



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

ACADEMIC ARTICLE

SUMMARIZING PROJECT FINDINGS



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As part of the implementation of the project entitled “Posting workers during the COVID-19 pandemic, current challenges and perspectives for the future”, we have reviewed literature in the Polish language on the posting of workers, and have analysed the data on the use of posting and the actual situation of posted workers themselves (through meetings and interviews). The project focused on companies from the industrial sector which post workers, with most data coming from the metallurgy, metal and automotive sectors. Importantly, the analyses and conclusions developed during the project are pertinent to the abovementioned sectors which differ from, for instance, transport or service industries, where the posting of workers is also used.

Although Poland is one of the key states that post workers, the topic of posting has not enjoyed broad coverage neither in academic journals nor in popular or specialist press. It may well be a consequence of the small percentage that posted workers account for in the total number of all people employed, which makes posting an objectively niche issue on the labour market. The posting of workers, regardless of key words used, may be found in the context of legal and actual issues (practical aspects) concerning the use of this legal instrument. The analyses are primarily centred on the provisions of law, their interpretation and practical applicability. Authors’ attention, however, focuses on the public law obligations of the employer arising from the provisions on the posting of workers. No specialist analyses on the posting in the metal (metallurgical) sector have been found; press is also silent on the matter. The first outcomes of the analysis of sources on the posting of workers consist in the references to websites of businesses which handle the legal aspects of posting or serve as intermediaries in the posting of workers. In general, the topic of posting of Polish-speaking workers has not been broadly covered in the sources, and the number of materials that could be identified is limited. There are few authors (experts) specialising in the posting of workers, including in the academic context. What makes this even more surprising is the fact that Polish employees constitute a significant group of posted workers in the European Union. On top of that, there are also people from other countries who work in Poland on the basis of posting. Nevertheless, in Polish literature, posting remains a downright niche topic. Both the number of authors who approach the issue of posting from a specialist angle and the number of papers published are scarce. The analyses of the posting of workers are relatively few and can be found in highly specialised academic literature targeted at experts. What is more, as mentioned above, these publications focus mostly on the aspects related to public law dues. A broader range of perspectives could be found in daily press (on specialist legal pages) from the periods when the directive was being adopted and revised at the EU level and when the EU rules were being implemented into national law. At that time, we could observe a surge in publications that took the form of practical guidebooks, which explained the content of the law in a more accessible (non-legal) language.

When it comes to academic articles, such papers focus mostly on the description of the legal and formal aspects of posting or aim at disseminating knowledge on its correct application, clarifying the obligations with regard to the social insurance system and the payment of taxes. These topics seemed particularly relevant in literature, addressing practical challenges faced by employers in this respect. The key issue for experts was to determine the state and the amount in which public law dues should be paid. The information was mostly intended to support entrepreneurs in fulfilment of their public law obligations and prevent a negative outcome of a posting-related audit by state authorities.

The papers clearly focus on the aspects relevant to employers, especially formal requirements inherent to posting. By contrast, topics such as work conditions, requirements that employers have with respect to employees in connection with posting, risks and benefits for employees arising from this form of work, or practical guidebooks for workers are nowhere to be found. The rules on posting, and their modifications in particular, are analysed from the perspective of their impact on the costs of business (mostly the increased labour costs), but the issue of their influence on work conditions is not being discussed. In the identified publications, the point of view of workers, their opinions and experiences from posting are basically absent. A few papers mention court procedures initiated in connection with certain shortcomings in posting to the detriment of workers (failure to pay wages). This clearly suggests that workers do turn to courts to seek redress as a result of incorrect posting practices. The scarcity of information in the press on such cases should not be relied on to gauge the scale of the problem. Yet another topic raised in the literature is the issue of social dumping, i.e. competition between employers based on the labour costs. This matter comes up in discussions on the posting of workers as an argument against posting as such and the free movement of workers in the European Union in general. The posting of workers is perceived as a tool of competition in the area of labour costs and social insurance in the EU internal market. Nevertheless, this narrative focuses on workers rather than employers who choose this form of hiring employees to compete in the market. However, in practice, it should be emphasized that the posting of workers accounts for as little as ca. 1% of the total number of employees in the EU. The costs of labour do matter, but the posting of workers is also a way to address the issue of demand for workforce, especially specialists, in a specific sector of the economy. The majority of posting takes place in the supply chains of characterised by high added value and concerns highly skilled employees whose work requires adequately high remuneration. In consequence, in such cases the pay is not the decisive factor. One of the arguments raised in the literature is that the costs related to posting, the organisational effort required to follow this process and the specialist nature of work by posted workers render this instrument not “attractive” in terms of labour market competition.

