



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

POSTING PROSPECTS

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LITERATURE REVIEW ON THE POSTING OF WORKERS

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1. Introduction

COVID-19 has been identified in Wuhan (November 2019) and it has been evolving as the most disruptive contemporary global-scale event. Though, first and foremost, it is a health pandemic, COVID-19 has grown into an unprecedented, global-scale, economic and social disruption (Niavis et al., 2021)¹. COVID-19 pandemic is, apparently, challenging households and firms in unprecedented ways. On the one hand, there is the top priority of protecting human lives. On the other hand, the containment of the pandemic has restricted economic and social interactions and has endangered jobs and welfare. The economic impact of the pandemic lies on both the demand and the supply side. On the demand side, stay-at-home and social distancing measures have cut down on consumption. On the supply side, border controls and lockdown of economic activities have disrupted global supply chains.

The text contains a review of the literature as regards the the posting of workers, putting emphasis on the case of Greece.

2. Legislation on Posted Workers

“Posted worker” is “a person who, for a limited time, carries out his / her work in the territory of a country other than the one in which he / she normally works”.

2.1. EU Legislation

The Directives² 96/71/EC (Posted Workers Directive) and 2014/67/EU (Posted Workers Enforcement Directive) regulate posted workers’ issues within the EU territory.

The Posted Workers Directive 96/71/EC³ is concerned within the free movement of workers within the EU territory and makes an exemption to the Convention on the Law Applicable

¹ Niavis S., Kallioras D., Vlontzos G. and Duquenne M. N. (2021), COVID-19 pandemic and lockdown fine optimality, *Economies*, 9(1).

² A "Directive" is a legislative act that sets out a goal that all EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals. See https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en for details. A "Regulation" is a binding legislative act that must be applied in its entirety across the EU. A "Decision" is a binding legislative act that must be applied on those to whom it is addressed. A "Recommendation" is not binding.

³ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31996L0071&from=en>.

to Contractual Obligations 1980 (or Rome Convention)⁴. The latter requires that workers are protected by the law of the country in which they work. The Directive aims to clarify competing claims of competence in the case of workers being sent abroad by their employers (i.e., posting of workers), between the rules governing labor relations in the country of origin of the employing service provider and the country where the work is actually carried out (but where the workers are not normally based). In the case that the laws of the country where the work is, actually, carried out applied even for short stays, the companies wishing to offer their service in the entire EU would have to be aware of every national set of rules. To counter such a burdensome obligation, which would discourage companies from taking the full advantage of the EU internal market, the European Court of Justice has developed a balancing mechanism that determines which country's rules apply in a given situation. Yet, such a case-by-case approach generates legal uncertainty. The Directive tackles this uncertainty providing that a “hard core” of rules of the host country (i.e., country of destination) needs to be observed.

The Directive applies when: (a) a company agrees to provide a service to a client in another EU country and needs to send workers there in order to carry out this work, (b) a worker is posted to another country through arrangements within a group of companies, with the parent and subsidiaries based in different EU countries, and (c) a worker is posted through an agreement between an employer and an employment agency. The EU country hosting a posted worker must ensure that he / she is protected in terms of minimum standards that refer to: (a) working time, (b) standards applicable to agency workers, (c) health and safety, (d) pregnancy and maternity protection, (e) discrimination law, and (f) building and construction trades and collective agreement standards. The Directive has come under criticism for reducing the rights of posted workers and undermining the rights of workers in a home country. This is because the aforementioned minimum standards must be read within the context of the TFEU⁵ (art. 56), the European Convention on Human Rights⁶ (art. 11) and the EU Race Equality Directive (Directive 2000/43/EC)⁷ that provide the basis for the development of the “justified restrictions for the protection of essential

⁴ Rome Convention has been replaced by Regulation EC No 593/2008 (or Rome I Regulation). The latter governs the choice of law in the EU. See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008R0593&from=EN>. The Regulation applies to all EU countries except Denmark.

⁵ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.

⁶ See https://www.echr.coe.int/Documents/Convention_ENG.pdf.

⁷ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32000L0043&from=EN>.

requirements in the general interest” mechanism on behalf of the European Court of Justice. Taking into consideration the above criticism, Directive 2018/958/EU⁸ amends Directive 96/71/EC.

