



POWBRIDGE

Bridging the gap between legislation
and practice in the posting of workers



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**Bridging the gap between legislation and practice in the posting of
workers
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**Bridging the gap between legislation and practice in the posting of
workers:
Poland Country Report**

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Executive Summary

Poland is one of the key member states issuing portable documents A1, although the numbers declined since 2016. In 2018, Poland issued 238,525 PDs A1 under Article 12 of the Basic Regulation, with the highest number of postings directed at Germany, France, and Belgium. Poland is also a receiving country of posted workers, albeit to a lesser extent (26,714 in 2018), experiencing an increase in the numbers since 2016.

This report focuses on the posting of workers based on the review of relevant legislation, literature, and available statistics. We also gathered qualitative data with representatives of employers, employment agencies, social partners, and public authorities to better understand the gap between legislation and practices in the posting of workers. We mostly focused on the posting of workers in the construction and care sectors.

We describe the Polish context's specifics and its regulatory framework regarding posting and cross-border mobility, temporary agency work, social security, health insurance coverage, and others. We outline the roles of the National Labour Inspectorate and Social Insurance Institution.

On the employers' side, we describe companies operating according to the rules and the ones operating in the grey zone. While the former learn how to navigate the legal framework of sending and receiving countries using support from legal companies or employers' networks, the latter use ambiguities in the laws to misuse the system. Among these, the interviewees reported how the companies might misuse portable documents A1, pay social insurance contributions from understated rates of salary or try to bypass the provisions on the posting by applying financially more 'beneficial' regulations on business trips and pay a part of the salary as a travel allowance. In particular, employers who operate in the grey zone pose a threat to workers' rights. Hence the workers' protection initiatives should address the persistently low levels of knowledge of the rules and issues related to the contracts, taxes, and social insurance contributions among posted workers.

We conclude this report with several recommendations on EU and national levels regarding industries, enforcement agencies, and social partners.

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1 Introduction

The study investigates how the Posting of Workers Directive and other EU regulations interplay with national rules and regulations on social security, health insurance, temporary agency work, and company law, analysing the Polish case. Poland report is one of a country case studies identifying gaps between procedures (legal basis) and practices (experiences) in posting rule enactments in Austria, Slovenia, Italy, Slovakia, Hungary, Poland, Serbia, and North Macedonia.

The methodology combines secondary and empirical data use. Secondary data are based on a literature review and national statistics. The analytical framework identifies national legislation, policy measures, government instructions, and related regulations in various domains about posting and cross-border labour mobility. Documents under study include rights and obligations of posted workers, cross-border mobile workers, posting companies, etc.

Empirical data were gathered from the viewpoint of employers as well as public authorities and social partners. Semi-structured interviews use a vignette design to elicit insights from both viewpoints on posting practices. The empirical data analysis follows qualitative thematic analysis that thematically organises and compares different interview responses to create a comprehensive picture of the situation and perceived challenges.

We provide an overview of the institutional framework in Poland related to the posting of workers, including the roles played by the Social Insurance Institution and National Labour Inspectorate and their activities. We describe the issues around transnational cooperation between the agencies in various countries and the challenges of day-to-day work. We show various strategies of employers, operating legally and illegally. We describe how employers, especially smaller companies, experience issues in applying posting rules, in particular regarding social insurance contributions and coordination of social security systems. We present various activities designed to protect the posted workers' rights, pointing to the specificities of sectors selected for analysis (mainly construction and care).

The report proceeds as follows. It first provides an overview of the Polish socio-economic context, describing the labour market from the demand and supply side and the working conditions. The report also presents Poland as a country of emigration and immigration and the numbers on posting of workers. The methodological section describes data design, data collection, and the challenges involved, mainly in the context of the COVID-19 pandemic. The results section focuses on the regulatory framework, national implementation and enforcement, employer practices and challenges, and, finally, worker protection. Based on these results, we propose policy recommendations at various governance levels and related to different stakeholder groups involved in the posting of workers.

2 Country Context

2.1 Socio-economic overview

In recent years Poland experienced economic growth, also compared to other EU countries. In 2019 the diminishing trend in unemployment rates continued, with the country reporting one of the EU's lowest unemployment levels. The employment rate, however, remained below the EU average. The average monthly earnings in Poland were 4,918 PLN (around 1,100 EUR) in 2019, which is relatively lower than the earnings in the 'Western' EU member states, but the country experienced a growing trend in average monthly earnings and minimum wages (see Table 1).

Concerning the Polish labour market context, the ILO highlights the demographic changes with the ageing workforce. Another labour market challenge is the low labour force participation rate that could impede further economic growth. Poland is also characterised by high job insecurity (high share of temporary and atypical work). The country struggles with gender pay and the employment gap related to the poor availability of childcare services. Some groups have a much lower share of labour market participation (among them women, older persons, persons with disabilities, and lower educational attainment) (ILO, 2020). Poland's score on the OECD measures of job quality is below or around average, with low earnings quality and more often experiencing job strain (OECD, 2018).

Table 1 Overall labour market dynamics in Poland

	2017	2018	2019
GDP real (annual growth – volume - in %) *	4.8	5.4	4.5
Employment rate, population aged 15 to 64 (%) **	66.1	67.4	68.2
Job vacancy rate (industry, construction and services, %)***	1.0	1.2	1.1
Unemployment rate, population aged 15 to 74 (%) ****	4.9	3.9	3.3
Average monthly gross wage (in EUR)*****	960	1030	1,100
Monthly gross minimum wage (in EUR)*****	473.3	480.2	529.5

Sources: *Eurostat 2020 [TEPSR_WC170]; ** Eurostat 2020 [TEPSR_WC110]; *** Eurostat 2020 [JVS_A_RATE_R2]; **** Eurostat 2020 [TEPSR_WC170]; ***** Statistics Poland 2019 & 2020; ***** Eurostat 2020 [EARN_MW_CUR]

2.2 Labour mobility and posting rates and trends

Poland has long been a country of emigration, including large outflows following its EU accession in 2004 (Statistics Poland, 2017). However, recently Poland started to feature on the map of migrant destination countries, with mass inflows of temporary and circular character. Since 2006, nationals of six countries¹ have access to the Polish labour market for six months (out of 12 months) based on a statement from an employer wishing to hire a foreigner (without obtaining a work permit). It is mostly Ukrainian nationals, especially since the military conflict in Ukraine in 2014, who make use of this path to migrate to Poland. Indeed, according to the OECD, Poland ranked a top destination for temporary labour migrants in the world in 2017 (OECD, 2019).

¹ Including Armenia, Belarus, Russia, Ukraine, Georgia and Moldova.

Poland is one of the key member states issuing portable documents (PDs) regarding the posting of workers. In 2018, Poland issued 238,525 PDs A1 under Article 12 of the Basic Regulation, which was down from 259,999 PDs issued in 2016. Most postings from Poland in 2018 were directed at Germany (120,540), France (26,371), and Belgium (21,358). The numbers of postings to Poland were on the rise between 2016 and 2018, reaching 26,714 in 2018 (almost a 30% rise compared to the previous year). The main countries of origin of workers posted to Poland in 2018 were Germany (12,757), Italy (3,013), and France (2,654) (data from De Wispelaere et al., 2020). Kall et al. (2020) also describe a growing phenomenon of posting of third-country nationals (TCN) involving Ukrainian workers posted via Poland to construction sites in Finland and Estonia. The authors give an overview of the numbers of these postings and highlight some of the challenges that the posted workers face.

