Fátima Santos

De: Comissão 4ª - CAE XIII <4CAE@ar.parlamento.pt>
Enviado: 24 de março de 2016 15:04
Para: Assuntos Parlamentares
Cc: João Filipe; Sara Pereira; Teresa Meneses
Assunto: Iniciativa selecionada com prazo - Envio para elaboração de relatório [COM(2016)128]
Anexos: 1_PT_letter.pdf; COM_2016_128_PT_ACTE_f.docx; COM_2016_128_PT_ACTE_f.pdf; SWD_2016_52_EN_DOCUMENTDETRAVAIL_f.pdf; SWD_2016_52 _EN_DOCUMENTDETRAVAIL_f.doc; SWD_2016_53 _FR_DOCUMENTDETRAVAIL_f.docx; SWD_2016_53_FR_DOCUMENTDETRAVAIL_f.pdf

Excelentíssima Senhora Presidente da

Assembleia Legislativa da Região Autónoma dos Açores,

A Comissão de Assuntos Europeus recebeu, no dia 15 de março, a iniciativa Proposta de DIRETIVA DO PARLAMENTO EUROPEU E DO CONSELHO que altera a Diretiva 96/71/CE do Parlamento Europeu e do Conselho, de 16 de dezembro de 1996, relativa ao destacamento de trabalhadores no âmbito de uma prestação de serviços [COM(2016)128] + SWD(2016)52 e SWD(2016)53. Acrescenta-se que nenhum dos documentos de trabalho está disponível em língua Portuguesa.

Tratando-se de uma iniciativa selecionada para escrutínio pela Comissão a que V. Exa preside, no âmbito do Programa de Trabalho da Comissão Europeia para 2015 e que consta da Resolução da Assembleia da República n.º 52/2015, de 15 de maio, junto envio a mesma para análise e elaboração de relatório, no qual devem ser abordadas as questões de substância da iniciativa e, sobretudo, as implicações que a mesma tenha para Portugal, bem como se o objeto da iniciativa recai no âmbito de matérias da competência legislativa reservada da Assembleia da República.

A base jurídica da iniciativa e a observância dos princípios da subsidiariedade e da proporcionalidade podem ser objeto de análise por essa Comissão, sem prejuízo das competências específicas da CAE nesta matéria.

As conclusões devem discriminar, separadamente, as questões suscitadas quanto à substância e quanto à observância dos princípios da subsidiariedade e da proporcionalidade, caso existam.

Por esta iniciativa constituir uma proposta de ato legislativo e para efeitos de análise da conformidade com o princípio da subsidiariedade, nos termos do Protocolo n.º 2 anexo ao Tratado de Lisboa, o prazo de 8 semanas começa a contar no dia 15 de março de 2016 conforme carta da Comissão Europeia, que se anexa.

Solicito, assim, a melhor cooperação por parte de V. Exa, agradecendo que seja dado conhecimento do Relator nomeado à Equipa de apoio à CAE e que o relatório dessa Comissão nos seja enviado até 17 de abril de 2016.

A Equipa de apoio à CAE encontra-se disponível para qualquer esclarecimento e toda a colaboração.

Com os meus melhores cumprimentos,

Regina Bastos
Presidente da Comissão de Assuntos Europeus

COMISSÃO EUROPEIA
SECRETARIADO-GERAL

Bruxelas, 15.3.2016
SG-Greffe(2016) D/ 3407

Assembleia da República
Palácio de S. Bento
P-1249-068 Lisboa

Transmissão nos termos do Protocolo (n.º 2) do Tratado da União Europeia e do Tratado sobre o Funcionamento da União Europeia relativo à aplicação dos princípios da subsidiariedade e da proporcionalidade

Assunto: COM(2016) 128 final, 8.3.2016

A Comissão informa que todas as versões linguísticas do projecto de acto legislativo mencionado em epígrafe foram transmitidas aos parlamentos nacionais e às câmaras dos parlamentos nacionais dos Estados-Membros.

A presente carta dá início ao procedimento previsto no Protocolo (n.º 2) relativo à aplicação dos princípios da subsidiariedade e da proporcionalidade.

No prazo de oito semanas[1] a contar da data da presente carta, pode ser dirigido aos Presidentes do Parlamento Europeu, do Conselho e da Comissão um parecer fundamentado expondo as razões pelas quais consideram que o projecto em questão não obedece ao princípio da subsidiariedade.

Pelo Secretário-Geral,

Jordi AYET PUIGARNAU
Director

[1] O período compreendido entre 1 e 31 de Agosto não é incluído no cálculo do período de oito semanas.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel.
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COMISSÃO
EUROPEIA

Estrasburgo, 8.3.2016
COM(2016) 128 final

2016/0070 (COD)

Proposta de

DIRETIVA DO PARLAMENTO EUROPEU E DO CONSELHO

que altera a Diretiva 96/71/CE do Parlamento Europeu e do Conselho, de 16 de dezembro de 1996, relativa ao destacamento de trabalhadores no âmbito de uma prestação de serviços

(Texto relevante para efeitos do EEE)

{SWD(2016) 52 final}
{SWD(2016) 53 final}

EXPOSIÇÃO DE MOTIVOS

1. CONTEXTO DA PROPOSTA

1.1. Razões e objetivos da proposta

Nas suas Orientações Políticas, e depois no seu Programa de Trabalho para 2016, a Comissão anunciou uma revisão específica da Diretiva relativa ao destacamento de trabalhadores, com o objetivo de contrariar as práticas abusivas e promover o princípio segundo o qual o mesmo trabalho realizado no mesmo lugar deve ser remunerado da mesma forma.

O destacamento de trabalhadores desempenha um papel essencial no mercado interno, nomeadamente na prestação transnacional de serviços. A Diretiva 96/71/CE[1] (a seguir designada «a Diretiva») regula três variantes de destacamento: a prestação direta de serviços por uma empresa no âmbito de um contrato de prestação de serviços, o destacamento no contexto de um estabelecimento ou uma empresa pertencente ao mesmo grupo (a seguir «destacamento intragrupo») e o destacamento mediante a disponibilização de um trabalhador por parte uma agência de trabalho temporário estabelecida no território de outro Estado-Membro.

A UE criou um mercado interno baseado numa economia social de mercado altamente competitiva, que tem como meta o pleno emprego e o progresso social (artigo 3.º, n.º 3, do TUE).

O Tratado estabelece o direito de as empresas prestarem os seus serviços noutros Estados-Membros. Dispõe ainda que «as restrições à livre prestação de serviços na União serão proibidas em relação aos nacionais dos Estados-Membros estabelecidos num Estado-Membro que não seja o do destinatário da prestação» (artigo 56.º do TFUE). A livre prestação de serviços só pode ser restringida por razões imperiosas de interesse geral, desde que estas sejam justificadas, proporcionais e aplicadas de uma forma não discriminatória.

Segundo os últimos dados disponíveis, em 2014, havia mais de 1,9 milhões de trabalhadores destacados na UE (o equivalente a 0,7 % do emprego total na UE), o que representa um aumento de 10,3 % em relação a 2013 e de 44,4 % em relação a 2010. Esta tendência ascendente seguiu-se à estagnação observada nos anos de 2009 e 2010.

A Diretiva de 1996 configura o quadro regulamentar da UE para estabelecer um equilíbrio entre os objetivos de promoção e flexibilização da prestação transnacional de serviços, protegendo, ao mesmo tempo, os trabalhadores destacados e garantindo condições concorrenciais equitativas entre as empresas estabelecidas localmente e no estrangeiro. Estabelece um «núcleo duro» de condições de trabalho e de emprego vigentes no Estado-Membro de acolhimento que devem ser obrigatoriamente aplicadas pelos prestadores de serviços estrangeiros, onde se incluem (artigo 3.º, n.º 1, da Diretiva): períodos máximos de trabalho e períodos mínimos de descanso; remunerações salariais mínimas, incluindo as bonificações relativas a horas extraordinárias; duração mínima das férias anuais remuneradas; condições de disponibilização dos trabalhadores; saúde, segurança e higiene no local de trabalho; medidas de proteção aplicáveis às condições de trabalho e emprego das mulheres

[1] Diretiva 96/71/CE do Parlamento Europeu e do Conselho, de 16 de dezembro de 1996, relativa ao destacamento de trabalhadores no âmbito de uma prestação de serviços, JO L 18 de 21.1.1997, p. 1.

grávidas e das puérperas, das crianças e dos jovens; igualdade de tratamento entre homens e mulheres; e outras disposições em matéria de não discriminação.

A Diretiva de Execução de 2014[2] introduziu instrumentos novos e reforçados para combater e sancionar a evasão às regras e as práticas fraudulentas e abusivas. Aborda problemas causados pelas denominadas «empresas de fachada» e reforça a capacidade dos Estados-Membros de fiscalizar as condições de trabalho e fazer cumprir as regras aplicáveis. Designadamente, a Diretiva enumera elementos factuais que caracterizam a existência de um vínculo real entre o empregador e o Estado-Membro de estabelecimento, que podem ser igualmente utilizados para determinar se um indivíduo se enquadra na definição aplicável de «trabalhador destacado». A Diretiva de Execução estabelece igualmente disposições para melhorar a cooperação administrativa entre as autoridades nacionais responsáveis pelo destacamento. Por exemplo, prevê uma obrigação de dar resposta a pedidos de assistência por parte de autoridades competentes de outros Estados-Membros no prazo de dois dias úteis no caso de pedidos urgentes e de 25 dias úteis em todos os outros casos. Além disso, a diretiva enumera as medidas de controlo nacionais que os Estados-Membros podem aplicar quando verificam o cumprimento das condições de trabalho aplicáveis aos trabalhadores destacados, requer a aplicação de medidas de verificação e mecanismos de controlo adequados e eficazes e obriga as autoridades nacionais competentes a realizar inspeções eficazes e apropriadas no respetivo território, a fim de controlar e garantir o respeito das disposições e regras estabelecidas na Diretiva 96/71/CE. Os plenos efeitos da Diretiva deverão fazer-se sentir em meados de 2016, dado que os Estados-Membros dispõem de um prazo até 18 de junho de 2016 para a sua transposição.

A presente iniciativa não inclui nenhuma das questões abordadas na Diretiva de Execução. Pelo contrário, incide em aspetos que esta diretiva não abrange e que dizem respeito ao quadro regulamentar da UE estabelecido pela Diretiva original de 1996. Por conseguinte, a revisão da Diretiva relativa ao destacamento de trabalhadores e a Diretiva de Execução são complementares e reforçam-se mutuamente.

1.2. Coerência com as disposições vigentes no mesmo domínio setorial

A Comissão comprometeu-se a trabalhar no sentido de um mercado único mais aprofundado e mais equitativo, compromisso este que fixou como uma das principais prioridades do seu mandato. A proposta de alterações específicas à Diretiva relativa ao destacamento de trabalhadores integra e complementa as disposições da Diretiva de Execução, cujo prazo de transposição termina em 18 de junho de 2016.

Aquando das consultas preparatórias, que a Comissão realizou com cerca de 300 partes interessadas, na sua maioria PME, 30 % das empresas que prestam serviços a nível transfronteiriço assinalaram problemas com as regras em vigor em matéria de destacamento de trabalhadores, evidenciando o excesso de formalidades administrativas, burocracia, encargos financeiros e obrigações de registo. A falta de clareza das regras do mercado de trabalho no país de destino é também considerada um obstáculo à prestação transnacional de serviços, em particular para as PME.

[2] Diretiva 2014/67/UE do Parlamento Europeu e do Conselho, de 15 de maio de 2014, respeitante à execução da Diretiva 96/71/CE relativa ao destacamento de trabalhadores no âmbito de uma prestação de serviços e que altera o Regulamento (UE) n.° 1024/2012 relativo à cooperação administrativa através do Sistema de Informação do Mercado Interno («Regulamento IMI»), JO L 159 de 28.5.2014, p.11.

Ao mesmo tempo, a Diretiva relativa ao destacamento de trabalhadores está na base das iniciativas no setor do transporte rodoviário anunciadas pela Comissão no seu Programa de Trabalho para 2016. Estas medidas visarão, em especial, melhorar as condições sociais e de trabalho dos trabalhadores do setor dos transportes rodoviários e, ao mesmo tempo, fomentar uma prestação eficaz e justa de serviços de transporte rodoviário. Os dois milhões de trabalhadores que efetuam regularmente operações de transporte rodoviário internacional exercem atividades no território de vários Estados-Membros, por curtos períodos de tempo. Neste contexto, as iniciativas previstas para o setor do transporte rodoviário deverão contribuir para uma maior clareza e um melhor controlo do cumprimento das regras aplicáveis aos contratos de trabalho no setor dos transportes, podendo dar resposta aos desafios específicos que a aplicação das disposições da Diretiva relativa ao destacamento de trabalhadores suscita neste setor.

A modernização do quadro legislativo para o destacamento de trabalhadores contribuirá para criar condições transparentes e equitativas para a execução do Plano de Investimento para a Europa. O Plano de Investimento dará um impulso adicional à prestação transnacional de serviços e, deste modo, induzirá um aumento da procura de mão de obra qualificada. Porque a realização de projetos estratégicos de infraestruturas implica a travessia de fronteiras dos Estados-Membros, as empresas irão necessitar das competências certas para o fazerem, sendo imperativo estabelecer condições para que a procura seja satisfeita com uma oferta adequada nos vários países implicados. A modernização da Diretiva relativa ao destacamento de trabalhadores contribuirá para que os investimentos sejam realizados em condições de concorrência justas e de proteção dos direitos dos trabalhadores.

A Plataforma da UE contra o trabalho não declarado poderá interagir de forma positiva na perspetiva da eliminação das práticas fraudulentas em matéria de destacamento de trabalhadores. O recurso ao destacamento implica riscos associados a práticas de trabalho não declarado, como, por exemplo, os «salários entregues em mão» em que apenas uma parte do salário é paga oficialmente e o restante é entregue ao trabalhador sem recibo, o falso trabalho por conta própria e a evasão às regras comunitárias e nacionais aplicáveis. A UE intensificou a sua ação de combate ao trabalho não declarado e continua a intervir contra as empresas «de fachada». Em abril de 2014, a Comissão propôs a criação de uma plataforma de prevenção e dissuasão do trabalho não declarado. A plataforma reunirá as autoridades competentes de todos os Estados-Membros e facilitará o intercâmbio de boas práticas, desenvolverá competências especializadas e análises e apoiará a cooperação transfronteiriça entre os Estados-Membros, a fim de combater com maior eficácia o trabalho não declarado.

2. BASE JURÍDICA, SUBSIDIARIEDADE E PROPORCIONALIDADE

2.1. Base jurídica

A presente proposta altera a Diretiva 96/71/CE e, por conseguinte, tem a mesma base jurídica, designadamente o artigo 53.º, n.º 1, e o artigo 62.º do TFUE.

2.2. Subsidiariedade (no caso de competência não exclusiva)

A alteração de uma diretiva vigente só pode ser feita através da adoção de uma nova diretiva.

2.3. Proporcionalidade

É jurisprudência constante que as restrições à livre prestação de serviços só são admissíveis se se justificarem por razões imperiosas de interesse geral, respeitantes, nomeadamente, à proteção dos trabalhadores, devendo ser proporcionadas e necessárias.

A presente proposta respeita esta condição, uma vez que não procede à harmonização dos custos de mão de obra na Europa e se limita ao necessário para garantir condições adaptadas ao custo de vida e às regras do Estado-Membro de acolhimento durante o período de afetação dos trabalhadores destacados.

Num mercado interno altamente competitivo, a concorrência é baseada na qualidade do serviço, na produtividade, nos custos (dos quais os custos da mão de obra são apenas uma parte) e na inovação. Por conseguinte, a presente proposta não excede o necessário para atingir esse objetivo.

3. RESULTADOS DAS AVALIAÇÕES *EX POST*, DAS CONSULTAS DAS PARTES INTERESSADAS E DAS AVALIAÇÕES DE IMPACTO

3.1. Consulta das partes interessadas

Por carta conjunta, a Áustria, a Bélgica, a França, a Alemanha, o Luxemburgo, os Países Baixos e a Suécia manifestaram apoio à modernização da Diretiva relativa ao destacamento de trabalhadores, estabelecendo o princípio do «salário igual para trabalho igual no mesmo local». Estes Estados-Membros sugeriram alterar e alargar as disposições relativas às condições sociais e de trabalho, com especial destaque para a remuneração, aplicáveis aos trabalhadores destacados; considerar a fixação de um limite máximo à duração do destacamento, na perspetiva mais específica de alinhamento das disposições com o Regulamento da UE em matéria de coordenação dos sistemas de segurança social; clarificar as condições aplicáveis ao setor do transporte rodoviário de mercadorias; reforçar a fiabilidade das informações constantes dos documentos portáteis A1; melhorar a cooperação transfronteiriça entre os serviços de inspeção; e analisar a dimensão e o impacto do falso trabalho por conta própria no contexto do destacamento.

Também por carta conjunta, a Bulgária, a República Checa, a Estónia, a Hungria, a Lituânia, a Letónia, a Polónia, a Eslováquia e a Roménia argumentaram que uma revisão da Diretiva de 1996 é prematura e devia ser adiada para depois de terminado o prazo para a transposição da Diretiva de Execução e de devidamente analisados e avaliados os seus efeitos. Estes Estados-Membros manifestaram-se preocupados com o facto de o princípio do salário igual para trabalho igual no mesmo local poder ser incompatível com o mercado único, uma vez que as diferenças nos níveis de remuneração constituem um elemento legítimo de vantagem concorrencial para os prestadores de serviços. Além disso, defendem que, para efeitos de segurança social, os trabalhadores destacados devem continuar a estar cobertos pela legislação do Estado-Membro de origem, e não devem, por isso, ser tomadas medidas para rever a relação entre o destacamento de trabalhadores e a coordenação dos sistemas de segurança social nesse sentido. Por último, instaram a Comissão a considerar uma intervenção apenas depois de serem rigorosamente analisadas provas dos desafios e das especificidades da prestação transnacional de serviços.

A CES manifestou-se favorável a uma revisão para garantir o princípio da igualdade de tratamento. Neste contexto, porém, instou a Comissão a respeitar o princípio da

autonomia dos parceiros sociais em matéria de negociação salarial e a diversidade dos sistemas nacionais de relações laborais, estabelecendo disposições sobre os elementos constitutivos da remuneração que tenham por efeito privilegiar a celebração de convenções coletivas a nível da empresa em detrimento de convenções setoriais. Por outro lado, a CES recomendou que a Comissão propusesse disposições no sentido de ser exigido, especialmente aos trabalhadores destacados por agências de trabalho temporário, um período prévio de emprego no país de origem, novas regras em matéria de combate ao falso trabalho por conta própria e medidas que assegurem um melhor controlo do cumprimento da regulamentação, nomeadamente inspeções e formulários de segurança social mais fiáveis.

A *European Building Confederation* (EBC), que representa as PME do setor da construção, expressou o seu apoio à revisão da Diretiva de 1996 no sentido de a alinhar com o princípio do «salário igual para trabalho igual no mesmo local». Também o Sindicato dos Trabalhadores das Indústrias da Construção e da Madeira (FETBB), a Confederação dos Sindicatos Neerlandeses (FNV), a Confederação dos Sindicatos Estónios e o Conselho dos Sindicatos Nórdicos se manifestaram favoráveis a uma revisão da Diretiva. Os parceiros sociais da UE do setor da construção (FIEC e FETBB) adotaram igualmente uma posição conjunta onde solicitam à Comissão que avalie um conjunto de questões relacionadas com o destacamento.

A BUSINESS EUROPE considerou ser prioritário assegurar a correta transposição da Diretiva de Execução, uma vez que considera que a maior parte dos desafios que se colocam ao destacamento de trabalhadores está associada à aplicação deficiente e à falta de controlos nos Estados-Membros. Sugeriu também que a revisão da Diretiva pode levar a uma redução das atividades de destacamento, em virtude da incerteza que o processo de negociação geraria entre as empresas. Embora apoie medidas destinadas a aumentar a fiabilidade e a transparência dos documentos portáteis, a BUSINESS EUROPE considerou que o princípio do «salário igual para trabalho igual» criaria uma ingerência indevida da UE na livre determinação dos níveis salariais por parte dos parceiros sociais, e recorda que a equidade nas condições de concorrência é assegurada por um vasto conjunto de atos legislativos da UE que regulam diferentes aspetos do direito do trabalho. Estes argumentos foram igualmente partilhados pelos representantes dos empregadores das indústrias da metalurgia, engenharia e tecnologias (CEEMET), e pela Confederação Europeia de Quadros (CEC). A Confederação da Indústria da República Checa e as Associações Profissionais da Finlândia, Suécia, Dinamarca, Islândia e Noruega manifestaram também, em carta conjunta, preocupações quanto à introdução do princípio do salário igual por trabalho igual na Diretiva relativa ao destacamento de trabalhadores.

Do mesmo modo, a UAPME considera que a Diretiva relativa ao destacamento dos trabalhadores não deve ser alterada antes de terminada a transposição da Diretiva de Execução e de avaliados os seus efeitos.

A EUROCIETT, em representação das agências de trabalho temporário, considerou que, de um modo geral, não há necessidade de rever a Diretiva de 1996. No entanto, apoia o princípio do salário igual por trabalho igual para os trabalhadores destacados por agências de trabalho temporário, bem como a aplicação a estes trabalhadores de todas as disposições previstas na Diretiva relativa ao trabalho temporário.

4. OBTENÇÃO E UTILIZAÇÃO DE COMPETÊNCIAS ESPECIALIZADAS

Na preparação da presente iniciativa, foram analisados vários estudos, relatórios e artigos. As referências podem ser encontradas no relatório da avaliação de impacto que acompanha a presente proposta.

5. AVALIAÇÃO DE IMPACTO

A presente proposta é acompanhada de um relatório de avaliação de impacto que analisa a problemática do destacamento, descreve o problema com o atual quadro jurídico e prevê diferentes opções políticas para o resolver e, por último, avalia o impacto social e económico das opções políticas.

6. DIREITOS FUNDAMENTAIS

A presente diretiva respeita os direitos fundamentais e observa os princípios consagrados na Carta dos Direitos Fundamentais da União Europeia. Em especial, a presente diretiva visa assegurar o pleno respeito do artigo 31.º da Carta, que prevê o direito de todos os trabalhadores a condições de trabalho saudáveis, seguras e dignas, a uma limitação da duração máxima do tempo de trabalho e a períodos de descanso diário e semanal, bem como a um período anual de férias pagas.

7. EXPLICAÇÃO PORMENORIZADA DAS DISPOSIÇÕES ESPECÍFICAS DA PROPOSTA

O artigo 1.º da proposta introduz várias alterações à Diretiva 96/71/CE.

7.1. Número 1

O número 1 adita um novo artigo 2.º-A à Diretiva. Este artigo diz respeito à legislação laboral aplicável aos trabalhadores destacados quando a duração prevista ou efetiva do destacamento for superior a 24 meses. Tal não prejudica a possível duração de uma prestação temporária de serviços. O Tribunal de Justiça tem consistentemente deliberado que a distinção entre a liberdade de estabelecimento e a liberdade de prestação de serviços numa base temporária deve ser feita caso a caso, tendo em conta não só a duração, mas também a regularidade, a periodicidade e a continuidade da prestação de serviços.

O número 1 do novo artigo 2.º-A aplica-se sempre que a duração prevista do destacamento for superior a 24 meses ou quando a duração efetiva do destacamento excede 24 meses. Em ambos os casos, o Estado-Membro de acolhimento é considerado como o país em cujo território o trabalho é habitualmente realizado. Em aplicação das disposições do Regulamento Roma I[3], a legislação laboral do Estado-Membro de acolhimento será, por conseguinte, aplicável ao contrato de trabalho desses trabalhadores destacados se as partes não tiverem optado pela aplicação de outra lei. No caso de terem decidido escolher uma lei diferente, essa decisão não pode, porém, ter como consequência privar o trabalhador da proteção que lhe proporcionam as disposições não derrogáveis por acordo ao abrigo da lei do Estado-Membro de acolhimento.

A fim de evitar a possibilidade de contornar o disposto no n.º 1, o n.º 2 esclarece que, em caso de substituição de um trabalhador para a realização da mesma tarefa, o

[3] Regulamento (CE) n.º 593/2008 do Parlamento Europeu e do Conselho, de 17 de junho de 2008, sobre a lei aplicável às obrigações contratuais (Roma I), JO L 177 de 4.7.2008, p. 6.

cálculo da duração do destacamento deve ter em conta a duração acumulada do destacamento dos trabalhadores em causa. O disposto no n.º 1 aplica-se sempre que a duração acumulada do destacamento exceder 24 meses, mas, a fim de respeitar o princípio da proporcionalidade, apenas aos trabalhadores destacados por um período mínimo de seis meses.

7.2. Número 2

O número 2 introduz várias alterações ao artigo 3.º da Diretiva.

Alínea a)

A alínea a) substitui o n.º 1 do artigo 3.º da Diretiva.

O novo texto introduz três alterações principais:

– suprime a referência às «atividades referidas no anexo» no segundo travessão;

– substitui a referência às «remunerações salariais mínimas» por uma referência à «remuneração»[4];

– acrescenta um novo parágrafo, que impõe aos Estados-Membros a obrigação de publicar informações sobre os elementos constitutivos da remuneração.

A primeira alteração torna as convenções coletivas de aplicação geral, na aceção do artigo 3.º, n.º 8, aplicáveis aos trabalhadores destacados em todos os setores da economia, independentemente do facto de as atividades serem ou não referidas no anexo da Diretiva (que é atualmente o caso apenas para o setor da construção).

É da competência dos Estados-Membros definir regras em matéria de remuneração, em conformidade com as respetivas legislações e práticas nacionais. A segunda alteração implica que as regras em matéria de remuneração aplicáveis aos trabalhadores locais, estabelecidas por lei ou por convenções coletivas de aplicação geral, na aceção do artigo 3.º, n.º 8, sejam igualmente aplicáveis aos trabalhadores destacados.

Por último, o novo parágrafo impõe aos Estados-Membros a obrigação de publicar, no sítio Web referido no artigo 5.º da Diretiva 2014/67/UE, os elementos constitutivos da remuneração aplicável aos trabalhadores destacados.

Alínea b)

É aditado um novo número que diz respeito a situações em que intervêm cadeias de subcontratação. Esta nova disposição permite aos Estados-Membros obrigar as empresas a subcontratar unicamente empresas que concedem aos trabalhadores certas condições de remuneração aplicáveis ao contratante, incluindo as que resultam de convenções coletivas de aplicação não geral. Tal só é possível numa base proporcionada e não discriminatória, o que implicaria, pois, que estas mesmas obrigações fossem impostas a todos os subcontratantes nacionais.

Alínea c)

É aditado um novo número que estabelece as condições aplicáveis aos trabalhadores referidos no artigo 1.º, n.º 3, alínea c), da Diretiva, ou seja, os trabalhadores disponibilizados por uma agência de trabalho temporário estabelecida num outro Estado-Membro que não o Estado-Membro de estabelecimento da empresa utilizadora. Este novo número corresponde ao artigo 3.º, n.º 9, da Diretiva. Aqui se

[4] Com base na jurisprudência do Tribunal de Justiça no processo C-396/13.

especifica que as condições aplicáveis às agências transfronteiriças de trabalho temporário que disponibilizam trabalhadores devem ser as que se aplicam, em conformidade com o artigo 5.º da Diretiva 2008/104/CE, às agências nacionais que disponibilizam trabalhadores. Contrariamente ao artigo 3.º, n.º 9, da Diretiva, trata-se doravante de uma obrigação jurídica imposta aos Estados-Membros.

7.3. Número 3

O número 3 altera o anexo da Diretiva na sequência das alterações introduzidas no artigo 3.º, n.º 1.

2016/0070 (COD)

Proposta de

DIRETIVA DO PARLAMENTO EUROPEU E DO CONSELHO

que altera a Diretiva 96/71/CE do Parlamento Europeu e do Conselho, de 16 de dezembro de 1996, relativa ao destacamento de trabalhadores no âmbito de uma prestação de serviços

(Texto relevante para efeitos do EEE)

O PARLAMENTO EUROPEU E O CONSELHO DA UNIÃO EUROPEIA,

Tendo em conta o Tratado sobre o Funcionamento da União Europeia, nomeadamente o artigo 53.º, n.º 1, e o artigo 62.º,

Tendo em conta a proposta da Comissão Europeia,

Após transmissão do projeto de ato legislativo aos parlamentos nacionais,

Tendo em conta o parecer do Comité Económico e Social Europeu[5],

Deliberando de acordo com o processo legislativo ordinário,

Considerando o seguinte:

(1) A liberdade de circulação de trabalhadores, a liberdade de estabelecimento e a liberdade de prestação de serviços são princípios fundamentais do mercado interno da União consagrados no Tratado sobre o Funcionamento da União Europeia (TFUE). A aplicação destes princípios é reforçada pela União Europeia no sentido de garantir condições equitativas para as empresas e assegurar o respeito pelos direitos dos trabalhadores.

(2) A liberdade de prestação de serviços inclui o direito de as empresas prestarem serviços noutro Estado-Membro, para onde podem destacar temporariamente os seus próprios trabalhadores a fim de nele prestarem os ditos serviços.

(3) Nos termos do artigo 3.º do TUE, a União deve promover a justiça e a proteção social. O artigo 9.º do TFUE atribui à União a tarefa de promover um elevado nível de emprego, a garantia de uma proteção social adequada e a luta contra a exclusão social.

(4) Quase vinte anos após a sua adoção, é necessário avaliar se a Diretiva relativa ao destacamento de trabalhadores ainda assegura o justo equilíbrio entre a necessidade de promover a liberdade de prestação de serviços e o imperativo de proteger os direitos dos trabalhadores destacados.

(5) O princípio da igualdade de tratamento e a proibição de qualquer discriminação em razão da nacionalidade estão consagrados no direito da UE desde os Tratados fundadores. O princípio da igualdade de remuneração é assegurado pelo direito derivado, não só entre os homens e as mulheres, mas também entre os trabalhadores com contratos a termo e os trabalhadores com contratos permanentes comparáveis,

5 [5]JO C , , p. .

entre trabalhadores a tempo parcial e trabalhadores a tempo inteiro ou entre trabalhadores temporários e trabalhadores comparáveis da empresa utilizadora.

(6) O Regulamento Roma I permite, de um modo geral, aos empregadores e aos trabalhadores a possibilidade de escolher a lei aplicável ao contrato de trabalho. No entanto, o trabalhador não deve ser privado da proteção que lhe proporcionam as disposições imperativas da lei do país em que o trabalhador realiza habitualmente o seu trabalho ou, na sua falta, a partir do qual o trabalhador realiza habitualmente o seu trabalho. Na ausência de escolha, o contrato é regulado pela lei do país em que o trabalhador realiza habitualmente o seu trabalho em execução do contrato ou, na sua falta, a partir do qual o trabalhador realiza habitualmente o seu trabalho em execução do contrato.

(7) O Regulamento Roma I dispõe que não se deve considerar que o país onde o trabalhador realiza habitualmente o seu trabalho muda quando o trabalhador estiver temporariamente empregado noutro país.

(8) Tendo em conta a longa duração de certas missões de destacamento, é necessário estabelecer que, em caso de destacamento de duração superior a 24 meses, o Estado-Membro de acolhimento é considerado como o país em que o trabalho é realizado. Em conformidade com o princípio do Regulamento Roma I, a lei do Estado-Membro de acolhimento será, por conseguinte, aplicável ao contrato de trabalho desses trabalhadores destacados se as partes não tiverem optado pela aplicação de outra lei. No caso de terem decidido escolher uma lei diferente, essa decisão não pode, porém, ter como consequência privar o trabalhador da proteção que lhe proporcionam as disposições não derrogáveis por acordo ao abrigo da lei do Estado-Membro de acolhimento. Estas disposições devem aplicar-se a partir do início da missão de destacamento sempre que a duração prevista seja superior a 24 meses, e a partir do primeiro dia seguinte aos 24 meses quando a duração efetiva exceder esse período. Esta regra não afeta o direito de as empresas que destacam trabalhadores para o território de outro Estado-Membro invocarem a liberdade de prestação de serviços também nos casos em que o destacamento for superior a 24 meses. O objetivo é simplesmente criar certeza jurídica na aplicação do Regulamento Roma I a uma situação específica, sem o alterar de qualquer forma. O trabalhador beneficiará, em especial, da proteção e das prestações previstas no Regulamento Roma I.

(9) É jurisprudência constante que as restrições à livre prestação de serviços só são admissíveis se se justificarem por razões imperiosas de interesse geral, devendo ser proporcionadas e necessárias.

(10) Em virtude da natureza fortemente móvel do trabalho nos transportes rodoviários internacionais, a aplicação da Diretiva relativa ao destacamento de trabalhadores suscita problemas e dificuldades jurídicos específicos (nomeadamente nos casos em que a ligação com o Estado-Membro em causa for insuficiente). Seria mais adequado que estes desafios fossem abordados no quadro de legislação setorial específica, juntamente com outras iniciativas da UE destinadas a melhorar o funcionamento do mercado interno dos transportes rodoviários.

(11) Num mercado interno competitivo, os prestadores de serviços concorrem entre si não apenas com base nos custos da mão de obra, mas também em fatores como a produtividade e a eficiência ou a qualidade e a inovação dos seus bens e serviços.

(12) É da competência dos Estados-Membros definir regras em matéria de remuneração, em conformidade com as respetivas legislações e práticas nacionais. No entanto, as

regras nacionais em matéria de remuneração aplicadas aos trabalhadores destacados devem ser justificadas pela necessidade de os proteger e não devem restringir de forma desproporcionada a prestação transnacional de serviços.

(13) Os elementos de remuneração regidos por lei ou por convenções coletivas de aplicação geral devem ser claros e transparentes para todos os prestadores de serviços. Justifica-se, pois, que se imponha aos Estados-Membros a obrigação de publicar os elementos constitutivos da remuneração no sítio Web único previsto no artigo 5.º da Diretiva de Execução.

(14) As disposições legislativas, regulamentares, administrativas ou as convenções coletivas aplicáveis nos Estados-Membros podem garantir que o recurso à subcontratação não confere às empresas a possibilidade de contornar regras que garantam determinadas condições de trabalho e de emprego em matéria de remuneração. Se, a nível nacional, existirem essas regras em matéria de remuneração, o Estado-Membro pode aplicá-las de forma não discriminatória às empresas que destacam trabalhadores para o seu território, desde que não restrinjam desproporcionadamente a prestação transnacional de serviços.

(15) A Diretiva 2008/104/CE do Parlamento Europeu e do Conselho relativa ao trabalho temporário dá expressão ao princípio segundo o qual as condições fundamentais de trabalho e de emprego aplicáveis aos trabalhadores temporários devem ser, no mínimo, as que seriam aplicáveis a esses trabalhadores se tivessem sido recrutados pela empresa utilizadora para ocupar o mesmo posto de trabalho. Este princípio deve igualmente aplicar-se aos trabalhadores destacados para outro Estado-Membro por agências de trabalho temporário.

