

**JOINT POSITION PAPER**  
**OF THE EUROPEAN SOCIAL PARTNERS IN THE CONSTRUCTION INDUSTRY**  
**On the findings of the *High Level Group (HLG)* on the Action Programme for reducing  
Administrative Burdens in the European Union, COM(2007) 23 final**

Taking into account:

- § The Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – Action Programme for Reducing Administrative Burdens in the European Union (COM[2007]23 final)
- § The Commission Communication “Improving quality and productivity at work: Community Strategy 2007-2012 on health and safety at work” (COM[2007]62 final);
- § The Communication from the Commission to the Council and the European Parliament – Action Programme for Reducing Administrative Burdens in the EU; Sectoral Reduction Plans and Actions 2009(COM[2009]544 final);

The European Social Partners of the construction industry have been following the activities of the High-Level Group (HLG) relating to industrial relations and occupational health and safety with interest and growing concern. EFBWW and FIEC consider that European policy on occupational health and safety makes an important contribution to the basic right of European citizens whereby their health should not be violated at work.

EFBWW and FIEC share the view that further steps are desirable in the reduction of administrative burden for companies, in particular SMEs, but these steps should not be done at the detriment of the positive achievements reached so far in health and safety policies.

EFBWW and FIEC support some of the proposals put forward by the HLG, in particular the encouragement to Member States :

- to introduce a more integrated approach to labour inspections which would avoid employers being visited by inspectors from different regulatory domains over a relatively short period of time;

- to supply adequate and practical guidance on the H&S plan and file, in order to diminish, as far as possible, the need to resort to the services of external health and safety coordinators, though still reflecting that the health and safety coordinators are able to act on behalf of the client of the project, also if a contractor is appointed to carry out the safety and health coordination.

However, EFBWW and FIEC express strong concerns on other aspects of the report, in particular :

1. the measurements and the methodology used by the HLG;
2. the recommendation of exempting SMEs from some of the obligations foreseen by the Directives;
3. the fact that the European Social Partners of the construction industry have not been involved in this exercise.

For these reasons, EFBWW and FIEC consider that the adoption of the recommendations as proposed by the HLG could endanger one of the main EU social policy pillars, namely occupational health and safety.

In order to prevent this from happening, the European Social Partners of the construction industry have drafted the following joint position with the aim of providing a critical input on the findings of the HLG.

On this basis EFBWW and FIEC are open for a possible constructive debate with the HLG in order to review the recommendations put forward.

## **1. THE METHODOLOGY USED AND THE QUANTIFICATION OF THE OUTCOMES AFFECT THE CREDIBILITY OF THE REPORT**

(1) The European Social Partners of the construction industry note that the Directorate General for Employment, Social Affairs and Equal Opportunities (DG EMPL) has disagreed with the Consortium over the measurements results.

(2) The data used by the HLG is based on an extremely small and unrepresentative sample of countries (six) and the results obtained have then been extrapolated and applied in the same way to all the 27 member states.<sup>1</sup> This procedure is seriously flawed, as it ignores the fact that member states have a wide scope for discretion when implementing European directives at national level, which they apply according to national circumstances. Simple extrapolations distort the results. The survey would therefore need to be conducted again using different methods and separate calculations made in all member states.

(3) The striking differences in orders of magnitude between the individual reports give rise to doubts about the reliability of the figures referred to by the High-Level Group. For instance, between the last and the previous report of the High-Level Group, the relative share of the administrative burdens associated with the methods of raising turnover tax is for no apparent reason reduced from the initial figure of €106 billion to a current figure of €80 billion. This has the effect of pushing up the relative share of the other types of burden, such as occupational health and safety.

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<sup>1</sup> Observations DG Empl. On Modules 3 & 4, 5 MARCH 2009

(4) Furthermore, EFBWW and FIEC find it questionable that savings should be sought of all places in the area of occupational health and safety, given that other policy areas make up around 97% of all administrative burdens, while occupational health and safety represents a mere 3%. In view of this wide gap between the actual proportions it would have made much more sense for an impartial "critic of red tape" to look for ways of making savings in the major cost categories rather than, in an area which represents a very small proportion of the overall costs.

