Posting of workers during the COVID-19 pandemic, current challenges, and future prospects

# COUNTRY SPECIFIC REPORT

AFTER IMPLEMENTATION OF INTERVIEWS AND FOCUS GROUPS

## POLAND

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Posting of workers is a form of labour mobility involving the temporary assignment by an employer (or temporary work agency) of an employee to perform a specific service in another country belonging to the EU (more precisely, the European Economic Area and Switzerland). What is important here is that the essential functioning of the employee (professional and personal) is carried out in the country from which he is posted. The posting of workers should be strongly distinguished from another form of labour mobility, which is the migration of workers to another EU member state under the free movement of workers. Posted workers are employees who are sent by an employer to temporarily provide a service in another EU member state (for up to 12 months and in certain cases up to 18 months). Upon completion of the service, however, the employees are required to return to their "home" country. This, among other things, distinguishes this situation from migratory mobility.

The instrument of posting workers has both benefits and negative aspects. The challenge of applying the instrument of posting workers is the employer's familiarity with the regulations in force in the country to which it posts workers, particularly in the area of wages and the provisions of collective bargaining agreements as well as tax and social security regulations. In turn, employees receive higher wages so their purchasing power after returning to the country is higher, tax revenues to the state budget increase. The employee gains experience and skills, which he can then use in the domestic labour market. On the other hand, the labour market loses a person who is gainfully active for a while, with the risk of permanently losing the employee (in case of a change of employer). Posted workers face the risk of discrimination at the place of posting, as well as the stress of separation from family, a change in the place of work and the culture in which they previously operated.

Posting of workers is seen as a tool of competition in terms of labour costs and social security in the EU internal market. Changes to the rules on posting of workers at the EU level were supposed to reduce the negative phenomena in the area of posting of workers in practice. In practice, the posting of workers affects only about 1% of the total number of workers in the

EU. Employment cost issues are important, but the posting of workers is also responsible for the demand of businesses for workers, particularly for specialists in a particular sector of the economy. Much of the posting of workers occurs in high value-added chains and involves highly skilled workers. Thus, wage issues are not predominant in these cases.

Poland is the main country responsible for the posting of workers, which is evident in the number of A1 forms issued, the number of which only temporarily decreased during the COVID-19 pandemic. Workers from Poland are posted primarily to Germany, France, Belgium and the Netherlands. Legal residence and work in Poland is a condition for being able to legally post them abroad. Workers posted to Poland come, in addition to Ukraine, from South Korea, Belarus, Italy, Austria, Czech Republic, China, USA, India, UK, Japan.

The posting of citizens of certain third countries is facilitated by the existence of bilateral social security agreements that Poland has concluded with Ukraine, the US, the Republic of Korea, Germany and Austria, among others. Thus, third-country nationals from the aforementioned countries are posted to Poland on the basis of such bilateral agreements. Posted workers from countries with which Poland has not concluded bilateral agreements are posted on the basis of EU posting regulations.

The sector with the largest number of posted workers was industry, for which posting accounted for more than 60% of all other economic sectors. In second place was the services sector (about 30%). The lowest percentage of posted workers by sector was agriculture, forestry, hunting and fishing.

Delegation of workers to Poland is a legal instrument rarely used in relation to the number of total employees, including direct employment of foreigners. Workers posted to Poland are mostly third-country nationals (in 2020 they accounted for about 60%) so they are not citizens of EU countries. The number of posted workers who are citizens of Poland (or citizens of other EU member states) is decreasing, while the share of workers from third-country nationals is

