



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

REPORT ON THE POSTING PERSPECTIVES: **THE PORTUGUESE CASE**



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Introduction

The objective of this report is to characterise quantitatively and qualitatively the postings of workers in the metallurgy sector during and after the pandemic in Portugal. Next, the available data is framed to characterize this type of work with the existing data. The following chapter describes the context and legislative framework that regulates postings in Portugal. Below is a brief description of the methodologies used. Finally, a brief summary of the research carried out and the main conclusions that characterise the Portuguese situation are presented.

The posting in Portugal

The most recent data provided by ACT reveal that the number of workers posted outside the country was 54993 in 2022, according to data from DSI-ACT Communications and workers posted abroad. The main destination of these postings was France with 41%, followed by Belgium with 17%, Spain with 16% and Germany with 7% of posted workers in 2022. Second, the same data indicates that the overwhelming majority (99%) of posted workers outside the country in 2022 were men, according to data from DSI-ACT Communications and posted workers abroad. In addition, the analysis of ACT data shows that the flow of posting reception focuses on issuing countries geographically close to Portugal. Spain represents 48% of the flow of postings to Portugal, Germany represents 30% of this flow and, with significantly lower values, Italy (8%), the Netherlands (2%), France (2%) and others (11%). Finally, the data show that the manufacturing sector was the third most representative sector (14%) in terms of workers posted to Portugal in 2022, after the “Other activities” (51%) and “Construction” (32%) sectors.

There are three main legislative acts that frame the posting of workers in Portugal. According to the Directorate-General for Employment and Labour Relations (DGERT): Law 7/2009 approves the Labour Code, which refers to workers posted under Articles 2, 4, 6, 7, 8 and 551. Secondly, Law 29/2017, transposing Directive 2014/67/EU of the European Parliament and of the Council of May 15, 2014 on the implementation of Directive 96/71/EC (the “Implementing Directive”) into the internal legal order of the European Parliament and of the Council on the posting of workers in the framework of the provision of services. Decree-Law 101-E/2020, of December 7, transposing Directive (EU) 2018/957, on the posting of workers in the scope of the provision of services, proceeding with the first amendment of Law 29/2017.

Finally, given the mobile nature of its operation and the specificity of the road transport sector, it is expected, in compliance with the provisions of the directive transposed by this decree-law, to extend the provisions established therein to that sector, from the date of

entry into force in the national legal order of the legislation transposing the European Act amending Directive 2006/22/EC, in particular with regard to implementation requirements, and to lay down specific rules with regard to Directives 96/71/EC and 2014/67/EU.

Methodology

For this project, it was proposed that the fieldwork would involve qualitative research and interviews. It was planned to develop respondents by country with an online survey. We tried to reach out to various *stakeholders* to publicize the survey questions. However, very few responses were obtained not only in Portugal, but also in the other countries involved in this project. In the Portuguese case, we sent emails to 60 organizations and received 4 responses. The online survey was not suitable for reaching posted workers for several reasons. Firstly, companies and workers in metallurgical SMEs in the North of Portugal do not want to disclose any information about their jobs. These companies do not want to allow interviews with their posted workers. Some workers have indicated that they are facing the fatigue of online consultations, especially after the Covid-19 pandemic.

The survey results were very poor and not significant. Eight respondents participated in the survey. All respondents are of working age, from 24 to 64 years old and one was a woman. The level of qualification ranges from primary to higher education, and they are mainly employed in the metallurgical sector. Although the sample cannot be conclusive, it should be noted that about 60% answered that they had better working conditions in the country of destination and 40% the same conditions as in the country of origin. Likewise, about 61% believe that the posting did not contribute to their career progression and most returned to the same position in their home country within their organization. All respondents have a positive view of representation through trade unions (social and health care), while 33% believe that workers' committees contributed to collective representation during their posting. During the Covid-19 pandemic, about 60% worked in their country of origin, with transportation being the most common problem. Only one respondent remains in the destination country and the rest have returned to their home country. In conclusion, a satisfactory number of responses was not obtained through the *online* survey.

Our fieldwork allowed us to develop a total number of interviews from 18 in-depth interviews. We have developed three different questionnaires to more specifically address

each stakeholder, i.e. posted worker, trade union and employer association (see annexes 1, 2 and 3). These in-depth interviews were conducted in April 2023. Our work included interviews with:

- The main employers' association of the metallurgical industry or Association of the Metallurgical and Metalworking Industry (AIMMAP). This association is affiliated with the most representative employers' confederation in Portugal, the Portuguese Industrial Confederation (Confederação Empresarial de Portugal – CIP). The interviewee also spoke on behalf of the CIP. The interview was conducted via Zoom and lasted about an hour. From a methodological point of view, it should be noted that Portuguese companies in the metallurgical sector were reluctant to follow the new legislative framework that came into force on January 1, 2022. The directive, its translation contested into Portuguese law by CIP and Metal Portugal.
- The employer of the electromechanical industrialists – the Industrial Association of the Electrical Industry (ANIMEE), with a face-to-face interview that lasted about 2 hours.
- The main trade union confederation in the country – The General Confederation of Portuguese Workers - National Intersyndical (CGTP), with an interview conducted in October 2023. This interview was in person and lasted about an hour.
- Three (3) companies in the metallurgical sector, via Zoom, which lasted about an hour, during the period from September to November 2023.
- The inspector and department director of the National Authority for Working Conditions (ACT). The interview was conducted via Zoom in November 2023 and lasted about an hour. This contact also allowed the exchange of updated statistical information on the posting of workers.

