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Notes for the public hearing in the Petitions Committee on the use of promissory notes issued by employees to employers as a potential debt, loss or damage security

Petitions 2114/2014 by Katarzyna Pietrzycka and 2449/2014 by Krzysztof Bełus

Description of the problem illustrated by 2 petitions and 1 court case

A promissory note is an abstract i.e. non causal written obligation of an issuer to pay the determined sum of money to the owner of the note (payee) at a future date or on demand. A blank promissory note may be filled in by the owner of the note with any sum. A promissory note is subject of trade, so it may be transferred to a 3rd party (by endorsement = indos). It is mostly used to secure the payment of any debt. It gives all the power to the creditor and no rights to the debtor. The execution procedure is fast and easy.

A hairdresser and a window factory worker have issued and signed **blank promissory notes** upon signing contracts. Ms. Pietrzycka had a labour contract and Mr. Bełus was employed on the basis of civil type contract. To prevent the employee from terminating the contract, the 1st employer filled in the blank promissory note of Ms. Pietrzycka with the amount 9 times higher than her salary. In case of Mr. Bełus, the employer refused to return the promissory note after terminating the contract, which causes mental stress of the petitioner.

Using promissory notes between labour contract parties is not the matter of the European law. The Polish Labour Code does not address directly the possibility nor prohibition of issuing promissory notes. Until 2011 the courts in Poland were biased and some were allowing this practice. An important ruling by the Supreme Court issued on 26th January 2011 (II PK 159/10) set a **new line of jurisprudence**.

The pharmacy store employee has accepted the liability for the loss and has issued a promissory note for a maximum amount of PLN 60 000 (= € 14 000). The note then has been transferred by the employer to the 3rd party.

Even though the new owner of the promissory note was not the employer, the Supreme Court has ruled the note to be void. The main argument was that the Labour Code regulates exhaustively the material liability of employees in Chapter V and therefore it was illegal to use a civil law on contracts and torts to secure the employee's obligation. The Court has treated the endorsement of the promissory note to the 3rd party as a circumvention of liability limits set out in the Labour Code. The employee's liability for loss or damage requires evidence provided by the employer. A promissory note used as a shortcut to liability is less favorable for the employee and as such – void under the “privilege principle” set out in art. 18 of the Labour Code.

The conclusion:

The existing law accompanied by the jurisprudence allows for treating the promissory notes in labour relation as **unacceptable, illegal and void**. However it is possible that such illegal promissory note will be executed from an employee of low legal awareness. This will be the case if an employee fails to show the connection between labour contract and the promissory note or misses the court deadline.

Before I go to my main point which is the use or **abuse of the promissory notes in civil type contracts**, let me present one more potential legal tool to defend against an abuse of promissory notes in both labour and civil-type contracts. It is the revocation or avoiding legal consequences of the promissory note due to unlawful **force, deception or mistake** (misapprehension) caused by the other party. This is normal civil law instrument to avoid the consequences of any legal action.

Promissory notes in civil type contracts

The real problem of unknown but potentially large scale exists in the case of **civil type contracts of commissioned work**, which are very popular in Poland and to which the Labour Code does not apply. There are no doubts that under the existing rules the promissory notes in civil type contracts are legally acceptable. Freedom of contracts governing civil type contracts allows for all instruments of securing the liability.

When the economic situation of the parties is uneven, the promissory note may be used as a tool for **human trafficking** and **modern slavery**. It may prevent people from changing jobs, deprive them the freedom to choose

occupation and the freedom to move. But it may also lead to undeclared work in hazardous, insecure conditions, without time to rest or any social protection.

And here we come to the main **obstacles to mobility**, which is the concern of this Committee today.

Labour mobility and service mobility, which also involves mobility of (posted) workers are the greatest achievements of the common market. Yet people are more fragile than goods and certainly more fragile than capital.

One of the well known methods keeping subservience of the victims of human traffic is a **debt-bondage**. The promissory note appears to be perfect tool here. Mr. Bełus who have had a civil type contract, as yet, has not been a victim of such practices but he has every right to mental distress for not retrieving his promissory note upon termination of contract.

Conclusion

I believe that promissory notes in civil type contracts is the area where immediate action is needed. *De lege ferenda* on the regulatory level, the promissory notes should be banned, if the issuer is a natural person. The downside of such drastic limitation of freedom of contracts could be more difficult access to loans. The promissory notes, along with mortgage and insurance, are widely used by financial institutions to secure loan payments. But isn't it the price worth paying for reducing the risk of modern slavery?

Strong financial institutions will oppose to such motion, so until this Parliament or national parliaments ban promissory notes as obsolete and dangerous, all our efforts should be put on eradicating poverty, strong employment policy, and basic legal and financial education and information for citizens in all ages. It is: poverty, unemployment and insufficient education, which causes human trafficking.

As for **workers mobility in the EU**, we need to promote mobility of posted workers in the framework of free movement of services. This type of mobility proves to be a very effective preventive measure against human trafficking. To keep it safe, cooperation between law enforcement and labour inspections among the Member States is the key element, already provided for in the so called enforcement directive 2014/64/EU. These solutions need no further regulatory amendments, but effective transposition and financing schemes.