

Why free movement of labour must guarantee equal treatment for workers

The case of posted and seasonal workers

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Sarah Clarkson
GMB European Research & Policy Officer

Introduction

- Main focus: posting of workers
- Practical approach:
 - Aims of the original legislation
 - Implementation and enforcement of the Directive in practice
 - Case study: Flamanville
- The need for revision
- Seasonal workers - the same story?


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The 1996 Directive: what was it supposed to achieve?

- Protect workers and prevent unfair competition...
- ...while removing barriers to free movement of labour and services
- Key principle:
Posted worker is entitled to the same minimum terms and conditions that apply to local workers in the host country, even if these terms are better than those in the worker's own contract or home state

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Straying from good intentions

- Early 2000s: growing concerns over application of equal treatment principle in the UK
- ECJ restrictive interpretation, reversing the Directive's original intention
- Legal uncertainty + implementation and enforcement concerns



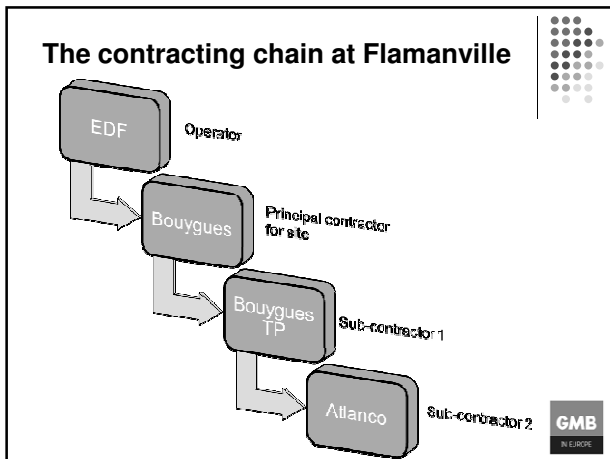
Posting in practice: the key problems

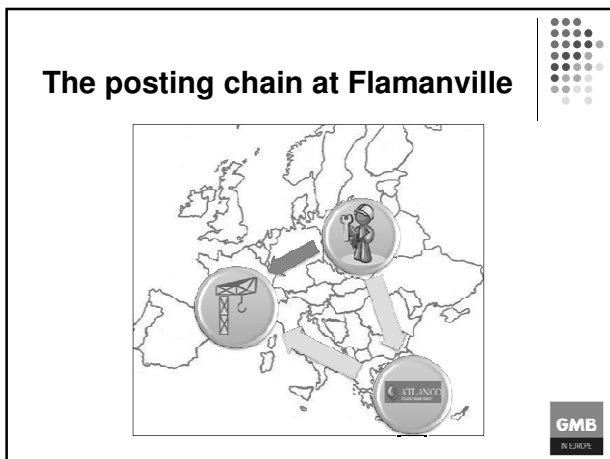
- Vague definitions:
 - Discrimination, evasion of social responsibilities, social welfare fraud
 - Bogus self-employment
 - Genuine link of worker to home companies
 - Genuine link of company to home country – rise of letterbox companies & welfare shopping
- Sub-contracting chains
- Poor systems of monitoring and administrative/judicial cooperation
- Vulnerability of posted workers – exploitation



Flamanville: a textbook example







The small print

Average employer contributions for non-executive employees:

France	Poland	Ireland	Cyprus
38.9%	18.8%	8.5%	6.3%

- The mysterious Cypriot office of Atlanco: classic example of a letterbox company

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Key contacts

Belgium
200,023 Ave. Katholiek Road
2010 B
Tel: +32 (0) 11 480 000
Fax: +32 (0) 11 480 000
E-mail: atl@atlcoinc.com
Website: www.atlcoinc.com

