

# **POSTING OF WORKERS:**

**SHARING EXPERIENCES, PROMOTING BEST  
PRACTICES AND IMPROVING ACCESS TO  
INFORMATION**

FINAL EXPERT REPORT

---

Mojca Vah Jevšnik, Sanja Cukut Krilić

ZRC SAZU, November 2016

# POSTING OF WORKERS: SHARING EXPERIENCES, PROMOTING BEST PRACTICES AND IMPROVING ACCESS TO INFORMATION. FINAL EXPERT REPORT

## Authors

Mojca Vah Jevšnik and Sanja Cukut Krilić

## Proofreading

Peter Altshul

Cover and layout design:

Deja Gliha

Publisher

ZRC SAZU, Slovenian Migration Institute

This report has been prepared in the framework of Contract No VS/2015/0014 'Posting of Workers: Sharing Experiences, Promoting best Practices and Improving Access to Information'. The project was financially supported by the European Commission (EaSI PROGRESS) and Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia.

The publication reflects only the author's view and the Commission is not responsible for any use that may be made of the information it contains.



REPUBLIC OF SLOVENIA  
MINISTRY OF LABOUR, FAMILY  
SOCIAL AFFAIRS AND EQUAL OPPORTUNITIE



# SUMMARY

This report was prepared within the framework of the transnational research project Posting of Workers: Sharing Experiences, Promoting Best Practices and Improving Access to Information (EaSI Programme, PROGRESS axis), led by ZRC SAZU in cooperation with the Ministry of Labour, Family, Social Affairs and Equal Opportunities (Slovenia), Labour Inspectorate of the Republic of Slovenia, Association of Free Trade Unions of Slovenia, Chamber of Commerce and Industry (Slovenia), Ministry of Labour and Pension System of the Republic of Croatia, Faculty of Humanities and Social Sciences of the University of Zagreb (Croatia), Union of Autonomous Trade Unions of Croatia, University of Rostock, Chair of Business, Economics and Entrepreneurship Education of the University of Rostock (Germany) and Labour Inspection of the Federal Public Service Employment, Work and Social Dialogue (Belgium)<sup>1</sup>.

The aim of the report is to summarise and reflect on a variety of issues relating to the process of posting of workers that were discussed at the transnational events held within the framework of the project and attended by stakeholders from the participant countries. The chapters outline these debates and combine them with an extensive literature review in order to define the existing and emerging challenges, such as establishing efficient transnational cooperation between competent public bodies, developing amendments to the existing Posting of Workers Directive, reacting to social dumping and other violations of workers' rights, and neglecting the issue of occupational safety and health of posted workers. Based on the findings, the report provides some recommendations to inform the policy dialogue in Slovenia and other EU countries, and outlines further research possibilities relating to the issue of posting of workers.

---

<sup>1</sup> Duration of the project: 1 December 2014 to 30 November 2016.

# CONTENTS

<b>Summary</b>	<b>1</b>
<b>1 Introduction</b>	<b>3</b>
1.1 Scope of the issue and policy context	3
1.2 Statistical data on posting of workers	4
1.3 Project description, rationale and deliverables	5
1.4 Structure of the report	7
<b>2 Transnational cooperation between competent public authorities</b>	<b>8</b>
<b>3 Do we need a new Directive on posting of workers?</b>	<b>11</b>
<b>4 Mobility yes, social dumping no</b>	<b>14</b>
<b>5 Labour/working conditions and occupational safety and health at work (OSH)</b>	<b>19</b>
<b>6 Concluding remarks</b>	<b>22</b>
<b>7 References</b>	<b>26</b>

# 1 INTRODUCTION

## 1.1 SCOPE OF THE ISSUE AND POLICY CONTEXT

The posting of workers within the EU, regulated by Directive 96/71/EC (hereafter: the Directive) and Enforcement Directive 2014/67/EU (hereafter: the Enforcement Directive), has initiated heated debates within and between Member States. The issue goes far beyond the seemingly unproblematic process of cross-border, short-term provision of services on the European single market, since it exposes the deeply rooted tensions between promoting the free movement of goods, capital, services and labour and maintenance of the European Social Model. In that sense, it has become a sensitive issue, especially in the Member States where labour is expensive and where the welfare state is generous. The Directive itself was conceived before the enlargement of the EU and was initially adopted by fifteen states which all had strong labour protection laws, attachment to the European social model and well-developed industrial relation traditions (Maslauskaite 2014: 9). Since the enlargement, the provision of cheap labour has become a challenge for ethical employment relations and labour conditions in those states, and has often resulted in opportunistic distortions (ibid.: 14). The Directive itself, while not overly criticised for its general content but rather for vagueness and lack of implementation, has indeed provided a weak regulatory framework that has not been successful in assuring fair competition of labour and has often resulted in social dumping, tax avoidance, the creation of letterbox companies<sup>2</sup> and the provision of substandard working conditions. The Enforcement Directive, which was developed with the aim to improve the implementation of the Directive, and which has addressed some regulatory ambiguities related to fraud, circumvention of rules and exchange of information between Member States, has yet to show its effects. It was due to be transposed by all Member States by June 2016.

Nevertheless, the ongoing tensions between liberalisation of the service sector and preserving national labour and social standards remain, and have come to reveal deep political-economic tensions, mainly between new and old Member States. Disputes between social actors, i.e. employees or trade unions and employers or employers' associations, have become political issues that have often resulted in diplomatic interventions and the involvement of the European Court of Justice (ECJ). The cases, at least initially, have mostly revolved around the abovementioned conflicting freedoms: the right to provide services across borders and the right to industrial action, including strikes, to protect collective interests (see Charter of Fundamental Rights of the European Union) of the native workers.<sup>3</sup> In the well-known Laval and Viking cases, which we analyse in some detail in this report, the dispute was whether industrial action by Swedish and Finnish unions in order to prevent firms from taking advantage of lower cost Latvian and Estonian labour violates EU laws on free movement of services (Lindstrom 2010; Malmberg 2010).

---

<sup>2</sup> The attendees of the project conference in Zagreb, Croatia pointed especially to the problem of transborder fraud in construction, where many workers are involved in the work of so-called 'letterbox' companies.

<sup>3</sup> A series of cases tried by the ECJ, known as the Laval quartet, were at the centre of political and judicial attention in 2007 and 2008: the Laval case, the Ruffert case, the Commission vs. Luxembourg and the Viking case. The cases, rulings and the impact of the rulings on the practice of collective bargaining and the effectiveness of social action are presented in detail in studies by Malmberg (2010) and Schiek (2015), but the broad stance of the ECJ has been clearly in favour of the free provision of services.

Wage differentiation and the issue of the minimum wage as stipulated in the Directive has been one of the most controversial issues concerning posting. Differentiated rules on wages mean a competitive advantage for posting companies supplying cheaper labour at the expense of local companies. The problem arises due to the significant gap between Member States in minimum wages, which has been constantly increasing since 1996. The ratio between the lowest and the highest minimum wage has risen from 1:3 to 1:10 (European Commission 2016). Wage differentiation significantly stimulates posting from low-wage countries and in labour-intensive sectors such as construction and transport, where low-skill workers are required for jobs with minimum pay rates. Minimum pay rates are determined by each Member State by law or by universally applicable collective agreements. In the absence of such agreements, posted workers may only be paid the statutory minimum wage, regardless of their job tasks. But studies show that even when collective agreements are applicable, posting companies often pay the rates applicable to the lowest pay group, rather than providing payment corresponding to the workers' job tasks, education and seniority. This applies mainly to workers posted from low-wage Member States in low-skill occupations with limited bargaining power. In an impact report on the Directive, the EC thus concludes that the existing Directive has an in-built structural wage gap between posted and local workers (European Commission 2016: 11). The newly proposed Directive sets to rectify that by introducing, among other things, the principle of equal pay for equal work in the same place. It is important to note that the employment conditions in the context of posting are regulated under the framework of free movement of services, not free movement of workers. This means that most aspects of employer relations, such as social insurance and pension payments, continue to be determined by the sending country (Berntsen 2015: 374).

## 1.2 STATISTICAL DATA ON POSTING OF WORKERS

The latest available data shows that there were over 1.92 million postings in the EU in 2014, which is an increase of 10.3% as compared to 2013 and 44.4% with respect to 2010. The main destinations of posted workers remain the EU 15 states, with Germany, France and Belgium receiving the highest numbers of postings. All Member States are senders of posted workers, but Poland leads the pack, followed by Germany and France. Among sending countries, posted workers have a strong significance (in terms of the percentage of the domestically employed population, not in absolute terms) particularly in Luxembourg and Slovenia, where they represent 20.7% and 11.5% of the domestic employed population respectively. In Poland, by comparison, this percentage is 1.7%. Between 2010 and 2014, the highest increases among sending countries were observed in Greece, Slovakia, Lithuania, Bulgaria and particularly Slovenia, where the number of posted workers sent out more than tripled (European Commission 2016: 55-57).

But this statistic on posting, provided by Pacolet and De Wispelaere (2015) and used by the European Commission in their documents (e.g. European Commission 2016) has significant limitations. It is based only on the portable A1 forms issued for social security purposes when posting workers abroad. The number of A1 forms submitted does not reflect the number of actual postings, since it also includes the self-employed, who are not covered by the Directive, and is not required for short-term postings of less than 1 month. A comparison between the EU data sources (number of A1 forms received) and data derived from the compulsory registration systems for incoming posted workers in place in e.g. Belgium (LIMOSA), Denmark (RUT) and France, shows significant discrepancies. The number of A1 forms received in Belgium in 2014 was 159,753, while according to

the data from the LIMOSA registration systems, they received 499,840 declarations. In Denmark, the national figures are five times as high as the EU figures. This indicates that the actual number of posted workers is significantly underestimated (European Commission 2016: 57). In addition, since the same worker can be posted a number of times per year, the number of issued A1 forms only reflects the number of postings rather than the number of posted workers. The EU data also does not provide complete information on the duration of posting(s) and the precise sector of activity, and it does not include any information on the qualifications/skills of posted workers and their earnings.

