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

NATIONAL ANALYSES

OF LITERATURE REVIEW ABOUT
POSTED WORKERS IN EUROPE:

A SUMMARY REPORT

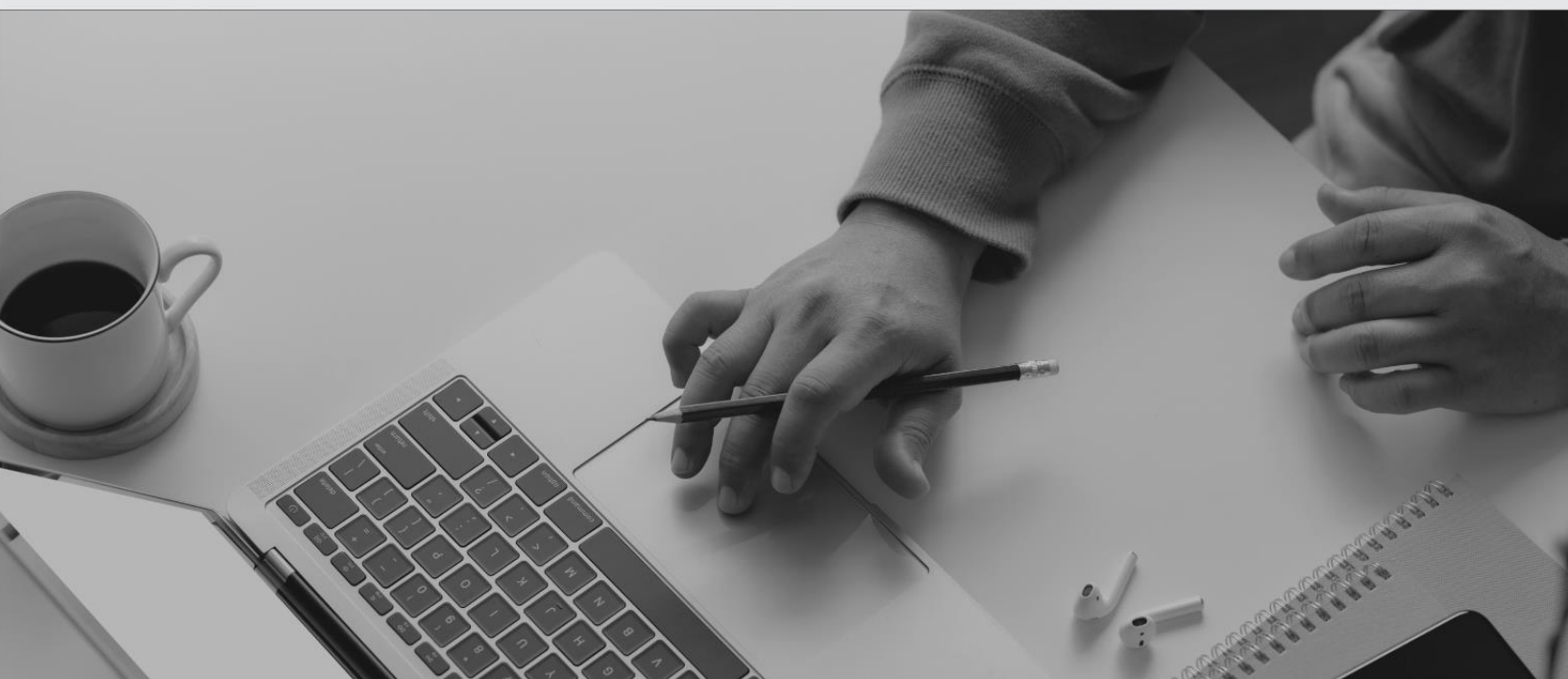


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Introduction

This summative report is based on the national reports produced on the literature review and data sets done by the teams of the European project “Posting Prospects” supported by DG EMP. We pretend to present here a summary of the common problems that were identified in participating EU Member states and in other selected non-EU countries.

