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ARE THE MINIMUM RATES OF PAY OF POSTED WORKERS IN COMPLIANCE WITH THE SOCIAL MARKET ECONOMY?

1. THE CONCEPT OF THE SOCIAL MARKET ECONOMY AFTER THE LISBON TREATY

The social market economy – is a term that has been introduced at the European Union level through amendments to treaty provisions, namely through the Lisbon Treaty which came into force in the year 2009. It thus produced an effect in the legal systems of all EU countries. The reference in art. 3 TEU to the concept of the social market economy should therefore encourage the EU legislator to intensify its activity toward strengthening the protection of workers, namely by developing (expanding) regulations for labour law. This also means that the deregulatory function of EU law, which aims to remove all obstacles to the functioning of the internal market, and the creation of the single market, should be balanced against the protective function of labour law, giving a wide variety of safeguarding forms to workers and increasing both employment and living standards at the same time.

Article 3 TEU proclaims the concept of the social market economy as a foundation for socio-economic development of the European Union, though not something that causes a horizontal direct effect[2] itself. One of the most interesting questions for labour law doctrine is how to recognize the type of legal effect before it is brought about by the European Court of Justice (ECJ). There is a lot of evidence in ECJ case law that which the it comes up with the conclusion that

[1] National Expert Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors, Contract No. VC/2015/0334, Final report.

[2] Case 26/62 NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration, ECR 1963, p. 1.

some articles of the TFEU (i.a. art. 45 TFEU[3] or art. 157 TFEU[4]) have horizontal direct effect without any textual basis from the EU Treaty itself. However, this is not the essential problem that this article concerns itself with. It is enough to say that art. 3 TEU is too general, not sufficiently clear and precise[5], nor sufficiently unconditional[6], to create an obligation on the entities of European Union law. Moreover, the Treaty on the European Union (TEU), in contrast to the Treaty on the Functioning of the European Union (TFEU)[7], consists of goals, and the objectives under the provisions of the said Treaties are described by directional and teleological standards. Article 3 TUE affects each and every level of the operation of law. It provides a framework for the creation of EU and national law (so-called directional guidelines), as well as for the understanding of law in practice (so-called interpretative guidelines). This underlying kind of provision also carries some importance for the application of law by EU and national institutions, especially in such cases where provisions establish a so-called clearance decision (specifying guidelines)[8].

What is of note here is that art. 3 TEU stipulates not only a social market economy, but it also requires more prerequisites. Firstly, it may be highly competitive, as the construction of one big market is at the heart of the European project envisaged by the founding fathers. Secondly, it should aim at full employment and social progress, having regard for the fact that a single market is an important factor that enhances our international competitiveness, one that needs to enjoy the support of all market players: businesses, consumers and workers[9]. The ideal of the social market economy is to achieve an economic and a social purpose at the same time. However, the real and very practical problem the EU legislator has to solve is how, and with which technical methods, such an ideal should be realized. It has to be clearly explained what separates the law of the EU based on the

[3] Case C-292/89 Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen, ECS 1991, p. I-745.

[4] Case 43/75 Gabrielle Defrenne (II) v Société anonyme belge de navigation aérienne Sabena, ECR 1976, p. 455.

[5] Joint cases Bernhard Pfeiffer (C-397/01), Wilhelm Roith (C-398/01), Albert Süß (C-399/01), Michael Winter (C-400/01), Klaus Nestvogel (C-401/01), Roswitha Zeller (C-402/01) i Matthias Döbele (C-403/01) v Deutsches Rotes Kreuz, Kreisverband Waldshut eV, ECR 2004, s. I-8835, p. 103.

[6] Case 152/84 M. Marhall (I) v Southampton and South-West Hampshire Area Health Authority, ECR 1986, p. 723, pp 52.

[7] Consolidated versions Official Journal C 326, 26/10/2012 P. 0001-0390.

[8] W. Sanetra, *Prawo pracy po Traktacie z Lizbony*, "Europejski Przegląd Sądowy" 2010, No. 2, pp. 3–4.

