

**Posting in metal sector –**

**guide**



Extension and sharing of knowledge and good practice.

Strengthening international cooperation.

Monitoring of application of the law.

**I.**

***General information***

This guide has been prepared within a project co-financed from the funds of the European Union, entitled:

**„POSTING AT EQUAL RIGHTS FOR EQUAL WORK AND FAIR COMPETITION IN METAL INDUSTRY POS2COMI”.**

Publication has been prepared by Niezależny Samorządny Związek Zawodowy Pracowników Arcelor Mittal Poland S.A. (Independent Self-governing Trade Union of Employees of Arcelor Mittal Poland S.A.) in cooperation with organizations and institutions representing 7 countries: Greece, Spain, Serbia, Italy, Lithuania, Bulgaria and Poland.

Participation of representatives from several countries representing various entities (trade unions, employers, employment agencies, university research centres, labour inspectorates) enables complex assessment of legal and practical solutions associated with job posting, as well as sharing of experience which differs from country to country due to the extent of posting and the mechanisms included in national legislation. Participating countries took part in project activities both as „new” and „old” member states of the EU as well as candidate countries, which undoubtedly also extended the potential for assessment and drawing conclusions from various perspectives and points of reference.

This guide is meant to deepen the knowledge in posting of workers, make readers familiar with legal solutions, and to share information and good practice applied in countries posting workers and accepting them.

In addition, the guide contains solutions aimed at monitoring application of the law: both EU directives as well as national legislation in the field of employment conditions for posted workers. The guide also includes assessment of the issue of posting workers, based on the research survey among employees and companies posting them.

An added value of this guide is strengthening international cooperation between competent national bodies and social partners, which is necessary for providing proper application of and compliance with legal solutions which are supposed to properly secure the rights and interests of posted workers. For this purpose, the guide contains contact details of all organizations and entities taking part in the project.

II.

***Detailed project objectives***

„POSTING AT EQUAL RIGHTS FOR EQUAL WORK AND FAIR COMPETITION IN METAL INDUSTRY POS2COMI” (hereinafter: *the project*) has been implemented since September 2017 and its objectives can be described as follows:

* contribution to further improvement of translational cooperation between competent national bodies and social partners involved in monitoring and proper application 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 as well as of Directive 2014/67/EU of 15 May 2014 on the enforcement of Directive 96/71/EC;
* increase in mutual trust among the interested parties, including promotion of joint actions between social partners on various levels, exchange of appropriate officials, as well as training;
* increase in evidence-based assessment of information and data regarding various extents of the posting of workers,
* increase in accessibility, transparency and quality of information regarding employment conditions which should be complied with and current practice in member states of the EU with regard to monitoring and enforcement of the provisions of the directive concerning posting of workers,
* definition of obstacles to accessing information regarding the rights of posted workers, as well as elimination of those obstacles,
* making employees aware of the role of trade union organizations in the process of posting,
* indication of opportunities to deepen the posted workers’ knowledge regarding the conditions of work and payment, worker rights and responsibilities, social and tax regulations at the place of work performance,
* promotion of international cooperation between the interested parties in the area in question,
* indication of problems most frequently affecting posted workers,
* presentation of the possibilities of defending their rights and interests.

III.

***Legal characteristics of posting***

For the first time, the area of the posting of workers under the free flow of services on common market was regulated in 1996 along with adopting Directive 96/71/EC (hereinafter: *the directive*) which is still valid.[[1]](#footnote-1) Member states were given time until 16 December 1999 to adopt new regulations.

In the first place, the directive indicated a general rule of the possibility of temporary delegation (posting) of own employees to perform work in other member state of the EU under the idea of removing obstacles to free flow of people and services. Following that rule, appropriate legal regulations have been introduced, aimed at provision of adequate employment standards and at elimination of uncertainty in the field of provision of services. The Directive very clearly emphasizes that promotion of the provision of services requires fair competition and means guaranteeing respect for workers’ rights. Current legal status was not understandable, clear, nor did it guarantee posted workers a proper level of protection, which made the situation of posted workers unfavourable.

