



Press-release

22 April 2014

The Association of European Businesses is Concerned about the Adoption of the Draft Law on the Use of Agency Labour

On April 22, 2014, the Russian State Duma adopted a draft law on restrictions for agency labour and ban on *zayomny trud*¹ (Federal Law *On Amendments to Certain Legislative Acts of the Russian Federation* No. 451173-5 (regarding measures that prevent employers from evading the conclusion of labor contracts by the unwarranted conclusion of civil law contracts, the use of agency labour mechanisms or otherwise)) in the second and third readings.

The Association is extremely concerned about the adopted draft law for several reasons:

1. The definition of *zayomny trud* in the RF Labor Code (Article 56.1) fully corresponds to the existing relations between legal entities on secondment (and provision of temporary personnel), which creates the possibility for a broad interpretation of this concept by regulatory authorities and will contribute to the increase in corruption risks.
2. New wording of the Article 341.3 of the RF Labor Code refers to a separate federal law and, therefore, removes the secondment agreement from the area of legal regulation until the new 'reference' law takes effect. This situation creates legal uncertainty and risks regarding the current legality of using secondment agreements by companies, most of which are major investors to the Russian economy. This uncertainty will remain at least until January 1, 2016 when these relations are expected to be 'regulated' and the Law will enter into force, provided that prior to this time the said 'reference' law will be developed, adopted, and will take effect. The law provides for similar amendments to the Law on Employment (Clause 2, Part 3, Article 18.1 of the Federal Law *On Employment in the Russian Federation*). Given this situation, the AEB does not support the idea of 'partially' regulating the institute of secondment.
3. In addition, the definition of an employer in the Law on Employment (Clause 2, Part 3, Article 18.1) does not cover all existing cases of secondment from one legal entity to another, in accordance with the specified terms/restrictions and thus establishes unjustified restrictions on applying the secondment mechanism.
4. Unnecessary restrictions are introduced for private employment agencies, which will have the right to carry out activities regarding agency labour (secondment) for the works associated with a known temporary expansion of production, increase in production volume and amount of provided services for no more than 9 months. Such a restriction is unreasonable, inasmuch as practice shows that the period of 9 months is insufficient to implement various projects related to the expansion of production or increase in production volume and amount

¹ This term does not have any equivalent in English until now.

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of provided services. In addition, restricting agencies' ability to provide agency labour to perform jobs that are known to be unrelated to the core activities of the host party will cause substantial damage both to companies that have a long-standing history of using this service in most countries around the world and to the Russian economy in general.

5. Furthermore, the draft law extensively covers the obligation of the host party to bear secondary liability for financial and other obligations of the employer (Article 341.5 of the Labor Code). In accordance with the current version, the host party bears secondary liability for virtually any employer obligation that arises out of labor relations. This may lead to unreasonable risks in a number of cases as, for instance, if the directing party behaves unfairly when dismissing employees.

The adoption of the law in its present form will lead to a substantial increase in legal uncertainty and corruption risks. This situation may adversely affect companies in the oil and gas sectors, including the oil service and coal sectors, engineering and metallurgical enterprises, as well as other manufacturing companies in automotive, consumer goods, chemical and food industry etc. Companies in these industries often use secondment agreements. Following the adoption of this law, these companies will be forced to significantly reduce the practice of hiring specialists that are either required to perform temporary and seasonal jobs or that have rare specialty and experience, which will in turn cause irreparable damage to the businesses.

Frank Schauff, Chief Executive Officer of the Association of European Businesses, said: "The adoption of the law putting restrictions to use of secondment agreements and banning *zayomny trud* will possibly decrease the inflow of foreign investments. Businesses in Russia will lose the opportunity to focus on their core activities, to respond flexibly to the decrease or increase in production volumes and changes in the labor market, which is especially important in times of economic downturn. Creating additional obstacles for investments and business development in Russia by introducing a restrictive law, that assuredly contradicts long-standing global and national practice, can cause harm to both businesses and the state."

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