

Introduction

Posting of workers in the EU: where do we stand?

Zane Rasnača and Magdalena Bernaciak

Introduction

The right to provide services on a cross-border basis is one of the fundamental economic freedoms enjoyed by companies in the EU. To fulfil their contractual obligations, companies are allowed to temporarily send – or post – their employees to other EU Member States. The status of these employees is set out in EU law and national-level regulations, as well as industrial relations practices, in particular collective agreements, and local traditions.

Relative to EU Member States' working populations, the number of posted workers is still quite modest. Its limited scope notwithstanding, employee posting has become one of the most debated matters in the EU. Numerous court cases before the Court of Justice of the European Union (CJEU) as well as successful and less successful attempts to change the legal framework regulating posting at the EU level suggest that there are many unresolved issues arising from the clash of competences, loopholes and shortcomings in the legal framework, breaches and/or circumvention of workers' rights and weak enforcement.

To date, academic studies have focused mainly on the strengths and weaknesses of EU legal framework concerning posting,¹ posting flows² and the examination of rule-circumventing practices and working conditions in specific market segments.³ Scholars have also studied the interaction between EU rules on posting and national

1. See among others: Kilpatrick C. (2012) Internal market architecture and the accommodation of labour rights. As good as it gets?, *European Journal of Social Law*, 2 (1), 4-29; Malmberg J. (2010) Posting post Laval. International and national responses, Uppsala Center for Labor Studies Working Paper Series 2010:5, Uppsala, Uppsala University, 6. http://econpapers.repec.org/paper/hhsuulswp/2010_5f005.htm; Rasnača Z. (2018) Identifying the (dis)placement of 'new' Member State social interests in the posting of workers: the case of Latvia, *European Constitutional Law Review*, 14 (1), 131-153.
2. De Wispelaere F. and Pacolet J. (2018) Posting of workers: report on A1 portable documents issued in 2016, Brussels, European Commission; Pacolet J. and De Wispelaere F. (2017) The size and impact of intra-EU posting on the Belgian economy, Leuven, Research Institute for Work and Society (HIVA), KU Leuven; Mussche N., Corluy V. and Marx I. (2016) The rise of the free movements: how posting shapes a hybrid Single European Labour Market, IZA Discussion Paper no. 10365, Bonn, Institute of Labor Economics.
3. Wagner I. (2018) Workers without borders: posted work and precarity in the EU, Ithaca, NY, ILR Press; Vah Jevšnik M. and Rogelja N. (2018) Occupational safety and health in transnational workplaces: the case of posted workers, *Dve domovini / Two Homelands*, 48, 23-36; Alberti A. and Danaj S. (2017) Posting and agency work in British construction and hospitality: the role of regulation in differentiating the experiences of migrants, *International Journal of Human Resource Management*, 28 (21), 3059-3082; Berntsen L. and Lillie N. (2015) Breaking the law? Varieties of social dumping in a pan-European labour market, in Bernaciak M. (ed.) *Market expansion and social dumping in Europe*, London, Routledge, 43-60.

rule enforcement systems, both from legal and sociological perspectives,⁴ with a strong emphasis on the analysis of posting-related cases before the CJEU.⁵ However, there are virtually no accounts how posting legislation is applied by courts in the disputes at the national level. The available studies on the implementation of the Posted Workers Directive⁶ are rather outdated and do not involve a comprehensive analysis of the existing national case law.

This book aims to fill this gap by examining posting-related case law in 11 European countries: Bulgaria, Denmark, Finland, France, Germany, Ireland, Latvia, the Netherlands, Poland, Portugal, and Slovenia. These countries constitute a diverse sample in terms of geographical location and the number of workers posted to and from the territory. They also vary with respect to their political-economic and legal systems and their approaches to both individual and collective labour law. The book identifies problems related to the application of the posting regulations for workers and posting companies in different legal, political, economic and industrial relations settings. It also outlines major legal and public debates on cross-border service mobility and examines whether the issues brought to courts are also subject to nation-wide discussions in the respective countries.