In accordance with art. 1 of the directive, its provisions apply to temporary, cross-border provision of services consisting in:

* posting of workers by a company for its own account and under its own direction on the territory of another member state under an agreement concluded between the posting company and the recipient of services operating in a given member state, provided that there is employment relationship between the posting company and the worker in the period of posting,
* posting of workers to a facility of a company being a part of a group of entrepreneurs on the territory of another member state, provided that there is employment relationship between the posting company and the worker in the period of posting,
* posting of workers to the territory of another member state as a temporary employment company or a staff-hiring agency, provided that throughout the period of posting there is employment relationship between the temporary employment company or the hiring agency and the worker.

When analyzing the provisions above, it can be pointed out that common elements for all possible cases of posting are:

* temporary character of work performance (posting) and
* employment relationship between the posting company and the worker throughout the period of posting.

In literature on the subject, some experts call this group “workers on a spring”, emphasizing that having provided given services they go back to the posting country[[2]](#footnote-2). Regulations specify the maximum time of performing work by a posted worker as 24 months.

According to the directive, a posted worker means a worker who, for a limited period of time, carries out his or her work on the territory of a member state other that the state in which he or she normally works. For the purpose of the directive, it has been assumed that the binding definition of a worker is the one applied in the legislation of a member state to the territory of which the worker is posted. In order to properly understand this definition and differentiate other cases of performing work abroad, it has to be emphasized that a posted worker is not a person who, while exercising the right to free movement, goes to another country of their own accord in order to live and work there (the so-called economic migration).

Tab. 1. Comparison of the posting of workers to economic migration.

|  |  |  |
| --- | --- | --- |
|  | **Posting of workers** | **Economic migration** |
| Definition | Temporary provision of services in a country other than the one where the employer is located | Change of the place (country)of residence and employment, usually not for a specified period of time |
| Remuneration and employment conditions | Guaranteeing minimum standards of remuneration and employment conditions in the country where work is performed | Currently binding at the place of work performance |
| Social security | According to the destination country, if posting period is not longer than 24 months | According to the country of work performance |
| Place of residence | Country of work performance | Country of work performance |

Source: Delegowanie pracowników w Unii Europejskiej (Posting of workers in the European Union), Kamil Matuszczyk, infos No. 8 of 5 July 2018.

 At this point, a thing worth mentioning is a business trip of a worker, since similar nomenclature often makes the terms be used interchangeably. (Translator’s note: in Polish both ‘business trip’ and ‘posting’ are also called ‘delegation’) However, these are two different things and business trips have not much in common with job posting. In general, a business trip means performance of worker’s responsibilities (work) outside the permanent place of work performance, as required by the employer; it is incidental, short-term and temporary work. In such a case, the worker is granted allowance as well as refund of travel and accommodation expenses.

However, many years of the directive’s application have shown the need to improve the implementation and enforcement of the rules associated with posting of workers. There were situations where competent bodies in member states, service providers and posted workers themselves experienced frequent problems with, for instance, determining whether or not they deal with posting as defined by the directive.

There were cases of reprehensible practice of employers who took advantage of the unclear and overly general regulations in order to circumvent them, e.g. lots of companies started to register fictional places of business (the so-called “letter box”) abroad, e.g. in Poland or in Cyprus. They dealt only with posting of workers, taking advantage of lower cost of employment. Those entities did not perform the normally understood business operations but were only satellite companies posting workers to their labour markets, which led to, among other things, violation of workers’ rights. Other problems were associated also with proper implementation of the directive in particular member states as well as with the lack of understanding of its objectives and tasks. Cooperation in the field of information transfer by liaison offices and competent offices in member states did not function well, which led to impunity of companies violating the rules included in the directive and in executive regulations.

Elimination of those mistakes and abuse has therefore become a necessity. For this purpose, 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 passed, and became valid on 17 June 2014 (hereinafter: implementation directive or directive 2014/67/EU).

Implementation directive improved a number of issues and made them more efficient; for instance:

• it introduced the measures for control bodies from all EU countries to assess the lawfulness of the posting of workers as well as to prevent abuse and circumvention of regulations (art. 4),

• it provided better access to information regarding employment conditions of a posted worker as well as provided a mechanism for faster exchange of information between member states (art. 5). For this purpose, it was pointed out that it was necessary to create one official national website providing clear and complete information on employment conditions; apart from commonly binding legal regulations, the website should also inform about collective agreements as well as any other sources of labour law which may cover posted workers,

