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# The Significance of Effective Labour Inspectorates for Cross-border Labour Mobility<sup>1</sup>

## Introduction

According to the latest available data, cross-border labour mobility has almost doubled compared to a decade ago. In 2017, 17 million citizens lived or worked in a Member State other than that of their nationality and 1.4 million EU citizens commute to go to work in another Member State.<sup>2</sup> There has also been an increase in the number of posted workers from more than 1.9 million postings recorded in the EU in 2014 to 2.3 million in 2016. It accounts for about 1% of the total employment in the EU.<sup>3</sup> Despite the rather small quantitative share of posted workers in the movement of persons between Member States, the economic significance of posting is considerable. On the one hand, it may aid in temporary dealing with shortages of the supply of a labour force in some sectors, e.g. transport, or construction. However, the unrestrained posting of workers to specific regions or sectors may also bring about adverse effects, e.g. distortion in competition or limitation of workers' rights, on the other.<sup>4</sup> Therefore, clearly regulating as well as

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1 Research for this paper has been supported financially by the Polish National Science Centre, decision no. 2015/17/B/HS5/00419.

2 2017 Annual Report on Intra-EU Labour Mobility.

3 It needs to be remembered that the situation is different in the individual Member States. *Opinion of the European Economic and Social Committee of 14 December 2016 on the Proposal for a Directive of the European Parliament and of the Council 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.*

4 J. Cremes, *Rules on working conditions in Europe: Subordinated to freedom of services?*, "EJIR" 2010, No. 16/3, p. 302; J.E. Dølvik, J. Visser, *Free movement, equal treatment and workers' rights: can the European Union solve its trilemma of fundamental principle?*, "IRJ" 2009, No. 40/6, p. 497. V. C. Barnard, *The UK and posted workers: The effect of Commission v Luxembourg on the territorial application of British labour law*, "ILJ" 2009, No. 28/1, p. 122 and *European Parliament resolution on the implementation of Directive 96/71/EC in the Member States.*

effectively enforcing the protection of cross-border workers, including posted workers, and providing the conditions of fair competition on the internal market are important.

Generally, the objectives identified above were to be accomplished under the provisions of *Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Directive 2018/957)*.<sup>5</sup> The number of practical problems identified during the process of implementing the provisions of the *Directive 96/71/EC* became the reason for adopting *Directive 2014/67/EU of the European Parliament (PE) and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Directive 2014/67/EU)*.<sup>6</sup> These problems concerned, for example, poor administrative cooperation between the Member States, including national labour inspectorates.

The effectiveness of exercising rights by the internal market participants would certainly be at risk if there was no suitable and adequate institutional base. A question can be raised whether the institutional system functioning within the EU is sufficient to provide protection of these rights or establishing additional institutions should be taken into consideration. Maybe it would be enough only to enhance cooperation of the suitable national authorities. Main attention should be focussed on national labour inspectorates which contribute to enhancing the protection of social rights.

In connection with the above, a brief description of the cross-border posting of workers is provided first, especially showing the role that labour inspectors play in this area. Then, the initiative of a European Platform for undeclared work for labour inspectors is analysed. This was to allow confrontation with other initiatives functioning in this field on the EU level, i.e. the Committee of Senior Labour Inspectors, but also with those requested for possible approval, i.e. European Social INTERPOL, or the European Labour Authority.

## **The Purpose and Scope of the Cross-Border Posting of Workers in the Framework of the Provision of Services**

The main purpose of Directive 2018/957 is to ensure the protection of posted workers during their posting in relation to the freedom to provide services. It lays down mandatory provisions of the hosting Member State regarding working conditions and the protection of workers' health and safety that must be respected (Article 1(1) Directive 2018/957). It is also to remove obstacles and uncertainty as regards freedom to

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5 OJ EU 1997 L 18/1.

6 OJ EU 2014 L 159/11.

provide services.<sup>7</sup> This purpose is to be accomplished by improving legal certainty and facilitating identifying the terms and conditions of employment applied towards workers temporarily employed in a Member State other than the one whose legislation regulates employment relationship. Directive 2018/957 also aims at guaranteeing the balance between the internal market freedoms and workers' rights during the period of their posting. Equal legal protection is to be available by both the employers providing services on the internal market, posted workers themselves, but also the beneficiaries of the services provided by them.<sup>8</sup>