[9] Communication From the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, *For a highly competitive social market economy*, Brussels, October 27, 2010 COM(2010) 608 final at http://ec.europa.eu/internal_market/smact/docs/single-market-act_en.pdf (visited, January 17, 2017).

market – "a market community" – from the law of a "social market economy"[10]. Instead of ensuring a balanced reconciliation between the rules of the market and the requirements of social protection, we can observe many examples of conflicts of values.

2. SEARCHING FOR BALANCE BETWEEN THE FUNDAMENTAL FREEDOM TO PROVIDE CROSS-BORDER SERVICES AND SOCIAL PROTECTION IN THE LIGHT OF THE SOCIAL MARKET ECONOMY

The existence of a single market would not be feasible without the freedom to provide services. This basically means that Polish companies are able to send workers to and host workers from Member States (in practice, this is about sending workers to Western Europe, since Poland is the country that delegates the highest number of workers of all EU countries). Posted workers play a crucial role in the development of the internal market of services. There was a tremendous debate on how to guarantee the rights of these posted workers, especially a fundamental right – the right to remuneration, whilst bearing in mind protection from the host country. The social market economy should deal with problems related to social dumping, level playing fields, the previously-mentioned fairer single market and, most importantly, equal pay for equal work. The crucial question is whether the minimum rates of pay of posted workers are in accordance with the social market economy.

As is commonly known, the **Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996 concerning the posting of workers in the framework of the provision of services** (hereafter: Posting of Workers Directive – PWD)[11] reconciles the exercise of the fundamental freedom of companies to provide cross-border services under art. 56 TFEU (ex art. 49 TEC) with the need to ensure a level of fair competition and respect for the rights of workers (preamble, recital 5). This means that the Directive aimed mainly to promote the cross-border provision of services in a single market, while providing protection to posted workers and ensuring a level playing field between foreign and local competitors[12]. Unfortunately, the adoption of the Posting of Workers

[10] L. Azoulai, *The Court of Justice and the social market economy: The emergence of an ideal and the conditions for its realization*, "Common Marcet Law Review" 2008, Vol. 45, issue 5, p. 1335.

[11] Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, January 21, 1997, pp. 1–6).

[12] The European Commission has regularly monitored the implementation and enforcement of this Directive to assess whether the aims of the PWD were being met (i.e., "Posting of workers

Directive has not removed the controversy surrounding the topic of the posting of workers even concerning such an essential question as the minimum wage. Moreover, the legal framework in relation to posting is considered by many as conducive to "social dumping" and results in displacement effects on local businesses and workers.

Article 3 PWD stipulates that Member States shall guarantee workers posted to their territory the terms and conditions of employment covering the minimum rates of pay, including overtime rates which are laid down in the Member State where the work is carried out. Unfortunately, it does not define the meaning of minimum rates of pay. On the contrary, it points out that for the purposes of the PWD, the concept of minimum rates of pay is determined by the national **law** and/or **practice** of the Member State to whose territory the worker is posted. Indeed, a great deal of confusion flows from the neighbouring expressions of "**minimum wage**" (national concept) and "**minimum rates of pay**" (EU concept), both of which terms countries have a tendency to consider as equivalent. There are a lot of problems related to deciding **which elements** ought to be regarded as constituent elements of minimum rates of pay. Undoubtedly, this is the main source of problems related to the effective protection of "hard core" workers' rights. What is more, it has negative impact on international competiveness – one of the pillars of a social market economy.

Perhaps we should understand the absence of definitions (neither minimum wage nor minimum rates of pay), as providing them would be an extremely hard a task, perhaps even impossible. Firstly, defining these terms on their merits seems implausible as all Member States have their own **legal system** and **practice**. Secondly, as they are within a Directive, it leaves to the national authorities the choice of the form and methods of its implementation. This expressly means that it is within Member States' competence to set rules on remuneration in accordance with their law and practice. Member States have different traditions when it comes to standard-setting in labour law, including minimum wages and wage structures. They resort to a variety of mechanisms which are often combined and range from statutory regulation over various types of agreements to social clauses in procurement rules. It is out of the question that Member State cannot violate EU law even they exercise exclusively internal competence. This is why Member State it cannot impede the free movement of services between Member States[13]. What is more, although all European Union Member States[14] have mechanisms in place to set minimum wages, there is a wide variety in terms of the systems and effective levels of minimum wages, and in the extent of low paid employment.