• it strengthened administrative cooperation of competent bodies, exchange of officials dealing with posting, as well as mutual help in order to implement, apply and enforce the said directives (art. 6 and 8); it provides for, i.a. provision of registration information via electronic means (VAT payer) as fast as possible, within no more than 2 working days, and other information within 25 working days from the moment of application receipt, unless member states have agreed upon a shorter deadline,

• in the construction sector, in the case of subcontracting, it introduced liability of the contractor and subcontractor in respect of any outstanding remuneration for workers posted to subcontractors (art. 12),

• it introduced cross-border enforcement of fines and penalties (chapter VI); up till then, due to the lack of proper and fast legal tools as well as problems in cooperation of competent bodies, usually in practice administrative penalties and fines were not enforced outside a country that imposed them,

• it introduced lists of control measures aimed only at implementation of the directive concerning the posting of workers, provided that these are justified and proportionate (art. 9).

An extremely important document in the discussed area is the newest Directive of the European Parliament and of the Council (EU) 2018/957 of 28 June 2018, amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. New directive includes critical principles, which are supposed to:

* strengthen coordination among competent bodies or entities in member states and cooperation on the European level in the field of combating frauds associated with posting of workers,
* eliminate any discrimination, which, among others, means „equal treatment” of all employees in terms of remuneration conditions in accordance with the slogan „equal pay for equal work at the same place”. This applies also to refund of travelling, board and accommodation expenses.
* result in taking into account all elements of remuneration, also the ones provided for in workplace regulations (collective agreements) – so far, it has been the case only in the construction sector,
* limit posting period to 12 months, with the possibility of extending it by 6 months, based on justified notification submitted by an entrepreneur to the authorities of accepting countries (after the expiry of this time, a worker would still be able to stay and work in a member state he or she was posted to, but would be subject to the conditions compliant with the labour law of the accepting country – also with regard to social security).

According to the new directive, member states adopt and publish, by 30 July 2020, any statutory, executive and administrative regulations necessary for execution of its provisions.

Despite many objections, especially on the part of the countries of Eastern Europe which are afraid that the suggested solutions will lead to cost increase on the part of employers, new regulations reflect social, economic and political reality of the European Union. They determine a way to a more social Europe, where companies compete with one another in a more just way and employees have better rights. Undoubtedly, those regulations will limit the so-called social dumping and will also put an end to the operations of “letter box companies”.

***Social security in posting***

A significant group are also regulations concerning the issue of coordinating social security systems:

* Regulation (EC) No 883/2004 of the European Parliament and of the Council of 24 April 2004 on the coordination of social security systems[[3]](#footnote-3),
* Regulation (EC) No. 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No. 883/2004 on the coordination of social security systems[[4]](#footnote-4).

At this point, it is worth emphasizing that the majority of regulations regarding social security (e.g. determination of social security premiums) remains within the regulations applicable to the source labour market of the posted worker. This allows to avoid a situation of being subject to two social security systems at the same time or a situation where a worker is not subject to any system, which would deprive such a worker of appropriate benefits.

***Income tax in posting***

 EU law does not include separate regulations determining which countries should collect income tax in the course of work performance by a posted worker. In general, such a situation is defined by agreements concerning taxing, concluded between particular EU countries (avoiding the so-called double taxation) or internal tax regulations of a given country.

**IV.**

***Fundamental rights of a posted worker***

In accordance with art. 3 of the directive, member states guarantee specific employment conditions to posted workers on their territory, as far as such conditions are more beneficial than current employment conditions of a posted worker. Such conditions apply to:

1. maximum work periods and minimum rest periods.

This applies, in particular, to the maximum daily working hours as well as regulations associated with uninterrupted daily and weekly rest.

1. minimum paid annual holidays.

This applies, in particular, to annual leaves, the minimum lengths of which are different in particular countries of the EU. This obligation does not apply to a case where posing does not exceed a period of 8 days and is performed by a company which is not a temporary employment agency.

1. minimum rates of pay, including overtime rates – minimum monthly or hourly rates for work as well as rules associated with paying for overtime work,
2. issues associated with occupational healthand safety – this applies to all aspects of work being performed, since the issues of taking care of the workers’ health and life are the most important issues at a workplace,
3. protective measures applying to employment conditions of pregnant women or those who have recently given birth, of children and of young people,
4. equal treatment of men and women, as well as other provisions on non-discrimination.