The question of ensuring the coordination of Member States legislation by establishing mandatory requirements concerning the minimum protection of posted workers, which their sending employers are to comply with, has turned out to be of a great essence.<sup>9</sup> A catalogue of this type of mandatory regulations concerning the minimum protection are provided by Article 3(1) of Directive 2018/957. Applying its labour law by the host Member State may be a barrier to the free movement of services, arising out of Article 56 of the Treaty on the Functioning of the European Union. It was the reason why RG Mengozzi in the case C-341/05 *Laval* deemed Article 3 of the former Directive 96/71/EC as derogation of the host Member State control principle.<sup>10</sup> The main purpose of its 'successor', Directive 2018/957, is to remove all barriers to the freedom to provide services. The purpose of establishing the aforementioned minimum working conditions of the host Member State is, however, not only to avoid distortion in competition and to remove barriers to the free movement of services, but also to guarantee that posted workers' rights will be complied with.<sup>11</sup>

7 This has been confirmed by the case-law of the Court of Justice of the European Union, firstly the judgements in the following cases: C-341/05 *Laval* and C-346/06 *Rüffert* where the Court ordered to make an interpretation of Directive 96/71/EC in light of Article 56 of the Treaty on the Functioning of the European Union, stressing that its purpose is, among others, to achieve the freedom to provide services, 'being one of the fundamental freedoms guaranteed by the treaty', respectively items 61 and 63.

8 A. M. Świątkowski, *Prawo pracy Unii Europejskiej*, Warszawa 2015, p. 168. V. V. Kosta, *Fundamental Rights in EU Internal Market Legislation*, Oxford-Portland-Oregon 2015, pp. 196–200; T. van Peijpe, *Collective labour Law After Viking, Laval, Rüffert, and Commission v. Luxembourg*, "IJCLLR" 2009, No. 25/2, pp. 83–86. More about plurality of purposes which Directive 96/71/EC seems to serve and which unfortunately affects uncertainty and vagueness of its provisions v. S. Evju, *Posting Past and Present. The Posting of Workers Directive – Genesis and Current Contrasts*, "FWP" 2009, No. 8, pp. 21–22 and 24–15.

9 *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, The implementation of Directive 96/71/EC in the Member States*.

10 RG Mengozzi's opinion in the case C-341/05 *Laval*.

11 RG Trstenjak's opinion in the case C-319/06 *Commission v Luxembourg*, item 33. V. C. Barnard, *The substantive law of the EU. The Four Freedoms. Fourth edition*, Oxford 2013, p. 381. On posting of workers' good and bad sides look especially at: J. Cremers, *In search for cheap labour in Europe – Working and living conditions of posted workers*, "CRL News" 2011, No. 1, pp. 8–9.

To overcome the practical problems related to the insufficient enforcement of Directive 96/71/EC, Directive 2014/67/EU was adopted. It was also a reaction to the discussion about the need to ensure a real balance between social rights, and the internal market freedoms which has broken out as a result of the rulings of the Court of Justice of the European Union in the following cases: C-438/05 *Viking*, C-341/05 *Laval*, C-346/06 *Rüffert*, and C-319/06 *Commission v Luxembourg*.<sup>12</sup> In response to numerous accusations, both from the EU institutions, and also from the doctrine representatives, towards the aforementioned judgements, the compliance of the Directive provisions with the fundamental rights and with the principles laid down in the Charter of Fundamental Rights was pointed out in Recital 48 of Directive 2014/67/EU. Therefore, when bringing in its provisions, one should be guided by such rights and principles as the freedom to conduct business (Article 16 of the Charter of Fundamental Rights) or the right of collective bargaining and action (Article 28 of the Charter of Fundamental Rights). The provisions of Directive 2014/67/EU are thus to fulfil a double purpose. Its provisions are both to protect posted workers and ensure that all legal measures introduced under it cause no administrative burdens or restrictions on the freedom to provide services (Recitals 4 and 16 of Directive 2014/67/EU and Article 1(1) paragraph of Directive 2014/67/EU). Therefore, a common framework for suitable control measures and mechanisms for a more efficient and a more uniform implementation of posted workers' provisions proved to be necessary.

For efficiently accomplishing the purposes of the posting of workers' legal basis, the Member States were called on to enhance cooperation between the offices which are responsible for supervising the compliance with the working terms and conditions provided for in its provisions. The authorities of the host state in cooperation with the authorities of the Member State of establishment are responsible for inspecting the terms and conditions of employment to be complied with (Article 7(1) of Directive 2014/67/EU). This cooperation may also rely on exchanging all relevant information, e.g. regarding the legality of registration of a service provider registered office or compliance of their operations with the law. Generally, this is about the labour inspectors' work, although it should be remembered that this cooperation is to be carried out not only between them, but also between the suitable offices of the Member States, and the European Commission.<sup>13</sup>

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12 *Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services*, *Official Journal of the EU* 2012 C 351/61, item 3.2. V. V. Kosta, *Fundamental...*, pp. 200–209.

