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KONVENT**

Labour Mobility in the EU

Summary and recommendations arising from the National Convention
on the EU roundtable discussion held on 1 April 2016

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Introduction

The basic building blocks of European integration include the free movement of people, which itself includes the freedom of establishment and the free movement of workers and service providers. The integration process, taking place through the gradual removal of regulatory and technical barriers, has also, with the help of the European Court of Justice, resulted in the creation of a coherent system of secondary legislation. This regulates the rights and obligations of migrating workers and their family members and ensures a certain level of harmonisation of rules at the European level.

Within the context of the free movement of services, there is also an option allowing the “posting” of workers, meaning workers who carry out work temporarily in a European Union Member State other than the state in which they normally work. This instrument was already guaranteed by the Treaty of Rome. Efforts to clarify the concepts, rights and obligations associated with the posting of workers culminated in 1996 with the adoption of Directive 96/71/EC. Article 3 of the aforementioned directive stipulates that posted workers shall be entitled to minimum rates of pay, maximum work periods, minimum rest periods and health, safety and hygiene at work standards applicable in the Member State where the work is carried out.

In view of the efforts engaged in by service providers to avoid fulfilling the requirements or to adopt various methods of circumventing the conditions laid down in the abovementioned directive, The European Commission issued Directive 2014/67/EU (directive on the enforcement of Directive 96/71/EC), which has not yet been fully transposed into the legislation of the European Union Member States. In addition, a European platform was created to enhance cooperation in preventing and discouraging undeclared work.

On 8 March 2016 an amended directive on the posting of workers was presented by the European Commission. The need for this revision is explained in terms of an effort to ensure the posted worker benefits from the same rules that apply to local workers in the Member State where the work is carried out. This principle currently only applies to workers in the construction sector, or in sectors defined by the EU Member State itself. One of the main arguments for this amendment is that it attempts to prevent social dumping, i.e. a situation where there is pressure to reduce the level of social conditions as a result of economic competition with countries with lower social standards. According to the European Commission, this seriously disrupts the functioning of the EU internal market.

Through the new amendment to the directive, the European Commission addresses problems regarding inequality in the internal market and the almost stagnating convergence of wages between the EU Member States. Whereas wage differential between the richest and poorest US states ranges between a value of two to three, in the case of the EU Member States it is ten times as high. This therefore raises the question of whether such huge differences allow for the effective functioning of the internal market, or whether they create incentives for the creation of various protectionist measures, which would continue to weaken the common market. Cross-border labour mobility in the EU is extremely low – only

affecting around 11 million workers, of whom about 1.2 – 1.4 million are expatriated under the directive on the posting of workers.

From an empirical point of view, different forms of migration by workers within the EU are driven by different determinants. Whereas overall labour mobility can be seen to be primarily driven by macroeconomic factors, such as the wage differential or the number of job vacancies, microeconomic factors are decisive at the level of the individual undertakings.

Roundtable framework

The roundtable discussion hosted by **Filip Pertold** from CERGE-EI focused on the issue of labour mobility and notably on the amendment to the directive on the posting of workers. Most of those taking part were social partners and business associations.

The topics of the discussion were following:

- 1) Does the present legislation covering the posting of workers in the EU Member States guarantee adequate social and labour standards? In which areas could it be improved? In which areas, on the other hand, is it too restrictive?
- 2) Does the current system for posting workers exert real pressure on wage levels in the target countries? Is this also the case in other types of employment abroad? How can this type of impact be contained while at the same time not creating new barriers to the free movement of workers within the EU?
- 3) The average wage in EEA countries with the highest wage levels is ten times that of countries with the lowest wages. Given this spread, is it possible to create an internal market for goods and services without barriers?
- 4) What conclusions can be drawn from statistics on the employment of foreign residents in terms of our position on the overall approach to labour mobility within the EU? How is this overall position reflected in the current approach through the amendment of the directive on the posting of workers?

