

Paris, 9 October 2015

POLISH-FRENCH SEMINAR : «POSTING OF WORKERS WITHIN THE FRAMEWORK OF FREEDOM TO PROVIDE SERVICES AS A FUNDAMENTAL PRINCIPLE OF THE EU INTERNAL MARKET »

Draft of the speech by Stefan Schwarz, President of the Labour Mobility Initiative

My name is Stefan Schwarz. I am an economist. I am an entrepreneur. Three years ago I founded an association the aim of which is to support the dialogue on the freedom to provide services which has become for my home country one of the few competitive advantages on the European internal market.

I represent a state that has always been a source of problems in Europe. Polish workers would cross the iron curtain to go west in search for work. They finally caused its collapse, so that more of them could leave the country. They continue to be a problem today, both when exercising the freedom of movement and being hired in the host countries as well as when leaving as employees of Polish companies.

Would I like to share with you the results of studies we conducted in our association.

They were inspired by extreme discrepancies in perception of the issue of posting of workers and abuses in posting in Poland and France.

Most common issues raised in France:

1. Why is there so much abuse in the area of posting of workers in our country?
There are much fewer problems in Germany where Polish companies post three times more employees.
2. Why do increasingly stringent regulations result in no improvement of the situation? Instead, they make providing services legally by foreign companies more difficult or impossible.

The hopelessness against this problem almost drives some politicians obsessed - in France the social attitude towards Polish service companies posting workers is similar to the one that unfortunately the society in Poland has towards Syrian refugees - they arrive, they question our values and take our jobs.

Most common issues raised in Poland:

1. Why does the French inspection keep controlling legally operating businesses and doesn't deal with those illegally hiring instead? After all, we operate according to the law. We have no problems in other countries where we provide services. But we do have them in France.
2. Despite all those actions undertaken by France, why our employees keep receiving offers of illegal work in France, and the customers still say they receive calls every day, offering them foreign candidates working for 11 euro per hour?
3. Why does France fight with posting of workers and not against abuses and illegal work? After all, a legally posted worker costs more- less the same as the French one, and due to the freedom of providing services, French companies gain access to high quality services that improve their competitiveness - and the greater competitiveness is, the more work places appear.

Comparing the opinions from both sides we receive an interesting image where Polish service companies, (considering themselves reliable and operating according to the law), are permanently controlled and even harassed with controls, making it harder for them to provide services in France, whereas those who operate in violation of the law are doing well, as confirmed by all available sources.

In purpose to solve the riddle of reasons for such situation, I would like to propose a division of workers- posting companies into three groups:

1. those who want to and are able to observe all regulations;
2. those who want to, but are not able to observe regulations, because they are not aware them or got lost in them;
3. those who do not observe regulations on purpose.

The fourth additional group are Poles hired illegally by French companies.

Re. 1 - these companies must be protected and put as an example. Meanwhile, these are the most controlled ones. They complain about discrimination and disproportional controls. Why? These companies are the easiest to search for (they send notifications to the labour inspection) and the labour inspection is in need for the results (executing more controls), so the inspectors focus on controlling companies which provide best results (bringing greater number of controls). When the great number of controls failed to bring effects, the expectations from "the top" increased, now requiring effectiveness. So the inspectors started – while controlling the same companies - to seek for the slightest flaws. They measure, for example, distance between beds or check the lunch menu instead of investigating some real abuses.

Re. 2 - nothing surprising in the fact they are not able to observe regulations, since the regulations are very complicated. Why are they so? Because of certain countries that demand introduction of new tools and restrictions. How can we solve the problem of companies that are willing to but don't manage in keeping up with the law? The implementing directive of 2014 ordered publication of all regulations to be observed by posting companies on one website, but France failed to create one until now. The only thing France did was to introduce even more complex regulations and increasing penalties for their infringement.

I'd like you to imagine such a hypothetical situation - there are lots of people dying in car accidents in France caused by drivers violating the law. The state, reacting to the problem, increases the difficulty of driving licence exams, and introduces mandatory annual tests for all holders of driving licences. It turns out that the drivers who cause these accidents don't have driving licences - they violate the regulations, because they don't know them. Will the actions taken by the state, imposed, in fact, on drivers holding a driving licence, be effective? No, they won't! In contrary - they will even increase the problem since more drivers will drive their cars without a licence because of fear of difficult exams.

Re. 3 - this category includes post box companies and posting platforms. Everyone searches for them, but they are the hardest to find as they send no notifications to the labour inspection. They appear and disappear. They are often conducted by the same people who conduct the companies to which these workers are posted. The inspection does not look for them, because they don't have time for it. After all, it is busy controlling companies that had sent the notifications and, thus, reported on themselves. Post box companies do not report on themselves! Tightening the regulations is not effective here since the companies don't even intend to observe them anyway. They're very mobile and

flexible. They incur no costs that reliable service companies bear, so they are a threat and unfair competition for them as well.