13 Here, the Commission's participation in principle takes a form of financial support, including exchanges of relevant officials and organising training, language courses in order to develop, facilitate, and propagate best practice initiatives such as the development and updating of databases or joint websites containing information concerning terms and conditions of employment to be respected – Article 8 of *Directive 2014/67/EU*. Language barriers have in fact

For the purposes of ensuring effective monitoring of compliance of their own legislation with the obligations arising out of directives on the posting of workers, Member States may only impose such administrative requirements and control measures which are justified and proportionate in accordance with EU law (Article 9(1) of Directive 2014/67/EU). From among those which are acceptable, there are, for example, the following: an obligation for a service provider established in another Member State to make a simple declaration containing the relevant information necessary in order to allow factual controls at the workplace; an obligation to keep or make available and/or retain copies, in paper or electronic form, of the employment contract or an equivalent document during the period of posting, and also an obligation to designate a person to liaise with the competent authorities in the host Member State (Article 9(2) of Directive 2014/67/EU). It needs to be highlighted that these obligations are at the same time to facilitate works of national labour inspectorates connected with fulfilling the obligations of employers' posting their workers in order to provide services on the territory of the host Member State.

### **The European Platform for Undeclared Work and European Labour Authority**

There should not be any doubt as to the key role that labour inspectorates play for both fair mobility and the protection of workers' rights. If they function effectively, this ensures protection of health and safety at work. It could generally take a form of combating and eliminating hazardous working conditions and contributing to the remuneration and social insurance premiums being actually paid. It should be highlighted that labour inspectorates are of particular significance in the context of the posting of workers, especially by establishing the liability as regards compliance with host Member States' minimum working conditions. It causes serious practical difficulties. Therefore, labour inspectors play a key role not only in relation to protecting workers' rights, but also in relation to preventing abuses and supporting economic and social development.

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turned out to be one of the fundamental practical problems. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, The implementation of Directive 96/71/EC in the Member States, COM 2003 458 final, p. 14. V. Commission Recommendation of 31 March 2008 on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services, Official Journal of the EU 2008 C 85/1 and Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions of 6 November 2008 - Delivering the benefits of the single market through enhanced administrative cooperation, COM 2008 703 final.*

Member States use various, often different methods for carrying out inspections at work, and labour inspectorates functioning there have many times suffered from a shortage of staff and constant training courses, especially those concerning EU issues.<sup>14</sup> Insufficient language competences have also occurred to be a serious problem. National inspection systems should therefore be strengthened, for example, by providing moderately uniform training for the labour inspectors as well as by increasing the intensity of language courses, e.g. by making use of financial support under the European Social Fund for the implementation of so-called ‘soft projects.’

A system of electronic networking used by all relevant social security authorities, would certainly help them exchange information and be a very useful tool for national labour inspectors. On the other hand, inspections carried out by labour inspectorates could be considerably facilitated as a result of creating national systems of electronic networking imposing an obligation on employers to immediately register workers from abroad, e.g. posted workers.<sup>15</sup> In connection with the aforementioned practical problems, the European Platform for undeclared work for labour inspectors has been established (henceforth: Platform).<sup>16</sup>

The following were indicated as the headline goals of the Platform: improving working conditions, supporting integration on the labour market and social inclusion, including better enforcement of the regulations in these fields, and also limiting the scale of undeclared work and increasing the number of legal jobs, thereby preventing the deterioration in the quality of work as well as occupational health and safety. Above all, these goals are to be accomplished through cooperation between competent authorities of the Member States, by improving their potential in counteracting cross-border undeclared work and contributing whereby to providing equal terms and conditions of carrying out business activities as well as raising social conscience in all issues related to the undeclared work. Here, the cooperation of the Member States should, among others, take the form of exchanging best practices and information in order to develop specialist knowledge and analyses as well as to support and facilitate using innovative methods for having effective and efficient cross-border cooperation.<sup>17</sup>

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14 *European Parliament Resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe*, *Official Journal of the EU* 2016 C 482/31, items 6–7 and a motion for a *Resolution of the European Parliament of 12 December 2013 on effective working conditions as a strategy to improve working conditions in Europe 2013/2112 INI*.

15 *Ibidem*, items 17–18.

