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THE SOCIAL MARKET ECONOMY – BALANCE BETWEEN FUNDAMENTAL FREEDOM TO PROVIDE CROSS-BORDER SERVICES AND SOCIAL PROTECTION OF WORKERS' RIGHTS

1. The concept of a 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 the Lisbon Treaty which came into force in the year 2009. This way it produced an effect in all legal systems of the European countries. The reference in Article 3 TEU to the concept of social market economy should therefore encourage EU legislator to the intensification of its activity toward strengthening the protection of workers, namely by developing (expanding) regulations belonging to the labour law. This also means that the deregulation function of the EU law, aiming to remove all obstacles in the functioning of the internal market and the creation of the single one, should be balanced against the protective function of labour law, giving a wide variety of safeguarding forms for workers and increasing both employment and living standards at the same time.

Article 3 TEU proclaims the concept of social market economy as a foundation for socio-economic development of the European Union and does not cause the horizontal direct effect¹ itself. One of the most interesting questions for the labour law doctrine is how to recognize the type of legal effect before it is done by the European Court of Justice (ECJ). There is a lot of evidence in ECJ case-law that

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

Tribunal comes up with the conclusion that some articles of the TFUE (i.a. Article 45 TFUE² or Article 157 TFUE³) have horizontal direct effect without any textual basis from the UE Treaty itself. However, this is not the essential problem for the subject-matter of this article. It is enough to say that Article 3 TEU is too general, not sufficiently clear and precise⁴, nor unconditional⁵ to create such obligation for the entities of the European Union law. Moreover, the Treaty on the European Union (TEU) in contrast to the Treaty on the functioning of the European Union (TFUE)⁶ consists of the 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). The 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 the so-called clearance decision (specifying guidelines)⁷.

What draws our attention is that Article 3 TEU stipulates not only 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 enhancing our international competitiveness and that it needs to enjoy the support of all market players: businesses, consumers and workers⁸. The ideal of the social market economy is to achieve economic and a social purpose at the same time. Yet, the real and very practical problem the EU legislator has to solve is how and which technical methods are to be chosen in order to realize such an ideal. It has to be clearly explained what separates the law of the EU based on the market - „a market Community” - from the law of a „social market economy”⁹. Instead of ensuring a balanced reconciliation between the rules of the

² Case C-292/89 *Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen*, ECS 1991 s. I-745.

³ Case 43/75 *Gabrielle Defrenne (II) v Société anonyme belge de navigation aérienne Sabena*, ECR 1976, p. 455.

⁴ 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.

⁵ Case 152/84 *M. Marhall (I) v Southampton and South-West Hampshire Area Health Authority*, ECR 1986, p. 723, pp 52.

⁶ Consolidated versions Official Journal C 326, 26/10/2012 P. 0001 – 0390.

⁷ W. Sanetra, *Prawo pracy po Traktacie z Lizbony*, Europejski Przegląd Sądowy nr 2/2010, p. 3-4.

⁸ 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, 27.10.2010 COM(2010) 608 final.

⁹ L. Azoulay, *The Court of Justice and the social market economy: The emergence of an ideal and the conditions for its realization*, CML Rev. Vol./2008, s. 1335, Lex.

market and the requirements of social protection, we can observe many examples of conflicts of values.

2. Searching for balance between fundamental freedom to provide cross-border services and social protection in the light of social market economy

The existence of a single market would not be feasible without freedom to provide services. It basically means that Polish companies are able to send and host staff to or from Member States (in practice, it is about sending workers to Western Europe, since Poland is a country that delegates the highest number of workers in contrast to all European countries). Posted workers have crucial meaning in the development of the internal market of services. There was a tremendous debate on how to guarantee the rights of the posted workers, especially fundamental right: the right to remuneration on the one hand, bearing in mind protection from the host country on the second hand. Social market economy should deal with problems related to social dumping, level playing field, earlier mentioned fairer single market and the most important – equal pay for equal work. 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 16 December 1996 concerning the posting of workers in the framework of the provision of services (further: Posting of Workers Directive – PWD)**¹⁰ reconciles the exercise of companies' fundamental freedom to provide cross-border services under Article 56 TFEU (ex Article 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 Directive aimed mainly to promote 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 competitors¹¹. Unfortunately, the adoption of the Posting of Workers Directive has not removed the controversy surrounding the topic of posting of workers even in such an essential question as the minimum wage is. Moreover, the legal framework in relation to posting is considered by many as conducive to 'social dumping' and evokes 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

¹⁰ 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 (OJ L 18, 21.1.1997, p. 1–6).

