

Course: GV251

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LT Week 4: Regulation of the Single Market

PART I) Introduction to the Single Market

(a) What was the aim of the Single Market Programme, which was adopted as part of the Single European Act in 1985? _____

(b) What are non-tariff barriers to trade? Please provide a few examples.

(c) What is the rationale behind removing barriers to trade, including non-tariff barriers to trade?

“Delors did not enthuse about the single market because he was a born deregulator. **He thought it would arrest Europe’s economic decline**, relative to America and the Asian economies. Delors revealed a concern for Europe’s rank in the world which echoed de Gaulle talking of France.” (Charles Grant, *Delors: Inside the House that Jacques Built*, London: Brealey Publishing, 1994, p. 67)

“Under the banner of "1992," the European Communities are putting in place a series of political and business bargains that will recast, if not unify, the European market. This initiative is a disjunction, a dramatic new start, rather than the fulfillment of the original effort to construct Europe. It is not merely the culmination of the integration begun in the 1950s, the "completion" of the internal market. (...) **Nineteen ninety-two is a vision as much as a program - a vision of Europe's place in the world.** The vision is already producing a new awareness of European strengths and a seemingly sudden assertion of the will to exploit these strengths in competition with the United States and Japan. It is affecting companies as well as governments. A senior executive of Fiat recently declared, “The final goal of the European 'dream' is to transform Europe into an integrated economic continent with its specific role, weight and responsibility on the international scenario vis-a-vis the U.S. and Japan.”” (Wayne Sandholtz and John Zysman, “1992: Recasting the European Bargain”, *World Politics* 42.1, Oct. 1989, p. 95)

(d) What types of problems can the removal of different types of non-tariff barriers to trade generate?

(e) Explain how the following modes of governance of the Single Market work. What are some advantages and disadvantages associated with each?

| | Explanation | Advantages | Disadvantages | Example |
|---|-------------|------------|---------------|---|
| Deregulation | | | | Elimination of nationality requirement to practice as a notary |
| Mutual Recognition | | | | Many types of professional qualifications (Professional Qualifications Directive, 2005) |
| Harmonisation/ Minimum Standards | | | | Working conditions (e.g. working time, parental leave) |
| Harmonisation/ Single Rulebook | | | | Regulatory framework for the financial sector, adopted during the crisis |

(f) What factors affect which mode of governance is chosen for different policy areas within the Single Market?

(g) To what extent is the UK likely to regain sovereignty over regulatory standards after Brexit?

PART II) The free movement of persons

(a) *“Not unlike goods and services, a number of measures have to be adopted before the regulatory framework is sufficient for labour market integration.”* [Egan 2015]

What are some examples of regulatory obstacles to the free movement of workers and professionals? _____

(b) **Why is the freedom of movement of workers and professionals such a controversial issue?** _____

(c) **Case study:** Consider the case of the revision of the Posting of Workers Directive, which is was adopted by the Council and the European Parliament in June 2018. Please draw from the materials included in the Appendix and provide an answer to the questions below.

- i. What are the most controversial topics that were discussed during the negotiations for the revision of the Posting of Workers Directive?
- ii. Which governments were in favour of the Commission’s proposal and why? Which governments were against the Commission’s proposal and why?
- iii. In October 2017, the member-states in the Council reached a common position regarding the revision of the Posting of Workers Directive, adopting the core of the Commission’s suggestions on equal pay. How can we explain the outcome of the negotiations? *In providing a response, please consider the role of relative bargaining power among the member-states as well as the role of issue framing.*
- iv. Do you think that the deal reached in the Council is fair? Does it strike the right balance between the individual’s right to pursue better economic opportunities abroad, the right to receive equal treatment, and member-states’ duty of care for their citizens?

(d) **Has the right of freedom of movement within the EU gone too far?**

Appendix: The proposed revision of the Posting of Workers Directive

a) The Commission's Proposal:

European Commission - Press release

Commission presents reform of the Posting of Workers Directive – towards a deeper and fairer European labour market

Strasbourg, 8 March 2016

Today the European Commission is presenting a targeted revision of the rules on the posting of workers.

This revision translates a commitment of the Political Guidelines for this Commission to promote *the principle that the same work at the same place should be remunerated in the same manner*. It was announced in the 2016 Commission Work Programme. The aim of this proposal is to facilitate the posting of workers within a climate of fair competition and respect for the rights of workers, who are employed in one Member State and sent to work temporarily in another by their employer. More specifically, the initiative aims at ensuring fair wage conditions and a level playing field between posting and local companies in the host country.

The targeted revision will introduce changes in three main areas: remuneration of posted workers, including in situations of subcontracting, rules on temporary agency workers, and long-term posting.

