



POSTING OF WORKERS IN THE EUROPEAN UNION

Executive Summary

Issue	Insights
<p>Posting of workers allows a worker from a sending country to work in a recipient country while observing regulations of the sending country.</p>	<p>OECD data shows that labour market regulation in new Member States (NMS) is as rigid as in old Member States (OMS). World Bank data shows that labour regulation in NMS is even tighter than in OMS (e.g. maximum length of labour week, extra pay for overtime, night hours and work on rest days).</p>
<p>Some OMS request the principle of “equal pay for equal work in the same place” and tighter regulation of posted workers.</p>	<p>The minimum wage (MW) gap between NMS and OMS is a result of different level of economic development rather than disparity in social standards. On average, OMS and NMS have similar ratios between the minimum wage (policy choice) and the average wage (economic development).</p>
<p>Some NMS argue that the principle of “equal pay for equal work in the same place” may be incompatible with the Single Market, as pay rate differences constitute a legitimate element of competitive advantage for service providers.</p>	<p>In all EU Member States workers of the same occupation or sector receive widely different salaries. This means that the principle of “equal pay for equal work in the same place” does not exist even in individual Member States. Therefore, it would be arbitrary to introduce this principle at the Union level.</p>

Policy context

In March 2016, the Commission presented a proposal for a revision of the Posting of Workers Directive (Directive 96/71/EC), defining a set of mandatory rules regarding the terms and conditions of employment to be applied to posted workers. The Directive is aimed to guarantee that these rights and working conditions are protected throughout the EU and to avoid "social dumping" where foreign service providers can undercut local service providers because their labour standards are lower. The proposed revision is meant to ensure that the rules remain fit for purpose. The Enforcement Directive will need to be transposed by the Member States.

In May 2016 national Parliaments from 11 Member States, including Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia, submitted reasoned opinions claiming that the proposal was in breach of the principle of subsidiarity. After re-examining its proposal in the context of the subsidiarity control mechanism triggered by national parliaments, the Commission concluded in July 2016 that the proposal for a revision of the Directive did not constitute a breach of the subsidiarity principle.

Posting of workers plays an essential role in the Internal Market, particularly in the cross-border provision of services. It consists of the case in which undertakings post an employee to another Member State to provide services. Directive 96/71/EC provides three options of posting: a direct provision of services between two companies under a service contract, posting in the context of an establishment or a company belonging to the same group (intra-group posting), and posting by hiring out a worker to a temporary work agency established in another Member State.¹ Simply put, posting of workers allows a worker from a sending country to work in a recipient country while observing regulations of the former.

Some OMS² request the principle of "equal pay for equal work in the same place", meaning that posted workers would not receive lower pay than the minimum wage of the recipient country. During the discussion accusations of social dumping by NMS with regard to OMS surfaced. The impact assessment equated lower minimum wages in NMS to social dumping and presented differences in labour market regulation as unfair competition.

NMS³ argue that the principle of "equal pay for equal work in the same place" may be incompatible with the Single Market, as pay rate differences constitute a legitimate element of competitive advantage for service providers.⁴

In 2014 there were over 1.92 million postings in the EU. OMS were recipients in 86% of cases, with Germany, France and Belgium receiving 50% of all postings while Poland, Germany and France were the three largest sending countries.

¹ Impact Assessment, accompanying the document Proposal for a Directive of the European Parliament and the Council amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

² Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Sweden.

³ Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Latvia, Poland, Slovakia and Romania.

⁴ 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 16 December 1996 concerning the posting of workers in the framework of the provision of services.



