Rights of Posted Workers as Opposed to Article 39

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Free movement of manpower Three legal “tracks”

► Article 39 – Workers,
  Regulation 1612/68.
► Article 49 – Services,
  Directive 2006/123 on services,
  Directive 96/71 on Posted workers.
► Article 43 – Establishment,
  Directive 2006/123 on services.

Rights for workers and posted workers

► Article 12 – European citizenship(?),
  Directive 2004/38 on the right of citizens
  and their family members to move and
  reside freely within the MS.
  
Workers:
  - employed in the host MS,
  - equal treatment as national workers,
  - national law, collective agreements etc.,
  - social security and more.

► Posted workers:
  - employed in the other MS by the employer
    posting workers to the MS for temporary
    services.
  - ruled by the chosen law, or
    by law in the MS where the work
    habitually is performed.
  - However, “hard core“-regulations in the MS should
    apply (Posted workers directive, art. 3.1).

Conflicting situations Workers – Posted workers

► Cross-situations W – PW; example:
  - if a worker in the host MS is employed by
    the employer, posting workers from another
    MS,
  - PW seeking job in the other MS.
The boundary temporary work – not temporary work,
- long period of the service and more,
- services repeatedly provided.
- Guidelines from the ECJ.

- Worker’s “full” entitlements, equal treatment,
- Posted worker: minimum levels within the “hard core” (PWD, art. 3.1),
- Laval; both “floor” and “ceiling”.
- Public policy criteria (PWD, art.3.10).

- Bringing family members
- Worker’s right (2004/38 art. 7.1a), social entitlements and more, right to stay (unemployment etc.).
- Posted worker (2004/38 art. 7.1b), provide for his or her family, social security after 24 months?

Conclusions
- Different legal tracks – different rights.
- Two strategies:
  1. Workers – social dimension.
  2. Posted workers – services, economically justified.
- Different union citizenships?