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DRAFT REPORT

on social dumping in the European Union
(2015/2255(INI))

Committee on Employment and Social Affairs

Rapporteur: Guillaume Balas

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on social dumping in the European Union (2015/2255(INI))

The European Parliament,

- having regard to the Treaty on the Functioning of the European Union,
- having regard to Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services¹,
- having regard to Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation')²,
- having regard to Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems³,
- having regard to Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems⁴,
- having regard to Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)⁵,
- having regard to Regulation (EC) No 1072/2009 of the European Parliament and of the Council of 21 October 2009 on common rules for access to the international road haulage market⁶,
- having regard to Regulation (EC) 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community⁷,
- having regard to the proposal for a Council Directive on manning conditions for regular passenger and ferry services operating between Member States (COM(98)0251 – C4-0424/98 – 98/0159(SYN)),
- having regard to its resolution of 14 January 2014 on effective labour inspections as a

¹ OJ L 18, 21.1.1997, p. 1.

² OJ L 159, 28.5.2014, p. 11.

³ OJ L 166, 30.4.2004, p. 1.

⁴ OJ L 284, 30.10.2009, p. 1.

⁵ OJ L 177, 4.7.2008, p. 6.

⁶ OJ L 300, 14.11.2009, p. 72.

⁷ OJ L 293, 31.10.2008, p. 3.

strategy to improve working conditions in Europe¹,

- having regard to the International Labour Organisation (ILO)'s fundamental labour standards and to its conventions and recommendations on labour administration and labour inspections, which are an international benchmark for ensuring that legal provisions concerning working conditions and worker protection are applied,
 - having regard to the Commission President's State of the Union address to Parliament of 9 September 2015,
 - having regard to Rule 52 of its Rules of Procedure,
 - having regard to the report of the Committee on Employment and Social Affairs and the opinions of the Committee on Transport and Tourism and the Committee on Women's Rights and Gender Equality (A8-0000/2016),
- A. having regard to the increased trend towards undeclared work, bogus self-employment, outsourcing and subcontracting, leading to an increase in precarious jobs and deteriorating levels of worker protection,
- B. whereas on 15 July 2014 Jean-Claude Juncker, President of the Commission, undertook before Parliament to combat 'social dumping' and reiterated this commitment in his 2015 State of the Union address²,
- C. whereas the Court of Justice of the European Union in its judgment in case C-34/05 Laval of 18 December 2007³ highlighted the legitimacy of the struggle against social dumping,
- D. having regard to the importance of the principle of 'equal pay and social protection for the same work at the same place' for all European workers,

I. Reinforcing controls and coordination between Member States

1. Calls on the Commission to submit a proposal for a directive based on ILO Convention No. 81 on labour inspection;
2. Calls on Member States to increase the staffing levels and resources of their labour inspectorates and their liaison offices, in particular for interpretation and translation;
3. Calls for the creation of a European body of cross-border labour inspectors to carry out on-the-spot checks in suspected cases of social dumping, including by identifying 'letterbox companies', which body would work in coordination with the platform

¹ Texts adopted, P7_TA(2014)0012,

² HYPERLINK "http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm" http://europa.eu/rapid/press-release_SPEECH-15-5614_en.htm

³ HYPERLINK

"<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=71925&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=498309>"
<http://curia.europa.eu/juris/showPdf.jsf?text=&docid=71925&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=498309>

against undeclared work in order to limit the financial burden involved;

4. Calls for the implementation by Member States of electronic systems for the registration of the prior declaration of posting missions;
5. Calls on the Commission to submit a proposal for a directive based on ILO Convention No. 189 concerning decent work for domestic workers;
6. Takes the view that the competent authorities should be able to suspend the provision of services in cases of serious breaches of legislation on postings; considers that the amount of the fines should exceed employees' contributions;
7. Requests that information on postings should not be retroactive and should be entered in a European electronic register; stresses that the competent authorities of the host Member State should be able to revise form A1 in the event of serious doubts about whether a posting is genuine;
8. Recalls its appeal for the creation of 'a forgery-proof European social security card (...) on which could be stored all the data needed to verify the bearer's employment relationship'¹; wishes all the information associated with the worker's postings to feature on this card;
9. Calls for a public list to be drawn up of enterprises responsible for serious breaches of EU legislation;

II. Addressing regulatory gaps in order to implement the principle of 'equal pay and equal social protection for the same work'

