

# **Evaluation of the monitoring and effects of the flanking measures related to the free movement of persons**

## **Summary of the Report by the Parliamentary Control of the Administration for the National Council Control Committee**

of 16 June 2011

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### **Summary**

*The flanking measures became effective on 1 June 2004 in connection with the introduction of the free movement of persons that had been negotiated within the framework of the Bilateral Agreements (Bilaterals I) with the European Union. They are intended to prevent wages and working conditions from deteriorating in Switzerland as a consequence of foreign employees' easier access to the Swiss labour market (prevention of wage and social welfare dumping). On the one hand, these measures consist in checks on compliance with wage and social conditions for posted workers. On the other hand, there is the possibility of making it easier to declare collective labour agreements generally binding or of enforcing standard labour agreements with compulsory minimum wages if there is evidence of a given industry repeatedly undercutting wages in an abusive way.*

*Since the introduction of the flanking measures, many questions have arisen as to their application and effectiveness. It was against this background that the competent subcommittee of the Control Committees of the Federal Assembly instructed the Parliamentary Control of the Administration (PCA) to conduct an evaluation of the monitoring and effects of the flanking measures related to the free movement of persons.*

### **The most important results**

*The free movement of persons has had material effects on the Swiss economy. This is shown, in particular, in an increase in consumption and in the demand for housing, but also in a rise in the number of foreign job seekers, who may both constitute a complement and increase competition on the domestic labour market. This evaluation does not analyse the general effects of the free movement of persons on the Swiss economy but only its impact on wages in order to establish whether the latter have come under pressure with the opening-up of the Swiss labour market in spite of the introduction of the flanking measures.*

*The solution to the problems that have been identified is complex because it falls within the competence of various actors (Confederation, cantons and social partners).*

*The room for manoeuvre demanded by the legislator hampers steering and the coherent application of the flanking measures. The joint, tripartite and cantonal executive bodies implement the intended measures with different degrees of coherence and conformity.*

### ***Obvious wage pressure, undetectable wage undercutting***

*The evaluation reveals that the increase in the supply of manpower caused by the free movement of persons has indeed exerted pressure on wages.*

*Although there is evidence of wage pressure, it cannot be gauged whether there are also cases of abusive wage undercutting. The legislator has not clearly defined what is meant by repeated abusive wage undercutting, which is why its identification depends on varying cantonal practices. The criteria for the definition of abusive wage undercutting are not always stipulated, communicated and applied by the cantons. Data collected by the PCA have demonstrated, however, that the wages of posted workers sometimes fall significantly short of the wages of resident employees.*

### ***Incomplete and inconsistent application of the flanking measures***

*The flanking measures are applied differently by different executive bodies. They appear to confine themselves to checks and collective labour agreement provisions. Conversely, the sanctions provided in the Posted Workers Act or other instruments such as those that make it easier to declare collected labour agreements generally binding or to enforce standard labour agreements are hardly ever applied.*

*Application problems vary according to the regulations governing different industries:*

- In most industries with collective labour agreements that have been declared generally binding at the national level, checks are not followed up by sanctions pursuant to the Posted Workers Act because the cases are not forwarded to the cantonal authorities.*
- In most industries with collective labour agreements that have been declared generally binding at the cantonal level, the quantity and quality of data are not adequate to the task of establishing whether the flanking measures are applied correctly and effectively.*
- Within the remit of the tripartite commissions, the cantonal checking procedures and methods do not allow for cases of repeated abusive wage undercutting to be clearly identified. This results in a situation whereby the instruments provided for such cases – i.e. making it easier to declare collective labour agreements generally binding or enforcing standard labour agreements with compulsory minimum wages – cannot be applied.*

### ***Late, complex and poorly targeted steering***

*A lack of federal support during the initial years after the introduction of the flanking measures contributed to the discrepancies that can be observed in their application. The State Secretariat for Economic Affairs (SECO) began to take increasing note of application problems and to remedy this shortcoming gradually from 2008 onwards. Through its Labour Directorate and the competent division, it developed a high-quality strategy to attain the legal objectives.*

*However, most application problems had been known for years, and the inappropriate practices of certain cantons and joint committees should have resulted in the Federal Council taking action much earlier. To date, it has been impossible to base steering on reliable data and, for instance, to get an idea of how many infringements there really are with regard to wages or how the joint committees apportion up and*

*fund checks. Steering is severely hampered by its federalist application and by the inconsistent and complex organisation of the joint committees.*

*The principal objective of the flanking measures is the fight against wage and social dumping. In view of this, the fact that strategic steering primarily focuses on a small target group presents a problem: more than half of the checks and three quarters of the budget are used to conduct checks on posted workers, although the latter only account for 0.5% of Switzerland's volume of employment.*

*The system of the flanking measures is based on a structural element of the Swiss economy, namely on the relations between the social partners. The predominant position of the joint committees in the application of the flanking measures can be justified by the fact that the industries they cover are particularly vulnerable in terms of manpower qualifications, wage levels and competitive pressure. Although almost half of all the checks are conducted in these industries, and although half of the Confederation's overall costs are incurred in them, they only account for 13% of the workforce in terms of quantity. The study, which was realised on the basis of the wage structure survey, showed, however, that wage pressure is not only noticeable in those industries which are regarded as particularly prone to wage and social dumping. For this reason, the appropriateness of the prioritisation and targets of the flanking measures should be queried.*

*The flanking measures are continually adapted in accordance with the political debates concerning the opening of markets and the extension of the free movement of persons to new EU member states. However, the further development of the flanking measures is taking place without any knowledge of their actual effectiveness since a reliable data basis is lacking.*

### ***Inadequate communication***

*Propositions with regard to the effectiveness of the flanking measures or the (non-) existence of wage dumping cannot be justified on the basis of the data that have been submitted so far. They only furnish a distorted image of the application and effects of the flanking measures.*

*Any conclusion based on these incomplete and unreliable data or on the basis of national averages fails to make sense because the effects of the free movement of persons differ greatly from region to region, and the application of the flanking measures differs greatly from canton to canton.*

*The full report is available in German and French, and the Italian version should be ready around May 2012: [www.parlament.ch](http://www.parlament.ch) > Bodies and council members > Committees > Parliamentary Control of the Administration*