

Conclusions and Stimulations from Eurodetachment-Workshop in Hamburg, 03. – 04.11.2016

Rüdiger Winter

2 Workshops outside Eurodetachement with Labour Inspectorate Poland

02.06.2016 Hamburg

06.10.2016 Wroclaw

Eurodetachement-Workshop in Hamburg, 03. – 04.11.2016

Finanzkontrolle Schwarzarbeit Hamburg was ready to attend the workshop
But didn't get an allowance from GZD, Köln

3rd November 2016

09:00 – 09:15

Opening

Katja Karger, Head DGB Hamburg

09:15 – 09:30

Agenda and goals with regard to Eurodetachement

Rüdiger Winter, Arbeit und Leben Hamburg

10:00 – 11:30

Strukturen und Verantwortlichkeiten ACT, Portugal. Erfahrungen mit Kooperation mit deutschen Behörden

Joana Amorim, Katia Silva, Autoridade para as Condições do Trabalho

11:45 – 13:00

Strukturen und Verantwortlichkeiten Labour Inspectorate Rumänien. Erfahrungen mit Kooperation mit deutschen Behörden

Florin Cosma, Catalin Tacu, Inspectoratul Muncii

14:00 – 15:30

Internal Market Information System IMI. Zugang und Nutzung

Rüdiger Winter, Arbeit und Leben Hamburg

15:45 – 17:00

SOKA BAU: Vakanz-Entschädigungs-Verfahren für entsandte Arbeitnehmer in der Bauwirtschaft

Siegfried Stoll, SOKA BAU

4th November 2016

09:00 – 10:30

Minimum wages in Germany

Antonius Allgaier, IGBAU, Frankfurt

10:45 – 13:00

Tasks and procedures OSH-Authority, Hamburg

Dr. Fang Yu, Amt für Arbeitsschutz

14:00 – 15:30

Closing discussion: Ways to improve transnational cooperation

There is a need to improve transnational cooperation

- Significant disproportion of official numbers of posted workers and estimated actual numbers
- Estimated high number of undeclared posting of workers
- Significant disproportion of number of posted workers and requests
- Mismatch of tasks and responsibilities of national authorities
- Lack of bilateral agreements
- Limited use of IMI

DIRECTIVE 96/71/EC

Article 4

Cooperation on information

- 1 . For the purposes of implementing this Directive, Member States shall, in accordance with national legislation and/or practice, **designate one or more liaison offices or one or more competent national bodies**.
- 2 . Member States shall make provision for cooperation between the public authorities which, in accordance with national legislation, are **responsible for monitoring the terms and conditions of employment referred to in Article 3** . Such cooperation shall in particular consist in replying to reasoned requests from those authorities for information on the transnational hiring-out of workers, including manifest abuses or possible cases of unlawful transnational activities.

Terms and Conditions of Employment (Art 3 Posting of Workers Directive 96/71/EG)

Who is responsible for supervising and monitoring in Germany?

	Zoll / FKS	OSH
maximum work periods and minimum rest periods		X
minimum paid annual holidays		
minimum rates of pay, including overtime rates	X	
conditions of hiring-out of workers	X	
health, safety and hygiene at work		X
protective measures with regard to the terms and conditions of employment of pregnant women or women who have recently given birth, of children and of young people;		X
quality of treatment between men and women and other provisions on non-discrimination.		

Many issues concerning OSH-matters or accidents, so
there's relevance of . . .

OSH Authorities

16 State Authorities

LASI

Federal OSH Committee / High Commission

Dual OSH-System

DGUV (Berufsgenossenschaften)

http://www.dguv.de/de/internationales/deutsche_verbindungsstelle/index.jsp

Direct bilateral communication?

Art. 21 Enforcement Directive:

“Member States may apply bilateral agreements or arrangements concerning administrative cooperation and mutual assistance between their competent authorities....”

