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ABSTRACT OF DOCTORAL THESIS

**Management of European Mobility
of Human Resources**

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1. Introduction

The idea of an economic union and the disappearance of barriers creates new opportunities for the development of companies in *European Union (EU)* member states. Access to other markets, the opening and diversification of operation plans for the providers of services in newly integrated *EU* states, institutes a new management model for the geographical development of companies. The uniqueness of the *EU* institutional profile, supplemented by national diversity and social disparities, attributes a particular character to the economic mechanisms governing national and community relations, determined by the use of human resources.

In the *EU* environment, favourable to the development of economic operations on the territory of another member state, within the transnational provision of services, the carrying out of an activity which supposes the temporary displacement of one's own employees is subjected to the conditions of *Directive 96/71*¹. Regardless of the law applicable to the work relations, the transnational organisation must ensure for the posted workers the minimal social standards stipulated in the legislation or the collective conventions universally applicable within the host territory on which the work is provided (the *hard core* of the legislation) concerning: work time and rest time, annual paid leave, minimum wage, including compensation or payment of overtime, conditions for the lease of employees by the temporary work agencies, work health and safety, special protection measures applicable to some categories of workers, the equality of treatment among men and women and other dispositions concerning non-discrimination.

The transnational posting can have three forms determined by the nature of the work relationships between employee and employer and commercial relationships between provider and beneficiary, having as common denominator the maintaining of a work relationship all throughout the posting, between the employee and the employer making the posting. The first involves the provision of services with the temporary relocation of workers for this, the second refers to the *intra-group* mobility of workers or within the subsidiary-parent company and the third concerns the lease of personnel made by the temporary work agent.

The specificity of the commercial activity of providing services, together with the special statute of public authorities and institutions, narrow the field of applicability of the mechanism of *Directive 96/71* to entities of the business operators functioning within a *EU* member state and its workers.

The ways through which the geographic mobility of human resources manifests itself within the general institutional framework of *Directive 96/71*, represents the topic of the present research.

The main aim of the research is the development of the theory of the *management of the European mobility of human resources*, by integrating the model of the transnational posting of workers. The socio-economic and institutional environment of the *EU* strongly influences the system of management of the human resources within the organisation and influences the general theories about insurance, payment, motivation, development and maintaining the staff.

In order to achieve the set aim, the objective of the research is the exploration of the phenomenon of posting of workers within the provision of transnational services and especially its manifestation in the member states where there are great differences of salary levels in comparison with the European average. This analysis makes use of the peripheral perspective of Romania, since it is an origin state for the posting, geographically situated at the edge of the *EU*, lacking a common frontier with a founding state and being at the bottom of the economic competitiveness chart, with a salary level at the inferior limit of European diversity.

¹ Directive 96/71/CE of the *European Parliament* and the *Council*, of 16 December 1996, *concerning the posting of workers within the provision of services*, published in the Official Journal of the European Communities no. L018 of 21 January 1997, republished in Romanian in the Official Journal of the European Union 05/vol.4 RO.

2. Structure of the doctoral thesis

The thesis has seven chapters; it contains lists of figures and tables, a summary of the terms used in the thesis and definitions for these terms, bibliography and a series of annexes. After a first chapter which serves as introduction to the topic and presentation of the aim and objectives of the research, *chapter II* presents the theoretical approaches concerning the transnational posting of workers in the specialised literature. They are structured as three sections addressing the normative framework of *Directive 96/71*, the complex of themes associated to posting, the implications at institutional and social level, and the identification of a system of classification of the empirical expression of situations of transnational posting of workers. The methodological benchmarks of the research, together with the problem, ambivalent aspects and the hypotheses which constitute the premises of the scientific undertaking are all identified in *chapter III*. The institutional research is carried out in *chapter IV* and, together with the description of the empirical situations of transnational posting of employees in *chapter V*, forms the main body and nucleus of the doctoral thesis. The institutional research approaches the Romanian normative framework in comparison with the European one, based on *Directive 96/71*, through two interconnected directions, theoretically individualised. The first looks at the institution of posting in different ways of manifesting itself, from a historic and transversally situational perspective, and the second evaluates the national institutional models of geographical mobility of employees, in the sense of the compatibility with the normative mechanism of *Directive 96/71*. The empirical research maintains the dual system of structuring, first addressing the study of the community of employers which provide transnational services, and then analysing the situations of posting, both based on practical cases in county Iasi and the situation in Romania, in general, as state of origin for the European mobility of human resources. *Chapter VI* presents the results of the research by direct comparison with the aim, objectives and hypotheses, while *chapter VII* includes the final conclusions of the research concentrated on recommendations, proposals and solutions, addressed to all actors in the phenomenon of posting within the provision of transnational services.