10. Calls on the Commission to combat the phenomenon of letterbox companies by applying more generally the principle that each company should have a single corporate headquarters; recalls the rejection by the Committee on Employment and Social Affairs of the proposal for a directive on single-person limited liability companies;
11. Notes that Directive 96/71/EC refers only to Articles 57 and 66 TFEU relating to the freedom to provide services and freedom of movement; believes that its legal basis must be complemented by Articles 151 and 153 TFEU;
12. Considers that the notion of 'minimum wage' contained in Directive 96/71/EC should be revised to ensure equal pay for posted workers and local workers in similar positions; stresses the need to respect the collective agreements of the host country and to ensure, through the revision of Regulations (EC) No 883/2004 and (EC) No 987/2009, the payment of gross earnings corresponding to the remuneration paid by the employer before the deduction of taxes and social security contributions payable by employees and withheld by the employer; recalls that specific postings bonuses should be paid on top of remuneration;
13. Wishes periods of postings to be limited in Directive 96/71/EC and temporary

¹ HYPERLINK "<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0012+0+DOC+XML+V0//EN>" <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0012+0+DOC+XML+V0//EN>

employment agencies to be excluded from the scope of the directive;

Mobile workers: Combating social dumping in the transport industry

14. Calls for increased controls on the implementation of working time and rest times in transport; calls for the introduction of automatic digital records and the development of 'smart tachographs' for all means of transport, including inland waterway transport; recalls the desire expressed in its resolution of 3 July 2012 on road transport that '*by 2020 all vehicles which are not exempted from the application of this Regulation in accordance with paragraphs 2 and 3 shall be fitted with a smart tachograph*¹';
15. Calls for the creation of a European transport agency bringing together existing agencies; takes the view that at the very least a specific road transport agency is needed;
16. Asks the Commission to clarify the provisions so that a distinction can be drawn between employees and self-employed workers to combat 'bogus self employment'; emphasises that airline pilots and train drivers cannot be considered to be independent of the companies for which they work;
17. Believes that the rules on cabotage are not sufficiently precise, which facilitates the practice of some road operators of engaging in permanent cabotage; wishes cabotage operations to be subject to mandatory prior notification;
18. Stresses the need for a new regulation on groundhandling at airports to ensure mandatory social and wage protection for workers in the event of new calls for tenders or the partial loss of work; supports the introduction of rules to ensure the effective implementation of laws with regard to airlines with 'operational bases' on the territory of a Member State; calls for the clarification of the definition of 'home base' to protect the social rights of cabin crews, in particular their rest periods;
19. Calls on Member States to review their laws to eliminate precarious contracts called 'zero hour contracts' or 'pay to fly contracts'; believes that precarious working conditions are an additional safety risk;
20. Calls on the Commission shortly to submit a proposal for a directive on requirements with regard to the crews of vessels providing regular cargo, passenger and ferry services operating between Member States so that the conditions applicable on board a vessel are those of the State applying the most favourable standards for workers;
21. Calls on the Commission, drawing on the US *Jones Act*, to take the necessary measures to ensure that vessels carrying goods between two European ports are built in Europe, fly a European flag and are owned by a European company; calls for the law that is applicable to be associated with the country in which the vessel owner is based;
22. Calls on the Commission rapidly to draw up proposals to combat unfair competition in

¹ HYPERLINK "<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0271&language=EN&ring=A7-2012-0195>" \l "BKMD-7"
www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2012-0271&language=EN&ring=A7-2012-0195#BKMD-7

the digital and sharing economy;

III. Towards social convergence

23. Takes the view that a social protocol is necessary to ensure the primacy of fundamental rights over economic freedoms;
24. Recalls the Commission's commitment to proposing a basis of minimum social rights; emphasises that the establishment of criteria for comparing the various national social systems cannot provide such a basis, but can only serve as a preliminary analytical framework;
25. Desires that wage floors be established, possibly in the form of a minimum wage; emphasises that this instrument should be set up on the basis of legislation or convention, in accordance with national practices, with due respect for the role of the social partners; believes that these wage floors should represent at least 60% of the average national wage; calls on the Commission to consult the social partners with a view to introducing, where appropriate, a minimum wage in some border areas associated with highly mobile workers;
26. Supports the development of unemployment benefit arrangements as a mechanism for absorbing asymmetric social shocks within the euro area;
27. Calls on the Commission to propose a legal instrument to address the cross-border dimensions of outsourcing, extending the joint and several liability of the payer to include all economic sectors and the entire subcontracting chain;
28. Calls on the Commission to propose an appropriate legislative vehicle providing that companies have a duty of care for which they may be held liable, in respect of both their subsidiaries that their subcontractors operating in third countries in order to prevent the risk of violations of human rights, corruption, severe physical injury or environmental damage and the violation of ILO Conventions;
29. Considers that Directive 96/71/EC and the rules coordinating social security systems must be revised before any trade agreement including provisions relating to 'Mode 4' can be concluded;
30. Instructs its President to forward this resolution to the Council and the Commission.

