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## Intervention of Commissioner Marianne Thyssen at 3rd Labour Mobility Congress

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I am grateful to the organisers, the Cracow University of Economics and the Labour Mobility initiative, for inviting me to address you – especially in this beautiful royal city.

I welcome the chance to talk to you about labour mobility. I know this is an important topic for you here in Poland. It is an important topic to many people and businesses everywhere in the EU.

No matter where I go, no matter whether my interlocutors are entrepreneurs, workers, politicians or ordinary people: they all seem to have strong views on labour mobility.

Those views are not necessarily aligned.

And yet, I am deeply convinced that ultimately we share the same interests. This is why we need to debate this topic, listen to each other's views and find common ground. Only then will we be able to move forward instead of being stuck or even falling back on what has been achieved.

This is why I am here with you today: to listen, to share some of my own views and to engage with you in an open and frank debate.

A deeper and fairer internal market

Let me start by sharing some of my thoughts with you. I will get to the specific topic of labour mobility in a minute. But allow me first to put this topic into a broader policy context.

Throughout my political career – both as a member of the European Parliament and as a politician in my home country, Belgium – I have been a fierce promotor of the Internal Market.

For decades, the internal market has created opportunities and brought growth and welfare throughout the EU: to the north and the south; to the west and the east. I know that Poland has always been a strong supporter of and contributor to the internal market. The Government made this one of its political priorities during the Polish Presidency of the Council in 2011. Now that the EU is going through difficult economic times, now that economic convergence between EU Member States is going down instead of up, it is obvious to me that we need the internal market more than ever.

We need more internal market not less. This is why it is a priority for this Commission to deepen the internal market.

What does deepening the internal market mean?

In my view it is absolutely essential that we work on two fronts:

First, we must remove the remaining obstacles. This will not happen by itself – it will require continuous effort and enforcement action from the Commission and the Member States.

Secondly, we must gradually come to more commonality in the rules and parameters that govern our national markets.

This is true for the Energy Union that we are trying to create, for the Digital Single Market as well as for the Banking Union. It is true for goods, for services and for capital. It is also true for the free movement of workers.

Deepening the internal labour market means: removing remaining obstacles to free movement of workers and gradually elaborating the common set of minimum rights that apply to all workers across the EU. If both go hand in hand, they can become a virtuous circle of mutually reinforcing powers – ying and yang!

Let me illustrate this based on a concrete example: The common EU rules on food safety facilitate the free movement of food products. They make it easier for citizens to trust imported goods because they know that these goods meet the same health and safety standards as locally produced food. Conversely, they make it more difficult for Member States to justify national protection measures and hence easier for producers to export their goods. This equates to a mutually reinforcing interaction between free movement and common standards of protection.

But the balance must be there. Removing barriers without developing common rules is not a sustainable policy proposition.

What does this mean for labour mobility?

It means that in this area too, our approach must be balanced. If we let workers circulate freely from one Member State to the other, without commonly agreed rules of the game, it would not work. It would lead to disputes, abuses, to unilateral measures introduced by some, disputed by others.

This is why we have detailed rules on the coordination of social security systems. It is why in 1996 the EU introduced the Posting of Workers Directive seeking a fair balance between the interests of the workers concerned, of the service providers and of the local businesses in the recipient countries.

The question today is whether these rules are still fit for purpose?

This brings me to the Mobility Package which we are currently preparing in the Commission and which we intend to bring forward by the end of the year.

The objective is three-fold:

(1) As I hope I have made clear before: the free movement of workers and the freedom to provide services are not up for discussion. This being said, we cannot and should not turn a blind eye on the issues that labour mobility gives rise to, both in the countries of destination and in the countries of origin. In order to respond to citizens' concerns and to inform our policy making, we need a correct picture of the situation, based

on facts and figures – not on emotions. This is where I see a first task for the Commission: to analyse and report objectively on mobility flows and their consequences on national labour markets and social security systems, both in sending and receiving countries. We may find out that perceptions do not always correspond to reality.

(2) Our second priority will be to prevent errors, abuse and fraud. This is not only in the interest of the receiving countries but also in the interest of the origin countries. I will come back on this in a minute.

