC recommends that a 30 day payment period should be the maximum permitted for invoice payments (including acceptance and verification).

In order not to jeopardise or significantly reduce the chances of economic recovery, the EESC would stress the need to restore and increase bank loans for investors and the real economy. It recommends preventing the exercise of excessive prudence in the granting of credit and the prioritising of investments in securities, to the detriment of loans to companies which have survived the crisis. Bridging loans are vital for the day to day survival of many companies, especially SMEs. Consequently, current restricted bank lending poses a real threat to the viability of such enterprises. In order not to aggravate already squeezed lending, financial prudential rules such as those put forward under the Basel III agreement should not lead to a further curb in lending by banks to the real economy. For this to be achieved, borrowing cheap money from the ECB should be conditioned by the obligation that an important part has to benefit the real economy.

A vital part of creating a sustainable and competitive construction sector is securing good working conditions in the sector. The Atkins report back in 19932 concluded that a construction sector that is dependent on precarious employment forms such as false self-employment creates disincentives for productivity. Thus, the Action Plan should also include strategies to stabilise employment and fight unlawful practices such as false self-employment in the sector. Independently of the form of employment, incentives need to be put into place for up-skilling the workforce and offering life-long learning possibilities.
Circumventing the rules and social obligations distorts the construction market. A level playing field for competition must therefore be secured, based on compliance with the existing regulations and social conditions in force in the host country. To achieve this, proper enforcement mechanisms to secure host country conditions must be applied.

The EESC calls on the European institutions and the Member States to strengthen policies and take concrete actions against the influence of corruption and criminal organisations on public tenders mainly on large infrastructure projects, which create an unacceptable and unfair competition through the use of threats and violence reducing freedom and democracy.

The EESC stresses that Member States should be allowed to apply current and additional control measures or administrative formalities which are deemed to be effective and necessary. This includes the obligation to ensure that such checks, monitoring and enforcement mechanisms, as well as effective and adequate inspections are actually undertaken, in order to ensure compliance with national law and the "posting directive" (96/71/EC).

Migrant workers should be entitled to minimum social conditions and/or equal treatment based on host country conditions and regulations. Proper enforcement mechanisms to combat social dumping and unequal treatment in respect of the law of migrant workers should be put in place.

The EESC supports fair and balanced contract conditions, which should be in place in all EU Member States and should include non-EU companies active on the EU construction market. The promotion of the Most Economically Advantageous Tender (instead of the "lowest price"), as well as a consistent approach to rejecting abnormally low tenders are essential pillars of efficient and fair competition.

### 6.2 RELATED EESC OPINIONS

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<td>On the free movement of workers</td>
<td>The EESC supports steps to improve free movement of labour, including the elimination of barriers such as the recognition of qualifications. It is especially necessary to modernise and liberalise this system, increase coordination in the healthcare sector in order to prevent labour shortages in sending countries, deepen coordination of social security systems and create a one-stop-shop to facilitate registration procedures.</td>
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<td>C. Dhéret; A. Lazarowicz; F. Nicoli; Y. Pascouau; F. Zuleeg. Making progress towards the completion of the Single European Labour Market. EPC Study No 75, May 2013.</td>
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new Action Plan. To continue this convergence process, the European Commission should urgently adopt a new EU Strategy Action Plan to promote high safety standards (as underlined by the Advisory Committee on Safety and Health at Work) in close cooperation with the social partners.

Where substantive EU rights are infringed, workers, consumers and businesses must be able to enforce the rights granted to them by EU legislation. However, in this context the EU only refers to the rights of consumers and businesses. It is necessary that workers have the same possibility to enforce rights from EU legislation in cross-border labour conflicts. Although it is often claimed that workers have access to justice and can seek redress, respect for working conditions and legal provisions through local courts in the host countries, in practice, they are directed to the courts in their home country.

**On transposition, implementation and enforcement**

Better cooperation between national enforcement authorities and a more prominent role for the European Commission in jointly coordinating these actions should be aimed at. Synergies between public and private enforcement players, such as consumer organisations, should be better exploited.

The cooperation between national enforcement authorities has become a key issue but has not been very successful to date.

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**The Single Market Act II – Together for New Growth**

**On Monti II**

The withdrawal of the Monti II regulation does not solve the problems created by the European Court of Justice (ECJ) in its judgments relating to the posting of workers. A solution to the current situation must be found, since it is preventing workers from exercising their rights fully. The Commission should ensure that fundamental social rights cannot be restricted by economic freedoms. The Commission should consider a proposal for a social progress protocol to be attached to the European Treaties. Such a protocol should clarify the relationship between fundamental social rights and economic freedoms by confirming that the Single Market is not a goal in itself, but was established in order to achieve social progress for all EU citizens (effectively in implementation of Article 3.3 of the Consolidated version of the Treaty on European Union). It should also make it clear that economic freedoms and competition rules cannot take priority over fundamental social rights and social progress and can in no way be interpreted as granting undertakings the right to evade or circumvent national social and employment laws and practices or for the purposes of unfair competition on wages and working conditions.

**On mobility**

Mobility as such is not a target in itself. It takes a lot for people to leave their home soil, and comparisons with the US are not always viable. Workers and the self-employed that do cross borders are often confronted with a lack of recognition of their qualifications, long working hours, poor working conditions, discrimination, unfair treatment and language barriers. Improving working conditions and promoting equal treatment should be part of a European active labour market policy. In particular, the EESC deplores the fact that, after more than 20 years, no progress has been made on the important issue of the

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recognition of vocational qualifications\textsuperscript{105}. The mobility of trainees, apprentices and young entrepreneurs should be promoted in Europe.

**On business environment**

The proposal for the modernisation of insolvency legislation is a step in the right direction in terms of improving the business environment, particularly when aimed at giving entrepreneurs a second chance. There is still too much red tape which SMEs, and especially microenterprises, are unable to handle. We call on the Commission to continue its efforts to reduce the administrative burden and to identify quantitative and qualitative targets. In this respect, the impact assessment should be constantly improved. To date, the evaluation of administrative burdens has focussed too much on the regulations themselves and, partly as a result of this, has been too "technocratic" in nature. A Member State regulation may very well be motivated by the desire to maintain the quality of the service provided and thus be in the interest of public welfare and hence not unnecessary\textsuperscript{106}.

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\textbf{KEY ACTIONS TOWARDS A SINGLE MARKET}  
\textbf{ACT II}

**On social cohesion**

The Committee is of the opinion that there is a need to clarify the enforcement rules and the reference to article 3.3 of the Lisbon Treaty where it is said that the internal market is not a goal in itself, but an instrument to achieve social progress and a sustainable society for the European citizens.

**On public procurement**

Public procurement has to be established by rules that not only refer to the best price; other criteria related to the social benefits and the impact on sustainability must be weighted on an equal footing.

It should be considered to which extent EU public procurement markets could sustainably remain open whilst third countries maintain an unlevelled playing field. In this respect, ratified ILO conventions and Human Rights have to be respected by all players, Member States and third countries alike. The EU should actively promote this policy at global level.

More could be achieved through e-procurement to speed up administrative procedures.

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\textbf{THE SINGLE MARKET ACT - TWELVE LEVERS TO BOOST GROWTH AND STRENGTHEN COMPETITIVENESS}

**On actions for SMEs**

\textsuperscript{105} OJ C 191, 29.06.2012, p. 103.

\textsuperscript{106} See EESC opinion OJ C 318, 29.10.2011, p. 109, point 3.2.
The EESC welcomes the proposals that should lead to the solution of some of the problems that SMEs face, especially regarding increased access to cross-border venture capital financing. However, the Committee notes that this will not be sufficient to address the more general restricted access to financing many SMEs face across Europe in the aftermath of the crisis. In addition, more attention must be paid to the needs of micro- and family businesses which are often unable to access existing support mechanisms and whose financial sustainability is often undermined by late and non-payment. The effect of Basel III on the banks' willingness to finance SMEs should be assessed.

On mobility

The EESC would also like to remind that most other key actions will have an impact to a large or smaller extent on the SMEs. The role of Small Business Act should not be underestimated. The principle of "think small first" should therefore be applied in every legislative proposal, whose effects on SMEs and micro/family businesses should be screened ex ante. Implementation and its monitoring should be considered a priority for EU SME policy.

Recognition of professional qualifications has been tried before, in the late eighties, with then fewer Member States. The Professional Qualifications Directive adopted in 2005 consolidated the 15 previous directives covering separate categories of regulated professions. Since it did not reach so far its target the EC started in 2010 the revision of the transposition of the Directive.

The EESC wants to underline that any additional legislation to the current directive should be preceded by a thorough diagnosis of how existing legislation can be amended to further support the mutual recognition of professional qualifications. The EESC points out:

- Reducing the number of regulated profession: A systematic screening should be conducted on the need for regulated professions to stay regulated respecting new labour market needs;
- The idea of a European Professional Card needs to be explored further (automatic recognition by the competent authorities, who should be able to issue these cards in the first place);
- Updating of minimum training standards should be based on the outcome in terms of skills and competences rather than on hours spent in the school;
- To ensure co-existence of the general system of the professional qualifications Directive on the one hand and EQF and the other transparency tools of the Bologna and Copenhagen process.

The EESC suggests that until a full harmonisation among the 27 Member States is reached a possibility of another approach based on joint activities between a smaller number of Member States should be evaluated, potentially utilising enhanced cooperation, that follows migration patterns and labour market developments; this might bring the success that is needed to improve the mobility of workers. After this first step, it could prove easier to target full harmonisation.

The EESC does not see a need to review the Directive on occupational-pension institutions since it established a sufficient legal framework. It is still necessary to improve the functioning of its cross-border elements.

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107 European Qualifications Framework.
On services
The Committee supports the proposal for the extension of the standards on services, but points out that the specific character of services should be taken into account and the model of standardisation of goods cannot be copied automatically. Further development of standards in the field of services has to take into consideration market and societal needs as well as consumer safety.

The EESC welcomes the proposal regarding the High Level Group on business services to identify the main obstacles and bottlenecks on the market.

The Committee welcomes the initiative to modernise public administrations by setting up "points of single contact", and can only applaud the development of administrative cooperation in cross-border matters. This cooperation also needs to be extended to policy areas where compliance with obligations is at stake. The EESC considers the Commission's conclusions on the impact of the Services Directive and on the functioning of the services sector to be premature as the directive has been in force for only a few years 108.

On social cohesion
The EESC supports the ideas the Commission presents under the lever of Social Cohesion. It goes beyond simply better implementation of the Posting of Workers Directive, as the Commission initially proposed in its communication Towards a Single Market Act. The Commission plans to adopt a legislative proposal to improve the implementation of the Posting of Workers Directive, which is to include or be supplemented by a clarification of the exercise of fundamental social rights within the context of the economic freedoms of the Single Market. This does not propose a revision but suggests another legal act on the improved implementation of the directive. Contradictions in the applications of the directive should be clarified and Member States' competence to enforce their labour standards and industrial relations systems, including the crucial role of collective bargaining in the different forms, should be properly defined. The result of this clarification should show if a revision of the Posting of Workers directive is needed. This should not come at the expense of competition rules and the principle of non-discrimination on ground of nationality. Any review of the existing legislation or any new legislative act should be based on consultation with the social partners and on the balance between high labour standards and economic freedoms, as well as addressing problems caused by black labour markets.

On business environment
Regulation cannot be labelled as a barrier or a burden when it equals safeguarding societal interests, including consumers and workers' rights. The proposed simplification of the accounting directive that would reduce the administrative burden to the businesses especially SMEs seems a right contribution to the business friendly environment but it should be only one part of a comprehensive review of unnecessary regulatory burden that the European enterprises have to face making them less competitive on the global market.

The EESC welcomes and supports the proposed actions such as interconnection of business registers, a Statute of the European Private Company which matches societal requirements, more coherent implementation of the Small Business Act by the EU and Member States but stresses the need to reduce the

unnecessary administrative burden further and expects that the Commission will propose the targets after 2012 when the administrative burden should have been reduced by 25%. The Committee notes that a reduction of unnecessary burden is always desirable be it for businesses, consumers or public authorities but that there needs to be a careful assessment to ensure that the original purpose of the legislation is not compromised. The Committee recalls that a common EU approach can also reduce administrative burden if it replaces 27 differing national approaches.

On public procurement

The EESC welcomes the initiative to develop a balanced procurement policy which fosters demand for environmentally sustainable, innovative and socially responsible development. Attention must also be paid to ensuring that corruption and misuse of public funds in procurement processes is addressed across the EU. But public procurement is in danger of becoming too complex to be applied consistently. At the very least, more should be done to build capacity in public administration to apply public procurement rules in a consistent way, while at the same time enabling them to build the new demands public procurement needs to fulfil into their specifications. The Commission should also promote more widespread use of the code of conduct by public authorities to make procurement more SME friendly.

Since the start of the Single Market project in the mid-1980s, the integration of a fundamental social clause in the rules has been discussed. These demands have been partially met during the revision of the procurement rules in 2005. The review of the EU public procurement directives should allow for full exploitation of the current framework for the integration of social and environmental criteria into public contracts, also to be applied by third country services providers, provided that such criteria are in balance with the fundamental principles of EU law as enshrined in the Lisbon Treaty.

The Commission's initiative in the area of public procurement should pay more attention to the persistent imbalance in openness of public procurement markets between the EU and its main trading partners. It should be considered to which extent EU public procurement markets can sustainably remain open whilst third countries maintain an unlevelled playing field. In this respect, ratified ILO conventions and Human Rights have to be respected by all players, Member States and third countries alike. The EU should actively promote this policy at global level.
interact with one another and impact on society at large: workers, consumers, businesses and citizens alike. There is no specific Single Market for each of those categories. According to the Treaty on European Union (art. 3.3) "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance". The Committee insists on guaranteeing a high level of consumer protection.

Open communication on the added value and challenges is of paramount importance in order to gain public support. Short term political aims often resulting in a lack of consistency and/or unbalanced proposals as well as the financial economic, political and social crises do not contribute to citizens' trust in the EU. It is important to take into account the reality on the ground and the real worries of citizens.

