

European Union Posting of Workers Law and Equal Treatment in Internal Labour Market for Social Cohesion

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ABSTRACT

The main objective of this article was to examine the European Union Posting of Workers Directive as an instrument for the internal labour market to achieve social cohesion. A posted worker is an employee that the employer has sent to a territory of a Member State (other than the State where he/she normally works) to perform his/her tasks during a given period. The latest revision (PWD 2018/957) has allowed the introduction of amendments to the posting of workers legislation, which improved the previous law and reinforced the legal protection of posted workers. Its objective is to reinforce the posting of workers' policy to eradicate some prejudicial practices detected in applying the previous Directive, such as inequitable work conditions and unfair competition, which are obstacles to social cohesion. This paper analyses the Directive as a key instrument for social cohesion in light of the modifications introduced to improve the Directive (PWD 2018/957). Proposals for improvement of the Directive for social cohesion are formulated in terms of cooperation, availability of information, and inspectorate, which still require more attention and reformulation for better labour mobility of posting of workers in the European Union. Some key practical implications are discussed.

Keywords: Equal treatment, European Union (EU), posting of workers, social cohesion.

Submitted: April 07, 2024

Published: July 12, 2024

 10.24018/ejpolitics.2024.3.4.147

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1. INTRODUCTION

Mobility of the workforce is one of the fundamental social and economic freedoms in the European Union (EU): free movement of people, goods, services, and capital. The free movement of people is based on the Treaty on the Functioning of the European Union in Article 45. Besides the Charter of Fundamental Rights of the European Union ratifies this fundamental right in paragraph 2 of Article 21 (Weatherill, 2016). According to the Treaty (article 56), companies can temporarily send employees to any Member State to perform specific tasks. The activities of posted workers remain regulated by each home Member State labour law in accordance with EU regulation (Directive PWD 1996/71/EC; PWD 2014/67/EU; PWD 2018/957).

In the context of the transnational provision of services and the distribution of information systems, the posting of workers' Directives has been a concern in the EU and in the countries candidates from Eastern Europe. On the one hand, it includes the need for labour mobility in the single internal market. On the other hand, it ensures the legal protection of workers' rights regarding equal treatment between workers throughout the European Union (Alsos & Eldring, 2008).

According to the Directive of Posting of Workers (PWD 1996/71/EC), a 'posted worker' is a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works (article 2, 1). The Posting of Workers Directive determines three types of posting:

1. Posting between a company and a service provider ("service contract" or "(sub)contracting"),
2. Movement of workers within the same group ("intragroup movement"),



3. Movement through temporary work or placement agencies.

Subcontracting appears to be the most common (section 2.5.1). At the same time, intra-group posting is used for specific types of posting (section 2.5.2) and posting through temporary work agencies is gaining importance (De Wispelaere *et al.*, 2022a; Houwerzijl, 2024).

The PWD 1996/71 provides the legal context that protects the rights. It determines the minimum standards (“hardcore”) of employment conditions that each EU Member State must ensure as hosting country for posted workers (maximum work periods and minimum rest periods, minimum paid annual holidays, the minimum rates of pay, the conditions of hiring-out of workers). The European Commission admitted difficulties related to the protection of posted workers; a revision of the transposition of the Directive and its implementation at the national level were encouraged and undertaken (European Union, 2019).

The posting of workers legislation is an instrument for social cohesion that enables the European Union to achieve its objective of unity, integration, and community. Social cohesion is an interesting concept for communities, regions, or countries. Unfortunately, there is still no consensus on definitions. However, the British Academy (Baylis *et al.*, 2019) identified some relevant principles that characterize social cohesion:

1. Social cohesion can be understood as a process and as a destination.
2. It should be considered at different geographical levels.
3. It is characterized by a feeling of belonging to a group or a community.
4. It implies homogeneity of values or attitudes.

Besides, Council of Europe (2004) addressed this issue, defining *social cohesion* as a community’s capability to guarantee citizens’ well-being, reducing disparities, and preventing marginalization. Therefore, social cohesion allows the management of variations and facilitates the required resources to achieve well-being for all members in different regions.

In the context of the European Union, social cohesion is a strategic element for its internal policy aimed at fulfilling the three fundamental values: human rights, democracy, and law enforcement. To ensure this social cohesion, in recent years, the European Union has focused on financing projects in less developed countries to help them reduce territorial disparities between regions regarding economic and social parameters. As an element of social cohesion, the Directive of Posting Workers is a step forward in protecting employees in EU countries.

The posting of workers became a concerning issue when the Southern Member States (particularly Greece, Spain, and Portugal) adhered to the European Union in the 1980s. Then, the question was to know to which extent the Northern European Union Member States (Belgium, France, Luxembourg, Germany, Netherlands, etc.) could apply their national labour regulations to the Southern Member States. The Case of Rush Portuguesa (C-113/89 Rush Portuguesa v Official National d’Immigration) was one of the important cases that contributed to the implementation of the Posting of Workers Directive (PWD) when the European Union Court of Justice (the Court) revealed that “*the Community law does not preclude Member States from extending their legislation, or collective labour agreements entered into by both sides of the industry, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established; nor does Community law prohibit Member States from enforcing those rules by appropriate means*” (ECJ, C-113/89, 1990, Rush Portuguesa v Official National d’Immigration).