### 1.3 PROJECT DESCRIPTION, RATIONALE AND DELIVERABLES

The project *Posting of Workers: Sharing Experiences, Promoting Best Practices and Improving Access to Information* was primarily concerned with:

- increasing the accessibility, transparency and coherence of the information on posting of workers for the officials of competent public authorities, employers and posted workers in Slovenia;
- improving transnational administrative cooperation between national competent authorities and social partners in Slovenia, Croatia, Germany and Belgium in order to detect irregularities in regard to posting of workers across different sectors, discuss the use of the IMI system and exchange best practices;
- increasing awareness of the Directive and the Enforcement Directive and their correct application by organising short training actions for the officials at the competent public authorities, social partners (trade unions) and employers in Slovenia.

The project activities were developed in response to the rising demand for more information in the light of the increased posting of workers from Slovenia and Croatia to Belgium and Germany, and the need for improved transnational cooperation between the competent public authorities and social partners. The rationale for the establishment of transnational linkages between the four countries therefore stems from the jointly identified connections in regard to the observed dynamics of posting of workers in practice.

In Slovenia, the efficient implementation of the Directive and the Enforcement Directive has proved a challenge for the competent Slovenian authorities. The identified challenges are manifold, ranging from an insufficient and incoherent information system for employers/service providers, posted workers and the governmental officials who are responsible for conducting the procedure; a poorly monitored procedure of issuing A1 certificates and subsequent failure to detect irregularities prior to posting; inefficient response to reported violations and breaches of workers' rights; and inadequate transnational administrative cooperation between national competent bodies to detect and respond to irregularities (Ljubljana, Project Round Table, 2015). Training actions on the Directive and its enforcement for the officials of the competent public authorities and the employers/service providers have also not been held, despite a clearly identified need for the training by the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Public Administration, the Association of Free Trade Unions of Slovenia and the Chamber of Commerce and Industry of Slovenia. Of particular concern is the lack of training of the officials, since, due to the changes in the relevant Slovenian legislation, the jurisdiction over the responsibilities in the area of posted workers was transferred from the Employment Service of Slovenia to the local administrative units. Finally, prior to this project, a single transparent national web site with comprehensive information on posting has not been set up and publications

containing coherent and detailed information for all stakeholders have not been published. Croatia, where posting of workers has been a relatively new phenomenon, has been facing similar problems: lack of comprehensive information for responsible authorities and social partners, problems with enforcement of the Directive, inconsistent monitoring of violations and problems with determining liability in the context of subcontracting, the question of developing national regulatory mechanisms to prevent violations, etc. On the other end, countries such as Belgium and Germany have had a more intensified experience with posting and have dedicated themselves to efficiently addressing the violations. In this respect, the Belgian labour inspectorate was a crucial partner in the project.

To fill the gap in Slovenia, project deliverables included: 1) a national web site<sup>4</sup> with comprehensive and transparent information on posting of workers for a variety of stakeholders: posted workers in/from Slovenia, employers/service providers, trade unions, officials of the competent public authorities and general public; 2) an e-Handbook and leaflets with detailed information on posting; 3) an expert report summing up and analysing the weaknesses related to the regulatory frameworks discussed at the project events. Another important part of the project has been the establishing of transnational cooperation, primarily between labour inspectorates, but also between trade union bodies and research institutions concerned with posting of workers. The following transnational events were held for this purpose:<sup>5</sup>

- 4 joint visits (including 1 joint inspection at the construction site in Brussels, Belgium) in Slovenia, Belgium, Croatia and Germany, with the aim of establishing and enhancing transnational networking and improve cooperation, information sharing and exchange of best practices between the officials of the competent public authorities and social partners.
- transnational round table in Ljubljana, Slovenia, for all associated institutions participating in the project, stakeholders, the general public and the media, intended for an exchange of best practice initiatives in regard to the information and administration systems, databases, IMI, detection of irregularities, violations and breaches of posted workers' rights across different sectors, occupational safety and health of posted workers, future transnational cooperation and related issues;
- transnational conference for all associated institutions participating in the project in Zagreb, Croatia, where the officials of the competent public authorities from Croatia, Belgium and Slovenia and trade union representatives from Croatia and Slovenia discussed the identified challenges in regard to posting, and researchers from Germany presented the labour market/posting challenges in Germany.

The final component of the project was the holding of training actions for competent public authorities and other social partners in Slovenia. The training actions were held in six regions across Slovenia and were intended to discuss the provisions of the Directive, the Enforcement Directive and applicable Slovenian laws, provide information on posting and respond to participants' questions. The courses were provided by two experts on posting from the Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities, one of whom was previously employed at the Slovenian Labour Inspectorate, a counsellor for migrants from the Organization for the Advocacy of Vulnerable Groups, and researchers from ZRC SAZU. The courses were attended by 433 employers or employers' representatives and public authority officials.

<sup>4</sup> <http://www.napotenidelavci.si/>

<sup>5</sup> The events were attended by 146 people.



**Table 1:** Project deliverables

Action 1	<p>Development of a coherent and transparent information system in Slovenia</p> <ul style="list-style-type: none"> <li>■ national web site in 4 languages</li> <li>■ e-Handbook</li> <li>■ information leaflets</li> </ul>
Action 2	<p>Organisation and implementation of transnational events/joint visits</p> <ul style="list-style-type: none"> <li>■ roundtable event in Ljubljana, Slovenia</li> <li>■ conference in Zagreb, Croatia</li> <li>■ 2 joint visits (Labour Inspectorate representatives) in Ljubljana, Slovenia and Zagreb, Croatia</li> <li>■ 1 joint visit (Labour Inspectorate representatives) with onsite labour inspection in Brussels, Belgium</li> <li>■ 1 joint visit (researchers and trade union body representatives) in Rostock, Germany</li> </ul>
Action 3	<p>Development and implementation of short training actions for competent public authorities and other social partners</p> <ul style="list-style-type: none"> <li>■ 6 training courses in 6 Slovenian regions-towns: Ljubljana, Celje, Sežana, Jesenice, Novo mesto and Maribor</li> <li>■ 1 national training course for public officials in Ljubljana-Smartno</li> </ul>

## 1.4 STRUCTURE OF THE REPORT

This report sums up and analyses the dilemmas, shortcomings and weaknesses related to the regulatory frameworks, types of abuses, best practices and cooperation initiatives that were discussed at the transnational events (Table 1, Action 2). The identified issues are placed within the framework of relevant academic and policy literature on the posting of workers. The following issues were the most intensely discussed and therefore covered by this report:

- the challenge of establishing and maintaining efficient transnational cooperation between labour inspectorates and the use of the IMI system for identification of possible irregularities in the posting process;
- the evolvement of the Posted Workers Directive, its amendments and the main issues it raises among different stakeholders;
- posting of workers in the context of social security, establishing minimum conditions for posted workers and the problem of social dumping;
- the overlooked aspect – in the Enforcement Directive, policy and academic research – of ensuring decent labour/working conditions and occupational safety and health at work for posted workers, especially in hazardous professions and sectors.

The concluding chapter provides final remarks and some recommendations to inform the policy dialogue in Slovenia and other EU countries.

## 2 TRANSNATIONAL COOPERATION BETWEEN COMPETENT PUBLIC AUTHORITIES

Transnational cooperation between the competent public authorities and social partners is the key to ensuring the implementation of the Directives, and the exchange of information on fraud, abuses and circumventions. Provisions to improve administrative cooperation between national authorities in charge of posting have been laid down in the Enforcement Directive, which has also called upon the Member States to introduce stronger regulations on letterbox companies and undeclared or illegal work activities, to simplify and improve access to information on terms and conditions of employment for both posted workers and employers, and to work towards improving cross-border enforcement of administrative penalties and fines (European Commission 2016: 9, 18). The Enforcement Directive also includes very clear instructions concerning the obligation to respond to requests for assistance from the competent authorities in other Member States within two working days in the case of urgent requests and within 25 working days in non-urgent cases (ibid.: 9). The medium through which such requests are issued is an IT-based information network known as the Internal Market Information System (IMI). The purpose of IMI is to link national, regional and local authorities of different Member States in order to enhance communication and exchange of data. The EC is also trying to enhance cooperation by providing funding for projects through the EaSi/PROGRESS platform, which enables joint visits, meetings and conferences at which representatives of competent national authorities can meet in person. On the completion of the PoW project, we are convinced that such transnational events provide a useful tool for enhancing cooperation, since they enable face-to-face meetings and provide a space for the spontaneous exchange of ideas, concerns and suggestions.

The transnational events held within the project brought together labour inspectors from the labour inspectorates in Slovenia, Croatia and Belgium. The purpose of the joint visits, meetings, conference and round table was to present how the three labour inspectorates operate in general and in cases of postings in particular. Due to their ten years of experience in monitoring posting of workers, the Belgian labour inspectors were able to provide answers to many questions and dilemmas experienced by their Slovenian and Croatian colleagues and proved to be an invaluable contributor to the overall success of the events. The Belgian labour inspectorate (LI) experienced a dramatic increase in the posting of workers to Belgium in the years following the millennium, often accompanied by exploitation of workers and conducted in contravention of Belgian labour laws. As a result, in 2005 the LI created specialized units for dealing with postings, and two years later introduced an online system of mandatory prior declaration of posted workers, called LIMOSA.<sup>6</sup> Since then, 800 to 1000 foreign employers have been subject to annual specialized screenings by the special units and, as a result of these inspections, thousands of workers have received back payments (Brussels, joint visit, 2016).

The work of the specialized units was presented at the project events in great detail. The specialized units are reactive in each Belgian province, with 3 or 4 inspectors in each being specially trained and assigned to the inspections concerning posting of workers. Each new inspector has to take a two-day theoretical course on how to conduct the inspections and undergoes

---

<sup>6</sup> According to the Limosa database, Belgium has an annual influx of 140,000 – 150,000 posted workers, who mainly come from the Netherlands, Poland, Portugal, Germany, Hungary, Bulgaria and Romania. More than 60 percent work in the construction sector (Brussels, joint visit, 2016).

a one-year traineeship, while the chief labour inspectors regularly participate in relevant EU projects (such as, for example, Eurodetachement). The specialized units have developed a 110-page-long manual on how to inspect foreign service providers, special interview forms and questionnaires for foreign employees and self-employed persons. They have also prepared generic letters for employers in several EU languages. In 2011, the specialized team handled 658 cases concerning foreign companies and 751 cases concerning Belgian companies. In 2015, these figures were 1282 and 1561, respectively (Brussels, joint visit, 2016).