The European Commission cannot alone take responsibility for raising awareness on Single Market issues and for informing the public on instruments that are available for all. The input of organised civil society is indispensable as well as the involvement of national governments that have to take into consideration that the Single Market is an integral part of our domestic economies. Political parties, the media, educational institutions and all stakeholders have a historical responsibility in relation to the EU being able to successfully cope with the challenges of the global world based on the values that so far have characterised our social market economies. The world will not wait for us. Europe's fragmentation, protectionism, nationalism and lack of vision will not allow us to compete with the new global powers.

The Single Market is at the heart of European integration and its EU 2020 Strategy. Monitoring, managing and enforcing Single Market legislation is crucial. To achieve this, the European Commission should cooperate closely with Member States through better use of the Single Market Scoreboard.

DEVELOPING A PEOPLE-ORIENTED, GRASSROOTS APPROACH TO INTERNAL MARKET POLICY

Thinking about the internal market today, however, entails thinking again about the entire model of the European venture. There is every cause to wonder whether Europe – as conceived by some, who have striven so hard to build it, as others have attempted gradually to dismantle it over the last 60 years – will still exist in 2050 as a model of freedom and a beacon of culture, championing peace, advocating fraternity between peoples and equality between people, in a world free of discrimination and barriers. This was the question posed recently by Commissioner Barnier in an eloquent speech to Humboldt University.

This is all the more true at a time of particular upheaval, as Europe struggles with a stubborn crisis that is systemic rather than cyclical, and is not only economic and financial, but also a crisis of social and cultural values, from which the broad swathe of interests represented at the EESC sees no obvious way out.

We are facing a crisis of jobs. The situation is such that Europe can no longer guarantee jobs for its citizens. The only way out of this predicament is through the creation of growth and the main instrument for achieving such growth must be the full accomplishment of the internal market.
Civil society quite legitimately has questions regarding the ability of the present EU institutional model as shaped by the Lisbon Treaty to handle this crisis; it doubts that the current economic and financial model is capable of effective and appropriate self-regulation and is greatly concerned at the lack of consistent and effective regulatory measures as well as at the proliferation of isolated and contradictory decisions from all sides; it wonders how stricter and more effective control over the financial system can be achieved, in view of the successive stock market crashes with all the inevitably ensuing social and economic damage; it fears that the deep-rooted symptoms of the crisis, given the imminent danger of world recession, suggest that the European model in its current form may collapse. Civil society is therefore calling on its current leaders to show the necessary ambition and vision to successfully regenerate the European economic and social model in keeping with the values and principles enshrined in the Treaty.

In the context of this particular opinion, it must be added that the Single Market Observatory and the Consultative Committee of the European Free Trade Association (EFTA) involving Iceland, Liechtenstein and Norway, worked together. It is often forgotten that if the EU consists of 28 Member States, its Single Market has however 31 countries.
7. TECHNICAL FICHES

7.1 THE SERVICES DIRECTIVE IN THE MEMBER STATES

As always when it comes to the European Union, the European integration project or the Single Market, ownership by their constituents or actors is essential – and lacking. Information on the legislative changes undertaken by Member States can be found here: http://ec.europa.eu/internal_market/services/services-dir/implementation/implementing_legislation/index_en.htm

The SMO secretariat has compiled a number of data mostly in the form of tables with a view to providing an overview of the situation across the Member States in general and among the 6 countries under scrutiny in particular.
THE IMPACT OF THE SERVICES DIRECTIVE ON NATIONAL LEGISLATION

The synopsis below attempts to illustrate the amount of changes brought about by the Services Directive in the legal corpus of the Member States.


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<th>LITTLE IMPACT BEYOND MINIMUM TRANSPOSITION</th>
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By "little impact beyond minimum transposition" the source means that pre-existing administrative laws in general were little affected. "Relative impact beyond minimum transposition" indicates a certain impetus for the national legislator, but usually not in a profound way. In the case of Malta, the Services Directive engendered general and universal standards beyond a mere minimum transposition. The Directive has had a deep impact on Germany and Spain inducing changes in administrative laws in general. In Poland, the system of administrative economic law in general has been subject to a profound change.

Croatia was not an EU Member State when this survey took place. The source does not give any indication as to the transposition of the Services Directive in Greece and Hungary and this will checked out in the context of the present study. At the time of the survey Luxembourg’s implementation looked like that of the "Little Impact" Member States. The survey concludes that "Germany was the only country (...) that used the implementation of the Services Directive to implement new and potentially generally applicable administrative procedures beyond the scope of the Directive". In Portugal, the Directive has had impact only on certain aspects of administrative law. The EFTA countries (Iceland, Lichtenstein and Norway) are not accounted for in the survey although there implement the Single Market rules.

The survey further indicates that "the establishment of Points of Single Contact, procedural simplification, particularly the introduction/considerable extension of a tacit (fictitious) authorisation, and the establishment of a system of administrative assistance appear to be the most important features of the SD-stipulated changes for national administrative law." It also points at the fact that in Lithuania, Ireland to some extent, and Poland, the Services Directive was primarily perceived in the light of economic matters and not in that of administrative considerations.
The impact of the services directive on national legislation
RESPONSIBILITY/COMPETENCE FOR THE SERVICES DIRECTIVE IN THE MEMBER STATES

<table>
<thead>
<tr>
<th>MINISTRY FOR ECONOMY</th>
<th>FOREIGN AFFAIRS</th>
<th>OTHER STATE ADMINISTRATION</th>
<th>OTHER</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSTRIA</td>
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<td>BELGIUM</td>
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<td>BULGARIA</td>
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<td>CROATIA*</td>
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<td>CYPRUS</td>
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<td>CZECH REPUBLIC</td>
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<td>DENMARK</td>
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<td>ESTONIA</td>
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<td>FRANCE</td>
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<td>GERMANY</td>
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<tr>
<td>GREECE*</td>
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<tr>
<td>HUNGARY</td>
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<td>IRELAND</td>
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<td>ITALY</td>
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<td>LATVIA</td>
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<td>LITHUANIA</td>
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<td>LUXEMBOURG</td>
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<td>MALTA</td>
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<td>NETHERLANDS</td>
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<td>POLAND</td>
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<td>PORTUGAL</td>
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<td>ROMANIA</td>
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<td>SLOVAKIA</td>
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<tr>
<td>SLOVENIA*</td>
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<td>SPAIN</td>
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<td>SWEDEN</td>
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<tr>
<td>UNITED KINGDOM</td>
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</tbody>
</table>

The source is the very same as for the previous synopsis. It does not give any details of responsibilities for implementation in Croatia (see remark above), Greece and Slovenia. This will be remedied shortly. The first column is plain to understand. Luxembourg however has the Ministry of State on board,
too. Member States with a federal system such as Austria and Germany have set up inter-level groups involving local authorities. Denmark and Finland have also used such groups to comprehend the various aspects of the Directive.

Looking at the 2nd left column in the above synopsis we see that Hungary and Sweden have their Ministries for Foreign Affairs in charge. This may be an illustration of how "alien" the EU and its Single Market are perceived, not only by the public but also by governments.

In the 3rd column, we have Cyprus and its Planning Bureau, under the Ministry of Finance and with competence in economy and social growth, in charge. Italy's option is a rather unusual one since "it appears that the government in general [was] mandated by parliament to conduct the implementation process by legislative decree." Ireland has a similar method as the government used a statutory instrument. Romania has the Department for European Affairs dealing with it and Spain set up an inter-ministerial cooperation to coordinate the implementation process.

The Member States in the 4th column (right) have opted for relatively original solutions. Denmark has its Danish Internal Market Centre in the lead but the centre is set up by the Ministry in charge of economic issues together with the Danish Enterprise and Construction Authority. Implementation in Latvia is headed by the Cabinet of Ministers, with the Ministry for Economy having a decisive role. Lithuania hired a private law firm to assist the government in identifying the legal areas impacted upon by the Services Directive. A working group set up by the Lithuanian government is in charge of horizontal transposition.

The survey further states that "in addition to the general supervising institutions, further ministries, representatives of municipalities, non-governmental organisations, trade organisations, chambers, and so forth (including stakeholders in general) have been involved in the legislative process in nearly every Member State."
POSITIONS ON THE SINGLE MARKET FOR SERVICES

The Services Directive in a nutshell

By the end of the year 2009 it became easier for European businesses to provide their services in other EU Member States. Whereas goods can be moved almost freely within the European Single Market, the movement of services still has to overcome significant administrative obstacles.

Businesses are still required to abide by national laws in other EU Member States. As a result, consumers and businesspeople alike face a variety of sometimes very diverse regulations, regardless of whether their activities are temporary or permanent. Since service personnel sometimes need to cross borders in order to perform their services on/for local customers, the services sector is most visibly impacted by differing national regulations.

The EU Directive on Services in the Single Market removes these obstacles in order to facilitate cross-border services and the establishment of service providers in EU Member States other than their own. To attain these goals European legislators and governments are obliged to cut administrative burden by:

- Reducing national regulations that tend to obstruct the cross-border provision of services within the EU’s Single Market;
- Establishing Points of Single Contact (PSCs) where service providers can complete all relevant administrative procedures;
- Providing essential information about the requirements foreign service providers have to comply with;
- Making procedures and information accessible from any distance by electronic means.

Purpose of the Services Directive

Complete the Internal Market for services while safeguarding a high level of quality and social cohesion;
Enhance growth within the framework of the Europe 2020 strategy and the Single Market Act;
Make it easier for self-employed and SMEs to pursue activities, develop business and recruit cross-border.

Exclusion from the scope of the Services Directive

Non-economic SGIs, healthcare services, most social services;
Labour law and national social security legislation.

Just a reminder…

“Services make up the great majority of economic activity in most developed economies”


It could prove useful to draft a concise guide to Services in the EU, possibly as a glossary of terms with short explanations.

While the market is truly international, labour remains national…

In “How to build European services markets”, Centre for European Reform, September 2012. In France and the UK, services account for nearly 80% of economic activity. Services in Germany (that has a large manufacturing sector) make up 72%.
<table>
<thead>
<tr>
<th>SHORTCOMINGS</th>
<th>PROPOSED REMEDIES/AVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deficient recognition of professional qualifications (esp. in the medical sector)</td>
<td>Review the Directive on professional qualifications</td>
</tr>
</tbody>
</table>
| Problems with the functioning of the PSCs are proof of identity, use of e-signatures etc. | Improve user-friendliness of PSCs  
Full interoperability of PSCs  
PSCs must equal administrative simplification  
PSCs must inform on employment and social laws in the various MS Dialogue and exchange of best practices between MS => PSCs on an equal footing in all MS  
Update of information on national requirements through cooperation between individual PSCs |
| Information on how to contact PSCs insufficient | EU-wide promotion campaign |
| Many service providers are not clear about their service coming under the Services Directive | Draw a clear distinction between services according to the Directive and SGIs  
Safeguard SGIs through framework legislation |
| IMI system possibly underused | |
| Mutual evaluation too burdensome for administrations | Balance between advantages of the mutual evaluation procedure and subsequent burden? |

**ECON Committee suggestions**

<table>
<thead>
<tr>
<th>ECON Committee suggestions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive assessment of the impact on economic activity, qualitative and quantitative levels of employment, social protection, fulfilment of environmental objectives and services quality</td>
</tr>
<tr>
<td>PSCs to provide appropriate and comprehensive information on national labour rights and tax arrangements (esp. re VAT)</td>
</tr>
</tbody>
</table>
| PSCs insufficient to provide qualitative assistance | Performance analysis on the basis of tangible indicators  
PSCs not only online but also physical  
In view of growing complexity, dialogue, advice and information are core elements |

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115 Esp. re art. 2(j).
<table>
<thead>
<tr>
<th>Keep admin burden to proportionate and reasonable levels</th>
<th>Make better use of IMI to communicate more rapidly and effectively</th>
</tr>
</thead>
<tbody>
<tr>
<td>IMI system possibly underused</td>
<td>Assess implications of the vertical and horizontal transposition methods (quality and legibility)</td>
</tr>
<tr>
<td><strong>EMPL Committee suggestions</strong></td>
<td><strong>REGI Committee suggestions</strong></td>
</tr>
<tr>
<td>Interpret the Services Directive in the light of the ECJ rulings (Viking, Laval and Rüffert)</td>
<td>Involvement of regional and local authorities in administrative cooperation (IMI, PCSs)</td>
</tr>
<tr>
<td>Review the Posting of Workers Directive</td>
<td>PSCs to be established as public bodies and one-stop shops for service providers</td>
</tr>
<tr>
<td>Balance between Internal Market and European social model (art. 3 TEU)</td>
<td>Close cooperation between PSCs to facilitate exchange of information on cross-border services</td>
</tr>
<tr>
<td><strong>Backlog in implementing the Directive</strong>&lt;sup&gt;116&lt;/sup&gt;</td>
<td>Interchange of information (through a European network) on the reliability of service providers</td>
</tr>
<tr>
<td>Member States to do their homework in a timely manner</td>
<td>Information campaign for local and regional authorities on the implementation of the directive</td>
</tr>
<tr>
<td>Issue regular implementation reports (incl. real medium- and long-term effects of the Directive on employment)</td>
<td>Excessive administrative burden (i.e. on local and regional authorities) arising from the existing requirements to notify changes to articles of association</td>
</tr>
<tr>
<td><strong>Legal uncertainty</strong></td>
<td>Thorough monitoring of the application of the restrictions provided for in the Directive re SGEIs&lt;sup&gt;118&lt;/sup&gt;</td>
</tr>
<tr>
<td>Develop the concept of advance administrative rulings (labour law and social security)</td>
<td>Prosecution&lt;sup&gt;117&lt;/sup&gt;</td>
</tr>
<tr>
<td>Fraud through circumventing national employment laws (undeclared work or self-employment)</td>
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<sup>116</sup> The quality of implementation of the Directive by the Member States is just as vital as the compliance with implementation deadlines.

<sup>117</sup> See the fundamental issue of market surveillance.

