



## Abstract

Slovenia is one of the main sending Member States of posted workers in the EU. The report aims to increase knowledge about the posting of workers from Slovenia by identifying new data sources and exploring a variety of administrative micro-data available at national level. The report provides insights into the scale, characteristics and impact of posting from Slovenia before and after the adoption of the Transnational Provision of Services Act, including detailed quarterly statistics on posting from Slovenia in 2020 during the COVID-19 pandemic. Existing data on posted workers (e.g., number, sector of activity and country of destination) are supplemented with new data on their demographic characteristics, such as nationality, gender, education, marital status and region of residency. The report also analyses a selection of relevant issues concerning the posting of workers from Slovenia, such as the calculation method for determining social security contributions under Article 12 of Regulation (EC) No 883/2004 on the coordination of social security systems, posting of third country nationals and violations of posted workers' rights.

March 2022

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**Please refer to this publication as follows:**

Vah Jevšnik, M., Cukut Krilić, S., Toplak, K. (2022). *Posted workers from Slovenia. Facts and Figures*. POSTING.STAT project.

Information may be quoted provided the source is stated accurately and clearly.

This publication is part of the POSTING.STAT project. This project has received funding by the European Commission, DG Employment, Social Affairs and Inclusion, within the EU Programme for Employment and Social Innovation (EaSI) under the Grant Agreement No°VS/2020/0499.

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## Summary of main findings

Slovenia is one of the main sending Member States of posted workers<sup>1</sup> in the EU. This report, prepared within the framework of the *POSTING.STAT* project,<sup>2</sup> aims to increase knowledge about the posting of workers from Slovenia by exploring a variety of administrative micro-data sources available at national level and providing new in-depth insights into the phenomenon. The report provides insights into the scale, characteristics and impact of posting from Slovenia before and after the adoption of the Transnational Provision of Services Act, including detailed quarterly statistics on posting from Slovenia in 2020 during the COVID-19 pandemic. Existing data on posted workers (number, sector of activity, country of destination) are supplemented with new data on their demographic characteristics, such as nationality, gender, education, marital status and region of residency. The report also analyses a selection of relevant issues concerning the posting of workers from Slovenia, such as the calculation method for determining social security contributions under Article 12 of Regulation (EC) No 883/2004 on the coordination of social security systems (hereinafter: Basic Regulation or BR),<sup>3</sup> the posting of third country nationals and violations of posted workers' rights.

### ***Posting of workers in 2020***

Despite the COVID-19 pandemic, the upward trend of the posting of workers from Slovenia to other Member States continued in 2020. There was a 7% increase in the number of Portable Documents A1 (PDs A1)<sup>4</sup> issued and a 6% increase in the number of persons 'posted'<sup>5</sup> abroad compared to 2019. Outgoing posted workers amounted to 7% of overall national employment in Slovenia and even to some 30% of national employment in the Slovenian construction sector.

Approximately 63% of all PDs A1 were granted according to Article 12 of the Basic Regulation and nearly 37% were granted according to Article 13 of the Basic Regulation. Compared to 2019, there was a 3% increase in the PDs A1 issued according to Article 12 and an 18% increase in the number of PDs A1 issued according to Article 13. The biggest increase was in the number of PDs A1 issued under Article 13 for "installation/assembling and servicing" – more than 53% (from 19 122 PDs A1 issued in 2019 to 29 384 PDs A1 issued in 2020). The increase in this sector from 2018 to 2019 was even more than 3 800% (from 481 PDs A1 issued in 2018 to 19 122 PDs A1 issued in 2019). A similar increase in PDs A1 issued under Article 13 is noted in the road transport sector, which has gone up by over 3 500% from 2018 to 2019 (from 450 PDs A1 issued in 2018 to 16 497 PDs A1 issued in 2019) and a further 30% from 2019 to 2020 (21 484 PDs A1 issued in 2020).<sup>6</sup>

The total number of workers posted abroad in 2020 amounted to 60 503 persons, an increase of 6% compared to 2019 and nearly 15% compared to 2017. The number of persons posted abroad under Article 12 was 24 672 in 2020, an increase of 3.5% compared to 2019, but a 28% decrease compared to

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<sup>1</sup> The term 'posted worker' refers to workers who are legally employed by an undertaking established in one Member State (i.e., the sending Member State) and sent by that undertaking to another (i.e., the receiving Member State) in order to provide services/carry out work.

<sup>2</sup> *POSTING.STAT* brings together a consortium of universities and research centres from 10 different Member States, supported by several European social partner organisations and public authorities. HIVA – KU Leuven is responsible for the project management and the overall coordination of the project activities. The geographical scope of the project proposal covers the six main 'sending' Member States (Germany, Poland, Italy, Spain, Slovenia and Luxembourg) and the six main 'receiving' Member States (Germany, France, Belgium, Austria, the Netherlands and Luxembourg) of posted workers. [Link to the publications of the POSTING.STAT project.](#)

<sup>3</sup> Article 12 of the Basic Regulation relates to 1) employed persons who are employed by an employer which normally carries out its activities in a Member State and who are posted by that employer to another Member State to perform work on its behalf and 2) to persons who normally pursue an activity as a self-employed person in a Member State who go to pursue a similar activity in another Member State.

<sup>4</sup> A 'Portable Document A1' (PD A1) is a certificate that proves that the social security legislation of the issuing Member State applies and confirms that the worker in question has no obligations to pay contributions in another Member State.

<sup>5</sup> A broad approach to 'posting' is applied, covering the PDs A1 issued under both Article 12 and Article 13 of the Basic Regulation.

<sup>6</sup> Workers can be posted abroad under Article 13 if the services are provided abroad on a continuous basis (successive work assignments are carried out one after another).

2017.<sup>7</sup> However, the number of persons posted abroad under Article 13 has been rising continuously since 2017. In 2020, the number amounted to 40 332 persons, which is an increase of 10.8% compared to 2019 and nearly 107% compared to 2017.

The top destination country in 2020 was Germany, with 61 150 PDs A1 issued (39% of all PDs A1 issued) and 15 540 persons posted. Austria followed with 13 526 PDs A1 issued (8.6%) and 4 709 persons posted. The main sector of activity was construction (27%) but posting in some other sectors was notable as well, e.g., assembling/servicing and industry (both nearly 19%) and international road freight transport (14%).

The great majority of persons posted under Article 12 were male (over 95%) and had an upper or lower secondary education (75%). Posted workers were mainly employed as a welder (17%) or as a mason (14%).

### ***The impact of the COVID-19 pandemic***

In terms of the overall number of issued PDs A1 and persons posted in 2020, the COVID-19 pandemic had no significant impact on postings from Slovenia. The quarterly statistics show a decrease in the issued PDs A1 in the second quarter (April–June) and the fourth quarter (October–December), but the overall number of issued PDs A1 has continued to increase compared to previous years.

### ***The trend of posting of workers before and after the adoption of the Transnational Provision of Services Act***

The Transnational Provision of Services Act (in force since 1 January 2018) regulates posting under Article 12 of the Basic Regulation. The Act was implemented to prevent abuses, primarily the existence of letterbox companies. It introduced additional conditions for employers posting to and from Slovenia. It contains stricter rules, especially as regards formalities, monitoring and sanctions. It regulates subcontracting and subsidiary liability, posting of temporary agency workers, as well as cooperation with controlling authorities of the other Member States. Following the Act's adoption, the total number of PDs A1 issued under Article 12 drastically decreased as the conditions for obtaining a PD A1 under Article 12 have been very strict and the monitoring of compliance with those conditions vigorous. However, the decrease in the PDs A1 issued under Article 12 does not necessarily indicate a decrease in postings from Slovenia. Many employers actually started to take advantage of the possibility to post workers abroad under Article 13 of the Basic Regulation, which is not regulated by the Act.<sup>8</sup> In addition, figures from the National Bank of Slovenia show that the export of services to the Member States has not decreased following the adoption of the Act and the subsequent sharp decrease in the number of PDs A1 issued. A clear effect of the Act was a reduction in tax debts of companies that are posting workers abroad, which is a precondition for obtaining a PD A1. According to the Financial Administration, the tax debt of those companies decreased noticeably after the adoption of the Act: from € 17 055 886 in 2017 to € 7 566 456 in 2019.

After the adoption of the Act, the Health Insurance Institute started collecting information on the number of rejected applications for a PD A1 under Article 12. In 2020, the share of rejected applications was 10%. The main reason for the rejection was related to taxation (i.e., outstanding tax liabilities, failure to regularly submit tax deduction forms, no bank account or blocked bank account), amounting to 49% of all rejected applications. The second most common reason was the failure to provide the required documents (i.e., employment contracts and business contracts with the clients) (23% of all rejected applications). Applications were also rejected in cases when it was established that the employer did not usually provide services in Slovenia (i.e., there were too many workers posted abroad as per total workforce, the period of inclusion in the compulsory social security insurance schemes before posting was too short, the number of employees employed for a certain period before posting was too small) (18% of all rejected applications).

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<sup>7</sup> It should be noted that the sum of workers posted under Article 12 and Article 13 is higher than the total number of posted workers, because some workers may be posted under both articles in the same year.

<sup>8</sup> The strict provisions and high bureaucratic burden are most likely the reasons why employers started to send their workers abroad under Article 13 of the Basic Regulation. Posting under Article 13 is possible if employers can prove that their posting is continuous (worker is sent abroad on successive work assignments), e.g., they are providing international freight transport services, installation/assembling or servicing, they are issued a PD A1 for one year without having to meet the demands determined in the Act.

### ***Posting of third country nationals from Slovenia***

The posting of third country nationals (TCNs) from Slovenia is a persistent trend. In 2020, almost 60% of the posted workers from Slovenia were TCNs. Only one out of three workers posted from Slovenia had the Slovenian nationality and 7% had another EU nationality. Compared to previous years, the percentage of posted workers who are Slovenian nationals and EU nationals has been decreasing, while the share of TCNs has been increasing.

Workers from third countries posted from Slovenia are mostly nationals of Western Balkan countries, i.e., Bosnia and Herzegovina (BiH), Serbia and Kosovo. These countries share a strong historical link and are in relatively close geographical proximity to Slovenia. In 2020, the highest number and share of third country nationals posted from Slovenia were nationals of BiH (23 051; 38%), followed by nationals of Serbia (7 706; 12.7%) and Kosovo (3 368; 5.6%). Compared to 2019, the number of posted workers who are nationals of BiH has increased by 21.8%, from 18 925 in 2019 to 23 051 in 2020. In comparison, the number of Slovenian posted workers has decreased by 8.3%, from 22 473 in 2019 to 20 616 in 2020.

Data on the posting of workers in the construction sector show that 42 392 PDs A1 were issued under Article 12 of the Basic Regulation in 2020. Most PDs A1 (20 864) were issued to nationals of BiH. The number of PDs A1 issued to Slovenian nationals equalled 7 919. The share of PDs A1 issued to nationals of BiH and Slovenia was 49% and 19%, respectively. PDs A1 were also issued to Kosovars (12.4%), Serbs (8.2%) and North Macedonians (3%).

By comparing the number of persons with a PD A1 to the number of persons of working age/employed by nationality, an estimate can be made of the percentage of TCNs of working age/employed residing in Slovenia that was posted to another Member State. It is estimated that one out of three TCNs of working age and living in Slovenia was posted to another Member State in 2020. For example, more than half of Serbs of working age and living in Slovenia were employed as a posted worker in another Member State. These figures contrast with only 2% of Slovenians of working age who were posted to another Member State. The share of employed TCNs that were posted to another Member State is even higher. It is estimated that over 40% of all TCNs employed in Slovenia were posted to another Member State in 2020.

Slovenian employers recruited most workers who are nationals of BiH based on the bilateral agreement between the Republic of Slovenia and BiH. Overall, the number of valid work permits issued by the Employment Service of Slovenia on the basis of the bilateral agreement with BiH has been increasing continuously. The number more than doubled in the period from 2017 to 2020 (from 15 418 to 36 383).

### ***The controversy regarding the calculation method for determining social security contributions under Article 12 of the Basic Regulation***

According to the Pension and Disability Insurance Act (ZPIZ-2, Article 144, paragraph 4), social security contributions for workers posted under Article 12 of the Basic Regulation are not to be calculated based on the actual wage earned by the worker but based on the wage they would have earned in Slovenia for comparable work. The issue raises doubts about whether this legal rule violates the EU legal order by enabling Slovenian companies that post workers abroad to pay social insurance contributions at a reduced rate. Slovenian courts addressed this issue six times but always ruled that the actual wage paid to the posted worker is not to be taken into account as the law clearly stipulates that the contributions need to be calculated on the basis of the amount of a wage that would have been paid for comparable work in Slovenia. Furthermore, this means that the old-age pension base is to be calculated on the basis of the same, lower amount of a comparable wage. This issue was brought to the attention of the European Commission by the European Federation of Building and Woodworkers (EFBWW), which submitted a formal complaint against Slovenia, alleging that it is granting illegal state aid to companies that post workers abroad.

Further controversy was incited by the decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia that Article 144 only applies to workers who are posted under Article 12 of the Basic Regulation and are therefore subject to the Transnational Provision of Services Act. This means that workers who are posted according to Article 13 of the Basic Regulation are exempt from this legal provision; their social security contributions are to be calculated on the basis of the actual

wage earned while working abroad. This provision, however, did not discourage posting undertakings from posting under Article 13. On the contrary, the share of PDs A1 issued under Article 13 has been growing faster than the share of PDs A1 issued under Article 12.

It is estimated that this policy exempts an amount of € 128 million from social security contributions. This means that the Slovenian state receives roughly € 49 million less social contributions compared to when the wage of the host country is taken into account. An amount that Slovenian posting undertakings do not have to pay, thus creating an (additional) competitive advantage.

### ***Infringements related to the posting of workers from Slovenia***

Strict monitoring of the compliance with the provisions of the Transnational Provision of Services Act (in force since 2018) is conducted before granting a PD A1 under Article 12 of the Basic Regulation. The PD A1 is not granted to posting undertakings with any tax-related irregularities, labour law infringements, irregularities concerning posting of third country nationals (such as unresolved migration status) and to those undertakings that fail to demonstrate that they usually provide services in Slovenia. PDs A1 are also not issued to any posting undertaking that does not submit a copy of the employment contract of a posted worker and a business contract with a foreign contractor. The share of rejected applications for a PD A1 in 2020 amounted to 10%. It should be noted that sending workers abroad under Article 13 is not subject to the strict provisions of the Act.

In 2020, the Labour Inspectorate of the Republic of Slovenia responded to 581 requests submitted by the various Member States via the Internal Market Information System (IMI). Additional information on the posting undertakings was requested in 56 cases, and a request to issue documentation was issued in 525 cases. The yearly report issued by the Labour Inspectorate does not elaborate on these requests or the nature of infringements of the posting undertakings.

## Povzetek glavnih ugotovitev

Namen pričujočega poročila je razširiti vedenje o napotovanju delavcev iz Slovenije, saj je Slovenija ena glavnih držav, ki napotuje delavce v države članice EU. Identificirali smo nove vire podatkov, raziskali nabor različnih administrativnih mikro podatkov, ki so dosegljivi na nacionalni ravni, in predstavili nove poglobljene vidike obravnavanega fenomena. V poročilu so zajeti obseg, značilnosti in vpliv napotovanja iz Republike Slovenije (v nadaljevanju RS) pred in po sprejetju Zakona o čezmejnem opravljanju storitev (ZČmIS), skupaj s podrobno četrletno statistiko o napotovanju iz Slovenije med pandemijo COVID-19. Obstoječi podatki o napotjenih delavcih<sup>9</sup> (število, dejavnost, država napotitve) so dopolnjeni z nekaterimi demografskimi značilnostmi delavcev, kot so državljanstvo, spol, izobrazba, zakonski status in regija prebivanja. Poročilo vključuje analizo izbranih relevantnih vidikov napotovanja delavcev iz Slovenije, kot so obračunska metoda za določitev prispevkov za socialno varnost po 12. členu in po 13. členu Uredbe (ES) 883/04 o koordinaciji sistemov socialne varnosti (v nadaljevanju Uredba), napotovanje državljanov tretjih držav in kršenje pravic napotjenih delavcev.

