



THE ROLE OF SOCIAL PARTNERS
IN THE RIGHT OF FREEDOM OF
MOVEMENT OF WORKERS

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SOCIAL PARTNERS

DEFINITIONS OF SOCIAL PARTNERS

SIMILAR DEFINITION

➤ GER, NL, FR, B, S, AU

MAIN ELEMENTS

- Trade unions and employers' associations
- Taking part in collective bargaining



A. ROLES OF SOCIAL PARTNERS

I. SETTING STANDARDS ON WORKING CONDITIONS IN CBAS

- CBAs on national level have a normative character + considered as a source of law (except for I)
- Social Dialogue on EU-Level (Art 154,155 TFEU)

i. Applicability

- A, S, F, NL, I, B: mainly linked to membership employer
- G: two sided system
- Extension of coverage

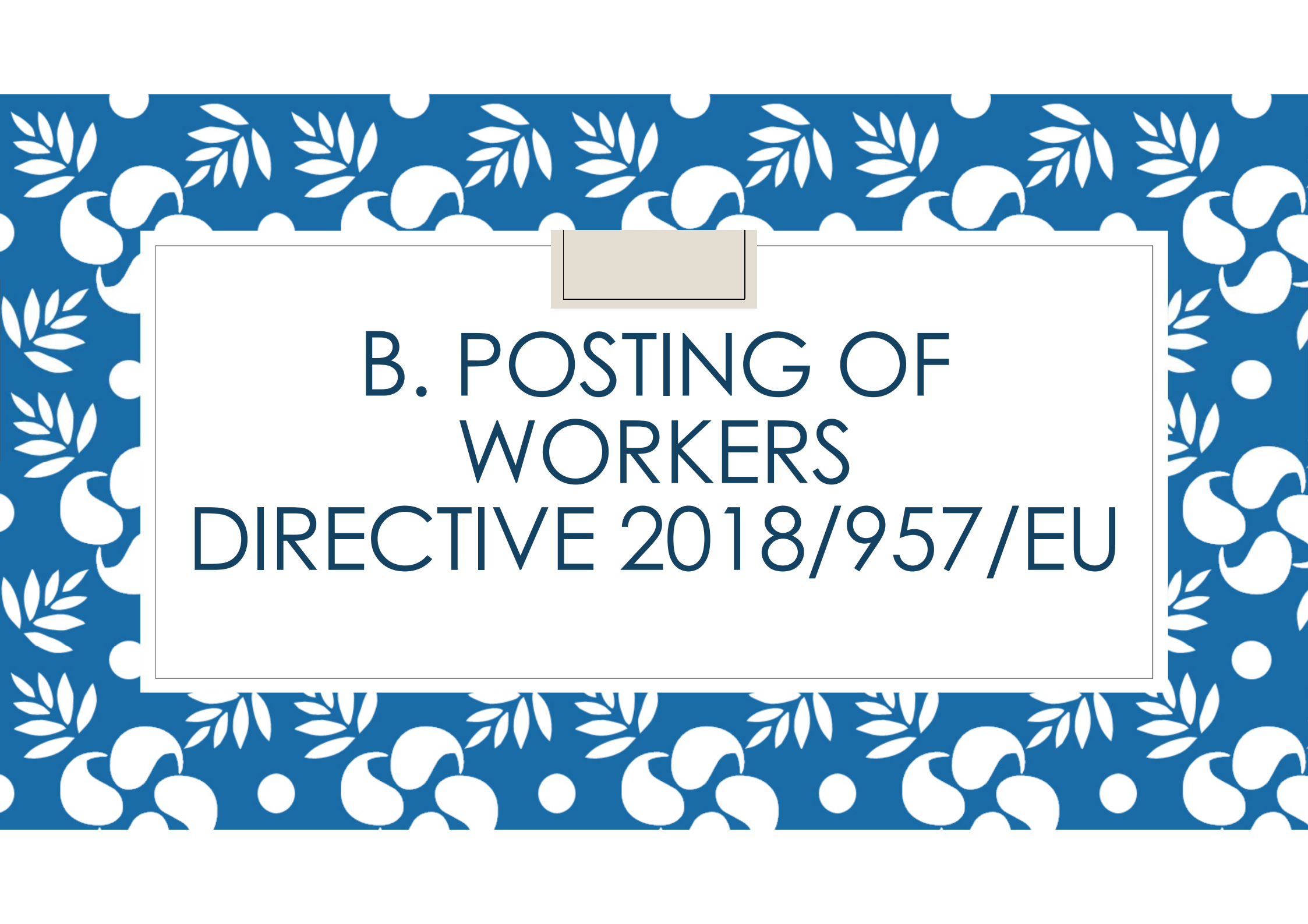
ii. Hierarchy: statutory law vs CBAs

II. ENSURE THE RIGHTS AND INTERESTS OF WORKERS

- i. Representation by trade unions before court
- ii. The right to strike
- iii. Providing information

III. PROMOTE MOBILITY?

- Helping workers to exercise their right to free movement
- E.g. French report: mobile clauses



B. POSTING OF
WORKERS
DIRECTIVE 2018/957/EU

CONTEXT OF THE DIRECTIVE

Freedom to provide services

— (Whereas 2) The freedom to provide services includes the right of undertakings to provide services in the territory of another Member State and **to post their own workers temporarily** to the territory of that Member State for that purpose

— Article 56 TFEU

... What is the role of social partners in a Directive not based on social policy?

THE MAIN ROLE OF SOCIAL PARTNERS IN THE DIRECTIVE

To contribute to set the minimum working condition => equal treatment and non-discrimination based on nationality

Article 3 Directive 96/71/EC **Terms and conditions of employment**

1. Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:

- by **law**, regulation or administrative provision, and/or
- by **collective agreements** or arbitration awards which have been declared universally applicable within the meaning of paragraph 8

A MORE EXTENSIVE ROLE FOR SOCIAL PARTNERS: ARTICLE 1 (2) D

'In the absence of, or in addition to, a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on:

- collective agreements or arbitration awards which are **generally applicable** to all similar undertakings in the geographical area and in the profession or industry concerned, and/or
- collective agreements which have been concluded by **the most representative employers' and labour organisations** at national level and which are applied throughout national territory

