Strategies for Circumventing Minimum Wages and the Equal-pay Principle in Association with Cross-Border Worker Posting

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Part I: Keynote speech

Thank you for your kind invitation for me to speak here. One of the previous speakers said that it is not easy to talk about nothing. Well, I have rather the opposite problem: it is not at all easy to talk about a wide-ranging field. For twenty-five years I have been working in various positions relating to the problem of posted workers. My manuscript contains a summary of examples, which we found in a study of how posting is used by employers as a kind of cheap placement policy. You are welcome to read it.

I am going to present something different now. Last week, I had a meeting with the Labour Inspectorates of Belgium, Luxembourg, France, Poland, Finland and the Baltic States as well as Denmark. At that meeting, several new examples were again presented, which in my opinion well depict the problems that exist. One thing I have to say straight away though, posting is only one and perhaps not even the most important form of placement or human trafficking taking place in Europe in the present day.

And with that, Ms Henlein, I have already absolved myself of my duty and can now focus on saying what I want. I did not mean it quite like that. I will, of course, mention a few of the things that you requested me to mention.

I assume that it is not necessary for me to depict posting as a mechanism. That dates back to two tracks, Regulation 1408/71, the Coordination of Social Insurance, actually already made it possible for workers to be posted for a specific period. These then are all employees who are not striving for permanent access to the labour market in the host country. At the end of the 1980s when I was still working as a trade union leader in Brussels, we attempted to develop a legal basis for the equal treatment of employees in the area of labour and employment conditions. Following eight hard years of lobbying – the Posting of Workers Directive emerged.

I am not going to present a detailed description of this directive, but it does, of course, contain a few key elements – including for the supervisory authority - regarding the concept of "posting". It actually states that an employment contract must exist in the country of origin. A genuine company must exist in this country of origin with a service agreement in the host country. The posted worker shall also perform paid work under the supervision of the posting company. That was the beautiful theory in those days. I have to say that, in the late 1980s, there was nothing novel about such arrangements.

We have always been aware, of course, of a distribution of the tasks; A parent company makes use of subcontractors with specific technical and professional knowledge and there is nothing wrong in that. However, based on two studies I was involved with – one in 2003 and one in 2010 – it can certainly be said that a strong erosion of these elements has taken place in the meantime. And this has created large problems for the supervisory authority. I will provide a few examples of this later.

In principle – and what I am saying now is nothing new – our 2010-2011 study revealed four forms of posting-
related placement. The first is the classical form. I always like to say – and it pleases my Austrian colleague to hear - that when a tunnel is built somewhere, then the subcontractor is an Austrian company who comes along with its team of specialists, and we do not need to worry about these colleagues, because they are paid properly and well. They are treated as experts. They also enjoy the possibility to negotiate their labour and employment conditions. No problem, all this is normally right and proper.

The second form, where we have witnessed a strong development in the previous 15 years, is the legally compliant posting of cheap labour under the guise of the provision of services. In this regard, I made a few statements last Monday in the Dutch press. And I must also address my Austrian colleague again, but this time negatively: the Strabag Company has a subsidiary company called Züblin, and this company, in turn, has a letter-box company in Portugal, from where it posts Portuguese workers. These Portuguese workers have two wage slips, one for the Belgian (or Dutch) authorities and a second for the Portuguese authorities. If you have a look at what is on these wage slips, then this is nothing other than the placement of cheap labour.

Then we are immediately confronted with the problem: how to approach it? In Belgium, the control is still more or less concentrated on social inspectors. But in Holland, for example, the control ensues via four or five paths, and they all look at each other and say: I do not think this is our responsibility. Is it yours, by any chance, etc.? So, legal protection for posted workers is more complicated than determining what is true or false and then going to see a lawyer to settle the issue.

The third form we found are postings where even the relevant regulations are not observed. My colleagues have the A-1 form (former E 101, posting according to regulations on the coordination of social insurance), but accommodation, expenses, transport costs, etc. – none of that is paid. In contrast to the second form, this is simply criminal. However, this fact alone is not sufficient to then avail oneself of the law.

