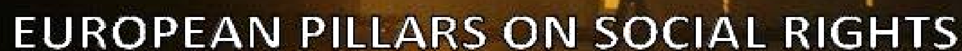
Lithuanian Free Market Institute

LIBERAL VOICES 2016

Analysis and policy ideas by think tanks in Central and Eastern Europe in response to a range of European Union legislative proposals



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About the publication

This publication is result of cooperation between independent think tanks in Central and Eastern Europe (CEE). The purpose of this cooperation is to increase awareness of upcoming legislative initiatives in the CEE countries, and to increase the presence of liberal opinions from the CEE countries in the EU decision making.

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The European Agenda for the Collaborative Economy

The European Commission (EC) has issued a European agenda for the collaborative economy (Agenda). A clear point of view on sharing economy was essential in the wake of these new business models. This relatively new phenomenon provides the European Union (EU) with an opportunity to create more jobs, more economic value, and spur innovation. It is estimated that even though the sharing-economy now contributes only EUR 28 billion to the EU economy per year it can grow to up to EUR 572 billion per year. In order to use as much potential as possible, both the EU and its Member States have to implement a regulatory model that is flexible and applicable to different business models. The following analyzes key areas addressed by the EC in the Agenda.

Market access requirements

Any market access barriers whether it be authorization schemes or licensing requirements, imposed by the governments must be implemented only if they are necessary in order to attain a clearly identified public interest objective. Any Imposed limits must be justified, legitimate and objective. One of the main purposes for market access requirements is to ensure the consumer protection. But such regulatory practices have morphed into a governmental instrument to limit the number of businesses or to limit the supply of goods and/or services. This has happened in the taxi industry in France where after setting the license limit for taxi drivers to 14 000 in 1930s it has only reached 18 000 by the time of the riots against Uber in 2015.

The necessity for governments to ensure consumer safety in areas where the sharing economy thrives, has decreased significantly mostly because of the autoregulation and feedback methods employed by platforms themselves. Platform owners usually issue a set of requirements that service provider has to meet before being able to use the platform. This acts as an *ex ante* regulation. After using the platform and interacting with consumers, the service providers are subject to an evaluation system. Customers can leave reviews and on how the service provider has performed or delivered in their transaction. This works as an *ex post* regulation. Because of the mobile technologies, which enable these evaluations, they take effect instantly. This allows other customers to see how the provider has performed before. Even the slightest decrease in the quality of services can instantly result in a poorer consumer evaluation and eventually lesser customer activity. System provides the results instantly therefore it is more flexible and more receptive to any quality changes than the rigid licensing systems imposed by governments. Thus the EC is right to advocate against absolute bans and refraining from any quantitative restrictions.

Despite this general idea of avoiding unnecessary restrictive measures, EC somehow argues for the differentiated regulatory regime. Below a certain threshold defined by the market player's economic criteria which may differ according to a sector, service providers may be subject to less restrictive requirements. Thresholds, established in a reasonable way are claimed to have a possible positive impact for the non-professional providers.

There is no clear evidence, that this would benefit anyone else except for a small part of market players. Purposefully creating differentiated regulatory regime will stifle and eventually the only losing party will be a consumer. There is no clear reason why bigger market players which use digital platforms to do business should be subject to a stricter regulatory regime.

Sharing economy is a chance for the EU to reform its approach on different business sectors. Digital platforms have let peer-to-peer service providers to compete against established market players and grab a significant part of their market share. This has shown that the customers are comfortable with quality standards maintained by platforms and their users, and that the requirements imposed by the governments are becoming obsolete. Therefore, neither the EU nor the Member States should apply differentiated regulatory regime. Instead, they should review old regulations and modernize them into those fitting the new business models.

Worker status in the collaborative economy

One of the most important opportunities presented by the collaborative economy is a possible increase in jobs and more ways for the EU citizens to earn a living. The flexibility of these business models is exceptionally attractive to people who are not able or willing to work full time. This includes students, young parents, people who want to have an extra source of revenue. But by arguing for a wider use of labor laws based on labor patterns, flexibility, which is so attractive to both consumers and service providers, may be sacrificed.

The application of labor laws relies heavily on three main criteria of the EU law which define the employment relationship: the existence of a subordination link; the nature of work; the presence of a remuneration. The problem is that based on these criteria most of collaborative economy business models and the relationship between service providers and digital platforms could be categorized as labor relationship which can eventually lead to higher taxation and lesser flexibility. Subordination criterion can be applied whenever a provider of the underlying service is not free to choose which services it will provide and how. A lot of collaborative economy businesses are one sector oriented. Which means that by limiting its activities to one sector it may also be categorized as a subordination relationship. The nature of work criterion would be met if a service provider is pursuing a genuine economic value, excluding services on a small scale as to be regarded as purely marginal and accessory. This criterion lacks certainty as it may be evaluated based on working hours, productivity, revenue and many other economic criteria. Such uncertainty can make it possible for legislators or courts to *ad hoc* classify any nature of work as the field of labor relationship. Remuneration criterion may also be met by numerous collaborative businesses due to the fact that they establish pricing policies and bonus systems, which significantly impact remuneration.

Neither the EU nor the Member States should seek to apply strict labor laws in the field of collaborative business models. Flexibility both in terms of regulation and working hours is what led to the flourishing of sharing-economy in the first place. By applying the traditional labor rules governments would only diminish the most significant competitive advantage of collaborative economy business models.

Taxation

Difference in taxation models and compliance rules has been named as one of the biggest problems for businesses that want to sell their goods or services in the EU. Therefore, an application of functionally similar tax obligations to businesses providing comparable services has been called for. Even though an increased clarity and transparency is a justifiable goal, development of commonly agreed standards can lead to tax system harmonization which may be harmful.

Differences between tax systems may serve as a stimulus to trade. Taxes constitute a significant share of costs and a large share of the price of factors of production, labor in particular. It is tax diversity (which is usually determined by the necessity to accommodate to local conditions and traditions) that provides

serious incentives to produce cheaper goods and services and to offer them on the international market. Non-existence of centralized tax harmonization promotes beneficial trade rather than undermining it.

A common approach towards tax administration may not necessarily help create the system that is applicable and welcome everywhere in the EU. The EC rightly encourages Member States to facilitate and improve tax collection by using the possibilities provided by collaborative platforms, as these already record economic activity. Member States should work on finding the best fitting tax administration model for their country while still competing with other countries' tax systems.

The European Commission (EC) has issued a European agenda for the collaborative economy (Agenda). A clear point of view on sharing economy was essential in the wake of these new business models. This relatively new phenomenon provides the European Union (EU) with an opportunity to create more jobs, more economic value, and spur innovation. It is estimated that even though the sharing-economy now contributes only EUR 28 billion to the EU economy per year it can grow to up to EUR 572 billion per year. In order to use as much potential as possible, both the EU and its Member States have to implement a regulatory model that is flexible and applicable to different business models. The following analyzes key areas addressed by the EC in the Agenda.

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Any market access barriers whether it be authorization schemes or licensing requirements, imposed by the governments must be implemented only if they are necessary in order to attain a clearly identified public interest objective. Any Imposed limits must be justified, legitimate and objective. One of the main purposes for market access requirements is to ensure the consumer protection. But such regulatory practices have morphed into a governmental instrument to limit the number of businesses or to limit the supply of goods and/or services. This has happened in the taxi industry in France where after setting the license limit for taxi drivers to 14 000 in 1930s it has only reached 18 000 by the time of the riots against Uber in 2015.

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Sharing economy is a chance for the EU to reform its approach on different business sectors. Digital platforms have let peer-to-peer service providers to compete against established market players and grab a significant part of their market share. This has shown that the customers are comfortable with quality standards maintained by platforms and their users, and that the requirements imposed by the governments are becoming obsolete. Therefore, neither the EU nor the Member States should apply differentiated regulatory regime. Instead, they should review old regulations and modernize them into those fitting the new business models.

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Neither the EU nor the Member States should seek to apply strict labor laws in the field of collaborative business models. Flexibility both in terms of regulation and working hours is what led to the flourishing of sharing-economy in the first place. By applying the traditional labor rules governments would only diminish the most significant competitive advantage of collaborative economy business models.