During a visit to the headquarters of the Belgian Labour Inspectorate in Brussels,<sup>7</sup> the inspectors carried out a joint field inspection of a construction site in order to demonstrate the procedure in practice. Prior to the inspection, the construction site declarations and Limosa declarations were checked, as well as the registration database checkin@work, where all workers present at the construction site should be listed. In the inspection, the identities of employees and self-employed were checked, as well as A1 forms and work permits, residence papers, time sheets and pay slips. The employees and employers, as well as the construction site manager, were interviewed on issues such as paid salary and working hours. The field inspection was followed by a discussion of further procedures, including conducting possible IMI requests or pursuing other forms of international cooperation to collect the necessary information.

Mutual cooperation was subject to continuous debates during all of the transnational events. The Belgian inspectors pointed out that cooperation is in the interest of the receiving and sending countries, as well as the posted workers themselves. For the receiving country, this means less distortion of the labour market, more fair, genuine and legal posting and less unfair competition. The sending country benefits from the better recovery of social security tax contributions and less social security-related problems when posted workers return. And there are benefits for posted workers as well in terms of protection against a variety of violations of labour rights and ensuring decent working conditions and OSH-related issues (Brussels, joint visit, 2016). The Belgian labour inspectorate cooperates with their colleagues in other countries via the IMI system, which has been generally evaluated as a good tool for exchanging information, but one with significant shortcomings. Croatian and Slovenian labour inspectors have pointed out that urgent requests sent via IMI may indeed be necessary, especially in cases of postings where workers are deployed for a short period of time, but responding to IMI requests in two days is not feasible due to understaffing. There is also the issue of differences in the legal framework in the Member States and differences in the competences of the inspectorates. For example, there is a question of whether the national laws concerning confidentiality in penal matters allow the forwarding of information extracted from files such as criminal records, or whether the national laws concerning the protection of privacy allow the provision of information protected by this legislation. Often, the information provided is also too general to contribute to the pending investigation (Brussels, joint visit, 2016). As can be seen in Figure 1, the Belgian labour inspectorate sends out the most requests for information on postings, followed by France and Austria. On the other end, the countries receiving the most requests for information are Portugal, Romania and Poland.

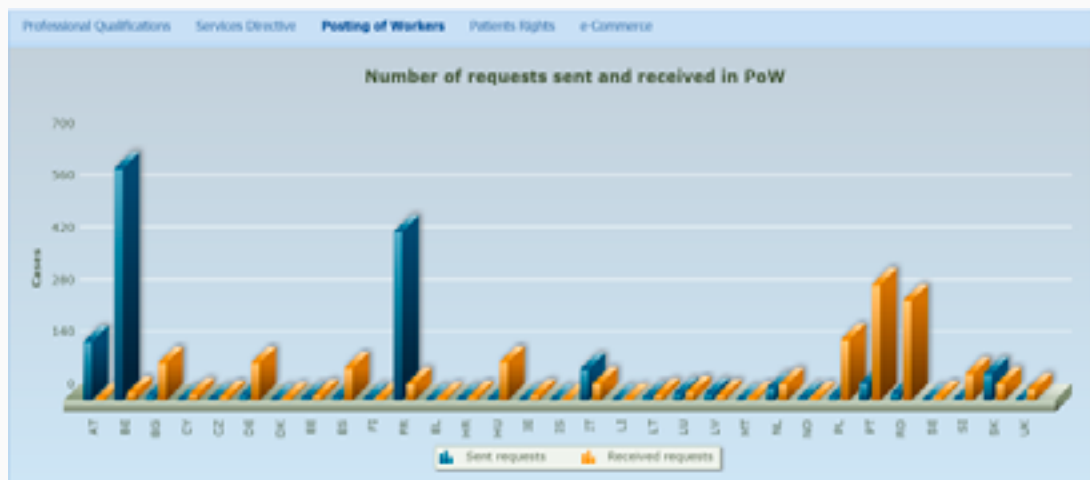
Apart from the use of IMI, there are other possibilities for cooperation. Bilateral agreements provide an important channel for sharing information and knowhow via single points

---

<sup>7</sup> 21-23 March 2016, Brussels, Belgium. Croatian labour inspectors, as well as a representative of the Slovenian labour inspectorate and two Slovenian researchers, were present at the inspection.

of contact, for holding regular meetings and conducting joint inspections. The Belgian inspectorate, for example, has signed bilateral agreements with France (2003), Poland (2007), Luxembourg (2008), Portugal (2009) and Romania (2013). It has also concluded a multilateral agreement with the Benelux countries in order to address in particular the issues of fictitious posting, letterbox companies and illegal temporary work agencies, share knowledge and conduct joint inspections (Brussels, joint visit, 2016). Concluding bilateral agreements is not in opposition to the Posting Directives and presents an additional tool for enabling more efficient cooperation in preventing fraud and safeguarding the rights of the workers. It also facilitates the exchange of data, which was labelled by the labour inspectors participating at the project events as one of the great weaknesses in EU cross-border cooperation.

**Figure 1:** Number of sent and received requests on postings, 1. 1. 2015 – 31. 12. 2015



**Source:** Internal Market Information System

Cooperation was also one of the main topics discussed at the expert conference *Promoting Decent Work, Better Compliance and Enforcement*,<sup>8</sup> where it was agreed that sustainable solutions can only be found if there is multilateral cross-border cooperation to prevent re-inventing the wheel or the creation of different wheels, if all of the stakeholders (state bodies and social partners) are involved, if all of the stakeholders are adequately equipped to play their role (in terms of mandate, staffing, capacity building), and if there is investment not only in detection and enforcement, but also in prevention (see Report of the Conference Promoting decent work). We also recommend that research be commenced on the issue of cooperation between stakeholders, in particular in the form of needs assessments, in order to create a comprehensive evidence base upon which the communication channels can be established. A systematic literature review indicates that such research has not yet been conducted.

<sup>8</sup> Amsterdam, the Netherlands, 8-9 February 2016; the conference was held within the framework of the Netherlands Presidency of the EU by the Labour Inspectorate of the Ministry of Social Affairs and Employment.

### 3 DO WE NEED A NEW DIRECTIVE ON POSTING OF WORKERS?

The directives that were adopted and implemented at the EU level were also among the issues discussed at the transnational project meetings, especially by the representatives from Belgium. As demonstrated by the early judgments of the European Court of Justice (ECJ), employee posting was an issue already in the late 1960s and 1970s, before the launch of the internal market. The practice of hiring temporary agency workers from a country with a cheaper social security scheme for the purposes of posting them to Member States with more expensive social security schemes was also widespread in this period (van Hoek and Houwerzijl 2012).

The Posted Workers Directive (PWD), adopted in 1996, established that posted workers are entitled to the statutory minimum conditions of either their host or sending state, whichever is better from the workers' perspective. In this regard, it extended national regulations of employment to transnational subcontractors (Berntsen and Lillie 2015). The principle objection to the PWD by the proponents of the equal remuneration principle was that the domestic and posting companies were not in an equal position. The latter were only obliged to comply with the legally defined host country minimum standards, while the domestic companies had to comply with additional regulations and collectively agreed provisions. The gap between the wages of posted and domestic workers was thus particularly evident in labour-intensive sectors such as construction (European Commission in Bernaciak 2016).

The PWD regulates three variants of posting: the direct provision of services between two companies under a service contract, posting in the context of an establishment or company belonging to the same group and posting through hiring out a worker via a temporary work agency established in another Member State. In all of these cases, the PWD stipulates certain mandatory terms and conditions to be applied by foreign service providers, which include (Article 3(1) of the PWD): maximum work periods and minimum rest periods; minimum rates of pay, including overtime rates; minimum paid annual holidays; the conditions of hiring-out workers: health, safety and hygiene at work; protective measures in favour of pregnant women, young mothers, children and young people; equality of treatment between genders; and other provisions of non-discrimination. But, since posting falls within the framework of the free provision of *services* and is characterised by temporariness (the maximum period of posting is 24 months), posted workers are subsumed under the social security and income tax regime of the sending country. This creates several loopholes that enable some employers to increase profits at the expense of the workers. For some time, a popular cost-containment measure by employers has been to post workers via countries with low social security contributions, e.g. Polish workers via Cyprus, thus contributing to the budget of a country that the workers have never lived or claimed benefits in. And there is a variety of 'fake' postings occurring in order to avoid social security payments entirely, such as the submission of fake A1 forms<sup>9</sup> and posting via letterbox companies that are set up in the Member States with the cheapest labour. They do not carry out significant economic activity in their home countries, but have a primary purpose to post workers abroad and take advantage of lowest employee labour taxes (Maslauskaite 2014). The Enforcement Directive was designed to tackle these and other problematic issues related to the fighting and sanctioning of circumventions, fraud and abuses, simplify

---

<sup>9</sup> The A1 form is a formal statement on the applicable social security legislation. It testifies that the employer pays social security contributions for a posted worker in the Member State of origin (European Commission 2016).

and improve access to information on terms and conditions of employment and improve administrative cooperation between the Member States (European Commission 2016).<sup>10</sup>

The Posting of Workers Enforcement Directive was adopted in 2014 and was aimed at ensuring the implementation of existing posting regulations and improving intergovernmental cooperation in tracking practices of fraud. It provided new and strengthened instruments to fight and sanction circumventions, fraud and abuses in the area of posting. It particularly addressed the problems caused by so-called 'letterbox companies' and increased the ability of Member States to monitor working conditions and enforce the applicable rules. This was done by listing the qualitative criteria for demonstrating the existence of a genuine link between the employer and the Member State of establishment. It also included provisions to improve administrative cooperation between the national authorities that are in charge of postings (Proposal for a Directive..., 2016). The Enforcement Directive was to be transposed into the EU Member States' legal systems by June 2016. Its effects are yet to be measured.

