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Posting of workers during
the COVID-19 pandemic,
current challenges,
and future prospects

SUMMARY REPORT

ON NATIONAL ANALYSES OF POSTING WORKERS IN EUROPE

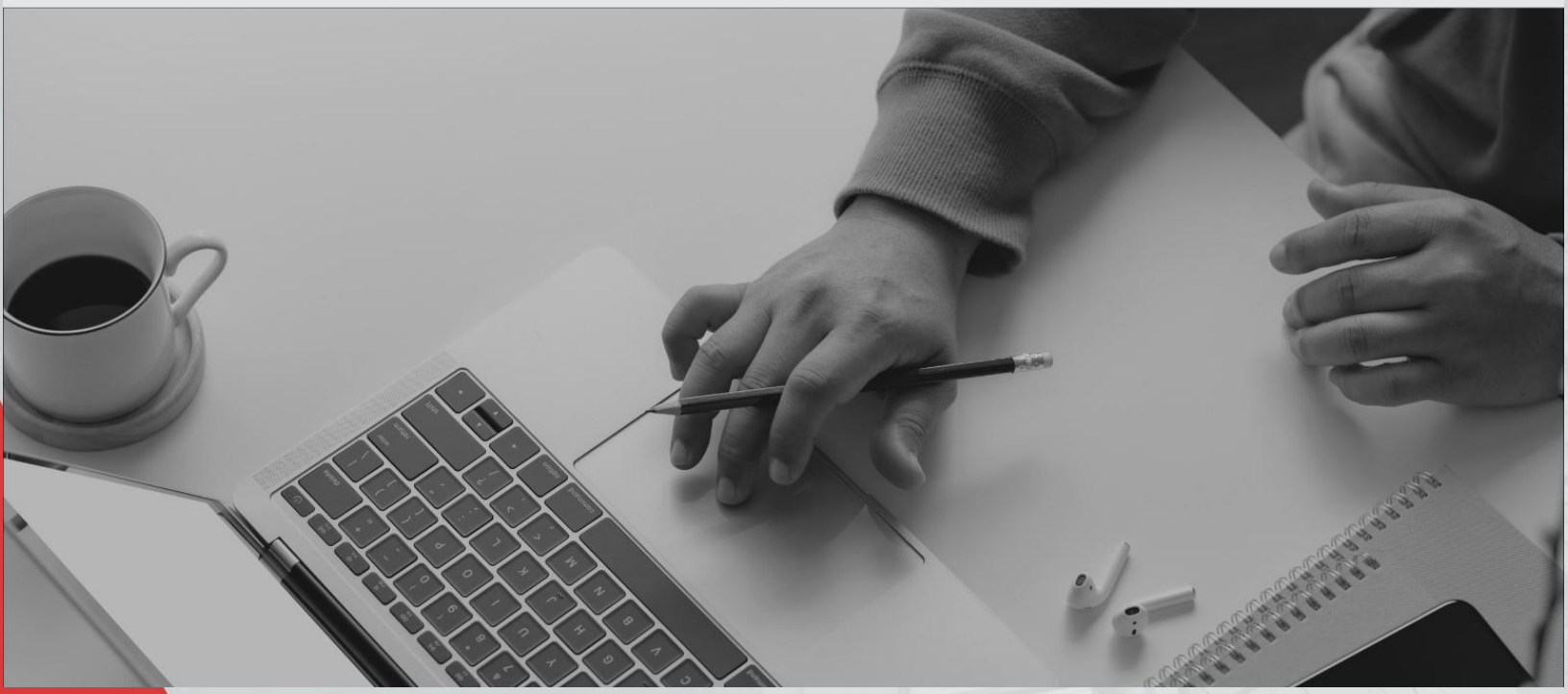


Table of Contents

- 1.** Introduction
- 2.** Posting in Europe
- 3.** Methodology
- 4.** Main findings
 - 4.1 Impact of Covid19
 - 4.2 Employment conditions
 - 4.3 Future
 - 4.4 Risk awareness
- 5.** Conclusions
- 6.** References

1. Introduction

This summative report is based on the national reports (country specific analytical reports) elaborated by the national teams for the European project “Posting perspectives”, funded by the DG Employment of the European Commission. The aim of this report is to retrieve the main features of use of posting work in the countries that were involved in the project. The list of reports is in the references chapter. These features allow us to collect information and highlights about the main impact that the pandemics of Covid19 brought to posting and the employment conditions posted workers found in these countries.