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in the framework of the provision of services: Maximising its benefits and potential while guaranteeing the protection of workers" and the accompanying Staff Working Document SEC (2007) 747.

[13] Case C-522/12 Tevfik Isbir v DB Services GmbH, OJ C 9, 11.1.2014, pp. 14–15.

[14] Eurofound, Pay in Europe in the 21st century, Dublin 2014.

This leads us to the conclusion that there are 28 different concepts of minimum rates of pay defined by 28 different internal legal systems. Moreover, it may be the case that in one country there is no unique concept of minimum rates of pay or different terms are used to define financial benefits for the employee – for example, "remuneration", "salary", and "wage". There may be sectoral minimum wages set by collective agreements that are not universally applicable by law[15], or minimum wages set by collective agreements that are universally applicable by law but only for a sector or for a region in a host Member State[16].

The minimum rates of pay, according to the provisions of the Posting of Workers Directive, may also be defined by the practice of each European country. This means that not only national law may determine this concept, but that it **may also be defined by practice**. But what does this term mean exactly? "Practice" here has a broad meaning and it is a very general statement; it is not clear what kind (source) of practice we should take into account, how long a term of use should be regarded as practice, which branches it is related to, etc.

The elements of minimum rates of pay under national law or universally applicable collective agreements are not clear and transparent to all service providers. We should bear in mind the conventional manner of wage standard-setting that covers a wide array of agreements, depending on the level at which they are concluded (cross-sectoral, sectoral, company), and whether or not their applicability can be extended. For that reason, the Posting of Workers Directive is considered by many to be more apt at accommodating the systems in which wage-setting is operated through legislation than at accommodating autonomous systems operated through collective agreements or practice[17].

This should further draw our attention to other areas of structural differentiation between posted workers and local ones. Potential differences relate not only to the mechanism of the wage-system, but also to social security contributions or basic income paid by employers. Doubts are aggravated by discrepancies in taxes between sending and receiving Member States – this falls within the scope of a "competitive advantage" for foreign service providers. Public obligations such as taxes are still paid in the sending Member State despite the temporary nature of the services provided in the receiving Member State[18]. Is this in accordance with high levels of competitiveness and the presumptions' of the

[15] Case C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan i Svenska Elektrikerförbundet, ECR 2007, p. I-1176.

[16] Case C-346/06 Dirk Rüffert v Land Niedersachsen, ECR 2008, p. I-01989.

[17] See: Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States.

[18] F. De Wispelaere, J. Pacolet, *An Ad Hoc Statistical Analysis on Short Term Mobility – Economic Value of Posting of Workers: The impact of intra-EU cross-border services, with special attention to the construction sector*, Leuven 2016.

social market economy? Even if this is not so, it should be regarded as such, which indeed seems at least unfair.

3. SOME COMMENTS ON POLISH REGULATIONS

Polish legislature differentiates between the duties of an employer towards employees working abroad depending on whether they have been expatriated to perform work in a non-EU country or posted to work in one of the Member States. Consequently, the Labour Code makes a distinction between the category of "**expatriate**" workers, which defines those working outside the territory of the European Union, and the category of those "**posted**" to work in the territory of the European Union. Moreover, the personal scope (*ratione personae*) of those "expatriated" covers both individuals who had been employed before in their [home] country by an employer as well as those admitted to work abroad, whereas there is a requirement that an employment relationship with the posted workers be established prior to posting. The differences in terminology have been taken from the Council Directive 91/533/EEC on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship[19] and the Directive 96/71/EC on the posting of workers in the framework of the provision of services[20].

Another characteristic feature of the Polish system was the absence of definition of the term "**posted worker**" for many years. However, it was generally recognised in Polish legal systems that a posted worker is a worker performing work in a Member State other than the state in which he normally works. In consequence, there was and there is no clear difference between a business trip and the posting of workers. It hardly needs to be said that employers prefer the worker to be sent on a business trip due to the lower financial charges associated when compared to the costs of posting of workers abroad[21].

Despite numerous judgments stating clearly that posting workers cannot be treated, under any circumstances, as sending them on a business trip[22], it is pop-

[19] Council Directive 91/533/EEC of October 14, 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288 of October 18, 1991, pp. 32–35).

