

**Equality in
Mobility**



responsible movement
of workers in EU

EN

Project implementation report

**“Equality in Mobility – responsible movement of
workers in EU”
VS/2015/0012**

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I. General information

“Equality in Mobility – responsible movement of workers in EU” (hereinafter: the project) has been carried out from 1 January 2014 to 24 May 2016.

Within the timeframe specified above:

- Comprehensive organisational and promotional activities were carried out first, consisting in, among others, the development and distribution of relevant information among union organisations to promote project ideas and goals;
- An opening conference was held on 17 February 2015 in Cracow (Poland) to acquaint participants with the key legislative acts concerning the posting of workers within the EU and to hear presentations delivered by invited experts. Representatives of trade unions discussed the most frequent issues in particular countries related to the posting of workers.
- A sessions of the Steering Committee was held on 28 May 2015 in Riga (Latvia) (two delegates from each country participating in the project), where the rules of round table meetings to be held in particular partner countries were established. Due to the importance of the issue it was assumed that the meetings will be held with the

attendance of parties actively participating in the development of the legal environment and practice in the area discussed (representatives of trade union organisations, state labour inspectorate, governmental institutions, labour law doctrine and employers' organisations);

- National meetings (so-called round tables) were held in September – December 2015 in partner countries (Poland, Latvia, Lithuania, Romania, France, Spain), attended by representatives of the host country and particular trade union organisations participating in the project;
- A final conference was held on 24 May 2016 in Brussels (Belgium) to summarise the project and national meetings, present recommendations and hear representatives of trade union organisations participating in the project. Moreover, the conference was attended by Bogusław Liberadzki – European Parliament MP and Ulisses Garrido – Director of ETUI Education Department, who presented the attendees new European Commission's proposals concerning posted workers.

Trade union organisations from 6 EU Member States participated in the project:

- Ogólnopolskie Porozumienie Związków Zawodowych – Poland,
- Latvian Construction Workers Trade Union – Latvia,
- Coalición Sindical Independiente de Trabajadores de Madrid – Spain,
- Lietuvos Profesiniu Sajungu Konfederacija (LPSK) – Lithuania,
- Confederation Generale du Travail (CGT) – France,
- Confederatia Nationala Sindicala „Cartel Alfa” – Romania.

All meetings held under the project were attended by several hundred people representing different circles, including members of the abovementioned trade union organisations as well as invited scientists, experts and practitioners from governmental and non-governmental organisations. The representatives of national labour inspections actively participated in the discussions, indicating legal loopholes and practical problems in the application of national and EU labour law with respect to posted workers.

II. Project objectives

Key project objectives include:

- Improvement of international cooperation between relevant national bodies and social partners involved in the monitoring and proper application of worker posting rules
- Development of international and national information strategies to reach interested workers and companies with information on the rights and duties related to the performance of posted work
- Increase in mutual confidence between the interested parties, including improvement of cooperation between trade union organisations and national bodies
- Development and promotion of initiatives concerning the exchange of best practices in the area of the posting of workers
- Promotion of international cooperation between interested parties, in particular in the area in question
- Detailed acquaintance with provisions of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC

III. The posting of workers – legal framework

The posting of workers within the free movement of services on the common market was formally regulated in 1996, when the European Community adopted the first, still applicable Directive 96/71/EC (hereinafter: Fundamental Directive or Directive 96/71/EC). A manifestation of the freedom of provision of services is the capacity to temporarily post own workers to perform works on the area of another Member State.

The general purpose of the Fundamental Directive is to ensure appropriate employment standards and to remove uncertainty in the provision of services. The Directive in question applies to 3 cases of temporary, transnational provision of services consisting in:

- Posting workers to the territory of a Member State on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in that Member State
- Posting workers to an establishment or to an undertaking owned by the group in the territory of a Member State

- Being a temporary employment undertaking or placement agency posting employees to the territory of a Member State or hiring out a worker to an undertaking

It has to be stressed that in all cases an employment relationship must exist during the entire posting period. The posted worker remains the employee of the posting company, and his/her stay abroad is temporary.

Posted workers are subject to regulations of the country where the undertaking is headquartered. However, they are entitled to a certain set of rights in the Member State they work in. Article 3 of Directive 96/71/EC specifies guarantees for a posted worker in the form of legally stipulated basic employment conditions applicable in the receiving country, if such are more advantageous than previously applicable employment conditions of the posted worker. Among others, this pertains to: the minimum rates of pay, maximum work periods, minimum rest periods and minimum paid annual holidays, health, safety and hygiene at work.

