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The European Asscher agenda A political and economic minefield

In the first half of 2016 the Netherlands will hold the Presidency of the European Union. The sensitive topic of labour migration is one of the main focal points of the Dutch Presidency. Equal pay for equal work in the same workplace has to prevent 'unfair' competition on employment conditions within Europe. Specific interest goes out to the current Posting of Workers Directive that regulates the conditions governing temporary workers from other EU Member States. The aim of this policy brief is to identify the areas of tension with regard to this specific priority of the Dutch EU Presidency. The challenges posed by the Dutch agenda include the balance between internal market and social policy objectives, the diverging interests of the "receiving" and the "sending" countries and the role of labour migration in the EMU.

1. Introduction

Labour migration is one of the main focal points of the Dutch Presidency of the Council of Ministers in 2016. The Netherlands wants to fight 'unfair' competition on employment conditions within Europe and, by advocating 'decent work', promote a level playing field based on 'equal pay for equal work'.¹ In focusing on this subject, the Netherlands is setting itself a difficult task, for several reasons. In the discussions on European labour mobility, national sensitivities as well as fundamental principles relating to the internal market and the euro are clashing. To guarantee equal pay, Minister of Social Affairs Lodewijk Asscher wants to adapt

the current Posting of Workers Directive that regulates the conditions governing temporary workers from other EU Member States.²

Asscher's plans thus shifts old EU debates on wage levels, labour market regulation and the welfare state back to the heart of the EU negotiations on the further development of the EMU.³ The plans fit into the current trend in European integration to increasingly highlight the social side of integration, including (relative) social

1 Dutch Government, 'Kabinetsreactie SER-advies arbeidsmigratie', 16 June 2015, p. 2, and Minister Asscher, 'Brief aan Eurocommissaris Thyssen over de Detacheringsrichtlijn', 18 June 2015.

2 Minister Asscher, Brief aan Eurocommissaris Thyssen over de Detacheringsrichtlijn, 18 June 2015, and Meijnders, K. 'Goedkope buitenlandse werknemers: Asscher gaat strijd aan met Brussel', *BNR website*, 27 February 2015.

3 Eichengreen, B. J. *European Monetary Unification: Theory, Practice, and Analysis*. Cambridge, MA: MIT, 1997, pp. 138-141.

minimum income and European solidarity.⁴ The issue of employment conditions has always been closely linked to support for the EU.⁵ Given the growing doubts about public support for the EU, the Dutch agenda on levelling wages is a pillar of the Europe strategy of the Rutte-2 Cabinet. It thus links the debate on labour migration as a means of increasing labour mobility in the EU with socially desirable limits. With the introduction of the euro, and thus with the disappearance of the exchange rate mechanism, labour mobility could be an important adjustment mechanism to absorb shocks within the EMU area. In particular many workers from the newest EU Member States have been making use of the free movement of persons and services.⁶ As a result, (wage) competition on the labour market has increased, including complaints about 'unfair competition' and a 'race to the bottom' on employment conditions.⁷

Against the background of the Dutch EU Presidency, we will briefly go into the discussions about the Posting of Workers Directive (section 2). The labour migration topics are analysed in section 3 in relation to tensions between the Dutch aspirations and EU legislation. The conclusions in section 4 specify the challenges for the Dutch Presidency by stating that the official Dutch Presidency strategy on social standards clashes with the Dutch wishes regarding the euro and with the priorities of other Member States. The result is an unenviable starting point for the Presidency.

2. The EU Presidency and the Dutch social agenda

First of all, it is important for the Netherlands to be aware of the different roles it will play during the Presidency of the Council of the European Union in 2016. Since the Lisbon Treaty, the Presidency's efforts have mainly focused on the rolling agenda. As already indicated by the Letter to the House of Representatives about the substantive preparations, the role of the Presidency is largely that "of a reliable and efficient intermediary that forges compromises between the 28 member states and between the Council, Commission and European Parliament".⁸ Of course, each country wants to emphasise certain points or draw extra attention to specific issues of its own at informal meetings.⁹ A well-thought-out and targeted selection of priorities can contribute to a successful Presidency.¹⁰

The Dutch Presidency focuses, according to its own statements, on key issues,¹¹ and Minister Asscher has designated working on a decent European labour market as his priority.¹² In February 2015, he formulated four objectives: (1) expanding responsibility in a subcontracting chain, (2) operationalising the platform for fighting undeclared work, (3) getting rid of PO box companies, and (4) reviewing the Posting of Workers Directive.¹³

4 Macron, E. and Gabriel S., 'Europe cannot wait any longer: France and Germany must drive ahead', *The Guardian*, 3 June 2015.

