

POSITING VERSUS INDIVIDUAL EMPLOYMENT IN TRANSNATIONAL SYSTEM**PhD. Student Daniel RAȚĂ***Stefan cel Mare University of Suceava, 720229, Romania*
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elenahlaciuc@gmail.com**Abstract**

Labor mobility is a social phenomenon characteristic of the world economic area, so also, in the European Union (E.U.). As part of the transnational labor force system, mobility can be manifested, inter alia, in the form of posting or in the form of individual employment. At the same time, labor mobility is a fundamental and important characteristic for the economic activity on a European scale, in the tendency to equalize and balance the demand/supply ratio of labor force. The economic motivation of mobility is the main cause of posting, but also for the individual engagement of citizens in countries with advanced economies. Considering the large scale of the phenomenon at the level of the E.U. and the need to limit labor mobility from developing countries to the developed ones in such way as to ensure the provision of services in a fair competitiveness, this research seeks to highlight the differences between the posting and individual engagement, know the national and European legislation governing this phenomenon as well as the economic and fiscal effects of labor mobility.

Key words: *labor; detachment; individual employee; salary; mobility.*

JEL Classification: *J01; J24; J62.*

I. INTRODUCTION

The mobility of the population, in general, and of the workforce, in particular, is a social phenomenon whose causes lie in the economic and individual interests of each individual and is sustained at the European Union level by a fundamental principle namely: free movement of persons (Grosu, 2018). The basis for this principle was made in 1968 when was signed the Treaty of Rome (which is taken over by Article 45 of the Treaty on the Functioning of the European Union) and subsequently developed by the secondary legislation of the European Union and the case-law of the Court of Justice. At E.U. level, the need for unitary workers posting law has long been felt, all the more so as economic entities have linked their ability to detach staff with freedom to provide services anywhere in the E.U. This freedom is supported by the fundamental principle of freedom of movement, essential for the entire European construction, namely for the existence and functioning of the single market.

In these circumstances, Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, was published, published in the Official Journal of the European Communities no. L18/1 of 21 January 1997. This regulation was practically the result of a balance between the interests of the European Union and of the Member States.

Over time, with the changes in the structure of the E.U. (currently 28 states, compared with 15 in 1996 and a state that is preparing to leave the European Union), this regulation is no longer present in many respects, and it seems to no longer meet the equality criteria. These developments and changes require a permanent re-adaptation of European regulation in the field, which has happened. At both national and international level, there have been changes in the scope of the posting of workers. In order to reduce or eliminate as far as possible fraud and abuse, the E.U. issued a directive supplementing Directive 96/71 / EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, published in Official Journal of the European Communities no. L18 / 1 of 21 January 1997, namely: Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on ensuring compliance with Directive 96/71/EC on the posting of workers in the framework of the provision of services and amending Regulation (EU) No. 1024/2012 on administrative cooperation through the Internal Market Information System, published in the Official Journal of the E.U. no. L 159/11 of 28 May 2014.

The theme of this research has been selected from the challenges of labor mobility, a phenomenon faced by all EU Member States. We mainly sought through the analysis of the legislation and European regulations in the field the clarification of the respective detachment concepts and the reflection of the motivations and implications that underlie the individual mobility in other EU member states, with the example of the state of Belgium.

The study is of real interest to both employers and employees, whether they are moving to the European Union as posted workers or as self-employed workers. It focused on the presentation of the motivation behind the transnational detachment but also on the legal and fiscal implications that this phenomenon implies on the other. Also, examples of salary calculations have been presented and how European regulations can influence the judgment of the professional accountant.

In this approach, the research methodology used is specific to the economic field, namely: mathematical methods, comparison, inductive and deductive reasoning.

II. LITERATURE REVIEW

Until 19th century, there are a few information about labor mobility or international mobility of workers (Hlaciuc & Rață, 2018). A form of territorial or geographical mobility is labor migration. We are talking about the phenomenon of labor migration when a person moves from one location to another, from one country to another, accompanied by a change of residence (Vasile & Zaman, 2005). As can be deduced from the above definition, the main and determining feature of migration is "home change". This criterion delimits the migration phenomenon of other forms of labor mobility. However, labor or staff mobility is a form of labor movement that does not substitute, nor can it be assimilated to the movement or migration of persons or workers, and which gives substance to these two forms of movement.