(3) But perhaps we need to go beyond enforcement and also take another close look at some key provisions of the existing rules. If they are no longer responding to the economic and social challenges of today, we may need to update them.

Let me turn to each of these points in more detail, starting with the factual analysis.

Scale and impact of free movement and posting

Only 8.1 million EU citizens out of over half a billion live and work in a member country other than their own. That makes only 3.3% of our total work force. They are not a homogeneous group: 41% have a tertiary education and that percentage is growing.

The figures for workers posted in connection with the provision of services across borders are also worth taking a look at. According to the latest official EU statistics available, some 1.3 million posting operations took place in 2013. That was an increase of 27% on 2010 but still involved only 0.6% of the total employed population aged 15 to 64 in the EU.

In absolute terms, the three main sending Member States were Poland, Germany and France and the three main receiving Member States were Germany, France and Belgium.

Now let's zoom in on the situation here in Poland:

In 2013 there were 1.9 million Polish citizens living in another Member State, accounting for 14% of all mobile EU citizens .

Most mobile Polish citizens live and work in the UK (718 000), Germany (566 000) and Ireland (120 000). In percentage terms, the Polish mobile citizens represent 3,9% of the labour force of Ireland, 1,4% in the UK, 0,8% in Austria and 0,7% in Germany.

By contrast, there were only 23 000 mobile EU citizens living in Poland.

But there are also many non-EU citizens living and working in Poland, and many of whose activity is not declared. Undeclared work has been estimated to have accounted for between 12 and 15% of Poland's GDP from 1995 to 2006, compared with an EU-27 average of 7.2%.

According to the latest data on portable A1 forms, in 2013 Poland was the top net sender of posted workers having sent 248 000 workers more than it received. In total Poland posted 263 000 workers to other EU Member States, mostly Germany (149 000), France (31 000) and Belgium (23 000). 48% of the Polish workers work in the construction sector.

Ladies and gentlemen, those are the numbers. But we cannot limit our analyses of the situation to statistics. We also have to look closely at the impact of mobility.

On the positive side, evidence points strongly to the economic benefits of labour mobility: it provides broader economic opportunities, helps correcting imbalances between high and low unemployment regions by matching labour supply with demand, it contributes to job creation opportunities and promotes economic growth and competitiveness. Labour mobility helps to address skills mismatches across borders. It promotes the dissemination of knowledge and innovation across the EU.

However, in particular when concentrated geographically, it may also create disruptions.

I am thinking of communities in the countries of origin, who may see many of their young and most highly skilled workers leaving. This raises legitimate questions about the medium to long term impact of ageing populations and shrinking workforces on GDP, the cost of educating those who leave, and how to promote circular migration.

And of communities in the host countries, who may feel overwhelmed by the sudden influx of large numbers of mobile EU workers and their families.

We cannot turn a blind eye on these issues, but we must analyse the facts and consider rationally how best to address them.

Incidentally, these are issues which do not only arise on a European scale. They may exist also within a Member State. Poland would for example from an economic viewpoint clearly benefit from more geographical mobility between regions with very different labour conditions inside the country. But still, that labour mobility appears not so easy to bring about and could give rise to local issue, such as impact on real estate prices and local social services.

Tackling fraud and abuses

As I mentioned, our second priority is to prevent errors, abuse and fraud in the context of labour mobility. For the internal market to work, it must be based on clear rules, which are fair, well understood and applied in practice.

Remember my example of food safety and think of the impact that one scandal of contaminated food can have! Beyond the direct harm it causes, it can take ages to restore people's trust. No matter how many safe food products have crossed borders at the same time. One rotten apple spoils the whole barrel!

It is the same with free movement of workers. No matter how many people play by the rules, one well mediatized fraud case undermines people's trust in the fairness of free movement of workers in general. That is why enforcement is so much in the common interest of all countries: the receiving ones as well as the net senders.

The Enforcement Directive on the posting of workers adopted last year will be important here.

It lists qualitative criteria characterising both the temporary nature inherent in the notion of posting

and the existence of a genuine link between the employer and the Member State of establishment.

