

The counterpoint of...

Jacques Freyssinet

The matter of posted workers encourages to the reflection on the relations established between legal norms and economic phenomena to which they apply.

First, let us recall that the objective of the Treaty of Rome is the free movement of workers, goods and capital. In the first area, the principle is of equal treatment in each Member State, workers belonging to the States in the Community. The posting of workers, from the point of view of economic analysis, is unquestionably a phenomenon of the movement of workers. The Community law, however, derives it from the freedom to provide services, it escapes, thus, the rule of equal treatment. This rule is completely isolated for the social protection; it can be applied only in exhaustively listed exceptions, in terms of the Labour Law. There is a free way to circumvent the founding principle.

Second, note that the Directive of 1996, still applicable, was prepared in the Community of twelve States and that it was adopted just after the enlargement to fifteen in 1995. This composition made credible the promise of the upward harmonisation, which was from the beginning in the very heart of the European message. The perspective of the competition based on the labour costs was not significant or was perceived as a transitional problem. Today the same rules apply in the Union of twenty-eight where the Court of Justice, in the name of the freedom to provide services, protects the rights of some States, using the gaps between labour costs as a competitive advantage.

Finally, one may question the relevance of a set of rules unique for three heterogeneous management modes for the workforce. The directive applies primarily to the circulation within multinational companies with a highly qualified workforce; as a rule, these employees have interest in preserving the status of the county of departure. It applies, also, to the workers coming from the countries where the level of salaries and social protection is low and who do mainly jobs not requiring skills; they are interested in taking benefits from the status that applies to the workplace. Finally, it is applied by the temporary employment agencies in the strategy of tax or social contributions optimization.

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Editor:

French Ministry of Finance
and Public Accounts
and Ministry of Economy
Industry and Digital

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139, rue de Bercy
75575 Paris CEDEX 12

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Layout:

Maryse Dos Santos

ISSN 1777-8050
eISSN 2417-9620

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