Empirically, the book draws on country reports prepared by national legal experts within the framework of the research project ‘Posting Before National Courts: An Interdisciplinary Study’, co-ordinated by the book’s editors. The court cases analysed relate to posted workers and their social and labour law protection, as well as other issues brought to court by companies and collective actors. The book focuses on litigation before civil, administrative and criminal courts; some reports additionally discuss out-of-court dispute settlement mechanisms and the activities of national labour inspectorates.

The Introduction provides an overview of the legal framework on posting, with comparative data on the extent of cross-border worker flows and posting in the EU, and how this is analysed.

1. Key aspects of legal framework concerning posting

There is a certain level of regulatory complexity when it comes to posting situations. Typically, posting is a triangular situation where an employer sends a worker to carry out services abroad (to a service recipient). These services can be received by one ‘user

-
4. See e.g. Barnard C. (2009) British jobs for British workers: the Lindsey Oil Refinery dispute and the future of local labour clauses in an integrated EU Market, *Industrial Law Journal*, 38 (3), 245-277; Wagner I. and Berntsen L. (2016) Restricted rights: obstacles in enforcing the labour rights of mobile EU workers in the German and Dutch construction sector, *Transfer*, 22 (2), 193-206.
 5. Asteriti A. (2012) Social dialogue, Laval style, *European Journal of Legal Studies*, 5 (2), 69-99; Hos N. (2010) The principle of proportionality in Viking and Laval: an appropriate standard of judicial review, *European Labour Law Journal*, 1 (2), 236-253.
 6. van Hoek A. and Houwerzijl M. (2011) Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union, Amsterdam, University of Amsterdam. <http://ec.europa.eu/social/BlobServlet?docId=7510&langId=en>

undertaking' or by multiple undertakings, or even by private individuals (for example, a painter sent to paint walls in a private apartment). To come under the umbrella of the EU law, there needs to be a cross-border element and an element of temporality. First, the posted worker should be sent from one EU Member State to another. If the posting situation is entirely internal (restricted to one country only), then it remains a matter for national law and EU law typically does not apply.⁷ Second, the worker should be posted 'temporarily' – s/he needs to carry out work for a certain (limited) period in a member state different from the one in which s/he normally works.

The rights of both posted workers and the companies that post them are protected by multiple layers of regulation enshrined in EU law, the home country's law and the law of the host country. By contrast, the 'user undertaking' or service recipient is not bound by such a complex set of rules. The only time it bears some responsibility towards the posted worker is in cases where EU Member States have chosen to implement the subcontracting liability concerning, for example, wages.

In certain cases, it can be difficult to determine the exact rights of the posted worker and obligations of the company, especially in cases of multiple postings to multiple countries within a short time span. It is even more complex for the posted workers to assert and enforce their rights.⁸ Knowledge of one's rights and also access to suitable enforcement mechanisms (be they judicial or administrative) are therefore decisive for posted workers.

There are at least three EU legal instruments that should be mentioned when it comes to the rights of posted of workers: 1) the Posted Workers Directive⁹; 2) the Enforcement Directive¹⁰, and 3) the Regulation on co-ordination of social security systems¹¹ (Social Security Regulation).

The Posted Workers Directive which was recently amended¹² sets out the nucleus of mandatory rules that must be observed by posting companies in line with the host country's law. These include: the maximum work and minimum rest periods; minimum paid annual holidays; minimum rates of pay (after amendments – remuneration); the conditions of hiring-out workers (in particular by temporary agencies); health and safety at work; protective measures for pregnant women, women who have recently given birth, children and young people; and equality of treatment between men and

7. An exception is where EU Member States during the implementation process of the Posted Workers Directive have decided to extend these rules to internal posting situations. We are not aware of such an example, but it is theoretically possible.