Taxation

Difference in taxation models and compliance rules has been named as one of the biggest problems for businesses that want to sell their goods or services in the EU. Therefore, an application of functionally similar tax obligations to businesses providing comparable services has been called for. Even though an increased clarity and transparency is a justifiable goal, development of commonly agreed standards can lead to tax system harmonization which may be harmful.

Differences between tax systems may serve as a stimulus to trade. Taxes constitute a significant share of costs and a large share of the price of factors of production, labor in particular. It is tax diversity (which is usually determined by the necessity to accommodate to local conditions and traditions) that provides serious incentives to produce cheaper goods and services and to offer them on the international market. Non-existence of centralized tax harmonization promotes beneficial trade rather than undermining it.

A common approach towards tax administration may not necessarily help create the system that is applicable and welcome everywhere in the EU. The EC rightly encourages Member States to facilitate and improve tax collection by using the possibilities provided by collaborative platforms, as these already record economic activity. Member States should work on finding the best fitting tax administration model for their country while still competing with other countries' tax systems.

Conclusion

- Member States should follow Agenda guidelines in terms of refraining from using restrictive market access policies for collaborative economy business models only. These new businesses have developed tools that help to maintain quality standards, therefore no additional governmental intervention is necessary.
- Differentiated regulatory regimes for different digital platform users should not be imposed because that would be harmful for the competition and end-users.
- Applying labor laws for digital platform and service provider relationship may lead to lesser flexibility of collaborative economy businesses which is one of the main factor why platforms became so popular among market players in the first place.
- Member States should use the possibilities created by the digital platforms to set up tax administration system that would be simple and efficient. At the same time Member States should compete among themselves with their tax tariffs and administration systems in order to make their tax environments inviting to the collaborative economy businesses. Member States should follow Agenda guidelines in terms of refraining from using restrictive market access policies for collaborative economy business models only. These new businesses have developed tools that help to maintain quality standards, therefore no additional governmental intervention is necessary.

- Differentiated regulatory regimes for different digital platform users should not be imposed because that would be harmful for the competition and end-users.

- Applying labor laws for digital platform and service provider relationship may lead to lesser flexibility of collaborative economy businesses which is one of the main factor why platforms became so popular among market players in the first place.

- Member States should use the possibilities created by the digital platforms to set up tax administration system that would be simple and efficient. At the same time Member States should compete among themselves with their tax tariffs and administration systems in order to make their tax environments inviting to the collaborative economy businesses.

Personal Pensions in the European Union

Executive summary

Issue	Insights
The development of personal pensions at the national and cross-border levels is limited by high compulsory payments to public pension funds, restrictions on the participation of the self-employed and the unemployed, rules governing access to retirement savings, taxation of retirement income and other national legal requirements limit.	Member States should reduce red-tape, allow for more flexibility in choosing personal pension schemes, promote cross-border personal pensions through a preferential tax treatment of employer and/or employee contributions and provide saving options for the self-employed and temporarily unemployed individuals.
Unstable legal regimes (frequent policy shifts and uncertainty in policy continuation), overregulation (price caps, regulation of investment strategies and contribution rates) and a general lack of a long term vision hinder the provision of cross-border pensions and create barriers to entry for pension providers.	Member States should ensure policy continuation and refrain from changing national policies on long-term investment products in the pursuit of short-term goals. Sustainable policies and the removal of anti-competitive restrictions that would allow market players to develop personal pension products are paramount.
Insufficient public policy incentives to stimulate saving in personal pension products and active promotion of incumbent mandatory state pension schemes combined with large compulsory payments to public pension funds reduce opportunities for private savings and decrease the demand for personal pensions.	Rather than promoting inflexible and high-cost compulsory state pension schemes, Member States should diversify investment options that would increase retirement saving choices and allow individuals to choose the best investment option based on individual needs, consumption patterns and opportunities.

Policy context

The principle of free movement of capital, goods, people and services comprises the main pillar of the European Economic Area. Excessive regulation, however, prevents EU Member States from reaching its full potential. Such untapped potential is particularly evident in the free movement of financial services as it is subject to extensive regulation at the national level. With the aim of strengthening the single market for capital, the European Commission will assess the case for a policy framework to establish European personal pensions.

Commendably, the Commission acknowledges the need to encourage more savings into personal pensions to secure adequate revenues for retirement, especially as the ratio of retired people to workers is expected to double by 2050. To that end, the Commission has announced a public consultation to identify potential obstacles to the uptake of personal pension products and ways to best address them, also stressing the need of deregulation and higher transparency in personal pension products. The

Commission is seeking advice on issues that hamper the development of national and cross-border personal pensions, create barriers to entry for providers, reduce the demand from individuals for personal pensions and restrict the portability of existing personal pension products.

As a potential solution to the issue, the Commission sees the establishment of the European Retirement Account. According to the Commission, the proposed cross-border saving account would ensure higher access (especially for migrant workers), multiple ways of contribution and participation of temporarily unemployed individuals in personal pension saving schemes, allowing potential savers to benefit from the free movement of capital and services.

On the proposed establishment of the European Retirement Account

The proposed European Retirement Account, which is supposed to address the existing imperfections of public and personal pension schemes and allowing wider access, multiple ways of contribution and limited predefined rules of investment, has the following features:

- it may be provided and managed by a variety of institutions, including banks, insurance companies, funds, etc.;
- may be opened by any EU citizen in any Member State;
- profits on the account as well as withdrawals after reaching the age of retirement will not be taxed. Contributions will be subject to taxation, unless tax incentives are provided by national legislation;
- the account will allow pre-retirement withdrawals subject to limited penalties. Withdrawals in case of specific hardships will not be penalized;
- a lump sum withdrawal will be allowed upon reaching the age of retirement;
- the age of retirement will not be harmonized, but depend on the saver's country of tax residence;
- the account providers will have to offer default low-cost investment strategies;
- the account will be portable both within and across Member States;
- annual performance reports will be used to ensure transparency of the fees paid; and
- there will be no mandatory guarantee on the accounts to maximize the return on investment and avoid the impression of a risk-free investment.

Though it is designed to tackle a number of key policy issues, the proposed European Retirement Account does not address the problem of high compulsory contributions to public pension schemes. As the issue of taxation remains at the disposal of individual Member States, a fully functioning product which may serve as an alternative or supplement to public pension schemes will still depend on the political will of individual Member States.

National legal requirements limit the development of national and cross-border personal pensions

As rightly pointed out by the Commission, varying national legal requirements limit the development of personal pensions both at the national and cross-border levels. Currently, a vast majority of personal pension regimes are based on national labour and social security laws as well as subject to national tax regulations. Saving for retirement in pension funds is not only tied-up with state subsidies, but private savings themselves are redistributed by national pension administration institutions and treated as the expenditure of the state pension fund rather than private property.

Moreover, individual Member States provide for different rules for participation in private pension schemes that vary from restrictions on the participation of the self-employed and the unemployed to rules governing access to retirement savings to taxation of retirement income and other country-specific regulations. High compulsory employer or/and employee contributions to public pension funds are of major concern when it comes to the development of personal pensions. For example, in Lithuania over

20 percent of employee salary (gross) is deducted as a mandatory contribution to the state pension scheme, leaving virtually no room for the development of innovative and efficient national and cross-border personal pensions that may compete with the incumbent state pension system.

In order to overcome the current stagnation of personal pension development, advance more innovative and more efficient personal pension products and allow cross-border personal pensions to function properly, the European Commission should encourage Member States to:

- reduce red-tape and seek deregulation;
- allow for more flexibility in choosing personal pension schemes;
- promote cross-border personal pensions through preferential tax treatment of employer and/or employee contributions;
- provide saving options for the self-employed and temporarily unemployed individuals; and
- promote competition by leaving the development of personal pension products to market players.

The abovementioned measures would increase competition, promote innovation and encourage investors to develop competitive products for personal pension saving. In turn, consumers could benefit from simpler, more innovative and efficient personal pensions to complement their retirement income.