### ***Napotovanje delavcev v letu 2020: obseg in značilnosti***

Trend naraščanja števila napotitev iz Slovenije je kljub pandemiji COVID-19 prisoten tudi v letu 2020. Izdanih je bilo za 7% več potrdil A1<sup>10</sup> in za 6% je naraslo število oseb, ki so bile napotene iz Slovenije. Delež napotjenih delavcev med delovno aktivnimi prebivalci je bil skoraj 7%.

Zaposlenim in samozaposlenim delavcem je bilo izdanih 63% vseh potrdil A1 po 12. členu<sup>11</sup> in skoraj 37% vseh potrdil A1 po 13. členu Uredbe. Potrdil A1 izdanih po členu 12 je bilo več za 3%, medtem ko je bilo potrdil A1 izdanih po členu 13 več za 18% v primerjavi z letom 2019.

Največji porast števila potrdil A1 izdanih po členu 12 je bil zabeležen v primeru 'montaže in servisiranja' (več kot 53%; od 19 122 potrdil A1 izdanih v letu 2019 je število naraslo na 29 384 potrdil A1 izdanih v letu 2020). Izpostaviti moramo, da se je število izdanih potrdil A1 znotraj iste dejavnosti med letoma 2018 in 2019 povečalo za več kot 3 800% (leta 2018 je bilo izdanih 481 potrdil A1, leta 2019 pa 19 122 potrdil A1). Podoben porast potrdil A1 je bil zabeležen v dejavnosti cestnega prevoza, kjer se je število potrdil med letoma 2018 in 2019 povečalo za več kot 3 500% (450 potrdil A1 je bilo izdanih leta 2018, v primerjavi s 16 497 potrdili A1 v letu 2019). Nadaljnja rast števila potrdil A1 je prisotna v letu 2020 in sicer za 30 % v primerjavi z letom 2019 (v letu 2020 je bilo izdanih 21 484 potrdil A1).<sup>12</sup>

Leta 2020 so bili v tujino napoteni 60 503 delavci. V primerjavi z letom 2019 gre za 6 % porast, v primerjavi z letom 2017 pa za skoraj 15% porast. Napotjenih oseb po členu 12 je bilo 24 672, kar po eni strani predstavlja 3.5 % več napotjenih oseb v primerjavi z letom 2019, po drugi pa 28 % manj v primerjavi z letom 2017.<sup>13</sup> Število oseb napotjenih v tujino po 13. členu Uredbe kontinuirano narašča od leta 2017 naprej. Leta 2020 je bilo njihovo število 40 332, kar predstavlja 10.8% porast v primerjavi z letom 2019 in skoraj 107% porast v primerjavi z letom 2017.

Največ potrdil A1, 61 150, je bilo izdanih za delavce napotene iz Slovenije v Nemčijo (39%), kamor je bilo napotjenih 15 540 oseb. Sledi Avstrija, za katero je bilo izdanih 13 526 potrdil A1 (8.6%) in tja napotjenih 4 709 oseb. Največ delavcev je bilo napotjenih v gradbeništvu (27%), a tudi v drugih dejavnostih, kot so na

<sup>9</sup> Napoteni delavec je vsaka fizična oseba, ki v okviru čezmejnega opravljanja storitev delodajalca s sedežem v eni državi članici EU (t.i. država pošiljateljica), začasno opravlja delo v drugi državi članici EU (t.i. država prejemnica).

<sup>10</sup> Potrdilo A1 je potrjuje, da so izpolnjeni pogoji, da se za napotenega delavca v času čezmejnega izvajanja storitve lahko še naprej uporabljajo predpisi o socialni varnosti Republike Slovenije, in da ni zavezan k plačilu prispevkov v drugi državi članici EU.

<sup>11</sup> Člen 12 Uredbe ES 883/2004 se nanaša na: 1) osebe, ki opravljajo dejavnost zaposlenih oseb v državi članici v imenu delodajalca, ki tam običajno opravlja svojo dejavnost in jih ta delodajalec napoti v drugo državo članico, da opravljajo delo v imenu tega delodajalca; in 2) osebe, ki običajno opravljajo dejavnost samozaposlene osebe v državi članici in ki gredo opravljat podobno dejavnost v drugo državo članico.

<sup>12</sup> Delavci so lahko napoteni v tujino po 13. členu, če se storitve v tujini opravljajo neprekinjeno (zaporedne delovne naloge se izvajajo ena za drugo).

<sup>13</sup> Opozoriti velja, da je skupno število napotjenih delavcev po 12. in 13. členu Uredbe višje kot skupno število napotjenih delavcev, ker so lahko nekateri delavci v istem letu napoteni po obeh členih.

primer montažna/servisna dejavnost in industrija (v obeh primerih skoraj 19%) ter mednarodni cestni promet (14%), podjetja veliko napotujejo,. Velika večina oseb, ki so bile napotene po členu 12, je bilo moškega spola (več kot 95%) z višjo ali nižjo srednješolsko izobrazbo (75%). Največ delavcev je bilo po poklicu varilcev (17%), sledili so zidarji (14%).

### ***Vpliv pandemije COVID-19***

Sodeč po skupnem številu izdanih potrdil A1 in številu napotениh oseb v letu 2020, pandemija COVID-19 ni bistveno vplivala na napotovanje iz Slovenije. Statistični podatki po četrletjih so pokazali, da je število izdanih potrdil A1 v drugem kvartalu (april – junij) in v četrtem kvartalu (oktober – december) upadlo, vendar se je skupno število izdanih potrdil A1 v letu 2020 povečalo v primerjavi s prejšnjim letom.

### ***Trend napotovanja delavcev pred in po sprejetju Zakona o čezmejnem opravljanju storitev***

Zakon o čezmejnem opravljanju storitev (v nadaljevanju ZČmIS; v uporabi od 1. 1. 2018) ureja napotovanje po 12. členu Uredbe (ES) 883/04. Sprejet je bil z namenom, da prepreči zlorabe, predvsem obstoj tako imenovanih slamnati podjetij. Zakon je vpeljal dodatne pogoje za podjetja, ki napotujejo v Slovenijo in iz nje, vsebuje pa tudi strožja pravila glede formalnosti napotovanja, nadzora in sankcij. Prav tako ureja podizvajalsko in subsidiarno odgovornost, napotovanje začasnih agencijskih<sup>14</sup> delavcev, kot tudi sodelovanje z nadzornimi organi drugih držav članic EU. Skupno število izdanih potrdil A1 je po sprejetju ZČmIS drastično upadlo, predvsem zaradi strogih pogojev za pridobitev potrdil A1 in intenzivnega spremljanja njihovega izpolnjevanja. Vendar dejanski upad izdanih potrdil A1 nujno ne pomeni, da se je zmanjšal tudi obseg napotovanja. Mnogi delodajalci so namreč začeli izkoriščati možnost, da delavce napotijo po 13. členu Uredbe, česar ZČmIS ne ureja.<sup>15</sup> Ko primerjamo obseg izdanih potrdil A1 pred in po sprejetju ZČmIS, je potrebno poudariti, da so potrdila A1 po 13. členu izdana za obdobje enega leta. Tudi podatki Banke Slovenije kažejo, da izvoz storitev v druge države članice EU po sprejetju zakona in posledičnem padcu števila izdanih potrdil A1, ni upadel, ampak se je zvišal za 11% (438 milijonov evrov). Eden od pomembnih učinkov novo sprejete zakonodaje je bilo zmanjšanje davčnega dolga podjetij, kar je tudi pogoj za pridobitev potrdila A1. Podatki Finančne uprave Republike Slovenije kažejo, da je po sprejetju ZČmIS davčni dolg podjetij vidno upadel. V letu 2017 je davčni dolg znašal 17 055 886 evrov, a se je leta 2019 znižal na 7 566 456 evrov.

Zavod za zdravstveno zavarovanje Slovenije je po sprejetju ZČmIS začel zbirati podatke o zavrženih zahtevah za izdajo potrdil A1 po 12. členu Uredbe. Leta 2020 je bil delež zavrženih vlog 10 %, kar je malenkost manj kot leta 2019, ko je ta delež predstavljal 10,4%. Največji delež zavrnitev je bil povezan z davčnimi razlogi: neporavnane davčne obveznosti, neoddani REK obrazci, ni bilo odprtega TRR, ali je bil le-ta blokiran. Iz tega razloga je bilo zavrženih 5 387 zahtev, oziroma 49% vseh zavrženih zahtev. Drugi najštevilnejši razlog zavrženih zahtev je bila neustreznost priloženih dokumentov, kot so pogodba o zaposlitvi in pogodba z naročnikom. Število teh je bilo 2,571 (23%). Zahteve za izdajo potrdila A1 so bile zavrjene tudi, če je bilo ugotovljeno, da delodajalec običajno ne opravlja dejavnosti v RS, na primer: prevelik delež napotениh delavcev pri delodajalcu, ni ustreznega predhodnega zavarovanja v RS, ni dovolj predhodno zaposlenih pri delodajalcu. Zavrženih zahtevkov je bilo v tem primeru 1 981 (18%). Razlogi za zavrnitev so bili lahko tudi postopkovni ali delovnopравни. V prvem primeru je bilo, na primer, potrdilo A1 že izdano za isto obdobje ali pa vloga v roku ni bila dopolnjena (746 zavrženih zahtev ali 7%), v drugem primeru so bili razlogi prejeta globa zaradi prekrškov ali ni bilo izdano enotno dovoljenje za delavca (219 zavrženih primerov ali 2%). Zadnji razlog po številu zavrženih zahtev je primarno povezan z nepravilnostmi napotovanja državljanov tretjih držav, kot na primer nerešen migracijski status (59 primerov ali 1%). Skupno število pomanjkljivosti je bilo 10,963, pri čemer gre za vsoto vseh zabeleženih pomanjkljivosti, saj je pri posameznem zahtevku lahko prisotnih več razlogov za zavrnitev.

<sup>14</sup> Gre za dejavnost zagotavljanja dela delavcev uporabniku kot je opredeljena v slovenski zakonodaji.

<sup>15</sup> Razloge, da so delodajalci začeli pošiljati svoje delavce v tujino po 13. členu Uredbe, lahko najdemo v strogih zakonskih določilih in veliki birokratski obremenitvi. Delodajalci morajo za napotovanje po 13. členu Uredbe dokazati, da je napotitev kontinuirana (delavec je napoten v tujino na opravljanje zaporednih delovnih nalog), na primer opravljajo storitev mednarodnega tovarnega prometa, montaže ali servisiranja. V tem primeru pridobijo potrdilo A1 za trajanje enega leta in jim ni treba izpolnjevati pogojev, določenih v zakonu.

### ***Napotovanje državljanov tretjih držav iz Slovenije***

Napotovanje državljanov tretjih držav iz Slovenije je trend, ki je vztrajno prisoten. Med vsemi napotenimi delavci, ki so bili leta 2020 napoteni iz Slovenije, je bilo 59% državljanov tretjih držav. Državljanov RS med napotenimi delavci je bilo 34% in delež državljanov drugih držav članic EU je bil 7%. Le eden od treh delavcev napotenih iz Slovenije je bil državljan RS. Delež napotenih državljanov RS in državljanov drugih držav članic je v primerjavi s prejšnjimi leti upadel, medtem ko je delež državljanov tretjih držav narasel.

Med delavci tretjih držav, ki so napoteni iz Slovenije, prevladujejo državljani držav Zahodnega Balkana, to je Bosne in Hercegovine (BiH), Srbije in Kosova. Slovenijo s temi državami povezujejo pomembni zgodovinski stiki in relativna geografska bližina. Leta 2020 je bilo največ državljanov tretjih držav napotenih iz Slovenije državljanov BiH (23 051 ali 38%), sledili so jim državljani Srbije (7 706 ali 12.7%) in državljani Kosova (3 368 ali 5.6%). Število napotenih delavcev državljanov BiH je v primerjavi z letom 2019 naraslo za 21.8%, to je z 18.925 v letu 2019 na 23 051 v letu 2020. Za primerjavo: število državljanov Slovenije napotenih iz Slovenije se je v istem obdobju zmanjšalo za 8.3 %: z 22 473 v letu 2019 na 20 616 v letu 2020.

Podatki o napotenih delavcih v gradbeništvu kažejo, da je bilo leta 2020 izdanih 42 392 potrdil A1 po 12. členu Uredbe. Največ potrdil A1, 20 864, je bilo izdanih državljanom BiH, kar predstavlja 49% delež. Državljanom RS je bilo izdano 7 919 potrdil A1, kar predstavlja 19% delež. Delež potrdil A1 izdanih drugim državljanom tretjih držav je bil naslednji: Kosovo 12.4 %, Srbija 8.2 % in Severna Makedonija 3 %. Pri tem je treba opozoriti, da je delež državljanov RS zaposlenih v gradbeništvu v Sloveniji v istem obdobju znašal 60%, delež tujih državljanov pa 40%. Delež državljanov tretjih držav, ki so bili napoteni iz Slovenije v gradbenem sektorju, pa je bil 93%, pri čemer je bilo največ državljanov BiH. Primerjava podatkov za slovensko gradbeništvu nam pokaže, da je bilo nesorazmerno več potrdil A1 v letu 2020 izdanih državljanom BiH kot državljanom RS.

Število oseb z izdanim potrdilo A1 smo primerjali s številom delovno aktivnega prebivalstva po nacionalnosti, da bi ugotovili, kakšen je bil delež državljanov tretjih držav s prebivališčem v Sloveniji, ki so bili napoteni na delo v drugo državo članico EU. Ocenjujemo, da je bil vsak tretji državljan tretjih držav s prebivališčem v Sloveniji leta 2020 napoten v drugo državo članico. Kot primer naj navedemo, da je več kot polovica srbskih državljanov, ki živijo v Sloveniji, opravljala storitve kot napoteni delavci v drugi državi članici. V nasprotju s tem je le 2 % delovno aktivnih slovenskih državljanov bilo napotenih v drugo državo članico. Delež zaposlenih državljanov tretjih držav, ki so bili napoteni v drugo državo članico, je še višji. Ocenjujemo, da je bilo več kot 40 % v Sloveniji zaposlenih državljanov tretjih držav v letu 2020 napotenih v drugo državo članico EU.

Slovenski delodajalci so zaposlili večino napotenih delavcev, ki so državljani BiH, pod pogoji določenimi v dvostranskem sporazumu o zaposlovanju med RS in BiH. Število veljavnih delovnih dovoljenj, ki jih izda Zavod za zaposlovanje Republike Slovenije na podlagi dvostranskega sporazuma o zaposlovanju med RS in BiH, se na splošno nenehno povečuje. Njihovo število se je v obdobju od leta 2017 do 2020 več kot podvojilo (od 15 418 na 36 383).