The proposal sets out that posted workers will generally benefit from the same rules governing pay and working conditions as local workers. This will be done in full respect of the principle of subsidiarity and the way these conditions are set by the public authorities and/or social partners in the Member State in question. Currently, posted workers are already subject to the same rules as host Member State employees in certain fields, such as health and safety. However, the employer is not obliged to pay a posted worker more than the minimum rate of pay set by the host country. *This can create wage differences between posted and local workers and potentially lead to unfair competition between companies.* This means that posted workers are often remunerated less than other workers for the same job.

From now on, all the rules on remuneration that are applied generally to local workers will also have to be granted to posted workers. Remuneration will not only include the minimum rates of pay, but also other elements such as bonuses or allowances where applicable. Member States will be required to specify in a transparent way the different elements of how remuneration is composed on their territory. *Rules set by law or universally applicable collective agreements become mandatory for posted workers in all economic sectors.* The proposal also gives the possibility to Member States to provide that subcontractors need to grant their workers the same pay as the main contractor. Nevertheless this can only be done in a non-discriminatory way: the same rule must apply to national and cross-border subcontractors.

The proposal will also ensure that national rules on temporary agency work apply when agencies established abroad post workers.

Finally, if the duration of posting exceeds 24 months, the labour law conditions of the host Member States will have to be applied, where this is favourable to the posted worker.

These changes will provide better protection for workers, more transparency and legal certainty and ensure a level playing field between domestic and posting firms while in full respect of Member States' wage-bargaining systems.

Source: http://europa.eu/rapid/press-release_IP-16-466_en.htm

b) A view in favour of the proposal:

“We want to ensure that all workers doing the same work at the same place receive the same pay and the same protections. The *abuse of workers* sent to work in other EU countries for lower salaries and with lower social protection than the local workforce – a practice which fuels *social dumping* – must be ended.

With our proposal, posted workers will be much better protected. We will put an end to the outrageous living conditions of workers posted abroad. Employers will no longer be able to make their employees pay for housing and transport out of their own pocket, but will have to cover these costs on top of their salary. Nor will employers be allowed to get away with paying the minimum wage when higher collective rates have been agreed. *Everyone working in the same place will have the same payslips and the rules set by collective-bargaining agreements will become mandatory for posted workers in all sectors.* Protecting posted workers from day one is the crucial issue, in effect much more important than the question of duration, as this will shut the door on abuse.”

(Agnes Jongerius, S&D Euro MP and author of the report on posting of workers, 16/10/2017)

Source: <http://www.socialistsanddemocrats.eu/newsroom/posting-workers-sds-make-equal-pay-equal-work-same-place-reality>

c) Views against the Commission’s proposal:

(i) “The proposed amendments to the posting of workers directive, which the European Commission and France are forcing, are nothing but *protectionism aimed against the poorer Member States*. The introduction of the principle of “equal pay for equal work in the same place” will severely limit the competitiveness of companies from lower-wage Member States in exporting services to North-Western Europe. In fact, Poland could just as well propose to limit the competitive advantages of the richer Member States, that have more capital per worker, which allows them to produce goods more cheaply. An analogous rule would for example prohibit the sale of French and German cars in Poland cheaper than the ones produced domestically. This is a road to nowhere.”

(Rafal Trzeciakowski, member of a network of Central & Eastern European think tanks, 21/9/17) **Source:** <http://4liberty.eu/restrictions-on-the-posting-of-workers-protectionism-against-the-poorer-member-states/>

(ii) “The truth is that Jean-Claude Juncker is siding with the wealthy EU countries that fear competition from workers from Eastern Europe, who accept more modest pay.

He has often been heard saying that workers should receive equal pay for equal work in the same place. Let’s see if the proposed mantra can work both sides. In Bulgaria, the country I know best, there are three electricity utilities that divide the country, all owned by foreign companies. Czech firm CEZ has the western part, Austria’s EVN has the southern part, and Energo-Pro, another Czech company, controls the north-east.(...)

According to credible press reports, the CEO of CEZ Bulgaria earns over €100,000 per month. The salaries of the CEOs of EVN and Energo-Pro are also reportedly very high. But the CEOs of Bulgarian-owned companies do not earn such sums. I just spoke to the head of a business association in Bulgaria, who mentioned a figure of well under €5,000 as a normal monthly salary for the CEO of a multi-million euro company.

If Juncker’s rule were to apply, the Czech boss of CEZ Bulgaria should agree to work for twenty times less. And *all Western experts working in companies in Bulgaria should be paid several times less, if their salaries were to be equal to their Bulgarian colleagues doing the same job.* (A highly qualified accountant earns €1,000 per month or even less.) This would cause an exodus of Western professionals from Bulgaria, and possibly other Eastern European countries too. (...)”