Table 2 General labour migration and posting trends (2016-2018)

	2016	2017	2018
Total number of emigrants*	236,441	218,492	189,794
Total number of immigrants**	208,302	209,353	214,083
Total EU migrants received**	22,786	22,653	19,175
Total TCN migrants received**	80,054	53,829	76,410
Share of immigrants of working age (19-65 years old) in %**	77.37	66.57	65.00
Total number of outgoing posted workers***	259,999	235,836	238,525
Total number of incoming posted workers***	17,818	20,620	26,714
Labour market share of incoming posted workers***	1.60%	1.40%	1.40%
Main countries of destination for posted workers***	Germany, France, Belgium	Germany, France, Belgium	Germany, France, Belgium
Main countries of origin of posted workers received***	Germany, France, Spain	Germany, France, Spain	Germany, Italy, France

Sources: *Eurostat 2020 [migr_emi1ctz]; ** Eurostat 2020 [migr_imm1ctz]; ***De Wispelaere et al., 2020. Data on posted workers refer to PDs A1 under Article 12.

3 Methodology

3.1 Data collection

Secondary national data are based on a literature review and overview of available statistics. We present data on socio-economic context and migration from the publicly available database via the Eurostat website. Eurostat publishes data allowing both tracking changes in time as well as comparisons between various countries. Where necessary, we complemented this overview with data on socio-economic context coming from Statistics Poland and administrative data on postings coming from a report by De Wispelaere et al. (2020).

Primary data were collected in each country of the POW-BRIDGE project to assess the impact of various regulations on actual practices. The method used for the primary data collection was based on semi-structured interviews with posting employers and representatives of public authorities and social partners in each country. We used vignettes to elicit insights from both sides of the institutional relationship: posting employers and street-level bureaucrats/state agencies' representatives on posting practices.

The data analysis utilises a mixed-methods approach combining qualitative data sources with secondary data. The qualitative data from interviews were collected by following a semi-structured interview template and analysed using qualitative thematic analysis. In an iterative effort, the various data interview responses were thematically organised and then compared with each other to create a comprehensive picture of the situation and perceived challenges.

Qualitative fieldwork took place between 29 July and 25 November 2020. The Polish team conducted 15 interviews in sectors selected for this study, mostly in construction and care. We were only able to conduct two interviews in the manufacturing sector, and hence we learned relatively less about this sector (one interview was conducted with a social partner and another with a representative of public authorities). Six interviews were conducted with representatives from the construction sector (three interviews with employers, two interviews with social partners and one interview with public authorities). Five interviews were conducted in the care sector (two interviews with employers/employment agencies, two interviews with social partners and one interview with public authorities). Two of the interviews with representatives of public authorities and social partners had a cross-sectoral focus on posting.

The length of interviews ranged between 46 minutes and 1 hour and 46 minutes. The majority of interviews were carried out using a phone, with the remaining interviews conducted face-to-face and one interview via Skype and one via Microsoft Teams. All interviews except one (due to the equipment failure) were recorded and transcribed. The interviewees were informed about the background of the interview. They were assured that their responses would remain confidential and that the audio files and transcripts will be secured with restricted access only by the researchers working on the project.

3.2 Analytic Framework

The analytic framework comprised the identification of the national legislation, policy measures, government instructions and related regulations in various domains pertaining to posting, cross-border labour mobility, temporary agency work, social security, health insurance, company law and any other relevant regulation. Documents under study include rights and obligations of posted workers, cross-border mobile workers, and posting companies, as well as conditions for and incentives of cross-border service provision.

3.3 Challenges and limitations

As the fieldwork phase was scheduled for summer 2020, it coincided with the COVID-19 pandemic and various administrative measures taken to tackle it. The research design required changes in order to make fieldwork possible when many professionals worked from home. The original research design foresaw face-to-face interviews, but this was not feasible in most cases. Hence, the research team flexibly reacted to the situation, offering potential respondents the possibility of phone and Internet-mediated interviews as well as face-to-face interviews. The research team contacted potential respondents, and in each case, the researcher agreed on how the interview would take place based on the respondent's preferences.

In the first place, it turned out to be challenging to reach some of the respondents because they worked from home, while the telephone contact information referred to their office phones. Some respondents faced additional work and time pressures related to the pandemic. Also, conducting the interviews via phone in some cases resulted in audio recordings of low quality, but the researchers complemented the transcripts with notes made after the interview.

During each interview, researchers used the interview scenario as a starting point, with the flexibility to focus on the respondents' specific expertise. For instance, in the case of the experts representing public authorities, it was problematic to gain sending and receiving country perspective, hence the focus usually remained on one of the contexts. Moreover, while vignettes included in the interview scenario referred to countries selected before the interview, the respondents were free to talk about the national contexts of countries receiving posted workers that were most familiar to them thanks to their professional experience. We also introduced *ad hoc* questions that referred to the impact of the pandemic on the posting of workers. Hence these issues were discussed where relevant, and they appear in the empirical results sections below.

In general, the interviews collected provide a rich source of material to understand the posting of workers juxtaposing existing regulations and the practice. However, some actors were more difficult to convince to participate in research, especially the employers (out of the three examined groups) to take part. One limitation of this research is that the new regulations, which we describe in more detail in the regulatory framework section, were introduced at the beginning of September 2020.² The gaps between legislation and practice were not so apparent yet for some of the interviewees in Poland.

² The Act of 24 July 2020 amending the Act on the posting of workers as part of the provision of services and certain other acts (Journal of Laws 2020, item 1423), (Polish: Ustawa z 24.7.2020 r. o zmianie ustawy o delegowaniu pracowników w ramach świadczenia usług oraz niektórych innych ustaw, (Dz.U. 2020 poz. 1423)).

4 Results

4.1 Regulatory Framework

4.1.1 Posting and cross-border labour mobility

As we have shown earlier, Poland is one of the key countries in terms of posting workers abroad. This section focuses on the regulatory framework, that is, legal definitions, procedures, rights, obligations, and monitoring mechanisms and control measures.

The first regulation in the Polish law regarding the posting of workers – Law of 10 June 2016 on posting of workers regarding supplying services – took effect on 18 June 2016.³ It implements two basic regulations: directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services and directive of the European Parliament and the Council of Europe 2014/67/EU of 15 May 2014 regarding enforcement of the directive 96/71/EC on posting of workers regarding supplying services, changing the regulation of the EU no. 1024/2012 concerning administrative cooperation mediated by a system of information exchange on a common market. This document regulated the issues related to the posting of workers, both from Poland to other countries, and, importantly, from non-EU countries (i.e. third countries). The Law of 10 June 2016 on the posting of workers is fully compliant with the EU Directive. However, as Szypniewski (2019: 172) noted, the Polish law uses the concept of a posting employer, while the basic directive 96/71/EC – a posting company. It is worth recalling, however, that Poland and Hungary⁴ were the only countries that brought the directive to the Court of Justice of the EU. In this complaint, Poland drew attention to the protectionist nature of the amended directive of 2018, which would hinder the implementation of the treaty principle of freedom of movement of labour and services.⁵ Nevertheless, the Court dismissed the actions brought by Hungary and Poland seeking the annulment of the directive, strengthening the rights of posted workers.⁶

Before adopting the 2016 Act, legal regulations regarding the posting of workers to Poland were contained in the Labour Code, the Act on the National Labour Inspectorate and in the Code of Civil Procedure. The last amendment entered into force on 4 September 2020⁷, but without including the amendments of 2018. Thus Poland failed to comply with the requirement to implement the new Directive 2018/957 by the deadline indicated by it. It should be emphasised that the obligations imposed by Law of 10 June 2016 on foreign employers posting employees to Poland must be performed not just by entities having their seat in an EU Member State. Article 26 of the Law of 10 June 2016 requires that the provisions of the Act be applied respectively in performing work in the Republic of Poland's territory by an employee assigned to this work by an employer established in a non-member state. Therefore, also employers from countries other than the EU Member States will be obliged to fulfil the obligations specified in the Act.

