



COUNTRY BRIEFING PAPER - POLAND

POSTING OF WORKERS AND POLAND

In absolute terms, Poland continues to be the EU country which send most workers, with over 600,000 A1 certificates issued in 2018 for workers based in Poland¹. This amounts to 20% of all A1 certificates issued in the entire EU, a share which is disproportionately large in comparison to the size of Poland's population (7.4% of the EU). This fact can be explained partly by a number of Polish companies – especially in the construction and transport sector – developing a business model based on offering low-cost services to EU-15 markets².

One should note that a significant amount (350,000) of these certificates are issued according to Article 13 of the Regulation (EC) 883/2004, covering workers who pursue an activity in two or more Member States. This makes Poland by far the largest issuer according to Article 13, making up 32% of all workers posted in the EU according to this rule. This accounts for the large number of persons in freight transport sector by road employed by companies registered in Poland (180,000 A1 forms issued in 2018).

However, if considering exclusively A1 certificates issued for workers posted pursuant to Article 12 of the Regulation (EC) 883/2004, Poland is only the second largest sending country, with 238,525³ issued in 2018, behind Germany (409,340), but far ahead of Italy (148,863), Spain (123,670) and France (117,739). The largest share of these workers (51%) is posted to Germany, with over 120,000 A1 forms issued for this country alone. This makes up 7% of all postings according to Article 12 in the entire EU, and represents the main flow of workers posted according to this rule. The other main destination countries are France (26,371), Belgium (21,358) and Sweden (14,794). Almost all workers (93.5%) are posted to EU-15 countries.

According to the data shown by A1 forms, most postings are related to the construction sector (47.8%) with a further 20% working in other industry sectors. In absolute terms, this makes up 5.4% of the entire construction sector in Poland, above the EU average of 3%, but far behind the leaders Luxembourg with 41% and Slovenia with 31% of their construction sector dedicated to posting workers.

From the data available from national declarations in 2017, concerning posting under the Posting of Workers Directive, it should be noted that a number of Polish workers are also posted by companies based in other EU countries. This shows a high level of mobility among Polish workers. ZUS data also shows that there are a number of non-EU nationals being posted to EU countries from companies based in Poland. The vast majority (97%) of these are from Ukraine and Belarus, with about 23,000 workers from Ukraine and 3,000 from Belarus. This is because workers from the Ukraine have special access to the Polish labour market through "D-visas" which also allow workers to be posted to any country in the Schengen area for up to 90 days.

¹ De Wispelaere, F., De Smedt, L. and Pacolet, J. (2019), *Posting of workers Report on A1 Portable Documents issued in 2018*, European Commission, Brussels.

² Surdykowska, B., Owczarek, D. (2018), *Posted workers regulations as a cohesion test in the enlarged European Union: divergent interests of trade unions, employers' organisations and governments*, Friedrich-Ebert-Stiftung and Institute of Public Affairs, Bratislava and Warsaw, p. 12.

³ 137,450 individual workers, i.e. 0.8% of the working population in Poland (twice the EU average). In terms of FTE, this amounts to 0.6% or three times the EU average. Far behind leaders LU (6.6%) and SI (3%).

According to a 2018 report by Poland's Supreme Audit Office, this has led to the creation of a number of letter-box companies whose sole purpose is to provide documents to foreign workers before sending them to EU countries as posted workers⁴.

Instead, the number of employees posted to Poland from EU countries is fairly low, with only 26,714 A1 forms delivered for workers posted to Poland in 2018. This makes Poland by far the largest net sender, with 211,811 more sent postings compared to hosted postings. According to A1 data, the vast majority (87%) of workers posted to Poland are from companies registered in EU-15 countries, most of them in Germany (48%), Italy (11%), France (10%) and Spain (9%).

However, a full picture cannot be seen from the A1 forms alone, as they only provide data on the total number of postings, not the number of individual workers posted to Poland. A single worker may be posted several times. In addition, the A1 forms do not provide data on workers posted from non-EU countries. In this sense, data provided from national declaration tools provide a different perspective.

According to the data available from national declaration tools, in 2017, 7,372 individual workers were declared as posted to Poland, with 42% of these workers from countries outside the EU. Data provided by the Polish Social Security Institute (ZUS) in 2018 show 13,731⁵ individual workers posted to Poland, with an even higher proportion of workers from outside the EU (almost 50%). This represents a marginal proportion of the workforce in Poland (under 0.1%). However, it should be noted that postings to Poland are disproportionately long compared to rest of the EU, with workers being posted on average for 512 days, compared to the EU average of 133.

The low numbers of workers posted to Poland can be explained by several factors: the low competitiveness of remuneration, the high availability of domestic employees and Poland's easy access to workers from third countries with lower wage requirements. In the case of employees from third countries (outside the EU / EEA) there are solutions allowing these employees to access the Polish labour market without posting (such as D-visas). The posting procedure in this case (mainly employees from Ukraine) is seldom used.

In 2018, the Labour Inspectorate (PIP) carried out 204 inspections on the issue of posting workers from the territory of the Republic of Poland to work in other European countries. Construction is 37% of entities covered by control.