We wanted to understand the specificities in these countries and not necessarily the whole characteristics of posted work and the general legislation applied to it. It was intended to collect qualitative information from manufacturing cases and not from the construction sector, where better knowledge exists in several comparative and national studies.

The countries involved in the project are Serbia, and EU member states, as Poland, Greece, Portugal, Bulgaria, Slovakia. We cannot say this was a comparative study, but otherwise is a scientific study that collects material and data from several European countries and provides information on differentiated social realities and different labour perspectives on the future application of posting work.

2. Posting in Europe

Social realities around posted work in Europe reveal some differentiated situations. There is legislation approved at the European level (Directives 96/71 ¹, 957/2018 and 67/2014 ²) and

¹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0071&from=en>.

² See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0067&from=EN>. The Directive applies also to the EEA countries (i.e., Norway, Iceland, Lichtenstein), to Switzerland, and to the UK. As regards the UK and

related national legislation that encompassed these directives. Even non-EU member states - as was the case for Serbia - did adapt their legislative instruments to respond to these European directives. In fact, the application of Directive 957/2018/EU (Revised Directive) and Directive 67/2014 (Enforcement Directive) partially regulate the area of posting of workers. Nevertheless, discrepancies were observed between these regulations and the collective agreements in different countries.

As is pointed out in the Serbian report, “there are still doubts about the application of collective agreements, compensation, or the duration of posting. (...) Posting is implemented on the basis of the law /agreement) – Law on the Conditions of Posting of Workers to Temporary Work Abroad (Official Gazette of RS, No. 91/15, 50/2018) which entered into force on 7 July 2018, and the Agreement implemented between Serbia and Germany (agreement concluded in 1989 between SFR Yugoslavia and FR Germany) and mainly refers to construction workers. There is a quota of workers from Serbia in detachments, which amounts to 2770 workers annually for more than a decade and a half, of which 1083 are in the construction sector”. However, in other EU member states there are no such quotas.

The Posted Workers Directive 96/71/EC is concerned within the free movement of workers within the EU territory and makes an exemption to the Convention on the Law Applicable to Contractual Obligations 1980 (or Rome Convention)³. The latter requires that workers are protected by the law of the country in which they work. The Directive aims to clarify competing claims of competence in the case of workers being sent abroad by their employers (i.e., posting of workers), between the rules governing labour relations in the country of origin of the employing service provider and the country where the work is carried out (although not the normally country of origin).

As observed by the Greek report, “the European Court of Justice has developed a balancing mechanism that determines which country's rules apply in each situation. Yet, such a case-by-case approach generates legal uncertainty. The Directive tackles this uncertainty providing that

the post-BREXIT period, the EU countries opted in to apply the provision for posting of workers in the social security Protocol of the EU-UK Agreement. For further details, see https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531 and <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2021:055:FULL&from=EN>.

³ Rome Convention has been replaced by Regulation EC No 593/2008 (or Rome I Regulation). The latter governs the choice of law in the EU. See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0593&from=EN>. The Regulation applies to all EU countries except Denmark.

a ‘hard core’ of rules of the host country (i.e., country of destination) needs to be observed” (p. 3). This situation of differentiated legal conditions in European countries was also mentioned by all reports.

Finally, what can be understood as “posted work”?