Now to the fourth form. It is actually a curious phenomenon, but in a some way simply the consequence of judgments made by the Court of Justice of the European Union (CJEU). When I am somewhere on a building site with my mates and along comes a control, then I can always say in the last minute: yes, but we have been posted. Then it all gets quiet, for if I have to check this, I first have to ask: Is there an A1 form? – Yes, but our company has it, it is at home, etc. The control measures on the ground have been so heavily restricted by the CJEU that it is actually impossible to make a direct decision on the spot. What then ultimately emerges from all this is that a second inspection is no longer able to locate the company, all of the workers on the site have disappeared, etc. Here, the posting is just an alibi to get the difficult control procedure underway.

These are the four forms!

Now let us look at the quite recent example of an office in Belgium, where all of these four forms are to be found. The results of an inspection were issued at the end of 2012. A building site where 118 Belgian and eleven foreign companies were represented was checked. These were the companies registered with the social insurance authorities in compliance with Belgian registration procedure. Of these companies, an on-site control revealed the presence of 35 Belgian, one Dutch, three Polish and one Portuguese company. The Dutch company consisted of one employer with one employee. However, one week after the control had taken pace, and the questions still continued in the direction of the Dutch authorities etc., the company went bankrupt. And that was the end of that. Very likely they registered under a new name two weeks later and are operating again somewhere on another building site.

The first Polish company consisted of one freelance person, who had posted himself – everything in order here. This was my category A. The man was fit, had his A1 form with him, he was working alone, had his own company and even used his own tools, etc. He was a one-man-band, but nothing amiss with that. What's more: This case could be verified on-site!
Then there was a second Polish company, thirty-three employees, no wage slips – not even after two attempts or enquiries to obtain them. They worked on Saturdays, Sundays and holidays. This is forbidden in Belgium in the construction industry. It appeared as though the posting was registered with the social insurance authorities. Nevertheless, proceedings were initiated and here the IMI was employed. The IMI is a new instrument introduced by the European Commission enabling authorities to mutually inform each other bilaterally (i.e. faster) and interact with each other. The procedure was initiated with the Polish authorities receiving the request to send the wage slips via IMI. It was not only a question of the number of workers concerned, but also of the posting period. The reply came back that these workers had signed contracts as freelance workers, i.e. commercial service contracts. But nobody had originally mentioned this fact. The problem for the Belgian authorities then was that it was already too late. Everybody had gone. Determining and checking the legality of the self-employment declaration was no longer possible.

And then there was Polish company number 3. Here, two employees were present, they had no wage slips, again working on Saturdays and Sundays, etc. Again the posting had been registered with the social insurance authorities. Proceedings were initiated, the IMI used, and the employer reported that one of the employees did not work for his company and the other was self-employment, although he was not actually registered as such in Poland. The Polish social insurance authorities replied: these workers are not registered with us. The A1 forms had been forged. This is the conclusion that emerged. But again it was too late to check the legality of the self-employment claim.

We have not finished with this building site yet. There was also one Portuguese company represented, albeit through the presence of 45 Polish employees. They all had wage slips. The posting had ensued in accordance with social security regulations. The colleagues had the A1 form, but the minimum wages were not paid. No contributions had been paid to the proper Belgian building fund.

In this case though, the employer was prepared to subsequently pay these contributions, since it was a subsidiary of a large company and did not want to receive any negative press. However, the inspection revealed that no taxes and no social insurance contributions had been paid on the wages in Portugal.

This was the Belgian case!

Now we have another case, a much bigger one, as it concerns temporary employment. I have not raised the subject of temporary employment yet. Some eighteen months to two years ago, colleagues discovered that in Flamanville the major French company Bouygues was recruiting Polish employees as posted workers via a letter-box company in Cyprus.

What can we learn as a result of these examples? On the evidence provided by several studies, I have often said that circumvention is based on the regulations in force. In nearly all of our countries, the regulations in force consist of employment legislation including collective bargaining law and labour market regulations. Depending on how this legislative framework is established, you can predict whether the circumvention will take place. In Spain, temporary employment was prohibited for a long time. The result here was that posting was the most popular method.

In England, there was no minimum wage for a long time – now there is. The most common way of circumventing this measure is self-employment.

In Germany, there are collective bargaining communities. So here, the main method is to be found in an exodus from the collective agreement system. I have done some further investigating into one of these companies and found that they were not registered in Germany as a construction company but as an industrial cleaning company. And why as an industrial cleaning company? Well, the industrial cleaning collective bargaining community has significantly cheaper rates than the construction sector community.
It can be said that circumvention either depends on how the regulatory framework is established or moonlighting flourishes, because there is no control. I once spoke to an inspector during a conference who told me: with us, the chance of an inspection taking place at a building site is once every 35 years. As a result, people take calculated risks.