### ***Polemika o načinu obračunavanja prispevkov za socialno varnost po 12. in 13. členu Uredbe (ES) 883/04 o koordinaciji sistemov socialne varnosti***

Prispevki za socialno varnost napotenih delavcev, ki so napoteni po 12. členu Uredbe (ES) 883/04 o koordinaciji sistemov socialne varnosti, se v skladu z nacionalnim Zakonom o pokojninskem in invalidskem zavarovanju (ZPIZ-2, 144. člen, 4. odstavek) ne obračunavajo na podlagi dejanskega prejemka, ampak glede na znesek, ki bi ga delavci dobili za primerljivo delo v Sloveniji. Takšna zakonska ureditev zbuja dvom, ali ne gre pri tem za kršitev pravnega reda EU, saj lahko slovenska podjetja, ki napotujejo delavce iz Slovenije, plačujejo nižje prispevke za socialno varnost. Slovenska sodišča so primer obravnavala že šestkrat, a so vselej presodila, da dejanska plača napotenih delavcev ne more biti merilo za obračun, saj zakon jasno določa, da morajo biti prispevki obračunani na podlagi plačila za primerljivo delo v Sloveniji. Posledično je osnova za izračun pokojnine isti, nižji znesek primerljive plače. Primer je obravnavala Evropska zveza gradbenih in lesnih delavcev (European Federation of Building and Woodworkers - *EFBWW*), ki je pri Evropski komisiji

vložila uradno pritožbo proti Sloveniji. Obtožuje jo, da podjetjem, ki napotujejo v tujino, podeljuje nezakonito državno pomoč.

Ministrstvo za delo, družino, socialne zadeve in enake možnosti Republike Slovenije je z odločitvijo, da 144. člen ZPIZ-2 velja le za delavce, ki so napoteni po 12. členu Uredbe in zanje veljajo določila ZČmIS, sprožilo nadaljnjo polemiko na tem področju. To pomeni, da so delavci, ki so napoteni po 13. členu Uredbe, izvzeti iz nacionalne zakonske določbe in se njihovi prispevki za socialno varnost obračunavajo na podlagi dejanske plače, ki jo prejmejo za delo v tujini. Ta določba pa ni odvrnila podjetij od napotovanja delavcev po 13. členu. Delež potrdil A1 izdanih po 13. členu Uredbe namreč narašča hitreje kot delež potrdil A1 izdanih po 12. členu Uredbe, število oseb napotenih po 13. členu pa vse od leta 2018 presega število oseb napotenih po 12. členu.

Ocenjujemo, da je zaradi te zakonske določbe iz prispevkov za socialno varnost izvzetih 128 milijonov eurov. Slovenska država potem takem prejme za 49 milijon eurov manj socialnih prispevkov, kot bi jih v primeru obračuna prispevkov od dejanske plače, prejete v tujini. Gre za znesek, ki ga slovenska podjetja, ki napotujejo, ne plačajo, kar zanje predstavlja dodatno konkurenčno prednost.

### ***Kršitve v primerih napotovanja iz Slovenije***

Pred odobritvijo potrdil A1 po 12. členu Uredbe (ES) 883/04 država strogo preverja njihovo skladnost z določili ZČmIS. Podjetjem, ki napotujejo, potrdilo A1 ni izdano v primerih, ko imajo kakršnekoli davčne obveznosti, kršijo delovno zakonodajo, nepravilno napotujejo državljane tretjih držav (na primer nerešen migrantski status), in ko ne dokažejo, da običajno opravljajo storitve v Sloveniji. Potrdila A1 ne dobijo podjetja, ki ne oddajo popolne dokumentacije, na primer ne oddajo kopije pogodbe o zaposlitvi napotnega delavca in pogodbe s tujim naročnikom. Leta 2020 je bil delež zavrnjenih zahtevkov za izdajo potrdil A1 10 %. Poudariti moramo, da strogi pogoji določeni v ZČmIS, ne veljajo v primerih napotovanja po 13. členu Uredbe.

Inšpektorat Republike Slovenije za delo se je leta 2020 odzval na 581 zahtevkov, ki so jih različne države članice EU posredovale preko Informacijskega sistema za notranji trg (IMI). V 56 primerih so bile zahtevane dodatne informacije o podjetjih, ki napotujejo, v 525 primerih pa je bila zahtevana dokumentacija z namenom preverbe pravilnosti napotovanja. Inšpektorat za delo v svojem letnem poročilu ne pojasnjuje teh zahtev ali narave kršitev, ki so povezane s podjetji, ki napotujejo delavce.

# 1. Introduction

The purpose of this report is to increase knowledge about the posting of workers<sup>16</sup> from and to Slovenia by identifying and exploring a variety of administrative micro-data available at national level and providing new insights.<sup>17</sup> The focus of the report is on posting *from* Slovenia, rather than posting *to* Slovenia,<sup>18</sup> as Slovenia is one of the main sending Member States of posted workers (De Wispelaere et al., 2021).

The report provides insights into the scale, characteristics and impact of posting from Slovenia before and after the adoption of the Transnational Provision of Services Act,<sup>19</sup> including detailed quarterly data on posting from Slovenia in 2020 during the COVID-19 pandemic. With regard to the latter, the quarterly statistics obtained from the Health Insurance Institute of Slovenia, the issuing authority of a Portable Document A1 (PD A1)<sup>20</sup>, provide a good indication about the dynamics of posting of workers from Slovenia during the first year of the pandemic. The report also contains detailed data on the reasons for the rejection of applications requesting PDs A1. For the first time, the existing data on posted workers (number, sector of activity, country of destination) are complemented with some of their demographic characteristics, such as nationality, gender, education, marital status and region of residency.

The report also provides the analysis of a selection of pending controversial issues in Slovenia. First, it examines the trends in the issuing of PDs A1 under Article 12<sup>21</sup> and Article 13<sup>22</sup> of Regulation (EC) No 883/2004 on the coordination of social security systems (hereinafter: Basic Regulation or BR). In Slovenia, the ratio between PDs A1 issued according to Article 12 and Article 13 has been reversed after the adoption of the Transnational Provision of Services Act, with increasingly more PDs A1 being issued under Article 13 in the past few years. The report provides an explanation for the occurrence of this trend. Second, new statistical data on a persistent trend of posting of third country nationals from Slovenia, most notably nationals from the Western Balkan countries, is presented. It is discussed how Slovenia has continuously been recruiting and posting third country nationals (TCNs) of Bosnia and Herzegovina, Serbia and Kosovo, which are in relatively close geographical proximity to Slovenia and share a strong historical link. The report also investigates the controversy surrounding the calculation method for determining social security contributions under Article 12 of the Basic Regulation. This issue remains unsolved and is the subject of an ongoing complaint filed to the European Commission by the European Federation of Building and Woodworkers (*EFBWW*). Finally, data on infringements related to posting is presented, mainly based on a recent report published by the Labour Inspectorate of the Republic of Slovenia. Another pending issue in Slovenia is the implementation and correct application of Directive (EU) 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the transnational provision of services. The transposition of the Directive into national legislation was supposed to be concluded by 30 July 2020, but Slovenia missed the deadline by nearly a full year and transposed the Directive as late as 17 July 2021.

16 The term 'posted worker' refers to workers who are legally employed by an undertaking established in one Member State (the sending Member State) and sent by that undertaking to another (the receiving Member State) in order to provide services/carry out work.

17 The authors are grateful for the comments received from Frederic De Wispelaere (HIVA-KU Leuven).

18 In 2019, the number of postings to Slovenia was 7 327 and the number of persons posted to Slovenia was 3 448. The percentage of posted workers in total employment has been less than 0.5%. Some 32% of workers received by Slovenia came from Croatia (De Wispelaere et al., 2021).

19 Zakon o čezmejnem opravljanju storitev (ZČMIS, Official Journal of the Republic of Slovenia, no. 10/17).

20 A 'Portable Document A1' (PD A1) is a certificate that proves that the social security legislation of the issuing Member State applies and confirms that the worker in question has no obligations to pay contributions in another Member State. PDs A1 are issued to posted workers but also to several other mobile workers, such as persons who pursue an activity in two or more Member States, mariners and flight or cabin crew members (De Wispelaere et al., 2021).

21 Article 12 of the Basic Regulation relates to 1) employed persons who are employed by an employer which normally carries out its activities in a Member State and who are posted by that employer to another Member State to perform work on its behalf, and 2) persons who normally pursue an activity as a self-employed person in a Member State who go to pursue a similar activity in another Member State.

22 Article 13 of the Basic Regulation relates to persons pursuing an activity as an employed/self-employed person in two or more Member States. In case of Article 13 of the Basic Regulation, special rules for persons who are normally employed, self-employed or both employed and self-employed in two or more Member States are laid down to ensure that the social security legislation of only one Member State is applicable.

It is therefore too soon to provide any analysis of the impact of the new Directive on posting of workers in Slovenia.

### 1.1 Brief overview of the legal framework

The Posted Workers Directive 96/71/EC and the Enforcement Directive 2014/67/EU were transposed into the Slovenian law primarily by the Employment Relationships Acts<sup>23</sup> from 2002 and 2013 (Zakon o delovnih razmerjih 2013), and, most importantly, by the Transnational Provision of Services Act<sup>24</sup> (Zakon o čezmejnem opravljanju storitev 2017, hereinafter: The Act), which came into force on 1 January 2018. The Act determines the conditions under which legal and natural persons registered to perform activities established in the Republic of Slovenia may temporarily provide services in another Member State. It also determines the conditions under which legal and natural persons registered to perform activities with a registered office in another Member State temporarily provide services in the Republic of Slovenia. The Act only regulates the posting of workers under Article 12 of the Basic Regulation. The new Posted Workers Directive (i.e., Directive (EU) 2018/957) was transposed into Slovenian law in July 2021 as an Amendment to the Transnational Provision of Services Act.<sup>25</sup> Recruitment and employment of third country nationals in Slovenia is determined by the Employment, Self-Employment and Work of Foreigners Act.<sup>26,27</sup>

### 1.2 Data collection

The quantitative data were obtained from the databases and internal reports provided by the Health Insurance Institute of Slovenia, the Slovenian Tax Administration, the Labour Inspectorate of the Republic of Slovenia, the National Bank of Slovenia, the Employment Service of Slovenia, and the Statistical Office of Slovenia. Quantitative data were complemented with interviews and e-mail correspondence with representatives of the Chamber of Commerce and Industry of Slovenia, the Association of Free Trade Unions of Slovenia, and the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

The collected data mainly cover the posting of workers from Slovenia in 2020, but for the purpose of explaining the trends of posting before and after the adoption of the Transnational Provision of Services Act, statistical information from 2017 onward is provided, when available.<sup>28</sup>

### 1.3 Content of the report

The report presents an overview of the number of PDs A1 issued in Slovenia in 2020 according to Articles 12 and 13 of the Basic Regulation. It provides quarterly statistics for the purpose of observing the issuing of PDs A1 during the COVID-19 pandemic, data on the number of applications submitted and rejected, and data on individual persons involved in posting. Data on socio-demographic characteristics of workers posted under Article 12 are provided, which is made possible due to the existence of different tax bases that apply only to workers posted under Article 12 and therefore distinguishes them from all other categories of workers. Data on their nationality, gender, education, marital status and region of residency are presented, followed by data on the share of posted workers in national employment in general and in the construction sector in particular (*Chapter 2*). The next chapter explains the trend of posting of workers before and after the adoption of the Transnational Provision of Services Act by analysing the regulations set by the law and the changes that occurred as a result. Detailed data on the reasons for rejection of PDs A1 under

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<sup>23</sup> Official Journal of the Republic of Slovenia, No. 42/2013 and subseq.

<sup>24</sup> Official Journal of the Republic of Slovenia, No. 10/2017.

<sup>25</sup> Official Journal of the Republic of Slovenia, No. 119/2021.

<sup>26</sup> Official Journal of the Republic of Slovenia, No. 47/2015 and subseq.

<sup>27</sup> Other important legal statutes include: the Health and Safety at Work Act, the Minimum Wage Act, the Labour Market Regulation Act, the Pension and Disability Insurance Act, the Labour and Social Courts Act and collective agreements.

<sup>28</sup> Discrepancies between different sources of statistical data were observed. After 2018, some statistics provided by the Health Insurance Institute of Slovenia only provide data relating to PDs A1 granted via the electronic submission system SPOT and not those PDs A1 that were granted 'manually'.

Article 12 are presented as well (*Chapter 3*). A chapter on the posting of third country nationals provides some statistics on the recruitment, employment and posting of workers who are not Slovenian nationals (*Chapter 4*). The focus is primarily on nationals of Bosnia and Herzegovina, who are the majority of workers posted from Slovenia. The bilateral agreements on the employment of workers from Bosnia and Herzegovina and Serbia in Slovenia are discussed in some detail. Furthermore, the controversy regarding the calculation method for determining social security contributions under Article 12 of the Basic Regulation is presented (*Chapter 5*). Finally, some infringements regarding the posting of workers from (and to) Slovenia are presented (*Chapter 6*).

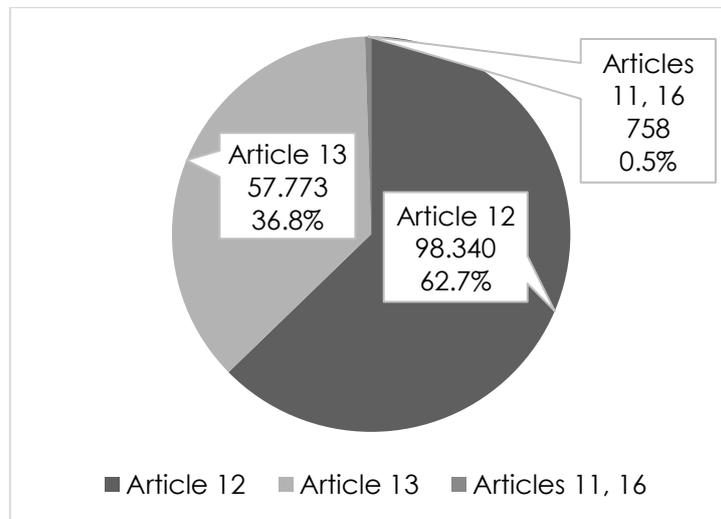
## 2. General overview of posting of workers from Slovenia in 2020 and the impact of the COVID-19 pandemic

This chapter builds on data extracted from the databases and internal reports provided by the Health Insurance Institute of Slovenia (*ZZZS - Zavod za zdravstveno zavarovanje Slovenije*), the competent authority responsible for issuing PDs A1 in Slovenia. ZZZS is able to provide detailed information on the number of PDs A1 granted according to the different articles of Regulation EC No 883/2004, on the number of individual persons involved, a breakdown by sector of economic activity, the average duration of posting, the destination countries, and the nationality of persons posted from Slovenia.<sup>29</sup> Since the Transnational Provision of Services Act came into force in 2018, ZZZS also provides detailed statistics on the reasons for rejection of the PD A1 applications for persons falling under Article 12 (*see Chapter 3*).

### 2.1 Total number of PDs A1 issued in 2020

In 2020, the total number of PDs A1 issued amounted to 156 868 forms, which is an increase of 7.3% compared to 2019. Roughly 63% of all PDs A1 (or 98 340 forms) were issued according to Article 12 of the Basic Regulation and 37% (or 58 531 forms) were issued under Articles 11, 13 and 16 of the Basic Regulation (*Figure 1*). The number of PDs A1 issued according to Article 13 amounted to 57 773 forms (36.8%).

**Figure 1** Number of PDs A1 issued and share in total, by applicable article, 2020



Source: Health Insurance Institute of Slovenia

<sup>29</sup> A broad approach to 'posting' is applied; i.e. we consider posting under both Article 12 and Article 13 of the Basic Regulation. It should be noted that differences exist in the notion of 'posted' used by the Basic Regulation compared to the Posting of Workers Directive. Consequently, persons might be 'posted' under the Basic Regulation but not in the meaning of the Directive. For instance, self-employed persons falling under Article 12 (2) of the Basic Regulation are not covered by the Posting of Workers Directive. In contrast, persons might also be posted under the Posting of Workers Directive and not under the Basic Regulation. For instance, workers who pursue an activity in two or more Member States (Article 13 of the Basic Regulation) may fall under the terms and conditions of the Posting of Workers Directive (De Wispelaere et al. 2021). The broad approach is also applied because the number of granted PDs A1 according to Article 13 has strongly increased in the past few years. In particular, the adoption of the Transnational Provision of Services Act resulted in avoidance of posting undertakings to apply for PDs A1 according to Article 12.