These provisions provide the Member States with tools to fight the abuses by „letterbox companies”.

The Directive will also make information on the applicable terms and conditions of employment much more easily available in each Member States.

Knowing your rights is a precondition for getting them respected and knowing your obligations is a prerequisite for honouring them.

The Enforcement Directive will also introduce direct subcontracting liability in the construction sector. Member States may choose to apply the subcontracting liability further down in the supply chain and may extend it to other sectors. These liability mechanisms can play an important role in securing workers' rights.

And the Directive establishes a list of national control measures that the Member States may apply to monitor compliance with the Posting of Workers Directive and the Enforcement Directive.

This may entail an obligation for the posting companies:

to make a simple, prior declaration to the authorities in the receiving country;

to keep basic documents – such as posted workers' employment contracts, payslips and timesheets – available at the workplace;

to designate a contact person for liaising with the enforcement authorities in the receiving country.

The Enforcement Directive will also intensify cooperation between national authorities with a view to exchange information and enforce the rules together. This is a point that I personally attach a lot of importance to. Posting, by definition, always involves a cross border element. To assess the regularity of posting across different Member States, it will almost certainly be necessary to assemble information held by authorities in different Member States. We must find efficient and effective ways to do this – I count on all national authorities to play their role.

You may be aware that the Commission has recently referred a Member State to Court for enabling its enforcement authorities unilaterally to declare an A1 form issued by another Member State void. Such unilateral actions are not acceptable in the EU. There are proper procedures for cooperation in place, which is why we did not hesitate to take the case to Court. Nevertheless, it is all Member States common responsibility to make sure that these procedures work.

Transposing the Enforcement Directive on posting swiftly and properly into the Member States' legislation is therefore crucial.

We shall continue to work closely with the Member States to ensure that this is done. Transposing the Enforcement Directive is not only a matter of adopting the necessary legislative measures – it is also a matter of ensuring that the competent authorities have the necessary resources to do the work. I count on Poland as one of the Member States with the highest number of posted workers sent to other Member States to fully play its role here.

I invite you, the business community, enforcement agencies and politicians of Poland, not to see legitimate actions of other Member States to enforce the posting rules as hostile acts. They are your allies! In the short run, they make sure that you who play by the rules do not face unfair competition from those who don't. And in the long run, they help ensuring that EU citizens trust and support free movement of workers.

The same is true for the fight against undeclared work. A second instrument in our fight against abuse and fraud is the proposed European Platform on undeclared work, a problem that you also know here in Poland.

This platform will bring together various national enforcement authorities, such as the labour inspectorates and the social security and tax authorities with a view to preventing and deterring undeclared work. In those Member States where good cooperation exists between those authorities, the administrative burden on businesses and workers can often be reduced.

Once established, it will involve sharing information and best practice, developing expertise and training, and supporting practical cross-border cooperation.

I hope that I can count on Poland's support for a rapid adoption by the co-legislators of the proposed Decision on the establishment of the Platform.

Targeted review of Posting of Workers Directive and revision of Social Security Regulation

The labour mobility package will not only aim to provide a factual description and rational analysis of labour mobility in the EU, and examine how we can further support national authorities in the fight against abuses and fraud. As I mentioned, we will also assess whether the existing rules are still fit for purpose and where needed propose adjustments.

As regards the 1996 Posting of Workers Directive, President Juncker has announced in his political guidelines that we would conduct a targeted review. This does not necessarily mean a revision. I am aware from my time in the Parliament that it was not easy to come to agreement on the Enforcement Directive and I will certainly not take the decision to open up the basic Posting Directive lightly. In any event, if at all we will propose to open up the basic Directive, it will not be to put the basic principles on free movement up for discussion.

The key objective of the Posting Directive, to aim for a balance between the interests of the worker, of the service provider and of the local businesses must remain intact. It is only when the rules appear to give rise to too many uncertainties or abuses that we could consider amending them. I notice that fundamental disputes continue to exist today, for example about the concept of posting in the transport sector. If an amendment of the Directive can bring more legal certainty, in the interest of businesses and workers, we should consider it. This too can be part of deepening the internal market.