OSH Authorities in Germany

Provide many information material

Project „Diversity Management in OSH“ (DiAS), Hamburg

DiAS Serviceportal: material in 13 languages

<http://www.hamburg.de/arbeitschutz/projekte/4300644/serviceportal-projekt-dias/>

OSH Authorities in Germany

For active control posting companies must be recognized

Registration data goes only to Zoll

No information about posting companies available for OSH authorities

No control of posting companies by OSH

Posting of Workers Directive 96/71/EG – Transposition into German national law

Arbeitnehmerentsendegesetz (AEntG), 20.04.2009

- Zoll competent authority (§ 16)
- But in practice not responsible for all aspects with regard to Terms and Conditions of Employment
- OSH authorities not specially mentioned

§ 20 AEntG

(2) Zoll-authorities and other authorities mentioned in § 2 of the Law to fight Illegal Work (SchwarzArbG) are allowed (...) to collaborate with authorities of other EU-member-states . . .

Enforcement Directive - 2014/67/EU

No formal transposition into German national law

Only by expiration of time limit 17.06.2016

But direct legal effect!

Administrative Cooperation (Chapter III)

Mutual assistance (Article 6): time limits

- 2 working days in urgent cases
- 25 working days maximum in all other requests

Recommendation

1. Official request to General Zoll Directorate (GZD)
2. With regard to time limits (Art 3, 2014/67/EU)
3. Send request **cc** to LASI (las@bgv.hamburg.de)
4. After expiration of time-limit send request to state-OSH-authority
5. OSH-authority can initiate measures, if needed

IMI-Modules / Sectors and Legal Bases

Sector of administrative cooperation	Legal Basis
Services	Richtlinie 2006/123/EG ; Entscheidung 2009/739/EG
Qualifications	Richtlinie 2005/36/EG geändert durch Richtlinie 2013/55/EU
Patients Rights	Richtlinie 2011/24/EU
SOLVIT	Empfehlung 2013/461/EU
Transborder Transport of Euro Cash	Verordnung (EU) Nr. 1214/2011
Posting of workers	Richtlinie 96/71/EG , Richtlinie 2014/67/EU
E-Business (Pilotprojekt)	Richtlinie 2000/31/EG
Driving Licences for Truckdrivers (Pilotprojekt)	Durchführungsbeschluss 2014/89/EU
Public Orders (Pilotprojekt)	Richtlinien 2014/24/EU und 2014/25/EU
Restitution of Cultural Goods	Richtlinie 2014/60/EU

IMI

It seems that ...

- German states do have IMI-access only to some few selected modules
- For posting-of-workers-issues Zoll (as National-Liaison-Office) is the only authority with IMI-access
- None of the 16 OSH-state-authorities does have IMI-access
- There is no transparent procedure resp. responsibility for expanding the access or IMI Coordinators (SDIMICs) are not aware of their responsibility

We identified . . .

- Malfunction of regulation in Germany (tasks and responsibilities)
- Structures do not comply with Enforcement Directive 2014/67/EU
- Unawareness of responsibilities
- Zoll ./ OSH ./ DGUV ./ Soka-Bau ./ DRV
- Need for action
- Need for National Liaison Office for OSH-matters
- Labour Inspectorate?
- Role of NGO Service Providers for EU-mobile-workers?
- Many questions to IMI

We identified . . .

- There seem to be no effective procedures for:
 - administrative cooperation
 - cross-border pursuits and prosecutions of offences and mutual assistance
- Difficulties to recover cross-border penalties or fines
- No mutual information about results

Results and Recommendations

1. Review of regulations in Germany: OSH-authorities and DGUV must be involved
2. Bilateral agreements with Germany needed
3. Direct personal communication matters
4. Information-plattformen in each language
 - Which competent authority for what issues?
 - Search by key-words
 - Review and translation of preventive Information for mobile workers (FAQs)
5. IMI partially usefull for limited purposes
 - Improvement of translation-funktion
 - IMI-Module on ground of free-movement-of-labour-directive should be considered
 - NGO service providers should be considered as external IMI-Users

Next steps

- Discuss issues with new EU-Equal-Treatment-Office, Bundeskanzleramt
- Discuss issues with Heads of Hamburg Ministries
- Discuss issues with LASI
- Insist on answers to IMI from NIMIC or SDMIC

Thank You for Your Attention

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