The breakdown by sector of economic activity shows that most PDs A1 were issued to persons employed in the construction sector (27%), followed by the category ‘other’ (21.8%), ‘installation/assembling and servicing’ (18.7%), ‘industry’ (18.6%) and ‘international road freight transport’ (13.7%) (Table 1).

The biggest increase compared to 2019 was in the number of PDs A1 issued for persons employed in ‘installation/assembling and servicing’: more than 53% (from 19 122 PDs A1 issued in 2019 to 29 384 PDs A1 issued in 2020). It should be noted that the increase in this sector from 2018 to 2019 was even more than 3 800% (481 PDs A1 issued in 2018 versus 19 122 PDs A1 issued in 2019). This can largely be attributed to the fact that ‘installation/assembling and servicing’, along with ‘international road freight transport’, are sectors exempt from the strict provisions set by the Transnational Provision of Services Act (2018) on the basis of being services provided abroad on a continuous basis. PDs A1 are therefore issued under Article 13, which is not the subject to the aforementioned law. Similar increases in the number of PDs A1 issued are noted in the road transport sector, which has gone up by over 3 500% from 2018 to 2019 (450 PDs A1 issued in 2018 versus 16 497 PDs A1 issued in 2019) and a further 30% from 2019 to 2020 (21 484 PDs A1 issued in 2020) (Health Insurance Institute of Slovenia, Internal report, 2021).

**Table 1 Number of PDs A1 issued, by applicable article and sector of activity, 2020**

Sector of activity	Total	Column %	Art. 12 BR	Column %	Art. 13 BR	Column %
Finance	23	<1%	23	<1%	/	0%
Construction	42 472	27.0%	42 392	43.1%	50	<1%
Industry	29 156	18.6%	29 095	29.6%	60	<1%
Agriculture	208	<1%	159	<1%	49	<1%
International road freight transport	21 484	13.7%	/	0%	21 484	37.2%
Installation/assembling – Servicing	29 384	18.7%	/	0%	29 384	50.9%
Other	34 141	21.8%	26 671	27.1%	6 746	11.7%
<b>Total</b>	<b>156 868</b>	<b>100%</b>	<b>98 340</b>	<b>100%</b>	<b>57 773</b>	<b>100%</b>

Source: Health Insurance Institute of Slovenia

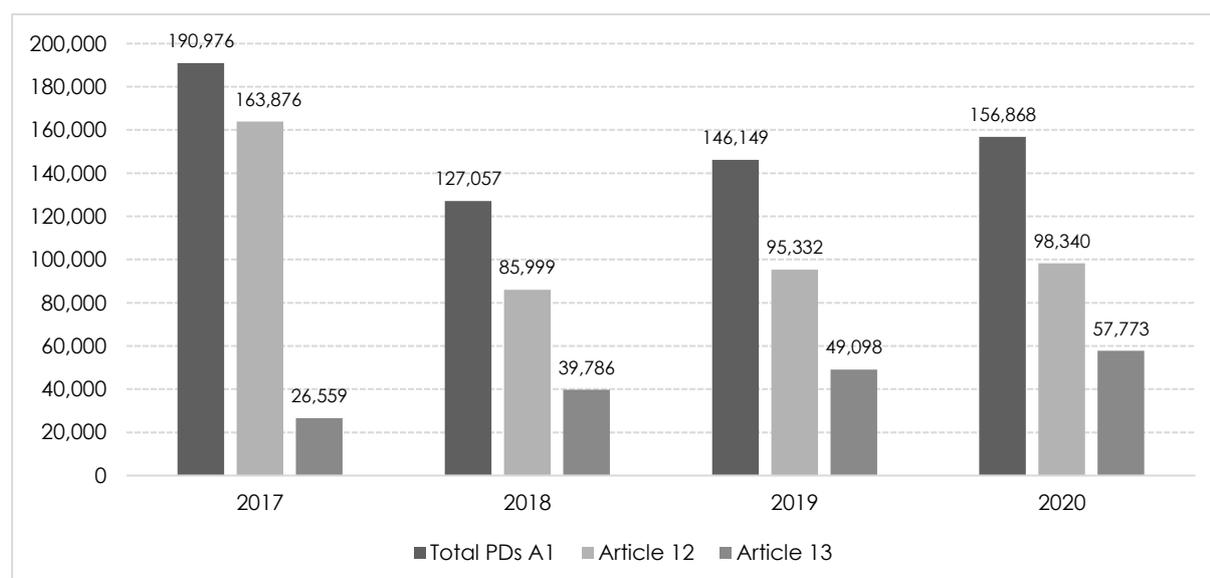
As in previous years, the main country of destination in 2020 was Germany (covering nearly 39% of all PDs A1 issued), followed by Austria (8.6%), Belgium (4.7%), Croatia (2.3%), the Netherlands (2%), Italy (1.6%) and France (1.3%). The number of issued PDs A1 for Austria, Belgium and France decreased compared to 2019, and increased for Germany, Croatia, the Netherlands and Italy. Since 2018, a steady decrease is noted for Austria and a moderate continuous increase for Germany. Most PDs A1 issued for Germany, Austria, Belgium and Croatia were for services provided in the construction sector, while in the case of the Netherlands and France, the main sector of activity was industry. It should be noted that for all countries of destination, the share of unidentified sectors (category ‘other’) in total is high. It can be assumed that this category mainly includes the transport sector and installation/assembling/servicing, two sectors/activities which are not included as separate categories in the statistics (Table 2).

**Table 2 Top ten receiving Member States of a PD A1 issued by Slovenia, 2020**

	PDs A1 issued	% share in total PDs A1 issued	Main sector of activity (% of PDs A1 issued)
Germany	61 150	39.0%	Construction (38.2%)
Austria	13 526	8.6%	Construction (59.1%)
Belgium	7 436	4.7%	Construction (68.6%)
Croatia	3 606	2.3%	Construction (70.9%)
The Netherlands	3 218	2.0%	Industry (42.6%)
Italy	2 439	1.6%	Other (35.9%)
France	1 994	1.3%	Industry (42.3%)
Switzerland	753	<1%	Construction (42.4%)
Sweden	645	<1%	Construction (54.8%)
Spain	514	<1%	Other (57.4%)

Source: Health Insurance Institute of Slovenia

Compared to previous years, the number of issued PDs A1 has been rising continuously. There was a notable sharp decrease in 2018 when the Transnational Provision of Services Act came into force and stricter conditions for obtaining PDs A1 were introduced (*Figure 2*). Another consequence of the new law was a significant increase in issued PDs A1 under Article 13, which is not subject to the Act.

**Figure 2 Evolution of the number of PDs A1 issued, 2017-2020**

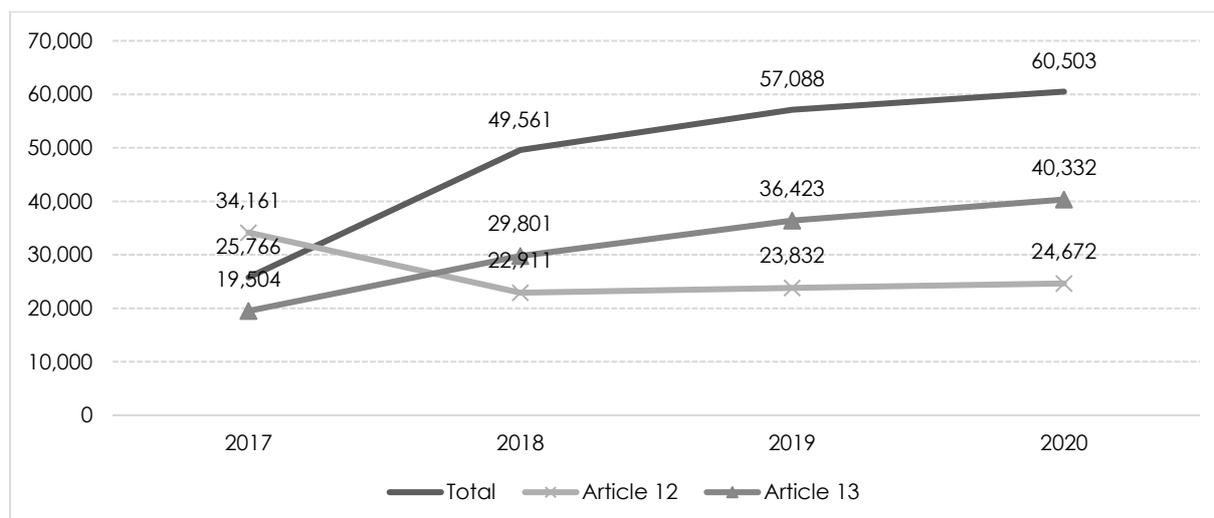
Source: Health Insurance Institute of Slovenia

The number of workers posted abroad in 2020 amounted to 60 503 persons (*Figure 3*). This is an increase of 6% compared to 2019 and nearly 15% compared to 2017. The number of persons posted abroad under Article 12 was 24 672, which is an increase of 3.5% compared to 2019, but a 28% decrease compared to 2017.<sup>30</sup>

The number of persons posted abroad under Article 13, however, has been rising continuously ever since 2017. In 2020, the number was 40 332, which is an increase of 10.8% compared to 2019 and by nearly 107% compared to 2017.

<sup>30</sup> It should be noted that the sum of workers posted under Article 12 and Article 13 is higher than the total number of posted workers, because some workers may be posted under both articles in the same year.

**Figure 3 Evolution of the number of persons with a PD A1, 2017-2020**



Source: Health Insurance Institute of Slovenia

### 2.1.1 Number of PDs A1 issued for posted workers according to Article 12 BR

The number of PDs A1 issued to persons covered by Article 12 amounted to 98 340 in 2020. Compared to 2019, this is an increase of 3.1%. There were 24 672 individual persons involved under Article 12. This means that in 2020, on average, one person falling under Article 12 was sent abroad nearly four times. It is important to note that in 2018, when the new law on transnational provision of services came into force and the number of PDs A1 decreased significantly, the number of people posted abroad was only slightly lower than in 2019.<sup>31</sup>

Due to the COVID-19 pandemic, the number of PDs A1 issued under Article 12 has varied throughout the year 2020. In the first quarter (January – March), the number of PDs A1 was 2.4% higher than the number of PDs A1 issued in the final quarter of 2019. In the second quarter (April – June), however, the decrease compared to the first quarter was 8%. The numbers increased again by 25% in the third quarter (July – September) and dropped by 12% in the final quarter (*Table 3*).

**Table 3 Total number of PDs A1 issued according to Article 12 BR, 2020 (quarterly data)**

Period	1.1.2020 – 31.3.2020	1.4.2020 – 30.6.2020	1.7.2020 – 30.9.2020	1.10.2020 – 31.12.2020
PDs A1 issued	24 121	22 179	27 685	24 355
Change by quarter (%)		-8%	25%	-12%

Source: Health Insurance Institute of Slovenia, Internal report (2021)

It is reasonable to assume that the decrease between April and June is not due to seasonal trends, as no such drop was documented in 2018 or 2017. In 2018, an increase of 1% of granted PDs A1 in the second quarter was noted (847 more PDs A1 granted than in the first quarter). In 2017, the increase of granted PDs A1 in the second quarter was 0.9% (2 582 more PDs A1 granted than in the first quarter) (Health Insurance Institute of Slovenia, Internal Report 2018 and 2019). The decrease in the fourth quarter of 2020 can also be attributed to the introduction of pandemic-related restrictions, as no such drop was documented in the fourth quarters of 2018 and 2017 (*Ibid.*). Posting undertakings and persons posted abroad encountered problems primarily related to the emergence of restrictive border-crossing regimes and obligatory quarantine periods (Zirnstain, Sedmak, & Širok, 2020).

<sup>31</sup> It should be noted that data on the number of individual persons refer only to applications submitted electronically, via the SPOT electronic submission system, and not to submissions handled 'manually'. In 2020, the number of PDs A1 submitted and issued 'manually' under Article 12 was 87.

In 2020, there were 112 513 requests for a PD A1 under Article 12, which is a 2% increase compared to 2019 (109 990 applications submitted) and a 6% increase compared to 2018 (105 841 application submitted) (Table 4). ‘Only’ for 87% of the applications a PD A1 under Article 12 was issued by the competent administration. As expected, the number of rejected applications and the number of requests for supporting documentation was highest in 2018, which coincides with the adoption of the law on transnational provision of services that set stricter rules and requirements for granting PDs A1 under Article 12 (see Chapter 3). The share of rejected applications was 11.3% in 2018 and 9.4% in 2020. The request for supporting documents was sent to 5.5% of all applicants in 2018, and 2.1% of all applicants in 2020. This decrease is likely due to applicants becoming better informed and aware of the new requirements after 2018. Table 4 shows a comparison of the number of applications for PDs A1 under Article 12, the number of granted PDs A1, the number of applications sent back to the applicant with a request to provide required documentation, the number of rejected and discarded applications, and the number of terminations of PDs A1 from 2018 to 2020. The reasons for the rejection of applications are presented in Chapter 3.

**Table 4 Data on PDs A1 issued according to Article 12 BR, applications vs granted, 2018-2020**

Posting of workers under Article 12	2018		2019		2020	
	Number	% share of total	Number	% share of total	Number	% share of total
Applications submitted	105 841	100%	109 990	100%	112 513	100%
PDs A1 granted	85 999	81.2%	95 339	86.7%	98 340	87.4%
Request for supporting documents	5 815	5.5%	2 464	2.2%	2 404	2.1%
Rejected	11 979	11.3%	10 764	9.8%	10 583	9.4%
Discarded	2 786	2.6%	623	0.6%	616	0.5%
Early termination of PDs A1	22 159	25.8%	27 536	28.9%	32 477	33%

Source: Health Insurance Institute of Slovenia, internal report (2019, 2020 and 2021)

### 2.1.2 Number of PDs A1 issued for persons active in two or more Member States according to Article 13 BR

In 2020, the number of PDs A1 issued according to Articles 11, 13 and 16 was 58 531. Compared to 2019, this is an increase of 15.2%. Most PDs A1s were issued according to Article 13 (57 773), and the majority of these forms (50 868 or 86.9%) were issued for workers active in transnational transport, installation/assembling and servicing, who have one (Slovenian) employer and who provide services abroad on a continuous basis (successive work assignments carried out one after another). The number of PDs A1 issued according to Articles 11 and 16 was 758.

Compared to previous years, the ‘posting’ of workers under Article 13 (*‘posting’ sensu lato*) has been continuously increasing. The number of granted PDs A1 in 2020 has increased by nearly 18% compared to 2019, and by 117% compared to 2017.

In 2020, there was a strong decrease of the PDs A1 issued according to Article 13 in the second (-10%) and third (-18%) quarter of the year, which can be attributed to the COVID-19 pandemic and the restrictive measures taken by Member States (Table 5).

It should be noted that quarterly data only include applications submitted and granted via the SPOT electronic submission system. The number of manually issued PDs A1 according to Article 13 was 6 905 and they are excluded from quarterly statistics.