16 *Decision EU 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work*, *Official Journal of the UE* 2016 L 65/12. Undeclared work is understood as “any paid activities that are lawful as regards their nature but not declared to public authorities, taking into account differences in the regulatory systems of the Member States”. *Communication from the Commission of 24 October 2007 entitled ‘Stepping up the fight against undeclared work’*, COM 2007 628 final.

17 Articles 4 and 5 of *Decision 2016/344*.

By developing and enhancing the cooperation, Member States and their suitable authorities maintain the competences for identifying, analysing, and resolving practical problems related to the enforcement of EU legislation concerning social protection and working conditions. They were to decide which measures need to be applied at a national level to introduce the platform results. Therefore, collaborative tools being developed under the platform were rather to take form of soft EU legislation, e.g. guidelines and good practice handbooks or common principles of carrying out inspections for tackling undeclared work.<sup>18</sup>

The composition of the Platform has three levels and includes a high-ranking representative of a given Member State, a representative of the European Commission as well as representatives of cross-sectoral social partners acting at the EU level. The Platform meets at least twice a year. Its tasks are to be carried out on its rules of procedure, 2-year work programmes, activity reports compiled every two years as well as on establishing, if needed, suitable working groups.<sup>19</sup> The Platform was officially launched in May 2016. At the first plenary session, which was held on 10 October 2016, the work programme for 2017–2018 was adopted, assuming three strategic priority axes: cooperation and joint action, mutual learning, broadening knowledge.<sup>20</sup> It was assumed that the platform could be used as a tool for supporting Member States in carrying out structural reforms as well as for the better enforcement of primary and secondary legislation. The actual Platform's work programme for 2019–2020 aims to deepen important aspects of the previous programme with a special attention on work to tackle bogus self-employment and fraudulent letterbox companies. Its activity will entail the four following sectors, which have been identified as heavily affected by undeclared work, that are: agriculture, aviation, tourism and hotel, restaurant and catering sectors.<sup>21</sup>

It needs to be stressed, that in order to bring an operational dimension to the activities of the platform, just after nearly three years of its establishment, it is to be taken over by a new EU agency – the European Labour Authority. The proposal for this new agency was presented by the European Commission in March 2018.<sup>22</sup> It shall assist Member States and the Commission in matters relating to cross-border labour mobility and the coordination of social security systems within the Union. To contribute to ensuring fair labour mobility in the internal market the Authority shall: 1) facilitate access for individuals and employers to information on their rights and obligations as well as to relevant services; 2) support cooperation between Member States in the cross-border enforcement of relevant

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18 Recital 18 and Article 3 and Article 6(1)(e) of *Decision 2016/344*.

19 Article 8 sections 2 and 3 of *Decision 2016/344*.

20 European Platform Undeclared Work Programme 2017–2018 adopted on 10 October 2016.

21 European Platform Undeclared Work Programme 2019–2020 adopted on 18 October 2018.

22 *Proposal for a regulation of the European Parliament and of the Council establishing a European Labour Authority*, COM 2018 131 final, preamble, item 31.

Union law, including facilitating joint inspections; 3) mediate and facilitate a solution in cases of cross-border disputes between national authorities or labour market disruptions.<sup>23</sup> The second aim especially seems to cover activities that are actually taken in the framework of the Platform. Joint labour inspections are thus needed to deal with complex cases of fraud or abuse that have a transnational dimension. They are to be coordinated by the European Labour Authority under the scope of its competences and on the request of one or several Member States. The Authority may also suggest to the authorities of the Member States concerned that they perform a concerted or joint inspection. The organisation of a concerted or joint inspection shall be subject to the prior agreement of all participating Member States via their National Liaison Officers. This agreement shall set out the conditions for carrying out such an exercise. Concerted and joint inspections and their follow-up shall be carried out in accordance with the national law of the Member States concerned with logistical and technical support of the European Labour Authority (together with translation and interpretation services). National authorities carrying out a concerted or joint inspection shall report back to the Authority on the outcomes within their respective Member State. In the event that the Authority, in the course of concerted or joint inspections, becomes aware of suspected irregularities in the application of Union law, it shall report on this to the Commission and authorities in the Member State concerned, where appropriate.<sup>24</sup>

### **Committee of Senior Labour Inspectors and other Collaborative Forums Consolidating the Effectiveness of Labour Inspectorates on the Internal Market**

Effectiveness of activities aiming at ensuring decent working conditions requires that activities of different groups of experts and committees acting in this field at the EU level are not duplicated. The activity of the Platform (soon to be renamed the European Labour Authority) and the Committee of Senior Labour Inspectors functioning within the European Commission is an example of such an assumption regarding each other.<sup>25</sup> Its task is to support the European Commission in monitoring compliance with the EU legislation regarding occupational health safety at a national level. Analysing and resolving practical problems in this field is within competences of suitable

<sup>23</sup> *Ibidem*, Article 1 and 2.