Unstable legal regimes hinder the provision of cross-border pensions

Uncertainty in policy continuation is yet another issue to be tackled by the European Commission in order to facilitate the provision of cross-border pensions. Combined with extensive regulation, unstable national legal regimes for personal pensions and private saving deter investment into cross-border pension products. Let alone that individual Member States establish price caps, fix the maximum contribution rates and regulate investment strategies of private pension funds.

For example, from 2003 through 2013 the Law on Pension Saving of Lithuania has been amended more than ten times, sending out a strong signal of a lack of a clear long-term vision on pension policy to investors. Further exacerbated by constant public policy debates promoting legal possibilities to switch from private to state pension schemes, this continuing uncertainty does not promote and could not attract any investment into the provision of cross-border pensions that are by nature long-term investment products to which the stability of legal regimes is paramount.

To facilitate the provision of cross-border pensions by removing current barriers to entry for providers, Member States should ensure long-term policy continuation and refrain from changing national policies on long-term investment products in the pursuit of short-term goals. If combined, the removal of anti-competitive restrictions on the provision of cross-border pensions and sustainable policies would attract investment, allow market players to develop innovative products and allow citizens to save for retirement in effective, transparent and, most importantly, portable accounts. This will benefit both the market for personal pension products and the consumers.

Insufficient public policy incentives discourage citizens from saving in personal pension products

Insufficient public policy incentives to stimulate saving in personal pension products are seen as a major concern regarding low demand from individuals for personal pensions. Indeed, current policy solutions and debates do not appear to create incentives to opt for personal pension products. The reasons behind this are manifold:

- the existing mandatory state pension scheme foster a paternalistic approach whereby individuals are forced to recognize that the state is best-positioned to provide for retirement;
- individuals are deprived of the opportunity to decide on the amounts of their contributions to pension saving accounts;

- individuals cannot freely choose which saving tools, public or private, to rely on when saving for their retirement;
- access to pension rights and retirement are strictly regulated and pension fund and retirement income are subject to taxation; and
- the portability of personal pensions is limited and changing pension funds is severely restricted.

Clearly, by promoting inflexible and high-cost compulsory state pension schemes, limiting individual choice and restricting portability of personal pensions and competition by introducing restrictions on movement between Member States and restrictions on changing pension funds, Member States discourage consumers from personal pensions. To increase the demand for personal pensions, Member States should allow individuals to choose the best investment option based on individual needs, consumption patterns and opportunities.

Flexibility is of major importance when it comes to long-term investment products, and especially those that focus on retirement. Investors' preferences and needs could change over lifetime and they would like to move their personal pension accounts both within the state by changing pension funds as well as across Member States, which is also very likely given the current development of cross-border career prospects. Flexibility of personal pensions would create incentives to participate in personal pension schemes as people will have more control over their investment. Likewise, portable pension accounts would make personal pensions a more attractive option for mobile workers in view of keeping their pension contributions together.

Conclusion

Provided that the abovementioned challenges are overcome, a truly functioning market for personal pensions could create a number of benefits and contribute to the growth and investment within the single market for capital. Increased competition would bring more product innovation, better prices and a wider range of personal pension providers. Furthermore, product transparency, simplicity, flexibility and portability would make personal pension saving more attractive to individuals. Finally, providers could also benefit from reduced complexity, facilitated cross-border activity and increased efficiency by pooling assets from a larger investor base.

However, to achieve this it is essential that barriers for the internal market are removed and cross-border solutions are not restricted by tighter regulatory mechanisms. Increased competition and portability and better access to personal pension products should remain the focal point of strengthening the single market for capital. Any attempt to harmonize European regulation on personal pension products by introducing further regulatory provisions would certainly pose the risk that instead of creating a healthy market of innovative and competitive products Europe will end up with a patchwork of regulatory requirements and market inefficiency. Policy should therefore focus on creating conditions for the development of long-term sustainable solutions while keeping regulation to a minimum.

Posting of Workers in the European Union

Executive summary

Issue	Insights
Posting of workers allows a worker from a sending country to work in a recipient country while observing regulations of the sending country.	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).
Some OMS request the principle of "equal pay for equal work in the same place" and tighter regulation of posted workers.	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).
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.	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.

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 OMS[2] 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.

NMS[3] 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.

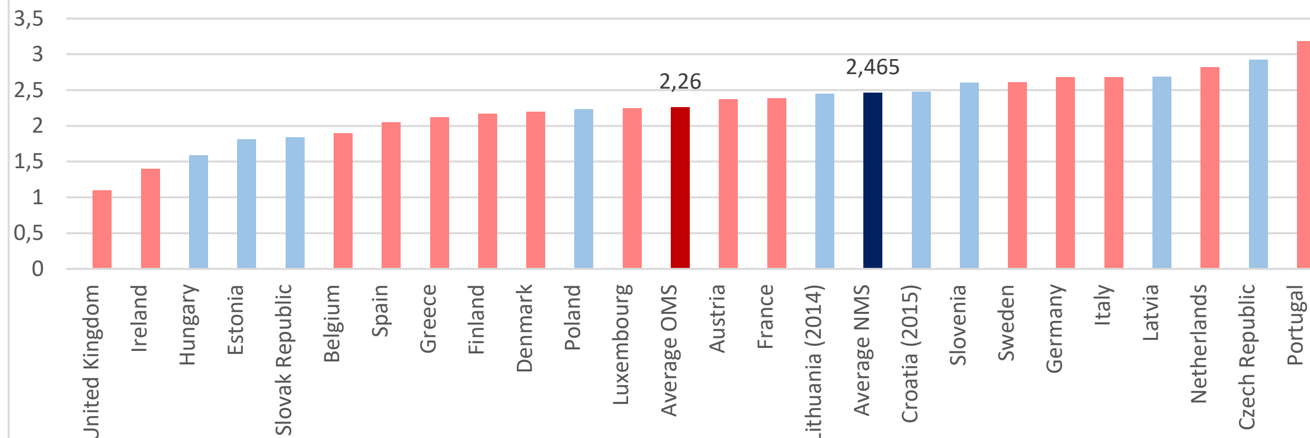
The present policy brief looks into the accusations by certain OMS that NMS are guilty of social dumping and addresses the following issues:

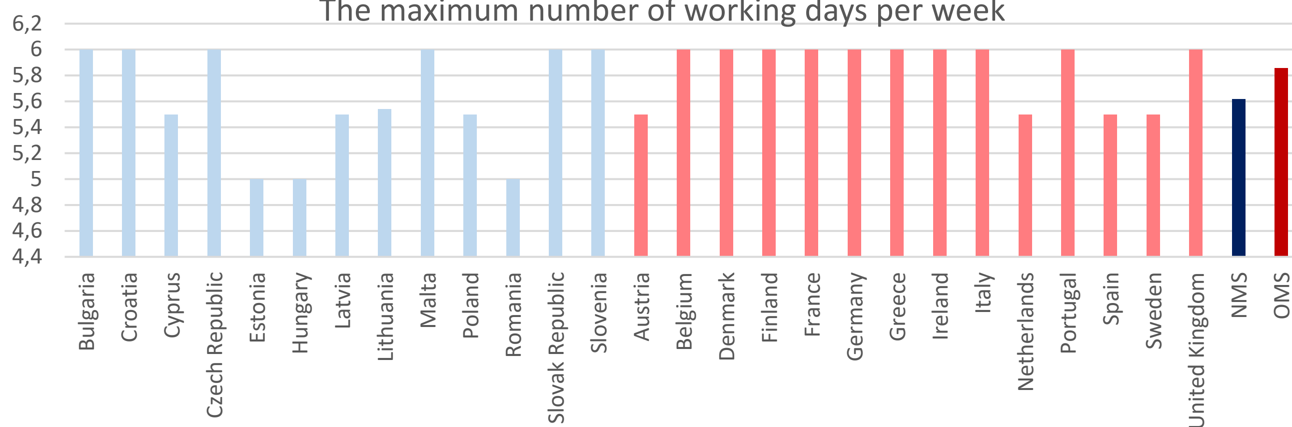
- Is labour regulation less restrictive in new Member States?
- Are lower minimum wages in new Member States a deliberate policy choice?
- Does the principle of "equal pay for equal work in the same place" exist in the European Union?

Is labour market regulation less restrictive in new Member States?

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.