EXPLANATORY STATEMENT

The European Union, which was born out the yearning for peace and prosperity that followed the end of the Second World War, was planned by its architects as a democratic space endowed with a strong economy and a high level of social protection.

It is important to stress that priority was given primarily to building and strengthening the internal market. The European Economic Community, as the name suggests, corresponded to this strategy and the European Union was initially built through the liberalisation of trade between Member States.

Your rapporteur would like to emphasise that the harmonisation of social rights was, however, neglected and that, apart from a some of the principles enshrined in the Treaty and a number of Directives, it was agreed that Member States should retain responsibility in the social field; there is a de facto asymmetry between the reality of an increasingly developed internal market and a very heterogeneous set of social rights.

Your rapporteur notes that this paradox has encouraged inter-corporate rivalry, since European workers are far from all enjoying the same social obligations or the same social rights. The very principle of fair competition between companies and the promotion of a social market economy by the EU are seriously flawed. These situations of unfair economic and social competition also represent an obstacle to maintaining a high level of social protection in Europe: thus increased competition between economic operators encourages them to reduce spending related to labour costs; this is leading to a weakening of the social standards in force in the various Member States of the Union, is gradually undermining all the rights enjoyed by European employees and, finally, is reducing the financial resources necessary for the various social protection systems.

The specific fragility of the social protection available to some employees should also be emphasised. This is particularly the situation of 'workers at sea', who are victims of the use of flags of convenience by many shipowners. This enables these employers to evade many social obligations. These practices have a negative impact on safety standards and contribute to reducing the number of qualified European seafarers and the loss of their expertise.

Your rapporteur would also emphasise the political impact of this asymmetry between economic freedoms and social rights: it fuels the feeling that Europe weakens both individuals and communities, instead of protecting them. Thus, the proliferation of abusive practices and unfair social competition weakens adherence to the principle of the internal market and undermines confidence in the construction of Europe. These phenomena encourage protectionist tendencies by the Member States and unilateral decision-taking by them in the social field.

Your rapporteur notes, however, that the EU authorities have in part become aware of the gravity of this issue and recalls the solemn commitment made by Jean-Claude Juncker on 15 July 2014 before the European Parliament to fight against 'social dumping' during the current parliamentary term. Your rapporteur also recalls that in his 2015 State of the Union address, the President of the Commission stated he wished to avoid 'abuses and risks of social dumping'.

After numerous hearings of experts, business leaders and employees' representatives, your

rappporteur recommends several measures aimed at filling the legislative and regulatory gaps that favour the development of the unfair competition that currently exists in the internal market.

He proposes, firstly, that controls and inspections should be strengthened, at both national and European level, in application of existing legislation. In this regard, the human and financial resources available to the authorities responsible for enforcing the rules should be significantly strengthened.

He emphasises the reforms needed to modernise the registration of employment benefits and the need to develop a single digital document guaranteeing social rights for every European worker. Your rapporteur urges that more should be done to tackle the problem of 'letterbox companies', including through new rules on the obligation for companies to have an official address. Finally, he proposes that a European list should be drawn up of enterprises responsible for serious offences such as the use of undeclared labour.

The Directive on the posting of workers should be revised so as to pave the way for the modification of its current legal basis and the rules for coordinating social security systems. In addition, some arrangements currently in force on postings should be amended to ensure equal treatment of workers and fair competition between economic players, in particular rules governing the payment of social security contributions.

Your rapporteur stresses that urgent action is needed in the field of transport, which is often an area where social rights simply do not exist, to ensure both the effective implementation of existing legislation and the strengthening of control systems.

Your rapporteur finally recommends that measures be taken to ensure social convergence in the European Union. He calls for a social protocol to ensure the predominance of social rights over economic freedoms and recommends the introduction of minimum wage floors that may be extended to Community level in some sectors such as transport, while duly respecting the autonomy of the social partners and the various legal traditions governing national social systems.

Your rapporteur seeks to ensure that the basis of social rights announced by the Commission is not limited to the development of simple comparative criteria. He calls for the establishment of a duty of care for major European companies with regard to the activities of their subsidiaries and their subcontractors in third countries

It has been your rapporteur's wish to make concrete proposals, proposals usually supported by employers, employees, or experts. He emphasises the significance of social issues, in particular unfair social competition among our European fellow-citizens. He underlines the importance of the European Parliament having a strong voice and a high profile in helping to build a more social Europe, a Europe which will therefore enjoy greater support from the peoples of Europe.