

CROSS-BORDER TEMPORARY AGENCY WORK (TAW): SOCIAL SUSTAINABILITY OF A BUSINESS MODEL (TOO OFTEN) BASED ON REGULATORY ARBITRAGE?

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ISLSSL PRAGUE XII EUROPEAN REGIONAL
CONGRESS

SESSION 5 – 23 SEPTEMBER 2017



EFFECTIVE REGULATION OF LABOUR MARKET INTERMEDIARIES TO ENSURE DECENT & FAIR TAW IN A CROSS-BORDER CONTEXT?

- **THE EU DIRECTIVE CONCERNING TEMPORARY AGENCY WORK AIMS TO PROVIDE EQUAL TREATMENT OF TEMP AGENCY WORKERS WITH COMPARABLE PERMANENT AND/OR FULLTIME STAFF CONCERNING EMPLOYMENT CONDITIONS UNLESS THERE ARE OBJECTIVE REASONS FOR DIFFERENT TREATMENT.**
- **WITH THE PURPOSE TO ENSURE THE PROTECTION OF TEMPORARY AGENCY WORKERS AND TO IMPROVE THE QUALITY OF TEMPORARY AGENCY WORK (..).**

(ART. 2, DIR 2008/104 ON TAW: AIM OF THE DIRECTIVE)

INCREASE IN LABOUR MOBILITY INTRA-EU

2004: 1,6%
2008: 2,4%
2014: 3,3%



- **“LABOUR MARKET INTERMEDIARIES ARE BECOMING INCREASINGLY IMPORTANT IN FACILITATING INTERNATIONAL MOBILITY. (...) HOWEVER, AS A 2015 REPORT FOR THE ILO POINTS OUT, THERE MAY BE AN OVERLAP BETWEEN FACILITATION AND EXPLOITATION.”**

(EUROFOUND, ‘**REGULATION OF LABOUR MARKET INTERMEDIARIES AND THE ROLE OF SOCIAL PARTNERS IN PREVENTING TRAFFICKING OF LABOUR**’, 2016)

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SOMO



Katrin McGauran, Esther de Haan, Fleur Scheele & Francien Winsemius

June 2016

JUSTICE



Severe labour exploitation: workers moving within or into the European Union

States' obligations and
victims' rights



EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

TWO TYPES OF CROSS-BORDER TAW: 'RECRUITED' AND 'POSTED' AGENCY WORKERS

- A CROSS BORDER TEMP AGENCY WORKER IS A WORKER WHO IS RECRUITED OR POSTED BY A TEMPORARY WORK AGENCY IN AN ASSIGNMENT THAT INVOLVES THE WORKER CROSSING A NATIONAL BORDER.
- **A RECRUITED AGENCY WORKER** HAS AN EMPLOYMENT CONTRACT WITH A TWA IN THE COUNTRY-OF-DESTINATION AND WORKS ON THOSE TERMS AND CONDITIONS.
- **A POSTED AGENCY WORKER** HAS AN EMPLOYMENT CONTRACT WITH A TWA IN THE COUNTRY WHERE HE HABITUALLY (IS SUPPOSED TO) WORK(S). AS A STARTING POINT, THOSE TERMS AND CONDITIONS APPLY, EVEN WHILE THE WORK IS TEMPORARILY CARRIED OUT IN THE COUNTRY-OF-DESTINATION. HOWEVER, THE POSTING OF WORKERS DIRECTIVE AS IMPLEMENTED IN THE COUNTRY-OF-DESTINATION IMPOSES HOST COUNTRY STANDARDS (IF MORE FAVOURABLE) AS FAR AS A SET OF CORE WORKING CONDITIONS IS CONCERNED.

INTERPLAY BETWEEN TAWD & PWD

- FOR POSTED AGENCY WORKERS CURRENTLY, THE APPLICATION OF THE POSTING DIRECTIVE TAKES PRECEDENCE OVER THE AGENCY WORK DIRECTIVE 2008 WHEN DEALING WITH THE CROSS-BORDER ACTIVITIES OF TEMPORARY WORK AGENCIES. THE **PROPOSAL FOR TARGETED REVISION OF THE PWD** (MARCH 2016) HOWEVER, AIMS TO CREATE A LEVEL PLAYING FIELD BETWEEN POSTED AND NON-POSTED (RECRUITED) TAW-WORKERS:
- A PROPOSED NEW ARTICLE 3(1B) PWD RENDERS THE TERMS AND CONDITIONS UNDER ARTICLE 5 TAWD MANDATORY FOR POSTED WORKERS, APPLYING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN TEMPORARY AGENCY WORKERS AND COMPARABLE WORKERS OF THE USER UNDERTAKINGS.

NO FULL MANDATORY EQUAL TREATMENT...

- **IF ADOPTED, WOULD POSTED TAW-WORKERS BE ABLE TO BENEFIT FROM?**
 - BEING INFORMED OF ANY VACANT POSTS IN THE USER UNDERTAKING TO GIVE THEM THE SAME OPPORTUNITY AS OTHER WORKERS IN THAT UNDERTAKING TO FIND PERMANENT EMPLOYMENT;
 - EQUAL ACCESS TO COLLECTIVE FACILITIES (CANTEEN, CHILDCARE FACILITIES, TRANSPORT SERVICE) UNLESS THE DIFFERENCE IN TREATMENT IS JUSTIFIED ON OBJECTIVE GROUNDS;
 - NATIONAL MEASURES OR CLA'S TO IMPROVE TEMPORARY AGENCY WORKERS' ACCESS TO TRAINING AND TO CHILD-CARE FACILITIES IN THE TEMPORARY-WORK AGENCIES, EVEN IN THE PERIODS BETWEEN THEIR ASSIGNMENTS, IN ORDER TO ENHANCE THEIR CAREER DEVELOPMENT AND EMPLOYABILITY; AND TO IMPROVE TEMPORARY AGENCY WORKERS' ACCESS TO TRAINING FOR THE

IN PRACTICE, SOCIAL DUMPING HAS BECOME A CRITICAL ISSUE.