Many years' of application of Directive 96/71/EC have demonstrated that it is necessary to improve the implementation and enforcement of the rules related to the posting of workers. This is because a number

of abuses and irregularities striking, in particular, the rights and interests of posted workers, occurred. Furthermore, issues with proper implementation of the Directive in particular Member States and non-comprehension of its purposes and tasks have been stressed.

In order to consolidate the effectiveness of provisions applicable to date, including to extend and specify such provisions and to improve the protection of delegated employees' rights, Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services was issued on 15 May 2014 and became effective on 17 June 2014 (hereinafter: Implementation Directive or Directive 2014/67/EU).

Key assumptions of the Implementation Directive include:

- Introduction of measures for inspection authorities in all EU Member States to assess the legality of worker posting and prevent abuse and circumvention (Article 4)
- Ensuring better access to information concerning employment conditions of a posted worker and quicker information exchange between Member States (Article 5); to this end a single official national website shall be established to present information on employment conditions in a transparent, clear and full manner. Furthermore, apart

from applicable legal regulations the website is to present collective agreements and all other terms and conditions of employment to be applied to posted workers

- Consolidation of administrative cooperation between competent authorities, exchange of appropriate officials and rapid provision of mutual assistance in order to implement, apply and enforce the Directives in question (Article 6 and 8); among others, electronic provision of registry information (VAT registration) as soon as possible and up to a maximum of two working days from the receipt of the request is provided for. For all other requests for information the period is up to a maximum of 25 working days from the receipt of the request, unless a shorter time limit is mutually agreed between the Member States
- In the construction sector – introduction of the so-called joint liability in case of subcontracting, contractor and subcontractor for liabilities pertaining to outstanding remuneration of the posted subcontractor's workers (Article 12)
- Introduction of cross-border enforcement of financial administrative penalties and/or fines (Chapter VI); in practice to date the financial administrative penalties and fines are often not enforced outside the boundaries of the imposing country

- Introduction of a list of control measures which are only to implement the Directive concerning the posting of workers and to be justified and proportionate (Article 9)

The Implementation Directive also stresses the crucial importance of state labour inspections, organisation of social partners and other monitoring bodies. Trade unions have been provided with the capacity to file complaints and take legal or administrative measures against employees violating the rights of posted workers.

EU Member States have to implement provisions of the Implementation Directive to the national law by 18 June 2016. Some Member States already apply the solutions laid down in the Implementation Directive (e.g. Belgium, Denmark), whereas others adopted regulations partially implementing the Directive (France). Furthermore, in July 2014 France adopted the so-called Savary Act, which introduced, among others, new requirements for the posting of workers to France (including the obligation to establish a representative of the posting undertaking in France to maintain constant contacts with the French labour inspection bodies).

IV. The scale of the posting of workers

The accession of Poland, Latvia, Lithuania, Romania and other new countries to the EU opened free movement of services to undertakings from these states and enabled dynamic growth of this sector. Undertakings gained the capacity to expand into the markets of 25 states, including the “old” EU15 and 10 new EU Member States. Countries with developed economies, i.e. Germany, France, UK became the natural target for the export of services. Spain, Belgium, the Netherlands and Scandinavian countries are also a popular destination for the posting of workers.

Matters related to the posting of workers are particularly important for Poland, which is the leader among the countries posting workers to other EU Member States, in particular to France, Germany, UK and the Netherlands. Next to Poland, which in 2014 posted more than 400 thousand workers, the largest worker “exporters” include Germany and France.


The issue is also important for new Member States, for which the posting of workers may be an alternative to economic migration, which substantially decreased workforce supply on the labour markets. Furthermore, it creates better remuneration opportunities for workers

and is an opportunity for undertaking growth. It is stressed that services provided by posted workers is one of the few competitive advantages of these economies in the EU.

In accordance with the EU data the number of posted workers in the EU in the 2010–2014 period increased by 45%. In 2014 there were 1.9 million of posted workers in the EU, compared to 1.3 million in 2010 and 1.7 million in 2013. The average posting time is four months¹. Therefore, the scale of posting is increasing continuously, although it shall be remembered that posted workers account for only 0.7% of the EU workforce.

Posting applies to many industries – from construction to IT. Recently, services performed by carriers under international road transport are increasingly often discussed in the context of posting. Reinterpretation of posting Directives in relation to this group of employees arises directly, for there is an increasing number of questions and doubts related to the nature of the drivers' work as well as the practice applied by certain EU Member States in that respect.