<sup>118</sup>
<table>
<thead>
<tr>
<th>SHORTCOMINGS</th>
<th>PROPOSED REMEDIES/AVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fragmented interpretation and inadequate implementation of the Services Directive</td>
<td>Effective enforcement smart and fast way of creating growth without public spending</td>
</tr>
<tr>
<td></td>
<td>Interpret the Directive in as extensive and future-proof manner as possible (=&gt; innovation)</td>
</tr>
<tr>
<td></td>
<td>Interplay with sector-specific rules</td>
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<tr>
<td></td>
<td>Consistency between peer review (under the Services Directive) and the mutual evaluation (under the Professional Qualifications Directive)</td>
</tr>
<tr>
<td></td>
<td>Identify areas where MS are disproportionately blocking access to certain professions</td>
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<tr>
<td></td>
<td>Go for mutual recognition when harmonisation doesn't apply</td>
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<tr>
<td></td>
<td>Exchange of best practices between MS</td>
</tr>
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<td>Learn from border regions</td>
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<td></td>
<td>Fast track infringement procedures to be set up when breaches of the Directive are identified</td>
</tr>
<tr>
<td>Member States protecting the domestic market often using overriding reasons of public interest</td>
<td>Make proportionality assessments</td>
</tr>
<tr>
<td></td>
<td>Practical guidance for MS on how to apply these assessments</td>
</tr>
<tr>
<td>Burdensome legal-form and shareholder requirements, territorial restrictions, economic needs tests and fixed tariffs create unjustified obstacles to cross-border establishment</td>
<td>Remove double regulatory burdens</td>
</tr>
<tr>
<td></td>
<td>e-procedures to enhance simplification, reduce compliance costs and increase legal certainty (see PSCs)</td>
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<td></td>
<td>Produce a list of the most burdensome restrictions and propose targeted reforms</td>
</tr>
<tr>
<td>Service providers having unjustified discriminatory practices (nationality, place of residence)</td>
<td>MS to enforce art. 20(2) of the Services Directive</td>
</tr>
<tr>
<td>Inadequate cross-border coverage of insurance for service providers</td>
<td>Dialogue between stakeholders</td>
</tr>
</tbody>
</table>

118 While respecting the division of competences with the Member States (MS are free to define, in accordance with EU law, what they consider to be SGEIs and how they operate).
119 They may involve extra authorisations and hence cumulative costs.
119 Cross-border cooperation often provides valuable downsized example of how the Single Market can actually work.
120 See art. 15 of the Services Directive. This indirectly points at Member States not taking ownership of the Single Market.
121 See art. 16 of the Services Directive.
| SOLVIT underused<sup>123</sup> | Second generation PSCs to be multilingual, user-friendly fully functional e-government portals  
PSCs to be fully interoperable |

## HOW TO BUILD EUROPEAN SERVICES MARKETS

**Centre for European Reform** ([http://www.cer.org.uk](http://www.cer.org.uk)), September 2012

<table>
<thead>
<tr>
<th>SHORTCOMINGS</th>
<th>PROPOSED REMEDIES/AVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absence of an integrated market for services explains part of the divergence in productivity between the US and the EU over the last 20 years</td>
<td>Lower the barriers&lt;sup&gt;124&lt;/sup&gt; created by the costly patchwork of national regulations&lt;sup&gt;125&lt;/sup&gt;</td>
</tr>
<tr>
<td>Services markets tend to be heavily regulated. There are also big divergences between national regulations that hamper cross-border service provision&lt;sup&gt;126&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>Failure of service providers to implement new organisational methods that maximise ICT benefits&lt;sup&gt;127&lt;/sup&gt;</td>
<td>The mutual evaluation exercise should become a permanent review of services regulation to encourage regulators to get rid of superfluous rules and trust each other's rules</td>
</tr>
<tr>
<td>The Directive leaves governments with too much discretion to decide what constitutes a barrier to establishment or a barrier to the provision of services across borders. They can label such barriers 'proportionate'</td>
<td></td>
</tr>
<tr>
<td>The 'big bang'&lt;sup&gt;128&lt;/sup&gt; approach taken in the original Directive inevitably led to opposition</td>
<td>Gradually extend mutual recognition&lt;sup&gt;129&lt;/sup&gt;, market by market&lt;sup&gt;130&lt;/sup&gt;</td>
</tr>
</tbody>
</table>

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<sup>123</sup> See EESC opinions on IMI (CESE 1848/2011). See also the EESC opinions on the SMA (CESE 1525/2011, CESE 1583/2011, CESE 1575/2012, CESE 2039/2012) pointing at the fact that SOLVIT is understaffed and lacks resources. SOLVIT is widely invisible (many civil society organisations and local Chambers of Commerce for example are fully unaware of its existence).


<sup>125</sup> "Richer Member States also worry that services liberalisation will stoke tensions over immigration. It is difficult to differentiate trade in services from labour migration, in many instances." In "How to build European services markets", CER, September 2012. According to CEPS special report no. 67, p. 16, "(...) the removal or lowering of services barriers [will not only] create a more pro-competitive environment by boosting services imports, which would eventually lead to higher efficiency generating economic growth (the traditional economic impact analysis of border obstacles), but the implementation will also reform the domestic services markets, which is bound to have similar effects on growth via domestic activity, not imports."

<sup>126</sup> See also Securing EU Growth from Services, F. Mustilli and J. Pelkmans, Centre for European Policy Studies (CEPS), CESP Special Report no. 67, October 2012.

<sup>127</sup> The CEPS report no. 67, p. 11, footnote 15, indicates however that "For SMEs, e-inclusion can be below potential because of the lack of e-skills at various levels (....)."

<sup>128</sup> By 'big bang' approach the CER author, J. Springford, means that "the Services directive was too sweeping, trying to free up all markets at once".

<sup>129</sup> According to CER, "There is little empirical evidence that mutual recognition of goods and services created in one country endangers consumers in another. (...) Similarly, there is little evidence that mutual recognition encourages a 'race to the bottom' in terms of regulatory standards".

<sup>130</sup> CER states that "Potentially, construction is one such sector and one where the biggest gains from mutual recognition could be made".
Member States often drag their feet on the implementation of directives.

Correct, timely transposition and implementation is a leitmotiv of the Single Market's litany...

"If the Single Market for services can be extended step-by-step, through mutual recognition, Europe's economies will be able to integrate further while sparing the EU from political paralysis."

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## SECURING EU GROWTH FROM SERVICES

F. Mustilli and J. Pelkmans, Centre for European Policy Studies (CEPS), CESP Special Report no. 67, October 2012

<table>
<thead>
<tr>
<th>SHORTCOMINGS</th>
<th>PROPOSED REMEDIES/AVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dysfunctions in the services markets impair the euro's capacity to absorb</td>
<td>Better integration of services markets (&quot;more Europe&quot;?)</td>
</tr>
<tr>
<td>shocks and the proper functioning of the monetary union</td>
<td>Cross-border Intra-EU liberalisation, EU regulation (in case of market failures)</td>
</tr>
<tr>
<td></td>
<td>competition policy and mutual recognition</td>
</tr>
<tr>
<td>Barriers in services are more numerous than in goods, tradability is low</td>
<td>This implies deep domestic services reforms resulting in more competitive and</td>
</tr>
<tr>
<td>and selective while SMEs may have a problem with the freedom of establishment</td>
<td>better-functioning services markets everywhere, which are quintessential and</td>
</tr>
<tr>
<td></td>
<td>far more important for EU growth than exposure to e.g. cross-border intra-EU services</td>
</tr>
<tr>
<td>EU business services are dominated by micro-enterprises that &quot;are sub-scale</td>
<td>Simulations of domestic reforms bringing EU countries' regulatory</td>
</tr>
<tr>
<td>and incapable of exploiting the Single Market&quot;</td>
<td>restrictiveness to best-practice levels (without affecting the solution to market</td>
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<td></td>
<td>failures) show very substantial productivity improvements for many countries</td>
</tr>
<tr>
<td>The removal of intra-EU barriers critically depends on the abolition or</td>
<td>In financial services, no new estimates seem available yet, whilst in network</td>
</tr>
<tr>
<td>reform of domestic services regulation</td>
<td>industries there are only some ad hoc attempts (pointing to fairly substantial</td>
</tr>
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<td></td>
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</tr>
<tr>
<td>More than goods, services suffer from regulatory disparity or variety</td>
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<tr>
<td>between MS</td>
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<tr>
<td>The gains from realizing a fully-fledged EU internal market for services</td>
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<tr>
<td>(that is, much beyond the horizontal services directive) are still not fully</td>
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131 See footnote 4.
132 Self- and co-regulation as alternatives? See the SMO database on European self- and co-regulation.
133 "This 'regulatory heterogeneity' can be very costly to business with a European focus – for every country, fixed entry costs will be incurred separately, which will have to be earned back before the investment and entry become profitable. Such recurrent fixed entry costs are extremely discouraging for services SMEs and at the very least not a help for many other providers. (…) A limited reduction of regulatory heterogeneity in the OECD already yields substantial increases in incoming FDI". CEPS Special Report no. 67, p. 17.
understood gains); in professional services no reliable estimates are available. In all three, there is no such thing as a genuine single market, which is suggestive of considerable further gains; the manifold economic gains from the services Directive are beginning to be understood only now and the medium- as well as longer- run gains are almost certainly adding up to several percentage points of EU GDP, if not more. Adding to the long-neglected benefits of less regulatory heterogeneity in services, gains are much higher still.

| Reaping the gains from better functioning services markets is not always just a matter of greater competition |
| This requires considerable infrastructural investments (gas, electricity, rail, and internet) over longer periods throughout the Union. A unique case is the digital single market, coupled with a much broader Digital Agenda |

| CEPS' spot on conclusion |
| A 'double-dividend' strategy: what Member States are expected to do in terms of reforms also serves the broader goal of EU economic growth, whereas the EU pursuit of the Single Market in services not only serves this goal but, in turn, helps directly the national reform efforts as well. Both will indirectly be helpful for the competitiveness of European industrial firms, too. |
| A 'triple dividend' strategy: promoting domestic services reform helps the proper functioning of monetary union. A well-functioning monetary union must have a smooth and swiftly working adjustment mechanism. More precisely, one would like to see relatively low-cost and rapid absorption of (especially idiosyncratic) shocks which minimises the cumulative loss of growth from such shocks. This is crucial for a monetary union because it needs to have alternative adjustment channels as nominal exchange rate changes are no longer available. Services reform would best go hand-in-hand with labour market reforms as they are complementary and can also reinforce each other (because services are very labour intensive) |
SERVICES DIRECTIVE IMPLEMENTATION SURVEY
The Chambers’ Perspective on the Points of Single Contact
EUROCHAMBRES, Policy Survey 7th edition, January 2011

<table>
<thead>
<tr>
<th>SHORTCOMINGS</th>
<th>PROPOSED REMEDIES/AVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Many PSCs do not offer an adequate service on procedures and formalities</td>
<td>Ensure that the PSCs are genuine transactional platforms to complete procedures thereby</td>
</tr>
<tr>
<td></td>
<td>going far beyond passive information provision</td>
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<tr>
<td></td>
<td>Improve user-friendliness and cut red tape (within PSCs and in terms of reducing</td>
</tr>
<tr>
<td></td>
<td>procedures in general)</td>
</tr>
<tr>
<td>PSCs lack full interoperability</td>
<td>The notion of service attractiveness for users as well as system integration must</td>
</tr>
<tr>
<td></td>
<td>become bottom line</td>
</tr>
<tr>
<td>Awareness raising and information campaigns are not synchronic with the</td>
<td>Timely information campaigns involving relays such as Chambers of Commerce</td>
</tr>
<tr>
<td>Services Directive(^{135})</td>
<td></td>
</tr>
</tbody>
</table>

\(^{134}\) One might need to recall the think small first principle and the Small Business Act.
Increase synchrony between policies and outcome or consequences on the ground ⇒ everything is interconnected and transposing and implementing the services Directive also means setting up in real time front end facilities such as PSCs

<table>
<thead>
<tr>
<th>Different sources coexist where a single portal (i.e. the ideal PSC) would provide obvious added value by making life easier for all</th>
<th>Implement the &quot;one-stop shop&quot; concept throughout the whole process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase synchrony between policies and outcome or consequences on the ground ⇒ everything is interconnected and transposing and implementing the services Directive also means setting up in real time front end facilities such as PSCs. Basically, it is about eliminating delays and &quot;administrative (and/or political) procrastination&quot;</td>
<td></td>
</tr>
</tbody>
</table>

More generally, transposition of the Directive's provisions at regional and local level suffers from:

a) A lack of communication between central government and decentralised administrations;
b) A slow uptake of the Directive's elements at local level;
c) Subsequently, this may hamper communication between administrations and service providers while reducing the effectiveness of the Directive

<table>
<thead>
<tr>
<th>Lack of multilingualism where PSCs are supposed to facilitate cross-border activities</th>
<th>At least English should be an option but multilingualism would allow for a wider audience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Implement the &quot;one-stop shop&quot; concept throughout the whole process</td>
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<tr>
<td>Different sources coexist where a single portal (i.e. the ideal PSC) would provide obvious added value by making life easier for all</td>
<td></td>
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</tbody>
</table>

More generally, transposition of the Directive's provisions at regional and local level suffers from:

a) A lack of communication between central government and decentralised administrations;
b) A slow uptake of the Directive's elements at local level;
c) Subsequently, this may hamper communication between administrations and service providers while reducing the effectiveness of the Directive

| As always, the issue of correct and timely transposition and implementation is key to proceed effectively in any policy |
| Member States and regional/local authorities must finally take ownership of the whole concept of Single Market (and of the European Union as a whole...) |
| Adequate resources, proper information and training of officials at all levels is crucial |
| Lack of multilingualism where PSCs are supposed to facilitate cross-border activities | At least English should be an option but multilingualism would allow for a wider audience |

<table>
<thead>
<tr>
<th>Lack of information on doing business in other Member States</th>
<th>Member States and regional/local authorities must finally take ownership of the whole concept of Single Market (and of the European Union as a whole...)</th>
</tr>
</thead>
</table>

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135 The Directive was to be transposed by Member States by end of 2009 but Eurochambres states that "some Chambers note that information campaigns are due to be launched in their countries in 2011". Denmark set up their PSC early 2010.