The Posted Workers Enforcement Directive 2014/67/EU⁹ aims to strengthen the practical application of the rules on posting of workers through administrative requirements such as the registration obligation of posted workers, the setting of proportionate fines and sanctions for non-compliance, giving access to information, cooperation between EU countries. To this end, the Directive establishes a common framework of a set of appropriate provisions, measures and control mechanisms necessary for better and more uniform implementation, application and enforcement in practice of Directive 96/71/EC. Hence, the Directive aims to guarantee respect for an appropriate level of protection of the rights of posted workers for the cross-border provision of services, while facilitating the exercise of the freedom to provide services for service providers and promoting fair competition between service providers, and thus supporting the functioning of the internal market. It is clarified that the Directive shall not affect in any way the exercise of fundamental rights, as recognized in EU countries and at the EU level, including the right or freedom to strike or to take other action covered by the specific industrial relations systems in EU countries, in accordance with national law and / or practice. It is, also, clarified that the Directive does not affect the right to negotiate, conclude and enforce collective agreements and to take collective action in accordance with national law and / or practice.

Posted Workers Directive 96/71/EC – and the amending Directive 2018/958/EU - and Posted Workers Enforcement Directive 2014/67/EU fall under the remit of the European Labor Authority (ELA)¹⁰. The latter was created to assist EU countries and the European Commission to ensure that EU rules on labor mobility and social security coordination are enforced in a fair, simple and effective way.

2.2. Greek Legislation

⁸ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L0957&from=EN>.

⁹ See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0067&from=EN>. The Directive applies also to the EEA countries (i.e., Norway, Iceland, Lichtenstein), to Switzerland, and to the UK. As regards the UK and the post-BREXIT period, the EU countries opted in to apply the provision for posting of workers in the social security Protocol of the EU-UK Agreement. For further details, see https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2531 and <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2021:055:FULL&from=EN>.

¹⁰ For further details see <https://www.ela.europa.eu/en>.

The provisions of Posted Workers Directive 96/71/EC – and the amending Directive 2018/958/EU - and Posted Workers Enforcement Directive 2014/67/EU have been transposed to the Greek legislation.¹¹

The provisions of Directive 96/71/EC have been transposed to the Greek legislation by means of the Presidential Decree 219/2000 “Measures on the protection of workers, posted in Greece in order to carry out a temporary work, within the territory of Greece in the framework of the transnational provision of services”¹². The latter applies in cases of posting of workers to the territory of Greece for a limited period of time, in the framework of the provision of services, by undertakings established in an EU country or in an EEA country. Presidential Decree 219/2000 applies to undertakings established in an EU country or in an EEA country, and in the cases that posting of workers falls under on the cases: (a) post workers on their account and under their direction, under a contract concluded between the undertaking making the posting and the party for whom the services are intended, operating in Greece, provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting, (b) post workers to an establishment or to an undertaking owned by the group of which the posting undertaking is a member provided there is an employment relationship between the undertaking making the posting and the worker during the period of posting, and (c) being a temporary employment undertaking or placement agency, hire out a worker to a user undertaking established or operating in the territory of Greece, provided there is an employment relationship between the temporary employment undertaking or placement agency and the worker during the period of posting.

The provisions of Directive 2014/67/EU have been transposed to the Greek legislation by means of the Presidential Decree 101/2016 “Adaptation of Greek legislation to the provisions of Directive 2014/67/EU of the European Parliament and the Council of 15th of May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and the amendment of regulation (EU) no: 1024/2012 on administrative cooperation through the Internal Market Information System (“IMI” Regulation)¹³”.

The competent authorities for information provision on legislation applicable in accordance with the Directives on posted workers are: (a) the Hellenic Ministry of Labor and Social

¹¹ For further details see <https://ypergasias.gov.gr/en/labour-relations/individual-employment-relations/posting-of-workers-in-the-framework-of-the-provision-of-services/>.

¹² For further details see Official Government Gazette 31st August 2000, vol. 1, issue 190 (*in Greek*).

¹³ For further details see Official Government Gazette 26th September 2016, vol. 1, issue 178 (*in Greek*).

Affairs¹⁴ (Directorate-General of Employment Relationships, Occupational Health and Safety and Labor Market Integration, Directorate of Individual Contractual Labour Arrangements, Section of Individual Labor Contract), (b) the Hellenic Ministry of Labor and Social Affairs (Directorate-General of Employment Relationships, Occupational Health and Safety and Labor Market Integration, Directorate of Health and Safety at Work), (c) the Labor Inspectorate Body¹⁵ (Central Division, Directorate of Planning and Coordination of Labor Inspectorate Body), (d) the Labor Inspectorate Body (Central Division, Directorate of Planning and Coordination of Inspection of Occupational Safety and Health), (e) the Labor Inspectorate Body (Regional Authorities, Directorates of Labor Inspectorate Body), and (f) the Labor Inspectorate Body (Regional Authorities, Directorates of Inspection of Occupational Safety and Health). The Labor Inspectorate Body is an Independent Authority.