¹ http://europa.eu/rapid/press-release_MEMO-16-467_pl.htm



The construction sector, mentioned above, exhibits the highest share of posted workers, employing 43.7% of workers. Other industries include: processing (21.8%), education, healthcare and social services (13.5%) and business services (10.3%).

New EU Member States also host workers from other Member States, although the scale is insubstantial. An example of a sector which employs many foreigners are banking services or advertising and production services. However, it shall be expected that for demographic reasons the labour markets of such states will need external workforce within the next several years.

V. Project conclusions and recommendations

During all meetings – from the kick-off meeting to national ‘round tables’, the issue of posting workers abroad spurred hot debates and inspired a lot of questions. It is a consequence of the fact that EU states from Central and Eastern Europe actively participate in posting large numbers of workers abroad. As a result, knowledge of practical solutions concerning the application of EU law and national legislation is necessary. This topic was also of great interest to representatives of the states receiving large numbers of posted workers. According to them, companies posting workers have been engaging in reprehensible practices that infringe the rights and interests of workers, generating many adverse effects, including social dumping.

The meetings were organised in a manner that encouraged open exchange of experiences and thoughts in discussions and panel debates with the participation of people representing a broad range of authorities and institutions dealing with these matters. Apart from the representatives of partner trade unions, other participants included representatives of the academia, legal science, and practitioners from state institutions (the ministry, state labour inspection, courts, prosecution, administration and supervision bodies, etc.), as well as NGOs. The meetings were also

attended by representatives of employers' organizations who pointed out to important problems concerning posting workers to other EU states from employer's perspective.

The attendees could listen to presentations by academics, including Prof. Catalina Bonciu (Alma Mater) or Marek Benio, PhD (University of Silesia), who presented their comments on the latest developments of the European Commission in the context of planned amendments to legislation concerning posted workers.

The discussions mostly focused on the **significant complexity of the EU legislation**. The application of these laws generates a lot of chaos and misunderstanding, even between administrative, control and supervisory bodies dealing with posted workers in their day-to-day operations.

The situation is made even more difficult by the fact that a number of EU states have failed to implement the implementation directive, causing multiple problems for posted workers who want to enforce their rights or for competent authorities investigating unfair entrepreneurs who breach binding legal regulations. In consequence, there is a widespread opinion that these provisions must be **significantly simplified and, as far as possible, interpreted in a harmonised manner across**

member states to ensure that their application is clear, coherent and universal, without interpretative discrepancies.

What is more, participants pointed out to the fact **of incomplete understanding of the nature of the process of posting workers abroad to perform services**. Often the process of posting workers is being confused with the principle of the free movement of employees, which entitles every EU citizen to move freely to another member state in order to work and live in that country. Posting workers is not based on the principle of the free movement of people, but on the free movement of services in the European Union. It has been the case sometimes, that relevant measures were targeted at the wrong audience, e.g. economic migrants.

One of the themes in the discussion, important for states posting workers, was the issue of the so-called **brain drain** by which Central and East European states have been particularly affected. The problem concerns mostly young people who, being well educated, with degrees obtained at their national universities, go abroad looking for better opportunities to develop, live and work, unable or unwilling to find employment locally. However, such practices are difficult to eradicate, given income inequality in member states that encourage employees to go abroad looking for better standards of living instead of being

posted. Increased outflow of workers abroad will bring about negative consequences for the economies of Central and East European states, including the growing deficit of workers in selected sectors. The risk of the higher outflow of workers motivated by economic reasons was emphasized by the representatives of employers, who identified such a risk in the context of the latest ideas of the European Commission concerning posted workers rules.

Analysing possible areas for improving the situation of posted workers, trade unions pointed out to the need for a **significant improvement of access to information for all the parties involved** – employees, employers, as well as administration and supervisory authorities. It must be emphasized that the key problem concerning the 96/71/CE directive is the lack of knowledge concerning such issues as the remuneration or other terms and conditions of employment applicable to persons providing work in EU states. Currently the EU has 38 members, each of whom regulates the conditions of work and pay in a different manner, including varying minimum wage rates. It is a consequence of the fact that these matters are governed by national and not EU legislation. As a result, it is difficult to determine the laws that apply to workers in a specific case.

