The consequences of restricting the Posted Workers Directive

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Posted workers are temporarily sent from one member state to another, usually for projects of short duration. There were 1.1. million posted workers in the EU in 2015, equivalent to 0.4 per cent of all full-time employment.

There has been economic convergence between member states, but large differentials remain: worker productivity is four times higher in Ireland than in Latvia. This matters because productivity determines remuneration.

The conventional narrative is that posted workers mostly move from poor member states to rich ones. The data suggest otherwise: 80 per cent of postings in the EU-15 are from other EU-15 countries. OECD data also show no pattern to suggest newer member states regulate labour markets less than older ones.

Restricting the Posted Workers Directive will weaken the ability of firms from low-productivity member states to compete, thereby undermining economic convergence and the single market.

Introduction

Posting of workers takes place when services are provided cross-border within the single market. Posted workers are legally employed in one member state and are sent by their employer to another member state (Kiss 2017).

The Posting of Workers Directive applied to 1.1 million EU workers in 2015, equivalent to 0.4 per cent of full-time employment when adjusted for working time (Pacolet and de Wispelaere 2016). However, the ability to post workers across member states is an important feature of the internal market, facilitating the cross-border provision of services, which have traditionally been slower to integrate than trade in goods (EC 2006). A company that secures a contract in a different member state will often find it easier to temporarily move some of its own domestic workforce than to hire new staff in the destination country, especially for projects of relatively short duration.

Until the present time, firms have been able to post workers whilst remaining largely bound to the social security obligations prevalent in their member state of residence, with a few additional requirements such as compliance with the host country's minimum wage legislation. However, under reform proposals to be voted on by the European Parliament, the posted workers regime will change fundamentally by introducing the principle of 'equal pay for equal work in the same place' (EC 2016). Whilst the EP report describes the proposals as creating a level playing field, it is likely that the reforms will in fact have the opposite effect, harming the competitive ability of less productive member states.

Large economic differentials continue to prevail across the EU

The free factor mobility enabled by the single market can be expected to lead to economic convergence among the member states over time. There has in fact been significant catch-up growth by newer and poorer member states relative to older ones (cf. Monfort 2008, Bongardt and Torres 2013). But there remain large gaps in economic performance, measured by aggregates such as worker productivity, as OECD data illustrate. As of 2016, output per hour worked was four times higher in Luxembourg and Ireland, the EU's top performers, than in Latvia, the lowest performer, and 2.5 times higher than in Denmark (see Table 1).

	2012	2013	2014	2015	2016
Country					
Belgium	62.7	63.0	63.8	64.4	..
Czech Republic	32.6	32.6	33.0	34.7	34.7
Denmark	61.6	62.1	63.1	63.4	63.5
Estonia	28.9	29.4	30.1	29.9	30.3
France	57.6	58.4	58.9	59.4	60.0
Germany	57.8	58.3	58.7	59.2	59.8
Greece	31.3	31.1	31.7	31.3	30.9
Ireland	64.1	63.1	66.7	81.3	83.2
Italy	47.3	47.8	47.8	47.7	47.4
Latvia	24.3	24.5	25.2	25.9	26.4
Luxembourg	77.7	79.7	81.7	82.5	83.6
Poland	27.1	27.6	27.9	28.4	29.0
Spain	45.9	46.5	46.7	46.9	47.2
Sweden	53.4	53.9	54.5	56.1	56.4
United Kingdom	46.9	46.9	47.1	47.8	47.5
EU-28	46.0	46.4	46.7	47.3	47.7

Table 1. Output per hour worked. Source: OECD.

Productivity differentials matter because worker remuneration depends strongly on productivity levels, and wage growth over the long run is almost entirely a function of productivity growth. Differences in remuneration therefore reflect differences in the productive efficiency of workers and capital. The reason that salaries across the EU have not converged more is that there remain large differences in productivity. This matters for posted workers, because it is not obvious that differentials vanish when workers from a low-productivity country move to a high-productivity one. It should also be noted that an easier flow of capital and labour across borders increases the extent and speed of convergence (IMF 2015; Trzeciakowski 2017).

Some figures on the number and distribution of posted workers in the EU

In 2015, posted workers represented 0.6 per cent of the EU workforce. Given that the average duration of postings is 182 days, the size of the posted workforce in full-time employment terms amounts to just 0.4 per cent of the EU total. The biggest senders of posted workers were Poland, Germany, France and Slovenia; the biggest receivers were Germany, France, Belgium and Austria (Pacolet and de Wispelaere 2016).

The conventional narrative is that the posting of workers is a surreptitious means for firms to circumvent labour standards. Yet, the official data belie this account, as a large share of postings occur between member states with a similar level of social protections. The largest national contingent of posted workers in Belgium are the French; in Luxembourg and the Netherlands, it is the Germans who are most represented. It is true that Poland accounts for the greatest number of postings in Germany, and Slovenia for Austria. But those are neighbouring states. A common language and geographic proximity are better predictors of posted worker flows than income differentials or gaps in labour standards.