The introductory speech was made by the Secretary of State for European Affairs, **Tomáš Prouza**. He said that the debate on labour mobility was not only important, but also controversial and pointed that previous debates on the directive on the posting of workers had been extremely heated. He attributed efforts to tackle the revision of Directive 96/71/EC to pressure from the “old” Member States, who were seeking to restrict labour migration by applying indirect measures. The problem of labour mobility is related to stagnation in wage convergence. It is in the interests of the Czech Republic to address

different wage levels between Member States, and the Government and trades unions are trying to do this in the Czech Republic. According to the Secretary, the draft amendment to the directive can be seen as an attempt to discriminate against countries with lower labour costs, which may actually slow down wage convergence and increase tensions between the “old” and the “new” Member States.

The next speaker was the Head of the Department of EU Strategies and Trends in the Office of the Government of the CR, **Aleš Chmelař**, who presented the discussion paper. After a general assessment of labour mobility, he addressed the issue of the posting of workers. On average, this instrument is more frequently used in the new Member States, but it is used relatively rarely in the Czech Republic. The dominant sector for the posting of workers is construction, which is currently impacted by measures newly introduced in the amended Directive 96/71/EC. We can infer from the data obtained that the amended directive would only actually affect a few tens of thousands of workers. This is because the Czech Republic avoids posting workers by using employment agencies or undeclared work. In his conclusion, Mr. Chmelař referred to the issue of the large wage differences and wage divergence, which prevents the creation of a stronger internal market.

Following these presentations, statements were made by other stakeholders. The first to be heard was the position of the Ministry of Labour and Social Affairs of the CR, presented by **Vlastimil Váňa**. He reminded the audience that the European Commission’s original plan was to introduce a comprehensive mobility package, before this was overtaken by the amendment of the directive. The Ministry holds a negative position towards the proposed changes. It considers the present legislation to be a suitable compromise. The issue of social dumping should be resolved using other instruments. The Ministry is concerned about the competitiveness of Czech companies, particularly small and medium-sized enterprises, and increased pressure to circumvent the rules and to use undeclared work or “disguised” employment.

The Chairman of the Czech-Moravian Confederation of Trade Unions (CMKOS), **Josef Středula**, was the next to speak. He resolutely rejected the position of the Ministry of Labour and Social Affairs and criticised the lack of communication between the ministry and the unions. According to the unions, the ministry’s rejection of the principle of equal pay for equal work in the same place is in conflict with its declared efforts to promote wage convergence. The Chairman of the CMKOS stated that the number of posted workers is so negligible that concerns that the amended directive might have negative impacts on the competitiveness of Czech companies can be considered to be excessive. For this reason, the position of the unions differs widely from that of the Ministry in this matter. However, the unions will definitely support efforts to restrict agency employment, which they consider to be a dangerous phenomenon. According to the unions, when establishing its new convergence programme, the Government should abandon its current policy of ensuring low salary levels to provide the Czech Republic with a competitive advantage.

Vladimíra Drbalová from the Confederation of Industry of the Czech Republic then pointed out that the discussion should not be restricted to the issue of posting workers, but should address labour mobility in general. This is currently being disregarded but should be intensively promoted in order to create a pan-European labour market, which would resolve the current problems facing national labour markets. For this reason, among others, the Confederation has supported updating the EURES project. The Confederation sees no reason to support the amended directive on the posting of workers as it considers the present version to be a satisfactory compromise, providing a balance between freedom of movement and protection of employees. The employers criticise the present negotiations by the European Commission for a number of reasons – the draft amended directive is insufficiently supported by statistical data, the Commission is presenting it in a situation where there is no wide consensus between the Member States on this issue and, ultimately, it does not reflect the principles of subsidiarity, proportionality and better regulation. Should the amended directive enter into force as it has been presented, the Confederation believes that this will lead to a tendency towards economic divergence of the Member States.