Applied methods

The aim of the literature review is to understand the existing scientific knowledge on a certain topic. This exercise could have contributed to a better understanding of the debate in each country involved in this project and, eventually, have a contextual reference to the national conditions where the posting of work has been a practice. However, very few reports provided such evidence, and most just referred to the legislation texts which frame those conditions. Most reports do not give information on the socio-economic context. As well, very few or almost no reports offered a conclusion on the national situation based on national data sets. For some, there was almost no national statistics provided on posted work.

Nevertheless, most reports identified the national scientific studies on posted work, as well the national data sets on this type of labour relationship in Europe. Unfortunately, the references based on national statistics were scarce. We know in advance that, “from a statistical point of view, the labour market appears to be demarcated by the place of establishment of the employer, thus excluding work (i.e., services) carried out through non established employers” (De Wispelaere et al., 2022). This is one of the main reasons for such data scarcity at national level.

In some of the national reports there is no mention of national studies on the topic. That is the case for Slovakia. References of literature are only done to regulatory instruments or other legislative documents and not to scientific studies.

The Polish report mentioned that “there is no material, information or analysis that addresses both the issue of the posting of workers and the metal sector” (p.1). It also mentions that “the topic of posting of workers appears in highly specialized academic literature aimed at experts, the circulation of which is low (number of copies). Information was also found on a few master theses on the topic of posting workers” (p. 3). However, no further information is provided about those “academic” studies, except for a list of scientific studies without information at least based on the abstracts, like Grygutis (2023), Szypniewski (2019), Wołoszyn (2018), Matuszczyk et al. (2022) or Tomaszewska (2018). Thus, we get no specific information on the approaches and methods used in those studies. As well, very little is known about the outcomes of the research developed.

The Greek report mentions that “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 labour mobility, including the provision of services abroad, or because several types of temporary labour mobility (the inflow and outflow of posted workers) are excluded when measuring employment in a country (De Wispelaere, 2022)”. As a result, the real extent of employment in a few labour-intensive sectors is, according to this report, strongly underestimated. But we get no further information about Greek authors and research that eventually is developed in this EU member state.

It is possible that this situation is broader than we could suppose. Most national reports were not mentioning scientific studies on national debates and legislative proposals brought to consultation to tripartite social partners. For example, the Bulgarian report states that in Rasnača and Bernaciak's (2020) book “there have been no national debates on the posting of workers in Bulgaria, and legislative proposals concerning the posting of workers were brought for consultation with the social partners in the framework of the Tripartite Cooperation Council” (p. 5).

Therefore, two main considerations can be advanced:

- a) there is almost no independent scientific research on this topic in Europe;
- b) if there are publications with results of eventual research, those publications are not publicly available through open access means.

This means that it is necessary to support more studies on this issue with national and/or comparative focuses. Independent knowledge on the processes and realities of posting work is urgently needed to provide capacity for further legislation and to understand the needs of posted workers and companies that send or receive posted workers.

Summative literature about posting of workers

According to the European report (2008) from the trESS network (Training and Reporting on European Social Security), there are institutional difficulties that can affect posted workers. Some problems are related to the difficulties for obtaining health care in other Member States, and claims of retirement pensions refused by institutions¹.

In Slovakia, for example, the topic of posting workers abroad came to the centre of attention largely immediately after the country's accession to the European Union. This was due to the favourable labour conditions in Slovakia, which motivated several companies to relocate their operations to other Central and Eastern European countries. This was also true primarily for enterprises in the transport sector.

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 regarding how the transport sector would be able to adapt to these new rules. Posted employees in this sector are of course subject to Slovak legislation in terms of social security. The employer continues to pay insurance premiums for them in Slovakia. In the transport sector, it remains crucial that these employees carry out activities on behalf of an employer operating in Slovakia; that the expected duration of such work does not exceed 24 months; and that the person is not posted abroad to replace another person's job.