<sup>24</sup> *Ibidem*, Article 9 and 10.

<sup>25</sup> Among other groups of experts and committees, Article 9 of *Decision 2016/344* lists the Committee of Experts on Posting of Workers, the Administrative Commission for the Coordination of Social Security Systems, the Network of Public Employment Services, the Employment Committee, the Social Protection Committee and a working group for administrative cooperation in the field of direct taxation.



national supervision offices and requires close cooperation between these offices, and the European Commission.<sup>26</sup>

The Committee's most important tasks include: assisting the Commission in defining common principles of labour inspection in the field of health and safety at work and developing methods of assessing the national systems of inspection in relation to those principles; promoting improved knowledge and a mutual understanding of different national systems and practices of labour inspection; developing exchanges between national labour inspection services of their experiences; promoting exchanges for labour inspectors between national administrations and setting up training programmes for inspectors; drawing up and publishing documents to facilitate the activities of labour inspectors and developing a reliable and efficient system of rapid information exchange between labour inspectorates.<sup>27</sup>

As it can be observed, the tasks carried out under the Platform - and the Committee of Senior Labour Inspectors are generally similar and focus mainly on developing knowledge, exchanging experiences and enhancing administrative cooperation of Member States in this field of EU integration. However, the material scope of the Platform activity is wider because it concerns cooperation on the fight against undeclared work. Nevertheless, the initiative of expanding this activity to also include issues related to the posting of workers could be considered. One could use projects being already carried out under the European Commission initiative entitled 'Eurodetachment'<sup>28</sup> and transform them into a permanent platform for exchanging information and good practices as well as common training courses for labour inspectors and liaison offices for posted workers. This permanent platform could be incorporated into the European Platform for unde-

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26 It should be stressed that a 'Group of Senior Labour Inspectors' has informally been in operation under the then EC already since 1982, and formally under the *Committee Decision No. 95/319/EC of 12 July 1995 setting up a Committee of Senior Labour Inspectors*, *Official Journal EC 1995 L 188/11* amended by the *Commission Decision of 22 October 2008*, *Official Journal of the EU 2008 L 288/5*. See also the *Commission Decision of 31 March 2016 on the appointment of members of the Committee of Senior Labour Inspectors for a new term of office*, *OJ EU 2016 C 115/17*.

27 Article 3 *Commission Decision 95/319/EC*. The Committee plenary sessions are held twice a year, usually chaired by the Member State exercising the current presidency in the EU Council. Usually, the representatives of labour inspectorates of the EU Member States, EOG and EFTA states, and also observers from ILO and EU-OSHA participate in the sessions.

28 It is a project carried out and assisted by the Directorate-General for Employment, Social Affairs and Inclusion of the European Commission which is designed to examine the current state of knowledge and the practice of posting of workers in the EU. Three implementing projects have already been carried out, that is: *Common training for labour inspectors and public officials of liaison office on posting involved in control and monitoring 2010–2011*, *The Posting of Workers: Improving Collaboration between Social Partners and Government Authorities in Europe 2012–2013 as well as Act on situations of posting workers: 'Learning by doing' 2014–2015*. Information about the project available at: <<http://www.eurodetachment-travail.eu>>.

clared work. However, if this process fails, coordination of tasks carried out under these platforms should be undertaken.<sup>29</sup>

The coordination of activities carried out under the Platform and the Committee of Senior Labour Inspectors could, in addition, be enhanced by setting up bilateral task forces or, where needed, a multilateral task force including national competent authorities and labour inspectors. They would carry out on-the-spot cross-border checks (subject to the approval of all Member States concerned), in accordance with the national law of the Member State in which the controls are taking place. Generally, their activities could be launched in cases of social dumping, work under illegal conditions or fraud, to identify *letterbox companies*, fraudulent recruitment agencies and abuses of any rules that result in the exploitation of workers. All those forces could create a network of national social inspection services with the main aim to promote information exchange.<sup>30</sup> Also the European Economic and Social Committee points out the need to ensure coherence of activities undertaken at the EU level in relation to all issues related with labour inspection, both under the Platform, and under the Committee of Senior Labour Inspectors.