**Table 5 Total number of PDs A1 issued according to Article 13 BR, 2020 (quarterly data)**

Period	1.1.2020 – 31.3.2020	1.4.2020 – 30.6.2020	1.7.2020 – 30.9.2020	1.10.2020 – 31.12.2020
<b>PDs A1 issued</b>	12 750	11 425	13 446	13 247
<b>Change by quarter (%)</b>		-10.4%	17.7%	-1.5%

Source: Health Insurance Institute of Slovenia, internal report (2019, 2020, 2021)

The number of applications for PDs A1 according to Article 13 via SPOT has increased by 42% compared to 2019. In 2019, the number of applications was 44 140 and in 2020 the number rose to 62 715 (*Table 6*). The number of PDs A1 under Article 13 via SPOT which were granted has increased by 56.6%, from 35 620 in 2019 to 50 868 in 2020. A very high number of applications (19%) of a PD A1 under Article 13 were rejected in both 2019 and 2020. There is no statistical data, however, on the *overall* number of applications submitted and rejected via both SPOT *and* manually. There are also no detailed data available on the reasons for rejection of PDs A1 under Article 13, as is the case for PDs A1 under Article 12 (*see Chapter 3*).

**Table 6 Data on PDs A1 issued according to Article 13 BR, applications vs granted, 2019 - 2020**

Article 13	2019		2020	
	<i>Number</i>	<i>% share of total</i>	<i>Number</i>	<i>% share of total</i>
<b>Applications submitted</b>	44 140	100%	62 715	100%
<b>PDs A1 granted</b>	35 620	81%	50 868	81%
<b>Rejected</b>	8 414	19%	11 872	19%
<b>Early termination of PDs A1</b>	2 834	6%	5 587	9%

\* Detailed data for 2018 are not available. SPOT (previously e-VEM) has not been widely used as a platform for applying for PDs A1 under Article 13 in 2018 and certain statistics were omitted. According to the ZZS internal report, 41 060 PDs A1 were granted in 2018 for Articles 13, 11 and 16 (39 786 for Article 13) and only 933 applications were submitted electronically. Source: Health Insurance Institute of Slovenia, internal report (2019 and 2020)

In 2020, the number of persons posted abroad according to Article 13 (*'posting' sensu lato*) was 40 332, which is an increase of nearly 11% from 2019 (36 423 persons posted abroad), and 107% from 2017 (19 504 persons posted abroad).

The sharp increase in posting under Article 13 in the past few years can be attributed to several factors. One of the reasons is undoubtedly to avoid the strict conditions and requirements set by the Transnational Provision of Services Act (*see Chapter 3*). The second reason is to avoid the bureaucratic procedures in place when applying for a PD A1 according to Article 12. If employers can demonstrate that their activities abroad occur on a continuous basis and that the worker has a repetitive working pattern<sup>32</sup> between the Member States involved, PDs A1 are granted on a yearly basis (usually for 12 months and no less than two months) which is significantly more convenient for employers than applying for a PD A1 for every individual posting undertaking. In addition, the PD A1 issued under Article 13 is valid in all Member States.

<sup>32</sup> Article 14(5) of Regulation 987/2009 provides that a person who 'normally pursues an activity as an employed person in two or more Member States' is a person who simultaneously or in alternation exercises one or more separate activities in two or more Member States for the same undertaking or employer or for various undertakings or employers. According to the practical guide on the applicable legislation, the provision 'activities that are performed in alternation' covers situations where the activities are not carried out simultaneously over the territory of several Member States but consists in successive work assignments carried out in different Member States, one after another. To determine if the activities are carried out during successive periods, not only must the anticipated duration of periods of activity be considered, but also the nature of the employment in question. It is not relevant how often this alternation takes place but some regularity in the activity is required (Practical guide on the applicable legislation, 2013: 24).

## 2.2 Share of outgoing posted workers in national employment

In 2020, employment in Slovenia amounted to 890 555 persons.<sup>33</sup> The total number of persons posted abroad in 2020 was 60 503 persons. This means that an equivalent of 6.8% of Slovenian employment was related to the employment of workers posted abroad (*Table 7*).<sup>34</sup> For posting under Article 12 the share was 2.8% and for posting under Article 13 the share was 4.5%. In relative terms, this makes Slovenia one of the most important sending Member States (see De Wispelaere et al., 2021).

In 2019, the share of posted workers in national employment was 6.4 %. The share of posted workers in national employment posted under Article 12 was 2.7% and posted under Article 13 was 4.1%. The increase for 2020 is therefore notable across all categories.

Over the years, a notable rise in the share of posted workers in national employment working abroad was observed especially under Article 13. Since 2017, the share has increased by 2.2 percentage points and the number of workers posted under Article 13 has increased by 52% (from 19 504 in 2017 to 40 332 in 2020).

**Table 7 Share of outgoing posted workers in national employment, 2019-2020**

Year	Total persons in employment	Persons 'posted' abroad	% of all persons 'posted' abroad	% of persons posted abroad (Art. 12 BR)	% of persons 'posted' abroad (Art. 13)
2020	890 555	60 503	6.8%	2.8%	4.5%
2019	890 418	57 088	6.4%	2.7%	4.1%

Source: SiStat database and Health Insurance Institute of Slovenia, Internal report (2020, 2021)

Based on the data by sector of activity the share of persons with a PD A1 in national employment by sector of activity can also be calculated. The findings for the construction sector, which is the sector that sends the highest percentage of posted workers from Slovenia, show that the share of persons employed in the construction sector and posted abroad under Article 12 in 2019 was 29.4%. This is the highest percentage among all Member States. Luxembourg follows with 14.3% and Poland with 13.1%. (De Wispelaere et al., 2021).

## 2.3 Socio-demographic characteristics of posted workers

The Statistical Office of the Republic of Slovenia (SURSTAT) gathers information about posted workers in its database on the Economically Active Population. However, only workers employed under Article 12 of the Basic Regulation are included in these statistics, because they are separated from the other labour active population based on the different social insurance base (*see Chapter 5 on the controversy surrounding the calculation method for determining social security contributions under Article 12 of the Basic Regulation*). The data shown cover the years 2017-2020, by month. Included in the database are workers whose insurance base on the last day of the month was 002 (meaning that they were posted abroad under Article 12). We provide data for January, June and December for the respective years. We present data about the nationality, gender, marital status, education, profession and region of residency of posted workers.<sup>35</sup>

### 2.3.1 Nationality

The highest percentage of persons who were posted from Slovenia are citizens of Bosnia and Herzegovina (BiH), followed by citizens of Slovenia. In 2020, the share of PDs A1 under Article 12 granted for workers who are citizens of BiH was 45.7%, while the share of PDs A1 granted for Slovenian citizens was 24.8%. The share of BiH and Slovenian nationals posted abroad was 38% and 34%, respectively. Other workers posted abroad were mainly nationals of Serbia, Kosovo and Croatia. Compared to 2019, the number of workers from Croatia shows a small decrease and the number of workers from Kosovo has been on the

<sup>33</sup> SiStat Database: <https://pxweb.stat.si/SiStatData/pxweb/en/Data/-/0700915S.px/table/tableViewLayout2/>

<sup>34</sup> It should be noted that the sum of workers posted under Article 12 and Article 13 is higher than the total number of posted workers, because some workers may be posted under both articles in the same year.

<sup>35</sup> Some figures were provided by SURSTAT at our request and are not published or available in SiS database.

increase (SiS database). Apart from these five nationalities, which constitute the majority of posted workers (94.5%), workers of 48 other nationalities were posted from Slovenia in 2020 (5.5%). They are nationals of: Albania, Armenia, Austria, Bangladesh, Belgium, Belarus, Bulgaria, Brazil, Czech Republic, Montenegro, Egypt, Eritrea, Ethiopia, Finland, France, Greece, Georgia, Iran, Ireland, Italy, Japan, Cameroon, Canada, Kazakhstan, China, Lithuania, Latvia, Hungary, Morocco, Moldavia, Germany, Nigeria, the Netherlands, Peru, Poland, Portugal, Romania, Russia, Northern Macedonia, Syria, Slovak Republic, Spain, Sweden, Thailand, Tunisia, Turkey, Ukraine and the United Kingdom (Health Insurance Institute of Slovenia). The nationality of posted workers is discussed in more detail in *Chapter 4*.

### 2.3.2 Gender

Data show that the majority of workers posted from Slovenia under Article 12 of the Basic Regulation are male (*Table 8*).<sup>36</sup> Concerning the marital status, the trend for the analysed years (2017-2020) shows the following: around 35 to 40% of the posted workers were married, about 35 to 40% were single, and for about 15% the status was either unknown or they were living in an extramarital community.

**Table 8 Gender of workers posted from Slovenia according to Article 12 BR, 2017-2020**

Year, month		Number	Male		Female	
			Number	% share of total	Number	% share of total
2017	January	7 071	6 834	96.6%	237	3.4%
	June	7 830	7 596	97.0%	234	3.0%
	December	7 227	7 009	97.0%	218	3.0%
2018	January	8 895	8 654	97.3%	241	2.7%
	June	10 768	10 488	97.4%	280	2.6%
	December	7 645	7 376	96.5%	269	3.5%
2019	January	10 310	10 036	97.3%	274	2.7%
	June	11 344	11 085	97.7%	259	2.3%
	December	6 871	6 610	96.2%	261	3.8%
2020	January	10 932	10 666	97.6%	266	2.4%
	June	12 024	11 741	97.6%	283	2.4%
	December	7 128	6 798	95.4%	330	4.6%

Source: Statistical Office of the Republic of Slovenia

### 2.3.3 Education

Around 75% of the workers posted under Article 12 in the period from 2017-2020 have completed upper- or lower-level secondary education. About 10% have completed elementary education, and the share of workers who completed levels of tertiary education is lower than 10% of all workers posted from Slovenia under Article 12.

### 2.3.4 Profession

From 2017 to 2020, the most common professions of workers posted from Slovenia were linked to jobs associated with the construction sector (*Table 9*). These include (top ten in 2020): welders, masons, electricians, fitters and assemblers, toolmakers, builders, carpenters, installers and repairers of plumbing and gas installations, construction finishing workers, drywall installers and plasterers.

In 2020, some other professions (not linked to construction) were: foresters (44 posted workers), soldiers (35), butchers (29), university lecturers/staff (25), bakers (24), IT professionals (14) and cooks (11).

<sup>36</sup> Due to very low numbers of female posted workers - for reasons of confidentiality and data protection - the Statistical Office of the Republic of Slovenia is not able to provide the breakdown by the sector of activity for female posted workers.

**Table 9 Top ten most common professions of workers posted from Slovenia, 2017-2020**

Profession*/Year	2017	% share	2018	Share %	2019	% share	2020	% Share
<b>Welder</b>	952	12.0%	1 554	14.3%	2 111	17.4%	2 283	17.0%
<b>Mason</b>	657	8.3%	945	8.7%	1 516	12.5%	1 832	13.6%
<b>Fitter and assembler</b>	900	11.3%	943	8.7%	904	7.5%	949	7.0%
<b>Electrician</b>	665	8.4%	926	8.5%	1 072	8.8%	1 304	9.7%
<b>Builder/construction worker</b>	488	6.2%	651	6.0%	595	4.9%	778	5.8%
<b>High-rise construction worker</b>	286	3.6%	320	2.9%				
<b>Carpenter</b>	376	4.7%	494	4.5%	665	5.5%	764	5.7%
<b>Electro mechanic</b>	412	5.2%	341	3.1%	312	2.6%		
<b>Toolmaker</b>	346	4.4%	647	5.9%	715	5.9%	824	6.0%
<b>Drywall installer, plasterer</b>					307	2.5%	277	2.0%
<b>Installer and repairer of plumbing and gas installations</b>	248	3.1%	341	3.1%	414	3.4%	384	2.9%
<b>Finishing works in construction</b>							278	2.1%
<b>Others</b>	2 610	32.9%	3 724	34.2%	3 525	29.1%	3 786	28.1%

\* Standard classification of professions, SKP-08

Source: Statistical Office of the Republic of Slovenia

### 2.3.5 Region of place of residence

The Podravska region (the region bordering Austria) is the region of residency of one third of workers posted from Slovenia. The Osrednjeslovenska region (central Slovenia, including the capital of Ljubljana) is the second biggest sending region, followed by the Savinjska region. The share of posted workers with residency from the regions bordering Italy (Goriška and Obalno-Kraška) are significantly lower. Less than 5% of all posted workers have residency in these two regions (Statistical Office of the republic of Slovenia). It should be noted that workers may be employed in a company situated outside their region of residency.

### 3. Explaining the trend of posting of workers before and after the adoption of the Transnational Provision of Services Act

The Posted Workers Directive 96/71/EC and the Enforcement Directive 2014/67/EU were transposed into the Slovenian law primarily by the Employment Relationships Acts and, most importantly, by the Transnational Provision of Services Act (Kresal, 2020).<sup>37</sup> The Transnational Provision of Services Act was implemented in order to prevent abuses, primarily the existence of letterbox companies. It introduced additional conditions for employers posting to and from Slovenia. It contains stricter rules, especially as regards formalities, monitoring and sanctions. It regulates subcontracting and subsidiary liability, posting of temporary agency workers, as well as the co-operation with controlling authorities of other Member States (Ibid.).

Slovenian employers have been voicing concerns that the Act introduces too strict measures, especially with regard to the set of requirements for obtaining a PD A1, and therefore provides obstacles to the free movement of services between the Member States (Vah Jevšnik & Toplak, 2021). Zirnstein et al. (2020) have identified several challenges for employers who post workers abroad, one of them being the complexity of regulation that they must comply with, prompting many of them to hire specialised agencies or legal offices in order to ensure that they are meeting the conditions. The problem is exacerbated for small and medium size companies which usually lack knowledge and own resources. Some employers reported having to attend several seminars on the topic of obtaining a PD A1 (Ibid.: 304).

The strict provisions and high bureaucratic burden are most likely the reasons why employers started to take advantage of the possibility to post workers abroad under Article 13 of the Basic Regulation, which is not subject to the Transnational Provision of Services Act.

#### 3.1 Conditions for obtaining a PD A1 according to Article 12 BR

According to the Transnational Provision of Services Act, the PD A1 under Article 12 can only be issued if a number of conditions are met. According to Article 4, the posting undertaking may provide services abroad provided that:

1. It usually carries out an activity in the Republic of Slovenia

*The condition is deemed to be fulfilled if:*

- the employer is registered in the Slovenian business register for at least two months prior to posting workers abroad;
- the employer is to have a valid bank account that is registered in the tax register in accordance with the law governing the financial administration and is not blocked;
- the employer that employs five to ten workers is required to have at least one worker who is covered by the compulsory pension and invalidity insurance, compulsory health insurance, parental care insurance and unemployment insurance (hereinafter: compulsory social insurance) in the Republic of Slovenia for at least six consecutive months (or, if the period from the establishment is shorter, from the establishment onwards);

<sup>37</sup> Other statutes relevant for the topic of this study include the Minimum Wage Act 2010, as later amended (Zakon o minimalni plači 2010), the Collective Agreements Act 2006, as later amended (Zakon o kolektivnih pogodbah 2006), the Employment, Self-employment and Work of Foreigners Act 2015, as later amended (Zakon o zaposlovanju, samozaposlovanju in delu tujcev 2015), and the Labour and Social Courts Act 2004, as later amended (Zakon o delovnih in socialnih sodiščih 2004) (Kresal 2020: 220). The other important statute is the Pension and Disability Insurance Act (Zakon o pokojninskem in invalidskem zavarovanju, ZPIZ-2), which defines the difference of the insurance basis according to the Article under which workers are being posted abroad.

- the employer that employs more than ten workers is required to have at least three workers who are covered by compulsory social insurance in the Republic of Slovenia for at least six consecutive months (or, if the period from the establishment is shorter, from the establishment onwards);
- in the last 12 months (or from the establishment onwards) the sum of all working hours included in the calculation of social security contributions for the workers who are posted is not more than 80% of their total working hours;
- the employer declares, under criminal and material liability, that they usually carry out their activities in Slovenia.