3. Results of the research

Starting from the peripheral condition of Romania within the *EU* and the perspective of origin state of the posting, the thesis fulfilled the main aim of exploring the phenomenon of posting of workers within the provision of transnational services and especially the way in which it manifests itself in Romania, a member state in which there are great differences of salary levels in comparison with the European average.

The main aim of the research was attained in a first stage through the study of the way in which the national and European institutional frameworks interact, the definition of concepts and the structuring of the types of mobilities for the understanding of the elements which characterise the relationship between organisation and worker. The second stage completed this undertaking through the empirical research of situations of transnational posting, having as a result the identification of the characteristics of the employer, the employee, of specific elements of the relationship between the two and the role of the authorities in the general contouring of the phenomenon.

Method of empirical research based on detached and discreet observation has proved to be a correct option, by identifying some invisible variants and the provision of a consistent quantity of data and information. The results have also validated the perspective of the origin state of the posting as way of approaching situations of posting in other member states of the *EU*, for employees belonging to employers based in Romania.

Observations and conclusions of the two levels of research are transposed in this section, based on the structure of hypotheses established at the beginning of the thesis. The results are presented in hierarchical succession, starting from work hypotheses, concentrated into three derived

hypotheses which describe the organisational, operational and normative levels, ending with the main hypothesis of the research.

The dissolution of the work relationship throughout the temporary relocation or at the end of it is revealed by all the complaints of the posted employees. The temporary employees of temporary work agencies which were hired only for the duration of the mission, together with the general trend of the number of employees of the sample employers confirm the tendency of preserving the work relationship only for the duration of the posting. They confirm the work hypothesis *h1.a*: the temporary relocation of workers as transnational posting determines the fragmentation of the work relationships by maintaining them only for the duration of the posting.

The work hypothesis *h1.b.*, which refers to the addressability of the system of protection offered to the workers by the authorities (petitioning and control) diminished in the case of transnational postings, is confirmed by the research applied to real situations of posting. The fractioning of control exerted by the authorities in both origin and host state, is the premises for this situation. In Figure 1, the transversal action of control authorities, Romanian or from other member states, follows the territorial separation of competences and not the horizontal line of the work relationship in which the temporary relocation happens.

The right to petitions of the posted employee manifests itself unaltered only in dealings with the authorities in the origin state.

Authority in Romania	↔ Dir. 96/71	Authority in other member states
Employer headquarters, Romania →	Dir. 96/71	Contingent of posted employees
Contingent of posted employees	Dir. 96/71	↔ Employer headquarters, other MS

Figure 1. Capacity of control of national authorities in situations of transnational posting

The investigation of posting situations based on the intrinsic degree of mobility and the temporary character of the fields of activity in which the transnational services are provided, allows for a general assignation of the three forms of posting. From this point of view, the limited time and the high mobility of the transnational activities characterise the real phenomenon of posting, confirming the work hypothesis *h1.c.*: the temporary relocation of workers in the form of transnational posting supposes changes in the work relationships, which determine a total separation between the expat structure and the parent organisation.

General conclusions drawn on the basis of the empirical research of situations of transnational posting of workers, based on the confirmation of work hypotheses *h1.a.*, *h1.b.* and *h1.c.*, but also the supplementary results revealed by the research, confirm the derived hypothesis *H1* associated to the organisational environment: the European model for the transnational posting of workers influences the dynamic of the work relations within the operational system based on international temporary relocation.

