CRACOW UNIVERSITY OF ECONOMICS

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LABOUR COSTS IN CROSS-BORDER SERVICES

The study on the labour cost structure in the case of posting of workers from Poland

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OBJECT AND PURPOSE OF THE STUDY, SAMPLE SIZE AND THE METHODOLOGY

The inspiration and need for this study arose from the declaration of the aim of the targeted revision of the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services [hereinafter: "Posting Directive"] expressed by the European Commission: to restore fair rules and a level playing field between local and posting companies.[01]
This aim clearly implies that the current Posting Directive provisions result in unfair rules and unlevel playing field. The Commission comes to this conclusion initially on the basis of the open letter of like-minded ministers of labour from seven high-wage EU Member States and without any survey-based data on the competitive advantage of posting companies over local service providers. The purpose of this study is to contribute to fact-based decision making.

The study examines the labour costs of workers who had been posted by Polish companies to work in another Member State in the framework of the provision of services. It is a continuation of the pilot study concluded in April 2016. Using the same methodology, the study covered over 20 000 cases of posting, i.e. 4 times more than in the pilot study.

The principle on which posting of workers mechanism (which is necessary for the cross-border provision of services) is based, has been developed with great difficulties. Removing obstacles to freedom to cross-border service provision took the most time to the European Union (as compared to other fundamental freedoms of the Single Market). It is still difficult to consider this process to be completed. What proved to be the turning point in the history of this freedom was the European Court of Justice's judgment in Rush Portuguesa[02], in which the Court emphasized that workers temporarily performing a service in another Member State do not usurp themselves the right to access labour market in such host Member State. "After the completion of their work workers return to their country of origin without at any time gaining access to the labour market of the host Member State."

After national protectionist sentiments were calmed up to a point and common recognition was reached that one should not be afraid of "social dumping", the Posting Directive was adopted. Then, the legal frames of the posting of workers mechanism were substantially strengthened by the adoption of the Directive 2014/67/EU (the so-called "Enforcement Directive").

Regardless of the above, the European Commission on 8th March 2016 announced a new legislative proposal concerning the targeted revision of the Posting Directive. The Impact Assessment (IA)
attached to the Commission's proposal contained a number of ambiguities[03] . What seems to be the major problem of it was the overwhelming lack of data (which the Commission actually emphasized in the document over 20 times).

01 Proposal for a Directive amending Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services COM(2016) 128 p. 5

02 Case C-113/89 Rush Portuguesa v Office nationale d'immigration (France) [1990] ECR I-1417.

03 See detailed analysis of the Impact Assessment by Benio, Kiełbasa, Schwarz, Zgłobica: Targeted Revision of the Directive on Posting of Workers: Comments to the Commission Proposal, 18th April 2016, available at www.inicjatywa.eu

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To make the matters worse, by starting work on the revision of the Posting Directive, before monitoring and evaluating the effects of the transposition of the Enforcement Directive, the Commission will deprive itself permanently of the opportunity to assess the effectiveness of the previously undertaken legislative steps. Thus, if posting of workers is to be seriously hindered or stopped, which is a fear shared by many European experts, one will not be able to assess the grounds and reasons. It will make further implementation of the EU work and service mobility policy even more difficult than it is now.

The study presents the results of the survey conducted by the Department of Public Economy and Administration of the Cracow University of Economics. The immediate reason for carrying out the study was the need of data on the actual level of cost and structure of the remuneration of posted workers. In particular on the costs, which arise solely from the fact that the service is provided in another Member State.

The need for the survey arose from the apparent mistake of associating the remuneration of posted workers with the price of the service. According to this false assumption the price of the service is as much lower as the difference in remuneration between posted and local workers. In reality remuneration is only one of many factors influencing the labour cost and the labour cost is only one of many competitive factors influencing the final price of the service.

The objective of this study was to assess what proportion of the total labour costs were the costs associated solely with the cross-border nature of services provided by Polish service companies.

The study was based on an anonymous questionnaire, in which service companies had been asked about the components of their posted workers remuneration, variable labour costs and fixed labour costs regarding cross-border services. The questions related to fixed labour costs were open-ended and so the answers gave information not only about the amount of costs but most of all, about the types of the costs resulting solely from the fact that the service was provided in another Member State.

The second task was to assess whether the extra cross-border labour costs are compensated for by lower wages of posted workers, lower margins of service providers, or otherwise, in order to keep the total price of the service competitive.

Remuneration, or even its average or aggregated value is a sensitive information for each company, constituting the company's trade secret. The same applies to the margin and to trading fees for potential intermediaries in other Member State(s). Therefore, the study did not aspire to draw a complete picture of the finances of the posting companies. Instead, it aimed at providing the picture of the proportion of extra cross-border labour costs related to the fact that services were provided in another Member State(s).