³ As Szypniewski (2019: 171) points out, the posting of workers from Poland was regulated for the first time in an agreement between the government of the Republic of Poland and the government of the Federal Republic of Germany on the posting of workers from Polish companies to carry out contracts of specified tasks (1990).

⁴ This proposal was also supported by other countries.

⁵ <https://inicjatywa.eu/14018/polska-i-wegry-zaskarzyly-rewizje-dyrektywy-o-delegowaniu-pracownikow/>

⁶ Court of Justice of the European Union, PRESS RELEASE No xx/20 Luxembourg, available at: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-12/cp200155en.pdf>

⁷ The Act of 24 July 2020 amending the Act on the posting of workers as part of the provision of services and certain other acts (Journal of Laws 2020, item 1423), (Polish: Ustawa z 24.7.2020 r. o zmianie ustawy o delegowaniu pracowników w ramach świadczenia usług oraz niektórych innych ustaw, (Dz.U. 2020 poz. 1423)).

The Act does not define the posting itself but contains a definition of an employer posting an employee to the territory of the Republic of Poland (Article 3 point 4) and an employee posted to the territory of the Republic of Poland (Article 3 point 6). Similar definitions can be found in this Act as for the employer posting an employee from the territory of the Republic of Poland to another Member State (Article 3 point 5) and for an employee posted from the territory of the Republic of Poland (Article 3 point 6). Based on these definitions, it can be concluded that a "posted worker" is an employee who is sent by his or her employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. The act does not apply to the Commercial naval companies with regard to the crews of merchant naval vessels and international transport, excluding cabotage transport.

As in the Article 3 of the Posting of Workers Directive 96/71/EC, the Polish law⁸ (further: Act of 10 June 2016) also regulates the minimum conditions that must be met by an employer posting workers to Poland. These conditions include:

- Standards and working hours as well as daily and weekly rest periods,
- Holiday leave dimension,
- Remuneration for work,
- Occupational health and safety,
- Protection of employees during pregnancy and during maternity leave,
- Employment of young people and performance of work or other gainful activities by a child,
- Prohibition of discrimination in employment and the principle of equal treatment,
- Charges to cover costs related to a business trip from the place of work in the territory of the Republic of Poland, to which the employee was posted, to another place of work in the territory of the Republic of Poland or outside the territory of the Republic of Poland.

The Act of 10 June 2016 also provides for short-term posting that lasts no more than 8 days per year (Article 5). It covers preliminary assembly or installation work provided for in the contract between the posting employer and the recipient of services in the host country. This type of work is excluded from the catalogue of posting workers to Poland. In such a case, the employer is not obliged to ensure employment conditions in terms of annual leave, minimum remuneration for work, and the amount of remuneration and allowance for overtime work.

The key institutional actor responsible for informing or respecting the rights of workers posted to or from Poland is the National Labour Inspectorate (hereafter NLI). This liaison office provides information about the conditions of employment in Poland and cooperates with control (liaison) institutions from other EU countries. NLI's tasks include ensuring universal, effective and free access to information on employment conditions in Poland. NLI also has the right to request from an employer posting workers from Poland to provide information on their activities. In accordance with the new regulations governing posting to Poland from September 2020, NLI control powers have increased. They concern, among others, the fight against fraud and illegal activities related to the posting of workers. In case of posting of workers from Poland to other EU countries, the NLI has the right to request such employer to provide the necessary information on posting. The NLI has also been authorised to obtain information from the Social Insurance Institution (ZUS), heads of tax offices, and other public administration bodies on the

⁸ Article 4, Act of 10 June 2016 on the posting of workers as part of the provision of services, Journal Of Laws 6 2016, item 868. (Polish: Ustawa z dnia 10 czerwca 2016 r. o delegowaniu pracowników w ramach świadczenia usług, Dz. U. 2016 poz. 868).

proper observance of posting of workers' regulations (as part of control and supervision activities). It is worth emphasising that NLI does not control all employees posted to Poland, only those cases in which there are serious doubts whether all the conditions set out in the Act of 10 June 2016 on the Posting of Workers have been met. Inspectors can fully control employers and the workers they employ with reference to an employment contract. In the case of workers employed on the basis of civil law contracts, NLI has limited control possibilities, limited to the issue of compliance with occupational health and safety at work. The range of fines for violation of regulations that can be imposed by NLI ranges from 1,000 to 30,000 PLN (approx. 223-6,667 EUR). Under section 7 of the Act, an employer may be fined if they:

- do not designate a person authorised to act as an intermediary in contacts with the National Labor Inspectorate and to send and receive documents or notifications, staying in the period of delegation to the territory of the Republic of Poland;
- do not submit to the National Labor Inspectorate a statement containing the employer's data, number of posted workers, contact details of posted workers or the place of storing documents at the latest on the date of commencement of the service;
- do not store documents in paper or electronic form during the period of posting to the territory of the Republic of Poland;
- do not provide documents and their translations into Polish at the request of the National Labor Inspectorate during the period of posting workers on the territory of the Republic of Poland;
- do not provide documents and their translations into Polish within two years after the completion of work by an employee posted to the territory of the Republic of Poland, at the request of the National Labor Inspectorate.

According to article 6 of Act of 13 April 2007 on the National Labor Inspectorate all employees have the general right to submit complaints from the competent district labour inspectorate against employers who do not comply with the relevant provisions of law. NLI is then obliged to conduct the inspection anonymously, and after its execution, provide a written justification of the decision and further steps (e.g. imposing a fine on the employer).

It is worth pointing out that in practice, an important and so far unresolved issue is the distinction between posting and a business trip. This topic has been repeatedly the subject of court decisions in Poland, as noted by Szypniewski (2019). Neither the Polish law nor Directive 96/71/ EC defines the minimum periods of posting, which means that a worker may also be posted for one day. In addition, Article 5 sec. 1 of Act of 10 June 2016 indicates that the posting may also concern a very short period and does not have to be related to a specific, relatively long duration. The regulations of the country to which the employee is posted will be decisive in determining whether a given foreign trip constitutes a posting. According to existing regulations, it is possible that both conditions for posting specified above and the conditions for a business trip specified in article 775 § 1 of the Labor Code are met at the same time. On these terms the employee's foreign trip will also be a posting within the meaning of the Act of 10 June 2016 and directives 96/71/EC and 2014/67/EU.

The second form that may be confused with the posting of workers abroad is the sending of workers in cases justified by the needs of the employer, to another job than the one specified in the employment contract, for a period not exceeding three months in a calendar year. The delegating of workers may occur if it does not result in a reduction of remuneration and corresponds to the qualifications of the employee – in this case, the termination of the existing working conditions or pay is not required (Article 42 § 4 of the Labour Code). Entrusting a job other than the one agreed does not require a written form so that the employer may give the employee oral instruction in this regard.

4.1.2 Temporary agency work

One category of posted workers is composed of temporary agency workers. This is a relatively common form of employing workers and sending them to work abroad (Szypliewski 2019). However, there is a legal limit setting the maximum duration of work for one employer. Pursuant to the Act on Temporary Employees of 2003, a temporary employment agency may assign a given temporary employee to perform temporary work for the benefit of one user employer for a period not exceeding a total of 18 months in the period covering 36 consecutive months (Article 20). The new rules on the duration of posting mean that such a worker can be sent to another country for a period of 12 or, where justified, 18 months. Importantly, the new regulations in force in Poland from September 2020 provide for an increased level of protection for temporary workers posted by temporary work agencies to or from Poland.