Better education in EU issues of labour inspectors and increasing their numbers are required as it has not even reached the minimum of what the International Labour Organization recommends, i.e. one inspector per ten thousand workers. In several Member States, the level of activity of labour inspectorates needs to be improved, particularly as regards information, consultation, and also the identification of undeclared work. Required improvement of labour inspectors' qualifications can be obtained *inter alia* through exchange and training programmes and by enhancing cooperation between labour inspection authorities under the Committee of Senior Labour Inspectors.<sup>31</sup>

It would also be helpful to improve EU cross-border labour market control instruments, including improving the enforcement of penalties at a cross-border level.<sup>32</sup> National labour inspectorates should play a key role in counteracting *letterbox companies*,

<sup>29</sup> Resolution of the European Parliament of 14 September 2016 on social dumping in the European Union 2015/2255 INI, item 4.

<sup>30</sup> *Ibidem*, item 5.

<sup>31</sup> Opinion of the European Economic and Social Committee of 11 December 2014 on the communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a EU strategic framework on health and safety at work 2014–2020, SOC 512, items 1.4., 5.1.5.–5.1.6.

<sup>32</sup> Opinion of the European Economic and Social Committee of 4 April 2016 on fairer labour mobility within the EU 2016/C 264/02, OJ EU 2016 C 264/11, items 1.9. and 4.4. It seems that Chapter VI of Directive 2014/67/EU concerning cross-border enforcement of financial administrative penalties and/or fines corresponds to this challenge. Competent authorities should have the possibility to impose effective, proportionate and dissuasive sanctions, including also the possibility to suspend the provision of services in the case of a serious breach of the provisions concerning posting of workers and/or the applicable collective agreements.

detecting and counteracting social dumping cases as well as in deterring undeclared work.<sup>33</sup> Greater involvement of the border regions in this process might become one of the solutions contributing to enhancing cooperation of the national labour inspectorates. Improving cross-border cooperation between labour inspection services, exchanging common practices and popularising an electronic exchange of information should not only consolidate the effectiveness of combating social frauds, bogus self-employment and undeclared work, but also help in preventing them.<sup>34</sup>

### **From a European Social INTERPOL to a European Labour Inspectorate?**

In one of its opinions, the European Economic and Social Committee, without defining this notion, or even setting out general assumptions of its activity, proposes to consider establishment of a 'European Social INTERPOL' which could support labour inspectors' from different Member States.<sup>35</sup> When trying to capture the essence of this proposal, one should first define fundamental features of INTERPOL as such. Second, the adequacy of these solutions for the protection of social rights on the internal market should be assessed. INTERPOL is an international criminal police organization assisting law enforcement bodies in fighting against all forms of crime. Its organizational structure consists of a network of National Central Bureaus coordinated by the General Secretariat as an administration and technical body which, in turn, is responsible for their actions before the General Assembly and the Executive Committee.<sup>36</sup>

It seems that special attention should be devoted to the INTERPOL National Central Bureaus' activity because of its 24/7/365 availability of duty officers and therefore quick exchange of information in INTERPOL's official languages. Achieving this type of rapid reaction capability by national labour inspectorates would undoubtedly contrib-

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33 *Opinion of the European Economic and Social Committee of 14 May 2009 on the impact of legislative barriers in the Member States on the competitiveness of the EU 2009/C 277/02, OJ EU 2009 C 277/6, item 1.10.*

34 *Resolution of the European Parliament of 14 September 2016 on social dumping in the European Union 2015/2255 INI.*

35 *Opinion of the European Economic and Social Committee of 5 May 2010 on the social dimension of the internal market, 2011/C 44/15, OJ EU 2011 C 44/90, item 1.7.*

36 INTERPOL general structure is provided in Article 5 of its Constitution, whereas the competencies of individual bodies in its consecutive Articles from 6 to 33. *The Constitution of the ICPO-INTERPOL adopted by the General Assembly at its 25th session, I/CONS/GA/1956 2008.* While at the EU level, the European Union Agency for Law Enforcement Cooperation should be pointed out here, operating under *Regulation EU 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation Europol, OJ EU 2016 L 135/53.*

ute to improve cooperation between them and thereby indirectly increase the control of compliance with workers' social rights in the internal market. Activities of the 'European Social INTERPOL' might include support for enforcing cross-border labour law provisions, and exchanging information and best practices about working conditions and control mechanisms of individual Member States. It should be noticed that some of these mechanisms already exist. The activity of the aforementioned Committee of Senior Labour Inspectors as regards monitoring of exercising the EU cross-border labour legislation at the national level, the activity of the Platform, in exchanging good practices, or the EU agencies, i.e. EUROFUND and EU-OSHA providing an expert base for issues being the object of their activity, can be given as an example.