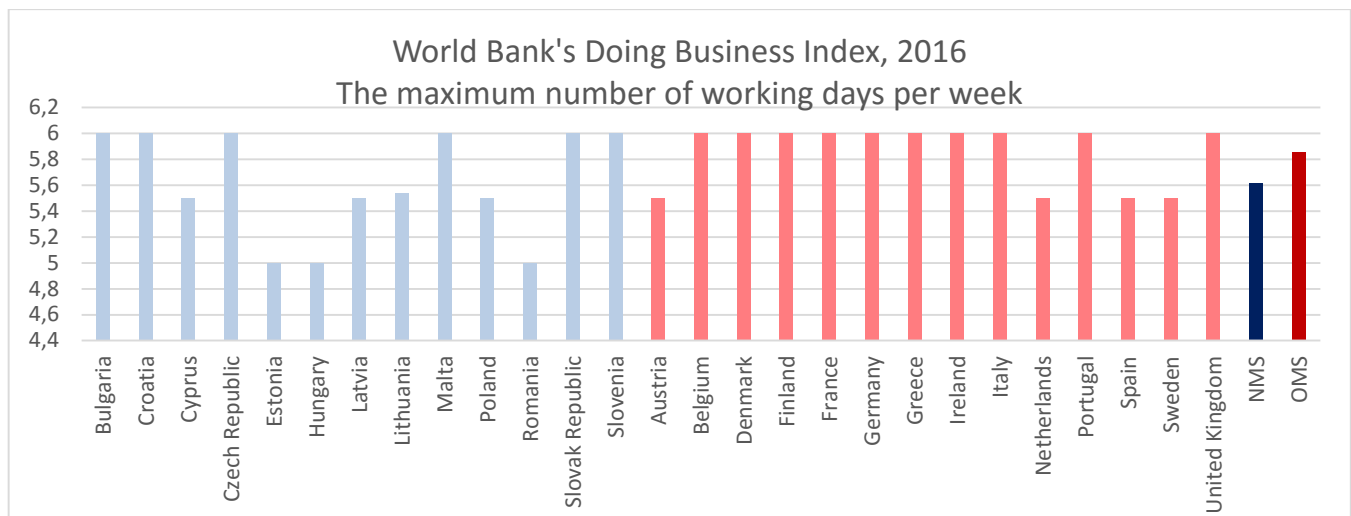
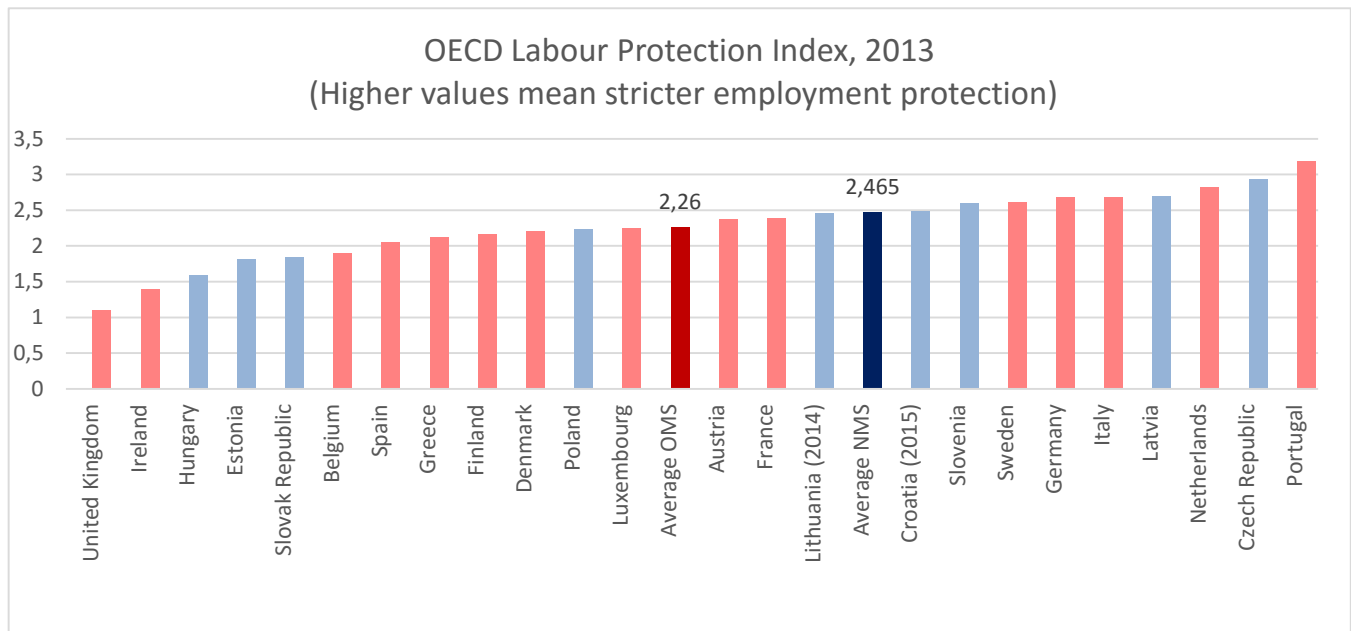
The present policy brief looks into the accusations by certain OMS that NMS are guilty of social dumping and addresses the following issues:

- Is labour regulation less restrictive in new Member States?
- Are lower minimum wages in new Member States a deliberate policy choice?
- Does the principle of “equal pay for equal work in the same place” exist in the European Union?

Is labour market regulation less restrictive in new Member States?

Labour market regulation in NMS is as rigid as in OMS.

There is no basis for claiming that posting of workers from NMS to OMS constitute a deterioration of standards of social protection. In fact, due to a lack of reforms NMS have stricter labour regulation than OMS. For example, the average maximum length of the working week in OMS is longer than in NMS. This is clearly reflected in the below data of OECD and the World Bank.



In addition, extra pay for overtime, night time and work on rest days in new Member States is higher than in old Member States:

Extra pay, % of hourly pay			
	Night time	Work on a weekly rest day	Overtime
NMS	23,3	38	50
OMS	13,5	26,7	21

The above data shows that in terms of worker protection, NMS regulations allow less working hours and stipulate higher overtime rates. Therefore, allowing posted workers from NMS to observe regulations of their sending countries while working in OMS does not undermine their rights.

Are lower minimum wages in new Member States a deliberate policy choice?

Different minimum wages between NMS and OMS is a result of different level of economic development rather than disparity in social standards.

The fact that minimum wages in NMS are considerably lower than in OMS is one of the arguments for imposing stricter rules on posted workers from NMS. However, this argument disregards a couple of key aspects.

Although minimum wages are lower in NMS, it is neither a consequence of different mentality or social policy nor a deliberate attempt by NMS to gain an unfair competitive advantage. In fact, the nominal minimum wage across Member States varies due to differences in economic development and therefore related policy choices should be compared with regard to the ratio between the minimum wage and the average wage.

According to Eurostat data, in 2014 the ratio was 41.5% in NMS and 43.1% in OMS. Clearly, there is no major difference between the two as lower minimum wages reflect economic development rather than different social policies.

Punishing NMS for having lower nominal minimum wages is tantamount to penalizing companies from different countries for different prices. This would go against fundamental principles of the Single Market where price competition is explicitly allowed or even encouraged.

Does the principle of “equal pay for equal work in the same place” exist in the European Union?