¹¹ 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 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).

where the work is carried out. Unfortunately, it does not define the meaning of minimum rates of pay. To the contrary, it points out that for the purposes of this 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, countries have a tendency to consider as being equivalent. There are a lot of problems with figuring out **which elements** ought to be regarded as constituent elements of minimum rates of pay. Undoubtedly, it is the main source of problems with effective protection of ‘hard core’ workers’ rights. What is more, it has negative impact on international competitiveness – one of the pillars of social market economy.

Perhaps we should understand the absence of definitions (neither minimum wage nor minimum rates of pay), as it would be extremely hard a task, maybe even impossible. Firstly, defining these terms on their merits seems implausible as all member states have their own **legal system** and **practice**. Secondly, as it is a Directive, it leaves to the national authorities the choice of form and methods of its implementation. It 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 exercising even exclusively internal competence, the Member cannot violate EU law. That is why, it cannot affect impeding a free movement of services between Member States¹². What is more, although all European Union Member States¹³ 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.

It 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 happen that in one country there is no unique concept of minimum rates of pay or there are used different terms to determine the financial benefit for the employee like remuneration, salary, and wage. There may be sectoral minimum wages set by collective agreement that are not universally applicable by law¹⁴ or minimum wages set by collective agreement that are universally applicable by law but only for a sector or for a region in the host member state¹⁵.

¹² Case C-522/12 *Tevfik Isbir v DB Services GmbH*, OJ C 9, 11.1.2014, p. 14–15.

¹³ Eurofound, *Pay in Europe in the 21st century*, Dublin, 2014.

¹⁴ Case C-341/05 *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet*, Svenska Byggnadsarbetareförbundets avdelning 1, *Byggettan i Svenska Elektrikerförbundet*, ECR 2007, p. I-1176.

¹⁵ Case C-346/06 *Dirk Ruffert v Land Niedersachsen*, ECR 2008, p. I-01989.

The foregoing concept, according to the Posting of Workers Directive provisions, may also be defined by the practice of each European country. It means that not only national law may determine this concept, but it **may be also defined by practice**. But what does this term exactly mean? The “practice” 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 taken 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 way 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 practice¹⁶.

It should further draw our attention to other areas of structural differentiation between posted workers and the local ones. Potential differentials relate not only to the mechanism of wage-system, but also to social security contributions or corporate income paid by employers. Doubts are aggravated by discrepancies in taxes between sending and receiving Member States, which comes into the scope of the ‘competitive advantage’ for foreign service providers. Public obligations such as taxes are still paid in the sending competent Member State despite the temporary nature of services provided in the receiving Member State¹⁷. Is it in accordance with highly competitive and presumptions of the social market economy? Even if so, it should be regarded as such, which indeed seems at least unfair.

3. Some comments on Polish regulations

Polish legislature differentiates duties of the 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 a category of “**expatriate**” workers which defines the group of those working outside the territory of the European Union and the group 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]

¹⁶ 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.

¹⁷ 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.

country by an employer as well as those admitted to work abroad, whereas there is a requirement of establishing the employment relationship with the posted workers prior to posting. The terminology differences 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 relationship¹⁸ and the Directive 96/71/EC on the posting of workers in the framework of the provision of services¹⁹.

Other characteristic feature of 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. No one needs to be convinced that employers prefer the worker sent on a business trip due to lower financial charges compared to the costs burdening posting of workers abroad²⁰.

In spite of a lot of judgments stating clearly that posting workers cannot be treated, under no circumstances, as a business trip²¹, it is popular practice in Poland to do it especially in transport sector. It is due to the fact that sending takes only 1-7 days. Because of the short time of sending, employers do not treat it as posting. In practice, employers send employees for short-term trips. What is more, treating this as a business trip is not unprofitable, they receive a similar amount of money²².

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

¹⁸ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship (OJ L 288 of 18.10.1991, p. 32-35).

¹⁹ 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 (OJ L 18, 21.1.1997, p. 1-6).

²⁰ 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.

²¹ Appellate Court in Wrocław, 27.03.2012, III APa 20/11, LEX.

²² M. Maksymiuk, - Project Team Leader in Pomeranian Employers Association, Interview conducted on 18th August 2015.