In practice, parties participating in the process of posting workers have encountered problems in accessing the correct and required information from the very beginning. The problem has been magnified by the lack of linguistic competence concerning the language spoken in a specific country, as well as obvious limitations concerning posted workers acting in a foreign, unknown environment. All these aspects together result in a situation where posted workers are often unaware of their minimum rights in the state where they work, while dishonest employers take advantage of this fact.

The discussion has pointed out to the shortcomings of the directive 96/71/EC in this respect, as it only contains a rather vague statement that every state must take relevant measures to ensure that information on work conditions are commonly accessible. However, such a provision in no way guarantees the correct Access to information, and, in practice – due to its general nature – gives no effective tools to determine information policy in specific EU states.

In this context the solutions prescribed in the implementation directive were received very positively – they were even considered one of priority issues to be implemented in all EU states as soon as possible. **The improved access to information**, in particular by the development of a state-specific website that presents employment terms and conditions, inclusive in a clear, detailed and friendly manner, **will decisively improve the situation of posted workers.**

Other expected measures include the obligation to distributed relevant **information in the form of free leaflets**, available also in the languages the best suited to the demographic of workers on the market. Participants have discussed autonomous initiatives in specific countries, that aimed to facilitate access to information to posted workers, e.g. text messaging or information points located at state borders.

When it comes to **the information policy**, trade unionists emphasized the **significant role of trade unions**, already emphasized by the EU in its directives. Trade unions have been long involved in the development of good practices concerning posted workers. To ensure comprehensive provision of information and provide support to relevant state authorities, trade unions have been engaging in information campaigns, developing leaflets, brochures, guides or special tabs on their websites where they publish information on this subject. These measures have been highly

effective when combined with the on-floor trade union work in many companies receiving posted workers. Trade union leaders have the possibility to directly and quickly access the worker, who does not have to look for information he or she needs elsewhere.

Furthermore, when providing information trade union members have the option to explain any doubts and clarify questions the posted worker may have, facilitating the protection of his or her rights and interests. **The system based on trade unions contacting a posted worker at a company directly** is considered one of the most effective measures of protecting posted workers rights and interests.

When exchanging experiences, trade union members gave examples of specific measures undertaken by their federations in order **to provide assistance to interested parties in their mother tongues**. This is certainly useful, since the contact with a person speaking the language of the posted worker who can provide necessary information and basic legal aid strengthens worker's position and allows him or her to get some peace of mind. One should note that OPZZ, the Polish trade union, had its representatives in England or in Switzerland, who provided assistance on spot to posted workers and economic migrants from Poland. This measure was highly valued, also in terms of effectiveness.

It should be emphasized that in many cases the **language barriers** **are** a major obstacle for the posted worker, hindering cooperation with people or authorities ready to provide the worker with fast and efficient assistance.

Participants concluded that in the course of their further cooperation they will aim at introducing **mechanisms of “assistance” addressed to posted workers**, making sure that such mechanisms respond to workers’ needs. The difficulty is to obtain additional necessary financing to fund the tasks in this area.

Another important aspect is the possible **participation of trade unions** – on behalf of and for posted workers – **in litigation and in administrative proceedings**. Access to legal aid – employee-friendly and readily accessible may constitute, along with the information policy, a key measure in the unions’ strategy in the field of posting workers. Legal aid provided by experienced experts, familiar with the specificity of posted workers’ situation, typical scams and areas of abuse, will certainly be more effective and efficient. For this purpose central union organisations should joint their forces to ensure mutual assistance and all other forms of cooperation aimed at ensuring appropriate protection of posted workers at their work places. Unionists emphasized that in

many countries local trade unions already provide such assistance with very good results, also in litigation.

When it comes to the information policy, trade unionists emphasized the **necessity to strengthen international cooperation**. To ensure that legislation on the posting of workers is complied with, it is necessary to put a **union information system** in place –independent from other systems, either operating or under development. One of the components of the system should be a **network of contact points** or contact people – specified by name and surname – who can immediately provide necessary information required to settle a case or provide legal aid in a specific state.

Fast access to information and documents in a language spoken by the posted worker will have positive impact on compliance with terms and procedures related to court or administrative proceedings. In consequence, these issues require **better relationships between trade union organizations**, identifying speakers of other languages (at least English) and willingness to maintain ongoing bilateral cooperation. It is also important to **attract additional experts** having relevant experience in the area because, as of today, many trade unions do not have sufficient expertise in this field.