[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.





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?

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.

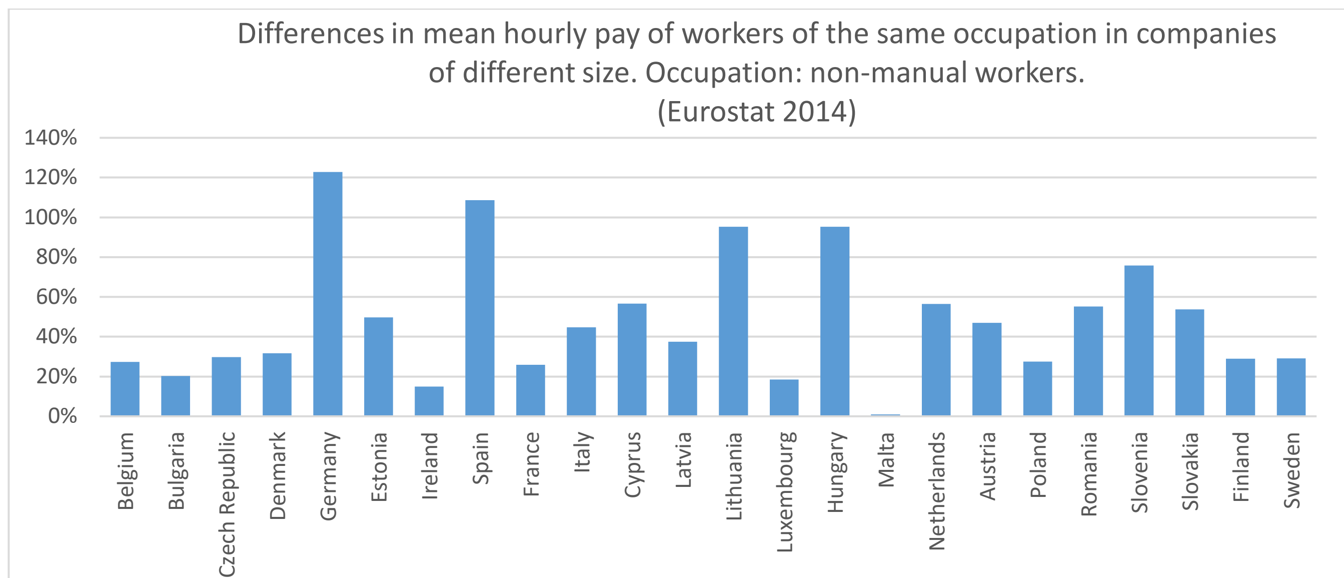
Punishing NMS for having lower nominal minimum wages is tantamount to penalizing companies from different countries for different prices. This would go against fundamental principles of the Single Market where price competition is explicitly allowed or even encouraged.

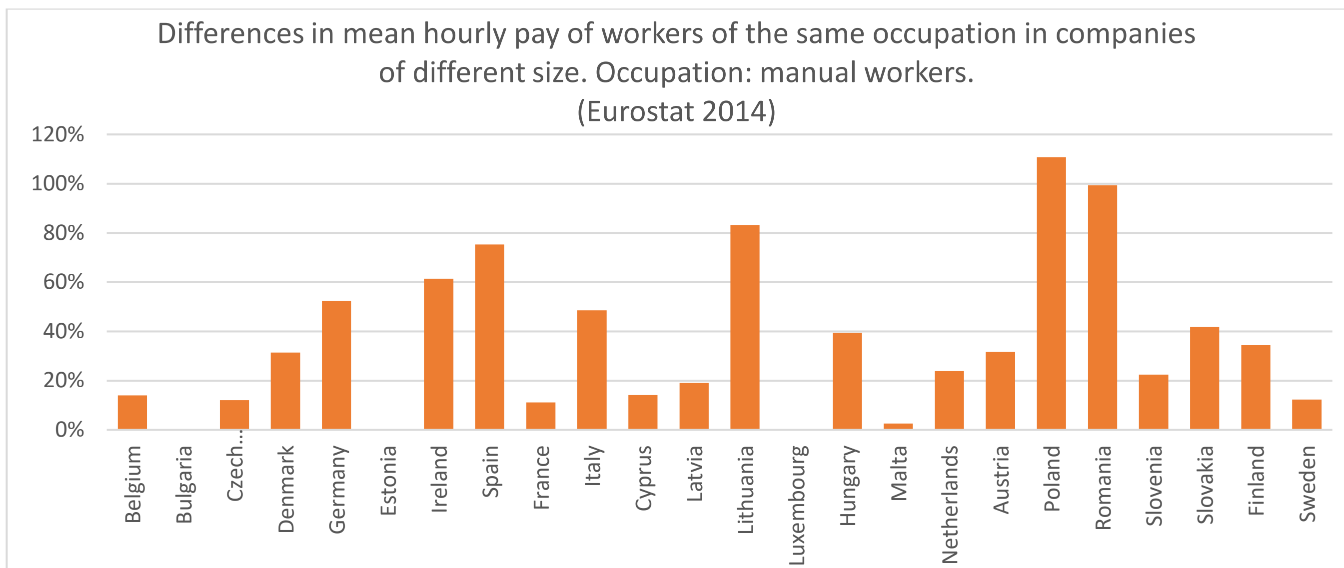
Does the principle of "equal pay for equal work in the same place" exist in the European Union?

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".

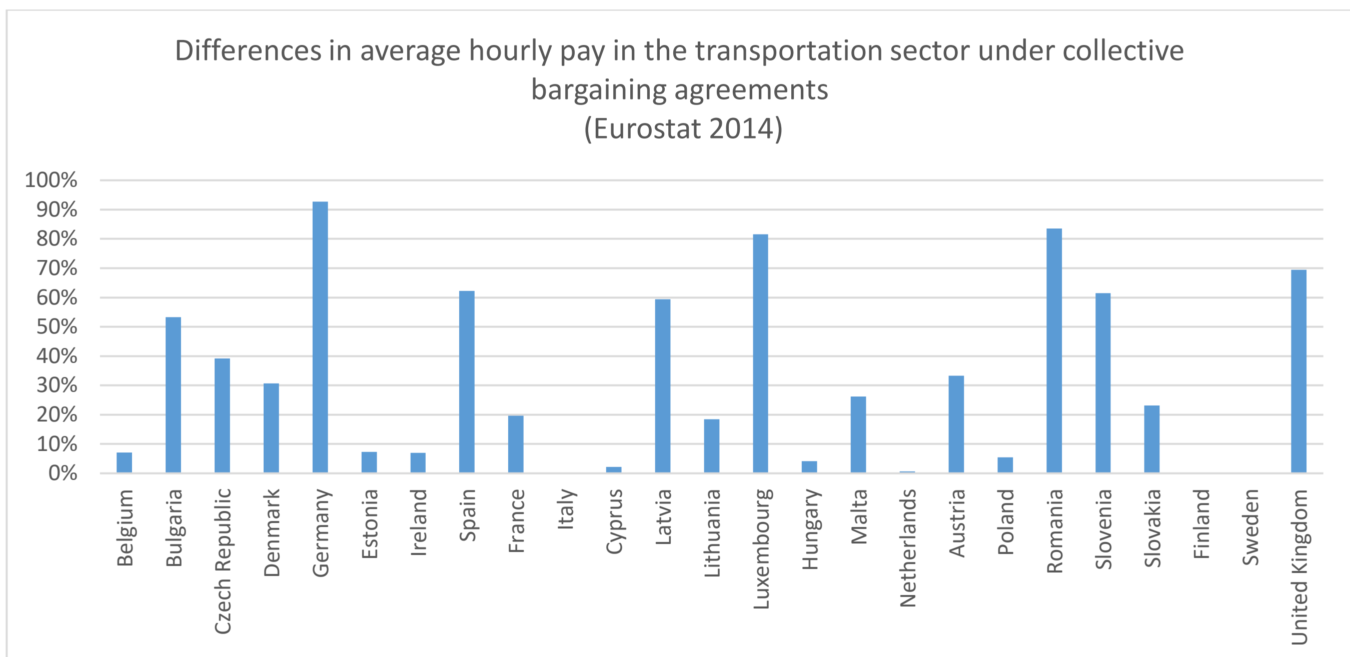
The choice to apply this principle would be arbitrary and unfair, because it does not even exist at the level of Member States. In any given Member State workers with similar jobs (or with similar qualifications) receive different pay. For example, earnings of workers with identical occupation may differ 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.