National Issues: examples

I. ITALY

- « generally applicable »
- « profession or industry »
- « collective agreements which have been concluded by the most representative employers' and labour organisations at national level »

National Issues: examples

II. FRANCE

- Priority of company level agreements
-
- More favorable treatment for posted workers than for local workers?

III. NETHERLANDS

- CBA non declared generally binding (but generally applicable)



C. PROTECTION OF MOBILE WORKERS BY SOCIAL PARTNERS

DIFFERENT TYPES OF MOBILE WORKERS

- Posted workers
- Crossborder workers
- Free movement workers (longterm)

WHICH TOOLS ?

Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers

WHICH TOOLS?

- Link between trade unions and administrative bodies
 - E.g. labour inspection services
- To be a member of a trade union
- Representation by trade unions before court
- Right to strike
- Information provided by a trade union

Membership of trade union

	Belgium	Spain	France	Italy	Netherlands	Germany	Austria
Crossborder workers	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Posted workers	Yes	Yes	Yes	Yes	Yes	Yes	Not within the statutory associations
Free movement workers	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Representation by trade unions before court

	Belgium	Spain	France	Italy	Netherlands	Germany	Austria
Membership required	Yes, unless posted workers	Yes	No	Not applicable	Yes	Yes	Yes
Consent required	Yes, unless posted workers	Yes	No, unless worker opposes	Not applicable	No, unless worker opposes	Yes	Yes, unless collective action
Collective action	No	No	No	Not applicable	Yes, if at least one member	No	Yes, but only in specific cases
Legal representation for individual action	Yes	Yes	Yes	Not applicable	Yes	Yes	Yes

Right to strike

	Belgium	Spain	France	Italy	Netherlands	Germany	Austria
Who can participate?	Every worker	Every worker	Every worker	Every worker	Every worker	Every worker if German trade union caught the strike	Every worker
Notification needed	Only trade unions	Yes	No	Only for essential public services	Only for essential public services	Yes	Yes, but certain conditions

Information provided by a trade union

	Belgium	Spain	France	Italy	Netherlands	Germany	Austria
Legal basis to oblige the trade union to answer ?	No	Yes	No	No	No	No	Yes, only to members (not posted workers)



CONCLUSION

A quick look at the European social partners...