increasing at a steady pace. Thus, the application of the instrument of delegation of workers from the territory of Poland to third-country nationals is increasingly common, dominated by workers of Ukrainian nationality. The number of employees of Ukrainian nationality in the Polish labor market is increasing. From 2014 to 2022, 1-2 million migrants from Ukraine arrived in Poland (the largest number after armed Russia to Ukraine, the border with Poland crossed about 4 million people). Since 2014, migration has been facilitated in Poland by a simplified mode of employment, based on statements of entrustment. Russia's armed aggression against Ukraine will likely have an impact on the posting of workers. At the EU level, already after the Russian aggression, member states were obliged by the European Commission to facilitate the entry of Ukrainians from abroad. Poland has introduced a number of facilitations for war refugees, including provisions allowing them to take up work quickly (based on the procedure of notification of employment of a Ukrainian citizen). These facilitations will affect the use of the posting instrument, as Ukrainians can be hired directly in the destination country. This will probably affect the number of posted foreigners coming from that country in the following years - reducing it.

The COVID-19 pandemic has had an inhibiting effect on worker mobility. Posted workers experienced special challenges after the outbreak of the COVID-19 pandemic, not only due to restrictions on the free movement of workers, but also due to the extraordinary measures put in place to protect individuals from contagion, but also to protect workers and companies from the negative consequences of the crisis. Companies that have posted workers abroad, especially those specializing in this form, have reduced operations due to restrictions to counter the spread of the SRS-CoV-2 virus. Entry restrictions introduced in the EU, including by the countries receiving the most posted workers (in the case of Poland - Germany, Italy, Belgium) have reduced the number of people posted. The number of delegates was also negatively affected by the obligation to implement quarantine upon return to Poland from abroad and the risk of not being able to return, in the event of a complete closure of the borders following an increase in the scale of the pandemic. Also difficult for employers to estimate were the costs of protecting workers from contagion affecting the "price" of posting

workers. Uncertainty about the further development of the pandemic played a large role in the decisions of employers and employees. In addition, the uncertainty of the law (constant and sudden changes in regulations) made it difficult for companies to plan for posting. It is worth mentioning, of course, that posting took place during this period for those workplaces where employee activities, due to their specifics, could not be performed remotely, as they required the physical presence of the employee at the workplace.

The European Commission published at the end of March 2020 guidelines on the use of free movement of workers during the COVID-19 pandemic. According to the guidelines, posted workers were considered key workers for host EU member states, for example, for the health care system, the provision of essential services or the provision of goods. The European Commission indicated that countries should allow posted workers to continue to cross borders to their place of work if work in a particular sector is still permitted in the host member state. This was a key position for businesses and workers using posting at the EU level.

As for the regulations implemented by Poland during the pandemic period, in addition to the introduction of quarantine upon return from abroad (the regulations changed throughout the pandemic period) and regulations aimed at limiting the spread of the SARS-CoV-2 virus in public spaces (restricting movement, changing the rules of organizing work in enterprises or closing them completely, temporarily), a number of solutions relevant to the employment of workers and their mobility were introduced during the pandemic period. Among the many regulations implemented at the time, it is worth mentioning those relevant to the posting of workers, especially foreigners:

- extension of validity of work permits and statements;
- extension of the validity of temporary residence permits and national visas;
- extension of the validity periods of temporary foreigner identity certificates;
- the right to legal residence in Poland on the basis of so-called short-term residence entitlements for foreigners who, on March 14, 2020, were residing in Poland on the basis of short-term residence permits, including visa-free movement, from the day

following the day on which their legal residence on the basis of such titles ended after the cancellation of the state of epidemic or epidemic emergency after the day on which the state of epidemic emergency or epidemic emergency was cancelled (whichever is cancelled later);

- extending the deadlines for applications for residence permits in Poland, for application deadlines falling during the period of the state of epidemic emergency or state of epidemic emergency;
- extension of the deadline for voluntary return of foreigners;
- extension of the deadline for leaving the territory of Poland.