A question can be raised whether the effectiveness of the initiatives mentioned here would be better, if they were replaced by a new EU institution, e.g. in the form of a European Labour Inspectorate. It could be composed of, e.g. the representatives of Member States having knowledge and experience in carrying out compliance with the labour law provisions, particularly the condition of occupational health and safety, and of the legality of employment. They could exercise their competences under jointly agreed principles of carrying out these types of inspections, thus supervising national labour inspectorates. Considering current division of competences between the EU and Member States in the field of social policy, there is, however, no opportunity of setting up this type of institution. It would involve a supervision of competences over national labour inspectorates which is not actually provided in any of the treaty provisions. It is worth mentioning, that even in its proposal on setting up the 'European Social INTERPOL', the European Economic and Social Committee points out supporting labour inspectors in different Member States. It suggests that its function should be auxiliary, rather than supervisory. The same has to be stated about the supporting character of the proposed European Labour Authority. Taking into account opportunities presented in the White Paper of the European Commission on the Future Europe, a different scenario should however not be completely excluded.<sup>37</sup> Everything depends on an eventual agreement of all Member States on the possibility of changing the division of competences in the field associated with social affairs.

## Conclusion

Directive 2018/957 is of unquestioned significance for the cross-border labour mobility of posted workers, providing them with minimum terms and conditions of employment in the host Member State. It also obliges service providers from other Member States to

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<sup>37</sup> *White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2015*, COM 2017, 2025.

make suitable declarations related to posting prior to its commencement as well as an obligation to keep the documentation of posted workers in the host Member State, which is simultaneously to ensure the protection of posted workers. Relevant authorities of the host Member State (usually labour inspectors) are to verify compliance with the minimum terms and conditions of employment applied on its territory. This must not lead to unjustified restrictions in the freedom to provide services related to the necessity of dealing with too-far-reaching formalities by employers sending their employees to other Member States. In connection with the insufficient, as it turned out, introduction and enforcement of the provisions regarding the cross-border posting of workers, Directive 2014/67/EU was adopted, which provided a number of measures aimed improving the situation in this field, including enhancing cooperation between labour inspectors of individual Member States.

A number of initiatives and advisory bodies which were undertaken/set up for the aforementioned cooperation (e.g. the European Platform for improving cooperation for tackling undeclared work, the proposed European Labour Authority, Committee of Senior Labour Inspectors, Expert Committee for Posting of Workers, Social Protection Committee or the 'Eurodetachment' initiative) can be pointed out. Generally, they are to guarantee the exchange of knowledge and good practices between national labour inspectorates in the form of collaborative platforms and to contribute to efficiently and effectively inspecting working conditions as well as the enforcement of the obligations resting with employers on this account. Undoubtedly, EUROFUND and EU-OSHA also play an indispensable role as regards experts' analyses concerning working conditions and the level of complying with them in the EU Member States. Due to the division of competences between the EU and Member States, it is assumed that the result of their work takes a form of soft legal acts in the form of guidelines, recommendations or good practice handbooks, and the competences of these bodies are of supporting character to activities of national labour inspectorates.

The conclusion should be drawn that plurality of initiatives and bodies mentioned above requires systematisation. They could be categorised into three task forces. The first one gathers bodies that are to ensure expertise knowledge in order to develop training programmes for labour inspectors and necessary analyses. The second one would include a platform under which this knowledge and these analyses would be disseminated between national labour inspectorates. The third group of bodies would have the task of monitoring the use of data available under the platform as well as supporting the activities undertaken at a national level. Reinforcing the European Commission's work connected with financing mutual learning programmes for labour inspectors in the Member States might turn out to be an additional complement to the effective labour inspection system within the EU.

The initiatives or activities do not exclude the possibility of establishment of an additional institution, e.g., in the form of a European Labour Inspectorate. There are thus different scenarios of the EU development demonstrated, for example, in the White Paper of the European Commission on the Future of Europe. Current division of competences between the EU and Member States in the field of social policy excludes however an opportunity of such a solution which would involve supervising national labour inspectorates. Currently, it should thus have competences only of a supporting character, as is in the case of the proposed European Labour Authority.