The EU Court judgments played a remarkable role in the order:

1. To determine the rights of workers in mobility situations,
2. To warn about conflicts of laws applicable in different countries,
3. To prevent unfair competition and violation of the protection of posted workers,
4. To confirm judicial sentences of cases of violation of posted workers’ rights.

Moreover, the EU had been involved in internal debate since it was unclear how to differentiate between immigration, the free movement of European citizens, and posted workers. The promulgation of the Workers Directive (Directive 1996/71/EC, 1996) posting contributed to managing the situation of employees sent by their employers to work in another EU country. The expression “posting of workers” in the Directive (PWD 1996/71/EC) has brought a new perspective for national employees, who are sent to another Member State territory to carry out specific tasks for a limited period. It clarifies the framework of conditions for the posting of workers. Since then, the Posting of Workers directive has become an important tool for the regulations of posted workers’ situations, competitiveness, and mobility of workers in the EU (Gebert, 2024; Sciarra, 2018).

However, some cases of fraud, violation of posted workers’ rights and unfair practices were reported as results of incorrect interpretation or lack of adequate application of the Directive (Arnholz &

Leschke, 2023; Houwerzijl, 2024; Surdykowska & Owczarek, 2018). In 2014, the enforcement Directive (Directive 2014/67/EU, 2014) was approved to improve the Directive (Directive 1996/71/EC, 1996). It is an additional regulation that specifies a shared framework of suitable provisions, actions and regulator mechanisms for better posting of workers and more homogeneous implementation and application of Directive (PWD 1996/71/EC). The interpretation of working conditions remained a dominant subject of debate, and they led to unfair practices such as social dumping and unequal treatment between local and posted workers. (Jorens, 2023; Riesco-Sanz *et al.*, 2019). For instance, the European Commission noted that the ‘minimum rate of pay’ for a given position is often understood as a ‘minimum legislated wage’. In this case, the employer could interpret that protection is unnecessary when it goes beyond the lowest level provided by regulation in the host member state (Carter, 2018).

The revision of Directive (Directive 1996/71/EC, 1996) and its Enforcement (PWD 2014/67/EU) has allowed the adoption of the recent Directive (Directive 2018/957/EU, 2018) that improves the previous regulations and ensures more protection in case of posting of workers’ activities. The improvement is centred on the following issues:

1. The reinforcement of the principle of “equal pay for equal work” between posted workers and local employees,
2. The application of the host country labour legislation (as mandatory) for assignments exceeding 12 months (extendible to 18 months with justification and notification to the national labour inspection),
3. The application of commonly applicable collective agreements to posted workers across all sectors,
4. The strengthening of the equal treatment of temporary agency workers and local workers.

With the revised Directive, the EU has been reforming its strategies on the posted of workers regulation to ensure better protection for posted workers and to reduce differences between local and host companies where posting workers are sent.

Despite the adoption of the recent Directive (Directive 2018/957/EU, 2018), some key problems and challenges remain unclear, such as social dumping control, inspectorate coordination within the EU, eradication of undeclared contracts, cooperation, and participation of stakeholders (government, employers, trade unions, NGO, employees,...), social security fraud, the role of temporary agency work at transnational level, and false self-employment. The contradiction between the legislation (equal treatment in the EU borders) and the practices in different countries and companies is the source of problems in applying the EU Directives to post workers (European Commission, 2019a; Iossa, 2022). In this context, the key questions of this study are as follows: Would the revised Directive (PWD 2018/957) overcome the problems of violation of posted workers’ protection to reinforce social cohesion? Which practical strategies should be considered to avoid the limitations of the previous posting of the workers’ Directive (PWD 1996/71/EC and its Enforcement PWD 2014/67/EU)?

Posting of workers Directives are rules that regulate the mobility of workers in the EU internal market based on the principle of cross-border service provision, social cohesion, and the protection of the rights of the posted workers. However, the EU posting of workers policy has raised concerns about some prejudicial practices such as inequitable work conditions, social dumping, and unfair competition, which are obstacles to social cohesion. This paper analyses the evolution of the Directive and the amendments introduced to improve the Directives to reach social cohesion and to guarantee social rights to avoid the unfair treatment of posted workers. In this paper, some key strategies are discussed to apply Directives better to overcome some obstacles to social cohesion. Therefore, this article aims to analyze the European Union (EU) Directive of posting workers as an instrument of the internal labour market to achieve EU social cohesion.