[20] Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996 concerning the posting of workers in the framework of the provision of services (OJ L 18, January 21, 1997, pp. 1–6).

[21] Study on wage-setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors, Contract No. VC/2015/0334, Final report.

[22] Appelate Court in Wrocław, March 27, 2012, III APa 20/11, LEX.

ular practice in Poland to do so, especially in the transport sector. This is due to the fact that they are often sent for only 1−7 days. Because of this short time frame, employers do not treat this as posting workers. In practice, employers send employees on short-term trips. What is more, treating these as business trips is not unprofitable – the workers receive a similar amount of money[23].

Devising a highly competitive social market economy, art. 3 PWD leaves defining the constituent elements of the minimum rates of pay at the discretion of Member States. Pursuing this competence, they have to respect the freedom to provide cross-border services guaranteed by the TFEU. However, there is a lack of clarity with regard to the legal qualification of a number of wage elements, such as contribution to social benefit funds, the exchangeability of special benefits, special payments related to the posting and the distinction between pay and the reimbursement of costs, complications caused by taxes and premiums (gross/net salary).

4. EQUAL PAY FOR EQUAL WORK AT THE SAME PLACE

Equal pay for equal work at the same place is a crucial task for the social market economy. Therefore, the Polish Supreme Court has repeatedly maintained that posted workers are entitled to receive at least the minimum wage that is received by employees in the country where they are performing work[24], and it has tried to clarify the differences between the definitions of gross income, net income and minimum wage of posted workers[25]. The problem lies in the misunderstanding of the term "minimum rates of pay" and the absence of one unique definition. The Polish legislator applies other terms. The minimum wage in Poland is regulated by the Act of October 10, 2002 on the Minimum Remuneration for Work[26].

The term "**minimum wage**" has a meaning equivalent to "**minimum remuneration**". The definition of the "minimum wage" should be understood as the lowest limit of remuneration (salary) guaranteed to an employee for a full month of working time in a full-time job. The Minimum Remuneration for Work Act

[23] M. Maksymiuk, *Project Team Leader in the Pomeranian Employers Association*, Interview conducted on August 18, 2015, Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors, Contract No. VC/2015/0334, Final report, http://ec.europa.eu/social/main.jsp?catId=471&langId=en&moreDocuments=yes (visited February 8, 2017).

[24] Supreme Court, II PK 208/10, LEX.

[25] Supreme Court July 9, 2014, I PK 250/13, LEX.

[26] Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę, Dz.U. z 2002 r., Nr 200, poz. 1679, z późn. zm. [Act of October 10, 2002 on the Minimum Remuneration for Work, Journal of Laws 2002, No. 200, item 1679, with subsequent amendments]. It came into force on January 1, 2003.

mentions "full monthly working time", without specifying any further details or a number of hours. According to provisions of the Labour Code, the working time should not on average exceed eight hours per day and 40 hours per a five-day-long working week (art. 129 (1) of the Labour Code). In the case of overtime hours, the weekly working time (including the overtime hours) should not on average exceed 48 hours (art. 131 (1) of the Labour Code).

In order to avoid social dumping, the legal Act on the Minimum Remuneration for Work stipulates that "the wage of the employee is calculated including the elements of basic remuneration and other benefits related to employment", the minimum wage cannot be lower than the above mentioned wage (minimum wage). The basic remuneration and other benefits form the so-called "personal wage" that also includes other components. Nevertheless, the Minimum Remuneration for Work does not specify these components.

While we have "equal pay for equal work" on the one hand, and "social dumping" on the other, we should go deeper into constituent elements of minimum rates of pay. The Minimum Remuneration for Work clearly excludes such constituents as: remuneration for overtime, jubilee awards, gratuities and retirement pay. Thus, it is clear that a bonus payment for overtime work is beyond the concept of minimum remuneration[27]. According to the PWD, the host country's minimum rates of pay **include overtime rates**. This means that **a bonus for overtime work must be equal for a posted worker**. However, this bonus is not included in a minimum wage. The general message here is that, the minimum rates of pay include overtime rates, while supplementary occupational retirement pension schemes are not covered.

