Transnational Monitoring and Enforcement of Posted Work: The Case of Czech Republic

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Mapping national enforcement capabilities

The State Labour Inspection Office (SLIO) is responsible for the inspections in the broad area of labour legislation, including rules of posting. It was set up in 2005 and has eight regional offices across Czechia. The SLIO is subordinated to the Ministry of Labour and Social Affairs, which includes the coordination of control priorities or the review of first instance decisions. In 2012 as part of the “fight” against illegal employment and migration it received new competence in the area of inspection of illegal work, which was transferred from the Labour Offices.

The SLIO is of a generalist, Latin American model of labour inspection (Teague 2009). First, it is the main institution responsible for most matters regarding enforcement of labour standards based on the provisions in the Labour Code and other legal documents. It has authority in the control of employment relations, working conditions, health and safety as well as inspections of illegal employment (see Table 1 below). Second, it is characterised by partnership with the employer (e.g. providing basic consultation service; preventive function), a relative decision-making autonomy of linear bureaucrats and the use of sanctions only in the last instance. There has been a growing deterring role of the sanctions and a partial reduction in the autonomy that the Labour Inspections’ employees have in determining the level of sanctions.

In 2016 the SLIO carried out a total of 26 296 inspections whereas in 2014 they were 46 685 (see Table 2 below). The politics of numbers (to reach a high number of inspections), especially in the area of control of illegal employment was replaced by a more targeted approach to labour inspections. From 2015, the focus has been more on inspections of bigger sites (e.g. construction sites), high-risk sectors and special control actions (e.g. seasonal work) (SLIO 2017: 61). This is indicated by a decrease in the number of inspections. From 2016, the control of illegal work has become a regular part of the budget and activities of SLIO, which has – in opposition to previous financing from EU structural funds – meant a stabilisation of the workforce and a further integration of these tasks within the Czech labour inspection (SLIO 2016).

Worksite controls focusing on illegal employment are carried out by at least two labour inspectors. Inspections tend to be announced in advance, but only if the focus is occupational safety or labour relations. On the one hand this makes it practical for the inspectors that the legal representative is at the workplace during the time of the inspection but on the other hand this complicates the carrying out of the control because the employer may have fulfilled his/her duties in the area of safety at work only for the control itself (cf. SLIO 2017: 177, Qubaiová et al. 2016: 12). The practice is different for controls of illegal employment.

These are not announced in advance as well as

1. The minimal sanction for illegal employment by a particular employer was 250 thousand CZK from 1 January 2012. Based on the amendment of the Employment Code (No. 203/2015, Coll.) the current minimal fine is 50 thousand CZK.
it is common that they are carried out especially in cooperation with the Foreign Police (due to the more conflictual nature of these controls) as well as other state bodies (e.g. Labour Office of the Czech Republic, Czech Social Security Administration). Information about potential breaches of law are then passed onto other institutions, too (SLIO 2017: 61-62). The level and quality of cooperation during the whole process of controls between the SLIO and the Foreign Police has been appreciated by the interviewed labour inspectors. The Police – focusing on the control of individuals (employees) – has learnt how to provide useful data for the controls of employers – the main focus on labour inspectors⁵.

With the low union density (estimated at 13 per cent in 2014), low collective bargaining coverage (31.6 per cent covered by the prevailing company-level agreements) (Chmelař 2017) and the limited outreach of trade unions to workers in precarious contracts (Čaněk 2017), the following analysis applies even more so to Czechia: “The diminished ability of trade unions to act as joint regulators of the employment relationship alongside management, and the increasing complexity of supply chains, imply an increase in the potential for non-compliance and hence an even greater need for effective labour inspection services” (Rychly 2013: 250).

The SLIO has been in contact with trade union representatives, e.g. getting information about potential breaches (SLIO 2017: 10). As regards the non-union settings the SLIO has also cooperated with non-governmental organisations (NGOs) active in the field migrant and social rights. There exist particular cases where such cooperation proved to be functional especially where it has been based on developed informal regular contacts; such contacts with NGOs could help maintain a longer-term relation with migrant workers (Qubaiová et al. 2016). There is a tension for the SLIO as concerns its relation towards especially migrant workers who are in a precarious legal position (including those unauthorised to work or stay in Czechia) in the labour market. The labour inspectors mostly do not give fines to the migrant workers themselves as they are aware of the more vulnerable position of workers vis-à-vis employers ; SLIO 2016: 79), on the other hand there is no protection for those migrant workers who would approach the SLIO in case a labour rights violation and would not have all papers in order; they would be reported to the Foreign Police.