(5) DG Employment has stated that anyone examining EU legislation on occupational health and safety with a view to simplifying and reducing the administrative costs must take into account the efforts made in recent times, particularly in the sphere of working conditions. The practical example can be taken from Directive 2007/30/EC amending Council Directive 89/391/EEC (on the introduction of measures to encourage improvements in the safety and health of workers at work), as well as its individual Directives 83/477/EEC (on the protection of workers from the risks related to exposure to asbestos at work), 91/383/EEC (supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship) and 94/33/EC (on the protection of young people at work) with a view to simplifying and rationalising the reports on practical implementation. These Directives were adopted with the aim of reducing the amount of reporting by the member states. From a previous figure of 500 national reports, in future only 27 will still be required.<sup>2</sup> EFBWW and FIEC share and support this approach.

## **2. NO EXEMPTIONS FROM THE OBLIGATIONS LAID DOWN IN THE DIRECTIVES**

(6) EFBWW and FIEC believe that it is the duty and the responsibility of each company, independently of its size, to take care about the health and safety of its workers and therefore there shouldn't be any distinction between the levels of risk for different sizes of firms : in the construction industry firms of different sizes are generally working together on the same construction sites and in cooperation with one another. Furthermore, the risk in small firms is by no means lower (as proven by official statistics). In addition, such a distinction would in practice create different categories of workers, putting at risk the fundamental right of every person to physical integrity.

(7) In order to develop and apply an efficient H&S policy at the company level a traceability of the procedures and actions undertaken and their documentation is needed. The EU Directives define common minimum standards of obligations, whilst at the same time providing the Member States on the one hand the possibility of setting higher standards and, on the other hand, to derogate to some provisions in specific cases. EFBWW and FIEC are therefore opposed to the exemptions from the obligations laid down in the Directives as recommended by the HLG.

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<sup>2</sup> Observations DG Empl. On Modules 3 & 4, 5 MARCH 2009

(8) However, EFBWW and FIEC recognise that further improvements can be achieved towards a better application of the obligations foreseen by the Directives in question, taking into account the needs and the possibilities of SMEs, thereby effectively reducing their administrative burdens. In this respect the exchange of best practices between Member States can provide an extremely useful added value. Furthermore, the European Social Partners of the construction industry are willing to discuss with the HLG possible alternative means for achieving the same objectives without putting in danger the achievements reached so far in the area of H&S.

### **3. NO REAL PROGRESS CAN BE ACHIEVED WITHOUT THE INVOLVEMENT OF THE SOCIAL PARTNERS**

(9) The EU Treaty (Art.154) foresees the obligation for the Commission to consult the social partners on the possible direction of any EU action before submitting proposals in the social policy field, thereby underlining the importance of their direct involvement in this area. Although the task of the HLG is to advise the Commission, its recommendations, if taken into account, can bear significant consequences as regards the application of H&S policies. EFBWW and FIEC strongly regret not having been consulted by the HLG while addressing two EU Directives playing a key role on H&S in the construction industry.

(10) The construction industry is characterised by some specificities, which make it very different from the other industrial sectors. It also has some particular working and employment conditions and the social partners play an important role in regulating such conditions. They are best placed for understanding the requirements and the needs of enterprises and workers and for defining the most adequate answers. Therefore, real progress can not be achieved without their involvement.

### **4. APPEAL TO THE COMMISSION AND TO THE HLG**

(11) The European Social Partners of the construction industry remind that the "Community strategy 2007 – 2012 on health and safety at work" (COM[2007]62) is stressing that better regulation by no means shall lead to diminishing of the level of protection. In the light of the arguments developed here above they therefore warn the Commission against a premature adoption of the recommendations put forward by the HLG regarding the "Framework" Directive (89/391/EC) and the "Construction sites" Directive (92/57/EC).

(12) EFBWW and FIEC underline the need for, on the one hand, further guidance at the EU level and, on the other hand, the exchange of best practices as regards the practical application of the Directives under examination with the aim of further improving the implementation of the health and safety policies in firms.

(13) It remains beyond dispute that the overwhelming majority of the workforce in the construction industry is working in small and medium-sized enterprises and that statistics indicate that health and safety risks remain particularly high in this category of enterprise. For this reason, appropriate provisions, which adequately take into account the needs and constraints of SMEs without affecting the development of their H&S policies, should be elaborated with the aim of better implementing the obligations foreseen by the Directives. EFBWW and FIEC are willing to collaborate with the HLG and the Commission in this area.

Brussels, 30 June 2010