

NATIONAL LABOUR INSPECTORATE AS A LIAISON OFFICE

**NLI's role related to exchanging
information on the terms of
employment of posted employees**



Warsaw, March 2013



ROLE OF NATIONAL LABOUR INSPECTORATE

The National Labour Inspectorate is an authority established to supervise and inspect the observance of **labour law**, in particular the regulations of **occupational safety and health**, as well as provisions on the **legality of employment and other paid work**.

STATUTORY TASKS



- supervision and inspection of compliance with labour law, in particular OSH regulations
- inspection of legality of employment
- prevention, promotion and advice
- other tasks (including cooperation with authorities supervising working conditions, and international cooperation)

NLI AS A LIAISON OFFICE

National Labour Inspectorate is obliged to cooperate with authorities from EU/EEA Member States, responsible for supervising the terms and conditions of employment. Therefore, our inspectorate provides information on:

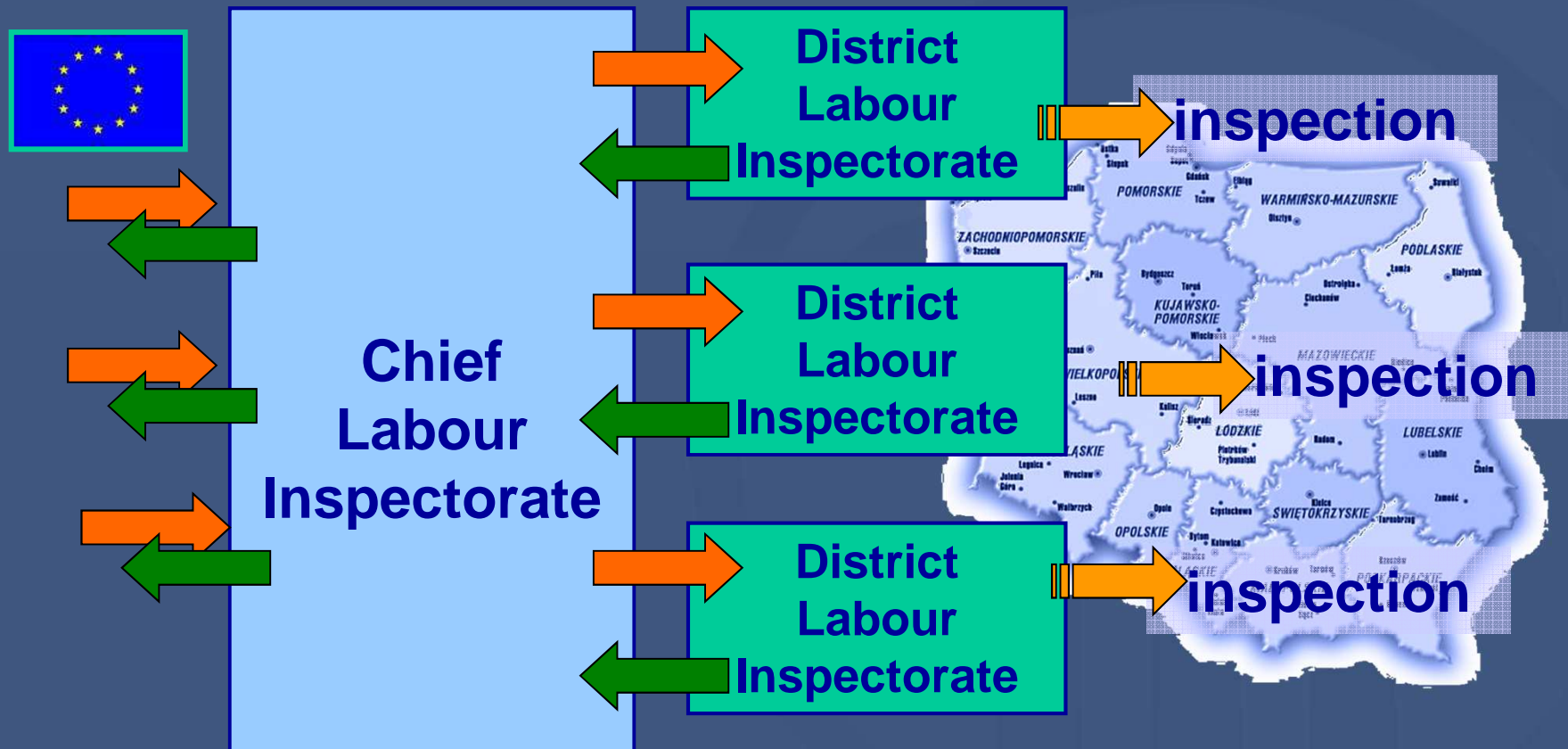
- **specific cases of posting workers to other EU/EEA Member States by entrepreneurs established in Poland, as well as data on those entrepreneurs, posted workers and their terms of employment,**
- **identified offences against rights of employees posted, by employers based in another Member State of EU/EEA, to perform work in the territory of Poland,**
- **the name and contact details of an authority supervising the labour market and competent to furnish the requested information.**

NLI AS A LIAISON OFFICE

Moreover, on a written request of the person concerned, National Labour Inspectorate **provides information on the so-called minimum terms of employment**, stipulated in Polish legal provisions, that should be ensured to employees posted to our country.