This applies to any aspects, in particular, to direct discrimination (e.g. on the grounds of sex, age, disability, race, religion, nationality, political beliefs, trade union membership, ethnic background, creed, sexual orientation) and indirect discrimination, as well as mobbing or harassment at work.

They do not apply to all employment-related issues, but it may be concluded that the above catalogue includes the most important employee issues associated with work performance in each member state. There are also no obstacles for member states to applying the provisions of collective, regional or industry agreements with regard to posted workers, which would raise the standards of employment benefited from by local employees.

Issues specified in the directive mean that a posted worker at the place of work performance cannot be discriminated in the above employment areas as compared to employment status and conditions of local workers. Therefore, the employer is obliged to provide a posted worker with working conditions at least equal to the level effective in a country where work is performed. At the same time, regulations of a posting country shall apply to a posted worker to the extent that they are more beneficial than the regulations of a country that the worker is posted at (Art. 3 passage 7 of the directive). An employer posting their workers must, in fact, take into account labour law regulations binding in more than one country.

A worker posted to a different EU country:

* does not have to have a work permit, unless he or she is a worker posted from Croatia to Austria which still applies limitations to some sectors,
* does not have to file any application for acknowledgement of professional qualifications; however, in the case of some professions, it may turn out necessary to file a written statement.

***Travelling, accommodation, board***

Expenses associated with travelling, board and accommodation of a posted worker are borne by the employer and, in such a case, there is no legal basis to deduct those amounts from the worker’s remuneration. Apart from that, the employer is obliged to provide a worker with appropriate accommodation compliant with the legislation of a country where work is performed.

***Right to go to court***

A posted worker should have the possibility to assert his or her working conditions guaranteed by art. 3 of the directive directly before courts of the country they are posted to. This means that an employer who posts workers to work in another member state must take account of the risk of being sued at the country of delegation as well as the country of their registered office (Art. 6 of the directive).

***Who the regulations on posting apply to***

Regulations relating to posting of workers apply to enterprises carrying out business in a member state of the European Union and in a country which is a signatory of the Agreement on the European Economic Area, which, under provision of services beyond its borders temporarily post workers to work in another member state.

**V.**

***Extent of posting***

In 2016, there were 2.3 mln posted workers in the EU. In the period of 2010-2016 the number of posted workers increased by 69%. Despite such an increase in the number of posted workers, their percentage among all of the employed in the EU is not very high – 0.6%. Average period of posted work is four months[[5]](#footnote-5).

Poland is one of the countries that delegate the largest number of workers. In 2016, it was more than half a million people, which, in turn, means that around 20% of posted workers in the EU came from Poland. In recent years, the largest number of people were posted to Germany (440 thousand), France (203 thousand) and Belgium (178 thousand). Workers are posted to industry (around 70%), sector of services (29%). The fewest workers are posted to works related to agriculture, hunting and fishery (1.55%).

The issue of posting is also significant for new member states for which posting of workers can be an alternative to economic emigration and is a chance for company development. It is indicated that services provided within posting of workers is one of the few competitive advantages of those economies in the EU.

**VI.**

***Cooperation of social partners and other entities***

Implementation directive emphasizes enormous or even key importance of national labour inspectorates, social partners’ organizations and other monitoring bodies. Trade unions are provided with the possibility of filing complaints and initiate legal or administrative actions against employers violating the rights of posted workers. Social partners have information which should be made available to a wider group of recipients, e.g. with regard to valid minimum pay rates or solutions functioning in collective labour agreements. Factors which are extremely important in the case of cooperation are mutual trust, the spirit of cooperation, constant dialogue and mutual understanding, as well as elimination of harmful stereotypes between trade union members and employers. Efficient and prejudice-free communication between those entities can be key to monitoring and prevention of the violation of posted workers’ rights.

Under the cooperation of social partners, it is possible to definitely improve access to information for all parties: workers, employers and controlling bodies. Because, undoubtedly, one of the fundamental problems of posting is insufficient knowledge or lack of it in the field of employment conditions that persons providing work in the EU countries are entitled to. The EU consists of 28 countries and each of them differently regulates working and pay conditions; minimum remuneration rates are also various. Therefore, among lots of regulations of particular countries, it is difficult to find an appropriate regulation applying to a specific situation of a given posted worker. A problem with gaining knowledge is also associated with language problems. Posted workers very often do not know a language of a given country, which definitely makes it difficult to function in an unknown environment. Therefore, apart from information requirements that should be met by each country of the EU, social partners may create their own information portals for posted workers (websites, leaflets, publications, informative actions, etc.).

