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The Commission Work Programme for 2016 states that the Commission will present the Labour Mobility Packet which will include, among others, a revision of the Posting of Workers Directive “...ensuring that the same work in, the same place, is rewarded the same pay”.

We support reasonable arguments expressed in position papers of several business and employer organizations including BUSINESSEUROPE, Eurociett of 9 November 2015, Nordic organizations of 18 November 2015, CEE organizations of 9 February 2016 and many others.

In this paper we aim to **shed additional light** on various aspects related to the posting of workers phenomenon from the **perspective of a posting state**.

Beyond any doubt, there are unsolved problems in the EU regarding fraud and abuse against intra-EU migrant workers' rights, which may lead to unfair competition or social dumping. On the other hand, there are challenges linked to national protectionism and administrative barriers which undermine work and services mobility within the Single Market. It contributes to the progressive loss of global competitiveness of the European economy, causing job losses.

There are politicians and advocates in the public arena in the prosperous member states who blame the mechanism of posting of workers as itself for the highlighted problems. In the public debate and media, the notion „illegal posting of workers” is regularly used to refer to cheap workers from Central and Eastern Europe, who, allegedly, dwell in poor living conditions and are exploited as slave labour, whilst destabilizing local markets and leading to economic problems in local business. Such sense of insecurity and fear is symbolized by the infamous “Polish plumber”, who menaced France in the context of the Bolkenstein Directive in May 2005.

Furthermore, the member states are currently implementing the Enforcement Directive (2014/67/EU), which will significantly complement the legal rules of posting of workers. The Enforcement Directive will provide to the member states new administrative tools and control measures for expeditious and effective prevention of fraud and abuse. What is also essential, it introduces electronic Internal Market Information System "IMI" which will finally allow the cooperation and information exchange between labour inspections of the hosting and sending states. In conclusion, the Enforcement Directive **organizes and clarifies most of the issues**, that were indicated by the member states and social partners as grounds of the fraud and abuse in posting of workers, particularly in the field of prevention of the unlawful „letterbox companies" and „ghost companies" economic activity.

The European Commission is today facing a tough challenge in the next step within the Labour Mobility Package. To meet the challenge there is **a need for extensive facts and figures** concerning the occurring problems and their actual causes.

Nevertheless, it should be emphasized that right now **there is no data source** that could give the reliable and comparable data concerning posting of workers across member states. Also, there is no EU-wide register in existence, which would allow for the examination of its presumed relation to exploitation of the intra-EU migrant workers or social dumping. The only statistics, available for the Commission concern the number of postings. That data reveals that posting of workers relates to a **tiny fraction of the EU workforce**. According to the latest data, Eurofound suggests that around **0,2% of the workforce are posted workers**.

How is it possible that such a marginal phenomenon could evoke such tensions and alleged economics turmoil in the receiving member states? Is the Commission addressing the right issue?

It appears that the assigning responsibility for the "social dumping" and workforce exploitation to ECC service companies **does not have grounds in the facts and figures**, but is based on **subjective perception**. Promoting such perception may be useful for some political actors and concerned stakeholders.

The very important side effect of the abovementioned introduction of the IMI system, will be the emergence of a **new reliable data source** for the policy makers in the field of posting of workers. Such data is extremely desirable due to the fact that too many legal decisions in the field of free movement of services and posting of workers had been taken on the basis of common sense, emotions, stereotypes, myths or xenophobia. Let us never make such a mistake in the future. If there is no data on the number of abuse and fraud, types of law evasion or confrontation of real labour cost in different member states, then the decisions are not based on facts, but on emotions. We would welcome all actions of the Commission that support the research, monitoring and data gathering. Such activities may seem **less**

spectacular than announcing the revision of the Posting of Workers Directive, but we are convinced that they constitute a more **powerful weapon against real problems**.

Does the Commission have any fact-based information that would justify a revision of the Posting of Workers Directive at this stage, even before the Enforcement Directive has been fully transposed in all of the Member States? Does the information available justify implementation of such unprecedented and drastic solution as the „equal pay“ principle?

From the perspective of the foremost leader in posting of workers, which is Poland, the perception on the highlighted problems is slightly different.