136 For instance by checking out if registration/password is really necessary to use PSCs.

137 This, of course, involves costs.
## KEY COMPONENTS FOR BUILDING A TRUE SINGLE MARKET FOR SERVICES
### BUSINESSEUROPE position paper, 5 March 2013

<table>
<thead>
<tr>
<th>SHORTCOMINGS</th>
<th>PROPOSED REMEDIES/AVENUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Three years after its transposition deadline, the 2006 Services Directive is still not fully implemented and correctly applied in all Member States</td>
<td>The provisions of the Directive must be well-applied and enforced on the ground (&quot;act as agreed&quot; principle)</td>
</tr>
<tr>
<td>The decision to abolish certain restrictions (Article 15 and 16), which may in some limited cases be justified under the Services Directive for an overriding reason of general interest, is left to Member States to make =&gt; grey zones/protectionism</td>
<td>Governments and responsible authorities must conduct a proper proportionality analysis for national rules and authorisation schemes</td>
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<td></td>
<td>A voluntary approach has its limits and it might be more helpful to further clarify the concepts of “proportionality” and what exactly constitutes an “overriding reason of general interest”</td>
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<td></td>
<td>Open debate on the proportionality analyses that have been made and the degree to which Member States have used their room for manoeuvre and kept certain restrictions which are at the very least questionable</td>
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<td></td>
<td>Member States must always respect the substance of a Directive or Regulation, avoid ambiguities and refrain from adding additional requirements (i.e. “gold plating”), which could lead to additional unnecessary costs for businesses</td>
</tr>
<tr>
<td>Although its scope is broad, the Services Directive does not cover a whole series of important requirements that directly affect services providers. Instead of reasoning in terms of separate legal texts and policy areas</td>
<td>The Commission should carry out further in-depth analysis of the practical functioning, including remaining problems and barriers of services markets in general and the real needs that exist on the ground</td>
</tr>
<tr>
<td></td>
<td>This analysis should also take into account all relevant areas not dealt with by the Services Directive, such as professional qualifications, posting of workers, the e-commerce Directive, consumer protection rules regarding the applicable law (Rome I and Rome II Regulations) or the jurisdiction of courts (Brussels I Regulation)</td>
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<td></td>
<td>Adopt a truly integrated approach to services in Europe</td>
</tr>
<tr>
<td></td>
<td>Reintroduce the formal reporting which the Commission (DG MARKT) provided (in 2009 and 2010) through regular detailed public “information notes” to the Competitiveness Council (and the European Parliament) on “the state of implementation of the Services Directive”</td>
</tr>
</tbody>
</table>

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140 Concepts in brackets added by the author on the basis of a discussion hosted by Malcolm HARBOUR at the European Parliament on 7 November 2013.
### The recalibrated reporting should focus on the broader topic of the state of the Single Market for services

- Beyond quantitative implementation data, it should also take into account the real results / functioning of services markets on the ground as well as the barriers and problems faced by businesses and consumers, also to create more transparency on the outstanding issues and better benchmark progress made.

### Lack of a true Single Market perspective across the board (i.e. services covered by the SD and those that are out of its scope)

- Integrated approach to services in the Single Market through a horizontal instrument.
- Need for consistence with other EU directives and initiatives (integrated or holistic approach).

### Points of single Contact have untapped potential

- Better cooperation between PSC management and responsible authorities.
- Opt for "tacit approval".
- More and accurate information on a wide variety of service activities.
- Provide more and accurate information in more languages.
- Make full online procedure possible => e-signature.
- Member States to sign a "PSC Charter" with quantitative indicators.
- Improve interoperability.
- Better promotion of PSCs involving stakeholders.

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141 Private security services, urban transport, taxi services, healthcare, social services and temporary work agencies' services. Attention is also drawn to other issues such as the lack of recognition of professional qualifications, the number of regulated professions and specialisations, double insurance and the lack of mutual recognition as well as conflicting national standards.
SUMMARY OF THE ANALYSIS OF THE IMPLEMENTATION OF THE SERVICES DIRECTIVE PER MEMBER STATE

The purpose of the Commission document SWD 2012/148 final

The Services Directive is a major step forward in making the single market for services a reality. It not only aims to facilitate operators’ freedom to provide services across national borders, but also to ensure that the recipients of these services can easily enjoy the opportunities brought about by the single market. The implementation of the Services Directive set in motion huge efforts in the Member States to modernise their administrations and the legal framework for the provision of services and to facilitate establishment and exercise of service activities across borders.

Implementation of the Directive has been challenging particularly because of its broad scope. It covers around 65% of service activities within the services sector. The activities covered represent around 45% of total EU GDP and employment. They include business services (11.7% of value added), real estate (11.8%), retail and wholesale distribution (11.1%), construction (6.43%) and tourism (4.4%). Among the service sectors not covered by the Services Directive (or covered only marginally, such as energy and postal services), most benefit from specific and comprehensive regulatory frameworks at EU level. This is the case for financial and insurance services (5.7% of value added), network services (4.7%, including telecommunications, postal services and energy) and transport (3.1%). The remaining service sectors are government services (14.4% of value added, such as defence and public education) — which in general do not fall within the scope of application of EU law (as ‘noneconomic’ services) — and health services (around 7.6%), to which, even in the absence of a comprehensive EU framework, a number of EU rules already apply, ranging from the recognition of professional qualifications to patients’ rights.

Services covered by the Services Directive (in colours) and other sectors of the EU economy. Source: Eurostat, 2009.
<table>
<thead>
<tr>
<th>Country</th>
<th>Prohibited Requirements</th>
<th>TACIT Approval of Authorisations</th>
<th>Streamlining the Regulatory Environment for the Establishment of Providers</th>
<th>Cross-Border Provision of Services</th>
<th>PSC</th>
<th>Total Prohibition of Commercial Communications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Austria</strong></td>
<td>Establishment and seat requirement in the craft sector/obligation for accountants, public accountants, tax advisors, patent attorneys need to be addressed to obtain financial guarantees from operators authorised to exercise in Austria.</td>
<td>Austria has to make sure that instances in which tacit approval is not applied are limited to duly justified matters</td>
<td>Legal forms and shareholding requirements exist and remain for civil engineers, accountants, patent attorneys, tax advisors, chimney sweeps, ski schools and mountain guides (for some Länder)</td>
<td>Remaining requirements hindering free provision of services identified (authorisations/certifications)</td>
<td>Improvements should be made to increase the clarity of information, distinguish between establishment and cross-border provision of services and extend the availability of other languages than German</td>
<td>x</td>
</tr>
<tr>
<td><strong>Bulgaria</strong></td>
<td>Prohibited discriminatory requirements maintained (nationality and residence)</td>
<td>Not clear with sector specific laws</td>
<td>Some measures maintained and should be reassessed (lawyers, minimum tariffs…) and should be re-examined</td>
<td>A clearly distinction should be ensured in all sector-specific legislation</td>
<td>Electronic completion needs to be improved (complete online procedures, clarity of information, availability of other languages than Bulgarian)</td>
<td>It remains for lawyers</td>
</tr>
<tr>
<td><strong>Cyprus</strong></td>
<td>It applies to real estate services and to opticians for residence and should be eliminated</td>
<td>x</td>
<td>Some measures identified (architects, engineers, minimum tariffs (lawyers) and fixed tariffs (tourist guides)) and should be re-examined</td>
<td>same authorisation requirements apply as for establishment purposes</td>
<td>Improvements are necessary to enhance access to online procedures (e-IDs)</td>
<td>It remains for lawyers and veterinarians</td>
</tr>
<tr>
<td><strong>Czech Republic</strong></td>
<td>x</td>
<td>C.R has to ensure that the derogations to tacit approval are applied on duly justified cases</td>
<td>Doubts on compatibility with article 15: specific legal form and shareholding requirement in specific sectors. It needs to be re-examined</td>
<td>Remaining requirements and restrictions (lawyers and real estate)</td>
<td>Improvements : providing online support tools, increasing the number of procedures that can be completed online (e-signature), increasing the amount of information available in other language</td>
<td>x</td>
</tr>
<tr>
<td>Country</td>
<td>x</td>
<td>Non application of the tacit approval in the sectors of construction and real estate, derogations should be limited to duly justified cases</td>
<td>x</td>
<td>Restrictions remain (cross-cutting notification obligation and authorisation schemes) - construction/crafts</td>
<td>Improvements could be made for user guidance and assistance</td>
<td>x</td>
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<tr>
<td>Denmark</td>
<td>x</td>
<td>x</td>
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<td>x</td>
<td>Registration requirements remain in specific sectors, and should be re-examined + lack of clarity and legal certainty</td>
<td>x</td>
</tr>
<tr>
<td>Estonia</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>Improvements could be made in distinguishing between establishment and cross-border service provision.</td>
<td>Identified for lawyers and should be eliminated</td>
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<tr>
<td>Finland</td>
<td>x</td>
<td>x</td>
<td></td>
<td>x</td>
<td>Incompatibility with the services directive in the real estate sector (specific registration) + authorisations requirements for patent attorneys = this must be re-examined</td>
<td>Improvements could be made to increase the possibility of online completion of procedures.</td>
</tr>
<tr>
<td>Greece</td>
<td>x</td>
<td>Measures maintained in retail sector, for casual trading</td>
<td>x</td>
<td>The scope of the law 3919/2011 is general + requirements hindering free provision of services still apply in the education sector</td>
<td>Improvements need to be made in the availability of all relevant information and on-line procedures + differentiation should be made between the regime applying to established and cross border service providers.</td>
<td>Remains for lawyers</td>
</tr>
<tr>
<td>Hungary</td>
<td>x</td>
<td>Requirements in the restriction of market access in big retail, sale of tobacco, meal and holiday vouchers, waste management need to be re-examined - doubts of compatibility with Article 15</td>
<td>x</td>
<td>A few questionable requirements in construction and education sector need to be re-examined</td>
<td>Improvements need to be made in on-line procedures + PSC is of limited use to cross-border service providers</td>
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<tr>
<td>Country</td>
<td>Status</td>
<td>Remarks</td>
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<tr>
<td>Ireland</td>
<td>x</td>
<td>Sector specific legislation to put alternative arrangements in place has not been amended</td>
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<td>Travel sector - the proportionality of these requirements in achieving the objective of consumer protection should be reviewed</td>
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<tr>
<td>Authorisation requirements for national providers are also applied to incoming service providers (travel, vocational education, manual handling instructors)</td>
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<td>Improvements need to be made in electronic processing of procedures, expanding the range of procedures, increasing awareness of the portal and improving the search function</td>
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<tr>
<td>Italy</td>
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<td>In the tourism sector some authorisations are linked to residence requirements</td>
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<tr>
<td>Some exceptions remain, in the tourism and retail sector not always based on overriding reasons of public interest + complicated because many sectors fall under the competence of the regions</td>
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<td>Quantitative and territorial restrictions noted (itinerant sales, trade activities, ski schools, shareholding requirements less rigorous for all regulated professions)</td>
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<tr>
<td>Authorisations, registration, or licensing requirements identified, procedures on cross-borders providers often remain unidentified</td>
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<tr>
<td>Lack of possibility to complete procedures, PSC difficult to use for cross-border providers for technical and linguistic reasons</td>
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<tr>
<td>Latvia</td>
<td>x</td>
<td>Work is underway to have provisions on tacit approval included also in sectorial legislation</td>
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<tr>
<td>Requirements have been identified in tourism and construction sector and need to be re-examined.</td>
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<tr>
<td>Efforts needed to enable cross-border completion of procedures, as well as increasing the number of electronic procedures available</td>
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<tr>
<td>Lithuania</td>
<td>x</td>
<td>To provide formal vocational training a natural person from another Member States must have its residence in Lithuania</td>
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<tr>
<td>Only a few of the requirements listed in the Article 15 have been identified.</td>
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<tr>
<td>Requirements identified in professional services sector for administration of company bankruptcy and restructuring, real estate, retail sector, education sector and need to be corrected</td>
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<tr>
<td>Improvements could be made concerning the availability of more on-line procedures</td>
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<td>Luxembourg</td>
<td>x</td>
<td>Exceptions for weapons and authorisations relating to the protection of the environment, Lux has to make sure the instances in which tacit approval is not applied are limited to duly justified matters</td>
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<tr>
<td>Some measures may raise doubts of compatibility with Article 15: quantitative restrictions and requirements for lawyers and places selling alcoholic beverages</td>
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<tr>
<td>Requirement to obtain an authorisation in the education sector, providers carrying, and verifications in the field of the environment should be re-examined</td>
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<tr>
<td>Improvements could be made concerning the availability of more on-line procedures</td>
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<tr>
<td>Country</td>
<td>Identification for the professional services sector for patent agents</td>
<td>Some measures may raise doubts of compatibility with Article 15 (legal form and shareholding requirements for architects, civil engineers and lawyers)</td>
<td>Lack of clarity whether authorisations, registration, or licensing requirements are applied (tourism sector)</td>
<td>Lack of technical support of e-signatures, information coverage and availability and accessibility of completion of procedures</td>
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<tr>
<td>MALTA</td>
<td>Identified for the professional services sector for patent agents</td>
<td>x</td>
<td>Lack of clarity whether authorisations, registration, or licensing requirements are applied (tourism sector)</td>
<td>Lack of technical support of e-signatures, information coverage and availability and accessibility of completion of procedures</td>
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<tr>
<td>NETHERLANDS</td>
<td>Residence (market stands) and economic criteria (retail outlets) - should be eliminated</td>
<td>x</td>
<td>Lack of clarity whether authorisations, registration, or licensing requirements are applied (tourism sector)</td>
<td>Lack of technical support of e-signatures, information coverage and availability and accessibility of completion of procedures</td>
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<tr>
<td>SLOVAKIA</td>
<td>Public interest justification for some specific sectors should be reviewed (architects, patent agents, translators, engineers for construction sector, education)</td>
<td>x</td>
<td>Lack of clarity whether authorisations, registration, or licensing requirements are applied (tourism sector)</td>
<td>Lack of technical support of e-signatures, information coverage and availability and accessibility of completion of procedures</td>
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<tr>
<td>SLOVENIA</td>
<td>Doubts of compatibility with Article 15 with some specific sectors</td>
<td>x</td>
<td>Lack of clarity whether authorisations, registration, or licensing requirements are applied (tourism sector)</td>
<td>Lack of technical support of e-signatures, information coverage and availability and accessibility of completion of procedures</td>
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<tr>
<td>SPAIN</td>
<td>In the tourism area, a restriction could remain to the freedom of the provider to choose between establishment in the form of an agency, branch or subsidiary</td>
<td>x</td>
<td>Lack of clarity whether authorisations, registration, or licensing requirements are applied (tourism sector)</td>
<td>Lack of technical support of e-signatures, information coverage and availability and accessibility of completion of procedures</td>
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<tr>
<td><strong>Residency Requirement Identified Concerning Car Rental Service and Patent Agents</strong></td>
<td><strong>Not Applied in the Construction Sector, Sweden Has to Make Sure the Instances in Which Tacit Approval Is Not Applied Are Limited to Duly Justified Matters</strong></td>
<td><strong>Some Measures Raise Doubts of Compatibility with Article 15 (Shareholding Requirements for Lawyers and Auditors)</strong></td>
<td><strong>Doubts on the Justification of Requirements Maintained (Real Estate or Driving School Services)</strong></td>
<td><strong>Improvements Could Be Made Concerning the Clarity of Information, and Accept Foreign-Issued E-Identification and E-Signatures</strong></td>
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<td><strong>SWEDEN</strong></td>
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<td><strong>UK</strong></td>
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</table>