5 Pellikaan H., H. Vollaard and S. Otjes, *Europe in The Netherlands*, The Hague: Scientific Council for Government Policy (WRR), May 2007, p. 42.

6 Berntsen, L., 'Agency of Labour in a Flexible Pan-European Labour Market', Phd diss. Faculty of Social Sciences of the University of Jyväskylä, June 2015, p. 58.

7 Rijksoverheid, 'Onderzoek arbeidsmigratie: verdringing door ongelijke concurrentie', 20 November 2014.

8 Dutch government, 'Kamerbrief betreffende inhoudelijke voorbereidingen Nederlands EU-voorzitterschap 2016', 28 January 2015.

9 Schout, J.A., S. Vanhoonacker (2006) 'Evaluating Presidencies of the Council of the EU Revisiting Nice', *Journal of Common Market Studies*, 44(5), 1049-1075.

10 Rood, J.Q. and Van Keulen, M., 'Nederland op de voorzittersstoel', *Internationale Spectator*, no. 6, 2004, p. 290.

11 Rijksoverheid, 'Koenders: 'EU-voorzitter Nederland zet in op hoofdzaken, innovatie en band met burgers'', 28 January 2015.

12 Rijksoverheid, 'Kabinet zet in op beperking duur detachering EU werknemers', 16 June 2015.

13 Asscher, L., 'Toespraak van minister Asscher (SZW) op het symposium Arbeidsmigratie Limburg', 9 February 2015.

Via a motion, tabled by the PvdA (Dutch Labour Party), Asscher has already gained wide support from the House of Representatives for prioritising a fundamental review of the Posting of Workers Directive during the Dutch Presidency.¹⁴ According to the Cabinet, the current Directive leads to unfair competition between Dutch workers and posted workers from other EU countries.¹⁵ The Dutch government aims to reduce differences in pay between these groups and to ensure that the principle of equal pay for equal work in the same workplace will apply throughout the entire EU.¹⁶

The Posting of Workers Directives regulates the temporary hiring of foreign workers at a low cost.¹⁷ Article 3, para. 1 of the Directive stipulates that only a basic package of employment conditions of the receiving country shall apply to the posted worker. These are so-called hard or key conditions of the receiving country, such as minimum wages, maximum working hours and a minimum number of holidays.¹⁸ Practice shows, however, that the Directive's provisions are often not complied with. A few concrete examples of abuse named by the Social and Economic Council (SER) are failure to apply hard employment conditions, wrongful designation of travel and subsistence allowance as wage and wrongfully acting as a foreign service provider via a PO box company.¹⁹ In addition, it is stated that the inadequate enforcement

of rules helps to sustain such abuse.²⁰ The adoption of the Enforcement Directive in 2014 was meant to improve the application of the Posting of Workers Directive, e.g., by arranging cross-border collection of fines, chain responsibility (in the building industry), national possibilities for control, and identification of PO box companies.²¹ However, the European trade union movement called the compromise reached 'disappointing', pointing to the remaining problems of under-payment and abuse.²² Mijke Houwerzijk also points out that these small steps probably amount to not much more than "mere drops in the ocean".²³

Another controversial issue is the fact that, under current European regulations governing posted workers, for a period of two years no social security and pension contributions need to be paid in the country of employment, but only in the country of residence.²⁴ This promotes legal competition on the payment of social security contributions²⁵ and is regarded as unfair. It makes posted workers cheaper than Dutch staff, which, according to Asscher, amounts to "a complete overhaul of the market".²⁶

14 Motion by MP Majj et al. about a renewed Posting of Workers Directive, *Kamerstuk* 34166-6, 2 April 2015.

15 Rijksoverheid, 'Onderzoek arbeidsmigratie: verdringing door ongelijke concurrentie', 20 November 2014.

16 Minister Asscher, 'Toespraak van minister Asscher (SZW) op het symposium Arbeidsmigratie Limburg', 9 February 2015.

17 Houwerzijk, M. S. (2014). Concurrenren met behulp van detachingsarbeid. In J. Cremers, I. van den Burg, C. Hamans, & A. Pilon (Eds.), *Voorbij de retoriek. Sociaal Europa vanuit twaalf invalshoeken*. (Vol. WBS Europa Fonds, pp. 91-105). Amsterdam: Van Gennep Amsterdam, p. 92.