The EU rules on the coordination of social security systems is another set of rules that we are taking another look at. The coordination rules have always been an important instrument to facilitate cross-border mobility of EU workers and their family.

They aim to ensure that mobile EU citizens do not lose their social security protection, and that one Member

State – and one Member State only – is always responsible for the social security protection of the individual citizen.

But we need to ensure that the rules reflect the changes in the economy and society and, as I said before, that they are seen as being fair by citizens and political leaders.

I approach this matter with an open mind, and we are eager to listen to the concerns and the proposals from the Member States and citizens. It is clear that the issues raised do not have easy answers. The fact that the social security systems of the Member States vary so substantially, does not always make it easy to find common ground.

Let's take family benefits.

As you know, where workers are entitled to family benefits, they will under the current rules – focussed on the *lex loci laboris* principle which underpins the Regulation (this means that it is in principle the law of the country in which the person works that is applicable) – receive the same amount of benefits as their fellow workers, regardless of whether their children live in the same country or another.

However, in the national jurisdictions of most Member States, family allowances are residence based and tax financed. Amounts of benefits vary moreover substantially between Member States, in absolute figures and in percentage of GDP. I understand, for instance, that child and family benefits in Poland account for only 0.8% of GDP, the lowest percentage in the EU.

Under the current circumstances are the existing rules fair? Or should the place of residence of the children be decisive, either for determining which Member State is competent in first instance or for determining the amount of the benefit?

As regards unemployment benefits, as you know, the last country of employment is responsible for paying them.

This is true even if the worker has worked – and paid social security contributions – in another Member State all his or her life, and for instance, for only two weeks in the last country of employment.

In such cases, can you legitimately question whether a worker should not have spent a minimum amount of time – say 1 month or 3 months – in the last country of employment before being entitled to unemployment benefits there?

Those are just two examples of questions that could be asked – and are being asked – on the subject of social security coordination rules in Europe.

Luckily, there are also some easier issues. For example, with more and more Member States introducing benefits for long term care in their social security systems – a trend which the Commission encourages in view of the aging of the population – it seems fairly obvious that those benefits need to be covered explicitly in the EU Coordination rules.

As I said, we are in listening mode and don't have the answers to those questions yet.

That is why we want a debate on the subject, to explore options and see whether the rules need updating.

We shall only take a decision on how to proceed as regards changing the current rules at the end of the year.

In the meantime, we are conducting a thorough impact assessment to ensure that we understand the effects of any change to the current rules.

So I am eager to hear the views of the Member States, the European Parliament, the social partners and other stakeholders to ensure that our decision is an informed one.

Ladies and gentlemen,

I sincerely believe that labour mobility is an opportunity, not a threat. To the extent that you needed to be convinced, I hope I have been able to convince you of that today.

We must not backtrack on the internal market now that we need it more than ever. We must deepen it.

Free movement of workers expands the opportunities available to individual workers and employers.

Like all freedoms, it must be tempered with concern for its impact on others. Of particular concern are its impact on the social protection of the workers and on the level playing field with the local businesses. This is not new – it has always been at the heart of the EU's internal market policy. If the EU does not pay attention to maintaining the balance, it risks undermining the EU citizen's support for the internal market and even for the EU project as a whole.

That is why the Commission is determined to support freedom of movement and freedom to provide services across borders and to make sure they take place in lawful and fair conditions.

But achieving a balanced approach to labour mobility and making sure it is fair is not something the Commission can do on its own.

The Member States, the social partners, enforcement agencies, civil society and individual citizens can and must all do their bit.

Tackling abuses and fraud, properly protecting the rights of posted workers, and making sure social security contributions are paid, are in Poland's interest just as much as they are in that of other Member States. It is in Poland's short term interest, and in its long term interest taking into account that Poland is in the centre of the EU internal market.

We need to see how to do this together, how to explain it to our fellow Europeans, and then how to enforce the rules that we have agreed.

Poland's contribution to achieving a fairer internal market will be hugely important.