Anti-Tax Avoidance Directive and Its Implications

On 12 July, 2016 the European Council (EC) adopted the Anti-Tax Avoidance Directive (ATA). The aim of this directive is to strengthen the protection against aggressive tax planning, combat the erosion of tax bases (BEPS) in the internal market and the shifting of profits out of the internal market. By adopting ATA directive, the EC is attempting to ensure that the OECD anti-BEPS measures are implemented in a coordinated manner in the EU.

The ATA Directive contains such measures as limitation of interest deduction, exit taxation, a general anti-abuse rule (GAAR), a controlled foreign company (CFC) rule and hybrid mismatches.

Member States will have to transpose the directive into their national laws by 31 December 2018, except for the exit taxation rules which are to be transposed until 31 December 2019.

Although many agree that tax competition is a healthy and natural economic process that drives economies, the EC now sees tax harmonization as an essential factor for the functioning of the single market. Together with the CCCTB initiative, the ATA Directive could be seen as a first step toward this harmonisation. The directive covers all taxpayers that are subject to corporate tax in one or more Member States, including subsidiaries of companies based in third countries. It lays down the EC's stance on corporate taxation and establishes anti-tax-avoidance rules in five specific fields:

- **Interest limitation** rules. Although for some entities lending from a subsidiary may be the only available source of finance and the interest rate of such transaction could be identical as borrowing from any other entity, the EC disapproves of such practices. According to the EC's view, multinational groups may finance group entities in high-tax jurisdictions through debt and arrange that they pay back inflated interest to subsidiaries residing in low-tax jurisdictions. The outcome is a reduced tax liability for the group as a whole. The EC aims to discourage this practice by limiting the amount of interest that a taxpayer may deduct in a given tax year, up to 30 percent of the taxpayer's EBITDA or €3 million.
- **Exit taxation** rules. Corporate taxpayers may try to reduce their tax bill by moving their tax residence and/or assets to a low-tax jurisdiction. The EC has established exit taxation rules aiming at preventing tax base erosion in the state of origin.
- General **anti-abuse** rule (GAAR). This rule is intended to cover gaps that may exist in country-specific anti-abuse rules. A general anti-abuse rule therefore enables tax authorities to deny the tax benefits of transactions or arrangements which do not have any commercial substance.
- **Controlled foreign company** (CFC) rules. In order to reduce their overall tax liability, corporate groups can shift large amounts of profits by transferring ownership of intangible assets such as intellectual property to the controlled subsidiaries in low-tax jurisdictions and then shifting royalty payments. CFC rules reattribute the income of a low-taxed controlled foreign subsidiary to its parent company usually subject to higher taxation.
- Rules on **hybrid mismatches**. The EC critically assesses corporate taxpayers practice of taking advantage of disparities between national tax systems in order to reduce their overall tax liability.

Such mismatches may lead to double deductions (i.e. tax deductions in both countries) or a deduction of the income in one country without its inclusion in the other.[5]

The ATA Directive contains rules closely resembling the German tax system. Some Member States (Ireland, Slovenia and Estonia) which have largely competitive corporate tax systems have already expressed their concerns on some of the provisions of the directive at the time of its preparation.[6]

This paper will briefly look at the issues addressed in the ATA Directive (for example, CFC provision and its scope), the consequences of its implementation in the economies of Member States and the issues that have to be borne in mind during its transposition into national law.

There are reasons to claim that the ATA Directive is not the best tool to address tax avoidance practices used by MNEs.

Tax competition is not unfair, does not hinder the internal market and fundamentally does not differ from other types of competition that Member States engage in

The diversity of tax systems is not a roadblock for the internal market. Quite the opposite, differences in tax systems might serve as a stimulus to trade. Taxes constitute a significant share of costs and a large share of the price of factors of production, labour in particular. It is tax diversity (which is usually determined by the necessity to accommodate to local conditions and traditions) that provides serious incentives to produce cheaper goods and services and to offer them on the internal market. The absence of centralised tax harmonisation is promoting trade rather than undermining it.

Countries have always competed using their exogenous factors (e.g. the amount of land, population, proximity to waterways, etc.) as well as endogenous ones (e.g. the level of corruption, political stability, low bureaucracy and the level of taxation). If the European Union accepts competition based on endogenous factors, it should not discriminate against competition based on other factors that depend on the government (e.g. taxation).

In other words, favorable tax regimes should not be perceived as "unfair" or "unnatural." Tax competition is no different from the competition for investment that is reflected in policies designed to cut red tape and bureaucracy and other factors that are decided by national governments. What is perceived by the EC as a tax avoidance is in most of the cases an exploitation of differences in tax systems. Tax system harmonization would deprive companies of this normal business practice.

Tax system harmonization will have unintended consequences on the competitiveness of different Member States

The ATA Directive together with the relaunched Common Consolidated Corporate Tax Base (CCCTB) initiative will definitely lead to the harmonization of tax bases as one of its aims is to regulate 'transfer pricing'. Although many countries (for example, Germany and the UK) already have their deductible EBITDA percentage set at 30%, others limit interest deduction by the rule of thin-capitalization. For example, in Lithuania the debt-to-equity ratio of 4:1 applies and any interest attributable to the debt in excess of this ratio is non-deductible (if the paying entity cannot demonstrate that the same loan would have been granted under the same circumstances by an unrelated party). After the transposition of the ATA Directive, all countries will have to apply the same interest limitation rule, only the percentage of

[5] http://www.consilium.europa.eu/en/press/press-releases/2016/06/21-corporate-tax-avoidance/

[6] http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/583804/EPRS_BRI(2016)583804_EN.pdf

deductible interest may vary up to the stated threshold. As mentioned above, unified tax rules can hardly contribute to more extensive international trade. On the contrary, as in Lithuania's case, they will only hamper the competitiveness of national tax systems.

The ATA Directive enacts stricter anti abuse provisions than OECD's anti-BEPS measures

The ATA Directive itself is based on the OECD recommendations on BEPS. Many argue that in certain areas ATA (and the whole Anti-Tax Avoidance Package presented by the EC) goes beyond OECD's recommendations. For example, in the case of hybrid mismatches OECD recommends rules that would neutralize the tax advantage of hybrid mismatches.[7] Yet another concern is that by raising effective corporate tax rates and deviating from international agreements the ATA Directive will put the EU at a competitive disadvantage in attracting global investment.[8]

There is a risk that the transposition of the ATA Directive into national law would establish stricter rules.

Although the ATA Directive establishes minimum requirements, Member States may still impose stricter rules when transposing the directive into national legislation. In case of interest limitation rules, countries may set a lower threshold of deductible interests and this will deteriorate business conditions.

The ATA Directive raises concerns about the principle of subsidiarity and compatibility with EU fundamental freedoms.

Even national parliaments expressing their support for setting-up common rules to fight tax-avoidance have emphasized the principle of subsidiarity, the fact that regulation of direct taxes falls within the competence of each individual Member State.[9]

The ATA Directive not only affects Member States' tax sovereignty and takes a step backwards on balancing Member States' abilities to stimulate their economies through tax policies and incentives.[10] It also poses a threat on the guaranteed fundamental freedoms, such as the free movement of capital (for example, in the case of the exit taxation rules). For example, according to the provisions, the recipient Member State shall accept as an entry value the value used by the exit Member State with respect to the exit taxation, unless this value does not reflect the market value. Unfortunately, the provision does not contain any safeguards against double taxation. In theory, the exit Member State may impose an exit tax at a higher value than the market value since the directive stipulates minimum requirements. Consequently, the recipient Member State is not obliged to use this higher value as entry value.[11]

Restriction on the free movement of capital also affects other freedoms such as the freedom of establishment, having direct influence on how many businesses (and jobs) are created in the internal market. Exit taxation means that Member States may impose tax on the value of an asset before it is transferred outside the EU or even within the EU, thus impeding the freedom of establishment.[12]

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[7] http://www.thetaxadviser.com/issues/2016/jun/adopting-beps-in-eu.html

[8] https://www.businesseurope.eu/publications/businesseurope-position-anti-tax-avoidance-package

[9] http://www.twobirds.com/en/news/articles/2016/netherlands/the-final-european-antitax-avoidance-directive

[10] https://www.taxjournal.com/articles/ec-anti-tax-avoidance-directive-usurps-eu-member-state-sovereignty-23062016

[11] http://kluwertaxblog.com/2016/10/17/uncertainties-following-final-eu-anti-tax-avoidance-directive/

[12] http://www.jonesday.com/eu-update-the-anti-tax-avoidance-package-02-18-2016/

ATA has potential unintended consequences of increased tax administration costs and uncertainty of the business environment.

