

Action form n°10: The National Labour Inspectorate concerned by the exchange of information on working conditions of seconded employees - general presentation - practical case study (Poland)

National Labour Inspectorate

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The liaison office responsible for the secondment of employees is the General Labour Inspectorate located in Warsaw, Rue Barska 28/30.

The liaison office responsible for the social security of seconded employees is the Social Insurance Institute (Zakład Ubezpieczeń Społecznych) located in Warsaw, Rue Szamocka 3,5.

1. The role of the National Labour Inspectorate

The National Labour Inspectorate (**PIP**) is an organisation appointed to supervise and control the respect of **labour law**, notably regulations concerning **health and safety at work** and regulations concerning **the legality of employment and other remunerated activities**.

Responsibilities:

- Supervision and control of respect of labour law, notably health and safety regulations
- Controlling the legality of employment
- Prevention, promotion and advice
- Other responsibilities (including cooperation with authorities responsible for supervising working conditions and international cooperation)

Website: www.pip.gov.pl

2. PIP, liaison office

The National Labour Inspectorate is bound to cooperate with liaison offices in European Union Member States and the European Economic Area responsible for supervision of work and employment conditions.

Consequently, our inspectorate:

- Provides information on specific cases to employees seconded by Polish employers to other EU/EEA countries, including information about these employers, seconded employees and working conditions
- Provides information about confirmed breaches of labour law for seconded employees in Poland by an employer from another EU/EEA country
- Specifies which supervision authorities hold jurisdictional competence for controlling the labour market and likely to provide all requested information.

Moreover, in response to any written request by the person concerned, **PIP provides information concerning so-called "minimum" working conditions**, pursuant to Polish regulations, which should be offered to seconded employees in our country.

Statistics from the IMI system

- PIP provides information concerning secondment in the framework of services offered by the Domestic Market Information System (IMI).
- Exchanges are undertaken in the following languages: English, German, French, Spanish and Italian.
- Responses are issued within 4 weeks (cooperation standards) (under the direction of the General Labour Inspectorate and Regional Labour Inspectorates)
- According to EU information, Poland is the country which receives the largest volume of information requests concerning secondment, currently along with Romania and Bulgaria.
- Cooperation within the IMI system has concerned a total of **475 matters** including **14** sent by PIP to the Labour Inspectorate in Belgium (3), Romania (3), United Kingdom, Germany, Czech Republic, Austria, Finland, Estonia, Italy and Denmark (1).

From 16 May 2011 until 31 December 2014, the authorities holding jurisdictional competence in 15 countries sent matters to the Polish Labour Inspectorate via the IMI system, with 461 matters being registered:

France - 180 matters, Belgium - 191 matters, Denmark- 25 matters, Austria - 14 matters.

In **2014**, the Polish Labour Inspectorate received **119** requests through the IMI System. The largest number of matters was sent to the inspectorate by the liaison office in the following countries: **Belgium - 63, France - 39**, the Netherlands - 6, Austria- 3, Slovakia- 2, Finland, Romania, Norway, Bulgaria, Italy- 1.

In 2013, the National Labour Inspectorate in Poland received **178** requests, including **68** from Belgium and **73** from France.

Other data

Exchange of information between the National Labour Inspectorate and the liaison offices in other EU/EEA countries and Switzerland **included, in 2013, a total of 226 matters** (in 2012- 229, in 2011- 198). In 2013, the National Labour Inspectorate sent the authorities holding jurisdictional competence in EU/EEA members states and Switzerland **37 matters** pertaining to the employment of seconded employees in the framework of performance of employment in the territory of another member country (in 2012 - 32 matters, in 2011 -33). Moreover, PIP sent 21 matters to authorities holding jurisdictional competence from member countries which did not concern seconded employees (undertaking employment abroad in the framework of another procedure other than secondment)

- Number of Polish employers seconded to EU/EEA countries according to the E101/A1 forms:
 - o Established from January to December 2013 in total: 262,714, towards Germany: 149,456,
 - o Established from January to December 2012: 246,214, towards Germany: 138,164

(Data from the Social Insurance Institute - ZUS)

3. Cooperation with EU member states

The most frequent questions issued to the general labour inspectorate are as follows:

- Confirmation of the existence of contractual relations between the employer and seconded employees
- Performance of legal professional activities by the employer in Poland
- Employer commercial sector
- Performance of significant professional activities by the employer in the country of secondment
- Confirmation of entry on the National Legal Register or the Database of Registration and information on economic activities and the trade and companies register
- Information on company management employees
- Actual performance of professional activities by the employer
- Company date of incorporation
- Places and dates of employee secondment
- Temporary employment services potentially proposed by the company and entry, in this regard, on the register of entities leading to employment agencies
- Questions on the working conditions of employees, including systems and standards for working hours, right to leave, declared and paid remuneration, services offered by virtue of secondment.

4. Feedback on experience

4.1 Primary difficulties encountered

- **Problems related to the exchange of information**

Lengthy procedure

Low effectiveness of activities undertaken by the two inspectorates in cooperation from the point of view of employees making complaints

Response from a foreign liaison office to only several questions within the complaints and without indication by the competent authorities on other issues which do not fall within the remit of the liaison office

- **Problems related to control - Secondment in Poland**

- **Problems with the formulation of observations**

In Poland, the lack of person authorised to represent an employer on secondment to the control bodies (Polish regulations do not impose the obligation to appoint a representative of employers from EU/EEA countries)

Lack of legal possibility to invite a representative from the company responsible for secondment from abroad (Administrative Procedure Code, art. 51 et seq)

Lack of documents necessary to make observations

Long waiting time to receive information provided in the framework of cooperation between liaison offices

- **Difficulties in applying penalties for infringement**

Lack of any person responsible for infringements in Poland

- **Doubts as to the possibility of recognition of certificates concerning health and safety at work training and medical examinations undertaken in a country of secondment**

4.2 Advice contributing towards effective and fruitful cooperation

- Consideration of the fact that PIP may not be able to send detailed documentation pertaining to the employee
- Performance of inspection pursuant to that which is requested, focused notably on employees whose information is sent by PIP
- Insofar as is practically possible, issue of data which will facilitate clear identification of a company
- Removal of lengthy procedures
- Issue of exhaustive and detailed responses to questions appearing in letters sent to liaison offices and, if all questions fall within the remit of one liaison office, specification of the authorities holding jurisdictional competence

- Use of information appearing in the following registers:
 - **Database of registration of information concerning economic activities in the Republic of Poland- Centralna Ewidencja i Informacja o Działalności Gospodarczej RP**
<https://prod.ceidg.gov.pl/CEIDG/CEIDG.Public.UI/Search.aspx> and
 - **National Legal Register - Krajowy Rejestr Sądowy**
<https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu>
- before sending the information request.

The authority with jurisdictional competence to provide social security data, to confirm whether an employer performs significant activities and to provide information on turnover of the company is **ZUS:**

Social insurance institute

(Zakład Ubezpieczeń Społecznych)

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