For the SLIO it is common to base an important part of inspections based on complaints received (e.g. 3 365 inspections out of 4 829 complaints in 2016 in the area of employment relations and working conditions; mostly about incorrect remuneration; SLIO 2017: 7). It may be expected that there is a lower rate of complaints to the SLIO by workers in precarious legal and employment settings as well as those not supported by unions or NGOs (c.f. Weil 2007: 136). On top of that the investigations by SLIO are time consuming and may not lead to the correction sought by the worker (e.g. back wages being paid). An alternative to the state enforcement of the labour law and/or the NGO support are private services provided by quasi-mafia structures who are efficient in providing unpaid wages for a commission (Trčka et al. 2018).

Transnational cooperation

The SLIO participates in transnational horizontal cooperation promoted by the European Commission in the field of labour enforcement with regards to posting (Hartlapp, Heidbreder 2017). It can be divided in three types of cooperation (adapted based on Hartlapp, Heidbreder 2017) a) direct “information sharing” among national labour inspections, b) mutual recognition of sanctions and fines; c) “organizational cooperation” that builds on existing networks (e.g. Senior Labour Inspectors’ Committee /SLIC/), new ones (e.g. European Platform tackling undeclared work) as well as bilateral cooperation.

First, as regards information sharing via IMI the SLIO has used it to send information requests (mostly to Poland) as well as reply to them (mostly – cca. 80 per cent – requests on social security issues but also e.g. French requests for information
has been enhanced thanks to a meeting in 2016 (SLIO 2017). As SLIO and other Czech authorities are concerned with mostly legality of posting of non-EU workers from Poland to Czechia most requests sent to Poland concern different aspects of “genuine posting” (finding information about the companies, workers’ attachment to the company and the local labour market, existence of A1 forms, etc.); they have not concerned wage and working rights violations to a great extent (this may change with the new and better structuring of questions in IMI including those on wage and working rights). Some more practical issues with IMI:

Finding the right partner in IMI – sometimes it is hard to find the partner to address within IMI, there is no available guide/map within IMI, or there is only one partner authority in the given Member State, which does not have competence in the respective matter.

Second, there has been little experience with the mutual recognition of fines and sanctions. One request was sent to Czechia from the Netherlands and was passed over to the Czech Customs Authority.

Third, as regards the organizational cooperation, the SLIO has been involved in the SLIC. There is no working group in SLIC on posting, however, there is e.g. currently a campaign on safety and health issues concerning temp agency employment and posted workers (coordinated by France; to be evaluated in 2018 or 2019). The SLIO has made use of the SLIC Knowledge Sharing Site where questions can be posed (the answers are provided within a 1-2 months range); it has been tolerated to ask questions also from other areas not involving safety and health. The SLIO has been also actively involved in the European Platform tackling undeclared work, which “could possibly develop into a body comparably robust as the SLIC” (Interview with the Liaison Officer, Opava, 9 June 2017).

The cooperation and communication via IMI between the Czech and Polish labour inspections has been enhanced thanks to a meeting in 2016 (SLIO 2017). As SLIO and other Czech authorities are concerned with mostly legality of posting of non-EU workers from Poland to Czechia most requests sent to Poland concern different aspects of “genuine posting” (finding information about the companies, workers’ attachment to the company and the local labour market, existence of A1 forms, etc.); they have not concerned wage and working rights violations to a great extent (this may change with the new and better structuring of questions in IMI including those on wage and working rights).

The liaison office is in the headquarters of SLIO. Some countries’ labour inspections have used non-electronic communication in communication with the SLIO (e.g. Bulgaria, Romania). Emails are used when the communication does not concern a sensitive topic.