As early as March 2016, the Commission introduced the so-called 'targeted revision' of the original PWD. The main proposed modifications are to set the maximum duration of posting to 24 months, extend the coverage of universally applicable collective agreements to posted workers, and allow for additional conditions to be set for subcontracting companies. The most important change was that posted workers would not be guaranteed only the host-country minimum wage, but would receive remuneration equal to that of domestic workers, including bonuses, holiday and seniority payments (Bernaciak 2016; Proposal for a directive..., 2016). It was believed that the introduction of the equal wage principle would prevent the exploitation of posted workers and ensure they are treated with dignity, as the notion of fairness in the context of wage differences between posted and domestic workers was at the forefront of discussions on this issue (Bernaciak 2016).

In the context of a targeted review of the PWD aimed at preventing social dumping and abuse of the free movement of services, the competing and often conflicting viewpoints of the various stakeholders are quite evident. Trade unions, European SMEs and Western European governments generally supported the proposed changes, while the new Member States' governments, employer organisations and European associations representing larger companies disapproved of the proposal (Bernaciak 2016). Proponents of the equal wage principle pointed to the positive societal reception of the proposed rule, which would help to restore wider trust in the European project. The European Trade Union Confederation (ETUC) has written to the EC that 'the current directive has been undermined by a series of court judgments, and a revision is absolutely necessary to re-establish the fundamental principle of equal pay for equal work. This is in the interest of all workers, especially posted workers and honest companies. Using posting to drive down wages and undermine working conditions benefits no one except bad employers.' (ETUC 2016) Seven EU Member States (Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Sweden) have expressed their support for a modernisation of the PWD. They were of the view that the provisions on working and social conditions, especially remuneration, should be broadened, a maximum duration of posting should be established, the reliability of the information base on the A1/E101 form strengthened, and cross-border cooperation between inspection services improved (Proposal for a Directive..., 2016: 5).

---

<sup>10</sup> It should be noted that, according to the EC, the Enforcement Directive and the proposed (revised) PWD are complementary and mutually reinforcing (European Commission 2016).

On the other hand, opponents of the equal pay for equal work principle argue that freedom to provide services on a cross-border scale was one of the fundamental principles of the EU internal market, and do not view such cross-country differentials as problematic. They also called for better enforcement of the existing laws, not new ones, as was acknowledged in a letter from nine new member states to the Commissioner for Employment, Social Affairs, Skills and Labour Mobility (cited in Bernaciak 2016). Among the fears of those not in favour of the revisions was a concern that the equal remuneration principle would lead to a considerable reduction of cross-border service flows and an increase in companies' expenses, and would consequently result in a wave of bankruptcies. They argued that new rules could actually lead not to preventing abuses but to further exploitation. For instance, workers who lost their jobs would actually enter the old EU member states via other channels, for example, fake self-employment (cited in Bernaciak 2016).<sup>11</sup> This phenomenon was mentioned as problematic during the national and transnational project events. For instance, during the project roundtable in Ljubljana, the Belgian Labour Inspectorate noted an increase in self-employment of posted workers, but with no activity in the sending country (Ljubljana, project roundtable, 2015). Regarding this issue, Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland, Slovakia and Romania, in the joint letter to the European Commission, claimed that the equal pay for equal work principle may be incompatible with the single market, as pay rate differences constitute one of the legitimate elements of competitive advantage for service providers. They also maintained that no measure should be taken to revise the links between posted workers and the social security coordination, as the posted workers should in their view remain under the legislation of the sending state for social security purposes (Proposal for a Directive..., 2016: 5).

The responses to the proposed new rules regarding posting of workers, as Bernaciak (2016: 4) maintains, actually resemble the discussions on equal wages in the late 1980s and 1990s, when intra-Community differences in wage levels and factor productivity also translated into diverging preferences with regard to the extent of social protection that should be granted to posted workers. Southern states were also keen on maintaining their competitive advantage when sending workers to the old Member States in the 1990s, while the receiving countries in the Northeast were in favour of regulatory measures to prevent downward wage pressures on their labour markets.

In discussing the future of the proposed PWD revisions, Bernaciak (2016) claims it is mainly a political issue and process, as the proposal actually envisages putting in place a new rule regarding permissible and legal company behaviour. Issues such as non-payment of workers, 'letterbox' companies and practices of fraud by some temporary work agencies will not be solved by the principle of equal pay for equal work (Bernaciak 2016). In this political process, Bernaciak emphasises the role of national and European employer associations, which could play a key role in the creation of a more predictable and transparent market environment.

---

<sup>11</sup> Fake self-employment means that temporary work agencies and/or other posting companies place workers who assume self-employed status voluntarily or forcibly, but in reality there is a link of subordination (Werner in Maslauskaitė 2014: 14).

## 4 MOBILITY YES, SOCIAL DUMPING NO

The title of this chapter was the title of a presentation made by a trade union representative from Croatia during the project conference in Zagreb. In her presentation, she showed that the EU project actually gave preference to economic over social liberties and rights, and that the violations in the area of posted work actually undermine the system of industrial relations in the countries where the posted workers perform their work. Although not limiting the process of social dumping only to the foreign labour force (e.g. posted workers) by emphasising that social dumping is also experienced by 'native' workers, she nevertheless pointed to various vulnerabilities that foreign workers experience in the countries where they perform work.

14

The gradual removal of barriers to the free movement of both persons and services, the intensification of competition, including wage competition and the ability of companies to act within regulatory regimes, have become one of the core elements of the current labour market in the EU (Berntsen and Lillie 2015: 44). Although the term 'social dumping' appears regularly in public discourses and policymaking circles to describe the transgression of such normative boundaries by firms in order to become more competitive, it is usually used in an uncritical, ambiguous and vague manner (Bernaciak 2014; Berntsen and Lillie 2015). This fact has apparently discouraged scholars from addressing the notion in more detail, leaving unclear both the mechanisms behind this notion and also its relation to socioeconomic changes in Europe, particularly the process of EU integration. Nevertheless, it seems to have influenced the strategies of stakeholders and government policies in the area of labour relations. This fact is especially evident in the introduction of transition periods temporarily restricting the access of the workforces of candidate and later new EU countries to the labour markets of the old EU member states (Bernaciak 2014: 5). In this vein, it is imperative to explore the mechanisms underlying social dumping practices. Bernaciak (2014: 5-6) defines social dumping as 'the practice undertaken by self-interested market participants of undermining or evading existing social regulations with the aim of gaining a competitive advantage'. Berntsen and Lillie (2015) ascribe a strongly normative dimension to the term social dumping, and describe it as a practice of transgressing certain normative boundaries in order to make firms more competitive. Although acknowledging that social dumping is inherent to the capitalist system of production and accumulation and is practiced by different social actors in a variety of market settings, Bernaciak (2014) argues that two major EU integration projects – the creation of the Internal Market and the EU enlargement to the south (in the 1980s) and more recently to the Central and Eastern European (CEE) countries – have led to intensification of price-based competition and have provided market actors with additional incentives and strategic opportunities to contest or circumvent transnational and national social regulations. There is an inherent tension in the European project between promoting the free movement of goods, capital, services and labour (the single market) and maintaining social cohesion within and across member states (the European Social Model) (Lindstrom 2008). Such tensions have intensified with the process of EU enlargement and have figured prominently in debates over the European Commission's proposal to liberalise the service sector. The image of the 'Polish plumber' has become emblematic of such post-enlargement concerns (Lindstrom 2008; Afonso 2009).<sup>12</sup> The EU enlargement, as argued by Lindstrom (2008: 6) could potentially threaten the European Social Model in several ways. Due to their lower wages and higher

---

<sup>12</sup> Although it is worth taking into account Berntsen's observation (2015: 374) that during the transition periods after the 2004 and 2007 expansions to the EU, posting was used as a way to bypass the need for work permits for workers from the new Member States.



rates of unemployment, new member states put downward pressure on wages in the EU as a whole as Western European firms move their production to the east, which places pressure on western labour to reduce its costs while east European workers seek higher wages abroad. As illustrated by the data provided by the Belgian Labour Inspectorate, the wage gap is estimated to range from 25% to 35% in the construction sector in the Netherlands and Belgium and up to 50% in the road transport sector in Belgium (Brussels, transnational visit, 2016). The levels of regulation and social protection are also considered to be lower in the new EU member states, contributing to fears of social dumping most apparent in the new member states' generally lower tax rates, laxer environmental and labour standards and weaker social provisions (Lindstrom 2008: 7). When in response to increasing fears of social dumping and increased competition the EC introduced the 'country of origin principle', stating that a service provider (a firm or an individual working in another EU member state) would be subject to the laws of its home state, the proposal was met with a great deal of ambiguity. Among the most frequently expressed concerns was the possibility of setting up letterbox companies in new member states in order to take advantage of lower wages and weaker regulations there (Lindstrom 2008).

As evident from such discussions, the economic disparities between the old and the new EU countries seem to have become a matter of the greatest concern. In this vein, the post-enlargement European market offered fertile ground for the evasion of social regulations. This was apparent during both phases of EU enlargement, and is demonstrated by numerous highly prominent legal disputes in this area. With regard to cross-border service provision, the post-enlargement cases of Greek, Portuguese and Spanish firms that initially posted their workers to other member states and paid them in line with their home-country standard rates are worth special mention. At the origin of the lawsuit between a Portuguese construction company and the French immigration service in the seminal 1990 *Rush Portuguesa* case was the question of whether the Portuguese company could bypass restrictions on the free movement of workers for workers from Portugal. Such restrictions were implemented in a transitional phase for workers from Portugal and Spain after both countries joined the EEC. The Portuguese company offered its services and brought its labour force as part of the free movement of services provision that was allowed during this transitional phase. The ECJ ruled that the Member State in whose territory the services are performed may not impose restrictions on the supplier of services such as the recruitment of workers and/or obtaining of work permits for them. The focus on only the basic rules established by the PWD and subsequent ECJ rulings opened the door to companies' exploiting the difference between minimum and standard levels of protection. In this way, combined with the minimum-protection approach, employee posting has been particularly prone to social dumping (Bernaciak 2014).