Much more problematic is the situation with the posting of a foreign worker from a third country on Poland's territory. As it results from the National Labour Inspectorate's interpretation, the possibility of posting of workers by temporary employment agencies from third countries to user employers on the territory of the Republic of Poland was *de facto* excluded. Such a worker may be employed in the territory of Poland if the agency sending him/her to work abroad has a branch in the territory of Poland. However, then the provisions on posting of workers (PIP 2020) do not apply.

The employer who uses temporary work is obliged to transfer to the foreign temporary employment agency or agency hiring personnel, i.e. the employer posting:

- written information on the website, which contains information on the terms and conditions of performing temporary work in Poland,
- written information on the terms of employment resulting from the provisions of collective bargaining agreements and other collective agreements, regulations, and statutes defining the rights and obligations of the parties to the employment relationship, which are in force at the given user employer, including the conditions of accommodation,
- information on the intention to send this employee to work in another Member State at least 15 working days before the planned assignment.

A temporary employment agency or an agency hiring personnel has to provide a temporary worker posted to the territory of Poland with the same employment and working conditions as those enjoyed by the local temporary workers. An employer who fails to provide this information to a foreign temporary employment agency or an agency hiring an employee commits an offence punishable by a fine of PLN 1,000 to PLN 30,000 (approx. 223 to 6,667 EUR).

4.1.3 Social security

The key aspect of the discussion about the posting of workers is the appropriate social security system and related insurance rights/entitlements. The posted workers from Poland may be employed under Labour Code contract, a contract for specific work (in Polish *umowa o dzieło*), contract of mandate (in Polish *umowa zlecenie*) or agency contract. This entails appropriate legal consequences for being subject to social insurance, including health insurance. Due to cheaper costs on the side of the employer and the nature of the work performed (e.g. as caregivers in the private household), a large part of the posted workers from Poland has a civil law contract (contract of mandate or contract to perform specified work). Although these civil law contracts allow for flexible working and employment conditions, they guarantee much less social security for employees. Moreover, lawyers have repeatedly pointed out that the use of such contracts leads to legal conflicts in the countries receiving workers posted from Poland

(Szypliewski 2019). Basic differences between different types of work contracts are presented in the table below (Table 3).

Table 3 Types and characteristics of employment contracts in Poland

Entitlements / Type of contract	Labour Code contracts		Civil-law contracts	
	Permanent	Fixed-term	Contract mandate (<i>umowa zlecenie</i>)	Contract to perform specified work (<i>umowa o dzieło</i>)
Social security benefits	Yes	Yes	Yes	No
Health insurance	Yes	Yes	Yes	No
Paid leave	Yes	Yes	No (upon agreement)	No (upon agreement)
Minimum wage requirement	Yes	Yes	Yes	No
Period of notice	Yes	Yes	Upon agreement	Upon agreement
Justification for terminating the contract	Yes	No	No	No
Severance pay	Yes	Yes	Upon agreement	No

Source: own elaboration based on Lewandowski and Magda (2017).

4.1.4 Health insurance and coverage

As a rule, posted workers are covered by health insurance (on the basis of the European Health Insurance Card). However, health insurance depends on the type of contract under which the worker is posted, as indicated above. In the Polish jurisdiction, Labour Code contracts as well as various civil law contracts are used for posting workers from Poland (Leiber et al. 2019) but it is only a Labour Code contract that guarantees full subjection to the social security system, including health insurance. The situation in the case of civil law contracts is more complex. The new regulations in force from 1 January 2016 require that health insurance premiums be paid also from the contract of mandate (i.e. 9% of the gross salary) – previously there was no such obligation. The social security law also indicates situations when employees are exempt from paying health insurance contributions on contracts of mandate: this applies, among others, to students under 26 years of age. The second type of civil law contract is a contract for a specific task, where the principal is not subject to social insurance, and no health insurance contributions are paid. However, the situation is different if the employer signs a contract for specific work with his own employee (employed on the basis of an employment contract) – then such a contract is treated as an additional employment contract, from which social insurance contributions are also paid.

4.1.5 Company law

The Polish legislation lacks clearly defined conditions relating to the circumstances that companies wishing to post workers must meet. In the Practical guide on the posting of workers (European Commission 2019), it is stated that companies operating in accordance with the applicable law have the right to the freedom to provide services.

4.1.6 Any other relevant regulation

The Law of 10 June 2016 on the posting of workers is the basic and only legal act that regulates the posting of workers to Poland. Additionally, it is worth mentioning the Act on employment promotion and labour market institutions (2004), where there is a reference to the posting of workers in the context of workers from third countries, but it concerns other rules related to the mobility of workers between companies. The Act describes in detail the procedure for posting workers on the territory of Poland, including issues regulating the acquisition of work and residence permits. There has been some evidence of misuse of this Act, aimed at cost reduction. Media pieces quoting experts state that Polish companies were established in Ukraine to second employees to companies operating on the Polish territory (Rzemek 2020).

Table 4 Rules and regulations on posting in the Polish context

	Law/Regulation	Posting Workers Rights	Posting Companies Rights and Incentives	Posting Companies Obligations	Public Authorities Mandate
Posting-specific or cross-border service provision regulations	<p>Act of 10 June 2016 on posting of employees within the framework of providing services (Journal of Laws 2016, item 868)</p> <p>Act of 26 June 1974 Labour Code (Journal of Laws 1974 No. 24, item 141)</p>	<p>Article 4 regulates the terms and conditions of employment for workers posted in Poland, which mirror the applicable provisions in the Labour Code. These provisions are in line with the PWD.</p>		<p>The obligations of an employer who posts an employee to Poland are regulated in Article 5 of the Posting of Workers Act.</p> <p>Providing employees with employment conditions no less favourable than those stipulated in the Polish Labour Code (1974)</p>	<p>National Labour Inspectorate, Social Insurance Institution, local and regional administration, Ministry of Economic Development, Labour and Technology</p>
Temporary Agency Work regulations	<p>Act of 9 July 2003 on the employment of temporary employees (Journal of Laws 2003 No. 166, item 160)</p> <p>Act of 26 June 1974 Labour Code (Journal of Laws 1974 No. 24, item 141)</p>	<p>According to the Act on the employment of temporary employees, they may be employed under a Labour Code contract or other civil law contract.</p>	n.a.	<p>A temporary employment agency or an agency hiring out personnel, which directs an employee to perform work for a user employer in Poland, shall provide such employee with working and other conditions of employment (it includes accommodation) no less favourable than those to which temporary employees are entitled in Poland.</p> <p>The user employer who uses temporary work is obliged to provide the foreign temporary work agency or staffing agency with written information on the detailed rules and conditions for performing temporary work in Poland.</p> <p>A temporary work agency or staffing agency that posts an employee to the territory of Poland is obliged to notify (at the latest on the day of commencement of service provision in the territory</p>	<p>National Labour Inspectorate</p>

				of Poland) the National Labour Inspectorate by submitting a statement on posting the employee to the territory of Poland. In addition, such agency is obliged to inform the NLI of any changes that occur in the employment of the worker posted to Poland.	
Health insurance and coverage	Act of 27 August 2004 on health care services financed from public funds (Journal of Laws 2018, 1510).	Before being posted to another country, a worker must be covered by health insurance for at least 30 days. An employee posted to another country must have a European Health Insurance Card.	n.a.	n.a.	Social Insurance Institution; Ministry of Health; National Health Fund
Social security regulation	Act of 13 October 1998 on the social security system (Journal of Laws 2020, item 266)		n.a.	The employer is obliged to pay the social security contributions of the posted worker. In the event of a change of circumstances related to the obligation to insure a given posted employee, the employer is obliged to inform the Social Insurance Institution, which issues the A1 certificate.	Ministry of Family and Social Policy (Department of Coordination of Social Security); Social Insurance Institution
Taxation	Personal Income Tax Act of 26 July 1991.	n.a.	n.a.	In accordance with the provisions on tax residence, when an employee is posted from Poland, the employer pays the tax in Poland. This applies to posting that lasts less than 183 days. Under current law, the employer does not have to withhold tax on subsistence or commuting allowances paid to an employee.	Local tax offices