- UK: No mechanism of recognition of authorisations granted by one developed administration by the others.
- Restrictions identified: legal form and shareholding requirements for lawyers in Scotland and NI.
- Improvements could be made concerning the on-line availability of procedures.
- Remain for lawyers.
## ARTICLE 16 (DEROGATIONS) OF DIRECTIVE 2006/123/EC FROM A NATIONAL PERSPECTIVE

<table>
<thead>
<tr>
<th>MEMBER STATES UNDER SCRUTINY</th>
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<tbody>
<tr>
<td><strong>BELGIUM</strong></td>
<td>No specific debates during parliamentary works; At the federal level - art. 14 and 16 transposed into art. 14 and 15 of the law on services; At the level of the Regions and Communities – art. 16 transposed into art. 14,15 of the horizontal Walloon decrees, French speaking Community decree, Brussels French speaking Community Commission decree and German speaking Community decree.</td>
</tr>
<tr>
<td><strong>GERMANY</strong></td>
<td>Need to transpose art. 16 into German provisions for business activities, especially in German Trade, Commerce and Industry Regulation Act (GewO) – new §4 stipulates that certain enumerated authorisations or provisions are generally not applied to service providers settled in another Member State of the EU or a state of the EEA; Among the provisions that do not apply for foreign service providers is, for instance § 34 (1) s.1 no.1 GewO which stipulates an authorization for running a broker business; § 4 particular feature - clause 2 stipulates that clause 1, which provides the exceptions for foreign EU service providers is not applicable in the case of misuse - if a service provider does provide its services only from another Member State to escape the duties enumerated in clause 1, these exceptions shall not be applied to such providers (fear, that legal standards could be undermined by service providers who might easier establish themselves in another country, or service providers of other Member States with more than one establishment, among them one in Germany, but acting from another establishment); Art. 16 (1) lit. b), (3) SD are seen as terminal – as a result, no other possible overriding reasons to the public interest can be used to justify restrictions in this respect, even recourse to primary law is seen as not possible; There is still a difference, as regards the implementation of non-procedural requirements, between domestic and transnational services providers – several provisions of GewO that are no longer applied to transnational service providers, but that are still valid for domestic service providers – reasoned by the fact, that the service providers of other Member States are already subject to the establishment regulations of their own Member State, whereas for German service providers, these regulations are in fact the business requirement of their member State and hence their own establishment requirements; Under discussion - art. 16 (1) sp. 3, (3) SD restricts the current jurisdiction of the ECJ in respect of &quot;overriding reasons to the public interest&quot; – although the SD itself does in several cases allow whole scale of overriding reasons to the public interest, regarding the freedom to provide services the justifications for national requirements for services provision are restricted to four: reasons of public policy, reasons of public security, reasons of public health and protection of the environment.</td>
</tr>
<tr>
<td><strong>FRANCE</strong></td>
<td>Due to lack of information on the screening process we cannot provide an answer to the question whether the national legislature identified the need to adapt national law according to this provision of the Services Directive or not; French law may be in contradiction with several requirements of the article 16, for instance, as regards the establishment or residence requirements to obtain access authorisations - we can therefore anticipate further sectoral modifications on these points – this is especially the case for travel agents, for some other sectors, burdensome requirements of access and professional exercise were retained despite some legal adaptations (e.g. for accounting experts).</td>
</tr>
<tr>
<td><strong>POLAND</strong></td>
<td>Prohibited requirements and further exemptions did not give rise to much discussion; Generally art. 16 is compatible with a general tendency towards creating a business environment that does not discriminate against entrepreneurs - the same is true in the case of further exemptions.</td>
</tr>
<tr>
<td><strong>ROMANIA</strong></td>
<td>Transposed in the same wording into EGO no. 49/2009 – challenge was to convince all field ministries to join the effort in equal manner, some ministries (Tourism, Administration and Internal Affairs and Public Constructions) reacted quicker and thus legislation in these fields was the first to be adapted; Screening process is bound to be incomplete due to the unequal participation of the field ministries in the process; Romanian legal system suffers from excessive legislation and contradictory norms, as well as from lack of codification of administrative proceedings; In the years to come, service providers will identify themselves the restrictions that are still in place or legislation that has yet to be amended in order to comply with the directive.</td>
</tr>
<tr>
<td><strong>PORTUGAL</strong></td>
<td>Need to adapt national law to implement art. 16; Omnibus law covering all the activities that ought to be subject to modifications due to the principles and rules laid down in the SD is being prepared; Portugal has long engaged in the modern regulation tradition and the state model is assumed, in general, to be that of the state regulator instead of the state provider.</td>
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<tr>
<td><strong>OTHER MEMBER STATES</strong></td>
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<tr>
<td><strong>AUSTRIA</strong></td>
<td>No amendments of substantive administrative laws on the federal level in the context of draft government bill (317dB XXIV GP); Nine legislators on the state level made very few amendments of substantive administrative laws, ex: the bill of Upper Austria abolishes the authorisation procedure for the opening on dancing schools and replaces this requirement by a simple notification; Discussions about the most appropriate form and location for the implementation of art. 16, §3, but the federal legislator finally decided not to provide for a(n explicit) corresponding free movement clause in the draft DLG (horizontal Services Act).</td>
</tr>
<tr>
<td><strong>BULGARIA</strong></td>
<td>Several laws (Law for Tourism, Law of the Spatial Planning, Law of protection of the consumers) were adapted due to the implementation of the directive; Hard to say that during the process of implementation there was a serious public discussion as regards to the prohibitions, restrictions and exemptions in articles 14-19 of the Directive.</td>
</tr>
<tr>
<td><strong>CYPRUS</strong></td>
<td>Art. 16 was transposed into respective articles of the Horizontal Law and formed part of the screening exercise carried out by Cyprus.</td>
</tr>
<tr>
<td><strong>CZECH REPUBLIC</strong></td>
<td>Few prohibited measures were identified and removed with the Amending Act; Many requirements whose assessment was demanded were left unexamined; Screening focused on discrimination against foreign providers – proportionality of requirements was questioned and resulted in the reduction or removal of requirements in only a few cases.</td>
</tr>
<tr>
<td><strong>DENMARK</strong></td>
<td>Articles 16 and 17 are implemented in articles 11 and 12 of the Danish Law on Services in the Internal Market;</td>
</tr>
<tr>
<td><strong>ESTONIA</strong></td>
<td>The legislator did not identify a need to adapt new national law as regards this provision of the SD but, instead, included a list of such provisions from the directive into the text of the new law.</td>
</tr>
<tr>
<td><strong>FINLAND</strong></td>
<td>Finnish officials noted with interest during the preparations for implementation the idea of British authorities, whereby national law</td>
</tr>
</tbody>
</table>
would make no distinction between freedom of establishment and freedom to provide services when regulating the possibilities of the Member State concerned to impose limitations on the service activity;
To comply with directive a less interventionist approach would have to apply, this approach was not followed at the end;
Dual regimes for requirements are very complex and it is sometimes difficult to say when a company is established since a company can have office facilities in a country without being established there;
The list of grounds for national interference in Article 16 (1), §3, does not include consumer protection as did the allowed derogations of the Internal Market Clause (Article 3, §4) of Directive 2000/31/EC on E-commerce.

<table>
<thead>
<tr>
<th>Country</th>
<th>Implementation Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>HUNGARY</td>
<td>Art. 16 implemented in Framework Act – takes over the text of the Directive; Art. 7-9 of the Framework Act contain the transposing rules for the Article 16 of the SD – according to these, it was laid down in law that, as a general rule, in case of the cross-border provision of service, neither authorisations are needed to take up and pursue a service activity, nor are notifications required to take up the service activity; No discussions with regard to prohibited requirements/restrictions and further exceptions.</td>
</tr>
<tr>
<td>IRELAND</td>
<td>Principally transposed through Regulation 6 of the Statutory Instrument (the European Union (Provision of Services) Regulations 2010).</td>
</tr>
<tr>
<td>ITALY</td>
<td>No discussion with regard to prohibited requirements/restrictions (art. 14,15,16,19 of the Directive) and further exemptions (Articles 16(3), 17, 18).</td>
</tr>
<tr>
<td>LATVIA</td>
<td>No specific discussion but the Draft Law was sent to various non-governmental institutions for review – no objections or suggestions were received.</td>
</tr>
<tr>
<td>LITHUANIA</td>
<td>Freedom to provide services, the prohibition of restrictions on that freedom – already enshrined in the treaty, art. 16 (1) in addition to laying down the obligation to ensure the free access and free exercise of service activities, allows Member States to restrain such freedoms by imposing requirements that respect the principles of non-discrimination, necessity, and proportionality – in that sense art. 16 is clearly inspired by existing case law and, although the SD does not explicitly mention the obligation of mutual recognition – contrary to its provisions on freedom of establishment – it could be considered that such an obligation is implicitly incorporated into the obligation of proportionality; However, the SD provides for a limited list of available justifications for exceptions to the freedom to provide services (public policy…) – this contrasts with the non-exhaustive list of justifications recognised in the case law of the Court of Justice; Art. 16 (1) literally transposed to art. 9 (3) of the Services Law; Art. 16 (2) – not transposed to Services Law, these prohibited requirements concerning the freedom of establishment were only laid down in the Recommendations on the draft of amendments to the laws and legislation implementing the laws not complying with the provisions of the European parliament and Council Directive 2006/123/EC of 12 December 2006 on services in the internal market (§28) §28 of those Recommendations provides that the competent authorities of Lithuania must ensure that the requirement applicable to providers having established in another Member State and temporarily providing services in Lithuania would be non-discriminative, necessary and proportionate to the purpose sought; Substantive effect of art. 16 – Lithuanian legislation does not contain provisions that are applicable solely to service providers established in other Member States, however, the situation in which requirements in relation to art. 16 are applicable to service providers established in other Member States as well as to Lithuanian service providers was identified during the legislative screening of some legal acts. (e.g.</td>
</tr>
<tr>
<td>Country</td>
<td>Explanation</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------</td>
</tr>
<tr>
<td><strong>Law on Control of Alcohol;</strong></td>
<td>The wording and the system of art. 16 do not appear to clarify the relation between art. 16 (1) and art. 16 (3) – what the purpose was of the latter provision to rewrite the principles of necessity into the first sentence of art. 16 (3); It is not obvious why the meaning of the necessity principle in art. 16 (1) (b) made different from that provided for in art. 9 (1) (b), which requires the authorisation scheme to be justified by overriding reason relating to the public interest.</td>
</tr>
<tr>
<td><strong>LUXEMBOURG</strong></td>
<td>Initially, lack of implementation of this article in the draft Bill – after several discussions regarding more the fact to have these articles implemented in this Bill or in another law, it has been decided to implement it in art. 12 ff.</td>
</tr>
<tr>
<td><strong>MALTA</strong></td>
<td>The screening process led to removal of restrictions deemed to clash with Union law; No public discussion, except in passing, about self-screening or the mutual evaluation report.</td>
</tr>
<tr>
<td><strong>NETHERLANDS</strong></td>
<td>Since the Dutch legislator is of the opinion that the SD codifies case law of the ECJ, it has argued that the provisions regarding the freedom of services and of establishment need no further implementation in Dutch (statutory) law – reason for this view – there is no need for transposition into national law, is that the doctrines established by the Court apply to Treaty provisions that are directly applicable in the national legal order; Since these rules concerning the freedom of services and of establishment already needed to be complied with, no further amendments in national law were considered necessary – however, some provisions have been incorporated in instructions for the legislature; Important difference – art. 16 stipulates that Member States shall not provide access to or allow a service activity to be exercised in their territory subject to compliance with any requirements that do not respect the principles of non-discrimination, necessity and proportionality; With regard to the necessity requirement, however, the SD does not allow justifications other than the reasons of public policy, public security, public health, or the protection of the environment, whereas the case law on Art. 56 TFEU did allow other justifications; Art. 16 needs no implementation in national statutory law, since it merely forms a prohibition for the legislator when determining authorisation schemes and can therefore be safeguarded through de facto behaviour – as a result, art. 16 has been (or will be) included in instructions for the legislature; Regulation of economic activity in the Netherlands does not distinguish between temporary and permanent activities, that is, services and establishment - Dutch legislator is of an opinion that art. 16 (2) contains no black list and that art. 16 (3) can therefore derogate from art. 16 (2).</td>
</tr>
<tr>
<td><strong>SLOVAKIA</strong></td>
<td>Implemented without any serious problems.</td>
</tr>
<tr>
<td><strong>SLOVENIA</strong></td>
<td>Transposed in the horizontal law, prohibited requirements regarding the freedom of establishment are also part of the screening and will affect sector-specific laws regulations, as well as general law on companies; Prohibited requirements and restrictions are not all part of the horizontal implementation act – discussions on whether to implement them by way of negative harmonisation, as done by the directive itself, but the Slovene Governmental Office for Legislation decided not to use the negative approach, and those requirements and restriction shall be taken fully into consideration by drafting and changing special Slovene legislation for the individual service in question; Broad discussion – art. 16 derogates from the existing case law and some well-accepted overriding reasons are left behind, only to be taken into account in the area of freedom of establishment and not in the area of free movement of services.</td>
</tr>
<tr>
<td>SPAIN</td>
<td>The implementation of requirements in art. 16 required substantial change in national administrative law, and accordingly their transposition has implied proposed amendments to numerous national laws; The principles contained in art. 16 were included in Umbrella Law and were also used to amend various laws, which were carried out through the Omnibus Law.</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>Changes were made in specific national legislation concerning demands that will not be put on businesses or business persons established in another EU Member State and that temporarily provide services; Changes were made in national legislation on lower legislative level and in the law on planning and building with regard to controlling person that person's qualifications and authorisations; Difference between the establishment and freedom of services as well as the scope of freedom of services was discussed in preparatory work, the separation was not clear; Guidelines were designed determining what should be referred to as a service or as a business establishment – done in order to meet the justified demand for legal certainty and predictability in the application of the legislation on branch offices in Sweden.</td>
</tr>
<tr>
<td>UNITED KINGDOM</td>
<td>Regulation 24 implements the rules laid down in art. 16.</td>
</tr>
</tbody>
</table>
**COMMISSION DOCUMENTS SWD (2012) 146, 147 and 148 FINAL**