Posting of workers is a form of labour mobility involving the temporary assignment by an employer (or temporary work agency) of an employee to perform a specific task and/or service in another country belonging to the EU (more precisely, the European Economic Area and Switzerland). What is important here is that the essential functioning of the employee (professional and personal) is carried out in the country in which he is posted and not in its country of origin. It is not a migration process. Posted workers are employees who are sent by an employer to temporarily provide a service in another EU member state (for up to 12 months and in certain cases up to 18 months). This means, the worker should have a regular contract in the country where is coming from. A contract must also exist between the “origin” company and the one (host) where the workers are going to work during that period. Upon completion of the task and/or service, however, the employees are required to return to their “home” country. As underlined by the Poland report, “this, among other things, distinguishes this situation from migratory mobility”.

“The European Commission indicated that countries should allow posted workers to continue to cross borders to their place of work if work in a particular sector is still permitted in the host member state”. The Polish report adds that “this was a key position for businesses and workers using posting at the EU level”. This situation is common to all European Union member states.

The Posted Workers Enforcement Directive 2014/67/EU aims to strengthen - continues the Greek report - the practical application of the rules on posting of workers through administrative requirements such as the registration obligation of posted workers, the setting of proportionate fines and sanctions for non-compliance, giving access to information, and cooperation between EU countries. To this end, the Directive establishes a common framework of a set of appropriate provisions, measures, and control mechanisms necessary for better and more uniform implementation, application, and enforcement in practice of Directive 96/71/EC (cf. p. 4).

3. Methodology

The national fieldwork on posted work was developed after the literature review and database report were done. These fieldwork reports included the empirical material obtained through surveys and interviews developed in participating countries. The interviews were applied after the mapping of the main actors on posting of workers. These interviews included the main national stakeholders and relevant company and association representatives in each country.

The online survey organised by the project did not reach a necessary response rate. Unfortunately, our team members were not able to collect the amount of information considered sufficient to analyses, despite a very significant repetition of requests to answer the online survey made to identified contacts. The requests were made through three to six rounds of emails, websites formularies and direct telephones to informants, individuals, experts, organizations, and institutions developed by the team members of all countries.

Several reasons were indicated by the authors of each national report. One research team mentioned that “the high complexity of the survey [with many pages] was a significant factor, which could have discouraged several potential respondents from completing this survey”, mentions the Slovakian report. Furthermore, the Portuguese team argued that “SME companies and workers in metal sector in the North of Portugal do not want to disclose any information about their core interests in posting. These companies do not want to allow interviews with their posted workers. Last but not the least, some workers have indicated fatigue of consecutive online consultations, especially after the Covid-19 pandemic”.

In addition, the Serbian team indicated that “a number of posted workers have some suspicion that their e-mail addresses will be collected, that responses will not be used only for research purposes, and that their advertising will jeopardise their position in the company where they work or stay in the country of destination”. The Bulgarian researchers stated that “recognizing the challenges encountered during the initial attempts to gather information through online surveys, the research team made a strategic decision to pivot towards a more effective methodology – telephone interviews” (Bulgaria report). The Greek report mentioned that “technical problems or communication difficulties may have played a role in not receiving answers” (Greek report).

On the other hand, the focus group/interviews proved to be more effective. The Slovak team reported that “employers could not send their employees to other countries until the pandemic was over”. As this would be also justified in most reports, we can say that the decrease of posting workers during pandemics is a result of national health safety rules and the agreement of most employers all over Europe. The confirmation of that was only possible through the semi-structured interviews.

The Portuguese mentioned that “The *focus group* was aimed at posted workers, among other stakeholders. However, many of these workers could not participate in person or online, given their current travels in foreign countries”. This was the problem of focus group technique. It was very difficult to have the possibility to be included in a same focus group meeting different stakeholders due to diverse agenda settings and to avoid the disclosure of company’s secrets.

According to most project researchers, in-depth semi-structured interviews were conducted with representatives of employers, trade union representatives and managers of selected companies in the metallurgical sector that post workers abroad. The application of this research technique was easier once the meeting date agreements were possible for each company representative. They proved also to be very enriching in terms of information provided about the experiences of posting of work.

4. Main findings

1. Impact of Covid19

According to representatives of the largest companies in Slovakia, the process of posting workers in the manufacturing sector was significantly affected by the Covid-19 pandemic, as it significantly changed and prolonged the preparatory phase, especially in the early stages of the pandemic.

