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Brussels, 12 March 2014

Joint position by the European social partners of the Cleaning Industry regarding the European Commission 2nd Stage Consultation of Social Partners under Article 154 TFEU on enhancing EU cooperation in the prevention and deterrence of undeclared work

The EFCI (European Federation of Cleaning Industries)¹ and UNI Europa² have taken note of the European Commission 2nd Stage Consultation of Social Partners under Article 154 TFEU on enhancing EU cooperation in the prevention and deterrence of undeclared work and would herewith like to submit their joint comments to the consultation. Through the present position paper, the European social partners wish to draw the attention to a series of elements, which are of high importance to companies and workers providing cleaning services.

The EFCI and UNI Europa represent more than 140.000 companies with an annual turnover of about 62 billion Euros as well as more than 3.32 million workers. It is a highly labour intensive sector where personnel costs (wages, social security contributions, etc.) represent about 80% of the total costs. They are recognised by the European Commission (DG Employment, Social Affairs and Equal Opportunities) as European sectoral social partners in accordance with the European Treaties. Further information can be found on the respective websites: www.efci.eu and www.uni-europa.org.

General comments

On 4 July 2013, the European Commission launched the first stage consultation of European social partners and received 15 replies. In this consultation the Commission identified the main problems related to prevention and deterrence of undeclared work, recalled the most recent activities taken by the Commission and introduced the objectives and possible content of the initiative. The aim of the consultation was to consult management and labour on the possible direction of the Union action.

In general terms, the EFCI and UNI Europa have a strong interest in all European legislation that affects employment, competitiveness and working conditions of the sectors' companies and employees. We therefore highly welcome the Commission's intention to enhance EU cooperation in the prevention and deterrence of undeclared work. As in many other sectors, illegal employment, bogus self-employment and other forms of undeclared work are of high concern for companies providing cleaning services.

The companies of our sector are mostly SME's. It is a highly labour intensive sector where personnel costs (wages, social security contributions, etc.) represent about 80% of the total costs. Therefore, any fraud on social insurance contributions and on tax payments leads to a massive distortion of competition at the expense of law-abiding companies. Furthermore, the wage dumping caused by undeclared work strongly puts at risk the regular employment within these law-abiding companies.

¹ The European Federation of Cleaning Industries (EFCI) represents and promotes the interests of cleaning contractors in 18 Member States of the European Union

² UNI Europa is a European trade union federation. It unites national trade unions organising in service and skills sectors. It has 320 affiliated trade union organizations and represents 7 million workers in 50 countries

Specific comments

1.) Establishment of a European platform

The EFCI and UNI Europa strongly support the establishment of a European platform in order to enhance cooperation between enforcement authorities, whose aim is to track, prevent and sanction undeclared work. In order to tackle the phenomenon of undeclared work, a better collaboration between labour inspectorates as well as social security, tax and migration authorities is essential and this in order to be able to carry out effective controls as well as to ensure the European-wide enforcement of financial penalties.

A better collaboration between the national authorities is therefore primordial. As stated in the consultation document, the platform should increase Member States' awareness on the urgency of the action and improve cooperation between Member States' different enforcement authorities. In addition, the platform should organise the exchange of best practices, improve the knowledge and measurement of undeclared work, create a knowledge bank and identify solutions for data sharing.

2.) Scope and objective of the European platform

The phenomenon of undeclared work has a domestic and transnational dimension. While the domestic dimension can be in most of the cases sufficiently checked and enforced by the authorities of each Member State, the transnational dimension created through bogus self-employment and in the event of posting workers from another Member State is by contrast very difficult to control. This does not only concern the respect of collectively agreed wages that are generally binding for all service providers, but affects even more the price competition that is carried out over the different social security contributions.

The European platform should therefore also provide a transparent picture of the different social security contribution systems existing in every EU Member State. Indeed, unfair competition through wage dumping can be quite well tackled through the existence of generally binding collectively agreed wages and the posting of workers directive.

