

# The Evolving Regulation – Dynamics and Consequences



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# Conflicts of Laws



- Regulation 1612/68: free movement of workers
- Regulation 1408/71: social security
- 1980 Rome Convention
  - Art. 3(1)
  - Art. 6(2)

# *Rush Portuguesa*



- The relevance of the facts:  
Post-Portuguese accession  
France a net importer of labour
- Two important statements:
  1. Posted workers not to be subjected to ordinary work permit requirements because the worker returned after completion of the service and did not gain access to the labour market of the host State
  2. Community law does not preclude MS from, extending their [labour] legislation or collective labour agreements (expanded from minimum wages...)

*Lack of clarity?!*

# Labour importer versus exporter states?



UK – no concerns and opposed to imposition of labour standards by host State (wanted cheap jobs for unemployed in Europe)

Germany and Norway – pre-emptive legislation in construction sector (Germany) and potentially more far-reaching (Finland and Norway) – although Norwegian legislation dormant until EU enlargement in 2004

Netherlands – gradual extension of CLAs - to construction sector in 1995

Reliance by Finland, Denmark and Sweden on second statement in *Rush* and explicit assurance by European Commission

# PWD Drafting



## Three phases

Throughout – certain bones of contention

1. Legal basis (not social)
2. Personal scope and forms of posting ('workers', 'a limited period', 'an employment relationship')
3. Forms of collective agreement
4. Favourability – a maximum or minimum directive?

Implementation varied – note UK extending employment statutory rights tho' lack of implementing legislation – floor of rights approach predominant

# Services Directive 2006/123/EC



First Bolkestein Draft:

‘country of origin’ principle: contractual freedom threatened, chaos prevails, costs of litigation, xenophobia?

Conflict between MS – old and new?

Conflict within MS – employers’ associations v unions

Conflict within unions?

Tensions between Council, Commission and Parliament

Leading to Art. 1(7) of the final text... ‘fundamental rights...

As recognised by Community law’...

Cf. Article 1 of Monti II Regulation?

# Relevance to Posted Workers?



- Formally excluded
- But see...

Art. 7 Point of Single Contact (PCS)

Art. 28 'Liaison points'

Etc.

# Implementation of SD



Reassurance by all national authorities... This is not Bolkestein draft.

Uncontroversial implementation on this basis in labour importer states: Germany and the Netherlands (also Norway)

Engagement of social partners in Denmark and Sweden esp. in design of legislative provisions governing 'contact persons'

UK and Poland: labour exporters – simply seen as irrelevant to PWD



# The Laval Quartet



- Forms and levels of standards to be imposed
- Means of regulation
- Role of collective bargaining and right to strike
- Clash with fundamental rights cf. ILO/ESC
- National responses...

# The Temporary Work Directive 2008/104



- Limited principle of equal treatment?
- Cf. FTW Directive 1999/70/EC
- Complements SD exclusion?
  
- Evidence of priority given to internal market objectives as opposed to social objectives
  
- What is in store under Monti II (as now proposed by the Commission)?