8. Rasnača Z. (2019) Reimbursement rules for posted workers: mapping national law in EU28, Background Analysis 2019.01, Brussels, ETUI, 6.

9. 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, OJ L 18, 21 January 1997, 1–6.

10. Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System, OJ L 159, 28 May 2014, 11–31.

11. Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30 April 2004, 1–123.

12. Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC, OJ L 173, 9 July 2018, 16–24.

women and ‘other provisions on non-discrimination’ (Article 3(1) Posted Workers Directive). Otherwise, the Posted Workers Directive refers to the country where the worker habitually works as the country whose law will generally apply to the employment relationship.¹³ In standard posting situations the law of the posted worker’s ‘home country’ will still regulate several important matters, including, for example, the conclusion and termination of the employment relationship.

Initially, it was thought that the host states could potentially adopt more protective rules than the ones set out by the Posted Workers Directive, and attribute other elements of their national law besides the nucleus set out in Article 3(1) Posted Workers Directive to such workers. However, such interpretation was denied by the CJEU, and therefore, in a way, Article 3(1) Posted Workers Directive is a maximum harmonisation provision in a minimum harmonisation measure. It means that while the Posted Workers Directive allows the Member States to adopt more protective measures, they are not allowed to attribute other aspects of their employment law (for example, rules on dismissal, more specific working-time rules beyond maximum work and minimum rest periods) to posted workers. Hence the host country’s law applies only with regard to the specific labour law aspects laid down in the Posted Workers Directive.

The Posted Workers Directive also states that the ‘home country’ is the country where the worker habitually works. Hence, if it follows from the particular case that the worker ‘habitually works’ in a country other than the country he has been initially posted from, one could argue that the law of this ‘other’ country should apply. This complicates the situation, especially for courts, who need to carry out a careful assessment in relation to each particular posting situation. As shown by the Chapters in this volume, this is not always an easy task.

However, the real difficulty in this setting, at least when it comes to the judicial enforcement, emerges when national courts have to apply foreign law. Namely, if a posted worker goes to court in the host country, then, beyond the nucleus, the host country’s court will have to apply the law of the home country. In turn, if the posted worker’s rights are litigated in his or her home country, then when it comes to the nucleus, the court will have to apply the host country’s (foreign) law. This is complicated further by the favourability principle laid down in Article 3(7) Posted Workers Directive. The courts have to have the information necessary to make a value assessment in terms of which particular set of rules is more favourable for the worker. This can be a rather difficult task since different sets of laws may be favourable in multiple ways.

While not applicable *ratione temporis* to the court cases analysed in this book, it is still relevant to mention the revision of the Posted Workers Directive. After much fraught political bickering, the revised version of the Posted Workers Directive has brought some changes which have to be implemented by EU Member States by 30 July 2020. The most relevant changes were the replacement of ‘minimum wage’ with ‘remuneration’ among the nucleus rules, and the introduction of the 12 months’ period (that may be prolonged to 18 months) after which the law of the host country applies

13. Recital 8 Posted Workers Directive.

concerning employment relationships.¹⁴ The revision also expanded the possibility to apply collective agreements declared universally applicable in the host country to posted workers in sectors beyond construction. In addition, Article 3(7) Posted Workers Directive now states that the employer shall reimburse expenditure incurred on account of posting (such as travel, board and lodging) in accordance with the national law and/or practice applicable to the employment relationship.¹⁵

The Enforcement Directive attempts to ease the work of the national courts by offering some indicators for identifying ‘genuine posting’, including the place where the undertaking has its registered office and administration, where it performs substantial business activity, the place of recruitment of posted workers, and where contracts with them are concluded, as well as the number of contracts performed and size of turnover in the EU Member State of establishment (Article 4(2)(a) to (e)). Furthermore, it lays down a non-exhaustive list of elements which should be considered in assessing whether a worker is a genuine posted worker, including, for example, the nature of activities, travel, board and lodging costs being reimbursed and whether the worker is expected to return and to work in the ‘home Member State’ (Article 4(3)(a) to (g)). The Enforcement Directive further introduced rules on improving access to information. The information on what rules apply to the posted workers and their content has to be published on a single website (Article 5). This should help the national courts in applying ‘foreign law’ to the posting-related disputes. Further rules on closer administrative co-operation (Articles 6 and 7), unfortunately, are not meant to be used in judicial enforcement; hence there is no quick and reliable process in which a court of one EU Member State could request information related to posting circumstances or applicable rules in another EU Member State.