Any other relevant legislation, e.g. anti-dumping laws	Act of 13 April 2007 on the National Labor Inspectorate (Journal of Laws of 2007, No. 89, item 589)	An employee posted from and to Poland has the right to report to the relevant branch of the national labour inspectorate any violation of employment-related legislation.	n.a.	Employers who post workers to Poland are obliged to provide the relevant documents to the NLI and must also cooperate in the event of an inspection of the employer concerned.	Sejm of the Republic of Poland
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Source: Own elaboration

4.2 National implementation and enforcement

4.2.1 Institutional Framework

In terms of the institutional framework for the implementation of the Posting of Workers Directive, Social Insurance Institution is the most relevant institution involved in the application of the rules of posting of workers. The coordination of social security is a crucial aspect of the international mobility of workers between EU countries. Although ZUS is only responsible in case of legal and administrative issues related to the subjection to the appropriate social security system (including issuing A1 certificates or performing inspections in this respect), the informants in the qualitative study pointed out that ZUS is the first institution where employers can and should look for information related to the posting of workers and the accompanying procedures. Contact with ZUS is necessary if there is a need to obtain interpretations of the regulations and start applying for PDs A1.

As described in the previous section, the National Labour Inspectorate is assigned key activities in the area of posting of workers as a liaison institution, although in practice, it largely plays a role when workers are posted to Poland. It was the amendment of the national legislation in September 2020 that gave the NLI additional powers to control the procedure of posting of workers from Poland. As indicated by the interlocutors from the public authorities, an employee posted from Poland (Polish or foreign national) can always ask questions about the application of the relevant employment regulations in the host country. If NLI officials do not know the answer, they have the right to contact the liaison institution in their country, using the Internal Market Information System (IMI) system.

4.2.2 Enforcement Agencies Practices

Interviewed employers largely reported that ZUS and NLI activities were not sufficient to meet their information needs on the correct application of the provisions on the posting of workers. Informants described that they sought additional information provided by trade organisations, mainly employer organisations/associations, and employee organisations, i.e. trade unions. There was also a case of cooperation between ZUS and NLI on the information campaign directed at workers, "I'm working legally", to inform about the dangers of working in the shadow economy and the benefits of legal employment in Poland. However, this campaign did not address the posting of workers explicitly, but rather workers in general.

While employers and social partners reported the long waiting time for PDs A1 to be issued by ZUS, the public authorities indicated that the waiting time could take longer than the foreseen seven days to consider an application for PD A1 in cases that needed further clarification. Employers also pointed to the differences in interpretation of regulations given in various regional branches of ZUS. Some interviewees reported that there were court cases against ZUS due to discrepancies in interpreting the regulations. There were also positive voices about the recent developments regarding ZUS activities in the area of posting of workers. One interviewee described their experience from court cases brought against ZUS, which concerned the legitimacy of being subject to the Polish social security system and the so-called insurance vacuum, in which one of the employees posted to Germany was found. Court cases were seen as serving both parties because, as a result, the courts decide how to apply the relevant regulations. One of the interlocutors representing the industry sector highlighted the openness

of ZUS to discussions with employers' organisations and the engagement in expert discussions on the posting of workers from Poland.

ZUS in 2020 launched a special Internet platform where employers could fill in PD A1 forms. The platform was developed in cooperation with selected employers to make the application process smoother. The platform should introduce the digital circulation of documents, which should streamline and speed up applying for appropriate documents (e.g. PDs A1). The COVID-19 pandemic, in particular, highlighted the need for a quick and systemic solution in this area.

As regards the National Labour Inspectorate, although it has gained new powers with the amendment of the Act on posting of workers, its importance for employers posting from Poland remains marginal (none of the employers interviewed indicated any experience with a liaison institution from Poland). According to previous legal regulations and administrative practice, the National Labour Inspectorate's activities concerning workers posted from Poland are rather reactive and include mainly answers to inquiries from other competent authorities via IMI system.

4.2.3 Enforcement through Transnational Cooperation

Proper implementation of the Posting of Workers Directive requires establishing transnational cooperation between various institutions. Apart from the regulated form of information flow in the common market (i.e. IMI system or SOLVIT system⁹), there are also examples of direct cooperation between employers, social partners, and public authorities.

The most important type of international cooperation concerns public institutions responsible for implementing the provisions on posting of workers to the national legal order. The cooperation of liaison institutions is the most regulated one, and it has so far proceeded without major problems (according to public authorities' representatives). For instance, the NLI receives inquiries from liaison institutions abroad about the legitimacy of issuing PD A1, the type of contract on the basis of which a given employee was posted, etc. In turn, ZUS regularly contacts insurance institutions from countries to which employees from Poland are posted, with queries about the proper application of regulations on the coordination of social security systems. Another area where many inquiries to Polish institutions arise concerns alternate and marginal work in the case of the care sector.

Representatives of employers and social partners pointed out that transnational cooperation does not always ensure the proper coordination of social security systems. There are still cases of workers who fall out of the national insurance system in Poland and for whom there is a need to establish which social contribution system applies. This is the case when a social security institution in the host country contests the legitimacy of the PD A1 being issued to a particular employee in the sending country.

4.2.4 Enforcement Agencies Challenges

The interviewees pointed out numerous challenges related to the implementation of the provisions on the posting of workers. They stressed that the regulations continually changed, and there was only limited support from public authorities for employers and social partners. Public authorities' representatives also talked about challenges related to cooperation between national institutions dealing with the posting of workers. Some interviewees proposed regulating this cooperation more, including a daily exchange of information or joint efforts to improve the interpretation of national and EU regulations. Another challenge reported in Poland

⁹ SOLVIT is an online service provided by the national administration of the EU Member States aimed at help with individual's or business' rights breach by public authorities in another EU Member State.

are staff shortages in the areas of implementation and interpretation of regulations. Staff shortages also affect waiting times for controls or obtaining answers from public authorities.

The biggest challenge in the practical application of the provisions on the posting of workers is related to the proper interpretation and understanding of the legal provisions on posting. In the next sections, we will outline the challenges faced by employers in more detail. Here it is essential to mention that when some companies operate illegally, the current regulations remain insufficient to punish illegal practices and to defend the rights of employees. One interviewee gave an example of the care work sector where employees were employed on the basis of civil law contracts, amounting to a mere 50-200 PLN (circa 10 to 40 EUR) as for the whole contract, from which social insurance contributions were paid. However, it was not ZUS' area of competence to carry out controls of contracts under which employees were hired and then posted to another Member State. In addition, care sector work, especially home care, remains a difficult subject to control for public agencies like the NLI, and this further increases the risk of exploitation of workers (as we will discuss in the section on worker protection).

