



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

POSTING OF WORKERS

FROM SLOVAKIA DURING THE
COVID – 19 PANDEMIC



Co-funded by
the European Union

Introduction

The single market is made up of the 27 EU countries along with Iceland, Liechtenstein, Norway and Switzerland. Within its borders, the movement of goods, services, capital and people is free. This includes workers, who can move freely without requiring a work permit - although there are some restrictions for some Member States. In 2017, 12.4 million people of working age (20-64) lived in an EU country other than their country of origin. There are also various forms of temporary cross-border workforce mobility in the EU, among which posting of workers is increasingly coming to the fore. Although precise figures are difficult to obtain, the number of documents used to estimate the number posted and issued in 2017 amounted to 2.8 million. The share of posting in total employment in the EU is 0.8 per cent.

This article describes the context of posting workers from Slovakia. It starts with a description of the key documents of European and Slovak legislation, followed by an analysis of the key terms and keywords in the context of posting workers abroad. The second part describes the results of Slovakia based on the individual databases. The most relevant debates on the subject are then identified in different scientific fields: sociology, economics or legal aspects.¹

Legislation on posting workers

The rules on posting workers abroad are dealt with at both national and European level on the basis of the competences of European and national law. The European Union defines a set of compulsory rules concerning the conditions of employment for posted workers. These rules stipulate that even if workers posted to a Member State are still employed by the posting company and are subject to the laws of that Member State, they are entitled to a set of basic rights applicable in the host Member State. These are specifically: minimum remuneration; maximum working periods and minimum working periods; minimum paid annual leave; the conditions for hiring out workers by temporary employment undertakings; health, safety and hygiene at work; or equal treatment between men and women². Posted workers in all industry sectors are to be paid the same wages as locally hired workers on the basis of rules laid down by law or generally applied collective agreements.

Legislation of the European Union

In terms of specific legal provisions, the following directives are key at European Union level:

- Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the context of the provision of services;
- Directive 2014/67/EU on the enforcement of Directive 96/71/EC concerning the posting of workers in the context of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ("IMI Regulation");

¹ EEPOW (2017) *Posting of workers in Eastern Europe*, Agreement No. VS/2017/0349, *European Centre for Social Welfare Policy and Research*, With financial support from the EaSI programme of the European Union, na https://www.zsh-online.de/projekte/projekte/13-projektarchiv/download/434_840819b365390c01c54136e40893a08f

² Národný inšpektorát práce (2016) *Nové povinnosti zamestnávateľa v súvislosti s vysielaním zamestnancov*, 14. júna 2016, Národný inšpektorát práce, na (*National Labour Inspectorate (2016) New employer obligations in relation to the posting of employees, 14 June 2016, National Labour Inspectorate*): <https://www.ip.gov.sk/wp-content/uploads/2016/07/Pr%C3%ADloha-2.pdf>

- Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the context of the provision of services;
- EU Directive 2020/1057 of 15 July 2020 setting out specific rules in relation to Directive 96/71/EC and Directive 2014/67/EU for the posting of drivers in the road transport sector and amending Directive 2006/22/EC as regards the compliance requirements and Regulation (EU) No 1024/2022 (hereinafter referred to as "Directive 2020/1057")
- Regulation (EC) 883/2004 on the coordination of social security systems;
- Regulation (EC) No 987/2009 of the European Parliament and of the Council (EC) laying down the procedure for implementing Regulation (EC) No 883/2004³.

In terms of the European Union market, the posting of workers is initially regulated in Directive 96/71/EC in Article 1(3), where three posting models are regulated:

1. posting workers to the territory of the Member State on the undertaking's own account and under its direction, and under a contract undertaking has concluded with the party in the State for which the **services** are intended provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting;
2. posting workers to an establishment or to an undertaking owned by the group in the territory of a Member State provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting (**group posting**);
3. hiring - out workers by a temporary employment undertaking or placement agency to a user undertaking established or operating in the territory of a Member State, provided there is an employment relationship between temporary employment undertaking or placement agency and the worker during the period of posting (**temporary assignment**). This third model is referred to in the literature as international employee leasing.⁴

Slovak legislation

In Slovakia, when posting an employee on a business trip, it is necessary to refer to § 57(1) of the Labour Code, which gives the employer the right to post an employee on a business trip for the necessary period of time. Employees may be posted to carry out work to provide services within the entire European Union (another Member State of the European Union within the meaning of the Labour Code is a Member State of the European Union and a state party to the Agreement on the European Economic Area, i.e., the 28 States of the European Union + Iceland, Norway and Liechtenstein).

