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The Need for European Norms and Measures to Prevent Social Dumping

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Abstract: *Combating the phenomenon of social dumping is a permanent concern of the European Union in the context of the creation of the internal market. Has the risk of social dumping become a permanent problem within the European Union meant that the European legislator has provided answers to the question: has European legislation taken sufficient, effective, and concrete measures to enable the European legal mechanism to combat this phenomenon? The article aims to analyze how the European space integrates into the global economic environment. The secondary purpose is also to identify how it can protect itself from the risk of social competition posed by trade with the rest of the world. Social dumping is the result of differences in the levels of development of the Member States of the European Union. In addition, the social variable would not have been as important if the working conditions in those countries had been the same. Given that the notion of social dumping has received many interpretations over time, currently, the notion does not have a clear definition, namely that of economic dumping, we can say that based on exploring the literature the term social dumping is viewed through a paradox. To explain this paradox, we can start from the finding that a state even if it has a lower level of social protection does not necessarily mean that it can develop the risk of social dumping.*

Keywords: *social dumping; paradox; European Union; social protection.*

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1. Introduction

In a period, full of financial scandals, lack of ethics in the behavior of business leaders, a period on the verge of global warming, and globalization of trade, the question arises: can a company get rid of all obligations, be they of order social, human, political, ecological? (Alber & Standing, 2000)

The answer to this challenge is the idea of corporate social responsibility which aims to test the ability of companies to manage all these obligations simultaneously (Andrei et al., 2018).

While social responsibility practices have continued to be widely debated internationally, with some countries even being institutionalized, they are the subject of a plurality of concepts and approaches (Darvas & Vaccarino, 2016).

Social responsibility refers both to the "integration of market and non-market dimensions in management and to the consideration of the extreme positive and negative effects of companies on society" (Boltanski & Chiapello, 1999).

The term social responsibility became known in the 1950s with the studies of Friedman, Levitt, and Bowen. In 1999, Caroll used no more than twenty variants as a definition of the term. All the options came to a single conclusion, all emphasizing the obligations of companies that go beyond the technical, legal, and financial, namely the introduction of new concepts, for example, the management of social responsibility (Radu, 2009; Radu & Tabirca, 2019; Tăbîrcă et al., 2021).

Bowen saw in 1953 that social responsibility was not "just an acceptable idea in the circles of great corporate executives, but it had become fashionable to use this concept, not new but as an extension of older business practices, such as corporate philanthropy" (Bowen, 2003; Windsor, 2001)

However, we are talking about the difficult management of a concept closely related to the national institutionalized context in a globalized economic system with practices with little potential for reform within social movements.

A paradox of social responsibility practices, often encountered not only in countries with lower social protection is defined by the phenomenon of Social Dumping (Arnholtz & Eldring, 2015).

Combating the phenomenon of social dumping is a permanent concern of the European Union in the context of creating the internal market. Has the risk of social dumping become a permanent problem within

the European Union meant that the European legislator has provided answers to the question: has European legislation adopted sufficient, effective, and concrete measures to enable the European legal mechanism to combat this phenomenon? (Defossez, 2014).

The aim is to analyze how the European space integrates into the global economic environment and how it can protect itself from the risk of social competition caused by trade with the rest of the world.

Social dumping is the result of differences between the levels of development of the Member States of the European Union and in addition, the social variable would not have been as important if ALL the working conditions in these countries had been the same (Barthe, 2003).

Given that the notion of social dumping has received many interpretations over time, currently, the notion does not have a clear definition, namely that of economic dumping, we can say that based on exploring the literature the term social dumping is viewed through a paradox.

To explain this paradox, we can start from the finding that a state even if it has a lower level of social protection does not necessarily mean that it can develop the risk of social dumping.

2. Problem Statement

What is social dumping? Social dumping is a practice of unfair competition in which companies reduce costs by taking advantage of low wages and poor working conditions in an underdeveloped country.

This practice is called "dumping" because it is considered that ALL companies that practice it sell below the cost they would have to bear if their workers enjoyed the working conditions in force in more developed countries.

Social dumping is a regulatory arbitrage in which companies try to reduce their costs by investing in countries with less stringent labor, environmental, and tax regulations. In this way, international companies achieve large labor savings and regulatory costs.