3. Data Availability on Posted Workers

The actual employment in a country at a specific point in time may differ greatly from the figures published in national employment statistics either because there is still too little administrative or survey data available on the inflow and outflow of temporary cross-border labor mobility, including the provision of services abroad, or because several types of temporary labor mobility (the inflow and outflow of posted workers) are excluded when measuring employment in a country (De Wispelaere, 2022¹⁶). As a result, the real extent of employment in a number of labor-intensive sectors, is strongly underestimated. As regards posted workers, in particular, producing comprehensive and comparable statistics remains a challenging task. To successfully address this task, UNECE (2019)¹⁷ published a set of guidelines to support improved measurement of international labor mobility.

The two main sources of information on intra-EU posting are data from the so-called “Portable Document A1” (PD A1) and data from the national “prior declaration tools” (Rennuy,

¹⁴ See www.ypergasias.gov.gr.

¹⁵ See <https://www.sepe.gov.gr/en/landing-page-en/>.

¹⁶ De Wispelaere F. (2022), Improving the monitoring of posted workers in the EU: Towards an exhaustive approach of employment statistics, *CESifo Forum*, 23(3): 29-32.

¹⁷ United Nations Economic Commission for Europe – UNECE (2019), *Guidelines to support improved measurement of international labor mobility*, Geneva: UN.

2020¹⁸; De Wispelaere, 2022). “PD A1” is a certificate that proves that the social security legislation of the issuing EU country applies and confirms that this person has no obligations to pay contributions in another EU country. The national “prior declaration tools” contains information on incoming posting undertakings and the workers concerned, provided from service providers, in order to allow factual controls on the workplace. The statistics that become publicly available by reporting data from the “PD A1” and the national “prior declarations tools” are almost the only source of comparable information at the European level to estimate the number of postings and posted workers.

De Wispelaere et al. (2021)¹⁹ and De Wispelaere et al. (2022)²⁰ present data on posted workers collected from the “PD A1” and the national “prior declaration tools”. Data refers to year 2020.

4. COVID-19 Pandemic and Posted Workers: Focus on Greece

COVID-19 pandemic exerted, *inter alia*, a tremendous impact on posted workers, even though the anti-pandemic measures were horizontal in nature and did not explicitly address posted workers. Because of the COVID-19 pandemic travel to work has turned into an exception, only authorized under strict conditions (Robin-Olivier, 2020²¹). Three categories of measures can be identified (Letta, 2021²²): (a) measures taken by the EU countries, (b) measures taken by the European Commission, and (c) measures taken by private companies.

EU countries took both contra-posting and pro-posting measures. On the one hand (i.e., contra-posting measures), EU countries, in order to stop the spread of the pandemic, suspended the *acquis communautaire* and re-introduced border controls (requiring, *inter alia*, vaccination certificate and / or negative PCR-test results and / or 14-day quarantine obligation) or even closed

¹⁸ Rennuy N. (2020), Posting of workers: Enforcement, compliance, and reform, *European Journal of Social Security*, 22(2): 212-234.

¹⁹ De Wispelaere F., De Smedt L. and Pacolet J. (2021), *Posting of workers: Report on A1 Portable Documents issued in 2020*, Brussels: European Commission.

²⁰ De Wispelaere F., De Smedt L. and Pacolet J. (2022), *Posting of workers: Collection of data from the prior declaration tools (reference year 2020)*, Brussels: European Commission.

²¹ Robin-Olivier S. (2020), Free movement of workers in the light of COVID-19 sanitary crisis: From restrictive selection to selective mobility, *European Papers*, 5(1): 613-619.

²² Letta E. (2021), The impact of the COVID-19 pandemic on posted workers: The new posting framework, *European Issues*, 591.

the borders. Apparently, these measures discourage companies to post workers. On the other hand (i.e., pro-posting measures), EU countries allowed the so-called “essential” postings and adopted *ad hoc* measures to avoid additional burdens.