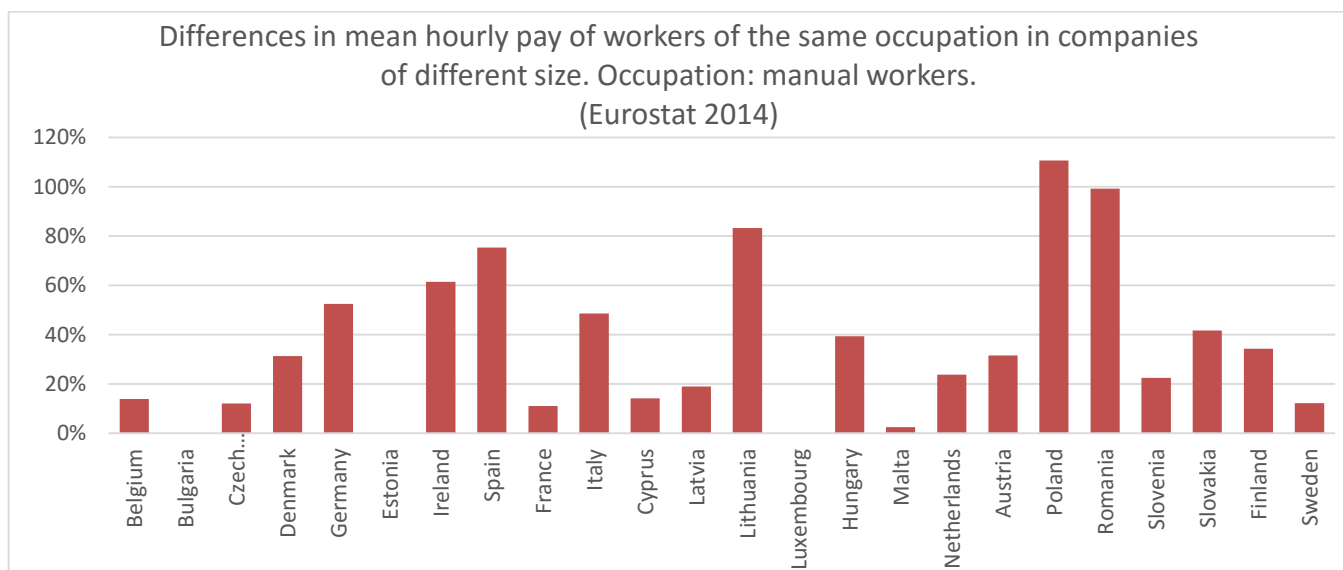
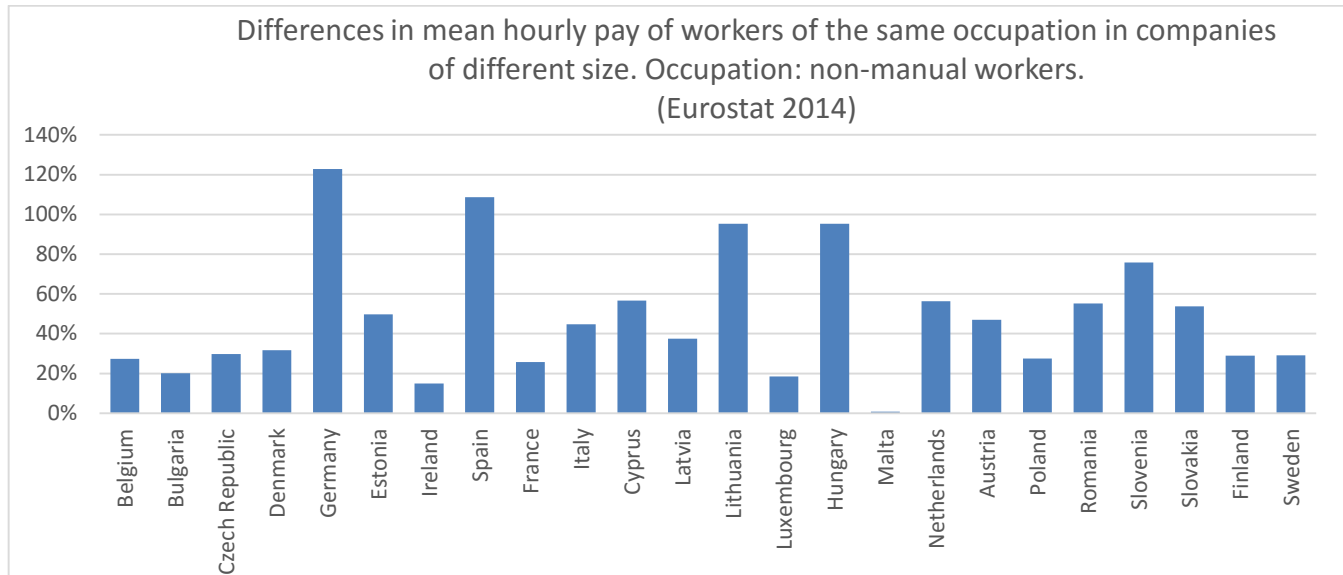
The principle does not exist even in individual Member States.

Stricter regulation of posted workers from NMS, or forcing these workers to accept the rules of the recipient country is argued for by applying the principle of “equal pay for equal work in the same place”.