I. Minimum level of salary in the origin state
II. Minimum level of salary in the host state
III. Level of salary formally established (CIM) - form for the host state - form for the origin state
IV. Level of salary informally established (consensual)
V. Level of paid salary
VI. Level of salary declared to the fiscal organisations

Figure 2. Levels of salary for the transnationally posted employee

The empirical multi-layering of the levels of salary (Figure 2), together with the phenomenon of invisible postings, the lack of significant activity in the origin state, fictitious

relocations and masked hire of the workforce, with the share of nonconforming operations as far as the payment of workers goes, confirm only partially the work hypothesis *h2.a.*: the share of nonconforming operations in the total of transnational postings explains to a great extent the total dynamic of the phenomenon, to the detriment of organisational development. The confirmation is not complete, because the number and intensity of behaviours which surpass the institutional framework don't define the majority of situations of transnational posting of workers.

The work hypothesis *h2.b.*, which considers the foreign management or shareholders a determining factor in the initiative of posting workers within the provision of services by Romanian employers, is partially confirmed by the empirical research. If the element of extraneity is extended to the previous experience of the Romanian employer, the degree of confirmation rises substantially.

The research of the dynamic of postings in the moment when the transitory restrictions for the direct employment of Romanian citizens were lifted does not confirm the use of transnational posting as substitution for the active mobility of human resources, invalidating the work hypothesis *h2.c.*: the distribution in *EU* member states of the posting of workers within the provision of services ensured by Romanian employers correlates with the transitory measures imposed by some member states for the direct employment of Romanian citizens.

The research of posting situations in which are involved employers from county Iasi, by partially confirming the work hypotheses *h2.a.*, *h2.b.* and *h2.c.*, partially confirms the derived hypothesis *H2* which describes the operational environment of the transnational posting: the empirical manifestation of the transnational posting of workers, with Romania as origin state, contours a real-informal plan with a high degree of imbalance in comparison with the institutional-formal level. In this way, the operations nonconforming with the institutional framework have an important presence, but they don't characterise the majority of posting situations. The imbalance refers mainly to the contents of the posting relationship and less to the fraudulent transnational postings manifesting themselves through the abusive exercise of rights in dealing with the general principles of the European normative framework.

The results of the normative research confirm the hypothesis *h3.a.*: the notion of posting has multiple meanings which, insufficiently defined, create confusion for the actors involved in the phenomenon of transnational posting. The confirmation is made, on the one hand, through the shown plurivalence of the term "posting" in the contents of the Romanian normative framework and, on the other hand, through the incompatibility of the concept of posting from the *Labour code* with that stipulated in *Directive 96/71*.

This hypothesis receives further confirmation on the basis of empirical research through the identification of concrete situations in which the posting stipulated in the *Labour code* is used in practice, although it is incompatible with the transnational posting.

In the assembly of institutional models addressing the transnational posting of workers made by employers settled in Romania, there is a lack of normative predictability. The partial compatibility of forms stipulated in the general national legal framework (*Labour code*) and the lack of regulations adapted to the transnational posting stipulated in *Directive 96/71*, confirm the second work hypothesis *h3.b.* from the normative framework: the national forms through which geographical mobility of workers is achieved do not ensure predictability and compatibility with the general European norms.

The confirmation of the two work hypotheses, made on the basis of the results of the research of the Romanian institutional framework, determine the general confirmation of the derived hypothesis *H3*: the national legal framework and the European one offer an unclear, unpredictable and insufficiently interconnected institutional environment within the transnational provision of services.

Starting from the verification of the work hypotheses which have contoured the total or partial confirmation of the derived hypotheses, the overall results point towards the confirmation of the general hypothesis of the research and demonstrate that the posting of workers within the provision of transnational services in the European Union is a special model, with its own individuality, of the geographic mobility of human resources, within the institutional framework set up by *Directive 96/71* and the legal national norms. Of all the derived hypotheses in the

organisational, operational and normative framework, only the one addressing the practical manifestation of the phenomenon has not completely confirmed the existence of a determining degree of asymmetry between the institutional framework and the one observed in reality.