Two prominent and mutually related court cases are exemplary of such debates over the liberalisation of services: the *Laval* and *Viking* cases.<sup>13</sup> After the ruling of the court in Sweden that the union actions that led the Latvian company renovating a school outside Stockholm into bankruptcy were in fact legal, the Latvian firm appealed to the ECJ to decide whether the free movement of services principle was violated. The ECJ ruled that any industrial (union) action to eradicate a cost advantage could be considered as a restraint on free movement, and any attempt to interfere with strategies based on labour

---

<sup>13</sup> *There have of course been other important court cases relating to workers' rights with regard to cross-border mobility, such as the Ruffert and Luxembourg cases, but the Laval and Viking cases are certainly the most well-known and widely discussed among both researchers and policy makers.*

costs constitutes an a priori restriction of free movement, but such a trade union action could be justified in cases where the public interest of protecting workers prevailed. This was supposedly not the case in the Laval judgment (Woolfson et al. 2010: 339).

As Dølvik and Visser (2009: 514) observe, 'the right to industrial action [in the ruling] appears secondary to that of free movement'. Consequently, Woolfson et al. (2010) claim that the Laval case could have a strong bearing on industrial relations in those states that rely on strong labour market actors to set labour market standards that are secured within a framework of collective bargaining. To illustrate, the court also ruled that in this case the Swedish unions' boycott violated the principle of free movement of services, since the unions' demands exceeded minimal protections under national labour law. The unions' right to take industrial action was thus recognised by the EU law while the national (Swedish) collective bargaining system was not. This could have larger implications for the existence of the European Social Model (Lindstrom 2008; Dølvik and Visser 2009; Berntsen and Lillie 2015). Berntsen and Lillie (2015: 48) argue that the list of work conditions posted workers are entitled to was comprehensively limited by the Laval judgments to only those standards that are explicitly mentioned in the 1996 PWD and set down in national law. From such a ruling, it followed that the full range of benefits accorded to the 'native' population and individual migrants could not be afforded to posted workers (ibid.).

In the Viking case, a Finnish ferry company (Viking) sought to register one of its vessels in Estonia in order to take advantage of its lower wage rates by employing an Estonian crew. In this case, the ECJ ruled that a collective action may be legitimate if its aim is to protect jobs or working conditions and if all other ways of resolving the conflict were exhausted. It argued that the strike action threatened by the two unions to force the employer to conclude a collective agreement amounted to a restriction of Viking's freedom of establishment. If Viking was prevented from reflagging its vessel in Estonia then it was also denied the freedom to compete with other Estonian-based companies conducting business under lower minimum wage rates and less strict regulations. The fight against the use of so-called flags of convenience could thus be interpreted as a restriction of the right of freedom of establishment (Lindstrom 2008: 19).

The fundamental issue in both court disputes was whether the union's industrial action, including the strike, to protect collective interests in order to prevent companies from taking advantage of lower cost Latvian and Estonian labour, violates EU laws on free movement of services across borders. The cases point to emerging divisions between old and new member state governments, with the former primarily supporting the employers and the latter the unions (the more liberal states, such as the UK, were a notable exception in this regard). On the other hand, both cases created opportunities for transnational mobilisation around two visions of the EU: one committed to further economic liberalisation and the other to constructing an enlarged Social Europe (Lindstrom 2008: 1). The cases also involve issues related to EU enlargement, especially the legality of actions by both state and non-state actors to prevent social dumping. They also revealed internal tensions within the European Commission that in its observations on the cases took a compromise position, neither privileging the free movement of services nor the absolute freedom of the right to collective action. The EC actually largely allowed the ECJ to decide on this contentious issue. Its judgements could be interpreted as privileging market liberalisation and boosting regime competition over prevailing national social models and rules (Lindstrom 2008; Berntsen and Lillie 2015). As Woolfson et al. (2010: 346) argue, the erosion of the capacity to defend core national labour conditions as a result of the Laval case opens the way further to the

'unprotecting' of migrant workers and of vulnerable undocumented labour on a wider scale. This bears significant implications for the implementation of national labour standards in a broader sense.<sup>14</sup> Such a minimalist interpretation of the posting rules can, in Cremers' (2013) view, neither guarantee the equal treatment nor protect the rights of temporary posted workers. Additionally, the actions to be taken after the rulings in both cases were not directed against a Member State, as is usually the case in free movement cases, but at labour unions. These are governed by private, not public law, and generally enjoy a substantial amount of autonomy guaranteed by both national and European constitutional provisions (Reich 2008).

Kelemen's claim (in Lindstrom 2008: 21) that 'the combination of EU-driven economic liberalisation and fragmented national regulatory traditions is leading to 'adversarial legalism' in the EU whereby private actors are increasingly pursuing their regulatory or anti-regulatory agendas through the courts' could also be of value here, as the ruling of the ECJ provided some legal grounds to seek legal redress against union actions in both cases (ibid.). It is also worth taking into account the fact that in a wider perspective, the political conflicts surrounding the well-known Viking and Laval cases and the posting of workers do not necessarily conform to the old/new member state divisions. Instead, they point to the discrepancies between further economic liberalisation and the vision of the enlarged social Europe that could be viewed as processes subject to constant negotiation and change (Jepsen in Lindstrom 2008: 3). Nevertheless, Lindstrom's observation (2008: 4) that 'most 'hard' legislation proposed and enforced by the Commission relates to furthering the single market, while social goals remain 'soft', subject to voluntary coordination, benchmarking and best practices' merits further attention. In practice, as Lindstrom states (2008: 8), the harmonisation of the single market indeed proceeded faster than the harmonisation of labour and social policies, which was also the priority of the EC. The issue of huge variations in terms of political-economic institutions among both the old and new EU member states could not be examined further in this report. Just to provide an example: largely absent in the ECJ hearings and the wider public debates in the Viking and Laval cases were the stances of new member states such as Slovenia, Hungary and Slovakia, that are deemed by Lindstrom (2008: 20) as those with a weaker commitment to a liberalising agenda. Cremers et al. (2007: 526) also note that the 'diversity of national industrial relation systems caused a regulatory quandary when it came to find 'neutral' ways of defining the principles of equal treatment and free and fair competition.' In this vein, Eichhorst (1998: 339) calls for research exploring how national and supranational regulatory regimes interact, inhibit, promote or reinforce each other. As Berntsen and Lillie (2015: 45) argue, 'industrial relations practices and legal rules are often applied in national contexts where they conflict with formal and/or informal industrial relations norms and laws. This patchwork of EU and national regulations results in 'grey zones' where actors do not necessarily know the rules or feel invested in them'.

As mentioned above, the existence of letterbox companies that are established in EU member states with lower levels of social protection and lower labour standards and do not have any genuine business activities in the posting state is also a pressing issue, as was observed especially by representatives of the trade union and also of labour inspectorates during the projects' national and transnational events. Such companies are created for the sole purpose of recruiting workers and posting them to other EU member states (Berntsen and Lillie 2015; Bernaciak 2016). This fact was highlighted,

---

<sup>14</sup> In this regard, Thörnqvist and Woolfson (2012) provide an important observation on the influence of tendering on working conditions. They maintain, drawing on the Swedish case, that the rigidity of tendering systems and the consequential need to provide competitive bids could mean further deteriorating terms and working conditions.

for instance, by a comprehensive study of the European Transport Workers' Federation (ETF) that interviewed around 1,000 professional drivers from 2008 to 2012 (ETF in Berntsen and Lillie 2015: 53). Berntsen and Lillie (2015: 53) refer to such practices as 'strategic posting' and define the notion of regulatory arbitrage as the exploitation of differences between national systems within the constraints set out by the PWD.

They define another form of social dumping as regulatory conformance (ibid.: 55), where the companies conform to the formal industrial relations system, but manipulate the rules for cost advantage and thereby achieve significant labour-cost savings. This phenomenon is also related to the ethnicization of labour markets or to the redesign of jobs in ways that make them less desirable due to the fact that a cheap labour force from abroad is willing to perform them. Lillie (2012), based on evidence from the shipbuilding and construction industries in Finland, claims that transnational subcontracting is creating labour market segmentation and undermining conditions for domestic workers by introducing direct price competition with workers employed under foreign conditions. He maintains it has also provided Finnish employers with an opportunity to challenge its bargain with its native workforce and sometimes circumvent collective bargaining agreements. Similar findings are reported by Woolfson et al. (2010), who examine Swedish industrial relations and conclude that a potential unregulated secondary labour market could emerge, characterised by lower wages and poorer working conditions for migrant workers, and facilitated by weak labour inspection and enforcement, especially in sectors to which low-skilled migrants were recruited recently. Lillie and Berntsen (2016), in their case study of the so-called 'hyper mobile' (migrant and posted) workers in the construction industry in the Netherlands, also note that the subcontracted nature of the industry, which generates fierce inter-company competition between lower level subcontractors, and the current East-West and South-North labour supply system also put pressure on work standards and create a pool of contingent labourers.

It is also worth noting that social dumping is not to be viewed as solely a company and/or state strategy/practice, but the role of workers in furthering social dumping, although controversial and indirect, is also to be taken into account (Berntsen and Lillie 2015; Bernaciak 2014). States provide 'windows of opportunity' in social dumping practices by easing regulatory constraints and introducing market mechanisms to areas previously protected from market pressures (Bernaciak 2014: 25). In this vein, Berntsen and Lillie (2015) argue that firms react to government incentives when they engage in social dumping practices. They also extend this notion to temporary work agencies that they view as a part of the spectrum of an inevitable presence in the regulatory environment that permits and promotes their activities. Kvist (in Berntsen and Lillie 2015: 47) describes this as a 'dual development' whereby the EU puts pressure on existing national social standards via various competitive mechanisms, but also provides EU citizens with access to EU and national-level rights through EU legislation and jurisprudence.