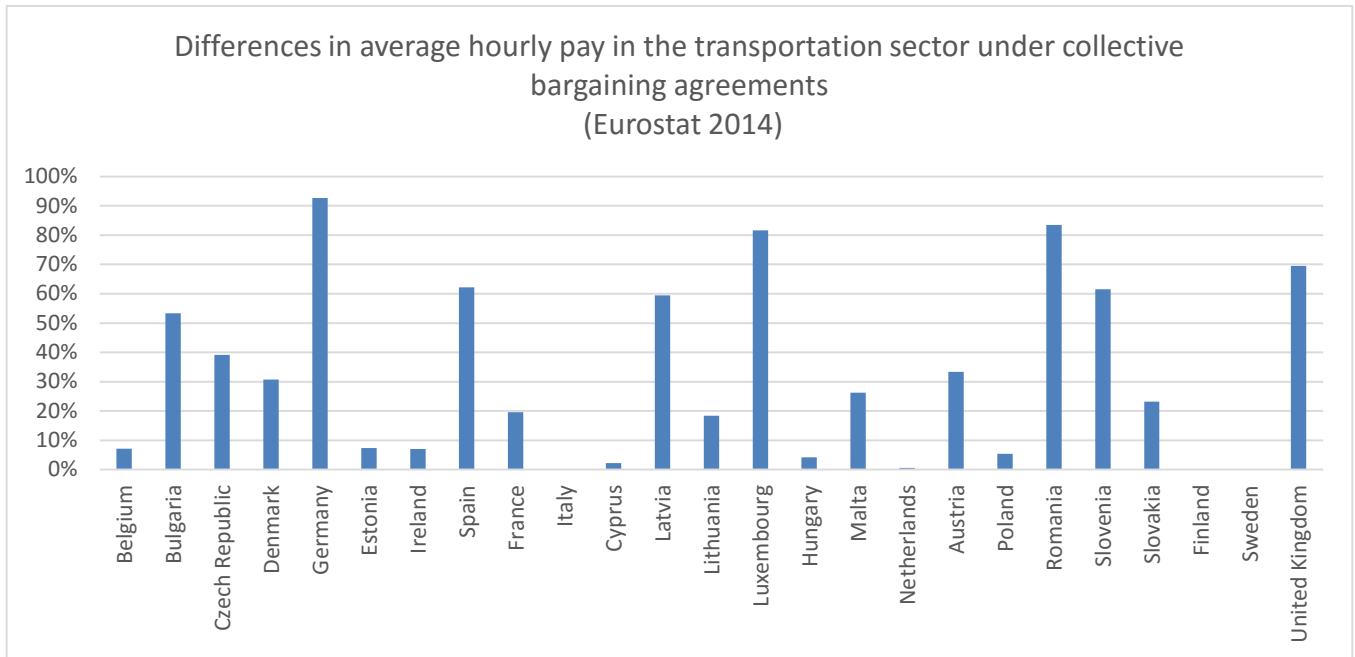
The choice to apply this principle would be arbitrary and unfair, because it does not even exist at the level of Member States. In any given Member State workers with similar jobs (or with similar qualifications) receive different pay. For example, earnings of workers with identical occupation may differ by over 100%, depending on the size of a company (see tables below).



For example, the pay for workers engaged in non-manual labour varies by 100% in Germany and Spain. One could easily argue that these wage differences also violate the principle of “equal pay for equal work in the same place”, because two workers employed in a similar job in the same country receive very different pay.



Similarly, differences in earnings may depend on different conditions of collective bargaining agreements. The table below shows differences in average earnings of the transportation sector employees in individual Member States, resulting from different collective bargaining schemes. Under collective bargaining arrangements, two workers of the same sector in the same country may receive very different wages (e.g. difference up to 90%).



Of course, there are valid economic reasons to account for these differences, the elimination of which should not turn into EU policy. Understood and tolerated at the intra-state level, pay differences should receive the same treatment at the inter-state level. After all, wouldn't one expect the principle of "equal pay for equal work in the same place" to be more prevalent within individual Member States?

Given the aforementioned arguments, it seems that a selective application of this principle has much more to do with restricting access to labour markets rather than achieving the equality of pay. As such, this type of protectionism goes against the fundamental principles of free movement of labour in the Single Market.