18 Ibid.

19 SER, *Advies arbeidsmigratie*, Advice 2014/9, December 2014, p. 36.

20 Houwerzijk, M. S. (2014). Concurrenren met behulp van detachingsarbeid. In J. Cremers, I. van den Burg, C. Hamans, & A. Pilon (Eds.), *Voorbij de retoriek. Sociaal Europa vanuit twaalf invalshoeken*. (Vol. WBS Europa Fonds, pp. 91-105). Amsterdam: Van Gennep Amsterdam, p. 119.

21 Rijksoverheid, 'Betekenis bereikte akkoord over de handhavingsrichtlijn', January 2013.

22 ETUC, 'Provisional deal on posting of workers will not put an end to social dumping', 5 March 2014.

23 Houwerzijk, M. S. (2014). Concurrenren met behulp van detachingsarbeid. In J. Cremers, I. van den Burg, C. Hamans, & A. Pilon (Eds.), *Voorbij de retoriek. Sociaal Europa vanuit twaalf invalshoeken*. (Vol. WBS Europa Fonds, pp. 91-105). Amsterdam: Van Gennep Amsterdam, p. 102.

24 SER, *Advies arbeidsmigratie*, Advice 2014/9, December 2014, p. 32.

25 Kremer, M. and Schrijvers, E., Policy Brief 1 - *Making Romanian and Bulgarian Migration Work in The Netherlands*, The Hague: Scientific Council for Government Policy (WRR), January 2014, no. 1, p. 8.

26 Meijnders, K., 'Goedkope buitenlandse werknemers: Asscher gaat strijd aan met Brussel', BNR, 27 February 2015.

In a letter to Commissioner Thyssen of 18 June 2015,²⁷ Asscher again set out his wishes. He emphasised, amongst others, the abuse of the Posting of Workers Directive, the use of ‘bogus constructions’ and the inadequate enforcement. To level wages among workers as much as possible, the focus will be on expanding the key conditions in the Posting of Workers Directive so as to further limit competition on conditions of employment. Likewise, Asscher wants to attach stricter time limits to postings.²⁸ In addition, in an interview he said he wanted to put an end to people working in the Netherlands but paying social security contributions in their own country.²⁹

3. Labour migration and the challenges for the Presidency

The ‘decent work’ agenda is part of a more fundamental discussion on labour migration in the EMU. The free movement of persons and services is inextricably linked to the functioning of the euro and of the internal market. At the same time, these freedoms have been under pressure for a long time. In 2004, temporary restrictions were imposed on the newly acceded countries. Today, in many EU Member States the drawbacks of the four freedoms (free movement of persons, goods, services and capital) that support the market have been gaining attention, due to the euro crisis and rising unemployment. As a result, the speed with which the various freedoms are realised greatly varies. Since 1990, capital movement has been liberalised at a rapid pace, but in new member Croatia, for instance, free movement of workers can only be fully realised in 2020, in line with what has been agreed.³⁰ This example is characteristic of

the hardening debate and of the reduced support mobility as integration principle.

Many see labour migration as a threat, and abuse gets a lot of media attention due to its socially sensitive nature. The discussion thus increasingly revolves around national support.³¹ On several occasions, Minister Asscher expressed his concerns about the declining support among the population for labour migration, and these concerns are echoed by the SER.³² These feelings are further exacerbated by well-known examples such as underpaid East Europeans in the Eemshaven and the exploitation of Portuguese people working on the new A2.

One of the concerns of the Netherlands and the other so-called ‘receiving Member States’ relates to substitution on the labour market. Already in 2013, Minister Asscher issued a ‘code orange’ because less skilled workers in the richer EU Member States would be disadvantaged by the free movement of workers.³³ He stated that “our weakest citizens would not be able to compete with better skilled people from elsewhere”.³⁴ This makes low wage competition in the service industry a controversial issue. EU citizens are much more negative about importing free movement of services than free movement of goods.³⁵

3.1 Sending countries, receiving countries and the European Commission

In wanting to adapt the Posting of Workers Directive the Dutch Presidency is faced with several challenges. The first challenge concerns the differences between Eastern and Western Europe. Not so long ago, Asscher seemed alone in his wish to adapt

27 Minister Asscher, Brief aan Eurocommissaris Thyssen, 18 June 2015.

28 Ibid, p. 3.

29 Meijnders, K., ‘Goedkope buitenlandse werknemers: Asscher gaat strijd aan met Brussel’, BNR, 27 February 2015.

30 Euractiv, ‘Labour ministers hammer out agreement on posted workers’, 10 December 2013.

31 Letter Ministry of Foreign Affairs, “Kamerbrief Inhoudelijke Voorbereidingen Nederlands EU-voorzitterschap 2016”, 28 January 2015, p. 11.