Another topic that came up in the project was the idea of the so-called **intermittent trade unions**. Based on this idea, whenever Polish, Romania, Latvian or Lithuanian workers are posted, the relevant trade union in that country would notify its counterpart in the state to which the workers are being posted. From the very beginning, a posted worker would be “looked after” by the trade union in the state where he or she works, enabling the union to control terms and conditions of employment, prevent abuse and offer appropriate assistance when necessary. In such a case, an employee posted, for instance, to France, could count on the representation by one of the French trade unions active in his or her work place. Obviously, the posted worker would temporarily belong to that trade union, throughout the period of work provided abroad.

All participants agreed that this idea is highly interesting, as oftentimes a posted worker starts looking for help too late, when the lapse of time or other events have adversely impacted his or her options to pursue and prove their rights. However, the implementation of this idea requires further arrangements and an analysis of trade union capacities in terms of logistics, as well as the elaboration of the rules of functioning and the sources of funding for the additional costs that the protection and representation of posted workers may involve.

In order to develop these measures, it is crucial **to boost the confidence and trust in trade unions**. Meanwhile, the image of trade unions is being shaped by mass media, and is oftentimes negative, influencing employees' attitudes. In many cases workers are suspicious of trade unions and see no benefits in joining a union or becoming actively involved in common measures. In consequence, it is necessary to remove barriers in this respect, actively promoting a positive trade union image and its activity, and setting clear goals and tasks that will become attractive and accessible “products” to employees.

What is more, there is a need to **intensify projects aimed at reaching out to posted workers with necessary information on terms and conditions of employment in EU states**. Such projects need to be carried out in close cooperation with national labour inspection authorities, which are respected and trusted by trade unions and employees and have necessary information, experience and tools required to solve labour law-related problems.

Another postulate presented in discussion concerned the need to **strengthen the position of national labour inspection authorities** by lobbying in favour of **awarding them higher budget and financing extra staff**. There is no doubt that in many states the increased burden of tasks has not been matched by relevant financial and logistics

support. In the context of multiple tasks and obligations of this authority in the field of the posting of workers, one may ask whether such tasks and obligations can be performed efficiently and effectively.

As a rule, one **should undertake integrated and comprehensive actions to reinforce and support labour inspections increasing the effectiveness of their activity.**

Furthermore, it is necessary to **introduce an appropriate training programme for labour inspection staff**, since unfair employers are constantly coming up with new abusive posting practices and scams, which requires ongoing learning and building one's knowledge on such practices across the EU.

Another important topic which came up in the discussion on the protection of posted workers was **the subject of minimum wage applicable in all EU states**. The harmonisation of minimum wage in all EU states would mean, in trade unions' opinion, a gigantic leap for the improvement of posted workers' situation. First of all, it would eliminate potential abuse, exploitation and frauds to the chagrin of workers, and would reduce social dumping. One of the ideas presented by participants was the introduction of an **inter-sectoral minimum wage**, the rules of which would be developed in social dialogue.

It was noted that, when developing regulations, the EU legislator disregarded this issue, despite the fact that it had been brought up by certain EU politicians, including Jean Claude-Juncker, current president of the European Commission. In consequence, being aware of a number of obstacles – both legal and economic – it is necessary to start serious discussions and work towards implementing relevant rules in the EU laws as soon as possible. Perhaps the possibility to conclude **supranational collective labour agreements** introducing higher standards, also in terms of remuneration, would be the first step in this direction.

In reference to the issue of wages, participants emphasized the need to establish a wage **guarantee fund at the supranational level**, which could be used when posted workers do not receive their pay. Such a fund, in combination with relevant national funds already in place in member states, would secure workers' right to receive due pay in case of employer's fraud, bankruptcy or liquidation, as well as other actions detrimental to employees.

To prevent abuse in the field of posting workers, participants emphasized the need to **effectively deal with the issue of the so-called letter-box companies**. These companies establish satellite companies in countries where taxes and social insurance contributions

are the lowest, using a mailing address to minimize tax liabilities, while actually running their business in other states: e.g. a Belgian company registered in Romania, where it runs no business. The only purpose of the company is to recruit workers and send them to work in Belgium. In consequence, the company is using the procedure of posting workers to evade the labour law.

Sometimes this method is also used by large corporations, which establish subsidiaries registered in states with favourable tax and social insurance laws, and subsequently post workers elsewhere. The only activity of such companies is to recruit and post workers abroad, taking advantage lower labour costs. Employers have committed abuse, exploiting the lack of clarity of the basic directive.