4.3 Employer practices and challenges

4.3.1 Employer practices

Practices of entrepreneurs who post workers can be divided into two main groups regardless of the sector in which they operate. The first group consists of legally operating employers who obey the letter of the law. They register their employees at local offices, pay all taxes and social insurance contributions by the law and apply collective agreements in the receiving countries. In the first group, there are employers who post their workers directly and big companies that use the mechanism of intercompany rental/lending agreement. The latter set up temporary work agencies in the sending as well as the receiving country to post their employees legally. This mechanism is used when there are some surpluses in the sister company and shortages in the other company within the corporation (although this business model is not used in the care sector in which companies and agencies are predominantly focused on the labour export). As all the interviewees emphasised, posting of workers according to the rules involves high costs of employment, high cost of legal services both in the sending and the receiving country, and high administrative workload. As a result, it is mainly big companies that can afford legal and tax consultations in at least two Member States and remain competitive in terms of the final price of the service offered. As far as small and medium-size companies are concerned, the entrepreneurs try to get access to the most up-to-date, practical expert knowledge through the membership in employers' organisations and think tanks specialised in the posting of workers within the provision of services. These associations assist their members by organising themed workshops where the practical problems related to the posting of workers within the provision of services are discussed.

Despite costs, posting from Poland carries a number of competitive advantages. Even when they apply to posted workers all the mandatory elements of remuneration (instead of the "minimum rates of pay") in the receiving country, they still pay social insurance contributions to the Polish Social Insurance Institution (which is a lower cost than in the receiving country). Other competitive advantages of Polish posting companies relate to their employees who want to take up some jobs for which there is a high demand in the European labour market whilst there is a low supply (e.g. skilled workers in the construction and care workers) and who work overtime.

The second group of employers operates in the so-called grey area making use of ambiguities within Polish and European law. These entrepreneurs misuse portable documents A1, pay social insurance contributions from understated rates of salary (by using overlapping civil-law

contracts, e.g. the first contract concerns the distribution of leaflets in Poland while the second concerns care work in Germany) or try to bypass the provisions on the posting by applying financially more 'beneficial' regulations on business trips and pay a part of the salary as a travel allowance even though the trips of their employees are not incidental but have a permanent character and last, for instance, several weeks or months (see Kall et al. 2020). This group also includes Polish employment agencies that recruit caretakers on behalf of German temporary work agencies but do not bear any organisational and time costs for registering themselves as a temporary employment agency in Germany. They act more as a recruitment service provider. According to the representatives of the social partners, the group of employers who operate in the grey area is the most numerous and includes, among others, companies that use the export of labour as a business model.

There are also some entrepreneurs who employ without contracts and do not pay social security contributions at all. Such practices occur in the construction and the care sector (the latter is, due to the nature of the work performed, hard to control by public authorities). However, because of their irregularity, those cases cannot be defined as the posting of workers in the framework of the provision of services.

Employers' practices depend greatly on the sector in which the company or agency operates. In manufacturing, the work is easy to regulate in terms of the type of contract and work time. In the care sector, employers (both companies and agencies) use the Articles 12 and 13 of the Basic Regulation ((EC) No 883/2004) on the coordination of social security systems to pay social contributions in Poland even when their employee pursues a substantial part of his/her activity in the other Member States. Moreover, employment is often organised through a complex chain of care at home and domiciliary care agencies. As far as the construction sector is concerned, Polish employers currently are mostly interested in retaining qualified workers in the domestic labour market, and they are involved in posting to a limited extent only. Posting of construction workers takes place mainly through temporary employment agencies (EC 2020). For that reason, the tightening of posting rules introduced by the revised Directive was supported both by the trade union and the employers' associations (the Polish Union of Construction Employers and by the Confederation of Building and Real Estate).

4.3.2 Employer challenges in applying posting rules

Operating within at least two (often changing) legal systems and applying them alternately depending on which rules will be more favourable constitute the biggest challenges for employers. In some cases, national rules on posting and the related areas are incompatible, like in the case of different employment limits for temporary workers in the various Member States (e.g. in Poland and France¹⁰).

Another issue is related to social insurance contributions and the coordination of social security systems. When a given employer wins a contract and wants to send employees on a given date, there is no certainty that he will manage to do so, as employer representatives report that the deadlines for issuing A1 documents by ZUS have been significantly extended. Moreover, the European Health Insurance Card (EHIC) can be created only based on PD A1. In practice, employers send employees to the other Member States, and only in the unspecified future, it will turn out whether or not their workers can provide service there in the framework of posting. If ZUS refuses to issue PDs A1, the employer must prove in the receiving country that he cannot

¹⁰ Under Polish law, a temporary employment agency may assign a temporary employee to perform temporary work for one user employer for a period not exceeding a total of 18 months in a period covering 36 consecutive months while in France additional regulations apply, eg. a temporary employment contract may be renewed twice if the total duration of the contract, including renewal, does not exceed the maximum authorised duration.

insure employees in Poland. This procedure can last even several months resulting in the exclusion of the employee from the insurance that has far-reaching consequences in terms of entitlement to a retirement pension, access to health benefits, etc. As our interlocutors pointed out, problems with social insurance contributions do not result only from deliberate practices of employers and willingness to reduce employment costs. Problems also arise from employers' lack of knowledge of the complicated legal system. According to the social partners, many Polish small and medium-size companies see legal services as an additional expense rather than investment and do not deem it necessary if only a few employees are posted. The employers resort to legal services in case of foreign authorities' controls and risk of high fines. In France, for instance, controls are designed to encourage employers to set up companies in the receiving country, which increases the general costs of business. Small and medium-sized enterprises face many administrative barriers that exceed their capacity to run a business abroad. According to the social partners, such practices, along with unclear legal provisions on the national level, stay in conflict with the EU regulations. French protectionism, in particular strongly discourages employers from posting. Nevertheless, France remains one of the main receiving countries for posted workers from Poland.

Moreover, the revision of the Posting of Workers Directive was described by the employers as imprecise since it is not clear how the employers should calculate the duration of posting (to sum up the postings to 12 or 18 months) and what to do in a case of a posting exceeding 12 or, where applicable, 18 months. These questions are crucial in the care sector, where the issue of replacing posted workers performing the same task at the same place is directly linked to the health status of the persons receiving care.

Due to the pandemic, the provision of care service became even more complicated. Some caretakers could not perform work because of the fear of the families of infections or quarantine (which entailed the risk of losing the PD A1 if ZUS classify those cases as marginal employment¹¹). On the other side, care workers themselves were afraid to move abroad when Poland went into lockdown in the spring of 2020. The coronavirus pandemic also affected the construction companies that operate in the Member States that chose different models for fighting COVID-19 (including lockdown). Some of the posted workers were quarantined for two weeks after crossing the Polish border, which raised questions about payments of salaries and insurance issues. Eventually, sick pay or benefits were paid, depending on whether the worker was already sick or not.

Last but not least, the interlocutors from all groups emphasised that shortages of employees related to the demographic changes in Poland (i.e. ageing population and post-enlargement migration) and unwillingness to undertake certain work by young people¹², constitute serious challenges related to the posting of Polish workers across the EU. This situation applies to all sectors under study, both qualified construction workers and unskilled care workers. As a result, the Polish labour market is opening up to foreign workers, mainly from Ukraine. However, the scale of posting of third-country nationals from Poland is still limited. Our interlocutors described language barriers (most problematic in the context of occupational health and safety in the construction sector) and recognition of qualifications as the biggest obstacles to posting TCNs from Poland.¹³

¹¹ ZUS recommends that employment that occupies less than 5% of an employee's regular working hours and/or brings less than 5% of the employee's total salary should be considered marginal.

¹² Due to the negative image of the construction sector and the often-suboptimal vocational education and training fewer and fewer young people are willing to learn a trade in this sector.