## Literature

- Barnard C., *The substantive law of the EU. The Four Freedoms. Fourth edition*, Oxford 2013.
- Barnard C., *The UK and posted workers: The effect of Commission v Luxembourg on the territorial application of British labour law*, "ILJ" 2009, No. 28/1.
- Cremers J., *In search for cheap labour in Europe – Working and living conditions of posted workers*, "CRL News" 2011, No. 1.
- Cremes J. , *Rules on working conditions in Europe: Subordinated to freedom of services?*, "EJIR" 2010, No. 16/3, p. 302;
- Dølvik J.E., Visser J., *Free movement, equal treatment and workers' tights: can the European Union solve its trilemma of fundamental principle?*, "IRJ" 2009, No. 40/6.
- Evju S., *Posting Past and Present. The Posting of Workers Directive – Genesis and Current Contrasts*, "FWP" 2009, No. 8.
- Kosta V., *Fundamental Rights in EU Internal Market Legislation*, Oxford-Portland-Oregon 2015.
- Świątkowski A. M. , *Prawo pracy Unii Europejskiej*, Warszawa 2015.
- van Peijpe T., *Collective labour law after Viking, Laval, Rüffert, and Commission v. Luxembourg*, "IJCLLIR" 2009, No. 25/2.
- Opinion of the European Economic and Social Committee of 14 December 2016 on the Proposal for a Directive of the European Parliament and of the Council 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 final – 2016–70–COD, SOC/541.
- European Parliament resolution on the implementation of Directive 96/71/EC in the Member States* COM 2003, 458–2003/2168 INI.
- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, The implementation of Directive 96/71/EC in the Member States*, COM 2003, 458 final.

- European Parliament Resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe, Official Journal of the EU 2016 C 482/31.*
- Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services, Official Journal of the EU 2012 C 351/61.*
- Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, The implementation of Directive 96/71/EC in the Member States, COM 2003, 458 final.*
- Commission Recommendation of 31 March 2008 on enhanced administrative cooperation in the context of the posting of workers in the framework of the provision of services, Official Journal of the EU 2008 C 85/1.*
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions of 6 November 2008 – Delivering the benefits of the single market through enhanced administrative cooperation, COM 2008, 703 final*
- European Parliament Resolution of 14 January 2014 on effective labour inspections as a strategy to improve working conditions in Europe, Official Journal of the EU 2016 C 482/31.*
- Decision EU 2016/344 of the European Parliament and of the Council of 9 March 2016 on establishing a European Platform to enhance cooperation in tackling undeclared work, Official Journal of the UE 2016 L 65/12.*
- Communication from the Commission of 24 October 2007 entitled ‘Stepping up the fight against undeclared work’, COM 2007 628 final.*
- Committee Decision No. 95/319/EC of 12 July 1995 setting up a Committee of Senior Labour Inspectors, Official Journal EC 1995 L 188/11.*
- Commission Decision of 31 March 2016 on the appointment of members of the Committee of Senior Labour Inspectors for a new term of office, OJ EU 2016 C 115/17.*
- Resolution of the European Parliament of 14 September 2016 on social dumping in the European Union, 2015/2255 INI.*
- Opinion of the European Economic and Social Committee of 11 December 2014 on the communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a EU strategic framework on health and safety at work 2014–2020, SOC 512.*
- Opinion of the European Economic and Social Committee of 4 April 2016 on fairer labour mobility within the EU 2016/C 264/02, OJ EU 2016 C 264/11.*
- Opinion of the European Economic and Social Committee of 14 May 2009 on the impact of legislative barriers in the Member States on the competitiveness of the EU, 2009/C 277/02, OJ EU 2009 C 277/6.*

*Opinion of the European Economic and Social Committee of 5 May 2010 on the social dimension of the internal market 2011/C 44/15, OJ EU 2011 C 44/90.*

*The Constitution of the ICPO-INTERPOL adopted by the General Assembly at its 25th session I/CONS/GA/1956 2008.*

*Regulation EU 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), OJ EU 2016 L 135/53.*

*White Paper on the Future of Europe. Reflections and scenarios for the EU27 by 2015, COM 2017 2025 final.*

#### SUMMARY

### **The Significance of Effective Labour Inspectorates for Cross-border Labour Mobility**

Efficiently functioning labour inspectorates play a key role for both fair mobility and the protection of workers' rights. They contribute, for example, to combating and eliminating hazardous working conditions, and ensuring that remuneration and social insurance premiums are actually paid. This is significant in the context of the posting of workers in the framework of the provision of services. Establishing the liability regarding compliance with the occupational health and safety regulations is causing serious practical difficulties. Therefore, it is important above all to identify initiatives undertaken at the EU level designed to enhance cooperation of national labour inspectors in this field. It is also important to carry out an assessment whether they work efficiently, require systematising, or perhaps it is necessary to undertake more formalised initiatives, e.g. in the form of a new EU institution.

Keywords: posting of workers, undeclared work, labour inspectors.

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