The Portuguese report stated that “the Covid-19 pandemic brought changes to the usual posting, as many orders were cancelled or suspended. The pandemic brought back borders and major restrictions on the movement of people, quarantine closures and the inability to provide

adequate conditions for workers, which, in addition to becoming infected, forced companies to expand workspaces so that other workers could share the same rooms”. The Covid-19 pandemic also brought changes in the work sphere, especially in its organization, reducing working hours and increasing remote work. But, according to the interviewed managers, the responses to the challenges of the pandemic crisis were overcome over time and everything returned to normal after the pandemic.

In the same direction the Greece report revealed “negative impact the Covid-19 pandemic had on their work. It was noted that travel, a key element of posted work, was significantly impeded, creating challenges and inhibitions in their professional lives”. The Polish report says that “the uncertainty of the law (constant and sudden changes in regulations) made it difficult for companies to plan for posting [during COVID19 pandemics]”.

The Bulgarian report revealed that “respondents articulated a range of social and health challenges associated with their postings. Travel problems, changes in workplaces, income losses and uncertainties regarding social and health guarantees were prevalent. Notably, instances of discrimination and accommodation issues underscored the challenges faced by workers in their host countries”. These limitations were observed especially during Covid19 pandemics period but remained as a condition for the post-pandemics period.

The Polish report stated that the “dominant obstacle to activity was the collapse of supply chains and the decline in demand for goods. During the COVID-19 pandemic, companies faced supply constraints on items needed for production that occurred because of broken supply chains. Hence, production was interrupted or curtailed, which affected personnel management”. This situation was considered for cases where posted work is mostly applied among companies that work in an established value chain. It can be understood by the diversity of national reports, that some countries are more dependent on these value chains than others. Thus, the effect of COVID-19 was different according to the importance of relations in the value chains.

Posted workers “concerned a very small group of employees, numerically variable over time, and was dictated by the need to ensure the continuity of the operation of enterprises in the conditions of an increased number of employee illnesses. [Seniors] were subject to delegation. By delegating workers, staffing was managed within a group of plants to optimise work under pandemic conditions” (Polish report).

The Serbian report stated that “the COVID-19 pandemic affected the posting process and working conditions of posted employees in the industry, because it was necessary to ensure their protection, strictly comply with regulations related to health protection and the movement of workers to ensure the return of workers to work. The pandemic has shown that many jobs can be done from home, definitely, eight-hour working hours per day is not productive and that it is possible to reduce working hours or introduce flexible working hours and a lot has been changed in the organization of work, namely at the supply process.” This was observed as well in the involved EU-members states.

2. Employment conditions

The Slovak report mentioned that no changes were made in terms of employment conditions or differentiation of conditions between posted workers and domestic workers in third countries. We can add that this, in particular, is true for the manufacturing sector. Other studies on construction, fisheries, or agriculture, reveal otherwise.

In the manufacturing sector, “the postings are always in compliance with Directive 2018/957 and with the legislation transposed in force since January 2022 in Portugal and in the countries of destination. Workers always earn more than the Portuguese salary in the host country, which makes this type of work very attractive. In addition, the teams involved in the postings are all quite used to carrying out this type of work and there are rarely any problems” (Portuguese report).

In interviews with the Portuguese national authority for working conditions (ACT) and with a major confederation of trade unions (CGTP) it was indicated that the directive contributed to clarify and improve the imbalances found in the distribution of the incomes, where workers were paid low salaries, and the companies received the wealth of the posting work. This means that the European legislation contributed to improve the employment conditions.

In this same direction, in most cases, “employees receive higher wages so their purchasing power after returning to the country is higher, tax revenues to the state budget increase. The

employee gains experience and skills, which he can then use in the domestic labour market” (Polish report). Although this is particularly relevant for countries where the sending labour has lower income than the receiving average labour market, this can also be considered as a positive outcome of the application of common European legislation to improve employment conditions within Europe.