This is particularly true when the employer conscientiously complies with all legal requirements with regard to costs. This by no means suggests, however, that there is no labour costs-based competition in the EU market. Amendments to the EU rules on posting were intended to reduce the negative phenomena related to posting in practice.

When compared to the overall number of people employed, posting of workers, including foreigners, to Poland, is a tool that is rarely used. Poland is a major state responsible for posting workers elsewhere, as evidenced by the volume of A1 documents issued, the number of which decreased only temporarily during the COVID-19 pandemic. According to the report on the activity of the State Labour Inspectorate, in 2020, 24,373 people were posted in Poland, 6,844 less (21.92% y/y) compared to 2019. Given the number of ca. 16.8 m of people employed, workers posted to Poland accounted for 0.1% of them. In 2021, Poland issued 676,839 A1 documents, i.e. 5,067 (9,6%) more with respect to 2020 (619,127). In 2021, Poland accounted for 18.6% of all A1 documents issued in the European Union (ranking second after Germany with a 27.3% share) Poland received 58,024 posting notifications, which marks a decrease by 939 (1.6%). According to the recent data from the Social Insurance Authority (ZUS), from January to August 2023 as many as 29,836 A1 forms were issued, compared to 25,500 in the same period of the previous year. This demonstrates a consistent trend in the growth of posting, as in 2021 and 2022 the number of A1 forms was lower. Workers from Poland are posted mostly to Germany, France, Belgium and the Netherlands. Most of the workers posted to Poland are third country nationals (in 2020 they accounted for ca. 60%) and as such are not EU citizens. Apart from Ukraine, workers posted to Poland come from South Korea, Belarus, Italy, Austria, Czechia, China, the USA, India, the United Kingdom, Japan. The existence of bilateral agreements on social security that Poland has signed, i.a. with Ukraine, the USA, the Korean Republic, Germany and Austria, facilitates the posting of citizens from certain third countries. The sector with the highest number of posted workers is the industry, accounting for more than 60% of the other sectors. The service sector came second (ca. 30%). The most challenging task seems to be the practical analysis of the situation of workers (in terms of work conditions and pay) in the service sector. This is a consequence of the dispersion of workers (microenterprises, agency work) and the lack of conditions for the operation of trade unions that could advocate for the workers, monitor their work conditions and cause such conditions to improve. In the industry, by contrast, trade unions have a stronger footing and, whenever present in an enterprise, enjoy legal rights to work for the benefit of workers, including the posted ones.

The posting of workers can produce benefits but has its dark side as well. One of the challenges regarding the use of this instrument involves the knowledge of the legal rules effective in the state to which the workers are to be posted – especially in the area of remuneration and collective labour agreements, but also taxes and social insurance. And this, most likely, is the reason fuelling the demand for companies that specialise in the handling of posting. Workers, on their part, receive higher pay when posted, and so once they return to their country of origin their purchasing power is higher and the tax revenues of the state increase as well. Workers gain experience and skills that can later be applied in the domestic labour market. Obviously, on condition that their work and pay conditions are observed and the job is of high quality. On the other hand, the domestic market loses a gainfully employed person for some time; there is a risk of losing the worker permanently, should they choose to switch employers once the posting is over. Additionally, posted workers are at risk of being discriminated against at the place of posting and are exposed to stress as a result of being away from their families, as well as the change in the workplace and culture within which they have lived thus far. In practice, such living conditions (the sense of a lack of stability, being away from home, accommodation conditions, separation from relatives) often put a strain on posted workers in the long run. Whether workers view posting as positive or not depends largely on the quality of employment and on the observance of worker's rights by the employer – whether they are able to provide high quality workplace and comply with corporate social responsibility rules. One interesting aspect of posting can be found in the automotive sector: here employers resort to posting with respect to high level management and specialists; the use of posting is viewed as a privilege given very good work and pay conditions offered to such employees – much better than in their facility of origin. Such people provide work on the basis of individually negotiated contract, which puts them in a privileged position with regard to domestic workers. This has given rise to some negative opinions about posting, which could be perceived as an element of worker differentiation and a way to acquire know-how in terms of management and production techniques in the companies to which such workers are posted. Indeed, it is no secret that individual companies, despite belonging to the same group, compete with each other for orders and are exposed to the risk of relocation, which poses a threat to the preservation of jobs. The workers at the facilities to which the abovementioned employees are posted view them negatively because of their preferential treatment and the risk of losing know-how, which is of key importance for the facility's competitive advantage.