Finally, the Social Security Regulation¹⁶ has to be mentioned as an instrument which, albeit more indirectly, also to an extent determines EU level rules on posting. Concerning posting, Article 12 determines that an employed person posted by an employer to work in another EU Member State remains subject to home state legislation, provided that the anticipated duration of such work does not exceed twenty-four months and that she or he is not sent to replace another person. This sets an upper limit for the period of posting, at least for the purposes of social security rules. In rare situations Article 13 could also potentially apply to posted workers - namely, if in line with Article 13(1) (b) the worker normally carries out work in two or more EU Member States, but still happens to have only one employer. In such a case, the legislation of the state in which the registered office or the place of business of the employer is situated will apply (this will then be the ‘home state’).

14. Article 1 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, OJ L 173, 9 July 2018, 16–24.

15. For more analysis regarding aspects of the revision most relevant for practice of the national courts, see the Conclusion.

16. See also the implementing Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30 October 2009, 1–42.

2. Intra-EU worker posting: trends and numbers

Comparative data on the number and the distribution of posted workers in the EU is not readily available. In a report compiled for the European Commission (EC) in 2018 by De Wispelaere and Pacolet,¹⁷ intra-EU posting flows based on national data on A1 certificates are traced. Home-country social security authorities issue these to workers and self-employed persons who are temporarily active in other EU Member States, in accordance with Regulation 883/2004 on the co-ordination of social security systems in the EU (Social Security Regulation).

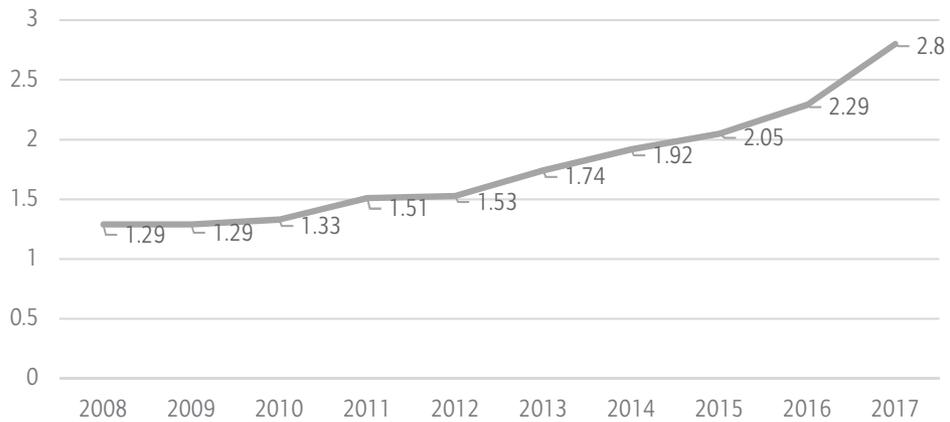
The authors acknowledge that it could be misleading to estimate the number of posted individuals on the basis of A1 data. First, the certificates are issued per trip, and not per worker, which means that the same person deployed abroad multiple times in the course of a single year will receive several A1 certificates. Second, some companies fail to procure A1 certificates for their workers, which could result in the under-reporting of posting numbers. Third, the two legislative acts regulating the employment conditions and social security status of cross-border workers – the Posted Workers Directive and the Social Security Regulation – differ in scope significantly. Specifically, some categories of workers covered by the Social Security Regulation – and, consequently, the recipients of A1 certificates – are not posted workers in the meaning of the Posted Workers Directive.