(16) Em conformidade com a Declaração Política Conjunta, de 28 de setembro de 2011, dos Estados-Membros e da Comissão sobre os documentos explicativos[6], os Estados-Membros comprometeram-se a fazer acompanhar, nos casos em que tal se justifique, a notificação das suas medidas de transposição de um ou mais documentos que expliquem a relação entre os componentes de uma diretiva e as partes correspondentes dos instrumentos nacionais de transposição. Em relação à presente diretiva, o legislador considera que a transmissão desses documentos se justifica,

ADOTARAM A PRESENTE DIRETIVA:

Artigo 1.º
Alterações à Diretiva 96/71/CE

A Diretiva 96/71/CE é alterada do seguinte modo:

(1) É inserido o seguinte artigo 2.º-A:

Artigo 2.º-A

Destacamento superior a 24 meses

1. Quando a duração prevista ou efetiva do destacamento for superior a 24 meses, o Estado-Membro em cujo território o trabalhador se encontra destacado deve ser considerado o país em que o seu trabalho é habitualmente realizado.

2. Para efeitos do n.º 1, em caso de substituição de trabalhadores destacados que efetuem o mesmo trabalho no mesmo local, deve ser tida em consideração a duração

6 [6]JO C 369 de 17.12.2011, p. 14.

acumulada dos períodos de destacamento dos trabalhadores em causa, no que respeita aos trabalhadores destacados por uma duração efetiva mínima de seis meses.

(2) O artigo 3.º é alterado do seguinte modo:

(a) O n.º 1 passa a ter a seguinte redação:

1. Os Estados-Membros providenciarão no sentido de que, independentemente da lei aplicável à relação de trabalho, as empresas referidas artigo 1.º, n.º 1, garantam aos trabalhadores destacados no seu território as condições de trabalho e de emprego relativas às matérias adiante referidas que, no território do Estado-Membro onde o trabalho for executado, sejam fixadas:

– por disposições legislativas, regulamentares ou administrativas e/ou

– por convenções coletivas ou decisões arbitrais declaradas de aplicação geral na aceção do n.º 8:

(a) períodos máximos de trabalho e períodos mínimos de descanso;

(b) duração mínima das férias anuais remuneradas;

(c) remuneração, incluindo as bonificações relativas a horas extraordinárias; a presente alínea não se aplica aos regimes complementares voluntários de reforma;

(d) condições de disponibilização dos trabalhadores, nomeadamente por agências de trabalho temporário;

(e) saúde, segurança e higiene no local de trabalho;

(f) medidas de proteção aplicáveis às condições de trabalho e emprego das mulheres grávidas e das puérperas, das crianças e dos jovens;

(g) igualdade de tratamento entre homens e mulheres, bem como outras disposições em matéria de não-discriminação.

Para efeitos da presente diretiva, por remuneração entende-se todos os elementos de remuneração tornados obrigatórios por disposições legislativas, regulamentares ou administrativas, por convenções coletivas ou decisões arbitrais declaradas de aplicação geral e/ou, na falta de um sistema que permita declarar de aplicação geral convenções coletivas ou decisões arbitrais, por outras convenções coletivas ou decisões arbitrais na aceção do segundo parágrafo do n.º 8, no Estado-Membro em cujo território o trabalhador se encontra destacado.

Os Estados-Membros devem publicar, no sítio Web oficial único a nível nacional referido no artigo 5.º da Diretiva 2014/67/UE, os elementos constitutivos da remuneração em conformidade com a alínea c).

(b) É aditado o seguinte número:

1-A. Se as empresas estabelecidas no território de um Estado-Membro forem obrigadas, por disposições legislativas, regulamentares e administrativas ou por convenção coletiva, a subcontratar, no âmbito das suas obrigações contratuais, apenas empresas que garantam certas condições de trabalho e de emprego em matéria de remuneração, o Estado-Membro pode, de uma forma não discriminatória e proporcionada, estabelecer que essas empresas estejam sujeitas à mesma obrigação relativamente a subcontratos celebrados com as

empresas referidas no artigo 1.º, n.º 1, que destacam trabalhadores para o seu território.

(c) É aditado o seguinte número:

1-B. Os Estados-Membros devem estabelecer que as empresas referidas no artigo 1.º, n.º 3, alínea c), garantam aos trabalhadores destacados as condições aplicáveis, nos termos do artigo 5.º da Diretiva 2008/104/CE do Parlamento Europeu e do Conselho, de 19 de novembro de 2008, relativa ao trabalho temporário, aos trabalhadores disponibilizados por agências de trabalho temporário estabelecidas no Estado-Membro onde é realizado o trabalho.

(d) É suprimido o número 9.

(e) No número 10, é suprimido o segundo travessão.

(3) O primeiro parágrafo do anexo é alterado do seguinte modo:

As atividades a que se refere o artigo 3.º abrangem todas as atividades no domínio da construção que visem a realização, reparação, manutenção, alteração ou eliminação de construções e, nomeadamente, os seguintes trabalhos:

Artigo 2.º

1. Os Estados-Membros devem adotar as disposições legislativas, regulamentares e administrativas necessárias para dar cumprimento à presente diretiva o mais tardar até [dois anos após a adoção]. Os Estados-Membros devem comunicar imediatamente à Comissão o texto dessas disposições.

As disposições adotadas pelos Estados-Membros devem fazer referência à presente diretiva ou ser acompanhadas dessa referência aquando da sua publicação oficial. As modalidades da referência são estabelecidas pelos Estados-Membros.

2. Os Estados-Membros devem comunicar à Comissão o texto das principais disposições de direito interno que adotarem no domínio abrangido pela presente diretiva.

Artigo 3.º

A presente diretiva entra em vigor no [vigésimo] dia seguinte ao da sua publicação no *Jornal Oficial da União Europeia*.

Artigo 4.º

Os Estados-Membros são os destinatários da presente diretiva.

Feito em Estrasburgo, em

Pelo Parlamento Europeu	*Pelo Conselho*
O Presidente	*O Presidente*

EUROPEAN
COMMISSION

Strasbourg, 8.3.2016
SWD(2016) 52 final

COMMISSION STAFF WORKING DOCUMENT

IMPACT ASSESSMENT

Accompanying the document

Proposal for a Directive of the European Parliament and the Council

amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services

{COM(2016) 128 final}
{SWD(2016) 53 final}

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1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Identification

Lead DG: DG Employment, Social Affairs and Inclusion (EMPL)

Other services involved: SG, LS

CWP/Agenda planning reference: CWP 2016, Annex I, initiative n. 8.

1.2. Consultation and expertise

In the framework of the Labour Mobility Package, the Commission launched on 15 July 2015 a public consultation open to EU citizens and organisations, which remained open for 12 weeks. The consultation included a chapter on the social security rules applicable to posted workers. Out of 307 respondents who submitted their replies to the public consultation, 232 respondents replied online to the questions on the coordination rules on posting (which amounts to 75.57% of the total number of respondents), including 138 individuals (69.35% of the total number of individuals) and 94 organisations (87.04% of the total number of organisations).

During the preparation of the initiative, the Commission has received written contributions from 16 Member States, in the form of two joint letters. The first was sent on 18 June 2015, signed by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Sweden. On 31 August 2015, a second joint letter signed by Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania was sent to the Commission.

The targeted revision of the Directive was also discussed with Member States' representatives within the Committee of Experts on Posting of Workers, in a meeting held on 7 September 2015.

The Commission organised a consultation of European social partners on the Labour Mobility Package, including the targeted review of the Posting of Workers Directive, in the form of a roundtable, which was held on 10 June 2015.

A meeting with was held with civil society on 17 June 2015.

Written contributions were received from the following European social partners: ETUC, BusinessEurope, UEAPME, EFBWW and FIEC, EBC, CESI, CEC and Eurociett.

Written contributions were also received from national social partners, namely the Swedish Association of Industrial Employers, *Gesamtmetall* , the Confederation of Industry of the Czech Republic, the Industry Associations of Denmark, Finland, Iceland, Norway, Sweden, the Council of Nordic Trade Unions and the Dutch Trade Union Confederation (FNV).

Two European NGOs have also sent written contributions: ECAS and Eurodiaconia.

Annex III provides a summary of the positions expressed by the Member States and stakeholders in written contributions

To increase the evidence basis, a study on wage-setting systems and minimum rates of pay applicable to posted workers in accordance with 1996 Posting of Workers Directive in a selected number of Member States and sectors was prepared, on behalf of the Commission, by the Fondazione Giacomo Brodolini[1]. An analysis on the economic value of posting of workers was prepared on behalf of the Commission by HIVA KU Leuven[2].

1.3 Scrutiny by the Commission Regulatory Scrutiny Board

The Regulatory Scrutiny Board of the European Commission assessed a draft version of the present IA and issued a negative opinion on 22 January 2016. A new version of the Impact Assessment was submitted to the Board on 15 February 2016. A positive opinion on the new version was issued on 24 February 2016.

2. PROBLEM DEFINITION

2.1. Policy context[3]

Posting of workers plays an essential role in the Internal Market, particularly in the cross-border provision of services. It consists of the case in which undertakings post an employee to another Member State to provide a service. Directive 96/71/EC (hereafter: 'the Directive')[4] regulates three variants of posting: the direct provision of services between two companies under a service contract, posting in the context of an establishment or company belonging to the same group ('intra-group posting'), and

1 Fondazione Giacomo Brodolini (FGB), *Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 97/71/EC in a selected number of Member States and sectors*, December 2015.

2 De Wispelaere, F. and Pacolet, J., 'An ad hoc statistical analysis on short term mobility - economic value of posting of workers', HIVA KU Leuven, February 2016.

3 For more information, see Annex II.

4 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 services.

posting through hiring out a worker via a temporary work agency established in another Member State.

The EU established an Internal Market which is based on a highly competitive social market economy, aiming at full employment and social progress (Article 3(3)TFEU).

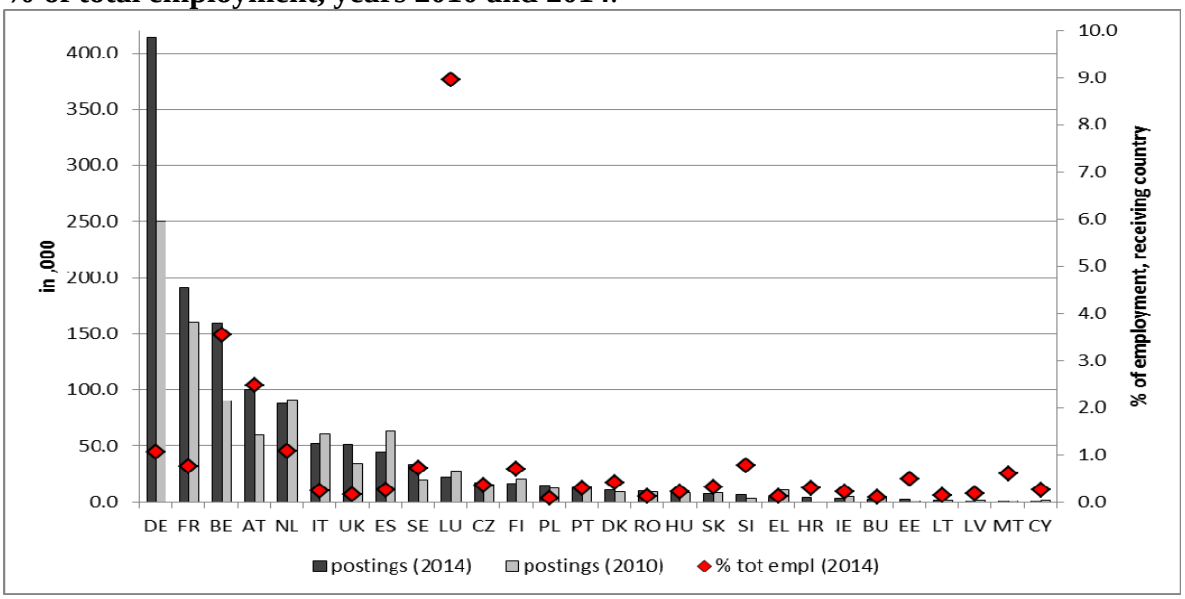
The treaty establishes the right for companies to provide their services in other Member States. It provides that 'restrictions on the freedom to provide services in the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person to whom the services are intended' (Article 56 TFEU). The freedom to provide services may be limited only by rules which are justified by overriding reasons of general interest, provided that these are justified, proportionate and applied in a non-discriminatory way.

Altogether, in 2014 (latest data available), there were over 1.92 million postings in the EU, up by 10.3% as compared to 2013 and by 44.4% with respect to 2010. The upward trend followed the stagnation of postings during the years 2009 and 2010[5].

EU-15 Member States represented the destination of 86% of total postings, with Germany, France and Belgium as the three main countries of destination which altogether received 50% of total postings in Europe (see figure 1). In proportion to the domestic employment of the receiving country, posted workers represent a relevant share in Luxembourg, Belgium and Austria.

[5] Pacolet, J. and De Wispelaere, F. (2015), *Posting of Workers. Report on A1 portable documents issued in 2014*, Network Statistics FMW&SSC, European Commission. The data include postings to single Member States (according to art. 12 of Regulation 883/2004) and postings to multiple Member States (article 13 of Regulation 883/2004). The data also includes the self-employed (on average 8% of total postings) which are not covered by the posting of Workers Directive. Because no data is available on the destination of postings to multiple member States, the total figure of sent posted workers (1.92 million) is higher than that of received posted workers (1.45 million, in 2014).

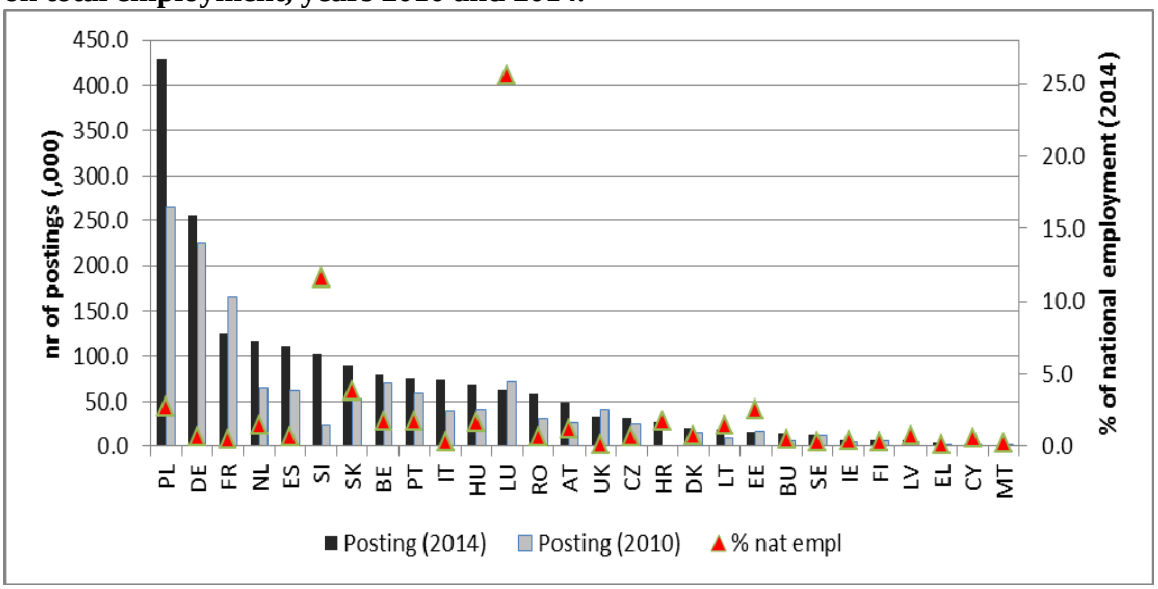
Figure 1. Posted workers, breakdown by *receiving country*, absolute numbers and % of total employment, years 2010 and 2014.



Source: EMPL elaboration on Pacolet and De Wispelaere (2015). Note: data on received posted workers are only available with respect to postings to single Member States (art. 12 of Reg. 883/2004).

Poland, Germany and France accounted for the three largest senders of posted workers in 2014, with EU-15 accounting for 54% of total posted workers sent in that year. The incidence of posted workers on the domestic employment of sending countries was highest in Luxembourg, Slovenia, and Slovakia.

Figure 2. Posted workers, breakdown by *sending country*, absolute number and % on total employment, years 2010 and 2014.



Source: EMPL elaboration on Pacolet and De Wispelaere (2015). Note: data on sent posted workers include both postings to single Member States and postings to multiple Member States (art. 12, 13 of Reg. 883/2004).

Postings involve a small share of the total EU workforce (0.7%), with unique posted persons accounting on average for 0.4% of EU employment (0.2% in full-time equivalents). However, the relevance of posting of workers is particularly strong in the construction sector, in which 42% of total postings are concentrated. Posting of workers is also important in the manufacturing industry (21.8%) and in other service sectors, such as personal services (education, health and social work, 13.5%) and business services (administrative, professional, and financial services, 10.3%). Posting of workers through temporary agency work represents, on average, 5% of total postings in the EU, albeit with significant cross-country variations.

Further data on posting of workers are presented in Annex II.

However, it is important to note that strong data limitations on posting of workers remain an on-going problem[6]. Comparable figures are based on the portable documents A1 (PD A1) for social security purposes[7], although some Member States, including Belgium, Denmark, France and Sweden have set up national registration systems, requiring detailed information from companies posting workers to their country. The accuracy of the information contained in PD A1 documents cannot be guaranteed due to the lack of formal controls by the authorities in the sending countries, among other things. Therefore, the figures presented below represent an estimate of the actual number of postings taking place and do not provide a precise picture of reality[8]. Moreover, PD A1 forms include incomplete information on the duration of postings (these forms are not required for short-term postings below one month of duration and for long-term postings over 24 months) and the precise economic sector of activity; and they include no information at all on aspects such as the qualification of posted workers, their earnings, and the economic value of cross-border services involving posting of workers.

Improvements can be expected from the transposition of the 2014 Enforcement Directive, in particular the administrative requirements and control measures suggested by article 9(1). Furthermore, the envisaged revision of the Regulation on social security

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6 See also European Commission (2012) *Impact Assessment. Revision of the legislative framework on the posting of workers in the context of the provision of services. Partie I*, SWD (2012) 63 final.

7 Within the meaning of Article 12 of Regulation No 883/2004 on the coordination of social security systems, PD A1 forms serve to certify that the holder is covered by the social security legislation of the Member State of origin. PD A1 could, *inter alia*, also be issued for persons who are normally employed, self-employed or both employed and self-employed in two or more Member States (Art. 13 of Regulation (EC) No 883/2004).

8 The gap in registered posted workers between PD A1 figures and national registers can be significant. Annex II provides some examples. The gap can be explained by many factors, including in particular the non-obligation for sending employers to have a PD A1 form for short-term postings below one month and long-term postings over 24 months (which are instead compulsory registered in national systems). However, the gap still demonstrates the shortcoming of the data available through social security forms, which remain the only fully comparable data source.

coordination will propose stricter measures to improve the reliability of the A1 forms, and therefore of the data, provided by sending Member States.

2.2. Defining the scope of the issue

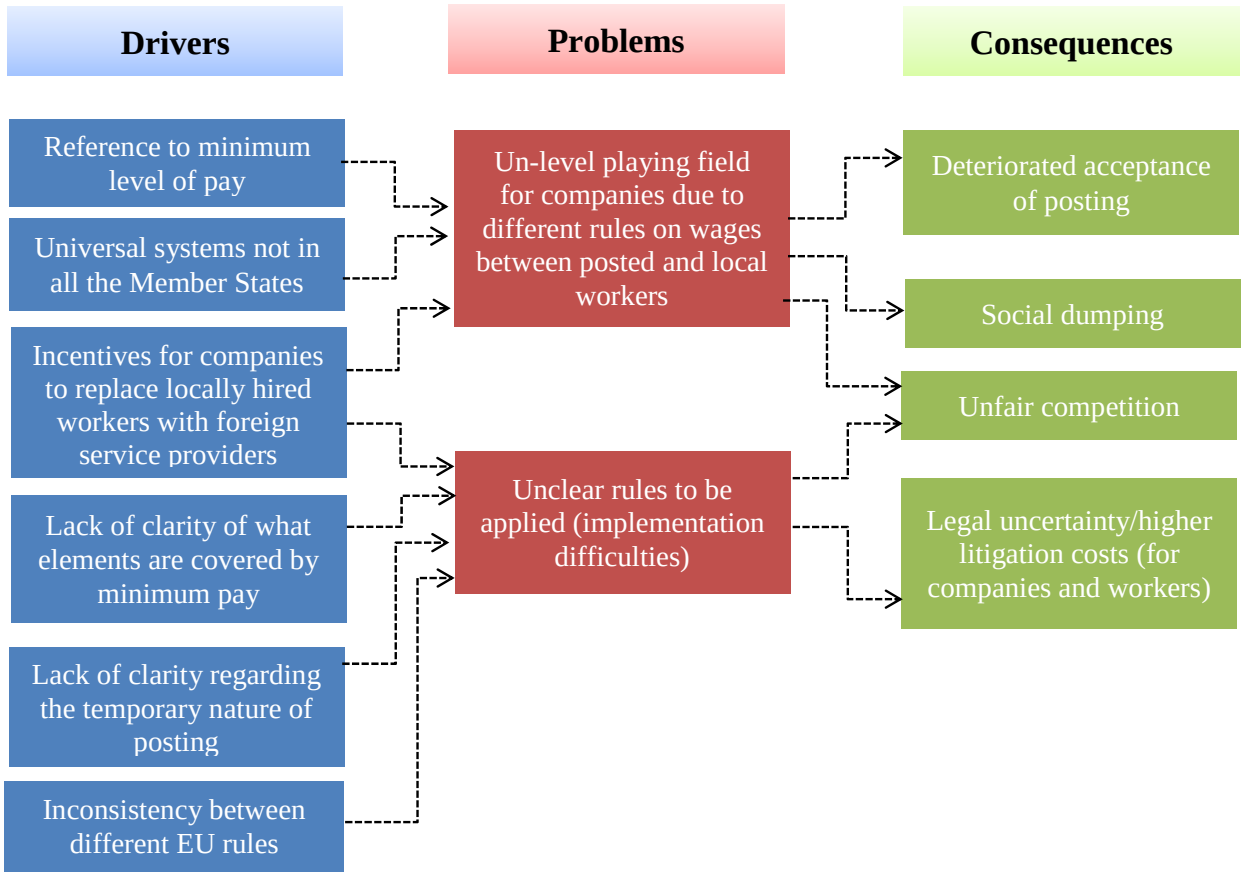
Posting of workers constitutes an essential resource for the functioning of the Internal Market. The 1996 Directive sets the EU regulatory framework to establish a balance between the objectives of promoting and facilitating the cross-border provision of services, providing protection to posted workers and ensuring a level-playing field between foreign and local competitors. It stipulates a 'core set' of terms and conditions of employment of the host Member State which are mandatory to be applied by foreign service providers, which include (article 3(1) of the Directive): maximum work periods and minimum rest periods; the minimum rates of pay, including overtime rates; minimum paid annual holidays; the conditions of hiring-out of workers; health, safety and hygiene at work; protective measures in favour of pregnant women, young mothers, children, and young people; equality of treatment between genders; and other provisions of non-discrimination.

The 2014 Enforcement Directive[9] has provided for new and strengthened instruments to fight and sanction circumventions, fraud and abuses. It addresses problems caused by so-called "letter-box companies" and increases the Member States' ability to monitor working conditions and enforce the rules applicable. *Inter alia*, the Directive lists qualitative criteria characterising the existence of a genuine link between the employer and the Member State of establishment. The Enforcement Directive also lays down provisions to improve administrative cooperation between national authorities in charge of posting. For instance, it provides for an obligation to respond to requests for assistance from the competent authorities in other Member States within two working days in the case of urgent requests for information and within 25 working days in non-urgent cases. Moreover, the Directive lists national control measures that the Member States may apply when monitoring compliance with the working conditions applicable to posted workers. The full effects of the Directive should become tangible as of mid-2016, as Member States will have until 18 June 2016 to transpose the Directive.

The current initiative does not address any issue touched upon by the Enforcement Directive. Neither the Enforcement Directive nor the measures taken to transpose it into national laws will be in any way affected by the present initiative. Rather, it focuses on issues which were not addressed by it and pertain to the EU regulatory framework set by the original 1996 Directive. Therefore, the revised posting of Workers Directive and the Enforcement Directive are complementary to each other and mutually reinforcing.

[9] 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').

Problem Tree



2.3. Inconsistent playing field for companies grounded on differentiated wage rules

The 1996 Posting of Workers Directive establishes a structural differentiation of wage rules applying to posted and local workers which is the institutional source of an un-level playing field between posting and local companies, as well as of segmentation in the labour market.

Wage differentiation originates from three mechanisms set in place by the Directive.

First, the Directive stipulates that posted workers are guaranteed only the *minimum rates of pay*, as part of a "hard core of clearly defined protective rules", in the receiving Member State. Minimum pay is defined either by the law or by universally applicable collective agreements which have been declared universally applicable. In the absence of universally applicable collective agreements, Member States may decide to base themselves on collective agreements which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, or

collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory[10]. Thus, unless there are collective agreements that fulfil these conditions, posted workers are only entitled to whatever statutory minimum wage that there might be in the receiving country. However, even when collective agreements are applicable, it is widely reported that sending companies tend to pay the rates applicable to the lowest pay group, rather than the adequate pay group corresponding to workers' job tasks, educational level and seniority[11]. In summary, the existing Directive has an in-built structural wage gap between posted and local workers.

Second, the composition of the minimum rates of pay guaranteed to posted workers in the host Member States is unclear and sensibly varies across the Member States. The Directive leaves the definition and composition of 'minimum rates of pay' applicable in their country to the Member States and the social partners. For example, while certain bonuses or allowances (such as Christmas bonus or bad-weather allowance) are constituent parts of the pay in some Member States, they are not in others. Annex V provides an overview of the types of bonuses and allowances included across different Member States. The European Court of Justice has clarified selected issues of the concept[12]. Nevertheless, the lack of a clear standard generates uncertainty about rules and practical difficulties for the bodies responsible for the enforcement of the rules in the host Member State; for the service provider when determining the wage due to a posted worker; and for the awareness of posted workers themselves about their entitlements. In practice, the notion of "minimum rates of pay" which can in a number of Member States include seniority allowance, quality bonuses and 13th month bonuses, seems to be wrongly interpreted without these components, as meaning 'minimum wage' (see Annex V).

Third, there are uncertainties concerning the effectiveness of the Directive in Denmark and Sweden where, in the absence of a statutory minimum wage and a scheme for the extension of collective agreements, minimum rates of pay are set by collective agreements that are applicable nationwide but leave ample room for integration to company-level agreements, in line with productivity and skill requirements. Following the Laval ruling[13] through which the European Court of Justice has challenged the

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10 See in particular article 3(8) of the 1996 Posting of Workers Directive.

11 FGB (2015), Wage Study. This situation primarily affects workers posted from low-wage EU Member States in low-skill occupations. Workers with higher bargaining power vis-à-vis their employers are reported to receive wages in line with the standards of the receiving countries.

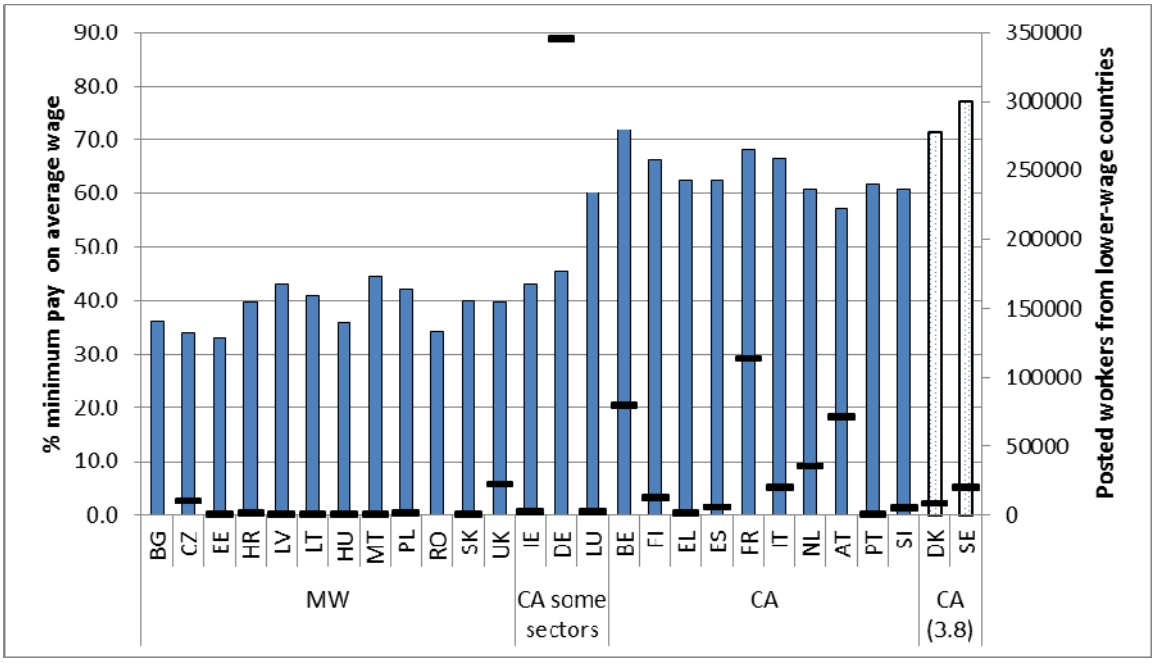
12 *Commission v. Germany* (C-341/02), *Isbir* (C-522/12). In the recent case *Sähköalojen ammattiliitto ry* (C-396/13), the Court ruled that the 'minimum rates of pay' which a host Member State can require to be paid to posted workers include: holiday allowances, daily flat-rate allowances for posted workers to compensate them for disadvantages entailed by the posting, and compensation for travelling time, on equal terms as local workers. Moreover, it acknowledged the validity of different hourly pay levels attached to the categorisation of employees into pay groups in collective agreements to the sense of the Directive, provided that the conditions are universally binding and transparent.

13 C-341/05 - *Laval un Partneri*.

validity of company-level agreements to set the working conditions for posted workers, both countries have amended national legislation to clarify the application of their wage-setting systems in the terms set by the Directive[14] . While general agreements set basic wage floors in some relevant exposed sectors, company-level agreements play an essential role in setting a level playing field with local companies, but the number of such collective agreements with cross-border service providers seems to be low[15]..

Figure 3 provides a synoptic view of the level of minimum rates of pay (as a ratio of the average wage in the whole economy) under different wage regimes and the number of workers posted to each Member State from lower-wage countries who are likely to receive only the minimum rates of pay in the receiving country.

Figure 3. Minimum rates of pay guaranteed by the Directive and potential range of posted workers affected, by receiving country, whole economy, 2010



Source: EMPL calculations on Eurostat data and Pacolet and De Wispelaere (2015) data. No data for CY.
Note: in minimum wage countries (MW) the minimum pay is calculated as the ratio between the monthly statutory minimum wage and the nominal average wage in the construction sector; in Member States with universally applicable collective agreements (CA), and collective agreements concluded at national level (in accordance to article 3(8) of the Directive), the minimum rate of pay is calculated as the ratio between the nominal monthly wage of the lowest pay group (elementary worker) and the average wage in the construction sector.

[14] Malmberg, J. (2010), The impact of the ECJ judgements on Viking, Laval, Rueffert and Luxemburg on the practice of collective bargaining and the effectiveness of social action, European Parliament Study (http://www.europarl.europa.eu/document/activities/cont/201107/20110718ATT24274/20110718ATT24274EN.pdf)

[15] FGB Study (2015), Denmark and Sweden Country reports.

Differentiated rules on wages translate into a competitive advantage for posting companies over local companies in receiving countries, with the former being able to adhere to lower wage bound than the latter, while competing for the same business in the same (host) country. This is particularly true in domestically-provided services, such as construction and personal services, given their labour-intensive and price-sensitive character and the fact that delocalisation of these activities is not possible. In light of EU labour market conditions, including wage differentials and diversity of wage-setting regimes, in the context of an enlarged European Union, the balance struck by the 1996 Directive to establish a climate of fair competition has changed considerably. As illustrated by figure 9 (Annex II), the gap between Member States on minimum wages has constantly increased since 1996, from a ratio between the lowest and the highest minimum wage of 1:3 to 1:10. Moreover, differentiated wage rules seem in contradiction with the principle according to which cross-border service providers should pursue their activities in another Member State "under the same conditions as are imposed by the State on its own nationals" (Article 57 TFEU).

The labour market effect of these provisions is segmentation between posted and local workers. Posted workers are reported to receive a lower remuneration level than local workers, especially in high-wage EU receiving countries, such as Belgium, Denmark, France, Germany, the Netherlands and Sweden. Because of the absence of data on the earnings of posted workers, only gross estimates exist. However, the wage gap (in compliance with the Directive) is estimated to range from 10-15% in the Danish construction sector, up to about 25% - 35% in the construction sector in the Netherlands and Belgium, and up to 50% in the road transport sector in Belgium[16]. The wage gap constitutes a source of labour market segmentation insofar as it implies differentiated rules applying to posted workers on aspects such as composition of pay, correspondence of certain bonuses, and longer working hours.

Wage differentiation is reported to be especially acute in two cases. First, posted workers in labour-intensive sectors, such as the construction sector and road transport are more likely to receive minimum pay rates than posted workers in high-end service sectors, e.g. finance and insurance. This is because in these sectors labour cost differentials are one of the key drivers of posting of workers while posted workers tend to have low skills[17]. By

[16] See Fondazione Giacomo Brodolini (FGB), *Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 97/71/EC in a selected number of Member States and sectors* [henceforth quoted as "FGB - Wage Study"], Final report, November 2015; Schiek, Oliver, Forde, Alberti, "*EU Social and Labour Rights and EU Internal Market Law*", Study for the EMPL Committee, European Parliament, September 2015 (http://www.europarl.europa.eu/RegData/etudes/STUD/2015/563457/IPOL_STU%282015%29563457_EN.pdf); M. Houwerzijl, "The Dutch Understanding of Posting of Workers in the context of Free Services Provision and Enlargement: a Neutral Approach?", in: S. Evju, Cross-Border Services, Posting of Workers and Multilevel Governance, University of Oslo, 2013 (http://www.jus.uio.no/ifp/english/research/projects/freemov/publications/books/cross-border.html)

[17] See ISMERI Europa, *Preparatory Study for an Impact Assessment concerning the possible revision of the legislative framework on the posting of workers in the context of the provision of services*, Final

contrast, in sectors or for professions in which posting is driven by skills shortages, such as the care services sector, or workers have higher skills, wages are not reported to be a problematic issue[18]. Second, unequal wage treatment particularly affects workers posted from low- to high-wage countries. While the 1996 Directive does not preclude companies from applying more generous conditions than the minimum standards of the receiving country, workers posted from low-wage countries tend to lack the bargaining power to obtain more generous conditions in line with the wage standards of the receiving countries. On the receiving end, the Directive provisions can exert downward wage and overall labour cost competition on local companies and workers in high-wage Member States[19], including through possible risks of replacement of local workers with posted workers. It also risks destabilising coordinated wage-setting regimes and the bargaining autonomy of the social partners in those regimes.