The European Commission published Communication 2020/C102/I/02²³, Communication 2020/C102/I/03²⁴ and Communication 2020/C/169/03²⁵ aiming at ensuring that free movement is restricted in compliance with EU legislation. With Communication 2020/C102/I/02, the European Commission makes recommendations on the introduction of temporary travel restrictions to apply to all non-essential travel from third countries, thus acknowledging - even though it does not explicitly mention the postings - the national limitations of assignments coming from a non-EU country. The European Commission has further requested that any decision on refusal of entry be proportionate, non-discriminatory and implemented in a way that ensures full respect of the human dignity of the persons concerned. With Communication 2020/C102/I/03, the European Commission makes a direct reference to border workers, posted workers, as well as seasonal workers, and called on the EU countries to adopt a coordinated approach at EU level, aiming to facilitate the crossing of the EU internal borders. To achieve this purpose, health screenings for border and posted workers should be carried out under the same conditions as for nationals exercising the same occupations. With Communication 2020/C/169/03, the European Commission requests that EU countries allow workers, in particular transport, border, posted and seasonal workers, and service providers to cross borders and have unhindered access to their place of work.

Private companies, within the framework of COVID-19 pandemic, have rethought their way of doing business and providing cross-border services, and have discontinued postings of workers. Of course, workers themselves have been reluctant to travel to a foreign country.

Greece took both sanitary and economic measures to counterbalance the negative impact of COVID-19 pandemic (Kousi et al., 2021²⁶). Sanitary measures included social distancing, lockdowns and mandatory vaccinations. Economic measures included the digitalization of critical public function and the provision of subsidies to private companies. Besides the enactment of the Presidential Decree 219/2000 and the Presidential Decree 101/2016 that regulate the issues of

²³ See [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0330\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0330(02)&from=EN).

²⁴ See [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0330\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0330(03)&from=EN).

²⁵ See [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0515\(05\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0515(05)&from=EN).

²⁶ Kousi T., Mitsi L.-C. and Simos J. (2021), The early stage of COVID-19 outbreak in Greece: A review of the national response and the socioeconomic impact, *Journal of Environmental Research and Public Health*, 18(1): 322.

posted workers, in accordance to the corresponding EU legislation, Greece adjusted properly to the Communications made on behalf of the European Union as regards the posting of workers in the light of the COVID-19 pandemic. The employers who fail in complying with the provisions of the Greek labor legislation when post workers are liable to both administrative and penal sanctions. On the one hand, employers who infringe terms and conditions in the Greek labor legislation can be punished with a fine, which amount ranges from €1,000 to €30,000 for infringement. On the other hand, the failure of terms and conditions of working time limits, remuneration and other provisions is liable to imprisonment of at least 6 months or to a fine of at least € 900 or to both.

The Greek think tank Dianeosis²⁷ conducted seven public opinion surveys on challenges of the COVID-19 pandemic for the Greek economy and society²⁸. Even though the survey does not address directly the issue of posted workers, some insight can be, indirectly, gained. The most recent survey published in November 2021.²⁹ The majority of the respondents (67.0%) believes that the hard times of the pandemic are over. However, a significant part (26.2%) believes that more difficult days are ahead. The majority of the respondents (48.4%) believes that the management of the pandemic so far has been generally right. However, an almost equal share of the respondents (45.8%) believes that management of the pandemic so far has been generally wrong. The majority of the respondents (49.8%) disagrees with the opinion that only vaccinated service providers have the right to provide services. However, a significant part (47.6%) agrees with this opinion. The vast majority of the respondents (82.6%) work at their working place, whereas a, rather, small share of the respondents (9.7%) work remotely (i.e., from home). The corresponding shares are 90.5% - 0.0% for the primary education graduates, 86.9% - 4.8% for the secondary education graduates, 80.0% - 12.7% for the tertiary education graduates, and 78.7% - 13.8% for the tertiary education graduates with a Master and / or a PhD. Also, the corresponding shares are 92.8% - 3.4% for those employed in the public sector, 78.6% - 13.8% for those employed in the private sector, and 79.9% - 9.0% for the self-employed.

²⁷ See <https://www.dianeosis.org/> (in Greek) and <https://www.dianeosis.org/en/>.

²⁸ For details see <https://www.dianeosis.org/research/covid-19/> (in Greek).

²⁹ For details see https://www.dianeosis.org/wp-content/uploads/2021/11/Covid-19_7th-wave.pdf (in Greek).



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