The conditions covered by art. 3(1)(a–g) of the PWD are determined in Poland by statutory law. However, there is no legal obstacle to introducing more favourable conditions by a collective agreement in favour of posted workers, or to granting them additional benefits. In accordance with art. 18(1), the provisions of the Labour Code on employment contracts and other acts – also including collective agreements – on the basis of which an employment relationship is established may not disadvantage an employee more than the provisions of the labour law.

Most national laws implementing the PWD mention both the law and collective agreements as instruments for setting the protection level of posted workers. Poland has assigned the definition of employment and working conditions for

[27] Article 151 of the Labour Code. In addition to the regular remuneration, a bonus for overtime work must be paid: 100% of remuneration for overtime work:

1. during the night,

2. on Sundays and public holidays which are not working days on the employee's normal work schedule,

3. on a day off granted to an employee in exchange for working on a Sunday or on a holiday on the employee's normal work schedule, 50% of remuneration for overtime work on any day other than those specified above.

posted workers exclusively to the law. In practice, **collective agreements do not have far-reaching** importance for posted workers. To be accurate, there are no collective agreements in Poland that could be considered universally applicable within the meaning of art. 3 PWD[28]. There is a similar situation in Romania[29].

A problematic area in the enforcement of the said provisions is also related to the frequency of pay. For example, Member States may establish a minimum hourly wage or a minimum monthly wage. The Posting of Workers Directive does not in general preclude a calculation of the minimum wage for hourly work and/or for piecework which is based on the categorisation of employees into pay groups, provided that this calculation and categorisation are carried out in accordance with rules that are binding and transparent[30]. There may be some problems when an employee works for an hourly wage and Member States establish minimum monthly wage or *vice versa*. It appears that art. 3 PWD does not forbid establishing a minimum hourly or minimum monthly wage. The Posting Workers Directive cannot be interpreted as an legal basis that limits an applicable system of remuneration.

While we consider whether the minimum rates of pay for posted workers are in accordance with the social market economy we should also analyse Case C-396/13 ("Elektrobudowa"), in which the subject matter of the main proceedings related to the determination of the scope of the concept of "minimum rates of pay", within the meaning of PWD, to which Polish workers posted to Finland are entitled. The EU Court of Justice had to deal with a lot of elements of rates of pay, as there was a need to treat them separately. Finally, the EU Court of Justice held that:

− **a daily allowance** such as that at issue in the main proceedings must be regarded **as part of the minimum wage** under the same conditions as those governing the inclusion of the allowance in the minimum wage paid to local workers when they are posted within the Member State concerned;

− **compensation for daily travelling time**, which is paid to the workers on the condition that their daily journey to and from their place of work is of more than one hour's duration, **must be regarded** as part of the minimum wage of the posted workers, provided that this condition is fulfilled, and it is a matter for the national court to verify this.

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[28] Study on wage setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors, Annexes.

[29] Study on wage-setting systems and minimum rates of pay applicable to posted workers in accordance with Directive 96/71/EC in a selected number of Member States and sectors, Contract No VC/2015/0334, Final report.

[30] Case C-396/13 Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna, at http://curia.europa.eu/juris/document/document.jsf?docid=163056&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=PL&cid=59496 (visited January 17, 2017).

Let us try to justify this – we are dealing with compensation for working for some time outside one's regular place of residence, even country. As an employee does not need to prove incurred costs, it is justified to include these allowances in minimum rates of pay. When it comes to the compensation for daily travelling time, it seems that it is **rather time that is compensated, and not incurred cost** – as it is irrelevant. What is more, we may consider what happens if a daily journey to and from a workplace takes **less than** one hour. If a collective agreement establishes such an obligation, compensation for working should be regarded as part of the minimum wage even though it is less than one hour.

We must agree with the statement, having taken into account the substance of art. 3(7) PWD stipulating that allowances specific to a posting shall be considered to be part of the minimum wage, unless they are paid as reimbursement for expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. This provision is exceptional in nature, as usually remuneration is in exchange for work performed[31]. Hence, the EU Court of Justice ruled:

− coverage of the cost of the said workers' accommodation is not to be regarded as an element of their minimum wage;

− an allowance taking the form of meal vouchers provided to the posted workers is not to be regarded as part of the their minimum salary.