2. POSTED WORKERS IN THE EU FOR SOCIAL COHESION IN INTERNAL MARKET

The European Union has promoted social and economic cohesion since its constitutive treaties and the European Economic Community constitution (in article 2) in 1957. In addition, the Rome Treaty highlighted the objective of “social progress” as economic policies focused on improving production quality, reducing barriers to economic integration and making the internal market’s growth possible. Furthermore, the Maastricht Treaty in 1992 and later in the Lisbon agenda in 2000 (Chamusca, 2023; Dawson, 2015; MacRae, 2010) ratified the political, economic, and social dimensions of the European Union. The EU also declared that the socioeconomic cohesion of Europe was the main objective of its policy. Social cohesion is an instrument that must support the policies of equity, the redistribution of resources, governance, and modernization of society (Becker *et al.*, 2018; Diaz *et al.*, 2023; Gagliardi & Percoco, 2017). In this context, posting workers’ Directives becomes a key instrument for social

cohesion and an essential tool for the consecutive fundamental objectives of the European Union: the freedom of people's movements and the freedom of companies to provide cross-border services.

In the European Union integration process, constructing a common market has been a priority, particularly during the second half of 2010, when the "Social Europe" project was established (Kyriazi, 2023). Social cohesion is a complex construct, and the debate about this concept has developed from a multidisciplinary perspective. It is a difficult concept to define and measure because most studies usually define it by emphasizing a certain dimension, that is, the economic, political, or social dimensions. Few definitions consider all these dimensions simultaneously; it is one of the reasons that makes it a difficult reality to achieve for public policies (Council of Europe, 2010). In literature, some authors or institutions have tried to highlight the characteristics of social cohesion (Fonseca *et al.*, 2019; Oberndorfer *et al.*, 2022). Those works highlight that a cohesive social context is characterized by a narrow social relationship of help and cooperation, an emotional connection pronounced with the social entity of reference and a solid alignment towards the common objectives (Oberndorfer *et al.*, 2022; Schiefer & Van der Noll, 2017; Walesiak & Dehnel, 2023).

In addition, six dimensions of social cohesion are usually determined as the following (Becker *et al.*, 2018; Klein, 2013; Marian *et al.*, 2022):

Social relations: Social cohesion is analyzed based on the quality, quantity, and degree of social relations between different groups and people within a community.

Identity: Social cohesion is perceived as an identity process or permanent feelings to a community. Orientation towards a common good.

It is the orientation towards approaches of responsibilities for common benefits and conformity with social norms; (d) shared values. Social cohesion implies elaborating shared values that allow community members to identify common objectives and a social structure of interactions through shared behaviours; (e) Equity. One of the objectives of social cohesion is the reduction of disparities between people or groups of people in terms of access to wealth and income; (f) The quality of life. It refers to the objective and subjective determinants of quality of life, which contribute to social cohesion to the extent that it affects aspects such as well-being and physical and psychological health (Moustakas & Robrade, 2022).

Throughout those last decades, it has launched initiatives, among which the directive of posted workers can be highlighted. It is relevant to underline that no commonly accepted definition of social cohesion exists. However, governments and public and private institutions try to find the necessary elements to guide their actions. In this framework, posting workers' Directives has become a key component for social cohesion and an essential instrument for the consecutive fundamental objectives of the European Union integration.

According to the European Council, social cohesion is the scope of a community and society to guarantee the well-being of all its members, reduce social differences or disparities, avoid marginalization, and provide the necessary means to achieve well-being for all members. Furthermore, the General Directorate of Social Cohesion (of the European Council) defined social cohesion as a concept that embraces values, benefits, and principles, and the objective is equal treatment of all citizens. It is based on principles of equality, no discrimination and justice any discrimination. Therefore, social cohesion is based on equality and respect for fundamental social and economic rights (European Commission, 2020).

One of the main objectives of the EU social policy treaty is to contribute to the free movement of workers, to establish non-discrimination measures, and to avoid social dumping caused by the difference between the interpretation of Directive regulation and the standards of national labour markets (Collins, 1975; Hacker, 2023; Hoskyns, 1996). The Treaty of Lisbon of 2000, which became effective in 2009, expanded the social dimension of the EU and established several directives related to working conditions, time of work, equal pay for equal work, non-discrimination, safety and health in the workplace, balance of work and family life, and right to information and dialogue (Chamusca, 2023; Dawson, 2015; MacRae, 2010).

The European Union identifies social cohesion as one of the basic needs of Europe. It is also considered a crucial supplement to promoting human rights. In this context, social cohesion means a community's capacity to contribute to all its members' well-being, reducing inequalities and avoiding discrimination and polarization. Social dialogue is relevant for building and consolidating social cohesion in the European Union (Council of Europe, 2004; European Commission, 2019b). Directives of posting of workers are strategic results of the social dialogue to consolidate social cohesion.

For this reason, the directives have been raised to comply with two core principles: first, the principle of guarantee of equal conditions in the provision of cross-border services in the most unlimited way possible, and, secondly, the principle of social cohesion and protection of the rights of posted workers assuring a common set of social rights to avoid discriminating action.