32 SER, Advies arbeidsmigratie, Advice 2014/9, December 2014, p. 10.

33 Editorial, ‘Asscher: code oranje heeft gewerkt’, *Trouw*, 9 May 2014.

34 Ibid.

35 Calmfors, L. et al., ‘Trade in Services and in Goods with Low-Wage Countries– How Do Attitudes Differ and How Are They Formed?’, *SIEPS*, 2009:6, p. 8.

the Posting of Workers Directive.³⁶ However, he is now gaining support from other receiving Member States. A letter on this matter addressed to Commissioner Thyssen was co-signed by France, Germany, Sweden, Belgium, Luxembourg and Austria.³⁷ In the recent past, receiving Member States also independently tried to protect their labour markets. For instance, in anticipation of the adoption of the Enforcement Directive in spring 2014, France announced stricter national rules for migrant workers.³⁸

The traditional ‘sending countries’ are not very enthusiastic about such tighter measures. In 2013, the ranking list of net migration countries was headed by Poland, followed by Slovenia, Portugal, Hungary, Slovakia and Romania.³⁹ Where the Netherlands refers to ‘distorted’ or ‘unfair’ competition, these Member States see their cheaper labour as a legitimate competitive advantage.⁴⁰ The sending Member States’ opposition to restrictions also became evident when the Enforcement Directive for postings was adopted in spring 2014. Hungary, the Czech Republic, Latvia, Estonia, Slovakia, Malta and the United Kingdom voted against.⁴¹ The Directive was adopted at the last minute with the help of Poland, but according to then French Minister Repentin “the deal was extremely difficult to reach” and the balance was fragile.⁴² Considering the voting pattern when the Enforcement Directive was adopted

in 2014, it may be assumed that a large number of these sending Member States will not support Asscher’s policy agenda in 2016. The question is whether the Dutch Presidency will be able to stay neutral in this matter.

For a Presidency, good cooperation with the European Commission is essential.⁴³ Initially, there was little evidence of that in the field of labour migration. The Barroso Commission seemed little enamoured with Minister Asscher’s ‘code orange’ and with his remarks about ‘the Dutch dykes that were on the point of collapse’ as a result of labour migration.⁴⁴ Commissioner Neelie Kroes compared Asscher with a Hansje Brinker putting his finger in the wrong dyke, thus telling Asscher he ought to first take a look at the problems on the Dutch labour market.⁴⁵ Former Commissioner Laszlo Andor moreover accused Asscher of ‘xenophobia’.⁴⁶ All in all, the previous Commission had its reservations about adaptations and pointed to the importance of the national enforcement mechanism.⁴⁷ The current Commission wants to play a more prominent political role and seems open to the Dutch efforts. Upon his appointment, Juncker was explicit in his wanting a targeted evaluation of the Posting of Workers Directive because there is no room for ‘social dumping’ in the European Union,⁴⁸ and Commissioner Thyssen underlined that European legislation

36 Rijksoverheid, Brief aan Eurocommissaris Thyssen, 18 June 2015, p. 3.

37 Ibid.

38 Euractiv, ‘Deal on posted workers set for before EU elections’, 3 March 2014.

39 European Commission, *Report Posting of Workers: report on A1 portable documents issued in 2011 and 2012*, December 2014, p. 15.

40 Houwerzijl, M. S. (2014). Concurreren met behulp van detachingsarbeid. In J. Cremers, I. van den Burg, C. Hamans, & A. Pilon (Eds.), *Voorbij de retoriek. Sociaal Europa vanuit twaalf invalshoeken*. (Vol. WBS Europa Fonds, pp. 91-105). Amsterdam: Van Gennep Amsterdam, p. 95.

41 Euractiv, ‘Labour ministers hammer out agreement on posted workers’, 10 December 2013.

42 Barbieri, C., ‘France moves ahead on posted workers without waiting for EU’, *Euractiv*, 14 January 2014.

43 IOB Ministerie van Buitenlandse Zaken, *Primus inter pares: Een evaluatie van het Nederlandse voorzitterschap 2004*, no. 314, July 2008, p. 42.

44 Asscher, L. and Goodhart, D., ‘Code Oranje voor vrij verkeer werknemers’, *Volkskrant*, 17 August 2013.

45 Kroes, N., ‘Hansje Brinker herrijst’, *Financieel Dagblad*, 31 August 2013, and De Koning, P., ‘Niemand mag mij een xenofob noemen’, *NRC*, 10 December 2013.