However, in the absence of systematic micro-level evidence it is difficult if not impossible to draw a clear line between worker exploitation and practices that are not in line with the existing norms but are nonetheless viewed as 'permissible' by the workers. For example, in the case of concession bargaining, they seek to obtain a competitive advantage and certain level of job security by compromising on wages and working conditions (Bernaciak 2014: 25). To further support this argument, the findings of a study that examined the working and living conditions of posted workers in five selected countries (Belgium, France, Germany, Sweden and the UK) clearly demonstrate that the workers were aware that they were cheaper than the domestic labour force, but this was to some degree acceptable to

them as long as the wages remained significantly above their country of origin levels. For most of the interviewed workers, posting was a part of a project to improve their lives (Clark 2012). In a similar vein, Berntsen and Lillie (2014) maintain that the workers' role in terms of monitoring and enforcing labour conditions is generally relatively passive, which they interpret as the logical outcome of the temporary and insecure nature of their employment.

As demonstrated in the debates over the new PWD Directive described in the previous chapters, concerns over the undesirable restrictions on the EU economic freedoms are still prevalent among certain stakeholders (see also Bernaciak 2014: 26). Bernaciak (2014: 6) maintains that in the short run social dumping exerts downward pressure on wages and working conditions in Europe, but if pursued over the long run by a large number of actors, it could considerably weaken the beneficial social effects of economic growth, threaten social cohesion and even lead to the disintegration of the market order (Bernaciak 2014: 6).

## 5 LABOUR/WORKING CONDITIONS AND OCCUPATIONAL SAFETY AND HEALTH AT WORK (OSH)

The aim of OSH is prevention of occupational risks by promoting the highest degree of safety and health at workspaces. OSH is not only concerned with the necessity of adopting such straightforward measures as providing safe equipment and protective clothing but also about ensuring workers' overall physical, mental and social wellbeing (International Labour Organisation). The 2016 ILO campaign World Day for Safety and Work, for example, has drawn attention to the changing nature of work and increasing pressure to meet the demands of modern working life, which is inextricably connected with the emergence of psychosocial risks such as increased competition, higher expectations on performance and longer working hours – these lead to an increase in work-related stress and have a significant effect on the health and wellbeing of workers. OSH, therefore, is concerned with eliminating hazards that can lead to work accidents and hazards that can lead to poor health.<sup>15</sup> In the EU, the Member States have adopted specific national laws on ensuring OSH which have been harmonized with Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work and Directive 92/57/EEC on the implementation of minimum safety and health requirements at temporary or mobile construction sites. The European Commission has also adopted a Strategic Framework on Health and Safety at Work (2014-2020) with identified key challenges and strategic objectives in the field. None however is particularly concerned with migrant or posted workers (see EU Occupational Safety and Health Strategic Framework).

---

<sup>15</sup> *Examples of hazards that can lead to work accidents are work equipment related (unguarded machinery, machine movement, walking on slippery surfaces), work practices related (heavy lifting, working at heights, tasks involving awkward movement or posture), and use of electricity related (overhead electric lines, electrically operated equipment with bad insulation). Hazards that can lead to poor health include handling chemical substances (inhalation, ingestion and skin absorption of a material hazardous for health), exposure to physical agents (noise, extreme temperatures, electromagnetic radiation), exposure to biological agents (viruses, bacteria, fungi), inadequate ergonomic conditions (awkward postures, fast paced work, repetitive tasks, insufficient rest period), psychosocial hazardous situations (stressful tasks, job insecurity, isolation, mobbing) (OSHwiki).*

OSH of posted workers is regulated by Article 3 of Directive 96/71/EC concerning the posting of workers in the framework of provision of services, and is inextricably linked to the assurance of decent labour/working conditions. The labour inspectors from Belgium, Slovenia and Croatia agreed that serious infringements in matters of OSH go hand in hand with underpayment, excessive working time, lack of rest periods, lack of preventive measures, non-compliance with regulations concerning social security and health insurance and underestimating the challenges concerning OSH in culturally and ethnically diverse workspaces. In other words, the high rate of accidents may also be attributed to fatigue due to long working hours and stress-related conditions, the failure to provide OSH training, failure to provide translations of health and safety rules and lack of necessary working equipment. They warned that this inevitably leads to a higher rate of work-related accidents, especially in high-risk, hazardous sectors, and can have short-term and long-term effects (i.e. burnout, disabilities, chronic conditions) on the health of posted workers. Since posted workers predominantly provide services in hazardous sectors such as agriculture, construction and mining, and/or are exposed to hazardous agents such as chemical substances or radiation, they are particularly vulnerable to accidents and occupational diseases. Their observations are in line with ILO and EU-OSHA studies, which highlight several reasons why OSH is of special importance for migrant workers: high employment rates of migrant workers in high-risk sectors, language and cultural barriers which require specific OSH communication, instructions and training approaches, and frequent overtime work which makes them more prone to occupational diseases and injuries (ILO 2004, European Agency for Safety and Health at Work 2007).

While current research and policy-oriented initiatives tend to focus on issues such as tax avoidance, fictitious postings, social benefit frauds and challenges in establishing cooperation and information sharing on breaches of the relevant Directives between national competent authorities via the IMI system, more attention should also be placed on the assurance of decent working conditions, occupational safety and health (in particular the assessment of health-related risks), prevention measures and monitoring. Literature on OSH in the context of posting is scarce, with the notable exception of Cremers' (2011) study of the working and living conditions of posted workers, and substantially fragmented. Data and conceptual frameworks must therefore be drawn from the studies on OSH of migrant workers (European Agency for Safety and Health at Work 2007, Sargeant and Tucker 2009), a study on the precariousness of posting jobs (Berntsen 2015) and studies on the impact of subcontracting/outsourcing on OSH (Jorens et al. 2012, Mayhew et al. 1997).

A good tool for assessing the OSH vulnerabilities of migrant workers, including posted workers, is the so-called 'layer of vulnerability framework' (Sargeant and Tucker 2009). The framework is used to identify the risk factors and thus indirectly contribute to the effectiveness of institutional responses. It is particularly useful because it recognizes the heterogeneity of migrant workers in terms of their legal status and personal characteristics when identifying vulnerabilities. Failure to declare work performed by posted workers and accompanying social frauds, for example, can have a significant impact on the OSH and wellbeing of posted workers. The labour inspectors, trade unions representatives and NGO representatives participating at the transnational events reported cases where employers ignored or downgraded injuries of posted workers in order to avoid paperwork or to conceal irregularities in the posting procedure. There have been cases where injured posted workers were transported from the country where they were providing services to a neighbouring country for medical assistance, in order to avoid a labour inspection that would result in a fine (Brussels, joint visit, 2016). Dependence on the employer in

cases of undeclared work is significant, since it generates precariousness that involves “instability, lack of protection, insecurity and social or economic vulnerability” (Rodgers and Rodgers in Berntsen 2015: 377) and prevents interactions with the host society. The labour inspectors noted that due to the significant wage disparities in the EU Member States, workers from lower-income countries tend to intentionally ignore or downplay irregularities concerning their legal status and are reluctant to report violations of OSH-related issues for fear of losing their jobs. They are often willing to work long hours and in substandard working conditions, often at the expense of experiencing work-related stress and injuries, developing acute and chronic illnesses and temporary or life-long disabilities.

The labour inspectors and union representatives agreed that posted workers in hazardous sectors are usually less likely to have received OSH training or instructions. Due to their inability to speak the language of the host employer, they are also unable to fully understand instructions, read warning signs, communicate concerns and learn about regulatory protection in place in order to make complaints or voice their concerns regarding safety and health. Some UK studies on OSH of migrant workers stress the lack of understandable training and protective clothing and argue that “risk assessments bearing in mind migrant workers (cultural differences and language barriers) are hardly done” (European Agency for Safety and Health at Work 2007: 29). Premji et al. (2008) argue that the inability to communicate at work can also interfere with the supportive relations at work, which in itself can adversely affect workers’ health.

The health, well-being and job satisfaction of posted workers have not yet been subject to research. More has been done in the field of occupational diseases and health of migrant workers in general. Several researchers have undertaken research on occupational diseases and the health situation of migrant workers in Germany (see European Agency for Safety and Health at Work 2007: 33) and found that Turkish migrants in particular are mostly working at workplaces with high health risks and physically demanding tasks that lead to a higher percentage of diseases of the ears and the musculoskeletal system. An Austrian study found that lack of knowledge of the functioning of the Austrian health system and a lack of language skills account for the fact that migrants tend to make use of health services at a very late stage, which can contribute to the genesis of chronic diseases (Pochobradsky et al. 2002). In the UK, a significant association between work-related stress and ethnicity was found (Ruhs 2005), with migrant workers experiencing more stress due to stigmatization and racial discrimination at work. A Swedish study found that the rates of burnout among immigrants were almost twice as high as those among Swedes. Working conditions, such as excessively high job demands and mobbing (bullying), were related to burnout (Hallsten et al. in European Agency for Safety and Health at Work 2007: 36).

Given the significance of the topic, which has been widely acknowledged by labour inspectors, trade union and NGO representatives, research on OSH of posted workers needs a fresh impetus. The EU has taken a step in this direction by approving the financing of a two-year transnational project *Occupational Safety and Health of Posted Workers: Depicting the Existing and Future Challenges in Assuring Decent Working Conditions and Wellbeing of Workers in Hazardous Sectors (POOSH)*.<sup>16</sup>

<sup>16</sup> The project will commence in January 2017, within the framework of the EaSi Programme, PROGRESS axis. The lead partner is the Research Centre of the Slovenian Academy of Sciences and Arts (ZRC SAZU); other partners include: The National University of Political Studies and Public Administration, Centre for European Studies on Human Migration (Bucharest, Romania); European Centre for Social Welfare Policy and Research; Work, Wealth,

The project aims at 1) providing comprehensive research on OSH-related vulnerabilities of posted workers and regulatory protection in place in nine EU countries covered in the project; 2) enhancing transnational cooperation between national competent bodies, social partners and NGOs concerned with the OSH and labour/working conditions of posted workers, with the aim of exchanging best practices, experience, discussing possible forms of further cooperation, improving cooperation via the IMI system, facilitating multilateral initiatives leading to better monitoring and response to violations of labour rights, and developing policy recommendations; and 3) improving access to and quality of information on decent labour/working conditions and OSH of posted workers for employees, national competent authorities and posted workers themselves.

