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LABOUR COSTS IN CROSS-BORDER SERVICES

Preliminary findings of
a pilot study conducted by
the Department of Public
Economy and Administration,
Cracow University of Eco-
nomics in cooperation with
the Labour Mobility Initiative
Association.

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OBJECT AND PURPOSE OF THE STUDY, SAMPLE SIZE AND METHODOLOGY

The study examines the labour costs of workers who had been posted by Polish companies to work in another Member State of the EU in the framework of the freedom to provide services.

The principles on which freedom to provide services and posting of workers (which is necessary for the cross-border provision of services) are based, have both been developed with great difficulties. Removing obstacles to freedom to provide services took the European Union up the most time (as compared to other freedoms of the EU). It is still difficult to consider this process to be completed. What proved to be the turning point in the history of the freedom to provide services was the European Court of Justice's judgment in *Rush Portuguesa*, in which the Court emphasized that workers temporarily performing a service in another Member State did not usurp themselves the right to access labour market in such host Member State. "After the completion of their work workers return to their country of origin without at any time gaining access to the labour market of the host Member State."

After national protectionist sentiments were calmed up to a point and common recognition was reached that one should not be afraid of "social dumping", the Directive 96/71/EC on the posting of workers (hereinafter "Directive") was adopted. Then, the legal frames of the posting of workers mechanism were substantially strengthened by the adoption of the Directive 2014/67/EU (so-called "Enforcement Directive").

Regardless of the above, the European Commission on 8th March 2016 announced a new legislative proposal concerning the targeted revision of the Directive. The Impact Assessment (IA) attached to the Commission's proposal contained a number of ambiguities. What seems to be the major problem of it was the overwhelming lack of data (which the Commission actually admitted in the text more than 20 times).

To make the matters worse, by starting work on the revision of the Directive before monitoring and evaluating the effects of the transposition of the Enforcement Directive, the Commission deprives itself permanently of the possibility to assess the effectiveness of the actually undertaken legislative steps. Thus, if service mobility will be stopped or limited, which is a fear shared by many experts, one will not be able to assess the reasons. It will make further implementation of the mobility policy in the EU very difficult.

The study contains the preliminary results of the survey conducted by the Department of Public Economy and Administration of the Cracow University of Economics. The immediate reason for carrying out the study was the need of data on actual remuneration of posted workers and on the costs of employment which arise solely from the fact that the service is provided in another Member State. The need for the survey arose from the apparent mistake of associating the remuneration of posted workers with the price of the service.

The objective of this study was to assess what proportion of the total employment costs were the costs associated with the cross-border nature of services provided by Polish service companies.

The study was based on an anonymous questionnaire, in which companies providing cross-border services had been asked about the components of remuneration, indirect variable labour costs as well as fixed labour costs. The questions related to the fixed labour costs were open-ended and provided information not only about the amount of costs but most of all, about the types of indirect costs resulting from the fact that the service was provided in another Member State. All such costs hinder competitiveness in the single market and constitute obstacles to freedom of services. Some of them, like transport, board and lodging are socially justifiable, but others should be limited or waived as unnecessary obstacles. The second task was to assess whether, assuming a comparable price of the final service, the "cross-border fixed and variable costs" are compensated for by lower wages of posted workers, lower margin of the service provider, or otherwise.

Employee remuneration, or even its average or aggregated value is a sensitive information for each company, constituting the company's trade secret. The same applies to the margin and to trading fees for potential intermediaries in other Member State(s). Therefore, the study did not aspire to draw a complete picture of the finances of undertakings posting workers in the framework of the freedom to provide services. Instead, it aimed at providing the picture of the proportion of labour costs related to the fact that services were provided in another Member State(s).

The study included 12 undertakings. 6 of them were employment agencies. The survey covered a grand total of 5821 postings in 2013, 2014 and 2015.

The number of postings was determined on the basis of the number of A1 Portable Documents (A1 PDs) obtained by the surveyed undertakings. The number was actually higher, but two of the surveyed undertakings did not disclose the number of A1 PDs. Nonetheless, the monthly data per posting was delivered, and thus they were taken into account when calculating the labour costs.

The dominant service areas by the number of posted workers involved were:

- ▶ home care services for seniors,
- ▶ construction services,
- ▶ metal-related services,
- ▶ simple industry works.

The host Member States in which the services were provided were: Germany, France, Sweden, Denmark and Norway.

The dominant form of employment in 8 undertakings was an employment contract and in 4 of them – flexible forms of employment.

The average posting period was 183 days.

CONCLUSIONS ON REMUNERATION

1 Basic remuneration rates and the requirement to guarantee the minimum rates of pay

The average remuneration for 1 hour net amounted to € 10.88. The lowest rate was € 6.58 net per hour. Salary level just above the minimum rates of pay required by the host country legislation was paid by only two home care services and simple industry works undertakings. Rates of pay in construction services as well as in metal-related services at the surveyed undertakings were significantly higher than the minimum rates of pay required by the legislation of the host countries.

The burdens arising from social security contributions, health insurance and income tax showed a high level of differentiation due to some workers being subject to tax systems of the host countries. For this reason, the amount of net remuneration was the most objective criterion allowing to assess whether the very remuneration was fair.

The interviews conducted with employers and posted workers showed that the net remuneration was the most important criterion when they applied for a job.

2 Standard variable indirect costs of labour independent of posting

These costs consist primarily of public levies (starting from the highest ones):

- ▶ social security contributions [ZUS],
- ▶ personal income tax advances [PIT],
- ▶ health insurance contributions [NFZ],
- ▶ contributions to the Labour Fund [FP],
- ▶ contributions to the Fund for Guaranteed Employee Benefits [FGŚP],
- ▶ payments to the State Fund for Rehabilitation of Disabled Persons [PFRON],
- ▶ costs of an occupational health & safety (OHS) training and of medical examination [bhp/lek],
- ▶ payments to the Company Social Allowance Fund [ZFŚS].