Table 3. IMI requests sent/received by SLIO (from 6 September 2016 to 8 November 2017)

<table>
<thead>
<tr>
<th>IMI requests received</th>
<th>Austria 35, Belgium 6, Denmark 5, France 7, Italy 2, Luxembourg 1, the Netherlands 1, Slovakia 17, Spain 1; 75 in total</th>
</tr>
</thead>
<tbody>
<tr>
<td>IMI requests sent</td>
<td>Belgium 1, Bulgaria 1, Germany 1, the Netherlands 1, Poland 66, Slovakia 8; 78 in total</td>
</tr>
</tbody>
</table>


The SLIO is the only body responsible for requests on posting within IMI in Czechia. This means both an advantage (as an intermediary it can provide valuable services to e.g. the Police sending requests to Poland) and a disadvantage (a burden of more work – it cannot forward directly a request sent via IMI to the responsible institution; some information cannot be forwarded to EU partners due to privacy concerns – e.g. about social security payments). As a substantial part of information requests (in-coming and outgoing) concern social security matters, the involvement of the Czech Social Security Administration (CSSA) has been crucial (regarding the kind of information that can be provided). As the CSSA has not joined the IMI, a delegated CSSA contact person was assigned to provide assistance with regards to IMI: both providing data needed to answer the incoming requests as well as submitting SLIO’s outgoing requests to social security authorities in other Member States. The SLIO therefore does not include questions about specific cases of social security payments / A1 Forms in its outgoing information requests, and forwards them to the afore-mentioned CSSA contact person instead. The data obtained from CSSA is more reliable and precise but may take up to three months, which is the statutory period of the Social Insurance Administration in Poland for answering requests.

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The SLIO (or the Ministry of Labour and Social Affairs) has had cooperation agreements or memoranda of cooperation with the labour inspections from neighbouring countries (Slovakia, Poland, Germany) as well as a few others (e.g. the Netherlands). Most developed formal and informal contacts have been with Slovak and Polish labour inspections. For more detail on bilateral agreements and memoranda see Annex 1.
Issues specific to the cross-border regulation of posting

Czechia has stopped being just a labour exporter in respect to posting but also an importer. The 2014 data on A1 social security forms show that the country has even become a net importer with 17.2 thousand posted to Czechia and 10.4 thousand posted out of the country (Chmelář et al. 2016). For the SLIO the control of posting has been important for both migration directions, however, recently even more so with regards to posting to Czechia.

Out of the three types of posting enumerated in the 96/71/EC Directive on the posting of workers, the SLIO has been concerned with the “traditional” posting (art. 1 a) and temporary agency work (art. 1 c) and not with intra-corporate posting (art 1 b) (cf. Cremers 2011). When inspecting the cases of posted Ukrainian workers mostly from Poland to Czechia the SLIO has found only very few which would fulfil a correct definition of posting and thus can be characterised as “fake” posting (Cremers 2011: 41). They are semi-legal arrangements most probably used to circumvent labour migration restrictions towards non-EU workers and diffuse legal responsibility for this kind of employment in subcontracting chains. They also allow making savings in social security and other payments. The Table 4 below summarises issues with posting of Ukrainian workers from Poland to Czechia from the point of view of the SLIO as well as workers’ rights.

<table>
<thead>
<tr>
<th>Issues</th>
<th>Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Notification</strong></td>
<td>The SLIO has the right to get this information from the Labour Office (par. 8a 1 o) of the Employment Act 435/2004, Coll.). The information provided, however, is not always accurate or precise including the address of the workplace.</td>
</tr>
<tr>
<td><strong>Work and residence permit in relation to posting</strong></td>
<td>In order for the employment to be legal, it is required to be in agreement with the definition of posting (which is not very precise as the SLIO labour inspectors complained), which is often not the case (e.g. workers coming directly from Ukraine to Czechia, not having A1 forms, the employer being just formally established in Poland, being in a dependent relationship to the Czech employer operating as an unofficial temp agency with the given worker being sent around different employers in Czechia, etc.).</td>
</tr>
</tbody>
</table>