Independently from these conclusions from the desk research, the analysis of the annual reports published by the State Labour Inspectorate has shown that certain irregularities in the field of posting do occur. It is important to add, however, that the scale of control activities aimed at

eliminating irregularities in the posting of workers is small when compared to the scale of posting in general. In consequence, we do not know what percentage of irregularities remain undiscovered either owing to the lack of control or the lack reporting by the employees. We must nevertheless conclude that, due to organisational and staffing limitations affecting the capacity of the State Labour Inspection to carry out field control, the scale of irregularities and abuse in the labour market, including the area of posting, is underestimated. Generally, where irregularities were discovered, they mostly pertained to the conditions of employment of persons posted from Poland to other EU states, especially the pay for work. The prevailing problem concerned failures to pay the wages and other dues payable to employees. Posted workers should receive remuneration on the same terms and conditions as applicable to local workers. It should be emphasized, however, that many people working in Poland (regardless of the form of work), resign from pursuing their rights either because they wish to keep their job (if they continue to work for the same employer) or are discouraged by the lengthy process of pursuing their rights and the related costs. One group facing particular difficulties in pursuing their rights are the foreigners who, as evidenced by the data quoted above, constitute a large group among posted workers. Some of the other reasons include e.g. the language barrier, legal rules and social norms.

The COVID-19 pandemic restricted worker mobility. Following the outbreak of the COVID-19 pandemic, posted workers experienced particular difficulties, not only due to restrictions in the free movement of workers, but also extraordinary measures introduced for the purpose of protecting people against infection. These measures changed over time, which required paying close attention to such changes and being able to adapt to them quickly. For workers, it was a period of stress – caused by the risk of being infected and coming down with the disease or one’s close people getting sick, the risk of being quarantined, “getting stuck” in one place because of the law changing, limited information and uncertain future or the risk of losing employment and the source income needed to make a living.

From the perspective of posting, the COVID-19 pandemic only temporarily affected the long-term posting trend and had no lasting impact on the use of this instrument. This is evidenced by the number of postings. The uncertainty with regard to the further development of the COVID-19 pandemic played an important role in decision-making both by the employers and the employees. On top of that, operational business decisions, including the management of staff (posted workers included) were affected by legal uncertainty and the frequent changes of law during the pandemic (though one should note the positive impact of the decisions on the status of posted workers at the EU level).

During that period, posting was used when the tasks of workers, because of their specificity, could not be carried out remotely, because they required ongoing physical presence of the worker on site. It was used to optimise the work of the staff within company structures and to minimize the costs of business operations. It allowed for filling job posts in a way optimizing work under pandemic conditions. In consequence, the posting of workers turned out to be a useful tool aimed at maintaining production continuity and the level of employment during the COVID-19 pandemic. The posting of workers was motivated by the need to ensure ongoing operation of businesses in a period of increased absences of staff due to medical reasons. One could expect that during the pandemic the use of posting involved higher costs for employers, because of the quarantine or the security measures required to be put in place to comply with the legal rules on occupational health and safety.

The outbreak of the pandemic and the limited impact of it on the economic standing of companies (taking account of public aid) resulted in posting being used for a limited time. Some workers reported that their situation from the perspective of pay deteriorated during the COVID-19 pandemic, but this was often a consequence of the lack (or a limited number) of orders received by the company in that period rather than a change in employment terms and conditions arising from posting.

Employees viewed posting as an opportunity to gain new experiences, test oneself in new conditions or apply their existing skills in a different company, growing their professional and personal skills. Undoubtedly, during the pandemic, one important aspect analysed by workers considering being posted was their willingness to remain employed, given the uncertainty regarding the development of the situation in the labour market, and to receive remuneration, which could often be higher than one's salary earned from the current job.