The transnational labor force system is a complex of economic, legal and social - fiscal relationships related to the use of labor force in order to achieve the economic objectives. In fact, in order to achieve the economic objectives, in a national economic system, a national labor force is used but, increasingly, labor is being used from another country. The relocation of the labor force to another country can also be done by posting.

Conceptually, posting consists of:

- According to art. 45 of the Labor Code, Title II: "posting is the act whereby the temporary change of the place of work is ordered, at the employer's disposal, to another employer, for the purpose of carrying out works in its interest";

- According to art. 2, par. (d) "transnational posting means the situation where an undertaking established in a Member State or within the territory of the Swiss Confederation, in the framework of the provision of transnational services, posts in the territory of another Member State employees with whom employment relationships have been established";

- According to Hlaciuc & Rață (2018) the detachment, in general, is to move an employee temporarily and in the interest of service to a unit in another or from one locality to another.

In the same range of ideas, through voluntary employment, the citizen becomes employed, that is, the action the individual carries out directly with the employer, on the basis of which he concludes an individual employment contract. So:

- According to art. 2, par. a) and b) of the Labor Code, the concept of employee is applicable to "Romanian citizens with an individual employment contract, who work in Romania; respectively Romanian citizens with an individual employment contract and who perform their activity abroad, on the basis of contracts concluded with an employer";

- According to art. 9 of the Labor Code, Romanian citizens are free to work in the EU Member States, as well as in any other state, in compliance with the norms of international labor law and bilateral treaties to which Romania is a party.

Labor mobility is a social phenomenon characteristic to the present (Bostan & Grosu, 2010). The main issue is that labor mobility must be delimited by social and political mobility, migration and the mass movement of the population.

The mobility of staff seconded under the principles of "low home salaries or high salaries in Western host countries" (Tofan & Bercu, 2017) implies a number of advantages but also a number of disadvantages. Cremers

(2011) conducted a study detailing staffing research focusing on the "cheap labor force" principle in 12 Member States. Cremers (2011) addresses the transnational posting of staff as a simple, normal mechanism as a long-term partnership with a decent legal base to later consider this phenomenon as an illegal process as a partnership based on illegal practices associated with the mailbox used only for recruiting staff.

Thus, four models of mobility of personnel are identified at the level of the 12 analysed Member States, namely (Cremers, 2011):

- Normal posting - is the phenomenon by which economic entities provide temporary service provision in other Member States with qualified and well-paid staff;

- Perfect legal posting - is a form of work that results from the comparison of local labor costs and those of staff recruited from other Member States in accordance with the principle of freedom to provide services. Thus, an employer in a Member State where staff costs are lower will be cheaper than hiring or contracting the provision of the service with an internal supplier. However, the legal nature of this form of delegation can be questioned under a prolonged work program or bad living and working conditions;

- Legal posting - is a questionable form of staff mobility because the main issues facing employers are generally of a fiscal nature such as: deductibility of travel and accommodation expenses, tax deductions, and the payment of a minimum wage to seconded staff. These are, in fact, the most important aspects of the European directives in the field and are most often violated by employers;

- False posting - a phenomenon characterized by the issuing of false A1 forms, the recruitment of staff via mailboxes, the recruitment of posted workers already present in the host country, false invoices, non-conforming services, etc.

Therefore, an EU citizen can be posted in the interests of the employer (of the company with an individual employment contract) to work in another country or may be in a self-employed position with a firm from another the country, this time in the personal interest.

The need to ensure the minimum wage in the Member State where the worker is posted increases the temptation to commit fraud, to renounce human resources management activities or to neglect the working conditions of staff with a view to reducing costs. However, these preoccupations at the limit of the law or even outside it will have negative long-term consequences.

What does this involve? What are the main economic consequences for the citizen who engages or is posted in another country?

III. MOTIVATION OF LABOR MOBILITY

Transnational posting has a major impact on the domestic labor markets of the host country, and since general price and wage levels differ throughout the E.U., workers from "low wage" countries often represent a competitive advantage compared to those from advanced economies. At the same time, labor mobility is a fundamental and important characteristic for the economic activity on a European scale in the tendency to equalize and balance the labor supply/demand ratio, is practically a catalyst for the economic development both in the advanced economic country using the contribution the labor force it needs, unlike the countries with wages bellow 500 euros (Figure 1), which use for their own development the contribution of the money they earn.