Under such actions nothing stands in the way of combining efforts and creating together a great source of information on employment conditions in a given country, referring, in particular, to conditions in a given industry or branch of economy. Knowledge of social partners in this respect – who operate in their industries for many years and are familiar with both general and detailed legal regulations – is extremely important. Use of this potential would definitely have positive influence on the situation of posted workers and would promote healthy competition between employers (e.g. through creation of an industry-related website which would clearly as well as in detailed and friendly ways present employment conditions in a given industry).

Acquisition of knowledge by posted workers takes place also at work. This fact opens new perspectives for trade union representatives who should be able to quickly provide clear information. This also means cooperation of employers who may perform the same tasks and, in the case of trade union representatives, additionally present e.g. a training offer in a given field related to labour law. It can be assumed that actions of trade union representatives related to providing information to a worker directly at a workplace will be one of the most effective ways of protection of rights and interests of posted workers.

Cooperation can also have a form of trade union representatives’ visits to trade union centres in other countries, in order to help the interested parties in their mother tongue. Contact with a person who can provide explanations in the mother tongue of a posted worker at the place of work performance surely guarantees comfort and social peace to interested parties. As far as the role of trade unions in this aspect of posting is concerned, it is also necessary to run actions aiming at increasing the level of trust in trade union organizations as well as turning for help to them, since a posted worker often perceives employee representatives in a wrong or negative way as a result of experience in his or her mother country or in countries where he or she has worked.

There is no doubt that within the cooperation of parties it would be beneficial to create a detailed contact base (of contact points) or a base of names of people who can immediately provide necessary information to each of the interested parties.

A very important aspect is cooperation with labour inspectorates which usually have effective legal means and qualified staff at their disposal as well as the possibility to affect a wide group of recipients. Labour inspectorates are the entities controlling and supervising the application of law with regard to posted workers in a given country. Their efficiency determines the implementation of rules provided for in directives and national regulations. Bearing this in mind, the cooperation should aim at strengthening labour inspectorates through lobbying for providing them with more financial measures and increasing employment.

It is also necessary to tighten cooperation with labour inspectorates which may control workplaces also upon requests of workplace organizations. Specialized inspectors could, in turn, use their knowledge and experience to e.g. train trade union representatives or make certain materials (publications, leaflets, studies, etc.) available.

**VII.**

**Discrimination of posted workers.**

**Workplace Anti-discrimination Policy**

As mentioned before, posted workers are often discriminated by employers at the places of performing work. They are often treated worse in terms of remuneration, working conditions or social issues. Discrimination is also directly related to race, nationality or ethnic background. It is a serious problem which, despite system and general provision functioning in legal systems of particular countries, requires additional regulation at the level of workplaces or industries. In the first place, it is necessary to indicate agreements at the level of workplaces as well as collective agreements, work rules, codes of conduct and other detailed principles.

Bearing in mind the sources of labour law at workplaces, it is necessary to emphasize a special role of anti-discrimination and anti-mobbing policies. These are legal acts containing regulations making the commonly binding laws more detailed and adapting them to conditions and specific nature of a given company. These types of documents usually provide:

* examples of discrimination (mobbing) and areas of a workplace they may apply to,
* possible actions that can be taken by a victim, aimed at explaining and solving the problem at the workplace level,
* procedures (including the procedure for filing a complaint and its examination by committees or teams appointed at workplaces),
* scope of possible employer’s and trade union organizations’ activities,
* principles for appointing, as necessary, independent, external experts (these may be mediators, lawyers, advisors or trustworthy persons),
* informative and education actions for managerial staff as well as workers themselves.

Undoubtedly, it is an extremely helpful tool which, at workplaces, can be used also with regard to posted workers, as the ones particularly exposed to discrimination. In practice, such provisions are also beneficial to employers who can prove they have transparent and clear legal regulations, they care for elimination of the cases of discrimination or mobbing from their workplaces, show higher legal culture and care for workers, as well as properly use social dialogue with trade union organizations.