When it comes to the assessment of the implementation directive, Article 4 in particular, participants **positively responded to new mechanisms** which allow for the examination whether an enterprise posting workers does run other significant activity, apart from management and administration, in its registration state. Participants emphasized that comprehensive assessment of the following elements:

- Venue where the company has its registered seat and centre of administration,

- Number of administrative staff employed in the member state where the employer has its registered seat and in another member state,
- Venue where workers are being recruited and to which they are posted,
- Venue where most of the contracts with clients are made,
- Law applicable to the contracts made by the enterprise with clients,
- Number of contracts exercised in the posting state,

together with other control measures, is likely to become an effective legal tool to combat abuse, especially the letter-box companies.

The discussion also focused on the meaning of the term “significant activity”, which is not specific and may be interpreted in various way (in Poland, Social Insurance Authority assumes that it is sufficient for the company to generate 25% of its business domestically; however, one needs to bear in mind the fact that this value is only an auxiliary approximate).

Participants expressed their **positive views on administrative requirements and control measures introduced by the implementation directive**, and found them necessary to ensure effective monitoring of the compliance of employment practices with effective laws. These measures involve service providers' disclosure

obligations (including the presentation and storage of documents related to work performer, such as: payroll slips, work time charts, proof of waged paid), relevant transactions, detailed reporting on posted workers and appointed contact persons. Trade union leaders found these requirements necessary and justified for the effective protection of posted workers' rights. Furthermore, they provide data required for relevant supervisory and control authorities whenever audits at the work place are carried out. This in turn makes **audits more comprehensive and effective**, at least in terms of compliance with commonly binding laws.

However, employers were worried by the provision that allows for the introduction of other administrative requirements and control measures in the case of new events suggesting that current administrative requirements and control measures are insufficient or ineffective. They pointed out to certain practices in place in certain EU states that discriminate against companies posting workers from Central and Eastern Europe, as well as unreasonably high penalties, including the exclusion from the market.

However, trade unions did not agree with employers' concerns pointing out to the fact that similar solutions, based on an open catalogue of measures, are fully justified given the ongoing search for

loopholes in the legal system or new scams that are developed. What is more, it should be added that the implementation directive allows for the introduction of new legal measures on condition that they be justified and proportional. Additionally, the European Commission informs other member states of such measures, meaning that “good practices” on additional requirements and control measures necessary to ensure compliance with effective laws can be developed.

Referring to the issue of effective and expedient control, participants discussed related penalties that can be imposed. Participants emphasized that **penalties effective to date have not been effective as deterrents** and in many cases it paid off to unfair employers to go on with their activity despite paying fines. It's been only recently that supervisory and control authorities, aware of the scale of these practices and violations of posted workers' rights, have started to impose more severe penalties, sometimes referred to by the employers as harsh or even “draconian”. Such examples of deterring penalties include EUR 500,000 penalty imposed by French authorities, or even a closure of a construction site and a ban on further business activity.

Trade unions have often presented their views on the need **to increase penalties**, as the scale of infringement of workers' rights by some employers was enormous. Therefore, it can be said that the practice follows the route favoured by trade unions in terms of **applying effective and deterring penalties**.

During the meetings participants stressed the duty of member states to **ruthlessly persecute people responsible for infringing the law**, even when the company is being wound up or declares bankruptcy or its registration data turns out to be false. In such a case, even when the legal entity ceases to exist, people who undertook illegal actions on behalf of such a legal entity must be held accountable and their identity must be established. Furthermore, matters notified by posted workers must be followed up, even if the company becomes insolvent or bankrupt.

Another important matter discussed in this context was the transborder enforcement of financial penalties and administrative fines. There is no doubt **that effective enforcement of laws governing the posting of workers needs to be supported by effective transborder enforcement of financial penalties and administrative fines**.

Current practice suggests that the enforceability of penalties imposed on companies posting workers has been exceptionally low. There have been no mechanisms or guidelines facilitating cooperation between respective competent authorities in various member states.

In consequence, national authorities in charge of supervision exercised discretion in terms of how the law would be enforced, which resulted in shortcomings and incoherence between audits carried out in the European Union. In many member states sanctions are imposed under criminal law, while in other countries they are governed by administrative law. In consequence, given the lack of unified provisions, no cooperation has taken place in this respect. The lack of a common instrument enabling mutual recognition and enforcement of penalties is one of the identified root causes of major problems and difficulties with practical enforcement of the law. Participants are aware of cases where, having imposed a penalty, foreign labour authority had to file its claims with a court, and wait years for the case to be settled.