When posted, employees were subject to the same rules of occupational health and safety as the remaining employees in a given work place at that time (including the measures preventing the spread of SARS-CoV-2 virus) and declared that their work conditions during the COVID-19 pandemic were safe and sanitary (and corresponded to the measures offered to employees permanently employed at the same facilities). As the posting of workers was of short-term nature, they did not experience difficulties when interacting with their environment, of language-related or logistic nature. Furthermore, they hardly ever reported the issue of being separated from their loved ones, though this could result from the lack of willingness to share details about their private lives at work and assuming a task-oriented attitude during posting. As regards the terms and conditions of employment, including the pay, the situation of workers was good, or in some cases even better

than at their regular place of work. The representatives of trade unions emphasized that the opinion on the posting of workers is also motivated by the fact that the workers volunteered to work in this form, and hence they experienced more satisfaction from their work conditions. This is also confirmed by the current interest in posting in companies, as the employer has sent employees of various levels to work at foreign branches in the capacity of posted workers, where they are responsible for organising work at the relevant branch (commissioning of production). In consequence, informed consent for posting and the benefits offered by the employer (transfer, accommodation, often higher pay and a bonus for being separated from one's family) make posted workers view their work in this form in a positive light. However, the workers did report the problem of being separated from their families as well as transportation and accommodation issues related to their employment.


As a result of the above and the necessity to strictly abide by the occupational health and safety rules because of the legal requirements and the nature of production in the metal sector, the standards of employment are higher than in other sectors and companies that typically post employees (as a side note one could refer to the transport sector or the care service sector where more irregularities in the field of employees' rights are reported – this was also the case during the COVID-19 pandemic, when trade unions from these sectors of the economy received signals concerning the failure to ensure safe and sanitary work conditions for workers). What is more, workers are posted within the structure of a business group rather than in the open labour market, which has a positive impact on the standards of posting. One could assume that the standards of work within one corporate group are similar or at least analogous. Additionally, experiences have confirmed that whenever trade unions are present within companies, the standard of work is typically higher than in entities where workers are not unionised.

According to information obtained during the implementation of the project entitled “Posting workers during COVID-19 pandemic, current challenges and perspectives for the future”, employers are not taking up actions aimed at preventing the re-occurrence of the pandemic crisis (the reasons being the lack of legal obligation to do so and the costs). However, one should strongly emphasize that employers are bound by national laws requiring them to ensure safe and sanitary work conditions for their employees (OHS). In certain companies, the so-called OHS services, volunteer OHS inspectors and trade unions control working conditions and collaborate with the employer to make sure that employees are guaranteed safe and sanitary place to work. The aim is to make sure that workers are safe when performing their duties. On top of that, many companies have kept certain organisational measures introduced during the pandemic – following end of the

health crisis, they have been kept and now make part of the work culture at a given business. They pertain to the organisation of production, internal corporate procedures or the use of work from home (when such option is feasible).

Irrespectively from the foregoing, when analysing the perspectives on the posting of workers, one should point out to the demand for goods and services, and thus the economic sentiment, as the key factor determining the demand for work, and thus also for posted workers. In addition, the use of posting is affected by the situation in the labour market, the availability of people with appropriate education and skills, as well as the growing number of migrants, which is already affecting the supply of work. From 2014 to 2022 1-2 million of migrants from Ukraine came to Poland (the biggest influx was registered following the military aggression of Russia in Ukraine, when about 4 million people crossed the border with Poland). Since 2014, migration to Poland has been facilitated by the new law streamlining the employment procedure, now based on declarations of employment. The military aggression of Russia against Ukraine is also likely to influence the posting of workers, but any conclusions in this respect require an analysis of data over the next years. What is already clear is that the Russian aggression against Ukraine has caused a marked increase in the number of foreigners in the Polish labour market. At the EU level, following the Russian aggression, member state were obliged by the European Commission to facilitate the entry of Ukrainians from abroad. Poland has introduced many measures to alleviate the situation of war refugees, including provisions that allow them to be hired quickly (on the basis of a procedure involving a notification on employing a citizen of Ukraine). As a result, Ukrainians may be directly employed at the target state. It is likely to affect the number of foreigners originating from that state who provide work on the basis of posting.

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