The analysis of the factual situation and the information obtained during the implementation of the project indicate that the COVID-19 pandemic has negatively affected business conditions and employment. However, the industrial sector in Poland proved to be resilient to the crisis, both against other sectors of the economy and against the condition of the sector in other EU countries. The dominant obstacle to activity was the collapse of supply chains and the decline in demand for goods. During the COVID-19 pandemic, companies faced supply constraints on items needed for production that occurred as a result of broken supply chains. Because of this, production was interrupted or curtailed, which affected personnel management. In order to optimize the work of the workforce and minimize business costs, so-called layoffs or sending employees on vacation were used. Employees were also transferred to work in other plants of the capital group, also by means of the institution of posting of employees. Thus, the institution of worker secondment was a useful tool for maintaining continuity of production and employment status during the COVID-19 pandemic. The period of secondment during this period varied, but was generally short, up to several months. Managing labour organization, including posting, was difficult in the face of uncertainty about the development of the pandemic and changes in regulations aimed at limiting the spread of the COVID-19 virus, particularly regarding movement and quarantine periods.

Interviews and focus group discussions conducted, as part of the project, showed that the most common practice was the posting of employees to another plant operating within a group of entrepreneurs (either a corporate group or functionally related - a foreign branch of a company) on the territory of another EU member state. These were mainly manufacturing plants in the automotive and metal processing sectors. However, this delegation concerned a very small group of employees, numerically variable over time, and was dictated by the need to ensure the continuity of the operation of enterprises in the conditions of an increased number of employee illnesses. Secondary-aged men were subject to delegation. By delegating workers, staffing was managed within a group of plants to optimize work under pandemic conditions. As mentioned above, the posting period was short - up to several months. Employees who were directed to work by posting workers made the decision to send them to work abroad voluntarily. Awareness of the conditions of posting promoted their acceptance. In turn, employers, but also partly employees, perceived work in the form of posting as an opportunity to gain new experience, prove themselves in new conditions and use their existing skills in another workplace, develop professional and personal skills. During the pandemic period, an important, even crucial, aspect considered by workers deciding to post was to maintain employment, in the face of anxiety about and uncertainty about labour market developments, and to maintain wages, which could often be and were higher than those received in current employment.

Representatives of trade unions who participated in the focus groups took the position that the situation of employees in terms of employment conditions, including remuneration, was good, and sometimes even better than in their current workplace. Trade unions operating at the plants from which the employees were posted did not receive negative assessments of the process of implementing the posting. Although some workers indicated that the situation of some workers in terms of wages worsened during the COVID-19 pandemic, this was due to the lack of orders received by the company (a reduction in the number of orders and thus in the hours worked) and not to a change in the conditions of employment resulting from the use of the instrument of worker posting.

During the period of delegation, the employees were subject to the same health and safety rules as other employees at the relevant workplace during that period ( including those against infection with the SARS-CoV-2 virus) and declared that safe and hygienic working conditions were provided to them during the COVID-19 pandemic (analogous to employees permanently employed at the workplace). In view of the fact that the form of posting was applied to employees for a short period of time, they did not experience difficulties in relations with the environment, linguistic or logistical, and the problem of separation from relatives was also rarely indicated, although it is possible that this was due to a lack of desire to share a personal area of life at the workplace and the adoption of the task-based nature of work in the form of a posted employee. Trade union representatives stressed that the evaluation of the delegated worker instrument was also due to the fact that employees voluntarily performed work in this form, hence greater satisfaction with the conditions under which they worked. This is also confirmed by the current interest in delegation in workplaces, as the employer has directed employees of various levels to work as delegated employees to a branch abroad, where they are responsible for organizing work in that branch (production implementation). Thus, the informed consent to the posting and the benefits that the employer provides (travel, accommodation, often higher wages and an allowance for separation from the family) result in a positive evaluation of work in this form by posted employees. However, in doing so, attention was drawn to the problem of separation from the family and the transportation and housing problems associated with employment.