4. Equal pay for equal work at the same place

Equal pay for equal work at the same place is crucial task for the social market economy. Therefore, Polish Supreme Court has repeatedly reminded that posted workers are entitled to receive at least the minimum wage that is received by employees in the country of performing work²³, and has tried to clarify differences between the definitions of: gross income, net income and minimum wage of posted workers²⁴. The problem lies in misunderstanding of the “minimum rates of pay” term and lack of unique definition. Polish legislator applies other terms. The minimum wage in Poland is regulated by the Act of 10 October 2002 on the Minimum Wage²⁵.

The term “**minimum wage**” has an equivalent meaning to “**minimum remuneration**”. The definition of the “minimum wage” should be understood as the lowest limit of remuneration (salary) guaranteed to the employee for a full month of working time in a full-time job. The Minimum Wage Act mentions „full monthly working time”, without specifying any further details and 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 (Article 129 (1) of the Labour Code). In case of overtime hours, the weekly working time (including the overtime hours) should not on average exceed 48 hours (Article 131 (1) of the Labour Code).

In order to avoid the social dumping, the legal act on the Minimum Wage 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 includes other components. Nevertheless, Act on the Minimum Wage does not specify these components.

While we have an ‘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. Act on the Minimum Wage clearly excludes such constituents as: remuneration for overtime, jubilee reward, gratuity and retirement pay. Thus, it is clear that bonus amount for overtime work is beyond the concept of minimum remuneration²⁶. According to the PWD, the host country’s minimum rates

²³ Supreme Court II PK 208/10, LEX.

²⁴ Supreme Court 9.07.2014 I PK 250/13, LEX.

²⁵ Ustawa z dnia 10 października 2002 r. o minimalnym wynagrodzeniu za pracę (Dz.U. z 2002 Nr 200, poz.1679 z późniejszymi zmianami) [Act of 10 October 2002 on the Minimum Remuneration for Work, Journal of Laws 2002, No. 200 item 1679, with subsequent amendments]. It came into force on 1 January 2003.

²⁶ Article 151 of the Labour Code. In addition to the regular remuneration, a bonus for overtime work must be paid off: 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 work schedule,

of pay **include overtime rates**. It means that **a bonus for overtime work must be equal for posted worker**. Meanwhile, this bonus is not included in minimum rate of wage. Summing up, the minimum rates of pay include overtime rates, whereas supplementary occupational retirement pension schemes are not covered.

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

Most national laws implementing the PWD mention both law and collective agreements as instruments for setting the protection level of posted workers. Poland has assigned exclusively to the law the definition of employment and working conditions to posted workers. In practice, **collective agreements do not have a far-reaching** importance for posted workers. Precisely speaking, there are no collective agreements in Poland that could be considered as universally applicable within the meaning of Article 3 PWD²⁷. Similar situation appears in Romania²⁸.

Difficulty area in an enforcement of the said provisions is also related to the frequency of pay. For example, Member States may establish minimum hourly wage or minimum monthly wage. Posting of Workers Directive, in general, does not 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 that calculation and categorisation are carried out in accordance with rules that are binding and transparent²⁹. It may cause some problem when employee works for hourly wage and Member States established minimum monthly wage or *vice versa*. It seems that Art. 3 PWD does not forbid establishing minimum hourly wage and minimum monthly wage. Posting Workers Directive cannot be interpreted as an act that limits applicable system of remuneration.

While we consider whether the minimum rates of pay of posted workers are in accordance with social market economy we should also analyse Case C-396/13 *Elektrobudowa*, in which the subject-matter of the main proceedings relates to

3. on a day off granted to an employee in exchange for working on a Sunday or on a holiday on the employee's work schedule,

50% of remuneration for overtime work on any day other than those specified above.

²⁷ 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.

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, Contract No VC/2015/0334, Final report.

²⁹ Case C396/13 *Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna*, <http://curia.europa.eu/juris/document/document.jsf?docid=163056&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=PL&cid=59496>.

the determination of the scope of the concept of ‘minimum rates of pay’, within the meaning of PWD, to which the Polish workers posted to Finland are entitled. The Tribunal had to deal with a lot of elements of rates of pay, as there was a need to treat them separately. Finally, Tribunal held that:

- **daily allowance** such as that at issue in the main proceedings must be regarded **as part of the minimum wage** on 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 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 that condition is fulfilled, a matter which it is for the national court to verify;

Let us try to justify it - it is compensation for working for some time outside the regular place, even country. As 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, not** incurred costs - as it is irrelevant. What is more, we may consider what happens if daily journey to and from their place of work takes **less than** one hour. If the collective agreement establishes such obligation, compensation for working should be regarded as part of the minimum wage even though duration takes less than our hour.