**IMPACT OF THE SERVICES DIRECTIVE**
COMMUNICATION FROM THE COMMISSION TO THE EP, COUNCIL, EESC AND COR (SWD (2012) 146 FINAL\(^*\))

<table>
<thead>
<tr>
<th>Purpose: The full implementation of the article should help the Member States according to EC to put an end to discriminatory practices.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lack of administrative and judicial enforcement</strong></td>
</tr>
<tr>
<td><strong>The Commission's role</strong></td>
</tr>
<tr>
<td><strong>Businesses' role</strong></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

**ON THE RESULT OF PERFORMANCE CHECKS ON THE INTERNAL MARKET FOR SERVICES**
COMMUNICATION FROM THE COMMISSION TO THE EP, COUNCIL, EESC AND COR (SWD (2012) 147 FINAL\(^*\))

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12.05.2014
<table>
<thead>
<tr>
<th>Challenges</th>
<th>Remaining challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Internal Market rules not being fully implemented</td>
<td>Realising the full potential of existing legislation/further facilitating the provision of services in certain sectors/Duplication of requirements laid down in EU sector-specific legislation/insurance for cross-border service provisions/lack of full harmonisation of consumer protection rules</td>
</tr>
<tr>
<td>Instances of deficient implementation/admin and procedural burdens hamper cross-border service provision for professionals</td>
<td></td>
</tr>
<tr>
<td>Beyond full implementation of existing rules</td>
<td></td>
</tr>
<tr>
<td>Significant divergences in regulation of professions, in corporate structures diversity of legal forms and shareholding requirements</td>
<td></td>
</tr>
</tbody>
</table>

**Sector specific barriers**

<table>
<thead>
<tr>
<th>Construction</th>
<th>Mutual recognition of accreditation and authorisations issued on the basis of sector-specific EU directives (F-gases, energy performance of buildings, waste related activities)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Business services</td>
<td>Corporate structure limitations and capital ownership requirements</td>
</tr>
<tr>
<td>Tourism</td>
<td>Distinction between establishment and cross-border service provision/divergence of consumer protection rules</td>
</tr>
</tbody>
</table>

**IMPLEMENTATION PROCESS OF THE WHOLE SERVICES DIRECTIVE**

**COMMUNICATION FROM THE COMMISSION TO THE EP, COUNCIL, EESC AND COR (SWD (2012) 148 FINAL[^144])**

<table>
<thead>
<tr>
<th>Update</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cross-border services remain limited</td>
<td>Boost cross-border trade and offer new opportunities to service providers</td>
</tr>
<tr>
<td>Implementation of the freedom to provide services clause by Member states: some Member states still amending sector specific legislation</td>
<td>The directive would have a much greater economic impact if the freedom to provide services was used to its full extent</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Obstacles</th>
<th>Proposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligation to obtain an authorisation with a professional body or association</td>
<td>Registration, notification or declaration schemes are less restrictive</td>
</tr>
<tr>
<td>Obligation to have an establishment in the territory of the member state where the service is provided (art. 16(2))</td>
<td>Must be addressed as a matter of priority</td>
</tr>
</tbody>
</table>
7.2 THE CONSTRUCTION SECTOR

The following piece of information aim at shedding light on the construction sector when dealing with the Services Directive with an inevitable a specific slant related to the posting of Workers Directive.

JOINT CONCLUSIONS AND RECOMMENDATIONS OF THE EUROPEAN SOCIAL PARTNERS IN THE CONSTRUCTION INDUSTRY ON SELF-EMPLOYMENT AND BOGUS SELF-EMPLOYMENT

On 5 February 2010, the European Federation of Building and Woodworkers (EFBWW) and the European Construction Industry Federation (FIEC) adopted joint conclusions on the particular issue of bogus self-employment in their sector. Both organisations stressed that high levels of craftsmanship, social protection and health and safety protection should be present at all times. They noted that the situation differed significantly between Member States in terms of definitions, relative importance of self-employment in the construction sector, labour market situations and measures put in place by the public authorities to fight bogus self-employment.

It is useful to share the main items of the consensus between the social partners in the construction sector. They are pragmatic avenues to be pursued for solving many problems that negatively impact on this sector in particular and on people's perception of the European Union and its Single Market in general:

<table>
<thead>
<tr>
<th>Findings</th>
<th>Avenues to pursue/measures to implement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Huge variety of national definitions of self-employment. Cross-border abuses of the status of self-employed worker are difficult to assess and prosecute.</td>
<td>Combat bogus self-employment through appropriate EU and national legislative measures and an adequate system of checks, enforcement and appropriate sanctions.</td>
</tr>
<tr>
<td>The notion of subordination is at the heart of distinction between a directly employed person and a self-employed worker. Self-employment exists when it is established that the activities are being carried out:</td>
<td></td>
</tr>
<tr>
<td>• Outside any relationship of subordination concerning the choice of that activity;</td>
<td>Determine a set of common European criteria which would provide guidelines for determining the nature of the employment status. Respect the principle of subsidiarity.</td>
</tr>
<tr>
<td>• Outside any relationship of subordination concerning the choice of conditions of remuneration, working under that person's own responsibility;</td>
<td></td>
</tr>
<tr>
<td>• In return for remuneration paid to that person directly and in full.</td>
<td></td>
</tr>
<tr>
<td>A substantial number of E 101 forms (now A1) are falsified, or contain</td>
<td>The determination of the employment status should be the legal</td>
</tr>
</tbody>
</table>

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145 It could be worth sounding the prospects of self-regulation in this context. There are a number of convincing examples from which lessons can be drawn, starting with the advertising sector (see http://www.easa-alliance.org/).
errors and are unchecked. Hence many migrant workers are in possession of an incorrect social security form.

| Responsibility of the country in which the work is done. It must decide whether subordination/control is apparent from the working circumstances and the contractual terms. |

| Bogus self-employment often occurs in a trilateral relationship between the contractor, an intermediary (agencies, gang masters, contractors), and the worker. |


There is currently no unambiguous, EU-wide definition making a clear distinction between bona fide self-employed people working on their own account and sham self-employed. Each competent authority and each individual body uses its own legal or regulatory framework, which can differ according to their jurisdiction and policy field (tax legislation, social security, business law, labour market, insurance). These abuses range from evasion of social security contributions, through tax evasion and undermining labour rights to undeclared work. This is a serious distortion of competition for the genuinely self-employed, micro businesses and SMEs.

<table>
<thead>
<tr>
<th>Negative findings</th>
<th>Positive findings/recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the consultation that followed the 2006 Green Paper of the European Commission on <em>Modernising labour law to meet the challenges of the 21st century</em>, it was acknowledged that the absence of an EU-wide definition could lead to problems, particularly in situations involving cross-border work (and supply of services).(^\text{146})</td>
<td>The 2006 ILO recommendation takes a broad approach to the notion of &quot;employment relationship&quot; to allow action against sham self-employment. In determining whether or not there is an employment relationship, the primary focus should be on the facts concerning the activities and the remuneration of the employee, irrespective of how the relationship is characterised in, for example, contractual terms.</td>
</tr>
<tr>
<td>A hidden employment relationship exists where the employer treats a worker in such a way as to conceal his or her true legal status as an employee, and where contractual terms can have the effect of taking away the protection to which employees are entitled.</td>
<td>Reliable regulation, and a definition of sham self-employment, would help bona fide self-employed and micro businesses. Sham self-employment should be combated through better registration and monitoring of the real position in the labour market.</td>
</tr>
<tr>
<td>The complex variety of people’s actual situations means that, in practice, it has often proven difficult to produce a general definition of the difference</td>
<td>Developing a good social security system for the self-employed in all Member States, taking account of the specific features of self-employed</td>
</tr>
</tbody>
</table>

\(^{146}\) In some countries (Netherlands) it is defined as a person working on his/her own account, mainly as a subcontractor to another company. In other Member States (France) the self-employed status is reserved for an entrepreneur who is not an employee of his company; he may have or not employees (in CESE 2063/2012).
Some schemes set up in Member States to develop entrepreneurship may create distortion of competition for genuine self-employed, micro businesses and SMEs. It is important to have a study of impact on all these categories.

Employees who become genuinely self-employed are a normal part of the labour market and the economy. Therefore, consideration should be given to how they can benefit from joint facilities like integration into existing SME organisations, business organisations, chambers and labour market organisations, as well as inclusion in different parts of the social security systems and pension schemes.

It is important for individuals to be able to make a free, informed choice as to whether or not they wish to be self-employed.

Member States should identify especially problematic sectors and to set through social dialogue minimum hourly rates that may vary even within the same Member State within regions.

It is essential that public procurement at Member State level would respect such a move in order to set an example and further tackle unfair situations.

In recent decades, major shifts have taken place in the composition of the category of self-employed people, next to the "classical" type of independents and small entrepreneurs. In the present period, it has become necessary to assess whether the operating environment offers sufficient protection to self-employed.

The EESC calls for:

- Data gathering on so-called "economically dependent self-employed work" in the EU;
- Identifying aspects common to definitions of employed persons in different EU Member States; and
- Promoting studies permitting a detailed analysis of national experiences particularly in cross-border areas.\(^\text{147}\)

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\(^{147}\) See EESC opinion "New trends in self-employed work: the specific case of economically dependent self-employed work", CESE 639/2010, rapp. José María ZUFIAUR NARVAIZA.
BENCHMARKING NATIONAL GOOD OR BEST PRACTICES
Conclusions drawn from the study on the posting of workers co-produced by Institut National du Travail, de l’Emploi et de la Formation Professionnelle (INTEFP)

Appendix III provides a number of ideas (proposed remedies/avenues) resulting from negative findings (shortcomings) emanating from various stakeholders. Subsequently, these proposed solutions are based on evidence and pragmatism. However, a number of measures are already being implemented by the Member States but what both the lack of benchmarking and the atavistic reluctance to learn from others are lacking... The French Institut National du Travail, de l’Emploi et de la Formation Professionnelle (INTEFP) co-produced a study\(^{148}\) that opened a number of promising avenues – provided that a "climate change" took place in terms of cooperation between the Member States. The following synopsis is an attempt to provide an overview of recommendations and current (good or best) practices in the 6 Member States under scrutiny while pinpointing at necessary improvements at EU level. The study also refers to such issues as cultural differences, social history, vulnerability, (organized) isolation or language of posted workers, which obviously make it difficult for example for authorities to physically get in contact with them.

In the construction sector outsourcing strategies aiming at cutting costs (labour cost, raw materials) lead to the process being beyond the contractor’s control and to lower quality as well as longer building times. This calls for awareness raising measures on the part of public authorities and socio-professional organisations\(^{149}\). Especially in times of budget constraints, pooling resources makes much sense. Basically, better communication equals better control.

<table>
<thead>
<tr>
<th>IMPROVING (ONLINE) COMMUNICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>The study points at the need to make better use on online instruments and to improve communication. Relevant and useful websites are not easy to find even through search engines, national companies and workers are not properly targeted, multilingualism is still not widespread, updates are not always timely, etc. The potential of the web remains therefore largely untapped(^{150}). In line with art. 4 of Directive 1996/71 (the Posting of workers Directive) every Member State runs a liaison office related to the posting of workers.</td>
</tr>
<tr>
<td>Web content to be designed in coordination with social partners so that it is more in line with real needs (with a focus on health at the workplace, which is underdeveloped in many Member States);</td>
</tr>
<tr>
<td>Improve web referencing;</td>
</tr>
<tr>
<td>Grant such information websites trust/quality labels incl. recognisable EU-wide logo;</td>
</tr>
<tr>
<td>The Posted Workers website (<a href="http://ec.europa.eu/social/main.jsp?catId=471&amp;langId=en">http://ec.europa.eu/social/main.jsp?catId=471&amp;langId=en</a>) should be hosted by the European Commission’s Directorate General for Employment;</td>
</tr>
<tr>
<td>Relevant national websites should be updated by linking to online information sources in the Member States involved in the flux of posted workers.</td>
</tr>
</tbody>
</table>

\(^{148}\) See footnote 34. The study focuses on the posting of workers but since this is closely related to services many findings and recommendations are valid across the board. See also http://www.eurodetachement-travail.eu/.

\(^{149}\) On this, see the Portuguese joint inter-institutional initiative "Working abroad" (http://www.trabalharnoestrangeiroinforme-seantesdepartir.pt/).

\(^{150}\) See the following websites dedicated to revealing bad practices such as bogus self-employment: http://www.stop-dumping-social-europe.org/ and http://www.faire-mobilitaet.de/.
The Internal Market Information system (IMI) is a communication and information tool for public administrations with a view to exchanging best practices in the implementation of the Directive. Regulation 1024/2012 states that “(...) technical means may need to be developed to allow external actors such as citizens, enterprises and organisations to interact with the competent authorities in order to supply information or retrieve data, or to exercise their rights as data subjects (...).”

Improve and speed up cooperation through networks between liaison offices and control authorities on site => sharing information and data across institutions and borders (see e.g. SIRS in Belgium and DNLF in France). Agreements between public authorities and the social partners are effective measures to be implemented (see the agreement signed on 22 June 2012 in Belgium between the relevant public administrations and the social partners in the construction sector).

**IMPROVING CONTROL**

Administrative cooperation is key and there is a clear connection between good communication and efficient control. This allows for better targeted investigations and inquiries, mutual information (essential in an integrated and extremely complex Single Market) on follow-ups to controls and regularisations. Likewise, cooperation between public authorities in various, complementary areas such as labour, social protection and tax are taking shape in a number of Member States. In the context of massive interpenetration of markets, exchange of information between national authorities is a must especially when these authorities are pursuing a similar objective such as the prevention of fraud and illegal work.