A posted worker is an employee who carries out work for a limited period of time in the territory of a Member State other than the State in which he or she normally works. The place of work during the period of posting to a Member State of the European Union shall not change and shall remain in the Slovak Republic. In the case of an employee posted pursuant to § 58 to a Member State of

³ Slovensko.sk (2023) *Zamestnávanie pracovníkov v iných členských štátoch (vysielanie pracovníkov do zahraničia)*, Slovensko.sk, 8. marca 2023, na (*Employing workers in other Member States (posting workers abroad)*, Slovensko.sk, 8 March 2023, at) <https://www.slovensko.sk/sk/zivotne-situacie/zivotna-situacia/zamestnavanie-pracovnikov-v-in/>

⁴ Národný inšpektorát práce (2015) *Vysielanie zamestnancov*, Národný inšpektorát práce, január 2015, na (*National Labour Inspectorate (2015) Posting of employees*, National Labour Inspectorate, January 2015, at) <https://www.ip.gov.sk/wp-content/uploads/2015/01/Vysielanie-zamestnancov.pdf>

the European Union, the terms and conditions of employment shall be governed by the law of the State in the territory of which the employee carries out his work ⁵.

Key discussion points on posting workers abroad in Slovakia

The posting of workers abroad came to the attention of our country to a large extent right after Slovakia's accession to the European Union. It was because of the favourable working conditions in Slovakia, which encouraged a number of businesses to relocate their operations to Central and Eastern European countries. This was also largely the case for businesses in the transport sector. In this respect, there are a number of ways in which employees of undertakings may be based in another country.

Discussion following the adoption of the latest changes at European Union level in the context of the road transport sector

The latest changes adopted at European Union level aim at stricter control of the rules on posting of workers in the transport sector, which has been reflected in the disapproving approach of the sector's representatives. These are based, in particular, on new obligations as well as specific rules on when a posting of workers is and is not considered a posting of workers.

While supporters of these changes believe that they will result in more transparency and certainty about whether or not drivers will be posted, opponents of these changes do not share their view. However, it is true that, given the different transporters' business models, the controversy over the changes introduced has been so extensive that it has reached even SD EU. The SD EU, in case C-815/18, held that the posting rules also apply to cabotage truck drivers ⁶.

Nevertheless, the new rules have generated a new debate on the specific new definitions of when a posting of workers is and is not considered a posting. Namely, in practice, several of the situations described below can arise at the same time, which may create new legal uncertainty for employers in this area.

The following cases are not posting under the new regulations:

- Transit - a situation where a truck driver is merely passing through a country to which he is not transporting goods;
- Bilateral transport operation - a situation when a truck driver goes from Slovakia (the carrier is established in Slovakia) directly to transport goods to another country (e.g., Germany) on the basis of a contract of carriage, and vice versa;
- Bilateral transport operation with additional activity - a situation where a truck driver travelling from Slovakia to Germany carries out one load and/or unload of goods in the countries he passes through on the way. Or alternatively, if he does not do any additional

⁵ Národný inšpektorát práce (2016) *Nové povinnosti zamestnávateľa v súvislosti s vysielaním zamestnancov*, 14. júna 2016, Národný inšpektorát práce, na (National Labor Inspectorate (2016) *New obligations of the employer in connection with the posting of employees*, 14 June 2016, National Labor Inspectorate, at) <https://www.ip.gov.sk/wp-content/uploads/2016/07/Pr%C3%ADloha-2.pdf>

⁶ Bugan, M. (2022) „Vysielanie kamionistov a pracovné právo pri medzinárodnej doprave po novom“ (Posting of truck drivers and new labour law in international transport), *Nitschneider & Partners*, 24. februára 2022, na <https://nitschneider.passle.net/post/102hife/vysielanie-kamionistov-a-pracovne-pravo-pri-medzinarodnej-doprave-po-novom>

work on the way to Germany, he will be able to do two of these costs and/or unloadings on the way back to Slovakia. Obviously, always on the condition that the loading/unloading is not carried out in the same country (i.e., the driver cannot load and unload the goods in the Czech Republic);

On the other hand, the following cases imply posting:

- Cabotage - a situation where a Slovak carrier posts its employees to transport goods to and within Switzerland (e.g., the Zurich - Geneva route).
- Non-bilateral transport operation - a situation when the driver of a Slovak carrier drives between two states, but none of these states is Slovakia (i.e., he does not return to the state where the carrier is established).