Through the observations made and the results obtained, the thesis offers new benchmarks in the development of the theory of management of the European mobility of human resources, by integrating the model of transnational posting of workers, attaining this way the main aim set at the beginning of the research.

4. Conclusions of the research

New research perspective offered by the situation of Romania as origin state of the posting of workers and the posting situations studied in the decision phase offer support to the decision factors involved in the establishing of public policies and actions or the projection of the European and national normative framework. The challenges identified and the solutions offered ensure the practical utility of the research that of offering decisional support to governmental and organisational management at national and European levels, involved in the phenomenon of posting of workers within the provision of transnational services in the *EU*.

Solutions proposed to the governmental management in Romania

Adaptation of internal policies, by perfecting or reconstructing institutional mechanisms, for facilitating the access of national companies on the services market in the *EU*:

- decentralisation of the certification system of belonging to the Romanian system of state social security (portable document A1);
- fiscal mechanisms that can facilitate the provision of transnational services;
- activation of economic services and those on work issues in embassies.

Initiation of negotiations for bilateral or multilateral agreements with *EU* member states:

- adopting institutional measures, instruments and common procedures (one step forward for more unity in the field of transnational posting of workers);
- they have the role of demonstrating the efficiency of the common action and of creating institutional models that will later on extend to the entire *EU*.

Supporting entrepreneurs who wish to provide transnational services through governmental measures of stimulation and support.

The organising of a national institutional framework made up of the competences of the authorities, the relationship between them and the adequate legal regulations could ensure the ex-ante monitoring of posting situations and an increase of the administrative capacity of control based on the principle of the protection of the worker. At external level, the mutual increase of the level of trust in bilateral relations of control authorities in the other *EU* member states must be achieved through mixed monitoring and inspecting actions, the mutual and integrative exchange of data and information, together with the forming of transnational competences for human resources in the institutions involved in the phenomenon of posting of the workers.

National institutional framework must be adapted to the supplementary needs for protection of the employees posted transnationally, in the conditions of diverse informal forms with a high precariousness of the work conditions and a high degree of nonconformity from the employers that are involved.

Evaluation of the phenomenon of posting can be achieved more efficiently by capitalising on data existing at this time. This action is based on the strengthening of cooperation between governmental authorities in Romania for the operative exchange of data and information, together with a reduction of the useless bureaucratic procedures and the insurance of a coordination of measures for posted employees and employers.

Identification of invisible postings, as a source of nonconformities and extreme precariousness for the employees:

- a preventive role, opening the possibility for monitoring by the Romanian authorities;
- the existing, raw, uncapitalised data show a lack of interest that can be stimulated, so that potentially visible postings do not remain invisible;
- the model for identification, analysis and evaluation used in this work finds its utility if it is taken over and developed.

Correct, complete and efficient informing of posted employers and workers is vital for the increase of conformity in comparison with the national and host state institutional framework. This undertaking must be addressed both to those involved in postings to other member states and to those who post workers in Romania.

Compensation of internal and transnational travel expenses in order to stimulate the mobility of human resources and opening of markets:

- a differentiated fiscal regime for the compensation of the economic pressure that is recorded at the level of the organisation which provides transnational services, generated by the high differences between the salaries in the parent organisation and the minimum wage applicable on the territory of the host state.

Management of the imbalance is necessary in the functioning of temporary work agents, taking into account the concentration of their activity in making available temporary workers to users in other member states.

All the governmental measures must be based on the strategic anticipation of the future evolution of the phenomenon of European mobility of human resources.

Solutions for the public European management

European institutional construction can be solid only by accepting the economic and social differences between the member states, taking into account the peripheral situation.

Providers of transnational services must benefit from the financial support of the *EU*, by compensating the internal and transnational travel expenses of the staff, in order to stimulate the European mobility of human resources and the increase of the competitiveness of the single European market. The *EU* must include the financing of the competition differences between the providers of services from the member states, within the programs with non-refundable financing.