The survey involved 16 questionnaires. 11 of them were filled in by employment agencies. The survey covered a grand total of 20 632 postings in 2013, 2014 and 2015.

The number of postings is accurate. It was determined on the basis of the number of Portable Documents A1 (PDs A1). The number was actually higher, but two of the surveyed undertakings did not disclose the number of PDs A1. Nonetheless, the monthly data per posting was delivered, and thus they were taken into account when calculating the labour costs.

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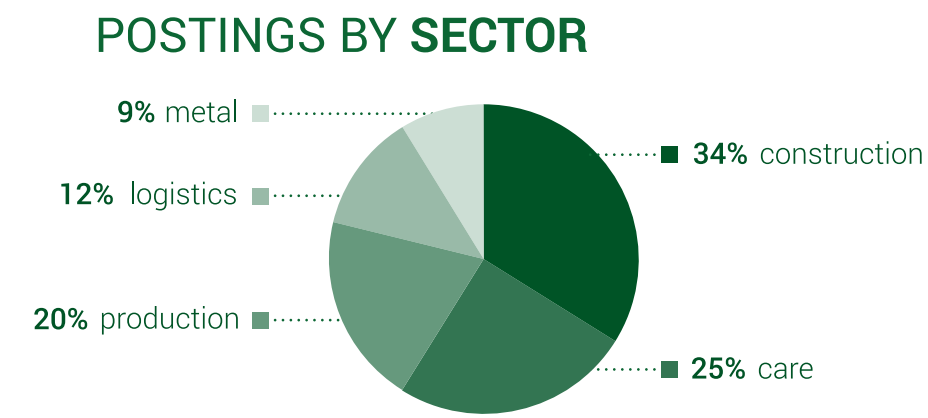
The number of posted workers remains unknown. It is only possible to estimate it on the basis of the number of PDs A1. The method suggested by de Wispelaere and Pacolet[04] was applied. A conservative approach of estimation based on this method allows for the assumption that the number of posted workers is 75% of the number of PDs A1. Using more liberal approach of full time equivalents would give ca. 50% of the number of PDs A1.

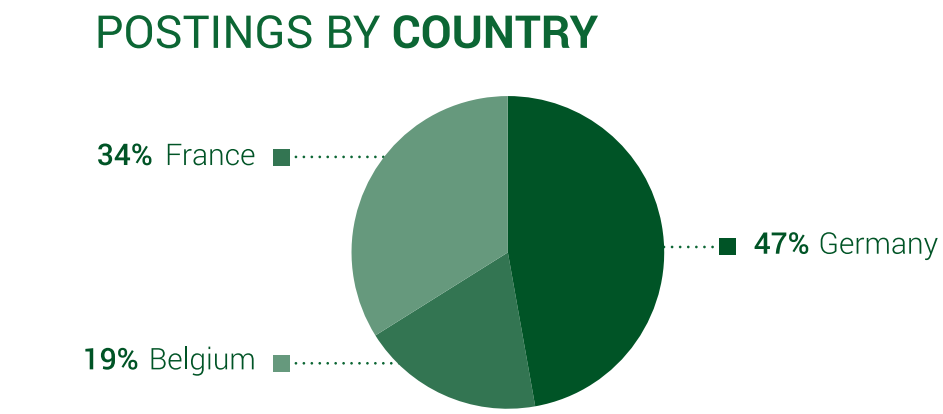
▶ The share of postings in particular sectors of services in the surveyed companies:

Fig. 1



The host Member States in which the services were provided were Germany, France, Belgium, Norway and Sweden. The number of PDs A1 to Norway and Sweden was insignificant (4 cases only).

Fig. 2



The dominant form of employment (in 12 cases) was an employment contract and in 4 of them were flexible forms of employment.

04 Pacolet, J. and de Wispelaere, F., Posting of workers: Report on A1 portable documents issued in 2012 and 2013, Network Statistics FMSSFE, European Commission, December 2014

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The average posting period (including short suspensions of work) was 260 days, whereas the average duration of PDs A1 was 182 days. Also this proportion contributed to the assumption on the number of posted workers.

Variable direct labour costs (unrelated to posting)

The average net remuneration for 1 hour net amounted to € 9,97. The lowest rate was € 5.98 net per hour. These results are slightly lower than in the pilot study. Salary level just above the minimum rates of pay required by the host country legislation was paid only in case of senior home care services and simple industry works (production). Rates of pay in construction services as well as in metal-related services and logistics at the surveyed undertakings were significantly higher than the minimum rates of pay required by the legislation of the host countries.

The burdens arising from social security contributions, health insurance and income tax showed a high level of differentiation due to some workers being subject to tax systems of the host countries. For this reason, the amount of net remuneration was the most objective criterion allowing to assess whether the very remuneration was fair. The interviews conducted with employers and posted workers showed that the net remuneration was the most important criterion when applying for a job.