Furthermore, we must agree with that statement, having taken into account the substance of Art. 3 (7) PWD stipulating that allowances specific to the posting shall be considered to be part of the minimum wage, unless they are paid in reimbursement of expenditure actually incurred on account of the posting, such as expenditure on travel, board and lodging. This provision has exceptional nature, as usually remuneration is the equivalent for a performed work³⁰. Hence, the Tribunal rejected :

- 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 latter’s minimum salary; and

We may argue that similarly as with allowances employee does not incur any costs, or at least it is not necessary, however, it is **expressly excluded by the PWD**.

Situation is different when we consider minimum paid annual holidays. There is no doubt that right to annual leave is a fundamental right in the European Union law and it is strictly connected to remuneration. For that reason, it ought to be regarded as an element of their minimum wage. The pay which the posted

³⁰ P. Wąż, *Glossary to C-396/13 13 Sähköalojen ammattiliitto ry v Elektrobudowa Spolka Akcyjna*, LEX 2015.

workers must receive for the minimum paid annual holidays corresponds to the minimum wage to which those workers are entitled during the reference period.

5. Conclusions

In social market economy, there is a need for the equal pay to be “quadrated” (multiplied) for equal work. Therefore, the 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, in particular, of the trade union organisations ‘equal pay for equal work at the same place’. On the other hand, it is understandable that low wage countries want to use lower labour standards as a competitive advantage in comparison to high wage countries³¹. 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, Ruffert and Luxembourg cases gave a real food for thought that achieving this balance is not an easy task, and it seems to many that ECJ gives premium to freedoms of markets before the strengthening protection of workers.

While we look for solutions *de lege ferenda*, European minimum wage is given large and profound consideration. However, we have to bear in mind that EU has no competences with respect to wage levels or wage formation mechanisms. Article 153 TFUE, 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 States³². Obviously, establishing European minimum wage would be 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 Directive amending PWD,³³ the new text introduces a crucial change – it replaces the reference to „minimum rates of pay” with a reference to remuneration³⁴ together with a 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

³¹ M. Weiss, “The Future of Labour Law”, in *Przyszłość prawa pracy. Księga Jubileuszowa Profesora Michała Seweryńskiego*, Łódź 2015.

³² Eurofound, *Pay in Europe in the 21st century*, Dublin, 2014.

³³ 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, COM (2016) 128 final 2016/0070 (COD), Strasbourg, 8.3.2016.

³⁴ Building on case law of the Court in Case C-396/13 13 Sähköalojen ammattiliitto ry v Elektrodowa Spółka Akcyjna.

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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SPOŁECZNA GOSPODARKA RYNKOWA – RÓWNOWAGA POMIĘDZY PODSTAWOWYM PRAWEM ŚWIADCZENIA USŁUG TRANSGRANICZNYCH A OCHRONĄ SOCJALNYCH PRAW PRACOWNICZYCH

Spółeczna gospodarka rynkowa - to termin, który został wprowadzony do prawa Unii Europejskiej dzięki zmianom wprowadzonym do postanowień Traktatów założycielskich przez Traktat z Lizbony. Zawarta w art. 3 Traktatu o Unii Europejskiej koncepcja społecznej gospodarki rynkowej powinna zachęcać prawodawcę UE do intensyfikacji prawodawczej działalności w kierunku wzmocnienia ochrony pracowników we wszystkich sferach aktywności Unii Europejskiej. Oznacza to również, że funkcja deregulacyjna prawa UE, mająca na celu usunięcie wszelkich przeszkód w funkcjonowaniu rynku wewnętrznego i stworzenia rynku jednolitego, powinna być zrównoważona funkcją ochronną prawa pracy, zapewniając szerokie formy zabezpieczenia pracowników i zwiększenia poziomu zatrudnienia i warunków pracy. Prawodawca unijny stoi przed wyzwaniem wyboru odpowiednich metod i środków prawnych, które powinny być zastosowane w celu realizacji takiego założenia. Zamiast zapewnienia równowagi pomiędzy regułami rynku i ochroną socjalną, możemy zaobserwować wiele przykładów konfliktu wartości. W tym kontekście autorzy artykułu starają się znaleźć odpowiedź na pytanie: czy minimalne stawki płacy pracowników delegowanych są zgodne ze społeczną gospodarką rynkową?