In accordance with the Regulation, A1 certificates are issued to three groups of workers temporarily active in another EU Member State: 1) employees that are sent by employers to provide services in another EU Member State (Article 12(1)); 2) self-employed individuals based in one country who temporarily move to another EU Member State to provide services there (Article 12(2)); and 3) self-employed and employed persons active in two or more EU Member States (Article 13). While the first category of workers constitutes posted workers *par excellence*, the second category is excluded from the scope of the Posted Workers Directive. The third includes both self-employed workers, who do not fall under the scope of the Posted Workers Directive, and employees posted within its meaning. However, the latter will likely constitute only a fraction of the overall number under the third category since only when work is done in two or more countries, but always for one employer, will workers constitute ‘posted workers’ in line with the criteria of the Directive.

All in all, the data suggests that the extent of cross-border mobility exercised by these three categories of persons is still relatively modest: in 2017, their activities accounted for 0.8% of employment in the EU. That being said, it is notable that the number of A1 certificates issued to transnationally mobile workers have increased nearly threefold in the past decade (see Figure 1). In 2017, Poland and Germany issued the highest number of A1 documents (573,358 and 399,745 respectively).

17. De Wispelaere F. and Pacolet J. (2018) Posting of workers: report on A1 portable documents issued in 2016, Brussels, European Commission.

Figure 1 A1 social security certificates issued by EU Member States (in millions), 2008-2017



Nb: the E101 certificates that preceded A1 certificates were still in use in 2009 and 2010

Source: De Wispelaere and Pacolet (2018)

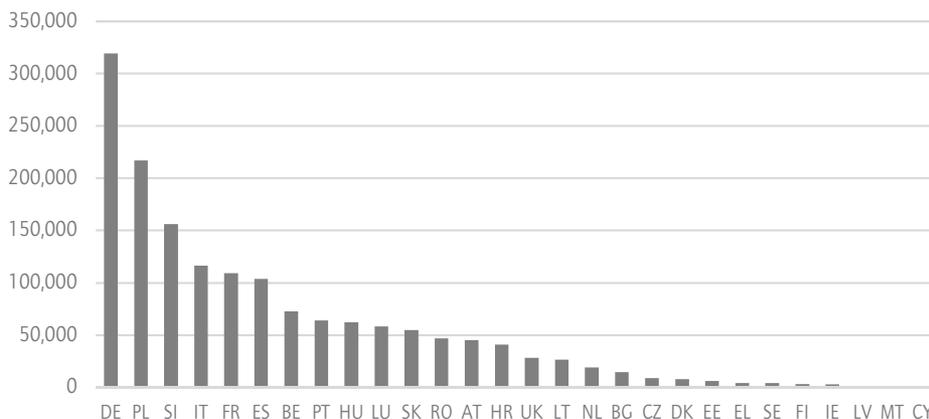
Figure 1 shows that temporary cross-border worker mobility was to a large degree ‘crisis-proof’ - while the issuance of A1 certificates stagnated in the early years of the downturn, their numbers soon began to grow again and have been on the increase ever since. Another interesting conclusion from the data is that temporary cross-border worker flows have not come to an end with the lifting of the transitory arrangements that had limited access to western European labour markets for central and eastern European (CEE) employees after their countries’ EU accession. According to Mussche et al.,¹⁸ this suggests that temporary cross-border worker flows, and posting in particular, should not be viewed as a substitute for regular migration, but rather as a separate, complementary form of labour mobility. In the authors’ view, the popularity of posting rests in the fact that it can offer ‘the best of both worlds’; so while it enables EU citizens to seize opportunities opened up by employment abroad, it saves them the challenges of a permanent move to another EU Member State, such as the language barrier, the administrative hurdles related to foreign residence registration or transferring social security entitlements from one country to another, and the psychological discomfort of living away from one’s family and country of origin. Due to these reasons, the growth of both intra-EU and third-country posting will likely continue in the foreseeable future. As the country reports included in this book show, there are still situations that entail difficulties and abuses due to the complexity and poor enforcement of posted workers’ rights. However, if posting rules are duly obeyed, the arrangement can indeed be considered appealing for both workers and employers.

