



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

REPORT SERBIA

DEVELOPED WITHIN THE PROJECT "POSTING OF WORKERS
DURING THE COVID 19 PANDEMIC, CURRENT CHALLENGES AND
FUTURE PERSPECTIVE"



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Although Serbia has recorded an increase in the employment rate and a decrease in unemployment, which is the result of depopulation and the outflow of labour, in recent years the number of insecure, atypical jobs, jobs on call has also been growing. The most common destinations where workers from Serbia go are: Germany, Austria, Slovakia, but also countries in the Region: Croatia and Slovenia. On an annual basis, the number of posted workers who go to work abroad increases by a fifth. Workers also go to work through temporary employment agencies or in some other arrangements. There is more and more talk about the true exodus of the workforce, so that the Serbian labour market lacks: medical staff, drivers, skilled construction workers. Although at the beginning of the COVID 19 pandemic there was a certain delay, the fact is that in 2021, and especially in 2022, during this year, the outflow of workforce continued, mostly young and qualified, but also unskilled and older workers.

According to the data of the Central Registry of Compulsory Social Insurance (CROSO) in 2020, there were 7,771 persons registered as posted workers, in 2021 (7,420) and in 2022 6,620 persons who had an application on the basis of insurance no. 109, i.e. persons posted to work abroad. However, although the number of posted workers seems to be declining, their number is significantly higher because many go through temporary employment agencies for a shorter period, and later extend their stay, so there is no orderly record for these workers.

Research results

1. The survey was conducted in accordance with the methodology developed within the Project and accepted by the team of experts of the participating countries. For the period related to the time of the COVID 19 pandemic, the results from previous research were used, as well as information obtained in interviews of respondents from Slovenia and Germany, dealing with issues of migrants and posted workers from the Western Balkans, including Serbia. Part of the data from that period was also obtained from respondents in Serbia who at that time worked on OSH jobs in the metal sector.

At the time of the rise of the COVID-19 pandemic, the migrant population faced a number of challenges that also led to a significant reduction in the volume of international migration flows (OECD, 2020). The first months of COVID-19 showed that a lot of Serbian citizens were abroad, both migrants and emigrants. Serbia organized special flights or otherwise helped its citizens return home during the quarantine. Data from the Serbian border police show that more than 400,000 of its citizens entered the country in March and April 2020, regardless of their legal status. In addition, a significant part of them remained in the receiving countries and began to return home at the end of June, when favourable conditions were created.

The findings show that at the onset of the COVID-19 pandemic, all migrants, posted workers or employed through temporary employment agencies, suddenly became stressed. Most of the stress that migrants from Serbia have been exposed to since the pandemic relates to work. One of the problems was the lack of support from public services in the destination countries and the fact that the diplomatic representations of the country of origin were not well organized in informing citizens and coordinating their return home. (Predojević Despić and Lukić, 2021)

The stresses they went through also depended on the legal status of migrants abroad. Temporary migrants who often repeated their stay abroad, including undocumented

working migrants, as well as daily border crossings, were exposed to the greatest insecurity (Tanasić, 2023.) Most of them were the first to be fired, before the expiration of the employment contract. Moreover, all were left without social and health care, which proved to be particularly stressful. Some were on hold with reduced earnings, which did not suit them, so they decided to return to the country. Those who had long-term employment contracts were in a slightly better position. Some workers who were left waiting for work were exposed to fraud - issuing fake licenses or PCR tests so that they could continue working or move to another EU country. Unfortunately, in some frauds, the workers themselves took part under the pressure of the employers, who bore the consequences the most - the ban on entering the country, etc. (Šarac, 2023)

2. In accordance with the proposed methodology and in agreement with the Independent Union of Metalworkers of Serbia, 4 companies from Serbia – FIAT Automobiles Serbia – STELLANTES Kragujevac, APTIV Leskovac, WACKER NEUSON Kragujevac and HI LEX Sremska Mitrovica were selected to consider posting workers to work abroad, i.e. hiring foreign workers. The reasons for choosing these companies are: the companies are from the metal sector, more precisely the automotive industry and all have arrangements for posting workers to work abroad. The companies are branches of multinational companies that are registered in Italy and Germany. By reviewing the available information and in conversations with representatives of employees of these companies, we found that three companies have concluded collective agreements, except for APTIV from Leskovac, where it is planned to start negotiations on the trade union-employer relationship.