Employers face obligations under these new rules when posting employees in the transport sector. In particular, the obligation to notify the posting and to provide drivers with the relevant documents, which can be examined in EU Member States.

Under the recent changes, employers will have more discretion in the scheduling of driver's working time. For example, he will have to take a break after 4 hours at the latest, although he can do so much earlier.

An employer cannot schedule a transport worker's weekly working time (for any type of transport) to exceed 60 hours. Such scheduling must be notified to him at least one week in advance.

Employers who set up the work of their employees (drivers) in such a way that they do not comply with working hours, driving times, on-call times, break times, daily or weekly rest periods or regulations on the use of recording equipment are liable to a fine of between €1,659 and €16,596.⁷

Data on the rate of employees posted from Slovakia to EU member states

This set-up of the new rules sparked a heated debate in Slovakia at the time of their adoption at the European level and implementation at the national level with regard to how the transport sector would be able to adapt to the new rules.

In terms of statistics, only partial data are available, which, however, point to a very advanced situation in the posting of employees from Slovakia to work in the member countries of the European Union and the countries of the European Economic Area.

Based on the available data from the Social Insurance Institution, employers posted almost 95,000 workers from Slovakia to work in the European Union in 2018. Employees of the Social Insurance Institution's branches issued 94 267 A1 transfer documents for them within one year. The employees were posted by Slovak companies under various employment contracts⁸.

⁷ VGD (2022) „Zjednotenie pravidiel vysielania vodičov v rámci Európskej únie od februára 2022“, *VGD News*, 31. januára 2022, na (Unifying rules on posting drivers across the European Union from February 2022", *VGD News*, 31 January 2022, at) <https://sk.vgd.eu/spravys/zjednotenie-pravidiel-vysielania-vodicov-v-ramci-eu-od-februara-2022>

⁸ Pravda (2019) „Zamestnávateľia vyslali na prácu do EÚ v roku 2018 takmer 95 tisíc pracovníkov zo Slovenska“, *Pravda.sk*, 5. marca 2019, na ("Employers posted almost 95,000 workers from Slovakia to work in the EU in 2018", *Pravda.sk*, 5 March 2019, at) <https://uzitocna.pravda.sk/praca-a-kariera/clanok/504366-zamestnavatelia-vyslali-na-pracu-do-eu-v-roku-2018-takmer-95-tisic-pracovnikov-zo-slovenska/>

Employers can post contract workers to work abroad in EU countries in addition to their full-time employees. These are natural persons employed by employers on the basis of a work performance agreement, a work activity agreement or a student temporary work agreement. Such a worker under an agreement, as well as a permanent worker, must meet the legal conditions for posting. For all such applications, the branches of the Social Insurance Institution review whether the employee/contract worker meets the requirements of posting or whether the employer carries out core activities in the territory of the Slovak Republic.

The transport sector remains a key sector in this context. Posted workers in this sector are, obviously, subject to Slovak legislation on social security. The employer continues to pay insurance contributions for these workers in Slovakia. In the transport sector, it remains crucial that the employees carry out activities on behalf of an employer operating in Slovakia, the expected length of such work does not exceed 24 months and the person is not posted abroad to replace another person's job.

Evaluation of available data

Posting of workers from Slovakia is undertaken by enterprises to a degree similar to the European Union average. If we take a look at the situation as it develops, we can observe, that the number of posted workers from Slovakia started to increase after Slovakia's accession to the European Union.

At the same time, it is indeed possible to observe a correlation between the evolution of the number of posted workers on the one hand and the economic cycle, where in times of economic crises there has been a significant decline in the number of posted workers. For this reason, as well, it is evident that the Covid-19 pandemic has had a significant impact on the posting of workers abroad.