¹³ In the case of posting TCNs to Germany, there is an additional bureaucratic barrier by means of a requirement the Van Der Elst visa which is a type of visa available to non-EEA/EFTA citizens employed by and working for

4.4 Worker protection

4.4.1 Mechanisms for worker protection: institutional, social partners

As mentioned earlier, Poland is the main sending Member State in absolute terms. Posting of workers to Poland is limited and includes mainly highly-skilled professionals and employees of international corporations who, by large, are more aware of their rights. Therefore, trade unions and NGOs mainly focus on providing support for workers posted from Poland to the other Member States. Nonetheless, trade union membership among posted workers remains low in Poland. This is due to the low effectiveness of representing posted workers' interests in foreign labour markets and employers' activities hindering union membership. However, the number of trade union members among Polish posted workers is increasing in some other Member States when they decide to settle there. One example is the construction sector in Belgium, where unions provide unemployment benefits, an annual union bonus paid by the employers, as well as legal services. Trade union membership is also fostered by the growing network of bilateral and multilateral trade union agreements on the mutual representation of the interests of posted workers and the growing number of liaison offices offering legal support in Polish. The case of the "Budowlani" Trade Union (a member of the European Federation of Building and Woodworkers, EFBWW) is an example of this kind of transnational union activities. Posted members of the "Budowlani" are entitled to legal advice free of charge in the receiving countries for a certain period. Foreign unions are interested in such a service as an element of tackling social dumping and protecting collective bargaining agreements and national labour law. The trade union "Budowlani" participates in the project "Information Sharing Agreements" (ISA) that targets the setup of cross-border cooperation agreements involving public authorities, paritarian institutions, and social partners from seven European countries (Italy, Portugal, Spain, Bulgaria, France, Poland, Romania) to enforce rules on social security and terms of employment applicable to posted workers.

When it comes to the care sector, the All-Poland Alliance of Trade Unions (OPZZ), which is the largest nationwide umbrella confederation of trade unions in Poland, launched in 2019 the information centre for caretakers posted to Germany as the largest receiving country. The advisory centre in Warsaw supports employees who are to be sent to Germany or who return from the country after a posting assignment. The office was established as a part of a two-year project co-financed by the European Commission "Fair working conditions. Access to Fair Working Conditions for Posted Workers through Sector-Specific Information and Cooperation".¹⁴ In Germany, the German Trade Union Confederation (DGB) operates eight Fair Mobility advisory centres that help mobile workers in all sectors to assert any claims they may have against their employers and concerning social issues, e.g. health insurance, accidents at the workplace, etc. The project runs an information website, publishes a short explanatory film, and carries out a campaign on posting in the construction industry. The project also offers a free helpline for questions about workers' rights during the COVID-19 crisis available in Bosnian, Croatian, Serbian, Bulgarian, Polish, Romanian, and Hungarian. Moreover, the DGB Bildungswerk (training institute of the DGB) offers a collection of information and websites that inform about further pandemic-related questions like short-time allowances, child care, freelancing or rights of third-country nationals.

a company in an EU/EEA/EFTA country, that allows them to work for that company in another EEA/EFTA member state.

¹⁴ Within the project "FAIR working conditions" five information centres were established in the sending countries. Each advisory centre focuses on a particular industry. These are as follows: Poland (care sector), Romania (construction sector), Hungary (metal sector), Slovenia (lorry drivers/transport sector) and Croatia (construction sector).

In terms of institutional support, posted workers may report violations to the labour inspection authorities in the receiving countries or to the Polish Labour Inspectorate that exchanges information with similar bodies in the other Member States through the IMI system. Before the COVID-19 crisis, the Polish Labour Inspectorate provided personal, free of charge legal advice in all its organisational units. Due to the rapid spread of the SARS-CoV-2 virus in autumn, the Inspectorate has launched additional phone counselling.

In Germany, one of the main destinations for workers posted from Poland, information about posting is provided in Polish also by SOKA-BAU, a paritarian institution established by the social partners of the German construction industry and which manages the paid leave scheme on their behalf. On 24 May 2018, ZUS and SOKA-BAU signed an agreement on the transfer of contributions from vacation equivalents. Thanks to the agreement, SOKA-BAU transfers directly to ZUS the contributions for unused vacation pay paid to Polish employees posted to work in Germany.

4.4.2 Challenges to worker protection: access to information, legal support and trade union representation

Almost all of our interviewees emphasised that posted workers have limited knowledge of the rules that apply to taking up work (not only abroad). This results in problems related to their contracts, taxes and social insurance contributions. Foreign language proficiency is another issue related to the challenges to worker protection, especially in terms of occupational health and safety in the construction sector and legal support offered to live-in care workers who – in extreme cases – are isolated and may have no access to the Internet where they could access information and help.

When it comes to institutional challenges, it is worth recalling the limited power of intervention and enforcement of rules on foreign companies. The Polish Labour Inspectorate does not have the power to enforce the terms and conditions of employment under labour legislation other than Polish. Moreover, there are no tools similar to IMI that would enable and facilitate communication with their counterparts outside the European Union in cases when TCN workers are involved. Problems also arise with monitoring and controlling in case of letterbox companies that are registered in Poland to evade tax payments, collective bargaining agreements, labour laws, and social security contributions. In most cases, it is impossible to carry out inspections in such entities and effectively fight against illegal work. Another important barrier related to enforcement agencies includes the failure to provide, at the request of the National Labour Inspectorate, the details of a person authorised by the employer to represent him during checks conducted by the Inspectorate. This usually results in a lack of possibility to contact a foreign employer and undertake control in a given entity.

As far as the care sector is concerned, the possibilities of conducting checks are also very limited. Very often, it is unclear who is responsible for the employment of the workers, that is who the employer is. Moreover, the National Labour Inspectorate has no authority to inspect private residences.

5 Synthesis and Conclusions

Poland is one of the key member states issuing portable documents A1, although the numbers were on the decline since 2016. In 2018, Poland issued 238,525 PDs A1 under Article 12 of the Basic Regulation, with many postings directed at Germany, France, and Belgium. To a much lesser extent, Poland also received posted workers (26,714 in 2018), and here there was an increase in the numbers since 2016.

We describe the specifics of the Polish context, first by describing the regulatory framework in relation to posting and cross-border mobility, temporary agency work, health insurance coverage, and others. We outline the roles of the NLI and ZUS in the Polish framework, and the conducted interviews shed light on the day-to-day operating of these agencies. On the national level, we found that employers reported that the information provided by ZUS and NLI did not suffice, and they often were looking for it elsewhere, mainly in the employers' associations. Employers' reported issues related to long waiting times for issuing the PDs A1 and divergent interpretations of the existing regulations depending on the ZUS branch. One of the positive developments recently included an online platform designed to submit PD A1 forms, potentially making the application process smoother. The challenges faced by enforcement agencies included staff shortages and some gaps identified in the regulations.

There are some initiatives on a different scale that facilitate transnational cooperation between public authorities. In 2018 ZUS and German SOKA-BAU signed an agreement on the transfer of contributions from vacation equivalents. The Internal Market Information System allows information exchanges between Labour Inspectorate in the various Member States on the EU level. However, the interviewees pointed to the need for more extended transnational cooperation, which would allow avoiding cases in which employees fall out of one national social contribution system, and there is no clarity which social contribution system should apply.

On the employers' side, practices of entrepreneurs who post workers can be divided into two main groups. First, there are legally operating employers, registering the employees at local offices, paying taxes and social insurance contributions, and applying collective agreements in the receiving countries. Large companies usually can afford legal services that assist with posting according to the rules. Smaller and medium-sized companies with fewer resources tend to search for legal expertise via employers' organisations and think tanks. Operating within at least two (often changing) legal systems and applying them alternately depending on which rules will be more favourable constitutes the biggest challenge for employers. These regulations are especially complex with regards to social insurance contributions and the coordination of social security systems.