FIAT currently has 145 posted workers in Slovakia (Tnava) and 25 workers in Poland (Tihi) in the Fiat or STELLANTES Group plants. The workers have a one-year or two-year contract and their salaries are the same as other employed workers in Poland and Slovakia, and they are satisfied with the accommodation.

APTIV from Leskovac has 30 workers in Germany who work on installations and assembly of vehicles and 87 workers in Romania (Sibiu). Workers in Romania stay on business trips for up

to 3 months and their salaries are paid as daily wages. According to the same principle, when there was an increase in the volume of work in 2021, workers from Romania and Turkey were hired in Leskovac. HI LEX posts workers to Hungary. Workers receive the minimum wage as in Hungary and are not satisfied because the cost of living in Hungary is significantly higher. WACKER NEUSON has 600 employees in Kragujevac. It posts workers to Germany on the basis of intercompany cooperation and training.

These four companies did not have posted workers during the COVID 19 pandemic, so the experiences of posted workers during that period were not recorded.

3. From July to the end of October 2023, an online survey was conducted through a survey, i.e. a semi-structured questionnaire divided into several units. The questionnaire was intended for posted workers, so this was a special challenge for researchers, given the dislocation of posted workers, as well as the fact that these are often lower qualifications, places where the Internet is not available or there is simply insufficient understanding of the issue. In the opinion of the authors of this report, the main problem, apart from the summer period when the research began, is the fact that a number of posted workers have some suspicion that e-mail addresses will be collected, that responses will not be used only for research purposes, and that their advertising will jeopardize their position in the company where they work or stay in the country of destination. This is especially the case when posting in a short period of time or when it comes to the absence of some documents necessary for residence and obtaining work permits, or non-compliance with the contract by the employer.

In order to implement this activity, we contacted trade union headquarters in Slovenia, which is an important transit country for posting workers from Serbia to EU countries, as well as checkpoints in Germany that have been dealing with the protection of foreign workers and fair mobility for years, and in whose activity the Union of Independent Trade Unions of Serbia is also involved. However, for the aforementioned reasons and the

difficulty of conducting the research, a satisfactory number of respondents' answers was not obtained, which would be a representative sample for making valid conclusions.

4. During the research, from the end of August to the end of October 2023, 18 in-depth interviews were conducted with representatives of trade unions from four selected companies in the metal sector, which post workers abroad, representatives of the branch trade union - the Independent Union of Metalworkers of Serbia (SSMS), the Union of Independent Trade Unions of Serbia (SSSS), experts in this field dealing with the issue of protection of posted workers to Slovenia, Germany and Serbia, and employers who post workers to work abroad. Semi-structured in-depth interviews were conducted, as a commonly used method of research in the social sciences. This approach was chosen given its ability to collect open data and present respondents' perceptions, attitudes, and opinions regarding the issues investigated (Barriball and While, 1994). In order to collect the most complete answers, part of the question was sent earlier in writing. Interviews were conducted by phone (Viber call), via Zoom and in direct contact. This method encouraged respondents' participation and provided longer verbal responses to open questions in close dialogue between researchers and respondents. A record of the content of the interview was made, and the parts were recorded in accordance with ethical rules and with the permission of the interlocutor.

*Trade unions mainly pointed out that they were not sufficiently involved in the mechanisms of protection of posted workers. The reasons are the absence of social dialogue and disregard for the views of trade unions in the adoption of national laws related to posting, the fact that a significant part of posted workers are not members of trade unions, which makes it impossible for trade union representatives to represent them, and the unavailability of these workers due to temporary residence in the receiving country. Unions usually respond to a request if an injured worker contacts them or there is a major problem, when a group of workers is left without paid salaries or serious injuries occur. In addition, the reasons for the inability of trade unions to participate in the representation of posted workers include the need to protect personal data, especially when it comes to individual

cases. However, in cases where a larger group of workers was involved, trade unions were successful.