At first, presumption that the posting of workers triggers labour exploitation and social dumping is based on emotions. In fact, the mechanism of posting of workers is built on a important **social safeguard clause**, which eliminates the risk of social dumping and wage exploitation as well as guarantees posted workers the right to a minimum wage and core terms and work conditions, according to the law of the host country, therefore considered by it as adequate and decent to its own citizens.

Secondly, accusations that posted workers take away the workplaces from the local workers, has no support in facts. Local businesses decide on using the services of the legitimate firms or hire workers from foreign legitimate employment agencies, predominantly as a result of the lack of adequate resources on the local market. In spite of appearances, the posting of workers is not a method to reduce costs, as it appears being not so cheap. Notre Europe - Jacques Delors Institute Study *“Social Competition in the EU: Myths and Realities”* (2013) concludes that, *“on the whole, **social competition within the EU** in general, and between the “new” and the “old” member states in particular, **is unlikely**”*. Statistical indices of productivity-adjusted real labour costs suggest that commonly perceived truths in terms of labour costs might no longer hold. Nowadays in top five cheapest destinations for cheap labour is more Ireland, Luxemburg and the UK. According to the Study, if combined with low tax rates, flexible labour laws and relatively weak employee participation the British Isles are the most realistic suspects of social dumping. Direct conclusion from the Study is that if the nominal labour cost will be equalized by implementing “equal pay” principle, it will make the **real cost of labour in Central and European Countries uncompetitively high**.

Similar conclusion can be drawn from a more recent pilot study carried out at the Cracow University of Economics on 5821 cases of posting from Poland. The study on *“Labour Costs in Transfrontier Services”* (2016) apart from the usual indirect costs, such as taxes and social security contributions, has distinguished mandatory indirect labour costs resulting solely from the fact that a service is performed in another member state. They include travel, lodging and maintenance reimbursement for employee, documents translation, notification, hiring a contact person to cooperate with local administrative bodies, etc. and amount to 32 % of total

labour cost. Perhaps even more interesting finding of the study is that the average hourly earnings of a posted worker from Poland is **€ 2,33 higher than the minimum earnings** required by the host country law. The earnings of posted workers from Poland have **significantly departed from the minimum wage** and are **gradually growing**. The wage gap to local workers will continue to close, unless the "equal pay" principle will put posted workers out of jobs.

Thirdly, the posting of workers **has nothing to do with the "shadow" economy** or job migration. In the public debate in some host states, usually the posting of workers is not differed from a broader occurrence of intra-EU economic migration under freedom of movement of people and from exploitation of intra-EU migrant workers in forms of unregistered job, bogus self-employment or human trafficking. A good example is that when workers originate from Central and Eastern Europe, and who are not registered to any social security system in any member state are then misleadingly perceived by e.g. the French Labour Inspection as "illegally posted workers". The same can be said in regards of self-employed. Using the very word "posted" in this context is an offence of posting of workers and proves that those individuals, who abuse the law are **using posting of workers as a camouflage** for their illegal practices. As a result, the Commission and politicians feel obliged to take action against the posting of workers itself and are **completely missing the target** which should be eliminating unregistered work, bogus self-employment and human trafficking.

Fourthly, Polish entrepreneurs and their employees fully support combating the fraud and abuse, however they **categorically object** to the usage of cases of abuse and fraud as a **pretext to the market exclusion** of legitimate service companies posting workers in the framework of service provision.

Occurrences such as unregistered work or bogus self-employment, which bypass the labour and social security law, sorely strike the Polish service companies as hard as the local ones. For example, only a minor part of Polish senior caregivers in Germany is lawfully employed. It is estimated that around **70% of them work illegally** or are bogusly self-employed, which makes them easy victims of human traffickers through a well-organized transnational network of unlawful intermediaries. Sadly, German media for such occurrences regularly accuse... legitimate Polish care service companies.