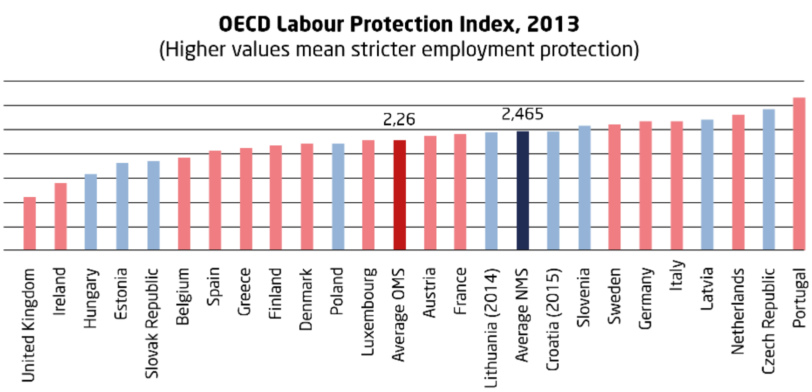
Despite claims that posted workers are used to circumvent labour regulations, common language and geographic proximity are better predictors of posted worker flows than income differentials or differences in labour regulation.

Even when the sending member state is substantially poorer than the receiving one, the proportion of posted workers as a share of the workforce is so small as to make their alleged impact on working conditions questionable. The case of Belgium is illustrative because this country has been at the forefront of efforts at legislative change. 55.7 per cent of postings in Belgium come from the EU-15, with just 16.2 per cent coming from Poland. Thus, even if all Polish posted workers were active in construction – a sector viewed as vulnerable to 'social dumping' – they would only account for about 4 per cent of all Belgian construction employment. In fact, posted workers as a whole represent 2.2 per cent of Belgian construction workers (EC 2016).

Are labour markets really less regulated in the poorer member states?

The fear among proponents of reform is that the posting of workers will otherwise undermine labour protections in the more regulated member states. At present, posting firms must comply with minimum-wage legislation of the receiving member state, but they are not bound by collective bargaining agreements in the applicable industry, which may prescribe higher rates of pay. The freedom of foreign firms to operate in those terms was upheld by the European Court of Justice in 2007. It was viewed as consonant with the ability to trade cross-border in the internal market (Thörnqvist and Woolfson 2012).

However, it is questionable that labour-market regulations are any more restrictive in the EU-15 than they are in the newer member states which some have accused of 'social dumping.' The Lithuanian Free Market Institute (2016) has shown that the 2004 accession member states are no less interventionist in labour markets than the EU-15. OECD data on employment protection show no such pattern (see graph).



The most common objection to the present system for the posting of workers is that some member states have lower wage levels than others and can thereby undercut workers in higher-income countries. But, as the LMFI report shows, new member states have the minimum wages they can afford: the ratio of minimum to average wages is the same in the new as in the old EU.

The tension: a free internal market vs. the desire to protect

At the heart of the policy debate around posted workers lies a conflict between two fundamental principles of the single market. On one hand, there is a desire not just to facilitate but to encourage cross-border trade in goods and services. Trade was underscored as an objective of the internal market in the ECJ's 2007 ruling on posted workers. On the other hand, member states wish to preserve policy autonomy and maintain existing labour market regulation.

This tension is reflected in what Sapir (2015) has termed the 'social trilemma' of economic integration, high social protection and domestic policy autonomy. It is possible to have two of the three, but not all three under the same regime. At present, there is an emphasis on economic integration and domestic autonomy, but the reform legislation and recent pronouncements in Brussels and Paris suggest that some policymakers are willing to slow down and even halt economic integration so as to guarantee lavish social protections. This would continue a trend whereby foreign firms, especially from the newer member states, find themselves discriminated against by national legislation (Kullas and Brombach 2017).

Reduced cross-border trade is to be expected if the notion of ‘equal pay for equal work in the same place’ is introduced. Forcing employers from sending member states to remunerate their posted workers according to the schedules mandated by the receiving country will, in many cases, make it uneconomical to post them in the first place. It is estimated that, even under the comparably more flexible present system, personnel costs rise by as much as 41 per cent for posted workers (Benio 2016). If posting firms become subject to industry-level collective agreements, it will no longer be profitable for some firms to compete for foreign contracts.

It is imperative to recognise that the internal market comprises heterogeneous economies at different levels of development. Output and productivity data reflect these differences and they suggest that divergences in worker remuneration are a product of real factors, not member state legislation. Forcing ‘equal pay for equal work in the same place’ will not help to close productivity gaps, but it will reduce the ability of businesses in poorer countries to compete, and thereby it will weaken the single market.

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