Access to collective representation of posted workers is also necessary. It is also necessary to define which collective agreements will apply, whether they are branch agreements that have a universal character or whether they are agreements with the employer. It seems justified that these are primarily contracts with the employer because they also contain rights related to posted workers, although the limitation in information is often a business secret, i.e. the unavailability of these contracts to the public. Trade union representatives pointed out that the *Law on Conditions for Posting Workers* partially solved the problem of worker protection, because there are still many agencies that post workers without appropriate documents, or with incomplete documentation, especially when it comes to the Van der Elst visa issued to workers from the so-called third countries that are not members of the EU. Most complaints coming to unions are related to payroll or unpaid overtime. A number of workers do not have social security, nor health care, which was a major problem during the COVID 19 pandemic, and also in cases of injuries at work, as well as in cases of pensions.

In interviews, trade union representatives also unfavourably assessed the provisions of the *Law on Employment of Foreigners*, the amendments to which entered into force in August 2023. They indicated social dumping as a product of the application of this law. Article 32 foresees the obligation of employers' organizations and trade unions to cooperate and exchange information, but it is not foreseen that the institutions provide any information to the trade union about foreign workers in Serbia. This Law does not explicitly state that foreign workers have the right to unionize and organize, nor the right to strike.

Respondents from trade unions and experts dealing with the posting of workers and migration emphasize that they are familiar with European directives, as well as the laws in Serbia on the basis of which workers are posted to work abroad. However, all responses point out that "workers do not know either European legislation or their rights that they have when they are posted to work and often work in poor conditions or do not know who

to turn to in case of violation of rights". The situation in the analysed companies is somewhat better, where the employer complied with the regulations, both in the preparation of workers, provision of insurance, as well as annexes to employment contracts and accommodation conditions. The problem still remains wages, i.e. the payment of minimum wages, and not benefits as provided for in the revised directive, which is somewhat bridged by the payment of daily allowances or lump sums before the start of the appointment or after the return to the country of origin (FIAT).

* According to employers' representatives, the most frequently mentioned employer challenge is related to work permits in EU countries. This seems to be the most important challenge, both in terms of achieving publication and in terms of demanding procedures that may jeopardize compliance with company deadlines in the receiving country, and that the conditions for a work permit or visa such as Van der Elst are too demanding. Work permits are most easily obtained by employers who post workers on the basis of the Agreement with the Federal Republic of Germany, so most of the posted workers are posted to Germany. However, even in this case when the employer is given a work permit quota, there are several administrative obstacles.

There is a challenge with the recognition of diplomas, that is, the recognition of qualifications that is a requirement for a work permit in Germany. The problem is complicated for certain professions for which there is no formal education in Serbia. The procedure for obtaining work permits is quite long and complicated and it can take a long time from the date of signing the contract in Germany to the moment when the workers are ready to start working.

Insufficient information was indicated on official websites, where data such as the list of valid collective agreements or the necessary list of necessary documents for posting workers were not highlighted. All this causes confusion, wrong applications as well as high penalties in case of errors. For SMEs, a significant financial and administrative item is the provision of a contact person or permanent representative in the receiving country. They are often unable to provide this, but seek to resolve it in cooperation with other companies.

In response to the question related to the "future development of the posting process and what are the expectations regarding jobs involving posted workers", it was emphasized that the processes of movement of workers will continue, because there is a lack of workforce, and for companies and employees it is important to acquire new knowledge and practices, as well as for profitability and competitiveness (opinion of employers).

Companies earn huge profits, entire occupations are absent, and so the process of posting workers abroad or hiring foreign workers will continue. Laws must be respected, and the interests of workers must be protected, social dumping and discrimination must be prevented (opinion of trade union representatives). "When we talk about the posting of workers, it can be said that the skilled workforce leaves Serbia and mainly goes through Slovenia to the countries of ZE, and workers come here mainly from Asia and it is actually a vicious circle that functions according to the principle of merged courts."