*« too often, workers like Radu, 30, from Bucarest, are hired through **a very complex mix of companies, subsidiaries, agencies based in different eu member states, some of which have no real existence**. As a result, they are hired at the lowest possible cost and they are not protected whenever problems arise. »*

(SPEECH VIOLETA BULC (EU COMMISSIONER DG MOVE) : 4 JUNE 2015)

IN PRACTICE, BOTH RECRUITED AND POSTED
CROSS-BORDER TEMP AGENCY WORKERS
EXPERIENCE THAT

RIGHTS WHICH CANNOT BE
ENFORCED ARE
WORTHLESS

AN ISSUE OF CONCERN AT EU-LEVEL? SEE ART. 47 EU¹⁰
COMPLIANCE AND MONITORING
ISSUES
CHARTER

KEY PROBLEM TO TACKLE: LETTERBOX COMPANIES



- SHOULD (EPA & TAX) COMPANIES BE ABLE TO REGISTER ANYWHERE?
- FROM A 'LETTERBOX PERSPECTIVE' THE ANSWER IS OBVIOUS... NO!
- HOWEVER, **NATIONAL LAWS** DETERMINE THE LEGAL EXISTENCE AND CAPACITY OF A COMPANY EITHER BY THE PLACE OF ITS INCORPORATION (INCORPORATION THEORY) OR BY THE LOCATION OF ITS ACTUAL ADMINISTRATIVE OFFICE (REAL SEAT THEORY).

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Bulgarije, ster in Europa

Vaste vlaktaksen Bulgarije kan zonder enige twijfel beschouwd worden als DE 'outsourcing ster' in Europa. Sinds 2007 gelden volgende ...



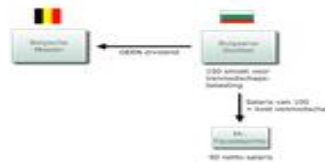
Loonkosten in Bulgarije

Ondernemen in Bulgarije



Welke vennootschaps kies je in Bulgarije?

1) Limited Liability Company: de zogenaamde EOOD (1 aandeelhouder) of OOD (meerdere ...)



U wilt Bulgaarse belastingplichtige worden?

Situatie 1: geen link tussen uw Belgische en Bulgaarse vennootschap
Voorbeeld 1 De ...



Belasting en sociale lasten: hel in België, walhalla in Bulgarije.

Een aantal factoren zorgen voor een extreem groot verschil tussen Bulgarije en België ...



Zoek

Zoek op Ondernemen in Bulgarije

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10.10.10

- 10% personenbelasting
- 10% vennootschapsbelasting
- 10% van de totale Belgische loonkost

PRELIMINARY CONCLUSIONS...

- THE REGULATORY FRAMEWORK FOR POSTED TAW IN CROSS-BORDER CONTEXT INHIBITS APPLICATION, MONITORING AND ENFORCEMENT: IT IS TOO COMPLICATED
- POSSIBLE WAY FORWARD: ABOLISH THE POSSIBILITY FOR ESTABLISHING LETTERBOX-COMPANIES AND POSTING OF AGENCY WORKERS (AT LEAST IN CERTAIN RISK SECTORS) AND PUT ALL EFFORTS ON BETTER MONITORING/ENFORCEMENT OF CROSS-BORDER RECRUITED AGENCY WORKERS INSTEAD?
- IN LIGHT OF THE FUNDAMENTAL RIGHT TO FAMILY LIFE;
RECONCILIATION OF WORK AND PRIVATE LIVE: WHERE EVER POSSIBLE >
BRING THE WORK TO THE PEOPLE INSTEAD OF THE PEOPLE TO THE WORK

EUROPEAN PILLAR OF SOCIAL RIGHTS ON THE ACQUIS RE “FLEXIBLE AND SECURE LABOUR CONTRACTS”:

A. EQUAL TREATMENT SHALL BE ENSURED, REGARDLESS OF EMPLOYMENT CONTRACT, UNLESS DIFFERENT TREATMENT IS JUSTIFIED ON OBJECTIVE GROUNDS. MISUSE OR ABUSE OF PRECARIOUS AND NON-PERMANENT EMPLOYMENT RELATIONSHIPS SHALL BE PREVENTED.

B. FLEXIBILITY IN THE CONDITIONS OF EMPLOYMENT CAN OFFER A GATEWAY TO THE LABOUR MARKET AND MAINTAIN EMPLOYERS' ABILITY TO SWIFTLY RESPOND TO SHIFTS IN DEMAND; HOWEVER, THE TRANSITION TOWARDS OPEN-ENDED CONTRACTS SHALL BE ENSURED.

THANK YOU!

**QUESTIONS WHICH COULD NOT BE
ADDRESSED/ANSWERED DURING THE
ISLSSL SESSION ON LAW?**

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