<table>
<thead>
<tr>
<th>Country</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>Authority in charge of &quot;social laws and social dialogue&quot; and another one in charge of &quot;well-being at the workplace&quot;. Database of companies and their employees (with personal data, works details and social security). A law dated 27 December 2012 prescribes systematic registering of persons on a building site and the systematic display of a badge on building sites is being discussed. Partnership agreements between social partners and control authorities. Setting up of specialised control units to fight unfair competition incl. regular site controls.</td>
</tr>
<tr>
<td>France</td>
<td>Labour inspection system covers a number of issues such as wages, working times as well as health and safety at the workplace. Decentralised offices for better information exchange and coordinated targeted controls (these office are located in border areas).</td>
</tr>
<tr>
<td>Germany</td>
<td>Labour inspection system covers a number of issues such as wages, working times as well as health and safety at the workplace. Network based on labour inspectors for better reactivity.</td>
</tr>
<tr>
<td>Poland</td>
<td>Labour inspection system covers a number of issues such as wages, working times as well as health and safety at the workplace.</td>
</tr>
<tr>
<td>Portugal</td>
<td>Labour inspection system covers a number of issues such as wages, working times as well as health and safety at the workplace. Plans to decentralise IMI users and relocate them within regional labour inspections for better coverage and information exchange.</td>
</tr>
<tr>
<td>Romania</td>
<td>Labour inspection system covers a number of issues such as wages, working times as well as health and safety at the workplace.</td>
</tr>
</tbody>
</table>

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It seems evident that the liberalisation of Single Market for services cannot be left up to the market alone. As illustrated by the 2008 crisis and its long lasting multiple aftermaths, the parameters of the market are strictly economic. "Outsourcing the Single Market" would inevitably lead to an erosion of the social acquis and, subsequently, of the European social model. It is necessary to anticipate practices that are contrary to what the European Union is all about (see art. 3.3 TFEU) in general and to the provisions of Directive 96/71/EC in particular. A number of suggestions are made/collection in the INTEFP study, including setting up procedures and instruments for detection, analysis, prevention, surveillance and follow-up, combining the anticipation of processes and controls and surveillance on the ground, inform and communicate properly and with comprehensible means e.g. on legislation in force and organising joint inspections. The attention is also drawn to the fact that the construction sector is heterogeneous and fragmented.

The study concludes that cross-border posting of workers cannot possibly be left to interim companies whose activities are based on "social and fiscal optimisation". The legal framework of the posting makes it possible for these companies to capitalise on differences between Member States and to escape controls. Creating a European labour market and guaranteeing security for migrant workers is a responsibility of both public authorities and social partners. The social dialogue is the most appropriate framework for this. This is about securing the European social model.

SUMMARY OF THE COMPARATIVE STUDY ON SELF-EMPLOYMENT AND BOGUS SELF-EMPLOYMENT IN THE EUROPEAN CONSTRUCTION INDUSTRY

Joint study by the EUROPEAN FEDERATION OF BUILDING AND WOODWORKERS (EFBWW) and the EUROPEAN CONSTRUCTION INDUSTRY FEDERATION (FIEC)

<table>
<thead>
<tr>
<th>BELGIUM</th>
<th>GERMANY</th>
<th>FRANCE</th>
<th>POLAND</th>
<th>ROMANIA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DEFINITION OF SUBORDINATE/SELF EMPLOYMENT</strong></td>
<td>According to Framework law of 27 December 2006 four criteria are important in establishing the difference: the will of the parties as expressed in the agreement, freedom of organization of working time, freedom to organize work, and possibility of establishing hierarchic control.</td>
<td>X</td>
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<td></td>
<td>Intermediate position, direct employment defined quite concisely through case law, but also present in the Labour Code - defines employee-employer relationship, one of the primary elements that determine direct employment status and description of the concept of self-employment.</td>
<td></td>
<td>Freedom of Business Activity Act and Personal Income Tax Act define the notion of &quot;business activity&quot; which includes that the self-employed is entirely responsible for the services provided, the business activity is not performed under the management or in a place and at a time indicated by the client, and the self-employed takes on economic risk linked to his/her activity.</td>
<td>Individual contract is a contract according to which a natural entity, called employee, undertakes to perform work for and under authority of an employer, who is a natural or legal entity, in exchange for payment, termed salary.</td>
</tr>
</tbody>
</table>

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155 No data available on Portugal in this particular study that initially covered 11 Member States.
<p>| <strong>Bogus Self-Employment from National Perspective</strong> | Two main forms in the construction industry: an employee with a bogus additional self-employed activity (the employee performs the same activities for the same person, both as an employee and as a self-employed worker as additional activity) and within the structure of a Cooperative Company with limited responsibility. | Specific case of abuse of the status of self-employment became apparent (Wir-AG, Ich-AG with several persons). There are increasing examples of cases in which a &quot;head&quot; and numerous unskilled or poorly skilled workers of new member states present themselves as GbR (Gesellschaft bürgerlichen Rechts) or similar foreign company constellation without the necessary precondition for the formation of such a company being met. | Considered as genuine self-employment until the contract has been redetermined as an employment contract - therefore, if the self-employed worker is in a state of subordination, the instigator of the contract can be prosecuted for concealed employment and the contract will have to be drawn up afresh as an employment contract. | X | X |
| <strong>Defining the Labour Relation</strong> | The will of the parties is decisive so long as services rendered correspond to the purpose of the contract. | The way the relationship in a contract is concluded has no bearing on how the distinction is made. | Recognition of a direct employment situation depends neither &quot;on the will expressed by both parties&quot; nor on &quot;the name given to the agreement&quot; but only on &quot;the factual conditions under which the service is supplied by the worker.&quot; | The will of both parties is decisive and the Court must respect it. This implies that if the both parties wish to be involved in a self-employment relationship, then the case presented by National Labour Inspectorate representative will be dismissed. | X |
| ELEMENTS AND CRITERIA DEFINING THE EMPLOYMENT SITUATION | The Law of 26 December 2006 defines four specific criteria to be used to distinguish the self-employed status and the employment status: the will of the parties as expressed in the agreement as long as it corresponds to the reality, the freedom of organisation of the working time and work, and hierarchic control. | According to German case law the distinguishing criterion between an independent activity and dependent employment is the degree of personal dependency of the self-employed. Certain criteria may in this respect indicate dependent employment instead of self-employment, i.e. if no typical indicators of entrepreneurial behaviour is recognisable e.g.: no entrepreneurial risk, no own permanent establishment. |  |
| COMPARISON IN NUMBERS | 208,754 employees and 56,312 self-employed workers in 2007. The amount of employees is thus 4 times higher. | In December 2007 there were 364,324 self-employed and 1,766,800 direct employees in the construction sector. Thus self-employed workers represent 20.6% of the total number. | 994,000 workers in the construction sector in 2006, of which, 189,000 were self-employed workers and 101,000 were &quot;own-account workers.&quot; According to the trade unions, however, some 50% of those employed are self-employed and are working on the basis of an agreement for performance of specific tasks/mandate agreements. |</p>
<table>
<thead>
<tr>
<th>OFFICIAL FIGURES AND STATISTICS</th>
<th>X</th>
<th>It is estimated that for one regular job in the construction sector there is one other on the black labour market.</th>
<th>X</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOCIAL SECURITY AND FISCAL DEVELOPMENT</td>
<td>X</td>
<td>The self-employed are protected to the same extent as the employees by the Law of 4 August 1996 on the welfare of workers at work when working on temporary or mobile construction sites.</td>
<td>X</td>
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<td></td>
<td>In 2007, 9.7% of the companies inspected in construction industry were charged with a violation of the law and 4% of these offences were linked to status abuse.</td>
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<td></td>
<td></td>
<td>In 2006, the RSI (social regime for the self-employed) was created. This regime guarantees a retirement pension, sickness and maternity benefits and collects the social contributions of the self-employed. Moreover, this regime is compulsory for self-employed persons in the construction sector. Self-employed persons must compulsorily pay for their own social contributions according to their income. If the professional income does not exceed a certain amount (4,534 EUR for 2008) then the self-employed person is exempted from social contributions.</td>
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<tr>
<td></td>
<td></td>
<td>As social security contributions are limited to a minimum, self-employed are only entitled to a minimum retirement pension and a minimum sickness benefit.</td>
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<tr>
<td></td>
<td></td>
<td>The indemnities received are often small since self-employed workers tend not to declare the whole amount of money received.</td>
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</table>
### ABUSE OF THE STATUS OF SELF-EMPLOYMENT

New legislation on employment relationships is considered as an example of dubious legislation as the criteria for deciding whether there is an employment relationship are considered too vague. Free movement of services is mentioned as one of the causes for this increase in bogus self-employment.

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<tbody>
<tr>
<td>X</td>
<td>X</td>
<td>Reduction/lower costs (labour, social security and taxes) are quite often considered as one of the main reasons.</td>
<td>Reduction/lower costs (labour, social security and taxes) are quite often considered as one of the main reasons.</td>
</tr>
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</table>

### ASSESSMENT OF PREVENTION AND COMBATING MEASURES AND SANCTIONS

The worker is requalified as an employee, which implies total compliance with the current labour laws: wage claims, holiday pay and resignation renumeration, etc. Moreover, social security contributions (from employer and employee) are increased with a 10% surcharge and 7% interests which will be claimed retroactively. The employer may receive a jail sentence ranging from 8 days to 3 months.

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<tr>
<td>X</td>
<td>A person risks 3 years imprisonment. Additional penalties are also possible: debarring of the business, the requisition of tools, machinery, goods, stocks; the publication of an announcement of the judgement, etc.</td>
<td>Bogus self-employment can only be brought to court by a self-employed person who claims they were forced to endorse this status. Checks cannot be performed by inspectors from the National Labour committee and only social insurance institutions or tax offices can access the self-employed on social insurance contributions or taxes. If for example a foreign legal person is condemned before the Court, there is often a problem in that national measures combating fraud are usually nationally tailored</td>
</tr>
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Additional penalties are also possible: debarring of the business, the requisition of tools, machinery, goods, stocks; the publication of an announcement of the judgement, etc.
In conclusion, "The distinction between self-employed workers and employees has important fiscal, social and economic consequences:

- Self-employed workers work under their own professional responsibility and therefore do not work under the authority of the main contractor;
- The method of payment of taxes and social security contributions differs between self-employed workers and employees;
- Some working conditions (wages, working time, rest periods, ...) governed by collective agreements or by specific legislative, administrative and regulatory provisions are not applicable to self-employed workers;
- As a consequence, relatively extended social protection (e.g. in case of temporary employment, occupational accidents, early retirement ...) is more restricted for self-employed workers.

During recent years, labour inspectors, tax inspectors and social partners have noted an increase in self-employed workers in the construction industry. In fact, some countries have chosen to promote self-employment as a driving force for their economic development and therefore easily grant self-employed status to workers. This increase is also partly due to organizational and economic developments in the construction sector. The main company becomes more and more a ‘user’ and is surrounded by a constellation of companies and self-employed workers with whom they have flexible relations of a purely business character. This development has led to an increase in “dependent self-employment” or “dependent outsourcing”. This economic dependence on one employer blurs the distinction between self-employed and employee status.

Approximately 16 % of workers are self-employed today, according to “Employment in Europe 2008”. The level of self-employed workers is even higher in some countries, such as Greece (37 %), Poland (27 %), Cyprus (25 %), Italy (27 %), and Romania (32 %)."
SUMMARY OF THE COMMISSION NOTE ON PERFORMANCE CHECKS, STATE OF PLAY OF THE INTERNAL MARKET IN THE CONSTRUCTION SECTOR, 22 March 2012

Not all items of the Commission analysis are taken on board in the tables below (e.g. environment and energy-related issues (p. 18-28), capital ownership requirements (for which there was too little data available) and advertising (p. 36-42).
* Blank lines indicate that there is apparently no information available. Interviewees could possibly help fill in the lines.

### REGULATION OF ACTIVITIES IN THE CONSTRUCTION SECTOR

<table>
<thead>
<tr>
<th>Horizontal Authorisation Imposed on Construction Service Providers</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BELGIUM</strong></td>
</tr>
<tr>
<td><strong>FRANCE</strong></td>
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<tr>
<td><strong>GERMANY</strong></td>
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<tr>
<td><strong>POLAND</strong></td>
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<tr>
<td><strong>PORTUGAL</strong></td>
</tr>
<tr>
<td><strong>ROMANIA</strong></td>
</tr>
</tbody>
</table>

### REGULATION OF THE RELEVANT PROFESSIONS

| **BELGIUM** | Architects, electricians and plumbers are regulated. |
| **FRANCE** | Architects, electricians and plumbers are regulated. |
| **GERMANY** | Architects, engineers and crafts professions (incl. masons, carpenters, plumbers and electrical technicians. Not tillers however.¹⁵⁸ |
| **POLAND** | |
| **PORTUGAL** | |

¹⁵⁷ The European Commission has introduced an appeal before the Court of Justice of the European Union on this declaration for self-employed workers (C-577/10).
¹⁵⁸ See Handwerksordnung, appendix A.
<table>
<thead>
<tr>
<th>Country</th>
<th>Recognition of Professional Qualifications</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Romania</strong></td>
<td>Only architects are regulated within the meaning of Directive 2005/36/EC on Professional Qualifications.</td>
</tr>
</tbody>
</table>

**RECOGNITION OF PROFESSIONAL QUALIFICATIONS**

<table>
<thead>
<tr>
<th>Country</th>
<th>Case by Case approach only for SMEs, which have to prove their 'entrepreneurial capacity'. Prior declaration foreseen in art. 7, § 1, of Directive 2005/36/EC on Professional Qualifications (architects only). At federal level. Proof of professional experience.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Belgium</strong></td>
<td>In line with ECJ Case C-55/94 (Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano), a necessary infrastructure does not exclude the application of the rules on cross-border service provision. Prior declaration foreseen in art. 7, § 1, of Directive 2005/36/EC on Professional Qualifications (architects, electricians and plumbers). Proof of professional experience.</td>
</tr>
<tr>
<td><strong>France</strong></td>
<td>In line with ECJ Case C-55/94 (Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano), a necessary infrastructure does not exclude the application of the rules on cross-border service provision. Prior declaration foreseen in art. 7, § 1, of Directive 2005/36/EC on Professional Qualifications (architects, engineers and crafts). This document is to be provided only once. Proof of professional experience.</td>
</tr>
<tr>
<td><strong>Germany</strong></td>
<td>In line with ECJ Case C-55/94 (Reinhard Gebhard v. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano), a necessary infrastructure does not exclude the application of the rules on cross-border service provision. Prior declaration foreseen in art. 7, § 1, of Directive 2005/36/EC on Professional Qualifications (architects, engineers and crafts). This document is to be provided only once. Pro forma registration in the competent professional chamber. Pro forma registration in the competent professional chamber. (architects and civil engineers). Proof of professional experience.</td>
</tr>
<tr>
<td><strong>Poland</strong></td>
<td>The features of the services that are specified in the contract between the parties are used as criteria (scope of the service, method of delivery, terms and conditions, place of the service provision). Prior declaration foreseen in art. 7, § 1, of Directive 2005/36/EC on Professional Qualifications (architects and engineers). This declaration is considered in line with art. 3 (annex III) of Directive 92/57/EC on the Implementation of minimum safety and health requirements at temporary or mobile construction sites. Proof of professional experience for electrical skilled workers. Pro forma registration in the competent professional chamber (architects and civil engineers).</td>
</tr>
<tr>
<td><strong>Portugal</strong></td>
<td>Lack of distinction between temporary and occasional provision of services. Prior declaration foreseen in art. 7, § 1, of Directive 2005/36/EC on Professional Qualifications (architects). This declaration is considered in line with art. 3 (annex III) of Directive 92/57/EC on the Implementation of minimum safety and health requirements at temporary or mobile construction sites.</td>
</tr>
</tbody>
</table>

**CONTROL BY THE COMPETENT AUTHORITIES**

Control mechanisms for the professionals and the documents submitted are not explicitly required by Directive 2005/36/EC on Professional Qualifications.  