Variable indirect labour costs (unrelated to posting)

These costs consist primarily of public levies (starting from the highest):

social security contributions [ZUS],
personal income tax advances [PIT],
health insurance contributions [NFZ],
contributions to the Labour Fund [FP],
contributions to the Fund for Guaranteed Employee Benefits [FGŚP],
payments to the State Fund for Rehabilitation of Disabled Persons [PFRON],
costs of an occupational health & safety (OHS) training and of medical examination [bhp/lek],
payments to the Company Social Allowance Fund [ZFŚS].

The standard variable indirect costs of labour were relatively low (ca. ¼ of total labour costs). The minimum rates of pay required by the protection clause adopted by the Directive form a relatively high (by the Polish standards) base for social security contributions and taxes. It is worth noticing, that net wages were approximately 17% higher than the minimum gross wage required e.g. in Germany.

Nominally, these costs were higher than in case of the same work performed in Poland. If cross-border costs are excluded, the tax and contributions would claim 27% of the total labour cost. This figure shows only the hypothetical size of the tax wedge including social security and health insurance contributions at the rates of remuneration of the high-wage EU countries to a Polish worker. The share of the total labour cost will drop to 19% after taking into account the fixed and variable extra cross-border labour costs.

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Variable cross-border labour costs (associated with posting)

Finally, we come to the point where the survey shows the costs associated with the posting of workers. Let us now add to the previous calculations the variable cross-border labour costs of travel (2%), board (6%) and lodging (13%). It should be noted that these costs are not obligatory in all the cases of posting. Mandatory or not, they are not part of the minimum wage, i.e. they are always paid on top of the minimum rates of pay. Posted worker is entitled to the reimbursement of these costs if the employment contract provides that his/her regular place of work i s in Poland, or when it is required by the host country (e.g. France).

As with all the costs, the study took into account only the actually incurred cost of board, travel and lodging as well as daily allowances. Important variable cross-border costs included also compensation for a fixed term contract (5%), contribution to mandatory holiday fund or holiday compensation other than remuneration (2%), currency exchange cost (1%) or additional cost of payroll management of posted workers (1%).

Insignificant as they were, in individual cases, there were some costs depending on the type of work (they did not have a universal character, but influenced the average cost of posting). Thus, e.g. costs of additional medical examinations and costs of the workwear supply and laundry were taken into account if covered in the host Member State.

Also, at that stage, the study did not take into account the costs of applying for a confirmation to determine the legislation applicable in the field of social security for the posted worker (PD A1). Such costs were listed in the study as fixed cross-border labour costs.

Fixed cross-border labour costs (associated with posting)

The study covered also other labour costs, whose amount was not directly dependent on the number of workers nor on the number of postings. However, only the fixed costs closely related to the fact that the provision of a service took place in another Member State were examined. They did not occur in the provision of domestic services. These costs can be divided into two groups:

Mandatory costs. The costs arising from the requirements of the law of the host Member State, often being the result of implementation of the Enforcement Directive (2014/67/EU). These include the costs of making obligatory declarations to the national authorities of host Member States, the costs of hiring a contact person to liaise with competent authorities in the host Member State, costs of obligatory translation of company and employment documentation.

The costs necessary for the proper provision of services, related to their cross-border nature. These costs are not mandatory within the legal meaning thereof. The dominant expenditure in this category were the administrative costs associated with application for PDs A1, costs of execution of debts in the host Member State, cost of international travel and debt insurance, legal services in the host Member State, payroll software dedicated to international settlements, local bi-lingual contract coordinators, logistics costs in the host Member State(s) (accommodation arrangements, 24h telephone hotline providing help in case of problems, etc.), costs of international mail, roaming telecommunication costs, cost of spreads in foreign currency exchange rates, foreign language trainings and tests.

There are also some additional cross-border costs emerging from improper functioning of

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the existing rules of the European law. Some respondents pointed out to costs of private health insurance necessary due to frequent refusal of recognition of the European Health Insurance Card (EHIC) in host Member States. Others pointed out to the costly cross-border debt execution resulting from ineffectual cross-border cooperation between courts and bailiffs.

The study passes over recruitment costs, as those are incurred also in case of services provided locally.

Fig. 3 The structure of the labour cost in case of posted workers.