The time period from 2004 to 2033 also illustrates a more significant regrouping of the destination countries to which the workers are posted. These reflect changes in terms of the key sectors that dominate the Slovak economy. Indeed, after 2004 the importance of the automotive industry began to grow, but companies from other sectors, the backbone of the Slovak economy, were still present. The steel industry was also dominant for a long time, and its importance was crucial particularly for eastern Slovakia, where many companies with an international reach benefited from this industry.

In terms of year-over-year development since 2004, it is apparent that until Slovakia's accession to the European Union, only the Czech Republic dominated the posting of employees, with more than 58 per cent of all posted workers, while Austria came in second place by a wide distance. This trend was understandable due to the fact that Slovakia was outside the single market of the European Union until this period.

The second interesting period occurred right before the arrival of the economic recession after 2008, when the aforementioned Hungary started to come to the fore, rising to third place overall. Similarly, the other continental countries of the European Union grew in importance. Including Germany, Italy, but also the United Kingdom.

In terms of the sectors that dominate the posting of workers in Slovakia, although information is less available, it is expected that most of them are in the transport sector, but some of them are in construction and manufacturing, as in the EU. In manufacturing, the automotive industry and the transport sector in general still play a significant role in this respect.

This area merits much more careful and detailed research to identify the needs of these employers as well as the key characteristics of posting workers from Slovakia.

A broader view of the situation in the transport sector

The high economic growth of Slovakia in the last two decades has led many companies to establish their service centres and transport or production hubs in Slovakia. These centres increasingly tend to post Slovak employees for temporary assignment abroad. It is fully reflected in the trend of the size of posting of workers from Slovakia abroad.

Euractiv.sk reports that the number of applications for posting of workers by Slovak companies abroad has been steadily increasing between 2011 and 2018 (the latest available figures). In 2017, the Social Insurance Institution handed over almost 129 thousand certificates for employees to be posted abroad and in 2018 the number reached 135 681. It indicates that until the COVID-19 crisis there was a trend to post workers by Slovak undertakings. For an outlook, in 2014, the number of workers posted abroad was only 89 494, representing an increase of more than 51% in postings over the four-year period.⁹

In terms of destination, the most frequent host countries for Slovak posted workers were Germany, Austria and the Czech Republic, followed by France, Belgium and the Netherlands. Construction, transport, manufacturing and services were the predominant industries in which workers were posted abroad. It illustrates that the sectoral distribution combines, on the one hand, strong sectors present in Slovakia and, on the other hand, also includes industries where the lack of skilled workers within the receiving countries is a major factor.

As far as posting workers to Slovakia from abroad is concerned, the number of workers coming to Slovakia for work is also on the rise. It is reinforced by a combination of a growing lack of skilled workforce in specific sectors (IT or skilled trades) combined with historically low unemployment rates among the low-skilled population. As a result, the number of workers posted to Slovakia has risen from 7,634 in 2014 to almost 69,000 in 2018. The representation of countries has also changed over time. In 2014, Romania was the leading country of origin, followed by the Czech Republic, Germany and Hungary. In 2018, Serbia was at the top of the list of main countries of origin, followed by Ukraine and then Romania. The trend shows a decreasing number of posted workers from Hungary and Romania, with an increasing number of posted workers from the Czech Republic, as well as Serbia, Croatia and even the UK. In the case of Serbia, for example, the number of workers from that country was not significant until 2016. In terms of occupations, more than half of them work as operators and machinery assemblers of machinery and equipment or as manual and unskilled workers¹⁰

⁹ EURACTIV.SK and TASR (2016) "Vysielanie pracovníkov: Slovensko sa snaží o konštruktívny prístup" (*Posting workers: Slovakia seeks a constructive approach*), Euractiv.sk, 12th October 2016, at <https://euractiv.sk/section/podnikanie-a-praca/news/vysielanie-pracovnikov-narodny-zaujem-ide-pocas-predsednictva-bokom/>

¹⁰ Kordošová, M. (2019) *Odstraňovanie bariér a zvyšovanie úrovne BOZP u zahraničných pracovníkov: I. etapa*, Bratislava: Inštitút pre výskum práce a rodiny (*Removing barriers and raising the level of OSH among foreign workers: stage I, Bratislava: the Institute for Labour and Family Research*), at https://ivpr.gov.sk/wp-content/uploads/2020/03/odstranovanie_barier_zahr_prac_vu_kordosova_2019.pdf