159 Except for the Land of Hessen.
<table>
<thead>
<tr>
<th>Country</th>
<th>Controls</th>
</tr>
</thead>
</table>
| Belgium | Controls through on-site checks and/or complaint.  
FRANCE  | Ex ante controls of the professionals and the documents submitted when receiving the building permit.  
Impromptu on-site inspections.  
GERMANY | Ex ante controls of the professionals and the documents submitted when registering or checking the documents enclosed with the prior declaration.  
POLAND  | Ex ante controls of the professionals and the documents submitted when receiving the building permit.  
PORTUGAL | Ex ante controls of the professionals and the documents submitted when receiving the building permit.  
ROMANIA | Ex ante controls of the professionals and the documents submitted when receiving the building permit.  

### INSURANCE OBLIGATIONS

This refers to art. 23, § 1, of Directive 2006/123/EC and is in relation with activities that present a safety or health risks basically implying professional liability.

| Country  | Applies. Architects must show proof of insurance of professional liability. Architects from another Member State may need an additional insurance if their original scheme does not match Belgian requirements.  
Soil management and soil remediation experts must have professional liability insurance.  
This applies to refrigeration engineering in the Brussels Capital Region.  
FRANCE  | Applies - see the French Federation of Insurance Companies (FFSA) and the independent "Bureau central de tarification" (BCT) in case of problems. Architects are checked on this on an annual basis.  
10 year liability insurance is imposed on construction service providers ("assurance garantie décennale").  
GERMANY | Applies. Architects must be adequately insured but no additional insurance for cross-border activities is required.  
POLAND  | Architects and civil engineers must submit ex ante a declaration re insurance cover/collective professional liability insurance. Grey zone as far as professionals from other Member States are concerned.  
PORTUGAL | Applies esp. to technicians submitting projects or acting as directors of construction works.  
Legislation on construction is currently being amended. Architects and engineers must subscribe a financial guarantee if they act as directors of construction works.  
Crafts people must subscribe a financial guarantee, incl. for cross-border activities if they act as directors of construction works (e.g. for minor works).  
Requirement of economic capacity is currently imposed on providers of construction services to ensure public safety (e.g. for works over a certain value). This is in the process of being amended for the sake of simplification.  
ROMANIA | Applies e.g. for operators involved in designing, carrying out and operating constructions.  

12.05.2014
REPLIES TO THE QUESTIONNAIRE ON
THE INTERNAL MARKET IN SERVICES - REQUIREMENTS AS REGARDS THE LABOUR MARKET AND CONSUMER PROTECTION
(Opinion CESE 793/2007, rapp. Karin ALLEWELDT, Group II, Workers – Germany)

The directive on services in the Internal Market\textsuperscript{6} is designed to promote competitiveness, growth and employment, in line with the Lisbon Strategy. It has, at the same time, triggered an intensive debate on the form to be taken by the freedom to provide services. A contentious issue has been and continues to be the effects which the proposal will have on national labour markets, social conditions and consumer protection requirements.

A. Effect on employment in cross-border services

In future it will be possible to provide cross-border services in the EU more easily and the operating conditions are to be changed (under the EU services Directive). The European Commission expects that this will trigger an increase in jobs in the EU as a whole of the order of 600 000.

A.1. Do you expect the planned liberalisation of the Internal Market in services to bring employment benefits for your country and your sector (if so, please indicate the sector concerned)?

\begin{figure}[h]
\centering
\includegraphics[width=0.5\textwidth]{chart.png}
\caption{Survey results on employment benefits in services liberalisation.}
\end{figure}

A.2. Do you expect to see job losses?

No 56%
Yes 44%

A.3. Who do you believe will be the winners and the losers in the employment sectors with which you are familiar?

A.4. Small and medium-sized enterprises (SMEs) and craft industries play an important role in providing employment in the market in services. In your opinion or on the basis of your knowledge, what effect will the increase in cross-border services have on the employment situation in SMEs?

Increased market potential in cross-border areas will boost employment:

No 34%
Yes 66%
Stronger competition which drives rival enterprises out of business, above all by forcing down prices, will have a detrimental effect on employment:

The future prospects for jobs in SMEs depend on other factors and they will not be fundamentally altered as a result of the liberalisation of the Internal Market in services:

A.5. Do you expect that in future self-employed people will have more opportunities for increased cross-border employment?
A.6. Do you consider that enough information is available on the possible impact on employment?

<table>
<thead>
<tr>
<th>Yes</th>
<th>10%</th>
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<tbody>
<tr>
<td>No</td>
<td>90%</td>
</tr>
</tbody>
</table>

A.7. Are you aware of any surveys which have been carried out with a view to making a quantitative appraisal of the effects on employment brought about by a more highly liberalised Internal Market in services and can you indicate the source of such information (apart from the studies referred to in the draft opinion – see under http://eesc.europa.eu/smo/news/index_en.asp)?

The following economic studies which largely focus on the impact of the initial Commission proposal of January 2004 are available on the Commission's website: [http://ec.europa.eu/internal_market/services/services-dir/studies_en.htm](http://ec.europa.eu/internal_market/services/services-dir/studies_en.htm)


Results of economic studies by the CPB Netherlands Bureau for Economic Policy Analysis, 7.10.2005.

Results of an independent study by Copenhagen Economics on the economic impact of the proposal for a directive on services in the Internal Market, 9.2.2005.

Economic Assessment of the Barriers to the Internal Market for Services, Final report, January 2005


"The European Single Market for Services in the context of the Lisbon Agenda: Macroeconomic Effects", November 2005

Andere Studien:

The Ministry of Industry and Trade of the Czech Republic has published an impact assessment with respect to the employment and economic implications of the Services Directive, 4.11.2005) An executive summary of the study is available in English on:


"Analysis of the economic impacts of the proposed Directive on Services in the Internal Market". The study was commissioned by the Czech Trade Promotion Agency and carried out by KPMG.
B. New challenges in respect of working conditions and terms of employment

The more that services are provided on a cross-border basis, the more frequently workers will work for a time in other countries.

B.1. Do you believe that this will bring about a change in terms of employment in your country?

No 18%
Yes 82%
B.2. If you expect such changes to occur, how would you describe their effect?

- Working conditions will deteriorate
- Working conditions will improve
- There is likely to be an increase in the number of temporary contracts and other forms of more flexible working
- Jobs will become more secure

B.3. In the case of cross-border services, posted workers are protected by the EU provisions on the posting of workers. On the basis of your experience, is this protection in principle adequate?

- No: 52%
- Yes: 48%
B.4. If you see that problems are arising, should they be tackled rather on an EU basis or a national basis?

- Rather on a national basis: 33%
- Rather on an EU basis: 67%

B.5. What, in your view, are the effects of a situation in which larger numbers of workers from different countries are employed in the same company and/or such workers are employed for longer periods, working under different national conditions, as a result of the cross-frontier provision of services?

- No particular effects
- Not yet possible to gauge the effect
- Differences in working conditions within individual enterprises are increasing
- Employees’ rights to participate in company decision-making will apply to only a part of the workforce
- It will become more difficult to comply with social provisions and employment provisions
B.6. Do you know of any examples in practice in which specific problems occur or new questions arise?

![Pie chart showing 24% yes and 76% no.]

B.7. Do you expect that the planned liberalisation of the Internal Market in services is more likely to bring about wage increases or decreases in wages?

![Pie chart showing 43% wage increases are more likely, 50% decreases in wages are more likely, and 7% no impact or depending on sector.]

C. Consumer protection in the Internal Market in services

The Internal Market in services is also designed to benefit consumers. These benefits relate to availability (price, access and supply), quality, transparency (information and confidence) and legal guarantees (liability and consumer protection).

C.1. In what order of priority would you rate these four aspects (1 = highest priority for you)?

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<tbody>
<tr>
<td>1</td>
<td>Quality</td>
</tr>
<tr>
<td>2</td>
<td>Legal guarantees</td>
</tr>
<tr>
<td>3</td>
<td>Availability</td>
</tr>
<tr>
<td>4</td>
<td>Transparency</td>
</tr>
</tbody>
</table>
C.2. In your opinion, have these aspects been adequately achieved at the present time?

Yes 23%
No 77%

C.3. In your opinion, to what extent are these aspects promoted in the strategy, currently under discussion, for implementing the EU Internal Market in services (EU Services Directive)? Please list them on a scale of 1 to 4, where 1 = "most promoted" and 4 = "least promoted".

1 Availability
2 Quality
3 Transparency
4 Legal guarantees
C.4. Under the planned Services Directive, in most cases the consumer protection provisions of the country where the service is provided will apply but it is not clear when in future the provisions of the country of origin of the service provider will apply, rather than those of the country where the service is provided. Do you consider that this will in future jeopardise national consumer protection provisions?

C.5. What consumer information do you consider it essential to provide in the case of the cross-border supply of services?

\[\text{...}\]

\[\text{161}^{\text{??}}\]

\[\text{Apparent no data (?)}.\]
C.6. Have you had any experience with European consumer advisory bodies or with EU-wide cooperation in the field of consumer protection?

Yes 25%

No 75%

C.7. Under the EU Services Directive, enterprises are to be encouraged to guarantee the quality of their services, on a voluntary basis. How do you assess this request?

A very good initiative 54%

A questionable initiative 46%

C.8. Will you feel more or less confident if, in future, cross-border services are monitored on a joint basis by the authorities in both the country where the service is provided and in the country of origin of the service-provider?

Less confident 18%

More confident 82%
C.9. Do you believe that problems could arise in connection with liability and the enforcement of administrative provisions?

Yes 76%
No 24%

C.10. Do you consider that, from a consumer standpoint, an Internal Market which is geared more to cross-border services will give rise to problems or unresolved questions which have so far not been adequately considered?

Yes 58%
No 42%
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

![Pie chart showing percentages of replies from different countries]

- Belgium: 13%
- France: 22%
- Germany: 3%
- Poland: 12%
- Portugal: 19%
- Romania: 22%
- Other: 9%

Replies representing the views as follows:

![Pie chart showing percentages of replies for employers, employees and other]

- Employers: 46%
- Employees: 27%
- Other: 27%

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162 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"?**

![Pie chart showing 77% No and 23% Yes]

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

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163 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.
their employers. This must change. (DE)

- Improve the quality of technical translations in contacts with the contracting party. (PL)
- 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.portaldempresa.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?\textsuperscript{164}

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

\textsuperscript{164} 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): \url{http://ec.europa.eu/solvit/}. The IMI network allows for cooperation between public administrations especially on transposition issues: \url{http://ec.europa.eu/internal_market/imi-net/index_en.html}. 

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A media campaign is necessary to make the existence of this centre known to the general public. (RO)

- 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 (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

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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
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**

- 44%: No barrier
- 29%: Barrier - should be removed
- 24%: Barrier - should not be removed
- 3%: No opinion

**Obligation for the services provider to register in the host country**

- 29%: No barrier
- 27%: Barrier - should be removed
- 26%: Barrier - should not be removed
- 18%: No opinion

- 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

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Obligation to apply rules regarding liability (towards creditors, workers, users)

- No barrier: 30%
- Barrier - should not be removed: 46%
- No opinion: 24%

Obligations regarding accounting and reporting

- No barrier: 28%
- Barrier - should be removed: 31%
- Barrier - should not be removed: 38%
- No opinion: 3%
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

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

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- 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?**

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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 (requalifying 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?

- **Very adequate**: 17%
- **Somewhat adequate**: 30%
- **Not adequate**: 37%
- **Not at all adequate**: 13%
- **No opinion**: 3%

**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)


![Chart showing distribution of responses]

- The sending country: 83%
- The host country: 13%
- Both the sending and the host country: 4%

166 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)
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")? 

![Poll](Image)

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.

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167 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](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011AE1161:EN:NOT).
under what conditions a company can be inscribed and for how long. (PL)

- 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 A1 database. (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)
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<td>Bouwunie</td>
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<td>Confération Construction</td>
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<td>CSC Bâtiment Industrie et Energie</td>
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<td>Labour Inspectorate – Federal Ministry of Labour</td>
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<td>BE</td>
<td>SPF Economie</td>
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<td>8</td>
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<td>31</td>
<td>DK</td>
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<td>32</td>
<td>LT</td>
<td>Lithuanian Labour Federation</td>
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