46 Editorial, ‘Asscher: code oranje heeft gewerkt’, *Trouw*, 9 May 2014.

47 Editorial, ‘België pakt sociale fraude verkeerd aan’, *De Redactie*, 25 September 2014.

48 Juncker, J.C., ‘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’, 15 July 2014, p. 7.

was not meant “to promote social dumping.”⁴⁹ In the meantime, the latter is making haste with a mobility package including an evaluation of the Posting of Workers Directive.⁵⁰

3.2 Internal Market versus social objectives

The EU Treaty stipulates that the EU shall work for a highly competitive social market economy, aiming at full employment and social progress.⁵¹ Where in the early years the emphasis of the European integration process was largely on economic objectives, attention for the social aspects appears to be growing.⁵² The enlargement, euro crisis and growing pressure on the labour market have increased the focus on the social side of the EU,⁵³ and the European Parliament is looking for ways to incorporate the social dimension into the European economic coordination.⁵⁴

The Posting of Workers Directive fits into the search for a balance between market forces and social objectives. Its goal is twofold: stimulating the free movement of services while safeguarding the protection of the posted worker.⁵⁵ The Directive has now

become symbolic of the tense relationship between the social and economic objectives of the EU and EMU. When, in the recent past, Member States did their best to introduce equal or better employment conditions for posted workers, these always conflicted with the provisions on free movement.⁵⁶ The judgment of the European Court of Justice in the *Laval* case showed that competition arising from national differences in wages and employee protection are acceptable as long as the minimum standards of the Posting of Workers Directive are observed.⁵⁷ According to Houwerzijl and Van Hoek, the Court’s case law in this and similar cases evidenced “a positive assessment of wage competition as impetus to move services to, or offer them in another Member State”.⁵⁸ The Court thus endorsed the promotion of the freedom of services as main objective.⁵⁹

Previously, the Commission also seemed to focus on the primacy of the internal market as regards the free movement of workers and services. Former Commissioner Andor made clear that Member States “cannot cherry pick which of the freedoms they want”.⁶⁰ The Dutch Cabinet is in favour of free movement of workers but does set limitations. According to the Netherlands, free movement should go hand in hand with better protection of workers.⁶¹

49 Troost, N., ‘Detacherings mag in Europa niet tot verdringing leiden’, *Volkskrant*, 6 March 2015.

50 Juncker, J.C., ‘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’, 15 July 2014, p. 7.

51 Art. 3(3) TEU.

52 Goudswaard, K.P. ‘De Europese Unie: Economisch en sociaal?’, *SMA*, 2006, p. 408.

53 Juncker, J.C., ‘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’, 15 July 2014, p. 7.

54 European Parliament, ‘Social dimension of EMU: more specific proposals needed, MEPs say’, 5 November 2013.

55 Van Den Eeckhout, V., ‘Internationaal arbeidsrecht gemengd tussen vrij verkeer van personen, vrij verkeer van diensten, vrijheid van vestiging en non-discriminatie. Enkele aantekeningen vanuit ipr-perspectief bij de uitspraken Viking, Laval, Rüffert en C./Luxemburg’, 2009, p. 10, and European Court of Justice, Case C-341/05, *Laval* (2007) ECR I-11767-11894, para. 74-76.

56 See, e.g., European Court of Justice, Case C-341/05, *Laval* (2007) ECR I-11767-11894, para. 80, and European Court of Justice, Case C-346/06, *Rüffert* (2008) ECR I-1989, para. 32-33.

57 Houwerzijl, M.S. and Van Hoek, A.A.H., ‘Loonconcurrentie als motor van de interne markt: Een tweeluik – Deel 1: de Arresten Viking, Laval en Ruffert, verdragsaspecten’, *Nederlands tijdschrift voor Europees recht*, no. 7/8 2008, p. 201.

58 *Idem*, p. 205.

59 Houwerzijl, M. S. (2014). Concurrenieren met behulp van detachingsarbeid. In J. Cremers, I. van den Burg, C. Hamans, & A. Pilon (Eds.), *Voorbij de retoriek. Sociaal Europa vanuit twaalf invalshoeken*. (Vol. WBS Europa Fonds, pp. 91-105). Amsterdam: Van Gennep Amsterdam, p. 95.