Bibliography

Bugan, M. (2022) „Vysielanie kamionistov a pracovné právo pri medzinárodnej doprave po novom“ (“*Posting of truck drivers and new labour law in international transport*”), *Nitschneider & Partners*, 24. februára 2022, na <https://nitschneider.passle.net/post/102hjfe/vysielanie-kamionistov-a-pracovne-pravo-pri-medzinarodnej-doprave-po-novom>

EEPOW (2017) *Posting of workers in Eastern Europe*, Agreement No. VS/2017/0349, *European Centre for Social Welfare Policy and Research*, With financial support from the EaSI programme of the European Union, na https://www.zsh-online.de/projekte/projekte/13-projektarchiv/download/434_840819b365390c01c54136e40893a08f

EURACTIV.SK and TASR (2016) “Vysielanie pracovníkov: Slovensko sa snaží o konštruktívny prístup” (“*Posting workers: Slovakia seeks a constructive approach*”), *Euractiv.sk*, 12th October 2016, at <https://euractiv.sk/section/podnikanie-a-praca/news/vysielanie-pracovnikov-narodny-zaujem-ide-pocas-predsednictva-bokom/>

Kordošová, M. (2019) *Odstraňovanie bariér a zvyšovanie úrovne BOZP u zahraničných pracovníkov: I. etapa*, Bratislava: Inštitút pre výskum práce a rodiny (*Removing barriers and raising the level of OSH among foreign workers: stage I, Bratislava: the Institute for Labour and Family Research*), at <https://ivpr.gov.sk/wp-content/uploads/2020/03/odstranovanie-barier-zahr-prac-vu-kordosova-2019.pdf>

Národný inšpektorát práce (2015) *Vysielanie zamestnancov*, Národný inšpektorát práce, január 2015, na (*National Labour Inspectorate (2015) Posting of employees, National Labour Inspectorate, January 2015*), <https://www.ip.gov.sk/wp-content/uploads/2015/01/Vysielanie-zamestnancov.pdf>

Národný inšpektorát práce (2016) *Nové povinnosti zamestnávateľa v súvislosti s vysielaním zamestnancov*, 14. júna 2016, Národný inšpektorát práce, na (*National Labour Inspectorate (2016) New employer obligations in relation to the posting of employees, 14 June 2016, National Labour Inspectorate*, at) <https://www.ip.gov.sk/wp-content/uploads/2016/07/Pr%C3%ADloha-2.pdf>

Pravda (2019) „Zamestnávateľia vyslali na prácu do EÚ v roku 2018 takmer 95 tisíc pracovníkov zo Slovenska“, *Pravda.sk*, 5. marca 2019, na (*Pravda (2019) "Employers sent almost 95,000 workers from Slovakia to work in the EU in 2018", Pravda.sk, 5 March 2019*, at) <https://uzitocna.pravda.sk/praca-a-kariera/clanok/504366-zamestnavatelia-vyslali-na-pracu-do-eu-v-roku-2018-takmer-95-tisic-pracovnikov-zo-slovenska/>

Slovensko.sk (2023) *Zamestnávanie pracovníkov v iných členských štátoch (vysielanie pracovníkov do zahraničia)*, *Slovensko.sk*, 8. marca 2023, na (*Slovensko.sk (2023) Employment of workers in other Member States (posting workers abroad), Slovensko.sk, 8 March 2023*, at) <https://www.slovensko.sk/sk/zivotne-situacie/zivotna-situacia/zamestnavanie-pracovnikov-v-in/>

VGD (2022) „Zjednotenie pravidiel vysielania vodičov v rámci Európskej únie od februára 2022“, *VGD News*, 31. januára 2022, na (*VGD (2022) (Unification of driver posting rules across the European Union from February 2022', VGD News, 31 January 2022*, at) <https://sk.vgd.eu/sk/spravy/zjednotenie-pravidiel-vysielania-vodicov-v-ramci-eu-od-februara-2022>



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



UNIVERSITY OF
THESSALY



InnoVED

InnoGrowth



industriAll
EUROPEAN TRADE UNION



Co-funded by
the European Union

Funded by the European Union. Views and opinions expressed are however those of the author(s) only, and do not necessarily reflect those of the European Union or European Commission. Neither the European Union nor the granting authority can be held responsible for them.