

POLICY BRIEF

SOCIAL PROTECTION OF POSTED WORKERS. WHAT CAN WE LEARN FROM THE EXPERIENCES OF WORKERS POSTED FROM SLOVENIA?

Secure mobility: Uncovering Gaps in the Social Protection of Posted Workers (SMUG)¹

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PROJECT BACKGROUND

Project SMUG - Secure Mobility: Uncovering Gaps in the Social Protection of Posted Workers (2021-2022), seeks to improve the evidence base for posting policy, by conducting a targeted policy-focused research project with clear dissemination channels into policy. The central objective is to map the pan-EU labour market from the perspective of the workers, showing how country of origin and other worker characteristics shape their opportunities and personal mobility decisions.

METHODOLOGY AND SCOPE OF THE POLICY BRIEF

This policy brief is based on the research conducted in Slovenia under the auspices of the SMUG project. The project involved ten biographical interviews with construction workers that were posted from Slovenia (4 workers that hold citizenship of Slovenia and 6 workers that are third-country nationals – of Bosnia and Herzegovina (3), Kosovo (2) and North Macedonia (1)). Furthermore, we conducted a focus group with stakeholders (NGO representative, trade union representative) and two researchers in the area of labour relations, migration and mobility to discuss the gaps between legislation and practice concerning posted workers previously identified through biographical interviews. The brief first discussed the definition of posting of workers and then focusses on the general trends in the posting of workers from Slovenia, linking these issues to the social protection aspects of the posting process as discussed by the workers posted from Slovenia and the focus group participants.

¹ More about the project: <https://isim.zrc-sazu.si/en/programi-in-projekti/secure-mobility-uncovering-gaps-in-the-social-protection-of-posted-workers>



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POSTING OF WORKERS FROM SLOVENIA BETWEEN MIGRATION AND MOBILITY REGIMES

A posted worker is an employee who is sent by his employer to carry out a service in another EU Member State on a temporary basis, in the context of a contract of services, an intra-group posting or a hiring out through a temporary agency. For example, a service provider may win a contract in another country and send his employees there to carry out the contract. Posted workers are different from EU mobile workers in that they remain in the host Member State only temporarily and do not integrate its labour market and they remain in the social insurance regime of the sending country. The portable document A1 issued in the process of posting of workers confirms that the worker is covered by the social security system in the sending country for the duration of posting.

The issue of posting has attracted considerable political attention in Slovenia, which is relatively one of the most important sending countries of posted workers in the EU. In Slovenia, posting of third-country nationals has been on the continuous rise in the past few years. In 2020, for instance, six out of ten workers posted from Slovenia were third-country nationals, and 99 per cent of these workers were nationals of former Yugoslav republics, mostly Bosnia and Herzegovina, but also Serbia, Kosovo, North Macedonia and Montenegro. In this respect, the posting of workers to Slovenia is part of the already well-established historical, cultural, geographical and economic relations between these countries. In addition, bilateral agreements on the employment of workers with Bosnia and Herzegovina and Serbia make it easier for workers from these countries to obtain legal residence and work status in Slovenia (Vah Jevšnik, Cukut Krilić and Toplak 2022).

In this vein, also the issues discussed by the focus group participants largely revolved around the posting of third-country nationals from Slovenia and the intersection between migration and posting regimes, especially the issues of residency and work permits, information provision and sharing and the recruitment of workers. For most of the interviewed workers, mobility through posting was perceived as a pathway to better wages, which were their main motive for posting. This was the case for workers from third-countries as well as workers from Slovenia. Less often discussed motives were the inability to get a job in Slovenia and posting as a pathway to career development or advancement.