60 Andor, L., ‘Labour Mobility in the European Union – The Inconvenient Truth’, speech, 10 February 2014.

61 Nieuwsbericht Rijksoverheid, ‘Zeven Europese landen voor eerlijke detachering EU-werknemers’, 19 June 2015.

Employers and employees have widely divergent views on labour migration and the operation of the Posting of Workers Directive. The Confederation of Netherlands Industry and Employers (VNO-NCW) believes that Asscher “is going too far” and puts too much emphasis on the disadvantages.⁶² In a reaction to the ‘code orange’, employers recognised that differences in employment conditions and wages may be considerable, but stated that it was more important to “critically examine whether Dutch collective labour agreements are still sufficiently capable of adaptation, and whether our social security system is still adequate”,⁶³ seeing that, through posting abroad, employers can gain cost benefits.⁶⁴ Employees, on the other hand, emphasise the need to counteract abuse and fraud. The unions are therefore in favour of applying the principle of country of employment rather than that of country of residence: if you work somewhere, the rules of that country should apply to you.⁶⁵ They have said to be disappointed with the fact that the Commission only speaks of a limited evaluation of the Posting of Workers Directive, because this would not be enough to tackle the social dumping problem and realise equal pay for equal work.⁶⁶

Of course, the question is whether a balance can be struck between economic and social considerations. The preparations for the Presidency at the Ministry of Social Affairs and Employment in consultation with like-minded countries and with the Commission should bring clarity about the room for manoeuvre.

3.3 The EMU versus labour migration

In practice, the adaption of posting regulations will hamper labour migration. The Eurozone in particular will feel the resulting negative effects because, within the EMU, labour migration is one of the most important adjustment mechanisms for absorbing asymmetrical shocks in the Member States.⁶⁷ The plans for a “decent European labour market” are thus at odds with the Dutch objective as stated in the State of the Union to achieve the “strengthening, deepening and institutional design of the Economic and Monetary Union (EMU)”.⁶⁸

Together with other Member States and the EU institutions, the Netherlands has worked hard to reform economic and financial policy through measures like the Six-Pack, Two-Pack, European Semester and the Banking Union, and in this respect convergence – Member States growing closer together – is an important goal.⁶⁹ Within the Dutch Cabinet, the views on further strengthening the EMU are divided. While Prime Minister Rutte’s intent is “to retain and restore as many market incentives as possible”⁷⁰, Minister Asscher emphasises the dangers of ‘unfair’ competition. The room for determining own policy is more limited now that monetary policy is being defined in Frankfurt. Countries with rising unemployment are therefore looking for new European instruments. The recently issued ‘Five Presidents’ Report’ advocates, following the Van Rompuy Report of 2012, a Brussels fiscal

62 Editorial, ‘Asscher slaat door over arbeidsmigratie’, *Forum (VNO-NCW)*, 19 May 2015, p. 4.

63 Ibid.

64 Kremer, M and Schrijvers, E., *Policy Brief 1 - Making Romanian and Bulgarian Migration Work in The Netherlands*, Scientific Council for Government Policy (WRR), January 2014, no. 1, p. 9.

65 Editorial, ‘Vakcentrales aan Europees Parlement: Detacheringsrichtlijn niet scherp genoeg’, *FNV*, 21 March 2012.

66 FNV ‘FNV Europa Nieuws’, *FNV*, 15 January 2015, p. 5.

67 Fernandes, S. and Maslauskaitė, K. *Policy Paper 98. A Social Dimension for the EMU*, Notre Europe, September 2013, p. 5.

68 Letter of the Dutch government, ‘State of the Union 2015’, 23 February 2015, p. 10.

69 D’Alfonso, A. ‘Rationale behind a euro area “fiscal capacity” Possible instruments including a dedicated budget’, *European Parliamentary Research Service*, 26 June 2013, p. 2.

70 Brief Ministerie van Buitenlandse Zaken, ‘Verslag van de Europese Raad d.d. 13 en 14 december 2012’, 18 December 2012, p. 2.

capacity to absorb economic shocks in the Member States.⁷¹

It is clear, however, that the Eurozone Member States have very different views on this alternative adjustment mechanism. European taxes to finance a European social policy are not popular in the Netherlands.⁷² And Germany, too, sees growing opposition to a transfer union (*Ausgleich*). There, the *Bundesministerium der Finanzen* has strongly criticised the transfers between the *Länder* because they take away incentives to reform and have not led to convergence.⁷³ This does not provide a solid basis for a discussion on a European *Ausgleich*.

France, Italy and other, especially Southern European countries, however, regularly call for a certain degree of wealth transfer from North to South to facilitate reforms in the Southern Member States.⁷⁴ However, in the current political reality the chances of a budgetary union being realised any time soon is believed to be extremely small.⁷⁵ The Northern Member States find the idea of Northern tax income disappearing to the Southern Member States hard to stomach. Member States such as Germany, Finland⁷⁶ and the Netherlands will not easily be forced to accept a European Ministry of Finance, the introduction of euro bonds or a European form of debt division.⁷⁷ Merkel said she does not want euro bonds “as long

as [she] live[s]”.⁷⁸ In a similar vein, Rutte argued that a euro budget is not necessary⁷⁹ because this would take away the incentive to reform. He even went so far as to say that introducing euro bonds at this moment was “madness”.⁸⁰ Therefore, in a reaction to the Van Rompuy Report,⁸¹ the Dutch Cabinet particularly emphasised strengthening the internal market, including greater flexibility of the labour market.⁸² According to the Advisory Council on International Affairs (AIV), labour mobility from weak to strong economic regions is even a precondition for the long-term sustainability of the EMU.⁸³

