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Commissioner for Employment, Social Affairs, Skills and Labour Mobility

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In relation to the recent discussion on the Commission Work Programme 2016 and planned targeted revision of the Posting of Workers Directive, which aims, among others, to introduce the principle of ‘equal pay for equal work at the same place’, we are sending the joint opinion of several European employers’ and business organisations, members of BUSINESSEUROPE. With this letter we aim to follow up arguments presented in the BUSINESSEUROPE position paper as well as the opinion expressed by the Nordic organizations in their letter of 18 November 2015 which we support as reasonable, well-balanced and based on everyday practice. We in particular share their observations about an unequal treatment of foreign services’ suppliers in the EU countries and on a too wide interpretation of the Treaty provisions related to the competencies of the EU and application the subsidiarity and proportionality principle.

Serious threat to free movement of services and weakening of competition

Implementing the principle of ‘equal pay for equal work at the same place’ threatens the free movement of services, one of the basic principles of the EU and indispensable condition for EU internal market. Levelling out salary levels derived from this principle will, in practice, eliminate price competition in the services sector. It will also eliminate competitiveness factors and drivers for the EU economy development as stipulated in the David Ricardo’s theory of comparative advantage. This advantage contributes to distribution of international specialization, and was the philosophical basis for the EU economic integration project. The European economy has reached its position due to specialization of its Member States’ economies. Modern continuation of this principle is the current ‘Smart Specialization Strategies’ approach promoted by the Commission. Introducing the ‘equal pay for equal work at the same place’ principle will eliminate the possibility of specialization in services’ provision as ‘exporting services’ will become unprofitable. Countries able to provide services at a lower cost will be deprived of such a possibility – the elementary cost of service provision will be levelled out by administrative measures. It is also worth noting that this ‘levelling out’ will concern only remuneration paid to employees.

Any additional costs related to the fact that service is provided abroad, i.e. daily allowance, accommodation costs, complying with administrative requirements such as translating employee documentation etc. will be additional burden for the posting company. It means that foreign company providing services will not be able to compete with national service providers. As a result, free movement of services at the EU internal market becomes non-viable economically. Not only does it mean that a substantial share of the services sectors at the EU market will be reduced, but it also implies that services at the EU market will become more expensive, therefore the competitiveness of the EU economy in relation to other global players will be weakened. Last but not least, the European consumer will have a limited choice of the best service provider; it is also more likely that available offer is more expensive.

Serious perturbations at a company level

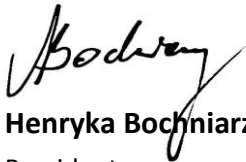
It is worth noting that the principle of 'equal pay for equal work at the same place', which implies that the same employee will be paid differently depending in which country he/she provides services, may be in contradiction with the rule of equal pay within a company. It also means that workers employed at the same company and at the same post, but in different country, will be paid differently. As a result, the principle of 'equal pay for equal work at the same place' may lead to serious inequalities within a single company. It is also an example of an excessive interference in autonomous management practices of companies as, by levelling out salaries, it renders performance-based remuneration systems impossible. Moreover, guaranteeing the same level of salaries weakens employees' motivation and makes their additional efforts useless. For employers from the CEEC it inevitably brings memories of the times before 1989 when, within the framework of a centrally planned economy, salaries were imposed on companies and there was no link with productivity. For employees there was no motivation to 'go an extra mile', seek innovation or professional development. It is worth noting that many enterprises across Member States already now link the EU with excessive bureaucracy, useless administration and irrational regulation. This image of the EU, and the European Commission in particular, may further worsen and become even more widespread, if the principle of 'equal pay for equal work at the same place' is introduced without listening to employers' and business organisations. The move will also clearly discriminate against 'service exporters' and workers employed by them.

Better regulation? Yes, but also in practice!

On-going implementation of the Enforcement Directive additionally calls into question the rationale of the planned revision of the Posting of Workers Directive. We believe that instead of introducing the unclear and threatening for economy principle of 'equal pay for equal work at the same place', the European Commission should rather focus on full implementation of the Enforcement Directive. If effectively implemented, this Directive may significantly improve situation of posted workers without any additional burdens for companies providing services abroad.

We stress that together with other employers' organisations, signatories of this letter, we fully support eliminating any illegal practices, but we are against limiting legal competition at the EU internal market. We also do not support the recent EC rhetoric that identifies posting of workers with 'social dumping', a phenomenon still not defined, but present practically in all EC interventions on the subject of posting. Moreover, we fear that the intention to use the 'equal pay for equal work at the same place' principle to ensure level playing field may eventually eliminate jobs in some parts of the EU and slow down overall EU job creation.

For all the above mentioned reasons we ask the European Commission to refrain from the proposed revision of the Posting of Workers Directive. We are seriously concerned that the costs of this initiative, both for the EU economies and Member States, may significantly outweigh doubtful advantages, especially in the context of the economic slowdown, or even recession in some EU countries. The revision of the directive will be a long-term process, rendering null and void the complex compromise once struck among the Member States and putting European enterprises in a limbo as to the rules applicable for their operations in other EU countries.



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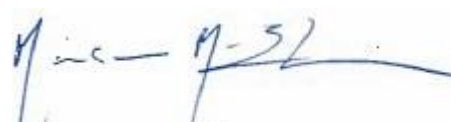
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