The COVID-19 pandemic affected the posting process and working conditions of posted employees in the industry because it was necessary to ensure their protection, strictly comply with regulations related to health protection and the movement of workers to ensure the return of workers to work. Companies were initially "closed" for the posting of workers from abroad, but with the relaxation of protection measures, the flows of labour movement were renewed. The pandemic has shown that many jobs can be done from home, that definitely eight-hour working hours are not productive and that it is possible to reduce working hours or introduce flexible working hours and a lot has been changed in the organization of work, e.g. supply. (M.L. Many companies, especially SMEs, are improving their business in overcoming risks by applying new technologies, electronic communication, automation and digitalization in various aspects of business. In this way, the lack of workforce or certain professions that are deficient in the labour market could be overcome. Predicting and mitigating risks has become a new item in the management of the company. In the event of a crisis, Management enters the "mode" of Crisis Management, which entails the application of procedures envisaged for difficult or crisis working conditions. COVID 19 crises and growing tensions in geopolitical terms force companies to revise procedures

intended for crisis management on a practically daily basis. The growing application of new technologies, primarily robotics, artificial intelligence and remote work opportunities provide employers with the opportunity to post workers practically "virtually" where they physically stay in their company and country, and perform their work on posted work through a virtual working environment. (V.L.)

The application of Directive 957/2018/EU (Revised Directive) and Directive 67/2014 (Enforcement Directive) partially regulate the area of posting of workers. There are still doubts about the application of collective agreements, compensation or the duration of posting¹ which further complicates the position of posted workers in partially harmonized legislation in Serbia. It is enough to emphasize that “every time a worker crosses the EU internal border between two Member States, a conflict of laws must be resolved in at least three legal areas: labour law, social security, taxes.”² The pandemic has affected European legislation in terms of clarifying some provisions or further specifying and tightening conditions as well as penalties for non-compliance. However, in the opinion of the respondents from the trade union, little has been done to protect posted workers. The activities of the ELA are significant, as well as the functioning of the IMI system, although there are also a lot of limitations – the unavailability of the system for the Labour Inspection from Serbia as a candidate country and not a full member of the EU, a chronically insufficient number of labour inspectors, as well as those who are familiar with European legislation and specialized in the field of posting workers.

Posted workers – case of Serbia

1. In the implementation of the *Posting Prospectus* project in the case of Serbia, we started from the specifics of posting workers to work abroad as well as hiring foreign workers. First, the very notion of *posting workers* is partly confusing in Serbia and is mainly considered as part of the overall migrant processes. The reason is migration waves as well as frequent

¹ It is important to stop mixing the 12-month posting period provided for in Directive 2018/957/EU (the one for the purpose of determining working conditions) with the 24-month posting period provided for in the social security provisions (

² ELMI: *Posting of workers - compliance checklists*

changes in the status of a posted worker, - from a posted worker in accordance with European legislation and EU directives, through employment through temporary employment agencies to self-employment, where in fact, statistics and researchers lose track of him or her.

Second, Serbia is a candidate country for accession to the EU and does not directly apply the European directives on the posting of workers, although the legislation is partially harmonized with the *acquis communautaire*.

Posting is implemented on the basis of the law /agreement) – *Law on the Conditions of Posting of Workers to Temporary Work Abroad* (Official Gazette of RS, No. 91/15, 50/2018) which entered into force on 7 July 2018, and the Agreement implemented between Serbia and Germany (agreement concluded in 1989 between SFR Yugoslavia and FR Germany) and mainly refers to construction workers. There is a quota of workers from Serbia in detachments, which amounts to 2770 workers annually for more than a decade and a half, of which 1083 are in the construction sector.

For the posting quota, a company based in Serbia, registered to perform the activity for which the posting was assigned, may apply. The company should have an independent branch ("Unselbständige Zweigstelle" – "Betriebsstätte") in Germany, operate in accordance with German regulations and meet the criteria referred to in Article 7 of the Decision on the distribution of the determined maximum number of posted workers to employers from the territory of the Republic. The request for consent can be submitted only when the Serbian company has opened a representative office and concluded an employment contract with a partner from the territory of the EU. (SCC, 2023).