Nevertheless, posting concerns a tiny fraction of EU workforce, for Poland it is as important as wine is for France, flowers are for the Netherlands or design is for Spain. **Services are Polish comparative advantage in Europe**. Historically, the Polish have always dominated in the service sector. In the pre-1989 period they emigrated illegally through the Iron Curtain to Western Europe or USA, where they launched small service companies in mass. The Polish work ethics and skilfulness, are specific national traits. Besides, if the posting was actually

based only on low labour costs, that sector would be dominated by poorer member states with a higher unemployment rate than Poland.

Poland has aspirations to become Europe's service centre. Krakow, where our Association is based, is ranked as the first in Europe and the 9th worldwide supplier of Global Business Services. Already today, the European business sector and citizens willingly use Polish services – from technologically advanced assembly and construction to senior care assistance, through which tens of thousands of German seniors can comfortably and safely live in their very own homes.

Implementing the principle of “equal pay” will **administratively eliminate the unique Polish comparative advantage** by making foreign service companies unable to compete with local ones, as foreign service providers bare higher indirect non-salary labour costs (travel, accommodation, maintenance reimbursement, hiring a representative to liaise with authorities in host Member States, administration staff to deal with A1 forms, translation of documents, legal advisors for at least three legal systems, etc.).

As a result, “equal pay” may **trigger a dramatic chain reaction** and far-reaching perturbations. First of all, thousands of Central and Eastern European service companies will most possibly go bankrupt leaving hundreds of thousands jobless. Perception of unfairness in CCE states will **possibly boost anti-EU reactions**. Jobless workers and their families will be forced to make permanent emigration, which will evoke again the perception of insecurity in the wealthiest member states about losing national jobs to cheap foreign workers. Furthermore, the accusations for overexploiting social security systems will escalate and will be followed by public demands to “combat fraud and abuse” of the free movement of people. It will start an **unstoppable process of dismantling** of the Single Market.

Besides, this principle is based on economic ignorance and constitutes a declaration of double standards for “old” and “new” Member States. **The goal should not be confused with the means to achieve it.** People are equal and should earn comparable income for the same work REGARDLESS of the place where the work is performed. Moreover, we want Central and Eastern European workers to earn the Western European salaries without having to move to another member state, also when they work in the home country for the foreign employer. Nonetheless, we are certain that **“equal pay” cannot be achieved by writing it down** in an EU Directive, because the result will be the opposite. In particular **“equal pay” will rebuild the economic wall** which will isolate workers and service companies from poorer member states and **brutally undermine the Treaty foundations**. That will open the gates for further step-by-step dismantling of the Single Market.

Today's key challenges are not connected to the core rights and working conditions of the Posting of Workers Directive, but to its application and implementation in practice. Both

workers and service companies from Poland expect **The Commission to focus on the fight against fraud and abuse**, not on rebuilding intra-European economic walls.

We also appeal to stop putting workers posted by legitimate service providers into one basket with abused, bogus self-employed or human trafficked workers. A **clear distinguishable line** between illegal economic activities and posting of workers in order to provide services in another Member State must be recognized.

We call the Commission to oppose the rhetoric of "tensions" and "conflict" in the context of two complementary values of freedom to provide services and labour rights. We perceive such approach as outdated, destructive, irresponsible and dangerous for European social dialogue. Rhetoric of confrontation **leads to emotional frustration** and **harms constructive debate** based on fact and figures.

In conclusion:

1. Today's major challenges are not linked to the core rights and working conditions of the Directive, but to its application and implementation in practice. They are focused to issues which were addressed in the Posting of Workers Enforcement Directive. Especially important is closing regulatory loopholes and **improving labour inspections** to better prevent fraud and abuse. Given the fact that the Enforcement Directive is still being implemented at national levels, it is currently **too early to assess its impact** in practice.
2. Implementing an "equal pay" principle for posted workers will be irrelevant for social dumping, exploitation of migrant workers and unfair competition, because posting of workers is not the cause of those problems. It will rather escalate them, because **posted workers will be replaced by cheap, unregistered and bogus self-employed workers**.
3. Finally, we need **smart, practical and clearly defined regulations** suited to hypermobility of European citizens and businesses to stop the Single Market from losing its global competitiveness, while facilitating social convergence and prevent abuse and fraud. This goal cannot be achieved by rebuilding intra-European economic walls to isolate those who cannot be enough "equal".



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