According to the Annual Report on Intra-EU Labour Mobility 2022 (European Commission, 2023), there were approximately 3.4% of active population (12.9 million of EU) who lived and worked in another EU country than their own (Fries-Tersch *et al.*, 2022). 2021, despite the COVID-19 pandemic, intra-EU posting was still visible according to the total number of issued PDs A1 in the EU-27. The European Free Trade Association (EFTA) quantified it to 3.6 million (−4.4% compared to 2020 and −22.4% compared to 2019). In 2019, the Member States that sent the most cross-border workers were France (374,000% or 20%), Germany (241,000% or 11%) and Poland (206,000% or 11%). Between 2017 and 2018, the countries that increased the number of cross-border workers were mainly Bulgaria (+66%), the UK (+52%), Slovenia (+31%), Spain (+21%), Luxembourg (+21%) and Croatia (+12%). Altogether, they received 50% of the total postings in Europe, and their number of EU-28 movers grew faster than the EU average compared to 2015. Germany and the UK are the principal destination countries for EU movers, with inflows of 318,000 and 194,000 people, respectively, in 2017. In 2018, Romania, Poland, Italy, Portugal and Bulgaria remained the main sending countries, each with between 100,000 and 160,000 nationals leaving for another EU country.

The nature of posting of workers in the EU context is a very complex issue regarding the actors involved and the policy implemented (jointly and in each specific EU Member State). There are obstacles to overcome and gaps in some undefined aspects of the directive. Specific cases have been reported within the jurisprudence framework emanating from the Court about the content and the applicative and interpretative uncertainties derived from the EU Directives PWD 1996/71/EC and PWD 2014/67/EU. The two normative texts, at least to date, have given rise to several judicial resolutions that bring out many problems and difficulties derived from applying the regulation. The Court has had many judgment cases related to posting workers, as the directive has come under criticism for reducing and undermining the rights of posted workers.

Taking up the jurisprudence of the Court, the EU has become aware of the necessity of revising the directive to improve the principle of free movement of persons and services between Member States. There should not be restrictions on nationality or residence in accordance with the EU belief system. In this regard, the implementation of the internal market offers an active scenario for the provision of transnational services by companies to temporarily move their employees to work in the territory of a Member State other than the State in which they usually work, which, in any case, requires a climate of fair competition and measures that guarantee the respect for workers' rights (European Commission, 2017). The cases reported of unfair practices and violation of the posted workers' rights include issues such as undeclared position (fictitiously self-employed), social dumping, unpaid overtime, unequal work conditions, and insufficient or lack of training for work safety. (Głowacka, 2019; Novitz & Andrijasevic, 2020).

Table I provides the main contributions of the posting of workers' Directives. The PWD 1996/71/EC already states that posted workers must be treated in the same conditions applicable to local employees. Nevertheless, employers are free to pay the minimum wage to posted workers, as determined by the national legislation of the host country. This point has become the source of social dumping cases reported in Court for lower remuneration for posted workers compared to the local employees for the same position or tasks. The PWD 2014/67/EU provides a joint legal context for workers' posting activities and cooperation between EU countries. Moreover, it contributes to the unification of the process in terms of the transposition, implementation, and enforcement of standards. It specifies the responsibilities incumbent on Member States to verify compliance with the regulation and encourages cooperation between countries. Consequently, the revised Directive (PWD 2018/957) establishes that all the aspects of remuneration applied to local employees will also be applied to posted workers. They can take advantage of the conditions applicable in the host country in terms of expenses to cover travel, lodging expenditures, allowances or reimbursement, and workers' accommodation expenses.

At the national level, each Member State specifies the terms and conditions of employment applicable to posted workers and the remuneration package concerning its national regulation. However, the revisited Directive does not specify the mechanisms of supervision that will ensure transparency and fair remuneration. Another improvement of the Directive is related to the period of the posting activities. When a posting assignment exceeds 12 months (or 18 months, where applicable), all terms of national labour regulation will be applied to posted workers rather than the mandatory minimum protection provisions of the national employment legislation regarding posted workers. In this case, related to the long period of posting of workers (when the posting activity duration goes beyond 12 or 18 months where applicable), specific conditions should be followed as additional terms of the employment relationship. The temporary work agencies have received particular attention in this revised Directive. Employers that use the services of temporary work agencies should provide detailed information to workers on the working conditions, including salary and non-monetary remuneration benefits.