The provisions of the *Law on the Conditions of Posting of Workers to Temporary Work Abroad* shall apply to: 1) the posting of workers within the framework of the performance of investment and other works and the provision of services, on the basis of a business cooperation agreement, or other appropriate basis; 2) work or professional training for the needs of the employer in the business units of the employer abroad, on the basis of a

deployment act or other appropriate basis; 3) work or professional training within the framework of intercompany movement, and for the needs of the employer.

With the amendments to the *Law on the Conditions of Posting Workers Abroad adopted in 2018*, the legislator sought to regulate this area. In accordance with the changes, the employee must be employed by the employer at least three months before the date of posting and that the number of posted workers does not exceed 20% of the total number of employees of the employer on the date of posting. The Employer may not send an employee under the age of 18 to work temporarily abroad, unless otherwise provided by law and for the needs of the Employer. (2) The employer may not, by a contract concluded with a foreign person, foresee the assignment of workers to that or another foreign person. The employer may post employees to work abroad only if they are employed for an indefinite period of time. Exceptionally, the employer can post an employee abroad for a certain period of time, provided that the employment relationship cannot last longer than the time for which the employment contract was concluded; (3) The employee may be posted to temporary work abroad only with his/her prior written consent; ³

Posting of workers abroad is not possible through temporary employment agencies. Deployment through agencies is provided for by the *Law on Agency Employment* ("Official Gazette of RS", no. 86/2019), but the articles relating to deployment (Articles 10 and 12) shall apply from the "date of acquisition of full membership of the Republic of Serbia in the European Union" (Article 37).

Posting of workers to Serbia is carried out on the basis of the *Law on Employment of Foreigners* (Official Gazette of RS, no. 128/2014, 113/2017, 50/2018, 31/2019, 62/2023)). In 2022, the National Employment Service (NSZ) issued 35,000 work permits to foreign workers, while 50,000 will be issued in 2023. The largest number of work permits were issued to

³ If the employment contract provides for posting abroad - the employee may refuse the posting for the following reasons: the reason for pregnancy; until the end of the child's three years of life; if the employee is a single parent up to 15 years of age of the child; if three months have not elapsed since returning from work abroad that lasted at least 11 months continuously. for compulsory social insurance before posting, which also proves that they are persons who are employed with the employer);

citizens of China, Russia, Turkey, India, Cuba, North Macedonia, Ukraine, Nepal and Bosnia and Herzegovina, and the largest number of foreign workers were engaged in the field of construction. Also, a number of work permits were issued to IT professionals. In addition, foreigners are employed as auxiliary workers in various industries, as well as in the service industry, catering and hotel industry. Trade unions have objections to the amendments to the Law because they believe that benefits for obtaining work permits can contribute to social dumping and jeopardize the position of both domestic workers and foreign workers who would work under unfavourable conditions and for low salaries.⁴

2. EU directives concerning posted workers 957/2018/EU, (revised directive) and Directive 67/2014, (enforcement directive) are effectively applied throughout the EU, and candidate countries should implement them in their legislation. Regarding Serbian legislation, although there is an opinion in the part of the domestic professional public that the laws are harmonized with EU legislation, the first concern is related to the fact that according to the revised 2018 directive, which entered into force in 2020, posted workers are also those hired through agencies. However, the Law on Temporary Employment of Workers Abroad does not define that. As for the 2014 Enforcement Directive, which provides that each country has a separate website in a transparent manner where all the conditions for posting will be clearly defined, as well as the collective agreements that apply, this has not been fully applied. The website exists, but it is very difficult to obtain information, e.g. for a foreign employer or foreign worker who will be employed in Serbia, and this is also complicated for the domestic public, especially when it comes to the list of valid collective agreements. The Law on Temporary Posting of Workers to Work Abroad still provides for a minimum wage, and not compensation as defined by the Directive, nor has a maximum duration of posting been defined.