IMPLEMENTING TASKS OF A LIAISON OFFICE

4 weeks for giving a reply (Standards of Cooperation)



AGREEMENTS CONCLUDED BY NLI

National Labour Inspectorate has concluded 10 agreements on cooperation with authorities of EU/EEA Member States responsible for supervising the terms and conditions of employment, including **7 agreements** concerning cooperation related to the exchange of information on the posting of workers, with:

- the Netherlands,
- Norway,
- Belgium,
- Portugal,
- Luxembourg,
- Bulgaria,
- Spain.

EXCHANGE OF INFORMATION VIA IMI SYSTEM

Since 16 May 2011, National Labour Inspectorate has been exchanging information on posting of workers in the framework of the provision of services via **Internal Market Information Exchange System (IMI)**.

According to the European Commission's data, Poland receives **the largest number of requests for information concerning posting (164 – as of 31 December 2012)**.

IMPLEMENTING TASKS OF A LIAISON OFFICE

Exchange of correspondence in the following languages:

- > English
- > German
- > French
- > Spanish
- > Italian

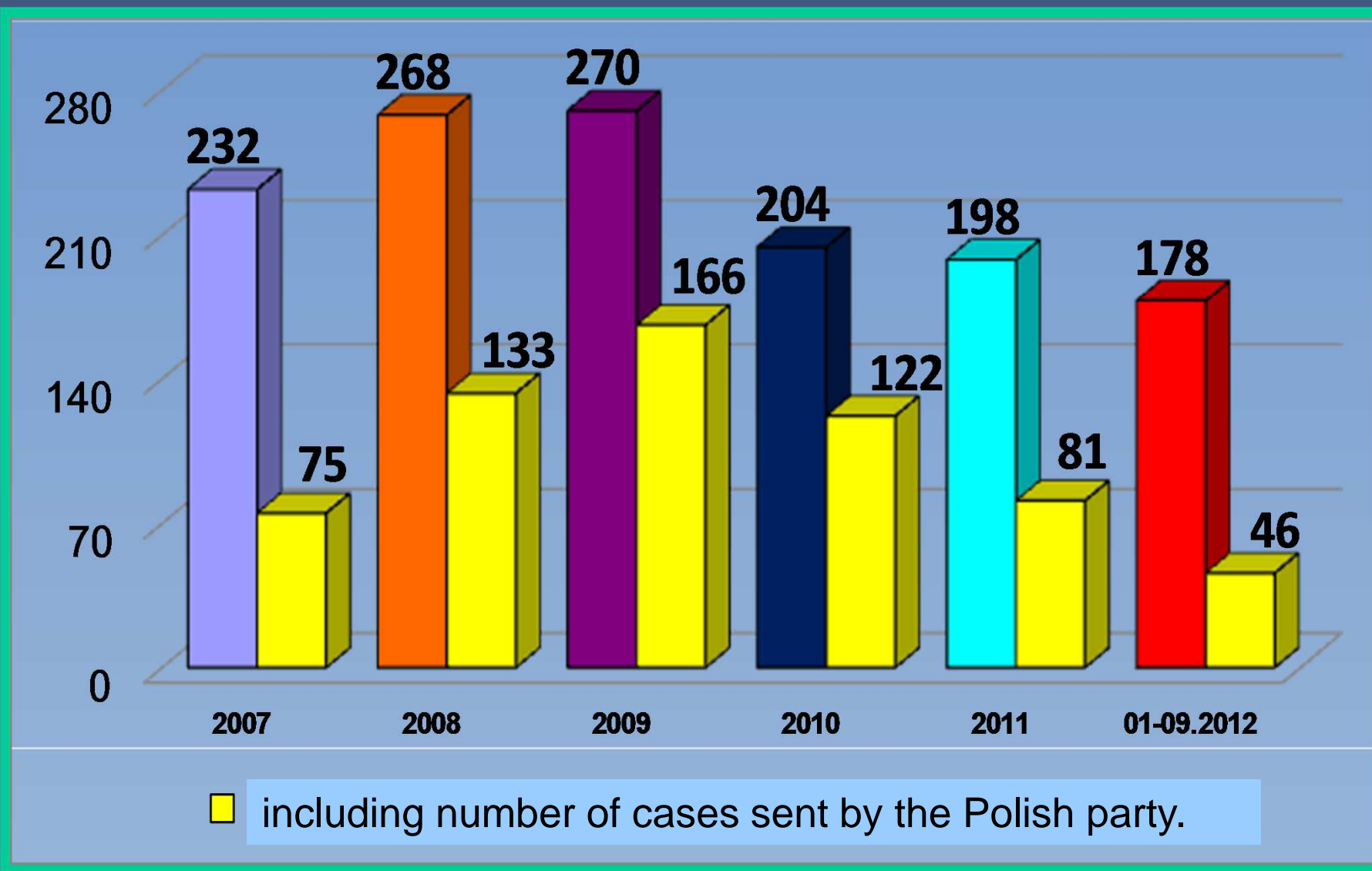


STATISTICS CONCERNING IMI SYSTEM

;Since 16 May 2011, cooperation with the use of IMI System has covered **157 cases** in total, including 5 cases sent by NLI to the Labour Inspectorates in Austria, Belgium, Romania, Finland and Estonia. Cases raised via IMI System were sent to the Polish Labour Inspectorate by competent authorities from 12 Member States. There were 152 requests in total:

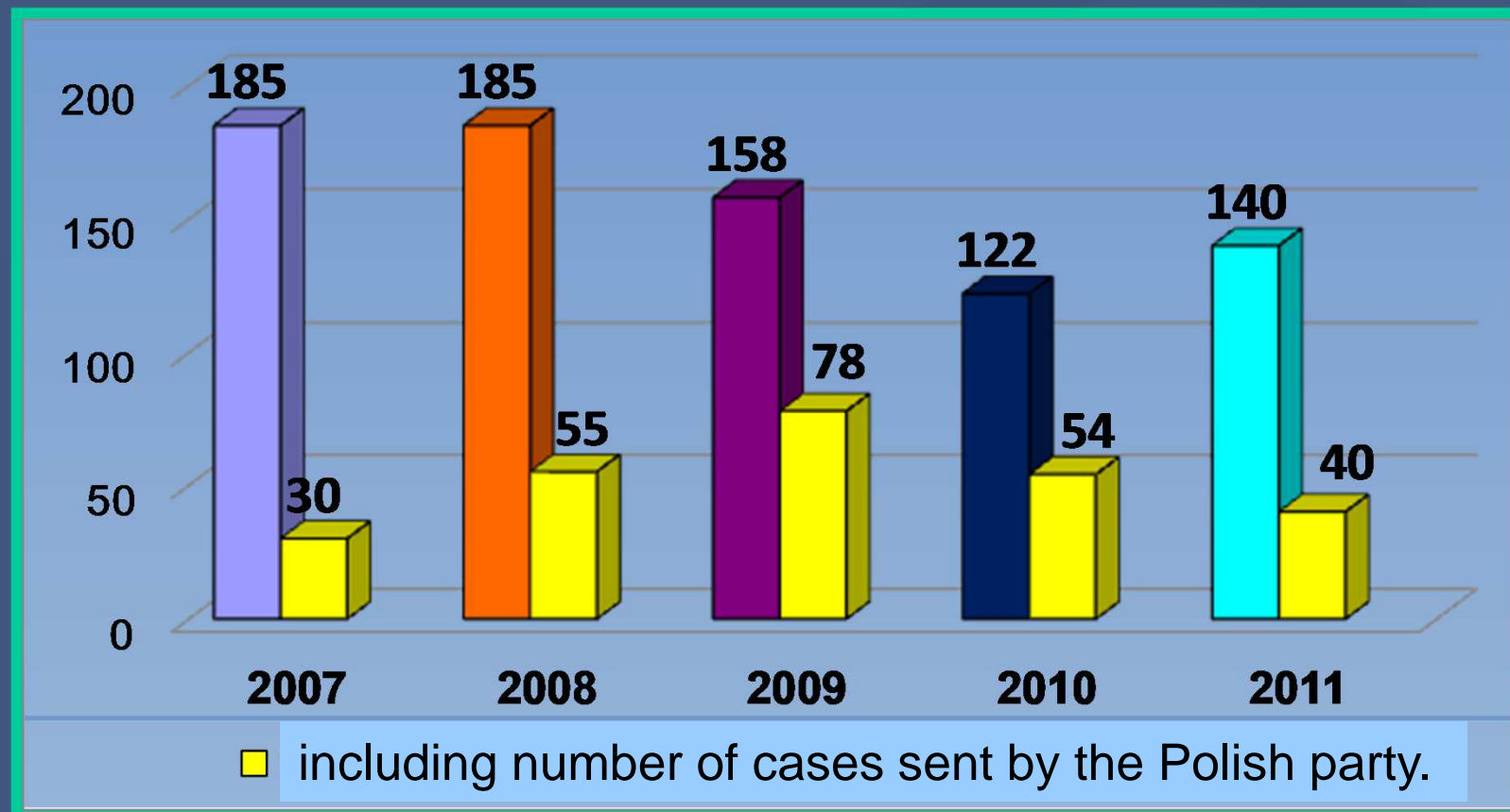
- **France** 65 cases,
- **Belgium** 55 cases,
- **Austria** 11 cases,
- **Finland** 4 cases,
- **Italy** 4 cases,
- **Estonia** 4 cases,
- **Germany** 3 cases,
- **Denmark** 1 case,
- **Norway** 2 cases,
- **Slovakia** 1 case,
- **Netherlands** 1 case,
- **Luxembourg** 1 case.