TABLE I: KEY CONTRIBUTIONS OF THE EU POSTING OF WORKERS DIRECTIVE

Directive	Key contributions of EU legal framework on posting workers
PWD 1996/71/EC	<ul style="list-style-type: none"> • Creates the legal basis for protecting the rights of posted workers. • Presents a clear definition of posted workers and describes the context of posting workers. • Determines the minimum standards (“hard core”) of employment conditions: of maximum work periods and minimum rest periods, minimum paid annual holidays, the minimum rates of pay, the conditions of hiring-out of workers. • Is the reinforcement of the previous directive to improve the gaps detected in the directive (pwd 1996/71/ec). • Provides a common legal framework for posting of workers and allows more uniformity in the application, administration and enforcement of common aspects of the regulation.
PWD 2014/67/EU	<ul style="list-style-type: none"> • Enhances collaboration between national authorities to better execute sanctions against fraud or unfair practices. • Provides better framework for information exchange between authorities and reinforces the cross-border financial administrative penalties. • Describes the responsibilities incumbent on member states to verify compliance with the pwd. • Creates the framework to achieve better cooperation between national authorities in charge of posting of workers issues; this requires the obligation to respond to request in time and with the appropriate information requested. • Provides conditions of penalties management and charges imposed on service providers by a member state. • Establishes the goal of making certain that the “same work at the same place should be remunerated in the same way” to combat against social dumping and other unfair practices related. • Improves previous regulations (pwd 1996/71/ec and its reinforcement pwd 2014/67/eu) and ensures more protection of posted workers’ rights.
PWD 2018/957	<ul style="list-style-type: none"> • Focuses on three specific areas: the wage of posted workers, the equality of working conditions in temporary work agencies, and the protection of long-term posted workers. • Reinforces the principle of “equal pay for equal work” between posted workers and local employees. • Clarifies the period of posting when the application of the host country labour legislation (as mandatory) for assignment exceeding 12 months (extendible to 18 months with justification and notification to the national labour inspection). • Clarifies the application of universally applicable collective agreements to posted workers across all sectors. • Clarifies the reinforcement of the equal treatment of temporary agency workers and local workers. • Establishes equal treatment for posted workers in case of temporary agencies dedicated to posting activities.

Reform amending the EU posting of workers regulation occurred in the structural context of liberalization (globalization and Europeanization), innovation (automation and digital transformation) and Brexit. Despite the slowdown due to COVID-19, this structural setting has given mobility an advantage and the growing interest of companies in doing business in different European countries. Each year, the mobility of European workers with portable documents A1 (a form that certifies which social security legislation to apply) is increasing considerably under the protection of rights defined in the posting of the Workers Directive. The posting Directive aims to guarantee the respect of workers’ rights, promote the freedom of providing services and mobility cross-borders, and protect posted workers from unfair treatment (De Wispelaere *et al.*, 2022b; European Parliament, 2018).

3. KEY STRENGTHS, WEAKNESSES, OPPORTUNITIES, AND THREATS (SWOT) OF EU POSTING OF WORKERS DIRECTIVE FOR SOCIAL COHESION

Consolidating the European Union requires strengthening the instruments that contribute to social cohesion, and one of them is the workers’ displacement directive. A directive written clearly and concisely and applied uniformly (without a place for intentional or subjective interpretation) should favour the transparency, effectiveness, and trust of citizens in the institutions of the European Union. After the exit of the United Kingdom and the context of conflicts in Ukraine and Russia, the European Union has a new opportunity that requires an innovative approach to its social cohesion policy in constructing the European Union. The European Union must continue reviewing labour mobility regulations, particularly for displaced workers, to guarantee equal access and use of basic services in all regions.

The EU Directive of posted workers is one of the most crucial elements of social cohesion, which means the degree of integration of the citizenry into the community. In this case, the degree of consolidation and integration of the European Union should allow any European citizen to work in another country under the same conditions without violating and restricting rights and obligations. When a country does not apply the posting of workers’ Directives in terms of equality of conditions, it becomes a case of unfair competition or social dumping that turns out to be a politicized and mediatized issue. Social cohesion implies equity, non-discrimination, justice, respect for labour conditions and human rights.

In this context, the posted workers Directive is one of the strategies aimed at boosting competitiveness and access to skilled labour, facilitating the exchange of knowledge and expertise, and better adaptation of workers at the workplace. In recent years, the different revisions of this regulation have made important progress, but some aspects require a thorough review at the European and national levels. Table II summarises the key strengths, weaknesses, opportunities, and threats (SWOT) of the EU Posting of Workers Directive.

TABLE II: SWOT ANALYSIS OF THE POSTING OF WORKERS DIRECTIVE (PWD 1996/71/EC, PWD 2014/67/EU AND PWD 2018/957)