The Law on Compulsory Social Insurance (ZOSO) is also not in accordance with the Law on the Conditions for Temporary Posting of Workers Abroad. The Law on Conditions assumes that

⁴ Out of 47 persons who suffered fatal injuries at work in 2022, 5 are foreign nationals. At the same time, 24 foreign nationals suffered serious injuries at work. At the "undeclared" work, 527 foreign citizens were found.

the worker earns the minimum gross salary in the receiving country, while ZOSO explicitly states the amount of salary they would earn in the same or a similar job in Serbia, which cannot be lower than 70% of the average monthly salary in Serbia. This leaves a significant difference between the minimum gross salary in the receiving country compared to the minimum contribution base for posted workers in Serbia. This has long-term consequences for workers, in terms of future pensions, but also short-term consequences in case of injuries/sick leave because sick leave in this case amounts to only 65% of the contribution base (100% in case of injury at work). At the same time, interviews and letters from Germany particularly emphasize disregard for the payment of salaries, contributions or taxes.

The COVID-19 pandemic has led to a global crisis in the health, economic and social spheres. In a certain sense, negative phenomena have affected all spheres of life, especially the economy, labour market and society. The pandemic crisis has dramatically increased business risk. Many companies, especially in industries affected by constraints, such as the automotive industry, have experienced sudden changes in supply and demand. In search of sustainable solutions for recovery and preparation for possible new crisis situations, companies form the so-called crisis management, develop communication and strategic action plans. In this sense, it is also important to plan the workforce, overcome the shortcomings of a qualified workforce, which is solved either by investing in new technologies or by posting or admitting foreign workers. Changes are so fast and adequate responses are needed. It seems that less corporate responsible companies have adapted better than the public sector, which has returned to the old business schemes.

Trade unions advocate social dialogue and the involvement of workers in crisis management, strategy development and workforce planning. Employee motivation is very important for overcoming problems, higher productivity if quality working conditions and decent salaries are ensured, which also includes paid overtime work. The paradox that

despite the lack of labour force, salaries are kept at a low level is worrying, and the admission of foreign workers, especially from third countries, makes this situation even worse, because these workers have very low salaries and work most often in worse conditions.

Trade unions emphasize the importance of mapping and support points for workers, good examples of practice such as the role of mediation of labour inspectors in concluding annexes to employment contracts for posting workers, Memorandum of Understanding and Cooperation of trade unions from 6 countries, including Serbia, as a result of the FAIR project, the formation of Viber and WhatsApp groups for legal support to posted workers, and the development of operational and short guides in the language of posted workers to be familiar with their rights, web addresses and contacts to address for the protection of their rights. The challenge for trade unions as well as all actors within this process is that labour law protection has expanded from the so-called home field to the protection of posted workers. Ongoing training and information of posted workers is necessary to enable them to exercise their rights. Consideration should also be given to opening the space for posted workers to join trade unions in receiving countries⁵, or possible mutual recognition of membership.⁶

Harmonization of European legislation, resolution of some doubts, as well as harmonization of legislation in Serbia with European directives and harmonized interpretation of concepts are also necessary. This should also be taken into account in terms of the perspective of posting workers abroad, as well as the admission of foreign workers. From all of the above, it can be seen that the flows of the movement of labour cannot be stopped. Serbia expects the opening of the Negotiating Chapter 2 on the freedom of movement of workers⁷. Serbia is also part of the so-called Open Balkans, a form of cooperation between Serbia, North

⁵ In the NSDS, as much as 40 percent of membership is made up of workers from Serbia

⁶ Practice of some construction workers' unions from EU countries

⁷ No prior conditions are required for this Chapter. Part of Cluster 2 – Internal Market

Macedonia and Albania to increase the mobility of labour, goods and capital among these countries.

In order to protect the rights of posted workers, it is necessary to cooperate with trade unions, employers, labour inspections, NGOs dealing with migrant issues, as well as all institutions such as the Ministry of Labour and Employment, Serbian Chamber of Commerce. In addition to national cooperation, cooperation on a broader regional and European level is also necessary.

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