Re. 4 - we can't forget that not all Polish, Romanian or Bulgarian citizens working in France for whom no contributions are paid are posted workers. There is no such thing as "illegal posting". Either somebody has been sent and has the A1 form, or works illegally. Quite often we have read in foreign press about "workers illegally posted from Poland" and then it turned out that those were self-employed ones under direct control of the company they worked for. Employee worker from Poland died in such circumstances at a construction site in Denmark. The employer desisted from calling an ambulance, because he knew he hired him illegally. Media described that situation as another example of the problem of illegally posted workers from Poland. Tightening up the regulations against posting companies and limitation of the freedom to provide services will not mitigate the problem of foreigners working in France illegally.

Conclusions:

1. there is no one common solution for all posting of workers issues - contrary to appearances, restrictive controls and complex legislation hindering legal posting do not solve the problem, but exaggerate it
2. French labour inspection, employing its entire resources for the purpose of control and punishment of companies which observe the law or at least are willing to do so, has no time to search for companies who don't even intend to abide by regulations.

Additional conclusions:

We have observed that the French media and politicians, speaking of such cheap workers posted from Poland, unintentionally stimulate the demand for such workers among the French companies. After each bigger article or TV news regarding social dumping caused by posting, Polish companies and employment agencies are flooded with calls from French companies looking for cheap employees from Poland. These companies call convinced that posting of workers allows to override SMIC. But that is not true! When the actual costs are revealed, they become confused.

The image of Poland as an ultra-liberal country with no social standards, where workers can be hired without payment of contributions or respect for their rights, draws to Poland

also French entrepreneurs craving for easy income who try to establish mailbox companies here and earn on reverse posting.

Three types of repressive controls based on information from entrepreneurs

Type 1 – ‘intimidation control’

Registered discussion between a French labour inspector and proxy of the controlled service company:

Inspector - *Do you agree to have your business activity registered in the territory of France?*

Proxy: - *Absolutely not. I don't understand why should we do so. Our business here is not permanent, and the turnover in France is only 10% of the company's total turnover.*

- *That's not important.*

- *It's very important.*

- *I've reported a misdemeanour regarding illegal work. These are gendarmes who will conduct the interrogation. Please follow them to the gendarme station.*

- *On what basis? What do you know about this company? You haven't even questioned us yet! Shouldn't your first familiarise yourself with the documents we provided?*

- *You will tell about this at the station.*

- *But you have no evidence against our company.*

- *I have - Article 40.*

- *On what basis?*

- *Code of Criminal Procedure.*

[the article mentioned stipulates that “any official who suspects commitment of an offence is obliged to notify the prosecution immediately”]

Previously, the same inspector sent a letter to a French client with the following content: *“bearing in mind the difficulties in recruitment of qualified personnel, having an important*

*role in development of your company, upon an ineffective attempt to introduce internal training, you used services of a Polish employment agency. Although the nature of your business allows for use of services of employment agencies, cooperation with the Polish agency [name] is illegal. You are obliged to regulate this situation immediately. **Further continuation of this cooperation exposes you to criminal procedure and being held liable**, especially that providing social insurance to the employees has not been confirmed by way of presentation of A1 forms”.*

[The employees had valid A1 forms, but the inspector has never asked for them to be presented]

Type 2 – ‘control of everything’

The inspector asks to provide all company’s documents regarding all workers posted or hired in the country of the registered office as well as the list of all company’s customers within the entire period of its business activity, etc. These documents must be translated into French and delivered within several days or else the charge of control hindrance will be filed. The inspector continues the control until he obtains results, demanding more and more documents or/and claiming that he didn’t receive all documents.

Type 3 – ‘control of nothing’

The inspector doesn’t ask for any documents, especially for A1 forms. He also doesn’t submit the request for control of the company by the Polish labour inspection or Polish pension agency. He frequently fails to inform the foreign company about commencement of control or initiates it officially at the very last moment. The company has no possibility to deliver any documents. This allows the inspector to have doubts regarding its legality. And these doubts allow him to notify the prosecution. Most frequently, along with petition to arrest the owner. The sufficient premise is usually “conducting illegal business activity in the territory of France”, as confirmed by the lack of entry in the French register of entrepreneurs. The notification submitted to the prosecutor’s office allows to notify the client on this fact who, presumably, is to bear liability for complicity in the offence of illegal work.

As a result of repressive controls, the clients often suspend regulation of liabilities which can cause problems with liquidity of the Polish subcontractors. This, in turn, results in the risk of problems with on-time payments of remuneration to the workers, giving the first spin to the typical mechanism of self-fulfilling prophecy.