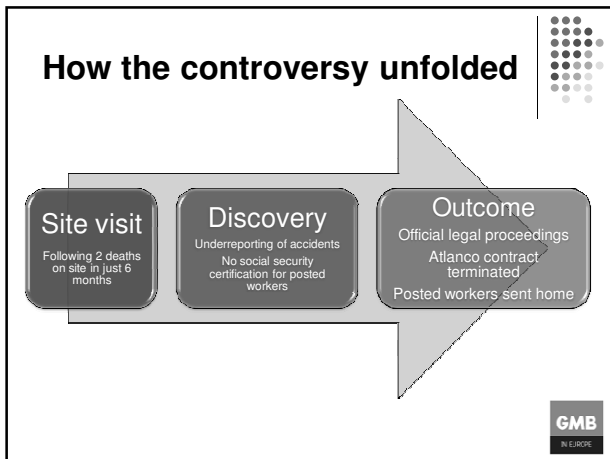
Portugal
Lago Marim Rendeiro Promeo 112
2200-000 Lisboa
Portugal
Tel: +351 21 0086 000
Fax: +351 21 0086 000
E-mail: atl@atlcoinc.com
Website: www.atlcoinc.com

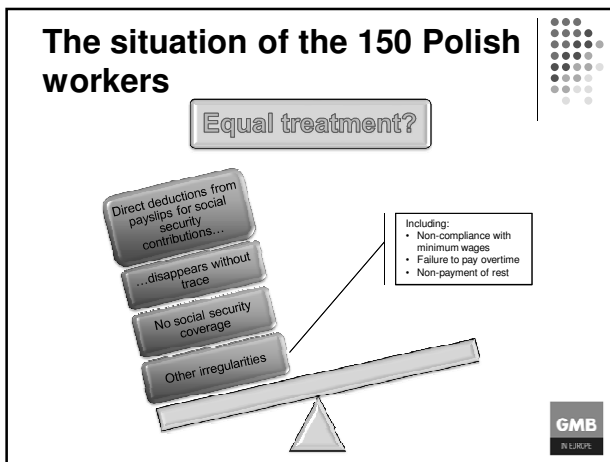
Czech Republic
Barrakova 101/10
120 00 Praha 2
Czech Republic
Tel: +420 256 270 200

UK
Atlantic House
21 Queen's Park Close
Moulton Park
Northampton
United Kingdom
Tel: +44 (0) 160 760 700
Fax: +44 (0) 160 760 700
E-mail: atl@atlcoinc.com
Website: www.atlcoinc.com

Poland
Ul. Bogańska 31
20-029 Kraków
Poland
Tel: +48 11 400 7600
Fax: +48 11 400 4900
E-mail: atl@atlcoinc.com
Website: www.atlcoinc.com

Romania
Str. Mihail Kogălniceanu, Nr. 36
Ploiești Prahova
Romania
Tel: +40 238 345000
Fax: +40 238 320000





So what happens now?

- Who is responsible? EDF, Bouygues, Bouygues TP or Atlanco?
- French law > Bouygues responsibility as principal contractor to monitor/control compliance of sub-contractor
- Response of Bouygues?:
 - Atlanco is to blame
 - "extremely complex regulations at European level"!
- Tribunal case ongoing...

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What can be learnt from the Flamanville case?



- Textbook example of Directive's practical failings & complete insufficiency of current interpretation of the rules
- Complex sub-contracting > blurred lines of responsibility & presents huge difficulties for monitoring
- Huge loss of public revenue
- Commission and national governments need to wake up to this reality



The need for revision



- Consistent pressure for full-scale revision
- Narrow scope of enforcement Directive – it must lead to serious improvement
- Draft version:
 - Stronger rules? But not strong enough?
 - Monitoring & enforcement systems but context of cuts & service reductions
 - Joint/several liability
 - Risk-based workplace assessments
- Window-dressing or genuine attempt to protect workers & prevent abuse?



Seasonal workers



- 1 of 5 Directives in legal migration package
- Doubts over added value & concerns over vague wording
- EP and Council internal debates > hugely divergent positions between them
- Unlikely to ensure anything above the minimum terms and conditions



Concluding remarks

- Enforcement Directive unlikely to lead to substantial change
- Positive impact only if:
 - Serious improvement to practical enforcement
 - First step towards more fundamental revision to restore original spirit of Directive
- Important role of EU legislation in fight against social dumping and unfair competition