2. It does not infringe important provisions of labour law relating to workers' rights

*The condition is deemed to be fulfilled if:*

- the employer has not been fined more than once in the past three years for infringements concerning payment of salaries, working time or undeclared employment;
- for six months prior to applying for a PD A1, the employer has been operating in total compliance with the tax legislation and does not have any outstanding tax liabilities.

3. The worker to be posted does not normally work in the host country

*The condition is deemed to be fulfilled if:*

- the worker is employed full-time and included in compulsory social security insurance schemes for at least 30 consecutive days.

4. The service is provided within the framework of the activity for which the employer is registered in the Republic of Slovenia (with the exception of posting to an affiliated company).

5. The service is provided in one of the permitted ways

*This condition is deemed to be fulfilled if:*

- the service is provided for its own account and under its own management on the basis of a contract concluded with the service user (contractor);
- the service is provided on the basis of an act of secondment to an affiliated company;
- the service is provided in the context of providing labour force to the user.

6. The worker does not already have a PDA1 issued for the same time period and the employer has not had any PD A1 revoked based on the finding of the Slovenian Labour Inspectorate that they are not usually providing services in Slovenia.

The employer applies for the PD A1 via the electronic submission system SPOT (previously e-VEM). In cases when the legislation that applies to workers needs to be determined, the submission is done via e-mail to one of the branch offices of the Health Insurance Institute of Slovenia. In addition to the general information on the worker and the posting undertaking, the employer must submit the worker's employment contract and contract with the foreign contractor on the provision of services (or deed of transfer to an affiliated company).

The SPOT system combines data from various state registers and databases and performs automatic checks. If the conditions are met, the employment contract is checked to meet the legal requirements set by Article 208 and 209 of the Employment Relationship Act. In cases of posting of third country nationals, the issuing authority also performs checks on the immigration status of the worker and may decline to issue a PD A1 in case of any irregularities.

### **3.2 The reasons for the rejection of applications**

Information on the reasons for the rejection of applications submitted via the SPOT platform has been available since 2018.<sup>38</sup> In 2020, 98 340 PDs A1 under Article 12 were issued via SPOT and only 87 manually.

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<sup>38</sup> Only rejections of applications submitted via SPOT are included in the statistics.

The statistics show that, compared to 2019, there was a 2.3% increase in the number of applications submitted.

Upon receiving the application, the issuing authority (Health Insurance Institute of Slovenia) asked the applicants to provide supporting documents in 2 404 cases (2.1%) and did not grant the document in 11 199 cases (10% rejected or discarded) (see also *Table 4 in section 2.1.1*). This is a slight decrease from 2019, when 10.4% of applications were rejected or discarded, but the percentage remains very high.

The main reason for the rejection was related to taxation (i.e., outstanding tax liabilities, failure to regularly submit tax deduction forms, no bank account or a blocked bank account). In total, 5 387 cases, or 49% of all rejected applications, were rejected based on this reason in 2020 (*Table 10*). The second most common reason was the failure to provide the required documents (i.e., employment contract and business contract with the clients). The number of PDs A1 rejected because of this reason amounted to 2 571 (23% of all rejected applications). The applications were also rejected in cases when the employer does not usually provide services in Slovenia (i.e., there are too many workers posted abroad as per total workforce, the period of inclusion in the compulsory social security insurance schemes before posting is too short, the number of workers employed for a certain period of time before posting is too small). The number of rejections on this basis was 1 981 (18%). The reasons for rejection were procedural as well, i.e., the PD A1 was already issued for the stated period, the application was not amended in time upon request; and labour law-related (i.e., fines issued for violations and failure to comply with the regulations). In the case of the former, the number of rejections was 746 (7%) and in the case of latter, the number of rejections was 219 (2%). The final reason for rejection has to do primarily with irregularities concerning the posting of third country nationals, such as an unresolved migration status (59 cases, 1%). The total number of ‘irregularities’ amounted to 10 963, but it should be noted that this number is a sum of all noted ‘irregularities’ and there may be several reasons identified in each individual application. The number of rejections in 2019 was 11 271 (*Table 10*).

**Table 10 Reasons for rejection of PDs A1 issued according to Article 12 BR, 2018 – 2020**

Reasons	2018		2019		2020	
	<i>Number of cases</i>	<i>% share of total</i>	<i>Number of cases</i>	<i>% share of total</i>	<i>Number of cases</i>	<i>% share of total</i>
<b>Tax-related (e.g., outstanding tax liabilities, no/blocked bank account)</b>	6 435	36.8%	4 983	44.2%	5 387	49%
<b>Failure to submit required supplements (employment/business contracts not provided)</b>	6 319	36.2%	2 660	23.6%	2 571	23%
<b>Procedural (e.g., PD A1 already issued, application not corrected upon request)</b>	2 322	13.3%	2 622	23.2%	1 981	18%
<b>Services not usually provided in Slovenia (e.g., too many workers posted abroad as per total workforce, the period of inclusion in the compulsory social security insurance schemes before posting is too short, etc.)</b>	2 123	12.2%	729	6.5%	746	7%
<b>Labour law violations</b>	188	1.1%	203	1.8%	219	2%
<b>Irregular posting of third country nationals</b>	82	0.5%	74	0.7%	59	1%
<b>Total</b>	<b>17 469</b>		<b>11 271</b>		<b>10 963</b>	

The Ministry of Labour did not yet conduct any comprehensive, in-depth evaluation of the effects of the Act. Their opinion is, however, that it has achieved its main purpose, which is a decrease in the number of letterbox companies and violations of workers’ rights (Interview with a Ministry representative, 9.3.2021). Another effect of the new law was a reduction in tax debt of companies that are posting workers abroad. According to the Financial Administration, the tax debt of those companies has decreased noticeably after

the adoption of the Act. The tax debt amounted to € 17 055 886 in 2017 and dropped to € 7 566 456 in 2019 (e-mail correspondence with the Financial administration, 7.6.2021).

However, many employers complain that the rules are too stringent and that the additional checks and bureaucratic burden are making posting very complicated (Vah Jevšnik & Toplak, 2021). In addition, Zirnstein et al. (2020) point out that some provisions are too rigorous. For instance, a PD A1 may not be issued to employers with only minor infringements, such as a few days of delay in the payment of the annual leave allowance, or a few days' delay in the payment of tax. Banning them from posting might be a disproportionate measure (i.e., the consequence of infringement is not proportionate to the gravity of the infringement) (Ibid.: 41).

### **3.3 Did the extent of posting from Slovenia decrease following the adoption of the Transnational Provision of Services Act?**

While the overall number of issued PDs A1 under Article 12 sharply decreased following the adoption of the Transnational Provision of Services Act, this does not necessarily mean that the extent of posting also decreased. According to the Chamber of Commerce and Industry, the biggest employers' association in Slovenia, many employers used the possibility to send workers abroad under Article 13, which is not regulated by the Act, and allows to obtain the PD A1 for the duration of one year and is valid in all Member States (e-mail correspondence, 19.4.2021).

If employers can prove that their 'posting' covers services on a continuous basis (worker is sent abroad on successive work assignments), e.g., they are providing transport services, installation/assembling or servicing, they are issued a PD A1 for the duration of one year without having to meet the demands set in the Act. As a result, 'posting' under Article 13 has seen a tremendous increase (*see Chapter 2*). Although posting under Article 12 is cheaper for the employer because the basis for the calculation of social security contributions is the comparable salary in Slovenia and not the actual amount earned abroad, this fact alone did not seem to discourage the employers from applying for PDs A1 under Article 13.

To determine whether or not posting in total (under Articles 12 and 13) has decreased, the statistics on the number of issued PDs A1 are not sufficient. An indicator that could be helpful in this respect is the export of services to other Member States. According to the statistics provided by the National Bank of Slovenia, the export of services to the EU has not decreased following the adoption of the Act and the subsequent sharp decrease in the issued PDs A1. It has in fact increased: an increase was noted from 2018 to 2019 (18%, € 746 million).

Posting undertakings' contribution to the GDP has also been rising continuously. In 2019, the share was 8.3%, during the pandemic year 2020 it increased by 0.1% to 8.4% and it is estimated that the share will be 8.7% in 2021 (e-mail correspondence with the legal department of The Chamber of Commerce and Industry).

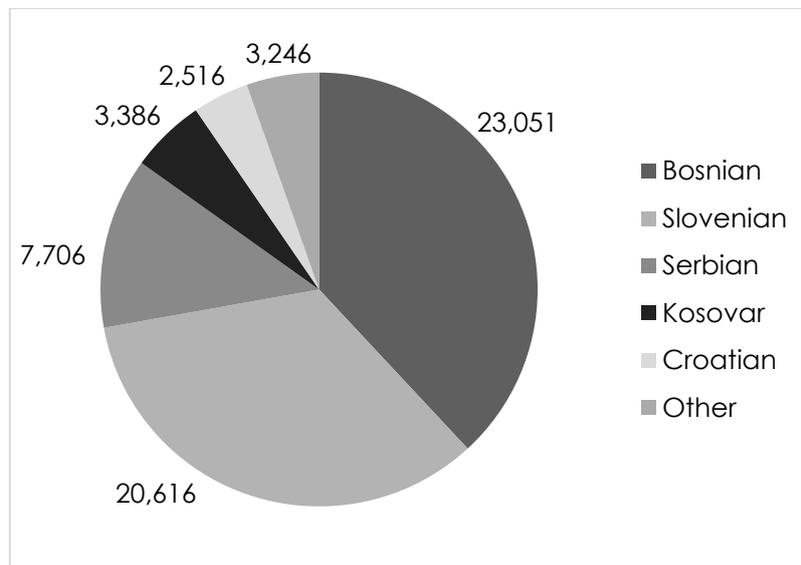
## 4. Posting of third country nationals from Slovenia

### 4.1 General overview

Posting of third country nationals (TCNs) from Slovenia is a persistent trend (Danaj et al., 2020).<sup>39</sup> In 2020, the share of third country nationals posted abroad under Article 12 or Article 13 amounted to almost 60% of the total number of workers posted from Slovenia. Workers from third countries are mostly nationals of the Western Balkan countries, i.e., Bosnia and Herzegovina (BiH), Serbia, and Kosovo. These countries share a strong historical link and are in relatively close geographical proximity to Slovenia.

In 2020, the highest number and share of workers posted from Slovenia were nationals of BiH (23 051; 38%), followed by nationals of Slovenia (20 616; 34%), Serbia (7 706; 12.7%), Kosovo (3 386; 5.6%) and Croatia (2 516; 4.2%) (Figure 4).

**Figure 4** Share of persons posted from Slovenia by nationality, 2020



Source: Health Insurance Institute of Slovenia

Compared to 2019, the number of posted workers who are nationals of BiH increased by 22% in 2020, from 18 925 in 2019 to 23 051 in 2020. In comparison, the number of Slovenian posted workers decreased by 8%, from 22 473 in 2019 to 20 616 in 2020. The biggest increase was noted in the number of posted workers who are Kosovar nationals (40%), although the absolute number remains low (Table 11).

<sup>39</sup> Employment and work of third country nationals is regulated in the Employment, Self-employment and Work of Foreigners Act. It determines the terms and conditions for employment, self-employment and work of foreigners and the related tasks of the state for the regulation and protection of the domestic labour market.

**Table 11 Number of persons 'posted' from Slovenia, by nationality, 2019-2020**

Nationality	2020		2019		Change 2020 vs. 2019	
	Number	% share of total	Number	% share of total	Number	%
<b>BiH</b>	23 051	38.0%	18 925	33.2%	4 126	21.8%
<b>Slovenian</b>	20 616	34.0%	22 473	39.4%	-1 857	-8.3%
<b>Serbian</b>	7 706	12.7%	7 670	13.4%	36	0.5%
<b>Kosovar</b>	3 368	5.6%	2 404	4.2%	964	40%
<b>Croatian</b>	2 516	4.2%	2 309	4.0%	207	9%
<b>Other</b>	3 246	5.4%	3 307	5.8%	-61	-1.8%
<b>Total</b>	60 503	100%	57 088	100%	3 415	6%

Source: Health Insurance Institute of Slovenia

In 2020, the number of Slovenian nationals who were posted abroad under Article 12 amounted to 5 828 persons and they were issued 24 401 PDs A1 (*Table 12*). Under Article 13, the number of Slovenian nationals who were posted abroad was 15 311 and they were issued 16 157 PDs A1.

The number of BiH nationals posted from Slovenia under Article 12, however, has been significantly higher: 11 024 BiH nationals were posted from Slovenia (5 196 more than Slovenian nationals), and they were issued 44 910 PDs A1. The number of BiH nationals posted abroad under Article 13 amounted to 14 881 persons and 22 252 PDs A1 were issued to this group of persons (via SPOT).

**Table 12 Number of persons 'posted' from Slovenia by nationality, according to Article 12 BR and Article 13 BR, 2020**

Article/Country	PDs A1 issued		Persons	
	Number	% share of total	Number	% share of total
<b>Article 12</b>	<b>98 253</b>	<b>100%</b>	<b>24 672</b>	<b>100%</b>
<i>Bosnia and Herzegovina</i>	44 910	45.7%	11 024	44.7%
<i>Slovenia</i>	24 401	24.8%	5 828	23.6%
<i>Serbia</i>	9 668	9.8%	2 043	8.3%
<i>Croatia</i>	7 567	7.7%	1 408	5.7%
<i>Kosovo</i>	5 440	5.5%	2 403	9.8%
<i>Other</i>	6 267	6.5%	1 966	8.0%
<b>Article 13</b>	<b>50 868</b>	<b>100%</b>	<b>40 332</b>	<b>100%</b>
<i>Bosnia and Herzegovina</i>	22 252	43.7%	14 881	36.9%
<i>Slovenia</i>	16 157	31.7%	15 311	38.0%
<i>Serbia</i>	7 539	14.8%	6 156	15.3%
<i>Kosovo</i>	1 688	3.3%	1 271	3.2%
<i>Croatia</i>	1 492	2.9%	1 244	3.1%
<i>Other</i>	1 740	3.4%	1 469	3.6%

Source: Health Insurance Institute of Slovenia, own calculations

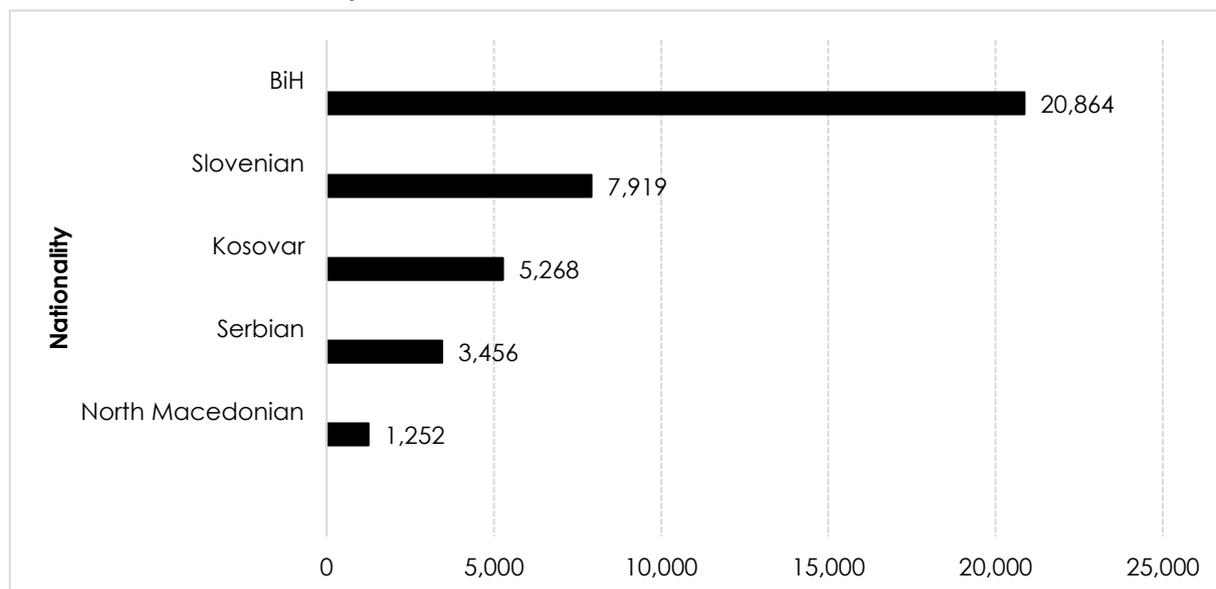
#### 4.2 Posting of third country nationals in the construction sector

Data on the posting of workers in the construction sector show that 42 392 PDs A1 were issued under Article 12 of the Basic Regulation in 2020. Most PDs A1 (20 864) were issued to nationals of Bosnia and Herzegovina (BiH) (*Figure 5*). The number of PDs A1 issued to Slovenian nationals amounted to 7 919 forms.