Another important aspect in this case is also the court aspect, since, in the case of litigation, the court usually verifies whether a given workplace has introduced internal anti-discrimination policy (this affects possible limitation of liability for damage or criminal liability of the employer). Besides, any conflicts should undoubtedly be solved, in the first place, using internal legal solutions at a given workplace, with the participation of the following parties: employer, worker and trade union organizations.

The role of trade unions is invaluable in such a case. They are usually the initiators of such legal solutions at workplaces. Therefore, it is necessary to emphasize the necessity to have an appropriate anti-discrimination document at workplace, as well as assess its usefulness for posted workers. Another important aspect is the educational one – trade union organization, being an initiator or a party to the said legal act, has a much wider scope of actions at its disposal in the event of violation of rights and interests of a posted worker. It is a co-author of such a document, and therefore, is able to apply its provisions in a more substantive and efficient way. Regular assessment of workplace policies in terms of their functioning in practice is worth mentioning, also with regard to possible gaps or incorrect (insufficient) legal provisions.

Apart from actions at workplaces, posted workers have the right to turn to labour inspectorate of the country where they stay over the period of being posted. National labour inspectorates have the right to investigate a complaint, examine any evidence and motions filed, as well as make a person (entity) violating the rights of employees with regard to equal treatment and discrimination liable for such practices. It is important for the proceedings not to be too lengthy and impeded, which can discourage workers from defending their violated rights.

**VIII.**

***Monitoring, indicators of application of and compliance with the law***

Apart from legal solutions and their assessment, an extremely significant thing is the issue of monitoring compliance with law regulations, both with regard to EU directives as well as implementation in the form of national law. A necessary thing is cooperation of EU institutions, proper bodies of member states, public authorities, research institutions and social partners. A key role at the national level, as mentioned above, is to be played by labour inspectorates as well as trade union organizations and employers, in accordance with their competences and possibilities. When monitoring specific areas associated with employing posted workers, it is necessary to remember to run the whole process in a non-discriminative and objective way.

Monitoring process would be run by proper ministries (e.g. ministry of labour), labour inspectorates, trade union organizations and employers’ organizations, as well as other specialized entities with adequate knowledge and experience in the area of posting workers.

Monitoring should include a detailed analysis of the situation in each country that workers are posted to. Such assessment should take into account diversification of challenges as well as the need for proper determination of priorities due to the differences in starting points and means accessible in particular countries.

Information for the analysis would be acquired through deep dialogue; information would also be conveyed throughout the year in a clear way, accessible for all interested parties.Such action would involve mutual assessment and comparative analysis among member states.

As regards the issue of efficiency indicators which can be used to monitor employment conditions of posted workers in a given country, it seems it should take place on two levels:

1. central level – in a general aspect of the national scale of employment and associated problems.
2. workplace level – in the aspect of employment at a specific workplace and of associated problems. An issue worth considering is possible introduction of a sectoral level, although in Poland, for example, it would be difficult due to reluctance of employers to become organized, which, in turn, means they are reluctant to cooperate.

At the central level, it would be good to consider creation of a Special Coordination Team (SCT) the members of which would be the representatives of ministries, other bodies of public administration, organizations of employers and employees as well as institutions interested in posting, and experts in the areas of knowledge associated with posting. It could also be teams in a more limited form, which would „quickly react” to any noticed cases of law violation or shortcomings of national legal systems. Such an entity would examine the quality of national law with regard to standards included in directives, and would react in cases of any reported signs of problems with posting.

SCT could also implement the following actions:

* substantial and analytical help, encouragement to share good practice among Member states and interested parties,
* review of results in employment and social issues associated with posted workers,
* development of effective methods (indicators) of application of and compliance with the law.

At the workplace level, one could create forms and procedures of cooperation among employers, trade union organizations and regional labour inspectorates. Those actions would be run on a micro-scale, on the basis of employment and emerging problems at a given workplace.

Any adopted indicators could be associated with:

* quantitative mechanism – which would monitor the number of reports and their nature,
* practical mechanism – a method of solving a given conflict as well as assessment of whether the way of dealing with it will increase efficiency in the field of application of and compliance with the law, and of whether it affects the number of next reports,
* directional mechanism – assessment of whether a given problem will result in the necessity to introduce legislative or other changes, proper for comprehensive normalization of a given issue.

Reports from interested parties could be collected by means of appropriate forms which would indicate specific problems associated with employment. It seems that an optimal solution would be methods of electronic communication since it provides greater possibilities and speed up specific procedures. Such forms could be provided on websites of social partners and other entities taking part in a given process.