In the reporting year, labour inspectors carried out 137 inspections of foreign employers posting employees to the territory of the Republic of Poland (in 133 entities). During these inspections, actions⁶ were taken for:

- 151 posted workers from 15 EU / EEA Member States and Switzerland, most of which were: Italian citizens - 88 people, Germany - 22, Switzerland - 7 and Austria - 6;
- 595 posted workers from 14 third countries, including: citizens of Ukraine - 437 people, Belarus - 79, Indonesia - 38 and China - 12.

⁴ See Surdykowska, B., Owczarek, D. (2018), *op. cit.*, p. 36-43.

⁵ This remarkable growth from 2017 to 2018, the numbers almost doubling in the space of one year, most likely does not reflect the actual growth in posting. Rather it reflects the increased usage of the national declaration tool, which was only introduced in 2016. Data from A1 forms show a more modest increase in posting of around 30% between 2017 and 2018.

⁶ E.g.: recommendations, orders backed by sanctions, financial penalties or referral to court.

DEBATE ON POSTING OF WORKERS

In recent years, discussions regarding the posting of workers in Poland have primarily concerned the revision of Directive 96/71/EC. The Polish government and a significant number of employers in the sectors in which the largest number of employees are posted were strongly opposed to the tightening of provisions on posting. Particularly controversial was the suggestion to change the regulations concerning drivers transporting loads through several EU countries and the related proposals to include them in the regulations of individual countries through which they pass. In the opinion of the government and most employers' organisations, the new regulations are protectionist, closing the labour markets of the host countries and are targeted primarily at companies posting employees from countries such as Poland.

In the early stages of discussions, Władysław Kosiniak-Kamysz, at that time Minister of Labour and Social Policy of the Republic of Poland, sent a letter⁷ to then Commissioner for Employment, Social Affairs, Skills and Labour Mobility Marianne Thyssen, along with Ministers from Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Romania and Slovakia), arguing against the revision of the directive. The main arguments of the letter were that:

- it is too soon to revise directive 96/71/EC, first one should wait until the results of the enforcement directive can be seen. Such revision would have the potential to be highly divisive;
- revising the directive could undermine the fundamental principles of the EU, mainly the freedom to provide services;
- differences in pay rates among countries are a legitimate element of competition for service providers and should be safeguarded by EU law.

In April 2016, the Polish Parliament was among those of ten Member States⁸ who officially opposed the revision of the directive on the grounds of a breach of the principles of subsidiarity and proportionality, triggering the “yellow card” procedure which obliged the Commission to re-examine its proposal.

The resolution⁹ argued that national regulations on minimum wages were in fact better equipped to implement the intent of Directive 96/71/EC and could provide adequate social protection of posted workers. The resolution also argued that the levelling of wages amongst Member States should not be brought about through legislative actions but through gradual economic development. The Polish Senate issued an opinion¹⁰ much in the same vein. Both statements were supported by employer's organisations such as the Lewiatan Confederation, the Employers of Poland, Business Centre Club, the Association of Employment Agencies and the Section of Care Agencies, who also sent a joint letter to the Commission expressing their views¹¹.

These attempts to oppose revision of the directive were criticised by the Polish trade unions¹², all of whom – NSZZ “Solidarność”, the All-Poland Alliance of Trade Unions (OPZZ) and the Forum of Trade Unions (FZZ) – supported amending the directive, arguing that the changes proposed by the Commission would help to

⁷ http://arbetsratt.juridicum.su.se/euarb/15-03/nio_medlemsstater_utstationeringsdirektivet_augusti_2015.pdf.

⁸ Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Poland and Romania.

⁹ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20160070/plsej.do>.

¹⁰ <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20160070/plsen.do>.

¹¹ Surdykowska, B., Owczarek, D. (2018), op. cit., p. 17.

¹² *Idem*, p. 19.

create a balance between the rights of posted workers and the freedom to provide services. The trade unions also expressed the following:

- The directive shall make clear additional benefits such as daily subsistence, reimbursement of travel and accommodation expenses should be considered as part of the minimum rates of pay;
- Transnational transport should be included within the scope of the directive;
- Amendments should be introduced to protect working conditions throughout the subcontracting chain and to cover the right of trade unions to negotiate on behalf of posted workers;
- Social partners at EU level should be better consulted in the legislative procedure.

As far as the construction sector is concerned, interestingly, the tightening of posting rules was backed both by the ZZ Budowlani union, by the Polish Union of Construction Employers (PZPB) and by the Confederation of Building and Real Estate (KBIN). Both employers' organisations did not object to the tightening of rules, because Polish employers are mostly interested in retaining qualified employees in the domestic labour market. Posting of construction workers actually seems to take place mainly through temporary employment agency; construction companies being involved to a limited extent.

The directive was finally approved in June 2018, though a consensus among Member States was never reached. Following the decision to remove transport workers from the scope of the directive, most of the countries who were originally opposed either voted for it or abstained. However, Poland (and Hungary) voted against the final directive. In addition, in October 2018, both countries introduced complaints to the Court of Justice of the European Union regarding the new directive, requesting for it to be annulled¹³.

¹³ Surdykowska, B., Owczarek, D. (2018), op. cit., p. 4.