## 6 CONCLUDING REMARKS

Although the proportion of posted workers and the absolute numbers of posted workers indicate that posting is a relatively small phenomenon on European labour markets, its economic importance in filling temporary shortfalls in the labour supply in certain sectors (for example, construction and transport) and occupations has been acknowledged by the European Commission (in Cremers 2013: 202). This report highlighted a considerable gap between A1 registration data and the real number of postings in EU member states, with the actual number of postings being up to three times higher than the number of A1/E101 social security declarations submitted. These forms are submitted per posting and not per person, and they are often filled out incorrectly (Berntsen 2015). Also, particularly in short-term postings, some companies do not submit this form, postings of above 12 months are not considered as postings in terms of social security, and there is no information on undocumented postings (Study on the economic and social effects..., 2011; Maslauskaitė 2014). A new initiative in this area is the European Platform to Enhance Cooperation in Tackling Undeclared Work, which was launched in 2016. The network aims at turning undeclared into declared work, thus ensuring social protection for workers that work in various kinds of risky job arrangements, including dependent work relationships hidden as self-employment. The Platform, chaired by the EC, will discuss ways and means of improving policies and measures relating to undeclared work and fostering cooperation between national authorities and other actors, including with regard to the cross-border aspects of undeclared work (European Commission 2016). The importance of the initiative was also acknowledged by the Belgian labour inspectorate during the transnational visit in Brussels (Brussels, joint visit, 2016).

As also highlighted at the project conference in Zagreb, the absence of statistical data on postings is due to a lack of systematic tracking of and reporting on such statistics by the competent authorities (Zagreb, project conference, 2015). It is therefore imperative that administrative procedures regarding the posting of workers are no longer based on one-sidedness but instead on cooperation between the EU Member States involved. In this regard, the role of the receiving member state could also be enhanced, as it could have

---

*Welfare Programme (Vienna, Austria); Ca' Foscari University of Venice, Department of Philosophy and Cultural Heritage (Venice, Italy) and University of Rostock, Chair of Business, Economics and Entrepreneurship Education (Rostock, Germany). A variety of social partners will join the project as associates: Slovenian Ministry of Labour, Family, Social Affairs and Equal Opportunities; Ministry of Labour and Pension System of the Republic of Croatia - Labour Inspectorate; Federal Public Service Employment, Labour and Social Dialogue (Belgium); European Trade Union Institute (ETUI, Belgium); Association for Employment, Dialogue and Migration (CONNECT, Romania); Federazione Italiana Lavoratori Legno Edili e Affini (FILLEA CGIL, Italy).*



the real possibility to verify the legality of the posting as well as to lay down provisions in the event that an A1 declaration is not submitted. It would thus be sensible to examine the possibilities and desired effects of further enhanced electronic exchange of information and data (Belgian Government 2015; Study on the economic and social effects..., 2011). Also, as emphasised during the project meeting in Ljubljana by a representative of the Labour Inspectorate of Slovenia, there are currently no statistics regarding violations that pertain specifically to posted workers (Ljubljana, project meeting, 2015).

The issue of the fake self-employment of posted workers also merits further attention. In this regard, it would seem sensible to initiate a wider study of the self-employed in Europe in order to examine the extent of this problem. During the project conference the attendees also pointed to the question of the liability of subcontractors and to the issue of posting of workers from third countries (Zagreb, project conference, 2015). Especially the latter has certainly not been critically assessed in research on posting, but we can assume that posted workers from third countries are subject to additional and specific vulnerabilities.

Through the selected examples, we have also shown that posted work is clearly a way for companies to get round existing regulations and national systems of industrial relations (Lillie 2007). However, we can agree with Berntsen's argument (2015) that 'posting is part of an assortment of often vaguely defined cross-border employment relations, resulting in precarious and often substandard conditions of workers. While research has addressed the effects of posting regulations on the protection of labour rights for migrants, few studies focus on how such cross-border employment structures generate specific dimensions of precariousness and how these impact the lives of posted workers'. Although their recruitment and entry is regulated, specific vulnerabilities of posted workers have been identified in this report. These certainly merit further research attention, which could be done especially through more focused, especially qualitative, case studies of posted workers, although we are well aware of all the difficulties of taking this approach. Another crucial but largely unexplored area is the issue of the family life and work-life balance of posted workers, which we have found to be almost omitted from current discussions both in policy and research publications. Additionally, the issue of transfer of benefits, e.g. maternity, health and social security benefits was mentioned during the project roundtable in Ljubljana (Ljubljana, project roundtable, 2015).

This fact might be linked to the prevalent idea behind posted work that posted workers do not access the labour market in the countries to which they are posted, as they are only posted to perform temporary work. However, this supposition is not always in line with the reality. Consequently, longer-term precarious posting should also be explored further in future research, as posting will undoubtedly remain one of the more important channels for cross-border employment within the EU market (Berntsen 2015). The alleged temporary nature of posting, as well as the differences between different ways of posting, further complicate the relations between the existing working communities of the receiving states and the inclusion of posted workers into the system of industrial relations in that state (Rocca). This also has implications for the wider issue of integration of posted workers into the receiving society that goes beyond them providing services in that country. At the project roundtable in Ljubljana, the need for more training programmes in areas such as language and intercultural competences was also emphasised (Ljubljana, project roundtable, 2015). This is particularly important within the context of ensuring safer and healthier workplaces.

The duration of stay and the manner of migration (posting vs. of migrants' own accord)

also significantly affect the shaping of trade unions' strategies towards posted workers and influence the challenges faced when organising posted workers (Danaj and Sippola 2015). There is also still a significant research gap in this area (for notable exceptions see for example Berntsen and Lillie 2015; Danaj and Sippola 2015). Trade unions, as Danaj and Sippola (2015) argue, need to maintain their critical organisational mass and acquire support from other stakeholders and the broader society. The hyper-mobility of most posted workers and their usually relatively short-term employment situation pose an additional challenge to the work of trade unions, and national union support for a more transnational approach in this area is also needed (Danaj and Sippola 2015; Berntsen and Lillie 2016). Furthermore, according to Cremers (2013: 215), 'collective bargaining has to be recognised as an important method for achieving labour standards at the workplace, also for posted workers.'

Another question that we have not addressed in more detail is the issue of inter-sectoral variations in the area of posting. Although the PWD was originally designed for the construction sector, the literature has also explored agriculture, transport, the manufacturing sector (especially the food industry) and the food processing industry (the meat industry) in more detail. The representatives of the Belgian labour inspectorate also emphasised that these sectors were the most often addressed when discussing the issue of posting of workers (Brussels, transnational visit, 2016). As we do not possess reliable figures about posting at a sectoral level, it is not clear to what extent the situation in these sectors is representative of the actual situation (Study on the economic and social effects..., 2011). Additionally, most literature on posting deals with the perspective of the receiving country and less with the perspective of the sending country (for instance, Germany is well covered as a receiving country of posted workers, but it is also a major sending country of workers, which is not reflected in the literature) and the existing research mainly covers Eastern European workers and/or low skilled workers in old EU member states (Study on the economic and social effects..., 2011). Also at the project roundtable in Ljubljana, the circulation of profiles such as civil servants, scientists and humanitarians and the need to examine similarities and differences with regard to mobility of other occupational groups was emphasised (Project roundtable, Ljubljana, 2015). The need to examine 'atypical' occupations in the posting process is also apparent.

Through the selected cases we have also tried to show that, in the words of Ferrera (in Dølvik and Visser 2009: 526) it is not only the encounter between the two grand institutions of post-war Europe, namely the EU and the welfare state that is becoming increasingly problematic. The encounter between the EU and national labour markets and their 'highly diverse regulatory mixes of union-management relations, public policy and legal order' could also be conflicting (Dølvik and Visser 2009: 526). As evident from the ECJ rulings discussed here, the territorial integrity of labour law and industrial relations is especially challenged (ibid.: 526).

To sum up, it seems that a multi-sectoral and multi-level approach and strengthened transnational cooperation among the various stakeholders is of crucial importance. At the project meeting in Belgium, the representatives of the Belgian labour inspectorate also noted that their cooperation with inspectorates of other countries is crucial to combating social fraud and social dumping. They also stated that the IMI system and bilateral agreements should be used as much as possible in order to reveal posting frauds, fake postings and letterbox companies (Brussels, transnational visit, 2016). Nevertheless, as noted by a representative of the Labour Inspectorate of Slovenia, while the IMI system has clear advantages in terms of its facilitation of prompt administrative procedures and user-friendliness, issues such as language (machine translation is currently used) and

the lack of information on the powers and measures of other competent authorities do hamper its successful functioning to some degree (Ljubljana, project roundtable, 2015).

It is also of crucial importance to take measures to prevent abuses in the area of posting. As was stated by one of the attendees of the project meeting in Ljubljana, Slovenia, complaints (e.g. reports of violations, initiation of formal procedures) usually come at the end, when workers return to their home countries (Ljubljana, project meeting, 2015). One of the more problematic aspects in this matter is that social partners currently have, as noted by Maslauskaite (2014), a limited impact in shaping the employment rights of posted workers.

One of the goals of the project was therefore also improving transnational cooperation among different stakeholders in the area of posting. In this respect, the transnational events represented an extremely useful platform for enhancing cooperation via face-to-face meetings and also provided a space for the spontaneous exchange of ideas, experiences and concerns. In this respect, bilateral agreements between countries also proved to be an important channel for sharing and exchanging information and expertise. One of the suggestions made by a representative of the trade union from Croatia at the project conference in Zagreb is to establish a European-level agency to systematically follow abuses in the area of social rights of workers (she calls it a 'social EUROPOL') (Zagreb, project conference, 2015). At the transnational events, it was generally agreed that sustainable solutions in the area of posting can only be found by means of multilateral cross-border cooperation that should involve stakeholders from both state authorities and social partners, and should also include a needs assessment of the various stakeholders in order to produce relevant and evidence-based policy recommendations in this area.