Table 4. Summary of issues with posting of Ukrainian workers from Poland to Czechia
<table>
<thead>
<tr>
<th>Issues</th>
<th>Controls</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Information about rights</strong></td>
<td>Many of the workers are most probably aware of the illegality (or semi-legality) of “Polish visas”, however, there has been little information provided to posted Ukrainian workers by the state authorities. Foreign Police issued expulsion orders for increasing numbers of Ukrainian citizens in recent years (including to those on “Polish visas”) – 2,045 in 2016 (a 64.5 % increase in comparison to the previous year) (Ministry of Labour and Social Affairs 2017)</td>
</tr>
<tr>
<td>A leaflet for Ukrainian posted workers was published in November 2017 by the Ministry of Interior of the Czech Republic[1]. Unclear definition of posting and differing positions of various state institutions to the conditions for legality of employment and residence have led to delays in the creation of such a leaflet. This shows the difficulties to coordinate the positions and practices of institutions in the national context (and not only in transnational one).</td>
<td></td>
</tr>
<tr>
<td><strong>Employment relationship</strong></td>
<td>In some cases, it appears that the SLIO has not accepted the mandate agreements as proper kind of contracts for posting because they are not employment contracts as can be seen from one of its cases investigated in construction: “The presented documents were supposed to create a fiction that the named persons were posted to the Czech Republic based on the par. 98 k) of the Employment Code No. 435/2004, Coll. This is not possible because the aforementioned par. 98 k) is clear in that “the employee was sent to the territory of the Czech Republic as part of the provision of services by an employer set up in a different Member State of the European Union” (in bold in the original).[3]</td>
</tr>
<tr>
<td><strong>“Hidden” temp agency employment and labour-only subcontracting</strong></td>
<td></td>
</tr>
<tr>
<td>The employment relationship is not always clear; this concerns especially labour-only subcontracting that has been growing in the Czech labour market (SLIO 2017). It is based on the use of trade or civil contracts between companies providing workforce. The contents of the contract is about a provision of a task. E.g. in manufacturing industry it is based on the leasing of a part of the factory to a subcontractor (Qubaiová et al. 2016: 4). It has also been taking form of a subcontractor set up in Poland by a Czech company (cf. Eurofound 2016: 17). It has also been common that workers on “Polish visas” in Czechia would be hired temporarily by different companies, in fact functioning as “hidden” temp agency employment if using the term of the SLIO. There tend to be chains of companies between the employer and the user, which in the view of the Foreign Police are used in order “not to be guilty of illegal employment” (Ministry of Labour and Social Affairs 2017).</td>
<td>The SLIO targets the “hidden” temp agency employment as one of its control priorities. It is, however, not common to directly target the user and successfully claim that the contract was in fact one between the employee and the user. The entity (e.g. in the chain of subcontractors) to which a sanction is imposed, is the one, to whom it is possible to prove successfully that “dependent work” was performed (which often is not the end user). Hence, the end users may often remain unpunished, which probably is the reason why some labour inspectors have been sceptical about the effects of their controls in which workers who were found to be working illegally at a particular worksite or with the same end user are soon replaced by new workers also working illegally. There has also been a rising use of attorneys (also already at the time of inspection) by employers. To clarify the chain of subcontractors/employers is time consuming and further complicated by the transnational setting.</td>
</tr>
<tr>
<td>Issues</td>
<td>Controls</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Social security expenses</td>
<td>The involvement of the CSSA in the control of posting has been crucial. The main issue to overcome has been its absence in the IML (see above).</td>
</tr>
<tr>
<td>Wages</td>
<td>The SLIO inspectors claimed that they were not able to find out what wages have been paid (or not) based on the trade or civil contract, which are signed between an end user (or its subcontractor) and the subcontractor employing the workers. In their opinion, that should be in the competence of the Polish labour inspection. However, this is not feasible, since very often these tend to be “letter-box” companies established in Poland. If the SLIO was successful in claiming that the “posted” employees were temp agency employees, these would have to receive remuneration comparable to their Czech colleagues in similar positions.</td>
</tr>
<tr>
<td>Working conditions</td>
<td>The priority for the SLIO has been the control of illegality. There is no “firewall” with regards to reporting to the Foreign Police in case of complaints raised by non-EU migrant workers (see above). There is also a lack of interpreters for better communication and building trust between the SLIO and migrant workers.</td>
</tr>
</tbody>
</table>