Tax advisers note that the anti-tax avoidance clause is vague and may grant tax authorities excessive rights to interpret taxpayers' business intentions.[13] Due to the GAAR, it can be expected that local tax authorities should be challenging structures that in their view lack business rationale. This might create legal uncertainty and lead to political interference and even corruption.

Legal entities with little physical presence and minimal staff may no longer produce the desired effects and need to be revisited, despite playing a genuine and critical role in society.[14] Companies may have to devote more resources and recruit more employees in order to justify themselves as genuine business units that are set-up to achieve business goals, not only to obtain tax advantages. This will result in losses in terms of productivity or, in extreme cases, closing down of certain businesses.

Large MNEs may be subject to separate, multiple and uncoordinated audits from various authorities at any time. Extensive cooperation between revenue authorities will be needed to ensure this does not happen.[15] International investigative processes will be costly not only for the businesses, but Member States as well. This may require an additional layer of bureaucracy and create regulatory uncertainty.

Tax revenues may also diminish as evidence exists that implementation of rules such as established in the ATA Directive may have unintended consequences on investments. For example, the CFC rule treatment significantly changes the taxation of all profits of a foreign subsidiary due to a sharp increase in the general cost of capital. Therefore, it may lead to substantial adjustments in general investment behavior, not only investments in passive assets.[16]

All these unintended consequences are even less justifiable having in mind the fact that the impact assessment was limited to generalized estimates of effective multinational corporate income tax rates and did not include estimates on the future tax burden on business or expected tax revenues after the implementation of the directive. Businesses and governments will have to comply with new legislation without substantial proof of the extent, quantum or even compelling financial rationale for it.[17]

Conclusion

The ATA Directive is an attempt to regulate 'transfer pricing' and the basis of it is double taxation rules and agreements between countries which have existed for decades. Therefore, the directive and its enforcement should be analysed together with these rules and agreements.

Firstly, in practise the directive sets out minimum requirements, meaning that national regulation will differ and 'transfer pricing' will be functioning further. This raises doubts about the possibilities of reaching the goals set out by the EU as the directive may end up creating extra administrative rules as well as posing additional legal and financial burdens.

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[13] http://www.twobirds.com/en/news/articles/2016/netherlands/the-final-european-antitax-avoidance-directive

[14] http://www.loyensloeff.com/en-us/news-events/news/qa-what-is-the-impact-of-the-eu-anti-tax-avoidance-directive-on-investment-funds

[15] http://economia.icaew.com/opinion/october-2014/beps-is-coming-but-raises-legitimate-concerns-for-business

[16] http://voxeu.org/article/anti-tax-avoidance-laws-unintended-consequences

[17] http://www.unikone.co.za/wordpress/?p=236

Consequently, the EU risks to lose its competitiveness with regard to third countries; de-localisation is one of the transfer pricing rules and rather than moving within the EU, companies may choose Singapore, India or the UK after Brexit (the UK government is promising lower levels of taxation for companies).

Secondly, the directive will result in increased administrative burden and uncertainty with double taxation rules and agreements (how it will be implemented in terms of administration and tax rates from country to country).

Thirdly, the biggest threat is a potential of 'witch hunting.' Intrusive policies and investigations of tax inspectorates (which are already very aggressive in cross-border tax matters) may be very harmful (especially if the burden of proof will be put on companies, not on the state).

Recommendations

In the light of this EU harmonization initiative, the competitiveness of tax systems where Member States promote lower levels of taxation requires a simple taxation and tax administration system in order to avoid any possible adverse impact on growth, investment and entrepreneurship. Due to the minimum requirements set out in the directive, the final consequences of the directive will depend on the measures chosen by individual Member States. Therefore, it is important to choose a reasonable implementation. Given the abovementioned negative consequences that the ATA Directive may cause after its transposition into national laws, countries must ensure that:

- the scope of the ATA Directive is not extended to transparent entities, sole proprietors and SMEs;
- the maximum allowed threshold of interest that the taxpayer is entitled to deduct in a tax year is enshrined in the national law, thus ensuring the greatest possible degree of the competitiveness of the tax system; and
- the burden of proof is not transferred to business entities.

The Effect of Corporate Tax Base Harmonization in the European Union

The European Commission (EC) has renewed its proposals on the Common Consolidated Corporate Tax Base (CCCTB) initiative. The initiative refers to two proposals by the European Commission for an EU-wide tax code aimed at companies operating in more than one Member State. Under CCCTB, businesses would compute their annual EU taxable income and apportion shares of it to different Member States according to a set formula, taking into account revenue, employee numbers, wages and assets. Under CCCTB, each Member State would apply national tax rates on profits of its companies. The renewed proposal introduces a two-step approach: efforts will first concentrate on compiling the rules for the Common Corporate Tax Base (CCTB), and consolidation (CCCTB) will be left for a later stage. According to the EC, Member States will have to transpose the CCTB directive into their national laws by 31 December 2018 and CCCTB directive by 31 December 2020.

Proponents of corporate tax harmonisation claim that the proposal will:

- create a better integrated market and secure free trade by removing tax obstacles;
- promote sustainable growth and investment;
- make the EU tax system easier to comply with;
- alleviate the burden of tax administration (both for taxpayers and tax administrators);
- guarantee even competition conditions;
- safeguard national tax revenues;
- improve tax transparency; and
- reduce tax avoidance (profit shifting, double non-taxation) and aggressive tax planning opportunities.

There are multiple reasons to suggest though that CCCTB is not the best tool to achieve these objectives.

Complete tax harmonization would destroy tax competition between countries, and this would have adverse effects.

Unified tax rules can hardly contribute to trade liberalisation. A diversity of tax systems is not a roadblock for free trade. Quite the opposite, differences in tax systems might serve as a stimulus to trade. Taxes constitute a significant share of costs and a large share of the price of factors of production, labour in particular. It is tax diversity (which is usually determined by the necessity to accommodate to local conditions and traditions) that frequently provides opportunities to produce cheaper goods and services and to offer them on the international market. Thus, absence of centralised tax harmonisation encourages beneficial trade rather than undermining it.

Countries have always competed using their exogenous factors (e.g. the amount of land, population, proximity to waterways, etc.) as well as endogenous one (e.g. the level of corruption, political stability, the level of bureaucracy and taxation). Competition by endogenous factors (e.g. taxation) should not be perceived as "unfair" or "unnatural." Tax competition is no different than competing for investment by cutting red tape, lowering bureaucracy and other factors that depend on national governments.

CCCTB confuses value-added with inputs.

The current proposal on CCCTB for harmonization of the tax base and profit tax share is based on a calculation formula which takes into account revenue, employee numbers and wages as well as most assets. By trying to reduce tax avoidance CCCTB could be interfering directly with modern production and distribution practices. In determining the "true" location of economic activity (and in which country to pay the tax) CCCTB incorrectly equates value added with inputs (labor, wages or real estate). CCCTB does not account for modern practices where the value of a product is created by branding, brand names and other subjective factors.

CCCTB will prevent market agents from selecting better taxation options.

Under CCCTB companies will not be able to exploit the advantages of different tariffs in different Member States. The introduction of CCTB would have a considerable impact on the values of the tax base in the EU Member States, except for Cyprus and Ireland, the values of the tax base would increase in all countries. On average, the effective tax burden would increase by 5.15% [1] and the common tax base would be expanded by 7.9 %. [2] In particular, the business environment would deteriorate in Estonia which currently applies its corporate tax on paid out dividends. So the proposed policy will not help businesses. Business needs good business conditions, not uniform taxes.