Strengths	Weaknesses
<ul style="list-style-type: none"> ● PWD (PWD 1996/71/EC, PWD 2014/67/EU and PWD 2018/957) create the legal framework for cross-border service provisions in the EU single market. ● PWD provides the legal context that protects the worker and prevents unfair treatment. ● PWD guarantees the rights and working conditions of posted employees. ● PWD encourages better information exchange between authorities to facilitate cross-border movement. ● PWD enhances cooperation between national authorities to improve information exchange and administrative management of penalties in case of fraud. ● PWD reinforces the principle of “equal pay for equal work” between posted and local workers. 	<ul style="list-style-type: none"> ● The interpretation of working conditions remains a dominant subject of debate, and they lead to unfair practices. ● Cases of unfair practices have been reported as results of incorrect interpretation or lack of adequate application of the PWD. ● Cases of social dumping, circumvention of social security provisions and unfair competition have been reported during the application of directive in limited EU countries. ● Unclear definition of established standards and cooperation mechanisms between authorities. ● Insufficient diffusion or lack of availability of information for the companies and for the posted workers. ● Information on the role of the European labour authority (ELA, 2020) is unclear to the stakeholders. ● Joint cross-border inspections of posting of workers activities remain a challenge.
Opportunities	Threats
<ul style="list-style-type: none"> ● Enhancement of effective joint cross-border inspections coordinated by the European Labour Authority (ELA, 2020). ● Employment conditions must be ensured by each EU member state as a hosting country. ● EU Court judgments play an important role in determining the rights of workers in mobility situations. ● Improvement of the availability of information is essential. ● Reinforcement of the role of ELA is a necessity for adequate application of posting of workers rules. ● Periodical revision of the directives allows for the improvement of working conditions and posted workers ‘rights. ● The revision and the transposition of the directive at the national level remain opportunities for its application. ● The posting of the workers directive is an opportunity to rekindle the debate between economic freedom and social rights in the EU single market. ● The court of justice of the European Union (EUCJ)*, which is a relevant judicial authority playing a key role in the application and interpretation of the posting of workers directives in the context of the European Union. 	<ul style="list-style-type: none"> ● The directive (PWD 1996/71/EC, PWD 2014/67/EU and PWD 2018/957) present some limitations that affect their interpretation and adequate application in EU countries. ● Public and private critics vary between bold and soft regulation for the protection of workers. ● Some key problems and challenges remain unclear and limited such as social dumping control, inspectorate coordination within EU, eradication of undeclared contracts. ● The contradiction between the legislation (equal treatment in the EU borders) and the practices in different countries and companies is the source of problems in the application of the EU directives of posting of workers. ● Lack of close cooperation and participation of stakeholders (government, employers, trade unions, NGO, employees) to solve the problems related to unfair practices.

Note: *Judicial cases related to the posting of workers are available at the Court of Justice of the European Union (EUCJ). See for instance, cases C-341/02, case C-490/04, case C-515/08, case C-307/09, C-309/09, case C-522/12, case C-315/13, case C-396/13, case C-549/13, case C-115/14, case C-33/17, case C-64/18 https://curia.europa.eu/jcms/jcms/j_6/en/.

Directive (PWD 1996/71/EC, PWD 2014/67/EU and PWD 2018/957) provides the legal basis for the protection of posted workers, but steps should be taken to overcome the weaknesses detected. The PWD 2018/957 presents many novelties to improve the rights of posted workers and working conditions to overcome many weaknesses and threats subject to controversial practices and debates. In its formulation, the PWD 2018/957 improved some gaps detected in the previous Directive, which led to significant changes in the protection of posted workers. However, despite adopting the recent Directive (PWD 2018/957), some problems and obstacles in applying previous regulations are still unclear, as

displayed in the SWOT analysis in [Table II](#). When the laws are made, they must be applied to the entire community to be effective in their execution and follow-up. Unfair practices in applying the rules could generate problems related to non-compliance, unequal treatment, and the lack of social cohesion and solidarity. The main violations related to posted worker directives address issues such as remuneration, compliance with working hours and rest periods ([Carrascosa Bermejo & Molina Millán, 2023](#); [Jorens et al., 2022](#)).

An [Eurofound \(2020\)](#) report indicates that the revised Directive on posting workers is deficient due to problems detected at different levels in applying the law. Quantitative data on the type of violations that occur during the posting is relevant since cross-border wage dumping, cross-border social fraud, and lack of liable information have been persistent problems related to the posting of employees. The main difficulty lies in the European Union being a community of 27 countries with different labour laws, working conditions, and social security systems ([Muñoz de Bustillo, 2022](#); [Pancaldi, 2017](#)).

4. DISCUSSION

The principal objective of this study was to analyze the European Union Posting Workers Directive as an instrument of the internal labour market to achieve social cohesion. Freedom of movement regarding labour mobility has become a central issue of social cohesion in the EU. Consolidating the European Union requires strengthening instruments that contribute to social cohesion, including the Workers' Posted Directive. After the exit of the United Kingdom (Brexit) in 2020 and the context of conflicts in Ukraine and Russia, the European Union has a new opportunity that requires an innovative approach to its social cohesion policy in constructing the European Union. European Union needs to continue reviewing labour mobility regulations, particularly in the case of posting workers' laws, to guarantee equality of access to and use of basic services in all regions.

One of the main objectives of this social policy treaty has been to guarantee the free movement of workers, to establish non-discrimination measures, and to avoid social dumping caused by the disparity between the standards of national labour markets ([Collins, 1975](#); [Hoskyns, 1996](#); [Stefanov et al., 2020](#); [Muñoz de Bustillo, 2022](#)). The Treaty of Lisbon of 2000, which came into force in 2009, expanded the social dimension of the EU and established several directives related to time of working, pay equity, non-discrimination of jobs, safety and health in the workplace, work and family life balance and right to get information and dialogue ([Chamusca, 2023](#); [Dawson, 2015](#); [MacRae, 2010](#)). Posted Workers Directive is one of the tools that the European Union has launched to achieve its "Social Europe". For this reason, equal treatment and social cohesion among all members are key pillars of the EU consolidation. Besides, social dialogue is a relevant instrument for building and consolidating social cohesion within the framework of the European Union ([Council of Europe, 2010](#)). Social cohesion in the European Union seeks to reduce disparities or structural imbalances between regions or countries and to promote equal opportunities for all. In practice, the EU could address this issue through policies aimed at financing strategies (for example, Structural Funds and Cohesion Funds) and the development and application of laws that promote cohesion, solidarity, and respect for people's fundamental rights. For this reason, the directives have been proposed to comply with two main principles: firstly, the principle of guaranteeing equal conditions in the provision of cross-border services in the most unlimited way possible, and, secondly, the principle of social cohesion and protection of the rights of posted employees, ensuring common social rights for all, and avoiding unfair practices.