The *focus group* planned in the preparatory scope of the *Posting Prospects* project was not possible to be held in Portugal. This decision common to other partners was due to a number of factors:

- The *focus group* was aimed at posted workers, among other stakeholders. However, many of these workers could only participate in person or online, given their current travels in foreign countries. A significant part of the workers posted in the metallurgical sector are also often low-skilled, although specialised, and consequently with less skilled with the digital tools to participate by in-person means. A significant part of those posted in the metallurgical sector are in older age groups, in accommodation where the Internet is not always available, with schedules out of step with those in Portugal and/or may be afraid to speak publicly about the problems and difficulties of their companies of origin and destination. It is important to note that there is a fear that the identities of these workers would be collected, thus enabling the identification of the posted worker, compromising their Portuguese company, their position in it and the working conditions in the companies of origin and destination. In other words, invitations to post posted workers would not be accepted.
- The reluctance of companies to grant an interview to the research team was very significant. 21 companies were invited for an interview via Zoom or phone and it was only possible to carry out 3 interviews after the third round of requests. According to a representative of the sector, this reluctance of the metallurgy sector seems to be linked to the entry into force of the directive on January 1, 2022, among other possible unidentified causes.
- The number of entities identified with knowledge of the current situation is very small. In addition to the state bodies and the employers' and trade union associations that were interviewed, it was not possible to identify specialists

who know how to characterise the current situation of the posting to and from Portugal. Furthermore, the few studies that exist prior to the pandemic focused on the construction sector. Finally, the data available by sector in the Working Conditions Authority has been corrupted and is awaiting its recovery. Social security and the Ministry of Labour did not accept the invitation to provide data and other information about the posting in Portugal.

- There were still three entities that could hypothetically be present in a *focus group*: The Authority for Working Conditions, CIP and CGTP. However, this presence was not enough to hold a focus group. There was no rationale for putting them together in a room in direct confrontation on a topic that is little known in Portugal: the posting of workers in the metallurgy sector during and after the pandemic. In addition, it was known that it would be possible to interview each of these entities separately in depth.

Consequently, during this fieldwork phase, it was still possible to carry out 8 in-depth interviews, between the period between the end of August and the end of October 2023. These interviews were conducted with representatives of employers, union representatives and managers of selected companies in the metallurgical sector that post workers abroad. In-depth semi-structured interviews were conducted, as a research method commonly used in the social sciences. The interviews were conducted over about an hour (on average) by phone, via Zoom and via Teams and by direct contact. A record of the content of the interview was made, and the parties were recorded in accordance with the ethical rules in force in research projects for human beings and with the permission of the interlocutor.

Conclusions

Posted workers from the three selected companies in the metallurgical industry were sent to work in France, Spain, Germany and Belgium. The first company belongs to a multinational group that posts workers to the parent company in another country and then arranges the posting to the destination country (France or another country). The other two national companies that post workers are essentially concentrated in the post-project phase of installation and maintenance, mainly within Europe. Of the three testimonies collected, the postings are always in compliance with Directive 2018/957 and with the legislation transposed in force since January 2022 in Portugal and in the countries of destination. Workers always earn more than the Portuguese salary in the host country, which makes this type of work very attractive. In addition, the teams involved in the postings are all quite used to carrying out this type of work and there are rarely any problems.

Interviews with employers' associations revealed that the degree of dissatisfaction with this directive is substantial among the small group of companies that carry out this type of posting in the metallurgical industry. It was even suggested that some companies in the sector will not be complying with all the legislation because they have lost their competitiveness in the foreign markets where they operate. One company complained in particular about the lack of information about the rules in force in the country of destination, which are always changing and force the company to hire a law firm at the destination to ensure that everything is as required by local legislation.

Posting is done in part to countries where communities of Portuguese emigrants already exist. Some postings appear to be occurring through the classic route of emigration rather than through posting. In the case of metal companies, it is related to the insertion of Portuguese companies in the value chain of international companies. Destination countries are often countries where client companies or supplier companies are located. The destination countries coincide with the countries from which there are emigrants, with the exception of the Netherlands and Spain. These exceptions show that the posting in the

metallurgy sector is different in some cases, as it is directed to companies in the value chain without the influence of the Portuguese emigrant communities located there.

The Covid-19 pandemic brought changes to the usual posting, as many orders were cancelled or suspended. The pandemic brought back borders and major restrictions on the movement of people, quarantine closures and the inability to provide adequate conditions for workers, which, in addition to becoming infected, forced companies to expand workspaces so that other workers could share the same rooms.

The Covid-19 pandemic also brought changes in the work sphere, especially in its organization, reducing working hours and increasing remote work. But, according to the interviewed managers, the responses to the challenges of the pandemic crisis were overcome over time and everything returned to normal. Two of the company managers stated that the increase in geopolitical tensions is having more of an impact on their operations (e.g. steel imports and inflation) than the pandemic itself.

European legislation has not changed significantly under the influence of the Covid-19 crisis, in terms of labour legal protection for workers, as there have been no changes to directives or regulations. The entry into force of the effects of the directive after its transposition into the Portuguese legal regime in January 2022, significantly clarified the displacement regime, according to the CGTP representative. However, the transposition of the regime also went further than the directive itself, making it even more difficult to comply with all regulations, according to the largest employers' association CIP.

The processes of movement and posting of workers will continue, because companies in central Europe want cheaper labour in this type of specialised services in the metallurgical industry, said the CIP representative. On the other hand, the CGTP representative stated that unions must protect posted workers to prevent social dumping, discrimination and guarantee the labour and social rights of posted workers in Portugal and abroad.



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