

European Association of Labour Court Judges Prague 2017

“Working Abroad”

Technical Questionnaire

A. With regard to jurisdiction and applicable law:

1. According to Article 27 of the recast “Brussels I” Regulation, judges have an *ex officio* duty to apply this regulation in order to establish which court has jurisdiction.
 - (a) Is the jurisdiction always clear?
 - (b) If not, why is this?
2. In order to determine which law applies, judges have to apply the “Rome I” Regulation.
 - (a) Is it always clear to you which law is applicable?
 - (b) If not, what causes problems?
3. Have you ever had to apply law from outside your own jurisdiction? If so, how did you deal with that?
4. Can you mention an important case in your country regarding “working abroad”?
5. If so, what were the discussion points regarding jurisdiction and the applicable law?

B. With regard to cross-border work:

6. Various EU measures apply to cross-border work, most importantly *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*; Article 45 TFEU (Free Movement of Workers); and the “Rome I” Regulation. Do these measures assist in distinguishing the status of the worker or employment relationship? Please include one example of a case you have dealt with or that has been discussed within your jurisdiction.
7. Which provisions in these EU measures have proved to be problematic? (e.g. in terms of definition, scope of application, or in relation to national law *etc.*). Please highlight no more than three examples.

C. With regard to posted workers:

8. When it comes to the posting of workers, receiving States tend to be confronted more with issues such as monitoring that companies pay the minimum wage to all workers. Sending States tend to be more concerned with issues such as posted workers claiming the minimum wage after having returned home. Into which category does your country fit?
9. Have you been directly involved with “posted worker” cases? If so, please indicate how many cases you have dealt with, and what were the main issues in those cases?

More generally, what issues are most often raised in your jurisdiction? As set out in Article 3(1)(a-g) of Directive 96/71/EC, these could be material issues, such as the applicability of a collective agreement, whether a situation qualifies as “posting”, or if your domestic legislation defines “worker” [see Article 2(2)]?

Are there other issues that have been raised or discussed? Please base your answers on your own experience and any impressions based on the legal doctrine in your jurisdiction.

10. Are there any issues raised that are not covered by Directive 96/71/EC, but which seem relevant in this situation? Please provide examples.

D. Other issues with regard to working abroad:

11. Have you ever had cases involving workers outside the EU? If so, what was the legal issue involved?
12. Is there anything not addressed in this questionnaire that you regard as particularly interesting on this issue?