In this respect, it is necessary to emphasize the implementation of appropriate rules of cooperation between social partners and public administration. It is necessary to create platforms of cooperation and exchange of information for the purpose of monitoring the application of law as well as cooperation in creating the indicators of efficiency and their assessment. It is also necessary to remeber about proper coordination of actions.

An interesting solution requiring support is one of the solutions included in the packet for social justice which was adopted by the European Commission on 13 March 2018. The Commission suggested establishing of a European Labour Office for the purpose of complementing previous initiatives aimed at improving regulations regarding posting of workers and coordination of social security systems. The Commission emphasized that freedom of movement is one of the most valued freedoms of the internal market – it is favourable for citizens and whole societies as well as economy of particular countries. In fact, a wide range of legal acts has already been introduced for the purpose of providing just mobility. It is important, however, for these principles to be effective in practice. According to the Commission, the suggested Office would have the following tasks:

* make it easier for citizens and employers to acquire information on their rights and responsibilities as well as access to appropriate services;
* support for cooperation among member states with regard to cross-border enforcement of relevant regulations of the EU, among other things through facilitating joint controls;
* conciliation and help in resolution of cross-border disputes between national bodies or in mitigating disturbances on the labour market.

**IX.**

***Conclusions from survey-based research***

The project included a number of surveys consisting in examination of the situation of posted workers as well as remarks of companies posting workers, in order to identify problems and become familiar with detailed remarks and observations. This method will additionally positively affect the assessment of legal and practical solutions in the field of posting workers in a given industry. Surveys also show most frequent problems experienced by people acting as posted workers.

Selection of participants for research was based on diverse experience in being a worker posted abroad, associated with work in countries of various economic, production and institutional structure.

Research showed that the level of knowledge on the directives on posting and of general knowledge on legal principles associated with posting is not satisfactory. Most survey participants did not know much or even anything about them. One more time it turns out that European law is not understandable for an ordinary person. EU directives in the said scope are, undoubtedly, extremely complicated and not very accessible. Another issue are sources of information which provide knowledge about legal solutions of a given country with regard to labour law, including the rights of posted workers. Therefore, apart from an official website run by each member state of the EU, it is worth creating other websites which would be easily accessible for the interested parties, containing more practical information, created in accordance with the requirements of workers and with regard to work in given fields or branches of industry.

What is distinctive, is the fact that participants of the survey pointed out trade unions as a significant source of knowledge about legal rules associated with posting of workers and of verifying employment conditions, and, next, other posted workers as well as the mass media (Internet, press). Survey participants determined information acquired through participation in international projects aimed at making the issue of posting of workers more familiar as useful knowledge.

As regards the question concerning assessment of the protection of posted workers at a workplace where survey participants are employed – protection was assessed as good or average. Only a small percentage of interviewees stated that protection is insufficient.

Most frequently identified problems with posting of workers were:

* discrimination in terms of remuneration and social benefits – interviewees usually pointed out to paying remuneration below minimum in a given country as well as other elements of the salary,
* non-compliance with labour law regulations in a country of performing work – in this respect, remarks apply, e.g. to failure to respect annual leaves as well as daily and weekly periods of uninterrupted rest of a worker. Survey participants also mentioned violation of working time, especially with regard to exceeding the limits of overtime allowed,
* failure to meet the requirements concerning occupational health and safety as well as proper equipment at working posts,
* conclusion of contracts for performance of less-paid tasks, whereas, in fact, the worker performs work of higher value which should be performed against higher remuneration,
* posting-related costs (fares, accommodation) which were usually deducted by employers from workers’ remuneration,
* lack of information in rules of employment and rights in the country of performing work,
* lack of information on labour inspectorates in a given country, on their addresses and phone numbers,
* language problems, barriers in communication – unfortunately, lack of language skills (especially English language) is still a serious problem. A worker, even in the case of identifying labour law violation by the employer, has a very difficult task of gaining help from competent bodies.
* lack of help or unsatisfactory help on the part of trade unions – it is necessary to consider introduction of particular actions of trade unions as well as to strengthen trust in employee representations,
* lack of experience in functioning as a posted worker,
* problem with prices of food and other articles at the place of performing work – when taking into account the minimum remuneration at the place of performing work, it is a negative factor for a posted worker.