2.4. Unclear rules to be applied on specific situations

The 1996 Directive addresses different types of posting through a one-size-fits-all principle. In specific situations, however, the rules have not proved to be up to standard with changing economic and labour market conditions and do not provide sufficient legal clarity. Unclear rules undermine the efficient functioning of the Internal Market by creating uncertainties among undertakings, workers and their representatives, and public authorities.

2.4.1. Subcontracting

Posted workers in the context of sub-contracting chains are in a situation of particular vulnerability. Subcontracting chains involve a client, or principal contractor, externalising single specialities or tasks to other companies or self-employed workers. Workers may be posted to another member State in order to execute that service. Subcontracting is an extensive practice in the building and construction sector, as well as in other industries and service sectors, such as shipbuilding, transport, tourism and the cleaning industry[20]. The compression of production costs through the subcontracting of specific tasks to trans-national subcontractors is one of the drivers of the phenomenon and may be a source of downward wage pressure in the context of posting both on posted and on local workers, as well as a source of risk of job displacement for local workers[21].

Report, March 2012; J. Cremers, *In search of cheap labour in Europe. Working and living conditions of posted workers*, European Institute for Construction Labour Research – AIAS, 2010.

18 FGB (2015), Wage Study.

19 EFBWW and FIEC, Joint Position, 29 February 2015; European Builders Confederation, Open Letter to Maryanne Thyssen, 5 October 2015; Council of Nordic Trade Unions, 20 January 2016.

20 Y. Jorens, S. Peters, M. Houwezijl, *Study on the protection of workers' rights in subcontracting processes in the European Union*, June 2012.

21 See Lillie, N. (2012), "Subcontracting, posted migrants and labour market segmentation in Finland", *British Journal of Industrial Relations*, 40(1): 148-167 N. Lillie and I. Wagner, Subcontracting, insecurity and posted work: evidence from construction, meat processing and ship building, European Trade Union Institute, 2015

As there is little comprehensive data, it is difficult to estimate the extent of sub-contracting through cross-border service providers and posting of workers. Overall, in 2011 (latest available data) payments of companies to subcontractors ranged between less than 15% (RO, PT, DK, and IT) to over 30% (UK, SK, and CZ) of turnover in the construction sector (figure 10, Annex II).

The 2014 Enforcement Directive recognised that "compliance with the applicable rules in the field of posting in practice and the effective protection of workers' rights in this respect is a matter of particular concern in subcontracting chains" (recital 36) while introducing a system of joint liability of the main contractor[22]. The Enforcement Directive hence determines who can be held liable for wage payment but does not address the question of what wage a posted worker in a subcontracting chain is entitled to.

2.4.2. Temporary agency workers

The posting of temporary agency workers to a user undertaking established in another Member State is a rather specific situation, compared with the typical situation of workers posted in the context of a contract of service. In the case of temporary agency workers, the movement of the worker to the host Member State constitutes the very purpose of the provision of services and the posted worker carries out his tasks under the control and direction of the user undertaking.

Posted agency workers are exposed to the risk of differentiated treatment with respect to temporary agency workers directly recruited in the host Member States because of the problematic interaction between the Posting of Workers directive and the Directive 2008/104/EC on temporary agency work (TAW)[23].

While the TAW Directive establishes that temporary agency workers should be granted the same working and employment conditions of workers as comparable workers of the user undertaking, in the Posting of Workers directive the same principle is not mandatory. Article 3(9) provides that temporary agency workers posted from another Member State are granted the application of the hard core of rights as nationals, including minimum rates of pay, but are not granted equal treatment as comparable workers of the user undertaking, unless a Member State has ruled so.

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[22] 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')

[23] A.Van Hoek and M. Houwerzijl, *Comparative Study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union*, 2011.

The majority of Member States (15) has transposed article 3(9) to ensure that the equal treatment principle also applies to posted temporary agency workers, but thirteen Member States (Austria, Cyprus, Estonia, Greece, Finland, Croatia, Hungary, Ireland, Latvia, Poland, Portugal, Slovenia, and Slovakia) do not set any specific provision for this category of workers, with the general conditions for posted workers applying[24].

As a result, temporary agency workers who are posted to the latter group of countries are exposed to risks of differentiated pay and working conditions with respect to locally recruited agency workers. National temporary agencies are faced with unfair competition since the workers assigned by agencies established in another Member State are potentially paid lower wages. It should be noted, however, that the Posting of Workers Directive does not affect the regulation of the temporary agency industry with respect to aspects such as restrictions on particular sectors or licencing systems in the Member States.

2.4.3. Definition of the temporary nature of posting

The 1996 Directive defines the nature of posting as having a temporary character, for the "limited period of time" necessary for a worker to carry out in another Member State the work for which he or she has been posted[25]. However, the Directive does not provide any temporary limitation to the posting of workers or any limitation to the assumption that they do not integrate into the labour market of the host Member State.

The lack of a definition of the temporary limitation of posting creates a mismatch with the Regulation on the coordination of social security systems[26]. The Regulation sets at 24 months the maximum duration of postings after which posted workers are compulsorily integrated in the social security regime of the host Member State for the entire period of posting. The same rule does not apply for working conditions under the Posting of Workers Directive. Workers posted for long periods remain entitled to the minimum standards of the host Member State, as far as remuneration, working time, and paid holidays are concerned, while remaining subject to the income tax regime of the home country.

The inconsistency of the EU regulatory framework on posting represents a problem as such as a matter of clarity of rules, while bearing significant adverse consequences on the fairness of competition between posting and local companies. Companies posting workers for long-term services can continue applying a more advantageous set of minimum-standard labour rules with respect to local companies, thus gaining a competitive edge based on the application of unequal wage rules.

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[24] Austria does not provide for equal treatment of posted temporary agency workers, but established more generous conditions than the minimum core of rights.

[25] A.Van Hoek and M. Houwerzijl, 2011.

[26] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.

In turn, workers posted for long periods are de facto integrated in the labour market of the host Member State, but they do not benefit from the principle of equal treatment with nationals as EU mobile workers (within the meaning of Article 45 TFEU) do, as far as working conditions are concerned. Workers in long-term postings are more exposed to abuses of their working conditions[27].

The Commission identified this problem in the preparation of the Enforcement Directive, but no policy option was presented at that time since the initiative focused only on problems related with the enforcement of the existing rules [28].

2.4.4. Intra-corporate posting

In addition to the typical situation of posting in the context of a contract of services between undertakings established in different Member States and to temporary agency workers, the Directive also covers intra-corporate posting, i.e., the posting to an establishment or to an undertaking owned by the group in the territory of another Member State.

The specificity of this situation is two-fold: first it has a rather weak link with the provision of services, being mainly confined to staff mobility within undertakings of the same group. Secondly, similarly to the agency worker, the link between the posted worker and the undertaking in which he/she temporarily performs the tasks is much stronger, since the worker carries out the tasks under the control and direction of the undertaking to which he/she has been posted. It also creates a difference of treatment between EU and third-country nationals. Indeed, Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer provides, in its Article 5(4)(b) that third country nationals must be given a remuneration "not less favourable than the remuneration granted to nationals of the Member State where the work is carried out occupying comparable positions".

By providing for the same rules as for the typical situation of posting under a contract of services, the Directive does not address the specificities of this situation and could create a distortion of competition between companies having (or not) subsidiaries in different Member States, as well as a difference of treatment between EU and third-country nationals.

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27 European Trade Union Confederation (ETUC), *A Revision of the Posting of Workers Directive. Eight proposals for improvement*. Final Report from the ETUC Expert Group on posting, 2010. (https://www.etuc.org/sites/www.etuc.org/files/final_report_ETUC_expert_group_posting_310510_EN.pdf).

28 European Commission, SWD(2012) 63 final.

2.5. Evolution of the problem without further EU intervention

With the continuing pick-up of economic activity in the EU[29], posting of workers can be expected to continue growing at a steady pace based on the evidence that the growth of posting is strongly correlated to the growth of GDP[30]. If postings continue to grow at the annual growth rate of 11.1% showed between 2010 and 2014, the total number of postings may reach up to 3 million workers by 2018. While the increase in the number of postings represents an indicator of a vigorous Internal Market for cross-border services, its social acceptance among companies and workers may risk being weakened by concerns about the fairness of EU rules.

The regulatory framework would nevertheless be subject to some changes as a consequence of two factors, notably the transposition of the 2014 Enforcement Directive and the application of current – and possibly, future – case law of the European Court of Justice.

The transposition of the Enforcement Directive

On 18 June 2016, the deadline for the transposition of the 2014 Enforcement Directive at national level elapses. The Enforcement Directive tackles a number of important issues related to the fighting and sanctioning of circumventions, fraud and abuses. Member States are called upon to set up stronger rules to unmask fraudulent competition practices by companies through the use of so-called "letter-box companies". The Directive will also simplify and improve access to information on terms and conditions of employment in the host Member State, both for employers and to posted workers. Moreover, the improvement of administrative cooperation between the Member States, in particular as concerns the exchange of information, will support the fight against abuses of the posting of workers covering up undeclared or illegal work activities. The set-up of stronger monitoring systems at national level will increase the availability of reliable data on the posting of workers across the EU Member States, and enhance *inter alia* the ability of the social partners to monitor and enforce the correct application of the provisions set by collective agreements. The cross-border enforcement of administrative penalties and fines will also ensure that the sanctions are effective and dissuasive even in case of a short presence of the cross-border service provider in the host Member State.

The Enforcement Directive will be effective essentially in situations of fraud (letter-box companies, etc.). It will therefore mainly contribute to preventing severe forms of distortion of competition. To the extent to which wage differentiation and unfair competition practices are a matter of poor enforcement at national level, the transposition of the Enforcement Directive will contribute to tackling the problems listed above.

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29 European Commission, European Economic Forecast, Autumn 2015 (http://ec.europa.eu/economy_finance/publications/eeip/pdf/ip011_en.pdf).

30 ISMERI Europe (2011)

The effects of the jurisprudence by the European Court of Justice

The European Court of Justice has clarified on successive occasions the notion of "minimum rates of pay". In particular, the case *Sähköalojen ammattiliitto ry* (C-396/13) has established that a host Member State can require sending companies to include in the payment to posted workers holiday allowances, daily flat-rate allowances to compensate workers for disadvantages entailed by the posting, and compensation for travelling time, on equal terms as local workers.

Moreover, the ruling acknowledged that if collective agreements set different pay levels related to the categorisation of employees into pay groups, these pay levels need to be considered as valid in line with the Directive, provided that the conditions are universally binding and transparent.

While the ruling has an immediate effect on the rules applicable to posting companies and posted workers, its effects will continue to be monitored closely.

In the more recent case *Regio-Post* (C-115/14)[31], the Court's ruling has tackled an issue in relation to subcontracting activities in public procurement. It established that Member States can require tenderers of public procurements and their subcontractors to pay their employees a set minimum wage. They can also exclude those tenderers and subcontractors who are unwilling to respect that minimum wage level.

In summary, the case law of the European Court of Justice has contributed to progressively clarify the provisions of the EU regulatory framework (see Annex II for a summary of recent case law).

The case law of the Court is nevertheless, by definition, unpredictable since it depends on the number and nature of the cases brought before the Court. Moreover, the Court can clarify but not amend the provisions of the Directive.

2.6. EU Right to Act

A regulative framework for posting of workers between Member States can only be established at EU level. The aims are to facilitate the cross-border provision of services through posting of workers by improving the clarity and transparency of applicable labour market rules in the host Member State(s) of posted workers; to ensure a level playing field for competition in the provision of services between posting companies and local companies in the host Member State, while ensuring that posted workers have an adequate level of protection while working in the host Member State.

[31] RegioPost GmbH & Co. KG v Stadt Landau in der Pfalz (C-115/14)

EU action in the form of a Directive is warranted to encourage the freedom to provide services across borders on the basis of article 56 of the Treaty on the Functioning of the European Union (TFEU).

The Directive currently provides for a uniform and EU-wide regulative framework setting a hard core of protective rules of the host Member State which need to be applied to posted workers, irrespective of their substance. Therefore, in full respect of the principle of subsidiarity, the Member States and the social partners at the appropriate level remain responsible for establishing their labour legislation, organising wage-setting systems and determining the level of remuneration and its constituent elements, in accordance with national law and practices. The envisaged initiative does not change this approach. It thus respects the principles of subsidiarity and proportionality and does not interfere with the competence of national authorities and social partners.

The proposed policy options respect the limits laid down in primary EU law and the Charter of Fundamental Rights. Proportionality is one of the factors against which the developed policy options have been assessed. The principle of equal treatment, including on pay, is enshrined in Article 21 of the EU Charter of Fundamental Rights. It is also at the core of EU secondary law on fixed-term contracts, part-time work or temporary agency work. More recently, the EU has developed a consistent legal acquis on equal treatment, including pay, in matters such as racial or ethnic origin, religion or belief, disability, age or sexual orientation.

3. OBJECTIVES

3.1. General Policy Objective

The general objective is to ensure the smooth functioning of the Internal Market by adapting the terms and conditions set by the 1996 Directive to the new economic and labour market conditions, diverting the basis of competition away from wage costs and workers' working conditions and thereby increasing the fairness of the Internal Market.

3.2. Specific objectives

The **specific objectives** that correspond to the problems identified are to:

- create a level playing field for the cross-border provision of services through equal rules on wages applicable to posted and to local workers;
- improve the clarity of EU rules on posting by improving the consistency between different pieces of EU legislation.

In the context of this impact assessment, the level playing field for companies is understood as the same set of rules applying for the remuneration of labour within a

given Member State, which generates equal opportunities for companies. The scope of a level playing field to other elements such as taxes, legal form of companies, access to loans, etc. is outside the scope of this initiative.

3.3. Coherence of the objectives with other EU policies

The targeted review of the Posting of Workers Directive figures prominently among the initiatives proposed by the Commission to achieve the objective of a *deeper and fairer Internal Market,* as one of the chief priorities for its mandate. The proposal of targeted amendments to the Posting of Workers Directive integrates and complements the provisions set in the Enforcement Directive, which is to be transposed by 18 June 2016.

The targeted revision of the Posting of Workers Directive will interact with the planned revision of the Regulation on the coordination of social security systems (Reg. No. 883/2004). The revision of social security coordination rules aims at facilitating the full exercise of citizens' mobility rights while at the same time ensuring an equitable distribution of the financial burden among the institutions of the Member States involved. Included in the said proposal of revision is the requirement for Member States to certify the information contained in the Portable Documents A1, which constitute the information basis for data on posted workers. Such provision may contribute to improving the reliability of data on the posting of workers and the evidence-basis for policy initiatives at national and EU level.

The amendments to the Posting of Workers Directive complement the *Internal Market Strategy* aimed at enhancing transparency and simplicity of rules for EU businesses. In the preparatory consultations led by the Commission with about 300 stakeholders, mostly SMEs, 30% of companies providing services across borders reported problems with existing rules on posting of workers, such as burdensome administrative requirements, paperwork, fees and registration obligations. The lack of clarity of labour market rules in the country of destination is also considered a relevant hindrance to cross-border service provision, especially among SME's[32]. A clarification of certain rules under the Posting of Workers Directive may positively complement the Internal Market Strategy to address these concerns.

4. POLICY OPTIONS

To reflect the holistic character of the initiative, the policy options are presented as a compact set of possible measures. Each option is nevertheless to be understood as opposed to the baseline scenario.

[32] European Commission, *Upgrading the Single Market: more opportunities for people and business Commission*, COM(2015) 550final, 28 October 2015

4.1. Option 1 - No policy change: baseline scenario

The Commission does not take any initiative to revise the 1996 Posting of Workers Directive. It monitors and evaluates the transposition of the Enforcement Directive and takes stock of its implementation, while it is left to the case law of the European Court of Justice to clarify the legal uncertainties in the EU regulative framework.

The entry into force of the Enforcement Directive will contribute to a better detection and sanction of situations of fraud (letter-box companies, non-compliance with the rules of the Member State of origin on taxes or social contributions, etc.).

The European Court of Justice could continue contributing to the clarification of the notion of "minimum rates of pay", although this is entirely dependent on the cases brought to the Court.

This option has the support of nine Member States[33], Business Europe, UAPME, the European representations of the metal, engineering and technology industries (CEEMET), temporary agency work industry (Eurociett, except for issues related to the temporary agency work sector, see below) and the Confederation of the Managers (CEC).

4.2. Option 2: clarification of the composition of minimum rates of pay to codify the rulings of the European Court of Justice

This option entails a revision of the 1996 Directive with the aim of codifying the case law of the European Court of Justice, with particular reference to the case *Sähköalojen ammattiliitto ry* (C-396/13). This option implies some changes to clarify the notion of "minimum rates of pay" and its composing elements.

The revision would define that minimum rates of pay applicable to posted workers may include, if set by the law of the Member State:

- holiday allowances;
- daily flat-rate allowances to compensate workers for disadvantages entailed by the posting; and
- compensation for travelling time, on equal terms as local workers.

Moreover, changes would also include the recognition of different pay levels attached to the categorisation of employees into pay groups in collective agreements, provided that the conditions are universally binding and transparent.

A fuller list of case law is provided in Annex III.

[33] Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania.

This option codifies case law, but it would not create any additional effect on the pay conditions applicable to posted workers with respect to the *status quo*. By codifying the case-law of the Court at a certain point in time, it could prevent its development in future cases.

4.3. Option 3: Changes to the provisions of the Directive regarding pay

4.3.1 Option 3a: Application of the same mandatory rules on remuneration for posted and local workers

This option establishes a new balance in working conditions, including remuneration, between posted and local workers in the host countries by removing the reference to the "minimum" rates of pay applicable to posted workers. The pay applicable to posted workers would thus encompass all the elements of remuneration that are paid to local workers if they are laid down by law or by collective agreement which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, or by collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory. In order to ensure that the rules on remuneration applicable to posted workers are proportionate and do not impede the provision of services, it could be specified that the applicable rules on remuneration should be all the elements of remuneration rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable and/or, in the absence of a system for declaring collective agreements or arbitration awards to be of universal application, other collective agreements or arbitration awards within the meaning of paragraph 8 second subparagraph, in the Member State to whose territory the worker is posted. .

This option would continue respecting the differences of wage-setting systems in Europe. Therefore, EU Member States would be affected differently by the option.

- In Member States in which terms and conditions of employment are set by law or by collective agreements not universally applicable (BG, CZ, EE, HR, HU, LV, LT, MT, PL, RO, SK, UK) this option would make applicable to posted workers elements of remuneration set by law that are not so far expressly considered as part of the "minimum rates of pay", if any, such as, for instance, of a Christmas allowance or a compensation for work during public holidays or night work;

- In Member States with collective agreements made universally applicable to some sectors (IE, DE, LU) or professions (CY) or in all sectors (AT, BE, ES, FI, FR, EL, IT, NL, PT, SI), or by nationwide collective agreements in accordance with Article 3(8) of the Directive (DK, SE), the option would add up to the pay of posted workers elements of remuneration set by the relevant collective agreement that are not so far

expressly considered as part of the "minimum rates of pay". Since collective agreements tend to be more detailed than statutory provisions on the elements of remuneration, the option would have a higher impact than in the case above. Elements of remuneration to be applied to posted workers are totally dependent on the terms of each collective agreement and may include elements such as seniority allowances, allowances and supplements for dirty, heavy or dangerous work, 13th/14th month bonuses.

Existing provisions leaving the faculty to Member States to exempt short-term postings of less than one month from the application of the rules on pay will not be changed[34].

4.3.2. Option 3b: Extension to all sectors of the reference to *erga omnes* collective agreements

The option establishes that posted workers must be granted the rates of pay laid down by law or by collective agreement made universally applicable in *all* economic sectors.

The modification would overcome the current provision which establishes that the application of collective agreements made universally applicable is currently mandatory only for the construction sector and optional for all other sectors. This option envisages extending the validity of universally-binding collective agreements for posted workers to all sectors of the economy. Thus, all collective agreements applicable *erga omnes* would automatically be applicable to posted workers, as well.

Member States would be differently affected by this provision.

This provision may have an impact on Member States which give generally binding force to collectively-agreed pay rates in some sectors or professions only (DE, IE, LU, CY). These Member States will be encouraged to extend this practice to posted workers in all sectors.

This option would have no impact either on Member States which already extend the validity of collective agreements to all sectors, in line with the faculty given by Article 3(10) of the 1996 Directive (AT, BE, ES, FR, EL, FI, IE, IT, NL, PT, SI); or on countries which do not made collective agreements universally applicable (BG, CZ, EE, HR, HU, LV, LT, MT, PL, RO, SK, UK, as well as DK, SE).

This option would go in the direction supported by seven Member States[35], the European Trade Union Confederation, and the European Builders Confederation.

[34] Article 3 (3).

[35] Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Sweden.

4.4. Option 4: Adapted rules for specific situations of posting

4.4.1. Option 4a: long-term postings

Option 4a would include a provision according to which the labour law of the host Member States applies to the employment contract of workers posted for longer than 24 months, from day one of posting.

The proposal provides that, whenever the anticipated or the effective duration of posting exceeds 24 months, the posted worker is deemed to be carrying out his tasks habitually in the host Member State. By application of the rules of the Rome I Regulation[36], the employment contract will be governed by the law of the host Member State[37]. In case of replacement of a posted worker, this option envisages that the cumulative duration of posting is taken into account with regard to workers who were posted for at least six months (who would thus benefit from the application of the labour law of the host Member State).

This provision would meet the objective of aligning the Posting of Workers Directive with the conditions set by the Regulation on the coordination of social security systems as regards long-term posting, thus eliminating a source of inconsistency in the EU regulatory framework.

The proposal would tackle the distortions to competition caused by the application of lower-standard wage rules by posting companies in host Member States in the event of long-term postings and correct the internal inconsistency of the EU regulatory framework as regards the definition of the temporary nature of posting.

This provision would affect workers posted to all Member States, provided that the anticipated or effective duration of posting is longer than 24 months.

This option goes in the direction of specifying the temporary duration of posting advocated by seven Member States, the Economic, Social and Environmental Council of France and the Socio-Economic Council of the Netherlands, as well as by the European Builders Confederation. The European Builders Confederation and the Economic, Social Environmental Council of France also propose that social partners are delegated to set the maximum duration of postings at sector level.

4.4.2. Option 4b: sub-contracting relations

This option would give Member States the *faculty* (but not the obligation) to provide that the workers of any subcontractor must be granted the same remuneration as the workers

[36] 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), OJ L 177, 4.7.2008, p. 6.

[37] Or, in case of an express choice of the law applicable, the provisions "that cannot be derogated from by agreement" will be applicable.

of the contractor, including the rules laid down in collective agreements not universally applicable (for instance, company-level agreements) which are binding to the contractor.

To avoid discriminating against cross-border service providers, the option would provide that Member States can only implement this principle for both national and cross-border service providers.

This provision would add a further level of protection for posted workers in subcontracting chains which would constitute a major change with respect to the existing situation. The current Directive provides no specific conditions for subcontracting chains.

While this option may potentially be exercised by all Member States, an essential precondition for it to have an impact is that the main contractor transparently applies a not universally applicable collective agreement at any level, including company-level agreements. The added value of this option would be more evident if applied in Member States where collective agreements are not universally applicable or the company is the dominant level of wage bargaining, including DK, SE, and the UK, *inter alia*. The option would not affect posted workers who already benefit from more favourable conditions of employment in accordance with their individual contract or the rules of the Member State of origin.

4.4.3. Option 4c: Temporary agency workers

Option 4 includes the provision to render mandatory the application to cross-border temporary agency workers of the principle of equal treatment of temporary agency workers with respect to comparable workers in the user undertaking, set by Article 5 of Directive 2008/104/EC.

This change would improve the consistency between the Posting of Workers Directive and the Temporary Agency Work Directive by eliminating any source of uncertainty as regards the application of the principle of equal treatment to agency workers.

Currently, it is up to the host Member State to decide whether it applies to these workers the general rules on posting (i.e. minimum rates of pay laid down in law or *erga omnes* collective agreements) or the terms and conditions of employment that are applicable to temporary agency workers at national level.

The option only concerns temporary agency workers assigned by temporary agencies established in a different Member State than the user undertaking. The main receiving Member States have made use of the possibility to provide for equal treatment between national and cross-border temporary agents. The option would require legislative amendments in AT, CY, EE, EL, FI, HR, HU, IE, LV, PL, PT, SI, and SK.

While no stakeholder has expressed any explicit position on this option, Eurociett has supported the principle of equal pay for equal work for posted agency workers and the application of the full set of regulations in the Temporary Agency Work Directive to posted agency workers. General favour for an EU initiative on posted agency workers has also been expressed by the European Trade Union Conference, the European Builders Confederation, and the Economic, Social and Environmental Council of France.

4.5. Discarded options

4.5.1 Communication by the Commission to clarify the elements of remuneration applicable to posted workers

This option would envisage an interpretative Communication which builds on the case law of the European Court of Justice to clarify the elements of remuneration applicable to posted workers across the EU Member States.

However, considering the wide range of views on this issue, a non-legislative option would have a very limited impact and would not attain the objectives of ensuring the fairness of posting and of increasing legal clarity for companies, workers and public authorities.

4.5.2. Introduction of equal pay for equal work with respect to a reference undertaking

This option would envisage the introduction of the principle of equal pay for equal work at company level by requiring that posted workers are guaranteed the terms and conditions of employment covering remuneration that would be applicable if the posted workers were employed by a reference undertaking or, in its absence, a similar undertaking established in the host Member State. In the case of a subcontracting chain, the proposal would imply that the posted workers should receive the same remuneration treatment as the employees of the contractor established in the host Member State of which the service provider is a direct or an indirect subcontractor (hereafter the "reference undertaking").

This proposal may be most effective to attain the objective of providing equal treatment to posted workers since it would ensure full equal treatment for posted workers compared with workers of the undertaking of reference. However, it risks failing the test of proportionality and compatibility with the Internal Market, as it would create more obligation on companies posting workers from other Member States than on local companies in the host Member State. Moreover, the complexity of the mechanism of identifying a reference or similar undertaking may increase the risk of judicial litigation in the implementation phase.

4.5.3. Clarification of the application of the Directive to the road transport sector

This option would consist in defining that the application of the Directive to international transport operations other than *cabotage* (which is always covered by the Directive) requires the existence of a sufficient link with the host Member States. In order to provide a high level of legal certainty, the criteria to determine the existence of a sufficient link should be expressly set out. In any case, given that *cabotage* falls in any case within the scope of the Directive, international transport operations combined with a *cabotage* operation should also fall within the scope of the Directive. For other international transport operations, the sufficient link should be expressed in the number of transport operations in a given Member State within a reference period (one month, for instance) or in any other way that is applicable in practice and enforceable in the host Member State.

This option would be effective to achieve the objectives of providing a more balanced playing field in the transport sector and enhance legal clarity for companies. However, as more evidence is required in order to establish an adequate definition of a "sufficient link" as regards to international transport operations, a sector-specific regulation is deemed more suitable to tackle the problem.

4.5.4. Intra-group posting

This option would concern workers posted between two establishments or undertakings of the same group, established in two Member States. It would provide that the remuneration of these posted workers is not less favourable than the remuneration granted to workers employed in the establishment or undertaking where the workers has been posted occupying comparable positions.

This option would aim at aligning the protection granted to EU nationals and third-country nationals in case of intra-corporate posting by extending equal treatment to posted workers, in line with Directive 2014/66/EU. However, the option has been discarded because it would be an obstacle to the free provision of services which would not be justified and proportionate.

The Court has recognised that the protection of workers is an overriding objective of general interest that can justify obstacles to the provision of services on condition that it is appropriate for ensuring the attainment of the legitimate objective or objectives pursued and that it proportionate, i.e., that it does not go beyond what is necessary to achieve the objective. This option cannot be seen as necessary for the protection of posted workers and would, in any case, go beyond what is necessary to reach the objective.

5. ANALYSIS OF THE IMPACT OF THE POLICY OPTIONS

This section summarises the economic and social impacts of each policy option. No environmental impact has been identified. The analysis includes an evaluation of the specific impact of the proposals on small and medium enterprises (SME's).

As noted in section 2.1, one fundamental caveat to the analysis of the impact is the scarce availability of data. To partially compensate for this, a multiplicity of sources of *qualitative evidence* has been used, based on stakeholders' assessment of the situation in particular sectors and workplaces. Where possible, *national data* sources have been used to complement EU data, in the understanding that national sources are not representative of other Member States. Finally, *proxies* have extensively been used to simulate the impact of the proposed provisions on remuneration levels, as well as on the economic value of posting.

5.1. Effectiveness

The analysis of effectiveness addresses the degree to which the options achieve the specific objectives of the revision of the Directive: create a level playing field for companies based on equal rules on wages; and improve the clarity of EU rules on posting, including by eliminating inconsistencies between different pieces of EU legislation.

5.1.1. Create a level playing field for companies based on equal rules on wages

Under **options 1 and 2**, differentials in rules on wages with posted workers may narrow as a consequence of the recent case law of the European Court of Justice, most notably the case *Sähköalojen ammattiliitto ry* (C-396/13), establishing that some allowances may be part of the pay of posted workers and that pay groups set by universally binding collective agreements should be respected for posted workers. The impact is expected to be significant especially in the construction sector, where collective agreements are a key source to determine the wage level of posted workers, either because they are declared universally binding or because they are signed by the most representative employers' and workers' associations in accordance with Article 3(8) of the Directive (see table 1). In those countries, the respect of pay groups may imply some wage raises, if –as reported by some stakeholders – employers tend to apply only the lowest pay group, under the status quo[38]. However, posted workers will still be entitled to minimum pay rates only, while the application of the Court's case law would have no impact on sectors and in countries where collective agreements are not binding. Therefore, the structural differentiation in pay rates and the resulting distortion of competitive conditions will persist.

[38] See section 5.2

Table 1. Sources of minimum rates of pay for posting of workers in the EU 28

Statutory minimum wage	**Binding collective agreements**		**Nationwide agreements (Art. 3(8)**
	Selected sectors or professions	*All sectors*	
BG, CZ, EE, HR, HU, LV, LT, MT, PL, RO, SK, UK	DE, IE, LU, CY	AT, BE, ES, FR, EL, FL, IT, NL, PT, SI	DK, SE

Note: In DE, the sector-specific wage minima apply in fourteen sectors (waste management, training services, construction industry, roofing trade, electrical trades, industrial cleaning services, money and valuable services, scaffolding erection, agriculture, forestry and horticulture, painting and decorating trades, care provision, slaughter and meat processing, stonemason and stone sculptor, the textile and clothing industry, laundry services and temporary agency work sector). In LU, collective agreements are universally binding in the main nine sectors of posting (building and associated trades, transport, road haulage and road passenger transport; cleaning of buildings; security guarding; brewing; printing; banking and insurance; social sector and care; temporary agency work). In IE, Employment Regulation Orders with statutory effects are currently in place in the catering, contract cleaning, hairdressing, hotels, retail and trades and in the security industry sectors. In CY, minimum wages have statutory effects for some professions only, namely shop assistants, clerks, child-care workers, personal care workers, security guards, and cleaners at business/corporate premises.

Option 3a and **3b** would establish equal rules on remuneration and extend the effectiveness of universally binding collective agreements to workers posted in all economic sectors. By overcoming the "minimum rates of pay" standard set by the current Directive, this option would achieve the utmost degree of effectiveness in attaining the objective of levelling the playing field as regards wage rules. Through the extension of the validity of universally binding collective agreements to all sectors beyond the construction sector, which is currently not mandatory, this option reinforces the wage-setting instruments to determine the rates of pay of posted workers. In several Member States, including among the largest recipients, the provision would have no impact as collective agreements are already enforced *erga omnes* in all sectors (see table 1). An impact may be exerted on DE, IE, LU and CY. These Member States will need to extend to posted workers those wage rates at sector- or professional level which they decide to declare universally binding in all sectors, while this is currently compulsory only for the construction sector. Obviously, the decision on whether or not to make a collective agreement legally binding will continue to rest with the Member States. This option would not affect Member States in which collective agreements are not universally binding and only the statutory minimum wage is applicable to posted workers, unless they regulate to this effect. Likewise, this option would not have any effect on the wage-setting regimes of DK and SE in those sectors where nationwide collective agreements do not set any remuneration standard.

Option 4 would reinforce the attainment of the objective of a more balanced level playing field by filling specific legislative gaps. In particular, the equal treatment rule would eliminate competition on wage rules among subcontractors in a production chain. As regards to long-term posting, the application of the equal treatment principle from day one would reduce differentials in the working conditions of long-term posted workers and contribute to reducing wage differentials with local workers. The clarification of the interplay between the posting of workers and the temporary agency workers directives would improve the level playing field by aligning legislation on the working conditions of posted temporary agency workers across the EU.

Figure 4. Summary of the impact of options on wages

Wage conditions	**Options 1 & 2**	**Option 3**	**Option 4**
Equal treatment	Optional for temporary agency workers	Optional for temporary agency workers	Temporary agency, Long-term Optional / subcontracting
Suppression of the reference to minimum		All the Member States	
Universal collective agreement applicable in all sectors		AT, BE, CY, DE, ES, FR, EL, FI, IE, IT, LU, NL, PT, SI	
Universal collective agreement, minimum level for construction and optional for other sectors	AT, BE, CY*, DE**, ES, FR, EL, FI, IE***, IT, LU****, NL, PT, SI		AT, BE, CY, DE*, ES, FR, EL, FI, IE**, IT, LU***, NL, PT, SI
Legal Minimum wage	BG, CZ, EE, HR, HU, LV, LT, MT, PL, RO, SK, UK	BG, CZ, EE, HR, HU, LV, LT, MT, PL, RO, SK, UK	BG, CZ, EE, HR, HU, LV, LT, MT, PL, RO, SK, UK
Collective agreements (art. 3(8))	SE, DK	SE, DK	SE, DK

* for 6 professions ** in 14 sectors *** in 6 sectors **** in 9 sectors

5.1.2. Improve the clarity of EU rules on posting

Under **option 1**, legal clarification is left to the pronouncements of the European Court of Justice upon the occurrence of judicial litigation on selected aspects. As shown in Annex III, the Court's jurisprudence has clarified the concept and composition of pay on several occasions. However, delegating finding a solution for the problems identified to the Court implies the permanence of uncertainty for companies and workers until the occurrence of a case of judicial litigation. The risk of further judicial litigation on issues of pay, among other aspects, and the related costs for businesses and workers, cannot be prevented through non-action.