At the same time, the EU is struggling with its rigid labour market. Although over the past years the number of intra-European migrant workers has risen from 4.7 million in 2005 to 8 million in 2013, this development strongly lags behind the situation in the US.⁸⁴ By way of comparison: in the EU, 4 per cent of the professional population live in another Member State while in the US over 30 per cent of the active population live in a state other than where they were born.⁸⁵ The permanently low labour mobility within the EU is all the more striking since unemployment in many Member States has

71 Juncker, J. et al., ‘Completing Europe’s Economic and Monetary Union’, June 2015, pp. 10-14.

72 Press conference M. Rutte after the Council of Ministers, 26 November 2010.

73 Der bundesstaatliche Finanzausgleich, Berlin: *Bundesministerium der Finanzen* 2015.

74 Probyn, C., in Wolzak, M., ‘Welvaartsoverdracht van noord naar zuid is onvermijdelijk’, *Financieel Dagblad*, 1 December 2014.

75 Ibid.

76 Press release Finnish Permanent Representation to the EU, ‘Prime Minister Katainen in Brussels: Finland against the introduction of eurobonds’, 24 May 2012.

77 Evans-Pritchard, A., ‘Blaming the Spanish victim as Europe spirals into summer crisis’, *Daily Telegraph*, 22 July 2012, and Editorial, ‘Soros: ‘Germany should accept Eurobonds or leave the euro’, *Euractiv*, 22 April 2013.

78 Editorial, ‘The Coming EU Summit Clash: Merkel Vows ‘No Euro Bonds as Long as I Live’ *Der Spiegel Online*, 27 June 2012, and Grässler, B., ‘Merkel affirms her rejection of eurobonds in budget debate’, *Deutsche Welle*, 24 November 2011.

79 Kamerbrief Rijksoverheid, ‘Kamerbrief over het tussenrapport Toekomst van de EMU’, 15 October 2012, p. 5.

80 Editorial, ‘Rutte: eurobonds misschien over tien jaar’, *RTL Nieuws*, 5 June 2012.

81 Van Rompuy, H. et al, ‘Towards a genuine Economic and Monetary Union’, 5 December 2012.

82 Kamerbrief Rijksoverheid, ‘Kamerbrief over het tussenrapport Toekomst van de EMU’, 15 October 2012, p. 5, and Editorial, ‘Eurotop over omstreden plan Van Rompuy. Krijgen we nu politieke unie?’, *NRC*, 13 December 2012.

83 Advisory Council on International Affairs (AIV), *Advisory Letter. Towards a stronger social dimension of the EU*, no. 23, 23 June 2013, p. 8.

84 Andor, L., ‘Labour mobility within the EU’, speech, 10 February 2013.

85 Arpaia, A. et al. ‘Labour mobility and labour market adjustment in the EU’, *European Commission, Economic Papers*, no. 539, December 2014, pp. 5-6.

seen a sharp increase following the outbreak of the financial crisis. At the beginning of the crisis, labour mobility even decreased by 41 per cent in the EU area.⁸⁶

The low labour mobility between Member States is partly due to language and cultural differences,⁸⁷ and is moreover hindered by country-specific barriers related to the design of social security systems, national rules and regulations, and the transparency of labour markets.⁸⁸ The European Commission has therefore launched a policy aimed at removing these barriers, e.g., by introducing European rules on pensions,⁸⁹ recognition of professional qualifications, and the EURES system that serves as a platform for labour mobility.⁹⁰

Labour migration in the EU is not primarily driven by unemployment. Although labour migration from Southern Europe increased by 73% in 2011 and 2012, the largest group of migrant workers still comes from Eastern Europe.⁹¹ Within the EMU, the rise in mobility from the South is, however, not enough to cause a substantial reduction in the average unemployment percentage of 11.3%.⁹² The current trend in labour migration seems mostly the result of major wage and income discrepancies between Eastern and Western Member States rather than of differences

in unemployment.⁹³ Over the past decade, income and wage discrepancies⁹⁴ between Eastern and Western EU Member States have been the main drivers of labour migration.⁹⁵ Also, interestingly, despite the various restrictions on labour mobility, it is precisely postings that have strongly gained in popularity.⁹⁶ Since the mid-eighties, temporary migration through free movement of services has increased.⁹⁷ Compared to 2010, the number of postings has risen sharply, amounting to 1.3 million postings in 2013.⁹⁸