Most frequently indicated motivating factor or an incentive for going abroad were better financial conditions, which is not a surprise. Remunerations in Europe are highly diverse, even at the level of minimum remuneration which is sometimes attractive for employees from other countries.

On the other hand, representatives of companies pointed out the need for increasing the clarity of the directives’ provisions, as well as completely improper provisions which should not, in their opinion, regulate particular issues. Some employers did not have sufficient knowledge on the provisions of law due to the problem with reaching an appropriate source.

Surveys also showed that some of the companies, in particular from Central-Eastern Europe, are afraid of introducing new solutions which, in their opinion, are too strict and give too much freedom of interpretation to national bodies supervising posted work.

**X.**

**Contact details**

Below, one can find contact details of organizations and institutions participating in the project, in order to facilitate cooperation and coordination between them:

Poland

* Niezależny Samorządny Związek Zawodowy Pracowników Arcelor Mittal Poland S.A./Independent Trade Union of Arcelor Mittal Poland (PL)
* Międzyzakładowy Związek Zawodowy Pracowników Arcelor Mittal Dąbrowa Górnicza /Trade Union of Workers of Arcelor Mittal Dabrowa Gornicza (MZZPAMDG) (PL)

Bulgaria

* Syndical Federation of Machine Builders and Metal Workers CL PODKREPA (SFMM

CL PODKREPA), Co-applicant (BG)

Spain

* Asociación Industrial Técnica y de Comercio (ASITECO) (ES)

Greece

* Panepistimio Thessaly’s/ University of Thessaly, Career & Vocational Training Center (UTH), Co-applicant (GR)

Serbia

* Serbian Association of SMEs – entrepreneurs association (RS)
* Union of Employers of Vojvodina (UPV) (RS)

Italy

* Veneto Lavoro / Labour Office of Veneto Region (VL) (IT)

Lithuania

* LIETUVOS PROFESINIŲ SĄJUNGŲ KONFEDERACIJA / Lithuanian Trade Union

Confederation (LPSK), (LT)

**XI.**

**Selected national websites for posted workers**[[6]](#footnote-6)

Poland: [www.pip.gov.pl](http://www.pip.gov.pl)

Bulgaria: www.justice.government.bg

Italy: www.giustizia.it/uffici/info/tribunali.htm

Lithuania: [www.vdi.lt/Forms/Tema.aspx?Tema\_ID=50](http://www.vdi.lt/Forms/Tema.aspx?Tema_ID=50)

Slovakia: [www.ip.gov.sk/?site\_lang=en&t=46&s=198&id\_fi](http://www.ip.gov.sk/?site_lang=en&t=46&s=198&id_fi)

Greece: www.ypakp.gr

Spain: [www.mitramiss.gob.es/es/sec\_trabajo/debes\_saber/desplazamiento-trabajadores-eng/index.htm](http://www.mitramiss.gob.es/es/sec_trabajo/debes_saber/desplazamiento-trabajadores-eng/index.htm)

**Table of contents:**

1. General information. 2
2. Detailed project objectives. 3
3. Legal characteristics of posting. 4
4. Fundamental rights of a posted worker 9
5. Extent of posting 11
6. Cooperation of social partners and other entities. 12
7. Discrimination of posted workers. Workplace Anti-discrimination Policy 14
8. Monitoring, indicators of application of and compliance with the law. 16
9. Conclusions from survey-based research. 19
10. Contact details. 21
11. Selected national websites for posted workers. 23
1. The directive was adopted on 16 December 1996; Official Journal of the European Union of 21 January 1997. [↑](#footnote-ref-1)
2. M. Benio, O przewadze konkurencyjnej Polski na wewnętrznym rynku Unii, o delegowaniu pracowników i swobodzie świadczenia usług w UE, „Zarządzanie Publiczne” 2013, No. 1(23), p. 116. [↑](#footnote-ref-2)
3. OJ L 166, 30.4.2004 [↑](#footnote-ref-3)
4. OJ L 284, 30.10.2009 [↑](#footnote-ref-4)
5. http://europa.eu/rapid/press-release\_MEMO-16-467\_pl.htm [↑](#footnote-ref-5)
6. On the basis of: https://europa.eu/youreurope/citizens/work/work-abroad/posted-workers/index\_en.htm [↑](#footnote-ref-6)