Option 2 brings some added value with respect to option 1. By modifying the EU Directive to reflect the rulings of the Court of Justice, this option would increase the clarity of the main EU legislative source. However, it would not tackle the identified legal situation with temporary agency work, subcontracting, long-term posting, and intra-

group transfers; nor would this option prevent further cases of judicial litigation on the components of pay emerging again in the future.

Options 3a and 3b contribute to improving clarity on the constituent elements of remuneration and to reducing existing cross-sector differences in the mandatory application of collective agreements. First, by equalising the rules on remuneration between posted and local workers, this option would clear any room for interpretation on the constituent elements of the wage to be applied to posted workers. It would thus contribute to minimising the risk of further judicial litigation on this very point. Second, the option would increase the certainty that the minimum pay set by all universally binding collective agreements apply to posted workers, regardless of their sector of employment. Within the scope of EU competences, however, the provision would not harmonise the set of instruments applicable to posted workers across the Member States, nor the diverse structure of collective agreements, including the definition of pay groups and bonuses and allowances, which remain a prerogative of the social partners in national wage-setting practices.

Option 4 contributes to legal clarity by intervening on specific situations by removing mismatches with other pieces of EU legislation. The thrust of option 4 reaches out to posted employees in subcontracting chains, in line with the attention conferred by the 2014 Enforcement Directive. The advantage of this option is that it would extend the applicability of company-level agreements in Denmark and Sweden where these are the predominant source of wage-setting, thus filling a legislative gap in the existing Directive. Further contributions to the legal clarity stem from aligning pieces of EU legislation in the case of long-term posting (with Regulation No. 883/2004) and temporary agency work (with Directive 2008/104/EC), by establishing similar rules between posted workers and third-country nationals.

5.2. Overall economic impacts

The economic impact of the options is assessed against the objectives of promoting a level playing field in the context of the Internal Market based on the application of equal rules on wages, and of improving legal clarity for companies.

Limited labour market and economic significance

The economic context of posting of workers is one of a rather limited significance in the national labour markets, with the number of postings accounting for 0.7% of total EU employment, descending to 0.4% if only unique posted workers are counted and further down to only 0.2% in full-time equivalents[39]. Overall, the employment impact of new

[39] Postings make up 0.7% of total EU employment, but the figure includes single workers being posted multiple times during the same year. Therefore, unique persons are normally the more comparable figure but only a few member States provide data. See Pacolet and De Wispelaere (2015)

legislation may be circumscribed to specific segments of the European labour market, including in those Member States where posting represents significant shares of the domestic employment population, such as Slovenia (11.5%) and Luxembourg (20.7%) from a sending perspective[40], and Belgium (3.6%) and Luxembourg (9%) from a receiving perspective.

The provision of cross-border services through posting of workers may be thus assumed to have a limited economic impact on sending or receiving countries. In the absence of any data on the turnover or added value gained through posting of workers, figures can only be reconstructed via proxies. To take the representative construction sector, cross-border services represent an overall small share of total turnover in the sector (calculated as the ratio of turnover from export activities on total turnover), amounting to just 0.7% of total turnover in the EU28 (figure 11, Annex II)[41]. Exceptions are SI, EE, DK and LU, where the cross-border trade intensity makes up about 5% of total turnover. It should be noticed however that not all cross-border construction services are carried out through posting of workers (e.g. they could be carried out by hiring local workforce).

Two posting models

The wage rules set by the Directive impact differently on the economic context in which posting takes place. Posted workers tend to support the provision of labour-intensive services in the context of *low value chains*, including construction, transports and some personal services. Labour cost differentials give a competitive edge to posting companies which thus tend to strictly apply the minimum rate of pay required in the host country. Wage cost competition is particularly relevant as posted workers support the provision of domestically-provided services which cannot be delocalised. On the other hand, posted workers are also employed in the context of the provision of high-productivity services, such as financial services or of particularly skilled labour in *high value chains*. In line with the possibilities given by the Directive, this segment of posted workers tends to be paid higher wages than the minimum, or at the level of the home country if this has higher wage standards than the receiving country[42].

Wage-based competition does not exhaust the phenomenon of posting of workers in the EU. Empirical evidence points to the fact that, while labour cost differentials remain one important driver of posting[43], there is no strict correlation between price level or tax wedge differentials and the volume of sent posted workers (figure 12 and 13, Annex II).

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40 Taking into account unique persons posted, however, the labour market impact of sent posted workers decreases to 4.2% of total employment in Slovenia and 4.7% in Luxembourg (Pacolet and De Wispelaere 2015). As noted in footnote (39), this implies that single workers are posted multiple times during the same year.

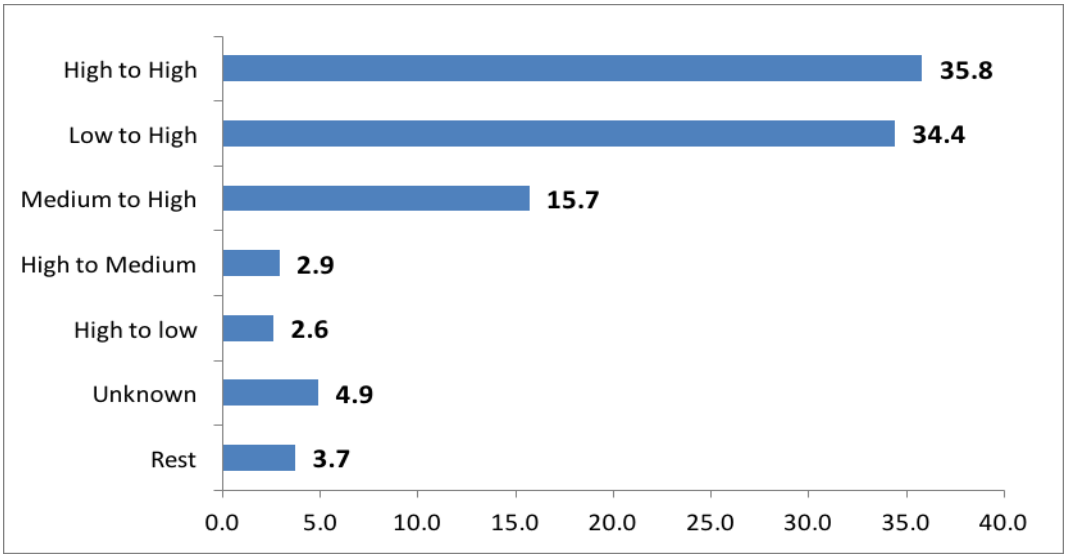
41 See also, European Commission, *A Single Market Strategy for Europe - Analysis and Evidence*, SWD(2015) 202 final, 28 October 2015.

42 ISMERI Europe (2011) and FGB (2015).

43 ISMERI Europe (2011).

This is because in high value chains skills shortages or factors such as specialisation or quality of the service play an important role in the cross-border provision of services. Wage cost differentials may be estimated to be the driving factor of flows from low- to high-wage countries, which represented one third of the total stock in 2014, and part of the comparative advantage for a further 15% of workers being posted from medium- to high-wage countries (figure 5). However, the remaining 50% of postings flow between countries with similar wage levels, where it can be assumed that the search for adequate skills rather than cost reductions constitute the main trigger for businesses to look for cross-border service providers. In this case, the wage rules set by the Directive are not reported by the stakeholders to create any particular problem.

Figure 5. Flow of postings between EU Member States divided by wage group (high, medium, low), % on total posting, year 2014

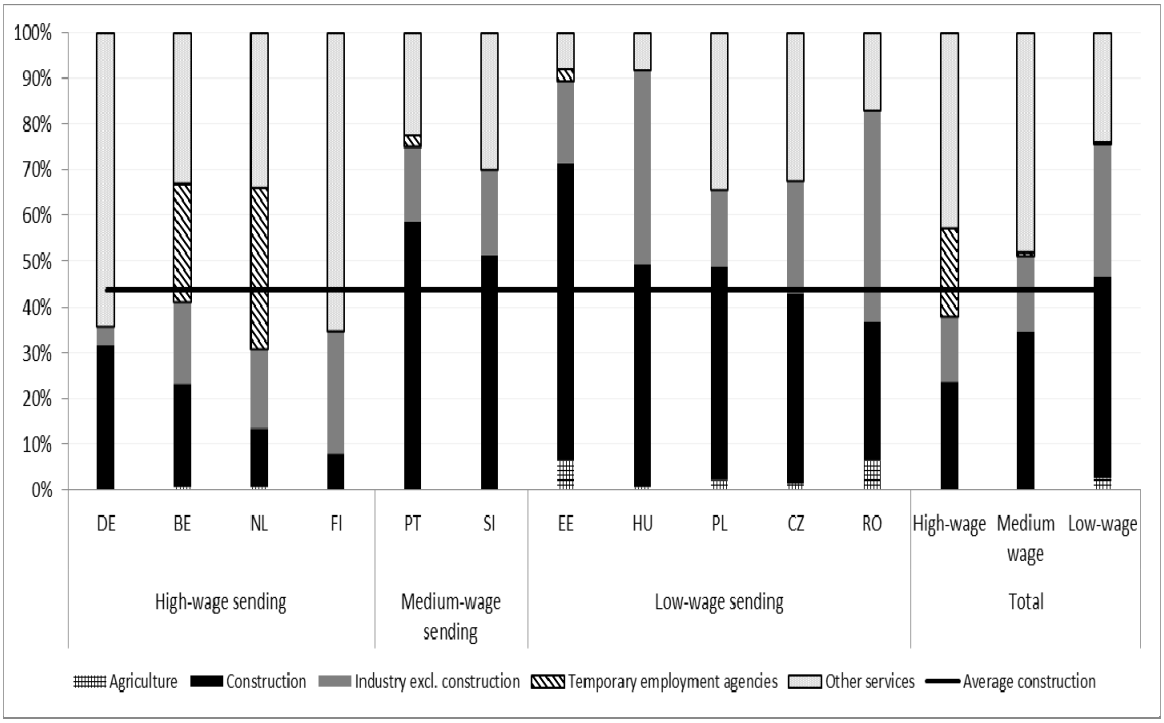


Notes: EMPL calculations. High-wage (above EU average wage, year 2012): DK, LU, SE, FI, BE, NL, DE, FR, AT, IT, IE; Medium-wage (around EU average, 2012): CY, ES, EL, MT, SI, PT; Low-wage (less than half of the EU average wage): HR, CZ, EE, PL, SK, HU, LV, LT, RO, BG; no data on the destination of postings from CY, DK, and the UK.

Posting of workers tends to be pro-cyclical, satisfying demand for services in more dynamic economies and contracting in the event of a downturn, which is reflected in the correlation between the number of postings and overall economic growth (figure 15, Annex II). However, the possibility for posting companies to wage costs through the current rules promotes the deepening of specialisation of low-wage countries in the provision of labour-intensive services in low value chains, most notably construction services, to high-wage countries. Figure 6 shows that 70% of postings from low-wage member States occur in industry and construction sectors, as compared to about 50% and 40% of postings from medium- and high-wage countries, respectively. Posting rules thus favour a strong role of wage-based competition in these services markets. Minimum-

standard rules on wages add up to differentials in labour and income taxation between Member States and generate significant gaps in total labour costs for employers[44].

Figure 6. Posted workers *sent* in 2014, breakdown by economic sector and group of countries



Source: EMPL calculations on Pacolet and De Wispelaere (2015); High-wage (above EU average wage, year 2012): DK, LU, SE, FI, BE, NL, DE, FR, AT, IT, IE; Medium-wage (around EU average, 2012): CY, ES, EL, MT, SI, PT; Low-wage (less than half of the EU average wage): HR, CZ, EE, PL, SK, HU, LV, LT, RO, BG; no data on the destination of postings from CY, DK, and the UK.

Concentrated impact on receiving country

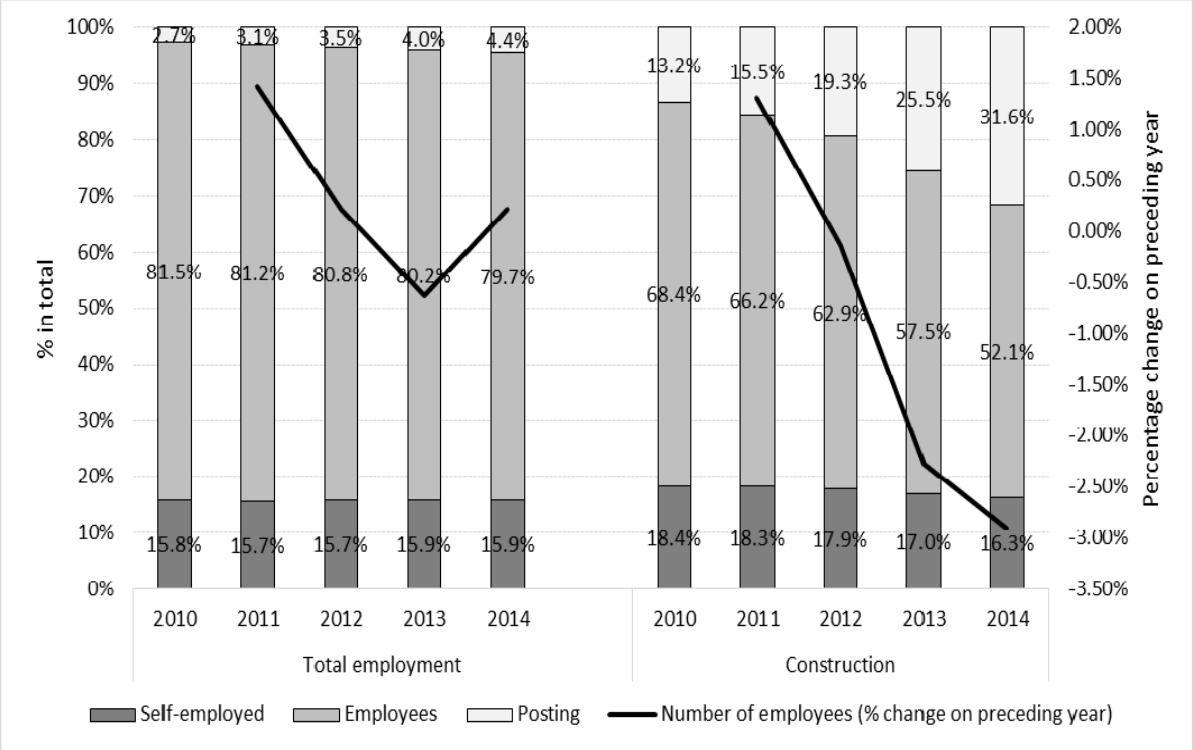
On the receiving end, current rules favour flows of posted workers into a set of high-wage economies, with DE, FR, BE, AT, NL receiving 81% of workers posted from low-wage countries, and a few economic sectors, most notably the construction sector (figure 15). In this sector, posted workers represent up to 20% of domestic employment in BE, and over 10% in AT and LU (figure 6, Annex II)

The labour market impact of the in-flow of workers to which lower pay rules apply in high-wage Member States is not univocal, although data limitation constrains in-depth analysis. There is some evidence that posted workers complement domestic employment in the whole economy by filling job vacancies for skills or positions which are not

[44] While nominal social security contribution rates or corporate or income tax rates may not differ widely (see figures 16-19 in Annex II), the labour cost gap is more relevant the lower the reference wage.

present in the domestic labour market[45]. However, while this seems to be the case of workers posted in high value chains, a closer analysis of posting in low value chains in a representative receiving Member State such as Belgium shows that potential substitution effects have been at play. Figure 7 shows the share of posted workers in the construction sector increasing since 2010 with overall domestic construction employment decreasing at the same time.

Figure 7. Belgium, trends in employment, self-employment and posted workers, all economy and construction sector, 2010-2014.



Source: Pacolet and De Wispelaere (2016) calculations on LIMOSA and BNB data

In other Member States, domestic employment growth remains subdued with respect to the growth of received posted workers. In this perspective, posted workers risk crowding out especially national low-skilled jobs with which they compete in the receiving market (figure 20, Annex II).

Under **option 1** (*baseline scenario*) and largely under **option 2**, unchanged rules would be likely to provide the context for the growth of posting of workers at a steady pace with respect to recent years in line with economic growth.

[45] Della Pellegrina, L. and Saraceno, M. (2013), "Posted workers: complements or substitutes for local employment? Empirical evidence from the EU", Paolo Baffi Centre Research Paper n. 136 (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2287841).

Option 3a and option 3b are expected to have an impact on raising the wage level of posted workers, particularly those posted from low-wage, and to a lesser extent from medium-wage Member States to high-wage Member States.

The application of equal rules on wages (**option 3a**) would imply that posted workers would be entitled to all elements of remuneration laid down by law or by universally applicable collective agreement. The quantification of possible wage increases is very difficult, as bonuses and allowances strongly vary across the member States and sectoral collective agreement (see Annex VI). On the basis of the distribution displayed in figure 5 for the year 2014, option 3a can be estimated to affect between around 700,000 to 900,000 workers being posted from low- to high-wage countries, and to a lesser extent, from medium- to high-wage countries which are assumed to receive the minimum rate of pay under the current scenario. The elimination of the reference to "minimum rates of pay" will facilitate the application of the Directive to the industrial relations systems of DK and SE by overcoming the problems related to the definition of "minima" which were among the causes of the dispute in the Laval case. Nevertheless, option 3a would affect workers posted to DK and SE only to the extent that nationwide collective agreements between the most representative social partners set remuneration standards, in the absence of both a statutory minimum wage and universally applicable collective agreements. The option would not affect workers being posted from high- to lower-wage countries, as they are reported to usually be paid the same wage levels as in their home Member State.

Option 3b may potentially affect only workers posted from lower-wage countries to the Member States which currently give statutory effect to collective agreements only in a selected number of sectors, most notably DE, IE and LU. The potential beneficiaries would be up to 300,000 workers[46]. Workers in sectors currently excluded from the application of sectoral minimum pay may benefit from the increased protection of applicable agreements.

By increasing the reach of equal rules on wages to workers posted from low-wage countries, the main economic impact of options 3a and 3b would principally be on labour-intensive services in low value chains but will remain limited. From the receiving perspective, local companies in high-wage Member States, especially cost-sensitive small and medium enterprises (SME's), would benefit from a more balanced level playing field vis-à-vis posting companies from lower-wage countries, thus increasing their cost competitiveness. However, it should be emphasised that equal rules on wages would translate neither into equal nominal wages between posted and local workers, nor into equal levels of labour costs. While the current gap in wage outcomes would narrow

[46] The number overlaps with workers affected by option 3a. It refers to workers posted from lower wage countries to DE, IE, LU and CY. However, available data do not allow to disaggregating information to the level of detail necessary to know how many of those 300,000 are already covered by sectoral collective agreements.

down, pay structures would remain differentiated more in line with wage distribution in the domestic labour market of the receiving Member State. Furthermore, social security and other tax differentials would still generate an advantage on total labour costs for companies established in countries with lower nominal rates than those in the receiving one. The simulation carried out in Annex IV shows that companies from high-tax Member States (e.g. BE or FR) would still be at a cost disadvantage with respect to posting companies from low-tax countries, even in an extreme situation of equalisation of wage costs (which is part of the discarded option)[47].

For the same reasons, from a sending perspective, the cost competitiveness of posting companies in labour-intensive sectors established in low-wage Member States would be reduced with respect to the baseline scenario, but it would not be eliminated by options 3a and 3b. Tax differentials would still play a role in determining lower total labour costs. On the one hand, stricter rules on wages may have an adverse impact especially on SME's providing cross-border services in sectors such as constructions with the risk of a possible loss of business opportunities. On the other hand, option 3a would have the advantage of enhancing legal clarity as concerns the elements of remuneration applicable to posted workers, which are currently a possible object of dispute and legal action. On a more macro-level, higher wage costs may drive companies established in low-wage Member States to invest in non-cost factors to open markets, such as the skills of their workforce and service innovation. In the long-run, the effect of equal rules on wages may contribute to shifting economic specialisation towards higher value chains.

Within the Internal Market, consumers of construction services may possibly be affected by price increases. However, the effect on prices would be unlikely to be automatic, as the limited increase of wage costs may simply reduce the mark-ups of construction firms which are estimated to be relatively higher in sending countries such as CZ, PL, SK and PT[48].

Lower-wage service providers to DK and SE would not be affected by option 3a and 3b. At the same time, posting of workers in more capital-intensive sectors such as high-end manufacturing, telecommunications and technological services are expected to be less affected by the modification of the Directive, to the extent that posting in these sectors is mainly motivated by the search for adequate skills which are not present in the domestic market.

The application of equal treatment envisaged by **option 4a and 4b** is expected to have a strong impact on levelling the playing field in cases of long-term postings and posting in

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47 K. Maslauskaite, *Posted workers in the EU: State of Play and regulatory evolution*, Notre Europe, Policy paper 107, 2014 (http://www.institutdelors.eu/media/postedworkers-maslauskaite-ne-jdi-mar14.pdf?pdf=ok).

48 See Molnar, M. and Bottini, N. (2010), *How Large are Competitive Pressures in Services Markets? Estimation of Mark-Ups for Selected OECD countries*, OECD Journal: Economic Studies (2010), http://www.oecd.org/eco/reform/49850122.pdf

the context of subcontracting, albeit on a limited segment of posting. They also contribute to improving legal clarity though fine-tuning different pieces of EU legislation, thus avoiding the risk of judicial litigation.

Option 4a would add the reduction of differentials in working conditions, including equal rules on wages, to the alignment of labour taxation costs envisaged for long-term postings by Regulation 883/2004 on social security coordination. The lack of data as regards long-term postings does not allow the estimation of how many workers would be affected by this option[49]. However, available data suggest that long-term postings may represent a small share of total postings. The average duration of posting was 103 days in 2014, with a maximum of 257 days of workers posted from Ireland (see figure 8, Annex II)[50]. Sample data from Austria find that 4-5% of total postings to that country are longer than a year[51], while the maximum length of a registered posting in France amounted to 1,288 days in a temporary agency work enterprise in 2012 but only 553 days in 2013[52]. In the construction sector, the maximum duration of postings is reported to be seldom longer than 6 months[53]. Therefore, it can be concluded that, while substantial, the changes introduced by option 4a would be circumscribed to a limited group of posted workers.

The impact of this option on the reduction of labour cost differentials would be more significant with respect to long-term postings from low-wage and high-wage countries. The margins for competition on labour costs for sending companies from lower-wage countries, in particular SME's, in low value chains would be reduced, as an effect of the application of equal rules on wages, as well as of the labour law provisions of the host Member State. On the other hand, local companies in receiving Member States would increase their cost competitiveness on more ambitious service provisions, and shift the determining competitiveness conditions on non-cost factors.

Option 4b would be optional for Member States to introduce in order to reduce the scope of wage cost competition in sub-contracting chains. The relevant feature of this option is that it provides the possibility to apply the rules on remuneration applicable to the main contractor to any subcontractor, including rules stemming from non-universally applicable collective agreements, for instance at company level, if the main contractor is

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49 As recalled above, PD A1 forms are not issued for postings up to 24 months, as beyond that duration posted workers are socially insured in the host country.

50 J. Pacolet and F. De Wispelaere, *Posting of Workers. Report on A1 portable document issued in 2014*, December 2015.

51 L&R Sozialforschung, *Entwicklungen im Bereich des Lohndumpings*, Wien, May 2014 (http://www.lrsocialresearch.at/sozialforschung/archiv-de/591-Entwicklungen+im+Bereich+des+Lohndumpings).

52 DGT, *Analyse des declarations de detachement des enterprises prestataires de services en France en 2013*, November 2014 (http://travail-emploi.gouv.fr/IMG/pdf/Bilan_PSI_2013.pdf).

53 According to data on Germany provided by SOKA Bau, 90% of postings in the construction sector lasted less than six months, FGB (2015), Country Report, Germany. See also European Builders' Confederation, Open Letter on Posting of Workers, 5 October 2015.

bound by one. Therefore, this option may have an effect on all wage-setting systems, including DK and SE, as well as Member States with full wage decentralisation, such as the UK. Despite the fact that sub-contracting is reported to be a wide-spread practice in a number of sectors, including construction, cleaning, and manufacturing industries, there is no data which allows to estimating the number of workers involved. According to Eurostat figures, in 2011, the relevance of payments to subcontractors in the construction sector amounted to over 30% of turnover in the UK, SK, and CZ and to less than 15% in RO, PT, DK, and IT (figure 11, Annex II). Based on the assumption that subcontracting mainly involves low-skilled workers in low-wage and labour intensive sectors[54], it could be estimated that the potential range of workers affected may fall in the range of up to 676,300 postings in 2014, including workers posted in sectors such as construction, agriculture, hunting and fishing sector, accommodation and food service activities, and freight transport by road sector.

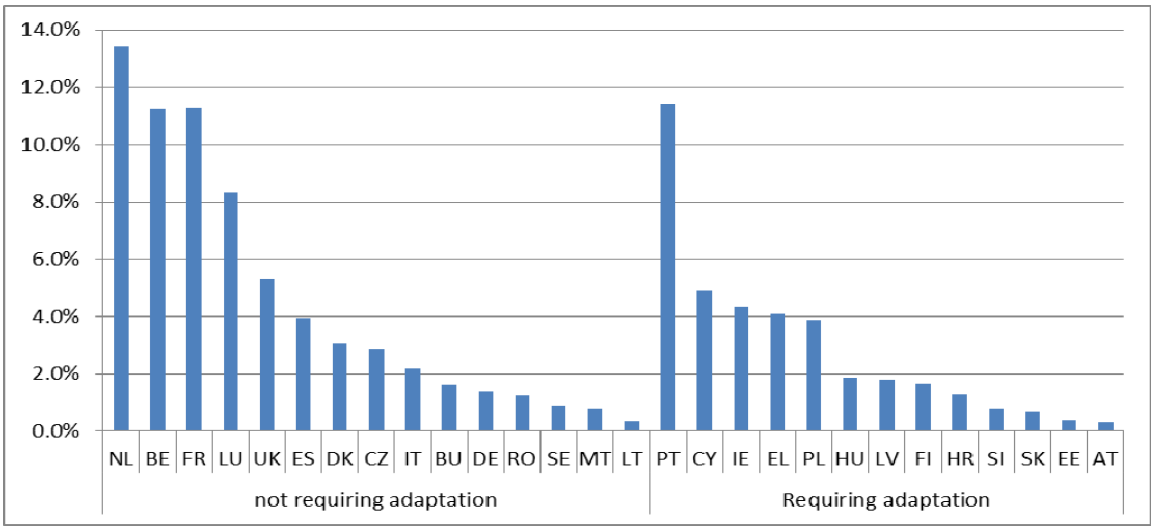
The application of equal treatment between posted workers in subcontracting chains with respect to the wage rules applicable to workers at the main contractor companies would have the effect of strongly compressing wage differentiation between the main contractor and its sub-contractors, including both local and foreign ones. Option 4b – proposed to be facultative for Member States to apply – would reduce the cost competitiveness especially of SME's posting workers from low- to higher-wage countries and result in some losses of business opportunities for companies placing their competitiveness on cost factors. However, option 4b would still entail the payment of the social security contributions at the rate of the country of origin, thus preserving some room of manoeuvre on total labour costs for sending firms. While equalising the level playing field would benefit domestic firms, especially SME's, in higher-wage countries vis-à-vis low-wage competitors, the provision would reduce room for cost competitiveness for local companies, as well. Final consumer prices may be pushed upwards to the extent that the main contractor would have a reduced leverage to optimise total service costs through competition between sub-contractors.

Option 4c targets a very limited group of posted workers. It would promote the adaptation of rules on equal treatment for posted temporary agency workers in thirteen Member States (figure 8). However, while these Member States are the destination of 7.5% of total posted workers in 2014, with Austria and Finland making up the lion's share of this figure, only Portugal has a relevant share of workers posted to the country through temporary work agencies (11.4%). Based on 2014 figures, this option may affect up to 1,000 workers posted to the thirteen Member States requiring legislative adaptation. In general, the regulation may have a cost-increasing impact to the extent that unclear rules on the treatment of posted agency workers in these Member States lead to lower working conditions standards for these workers. However, the impact would be

[54] Jorens, Y., Peters, and Houwerzijl, M. (2012), *Study on the protection of workers' rights in subcontracting processes in the European Union*, commissioned by DG EMPL - VC/2011/0015.

concentrated in countries where the agency work sector makes up low (between 4-5%) to very low (less than 2%) shares of total in-flowing postings[55].

Figure 8. % Share of temporary agency workers on total posting received, 2014



Source: EMPL, on the basis of data provided by Pacolet and De Wispelaere (2015)

5.3. Overall social impacts

The social impact of the initiative is measured against the objectives of fair conditions of competition among companies based on equal rules on wages applying to posted and local workers in the host country; and of providing more certain rules to posted workers and their representatives both in sending and receiving countries.

Under **option 1** (*status quo*) and, to a large extent, **option 2**, unequal rules on wages generate a segmentation between posted and local workers, affecting in particular workers posted from low- to higher-wage countries in labour-intensive sectors. To provide the same services, posted workers are entitled to minimum rates of pay, while the unclear status of pay increases according to skill or qualification levels are reported to create significant gaps in pay with equivalent domestic workers[56]. Wage differentials between posted and local workers are reported to vary across member States and sectors, from 10 up to 50% less. Unequal rules on wages may have an adverse impact on low-skilled workers in labour-intensive sectors of high-wage receiving Member States, through downward wage competition at the local level and displacement of job opportunities. On the other hand, wage differentials have a relatively lower impact on the overall welfare of workers posted from low-wage to higher-wage countries to the extent that minimum pay levels in high-wage countries exceed average take-home pay in the

[55] Pacolet and De Wispelaere, 2015.

[56] As noted already, no issue is identified with workers being posted from high to lower-wage Member States as these tend to be paid the same wage levels as in the home country (FGB 2015). The Directive allows for more favourable wage treatment. See also Cremers (2011), *In search of cheap labour*.

home country. As an illustrative example, in 2010, the level of the statutory minimum wage in Belgium (EUR 1,415) was almost twice as high as the average wage of a construction worker in Poland (EUR 752). Moreover, as shown in the simulation carried out in Annex IV, lower social security and income tax rates in the home Member State – where taxes are paid - may contribute to smoothing differentials in net earnings between posted and local workers, although gaps remain significant.

The implementation of the Enforcement Directive and of the rulings of the European Court of Justice may contribute to mitigating differentials, including through more effective inspection systems. However, any smoothing effect would not be an intentional consequence of clearer and more effective EU legislation either on the clarification of the composition of pay for posted workers, or on the application of rules across different economic sectors.

Option 2 is not expected to produce substantive changes with respect to the status quo. The codification of the case law into the Directive may advance some steps on legal clarity, as individual workers may access information about their entitlements about pay from one single and clearer legal text. However, while in practical terms the rulings of the European Court of Justice are already applicable, they only tackle part of the problems identified and do not provide an effective solution to unequal rules on wages, and their social consequences.

Option 3a and 3b are expected to have a relevant impact both on reducing wage differentials between posted and local workers and on clarifying the entitlements of posted workers across sectors.

While, as mentioned in section 5.2, these options do not aim at equal wage outcomes, they would contribute to clarifying the entitlement of posted workers to all the remuneration elements envisaged by universally applicable collective agreements or agreements signed by the most representative organisations, including bonuses and allowances, such as seniority pay or the Christmas bonus, *inter alia*, on equal terms as local workers[57]. **Option 3a** is expected to exert some effects also on Member States where rates of pay are set through statutory regulation insofar as elements of pay mandated by law to local workers (e.g. the 13th month bonus) would become applicable to posted workers.

Option 3b may have a beneficial effect for the social protection of workers posted from low-wage to higher-wage countries in sectors where collective agreements are not universally applicable. In DE, IE, LU, the statutory minimum wage represents the minimum rate of pay in sectors in which sectoral minimum wages are not given statutory

[57] FGB, *Wage Study*, 2015; see Annex VI for a preliminary reconstruction of the elements of wage which would become applicable to posted workers under option 3.

effects. In these Member States, option 3b would promote the extension of sectoral minima to all sectors.

On the other hand, both options entail the risk of an inflow of dependent posted work into self-employment as a possible unintended consequence of more equal wage standards. As collective agreements do not apply to the self-employed, companies may find it more advantageous to recruit on independent work arrangements, falling outside the protection scope of the Directive. In 2014, registered posted self-employed were roughly 8% of total postings, at fairly stable levels with respect to previous years. Nevertheless, bogus or false self-employment is reported to be a problematic issue as far as posting is concerned, even though part of the problem source for the phenomenon rests with labour market segmentation and enforcement of labour law in the sending Member States[58].

O**ptions 4a** would enhance the social protection of workers posted for long-term periods with an impact on the remuneration of posted workers similar to that of option 3.

Options 4b and 4c would have a strong beneficial impact on workers posted in the context of subcontracting chains or via temporary work agencies. The promotion of the principle of equal treatment aims at raising the protection especially of workers posted from low-wage Member States by conferring the entitlement to the remuneration conditions set by company-level agreements. Especially in the case of posted agency workers, options 4c would increase the level of protection in the thirteen countries where the principle of equal treatment is formally not in force. However, as discussed in section 5.2, little data availability limits the possibility to quantify the impact of these options. Stronger enforcement tools and coordination provided for by the Enforcement Directive would contribute to greater effectiveness of these options on the ground.

5.4. Impact on SME's

The envisaged initiative does not increase the administrative burden or costs to cross-border service providers and to SME's in particular. The issues concerning the administrative requirements and control measures that Member States can impose on cross-border service providers was dealt with by the Enforcement Directive (Article 9). None of the options considered here has any impact on these aspects.

SMEs especially in receiving high-wage Member State would benefit from this initiative, as a level playing field would enhance their capacity to compete on non-wage factors. This beneficial effect is stressed by some SME stakeholder, as well[59]. In turn, possible increases in wage costs may have some adverse effects especially on SMEs basing their

[58] See, for instance, Cremers, *In search of cheap labour*, 2010; LO (Swedish Trade Union Confederation). *Beyond dreams and belief. Pictures of posting in practice and the need for an amended Posting of Workers Directive*, 2015

[59] European Builders Confederation, Open Letter to Marianne Thyssen, 5 October 2015.

competitiveness on wage costs, which is reflected in the concerns of other European stakeholder associations about the opportunity to revise the Directive[60].

The costs of access to information to the conditions of remuneration applicable to posted workers in different receiving Member States would not be substantially modified by any of the considered options with respect to the status quo. However, option 3a would contribute to facilitating the application of collective agreements, as these would be applicable in their entirety, with respect to the current difficulty of identifying the components of "minimum rates of pay".

In any case, it should be noted that Article 5 of the Enforcement Directive requires that Member States ensure that the information on the terms and conditions of employment which are to be applied and complied with by service providers is made generally available free of charge in a clear, transparent, comprehensive and easily accessible way in a single national website on posting.