18. Mussche N., Corluy V. and Marx I. (2016) The rise of the free movements: how posting shapes a hybrid Single European Labour Market, IZA Discussion Paper no. 10365, Bonn, Institute of Labor Economics.

Within the broad category of cross-border workers, let us now have a closer look at posted workers *par excellence*, that is, those employed in their country of origin and temporarily sent abroad on behalf of their employers (Article 12(1) of the social security co-ordination Regulation). In 2017, their numbers in the EU reached 1.73 million, which equated to 0.4% of total EU employment. In absolute terms, Germany was the largest ‘exporter’ of this category of workers (319,332 of A1 certificates issued), followed by Poland (217,154) and Slovenia (156,347). Country positions change somewhat when the proportions of posted workers relative to countries’ working populations are taken into account. In absolute terms Slovenia leads the net sending countries’ ranking, with nearly 5% of its economically active population posted to another EU Member State.

It is notable that, according to the data, over a half of all A1 certificates in the examined category granted in 2017 were issued by EU15¹⁹. Mussche et al’s²⁰ analysis of data from the Belgian national register Limosa for 2012 reveals an even higher proportion of inbound posted workers originating from high-wage countries. These results indicate that posting is popular both among high-wage and low-wage actors, which runs counter to the popular perceptions of this form of mobility as an ‘entrance ticket’ to the EU internal market for ‘cheap’ service providers and workers.

Figure 2 A1 certificates issued to employed persons temporarily sent by their employers to another EU Member State (Article 12(1) of Regulation 883/2004, 2017)



Source: De Wispelaere and Pacolet (2018)

As far as receiving states are concerned, in 2017 Germany hosted the highest number of mobile workers falling under Article 12 of the Social Security Regulation; France, the Netherlands and Belgium followed suit (please see Figure 3 below). All in all, EU15 Member States received more than two-thirds of all workers posted within the EU in

19. BE, DE, IT, FR, LUX, NE, DK, IE, UK, ES, SE, FI, PT, AT, GR (Pacolet J. and De Wispelaere F. (2018) Posting of workers: report on A1 portable documents issued in 2016, Brussels, European Commission).

20. Mussche N., Corluy V. and Marx I. (2016) The rise of the free movements: how posting shapes a hybrid Single European Labour Market, IZA Discussion Paper no. 10365, Bonn, Institute of Labor Economics.

2017, with most flows taking place from high to high and from medium to high-income countries.²¹ This suggests that the ‘west European posting skew’ identified in relation to outbound posting is discernible in relation to inbound posting as well.

Finally, the examination of sectoral data indicates that cross-border activities pursuant to Article 12 of the Social Security Regulation have tended to be concentrated in construction (47% of all A1 documents issued in 2017); services (including health and social care services); and other industrial sectors. In some countries, these sectoral trends have been particularly pronounced: for instance, a staggering 33% of workers active in the Belgian construction sector in 2015 were posted workers.²²

The sectoral disaggregation of posting data is important because the labour market dynamics in individual market segments could differ from those in the economy as a whole. Specifically, even if the overall impact of posting is negligible, a large number of workers temporarily deployed to a given sector and subject to a separate set of regulations could exert competitive pressure on the wages and working conditions of domestic employees, and/or even displace the latter. As argued by the authors of the ECORYS (2009) study, these negative effects might be particularly pronounced in low and middle-skilled occupations. Indeed, for Belgium, De Wispelaere and Pacolet²³ point to the threat of job displacement in relation to several sub-sectors of the construction industry. They also show that between 2010 and 2014, the number of domestic employees decreased, whereas the number of posted and self-employed workers was on the rise. Unfortunately, to the editors’ knowledge, no similar studies are available for other EU countries. As a result, it is not possible to provide a comparative assessment of the impact of posting on national labour markets and their specific sub-segments.