## 7 REFERENCES

- Afonso, Alexandre (2009). The Domestic Regulation of Transnational Labour Markets: EU Enlargement and the politics of Labour Migration in Switzerland and Ireland. *The Transnationalization of Economies, States and Civil Societies* (eds. Bruszt Laszlo, Ronald Holzacker). Springer Science & Business Media, 83–106.
- Belgian Government (2015). *Posting of Workers Directive*, [http://arbetsratt.juridicum.su.se/euarb/15-03/sverige\\_och\\_sex-ms\\_utstationeringsdirektivet\\_juni\\_2015.pdf](http://arbetsratt.juridicum.su.se/euarb/15-03/sverige_och_sex-ms_utstationeringsdirektivet_juni_2015.pdf) (23. 3. 2016).
- Bernaciak, Magdalena (2014). *Social dumping and the EU integration process*, Working Paper 2014.06, <http://www.etui.org/Publications2/Working-Papers/Social-dumping-and-the-EU-integration-process> (12. 3. 2016).
- Bernaciak, Magdalena (2016). *Much Ado About Posting: the “Targeted Revision” of the EU Posted Workers Directive*. (unpublished text).
- Berntsen, Lisa (2015). Precarious Posted Worlds: Posted Migrant Workers in the Dutch Construction and Meat Processing Industries. *The International Journal of Comparative Labour Law and Industrial Relations* 31/4, 371 – 390.
- Berntsen, Lisa, Lillie, Nathan (2015). Breaking the Law? Varieties of social dumping in a pan-European labour market. *Market Expansion and Social Dumping in Europe* (ed. Magdalena Bernaciak). Routledge: London, New York, 43–60.
- Berntsen, Lisa, Lillie, Nathan (2016). Hyper-mobile migrant workers and Dutch trade union representation strategies at the Eemshaven construction sites. *Economic and Industrial Democracy* 37/1, 171–187.
- Charter of Fundamental Rights of the European Union*, [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf) (13. 9. 2016).
- Clark, Nick (2012). *Regulation and enforcement of posted workers employment rights*. London: Working Lives Research Institute.
- Cremers, Jan (2013). Free provision of services and cross-border labour recruitment. *Policy Studies* 34/2, 201–220.
- Cremers, Jan (2011). In search of cheap labour in Europe. Working and living conditions of posted workers. *CLR News* 2011.1, 6-10.
- Cremers, Jan, Dølvik, Jon Erik, Bosch, Gerhard (2007). Posting of workers in the single market: attempts to prevent social dumping and regime competition in the EU. *Industrial Relations Journal* 38/6, 524–541.
- Danaj, Sonila, Sippola, Markku (2015). Organizing posted workers in the construction sector. *The Outsourcing Challenge: Organizing workers across fragmented production networks* (ed. Jan Drahokoupil). Brussels: European Trade Union Institute, 217–235.

Dølvik, Jon Erik, Visser, Jelle (2009). Free movement, equal treatment and workers' rights: can the European Union solve its trilemma of fundamental principles?. *Industrial Relations Journal* 40/6, 513–531.

Eichhorst, Werner (1998). *European Social Policy between National and Supranational Regulation: Posted Workers in the Framework of Liberalized Service Provision*, <https://www.econstor.eu/bitstream/10419/43182/1/248171305.pdf> (1. 4. 2016).

ETUC (2016). *No to the yellow card on posted workers*, [https://www.etuc.org/press/trade-unions-call-fast-dismissal-yellow-card-posted-workers#.WDu7dn3z\\_rY](https://www.etuc.org/press/trade-unions-call-fast-dismissal-yellow-card-posted-workers#.WDu7dn3z_rY) (1. 6. 2016).

*EU Occupational Safety and Health (OSH) Strategic Framework 2014-2020*, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0332> (5. 9. 2016).

European Agency for Safety and Health at Work (2007). *Literature Study on Migrant Workers*, [https://osha.europa.eu/en/tools-and-publications/publications/literature\\_reviews/migrant\\_workers](https://osha.europa.eu/en/tools-and-publications/publications/literature_reviews/migrant_workers) (18. 8. 2016).

European Commission (2016). *Impact assessment concerning the revision of the Posting of Workers Directive*, <http://www.ec.europa.eu/social/BlobServlet?docId=15295&langId=en> (2. 9. 2016).

*Internal Market Information System*, [http://ec.europa.eu/internal\\_market/imi-net/statistics/2015/12/index\\_en.htm](http://ec.europa.eu/internal_market/imi-net/statistics/2015/12/index_en.htm) (23. 11. 2016).

*International Labour Organisation*, <http://www.ilo.org/safework/lang--en/index.htm> (2. 9. 2016).

ILO (2004) *Towards a fair deal for migrant workers in the global economy*, <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf> (15. 8. 2016).

Jorens, Yves, Peters, Saskia, Houwerzijl, Mijke (2012). *Study on the Protection of Workers' Rights in Subcontracting Processes in the European Union: Final Study*, <http://www.ec.europa.eu/social/BlobServlet?docId=7921&langId=en> (10. 8. 2016).

Lillie, Nathan (2012). Subcontracting, Posted Migrants and Labour Market Segmentation in Finland. *British Journal of Industrial Relations* 50/1, 148–167.

Lillie, Nathan, Sippola, Markku (2011). National unions and transnational workers: the case of Olkiluoto 3, Finland. *Work, employment and society* 25/2, 292–308.

Lindstrom, Nicole (2010). Service liberalization in the enlarged EU: A race to the bottom or the emergence of transnational political conflict?. *Journal of Common Market Studies* 48/5, 1307-1327.

Lindstrom, Nicole (2008). *Service Liberalization in the Enlarged EU: A Race to the Bottom or the Emergence of Transnational Political Conflict?* GARNET Working Paper No: 56/08, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.173.4068&rep=rep1&type=pdf> (21. 4. 2016).

Malmberg, Jonas (2010). *The Impact of the ECJ Judgments on Viking, Laval, Ruffert and Luxembourg on the Practice of Collective Bargaining and the Effectiveness of Social Action*, <http://www.diva-portal.org/smash/get/diva2:390169/FULLTEXT01.pdf> (15. 8. 2016).

Maslauskaitė, Kristina (2014). *Posted Workers in the EU: State of Play and Regulatory Evolution. Policy Paper 107*. Notre Europe - Jacques Delors Institute.

Mayhew, Claire, Quintan, Michael, Ferris, Rande (1997). The effects of subcontracting/outsourcing on occupational health and safety: survey evidence from four Australian industries. *Safety Science* 25/1, 163-178.

OSHWiki, [https://oshwiki.eu/wiki/Main\\_Page](https://oshwiki.eu/wiki/Main_Page) (5. 9. 2016).

Pacolet, Jozef, De Wispelaere, Frederic (2015). *Posting of Workers. Report on A1 portable document issued in 2014*, <http://www.ec.europa.eu/social/BlobServlet?docId=15348&langId=en> (3. 9. 2016).

Pochobradsky, Elisabeth, Habl, Claudia, Barbara, Schleicher (2002). *Soziale Ungleichheit und Gesundheit. [Social inequality and health]*. Wien: Österreichisches Bundesinstitut für Gesundheitswesen ÖBIG.

Premji, Stéphanie, Messing, Karen, Lippel, Katherine (2008). Broken English, broken bones? Mechanisms linking language proficiency and occupational health in a Montreal garment factory. *International Journal of Health Services* 38/1, 1-19.

*Proposal for a directive of the European Parliament and of the Council amending 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* (2016), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A128%3AFIN> (10. 5. 2016).

Reich, Norbert (2008). Free movement vs. social rights in an enlarged Union – the Laval and Viking cases before the ECJ. *German Law Journal* 9/2, 125–161.

*Report on the Conference Promoting Decent Work, Better Compliance and Enforcement 8 – 9 February 2016, Amsterdam, the Netherlands*, [http://www.inspectieszw.nl/Images/Report-of-the-conference-Promoting-Decent-Work-febr-2016\\_tcm335-373476.pdf](http://www.inspectieszw.nl/Images/Report-of-the-conference-Promoting-Decent-Work-febr-2016_tcm335-373476.pdf) (16. 9. 2016).

Rocca, Marco (year not provided). *Posting of workers and industrial relations*, [http://faos.ku.dk/english/pdf/teaching/PhD-course\\_presentation\\_Marco\\_Rocca.pdf](http://faos.ku.dk/english/pdf/teaching/PhD-course_presentation_Marco_Rocca.pdf) (2. 4. 2016).

Sargeant, Malcolm, Tucker, Eric (2009). Layers of vulnerability in occupational safety and health for migrant workers: case studies from Canada and the UK. *Policy and practice in health and safety* 7/2, 51-73.

Schiek, Dagmar (2015). Perspectives on Social Citizenship in the EU—From Status Positivus to Status Socialis Activus via Two Forms of Transnational Solidarity. *Perspectives on Social Citizenship in the EU—From Status Positivus to Status Socialis Activus via Two Forms of Transnational Solidarity*. Queen’s University Belfast Law Research Paper 10.

*Study on the economic and social effects associated with the phenomenon of posting of workers in the EU (final report)* (2011), <http://ec.europa.eu/social/BlobServlet?docId=6678&langId=en> (3. 4. 2016).

Thörnqvist, Christer, Woolfson, Charles (2012). When tender turns touch: posted workers and the tendering regime in the Swedish construction industry. *Construction Management and Economics* 30, 525–533.

van Hoek Aukje, Houwerzijl, Mijke (2012). ‘Posting’ and ‘Posted Workers’: The Need for Clear Definitions of Two Key Concepts of the Posting of Workers Directive. *Cambridge Yearbook of European Legal Studies* 14, 419–451.

Woolfson, Charles, Thörnqvist, Christer, Sommers, Jeffrey (2010). The Swedish model and the future of labour standards after *Laval*. *Industrial Relations Journal* 41/4, 333–350.