EXCHANGE OF INFORMATION BETWEEN NLI AND AUTHORITIES OF EU/EEA MEMBER STATES



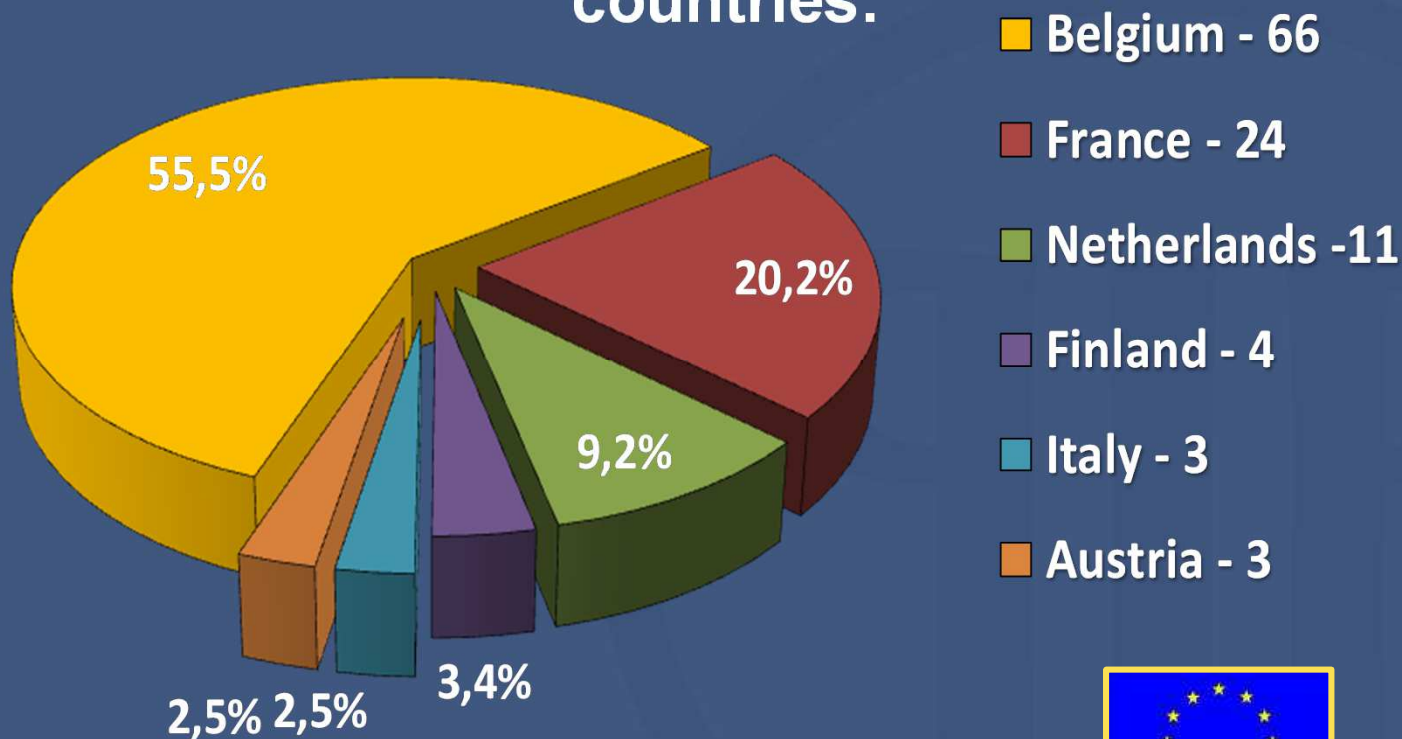
NLI'S COOPERATION AS A LIAISON OFFICE WITH AUTHORITIES FROM EU/EEA MEMBER STATES

Exchange of information with liaison offices from EU/EEA Member States covered:

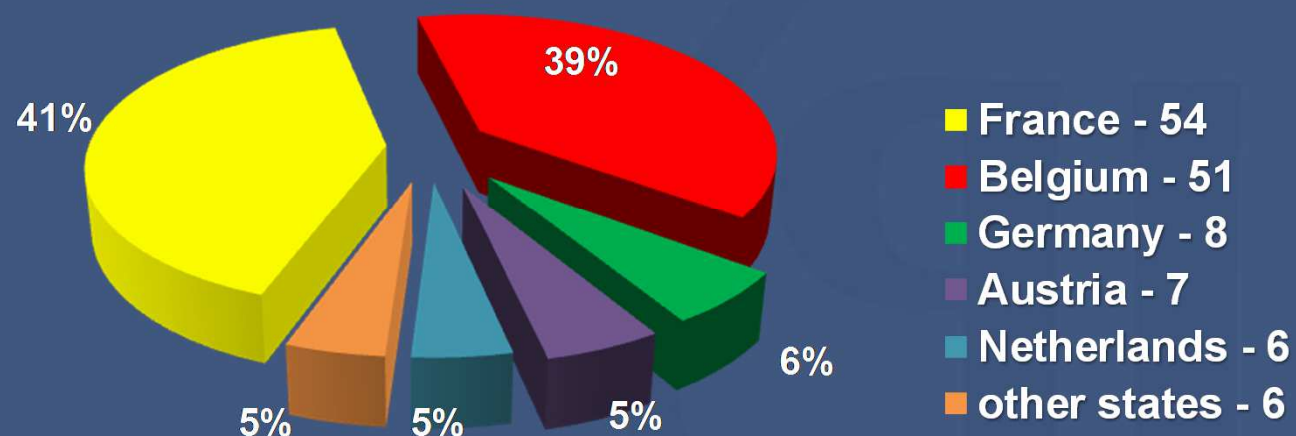


EXCHANGE OF INFORMATION BETWEEN NLI AND AUTHORITIES FROM EU/EEA MEMBER STATES

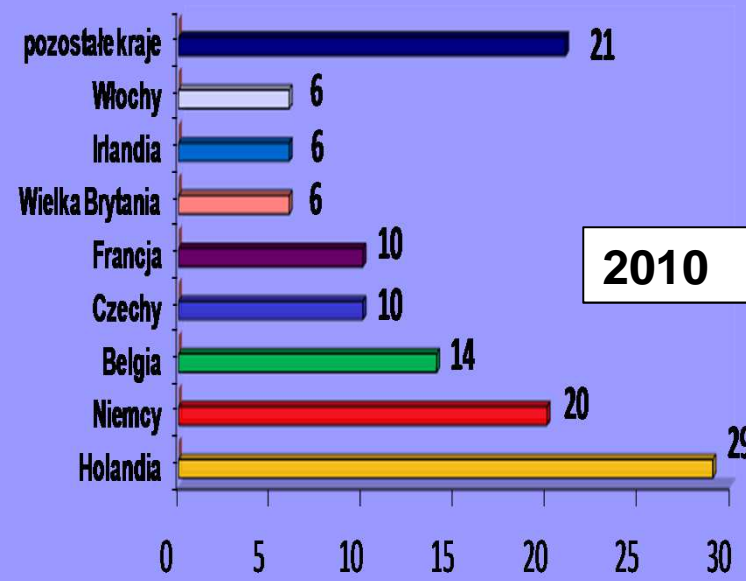
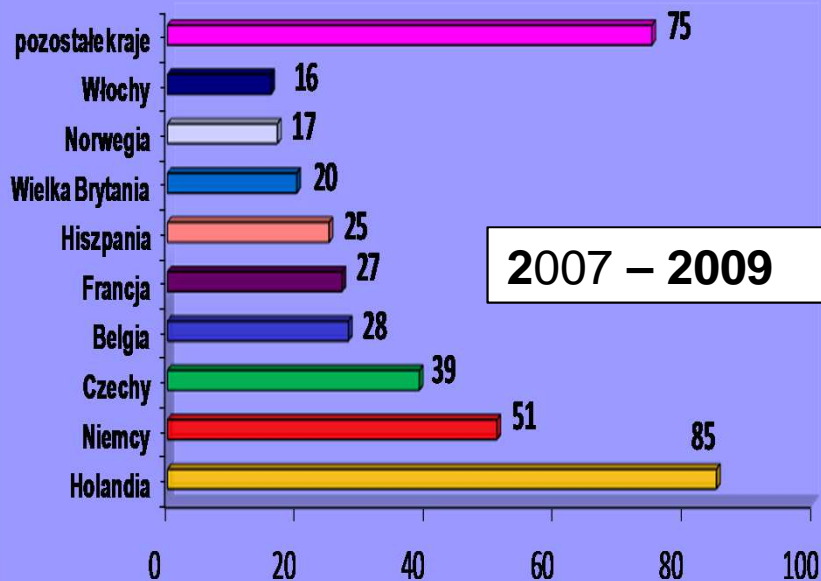
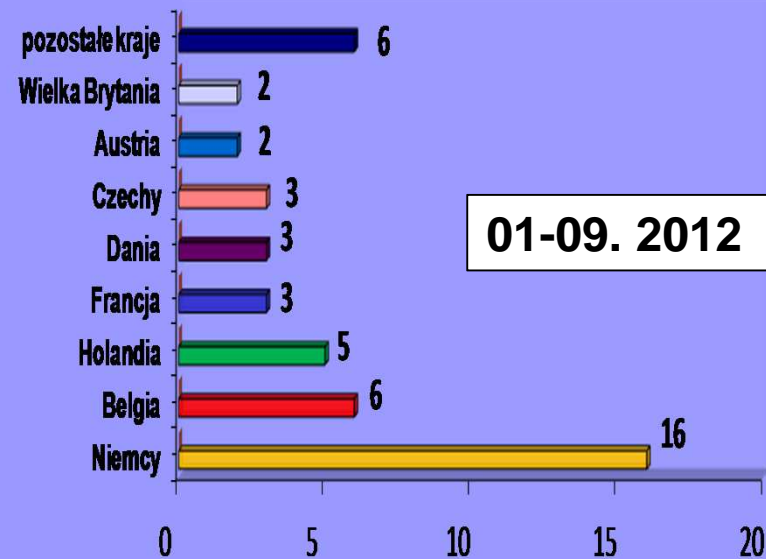
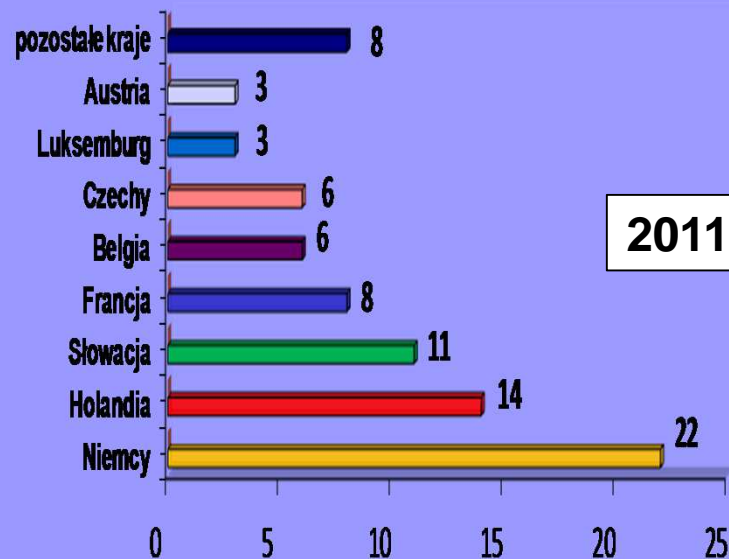
In 2011, the largest number of cases were sent to the Chief Labour Inspectorate by liaison offices from the following countries:



CASES SENT TO NATIONAL LABOUR INSPECTORATE BY LIAISON OFFICES FROM OTHER STATES in the period Jan.-Sept. 2012



EXCHANGE OF INFORMATION BETWEEN NLI AND AUTHORITIES OF EU/EEA MEMBER STATES



COOPERATION WITH EUROPEAN UNION STATES

The most frequent questions addressed to the National Labour Inspectorate:

- confirmation of the existence of an employment relationship between a specific entrepreneur and the posted workers,
- whether a specific employer legally operates in the territory of Poland,
- sector in which a specific enterprise operates,
- whether a specific employer conducts significant economic activity in the posting country,

COOPERATION WITH EUROPEAN UNION STATES

The most frequent questions addressed to the National Labour Inspectorate (continued):

- **confirmation that a specific enterprise has an entry in the court register or the Central Register and Information on Economic Activity/register of economic activity,**
- **data concerning managers of a specific enterprise,**
- **the actual activity conducted by a specific entrepreneur,**
- **date of establishing a specific enterprise,**

COOPERATION WITH EUROPEAN UNION STATES

The most frequent questions addressed to the National Labour Inspectorate (continued):

- place and periods of posting of workers,
- whether a specific enterprise provides services related to temporary work, and if so, has it obtained an entry in the register of entities operating as employment agencies?
- questions on the terms of employment of workers, including, among others, systems and norms of working time, length of annual leave, amount of paid and declared remuneration, benefits/extra amounts paid to workers due to posting.

COMPLAINTS FORWARDED TO LIAISON OFFICES

In 2011, NLI forwarded **63 complaints** of Polish employees to liaison offices from other Member States, including:

- **29 complaints** of employees posted in the framework of the provision of services,
- **24 complaints** of employees who took up jobs in companies of foreign employers (mainly via Polish employment agencies).