The share of PDs A1 issued to nationals of BiH and Slovenia amounted to 49% and 19%, respectively. PDs A1 were also issued to Kosovars (12.4%), Serbs (8.2%) and North Macedonians (3%). Other TCNs

who were posted abroad from Slovenia include nationals of Albania, Belarus, Montenegro, Iran, Kazakhstan, Moldavia, Russian Federation and Ukraine.

**Figure 5 Share of PDs A1 issued according to Article 12 BR in the construction sector to Slovenian and third country nationals, 2020**



Source: Health Insurance Institute of Slovenia

In 2020, the share of Slovenian nationals employed in the Slovenian construction sector was 60% and the share of 'foreigners' (mainly citizens of Bosnia and Herzegovina) was 40% (SiStat). This shows that, compared to Slovenian nationals, a much higher share of BiH nationals employed in the Slovenian construction sector were issued a PD A1 in 2020.

### 4.3 Bilateral agreements relating to the employment of workers from Bosnia and Herzegovina and Serbia

Recruitment and employment of workers from Bosnia and Herzegovina and Serbia is facilitated by bilateral agreements on labour migration (Smolnikar & Marinček, 2021). The Agreement between the Government of the Republic of Slovenia and the Council of Ministers of Bosnia and Herzegovina on the employment of citizens of Bosnia and Herzegovina in the Republic of Slovenia was ratified in 2012<sup>40</sup> and the Agreement between the Government of the Republic of Slovenia and the Government Republic of Serbia on the Employment of Citizens of the Republic of Serbia in the Republic of Slovenia<sup>41</sup> was ratified in 2019.

The agreement with Bosnia and Herzegovina defines the conditions and the procedure for employment of citizens of Bosnia and Herzegovina and the conditions and procedures for the issue of a permit that enables the employment of workers from Bosnia and Herzegovina in Slovenia. In accordance with the agreement, new employment of workers from Bosnia and Herzegovina is possible only with prior cooperation of employment services of Bosnia and Herzegovina and Slovenia. These employment services choose suitable candidates on the basis of a previously filed need for workers and forward them to the employer for the final selection or checks, if the names of the candidates are already known, if the candidates meet the necessary conditions and are ready to take up the offered employment. The exceptions refer to those workers who have already been legally employed in Slovenia on the day of the enforcement of the agreement and/or have legal residence in the country, in the cases of seasonal employment, employment of managers, employment or volunteer work in the field of medicine, those who reside in Slovenia on the basis

40 <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6526>

41 <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7993>

of family reunification and on the basis of a law regulating international protection, those who have been granted researcher status in Slovenia, to individuals who register a company or register as entrepreneurs, who can gain a personal work permit on the basis of education acquired in Slovenia and those to whom the Blue Card Directive applies. The procedure is initiated on the initiative of the employer, who files a job application with the Employment Service of Slovenia. If the candidate is already known, the employer can file the application for work permit with data about foreign workers. The length of the job contract must be at least one year.

In the next stage, the Employment Service of Slovenia checks if there are suitable local candidates in the register of the unemployed and whether other conditions for the employment of foreigners are met. Furthermore, the Employment Service checks with the Financial Administration of the Republic of Slovenia if tax obligations have been paid and calls the employer to provide possible missing information. If all these conditions are met, the Employment Service of Slovenia prepares a document with data on the employer and the free job posting and forwards it to the Labour and Employment Agency of Bosnia and Herzegovina which then initiates the procedure of selection described above. The whole procedure should take fifteen days at the maximum. The worker should be employed with the same employer for at least a year, otherwise the work permit will be annulled, except for cases of extraordinary termination of the work contract and in cases when the worker receives unemployment benefits. After a year, the worker has free access to the labour market in Slovenia. The validity of the work permit is three years, after which the permit can be extended for a further three years if the worker meets the specified criteria. The issued work permit is considered as an agreement to the single permit for residence and work issued by the administrative unit (Zavod za zaposlovanje Republike Slovenije, Zaposlovanje državljanov BiH).

For workers from Serbia, the procedure is identical, the Employment Service of Slovenia cooperates with the National Employment Service of the Republic of Serbia (Zavod za zaposlovanje Republike Slovenije, Zaposlovanje državljanov Srbije).

The rise in the number of posted workers who are nationals of Bosnia and Herzegovina is in correlation with the rise in the issued work permits for nationals of Bosnia and Herzegovina (Interview with the representative of the Ministry of Labour, Family, Social Affairs and Equal Opportunities, 9.3.2021).

Overall, the number of valid work permits issued by the Employment Service of Slovenia on the basis of a bilateral agreement with Bosnia and Herzegovina has been increasing continuously. The number more than doubled in the period from 2017 to 2020 (from 15 418 to 36 383) (Table 13).

**Table 13 Total valid work permits and valid work permits issued on the basis of the bilateral agreement with Bosnia and Herzegovina, 2017-2020**

Year	2017	2018	2019	2020
<b>Total valid (on 31/12)</b>	19 838	27 881	36 620	38 444
<b>Valid for BiH nationals (on 31/12)</b>	15 418	27 828	36 154	36 383
<b>% share of total</b>	77.8%	99.8%	98.7%	94.6%

Source: Employment Service of Slovenia, Employment of foreigners

By comparing the number of persons with a PD A1 to the number of persons of working age by nationality, an estimate can be made of the percentage of TCNs residing in Slovenia that was posted to another Member State. It is estimated that one out of three TCNs of working age and living in Slovenia was posted to another Member State in 2020 (Table 14). For example, more than half of Serbs of working age and living in Slovenia were employed as a posted worker in another Member State. These figures contrast with only 2% of Slovenians of working age who were posted to another Member State.

The share of employed TCNs that was posted to another Member State is even higher. It is estimated that over 40% of all TCNs employed in Slovenia was posted to another Member State in 2020 (SiStat database).

**Table 14 Share of outgoing posted workers as share in total number of persons of working age, by citizenship, 2020**

Citizenship	Persons of working age (A)	Persons with a PD A1 (B)	Share in total (B/A)
<b>Slovenia</b>	1 226 179	20 616	2%
<b>Non-EU country</b>	112 793	35 697	32%
<b>Bosnia and Herzegovina</b>	62 065	23 051	37%
<b>Serbia</b>	14 454	7 706	53%
<b>Kosovo</b>	14 951	3 368	23%

Source: Health Insurance Institute of Slovenia and Eurostat [migr\_pop1ctz]

## 5. The controversy regarding the calculation method for determining social security contributions under Article 12 of Regulation (EC) No 883/2004

### 5.1 What is it all about?

According to the Pension and Disability Insurance Act (ZPIZ-2, Article 144, paragraph 4)<sup>42</sup> social security contributions for workers posted under Article 12 of the Basic Regulation are not to be calculated based on the actual wage earned but based on the wage they would have earned in Slovenia for comparable work.<sup>43</sup>

Upon the issuance of a PD A1, the Health Insurance Institute of Slovenia deregisters the insurance of the posted worker under the existing insurance basis (001) and registers it under the insurance basis 002 (applicable to persons employed by an employer based in the Republic of Slovenia and sent to work or professional training abroad). The change of the insurance basis is reflected in the change of the basis for calculating social security contributions. At the end of the posting assignment, the employer must again file for deregistration of the insurance basis 002 and file for a registration of the insurance basis 001 (the one in place before being posted) (Zirnstein et al., 2021).

The issue raises doubts as to whether this legal provision violates the EU legal order by enabling Slovenian companies that post workers abroad to pay social insurance contributions at a reduced rate (Kresal, 2020). Slovenian courts addressed this issue six times<sup>44</sup> but always ruled that the actual wage paid to the posted worker is not to be taken into account as the law clearly stipulates that the contributions need to be calculated on the basis of the wage that would have been paid for comparable work in Slovenia. This further means that the old-age pension base is to be calculated on the basis of the same, lower amount of a comparable wage (Kresal, 2020: 230).

In one of these judgments, the Higher Labour and Social Court (No. Psp 51/2014) gave an elaborate explanation for such a decision, also putting it in a broader social context (Kresal, 2020: 230). The Court emphasised that this question of how the periods of posting of a worker abroad should be taken into account within the pension insurance system has always been problematic and, therefore, it has been and still is a subject of special rules in Acts regulating pension insurance. The wages of posted workers were usually higher than those of comparable workers performing the same/similar jobs in Slovenia. The Court explicitly mentioned some of the reasons: the fact that posted workers were entitled to different supplements due to separate family life; higher living costs in a host country; arduous working conditions; or the fact that the minimum rates of pay in a host country agreed upon by social partners in collective agreements are usually set at the higher level than those applicable in Slovenia, and so on. The Court further explained that over the years the legal solution has been developed, according to which not the actual wage paid to the posted worker was relevant, but the amount out of which social contributions have been paid. This amount was determined administratively in such a way that it was comparable to wages that workers performing the same/similar jobs have received for the work done in Slovenia in the same period. Therefore, it is not the actual wage paid to the posted worker, but a 'comparable wage' paid for the same/similar work in Slovenia that has to be taken into account when calculating the old-age pension.

This issue has been brought to the attention of the European Commission by the European Federation of Building and Woodworkers (EFBWW), which had submitted a formal complaint against Slovenia, alleging that it is granting illegal state aid to companies that post workers abroad. The complaint states that reduced social insurance contributions allow for significant financial competitive advantage for Slovenian

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42 Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-2)

43 The wage taken into account might be much lower. For example, the minimum monthly wage in Germany is € 1 544 and in Slovenia 'only' € 941.

44 Higher Labour and Social Court, Nos. Psp 42/2016, Psp 51/2014, Psp 102/2010 and Psp 539/2007 and Supreme Court, Nos. VIII Ips 134/2008 and VIII Ips 136/2014 (see Kresal, 2020).

companies as they can lower their labour costs, which ultimately leads to the disruption of the internal labour market (EFBWW, 2019).

Further controversy was created by the decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities of the Republic of Slovenia stating that Article 144 only applies to workers who are posted under Article 12 of the Basic Regulation and are therefore subject to the Transnational Provision of Services Act. This means that workers who are posted according to Article 13 of the Basic Regulation are exempt from this legal provision and their social security contributions are to be calculated on the basis of the actual wage earned while working abroad.

Since the number of postings under Article 13 has been on a tremendous rise since 2017 and the confusion among employers on how to calculate the wages in individual cases has begun to grow, the Chamber of Commerce and Industry started to repeatedly protest against this division. Their argument is that Article 144 clearly states that all workers who are posted abroad by Slovenian companies to provide services within the EU are to receive social security contributions according to the comparable wage in Slovenia. Therefore, they strongly object to the interpretation of the law by the respective Ministry and evaluate it as discriminative as it applies different rules to the same category of workers.<sup>45</sup> They urge the Ministry to make the decision that all posted workers are to receive social security contributions according to the so-called insurance base 002 (calculated based on a comparable wage in Slovenia) and not the insurance base 001 (calculated based on the actual wage) (The Chamber of Commerce and Industry, 2018). The opposing opinion of the trade unions, however, is that all persons who are employed in Slovenia should have their social security contributions calculated based on the amount of their salaries, regardless of whether they earned it while working in Slovenia or abroad.

## 5.2 Estimated financial impact of this policy

Table 15 estimates the financial impact of this policy.<sup>46</sup> Based on data on the number of PDs A1 issued under Article 12, the posting period, and the wages of the posted workers, such an estimate can be made. First, a calculation is made based on the minimum wage<sup>47</sup> that the posted worker should receive in the host Member State.<sup>48</sup> It is estimated that the total wage bill for outgoing posted workers amounted to around € 312 million 2020. Social security contributions are levied on this amount, resulting in an estimated amount of € 119 million to be paid by Slovenian posting undertakings. This amount represents approximately 1.5% of total social security contributions received by the Slovenian state.<sup>49</sup> Due to the current policy, the total wage bill taken into account for posted workers and thus the social contributions to be paid will be much lower. Indeed, if the Slovenian minimum wage is taken into account, the total wage bill amounts to only € 184 million (estimate). Consequently, the current policy exempts an amount of € 128 million from social security contributions (estimate).<sup>50</sup> This means that the Slovenian state receives roughly € 49 million less social contributions compared to when the wage of the host country wage is taken into account (estimate). An amount that Slovenian posting undertakings do not have to pay, thus creating an (additional) competitive advantage.

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45 The definition and status of posted workers is defined in Article 14, Paragraph 3 of ZPIZ-2. The article states that posted workers are workers who are: employed by a company registered in Slovenia, posted abroad to provide services, and who are not entitled to receive social security contributions according to the regulations of the sending country.

46 It should be noted that this policy only has an impact on postings to Member States that have a higher (minimum) wage than in Slovenia.

47 Under the amended Posting of Workers Directive, a 'remuneration' has to be paid. However, it sometimes appears that a wage below the minimum wage is paid.

48 However, the Posting of Workers Directive states that whenever the working conditions applicable to the worker in accordance with the rules of the sending Member State are more favourable than would result from the application of the host Member State rules, these are applied instead. The minimum wage in Slovenia is higher than the minimum wage in Bulgaria, Czech Republic, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania and Slovakia. Consequently, workers posted to these Member States receive the higher Slovenian minimum wage.

49 In total, € 7.7 billion social security contributions were paid in 2019 (most recent data) (Eurostat – ESSPROS).

50 € 312 million minus € 184 million equals € 128 million.