Rules on the depreciation of fixed assets would be extremely harmful for Lithuanian companies.

According to the CCTB proposal, fixed assets are defined as (1) tangible assets acquired for value or created by the taxpayer and (2) as intangible assets acquired for value that are capable of being valued independently and that are used in the business for producing, maintaining or securing income for more than 12 months, except where their acquisition or construction cost is less than EUR 1,000.

Currently Lithuania applies the same rule of usage for more than 12 months, but fixed assets are treated as such when their acquisition price is not less than the minimum purchase price for the group of assets set by the taxpayer. This rule allows more flexibility for the taxpayer to determine which goods are treated as fixed assets.

The CCTB proposal determines the useful life of fixed assets as follows:

Asset type	Useful life	Useful life (current situation in Lithuania)
Commercial, office and other buildings, as well as any other type of immovable property in use for the business, with the exception of industrial buildings and structures	40 years	(a) new buildings used in commercial activities and buildings included in the Lithuanian register of cultural properties, reconstruction of the buildings built or reconstruction carried out since 1 January 2002: 8 years; (b) residential buildings: 20 years; (c) other buildings: 15 years
Industrial buildings and structures	25 years	

<table>
<tr><td>Long-life fixed tangible assets not listed above</td><td>15 years</td><td rowspan="3">(d) machinery and equipment: 5 years;
(e) devices (structures, wells, etc.): 8 years;
(f) electricity transmission and communication devices (except for computer networks): 8 years;
(g) railway rolling stock (locomotives, wagons, tanks), vessels: 8 years;
(h) pipelines, planes, weapons: 15 years;
(i) furniture: 6 years;
(j) computer hardware and communication equipment (computers, networks and software): 3 years;
(k) cars: from 4 to 10 years;
(l) vehicles, trailers and semi-trailers: 4 years;
(m) other tangible assets not listed above: 4 years;
(n) other intangible assets: 4 years;
(o) goodwill: 15 years.</td></tr>
<tr><td>Medium-life fixed tangible assets</td><td>8 years</td></tr>
<tr><td>Fixed intangible assets: the period for which the asset enjoys legal protection or for which the right has been granted or, where that period cannot be determined</td><td>15 years</td></tr>
</table>

Under the CCTB proposal, the same depreciation rules apply to second-hand items, unless the taxpayer demonstrates that the estimated remaining useful life of the asset is shorter than stated years, in which case it shall be depreciated over that shorter period. Other fixed assets shall be depreciated together in one asset pool at an annual rate of 25 % of the depreciation base. Fixed tangible assets not subject to wear and tear and obsolescence such as land, fine art, antiques, or jewellery and financial assets will not be subject to depreciation.

In Lithuania, if used in R&D activities, devices (structures, wells, etc.), machinery and equipment, computer hardware and communication equipment (computers, networks and software) and other not listed tangible and intangible assets may be depreciated in two years. This means that in Lithuania the terms of depreciation are considerably shorter than those proposed by the EC. The adoption of CCTB would harm Lithuanian business conditions as for most categories of assets depreciation would be extended more than twice. New rules would lead to disproportionately and artificially expand the CIT base.

R&D super-deduction may not bring anticipated results.

Provisions such as super-deductions tend to mostly benefit companies that are profitable, which is not always the position that many companies investing in R&D find themselves in, especially in a start-up situation. Under the CCTB proposal, R&D costs will be fully expensed in the year incurred (with the

exception of immovable property). In addition, taxpayers will be entitled to a yearly extra super-deduction of 50% for R&D expenditure up to EUR 20 000 000. To the extent that R&D expenditure reaches beyond EUR 20,000,000, taxpayers may deduct 25% of the exceeding amount.

This enhanced super-deduction will be introduced for small starting companies without associated enterprises which are particularly innovative (a category that will in particular cover start-ups). In that context, eligible taxpayers may deduct 100% of their R&D costs in so far as these do not exceed EUR 20,000,000 and provided that these taxpayers do not have any associated enterprises.

Although super-deductions would be a positive step, only a small part of businesses would benefit from them. The reason is very strict R&D criteria. For example, a company willing to use an enhanced super-deduction must have fewer than 50 employees and annual turnover and/or annual balance sheet not exceeding EUR 10,000,000. It also must not be registered for longer than 5 years and have any associated enterprises. R&D activities are also strictly defined.

Currently Lithuania has even more generous R&D super-deduction: for the purpose of the calculation of the corporate income tax, R&D costs can be deducted three times from income for the tax period in which they are incurred.

Another corporate income tax benefit is available to businesses investing in technological modernisation. This benefit gives businesses the right to reduce their estimated taxable profit by up to 50 percent. Taxable profit can be reduced by the amount invested in technological modernisation. Investment costs in excess of 50 percent of estimated taxable profit can be carried forward and the taxable profit can be reduced in subsequent tax periods (the costs can be carried forward for four consecutive tax periods).[18] Together with abovementioned super-accelerated depreciation Lithuania offers R&D a favourable business environment.

The CCTB proposal, if adopted, would worse these conditions.

Instead of introducing the proposed measures, the EC should apply the most investment favourable regime. For example, Estonia, which applies the corporate income tax only on redistributed profits, has the largest share of gross domestic expenditure on R&D, (% of GDP), compared to other countries in the region (Latvia and Poland).

If imposed on all companies, CCCTB would make tax compliance harder.

If unified tax rules were imposed on all EU companies, companies operating only on the domestic (national) market would experience no tangible effects. At the same time businesses (especially SMEs) would also incur costs of conforming to the new rules. For example, a Lithuanian company selling goods only in Lithuania would have to bear compliance costs if in the future CCCTB replaced the current Lithuanian corporate tax base.

CCCTB might not reduce business and tax administration costs and could even increase them.

Although CCCTB may be advantageous for businesses as they will no longer need to scrutinise different rules of computing the corporate tax base, there is a high probability that a reduction of the administrative burden will be offset by an increase in other burdens (and costs). Also, differences between tax bases in various Member States may still remain as they are usually given some leeway even in the case of the strictest harmonisation.

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[18] http://www.investlithuania.com/news/corporate-income-tax-relief-offered-to-businesses-investing-in-innovation/

According to a study by PwC, an introduction of CCTB in Lithuania would increase a company's internal costs by 14% and external costs by 6 %, while one-off costs associated with the introduction of CCTB would be approximately EUR 19,000. The projected growth of costs are generally associated with more complex regulations than the current tax rules.

An introduction of CCCTB would increase internal costs by 5% and reduce external costs by 22%, and one-off costs associated with the introduction of CCCTB would be the same as in the CCTB scenario (approximately EUR 19.000).

The introduction of both CCTB and CCCTB is likely to increase the administrative burden for the State Tax Inspectorate (STI). If CCTB becomes compulsory, the administrative burden will increase by 2 % or EUR 1.4 million *per annum* (over a 5-year period). If the CCTB is optional, the administrative burden will increase by 45% or EUR 2.7 million *per annum* (over a 5-year period). In case of compulsory CCCTB, the administrative burden will increase by 25% or EUR 1.5 million *per annum* (over a 5-year period). If the CCCTB is optional, the administrative burden will increase by 47% or EUR 2.9 million *per annum* (over a 5-year period). This increase is associated with the complexity of the CC(C)TB tax administration process, taking into account the existing expertise of STI and the need to administer two systems (national and CC(C)TB). [3]

In three scenarios (optional CC(C)TB and compulsory CCCTB) an increase in the administrative burden of STI would outweigh the expected corporate tax revenues.

Requirements to disclose sensitive information would put EU businesses at a competitive disadvantage.

Requirements to disclose more information about a company's tax affairs and other activities as would be required for the operation of CCCTB would also increase the likelihood of disclosure of trade secrets and confidential business information (such as information about tax management, revenues, revenues split between related and unrelated parties, profit or loss before tax, income tax paid and accrued, stated capital, accumulated earnings, tangible assets, public subsidies received, etc.). This policy would be harmful to EU companies as they would be placed at a competitive disadvantage vis-à-vis non-EU multinational companies not based in EU member-states but operating in the EU.