NUMBER OF WORKERS POSTED FROM POLAND TO EU/EEA STATES

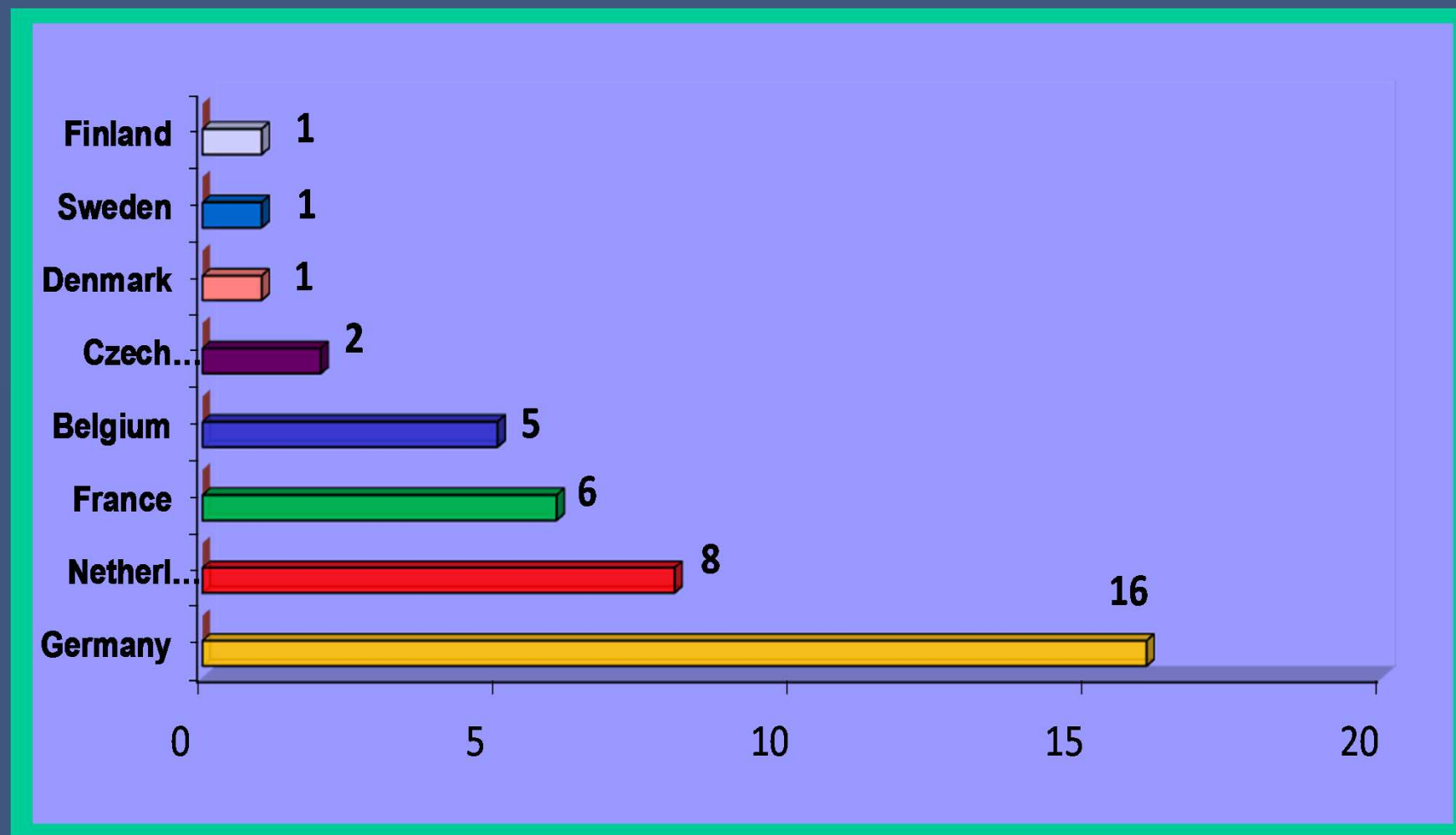
	E 101/A1 forms issued from January to December 2011
Total	227.930
including Germany	125.804

	E 101/A1 forms issued from January to December 2010
Total	265.605
including Germany	113.615

	E 101/A1 forms issued from January to December 2009		
	For employees	For persons conducting activity on their own account	Total
Total	192.736	15.835	208.571
including Germany	98.770	8.244	107.014

	E 101/A1 forms issued from January to December 2008		
	For employees	For persons conducting activity on their own account	Total
Total	218.069	13.688	231.757
including Germany	105.147	6.996	112.143

COMPLAINTS CONCERNING POSTED WORKERS IN 2011



INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM

- **Signals sent to NLI by the Polish Police Force and an employee of the Polish Embassy in the Kingdom of Belgium (the case with characteristics typical of human trafficking for forced labour).**
- **The case concerned employees posted by the Polish employer in the framework of the provision of services to work in three companies producing mushrooms in Belgium.**

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM

Reported irregularities:

- The workers were supposed to work **20–22 hours** per day,
- Employees were only paid **advances for remuneration**, once a month, in the approximate amount of 50 - 300 EUR, whereas they were promised remuneration of 1.317 PLN and 1200–1600 EUR per month,
- **standards of accommodation** provided to employees were glaringly different from what had been promised to them before departure (they were provided places for sleeping, but without bedclothes, and of very low standard),
- **frauds** related to working time records and the amount of collected mushrooms, which resulted in lowering amounts of their pay,
- the employees were supposedly trapped in the so-called **„debt spiral”**.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM

Steps undertaken:

- NLI forwarded the case to the Belgian labour inspection.
- The case was examined by the **following Belgian authorities**: prosecutor's office, federal court police and labour inspectorate.
- The latter two authorities conducted inspection activities in the mushroom producing company. As of the day of the inspection, the Polish entrepreneur involved in that matter, no longer employed the workers. The female employees present in the mushroom producing company were employed by two other Polish companies, of which one was established following the transformation of the posting entrepreneur.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM

Steps undertaken (continued):

The Belgian services submitted a fine report to the court, asking to punish the posting entrepreneur for:

- failure to submit a LIMOSA declaration,
- failure to report the expected extension of the period of posting,
- failure to pay minimum remuneration for work,
- failure to comply with the duty to pay remuneration regularly .

Inspection activities and court investigation are still underway.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM

Steps undertaken (continued):

- Employees of the Polish Embassy in Belgium intervened on the spot two times (they participated in meetings with employees and the Belgian Police with a view to questioning the wronged individuals).
- Based on testimony of the workers who returned to Poland, the Provincial Police Headquarters in Gorzów Wielkopolski initiated proceedings concerning exploitation of individuals for forced labour in the territory of Belgium.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM (2)

A Polish construction entrepreneur posted **29 employees** to work in Belgium.

The above-mentioned company had been established by a Belgian enterprise for whose benefit the posted workers performed work.