What is much more difficult to control and to verify by the authorities of the host Member State is the "grey" area regarding the compulsory social security contributions that are highly different in every Member State and that can strongly contribute to lower the total cost of labour. As no overview at EU level on these different social security contributions exists, it is not possible for national control authorities to guarantee the respect of legal obligations, and to finally ensure a fair competition between all companies and an equal treatment of all employees operating in this host Member State.

Finally, it is necessary to complement the activities of the platform by other tasks in order to enhance controls in practice. First of all, the activities of the platform have to include the coordination of the transnational execution of financial penalties, as foreseen by the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties. The best controls remain ineffective if the imposed financial penalties cannot be easily executed. These penalties only have the desired deterrent and preventive effect if a European-wide execution is ensured. Secondly, the cross-border exchange of data between national authorities needs to be further improved. This is essential to identify and control dishonest companies and to therefore prevent illegal employment at an early stage.

3.) Composition of the European platform

The proposed European platform can be a suitable tool to improve cooperation between Member States if the membership of all 28 Member States is mandatory. Given the already existing numerous working groups at EU level dealing with aspects of undeclared work, a newly created European platform should focus on the practical cooperation of relevant actors in the field. Therefore, representatives of national enforcement authorities and national social partners should be in any case represented.

The platform should first of all deal with cross-border issues. After a certain period of time and in case the activities of the platform are successful, its scope could be eventually widened to national issues. It is fundamental that all three concerned pillars (abusive behaviour regarding working conditions and/or health and safety norms / fraud on social insurance contributions / tax evasion), including bogus self-employment, are covered by the future activities of the platform in order to ensure the expertise of labour inspectorates as well as social security, tax and migration authorities. At least the authority carrying out the leading and coordinating role must be represented.

The main scope and objectives of the action and the proposed composition of the platform, including the practically relevant actors, would clearly distinguish this new body from the already existing groups and committees. It is therefore doubtful if a mere extension of the scope of existing working groups or committees would bring a practically relevant and effective added value. As a consequence, we strongly suggest establishing an independent body that can tackle all these different objectives of the platform.

4.) Involvement of social partners in the European platform

The European social partners are central actors in the fight against undeclared work, especially in those sectors most affected by the phenomenon of undeclared work, which are in any case all labour intensive industries. Therefore, social partners have carried out numerous policy activities, practical guides, joint actions and declarations.

Since the establishment of a sectoral Social Dialogue Committee in 1999, the social partners of the cleaning sector EFCI and UNI Europa dedicated an important part of their efforts to the improvement of the sectors' image and the encouragement of a healthy competition. That is why they adopted joint declarations on working conditions, education & training and undeclared work and elaborated with the financial contribution of the European Commission a joint guide in all languages of the EU entitled "Selecting Best Value - A guide for organisations awarding contracts for cleaning services". The guide offers purchasers a practical tool aiming to break the vicious circle provoked by the "lowest price" as the sole criterion considered by service purchasers.

Therefore, membership of the European social partners in the platform is indispensable. They must be able to decide autonomously, which representatives of the sectors affected by undeclared work will be represented in the platform. This goes in any case for labour intensive sectors, representatives of which must be platform members, such as industrial cleaning. As a consequence, not only cross-industry social partners, but also sectorial social partners representing the sectors particularly affected should be members of the platform.

Finally, the European platform must not result in a restriction of national control regimes. The activities of the platform must not result in any kind of harmonisation that would, as a consequence, reduce the effectiveness of control mechanisms at national level. The fight against undeclared work is mainly the responsibility of national authorities.

As much as the social partners are political actors regarding the issue of undeclared work, the definition and development of the legal framework as well as the implementation of appropriate control measures is a sovereign task that is carried out by the relevant Member States' authorities. A sole initiative of the European social partners would not result in any required comprehensive solution, due to their limited competences.

Signed in Brussels on 12 March 2014



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