Social legislation is difficult to harmonize due to two major competing principles, namely:

• The principle of liberalization of economic exchanges on the internal market

• The principle of the internal market and the competencies of the state, especially in the social field.

Although the fear of social dumping has been the focus of discussions between negotiators since the beginning of the establishment of

the Single Market in 1957, the European Community continues to focus on economic freedoms rather than social issues.

3. Research Questions/Aims of the research

Causes of Social Dumping

To understand social dumping, we need to look at it from a dual perspective.

First, there is a high level of social protection provided by developed countries to their employees. Measures such as the minimum wage, regulations on occupational safety rules, compensation for dismissals, reduction of working time, generate costs, and costs that most companies are trying to eliminate or at least reduce.

On the other hand, we have developing countries, where social protection rules are absent or being implemented, thus reducing costs for companies.

Considering the two situations, multinationals can choose to move their production from developed to developing countries, precisely to reduce costs. When we talk about the cost savings generated by the worst employment situation, then we can talk about social dumping.

The effects of social dumping

For the first category of countries, that developed countries, the main effect of social dumping is the loss of business investment, lack of employment, and lack of collection of taxes and duties. Because prefer to choose to settle in countries where they can save costs, companies give up their employees in developed countries, thus no longer contributing to the state budget (Tăbîrcă & Ivan, 2020).

In other words, for the other category of underdeveloped countries, a consequence of social dumping is that job insecurity.

If the governments of these states use the lack of social protection rules to attract foreign investment, workers in those countries will feel unprotected and companies will take full advantage, thus reducing costs. The situation is common in countries with a high level of corruption, which prevents employees from fighting for their rights.

4. Research Methods

Employee mobility in the European Union has become one of the most common phenomena in recent years. During the Pandemic, the pace of mobility was somewhat more temperate, but over time it returned to its original intensity because the activity of companies had to be resumed.

Given the tumultuous developments in the labor market, the European authorities have begun to pay greater attention to the issue of the posting of workers within the EU, to respect the rights and free competition in the labor market.

The legislation in the field was most often revised, year by year, the last revision taking place in August last year (Figure no. 1). Because the European Union has left the freedom to transpose the directives, the rules differ from one country to another. An in-depth analysis of these rules is thus needed, to avoid rather high sanctions at the Union level.

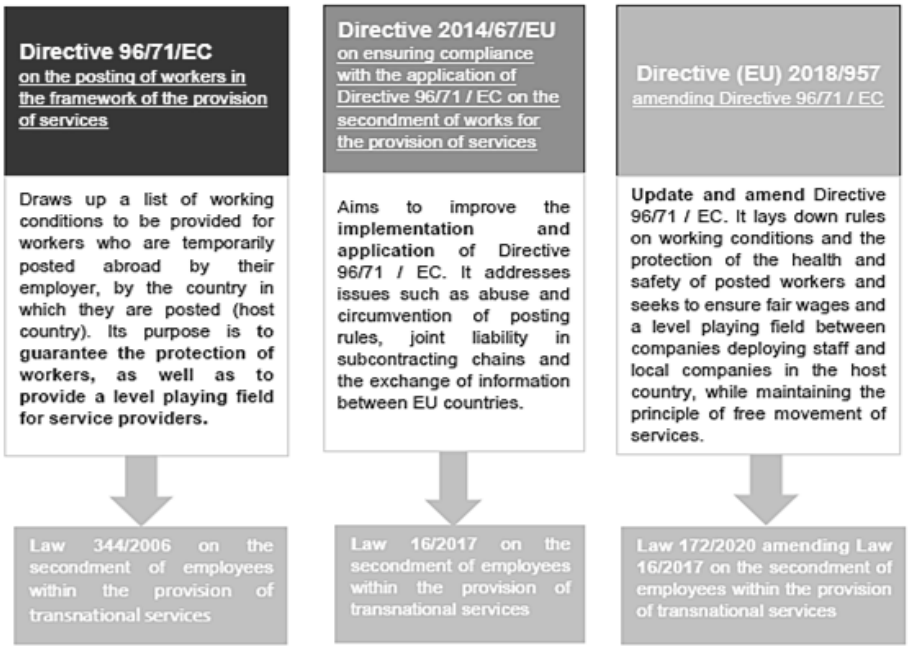


Figure no. 1 - *Legislation on transnational postings*
Source: KPMG - Guide on Posting of Workers 2021

The new regulation was also transposed into Romanian legislation, by law 172/2020, a law that clearly defines the rules regarding the secondment of employees from and to Romania (Romanian Parliament, 2020).