5.5. Implementation costs

The revision of the 1996 Directive would not bear any implementation cost. In fact, all implementation costs will be included in the transposition of the 2014 Enforcement Directive, due by 18 June 2016.

In line with the dispositions of the Enforcement Directive, the Commission will assess and evaluate the implementation and explore the enforcement mechanisms put in place by the Member States.

Some options could diminish administrative costs, by improving legal clarity and reducing the frequency of judicial litigation.

5.6. Budgetary Impact

No extra budgetary impact is envisaged for the implementation of the proposed revision. As noted above, the transposition of the Enforcement Directive should comprehend all implementation costs.

However, the proposed changes may have an impact on public budgets in the form of extra social security revenues for sending Member States, resulting from the increase of the wage basis on which social security charges are levied – especially for posting flows from low- to higher-wage countries. It is estimated that social security revenues represent, on average, 0.7% of total monthly revenues and 0.2% of total yearly revenues

[60] UAPME, reply on Mobility package consultation, 25 July 2015.

for sending Member States, with higher values (up to an estimated 4.9% in SI) in countries where sent posted workers represent a strong share of the domestic workforce[61]. A marginal wage increase for posted workers may further benefit social security revenues in sending Member States, even though there is a risk that possible losses of business opportunities in receiving countries may render the effect neutral.

6. OVERALL COMPARISON OF THE OPTIONS

The table below synthetizes the main impacts of the options for different groups of stakeholders.

Table 3. Impact on main groups and stakeholders

OPTIONS	**1**	**2**	**3a no reference to minima**	**3b Reference to CA**	***4a. long-term postings***	***4b. sub-contracting***	***4c. temporary Agency work***
Posted workers	0	0	(+) equal conditions	(+) equal conditions	(++) equal treatment	(++) equal wage	(++) equal treatment
Local workers (host country)	0	0	(++) less downward wage pressure	(++) less downward wage pressure	(++) no competition on labour standards	++ less wage pressure on sub-contractors	++ less competition on labour standards
Posting undertakings	0	0	(-) Higher wage costs	(-) Higher wage costs	(-) Higher wage costs	(--) Higher wage costs	(0/+) clearer rules to be applied
Local undertakings (host country)	0	0	(+) level playing field on wage rules	(++) level playing field on wage rules	(++) level playing field on labour costs	(++) level playing field on wage costs	(0/+) clearer rules to be applied
Public authorities	0	0	(+) budget impact	(0)	(+) budget impact	(0) budget impact / adm cost	(+) simplification
Social Partners	0	0	(+) respect of IR systems	(+) respect of IR systems	(0)	(0)	(0)

The options are compared in terms of effectiveness in reaching the objectives, in social and economic impact and coherence. Based on the impact analysis presented above, the following comparison of options can be drawn.

[61] De Wispelaere, F. and Pacolet, J. (2015), *Impact of social security coordination and income taxation law applicable to posted workers on welfare states: from tax competition towards upward social convergence*, KU Leuven working paper, November 2015 (https://hiva.kuleuven.be/nl/docs/working-papers/HIVA_WP2015_01.pdf)

Table 4. Comparison of options

OPTIONS	**1**	**2**	**3a**	**3b**	***4a. long-term postings***	***4b. sub-contracting***	***4c. temp. Agency work***
Objectives							
Ensure fair wage conditions to posted workers	0	0	++	+	++	++	++
Ensure a level playing field for companies	0	0	++	+	++	++	++
Improve legal clarity	0	+	++	+	++	+/0	++
Impact							
Social impact	0	0	+	+	++	++	+
Economic impact	0	0	0/-	0/-	-	--	0/-
Budgetary impact	0	0	+/0	+/0	+/0	+/0	0
Cost effectiveness	0	+/0	++/+	+	++/+	+/0	++

Option 2, codifying the case law of the European Court of Justice, has a modest impact on improving legal clarity of the EU regulatory framework, but has no value added with respect to the *status quo*.

Options 3a and 3b have an effective impact on attaining the policy objectives with an expected high social impact and a valuable economic impact on contributing to a more balanced level playing field. The risk of adverse impact on the competitiveness of posting undertakings is rather limited. It does not address specific problems with the effectiveness of the Directive on regulating particular cases of posting.

Options 4a, 4b, and 4c attain the objectives of legal clarity with a view on the current mismatches between the Directive and different pieces of EU legislation and a level playing field for companies as far as specific problems in the context of posting are concerned. Option 4b may have a strong economic impact on subcontracting chains. While effective in attaining these objectives, these options alone are not sufficient to comprehensively address the general problems identified with the existing Directive.

A wider variety of options (communication by the Commission, equal pay, specific intervention on the road transport sector) have been considered and discarded, as they have been deemed inadequate or disproportionate to tackle the identified problems.

6.1 The preferred options

In light of the comparison of the options, the preferred options are a combination between options 3 and 4. Option 3 revises the general regulatory framework of posting of workers, while option 4 tackles specific problems related to the posting of workers.

As for option 3, the introduction of equal rules on the remuneration of posted workers, coupled with the extension of the validity of universally binding collective agreements to posted workers in all economic sectors, addresses the identified problems of differentiated wage treatment of posted workers with respect to local workers in the host country, and the unfair competition advantage of posting undertakings based on different wage rules than those applicable to local companies. By removing the reference to "minimum" rates of pay applicable to posted workers, all the elements of remuneration legally applicable to local workers in host Member States become applicable to posted workers, as well. Universally binding collective agreements are automatically applicable to posted workers in all economic sectors, not only in the construction sector and optionally in other sectors, as currently is the case.

Option 4 integrates the principles set by option 3 through the introduction of equal treatment in a number of problematic issues which are currently unclear because of mismatches between different pieces of EU legislation. By establishing equal treatment on working conditions with respect to local workers in host countries in cases of postings lasting over 24 months, the Posting of Workers Directive aligns with the regulation of social security, thus filling a long-standing gap in EU legislation. The applicability of the remuneration conditions set in company-level collective agreements of the main contractor to all undertakings in a sub-contracting chain tackle the vulnerability of posted workers in subcontracting situations in line with the 2014 Enforcement Directive. By compulsory application to posted workers of the same rules set in the Temporary Agency Work Directive, a legislative mismatch is corrected for the benefit of legal clarity and improved consistency of the EU regulatory framework.

Table 5. Summary of expected impact of the selected options

	Content	**Impact**
3a	Minimum rates of pay replaced by a reference to remuneration. *(Inclusion of additional elements into the remuneration such as seniority allowance, 13th, 14th month bonuses)*	*Member States affected*: AT, BE, DK, ES, FI, FR, EL, IT, NL, PT, SE, SI *Impact on workers*: additional remuneration elements for about 700,000 to 900,000 posted workers *Impact on companies*: more level playing field in receiving countries, limited impact on wage competitiveness of sending companies *Impact on budget*: higher social security revenues for sending Member States.
3b	Extension of the reference to extended collective agreements to all sectors (not only construction)	*Member States affected*: DE, LU, IE, CY *Impact on workers*: higher pay rates for about 300,000 posted workers affected (2014 data); *Impact on companies*: more level playing field in receiving countries, limited impact on wage competitiveness of sending companies. *Impact on budget*: higher social security revenues for

		sending Member States
4a	Application of labour law of the host MS for posting with duration higher than 24 months	*Member States affected*: all *Impact on workers*: no clear data, estimated marginal share of total posted workers; *Impact on companies*: level playing field in the receiving countries, reduced margins of competition on labour costs. *Impact on budget*: none
4b	Possibility to introduce equal treatment in subcontracting chains	*Member States affected*: all (optional) *Impact on workers*: no clear data. Equal pay rates with respect to workers at main contractor estimated up to 700,000 workers; *Impact on companies*: level playing field in receiving countries, significant impact on wage competitiveness of sending companies *Impact on budget*: none
4c	Equal treatment for posted temporary agency workers *Same conditions for cross-border and national temporary agency workers*	*Member States affected*: AT, CY, EE, EL, FI, HR, HU, IE, LV, PL, PT, SI, SK; *Impact on workers*: up to 1,000 posted agency workers to MS requiring legislative adaptation; *Impact on companies*: higher pay rates for sending companies in line with work agencies in the receiving country *Impact on budget*: none

7. EVALUATION AND MONITORING

Monitoring and evaluation arrangements for the preferred options consist of a number of inter-related processes.

7.1. Monitoring

The Commission will monitor the transposition of the Enforcement Directive and its implementation in the Member States. No later than June 2019, the Commission is expected to submit a report on the application and implementation of the Enforcement Directive. Further implementation reports by the Commission will include aspects related to the revised Posting of Workers Directive in the future.

The Expert Committee on Posting of Workers (ECPW) regularly scrutinises and discusses various problems related to the Directive. Albeit not constituting a proper

monitoring committee, the ECPW can give an important contribution to the transposition of the revised Directive and to the analysis of its impact over the years.

The improvement of the information contained in the Portable Documents A1 – which is included in the revision of the Regulation on social security coordination presented by the Commission in the 2015 Mobility Package – will be key to enhancing the reliability of the information basis to monitor the dynamics of the posting of workers phenomenon. On the basis of evidence provided by the PD A1 forms, the Commission will continue to produce yearly reports on the flows of posted workers throughout the EU Member States, to be presented and discussed in the ECPW. At the same time, the possible set-up by some Member States of more extensive control systems and data bases concerning the in-flow of posted workers in their countries, as provided for by the 2014 Enforcement Directive, will further contribute to monitor aspects of the revised Directive for which data reliability has been found problematic. The newly established European Platform to enhance cooperation in tackling undeclared work will contribute with its work to monitor abuse of the posting of workers' rules.

The Commission will also promote independent studies, including in collaboration with the social partners and the EU sectoral dialogue, to survey sector-specific aspects of the directive, including the application of wage rules and of other working conditions such as working time, and duration of postings.

7.2. Evaluation

The Commission will proceed to a fully-fledged evaluation of the impact of the revised Directive five years after the deadline for transposition. The evaluation report will include an assessment of whether the operational objectives of the revised Directive have been reached. A particular focus will be cast on the application of the "equal pay for equal work" principle, its economic effects on the competitiveness of sending enterprises and flow of posted workers, and sector-specific issues in the temporary agency work industry and road transport sector, among others. This evaluation report will be developed by the Commission with the assistance of external experts, on the basis of terms of reference developed by the Commission services. Stakeholders will be informed of and consulted to comment on the terms of reference through the ECPW, and they will also be regularly informed of the progress of the evaluation and its findings. The evaluation report will be made public.

ANNEX I. - SUMMARY OF THE POSITIONS EXPRESSED BY THE MEMBER STATES AND THE STAKEHOLDERS

The targeted review of the 1996 Posting of Workers Directive has been the object of a roundtable with the social partners and non-governmental organisations, which was held on 22 July 2015 to identify the main remaining problems beyond the transposition of the Enforcement Directive and discuss the possible necessity for further EU action. While the messages conveyed by the social partners and other stakeholders' organisations on that occasion addressed the main issues of the Directive in a more general way, the social partners and some Member States followed up with written position papers with more precise policy preferences later on.

Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Sweden have claimed support for a modernisation of the Posting of Workers Directive establishing the principle of 'equal pay for equal work in the same place'[62]. These Member States suggested that the provisions regarding working and social conditions, most notably including remuneration, applicable to posted workers should be amended and widened; the set-up of a maximum duration limit to postings should be considered, with particular regard to aligning provisions with the EU Regulation on coordination of social security; the applicable conditions to the road transport sector should be clarified; the information basis contained in the Portable Documents A1 should be strengthened in its reliability; cross-border cooperation between inspection services should be improved; and a study on the extent and impact of bogus self-employment in the context of posting should be promoted.

In a separate opinion, the French authorities have proposed to reinforce the core rights granted to posted workers with a view to including an obligation for the posting employer to pay for lodging expenses and any other cost incurred by the worker in the context of posting; to establish a minimum and a maximum duration period for postings; to tackle double postings of temporary agency workers; to extend the mechanism of joint liability currently applying to the construction sector to all other sectors; to clarify the application of the Directive to the road transport sector, most notably as regards the mechanism of joint liability; and to establish an EU-level structure of cooperation and coordination of labour inspectorates and authorities to facilitate controls on postings.[63] On top of this, the French Economic, Social and Environmental Committee proposed to delegate to the European social partners at sectoral level the establishment of a maximum duration cap on postings; to limit the possibilities to post a worker to the Member State in

[62] Letter to Marianne Thyssen, Luxembourg 18 June 2015.
[63] Note des Autorités Françaises, 30 September 2015.

which he or she habitually resides and to establish a minimum of three months of affiliation to the social security system of a country before a worker can be posted.[64]

The Socio-Economic Council of the Netherlands also has advised to consider the introduction of an explicit limit to the temporariness of posting, as well as to clarify other concepts such as wage elements and untaxed allowances, and other applicable working conditions to posted workers.[65]

The European Parliament is discussing a draft Resolution[66] which calls to addressing regulatory gaps with a view to implementing the principle of "equal pay and equal social protection for the same work". The draft Resolution proposes to extend the legal basis of the Posting of Workers Directive beyond the freedom of movement and to provide services, to the social policy chapter (Articles 151 and 153 TFEU). While the draft Resolution posits that posted workers and local workers should receive equal pay, including by taking into consideration the role of social security contributions and posting-specific bonuses, it also calls to limiting the maximum period of posting and excluding temporary work agencies from the scope of the Directive. Specific measures are also advocated for the transport industry, in particular to clarify the rules on cabotage.

Favourable to revising the Directive have also been the European Trade Union Confederation (ETUC), the European Builders Confederation (EBC) representing the SME employers in the construction sector, the EU Trade Union of Building and Woodworkers (EFBWW), the Dutch Trade Union Confederation (FNV), the Estonian Trade Union Confederation and the Council of Nordic Trade Unions. The EU social partners in the construction industry have also asked the Commission to assess a number of issues related to the Directive.

The ETUC has expressed support for a revision to ensure the principle of equal treatment[67]. In this context, however, the ETUC called the Commission upon respecting the principle of autonomy of the social partners to negotiate wages and the plurality of national industrial relation systems, by establishing provisions on the constituent elements of pay and having the effect of favouring company-level over sector-level collective agreements[68]. In turn, the ETUC advised that the Commission reviews provisions regarding the requirement of a previous period of employment in the country of origin to be especially applied to posted temporary agency workers, new rules on

[64] CESE, Les Travailleurs detaches, 2015-24.
[65] Sociaal-Economische Raad (SER), *Arbeidsmigratie*, Advies 14/09, December 2014
[66] Report on Social dumping in the European Union (2015/2255 (INI), Committee on Employment and Social Affairs.
[67] ETUC, *Paris Manifesto, Stand Up in solidarity for quality jobs, workers' rights and a fair society in Europe*, 1 October 2015.
[68] ETUC, Targeted review of the Posting of Workers, ETUC contribution, 28 August 2015.

combatting bogus self-employment, and better enforcement measures, in particular inspections and more reliable social security forms[69].

The European Builders Confederation (EBC), representing SMEs in the construction sector, has expressed support for reopening the 1996 Directive in line with the principle "equal pay for equal work in the same place". Concerning this directive, the EBC proposes to extend the legal basis of the Posting of Workers directive in line with the social security regulation and the services directive; to delegate the sector-level social partners with setting a temporary limit to postings; to tighten rules on the activities of temporary work agencies in the construction sector, with particular reference to the provision of information as regards their activities; and to tackle the issue of bogus self-employment. EBC also proposes the creation of a common database of social security forms.

The Council of Nordic Trade Unions (NFS) has welcomed the prospect of a revision of the Directive calling for the close involvement of the social partners and the governments of the Nordic countries (Denmark, Finland, Iceland, Norway, Sweden) in its preparation[70]. The NFS has agreed with the principle of equal pay for equal work, which it considers the foundation of collective bargaining in the Nordic countries and a means to avoid wage competition and discrimination. However, it takes stock of the ambiguity introduced by the European Court of Justice as regards to the conformity of the labour market model of the Nordic countries with the Posting of Workers directive.

In a joint position, the EU social partners of the construction sector (the European Federation of Building and Woodworkers, EFBWW, and the European Construction Industry Federation, FIEC) have asked the Commission, among other things, to define a maximum duration of posting, elaborate a EU harmonised module for preliminary declaration for posting, and provide legal clarity as regards to the position of posted temporary agency workers in the light of the Temporary Agency Work Directive[71]. In a single letter, the EFBWW has encouraged the Commission to provide the instruments for the principle of "equal pay for equal work in the same workplace" to be widely applied[72].

ECAS (European Citizens' Action Service) has stressed the need to align the definition of posted worker between the Posting of Workers Directive and the Regulation on social security coordination.

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[69] ETUC, letter to Marianne Thyssen, Brussels 22 July 2015.

[70] Council of Nordic Trade Unions, Labour Mobility package – Revision of the Posting of Workers Directive, 20 January 2016.

[71] EFBWW and FIEC, Joint Position. Towards a level playing field in the European construction sector. Joint proposals of the EU sectoral social partners, 27 February 2015. The

[72] EFBWW, Observations regarding the proposed EU Labour Mobility Package, 29 February 2016.

On the other hand, nine other Member States, Business Europe, UAPME (representing European small and medium enterprises), Eurociett (representing the temporary work agency industry), CEEMET (representing employers of the metal, engineering and technology-based industries), Gesamtmetall (the employer association of the German metalworking industry) and the Association of Industrial Employers of Sweden, the Confederation of Industry of the Czech Republic, and the Industry Associations of Denmark, Finland, Iceland, Norway and Sweden have expressed their opposition to the review of the Directive, at this stage.

In a joint letter, Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Rumania have argued that a review of the 1996 Directive is premature and should be postponed after the deadline for the transposition of the Enforcement Directive has elapsed and its effects carefully evaluated and assessed. These Member States have expressed the concern that the principle of equal pay for equal work in the same place may be incompatible with the single market, as pay rate differences constitute one legitimate element of competitive advantage for service providers. Moreover, they have taken the position that posted workers should remain under the legislation of the sending Member State for social security purposes, and no measure should thus be taken to revise the linkages between the posting of workers and the social security coordination in this sense. Finally, they called upon the Commission to considering action only insofar as evidence is rigorously analysed concerning the challenges and specificities of cross-border service provision.

Similarly, BUSINESS EUROPE[73] has considered a priority to ensure the correct transposition of the Enforcement Directive as it deems that most of the challenges with posting of workers are related to poor enforcement and lack of controls in the Member States. Business Europe has also suggested that the reopening of the Directive may reduce posting activities because of the uncertainty that the negotiation would create among companies. While supportive of measures to increase the reliability and transparency of Portable Documents, Business Europe has considered that the principle of "equal pay for equal work" would create an undue interference of the EU in the free determination of wage levels by the social partners and recalls that a level playing field for competition is created by a large body of EU law addressing various aspects of labour law. These arguments were also shared by the representatives of employers of the metal, engineering and technology industries (CEEMET)[74], by the Confederation of European Managers (CEC), by the Swedish Association of Industrial Employers, the Industry Associations of Denmark, Finland, Iceland, Norway and Sweden, and by the Confederation of Industry of the Czech Republic.

[73] Business Europe, letter to Marianne Thyssen, 5 October 2015.

[74] CEEMET, Position against a Revision of Directive 96/71/EC concerning the posting of workers in the framewoek of the provision of services, 5 October 2015.

GESAMTMETALL has also called the Commission to clarifying the practical implications of the principle of "equal pay", as well as to taking into account the possible impact of this principle on the free provision of cross-border services, with notable reference to the competitiveness of undertakings established in countries with low wage standards.

Likewise, UAPME has taken the view that the Posting of Workers Directive should not be modified before the transposition of the Enforcement Directive is completed and its effects evaluated.

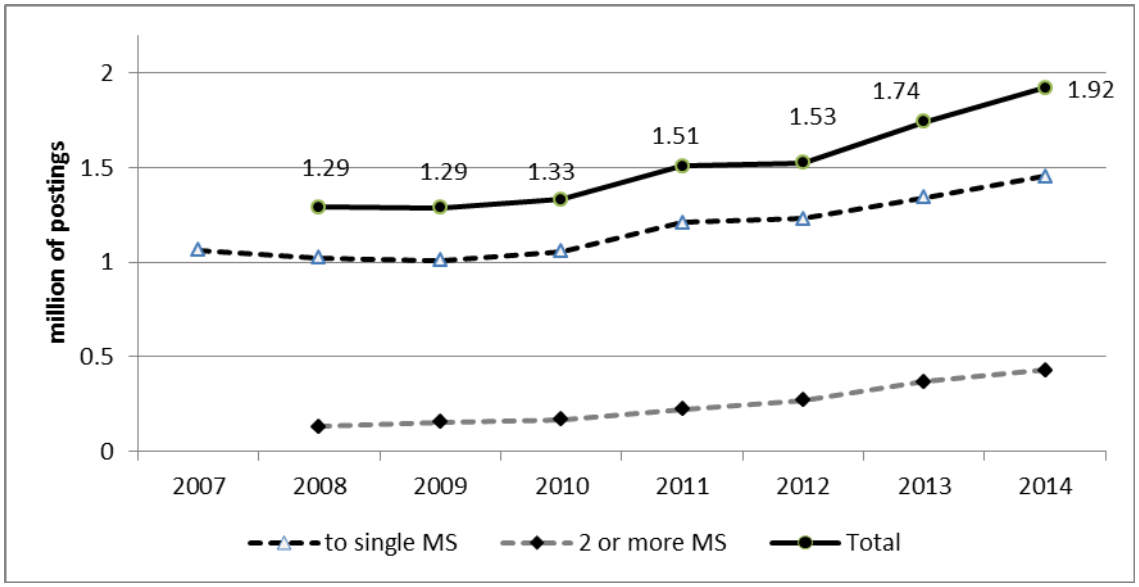
EUROCIETT[75], representing the temporary work agency industry, is of the view that there is no need for reopening the 1996 Directive. With particular reference to the temporary agency work sector, Eurociett maintains that the 2008 Temporary Agency Work Directive already provides for the implementation of the equal pay for equal work principle in all the Member States. While it argues that information access for companies and workers and data collection on the industry should be enhanced, it calls for a more in-depth legal analysis of the interplay between the directives on Posting of Workers and on Temporary Agency Workers. As the latter already provides for the implementation of the principle of equal pay for equal work in the host countries, Eurociett sees no need to modify the Posting of Workers Directive.

[75] Eurociett, *Posting of agency workers and the cross-border provision of services*, 9 November 2015.

ANNEX II. - NUMBERS AND FIGURES ON POSTING OF WORKERS

The posting of workers in the EU has steadily picked up since 2010 on an average annual rate of increase of 9.6%, to reach over 1.9 million postings in 2014. Overall, the number of posted workers, calculated as number of portable documents A1 (PD A1) issued, has increased by 44.4%, between 2010 and 2014 (figure 1)[76]. Although data are not fully comparable due to changes in the social security registration system in 2010, the number of postings has rebounded after a downward break in the first dip of the economic crisis between 2007 and 2009. Currently, the total figure is composed of postings to a single Member State (on average 75% of total postings in 2014), postings to two or more Member States (about 22% of the total) and postings in the framework of common agreements between Member States (2%) and of flight or cabin crew members (0.05%).

Figure 1. Number of social security certificates for posted workers issued to a single and to two or more Member States (in millions), 2007-2014



Source: DG EMPL calculations on PD A1s data.
Note: From 2010, the PD A1 form has replaced the previous E101 form. Data are not fully comparable, because the E101 form could be issued for posting periods up to 12 months – to be possibly prolonged for another 12 months, whereas under PD A1 rules the maximum duration of postings is 24 months.

The following analysis is mainly based on EU social security data measuring postings to single Member States. This is motivated by the facts that EU data are the only comparable source of information across all Member States; and that data on

[76] Workers posted from and to EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) are included in the calculation, as flows always involve EU countries.

postings to two or more Member States do not include any information regarding the destination of workers and therefore cannot be fully matched with information on receiving Member States[77]. However, for the sake of completeness of information, specific data will be presented when relevant.

Variation in the number of posted workers has been very different across the EU between 2010 and 2014, also reflecting the different impacts of the crisis. The highest increases in *sending* countries were recorded in Greece, Slovakia Lithuania, and Bulgaria– with more than double as many PD A1 issued in 2014 than in 2010 – and especially in Slovenia – where the number of posted workers sent more than tripled during the same period, although the absolute numbers remain low. In turn, Sweden, Germany, Belgium, Slovenia, Austria and, especially, Estonia recorded the highest increases among *receiving* countries, while the receipt of posted workers substantially dropped in Cyprus, Greece, Spain and Bulgaria.

The contribution of posting to adjusting labour demand within the EU partly explains the fact that the number of postings has increased faster than expected. According to simulations, the number of postings was projected to increase to 1.07 million by 2013 and reach up to 1.12 million in 2015. Actual data show that this projection has been underestimated by over 700,000 postings for each of the years 2013 and 2014[78]. In particular, the flows of posted workers have been directed to the Member States with relatively better economic performances during the crisis, such as Germany. Posting has thus proved to be also an important mechanism to adjust labour demand within the EU.

EU 15 Member States remain the main *destination* of posted workers. In absolute numbers, Germany (414,200), France (190,850) and Belgium (159,750) have been the Member States receiving the highest number of postings in 2014. In proportion to overall domestic employment, however, the receipt of posted workers had the strongest impact on Luxembourg (9%), Belgium (3.6%) and Austria (2.5%), while they make up around 1% of employed persons in Germany, the Netherlands, and France.

All Member States are *senders* of posted workers, but their incidence on domestic labour markets varies across the Member States. Poland (266,700), Germany (232,800) and France (119,700) record the highest absolute number of postings sent. However, while sent posted workers account for 1.7% of the total employed population

[77] It should be noticed that data also include self-employed workers working temporarily in another Member States, who do *not* fall into the scope of the Posting of Workers Directive. The self-employed make up on average 8% of total postings, with a higher importance in Germany, Italy, the Czech Republic and Slovakia.

[78] ISMERI Europe (2012), p. 81 projected postings to be 1.07 in 2013 and about 1.1 million in 2014, whereas actual numbers proved to be, respectively 1.74 and 1.92 million. See also European Commission (2012) *Impact Assessment. Revision of the legislative framework on the posting of workers in the context of the provision of services. Partie II*, SWD (2012) 63 final.

in Poland, they make up about 0.6% in France and Germany. In fact, among sending countries, posted workers have a stronger significance especially in Luxembourg and Slovenia, where they represent respectively 20.7% and 11.5% of the domestic employed population, followed by Slovakia, Estonia, Lithuania and Portugal[79].

These figures may underestimate the actual number of posted workers. From a *receiving* perspective, data from national compulsory registration systems show a relevant gap between EU and national figures, with the latter being up to five times higher in the case of Denmark (table 1). National estimations should carefully take into account full-time equivalents and the number of unique persons posted. However, EU social security data do not include information neither on short-term nor on long-term postings, as in these cases PD A1 forms are not required.

Table 1. Comparison between EU and national data sources on received posted workers, year 2014

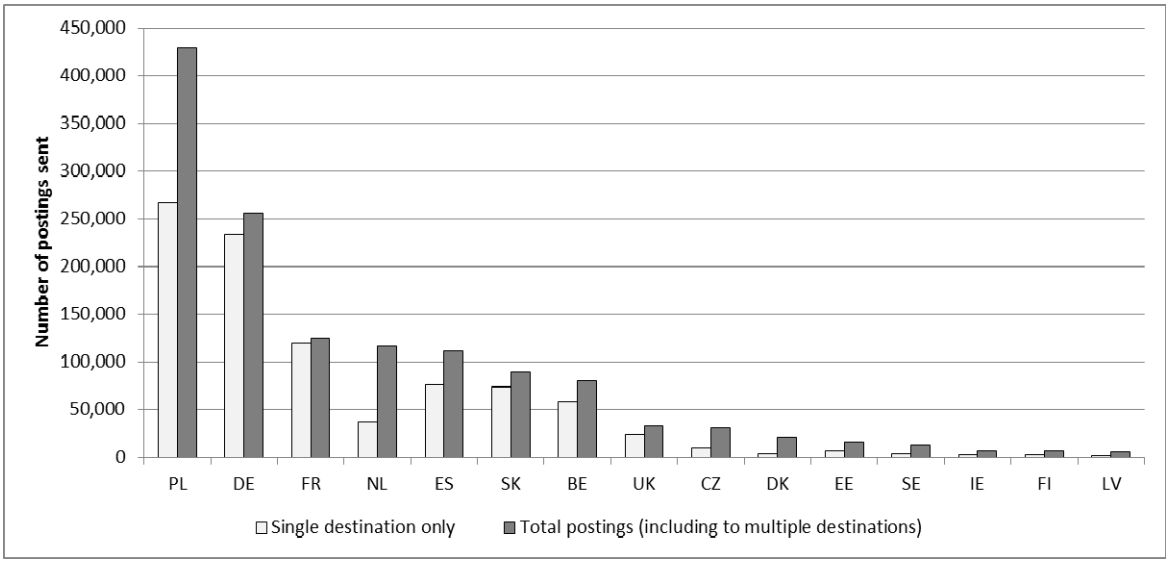
Country	Number of PD A1 received (EU data)	Number of registrations (national data)
Belgium (LIMOSA)	159,753	Number of declarations: 499,840 Number of unique persons: 205,279
Denmark (RUT)	10.869	59,351
France	190,848	228,650

Sources: Member States communications to the Commission

Postings to multiple Member States reflect the phenomenon of highly-mobile workers and are a significant part of total posted workers sent by some Member States. While Poland records 428,400 posted workers sent in 2014, Germany has 255,700 and France 125,200. Figure 2 below shows that for Member States such as Denmark, Latvia, Czech Republic and the Netherlands the figure of total postings can be up to four times higher than the figure of postings to single Member States only. This data could be understood as reflecting the extent of the phenomenon of highly-mobile workers in specific sectors, such as transports. However, there is a lack of data concerning the sector of activity of this group and the destination of these postings.

[79] If forms for unique persons only are taken into account, the percentage share of sent posted workers on the total employed population drops to 0.3% in France, 4.7% in Luxembourg and 4.2% in Slovenia. However, this information is not available for many Member States, including Germany and Poland.

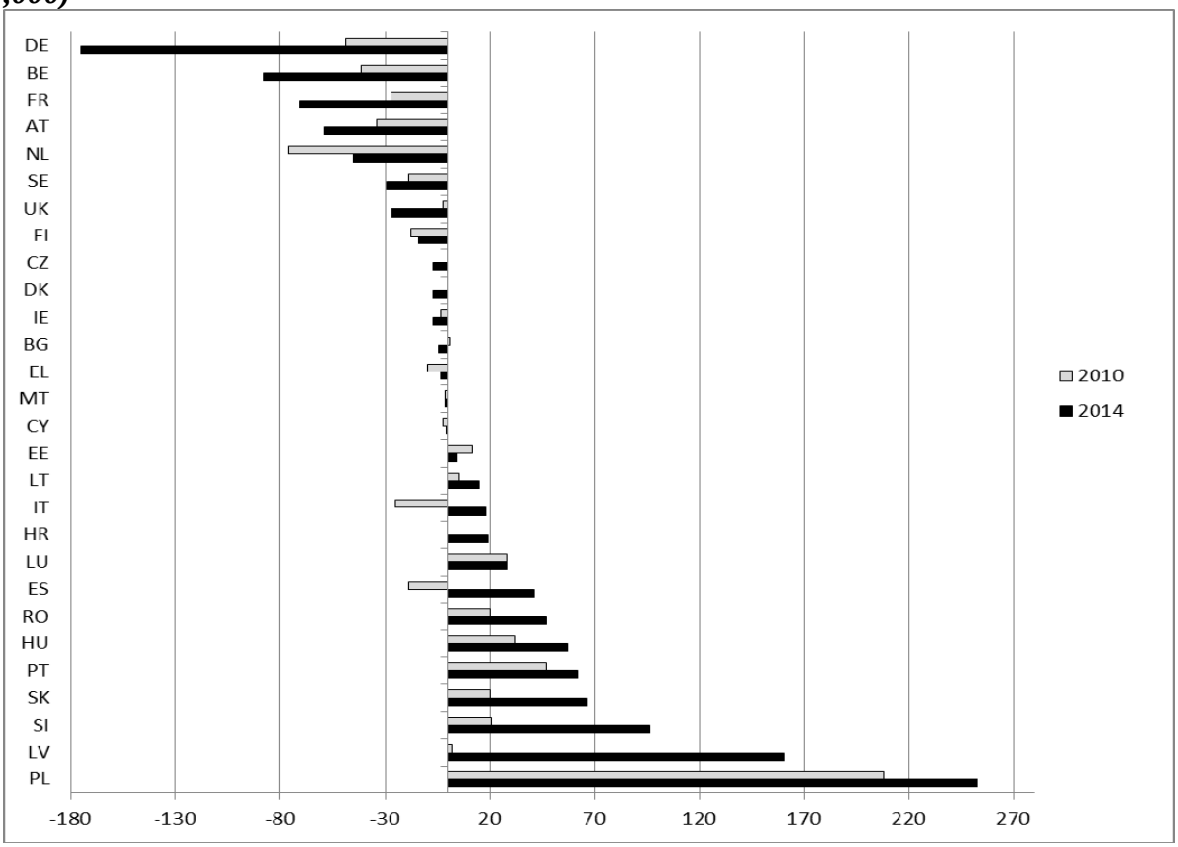
Figure 2. Posted workers sent to single destinations and total posted workers sent (including to multiple Member States), selected Member States, year 2014.



Source: EMPL calculations on Pacolet and De Wispelaere (2015)

Overall, some Member States are net senders and others net recipients of posted workers. Poland, Latvia, and Slovenia were among the highest net senders of posted workers, with levels which have increased over the period 2010-2014 (figure 3). In turn, Germany, Belgium, Austria, France and the Netherlands were amongst the highest net recipients. Except for in the Netherlands, the faster increase of receipts over sent posted workers during the crisis period has accentuated the balance in these countries. Contrary to most other Member States, Italy and Spain have turned from being net receivers to becoming net senders of posted workers between 2010 and 2014, mostly due to the impact of the economic crisis.

Figure 3. Net balance between postings sent and received, 2010 and 2014 (in ,000)



Source: EMPL calculations. Note: calculations are done on the basis of postings to single Member States only, due to the lack of data on the receipt of workers posted to multiple member States.

Posting between companies represents the most widespread type of posting, although there is no data on other types of postings. Directive 96/71/EC distinguishes between three types of postings, namely posting between a company and a service provider, posting of workers within the same group and posting through temporary work agencies. Although it is quite commonplace that the first type of posting is the most widespread, the grand majority of the Member States does not collect data to distinguish between the three types. As regards intra-group posting, only France provides data. In 2013, intra-group posting accounted for 3% of total postings[80]. Concerning posted temporary agency workers, available data from PD A1 documents for the year 2014 show that they make up on average 5% of total postings, yet with relevant cross-country variation. Agency workers represent over 10% of total postings received by the Netherlands, Belgium, France and Portugal, but up to 35% of total postings sent from the Netherlands and 25.7% of those sent from Belgium in 2014[81].