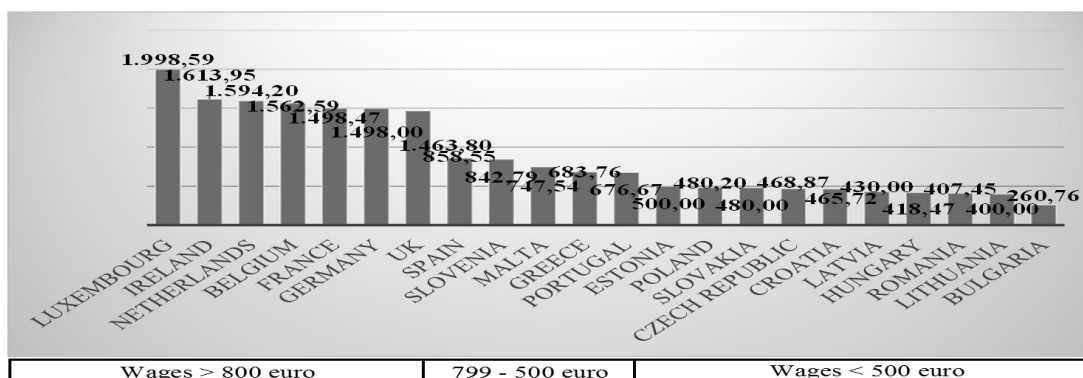


Figure 1- Minimum monthly wage in EU

Source: Eurostat: <https://ec.europa.eu/eurostat/data/database>

Wage marauding is the main motivation for which labor mobility has been and is a constant action in the EU. According to Figure 1, the group of developed countries (monthly salary exceeds € 800) represents a target for the generally qualified labor force, of the group countries with a salary of less than € 400-500.

Economic motivation is the main cause of posting, but also for the direct engagement of citizens in advanced economies.

If the average monthly salary of the first group of advanced countries is around € 1600, the average monthly salary of the 3rd group is between € 500 and € 260, of which only € 407 is in Romania. It is natural for citizens to move towards these sources of income.

IV. POSTING IMPLICATIONS

The risks of posting from Group 3 countries to Group 1 are related to:

- Establish working relationships between the parties involved;
- Establishment of pay and tax deductions between the parties;
- Tax evasion in the countries, etc.

Following cause / effect analysis over ca. 10 years of labor force deployment in the EU's economic space has been and continues to improve the posting mechanism:

- Legal basis for posting workforce;
- Legal basis for remuneration;
- The legal basis for taxation.

Among other things, Directive (EU) 2018/97 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71 / EC on the posting of workers in the framework of the provision of services (Official Journal of the European Union no. L173 / 16 of 9 July 2017), intervenes in the regulation of staff mobility at the level of the European Union in the following aspects (Hlaciuc & Rață, 2018):

- Remuneration of posted workers by promoting the principle of "equal pay for the same work. Under Article 3, seconded staff must be provided with the conditions of employment and employment which are established at the level of the Member State in whose territory the work is carried out. The employer must reimburse travel expenses (transport, accommodation, meal, etc.) and, if the posting allowance covers such expenses, is not considered an integral part of the employee's remuneration. It is important to note that workers are protected by this directive because Article 7 (Government Decision no. 518/1995) allows the application of more favorable working and employment conditions to employees;

- Remuneration of employees in the event of long-term postings. If the posting exceeds 12 months, under Article 3 (1a), "host Member States should ensure that undertakings posting workers on their territory guarantee to those workers an additional set of working and employment conditions applicable in a compulsory for workers in the Member State in whose territory the work is carried out".

Due to the increasing size of civilian detachments in the economic space of the European Union and the need to increase the accountability of national authorities on the one hand and the need to strike a balance between promoting the freedom to provide services and protecting the rights of posted workers (EU) No 2018/97 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71 / EC on the posting of workers and amending Council Directive 96/71 / EC on the posting of workers in the event of force majeure in the framework of the provision of services, published in the Official Journal of the European Union no. L173 / 16 of 9 July 2017, with implementation deadline in national legislation 30 July 2020.

