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**Fair mobility and fair
competition in the
single market**

Quote

The New York Times described some time ago how many European countries - especially those in southern Europe that have been tormented by the financial crisis - furiously have dismantled workplace protections in a bid to reduce the cost of labour. The austerity policy has radically changed the nature of Europe's society with widening inequality and an unheralded erosion of worker protection that is likely to have a big and lasting impact on Europe's labour relations.

Start

- Middle of the eighties: introduction of the internal market, economic freedoms, free movement principles.
- First national and European debates linked to free movement of workers and equal treatment.
- The package of public procurement directives: privatisation with weak social and environmental clauses in public works.

Background

- EEC started as an economic project
- Flanking social policy developed as part of the action plan related to Delors White paper
- In 2000 the Charter with fundamental rights for workers has been formalised. However, still no binding character
- Lisbon Treaty provides general aim (single market not the main aim but should serve social progress)
- Commission has not implemented this notion; Barroso has poorest social record since decennia

Market developments

- ❑ Outsourcing and the chain of (labour-only) subcontracting, agencies, letterbox-companies.
- ❑ National compromises on the difference between a commercial contract (for the provision of services) and a labour contract no longer a guarantee.
- ❑ Deregulation of company law and freedom of establishment created breeding ground for cross-border fraud and distortion of competition.
- ❑ Company law serves business; what about consumers, creditors and workers?

Category ↓	Issue →	a. Social security (Reg. 1408/71/nw 883/2004 and 987/2009)	b. Labour conditions (Directive 96/71)	c. Contract law
1. EU- citizens				
2.1 Third country workers (already working in EU)				
2.2 Third country workers (bilateral agreements, quota etc.)				
3.1 Self employed EU- citizen				
3.2 Self employed third country (already in EU)				
4. Posted workers				
5. Frontier commuters				
6. Seasonal workers				
7. Temporary agencies workers				

Different forms of circumvention of workers' rights

- Cross-border recruitment via (temporary) agencies.
- Sham self-employment.
- Shift to other industries (regime shopping).
- Manipulation with free establishment (letter-box companies) and country of residence.
- Abuse of the posting rules (working time, minimum wage, pay not in line with skill level, absurd deductions).

EU-Instruments

- ❑ Single market legislation is decisive for social measures.
- ❑ Reform and fight against 'red tape' regard first and for all key green items and workers' rights.
- ❑ The ECJ restrictions on control and enforcement; infringement practice limits compliance control and sanctioning.
- ❑ Effective, proportionate and dissuasive? Sanctioning in the social sphere is weak. Administrative sanctions are not taken serious in cross-border situations.

Recommendations

- The respect for the regulatory framework (of labour standards and working conditions) in the country where work is pursued has to be restored.
- Stronger legislation on 'genuine' undertakings.
- Written evidence, in the form of labour contracts and company registration, should be obligatory to make it possible to divide between genuine and sham cross-border labour recruitment.
- Cross border mobility based on EU regulations must be complemented by recognised legal provisions to guarantee effective transnational sanctions, remedy or redress.