The Polish report also reveals that “employers, but also partly employees, perceive work in the form of posting as an opportunity to gain new experience, prove themselves in new conditions and use their existing skills in another workplace, develop professional and personal skills”. In other words, supplying work and promotion of exchange of labour in Europe can be considered very positive when the employment conditions are not degraded or impoverished. Thus, the legislation and the monitoring of the application of positive experiences, can be considered as promoting the improvement of working conditions overall Europe.

Another important condition for the application of posting is the role of trade unions. “In organisations where trade unions operate, labour standards are higher - concludes the Polish report - than in entities where employees are not unionised. This is also confirmed by the analysis of the European Trade Union Confederation”. Although such a conclusion seems to be very relevant, the involvement of trade unions on the monitoring of posted work is not done in all member states. This role is done, in most cases, just by the national labour authorities that inspect working conditions.

In terms of particular issues related to posting work, the Serbia report underlines that “the recognition of qualifications is a requirement for a work permit in Germany. The problem is complicated for certain professions for which there is no formal education in Serbia. The procedure for obtaining work permits is quite long and complicated and it can take a long time from the date of signing the contract in Germany to the moment when the workers are ready to start working”. Although, the experience of posting work is mostly done just with Germany, this can be an issue on the skill level recognition among countries. If that has been working and applied since the last decades in the EU area, it cannot be the case for non-EU countries. The European agency CEDEFOP has been the main institution that have worked to understand the vocational education, training, and labour skill differences between EU member states ⁴. There is

⁴ <https://www.cedefop.europa.eu/en>

a national qualification framework tool for Serbia ⁵, but the harmonisation process probably has not been effective until now. This tool was not analysed in the Serbian report, thus we cannot establish further conclusions about the impact of this relation between an EU member state and a granted EU candidate, as is the case for Serbia.

For the employers, “the adoption of digital transformation emerged as a strategic approach. Technology was seen as instrumental in facilitating remote work, monitoring, and communication during and after the pandemic”, as is mentioned in the Bulgarian report. This observation also introduces a relevant topic on the role of COVID19 in the new forms of posting work, or even, eventually, on the transformation of posted work. Although, in the manufacturing sector most posting work is done in presence (and, in this case, the influence of pandemics is very significant), there are some occupations that can use digitised forms of communication to perform their work.

We can assume that digitised communication increased in the last years post-pandemics, but it is still not clear how much of manufacturing occupations became digitised and performed remotely. For sure, occupations in the design and programming spheres were already digitised, but other as maintenance could also be done remotely due to an increase of digitalisation of manufacturing processes. In particular, the case of implementation of Industry 4.0 concepts could increase such possibilities. Not a single national report referred to these eventual changes.

3. Future

As in the Polish report is mentioned, “the lack of signals of irregularities regarding the posting of workers may be due to the standards of operating companies in the manufacturing sector of the economy (industrial sector, including metallurgy and automotive), which is characterised by high technological innovations and demand for specialists. Employment standards in connection with the above, and the fact that health and safety must be strictly observed due to legal requirements and the nature of production - are higher than in the sector and companies that usually post workers (for example, the transportation sector or care services)”. This means that

⁵ <https://www.cedefop.europa.eu/en/tools/nqfs-online-tool/countries/serbia-2018>

in the future these conditions can still be applied, and we can also consider that they are similar among different countries but in the same type of sector.

Slovak interviewees confirmed that such a crisis is something they cannot be very prepared for. They have a pandemic behind them, in which they were able to adapt and, therefore, do not perceive it as a threat to the future.

In the case of Bulgaria, their national report indicated that “many workers, especially those in lower-skilled positions, opted to return to their home country due to improved working conditions. The study highlighted the need for additional support and security, particularly in the realms of social and health insurance, as workers navigated the uncertainties brought about by the pandemic”.

“European legislation has not changed significantly under the influence of the COVID-19 crisis - is mentioned in the Portuguese report -, in terms of labour legal protection for workers, as there have been no changes to directives or regulations”. They foresee that processes of movement and posting of workers will continue, because companies in central Europe (such as Germany, Netherlands, and Belgium) want cheaper labour in specialised services of the metallurgical industry.