3. Analytical framework of the study

This book examines national-level case law related to posting of workers in the EU. Each Chapter focuses on one EU Member State and analyses the judicial enforcement of posted workers’ rights and duties of posting companies. The country studies primarily cover issues of labour law and social security disputes; they also analyse posting-related cases before administrative and even criminal courts.

Country cases selected for analysis display variation on a number of characteristics. Individual Chapters in the book cover the founding EU Member States as well as newcomers from different enlargement waves, including those from northern, southern, central and eastern European states. Our sample encompasses countries that predominantly send posted workers as well as those who stand out as receivers.

21. Pacolet J. and De Wispelaere’s F. (2018) high-wage country category includes countries with above-EU average wage in 2012: DK, LU, SE, FI, BE, NL, DE, FR, AT, IT, IE, UK, IS, LI, NO and CH. Medium-wage countries are those around EU average in 2012: CY, ES, EL, MT, SI, PT. The remaining EU Member States are classified as low-wage countries.

22. Pacolet J. and De Wispelaere F. (2017) *The size and impact of intra-EU posting on the Belgian economy*, Leuven, Research Institute for Work and Society (HIVA), KU Leuven.

23. *Ibid.*

As illustrated by Table 1, some countries in our sample, most notably Germany and France and to an extent Denmark and Ireland, do not easily fit these categories, as they are both important senders and recipients of posted workers. In addition, the examined countries differ significantly in terms of their relative wealth and political-economic setup. We analyse high-wage co-ordinated market economies of continental and northern Europe (Germany, the Netherlands, and Denmark), France, traditionally marked by a significant level of state's involvement in the management of the economy, and a liberal market economy (Ireland); we also look at low-wage southern and central and eastern European economies.²⁴ Last but not least, the analysed EU Member States display significant variation in regard to their legal systems; while most examined EU Member States belong to the continental legal tradition, we also include Ireland, whose legal system is mainly based on the common law, and Denmark, which hosts an extensive out-of-court dispute settlement system.

Table 1 **The number and net balance between A1 certificates issued according to Article 12(1) of the Regulation 883/2004, 2017 in the EU Member States analysed in this book**

Country	A1 certificates received	A1 certificates issued	Net balance of received and issued A1 certificates
Germany	390,136	319,332	70,804
France	228,673	109,155	119,518
Netherlands	107,048	19,231	87,817
Finland	21,266	3,295	17,971
Denmark	14,524	8,081	6,443
Ireland	5,841	3,016	2,825
Poland	19,644	217,154	-197,510
Slovenia	6,135	156,347	-150,212
Portugal	21,605	64,200	-42,595
Bulgaria	3,277	14,713	-11,436
Latvia	1,306	1,529	-223

Source: De Wispelaere and Pacolet (2018)

24. For different models of capitalism in Western Europe, see e.g. Hall P.A. and Soskice D. (2001) *Varieties of capitalism: the institutional foundations of comparative advantage*, Oxford, Oxford University Press; For Central-Eastern Europe varieties of capitalist systems, see Bohle D. and Greskovits B. (2012) *Capitalist diversity on Europe's periphery*, Cornell, Cornell University Press.

In order to ensure the comparability of country-level information, each chapter includes the following elements:

- an overview of the legal framework on posting of workers at the national level with an emphasis on the access and typology of courts and/or other dispute settlement bodies;
- key national legal debates on posting and how they relate to judicial enforcement at national level;
- an overview and evaluation of the national case law on posting with identification of the key legal issues that frequently come before the national courts;
- relation (if any) between the findings and the EU level debate.