EU strategy in the field of the mobility of human resources imposes a relinquishing of the national approach of European problems and adopting a unitary strategy.

Cooperation between the monitoring and control authorities must be a joint venture, not something that has common European institutional bases.

EU must insure the institutional and financial support for bilateral and multilateral initiatives between member states for the increase of the level of cooperation on unique bases.

Challenges and solutions for the management of the European mobility of human resources at an organisational level

European mobility of human resources, based on the institutional framework established by *Directive 96/71*, determines the polarisation of the organisation and the policies for the management of human resources. The differences become apparent between the parent organisation and the temporarily relocated structure on the one hand and the temporarily relocated structure and the external environment of the host state, on the other. The latter is formed by the employers involved in the same operational structures (construction sites, computer science projects, hospitality structures), the authorities in the host state, the special insurance systems (The Builders' Social Fund), the syndicates and the Employers' Associations where the work is provided.

The remuneration system and the non-financial components of the salary package, together with its dynamic, represent the most important component of the management of work relations,

when the temporary relocation is done in member states with high levels of the minimum wage. The balance between the salary component and the one destined to compensate the discomfort caused by the temporary relocation to another country represents the solution for the management of the problem of the great differences between the general level of wages in the organisation and the normative level imposed in the host member state.

In this context becomes necessary the adaptation of the entire organisational managerial conception to the elements of extraneity of operations and the development of special measures and activities only for the components that are closely linked to mobility, through dynamic reference to external factors in the environment of the host state. The general management must identify the most suitable methods for planning, insuring, developing, motivating and maintaining the human resources, methods which can adapt to the European mobility and which can be applied in their entirety to the whole organisation, in order to reduce the essential differences between its own structures. This must be a permanent process which must adapt very quickly to the challenges in the external environment of the host state and manage in the same pace the gain of knowledge by integrating it in its organisational environment.

The management of the European mobility of human resources must answer the special needs of selection, training, preservation and re-entry into the parent organisation of the staff which have been transnationally posted. The design of jobs, of functional relationships between the structures and the entire organisational chart, must integrate the particularities of European mobility. The flexibility of this organisational framework and the creation of a special package for the time when the transnational posting ends are very important. The organisational design must insure the capitalisation of the gain through the development of one's own human capital, by reintegration at the end of the posting corresponding to this evolution. The internal procedures of the transnational organisation must insure the correct information of the staff prior to the posting and the inclusion of special provisions, in the internal regulations, for the periods of European mobility. The management of long distance communication with its own structure, from the point of view of work relations, and that which implies the relation with authorities in the host state, also suppose an adaptation of the organisational design.

For the duration of the European mobility the organisation must develop special measures destined for the management of personal and family problems brought about by the temporary absence of the worker relocated from its home environment.

Management of collective work relations in regard to the mechanisms for social dialogue and the associative structures in the host state, in parallel with those in the origin state, represent an important challenge for the management of the human resources in transnational organisations. The representation in entrepreneurial structures in the host state can be insured indirectly through mediation of the European associative structures. Likewise, the relationships with the syndicates in the origin state can also be mediated with the help of the syndicate in one's own company, based on openness towards mutual information and consultation.

Collective labour agreement signed at an organisational level must contain the general framework of collective relations involved by the European mobility of human resources and by the rights of the workers for the duration of their temporary posting. From the viewpoint of the strategic management of the European mobility of human resources, a correct evaluation is needed of all implications for one's own organisation, present and future, in the general concept of the management of the European mobility of human resources. The projection of the need for staff and the needs for mobility, the structural and territorial development of the organisation, the evolution of its own human capital and the local capitalisation of transnational experience are all strategic directions which require an integration within the general strategy of the employer involved in the posting of transnational services within the *EU*.

Normative projections for the institutional adaptation to the practical manifestation of transnational posting of workers and solutions for a new institutional approach

Romania as origin state of the transnational postings relies on the *Labour Code* for regulating the employment relationship as support of the European mobility in the conditions of *Directive 96/71*, but not on the nationally accepted institution of the posting of employees. This normative approach can be considered *a Romanian paradox of posting*.

