



6 March 2016

**M. Thyssen**

European Commissioner for Employment, Social Affairs, Skills and Labour Mobility

**V. Dombrovskis,**

Commission Vice-President for the Euro and Social Dialogue

**E. Bieńkowska**

European Commissioner for Internal Market, Industry, Entrepreneurship and SMEs

In consideration of the fact that the European Commission considers opening of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, and in view of disquieting feedback which we receive both from institutional entities and Polish employers providing services on the European market, acting on behalf of all employers representing the Association of Employment Agencies, Section of Care Agencies, Employers' Association Business Centre Club and Employers of Poland, we would like to strongly oppose against revising of the Posted Workers Directive, and introduction of the proposed principle of equal pay for the same type of labour at the same location.

The freedom to provide services, and to conduct competitive business operations, are the very foundations of a well-functioning market. Another fundamental factor that triggers entrepreneurship is legal stability. As representatives of employers who delegate their staff abroad, and provide their services within the EU market, we would like to express our concern for the future of such fundamental principles, and highlight the risk that the EU may eventually derogate from its fundamental values.

**Equal pay principle**

Fair competition and rivalry stimulate action and motivate both employers and their staff to work on the better quality of their services. Therefore, introducing of the principle of equal pay for the same type of work would seriously threaten the freedom to provide services, which is, per se, the founding pillar or the very essence of establishment of the European Union, as an entity supporting FREE market. At this point, we should definitely emphasise the meaning of *freedom*, because, apparently, certain actions taken by EU institutions seem to be focused on restricting and interfering with the freedom of business activities, and thus, more and more remind us of the communist system which took Europe long and painful time to overcome.

At this point, we would also like to strongly react to an argument which is often used to support the *equal pay* principle which says that the process of delegating workers leads to higher unemployment among local staff, due to the fact that they obtain substantially lower wages. It needs to be emphasised, however, that the equal pay principle has already been adopted in practice, because of certain market-related mechanisms – and only FREE market should regulate these issues. As a matter of fact, finding and retaining a qualified employee who would be willing to work abroad, far from his/her home and family, in return for a considerably lower pay than his/her local colleague, would be extremely difficult.

Hence, introducing such principle would mainly result in certain inequalities in the case of multinational companies, which offer identical jobs at their local branches located in different countries. Moreover, those staff members that are sent abroad in many cases just fill in qualification gaps, due to an absence of well-qualified local workers. Moreover, it needs be emphasised that all entrepreneurs delegating their staff also incur certain additional costs related to transfer, accommodation or other administrative procedures pertaining to such relocations. Another issue that needs to be taken into consideration are the differences in the purchasing power of a given currency, depending on an employee's country of origin.

In the context of discriminatory practices or unfair competition, we should focus, first of all, upon numerous cases of the unequal treatment of entities providing their services outside their countries of origin. Polish employers need to undergo excessive and disproportionate supervision, or even face unfair treatment by their competitors, and institutional entities of the host countries. At this point, we should also remember about the existence of the black employment market which is not subjected to any controlling mechanisms or regulations, regardless of the assertiveness of the trade unions at the host countries.

### **Revision of Directive.**

In our view, revision of the Posting of Workers Directive would, at the present moment, only jeopardise stability and quality of business operations within the EU market. At the same time, we would like to emphasise that less than 2 years ago, a newly enacted Directive 2014/67/EU of 15<sup>th</sup> May 2014 considerably limited the posted workers market within the European Union. We would also like to highlight that such Directive used to be presented as a remedy for all ailments of the common employee market, which was supposed to conclude the current debates around Directive 96/71/EC. Although the time which has elapsed since the implementation of the said Directive has not been long enough to enable all Member States adopt their internal implementation provisions, another change of legislation has already been planned. At this moment many are still in the process of implementation of the provisions of the Enforcement Directive. In our opinion, introducing such legislation by

Member States would sufficiently improve the compliance with employees' rights and supervision over business operations. The properly implemented regulations would ensure employee protection and allow for preventing any unethical or illegal conduct. Therefore, the European Commission should focus, first of all, on implementation of the already binding legislation, instead of creating new legislative measures that would cause even more obscurity or destabilisation.

Hence, we univocally call the European Commission to suspend the process of revision of the Posting of Workers Directive, which can become another bone of contention among Member States. The lack of understanding of the situation of the other party i.e. employers who send their workers abroad would foster internal conflicts and lack of identification with the objectives of the European Union, which interferes too radically with the freedom of activities, hinders progress and deviates from its primary objectives and values.

PRZES ZARZADU

Jarostaw Adamkiewicz

**Association of Employment Agencies**

**Section of Care Agencies**

**Business Centre Club**

**Employers of Poland**

**Association of Employment Agencies** – the major Polish organisation associating employment agencies

**Section of Care Agencies** – a section grouping employers who provide care services

**Business Centre Club** and **Employers of Poland** – two major organisations associating Polish employers and top businesspeople

**The signatories represent over 10 000 companies  
employing over 5 000 000 workers**