Both the European Commission and the Netherlands say they want to stimulate labour mobility. This can be done by further promoting temporary migration. However, if the focus shifts to levelling wages as much as possible, one of the main drivers of labour migration will disappear. OECD research (1999) showed that, as a result of income convergence and smaller wage differences in the euro area, the motives to migrate as existed among South Europeans in the fifties and sixties have disappeared.⁹⁹ In the longer run, further wage convergence may put the brakes on labour mobility.¹⁰⁰ This, in turn, raises the question of who will be bearing the social costs for emigration countries within the Eurozone.

86 Andor, L., 'Labour mobility within the EU', speech, 10 February 2013.

87 SER, 'EU-regelgeving en resterende belemmeringen voor arbeidsmobiliteit', p. 52.

88 Munz, R., 'Memos to the EU leadership: To the Commissioner in charge of mobility, migration, leadership, asylum and border management', Brueghel.

89 E.g., Directive 2014/50/EU of the European Parliament and of the Council of 16 April 2014 on minimum requirements for enhancing worker mobility between Member States by improving the acquisition and preservation of supplementary pension rights.

90 EURES is the European portal for labour mobility. It is an online vacancy system for people looking for work in another country within the European Union.

91 Van der Hulst, A., 'De nieuwe gastarbeiders komen uit Zuid-Europa', *NRC*, 11 December 2012.

92 Arpaia, A. et al, 'Quarterly Report on the Euro Area', *European Commission*, Volume 14, No. 1, 2015, p. 19, and Eurostat, *Unemployment statistics*, March 2015.

93 Andor, L., 'Labour mobility within the EU', speech, 10 February 2013.

94 Eurostat, 'Wages and labour costs', May 2015.

95 European Commission, *Employment and Social Developments in Europe 2013*, 21 January 2014, Chapter 5, Box 3, p. 284.

96 Berntsen, L., 'Agency of Labour in a Flexible Pan-European Labour Market', Phd diss. Faculty of Social Sciences of the University of Jyväskylä, June 2015, p. 57 and pp. 63-64.

97 European Commission, *Memo: Labour Mobility within the EU*, 25 September 2014.

98 European Commission, *Study on the economic and social effects associated with the phenomenon of posting of workers in the EU*, March 2011, p. 1.

99 OECD, *EMU: Facts, Challenges and Policies*, 1999, pp. 121-138.

100 Kremer, M and Schrijvers, E., *Policy Brief 1 – Making Romanian and Bulgarian Migration Work in The Netherlands*, Scientific Council for Government Policy (WRR), January 2014, no. 1, p. 20.

4. Conclusion

With the Asscher agenda the Netherlands is facing a complicated job in the run-up to the EU Presidency in 2016. It is important for an EU Presidency to strike a balance between expectations of neutrality, political leadership and own interests. The sensitive dossier of labour migration will be on the Dutch Presidency's agenda. The forces at work in this regard promise to provide quite a challenge. The Netherlands itself is considered a frontrunner in limiting 'unfair' competition and this potentially reduces labour mobility, while other countries and the Commission, in contrast, are in favour of increased mobility. Despite the fact that the Netherlands is trying to forge coalitions, the tensions are considerable. Substantial opposition to the planned limited review of the Posting of Workers Directive may be expected from the 'net sending Member States', which are in the majority.

Minister Asscher's agenda is moreover a delicate one because the balance between social and economic objectives may change. In the past, the Posting of Workers Directive seemed mostly meant to promote free movement of services rather than realising

social objectives. The Dutch government is now particularly working to limit wage competition, thus exactly underlining the social component of the internal market. Many regard Asscher's agenda, which aims to improve protection of workers, as restricting labour mobility because it reduces certain competitive advantages of low-wage countries. This raises the question of whether adaptation of the Posting of Workers Directive as intended by the Netherlands conflicts with an important objective of the EU to increase labour mobility.

Finally, reducing labour migration is at odds with the Dutch government's wish to prevent the EMU from becoming a transfer union. Wage flexibility and labour mobility are important adjustment mechanisms within the EMU. The Dutch efforts in the EMU and the European Semester are directed towards ensuring that countries solve their own problems, e.g. by relying on labour mobility. However, Asscher's proposals aim to reduce wage differences. Wage convergence imposed by Brussels can reduce labour migration. In short: the Dutch ambitions conflict with each other, which is not a good starting position.

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