During the writing process, the authors analysed a number of general elements that allowed crosscutting comparative analysis. When analysing the case law, all Chapters focussed on who brings the cases, before what type (and level) courts, what aspects of posting were (or were not) central in the judgment, whether the national court explicitly recognised the situation as posting, what the outcome was, and who ‘won’ the case. The Chapters also identify the elements of both EU and national legal framework that are most litigated. All these aspects fed into the comparative analysis of national-level discourses and case law on posting, which we present in the Conclusion. At the same time, each Member State has its own specific approach to regulating posted work and also to enforcing posted workers’ rights; therefore, where necessary and justified, the individual chapters diverge from the overall structural guidelines.

References

- Alberti A. and Danaj S. (2017) Posting and agency work in British construction and hospitality: the role of regulation in differentiating the experiences of migrants, *International Journal of Human Resource Management*, 28 (21), 3065-3088.
- Asteriti A. (2012) Social dialogue, Laval style, *European Journal of Legal Studies*, 5 (2), 69-99.
- Barnard C. (2009) British jobs for British workers: the Lindsey Oil Refinery dispute and the future of local labour clauses in an integrated EU Market, *Industrial Law Journal*, 38 (3), 245-277.
- Berntsen L. and Lillie N. (2015) Breaking the law? Varieties of social dumping in a pan-European labour market, in Bernaciak M. (ed.) *Market expansion and social dumping in Europe*, London, Routledge, 43-60.
- Bohle D. and Greskovits B. (2012) *Capitalist diversity on Europe's periphery*, Cornell, Cornell University Press.
- Hall P.A. and Soskice D. (2001) *Varieties of capitalism: the institutional foundations of comparative advantage*, Oxford, Oxford University Press.
- Hos N. (2010) The principle of proportionality in Viking and Laval: an appropriate standard of judicial review, *European Labour Law Journal*, 1 (2), 236-253.
- Kilpatrick C. (2012) Internal market architecture and the accommodation of labour rights. As good as it gets?, *European Journal of Social Law*, 2 (1), 4-29.

- Malmberg J. (2010) Posting post Laval. International and national responses, Uppsala Center for Labor Studies Working Paper Series 2010:5, Uppsala, Uppsala University, 6. http://econpapers.repec.org/paper/hhsuulswp/2010_5f005.htm
- Mussche N., Corluy V. and Marx I. (2016) The rise of the free movements: how posting shapes a hybrid Single European Labour Market, IZA Discussion Paper no. 10365, Bonn, Institute of Labor Economics.
- Pacolet J. and De Wispelaere F. (2017) The size and impact of intra-EU posting on the Belgian economy, Leuven, Research Institute for Work and Society (HIVA), KU Leuven.
- Pacolet J. and De Wispelaere F. (2018) Posting of workers: report on A1 portable documents issued in 2016, Brussels, European Commission.
- Rasnača Z. (2018) Identifying the (dis)placement of 'new' Member State social interests in the posting of workers: the case of Latvia, *European Constitutional Law Review*, 14 (1), 131-153.
- Rasnača Z. (2019) Reimbursement rules for posted workers: mapping national law in EU28, Background Analysis 2019.01, Brussels, ETUI.
- Vah Jevšnik M. and Rogelja N. (2018) Occupational safety and health in transnational workplaces: the case of posted workers, *Dvedomovini / Two Homelands*, 48, 23-36.
- van Hoek A. and Houwerzijl M. (2011) Complementary study on the legal aspects of the posting of workers in the framework of the provision of services in the European Union, Amsterdam, University of Amsterdam. <http://ec.europa.eu/social/BlobServlet?docId=7510&langId=en>
- Wagner I. (2018) *Workers without borders: posted work and precarity in the EU*, Ithaca, NY, ILR Press.
- Wagner I. and Berntsen L. (2016) Restricted rights: obstacles in enforcing the labour rights of mobile EU workers in the German and Dutch construction sector, *Transfer*, 22 (2), 193–206.