[4] Reporting about posting of Ukrainian workers from Poland to other EU states M. Keryk wrote: “During the period of January-September 2017 ZUS issued 167 753 forms A1, from which 2309 were for third country nationals including 2078 for Ukrainians. In total 1682 Ukrainians received forms A1.” (Keryk 2018).
[5] This, however, is not the case in trans-national provision of services by a temporary employment agency, see http://www.suip.cz/vysilani-pracovniku/.
The Enforcement Directive

There was a late implementation of the Enforcement Directive (2014/67/EU) in force since 1 April 2017 (apart from parts on the liability scheme – since 1 July 2017), which means there has been limited experience with its effects. Amendments to several acts – on Employment, Labour Inspections, and Labour Code – were made. Notifications have already existed before but what is new is the obligation for the service provider to keep a proof of social security payments and employment contract translated into Czech. The liability scheme – valid for all sectors but only for a direct contractor – is administratively quite complicated and it is hard to imagine it could work in practice (based on three conditions - unpaid wage, enforceable penalty, contractor “knew” or “should have known”).

Conclusions

This report described Czechia as a case of a country that has been turning from a labour exporter to a mainly labour importer. This can be seen on the – mostly false –posting of Ukrainian citizens through Polish companies. Although the sanctioning deterrent role of the State Labour Inspection Authority has been growing in recent years, there has been a lack of sanctions in the legislature for the end users. Thus while the employees usually do not receive penalties from the labour inspectors and are thus recognised as the vulnerable party in the dependent employment relationship, the inspections focus on the legality of posting and thus wage and working conditions are currently not at the centre of attention. It, however, is very difficult to investigate the latter in the context of often “letter-box” posting workers to Czechia.
References


Annex 1
The State Labour Inspection Office of the Czech Republic (SLIO) and bilateral agreements and memoranda

The SLIO is involved in the following cooperation memoranda/agreements:

Agreement of 29th June 2010 on cooperation between the National Labour Inspectorate (SK) and SLIO (CZ):
• cooperation in all aspects of occupational safety and health (OSH); provision of information and consultations regarding changes to OSH legislation and harmonisation with EU legislation, and provision of translations of foreign OSH legislation;
• elaboration and implementation of new forms of labour inspection in view of increased effectiveness / capacity in OSH inspections;
• cooperation on elaboration and development of IT systems, sharing statistical data;
• assistance with inspections of causes and circumstances of occupational accidents / emergency situations / breakdowns of technical equipment;
• cooperation with corrective measures towards entities based in the other state who shirk from fulfilling their obligations;
• cooperation and mutual sharing of information on research activities and providing their results;
• education and training of inspectors;
• providing information on organizing expert events on OSH and labour relations issues;
• coordination of processes leading to enforcing common interests in the context of international cooperation;
• provision of reports on activities.

Agreement on co-operation between the National Labour Inspectorate of Poland and the SLIO (CZ):
• exchange of experts;
• exchange of information materials, issued by or in association with each of organizations;
• co-operation on district labour inspectorates level, including participation on exchange principle of inspectors in the routine work of district labour inspectorates in the corresponding country;
• organizing practical courses to be carried out in the centres of the corresponding countries, as well as participation in conferences, symposia, international meetings organized by the Contracting Parties;
• exchange of experience in connection with implementation of the EU directives concerning the scope of activities of the Parties.

Apart from the above agreements which the SLIO concluded by itself, the SLIO is also mentioned in the following two ministerial memoranda/agreements:
• Memorandum of understanding between the Ministry of Social Affairs and Employment of the Kingdom of the Netherlands and the Ministry of Labour and Social Affairs of the Czech Republic on data exchange and cross-border cooperation in combatting of fraud in transnational posting of workers and illegal labour.
• Cooperation Protocol between the Ministry of Labour and Social Affairs of the Czech Republic and the Federal Ministry of Finance of the Federal Republic of Germany on cooperation in combatting illegal hiring of cross-border workers and the associated fraud of social security benefits and non-payment of premiums.
### Annex 2