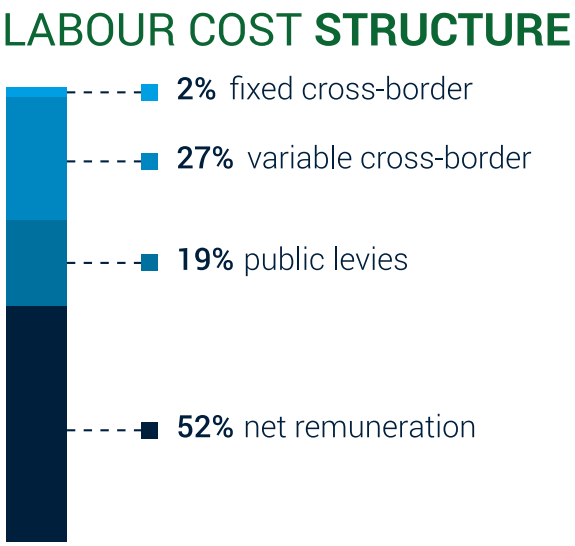

Table 1. Cross-border labour costs, listed from the highest to the lowest share in the total labour cost. The shaded types of costs never occur in case of local service providers.

accommodation cost
temporary contract compensation
travel cost
holiday fund or holiday compensation
per diem (daily allowance)
cost of spreads in foreign currency exchange rates
cross-border tax and payroll management (difference only)
hiring contact person to liaise with authorities in the host Member State
hiring local bi-lingual contract coordinators
local transport expenses in the host Member State
litigation expenditures in the host Member State
determination of the applicable legislation and PDs A1 application administrative costs
workwear, gear and laundry (obligatory in loci laboris)

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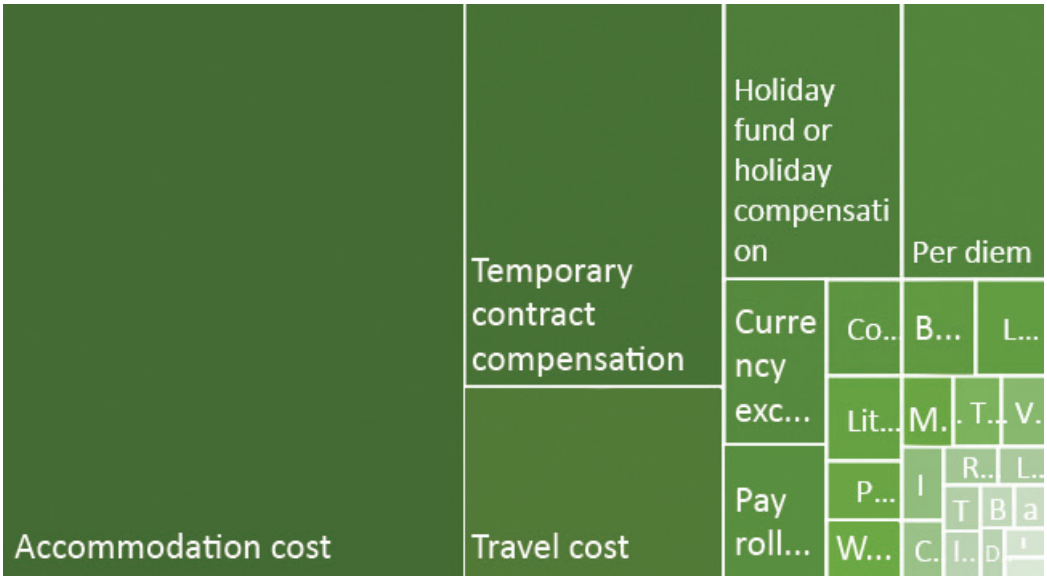
medical tests (obligatory in loci laboris)
foreign language trainings and tests private international health insurance for posted workers international debt insurance and debt execution in the host Member State roaming costs legal services in the host Member State
permits to conduct business activity in the host Member State (obligatory in Belgium) tax advice
international mail bank guarantee in the host Member State (obligatory in France) obligation to make declarations to the host Member State authorities domestic legal advice related to rules of posting of workers translation of documents & interpretation costs licences for software dedicated to cross-border payroll calculation

Table 2. The share of the cross-border labour costs



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CONCLUSIONS

1. Posting of workers involves extra cross-border costs that are related solely to the fact that the service is provided in the other Member State than the one of establishment of the service provider. These include the costs which local service providers do not have to incur. In the surveyed undertakings such costs represented 29% of the total labour cost.

2. Extra cross-border costs are compensated by lower employers' margins, social security contributions and posted workers' lower-than-average, but higher-than-minimum remuneration.

3. Polish posted workers earn significantly more than the minimum rates of pay required by host countries. This suggests that their employers' services are not chosen because of the low labour cost.

4. The study shows that there is a significant difference between the cost of remuneration and the total labour cost in case of posted workers. The cost of remuneration of posted workers is only one of many factors determining the final price of the cross-border services and overall competitiveness of their providers. This part of the study proves "social dumping", allegedly caused by posting of workers, to be false.

5. Further research in the host countries is needed to establish the reasons why Polish service providers are being chosen by their clients in other Member States. Possible reasons may include skill shortages or high quality and efficiency of the service.

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