Which brings me to you all! What does the law have to do each time we again formulate something new. I was involved in formulating the Directive regulating the posting of workers. As a member of the European Parliament, I was also involved in coordinating the social insurance regulations. But now I am constantly asked about Cyprus – for example, about the letter-box companies in Cyprus set up for the purpose of circumventing the coordination of social insurance. The big question to be faced is: How can we proceed, when it is possible to use a new, creative method every time?

**Part II: Posting and working conditions in practice**

1. **Introduction**

Directive 96/71/EC concerning employee posting as part of providing services, also known as the Posting of Workers Directive, forms an integral component of the action programme of the European Commission (EC), linked to a Community Charter of Basic Employee Social Rights, and is intended to create a legal framework for the working conditions of workers posted for a limited period to another Member State. One of the key features of a genuine worker posting is that the employee concerned does not strive for permanent access to the labour market in the host country.

In substance, it consists of a guarantee for a minimum level of protection, fair competition, and compliance with the legal framework conditions in the host country. The keystone behind the Posting of Workers Directive was the formulation of a ‘hard core’ of minimum conditions with additionally applicable labour and employment conditions on other themes than those referred to, which should then apply in a non-discriminating manner and be based on binding provisions (in relation to labour law or generally accepted collective bargaining agreements) (Article 3 (10) of the Directive).

The concept of posting has proven to be a hotbed for lively debates. The reason for this includes the gradual weakening of regulations on the part of the CJEU in the last ten years. What is more, the concept continues to sow confusion. Posting as such has nothing in common with unregistered work or illegal practices. Neither should it be equated with migrant labour.

2. **The different types of posting**

There exists a multi-layered range of experience with the three types of posting specified in the Directive (normal posting, in-house posting and posting via temporary employment agencies). The least problematic form is the first type of posting in the traditional sense of subcontracting special orders to a foreign company with frequently highly qualified and highly paid employees (e.g. financial services providers). These workers are not considered to be a problem in terms of protection of workers’ rights.

The picture for the second type of posting is rather more complex. Our study reports subsidiary companies exclusively established for the purpose of circumventing labour standards and other requirements. The majority of the reports, however, do not draw attention to the widespread abuses resulting from in-house posting.

These first two types only become a problem in situations, where labour exclusively constitutes the object of the subcontracting in labour-intensive industries, i.e. those cases, in which the subcontractor or the foreign subsidiary company has nothing to offer apart from cheap labour. The cost benefits resulting from posting from a country with low social insurance rates to a country with normal social insurance rates may be as much as 25 - 30%.
Further cost benefits are achieved if posted workers are not properly paid in accordance with their skills/qualifications but rather have minimum wages and minimum conditions applied to them, instead the same wages as regular workers in the host country. The biggest problem is caused by the use of temporary labour for cross-border work. The temporary character of the activity and of the workplace is typical for the new services, so that more attention should be paid to the dynamics between posting and temporary work. In labour-intensive sectors, the working conditions and work relationships are dominated by discontinuity and strong pressure in the direction of cutting costs. In the recent past, several countries have experienced periods of severe labour shortage, resulting in not only qualified but also unqualified workers being posted or recruited via temporary employment agencies.

At the time the Posting of Workers Directive was adopted, the phenomenon of temporary agency workers posted to other Member States was still insignificant. This was in part due to the ban on temporary employment agencies, which then continued to apply in several Member States, particularly in the building sector. Nevertheless, Article 1 (3c) of the Posting of Workers Directive drew attention to cross-border temporary work. Since then, the temporary employment agency sector has consistently grown, now contributing almost 2% of the whole full-time equivalent European labour force. At the end of the 1990s, the ban on temporary employment agencies was lifted in most of the countries it which it had been in force, resulting in an enormous surge in the sector. Since the beginning of this century, a significant blossoming of dubious agencies who use illegal workers and/or evade taxes and premiums has damaged the temporary employment agency sector.