The standard variable indirect costs of labour were relatively low (ca. ¼ of total labour costs). The minimum rates of pay required by the principle of advantage adopted by the Directive 96/71/EC form a relatively high (by the Polish standards) base for social security contributions and taxes. It is worth noticing, that real net wages were approximately 20% higher than the minimum gross wage required e.g. in Germany.

Nominally these costs were higher than in case of comparable work performed in Poland. When expressed as a percentage of total labour cost, they turn out to claim only 27% of the total labour cost. This figure shows only the hypothetical size of the tax wedge including social security and health insurance contributions at the rates of remuneration of the high-wage EU countries to a Polish worker. The figure will drop to 18% after taking into account the fixed and variable extra "cross-border labour costs", i.e. the costs generated only by the cross-border nature of services.

3 Variable cross-border extra labour costs - taking posting into account

Finally we come to the point where the survey shows the costs associated with the posting of workers. Let us now add to the previous calculations the variable labour costs of travel (3%), board (6%) and lodging (15%). It should be noted that these costs are not obligatory in all the cases of posting. Mandatory or not, they are not part of the minimum wage, i.e. they are always paid on top of the minimum rates of pay. A worker is entitled to the reimbursement of these costs if the labour contract provides that the usual place of work is in a home Member State, or when it is required by the host country (e.g. France).

The study took into account only the actually incurred cost of board, travel and lodging and daily allowances. Important variable cost is a complementary health insurance paid only because of frequent refusals of recognition of the European Health Insurance Card. Insignificant as they were, in individual cases, there were costs depending on the type of work (they did not have a universal character, but they influenced the average cost of posting). Thus, e.g. costs of additional medical examinations and costs of the workwear supply and laundry were taken into account if covered in the host Member State. These were variable costs. Also, at that stage the study did not take into account the costs of applying for a confirmation to determine the legislation applicable in the field of social security for the posted worker (A1 PD). Such costs were listed in the study as fixed costs.

4 Fixed cross-border extra labour costs associated with posting

The study covered other labour costs, whose size was not directly dependent on the number of workers nor on the number of postings. However, only the fixed costs closely related to the fact that the provision of services took place in another Member State were examined. They did not occur in the provision of domestic services. These costs can be divided into two groups:

- ▶ Mandatory costs. The costs arising from the requirements of the law of the host country, often being the result of an early implementation of the Enforcement Directive (2014/67/EU). These included the costs of notifications, the costs of hiring a contact person to liaise with competent authorities in the host Member State, translation costs of company and employment documentation.
- ▶ The costs necessary for the proper provision of services, closely related to their cross-border nature. They are not mandatory within the legal meaning thereof. The dominant expenditure in this category were the costs associated with obtaining A1 PDs, costs of cross-border credit insurance, costs of international legal advice, interpreting services, payroll software dedicated to international settlements, local coordinators, logistics costs in the host Member State(s) (accommodation arrangements, 24h telephone service providing help in case of problems, etc.), costs of international shipments, telecommunication costs, spreads on foreign currency exchange, foreign currency risks, foreign language trainings and tests. Some respondents also pointed out to costs of additional health insurance necessary due to frequent refusal of recognition of the European Health Insurance Card.

The study passes over recruitment costs, as they are incurred also in case of locally provided services.

GRAPH 1

32%

Indirect cross-border extra labour costs of posting of workers arising solely from the fact that the service is provided in another EU Member State than the one in which the employer (service provider) is established. These costs do not occur when the service is provided locally. They amount to **32%** of the total labour cost.

- holiday fund (equivalent)
- compensation for temporary contract
- other
- travel
- board
- lodging

Indirect (standard) labour costs (taxes, social security contributions, etc.) excluding extra „cross-border“ labour costs constitute **27%** of the total labour cost. If the extra cross-border labour costs are included - they amount only to **18%** of the total labour cost.

- Employees' Social Fund
- Occupational Health and Safety
- Disability Fund
- Guaranteed Employees' Allowance Fund
- Labour Fund
- Health Insurance Contribution
- Personal Income Tax
- Social Security Contribution

Net remuneration.

Due to a guarantee of payment of at least minimum rates of pay required by the host country (if they are higher there). Net salaries are on average **€ 2.33/h** higher than e.g. gross minimum wage in Germany. Net remuneration (without taking into account the extra „cross-border“ costs) would be **73%**, and taking into account the „cross-border“ extra labour costs - only **49%** of the total labour cost.

■ net



CONCLUSIONS

- 1 Posting of workers involves extra "cross-border" costs that are related only to the fact that the service is provided in the other Member State than the Member State of establishment of the service provider. These are the costs which local service providers do not have to incur. In the surveyed undertakings such costs represented **32%** of the total labour cost.
- 2 Extra "cross-border" costs are compensated by lower employers' margins, tax and social security contributions and posted workers' lower-than-average, but higher-than-minimum remuneration.
- 3 Polish posted workers earn significantly more than the minimum rates of pay required by host countries. This suggests that their services are not chosen because of the "cheap labour". The study shows that there is a significant difference between the level of remuneration and the total cost of labour in case of posted workers. The remuneration of posted workers is only one of many factors determining the final price of the cross-border services and competitiveness.
- 4 Further research in the host countries is needed to establish the reasons why Polish service providers are being chosen by the clients in other Member States. Possible reasons may include high quality of services or unavailability of local competitors.

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