Conclusions

Harmonisation of the corporate tax base would not only fail to attain the desired goals but would also engender a number of negative consequences:

- Corporate tax harmonisation would create considerable compliance costs in the transition period, especially for SMEs operating within the market of only one Member State.
- Fiscal centralisation would undermine competitiveness of the entire region as a centralised tax system erected inside the region, would force companies to take opportunity of the competitive advantage outside the region's territory.
- In certain cases harmonisation of the corporate tax base may be advantageous to individual taxpayers or taxpayers in certain countries (by removing double taxation, reducing administrative costs of MNEs in a long term, etc.). However, this would not occur as a systematic reduction of the tax burden but rather as a side effect of tax harmonisation on individual taxpayers.

Recommendations

- The European Commission should work to preserve the highest degree of tax competition between Member States. The CC(C)TB poses the danger of fundamentally hindering this vital feature of the internal market and should therefore be reconsidered.
- If the CC(C)TB is retained, the European Commission should also ensure that the CC(C)TB remains optional and pre-empts future moves to damaging harmonisation.
- High-tax EU Member States advocating tax harmonisation should take practical steps towards harmonisation by aligning their tax systems with those tax regimes that are the most conducive to economic growth.

A Response to EU Public Consultation on the European Pillar of Social Rights

On the social situation and EU social "acquis"

What do you see as most pressing employment and social priorities?

Unemployment and a need for so-called 'better' jobs are one of the highest concern of people and national governments, whereas increasing global competition, technological and demographic changes are most evident factors challenging conventional labour regulation and social policies. It should be noted, that economic factors and regulation are the basis for both employment and social priorities. There is a direct causal link between investments (business development) and new (or better) jobs. Employment depends on the business environment regulation, taxation of labour and corporate taxation, cost of establishment, as well as overall macroeconomic situation. Therefore, in order to tackle unemployment, improve employment conditions and social situation, Member States and the EU should focus on measures enhancing business and investment environment to make the Single Market competitive in the global economy.

How can we account for different employment and social situations across Europe?

Since the establishment of the EU, it comprised of diverse countries in terms of their geographic, economic, political and cultural situations, as well as diverse societal understanding of economic and social policies and public policy tendencies. Furthermore, values and aims of public policies change during the time both in every Member State and in the EU in general. These differences and changes are the common feature of public policy. Divergent perceptions have never been an obstacle for the EU to function rather fostered the competition between the Member States.

Is the EU "acquis" up to date and do you see scope for further EU action?

The EU 'acquis' played an important role to open markets and promote free movement of workers, services, capital and goods. That implied more competition between undertakings, more choice of employment for people and significantly added to the economic development of Member States. However, new forms of work, technological changes, demographic trends and tough competition the EU and Member States face from the outside of the Single Market require a clear understanding and agreement that the EU should strive for innovation and flexibility in terms of regulatory principles and measures, including in the field of employment and social policies.

Strict labour regulation connecting employment relations with extended social policies are the trend of yesterday. It ignores the future tendencies of businesses (workplaces) and economics and implies the burden for employment, entrepreneurship, as well as prevents Member States from being more competitive and affects the EU attractiveness for investment. In this context, the concept of 'flexicurity' is out-of-date, as practically in current economic situation and labour market the only security for an employee is their qualification (certain education and skills), as the protection measures covered by this concept create burdens for employment for the protected categories of workers and job creation.

Even though the Art 2(3) TEU establishes the socio-economic Union, it does not imply that the way to reach the EU goals requires a rigid protectionist regulation of labour and welfare systems. 'A highly

competitive social market economy' can be achieved by market instruments and removing existing regulatory burdens (including the ones created by the older EU Directives).

The Charter of Fundamental Rights gives enough substantial law ground for social rights, while Member States have judicial systems for individuals to claim or defend these rights. The EC should not involve in further 'interpreting' activity generalizing the principles from the Charter as it is contrary to the individualistic nature of the human (including social) rights.

On the future of work and welfare systems

What would be the main risks and opportunities linked to technological change, increasing global competition and demographic trends?

Demographic trends, technological change and increasing global competition are the most transformative trends which should be taken into consideration when discussing the future of work and welfare systems.

Firstly, demographic trends (mainly aging and migration) imply that incumbent state funds based welfare systems (in particular health care and national pensions systems) have to be reconsidered adapting the long-term visions towards them. This could be an opportunity for Member States to encourage individuals to save for retirement and healthcare personally or at least to provide a choice based on personal preferences how to save for retirement and insure for health care.

Secondly, technological change, which is highly interlinked with the necessity of new skills and new ways of work, requires innovative and flexible labour regulation and employment law. Neither the needs of business nor expectations of workers are facilitated by conventional labour regulation principles. On the contrary, it causes a struggle for innovation and competition, and prevents an employee from choosing their preferred work conditions and work-life balance. Therefore, the tendency of technological change is creating an opportunity to personalise employment relations, i.e. to practically implement flexibility in labour regulations.

Thirdly, increasing global competition in practice means that it has never been easier to establish or move your business to one or another country (within the EU and outside the EU) as it is nowadays. That implies that even the most secure labour regulations and employment law will not help if there will be no business employing in the country or the EU. Consequently, global competition is a driver of innovation, better goods, services and choice of jobs for workers. This should be taken as an opportunity to promote skills and qualification, because in the global competitive economy only the qualification of employee is the greatest security. The 'flexicurity' can be ensured only by qualification of the worker and favourable economic environment. The biggest threat would be to deprive workers, Member States and the EU from the benefits of global competition by too strict and complex regulation of business environment and labour.

On the European Pillar of Social Rights

Are there aspects which are not adequately expressed or covered so far?

Social issues are different from country to country, e.g. if housing is a massive issue in the UK, France and other Western European countries with high real estate and rent prices, the problem is of a much lower scale in Central-Eastern EU countries. Furthermore, the support needed is usually very individual and should focus on a particular individual in need. Therefore, issues and measures should be identified and taken locally based on a real need rather than centrally decided. Thus, definition of domains, i.e. issues, at the EU level is illogic and inefficient.

In addition, human rights (including social rights) are of the individual nature, i.e. they are assessed case-by-case and individual can invoke Human Rights infringements, e.g. the European Convention of the Human Rights, only if he/she personally and directly has been the victim of a violation of the rights and guarantees (known and applicable principle of the European Court of Human Rights jurisprudence of which the EU claims to observe and adhere). The EC defines the particular domains interpreting the Charter of Fundamental Rights and generalizing the nature of rights and guarantees. That cannot be treated more than the administrative practice the EC plans to follow and observe themselves whenever they act in accordance with the powers conferred on them by the Treaties, however, the only valid and binding interpretation of the rights granted for individuals and obligations imposed to the countries are by the Court of Justice of the European Union or by the European Cournt of Human Rights as far as it concerns European Convention on Human Rights.

The EU already has functioning relevant directives and regulations in the main domains identified. Thus, the EC should focus on enforcement of existing laws, rather thant involving in the fields with limited or no power to act at all putting themselves in the dubious and allegedly incorrect interpretations of the human rights and guarantees.

It has to be admitted that primary problems of the euro area are of a different nature, i.e. fiscal, financial and economic. Labour regulation and social policies can either deepen them or contribute partially to mitigating them but are not in a place to solve them or ensure a particular convergence for the euro area, if that were an ultimate goal.

Active support of employment should be the key target of the EU and Member States. This support should be in line with economic and market principles, whereas the EC definition of this domain ignores them.

Employment is driven by stable fiscal and economic situation, sound business and investment environment. Therefore, looking at the trend of the increasing global competition the Union should focus on measures improving the competitiveness of the EU in the global market. Furthermore, the EU is in the best position (taken into consideration the subsidiarity principle) to take action for that. This is an essential condition to ensure that business remains and establishes in the Single Market, i.e. that there will be work within the EU Member States. Fostering the free movement rules further and eliminating burdens to enter the market and trade, bureaucratic obstacles for (small and medium) business establish as well as promoting entrepreneurship and self-employment by simplifying regulation, tax administration, etc. are the measures to take.