For example, after the ban was lifted in France and the use of temporary employment agencies legalised, outsourcing in the construction industry assumed the form of a pure labour subcontracting (the return of ‘marchandage’ – a constant provision of precarious jobs). The construction industry share of the French temporary employment agency sector has now blossomed to 20.6% (and still counting) of all temporary workers in 2006 – a disproportionately strong representation. Investigations have revealed that temporary employees comprise 120,000 full-time jobs in the construction industry. Temporary workers at the lowest level are not even reflected in official statistics on construction workers. They are either regarded as ‘service providers’ or simply ignored due to the irregular nature of their activity. French legislation lays down that the posting of temporary workers for the sole purpose of providing (cheap) labour is prohibited. A shift has taken place from the recruitment of workers posted for a limited period to temporary labour (both of which probably come from the same countries). The complete opening up of the French labour market to the eight Central and Eastern European Countries that joined the EU in 2004 has resulted in worker posting being replaced to a considerable degree by direct recruitment via temporary employment agencies.

The Norwegian trade union Fellesforbundet observes a trend – particularly in shipbuilding – where employers consciously seek out temporary labour from temporary employment agencies based in Norway in preference to awarding contracts to companies with posted workers. A broadening of the collective agreement in the shipbuilding industry was disputed among employers, who were especially unhappy about the idea of applying accommodation and home leave provisions to posted and commuting workers. The establishment of local recruiting agencies has enabled costs to be reduced by the claim that these workers are “local”, resident workers instead of posted workers. In other words, within a few short years, the strategy has shifted from one of employing posted workers to one of favouring locally recruited foreign workers from temporary employment agencies – the very workers who in the past had been protected by cross-border provisions. This illustrates a general trend among some employers to favour the agreement with the lowest labour costs and what significance it actually has to circumvent parallel provisions with differing standards.

In Spain, temporary employment agencies are still excluded from building sites, although this will change as a result of the reforms now making their way through parliament. Nevertheless, the posting of foreign temporary labour by Portuguese subcontractors in specific regions has developed – albeit to a limited extent only – to become an established feature of the labour market. This continues to remain the case despite the employment crisis. The fact that posting is ongoing points to a possible shift in its function within the labour market. During the economic boom of 2006-2007, it was possible to argue that posting was the remedy for a shortage in the industrial labour supply. The fact, however, that posting still persists in the middle of periods of mass
redundancies indicates how important possibilities to reduce costs, and consequently the potential for abuse and unfair competition, have now become.

The problems recorded in Belgium are often connected with temporary employment agencies and workers posted under false premises. Companies receive offers from foreign temporary employment or posting firms at extremely attractive prices. In view of the fact that the minimum wages in Belgium can never be reached, such offers result in distortion of competition. Foreign employees are recruited via intermediaries, including non-bona fide posting firms in the informal economy. In some cases, temporary employment agencies expressly guarantee the personnel they recruit an 'employee status', while in others temporary workers are regarded as self-employed. This was reported in various countries (Ireland, the United Kingdom and Sweden). Controlling temporary employment firms' compliance with the Labour Code and with working condition rules remains difficult, particularly when they are based abroad.

The social partners in the Netherlands point to an increase in temporary labour and self-employment, and both parties determine that the number of bogus self-employed workers is on the rise. They state that posting is used to recruit workers from Central and Eastern European countries, who were prepared to work in poorer working conditions than their Dutch counterparts. As workers from Central and Eastern European countries no longer require a work permit, they come into the country via more favourable forms of work such as temporary work or self-employment. In 2007, the Dutch temporary employment agencies and trades unions launched a voluntary certification system for temporary employment agencies with the aim of distinguishing between genuine and bogus agencies: NEN-4400-1 (for Dutch temporary employment agencies) and NEN-4400-2 (for foreign temporary employment agencies). Once the existing licencing system was done away with in 1998, genuine temporary employment agencies began to witness a steep increase in the number of bogus placement agencies.

3. Interesting cases and forms of abuse

As far as unintended consequences are concerned, it is clear that the subject of 'posted workers' has been intermixed with issues relating to the recruitment of (migrant) workers in general and to contract compliance. Circumvention has been created as a response to the national legal framework conditions; the objective being to attempt to circumvent statutes and regulations in a wide range of ways. In spite of the fact that posting companies are required to observe labour and working conditions, these companies are able to achieve a cost advantage if the social insurance contributions in the country of origin are lower or if posted workers are not properly employed according to their level of qualification. These employees then work under minimum (wage) conditions, which do not correspond with those of their colleagues in the host country. Such factors may lead to preferences for posted workers over local workers, with the possibility that the requirements for a vocational qualification are undermined in the host country.