While workers from Slovenia, due to their citizenship of Slovenia as an EU country, generally did not report on being dependent on their employers, for some of the workers from third-countries, this was an issue. Namely, the stipulations of the bilateral agreement on employment between Slovenia and Bosnia and Herzegovina tie them to a certain employer for the period of one year. This dependency did not necessarily occur during the period of posting, as some of the workers had been working in Slovenia as migrant (foreign) workers and the employers posted them later on in their career. On the other hand, some workers reported that even though in possession of a work and residence permit in Slovenia, the



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intention of their employer was that they would be posted to another EU country immediately. In this respect, a few workers in our research never actually worked on construction sites in Slovenia. In the opinion of the trade union representative in the focus group, bilateral agreements might prolong, rather than facilitate posting of workers. Nevertheless, the general perception of the focus group participants and the interviewees was that the procedure for obtaining a work and residency permit was generally shorter and the outcome more predictable in Slovenia than in Germany.

Furthermore, the social media platforms were mentioned as crucial in the focus group discussion and the interviewees corroborated their importance and the importance of digital tools in the process of recruitment as well as accessing information. However, they also revealed the strong reliance on informal channels in their migration and/or posting experience (the importance of family, colleagues and friends). Informal networks are therefore a crucial part in transnational postings, but when violations and problems occur, they can sometimes be detrimental rather than beneficial for the social protection of workers. This was the case of some workers from third-countries who found posting arrangements through family members, and when problems arose, they were reluctant to take any (legal) action against them, as they did not want resentment from their part. On the other hand, some workers in our research, also those from third-countries, did take legal action against their employer through trade-union assistance, while some enlisted assistance from the trade union to claim unpaid benefits.

SOCIAL PROTECTION OF POSTED WORKERS: MAIN ISSUES

Lack of awareness about social security contributions

From the interviews with posted workers as well as the focus group, it can be discerned that there is some lack of workers' awareness about the importance of social security contributions. Instead, a strong preoccupation with the net payments that the workers evaluated as higher particularly in Germany and Austria than in Slovenia and/or in third-countries is evident among workers. For some workers, it was not clear whether social security contributions were paid and they had to enquire about it retrospectively. In some cases, these contributions were not paid and some workers we interviewed claimed the unpaid benefits, while some other just 'let the situation go' and 'moved on'. This happened to not only third-country nationals, but also workers with citizenship of Slovenia and workers often found about this retrospectively. In some cases, the number of posting arrangements was high and for the workers, this might have complicated the issue of who was responsible for the payment of social security contributions and whether these were paid in the first place.

Issue of undeclared work and social protection

The most problematic cases that the trade unions deal with are those concerning undeclared/informal work and the long-term consequences of being excluded from social security contributions. Whether reluctance on the part of workers to deal with social security



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issues is a consequence of the level of net earnings they are satisfied with and are not particularly concerned with social security, or a result of their generally temporary, short-term and precarious employment arrangements, is not clear. However, some workers admitted that due to lack of time and interest they did not inquire much about the formal arrangements and let their employer arrange the documentation for them. Furthermore, some workers do agree to be posted without proper documentation and are aware of the illegality of their arrangement. One of the extreme cases was described in the focus group: that of a third-country national, who had been mostly working as an undeclared worker in Germany for two decades. After he got sick with cancer, he realised he was not entitled to a pension in Slovenia, as he was not insured, nor to social assistance, because he was staying in Slovenia on a temporary residence permit. He was also not eligible public medical care, as he had no medical insurance. Our interviewees did not have such experiences, as for most of them, social security contributions were paid, but some of them did find out retrospectively that the employer had 'cut them off' social insurance contributions. In this respect, information sharing and awareness raising is of crucial importance, but the issue is exacerbated when both the employer and the worker consent to such informal and undeclared arrangements. In some cases, the workers simply had to trust the employers that they are paying social security contributions. However, with multiple contracts and workers working in multiple countries in various subcontracting chains, it is sometimes not clear who their employer is and who pays for their social security and health contributions.

