Council of European Employers
of the Metal, Engineering and
Technology-based industries

Hearing on posting of workers
EP EMPL Committee, 8 November 2016
Delphine Rudelli, Chair of CEEMET EU Affairs Committee

Preliminary remarks

Posting is a sound device, closely interlinked with the development of trade and businesses

Posting is necessary not to say indispensable for the development of companies, especially in a sector like mine , the metal and engineering industries, which often have a great part of their activities linked to exports

Indeed, our companies post many employees in companies established within the European Union :

- Either, because they are exporting their products and when they sell them they all sell services : the installation of a machine, its maintenance, the training of the buyer to properly use the machine etc.

- Either, for example, in the frame of intra corporate motilities (for internal training pathways, participation in meetings abroad etc.)

Furthermore, in many countries, our sector also needs posted workers to compensate the lack of skilled workers on certain specific jobs or in certain regions.

Of course, we are conscious that in some sectors, the development of frauds or abuses require that we find solutions to end these practices. We do not deny these realities but these are illegal practices and of course we combat illegal work. But we also refuse the idea that to try and solve the problems of some (which will not even be the case) you create problems for all.

However, we support the idea that to fight against frauds, against a bad implementation or a non-application of the rules, you need to use the right tools and to take the most adapted measures to solve the existing problems without jeopardizing neither the principle of posting nor the principle of free movement of workers within the European Union.

Over regulating is not the solution and the proposals that we have in front of us are not going in the right direction.

On the revision of the directive 96/71/CE on posting of workers

Why do we think this is not the right tool ?
Let's take three of the main provisions…

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1. Maximum duration of posting

Today: no limit to posting which has to be « temporary »
Proposal : set a maximum duration of two years, after which the full set of labour law from the host country will apply
Further, to anticipate any attempt to overcome this rule, it is foreseen that each posted employee for at least six months on the same job will be taken into account in the calculation to set if this total duration of 24 months.

We question the legality and the usefulness of these proposals

1. On the compatibility with Rome I : we believe the provision is in contradiction with Rome I which foresees the free choice of labour law applicable to the employment contract
2. On the usefulness: let me take one example: in France : the average duration of posting is 44 days : therefore is this measure setting a limit of 24 months relevant ? // to the contrary, it is extremely problematic for bigger companies who post employees for longer duration often in the frame of their international mobility policy.

2. Replacement of « minimum rate of pay» by « remuneration »

Today : application of « minimum rate of pay » stemming from legal provisions or generally applicable collective agreements (*erga omnes*)

Proposal: application of a full set of legal and collectively agreed remuneration elements if these are set by a collective agreement which is generally applicable // these elements will be set case by case by the Member States

We are worried of the practical application of this proposal :

1. some say it's easy it already exists in some countries : this isn't true / take the example of France !
2. bureaucracy and complexity for companies who will have to identify these elements of remuneration applicable to the workers they post abroad. These legal and contractual elements differ from one country to another and are often extremely difficult to identify. The first rule for one legislation to be properly implemented is to make sure that it is clear and easily applicable. This is an important task for co-legislators.

3. Equal treatment in sub-contracting chains

In the frame of sub-contracting, MS could chose to impose the application to posted workers of the rules applied by the contractor concerning « certain terms and conditions of employment covering remuneration » even if these rules stem from non-generally applicable agreements (e.g. company agreements).

This is an option for MS which would be applicable only if it is also implemented at national level in the sub-contracting contracts with local companies. If the MS would decide to apply this provision at national level, it could also apply it to sub-contractors posting employees from another MS without being discriminatory.

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We consider that this proposal is unacceptable and raises several problems :

- huge distortion of competition between those MS who would use the option and the others; would limit the provision of services;
- It is legally extremely unclear : what are « certain terms and conditions of employment covering remuneration » ?
- It's a breach in the autonomy of social partners !!
- in practice how do you apply this if you are sub-contractor for several companies ? you apply different "terms and conditions" to your employee depending where he works ?

Conclusion

- the proposal will lead to many legal and practical problems
- however, no solutions for the problems of frauds and illegal work which are real
- the solutions are elsewhere : controls, administrative cooperation, revision of 883/04
- there is an urgent need to improve the text for companies and workers

» Find more information on the legal and practical implications in CEEMET's analysis of the Revision of the Posting of Workers Directive.

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