According to the CLR study, it is possible to describe and categorise four different posting-related forms of labour recruitment.

a.

As part of our research work, we have determined proper forms of posting involving specialist subcontractors, who offer services on a temporary basis in another EU Member State with well-paid labour or qualified workers, all of whom belong to the core workforce of the posting company.

In these cases, labour standards are normally complied with. It is, however, not always a simple matter for the customer or prime contractor to check the wages and salary conditions. Problems of compliance arise as soon as recruiting is delegated to small subcontractors, this leading to different levels of recruiting and the continued lowering of the compliance level by falling back on private manpower services and temporary employment agencies. A strategy based solely on restricting subcontracting exclusively to labour recruitment with the aim of lower price agreements runs the risk that sooner or later labour with an unregulated status and illegal foreign workers enter the market. Groups of workers are taken on via letter-box companies, advertising and informal
networks. At the lowest level, this then means an improper supply of cheap labour from agencies or temporary employment agencies and the obvious potential distortion of the labour market. This underlines the importance of liability law. The French Senate has addressed the famous Porcheville case, which revealed that irregularities can occur even on major building sites of well-known customers and with specialist subcontractors. At the end of the debate, the conclusion was reached that non-compliance with posting regulations is not limited to small or medium-sized building sites.

b.
Furthermore, we have discovered cases of posting that were "perfectly within the law", in which the recruiting of domestic labour was balanced against the introduction of foreign labour under the guise of provision of services. At first glance, there is nothing objectionable about this. The calculation is very simple: a subcontractor able to provide a working crew from a country with low social insurance contributions is in all likelihood more convenient than a domestic subcontractor. Although the differences between the basic wages and the minimum working conditions to be observed may be low, when you combine them with long working hours and cheap living and working conditions it certainly becomes pertinent to question the legality of the posting. In this regard, it is a question of attempting two calculations: less social insurance contributions and minimum wage labour (instead of the locally prevailing wages and salaries taking qualifications into account). A third element could be tax evasion. Savings on the part of the employer result from the fact that some payments in the host country are subject neither to social insurance contributions nor to income tax. Because this does not fall within the purview and responsibility of the Labour Inspectorate or of other control organs, possibilities to defraud the tax and social insurance systems are created.

There exists a strong general consensus that although posted workers are in practice often paid only the official minimum wage, they are perfectly prepared to work for these wages (since they are still far above those in their native countries). A further problem is the question of the correspondence of the professional categories and the respective tasks.

In the United Kingdom, for example, posted workers are covered by national minimum wage provisions. These are not only lower than the wages established in any of the collective bargaining agreements, they are also beneath the often relatively high customary local wage. Currently, posted workers are not subject to any legal provisions or to any conditions established by collective agreement, binding or otherwise. This means that the collective agreements recognised by the social partners do not necessarily apply to posted workers.

In the report of the French Senate, a calculation was made (for 2006): compliance with the minimum posting regulations results in a difference in costs of some 50% between French wages and salaries and those of posted workers. Calculations in other host countries arrive at similar figures: the salary differentials based on lower social insurance contributions lie between 25 and 30%.

According to current legislation in Romania, companies who receive posted workers from third countries obtain competitive advantages in comparison to other companies. The costs paid by the employer for the posted worker are 29.5% less than those for workers with an employment contract (because the wages and salaries of workers posted to Romania are not subject to social, health or unemployment insurance contributions). Posted workers from third countries are not protected by laws ensuring adequate labour and working conditions. Romania is not a signatory to ILO Agreement No. 181 on private recruitment firms, in which ground rules governing the transparency of placement agencies and the necessary controls are envisaged to deter against the abuse of workers.

c.
We have been able to record questionable "legal" posting practices, under which the recruited workers were confronted by a lack of proper social insurance, unpaid overtime, deductions for administration costs, enforced and improper deductions for accommodation and transport, tax deductions and repayment obligations (after returning to their own country) of the (minimum) wage payments. In extreme cases, the workers were subjected to
excessive overtime as well as non-observance of rest days (or only one to two days a month) combined with fundamental occupational health and safety problems. In such circumstances, there is no (or no effective) workers’ representation. These practices represent a clear violation of the posting provisions. However, the question then arises as to how workers can assert their rights.