The Serbian report states that the “access to collective representation of posted workers is also necessary. It is also necessary to define which collective agreements will apply, whether they are branch agreements that have a universal character or whether they are agreements with the employer”.

In the same direction, the Serbian report concludes that “companies earn huge profits, entire occupations are absent [in destination countries]. So, the process of posting workers abroad or hiring foreign workers will continue (...). Ongoing training and information of posted workers is necessary to enable them to exercise their rights. Consideration should also be given to opening the space for posted workers to join trade unions in receiving countries” (Serbian report).

Finally, the Bulgarian report refers to “the recommendations put forth by both groups [trade unions and employers] highlighting the importance of improved data collection, collaborative strategies, adaptive regulations, and prioritising employee welfare to navigate the evolving landscape of international postings effectively”.

4. Risk awareness

In terms of risk awareness, businesses were partially already equipped with devices, such as temperature scanners, that businesses purchased during the pandemic, according to the Slovak report. So, in the future if there was a similar pandemic, they would already be equipped. Companies often had their own pandemic team, their own crisis staff, and their own doctor within the company, who provided employees with overall support.

The Portuguese report stated that “interviews with employers' associations revealed that the degree of dissatisfaction with this directive is substantial among the small group of companies that carry out this type of posting in the metallurgical industry” (Portuguese report).

“Thus, the informed consent to the posting and the benefits that the employer provides (travel, accommodation, often higher wages, and an allowance for separation from the family) results in a positive evaluation of by posted employees. However, in doing so, attention was drawn to the problem of separation from the family and the transportation and housing problems associated with employment” (Polish report).

“Trade unions mainly pointed out that they were not sufficiently involved in the mechanisms of protection of posted workers. The reasons are the absence of social dialogue and the disregard for the views of trade unions in the adoption of national laws related to posting. (...) Most complaints coming to unions are related to payroll or unpaid overtime. Several workers do not have social security, nor health care, which was a major problem during the COVID19 pandemic, and in cases of injuries at work, as well as in cases of pensions.” (Serbian report)

5. Conclusions

In a summative approach to the reports of the team member there are important conclusions to be drawn. First, it seems relevant to state that “importance of constantly updating and monitoring developments in the field of posted work, as well as enhancing the sources of information accessible to posted workers” (Greek report). Second, trade union members “suggested strengthening collaboration between countries as a key mitigation strategy [for the

pandemic]. Improved communication and coordination were seen as essential for smoother posting processes during health crises” (Bulgarian report).

The case of metal companies, appear to be related to the insertion of Portuguese companies in the value chain of international companies. Destination countries are often countries where client companies or supplier companies are located” (Portuguese report). To many teams, “posting of workers is seen as a tool of competition in terms of labour costs and social security in the EU internal market. Changes to the rules on posting of workers at the EU level were supposed to reduce the negative phenomena around posting of workers in practice. The posting of workers affects only about 1% of the total number of workers in the EU. Much of the posting of workers occurs in high value-added chains and involves highly skilled workers. Thus, wage issues are not predominant in these cases” (Polish report).

The trade “unions must protect posted workers to prevent social dumping, discrimination and guarantee the labour and social rights of posted workers in Portugal and abroad” (Portuguese report). Furthermore, “during the pandemic period, an important, even crucial, aspect considered by workers deciding to post was to maintain employment, in the face of anxiety about and uncertainty about labour market developments, and to maintain wages, which could often be and were higher than those received in current employment. Workers' rights were guaranteed, therefore, both at the permanent workplace and at the place of posting” (Polish report).

In sum, it can be argued that “companies and governments should prioritise the safety, fair treatment, and rights of workers sent abroad. This entails a comprehensive approach that considers the physical, mental, and social well-being of workers, ensuring that policies and decisions align with the overarching goal of promoting a secure and supportive environment for posted workers” (Bulgarian report).

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