The situation is different when we consider minimum paid annual holidays. There is no doubt that the right to annual leave is a fundamental right in European Union law and it is strictly connected to remuneration. For that reason, annual paid holiday ought to be regarded as an element of the minimum wage. The pay which posted workers must receive for their minimum paid annual holiday corresponds to the minimum wage to which those workers are entitled during the reference period.

5. CONCLUSIONS

In a social market economy, there is a need for the equal pay to be "quadrated" (multiplied) for equal work. Therefore, instruments that increase equal treatment for equal work at the same place, such as legislative measures to **counteract social dumping** and **unfair competition,** are high on the agenda of trade union organisations, particularly the issue of "equal pay for equal work at the same place". However, it is understandable that low-wage countries want to use lower labour

[31] P. Wąż, *Glossary to C-396/13* 13 Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna, LEX 2015.

standards as a competitive advantage when compared to high-wage countries[32]. Instead of ensuring a balanced reconciliation between the rules of the market and the requirements of social protection, we can observe many examples of conflicts of values. The ECJ rulings in the Viking, Laval, Rüffert and Luxembourg cases gave real food for thought that achieving this balance is not an easy task, and it seems to many that the ECJ gives priority to the freedom of the market ahead of strengthening the protection of workers.

While we look for solutions *de lege ferenda,* a European minimum wage is given large and profound consideration. However, we have to bear in mind that the EU has no competences with respect to wage levels or wage-formation mechanisms. Article 153 TFEU, which governs EU attributes of work and employment (including the areas of working conditions, health and safety, social security and employment protection), finishes with a sentence (point 5), which succinctly says "the provisions of this article shall not apply to pay". According to this, the level of minimum wages and mechanisms for establishing them are a matter for the Member States[33]. Obviously, establishing a European minimum wage would be an extremely hard task, as there is a huge difference, if not a yawning gap, between national minimum wages (from 2 to 10 Euro per hour).

In the latest proposal of the Directive amending the PWD[34], the new text introduces a crucial change – it replaces the reference to "minimum rates of pay" with a reference to "remuneration"[35] together with the proposal of a definition of this term. For the purpose of this Directive, remuneration **means all the elements** of remuneration rendered mandatory by national law, regulation or administrative provision, collective agreements or arbitration awards which have been declared universally applicable and/or, in the absence of a system for declaring collective agreements or arbitration awards to be of universal application, other collective agreements or arbitration awards within the meaning of paragraph 8, second subparagraph, in the Member State to whose territory the worker is posted.

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[32] M. Weiss, The Future of Labour Law, (in:) Z. Hajna, D. Skupień (eds.), *Przyszłość prawa pracy. Liber Amicorum. Księga Jubileuszowa Profesora Michała Seweryńskiego*, Łodź 2015.

[33] Eurofound, Pay in Europe in the 21st century, Dublin, 2014.

[34] Proposal for a Directive of the European Parliament and of the Council amending Directive 96/71/EC of The European Parliament and of the Council of December 16, 1996 concerning the posting of workers in the framework of the provision of services, COM (2016) 128 final 2016/0070 (COD), Strasbourg, March 8, 2016 at http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A128%3AFIN (visited January 17, 2017).

[35] Building on case law of the Court in Case C-396/13 13 Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna.

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Summary

Directive 96/71/EC of the European Parliament and of the Council of December 16, 1996 concerning the posting of workers in the framework of the provision of services aims mainly to promote the cross-border provision of services in a single market, while providing protection to posted workers and ensuring a level playing field between foreign and local competitors. Namely, art. 3 **stipulates that** Member States shall guarantee workers posted to their territory the terms and conditions of employment covering the minimum rates of pay, including overtime rates, which are laid down in the Member State where the work is carried out. On the other hand, the social market economy should deal with problems related to social dumping, a level playing field, the previously-mentioned fairer single market and, most importantly, equal pay for equal work. Thus, the crucial question is whether the minimum rates of pay of posted workers are in accordance with the social market economy.

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minimum rates of pay, posting of workers, posted workers, social market economy

SŁOWA KLUCZOWE

minimalne stawki płacy, delegowanie pracowników, pracownicy delegowani, społeczna gospodarka rynkowa