(Georgi Gotev | EURACTIV.com, 1/6/17) [Source: https://www.euractiv.com/section/all/news/same-pay-for-the-same-work-in-the-same-place/](https://www.euractiv.com/section/all/news/same-pay-for-the-same-work-in-the-same-place/)

d) The deal reached in the Council

EU overcomes divisions on posted workers

By [CATERINA TANI](#)

BRUSSELS, 24. OCT 2017, 09:17

EU employment ministers struck a compromise on Monday (23 October) to reform the 1996 directive on posted workers.

The new deal, based on a 2016 European Commission proposal, aims to modify current rules and allow people who work temporarily in another member state to earn as much as workers in the country where they are posted.

The issue has divided the EU down the middle, with Western member states backing a change and Eastern countries supporting the status quo, which gives them a competitive edge - due to their cheaper labour force.

The reform was strongly backed by French president Emmanuel Macron, with support also coming from Germany, Belgium, Luxembourg, the Netherlands and Austria.

Monday's agreement took almost 12 hours of talks and corridor negotiations, during which several member states expressed highly divergent opinions.

Employment commissioner Marianne Thyssen, who participated in the debate, said the final compromise is "balanced" and shows that, as Europeans, "we can reach agreements".

The deal reaffirms the principle of "the same pay for the same work in the same place", as stated in commission's proposal.

Twelve-month post

Ministers agreed to set the duration of posting to 12 months, with a possible six-month extension, in specific cases and when notified to authorities.

Member states have been divided between those who supported the commission's proposal of 24 months, instead of 30 under the current rules, as a good compromise, and others like France, which considered 12 months, or even less, to be more adequate.

The transport sector will be included in the posting rules, as requested by France, but ministers agrees on a special mechanism to take into account the "mobile nature" of the work.

To overcome opposition from countries such as Spain, Portugal and Ireland, the rules will only be applied when a specific law for the sector, which was presented by the commission earlier this year, comes into force.

Ministers also backed a proposal for a four-year transition period to introduce the revised directive into their national legal systems.

Hungary, Lithuania, Latvia and Poland voted against the compromise, with the UK, Ireland and Croatia abstaining over concerns that the new rules would hurt their transport industries. (...)

Member states will now enter discussions with the European Parliament to agree on a final version of the directive's revision.

Source: <https://euobserver.com/social/139599>

Politically fraught agreement was highly divisive, yet its economic impact will be small

Mehreen Khan
October 24, 2017

The EU finally has a deal to tighten up migrant labour rules on “posted workers”. Last night’s agreement, after 18 months of talks, has been politically fraught and highly divisive. Yet, for all the sound and fury, its economic impact will be small.

If you’ve never heard of migrant rules on posting you’re probably not a construction worker from eastern Europe, a foreign journalist in Brussels — or French.

Posting affects less than 1 per cent of the EU’s labour force — around 2m people. ***Overhauling the rules has become a cause célèbre of Emmanuel Macron’s early presidency.*** The issue has long been a bugbear of governments going back to Nicolas Sarkozy and French fixations with the Polish plumber.

For two decades, EU companies have been allowed to temporarily “post” employees to another member state without abiding by all local labour laws including providing the bonuses, overtime, and holidays afforded to “native” workers. Disparities are most obvious in countries with generous systems such as France or Denmark. For Mr Macron and the European Commission, posting in the age of populism has become a form of “social dumping” from eastern to western Europe.

Last night’s deal — reached with a qualified majority after 11 hours of marathon talks — will give Mr Macron his prized 12-month limit, extendable by six months, on posting in the face of fierce objections from countries led by Poland. In return, transport workers — mainly truckers — will be exempt from the stricter rules which will come into force after a four-year delay. The EU’s awkward squad of Poland, Hungary and the UK did not back the proposals.

The French president will hail the deal as his first major triumph in the creation of a “Europe that protects”. For the commission, the 20-year-old rules are in dire need of an upgrade now the EU encompasses 28 rather than 15 member states. Posting has also proliferated since the eurozone crisis (albeit from low numbers).

Economists will remain sceptical on just what any of the changes will achieve. Europe’s structural labour market problems — from precarious jobs to eye-watering youth unemployment and flagging productivity — are the real challenges that will remain unaffected by tweaks to the posted workers directive. Critics will also balk at the political capital spent on a minor area of the labour market which has again exposed Europe’s east-west tensions.

In the longer run, Europe’s free marketers will feel they have reasons to fear. ***In the face of anti-EU political opportunists, Brussels’ talk has turned to “fairness” and “protection” rather than competition and liberalisation. For the Poles and their allies, it is part of a steady creep which is reversing attempts to build a truly single market in Europe.***

Source: <https://www.ft.com/content/6ed52842-b89b-11e7-9bfb-4a9c83ffa852>