

# *Free movement and equal treatment – Jan Cremers*



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CLR

# *Introduction*

- ❖ Middle of the eighties: introduction of the internal market, free movement principles.
- ❖ First national and European debates linked to free movement of workers and equal treatment.
- ❖ The package of public procurement directives: social clause in the public works directive not in a “must” but in a “can” formula.

# *An instrument announced*

- ETUC and the social partners in construction (FIEC and EFBWW) ask for a legal instrument to avoid social dumping
- 12 Member States and the European Parliament discuss the need for action
- An initiative announced in the action plan of the Community Charter of Fundamental Rights for Workers (1989)

# *National debates*

- Situation differs in the (12) countries
- Re-examination of national legislation necessary
- Look at national collective agreements through European glasses
- Experiences with social dumping in Barcelona, Brussels, later on Berlin
- No majority in the Council until 1993

# *National transposition*

- ❖ Key issue: what if collective agreements are not generally binding?
- ❖ Broad interpretation of the applicable working conditions or just a “hard core”
- ❖ Applicability of industry wide supplementary provisions in the field of pensions and holiday funds
- ❖ Relationship with national labour legislation and provision of services

# *Applicable national rules*

1. No explicit reference to additional national rules: Austria
2. Mandatory rules added: Denmark, Finland, Germany, Spain, Sweden
3. Compliance with all legislative labour, wage and employment conditions: Belgium (all provisions sanctioned by criminal law), France (labour laws), the Netherlands (public/administrative law)

# *Administrative cooperation*

- National information often not transparent and difficult to find for foreign employers and workers
- Liaison offices have no reliable figures
- Cooperation with neighbouring countries functions but few requests
- How to give a follow up after a period of posting?

# *Measures and the execution of penalties*

- Responsibilities often dispersed
- Notification and verification debated
- Liability in the chain of subcontracting
  
- Lack of control; small staff
- Difficulties to check wages and other working conditions
- Same obligations as domestic companies

# *Experiences and practices*

- ❖ No reliable data; general impression is that the legal posting provided by the directive is not often used
- ❖ In practice lack of control and enforcement
- ❖ Semi-legal circumvention possible via bogus self-employment
- ❖ Moonlighting is the real problem

# *Evaluation of the directive*

- ❖ Implementation at national level was late
- ❖ Adequate mechanism for control and enforcement at national level were missing
- ❖ The directive as such is not a problem
- ❖ The purpose of the directive can only be achieved if the Member States take their obligations serious.

# *After enlargement*

- ❖ Restriction instead of regulation
- ❖ Transitional measures work out counterproductive
- ❖ The result is growth of illegal practices and cheap labour in the hands of dubious gang masters and agencies
- ❖ Bogus self-employment is even promoted by governments as the way to circumvent “normal” direct labour relations

# *A few examples*

- ✚ Explosive growth of registered fake self-employed and bogus firms
- ✚ Substitution and/or exploitation of vulnerable groups on the labour market
- ✚ Increase of undeclared/unregistered labour
- ✚ Supply of cheap labour takes the character of organised crime

# *Conclusion*

- ❖ Social dumping via illegal practices is much more devastating for the European social model than open borders
- ❖ We are better off by legalising and monitoring the labour market and the migration process
- ❖ Trades unions organise not discriminate

## *The way out*

- ❖ Free movement of individual workers has to fall completely under the law and rules of the host country. Equal treatment in the territory where the work is done is indispensable to fight unfair competition.
- ❖ Put the energy in compliance with legal regulations and collective agreements.
- ❖ Active recruitment policy instead of restrictions.