**Table 15 Estimated financial impact of the current calculation method for determining social security contributions under Article 12 of Regulation (EC) No 883/2004, 2020**

	PDs A1 issued under Art. 12 (A)	Average duration (days) (B)	Monthly minimum wages (in €) (C)	First decile monthly earnings (in €) (D)	Total wages			Social security contributions		Sum H+I
					Wage at the level of the host country* E=A*B*(C or D)	At the level of the Slovenian wage (minimum wage € 941) F=A*B*€ 941	Difference G=E-F	Employer social security contributions H=(G*16.1%)	Employee social security contributions I=(G*22.1%)	
Belgium	7 435	95	1 626		38 276 223	22 155 061	16 121 162	2 595 507	3 562 777	6 158 284
Bulgaria	23	159	312		114 708	114 708				
Czech Republic	401	35	546		440 231	440 231				
Denmark	143	43		3 107	636 831	192 874	443 958	71 477	98 115	169 592
Germany	61 139	56	1 544		176 210 750	107 392 691	68 818 058	11 079 707	15 208 791	26 288 498
Estonia	14	38	584		16 687	16 687				
Ireland	33	42	1 707		78 859	43 474	35 385	5 697	7 820	13 517
Greece	88	16	758		44 164	44 164				
Spain	514	43	1 108		816 544	693 266	123 278	19 848	27 244	47 092
France	1 993	47	1 539		4 806 634	2 938 147	1 868 487	300 826	412 936	713 762
Croatia	3 574	70	546		7 847 313	7 847 313				
Italy	2 422	72		1 611	9 364 421	5 469 845	3 894 576	627 027	860 701	1 487 728
Cyprus	6	70		886	13 174	13 174				
Latvia	28	58	430		50 939	50 939				
Lithuania	13	14	607		5 709	5 709				
Luxembourg	542	57	2 142		2 205 821	969 042	1 236 780	199 121	273 328	472 450
Hungary	270	39	452		330 291	330 291				
Malta	15	60	777		28 230	28 230				
Netherlands	3 218	47	1 680		8 469 776	4 744 083	3 725 693	599 837	823 378	1 423 215
Austria	13 451	62		1 852	51 483 254	26 158 608	25 324 646	4 077 268	5 596 747	9 674 015
Poland	353	30	583		332 173	332 173				
Portugal	9	117	741		33 029	33 029				
Romania	155	13	461		63 204	63 204				
Slovenia										
Slovak Republic	379	63	580		748 942	748 942				
Finland	238	71		2 381	1 341 138	530 034	811 104	130 588	179 254	309 842
Sweden	645	49		2 665	2 807 578	991 344	1 816 234	292 414	401 388	693 801
United Kingdom	361	32	1 583		609 680	362 348	247 332	39 820	54 660	94 481
Iceland	21	14		2 963	29 037	9 222	19 816	3 190	4 379	7 570
Liechtenstein										
Norway	62	53		3 214	352 040	103 071	248 969	40 084	55 022	95 106
Switzerland	753	50		3 516	4 412 580	1 180 955	3 231 625	520 292	714 189	1 234 481
<b>Total</b>					<b>311 969 959</b>	<b>184 002 858</b>	<b>127 967 102</b>	<b>20 602 703</b>	<b>28 280 729</b>	<b>48 883 433</b>

\* However, the Posting of Workers Directive States that whenever the working conditions applicable to the worker in accordance with the rules of the sending Member State are more favourable than would result from the application of the host Member State rules, these are applied instead. The minimum wage in Slovenia is higher than the minimum wage in Bulgaria, Czech Republic, Croatia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Portugal, Romania and Slovakia. Consequently, workers posted to these countries receive the higher Slovenian minimum wage. If there is no minimum wage, first decile monthly earnings have been taken into account.

Source: Calculations from Frederic De Wispelaere (HIVA-KU Leuven) based on data from the Health Insurance Institute of Slovenia and Eurostat

## 6. Infringements related to the posting of workers from (and to) Slovenia

The Labour Inspectorate of the Republic of Slovenia is part of the Senior Labour Inspectors Committee (SLIC) and occasionally also cooperates with the International Labour Organisation (ILO) and the International Association of Labour Inspection (IALI). The inspectorate has also established cooperation with competent bodies through the Internal Market Information System (IMI), a web-based application that enables quick and simple communication between national, regional and local authorities throughout the EU. For the needs of the Labour Inspectorate, the IMI system was set up for the purpose of administrative cooperation in the area of posted work so that employment conditions of workers posted to Slovenia can be checked. Furthermore, the aim of the IMI system is to obtain relevant information from employers that post workers to other Member States. The number of IMI claims dealt with within the Labour Inspectorate amounted to 293 cases in 2017 (*Table 16*), of which the inspectorate issued seven claims (in five cases, the labour inspectorate asked foreign authorities for data, in two cases, they asked for documents to be delivered to employers in cases where these could not be delivered according to the posting country of origin legislation) and the other 286 claims were made by competent authorities in other countries. Many of the claims the inspectorate dealt with were incomplete or were not within their competencies (Labour Inspectorate of the Republic of Slovenia, 2017).

In 2018, the number of IMI cases rose to 603, of which 11 cases involved asking for information on part of the Labour Inspectorate of the Republic of Slovenia, and in 592 cases competent authorities from other Member States turned to the inspectorate for information (in 25 cases, they asked for information, and the remaining 567 were claims for the issue of documents – among these, 211 claims were made for the issue of administrative decisions and 356 for the issue of other documents).

In 2019, there were 587 new claims within the IMI system, of which the Labour Inspectorate issued two requests for information. The competent authorities turned to the inspectorate in 585 cases, of which 60 cases involved asking for more information and 525 cases pertained to the issue of documents (190 to the issue of administrative decisions, and 335 for other documents).

In 2020, like in 2019, the Labour inspectorate was involved in 587 IMI cases, of which six involved the inspectorate asking for more information, while the other cases involved competent authorities from other countries – asking for more information in 56 cases and in 525 cases making claims to issue documents (Labour Inspectorate of the Republic of Slovenia, 2020).

**Table 16** Number of IMI cases issued and received by Slovenia, 2017-2020

Year	Number of IMI cases	Claims made by the Labour Inspectorate in Slovenia	Claims made by foreign competent authorities
2017	293	7	286
2018	603	11	592
2019	587	2	585
2020	587	6	581

Source: Labour Inspectorate of the Republic of Slovenia, yearly reports (2017, 2018, 2019 and 2020)

Drawing on yearly reports of the labour inspectorate from 2017 to 2020 (Labour Inspectorate of the Republic of Slovenia, 2017, 2018, 2019 and 2020), the different types of infringements most often registered by the labour inspectors can be analysed.

In 2020, ‘only’ 40 violations of the Employment, Self-Employment and Work of Foreigners Act<sup>51</sup> were detected (*Table 17*).

**Table 17 Number of violations of the Employment, Self-Employment and Work of Foreigners Act, 2017 - 2020**

Year	2017	2018	2019	2020
Number of violations	45	29	49	40

Source: Labour Inspectorate of the Republic of Slovenia, yearly reports (2017, 2018, 2019 and 2020)

In 2017, three violations of the first paragraph of Article 35 of the Act that pertained to the employer performing services with workers that were not employed in their company or performed services despite the fact that the prohibition of work of foreigners was in place. In addition, eight violations of the third paragraph of Article 45 of the Act, pertaining to the storage of documentation at the place where services are performed during the posting of workers to Slovenia, were recorded in 2017, only one in 2018 and none are mentioned in the 2019 and 2020 report.<sup>52</sup> One violation of the fifth paragraph of the Article 36 of the Act that referred to the provision that foreign employers can perform services with posted workers on the territory of Slovenia, linked to the supply of goods and servicing in the interrupted period of fourteen days and in the total duration of 90 days in the calendar year was recorded in 2017. One violation of the second paragraph of Article 37 of the Act that deals with the short-term work of representatives that determines that the foreigner is to report the beginning of work with the employment service before the representative begins to work, was reported in 2017.

The violations in the area of posted work also refer to the provisions of the Employment Relationships Act (Article 210) that deals with the employment of a posted worker. Violations of the provision that the employer must guarantee posted workers’ rights according to the regulations of the Republic of Slovenia and the collective agreements at the level of specific sectors that specify their working time, rest time and breaks, night work, minimal annual leave, wage, safety and health at work, special protection of workers and the guarantee of equality, if these are more favourable to the worker were noted as well. In 2017, three of such violations were registered, no violations in this area were registered in 2018, one was registered in 2019 and two in 2020.

The number of violations of Article 208 and 209 of the Employment Relationships Act that ensure the rights of workers posted from Slovenia to other countries was much higher than the number of violations in cases of workers posted to Slovenia. For example, there were 156 such violations in 2017 (*Table 18*). In 2018, 73 violations were registered of the Article 209 of the Act that stipulates the necessary parts of employment contracts for workers posted abroad<sup>53</sup>. In 2019, a higher number of 199 violations of Article 209 of the Act were registered, with the number again decreasing to 73 in 2020.

**Table 18 Number of violations of Article 209 of the Employment Relationships Act, 2017-2020**

Year	2017	2018	2019	2020
Number of violations	156 for Article 208 and 209*	73	199	73

\* In 2017, data are not available for Article 209 separately.

Source: Labour Inspectorate of the Republic of Slovenia, yearly reports (2017, 2018, 2019 and 2020)

In 2018, the labour inspectorate also began to control the implementation of the Transnational Provision of Services Act, which came into force in 2018. The inspectorate noted 20 violations pertaining to this act

51 In the report, we only focus on violations that specifically involve posted workers. However, since the yearly reports of the Labour Inspectorate are not specifically designed in a way which would enable comparison across time (changes in legislation and structure of the yearly reports, omitted issues), some issues are presented only descriptively.

52 The annual reports are not always structured in a similar way, so sometimes it is impossible to discern whether there were no violations in this area or whether they were not described in more detail in the individual annual reports.

53 The contract must include the provisions on the duration of the work abroad, holidays and work-free days, minimal annual leave, the wage and the currency in which the wage is to be paid, supplementary health insurance for services abroad, other income in cash or in kind to which the worker is entitled during work abroad, the means of guaranteeing and implementing rights related to pay for work and other income that are guaranteed in a different manner than in Slovenia and the conditions of return to Slovenia.

(Table 19), but the inspectorate finds that the number of violations in this area is no higher than other violations in the area of employment relations. However, increased needs in the area of administrative cooperation were noted (Labour Inspectorate of the Republic of Slovenia, 2018), especially in the area of issuing documents. The issue of letterbox companies and the fact that legal representatives of companies have neither temporary nor permanent residence in Slovenia were described in the yearly report as well. They also find that legal representatives of companies are often from third countries, and these are often changed, which further complicated the issue of documents and the recovery of financial fines. Two violations of the first paragraph of the Article 4 of the Act that pertain to conditions under which a Slovenian employer can perform cross-border services were registered in 2018, seven such violations were made by foreign employers in Slovenia. Among the recorded violations there were also three violations of the first paragraph of Article 14 of the Act which states that a foreign employer must register the provision of services with the Employment Service of Slovenia, and eight violations of the third paragraph of Article 14 of the Act which stipulates that a foreign employer must guarantee that in the time of cross border provision of services, relevant documentation must be stored and made available upon request of the competent authority. In 2019, the number of registered violations applying to the Transnational Provision of Services Act was 20, 11 referring to posting under Article 12, while other violations were related to the fact that a foreign employer did not register with the Employment Service of Slovenia before the beginning of the cross-border provision of services or did not store or make available the necessary documentation upon request of the competent authority. The report for the year 2019 also notes that some foreign employers only perform services in Slovenia for a day or two, which makes it difficult to control violations and makes cooperation between relevant control authorities of even greater importance.

In 2019, two more focused actions were performed by the labour inspectorate. One focussed on the control of the legislation on the rights of posted workers in the sector of metal and metal products production. Within this action, inspectors performed 82 inspection controls in 64 legal entities and recorded 12 violations of the legislation and nine measures were taken. Ten violations pertained to the Employment Relationships Act, mostly in the area of conditions to enter into a work contract, and there was one violation of the Labour and Social Security Registers Act. The second action focussed on the implementation of the Transnational Provision of Services Act, where 20 inspections within 16 legal entities were performed, and one fine, related to Article 12/2 of the Act, was imposed (the availability of the PD A1).

In 2020, inspections on the implementation of the Transnational Provision of Services Act were also performed, but in a limited scope. In the area of labour relations 17 inspections were carried out and 11 in the area of health and safety at work. A total of 13 violations of the Transnational Provision of Services Act were detected. In nine cases, Article 12 of the Act was violated, of which six cases involved the employer not being in possession of the valid A1 form for the posted worker. Four violations of the Article 14 pertaining to the obligations of the foreign employer to either perform an application with the Employment Service of the Republic of Slovenia and/or to store and make available to the inspectorate the requested documentation were detected, and two violations of Article 210 of the Employment Relationships Act relating to the position of foreign posted workers were recorded. Regarding health and safety at work, ten violations were detected in 2020 (Labour Inspectorate of the Republic of Slovenia, 2020).

**Table 19 Number of violations of the Transnational Provision of Services Act, 2018-2020**

Year	2018	2019	2020
Number of violations	20	12	13

Source: Labour Inspectorate of the Republic of Slovenia, yearly reports (2017, 2018, 2019 and 2020)

During the international project Fair Working Conditions (2019-2020) aiming to set up a transnational advisory network for posted workers, the Slovenian partner in the project, the Association of Free Trade Unions, the biggest trade union in Slovenia, kept a documentation of counselling cases (Association of Free Trade Unions, internal document). Although not all cases necessarily involved posted workers, most did,

and the numbers give a fair indication of some issues in the area of posting from/to Slovenia. In 2019, a total number of 182 cases were recorded, and in 2020 this number rose to 356, with some cases involving counselling more than one person (up to the maximum of 20 people per case). The total number of counselled individuals was 254 in 2019 and 381 in 2020. Among these, three females were counselled in 2019, and only one in 2020. All the other counselled individuals were men: 251 males in 2019 and 380 in 2020. From the documentation, it is not clear, however, whether the individuals counselled were posted workers, their family members or in some other relationship with the posted worker, but most cases do refer to posted workers.

In more than 90% of the cases, the way to counselling was found through friends and co-workers (171 in 2019 and 332 in 2020), pointing to the importance of social contacts when accessing information. Websites were clearly used less, only in nine cases in 2019 and 12 in 2020 counselling was found through this channel. Only in one case in 2019, information about counselling was found through a leaflet and in one case through the press/media information. In 2020, counsellors and institutions were used to access information in 12 cases.

In 2019, of the 184 cases, almost 80% (141) of the counselling cases involved workers from Bosnia and Herzegovina, in 32 (17%) cases the workers came from Serbia, in five cases from Northern Macedonia, in two cases from Kosovo and in one case from Bulgaria and Slovenia.

In 2020, of the 356 cases, 270 cases (about 75%) involved workers from Bosnia and Herzegovina, 68 (19%) workers from Serbia, nine from Northern Macedonia, four from Bulgaria, two from Slovenia, one from Croatia and Kosovo and in one case, the country of origin of the worker was unknown.

As for the violations recorded at the international level, the European Trade Union Confederation (ETUC, 2019) has announced in 2019 that it will refer nine cases involving posted workers to the new European Labour Authority (ELA) for investigation. Among these, four cases involved Slovenia directly or indirectly. One case involved a posted worker from Serbia posted from Slovenia to Germany who has been paid only half his wages in the first month and was promised that the rest would be paid when the job was completed. However, the employer has gone bankrupt in the meantime and the contractor is refusing to pay the worker. In another case, a group of 31 construction workers from Bosnia and Croatia were posed to Austria by a Slovenian company, but instead of working at the same site, they were most likely sent to different sites across Austria and the company did not comply with the Slovenian law for registering posted workers, which could have a negative impact on their social security and pension contributions upon return. The third case involved supposed bogus posting of 391 workers, mostly from Bosnia and Herzegovina to Germany since 2011, although the company has not registered any economic activity in Slovenia, and it is believed that the workers are not receiving the minimum wage or paid holiday. In a similar case, in which the workers also have not received the minimum wage or holiday pay, a Slovenian company has sent 113 workers, mostly from Serbia, to work on construction sites in Germany. However, it is believed that the company is only a front for a separate Serbian-based company, which has sent 1 500 posted workers, in order to get around the German limits on the number of workers who can be sent to Germany.

Due to violations involving third-country workers, the majority being from Bosnia and Herzegovina, the employment services from both Bosnia and Herzegovina and Slovenia have established quite an extensive cooperation. There is also cooperation between the employment service in Bosnia and Herzegovina and trade unions and NGOs in Slovenia in order to obtain relevant information on working conditions of workers from Bosnia and Herzegovina, information on the sectors where the highest number of violations occur and information on the companies that violate rights of workers from Bosnia and Herzegovina. They have also delivered this information to the Labour Inspectorate of the Republic of Slovenia that has been involved in control of working conditions of workers from Bosnia and Herzegovina (Agencija za rad i zaposljanje Bosne i Hercegovine, 2018).

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