The participants agree that mutual recognition and enforcement of fines and penalties, especially in the state to which the workers are being posted, is of key importance.

In the context of international administrative cooperation and mutual assistance, participants praised the **duty to cooperate** imposed in member states. This duty is to be performed by responding to justified requests to provide information submitted to competent authorities. Member states are obliged to provide information requested by other member states or the European Commission – electronically, as soon as possible, and in urgent cases not later than within 2 business days from the date of request. Trade unions believe that this provision will enable effective control of practices concerning posted workers, who are sent to another state for short periods of time.

Non-urgent requests must be answered within 25 business days from the date of receipt of the request, unless the states concerned mutually agreed on a shorter period.

Participants find these terms appropriate, but expressed concern whether they will be complied with. There are doubts as to the provision of urgent information (2 days at most), since the practice has shown that the transfer of information between competent authorities is laden with difficulties, and in many cases no response was given at all. However, one should expect that member states, as well as competent authorities in charge of provision of relevant information will develop practices and

measures enabling them to meet the requirements of the implementation directive in this respect.

What is more, participants emphasized the need to introduce **the rule of broad, joint and several accountability**, not only in the construction sector, but in other areas of the economy as well, principally in order to secure employees' rights, especially the right to receive timely pay. Although member states have been left with discretion to decide on other forms of accountability, such as sanctions imposed on the main contractor, in trade unions' opinion, posted workers should be protected against fraud by the option to sue the main contractor whenever subcontractors fail to meet their duties towards posted workers.

A lot of time in the project was spent discussing the **situation of posted workers in the context services offered by carriers operating in the international road transport sector**. Participants pointed out to unclear legal regulations in this respect, or the issue of daily allowances. They also commented on certain individual solutions introduced by specific EU states, such as the extension of the interpretation of minimum wage in Germany to transportation. In this respect, both the EU and national legislators are expected to **reinterpret the issue of the posting of workers and relevant EU provisions in the context of drivers working abroad, with the view of further improvement**

of drivers' work and social conditions. It must be emphasized that this matter concerns as many as over two million workers employed in international road transportation, who regularly perform work on the territory of other member states for short periods of time.

Among practical activities in this respect, participants have pointed out to the establishment of an information point for drivers on Polish-Lithuanian border, providing all useful information on drivers' work and work conditions. What is more, it would be advisable to develop a website presenting the wages in the transport sector in specific EU states.

Trade unions also pointed out to frequent shortcomings and infringements concerning the employment of posted workers – especially wages below the required EU and national level. Rare audits and difficulties in enforcing penalties have encouraged unfair employers to break the law and pay posted workers wages much lower than required in Germany or France. As a result, posted workers started to be perceived as unfair competition on the Labour market.

It is a widespread practice to hire posted workers to do lower paid jobs, while in fact such workers are doing other job, for which they should be paid more. In consequence, it is necessary to intensify audits,

and ensure early and decisive response of posted workers whenever their rights are being infringed.

It has been shown that in many cases workers just give up and come to terms with worse conditions of employment, trusting their employers or being afraid that they would lose their jobs. One should not delay reporting the case to a relevant supervisory or court authority, because if a case is reported too late, competent labour inspection or court face additional problems, e.g. with evidence. Fast and readily accessible information may significantly improve the likelihood of taking expedient legal steps, duly securing the rights and interests of the posted worker.

It is necessary to make extensive **use of the media in order to spread the word about cases of law infringement by unfair employers**. Today, media have a great impact influencing the image, brand, trust in the company and its products, which may effectively deter employers from breaking the law. Relevant media campaigns may help employees garner the needed support to protect their rights. Media should be construed broadly – starting with national or regional TV stations, radio networks and newspapers, to the Internet social media that play an instrumental role in shaping the public opinion (e.g. Facebook, Twitter).

One of the ideas that came up in the discussion on the elimination of abuse was to disseminate the obligation of holding the so-called **posted worker's card**, containing the information on the worker and his or her employment status necessary for the employee and for the control and supervisory authorities. In the case of an audit or investigation by a relevant labour inspection authority or court, the document would speed up explanatory proceedings.

