



MASARYK UNIVERSITY FACULTY OF LAW

Coordination in the Social Security Systems

The Law Applicable to Contractual Relations

Posting of Workers



Coordination of the Social Security

- The EU doesn't have competence for the harmonisation of the social security (social benefits, pensions, social security contributions, health care etc.).
- The EU law provides a coordination of the social security systems in order to protect social security rights when moving within Europe.
- The coordination doesn't replace national systems.
- Main principles:
 - Contributions are paid in just one country at a time.
 - Equal treatment.
 - When a person claims a benefit, previous periods of insurance, work or residence in other countries are taken into account.
 - A cash benefit from one state can be received even if a person lives in a different state.



Coordination of the Social Security

- Relevant legal acts:
 - Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
 - Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.
- The regulation is relevant also for the EEA and for Switzerland.
- It also covers health care (European Health Insurance Card).



The Law Applicable to Contractual Relations

- If a citizen of one member state performs work in another state, the applicable law for this contractual relation must be found.
- 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).
- Art. 8.1:

An individual employment contract shall be governed by the law chosen by the parties in accordance with Article 3. Such a choice of law may not, however, have the result of depriving the employee of the protection afforded to him by provisions that cannot be derogated from by agreement under the law that, in the absence of choice, would have been applicable pursuant to paragraphs 2, 3 and 4 of this Article.



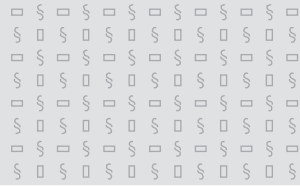
The Law Applicable to Contractual Relations

- Basic rules for finding the applicable law (Art. 8.2 and 3 of the Regulation):
 - The law of the country in which or, failing that, from which the employee habitually carries out his work in performance of the contract.
 - The country where the work is habitually carried out shall not be deemed to have changed if he is temporarily employed in another country.
 - If the abovementioned is not possible, the contract shall be governed by the law of the country where the place of business through which the employee was engaged is situated.
 - If it appears from the circumstances that a contract is more closely connected with another country, the law of that other country shall apply.



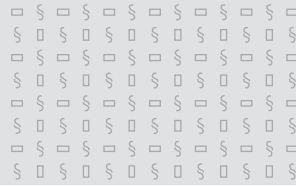
Posting of Workers

- 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.
- The basis for this Directive within the primary law is in the Art. 56 to 62 TFEU: freedom to provide services within EU.
- The goal of the directive is not a greater harmonization of labour law systems.



Posting of Workers

- Main goals of the directive:
 - combat social dumping,
 - promotion of the transnational provision of services by strengthening competition and establishing measures guaranteeing respect for the rights of workers,
 - abolition of obstacles to the free movement of persons and services.
- There are some controversies about the directive's real effect. Some say that it creates an obstacle to the free movement of services rather than abolish it.



Scope of the Directive

- The directive applies to undertakings established in a Member State which, in the Framework of the transnational provision of services, post workers, to the territory of a different Member State.
- To „post a worker“ means to temporarily assign him to work for a different company (undertaking).
- This represents the main difference between the free movement of workers and posting of workers.



Definition of Posting

- Possible measures referred to as posting:
 - An undertaking posts a worker to another Member State on its account and under its direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, provided there is an employment relationship between the undertaking making the posting and the worker.
 - An undertaking posts a worker to another Member State to an establishment or to an undertaking owned by the group in the territory of a Member State under the same conditions as above.
 - Temporary employment undertaking hires out a worker to a user undertaking established in the territory of a Member State, provided there is an employment relationship between the temporary employment undertaking and the worker during the period of posting.
- The definition is important for the consideration whether the directive applies.



Definition of Posting

- Criteria for ‘hiring out workers’:
 - hiring-out of workers is a service provided for remuneration in respect of which the worker who has been hired-out remains in the employ of the undertaking providing the service, no contract of employment being entered into with the user undertaking,
 - the movement of the worker to the host Member State constitutes the very purpose of the provision of services effected by the undertaking providing the services,
 - the employee carries out his tasks under the control and direction of the user undertaking.
- Relevant case law:
 - Case C - 586/13 Martin Meat: Joana



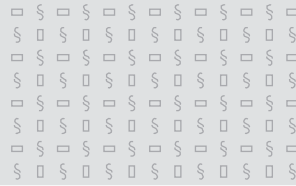
Terms and Conditions of Employment

- Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down :
 - by law, regulation or administrative provision, and/or
 - by collective agreements or arbitration awards which have been declared universally applicable.



Terms and Conditions of Employment

- A „hard core“ of terms and conditions covers:
 - maximum work periods and minimum rest periods,
 - minimum paid annual holidays,
 - the minimum rates of pay, including overtime rates; this point does not apply to supplementary occupational retirement pension schemes,
 - the conditions of hiring-out of workers, in particular the supply of workers by temporary employment undertakings,
 - health, safety and hygiene at work,
 - protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people,
 - equality of treatment between men and women and other provisions on non-discrimination.



Terms and Conditions of Employment

- For the purposes of the directive, the concept of minimum rates of pay is defined by the national law and/or practice of the Member State to whose territory the worker is posted.
- Relevant case law:
 - Case C - 396/13 Sähköalojen ammattiliitto ry v. Elektrobudowa Spółka Akcyjna: Francisco
 - Case C - 341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet



Case C-341/05 Laval

- Latvian company Laval posted workers to work on Swedish building sites.
- Swedish unions wanted Laval to respect Swedish collective agreement for the building sector. They wanted Laval to accept the mechanism for the negotiation of the minimum wage (there is no general regulation of the minimum wage).
- Collective action: blockade of all Laval building sites.
- Laval claimed the collective action illegal.
- Decision:
 - Collective actions are generally legal.
 - There was no directly applicable regulation of the minimum wage.
 - Under these circumstances the collective action limited the freedom to provide services.



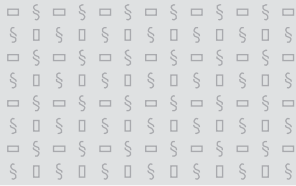
Cooperation and Information

- For the purposes of implementing this Directive, Member States shall, in accordance with national legislation and/or practice, designate one or more liaison offices or one or more competent national bodies.
- Each Member State shall take the appropriate measures to make the information on the terms and conditions of employment generally available.
- The example for the Czech Republic:
<http://www.businessinfo.cz/en/psc/start-your-business/posting-of-workers.html>
(not 100 % up-to-dated)



Enforcement

- Member States shall take appropriate measures in the event of failure to comply with this Directive.
- They shall in particular ensure that adequate procedures are available to workers and/or their representatives for the enforcement of obligations under this Directive.
- Relevant Case law:
 - Case C-60/03 Wolff & Müller GmbH & Co. KG v José Filipe Pereira Félix.



Directive on the Enforcement

- The effectiveness of the directive is not very good.
- Many cases of abusing and circumvention of the applicable rules (e.g. so called letterbox companies).
- That was the reason for adopting 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.



Possible Revision of the Directive

- Very controversial topic.
- Some member states adopted much stricter regulation (e.g. German regulation of the Mindestlohngesetz - MiLoG).
- On the 8 of March 2016, the European Commission proposed a revision of the rules on posting of workers within the EU to ensure they remain fit for purpose.
- One of the key points is the remuneration of posted workers: remuneration would not only include the minimum rates of pay, but also other elements such as bonuses or allowances where applicable.
- Additional information can be found here: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1459423564906&uri=CELEX%3A52016PC0128>