The owner of both companies, Polish and Belgian, was the same person.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM (2)

Infringements mentioned by the employees:

- failure to pay remuneration for work for the period of several months,
- failure to pay sickness benefits, allowances for business trips and financial equivalent in lieu of unused annual leave,
- failure to refund the costs related to return to Poland,
- failure to issue work certificates and RMUA documents confirming the payment of contributions for social insurance and health insurance,
- failure to fulfil formal requirements (failure to submit Z3 forms to ZUS) necessary for the payment to employees of financial benefits from social insurance.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM (2)

Polish labour inspectors attempted to conduct an inspection of the Polish company. Their attempts failed because **the entrepreneur did not conduct activity at the address known to the Polish authorities**. The company had not been crossed out from the court register, so formally speaking it still existed.

Chief Labour Inspectorate sent a letter to the Belgian liaison office, asking them to verify charges against the Polish employer.

Belgian inspectors undertook activities aimed at proving that the Polish entrepreneur who posted the workers established **a bogus company**. Through this, they hoped to be able to **enforce claims of the Polish workers from the Belgian entity**.

The case of the owner of both companies was investigated by a Polish judge.

INFRINGEMENTS OF EMPLOYEE RIGHTS – POSTING TO BELGIUM (2)

After over two years from sending the case to Belgium, NLI received a reply with the following details:

- In June 2008, bankruptcy was declared by the Belgian entity to which the workers had been posted;
- The owner of both companies conceded that he had not paid wages for May 2008. He claimed, however, that the employees had been paid wages for all earlier months. Yet, he did not present payment confirmations.

The workers were informed by Chief Labour Inspectorate that they may enforce their claims from the employer in proceedings before a labour court.

Problems related to exchange of information

- lengthy proceedings,
- low effectiveness of activities undertaken by both cooperating inspectorates from the point of view of workers lodging complaints,
- reply from a foreign liaison office only to some issues raised in complaints, and without specifying authorities competent in other issues that exceed the competence of the liaison office.

PROBLEMS RELATED TO INSPECTION ACTIVITIES. POSTING TO POLAND

1) Problems related to finding facts – causes:

- a)** there is no person in Poland authorised to represent a posting entrepreneur before inspection authorities (with regard to entrepreneurs from EU/EEA Member States, Polish provisions do not require that such a representative be appointed);
- b)** there is no legal possibility to summon a representative of a posting entrepreneur from abroad (Code of administrative proceedings, art. 51 and the following);
- c)** lack of documents indispensable to make findings;
- d)** a long period of waiting for information provided in the framework of cooperation between liaison offices.

PROBLEMS RELATED TO INSPECTION ACTIVITIES. POSTING TO POLAND

2) Difficulties in imposing penalties for infringements – causes:

a person liable for committed infringements does not remain in Poland;

PROBLEMS RELATED TO INSPECTION ACTIVITIES. POSTING TO POLAND

3) Doubts concerning the possibility of obtaining certificates on OSH training and medical examinations carried out in a posting country.

PROBLEMS RELATED TO INSPECTION ACTIVITIES. POSTING TO POLAND

EXAMPLE: A citizen of Romania posted by a Hungarian company to work in Poland fell from height during work consisting in installing tin sheets on a roof. All the workers from Romania (except for the victim who was in hospital), as well as representatives of the Hungarian company which employed them, left Poland three days after the accident. Therefore, it was impossible for the inspector to determine necessary facts. The inspector wanted to verify legality of employment of the victim, to check whether the accident victim had undergone preventative medical examinations and received OSH training. The period of waiting for such details from the liaison office was about 6 months. There was no person who might sign the post-inspection report on behalf of the employer, or who might be held liable for identified infringements.

COOPERATION BETWEEN LIAISON OFFICES

Guidance that will contribute to efficient and fruitful cooperation:

- Taking account of the fact that NLI may be unable to send extensive worker-related documentation,
- Conducting an inspection as requested, focusing especially on employees whose data were sent by NLI,
- As far as possible, providing data that will facilitate unambiguous identification of a company,

COOPERATION BETWEEN LIAISON OFFICES

Guidance that will contribute to efficient and fruitful cooperation:

- Eliminating lengthy proceedings,
- Providing comprehensive and full replies to questions included in letters addressed to liaison offices, and if any issues raised in requests fall beyond the competence of a liaison office, specifying the competent authorities.

COOPERATION BETWEEN LIAISON OFFICES

The authority competent: to provide information on social security, to confirm whether an employer conducts significant activity, and to inform on the company's turnover, is

Social Insurance Institution
(Zakład Ubezpieczeń Społecznych)

ul. Szamocka 3,5

01-748 Warszawa



COOPERATION BETWEEN LIAISON OFFICES

Guidance that will contribute to efficient and fruitful cooperation:

**Central Register and Information
on Economic Activity in Poland**

<https://prod.ceidg.gov.pl/CEIDG/CEIDG.Public.UI/Search.aspx>

National Court Register

<https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu>

Thank you for attention

Dariusz Górski
Legality of Employment
Department
Chief Labour Inspectorate