V. INDIVIDUAL EMPLOYMENT AND ITS IMPACT

Adjacent risks of individual employment are:

- Treating the individual in poor countries with superiority;
- Framing and lower pay, possibly working without employment documents;
- Inconsistent payments, possibly unconventional preferential payments, and so on.

Individual engagement can confer the advantage of an advantageous promotion under the conditions of a sustained and remarked activity by the employer.

The Romanian citizen arriving in Belgium, for example, learns from the specialized advertising platforms that there is a possibility of hiring at the Belgian-Brussels chocolate factory.

The announcement (appendix 1) presents undefined elements regarding the employing firm, so there is no possibility of verification. Instead, there are environmental elements of dizziness: free accommodation for husband and wife couple, free hot meal, etc. Our citizen can be represented in the relationship with the employer.

But, for the study, we are interested in the case of the individual who presents himself to the employer. So it does not represent representation and legal protection. For unconventional reasons, the salary of 1600 € becomes 1200 €, no accommodation is available for accommodation, etc.

VI. CASE STUDIES ON TRANSNATIONAL POSITING

VI.1. CALCULATION OF THE TAXABLE AMOUNT OF A BENEFIT, AS LONG AS IT DOES NOT FALL UNDER THE TRANSNATIONAL POSITING

As can be seen from the next calculations, if the employer is not in a situation of transnational detachment, both at the external and national level, he may grant a non-taxable daily allowance, in accordance with Law 225/2015 on the Fiscal Code, up to 2.5 times the legal level established for the travel allowance. Amounts exceeding this deductible maximum allowance for the delegation allowance are subject to social contributions and wage tax.

A) Posting in Belgium	
Departure date	05.02.2019
Arrival date	09.02.2019
Time of departure	07.00
Time of arrival	20.00
Daily allowance	=50 euros/day
Subsistence allowance for 5 days	250 euro
Nontaxable day subsistence allowance	35 euro/day (maxim non-taxable 2,5 x 35 euro/day = 87,5 euro/day)
Non-taxable day subsistence allowance for 5 days	175 euro, maxim fiscal 437,5 euros
Taxable Subsistence	0 euro (250 euros < 437.5 euros)
B) Delegation in Romania	
Departure date	05.09.2019
Arrival date	09.02.2019
Time of departure	07.00
Time of arrival	20.00
Day subsistence allowance	=70 Ron/day
Subsistence allowance for 5 days	350 RON
Non-taxable day subsistence allowance	20 RON (maxim non-taxable 2,5x20RON/day=50 RON/day)
Non-taxable day subsistence allowance for 5 day	100 RON, non-taxable 250 RON
Taxable Subsistence	350-250=100 RON (350 RON>250 RON)

In the above example, from the fiscal point of view, the delegation allowance amounting to RON 250 represents an advantage for the entity because the accounting profit is not affected by the obligations resulting from its taxation.

The difference of RON 100 is assimilated to salary incomes, being added to the gross salary made by the employee for the month in which he was traveling and is taxed as such as any other income of a salary nature.

VI.2. CALCULATION OF THE SALARY OF A PERSON POSTED TO BELGIUM

The most common problem in practice is that, in general, the competent control institutions verify compliance with the European directives on the remuneration of posted workers by comparing gross and non-gross remuneration, in accordance with Directive 2014/67 / EU of the European Parliament and of the Council on ensuring compliance with the application of Directive 96/71 / EC on the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System (IMI Regulation), published in the Official Journal of the European Union L 159/11 of 15 May 2014, which provides in Article 11 the following: Member States shall ensure that

the employer of the posted worker is liable for any outstanding claims resulting from a contractual relationship between the employer and the posted worker.

Member States shall in particular ensure that there are mechanisms in place to ensure that posted workers are in a position to receive any outstanding remuneration which would have been due.

Calculation of the salary of a posted worker (Tacu, 2015), without dependents, in Belgium; the person seconded to the position of electrician, in accordance with the national regulations of the host country is reflected below:

Days posted in Romania	20 days
Days posted in Belgium	14 days, 8 hours/day
Function	Electrician, 6 years old, specialized worker, B
BNR Exchange on 31.01.2019	4,7348
Monthly gross salary	3.200 RON
Gross salary in euro	676 euros
Personal deduction	120 RON, respectively 25 euros
Subsistence allowance	87,5 euros/day, respectively 1.225 euros for 14 days
Minimum monthly salary in Belgium	14,50 euros, respectively 1.624 euros

From a fiscal point of view, the issue of staff mobility at the European Union level has become a very disputed subject, especially since 2014, when the National Agency for Tax Administration implemented a pilot program aimed at increasing tax compliance in the field of payroll taxation and social contributions) and the fairness of the fiscal treatment of secondment and secondment allowances.