The legislation on postings in and in Romania establishes the following rules for companies established on the territory of a Member State, other than Romania, which second employees on the territory of Romania must make available to the control bodies, upon request, the resulting documentation:

• the total amount of the remuneration that the employee will benefit from, during the secondment period, with the distinct highlighting of the secondment allowance.

• expenses generated by secondment, transport, accommodation, meals and how they are granted, how to provide transport, accommodation, and meals as appropriate, respectively the applicable working conditions (European Parliament, 1997; 2014).

Undertakings established in Romania which, in the framework of the provision of transnational services, second, on the territory of a Member State other than Romania, or the territory of the Swiss Confederation, employers must inform, in writing, the employee seconded from Romania, previously detachment, regarding:

• the constituent elements of the remuneration to which the worker is entitled, by the law applicable in the host Member State and their level.

• the total amount of the remuneration granted to the employee during the secondment, with the distinct highlighting of the allowance specific to the secondment, when it is granted; the costs incurred by the secondment, such as transport, accommodation, and meals, as well as how they are granted or reimbursed, and how the transport, accommodation or meals are provided (European Parliament, 2018).

5. Findings

To combat social dumping, two measures have been implemented regarding economic redundancies:

• first, efforts have been made to assess economic difficulties. The existence of economic difficulties or a threat to the competitiveness of the sector must be proved at the level of the sector of activity of the group to which it belongs.

• then, the reclassification research was studied. Dismissing an employee for economic reasons is, therefore, the employer's last resort. He has a double obligation to train and redistribute in advance.

According to the Labor Code, the dismissal can only be done after all steps regarding the adaptation and reclassification of those of the layoff lists have been followed, without this reclassification being carried out on the jobs already occupied that ensure a total or partial rotation of the staff (Romanian Parliament, 2013).

6. Discussions

While The Unions in Western Europe noticed and sent a signal about the risk of the social dumping, The Unions in Eastern Europe agreed

to unrestricted access to the labor market in Western Europe. However theu specified that they do not support competion on the labor market based on costs. And that they support their citizens to work in the EU receiving the same salary as domestic employees (Bernaciak et al., 2014).

In 2018, after long sessions of debate, the European Council adopted the PWD, the revision of the Posting of Workers Directive. Numerous amendments have led to an imbalance on the one hand between the EU's freedom to provide services and its legislation to support social protection. All forums have been involved since the European Commission, continuing with the EU Parliament, Member States' representatives, social organizations, etc. The issue raised was largely social dumping for trade unions. This is because EU rules on worker mobility allow all companies in the Member States to win tenders in any Member State. This allowed companies to use lower wages to increase competitiveness, but with the imposition of certain restrictions.

At the same time, companies were allowed the chance to increase market share and provide secure jobs for employees. One of the most affected sectors of activity was that road freight transport.

Thus, it was proposed at the level of the European Commission the adoption of resolutions by the European Parliament to counteract the phenomenon of social dumping in the field of transport. Abusive practices in this sector unbalance the principle of the internal market and weaken the competitiveness of the transport companies.

7. Conclusions

In conclusion, it is desired to set up an EU freight transport agency at the EU level, it is required to revise Directive 92/106, on combined transport, and cabotage, to stop uncompetitive and unfair practices, and to comply with social legislation in the field of transport (Council of the European Communities, 1992).

In the medium and long term, it is possible for everyone to benefit from the exchange of experience with others and to look at the development of services.

Equal pay for posted workers will likely benefit everyone. Competition with those who use low labor costs can generate benefits but in the short term, this can become insignificant from a broader perspective.

However, the European Traffic Union will have a special role to play, which will the role of facilitating the collaboration of all actors at the European level and create a climate of cooperation.

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