From Directive PWD (1996)/71/EC to the PWD 2018/957, European Union has made relevant efforts to improve the posting of workers regulation and to fight unfair practices related to social dumping, unfair competition, fraudulent practices, and local protectionism ([Arnholtz & Leschke, 2023](#); [Houwerzijl, 2024](#); [Surdykowska & Owczarek, 2018](#)). The pathways for equal treatment in the internal Labour Market in the European Union should focus mainly on reinforcing the role of ELA, implementing effective joint cross-border inspections, and reinforcing the availability of data on posting activities. For the European Commission, the posting of workers is an instrument for the mobility of workers around the European Union countries, and it should guarantee workers' rights and ensure fair competition among businesses ([Furåker & Larsson, 2020](#); [Surdykowska & Owczarek, 2018](#)). The purpose of the original Directive (PWD 1996/71/EC) was to provide a regulatory framework for the cross-border provision of services within the EU. The revision of Directive 2014 focused on reinforcing the previous regulation (PWD 1996/71/EC) to improve the deficiencies detected. The objective of the reinforcement Directive (PWD 2014/67/EU) was to address the unfair practices detected in the previous law and to ensure pay equity; it means that tasks performed at the same place should be rewarded by the same salary ([European Commission, 2014](#)). In 2016, the Commission targeted the revision of the reinforcement Directive. After two years of debates and amendments, the

revision of the Directive (PWD 2018/957) was approved by the European Parliament and European Council in 2018. In July 2020, European member countries transposed it into their national laws.

Despite its adoption in 2020, the PWD 2018/957 presents some gaps that are still unsolved. EU Members will be required to work and cooperate to take advantage of the Directive improvement to solve the problems of cross-border social dumping and rights violations and reinforce the availability of information on posting Directives, and the dualization of the labour market. Improving the posting of the Workers Directive would eradicate any unfair practices and violations of workers' rights, which is a mandatory condition for achieving a "Social Europe" (Michel & Schmitt, 2023). The key drives to building Social Europe are mainly cohesion and coherence in the rules that allow the European Countries to build a common project. Social cohesion implies, among other things, compliance with the principle of equity, non-discrimination and inclusion described in the Treaties of the European Union. Differences in working conditions, unfair competition, tensions, or concerns about the effects of salary differences between member states and candidate countries (for their adhesion) could put at risk the efforts of consolidating social cohesion within the European Union. Therefore, appropriately protecting displaced workers' rights guarantees social cohesion in the European Union.

The role of ELA is crucial in applying the posting workers Directive. The institution acts as the European Union umbrella for a transparent and comprehensive transnational approach to labour mobility and provides cross-border posting of workers (Battista & Cangemi, 2023). In 2019, the European Parliament and the European Council approved the creation of a European Labour Authority (PE-CONS 49/19), amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344. Its main mission is to provide adequate information to employees and employers on the rights and obligations concerning cross-border mobility. Besides, it facilitates access to relevant services and cooperation between countries on labour mobility issues. Besides, the ELA is an adequate instrument for EU members to achieve adequate coordination with other EU agencies and national authorities to operate more effectively, reducing mistakes in decision-making and solving problems detected during the Posting of Workers Directive application.

Regarding effective joint cross-border inspections, in most European Union countries, there is limited information about the work of inspectors. Besides, the number of inspectors dedicated to reinforcing the implementation of the regulations for posted workers is unclear. For example, between 2019–2021, some countries such as France, Netherlands, Belgium, Luxembourg, and Spain spent less than 5% of all inspectors dealing with issues related to cross-border workers, including posted workers. However, in most European Union countries, this type of information on the number of inspectors and the cases they analyze is unavailable (Carrascosa Bermejo & Contreras Hernández, 2022; De Wispelaere *et al.*, 2022a).

EU needs to implement efficient mechanisms to control the company's compliance with the posting of workers' regulations. This is in accordance with the EU strategy based on the "Pillar of Social Rights", which is focused on free access to the internal labour market, equal opportunities, no discrimination, equitable working conditions, and adequate social protection (Houwerzijl & Van Hoek, 2011; Tajani *et al.*, 2018). Besides, an effective and efficient cross-border inspection is required to avoid certain unfair practices reported in specific countries. Transnational inspection requires a more efficient system of information exchange, alerting on unfair situations to prevent and combat irregular practices (frauds, avoidance of taxes pays, lowering the social security costs, social dumping). Likewise, the joint cross-border of the EU inspectorate should overcome other challenges such as legislation interpretation, legal barriers, language differences, level of the competent authorities, and psychological barriers (i.e., unwillingness to cooperate).