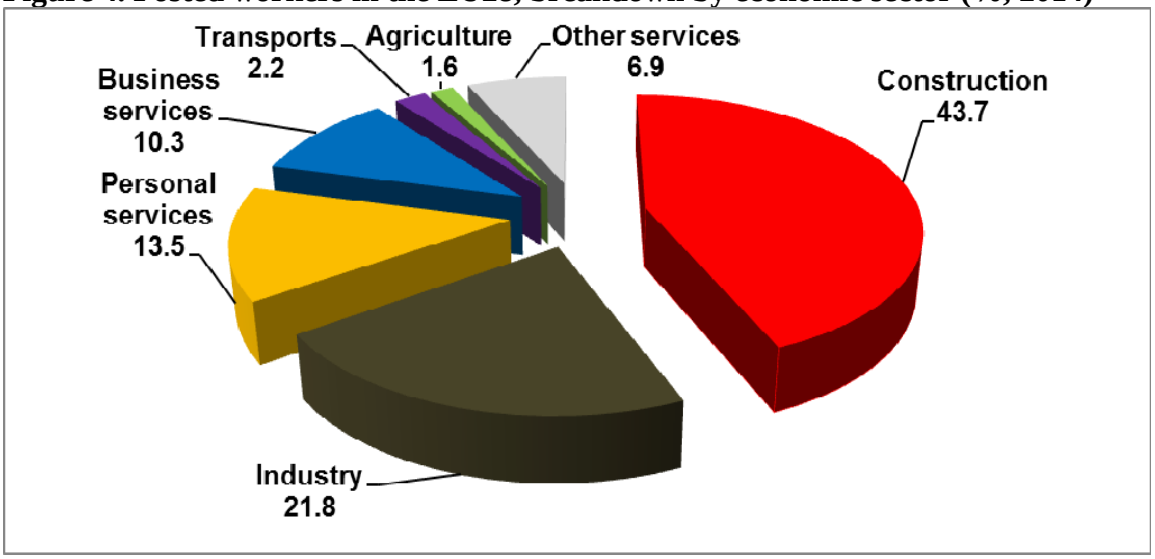
[80] DGT, Analyse des déclarations de détachement des entreprises prestataires de services en France en 2013, Novembre 2014.

[81] Frequently missing information concerning the sector of activity on the PD A1 forms suggests caution as regards the handling of data on sectoral breakdowns of postings.

All in all, posting of workers still involves a very small fraction (0.7%) of the EU employed population. In full-time equivalents, it can be estimated that posted workers account for 0.26% of EU employment. However, the labour market impact is especially concentrated on specific sectors and Member States.

The construction sector accounts for the largest sector for posting of workers, followed by the manufacturing industry and different types of services (figure 4). Overall, the construction sector absorbs 32.7% of total postings in the EU28, thus proving the most relevant sector for the provision of cross-border services. Industrial sectors, such as the metalworking industry, account for about another quarter of total postings. The service sector makes up 32% of total postings, which can be further disaggregated into personal services (education, health and social work), business services (finance and insurance, real estate, administrative, professional and technical services, including temporary agency work), and transports (including road transport and information and communication systems), as well as other services, such as wholesale and retail trade (1.4% of total postings) and food and accommodation services (0.4%). Agriculture employs 1.6% of total posted workers in the EU

Figure 4. Posted workers in the EU28, breakdown by economic sector (%, 2014)

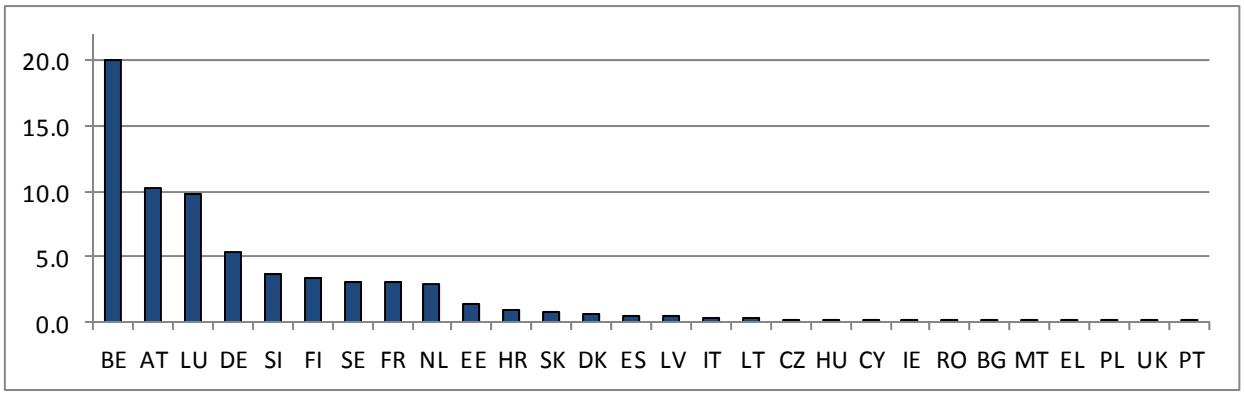


Source: DG EMPL elaboration on Pacolet and De Wispelaere (2015)

The incidence of posted construction sector workers on domestic labour markets is especially strong in some Member States. In Slovenia, Sweden, Finland, Austria, Belgium, and Latvia posted construction sector workers represented over half of total workers received in 2014. Measured as a proportion of the domestic employed workforce in the sector, posted workers made up 20% of Belgian construction workers in 2014, and

about 10% and Austrian and Luxembourgish workers (figure 5)[82]. From a sending perspective, construction workers represent over 50% of posted workers sent from Estonia, Portugal and Slovenia, and followed by Hungary, Poland and Luxembourg with shares slightly below that level.

Figure 5. % Share of received postings in the construction sector on total construction workers, year 2014



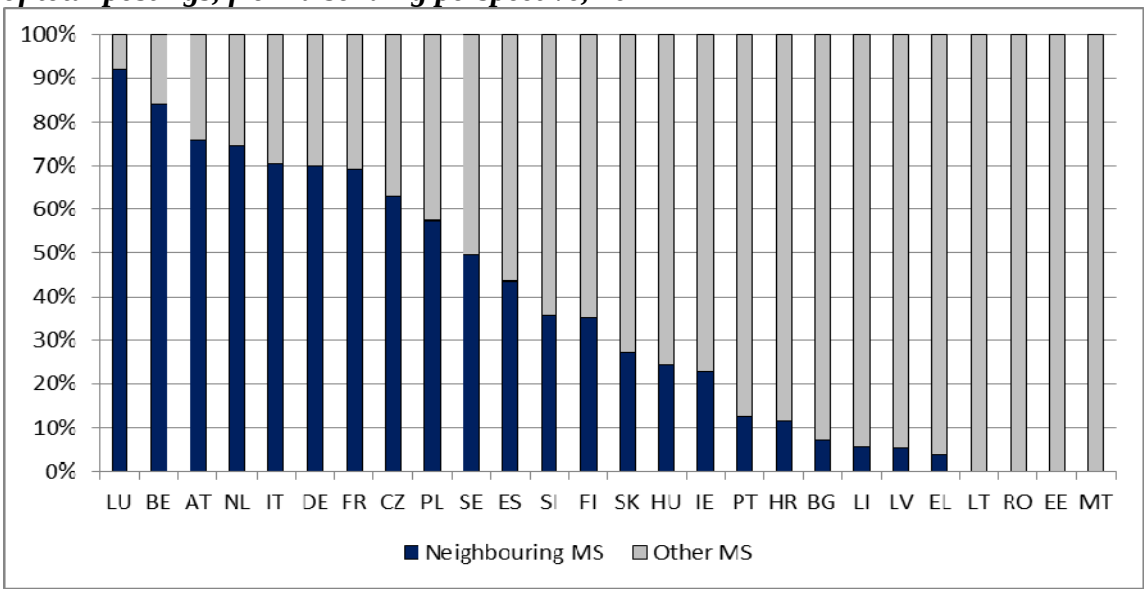
Source: DG EMPL calculations on Eurostat data

The service sector, mainly personal and business services, absorbs another 32.9% of posted workers. From a receiving perspective, financial and business services, as well as personal services represent the majority of postings received in Malta, Greece, Portugal Cyprus and Bulgaria. In turn, the Netherlands, Germany, Finland, Belgium and Luxembourg post a sizeable share of their workers in the services sector, particularly among financial and professional services, and personal services such as health and social work. While a minor share of total postings involves the agriculture sector, its share amongst sending countries is highest (6.5%) in Estonia and Romania.

Geographic proximity is a key context factor of posting dynamics. The majority (52%) of posted workers are sent to a neighbouring state, with peaks of over 70% in Luxembourg, Belgium, Austria, and the Netherlands (figures 6 and 7). Conversely, neighbouring countries make up over 70% of posted workers received by Luxembourg, Austria and the Czech Republic. For instance, Belgium mainly receives posted workers from and sends its own posted workers mainly to France, the Czech Republic mainly receives its posted workers from Slovakia, and Germany to the Netherlands, France, Switzerland and Austria.

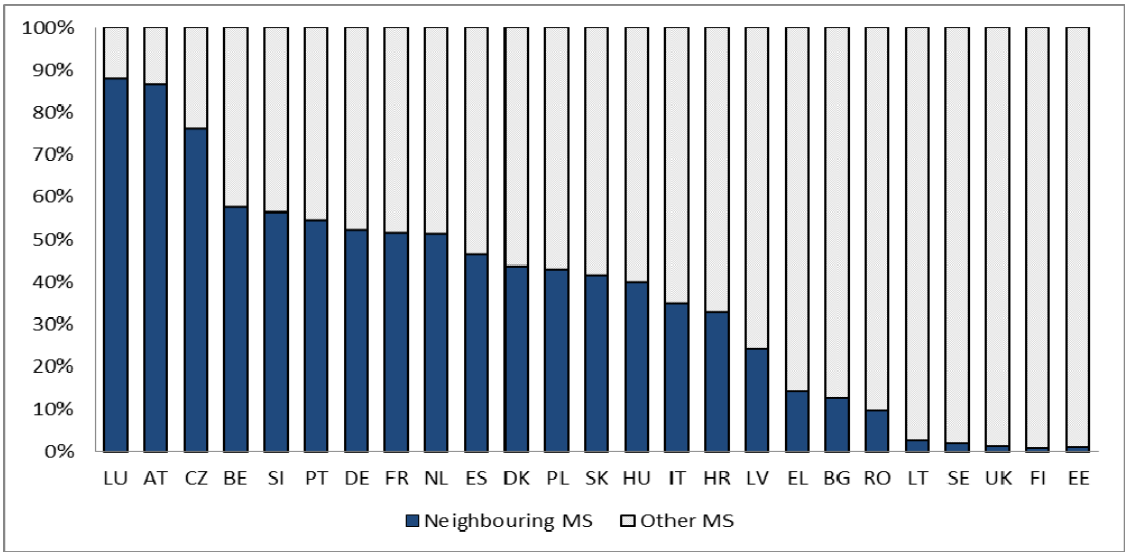
[82] While the number of PD A1 issued in the construction sector may not reflect the actual number of posted construction workers (as the same worker could be posted more times during the same year), the method allows cross-country comparisons.

Figure 6. Workers posted to neighbouring and non-neighbouring Member States as % of total postings, from a sending perspective, 2014



Source: DG EMPL elaboration on Pacolet and De Wispelaere (2015)

Figure 7. Workers posted from neighbouring and non-neighbouring Member States as % of total received postings, 2014.

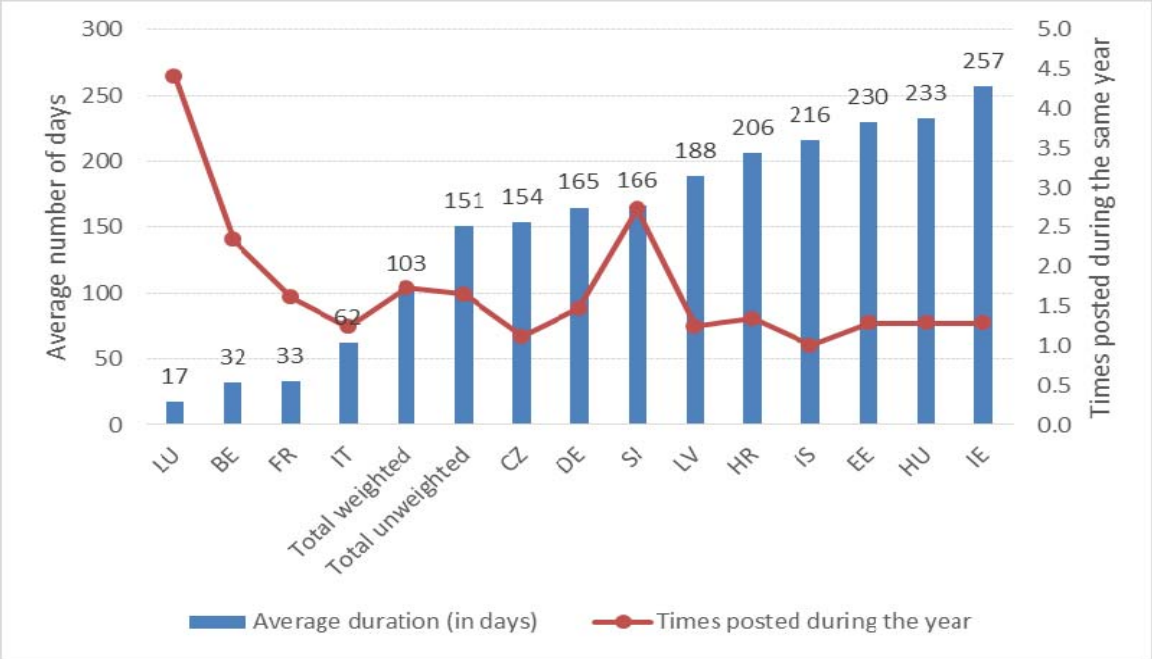


Source: DG EMPL elaboration on Pacolet and De Wispelaere (2015)

Posting is generally limited in time (figure 8). Available data suggests that the average duration of posting is less than 4 months (100 days in 2013, 103 days in 2014). However, there are significant differences between the Member States. Whereas the average duration of postings from France, Belgium and Luxembourg does not last over 33 days, workers posted from Estonia, Hungary and Ireland tend to stay for over 230 days. It should be noted that in some Member States workers are posted multiple times per year

for short periods. Indeed, by weighting the number of postings with the number of 'unique persons' posted, the same worker is posted on average 1.7 times per year.

Figure 8. Average duration of postings (in days) by sending Member State (2014)



Source: Pacolet and De Wispelaere (2015)

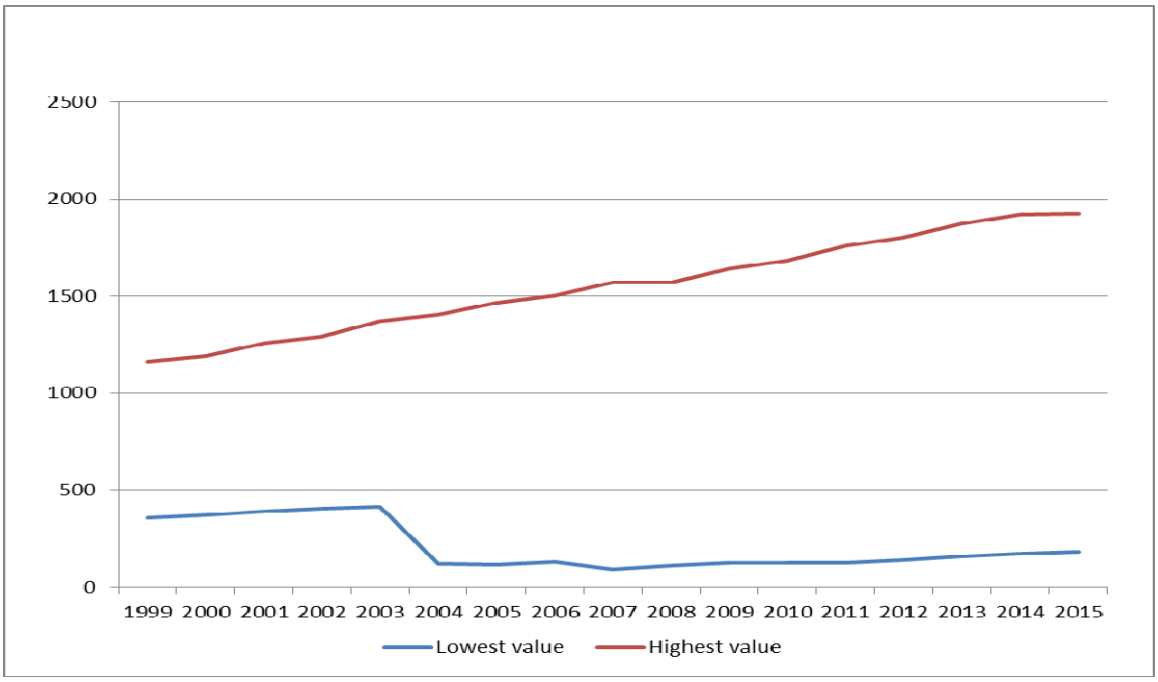
The incompleteness of information, however, suggests much caution in the interpretation of data. While data on the duration from PD A1 data is only available for twelve EU Member States (plus Iceland)[83], it should be reminded that PD A1 forms are not due for postings envisaged to be longer than two years, as in that case workers will be covered by the social security legislation of the Member State of employment[84]. Therefore, long-term postings are not included in the above figure.

[83] The countries are Belgium, Croatia, Czech Republic, Estonia, France, Germany, Hungary, Italy, Ireland, Latvia, Luxembourg, and Slovenia. There is however a small improvement with respect to the seven Member States for which data were available in 2013 (Belgium, Germany, France, Ireland, Italy, Hungary, Slovenia and Iceland). Pacolet, De Wispelaere, "*Posting of Workers. Report on A1 portable documents issued in 2012 and 2013*", European Commission, December 2014.

[84] If postings are based on common agreements between the Member States (in line with article 16 of Regulation 883/2004), posting periods are extensible up to 5 years.

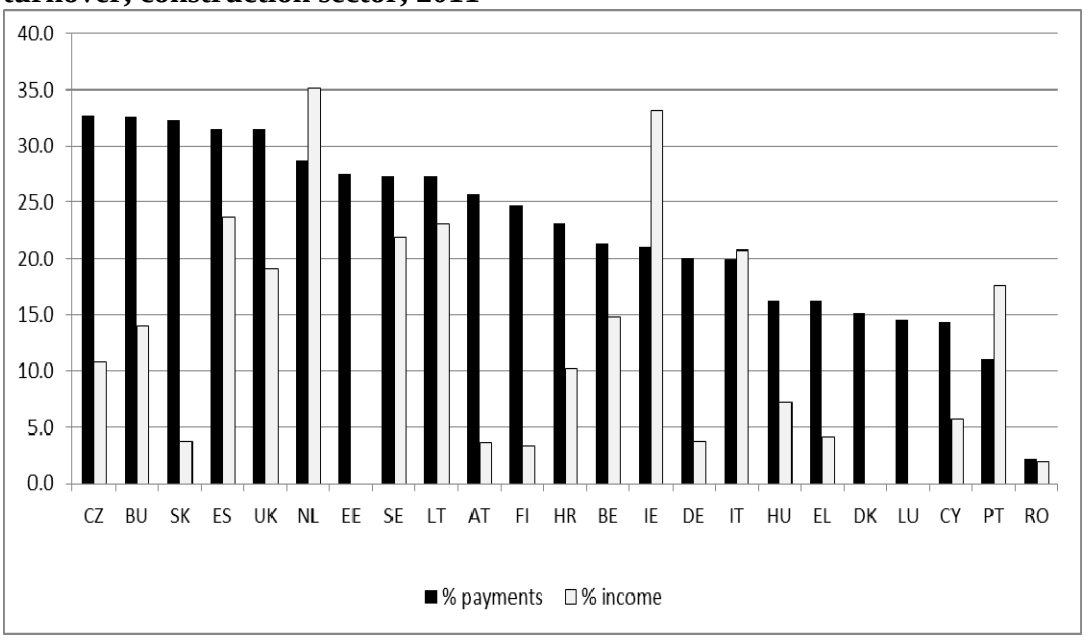
STATISTICAL ANNEX - ADDITIONAL FIGURES

Figure 9. Dispersion of the monthly minimum wages in the EU (1999-2015)



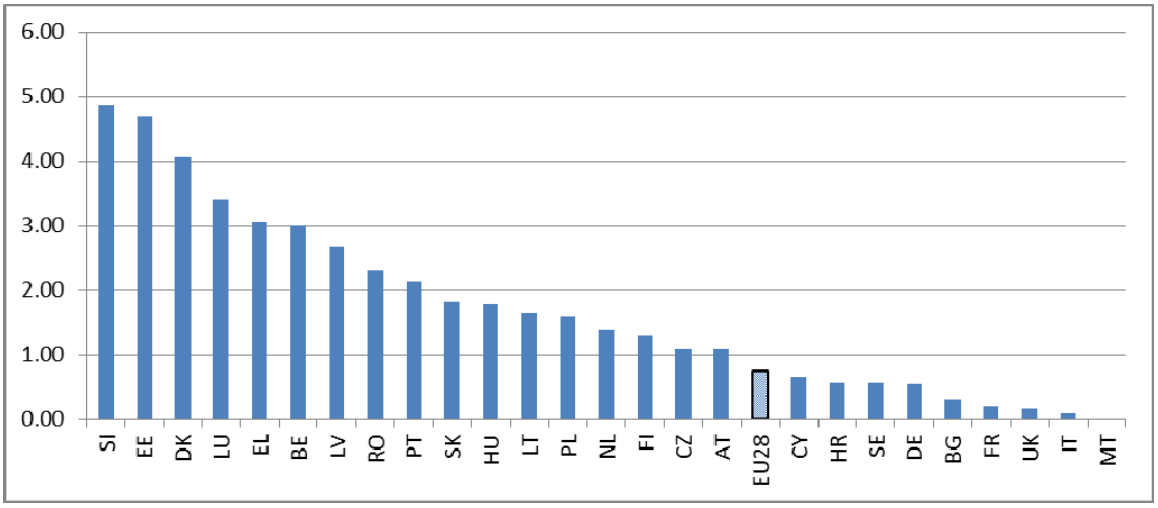
Source: Eurostat. Note: highest value is the minimum wage in Luxembourg. Lowest value is the minimum wage (in Portugal from 1999 to 2003; in Latvia from 2004 to 2006; in Bulgaria from 2007 to 2015, except for 2013 (Romania)

Figure 10. % share of payment to, and income from subcontractors on total turnover, construction sector, 2011



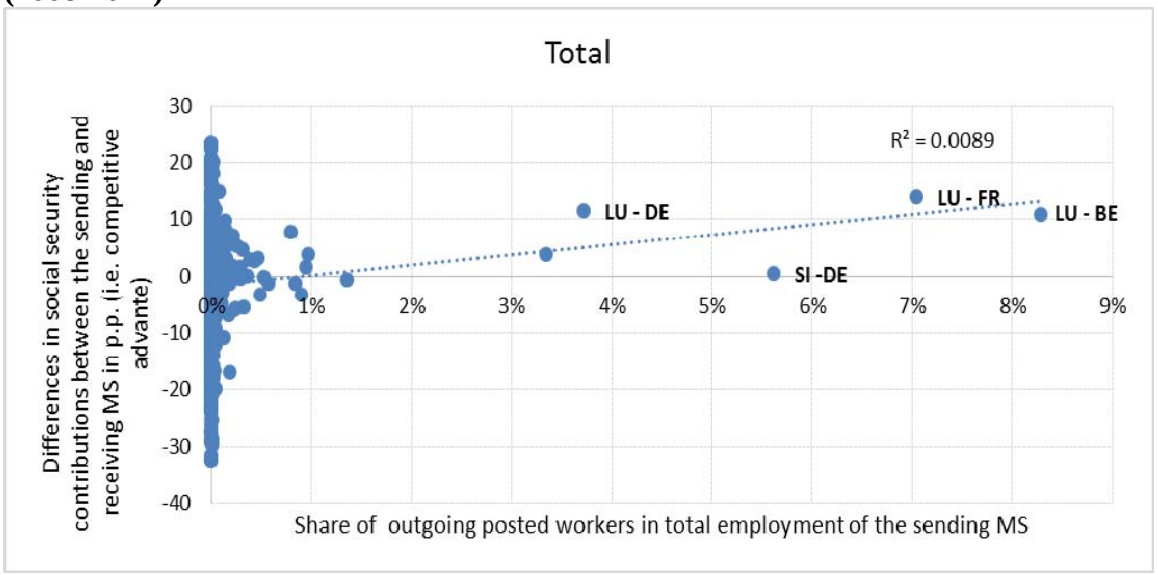
Source: Eurostat, Structural Business Statistics [sbs_is_subc_r2], EMPL calculation.
No data available for FR and PL.

Figure 11. Intensity of cross-border services on total turnover in the construction sector, 2014



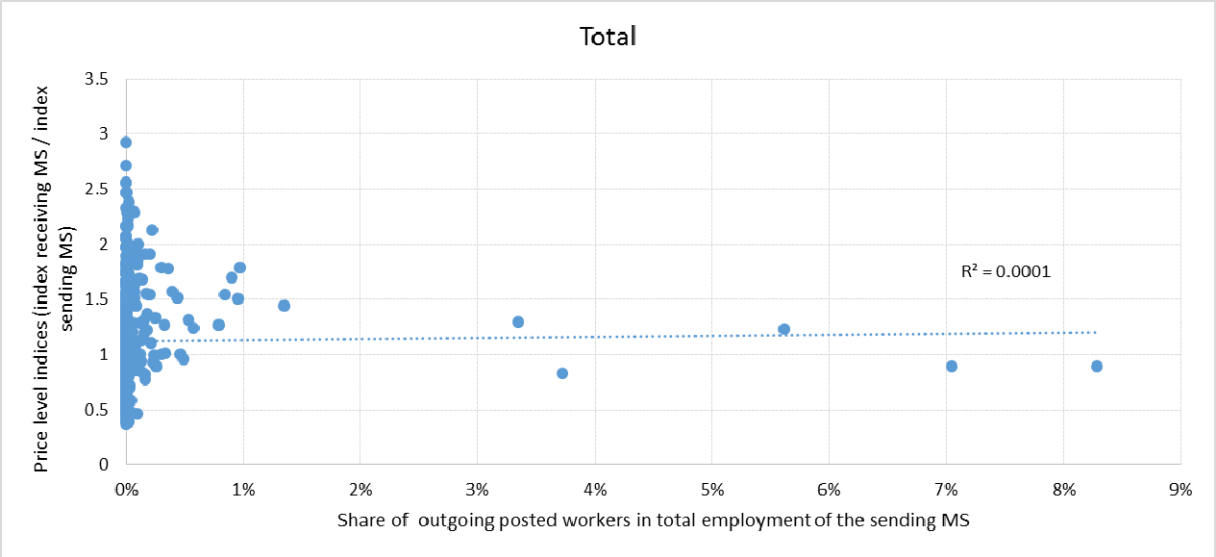
Source: EMPL calculations on Eurostat data.

Figure 12. Sent posted workers and differentials in social security contributions (2008-2014)



Source: Pacolet and De Wispelaere (2016) on Eurostat data

Figure 13. Sent posted workers and price differentials (2008-2014)



Source: Pacolet and De Wispelaere (2016)

Figure 14: Change in the share of received workers in total posted workers and GDP growth (2010-2013).

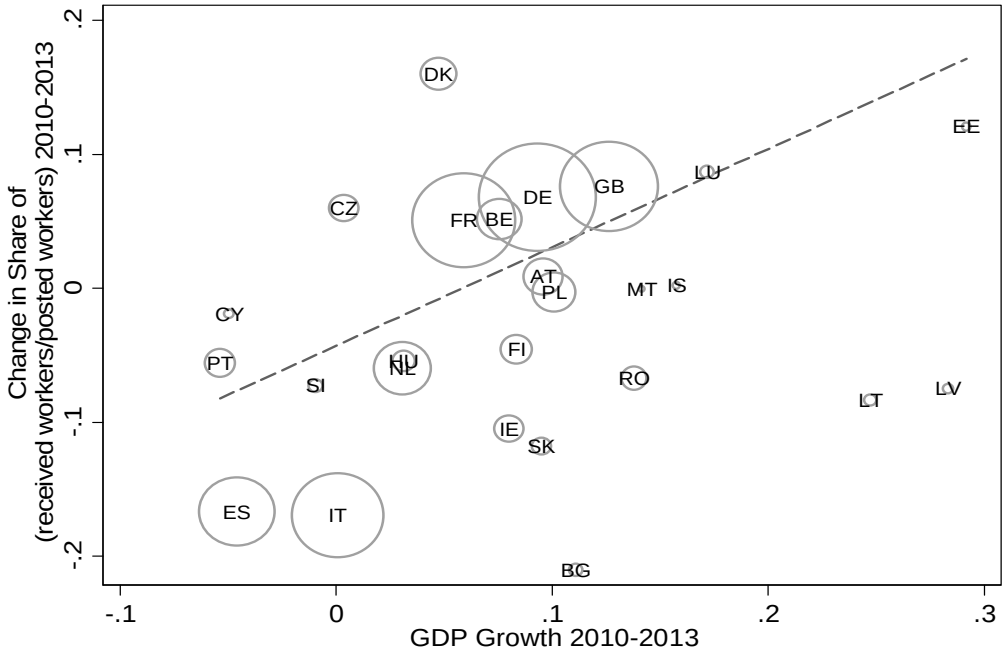
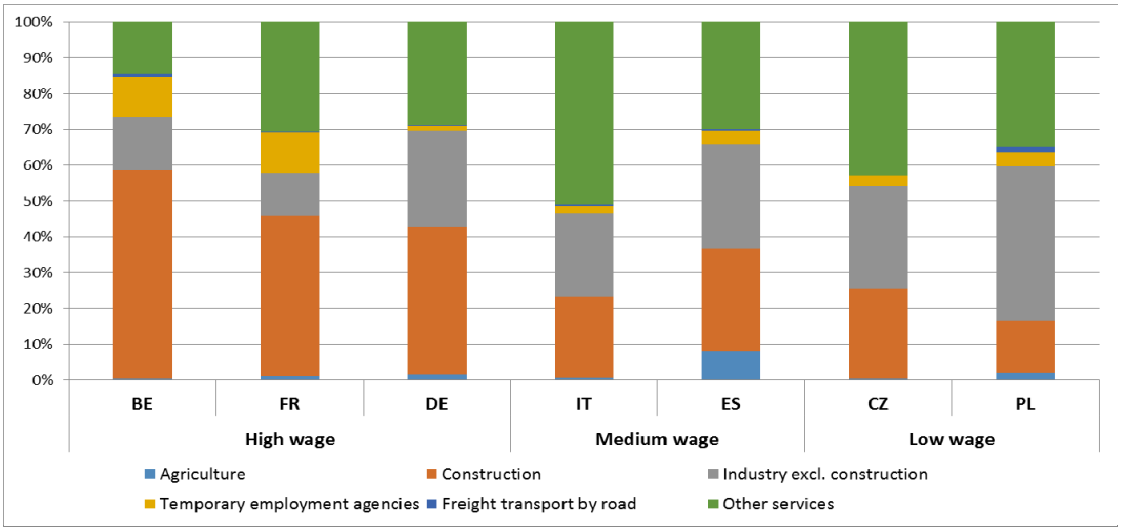
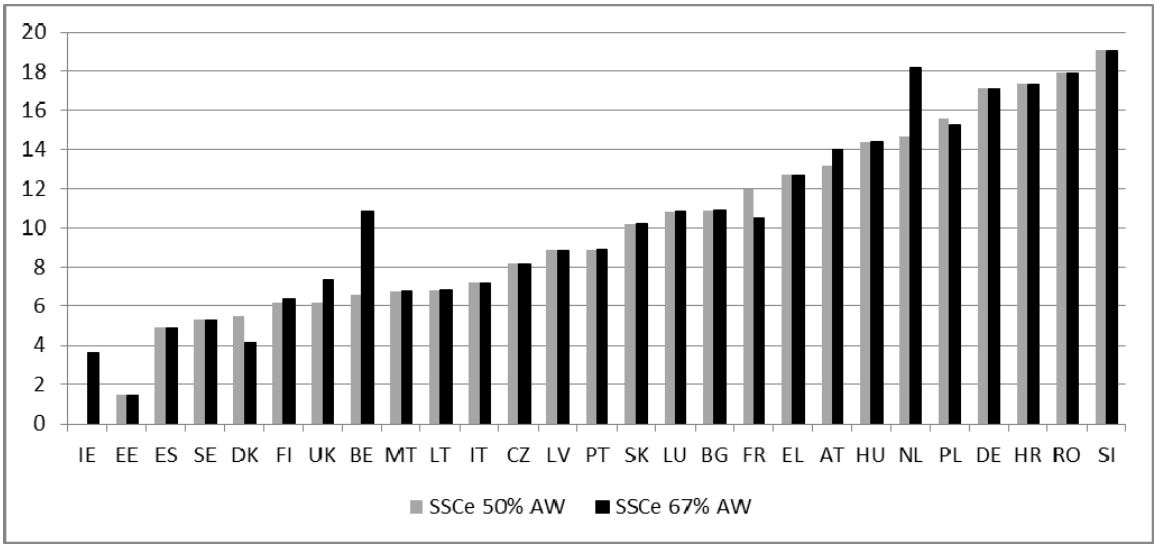


Figure 15. Posted workers received in 2014, breakdown by sector and selected group of countries



