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
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)
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.
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)
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.
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
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

including number of cases sent by the Polish party.
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:

- 2007: 185 cases
- 2008: 185 cases
- 2009: 158 cases
- 2010: 122 cases
- 2011: 140 cases

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

- Belgium: 66 cases
- France: 24 cases
- Netherlands: 11 cases
- Finland: 4 cases
- Italy: 3 cases
- Austria: 3 cases

55.5% of cases were from Belgium, 20.2% from France, 9.2% from the Netherlands, and 3.4% from Finland.
CASES SENT TO NATIONAL LABOUR INSPECTORATE BY LIAISON OFFICES FROM OTHER STATES in the period Jan.-Sept. 2012

- France: 54 cases (41%)
- Belgium: 51 cases (39%)
- Germany: 8 cases (6%)
- Austria: 7 cases
- Netherlands: 6 cases
- Other states: 6 cases
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,
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,
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.
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

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Including Germany</th>
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<td>2011</td>
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### Details by Year

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- **Including Germany**: 125,804

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#### 2009
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#### 2008
- **Total**: 218,069
- **Including Germany**: 105,147

### Source
Data from the Social Insurance Institution (ZUS)
COMPLAINTS CONCERNING POSTED WORKERS IN 2011

- Finland: 1
- Sweden: 1
- Denmark: 1
- Czech Republic: 2
- Belgium: 5
- France: 6
- Netherlands: 8
- Germany: 16

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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.
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.
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.
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 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.
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.
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.
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.
2) Difficulties in imposing penalties for infringements – causes:
   a person liable for committed infringements does not remain in Poland;
3) Doubts concerning the possibility of obtaining certificates on OSH training and medical examinations carried out in a posting country.
**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


National Court Register

https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu
Thank you for attention

Dariusz Górski
Legality of Employment
Department
Chief Labour Inspectorate