In the second case, we spoke of the ’legal’ impact that worker posting had on competition and, in particular, about the cost differences between the posting country and the host country in the area of social insurance. This situation is aggravated if the irregularities when resorting to posting affect not only the lower wages in comparison to the levels defined in the national tariff agreements or minimum wage regulations, but the unlawful social insurance contributions in the country of origin as well. The classical form of non-compliance, however, mainly comprises the non-observation of wage and salary provisions. Our research has brought to light severe irregularities with regard to the payment of posted workers. Even in the case of – to all appearances – regular wage packets, the workers only end up receiving part of their salary, or alternatively, are called upon to reimburse their employer for a portion.

The case of Gama in Ireland concerned the posting of Turkish workers to work on a series of coveted public projects, including electric power stations, extensive road infrastructure development projects and housing projects for the local authorities. In February 2005, it became known that Gama was employing workers at wages, which were not only below the minimum level set by collective agreement, but which did not even meet the statutory minimum wage. The workers were lodged by their employer in accommodations outside the building site and spoke little or no English. The affair came to the attention of the public, who in view of the living conditions of the workers reacted with shock. The Labour Inspectorate started its investigations and unearthed a complex story which involved work records being destroyed as well as several cases of workers’ money turning up in Irish, Turkish and Dutch bank accounts without their knowledge. The dispute, which was followed by a lengthy series of unofficial and official measures, was finally settled in August 2005 by the Labour Relations Commission. Gama undertook to pay all its Turkish workers a sum of 8,000 Euros per year of service as compensation for unpaid overtime. All the Turkish workers received money from the Dutch bank accounts as well as considerable amounts as compensation for the underpayment. By this time, almost all of the 600 Turkish workers had returned home, with only 83 remaining in Ireland. The Gama legal dispute raised questions relating to the exploitation of posted workers and the complex problems created by the posting for the first time. As a reaction to the legal dispute, the social partners agreed in a national partnership agreement to establish the National Employment Rights Authority (NERA).

In Spain, the Labour Inspectorates consider working hours to represent one of the major areas of abuse in relation to worker posting, with employees working systematically longer hours, performing more overtime and having shorter rest times than is permitted in compliance with collective bargaining agreements and the Law on the Rights of Employees. However, they also agree that such abuse is not restricted to posted workers. The monitoring of working times and overtime often represents a serious problem.

In the United Kingdom, the prime contractor Bouygues subcontracted part of the Tyne Tunnel Project order to Polish and Portuguese developers. UCATT, the trade union representing construction workers, established that posted workers were working for wages laid down in Level 1 for steel construction tasks in the agreement on employment regulations (£9.82 per hour plus contract bonus) although in reality they only received £5.50. This was illegal as the national minimum wage was £5.73. The employers denied that the national minimum wage was not being paid and one of them even argued that because the workers had been posted, it was not necessary to pay them for skilled steel construction work agreed upon in with Level 1. The Portuguese PortScope Company produced a wage slip - a fictitious one according to the trade union - which revealed that one employee was being paid above the minimum wage level, albeit in connection with holiday pay, a practice which became illegal after a CJEU judgment from 2006.

In the SFL case (SAB Ltd) in the United Kingdom in 2005, Hungarian workers were discovered, who were paid a monthly salary of between £816 and £1,020, which was less than both the customary rates and the national minimum wage. One of these posted workers reported that in Hungary, a corresponding monthly salary would be
£326. Following industrial action, an auditing system for wages and salaries was established, under which the SFL transferred the wages from an offshore bank account to the workers’ own accounts in Hungary. One posted worker, however, reported that a monthly ‘administrative charge’ of between £2,380 and £2,584 was deducted from their final wage paid into their personal Hungarian bank account. The posted workers concerned reported that they worked six days a week, nine and a half hours a day from Mondays to Fridays and into the early afternoon on Saturdays. There were no rest or coffee breaks, and absolutely no provisions existed on working conditions in bad weather. As far as the accommodation was concerned, the situation was extremely modest, to say the least. It transpired that there were always between eight and ten persons living in a small terraced house. The employers appeared to be informed on imminent controls, since they had instructed the workers living there to remove some of the beds from the house and ‘hide’ them ahead of time. These were then put back in the house once the control had finished.