Other meeting participants joined the subsequent debate: MEP for Christian and Democratic Union-Czechoslovak People's Party (KDU-ČSL) **Michaela Šojdrová**, **Ladislav Minčíč** representing the Czech Chamber of Commerce, **Vojtěch Hromíř** for the Association of Road Transport Operators (ČESMAD), **Lubomír Ondroušek** representing the Association of Haulage Contractors of Bohemia and Moravia, **Miroslav Fuchs** from the Permanent Representation of the CR to the EU, **Jaroslav Šulc** and **Pavel Janíčko** representing the Czech-Moravian Confederation of Trade Unions (ČMKOS), **Milan Šubrt** from the Association of Independent Trade Unions, **Marek Čaněk** from the Multicultural Centre Prague and **Pavčina Žáková** on behalf of the EC Representation in the Czech Republic. Questions and comments were also contributed by **Dalibor Holý** from the Czech Statistical Office and **Matěj Gregárek** Ministry of Labour and Social Affairs of the CR.

The debate highlighted the microeconomic impacts of the amended directive (for example in the transport sector), the issue of social dumping, problems associated with agency employment, the impacts of the amended directive on third countries and measures to improve enforcement of the applicable directives. However, the discussion did not change the positions adopted by the stakeholders with regard to the amended directive on the posting of workers presented.

Recommendations

Although the trades unions refused to agree to the framework position adopted by the Ministry of Labour and Social Affairs of the CR, which is supported by employers' representatives, we can find areas where there was greater consensus.

An important problem, which relates to the inadequate wage convergence between Member States, concerns attempts to use alternatives to the posting of workers, which could enable the conditions arising from the current directive to be avoided. Forms of work which circumvent the posting of workers regime and show signs of social dumping include undeclared work and agency employment. Since undeclared work is part of the grey economy, we can only work with estimates of the size and importance of this area. In the case of the CR, these estimates indicate that it represents a similar (or even higher) proportion of total employees to posted workers. In the case of employment agencies, both those which have a permit for these activities and those which do not, we encounter efforts to assign employees to temporary work in another Member State through business agreements, thereby bypassing the provisions of the Labour Code. According to the available data, this type of behaviour is becoming more common.

As it turns out, the problem associated both with the failure to comply with requirements for posted workers, as well as with behaviour that attempts to completely circumvent this institute, is a lack of controls. In order to restrict this type of behaviour, the social partners agree on the need for swift implementation of implementing Directive 2014/67/EU to ensure the effective enforcement of Directive 96/71/EC. The National Convention has agreed on the need to increase the pressure on partners in the European Union in order to pay far greater attention to issues concerning the misuse of agency employment and related activities which meet the definition of social dumping. The negative features of social dumping also take a toll on companies in new Member States, which are in the situation of price beneficiaries.

However, because the implementing directive has not yet been fully transposed, and because much important information on current practice will only be obtained when this directive enters into effect, it is not easy to estimate the potential effect of the newly submitted amended directive. For now we can only speak in general terms of the positive effects the amendment will have on small and medium-sized enterprises in the old Member States and some job losses in the new Member States. The social partners in the Czech Republic are therefore interested in ensuring that the pan-European discussion on the revision of the directive on the posting of workers should be based on a wider range of statistical data and information.

Recommendations by the National Convention on the EU:

1. To raise the issues of abuse of undeclared labour and agency employment as important contemporary problems affecting labour mobility in the European Union.
2. When discussing the situation in various sectors with partners from the old Member States, also to pay attention to sectors where social dumping practices exert enormous pressures on companies in the new Member States.
3. To bring pressure to bear on strict compliance with implementing Directive 2014/67/EU for the effective enforcement of Directive 96/71/EC.
4. To work towards establishing a more rigorous basis for the amended directive on the posting of workers with data that depicts the current situation in order to better assess the overall effects on employment, earnings and bonuses, as well as the position of Czech companies.

This text does not constitute the minutes of the individual contributions presented in the discussion. Therefore, it does not contain everything that was said and does not express the opinions of all the participants on all the discussed topics. It is a summary of the most important points and the formulation of recommendations on the basis of the discussion.

The National Convention on the European Union is a permanent venue for discussing European issues in the Czech Republic.

The project, coordinated by the Office of the Government of the Czech Republic, brings together representatives of the Government, both chambers of the Parliament of the Czech Republic and the European Parliament, academia, the non-profit sector and social partners, and other interested parties.

More information on the National Convention can be found at www.narodnikonvent.eu and on Twitter: [@KonventEU](https://twitter.com/KonventEU).