On the basis of the above-mentioned data, with no additional regulation on the calculation of the net salary received by the posted employee (Table 1), the employer observed and paid, from the perspective of the Belgian inspector, a higher net salary than the minimum wage required for this sector of activity.

Table 1 . Calculation of the net salary of a posted worker according to Romanian and European regulations

Indicator	Romania	Belgium	Difference Belgium vs. Romania
Gross monthly salary	676	1.624 + 132 = 1.756	-1.080
- Social security contribution	169	406 + 33 = 439	- 270
- Contribution for health insurance	68	162 + 13 = 175	- 107
- Personal deduction	25	0	25
= Taxable income	414	1.056 + 86 = 1.142	- 728
- Income tax	41	106 + 8 = 114	- 73
= net monthly income	398	950 + 78 = 1.028	- 630
Net income paid for 14 days	279	950	- 671
+ Subsistence allowance for 14 days	1.225	0	-1.225
= Total payments to the employee for the 14 days	1.504	950	-554

Source: our calculations

VII. CONCLUSION

Staff mobility at national and international level is an issue of increasing interest for both the European Union and the Member States, all the more so since the tax implications generated by this process are, as observed in the research present, somewhat confusing.

Delegation, posting and individual employment are forms of manifestation of labor mobility, but in the context of the synergy between European regulations in the field and national legislation, confusion can arise in relation to the interpretation of concepts, which alters legislative development and will have a negative effect on taxing and accurately accounting for the remuneration of delegated or seconded employees. Thus, the present research aims at identifying the numerous interpretations of these concepts and first clarifying, in terms of terminology, the essence of these types of mobility.

The lack of harmonization of national laws with European regulations has created confusion both for the seconded worker's home Member State and for the host Member State.

If in case of individual employment in another state member the situation is clear, in what concerns posting I have tried to highlight, on the one hand, the extent to which unitary tax regulations on the posting of workers from one Member State to another have been developed and how they have been transposed into national law and, in particular, in practice.

What every entrepreneur who wishes to enter the transnational services market from a tax point of view should know is the following:

- The posted worker must receive a salary equivalent to the salary in the Member State in which he is to work;
- The economic entity must provide him with the same conditions as a worker in the Member State in which the posting is arranged;
- The legislation applicable to compulsory contributions and taxation of wage income and assimilated to it is that of the Member State of origin.

Both detachment of workers and individual engagement involve risks. If in the first situation the risks are assumed by the employer, in the latter case the risks are the part of the shares: both the employee and the employer.

In the case of detachments, the employer assumes the risk of misinterpreting and applying inappropriate legislation, which results in penalties and penalties for the differences found by the control bodies.

In the second situation there is a risk that the employee leaves his country, arrives in a completely unknown environment and does not adapt to the working conditions (due to the lack of knowledge of the language due to the impossibility to adapt to culture and rules in the host country, etc.). The employer also takes the risk of hiring a worker who has a different culture and mentality, which can bring about a full balance of work.

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Appendix 1 - Job advertisements abroad

Chocolate Factory from Belgium - Bruxelles
City: Brasov
Wages: 1.600 euro/month

Job description

Unskilled personnel, couples, women or men for working in the factory on the following positions:

- a) packing;
- b) labeling;
- c) verification

A net salary of 1600 euros/month is offered, working overtime is paid double. The accommodation is free throughout the contract period and a hot meal is provided per day. Employment and everything related to the employee's stay there are done with legal documents (medical insurance, child support allowance). The contract is concluded for a period of 3 months and is extended for an indefinite period by the employer.

For more details call telephone no. [Apply](#) between 9am and 5pm from Monday to Friday

Source: <https://ro.jooble.org/desc/6665430412969906455?ckey=operatori-la-fabrica-din-belgia&rgn=-1&pos=6&elc key=-2143197900316050880&sid=-557144250572157825&age=279&relb=100&brelb=100&bscr=661,1081&scr=661,1081&iid=464633262115822285>