Another problem of the Directive is the availability of information. European Union recognizes the limitation of information availability on its posting of workers policy (Danaj *et al.*, 2024). For this reason, recital 5 of its Directive (EU) 2018/957 establishes that it is important to make available statistical data on the posting of workers' issues, such as figures by sector, country, and demographic variables. Availability of information is still a problem at the national administration level in different EU Member States. Besides, employers, employees, and inspectorate agents often work with incorrect and limited information about posted workers (Danaj *et al.*, 2024; Jorens, 2023; Maslauskaitė, 2014).

Overall, there is an encouraging trend going forward for several reasons. First, in all Member States, efforts have been made to combat fraud and to avoid the most common errors related to Directive application. Those efforts should continue to improve information exchange and cooperation between internally competent authorities and the competent authorities of other Member States, with a growing interest in using databases, electronic tools like IMI, and other kinds of data-sharing instruments. Cross-border cooperation in workers' mobility is extremely important, and it constitutes the bottleneck to achieving an optimal level of social cohesion, particularly in the case of posted workers. The creation of the European Labor Authority is an essential asset for the EU's internal market mobility. Secondly, ELA has taken the initiative to set up cross-border initiatives and joint

inspections to solve the problems of deficient joint inspectorate system and the lack of a more effective system of cooperation and data exchange between competent institutions of the respective country State members (for example, illegitimate affiliations and improper payments, undeclared employees, social dumping). ELA is working to implement mechanisms to prevent and detect fraud and errors in cross-border situations (ELA, 2021). Thirdly, a multidisciplinary and multisectoral approach is needed to better focus on the issue of exchanging data with authorities in EU countries (outside the social security coordination framework (labour inspectorates, tax and social security institutions, and judicial authorities)).

5. CONCLUSION AND PRACTICAL IMPLICATIONS

The posting of workers' activity remains a relevant issue on the agenda of the European Union because of its political and socioeconomic implications. Social cohesion covers solidarity, social harmony, and equitable management of resources to see people's quality of life safely. The Directive (PWD) is an important tool for social cohesion and for consolidating posted workers' conditions within countries of the European Union. This article analyses the posting workers Directive as a pathway instrument of social cohesion regarding equal treatment in the UE Internal Labour Market. It underlines EU Posting of Workers Directives's key strengths, weaknesses, opportunities, and threats (SWOT). Besides, it discusses some of the unsolved social problems that have become the main challenges for adequate application of the posting of workers Directives. More than twenty years after the publication of the posting of workers regulation (PWD 1996/71/EC), some cases of unfair practices and limitations of posted workers' rights have been reported in different EU countries.

The Directive (PWD 1996/71/EC) presents many weaknesses that can be interpreted as a source of infringement and abuses of posted workers' rights in providing services. Furthermore, the Directive has been considered an instrument with limitations to encourage social cohesion and protection of workers, to fight against social exclusion and discrimination, and to promote equal treatment and the protection of human health. European Union improved the posting regulation by introducing the Enforcement Directive (PWD 2014/67/EU), which has made some substantial enhancements; however, the protection problem of workers' rights remains unsolved. It again showed some weak points, particularly regarding the protection of workers, cooperation between countries, and availability of information on posting workers on official sites. In 2018, the European Parliament published the revised Directive (PWD 2018/957), and EU countries transposed it into their national laws in 2020. Its purpose is to improve the conditions of the posting of workers and to offer an adequate framework for the respect of the rights of workers. According to UE authorities, it is the inspections; (3) limited availability of information on the posting of workers on the official sites of EU member States; (4) the need for closer cooperation between stakeholders involved in the posting of workers issues (government, employers, trade unions, employees, EU agencies.). Posting of workers is one of the emblematic flags of European Union integration, consolidation, and social cohesion, and the revised Directive (PWD 2018/957) should not be "more of the same" with the same problems. The EU regulation of posting of workers needs continuous improvement in its implementation mechanisms in terms of strategies, cooperation, and availability of information and sharing of best practices. Therefore, improving the Directive to solve main gaps is required at the EU and national administration levels in different EU Member States.

As practical implications, on the one hand, the posting of workers' Directives is an instrument of social cohesion and integration within the EU. Its periodical revision is required to improve the working conditions and simplify workers' movement to provide services in the context of the EU internal single market. On the other hand, this article shows that despite the recent reforms, posting workers requires more adjustment and revision to protect the rights of posted workers better. EU regulation of posting workers' activities has a very positive impact on the political, economic and social cohesion of the European Union despite some problems that may arise in the application of regulations of such importance. In this research, decision-makers and EU leaders could find interesting clues for their mobility policy reform.

CONFLICT OF INTEREST

The authors declare no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

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