The legal dispute in the Lindsey case is the example par excellence in the United Kingdom for posted workers, who were living on barges moored alongside Grimsby pier well apart from other workers, the trade union, the local inhabitants and the surrounding community.

In France, the EDF Company was the customer for the power station built in Porcheville (2006), and the prime contractor (Alstom) commissioned a Polish subcontractor (Zrew). Following a warning message from the French unions, the Labour Inspectorate checked the wage slips of the posted workers and discovered that the payments had not been properly made. Although the workers were receiving the minimum wage, included in this were the allowances for accommodation. One worker, who was unionised in the Polish NSZZ Solidarno, resolved to fight for equal treatment and requested assistance from the local French trade union CGT. The local Labour Inspectorate ordered additional payments to be made to the workers in accordance with French legislation: however, as this was ignored, the case was taken to court and eventually won in 2008.

d.
Finally, we have uncovered various forms of “bogus postings” ranging from the reproduction and duplication of E101/A1 forms via a queue, via the recruiting of posted workers who were already in the host country or had been transformed into bogus self-employer workers, through to posting via letter-box companies and unverifiable invoices for the provision of services. Sometimes workers are registered as self-employed in their country of origin just before their departure to the host country. In separate cases, these workers are posted as a group of self-employed workers. Workers are not registered, do not have any contracts, are paid in cash etc., or posting companies and workers pay no taxes, either in the host country or in their country of origin.

In nearly all countries, there is little reason to believe that efficient monitoring systemsexist, let alone sanctions relating to one of the key posting criteria, i.e., that the posting is a temporary measure of companies and workers, who are normally active in their own country. Information and evidence from all possible sources strongly suggests that many postings are in practice bogus postings with workers, who exclusively work in the host country for subcontractors, whose principal – if not sole activity – also takes place there. There have been cases in which the address of the posting company referred to in the documents proved to be a cordoned-off, abandoned or even partially demolished building.

A familiar case of abuse within the framework of posting in France is the provision of services in the form of the recruiting of individual workers. As these workers in practice are under the control of the companies in which they are placed, French law mandates that they should be treated as direct employees of these companies. Another key feature is the existence of letter-box companies in the labour market. As intermediary agencies they offer cheap labour (with wages under the minimum wage or the dynamic cross-professional group minimum wage, called SMIC) without ever having been active as genuine building contractors or specialist subcontractors in the country of origin.

In the opinion of the Spanish Labour Inspectorate, subcontractors are involved in one of the most common violations of the posting law, namely the establishment of letter-box companies with only a marginal activity in
Portugal at best, whose principal or exclusive activity consists in appearing as subcontractors for Spanish companies. Cases have also been reported of Spanish companies who establish letter-box companies in Portugal, which when they are uncovered are forced to register their employees with the Spanish social insurance system.

For Ireland, cases have been reported where the managing directors of a company were also the sole managing directors of an employment placement agency, whose only task consisted of providing workers for the construction companies mentioned above. Such a practice may well be absolutely legal unless it turns out that it is applied purely for the purpose of tax evasion or the circumvention of labour law. Furthermore, considerable confusion and uncertainty reigns in Irish law concerning the status of individual persons, who receive work via temporary employment agencies. In some cases, agencies expressly guarantee the personnel they recruit an 'employee status', while in others temporary workers are regarded as self-employed.

In Italy, several cases of bogus posting have been referred to, ranging from the signing of 'posting contracts' with foreign workers who already live in Italy, through to the conclusion of contracts with letter-box companies or even pure bogus companies.

In the United Kingdom, the Gangmasters Licensing Authority (GLA) reported a series of cases, in which Bulgarian GLA-licenced employment placement agencies provided 'bogus posted workers'. Following the withdrawal of the licence to provide labour for the agricultural sector, the GLA reported that Bulgarian workers were being employed as bogus self-employed persons instead of bogus posted workers, although the employment status in this regard is difficult to define.

In Belgium, the Social Inspectorate often comes across fake, forged or incomplete E101/A1 certificates, bogus postings and other fraudulent series of tricks. A fourth violation consists of incomplete declarations on work performed: not all the hours worked by posted workers are declared to the social and tax authorities.