As mentioned above, the lack of signals of irregularities with regard to the posting of workers may be due to the standards of operating companies in the analyzed sector of the economy (industrial sector, including metallurgy and automotive), which is characterized by high technological advancement and demand for specialists. Employment standards in connection with the above, and the fact that health and safety must be strictly observed due to legal requirements and the nature of production - are higher than in the sector and companies that usually post workers (for example, the transportation sector or care services). Workers are

specialists who are valued by offering appropriate employment standards. In addition, workers were posted within the structure of companies and not from the open labour market, which has a positive effect on posting standards - it can be assumed that within a group of companies, labour standards are similar or analogous. Workers' rights were guaranteed, therefore, both at the permanent workplace and at the place of posting. A major influence on working conditions is the scarcity of workers (low labour supply) in the labour market, especially highly skilled workers, which has been observed in Poland for several years. This limits to some extent the abuse of employees and at the same time limits the level of acceptance by employees. Important for working conditions, including the use of the instrument of posting workers, is the operation of trade unions in the entities that post workers. Experience confirms that in entities where trade unions operate, labor standards are higher than in entities where employees are not unionized. This is also confirmed by analyses of the European Trade Union Confederation.

When sanitary restrictions were reduced by the Polish government, employers essentially returned to their previous way of doing business, but some sanitary solutions persisted for some time to come (such as disinfection). After the abolition of the state of epidemic and then epidemic threat, the legal obligations of enterprises ceased, so employers abandoned them. Thus, employers do not take action against the return of the pandemic crisis. However, it is worth strongly emphasizing at the same time that employers are bound by national regulations for ensuring safe and hygienic working conditions for employees (OSH). Some workplaces, for example, have occupational health and safety services, social labor inspectors and trade unions that control and interact with employers to ensure safe and hygienic working conditions for employees. The above is to ensure safe working conditions for employees.

Regardless of the above conclusions of the survey, an analysis of the annual reports of the State Labor Inspectorate shows that there are, however, irregularities in the labor market in the area of posting workers. At the same time, it is worth noting that the scale of control activities aimed at eliminating irregularities in the posting of workers is small in relation to the

total posting, so we have no knowledge of what proportion of irregularities remains undetected. In general, within the detected cases, the irregularities relate to the conditions of employment of persons posted from Poland to other EU countries, especially in terms of remuneration for work. The predominant problem was that of unpaid salaries and other labor dues. The abuses were mainly related to: failure to provide adequate remuneration for work and other work-related benefits in accordance with the legislation of the host country; failure to notify the competent authorities of the fact of posting workers; failure to show the required documents to the inspection authorities or failure to store these documents in a specified place on the territory of the host country: failure to comply with regulations on occupational health and safety and failure to comply with the law on the employment of temporary workers. It happened that in the course of the inspection it turned out that a given factual situation did not meet the definition of a posted worker.

The State Labour Inspectorate also noted in the course of its inspection activities that posting entities:

- are circumventing the remuneration regulations in force in the country of posting by, for example, paying contributions for business trips that are not recognized by foreign services as a component of the employee's remuneration;
- delegate to work abroad persons who have been entrusted with work in Poland on the basis of civil law contracts;
- delegate to work outside Poland, in order to perform contracts concluded with foreign contractors, persons who have not previously been connected with Polish entities by an employment relationship or any other type of legal relationship;
- delegate employees from the territory of the Republic of Poland by companies using the services of so-called virtual offices or box companies;
- delegate citizens of third countries (mainly citizens of Ukraine and Belarus) to work abroad, including those who are illegally employed in Poland;
- "sham" delegate workers to EU countries, mainly citizens of third countries, in order to obtain a kind of "pass" to other EU countries in this way.