The results of the research are transposed to an institutional level, into legislative proposals both within Romania and at a European level, which can constitute solutions for a new institutional approach.

National legislative proposals for Romania (lege ferenda)

Recommendations for modifying the *Labour Code*:

- territorial application of the provisions of the *Labour Code*;
- a more precise qualification of the employment contract;
- review of the institution of posting;
- special regulation of the work relationships with elements of extraneity within the *EU*;
- transnational widening of the mechanism of protecting employees in case of the transfer of the business;
- adapting the general record of employees.

The European mobility of human resources requires the introduction within the legislation regulating the social dialogue and the collective work relationships, of special provisions adapted to work relationships with elements of extraneity.

For the actual protection of the transnationally posted employee, a reconciliation of the conflict between the protection of rights of the employee and the protection of the social security systems must be arrived at.

The review of the procedure of authorising, of the necessary guarantees and the functioning of the temporary work agencies is in order, in the context of the European mobility of human resources. The principle of the individual protection of the transnationally posted employee must come first in the drawing up of any normative or administrative act.

European legislative proposals (lege ferenda)

The posting of workers within the transnational provision of services is a European phenomenon, which must be regulated in the same way all throughout Europe, by using norms which can be applied directly in the member states (regulations), on the basis of a single European *hard core* of social standards, of common European instruments for monitoring and control and of common European authorities, acting transnationally.

Review of the unitary treatment of the three posting situations comprised by *Directive 96/71* is in order, due to the inhomogeneity of these three forms.

The regulation, at European level, of the collective work relationships, must be adapted to the European mobility of human resources through the transnational posting of workers, on the basis of the fundamental principle of representativeness and legality of collective actions, but also the review of the system of representativeness of syndicate and entrepreneurial organisations at *EU* level.

The future of the transnational posting of workers

The phenomenon of transnational posting of workers is now in a special situation. The national and communion protection measures that have been enforced by the member states, the actions of syndicate organisations and the decisions of the *Court of Justice of the European Union* have evolved into an ascending trend, starting with the moment when *Directive 96/71* was adopted.

On a political level, the public management at European level directly touches the problem of the European mobility of human resources. *Jean-Claude Juncker*, the present president of the

European Commission, declared in his political programme² "(...) *I will ensure that the Posting of Workers Directive is strictly implemented, and I will initiate a targeted review of this Directive to ensure that social dumping has no place in the European Union. In our Union, the same work at the same place should be remunerated in the same manner.*"

The legislative proposals and solutions for European management previously presented coincide as far as the need for changing *Directive 96/71* is concerned, they are in consonance with the *same work - same place - same remuneration* project and I do not believe that the universally accepted principle of *equal work - equal remuneration*, can be contested in general terms. However, the debate is inevitable when the notions of *same work, same place and same remuneration* must be defined and detailed.

My personal vision understands the equal work related to the result produced in identical conditions, not with the time spent or the effort undertaken, the same place represents the borderless territory of the *EU*, not the national territory of a member state, and the same remuneration means something universally accepted, which can reflect the national European diversity and not each level of each business of each of the 28 member states.

Posting of workers within the transnational provision of services remains a purpose, not a finalised project. When it becomes reality by eliminating artificial barriers, the *European Union* will be much stronger and will achieve the real connection of *freedom and work*.

Construction of the European Union started naturally, based on an economic basis (*the coal and steel market*). This was the mobile which united the founding countries, since the economic dimension is that which creates workplaces and, in the end, well-being. The embedding of the economic dimension within religion, politics and social relations is a reality which should mould the normative equilibrium of the *European Union*, taking into account gaps, the peripheral condition of some member states and European national diversity, which is *old or new, expensive or cheap, with steel, but also with coal*.

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² Political statement "A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change", Political Guidelines for the next European Commission, Opening Statement in the European Parliament Plenary Session, Jean-Claude Juncker, Candidate for President of the European Commission, Strasbourg, 15 July 2014, available at <http://www.eesc.europa.eu/resources/docs/jean-claude-juncker---political-guidelines.pdf>.

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