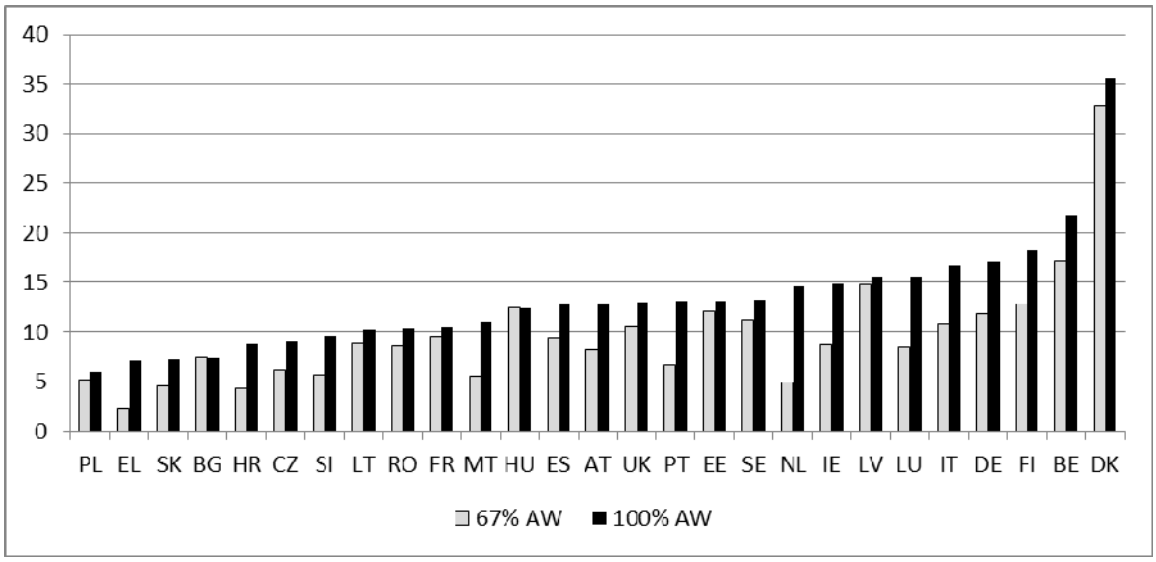
Source: EMPL calculation on Pacolet and De Wispelaere (2015)

Figure 16. Social contribution rates, paid by employees, EU 28, year 2014



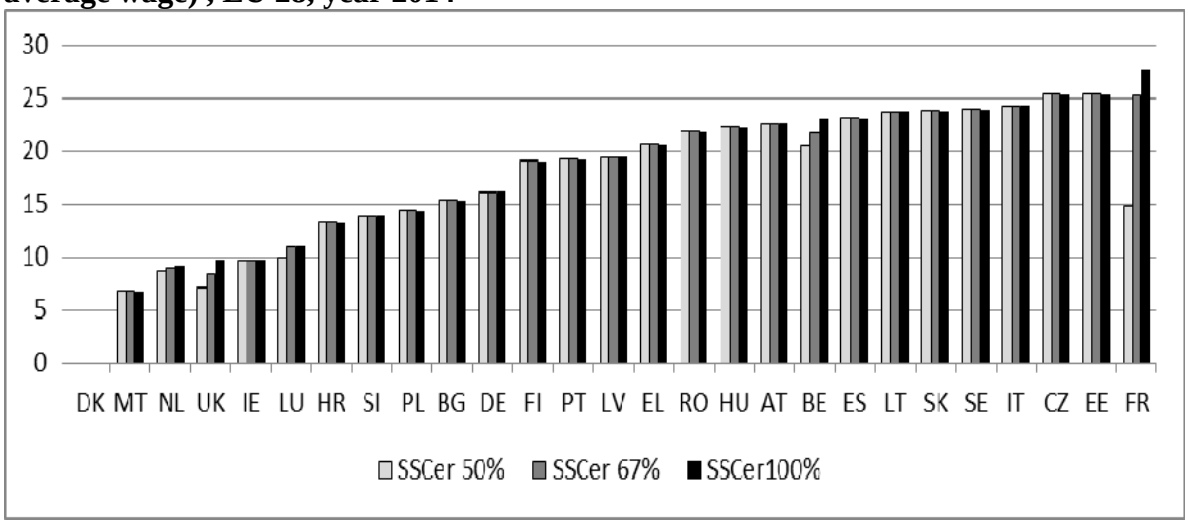
Source: OECD-EC tax benefit indicators**.** Note: data 2014; except BG, HR, LT, LV, MT, RO 2013 - CY no data

Figure 17. Personal income tax rates, at 67% and 100% of average wage (single person), 2014



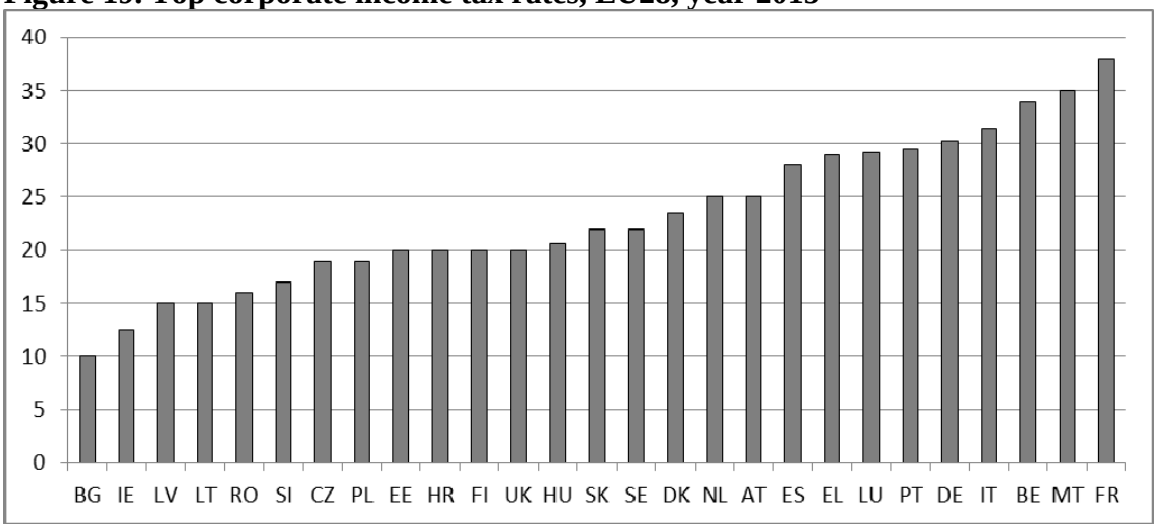
Source: OECD-EC tax benefit indicators. Note: data 2014.

Figure 18. Social contribution rates paid by employers (at 50/67/100% of the average wage) , EU 28, year 2014



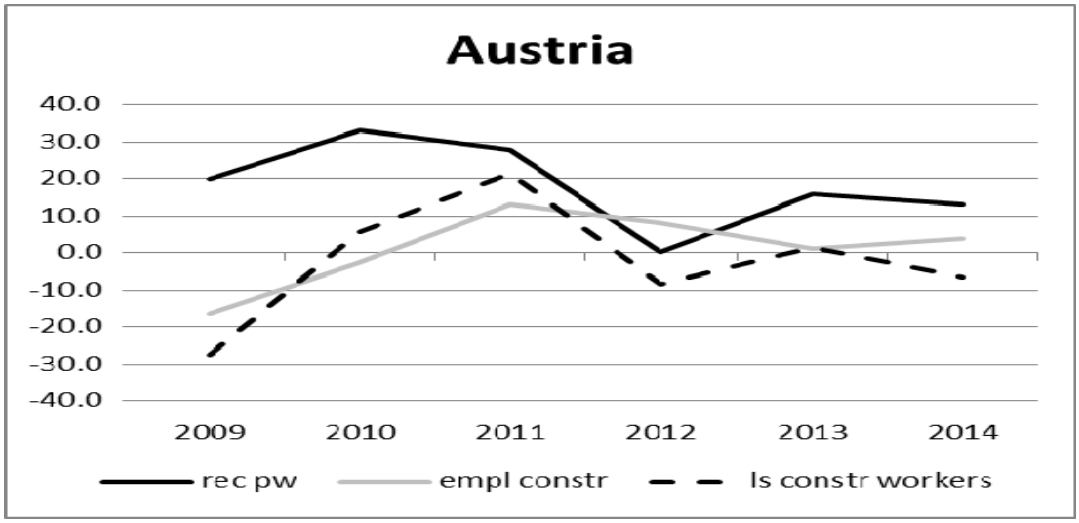
Source: OECD-EC tax benefit indicators. Note: SSCer (data 2014; except BG, HR, LT, LV, MT, RO 2013 - CY no data.

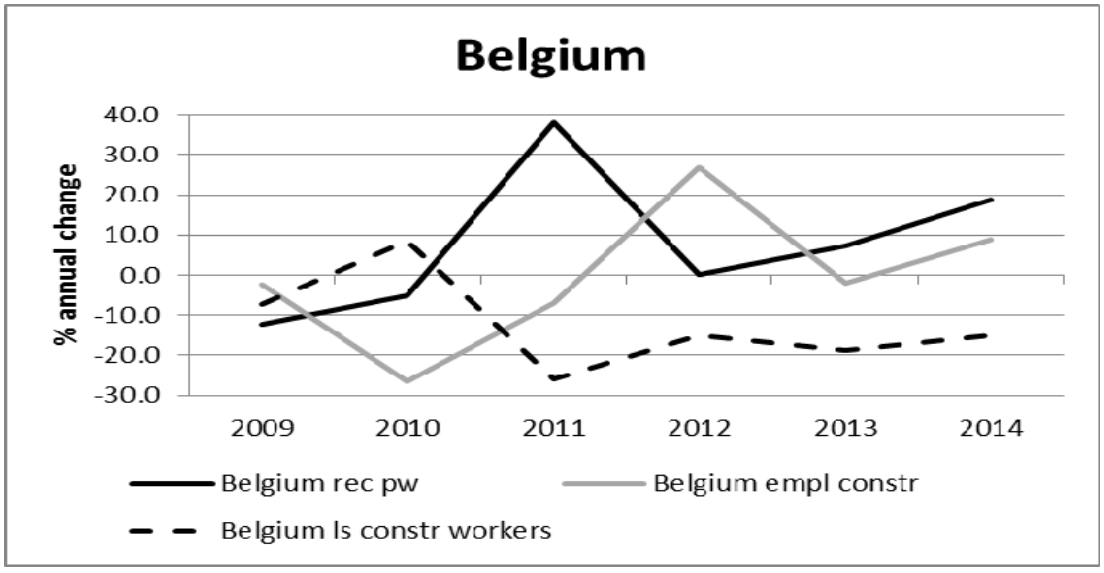
Figure 19. Top corporate income tax rates, EU28, year 2015

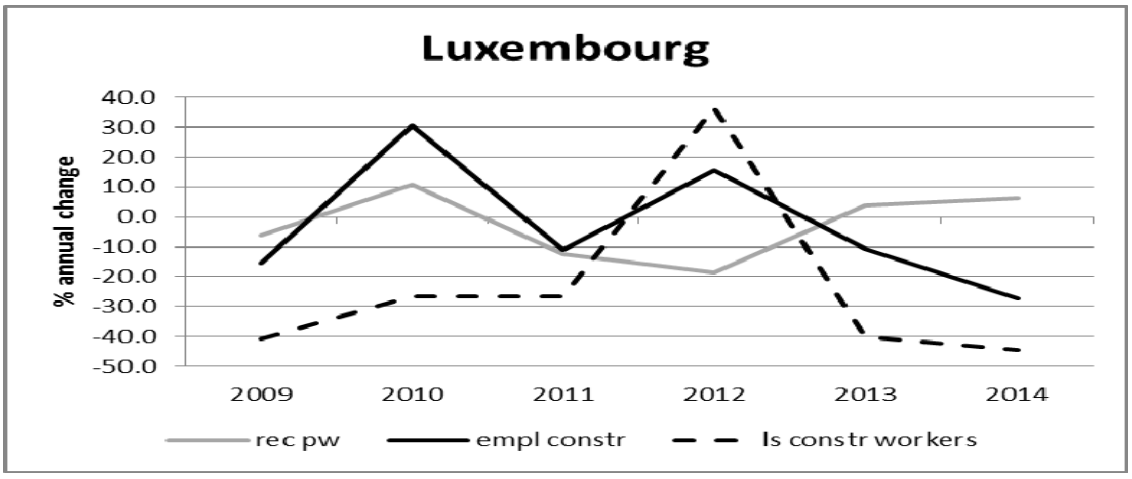


Source: European Commission, Tax Reforms in the Member States

Figure 20. Annual % changes in received posted workers, total construction sector employment, and low-skilled construction workers, AT, BE, LU (2008-2014)







Source: EMPL calculations on Eurostat data

ANNEX III. - OVERVIEW OF THE CASE LAW OF THE CJEU ON THE CONSTITUENT ELEMENTS OF MINIMUM RATES OF PAY

In the table below, the case law of the CJEU is summarized, distinguishing between the two perspectives:

1. **the host Member State perspective**: is the host Member State entitled or obliged to consider a certain element as being part of the notion of minimal rates of pay?

2. **the comparative perspective**: when assessing whether the amount effectively paid to the posted worker complies with the minimum rates of pay, must the Member State take into account a specific element as being part of the notion of minimal rates of pay?

In the first case, the elements in consideration are provided for by the law of the host Member State or by a collective agreement declared universally applicable. When the Court decides that this element is part of the notion of minimum rates of pay, this means that it needs to be part of the remuneration granted to the posted worker.

In the second case, the elements at stake are not foreseen in the law of the host Member State or in a collective agreement declared universally applicable, but they are effectively paid to the worker in accordance to the employment contract, the law of the Member State of establishment or a collective agreement binding to the undertaking posting the workers. When the Court decides that such an element must be taken into consideration as being part of the minimal rates of pay, the ruling has no impact on the constitutive elements of the host Member State, it only concerns the comparison between the amount paid to the worker and the amount that must be paid in accordance with the applicable rules of the host Member State.

Table 1: Are the elements below to be considered constituent elements of minimum rates of pay?

	Case	Host MS perspective	Comparative perspective	Reasoning of the CJEU
Bonuses in respect of the 13th and 14th month	Case C-341/02, §31	Not ruled yet	Yes, they are constituent elements of minimum rates of pay	On condition that they are paid regularly, proportionately, effectively and irrevocably during the period for which the worker is posted.
Quality bonuses	Case C-341/02, §39	Not ruled yet	No, they are not constituent elements of minimum rates of pay	Allowances and supplements which are not defined as being constituent elements of the minimum wage by the legislation or national practice of the host Member State, and which alter the relationship between the service provided by the worker, on the one hand, and the consideration which he receives in return, on the other, cannot be treated as being constituent elements of the minimum wage. It is entirely normal that, if an employer requires a worker to carry out additional work or to work under particular conditions, compensation must be provided to the worker for that additional service without its being taken into account for the purpose of calculating the minimum wage.
Bonuses for dirty, heavy or dangerous work	Case C-341/02, §39	Not ruled yet	No, they are not constituent elements of minimum rates of pay	Allowances and supplements which are not defined as being constituent elements of the minimum wage by the legislation or national practice of the host Member State, and which alter the relationship between the service provided by the worker, on the one hand, and the consideration which he receives in return, on the other, cannot be treated as being constituent elements of the minimum wage. It is entirely normal that, if an employer requires a worker to carry out additional work or to work under particular conditions, compensation must be provided to the worker for that additional service without its being taken into account for the purpose of calculating the minimum wage.
Lump sum payments determined in the context of the negotiation of a collective agreement	Case C‑522/12, §40-42	Depends on the intention of the parties to the collective agreement		Only the elements of remuneration which do not alter the relationship between the service provided by the worker, on the one hand, and the consideration that he receives in return, on the other, can be taken into account in determining the minimum wage within the meaning of Directive 96/71. It depends whether the parties to the collective wage agreement intended, in that way, to introduce an increase in wages in consideration of the work, during the negotiation of such a collective agreement, of anticipating, by those lump sum payments, the application of the new salary scale.
Capital formation contribution	Case C‑522/12, §43-45	No		The capital formation contribution seems, in view of its objective and its characteristics, to alter the relationship between the service provided by the worker and the consideration which he receives by way of remuneration for that service.

				Since its aim, by the formation of a capital amount that the worker will benefit from in the longer term, is to achieve an objective of social policy supported, in particular, by a financial contribution from the public authorities, it cannot be regarded, for the application of Directive 96/71, as forming part of the usual relationship between the work done and the financial consideration for that work from the employer.
Guaranteed pay for hourly work and/or piecework in accordance with the categorisation of employees into pay groups	C‑396/13, §40-45	Yes		The rules in force in the host Member State may determine whether the calculation of the minimum wage must be carried out on an hourly or a piecework basis. However, those rules must be binding and must meet the requirements of transparency, which means, in particular, that they must be accessible and clear. The minimum wage calculated by reference to the relevant collective agreements cannot be a matter of choice for an employer who posts employees with the sole aim of offering lower labour costs than those of local workers. The rules for categorising workers into pay groups, which are applied in the host Member State on the basis of various criteria including the workers' qualifications, training and experience and/or the nature of the work performed by them, apply instead of the rules that are applicable to the posted workers in the home Member State. It is only where a comparison is made between the terms and conditions of employment, referred to in the first subparagraph of Article 3(7) of Directive 96/71, applied in the home Member State and those in force in the host Member State that the categorisation made by the home Member State must be taken into account when it is more favourable to the worker.
Daily allowance	C‑396/13, §46-50	Yes		The allowance takes the form of a flat-rate daily payment. The allowance is not paid in reimbursement of expenditure actually incurred on account of the posting, as referred to in the second subparagraph of Article 3(7) of Directive 96/71. In fact, the allowance is intended to ensure the social protection of the workers concerned, making up for the disadvantages entailed by the posting as a result of the workers being removed from their usual environment. It follows that such an allowance must be classified as an 'allowance specific to the posting' within the meaning of the second subparagraph of Article 3(7) of Directive 96/71. That provision of the directive states that such an allowance is part of the minimum wage. Accordingly, the daily allowance at issue must be paid to posted workers such as those concerned in the main proceedings to the same extent as it is paid to local workers when they are posted within Finland.
Compensation for daily travelling time	C‑396/13, §53-57	Yes		The question raised does not concern compensation for the costs incurred by the workers concerned in travelling to and from their place of work but solely the question as to whether Article 3 of Directive 96/71 must be interpreted as meaning that compensation for daily

				travelling time is to be regarded as an element of those workers' minimum wage. According to the relevant provisions of the Finnish collective agreements, compensation for travelling time is paid to workers if their daily commute to and from work is of more than one hour's duration. Since such compensation for travelling time is not paid in reimbursement of expenditure actually incurred by the worker on account of the posting, it must, in accordance with the second subparagraph of Article 3(7) of Directive 96/71, be regarded as an allowance specific to the posting and thus be part of the minimum wage.
Coverage of the cost of accommodation	C‑396/13, §58-60	No		Even though the wording of Article 3(7) excludes only the reimbursement of expenditure on accommodation which has actually been incurred on account of the posting and the employer has defrayed the accommodation costs of the workers concerned without the latter having first to pay them and then seek to have them reimbursed, the method which the employer has chosen to cover such expenditure has no bearing on the legal classification thereof. The very purpose of Article 3(7) of Directive 96/71 does not permit expenditure connected with the posted workers' accommodation to be taken into account in the calculation of their minimum wage.
Meal vouchers	C‑396/13, §61-63		No	The Court observes that the provision of those vouchers is based neither on any law, regulation or administrative provision of the host Member State nor on the relevant collective agreements invoked by the *Sähköalojen ammattiliitto*, but derives from the employment relationship established in Poland between the posted workers and their employer. Furthermore, like the allowances paid to offset accommodation costs, these allowances are paid to compensate for living costs actually incurred by the workers on account of their posting. Accordingly, it is clear from the actual wording of paragraphs 1 and 7 of Article 3 of Directive 96/71 that the allowances concerned are not to be considered part of the minimum wage within the meaning of Article 3 of the directive.
Holiday pay	C‑396/13, §64-69	All workers entitled because of EU law	Not ruled yet	As regards payment in respect of holidays, it must be recalled at the outset that, under Article 31(2) of the Charter, every worker has the right to an annual period of paid leave. That right, which is set out in Article 7 of Directive 2003/88/EC from which that directive permits no derogation, provides that every worker is entitled to a period of paid annual leave of at least four weeks. The right to paid annual leave which, according to settled case-law, must be regarded as a particularly important principle of EU social law, is thus granted to every worker, whatever his place of employment. The Court's case-law also makes clear that the term 'paid annual leave' in Article 31 of the Charter and Article 7(1) of Directive 2003/88 means that, for the duration of annual leave within the meaning of those provisions, remuneration must be maintained and that, in

				other words, workers must receive their normal remuneration for that period of rest. According to that case-law, Directive 2003/88 treats entitlement to annual leave and to a payment on that account as being two aspects of a single right. The purpose of requiring payment to be made in respect of that leave is to put the worker, during such leave, in a position which is, as regards his salary, comparable to periods of work. Thus, the pay which the worker receives during the holidays is intrinsically linked to that which he receives in return for his services. Accordingly, Article 3 of Directive 96/71, read in the light of Articles 56 TFEU and 57 TFEU, must be interpreted as meaning that the minimum pay which the worker must receive, in accordance with point (b) of the second indent of Article 3(1) of the directive, for the minimum paid annual holidays corresponds to the minimum wage to which that worker is entitled during the reference period.

ANNEX IV

ILLUSTRATIVE SIMULATIONS OF THE IMPACT OF EQUAL PAY ON *LABOUR COSTS* FOR EMPLOYERS AND *AFTER-TAX INCOME* FOR WORKERS IN SITUATION OF POSTING

The following analysis simulates the impact of differentials in social security contributions and corporate and personal income tax rates between sending and receiving Member States on labour costs for firms and after-tax income for posted.

This simulation has only an illustrative value and neither does it correspond to the desired outcome of the proposed options nor aims at fully representing the reality of posting. 'Equal Pay' is therefore a fictitious scenario. It is used to illustrate the most extreme change but does not represent the outcome of the proposed revision which should instead fall between the 'status quo' and the 'equal pay' levels, depending on the applicable collective agreement, as well as other contingent characteristics such as firm size, worker's skill, seniority, and job position. Absent any systematic data collection, this simulation constitutes a useful proxy in order to better understand the role of the *home country rule* enshrined in Regulation 883/2004 on the coordination of social security systems as regards the payment of social security charges and taxes on posting of workers.

Methodological remarks

To construct the simulation, the three main receiving countries were taken as an example (BE, DE, FR). Sending countries were selected on the basis of differentials both in home wage standards, including one high-wage (NL), one medium-wage (PT) and two low-wage Member States (RO, PL), and in levels of labour and income taxation.

The exercise is developed on the basis of the wage of a low-skill manual worker in the representative construction sector. The reference wage is taken from the Eurostat Earnings Survey 2010 (latest data available) which provides data on wages per occupation and sector, inter alia. The EC-OECD tax-benefit database is the source for social security rates and income taxes.

The simulation analyses the status quo and three scenarios of change:

Status quo: foreign company paying / posted worker receiving the minimum pay set by the sectorial collective agreement of the *host* country, and social security contributions in the *home* country.

Scenario 1: foreign company paying / posted worker being paid the average wage of the sector in the *host* country, and social security contributions in the *home* country on the basis of the full wage of the host country

Scenario 2: foreign company paying / posted worker being paid the average sectorial wage of the host country, and social security contributions on the same basis as Scenario 1, as well as corporate / personal income tax in the home country

To simulate the minimum rates of pay received by posted construction workers in the status quo, the exercise takes the monthly salary level of the lowest-skilled occupation in the receiving countries, that is, elementary worker. The assumption is that under the status quo, employers will tend to pay posted workers with the minimum contractual level, regardless of the actual skill level of the posted worker.

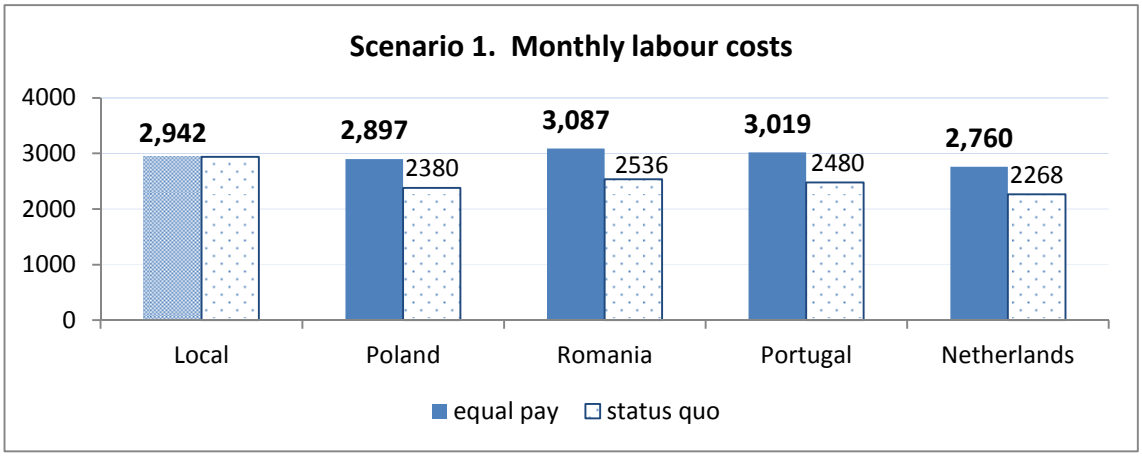
To simulate the scenario involving income taxation, the exercise assumes a company / worker posted / being posted to another Member State for a period of six months, that being the only source of profit / work revenue in the corresponding year. The company is assumed to employ 10 manual workers for 6 months and to pay corporate tax on the basis of a EUR 500,000 yearly turnout.

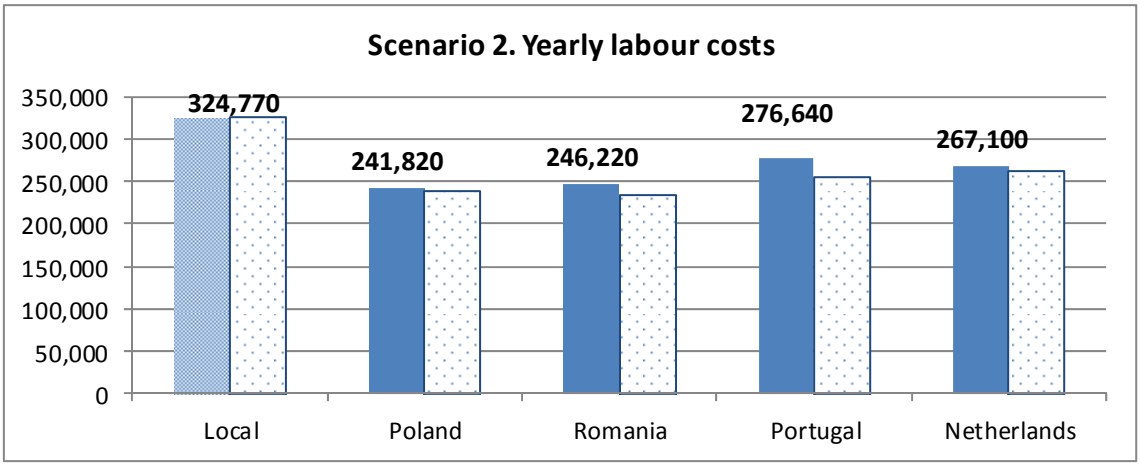
Data

Country	**Average wage manual [elementary] worker, constructions (EUR, 2010)**	**Social security employer (100 % AW)**	**Social security employee (100% AW)**	**Corporate income tax (% turnout)**	**Personal income tax (100% average wage)**
Receiving countries					
Germany	2,533 [2,081]	16.16	17.12	29.65	16.03
Belgium	2,615 [2,615]	22.96	10.79	33.99	21.83
France	1,714 [1,388]	27.69	10.16	33.33	10.59
Sending countries					
Poland	613	14.37	15.26	19	5.96
Romania	324	21.88	9.77	16	10.45
Portugal	773	19.19	8.89	21	13.14
Netherlands	3,082	8.97	13.9	25	14.58

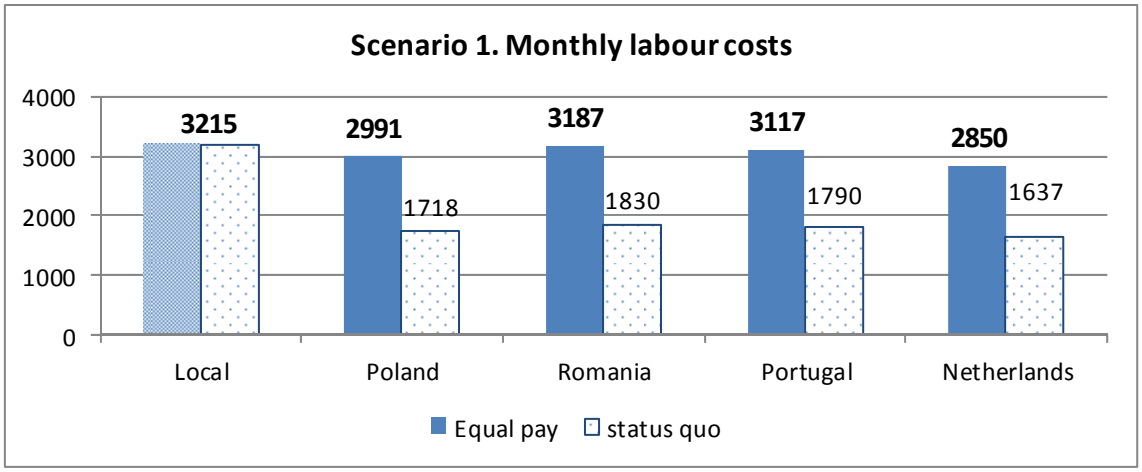
SIMULATION 1 – Labour costs for posting and local employers

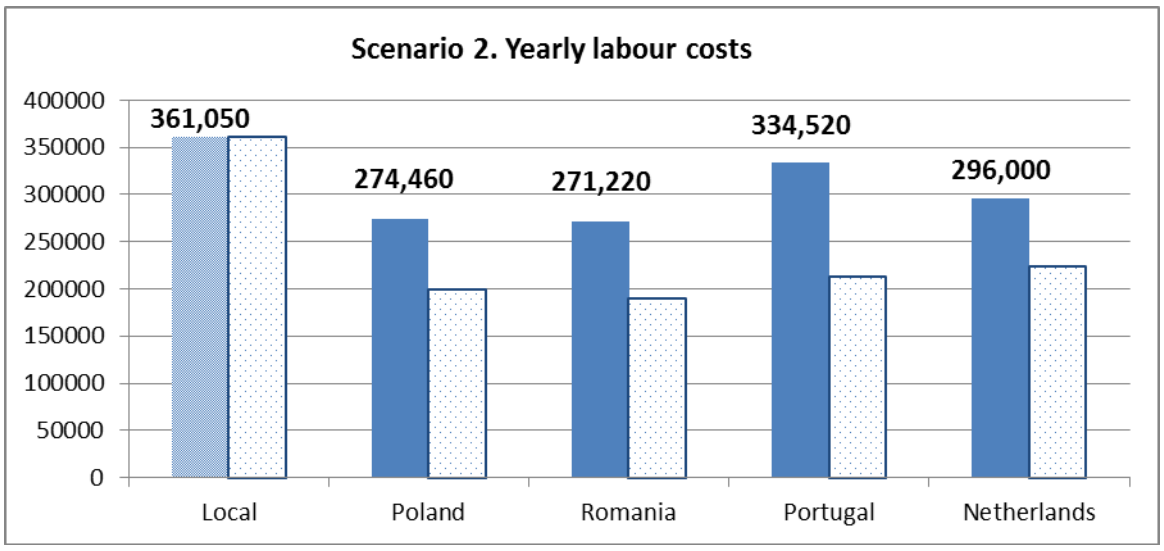
Germany



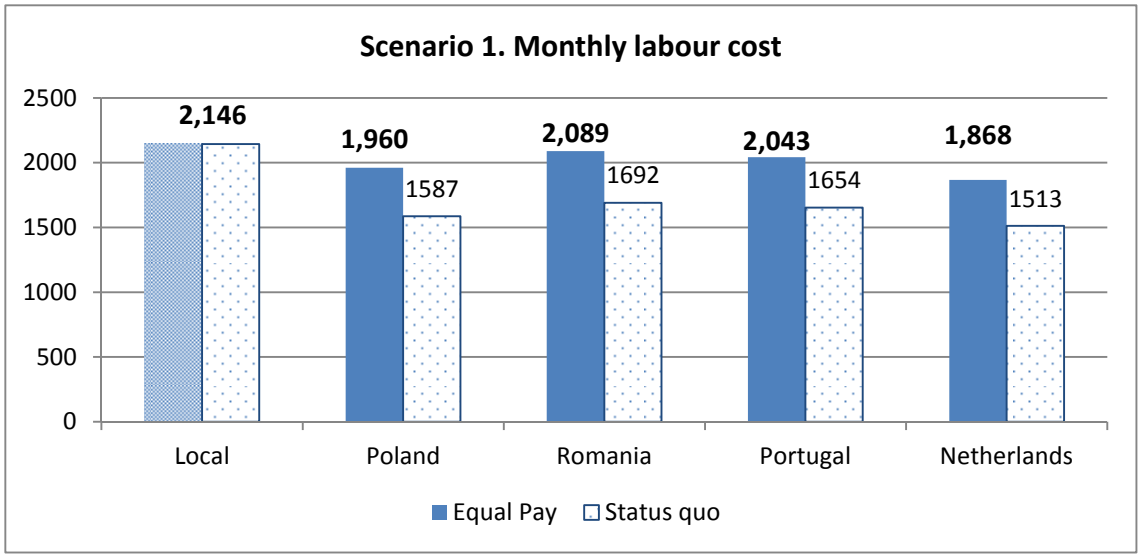


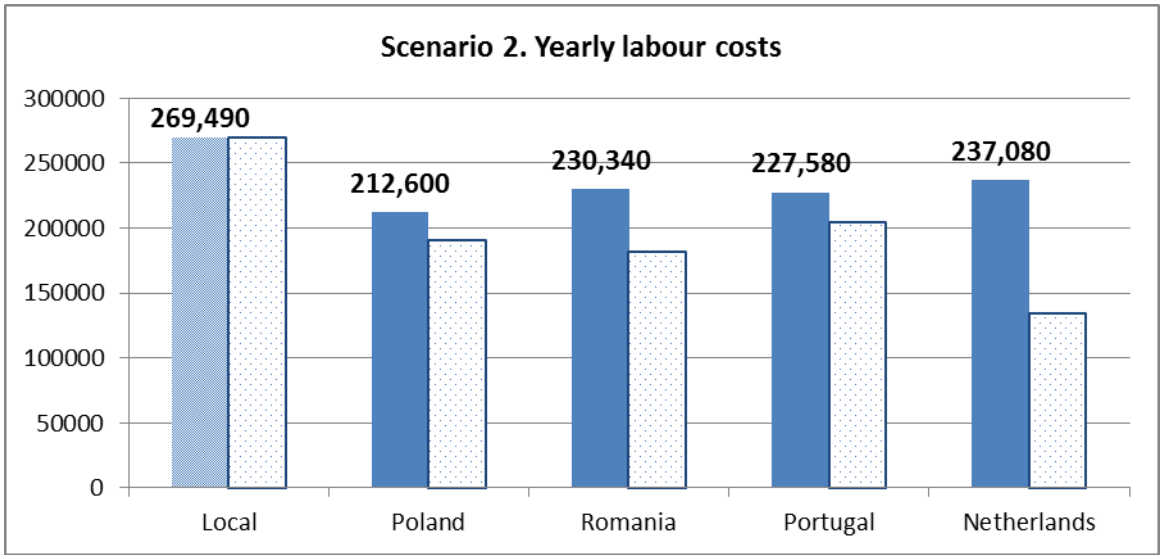
Belgium


Scenario 1. Monthly labour costs
4000
3000
2000
1000
0
3215
2991
1718
3187
1830
3117
1790
2850
1637
Local
Poland
Romania
Portugal
Netherlands
Equal pay
status quo


Scenario 2. Yearly labour costs
400000
350000
300000
250000
200000
150000
100000
50000
0
361,050
274,460
271,220
334,520
296,000
Local
Poland
Romania
Portugal
Netherlands

France


Scenario 1. Monthly labour cost
2500
2000
1500
1000
500
0
2,146
1,960
1587
2,089
1692
2,043
1654
1,868
1513
Local
Poland
Romania
Portugal
Netherlands
Equal Pay
Status quo


Scenario 2. Yearly labour costs
300000
250000
200000
150000
100000
50000
0
269,490
212,600
230,340
227,580
237,080
Local
Poland
Romania
Portugal
Netherlands

Comments

The simulation of the ***status quo*** depicts part of the baseline scenario in the receiving Member States. Social security contribution levels paid by employers in the selected sending countries are in all cases lower than in the receiving countries. Since social security charges are paid on lower wage levels, the total labour cost are substantially lower (up to 80% in the case of Polish workers in Belgium) than in the receiving countries.