One of the issues is that workers do not always get all of their net earnings in the form of a wage, but sometimes get the minimum wage on their bank accounts and receive the rest 'by hand'. This has, of course, negative implications for their social and pension security. The participants of the focus group agreed that responsibility for the social security benefits should be on the contractor in the receiving country, but in practice, this is not always the case. Moreover, posted workers tend to work long hours and change locations frequently, so social security issues seem not to take priority over immediate comparatively higher wages that are among the main motives for posted work. In some cases, the interviewed workers were aware of the fact that their, for instance German, counterparts were receiving higher hourly payments and worked shorter hours than they did. While it seems that in some cases, such over-time working arrangements are in breach of the law in Slovenia, it must be emphasised that in some cases workers also had an interest to work long hours. Besides higher net pay, the motive for this was also that by working longer hours, they could go back to their families and/or countries of origin more frequently. Most of them, however, agreed that posting, mainly due to the toll that such mobility and travelling back and forth constantly takes on the personal and family life, is a temporary arrangement, rather than one that is viable for them in the longer-term.

Safety and health at work

In terms of social protection issues concerning occupational safety and health (OSH), most of them viewed control during their posting assignments (mostly in Germany and Austria) as



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adequate and enforcement rather strict. They observe that in most cases, OSH rules are observed to a higher degree than in Slovenia and/or in their home countries and there is also stricter monitoring of work conditions. Workers also generally indicated they were aware of OSH measures and ways to implement them at their workplaces. Most of the interviewed workers also received immediate support when accessing health care and unemployment benefits in Slovenia, their country of social and health insurance. They report minor injuries, such as scratches. A few of the collocutors, however, referred to the difficult working conditions in the construction sector as contributing to their poorer health outcomes.

CONCLUSIONS AND POLICY RECOMMENDATIONS

- For workers posted from Slovenia the culture of long working hours leaves them little time and space for improved access to information and awareness about their rights. While the general tendency that most formal documentation is arranged by the employers, could be beneficial to workers, it may also insufficient knowledge about accessing health and social security benefits in the complex chains of posting companies and their liability for such benefits.
- There exist some differences in the power relations between workers and employers that are especially prevalent for third-country nationals that are found at the intersection of posting and migration regimes (e.g. the stipulation of the bilateral agreement between Bosnia and Herzegovina and Slovenia that tie the worker to the employer for one year). However, from the collected material, we could not claim that third-country nationals are necessarily more vulnerable in terms of the social security during posting, as some issues in the payment and claim of social security benefits occurred also for citizens of Slovenia.
- Despite the long-term consequences that can arise from the non-payment of social security and health benefits, workers sometimes voluntarily opt for such shady arrangements mainly for motives of higher net pay. Some workers admitted that due to lack of time, interest and long working hours, they let their employer arrange most of the posting documentation and did not inquire much about it.
- On the other hand, some workers seem to have difficulty accessing information about the payment of their contributions and enforcing their social rights. In practice, workers often seek this information retrospectively when problems arise, and in some cases, they did not take legal action against the employer.
- When legal action is taken, the role of trade unions and NGOs counselling posted workers came across as crucial in our research. Some form of collective action and organising on part of the posted workers could be observed among the interviewed



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workers (trade union membership, legal action against employers), while other interviewed workers reported no form of such action.

- Information sharing and information raising in terms of awareness of the importance of payment of social security contributions are of utmost importance. Improved information info-points and hubs for workers could be suggested as one among the favoured solutions. State systems that enable the workers to access benefits as well as check whether they are in place should be strengthened in this process at the national and possibly also at the level of the EU. To avoid such situations, more information and especially easier access to information on social security contributions and PD A1 for workers is recommended (guidelines and link to e-services of the Financial administration to be included in the employment contract, for example). In this respect, improved access to trade unions and NGO's assisting posted workers is also an important issue.

ACKNOWLEDGMENTS

This work evolved from research conducted under the auspices of the SMUG project – *Uncovering Gaps in the Social Protection of Posted Workers (SMUG)* funded by DG Employment and Social Affairs and the Slovenian Research Agency.

LITERATURE

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