**Registration form**

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**INFORMATION**

about a person’s starting work\(^7\) — the posting of a person to perform tasks arising out of a contract entered into\(^7\)

where the person is a citizen of the EU/EEA and Switzerland or the citizen’s family member, or a foreigner who does not need an employment permit in the territory of the Czech Republic (Article 87 of Act No. 435/2004 Coll., on Employment)

<table>
<thead>
<tr>
<th>Surname:</th>
<th>First name:</th>
<th>Nationality:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of birth:</td>
<td></td>
<td>Gender(^2): male □ female □</td>
</tr>
<tr>
<td>Personal identification number(^5):</td>
<td>Place of birth:</td>
<td></td>
</tr>
<tr>
<td>Address in the country of permanent residence:</td>
<td>Travel document number:</td>
<td></td>
</tr>
<tr>
<td>Postal delivery address</td>
<td>Name of the authority which has issued the travel document:</td>
<td></td>
</tr>
</tbody>
</table>

The highest educational achievement (according to the Classification of Basic Branches of Education)\(^7\):

- **EU citizen\(^9\) □**
- **EEA citizen\(^9\) □**
- **Swiss citizen\(^9\) □**

Foreigner according to\(^2\):
- Art. 98 c) □
- Art. 98 d) □
- Art. 98 e) □
- Art. 98 f) □
- Art. 98 a) □
- Art. 98 b) □
- Art. 98 c) □
- Art. 98 d) □
- Art. 98 f) □
- Art. 98 c) □

**Employment\(^7\) — the posting of the person to perform tasks arising out of a contract entered into\(^7\)**

- from \(^7\) \(\) to \(^7\) \(\)

- In a **CZ:ISCO** profession\(^9\) \(\) \(\)

- **CZ:ISCO numerical code\(^9\) \(\) \(\)**

- **Classification according to CZ-NACE\(^9\) \(\) \(\)**

- **Education required for the occupation (Classification of Basic Branches of Education)\(^9\) \(\) \(\)**

**a) Employment relationship with an employer having its registered office in the Czech Republic\(^7\)**

- Employer — name

- Registered office (address — district, city/town, street, number, postcode)

- ID No. \(\) \(\)

- Personal identification number\(^9\)

- Contact person \(\) \(\)

- Telephone \(\) \(\)

- Place of work (address)

**b) Posting of the person to perform tasks\(^7\) — under a contract entered into\(^7\) □**

- under temporary work\(^7\) □

- The natural or legal entity for which the work in the territory of the Czech Republic is carried out (registered office name and address — district, city/town, street, number, postcode)

- ID No. \(\) \(\)

- Personal identification number\(^9\)

- Contact person \(\) \(\)

- Telephone \(\) \(\)

- Place of work (address)

**c) Employment relationship with an employer having its registered office outside the territory of the Czech Republic\(^7\)**

- Employer — name

- Registered office (address — country, district, city/town, street, number, postcode)

- Contact worker \(\) \(\)

- Tel. \(\) \(\)

- Fax/e-mail \(\) \(\)
Annex 2
Registration form

This is the first employment in the territory of the Czech Republic: □ yes □ no

Date: ..............................................................

Responsible person’s signature: ...........................................

Stamp: .................................................................

A record by the regional office of the Public Employment Service of the Czech Republic in .........

Delivered on ..........................................................

Explanatory notes:

1. Indicate by ticking what applies.
2. Indicate the correct option by a cross.
3. To be filled in if the personal identification number has been assigned.

CBEE. Classification of Basic Braches of Education (the classification overview available at "www.czce.cz. Classification")

Czech Republic = Classification of Occupations — the name and numerical code of the profession shall be specified (the classification overview available at "www.czce.cz. Classification")

Czech Republic = Classification of Economic Activities (the classification overview available at "www.czce.cz. Classification")

Country Study: CZECH REPUBLIC

TRANSNATIONAL MONITORING AND ENFORCEMENT OF POSTED WORK

COUNTRY STUDY

PROTECTING MOBILITY THROUGH IMPROVING LABOUR RIGHTS ENFORCEMENT IN EUROPE

APRIL 2018

Country Study
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