The case of the Netherlands is telling of the role of taxation in determining labour cost competitiveness. While nominal wage costs are higher in the home country than in all other receiving countries, the low social security contribution rate (one third of the French one) results in lower total labour costs of posted workers from the Netherlands.

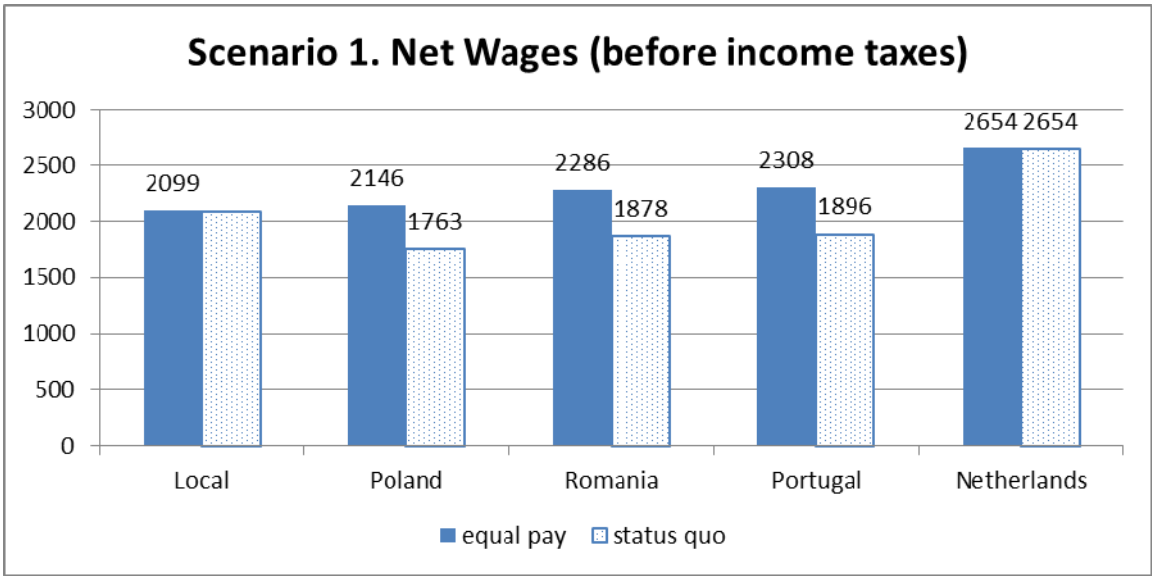
Scenario 1 shows that differentials in social security charges have a similar effect if equal pay is simulated, i.e. if posted workers are paid the same rate as local workers, but where differentials are lower (e.g. between Romania and Belgium or France) the gap in labour costs substantially narrows. However, the case of Germany shows that if the social security charges of the recipient Member State are lower than those of sending countries, the labour cost competitiveness of posted workers from low-wage countries is eliminated.

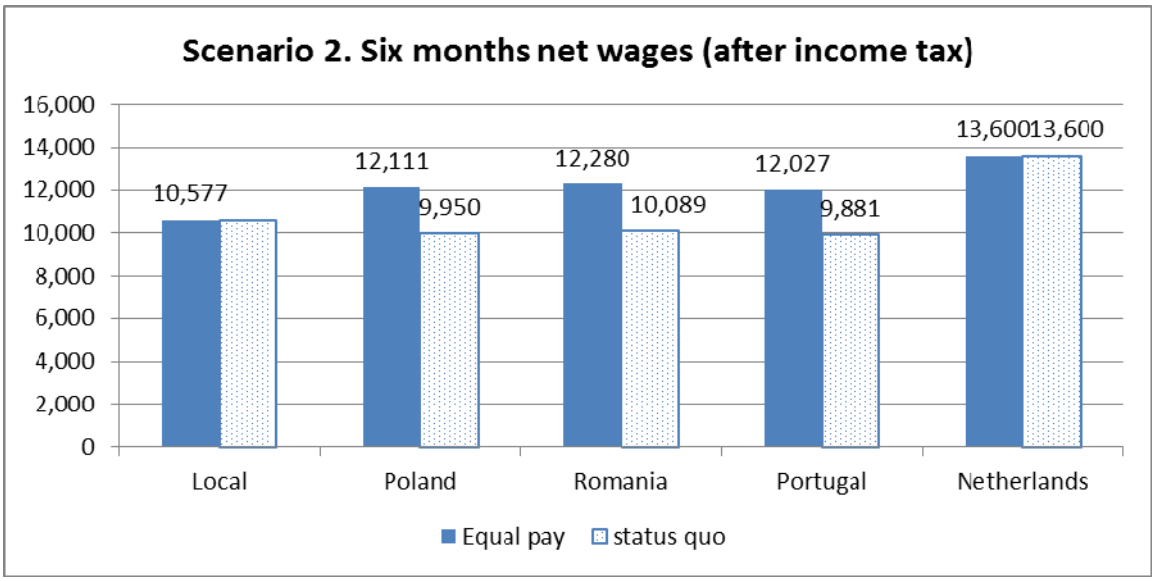
Scenario 2 shows that lower corporate income tax rates in all sending Member States vis-à-vis receiving countries may contribute to the overall *fiscal premium* of tax regulations in a situation of posting, even in a situation of equal pay. In that scenario, the cost gap is reduced with respect to the status quo but sending companies seem to have more leverage to compress costs than local firms, including if provisions established an equal pay rule. Clearly, the present simulation depicts a very simplified fiscal framework and should be understood only as an indicative sign of potential cost gaps.

In practice, labour costs for posted worker are increased by supplementary allowances specific to posting, whereas the non-application of a number of allowances granted to local workers may contribute to lower nominal wages for posted workers. The simulation has provided a tool to visually understand the implications of current and possible rules on the economic drivers of posting.

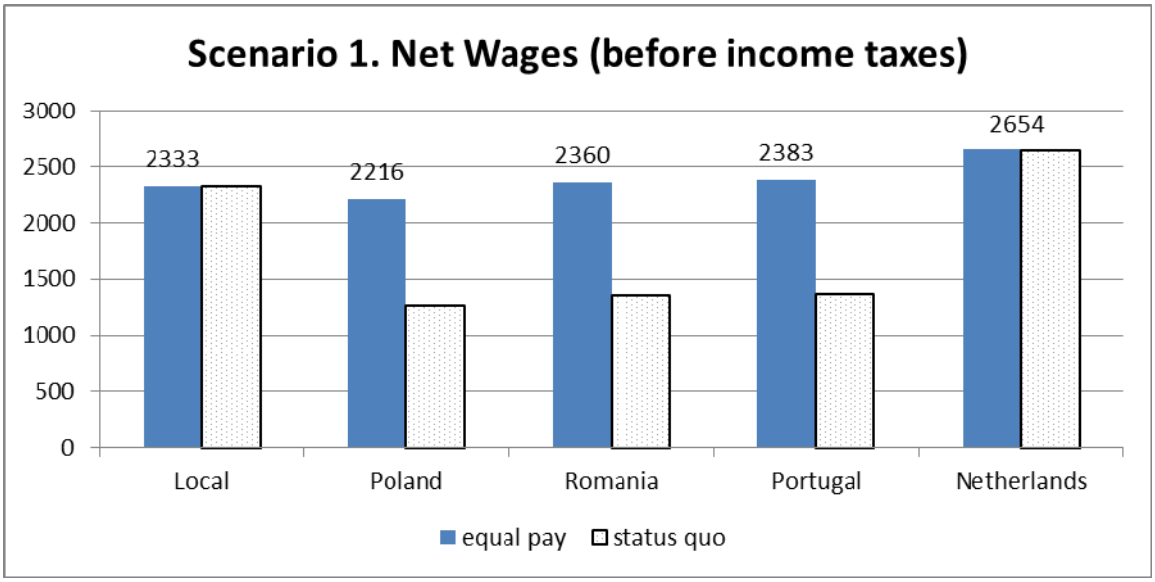
SIMULATION 2 – after-income earning of posted and local workers

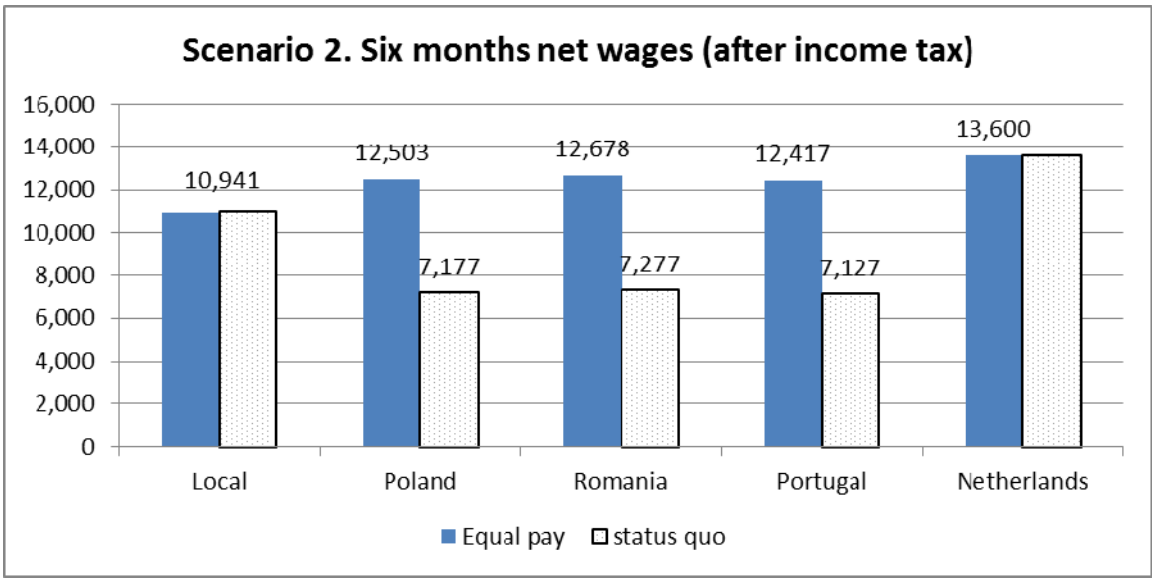
Germany



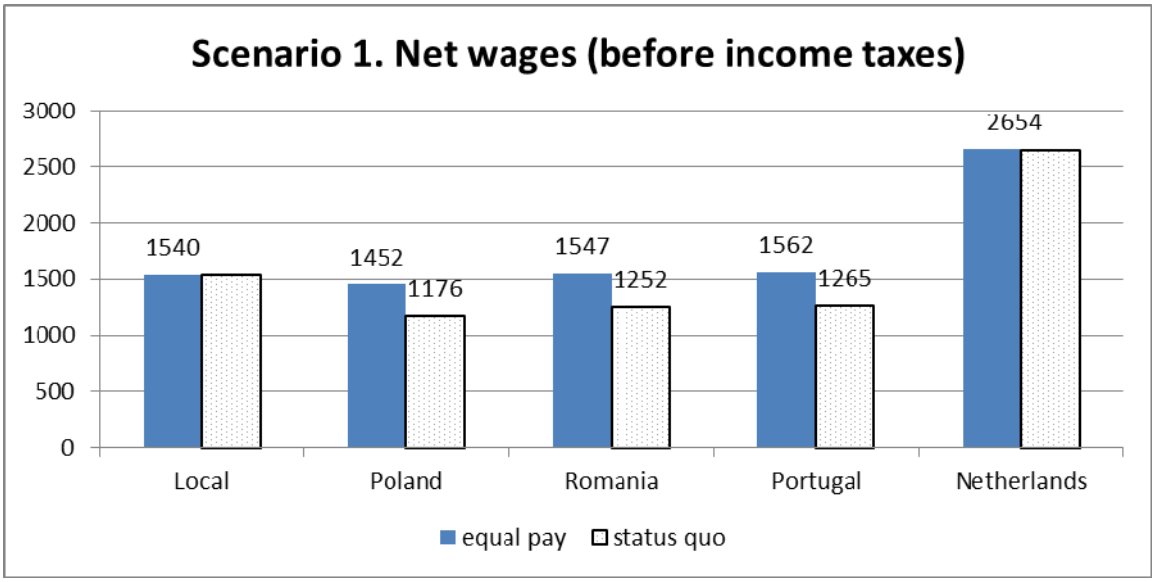


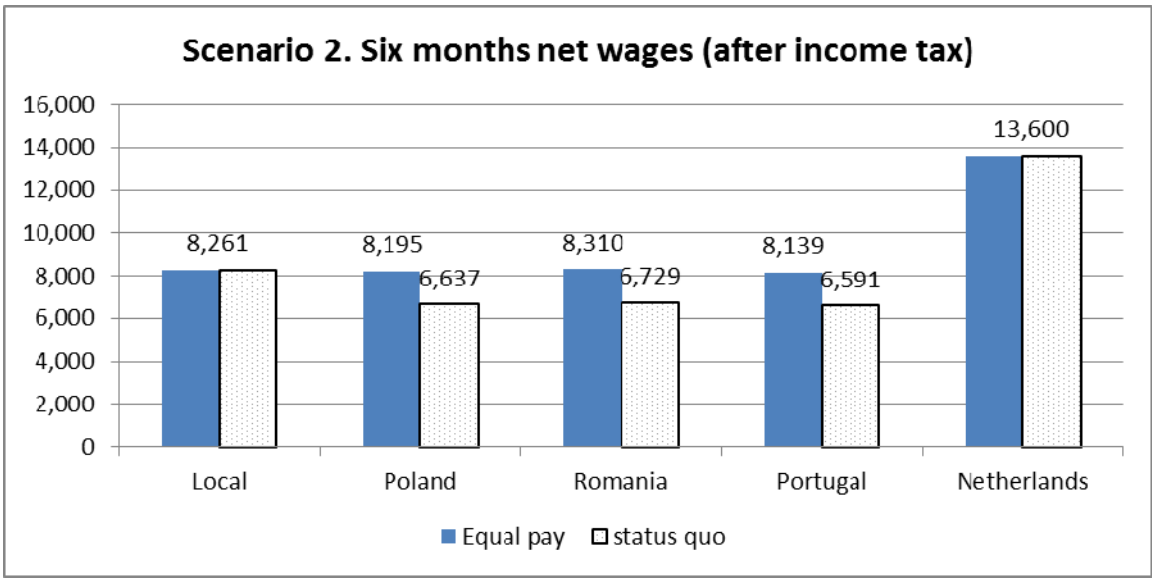
Belgium


Scenario 1. Net Wages (before income taxes)
3000
2500
2000
1500
1000
500
0
2333
2216
2360
2383
2654
Local
Poland
Romania
Portugal
Netherlands
equal pay
status quo


Scenario 2. Six months net wages (after income tax)
16,000
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
10,941
12,503
7,177
12,678
7,277
12,417
7,127
13,600
Local
Poland
Romania
Portugal
Netherlands
Equal pay
status quo

France


Scenario 1. Net wages (before income taxes)
3000
2500
2000
1500
1000
500
0
1540
1452
1176
1547
1252
1562
1265
2654
Local
Poland
Romania
Portugal
Netherlands
equal pay
status quo


Scenario 2. Six months net wages (after income tax)
16,000
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
8,261
8,195
6,637
8,310
6,729
8,139
6,591
13,600
Local
Poland
Romania
Portugal
Netherlands
Equal pay
status quo

Comments

This simulation analyses the impact of social security contributions paid by employees and personal income taxes on the potential take-home pay of posted workers vis-à-vis local workers.

In the case of employees, patterns in levels of social security contributions are less clear-cut as in the case of employers. Social security rates are higher in Poland and in the Netherlands than in Belgium and France, therefore net pay should be lower, nominal wages being equal. However, it is true that personal income taxes (here considered on a single person earning 100% the average wage) are generally lower in most sending countries than in the receiving countries, with the Polish rate being one third of the French rate). Despite some exceptions, income tax differentials may contribute to higher take-home pay for posted workers than local workers, pay being equal.

This situation is reflected in the scenario construed by the simulation.

In the ***status quo***, lower nominal wages result in lower net pay of posted workers all across the board. However, the role of tax differentials emerges in the equal ***pay scenario 1***. For instance, the lower social charges in Portugal than in Belgium produces that the take-home pay of workers posted from Portugal is higher than that of Belgian workers, nominal wages being equal. Instead, Romanian posted workers will receive a lower take-home pay than Belgians with the same wage because of higher social security contributions in Romania.

In **scenario 2**, the low tax differentials between France and most of the origin countries of posted workers results in a slightly better situation of local workers than posted workers, whereas in high-tax Belgium local workers remain significantly worse off than posted workers from Poland, Romania and Portugal.

ANNEX V. - COMPOSITION OF REMUNERATION

Element of wage	Is considered part of the minimum rates of pay	Is NOT considered part of the minimum rates of pay	EC case law: are to be considered as minimum rates of pay is present in the host MS	EC case law: must be accepted as being part of minimum rates of pay if effectively paid to posted workers
Seniority allowance	BE, DE, EL, AT, FR*, LU*, PL, SI, IT	BG, CY, EE, FR**, HU, IE, LT, LU**, LV, SK, UK, MT, CZ, NL		
Allowances and supplements for dirty, heavy or dangerous work	BE, EE, EL, ES, AT, FR*, LU**, PL, SI, IT	BG, CY, DE, FR**, HU, IE, LT, LU**, LV, SK, MT, CZ and NL		
Quality bonuses	BE, EE, ES, FR LU*, PL and SI	AT, BG, CY, DE, EL, HU, IE, IT, LT, LU**, LV, SK,UK MT, CZ and NL		No
13th month bonuses (Christmas allowances)	BE, EL, ES, AT, FR*, IT, LU and PL	BG, CY, DE, EE, FR**, HU, IE, LT, LU**, LV, SI, SK, UK, MT, CZ and NL		Yes
Travel expenses	SI	BE, CY, CZ, DE, EE, ES, FR, HU, IE, IT, LT, LV, NL, PL, SK, UK, EL and AT		
Lump sum payments determined in collective agreement			Yes, if the intention is to increase the wages	
Categorisation of employees into pay groups			Yes.	
Daily allowance to compensate for posting			Yes	
Compensation for daily travelling time			Yes	
Holiday pay longer than 4 weeks			Yes	
Meal vouchers				No

Notes:

* In collective agreements.

** In national law

ANNEX VI. - IMPACT OF THE REVISED DIRECTIVE ON REMUNERATION

	Option 3		Option 4a	Option 4b	Option 4c	Option 4d
	Equal rules on pay (elements to be added)	**Sectoral extension**	**Long-term**	**Sub-contracting**	**Temp agency work**	**Intra-corporate**
AT	Quality bonuses	Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since AT usually makes CA universally applicable.	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent less than 1% of posted workers.	For all MS, legislative changes will be required. There are no reliable figures on the number intra-corporate posting, but it seems to represent only a marginal proportion of posted workers.
BE		Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact	No impact: equal treatment between local and cross-border temporary agent workers already in place.	

				limited since BE usually makes CA universally applicable.		
BG		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since only around 30% of workers are covered by CA and workers posted to BG are likely to benefit from more favourable conditions in the home MS.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
CY		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years,	Legislative required only if MS decides to avail itself of this faculty. Impact depends on	Legislative changes required to implement the principle of equal treatment with national	

			including on remuneration.	whether the main contractor is bound by a non-universally applicable CA. Impact limited. Around 50% of workers are covered by CA and a large proportion of workers posted to CY could benefit from more favourable conditions in the home MS.	temporary agency workers. Impact limited since TAW represent around 6% of a low number of posted workers.	
CZ		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since only around 38% of workers are covered by CA and	No impact: equal treatment between local and cross-border temporary agent workers already in place.	

				workers posted to CZ are likely to benefit from more favourable conditions in the home MS.		
DE	Allowance for dirty or dangerous work; Quality bonuses	Currently, only 14 sectors.	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. With around 60% of workers covered by CA and universally applicable CA only in some sectors, the impact could be significant.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
DK		No impact since DK has no mechanism to make CA universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2	Legislative required only if MS decides to avail itself of this faculty. Impact	No impact: equal treatment between local and cross-border temporary agent	

			years, including on remuneration.	depends on whether the main contractor is bound by a non-universally applicable CA. With around 80% of workers covered by CA and no universally applicable CA, the impact could be significant.	workers already in place.	
EE		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since only around 33% of workers are covered by CA and workers posted to EE are likely to benefit from more	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent around 1% of a low number of posted workers.	

				favourable conditions in the home MS.		
EL	Quality bonuses	Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since EL usually makes CA universally applicable.	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent around 4% of a low number of posted workers.	
ES		Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since ES usually	No impact: equal treatment between local and cross-border temporary agent workers already in place.	

				makes CA universally applicable.		
FI	No information	Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. With around 90% of workers covered by CA and only a few universally applicable CA, the impact could be significant.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
FR		Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable	No impact: equal treatment between local and cross-border temporary agent workers already in place.	

				CA. Impact limited since FR usually makes CA universally applicable.		
HR		-	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
HU		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since only around 33% of workers are covered by	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent less than 2% of a low number of posted workers.	

				CA and workers posted to HU are likely to benefit from more favourable conditions in the home MS.		
IE	Seniority allowances; Quality bonuses; 13th month allowance	Currently only 7 sectors	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Some impact. Around 40% of workers are covered by CA and CA at the level of the undertaking are common.	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent around 4% of a low number of posted workers.	
IT	Quality bonuses	Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years,	Legislative required only if MS decides to avail itself of this faculty. Impact depends on	No impact: equal treatment between local and cross-border temporary agent workers	

			including on remuneration.	whether the main contractor is bound by a non-universally applicable CA. Impact limited since IT usually makes CA universally applicable.	already in place.	
LT		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since only around 15% of workers are covered by CA and workers posted to LT are likely to benefit from more favourable conditions in the home MS.		

LU		Currently only 9 sectors	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. With around 50% of workers covered by CA and universally applicable CA only in some sectors, the impact could be significant.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
LV		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent less than 2% of a	

				limited since only around 30% of workers are covered by CA and workers posted to LV are likely to benefit from more favourable conditions in the home MS.	low number of posted workers.	
MT		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Some impact. Around 60% of workers are covered by CA and CA at the level of the undertaking are common.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
NL	Seniority allowances; Allowance for dirty or dangerous	Already implemented, no impact	Legislative change required. National labour law	Legislative required only if MS decides to avail itself	No impact: equal treatment between local and	

	work; Quality bonuses;13th month allowance		will apply to workers posted for more than 2 years, including on remuneration.	of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since NL usually makes CA universally applicable.	cross-border temporary agent workers already in place.	
PL		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Limited impact. Around 25% of workers are covered by CA. Although CA at the level of the undertaking are common, workers		

				posted to PL are likely to benefit from more favourable conditions in the home MS.		
PT	No information	Already implemented, no impact	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since IT usually makes CA universally applicable.	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Some impact since TAW represent around 12% of workers posted to PT.	
RO		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable	No impact: equal treatment between local and cross-border temporary agent workers already in place.	

				CA. Impact limited since only around 35% of workers are covered by CA and workers posted to RO are likely to benefit from more favourable conditions in the home MS.		
SE		No impact since SE has no mechanism to make CA universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. With around 90% of workers covered by CA and no universally applicable CA, the impact could be significant.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	
SI		Legal change required,	Legislative change	Legislative required		

		impact dependent on the number and content of CA made universally applicable	required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since IT usually makes CA universally applicable.		
SK		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Impact limited since only around 35% of workers are covered by CA and workers posted to SK are	Legislative changes required to implement the principle of equal treatment with national temporary agency workers. Impact limited since TAW represent around 1% of a low number of posted workers.	

				likely to benefit from more favourable conditions in the home MS.		
UK		Legal change required, impact dependent on the number and content of CA made universally applicable	Legislative change required. National labour law will apply to workers posted for more than 2 years, including on remuneration.	Legislative required only if MS decides to avail itself of this faculty. Impact depends on whether the main contractor is bound by a non-universally applicable CA. Some impact. Around 30% of workers are covered by CA and CA at the level of the undertaking are common.	No impact: equal treatment between local and cross-border temporary agent workers already in place.	

COMMISSION
EUROPÉENNE

Strasbourg, le 8.3.2016
SWD(2016) 53 final

DOCUMENT DE TRAVAIL DES SERVICES DE LA COMMISSION

RÉSUMÉ DE L'ANALYSE D'IMPACT

accompagnant le document:

Proposition de directive du Parlement européen et du Conseil

modifiant la directive 96/71/CE du Parlement européen et du Conseil du 16 décembre 1996 concernant le détachement de travailleurs effectué dans le cadre d'une prestation de services

{COM(2016) 128 final}
{SWD(2016) 52 final}

Résumé de l'analyse d'impact

Analyse d'impact relative à la proposition de directive modifiant la directive 96/71/CE concernant le détachement de travailleurs effectué dans le cadre d'une prestation de services

A. Nécessité d'une action

Pourquoi? Quel est le problème abordé?

Le détachement a concerné 1,9 million de travailleurs européens en 2014. Bien qu'il ne représente que 0,7 % du nombre total d'emplois dans l'Union, le détachement de travailleurs favorise la prestation transfrontière de services au sein du marché intérieur, en particulier dans le secteur de la construction et dans certains secteurs de services à la personne et aux entreprises. Les règles actuelles prévoient que les entreprises détachant des travailleurs doivent respecter un noyau dur de droits en vigueur dans le pays d'accueil, dont les taux de salaire *minimal*. Cette disposition entraîne, entre les travailleurs détachés et les travailleurs locaux dans les pays d'accueil, des écarts salariaux considérables variant, d'après les estimations, entre 10 et 50 % selon les pays et les secteurs. Les règles salariales disparates faussent la concurrence entre les entreprises, car elles confèrent à celles qui détachent des travailleurs un avantage sur celles de l'État membre d'accueil en ce qui concerne le coût de la main-d'œuvre. Les asymétries entre la directive et certains autres actes législatifs européens sont source de confusion juridique quant à l'égalité de traitement des travailleurs détachés dans le cadre réglementaire de l'Union en cas de détachement de longue durée. En outre, il se peut que les règles générales en matière de détachement ne soient pas adéquates pour encadrer des situations spécifiques telles que les détachements effectués dans le contexte des chaînes de sous-traitance, du travail intérimaire et au sein d'un même groupe.

Quel objectif cette initiative devrait-elle atteindre?

La révision de la directive de 1996 vise à renforcer les objectifs initiaux – qui consistaient à encourager l'exercice de la libre prestation de services au niveau transfrontière dans un esprit de concurrence loyale et dans le respect des droits des travailleurs – en adaptant la législation au nouveau paysage économique et à la nouvelle configuration du marché du travail. L'initiative a notamment pour but, d'une part, de garantir des conditions salariales équitables aux travailleurs détachés et une concurrence loyale entre les entreprises détachant des travailleurs et les entreprises locales dans le pays d'accueil, et, d'autre part, de clarifier la législation de l'Union.

Quelle est la valeur ajoutée de l'action à l'échelle de l'Union?

Un cadre réglementant le détachement de travailleurs entre les États membres ne peut être établi qu'à l'échelle de l'Union. Les États membres et les partenaires sociaux au niveau approprié restent respectivement responsables de l'élaboration de leur législation et de la détermination des salaires, conformément au droit interne et aux pratiques nationales.

B. Solutions

Quelles options législatives et non législatives ont été envisagées? Y a-t-il une option privilégiée? Pourquoi?

La Commission estime que, pour atteindre les objectifs consistant à garantir des conditions salariales équitables aux travailleurs détachés, des conditions de concurrence plus équitables aux entreprises et une plus grande clarté juridique, il est plus efficace de mettre en place des règles égales en matière de rémunération et de rendre contraignant le recours aux conventions collectives d'application générale dans tous les secteurs que de s'abstenir de toute action. En outre, pour améliorer la clarté juridique, la Commission juge efficaces les options consistant à: appliquer le droit du travail de l'État membre d'accueil aux détachements de plus de 24 mois, conformément aux règles de coordination des systèmes de sécurité sociale; établir l'égalité de rémunération entre les travailleurs détachés dans les chaînes de sous-traitance et les travailleurs du contractant principal en appliquant les conditions de travail de ce dernier, y compris celles établies par des conventions collectives, le cas échéant; rendre obligatoire l'application des mêmes conditions de travail et d'emploi aux travailleurs détachés qu'aux travailleurs intérimaires recrutés au niveau local.

Qui soutient quelle option?

Les options consistant à introduire le principe de «règles égales en matière de rémunération pour un même travail» et à appliquer le droit du travail de l'État membre d'accueil aux détachements de longue durée vont dans le sens privilégié par sept États membres (Allemagne, Autriche, Belgique, France, Luxembourg, Pays-Bas et Suède), par la Confédération européenne des syndicats et par la Confédération européenne des employés de la construction. Eurociett soutient la révision de la directive relative au travail intérimaire de manière à assurer l'égalité de traitement entre les travailleurs intérimaires au niveau transfrontière et au niveau national. Neuf États membres (Bulgarie, Estonie, Hongrie, Lettonie, Lituanie, Pologne, Slovaquie, République tchèque et Roumanie), ainsi que Business Europe, l'UEAPME et le Ceemet ont exprimé le souhait d'attendre que la mise en œuvre de la directive d'exécution ait produit ses effets sur une période suffisamment longue avant que des mesures ne soient prises.

C. Incidences de l'option privilégiée

Quels sont les avantages de l'option privilégiée (ou, à défaut, des options principales)?

Des règles égales en matière de rémunération contribueront à la hausse du salaire des travailleurs détachés, à la réduction des écarts salariaux avec les travailleurs locaux et à la mise en place de conditions de concurrence équitables entre les entreprises dans les pays d'accueil. En amenuisant la part de concurrence liée au coût de la main-d'œuvre, le détachement de travailleurs stimulera la prestation transfrontière de services fondés sur la spécialisation, l'innovation et les compétences. La correction des asymétries entre la directive et les autres actes législatifs de l'Union apportera davantage de clarté juridique aux entreprises, aux travailleurs et aux autorités et réduira les coûts de l'éventuel contentieux judiciaire. Dans le cas des chaînes de sous-traitance et des détachements de longue durée, l'application du principe d'égalité de traitement devrait améliorer les conditions salariales des travailleurs détachés et leur offrir ainsi une meilleure protection sociale.

Quels sont les coûts de l'option privilégiée (ou, à défaut, des options principales)?

L'égalité des règles en matière de rémunération peut entraîner une augmentation des coûts salariaux pour les entreprises détachant des travailleurs qui opèrent dans le segment du marché à bas salaires (un tiers des cas), bien qu'il soit tout de même possible que les coûts totaux de main-d'œuvre restent inférieurs à ceux des entreprises locales dans les États membres d'accueil en raison des écarts entre les pays en matière de prélèvements sociaux et d'impôt sur les sociétés. L'amenuisement du rôle du coût de la main-d'œuvre en tant que facteur concurrentiel principal peut réduire la compétitivité des entreprises situées dans les États membres où les conditions de rémunération sont plus basses, en particulier dans les secteurs à forte intensité de main-d'œuvre, comme celui de la construction. Les règles relatives à l'égalité de traitement des travailleurs dans le cadre des détachements de longue durée (plus de 24 mois) et au sein des chaînes de sous-traitance peuvent réduire également le rôle du coût de la main-d'œuvre en tant que facteur concurrentiel principal, avec des effets semblables à ceux décrits plus haut, bien que les détachements de longue durée ne semblent représenter qu'une faible part du nombre total de détachements. L'application du principe d'égalité de traitement aux travailleurs intérimaires détachés peut également entraîner une augmentation des coûts salariaux pour les entreprises, bien que l'option ne prévoie pas de conditions autres que celles qui sont déjà en vigueur pour les travailleurs intérimaires recrutés au niveau local.

Quelle sera l'incidence sur les entreprises, les PME et les microentreprises? 8 lignes maximum

Aucun régime spécial n'est envisagé pour les PME. Tout d'abord, les PME bénéficieront de l'amélioration de la clarté juridique et de l'allègement des formalités administratives liées aux risques de contentieux judiciaire. Des règles égales en matière de rémunération ainsi que l'égalité de traitement dans le cas des détachements de longue durée et des chaînes de sous-traitance peuvent avoir une incidence surtout pour les PME qui fournissent des services transfrontières en détachant des travailleurs dans les segments du marché à bas salaires, du fait de l'éventuelle augmentation des coûts salariaux. Cette incidence peut toutefois être atténuée par les écarts entre les pays en matière de prélèvements sociaux et d'autres impôts, y compris les régimes spéciaux pour les PME appliqués dans certains États membres. En revanche, les PME détachant des travailleurs dans des segments du marché à salaires élevés jouiront d'un climat de concurrence loyale grâce à des règles salariales équitables. L'effet des options proposées peut multiplier leurs perspectives commerciales et accroître leur capacité à créer des emplois.

Y aura-t-il une incidence notable sur les budgets nationaux et les administrations nationales?

Les budgets nationaux et les administrations nationales ne devraient être exposés à aucun coût particulier. Les coûts liés à l'information et à l'application des dispositions sont déjà prévus par la directive d'exécution de 2014, qui est en cours de transposition.

Y aura-t-il d'autres incidences notables?

L'amélioration des informations figurant dans les documents portables A1 ainsi que la transposition de la directive d'exécution renforceront la fiabilité des informations sur la dynamique du détachement de travailleurs.

D. Suivi

Quand la législation sera-t-elle réexaminée?

La Commission évaluera l'incidence de la directive cinq ans après l'expiration du délai de transposition. Elle établira le rapport d'évaluation avec l'aide d'experts externes et en concertation avec les partenaires sociaux et d'autres parties intéressées.