What is more, participants discussed the issues related to **social insurance coverage for posted workers**. As a rule, the insurance of posted workers – despite the fact that they work abroad – is governed by the law of the state in which they are employed. Various aspects of these regulations were discussed. Some opinions were in favour of modifying this norm and introducing a rule that social insurance contributions are payable in the state where work is performed in the amount corresponding to the national rate applicable to a specific posted worker, or signing bilateral agreements between states governing the issue of social insurance.

However, the prevailing opinion was that the **current legal status should be upheld**, because it provides posted workers with more stability, especially when they are posted abroad frequently and for short

periods of time. One needs to bear in mind that posted workers are unaware of foreign social insurance systems and do not trust them.

Participants discussed the procedures related to obtaining the A1 declaration. It has been emphasized that the procedures need to be revised to become more effective, transparent and fair.

Other topics discussed at the meetings include new ideas of the European Commission concerning solutions to the problem of unfair practices, especially the rule of **equal pay for equal work at one workplace**. This rule is not limited to the basic rate, but also bonuses, extra pay or long service payments. It is to ensure that posted workers would be treated in the same manner as local ones. The priority of the European Commission is to pursue the idea of deeper harmonisation of the labour market. In her speeches, Marianne Thussen, EU Commissioner for Employment and Social Policy, has emphasized that the common market cannot be deprived of basic rules and must operate on the basis of fairness.

Project participants consider these solutions fully justified, as the European Union **cannot allow for any discrimination or unfair treatment in employment**, especially on the grounds of worker's nationality. It is unacceptable when in one company workers doing the same work have different pay only because one of them is a citizen of

the state where the plant is located, while the other is a posted worker of another nationality. There is no doubt that the suggested changes will contribute to the development of a fair European labour market.

The EU rule of **“equal pay for equal work” would also prevent law evasion concerning the posting of workers**, including the establishment of shell companies, as equal pay would be applicable regardless of whether a worker is directly employed or posted.

During the discussion participants noted the position of Central and Eastern European states which found the amendment premature, and the rules of equal pay contradictory to the free movement of services in the EU and free competition on the EU market. In consequence of these reservations, in the third time in history the so-called “yellow card” procedure was launched. As many as 11 member states oppose the amendment to the directive: Poland, Bulgaria, the Czech republic, Slovakia, Denmark, Estonia, Croatia, Hungary, Latvia, Lithuania and Romania. This situation reflects the importance of the issue and difficulties inherent to balancing the interests of employees and employers, and, in consequence, member states themselves.

Trade unions believe that the proposal put forward by the European Commission is a step in the right direction, as it will allow to extend more protection to posted workers and will facilitate creating fair conditions for investments, based on the principle of fair competition and protection of workers' rights.

Trade unions believe that the Commission should also regulate **the issue of benefits posted workers are, or should be entitled to** (including daily allowances, reimbursement of travel costs, accommodation). Today the legal status is unclear, generating a lot of chaos and uncertainty as to employer's duties in this respect.

VI. Final remarks

The posting of employees becomes an increasingly important item for the strategy of operation of trade union organisations. The increasing number of employees posted to perform work in other Member States requires coordinated measures at the international level, aimed at ensuring appropriate protection of employee rights.

Next to inspection and administrative bodies of particular Member States a crucial role in such measures shall be played by trade unions, which are capable of quickly reaching a worker and providing him/her with the necessary aid. However, this requires good and active cooperation between trade union organisations, maintenance of contacts on a current basis and care for the development of a relevant expert base. Furthermore, this also requires adequate financial resources, for the performance of an increased number of tasks in a complex legal and factual environment entails increased expenditures, among others on flyers, guidebooks, information brochures, websites or consultants. It is beyond doubt that in practice many difficulties are caused by the need to combine many different legal systems and select the applicable standards as well as by new, reprehensible practices applied by unfair employees and the still-common language barrier issues.

All this results in trade union organisations facing huge challenges, which are a very new experience for many of them. Therefore, it is crucial for trade unions in different states to exchange the necessary knowledge in the area of practical application of regulations on the posting of workers as well as share good practices and information necessary to settle industrial disputes. Further tightening of international cooperation between the interested trade union organisations is necessary, for the practical application of regulations on the posting of workers to date demonstrates that national institutions and bodies responsible for the compliance with the law in the area in question fail to tackle the many tasks imposed by the EU and national legislators.

In this context international projects, which apart from sharing substantive and practical knowledge with participants are a perfect platform to create increasingly complex schemes for cooperation between trade unions and establish proper organisational structures that may be launched for issues related to posted workers to provide information, preventive or control services, shall be appreciated.

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