The second group of employers operates in the so-called grey area using ambiguities within Polish and European law. These entrepreneurs misuse portable documents A1, pay social insurance contributions from understated rates of salary or try to bypass the provisions on the posting by applying financially more 'beneficial' regulations on business trips and pay a part of the salary as a travel allowance.

In the case of employers operating in the grey area, there is even more need for enhanced workers protection. Here, in the light of low trade union membership among posted workers in Poland, trade unions aim at developing bilateral and multilateral agreements on the mutual representation of the interests of posted workers and increasing the number of liaison offices offering legal support in Polish in the receiving countries. Polish trade unions, such as the All-Poland Alliance of Trade Unions (OPZZ) and "Budowlani" Trade Union are increasingly involved in transnational activities to support mobile workers. Also, on the receiving end, in countries like Germany, which is the main receiving country for posted workers, they assist

mobile workers in asserting any claims they may have against their employers and concerning social issues, e.g. health insurance, accidents at the workplace, etc. There is also support offered to workers' rights during the pandemic, in various languages (as workers do not always know the language of the receiving country).

Despite these initiatives, the interviewees still reported low levels of knowledge of the rules and issues related to the contracts, taxes, and social insurance contributions among posted workers. At the same time, the Polish NLI has limited intervention powers regarding workers posted to Poland, control of letterbox companies, controls in the private residences (case of care sector). The issues differ by sector (related to occupational health and safety in construction and problems specific to live-in care workers) and hence require sector-specific solutions.

6 Policy Recommendations

EU Level

- Creation of a website with access to translated information on working and employment conditions in each country to which employees are posted;
- Developing guidelines for applying the Posting of Workers Regulations and related acts, which will give clarity to the application of the guidelines.

National Level

- Simplifying the procedure for applying for and issuing PD A1 and, above all, establishing objective criteria based on which a given employee will receive such a certificate in a given country;
- Awarding companies and agencies operating fully legally by granting recognised certificates confirming their reliability and transparency;
- Initiating an information campaign on the rights of posted workers and different models of posting, as well as creating a system of access to knowledge for them;

Industry Level

- Limiting the subcontracting chains in the construction sector. It would facilitate identification of the headquarters both by the Enforcement State Agencies and trade unions in the case of tracing companies violating labour rights;
- Preparation of guides for employers who post employees to sectors whose specifics of service provision (mainly home care or transport) requires a special approach in the interpretation of general regulations;
- Developing solutions to regulate the working time and legal basis for employment in the home care sector.

Enforcement State Agencies

- Introduction of electronic document circulation between Enforcement State Agencies and their counterparts in the EU and digitalisation of data collected by the Enforcement State Agencies;
- Introduction of regulations limiting the possibility of setting up letterbox companies;
- Introduction of regulations limiting the possibility of bypassing the provisions on the posting by applying financially more 'beneficial' regulations on business trips and paying a part of the salary as a travel allowance.
- Increasing access to information about social insurance and raising awareness for issues related to exclusion from the social security system.

Social Partners

- Improving multi-stakeholder cooperation between public authorities and social partners;
- Setting up advisory services and support for mobile employees in their native languages;
- Strengthening of trade unions and employers' associations in labour law to give them the possibility of shaping relations on the labour market. Trade unions have no practical influence on what happens in the workplace in Poland since they have no legal tools for it.

7 References

- De Wispelaere, F., De Smedt, L. & Pacolet, J. (2020). Posting of workers. Report on A1 Portable Documents issued in 2018. Luxembourg: Publications Office of the European Union.
- European Commission (2019). Practical guide on posting, <https://op.europa.eu/en/publication-detail/-/publication/8ac7320a-170f-11ea-8c1f-01aa75ed71a1/language-en> (accessed 14.12.2020).
- Eurostat Database (2020). <https://ec.europa.eu/eurostat/data/database> (accessed 19.10.2020).
- ILO (2020). About the ILO in Poland. https://www.ilo.org/budapest/countries-covered/poland/WCMS_476068/lang--en/index.htm (accessed 19.10.2020).
- ISA (2020). Country Briefing Paper – Poland, https://www.isaproject.eu/wp-content/uploads/2020/05/Country_paper_PL.pdf (accessed 26.11.2020).
- Kall, K., Brzozowska, A., Lillie, N., Matuszczyk, K. & Salamońska, J. (2020). From Ukraine to Finland and Estonia via Poland: Migration and posting of third country nationals, http://www.migracje.uw.edu.pl/wp-content/uploads/2020/07/Con3Post_U_PL-FI-ET_final.pdf (accessed 19.10.2020).
- PIP (2020). Czy możliwe jest delegowanie na terytorium RP pracownika tymczasowego z agencji zatrudnienia posiadającej siedzibę w tzw. kraju trzecim? <https://www.pip.gov.pl/pl/porady-prawne/legalnosc-zatrudnienia/delegowanie-pracownikow-na-terytorium-rp-w-ramach-swiadczenia-uslug/107452,czy-mozliwe-jest-delegowanie-na-terytorium-rp-pracownika-tymczasowego-z-agencji-zatrudnienia-posiadajacej-siedzibe-w-tzw-kraju-trzecim.html> (accessed 26.11.2020).
- Leiber, S., Matuszczyk, K. & Rossow, V. (2019). Private Labor Market Intermediaries in the Europeanized Live-in Care Market between Germany and Poland: A Typology, *Zeitschrift für Sozialreform*, 65(3): 365-392.
- Lewandowski, P. & Magda, I. (2017). Temporary employment, unemployment and employment protection legislation in Poland, in: A. Piasna & M. Myant (eds.), *Myths of employment deregulation: how it neither creates jobs nor reduces labour market segmentation*, Brussels: ETUI, pp. 143-164.
- OECD (2019). International Migration Outlook 2019. Doi 10.1787/1999124x.
- OECD (2018). The new OECD Jobs Strategy. Good jobs for all in a changing world of work. How does Poland compare?, <https://www.oecd.org/poland/jobs-strategy-POLAND-EN.pdf> (accessed 19.10.2020).
- Rzemek, M. (2020). Ukraińcy delegowani do Polski bez żadnej kontroli - pracodawcy chcą ograniczeń dla zagranicznych spółek, Rzeczpospolita, <https://www.rp.pl/Kadry/200309881-Ukrajnicy-delegowani-do-Polski-bez-zadnej-kontroli---pracodawcy-chca-ograniczen-dla-zagranicznych-spolek.html> (accessed 19.10.2020).
- Statistics Poland (2020). Concise Statistical Yearbook of Poland. Warsaw: Statistical Publishing Establishment.
- Statistics Poland (2019). Concise Statistical Yearbook of Poland. Warsaw: Statistical Publishing Establishment.
- Statistics Poland (2017). Informacja o rozmiarach i kierunkach emigracji z Polski w latach 2004–2016 (Information about the size and destinations of Polish emigration between 2004 and 2016). Available at: <https://stat.gov.pl/obszary-tematyczne/ludnosc/migracje-zagraniczeludnosc/informacja-o-rozmiarach-i-kierunkach-emigracji-z-polski-w-latach20042016,2,10.html> (accessed 28/12/2019).
- Szypniewski, M. (2019). Ochrona interesu pracownik delegowanego w ramach świadczenia usług w Unii Europejskiej [Protection of posted workers' interests in the provision of services in the European Union], Warszawa: Wolters Kluwer.