As indicated above, due to the limited organizational and personnel capacity of the State Labour Inspectorate to carry out inspections, the scale of irregularities and abuses recognized in the labour market, including in the area of posting workers, is underestimated. A major change for the implementation of the posting process in Poland was the introduction of provisions in the Law on the Posting of Workers in the Provision of Services, which impose an obligation on the Polish employer posting an employee to provide him with full information on the terms and conditions of employment due to him in connection with the temporary performance of work in another EU member state, including wages, the allowance received for posting and the rules for receiving reimbursement of expenses for increased costs of accommodation and meals abroad - if provided for. This information must be presented to the posted employee even at the stage preceding the posting. Remuneration for work in Poland should include all mandatory components of remuneration under the Labor Code and other regulations governing the rights and obligations of employees. The remuneration received by posted workers must comply with the requirements of the regulations of the Member State where the posted worker performs work to enable them to cover their living expenses in that Member State. In addition to generally applicable regulations, collective wage agreements applied to posted workers. They should be paid wages determined on the same basis as local workers. To this end, the relevant provisions of collective agreements declared universally applicable should be applied. The above provisions create tools for posted workers to assert their rights with the possibility of compensation in the event of non-compliance by the home employer or retaliation by the home employer against the posted worker who requested the information. However, it is worth being aware that, in general, many working in Poland (without distinction between the form of work) give up asserting their rights, either because of the desire to maintain employment (if continued with a given employer) or the lengthiness of asserting their rights and the costs associated with the process. In particular, it is difficult for working foreigners to assert their rights.

Verification in the area of posting workers in Poland is also carried out by the Social Insurance Institution, but it is sporadic. According to a statement from the European Commission, the Social Insurance Institution conducted in 2021. 326 inspections of applications for the issuance of A1 documents, of which 115 proceedings concerned the conditions for the issuance of A1, while 211 the authenticity of the issued A1 - 38 cases were found to be incorrect. In the case of inspections of 175 documents, they were found to have been used incorrectly. The scale of verification of applications for the issuance of A1 document is therefore very small compared to the scale of several hundred thousand applications for the issuance of this document. Therefore, it can be concluded that the issuance of the A1 document, once the document is properly filled out, is automatic.

Restrictions on the mobility of workers due to the outbreak of the pandemic have negatively affected the posting of workers, both to and from Poland. As for posting from Poland, it decreased by 28,862 in 2020 compared to 2019. (from 647,989 to 619,127), but the recorded level was still higher than in 2018. The decrease in the number of postings in 2020 was the first in 10 years. The report on the activities of the State Labor Inspectorate in 2020, 24,373 people were posted to Poland, a decrease of 6,844 (21.92% y/y) compared to 2019. Taking into account the number of about 16.8 million employed people, workers posted to Poland accounted for 0.1% of this total. In 2021, the number of A1 documents issued in Poland amounted to 676,839, an increase of 59,067 (9.6%) compared to 2020. (619 127). Poland had a share of 18.6% of the total number of A1 documents issued in the European Union in 2021 (second only to Germany, whose share was 27.3%) Poland accepted 58,024 posting notifications, a decrease of 939 (1.6%). This means that the intensity of posting not only equaled the decrease in the scale of posting that occurred in 2020, but also the increase was higher than in previous years. This allows us to conclude that the COVID-19 pandemic only temporarily affected trends in the use of the posting instrument and did not have a lasting impact on the use of this tool. Also, changes in posting regulations related to the amendment of the content of the directive did not affect the trends in the use of posting of workers (there was only a slight slowdown in the growth rate due to legislative uncertainty, which returned after the provisions of the directive came

into force). Key to the formation of labor demand, including the posting of workers, appears to be the level of demand for goods and services of entrepreneurs, which increased with the reduction of anti-pandemic restrictions. The continuing shortage of workers in the labour markets of some countries, especially specialists, has also had an impact on the increased demand for the posting of workers and the increase in their mobility within the European Union in recent years. According to the latest data from the Social Insurance Institution, exactly 29,836 A1 forms were issued from January to August 2023, while in the same months last year there were 25,500 such certificates. This means a steady upward trend in the posting of workers, as in 2021 and 2020, the number of A1 forms was lower.

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