The Serbian report mentions that "in the last few years, CEE countries have become not only sending countries of migrants to the West, but also receiving countries of migrants from countries located east of the EU. A significant part of this migrant flow consists of workers from Ukraine, and

¹ Information presented in the Portuguese report on the literature review (p. 14), but the problem seems to be generalised.

its proportions have increased with the deterioration of the economic and political situation and the war in Ukraine. However, there are increasingly posted workers from the Western Balkan region who go further to the EE countries via Slovenia or some other EU member states” (p. 2).

There seems to be serious problems such as the persistence of extremely high unemployment rates in the Western Balkan region, large-scale emigration, a huge outflow of educated and skilled workers and widespread poverty (Ganić, 2019). As well, in countries where temporary labour status dominates for labour migrants, during the crisis, labour migrants from Serbia were especially affected by economic uncertainties and border closures (Predojević et al., 2021). It seems also that a practice that is often confused with posting is the practice of agencies for employment or agencies that perform a specific activity (aid agencies at home) send Serbian citizens to work in the grey economy for a short period of time (Stanić & Matković, 2021).

The Bulgarian report also presents existing problems. It is stated that, “in terms of the dynamics of the labour market, the literature has highlighted concerns about the potential exploitation of posted workers and wage differentials. There are also debates on the impact of the posting of workers on the efficiency and competitiveness of the labour market”. Despite this, they have concluded that exists a lack of interest and few scientific studies. That “is likely due to the fact that, in 2015, only 0.5% of Bulgaria's workforce was posted to other EU Member States, and the rules on inbound posted workers applied to only 3,300 citizens of other EU Member States” (p. 5).

In the Portuguese case, “the posting of workers abroad is framed in the Labour Code, in Article 108. When a worker is posted from Portugal, there are some additional requirements that should be met regarding the duty of information” (Portuguese report, p. 7). A posted worker is entitled to the same working conditions as other workers in the country of destination when these are more favourable. When it comes to working conditions, wages, working hours, overtime payments, holidays and occupational safety and health are included. This also includes the protection of parenthood and equal treatment and non-discrimination. There is, within the Portuguese Authority for Working Conditions, a working group dedicated to the transnational mobility of workers and companies.

Ribeiro and Rouxinol (2022) research found that posting of workers has generally been the subject of little attention in universities. In another study, Carvalho (2018) conducted a legislative

analysis of the amendments introduced by the Directive (EU) 2018/957. The author demonstrated that, despite creating a favourable legislative framework for fair competitive conditions, the directive may compromise the delicate balance between the protection of workers and the freedom to provide services.

Pereira et al. (2020a) found that among the Portuguese workers in Belgium, the idea that only settled emigrants reveal greater availability for the effective fulfilment of working hours; the posted workers, the self-employed (false or not), systematically work more hours – that the formal and informal regulation of work assumes, for posted workers.

Finally, “in Portugal there are several sectoral agreements signed by the manufacturing employer’s association and several trade unions that regulate many aspects of posting of workers. The representativeness of all these institutions is not well established in the scientific literature. However, all collective bargaining agreements need to provide indicators that make estimations about the number of workers covered and the number of companies represented by both parties” (p. 21).

In Portugal, “there is a general perception (from CGTP-IN and the labour general inspectorate) that workers posted by domestic companies are working mostly in construction, maintenance, logistic and agriculture” (p. 14).

The Polish report mentions that “in a noted article on social dumping, the author undertook to dispel the myth that the posting of workers is a tool of social dumping. He argued, based on data, that the financial costs and administrative burdens resulting from the use of this legal instrument are large (high) and that posting of workers is most often used by posting people to countries with high wages and costs for the posting agent” (p. 6). Unfortunately, we don’t know which author and which article is mentioned.

The Greek report refers that “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., 2021). 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 (p. 9).

The Greek think tank Dianeosis² conducted seven public opinion surveys on challenges of the COVID-19 pandemic for the Greek economy and society³. Even though the survey does not directly address the issue of posted workers, some insight can be, indirectly, gained. In the 2021 survey, they have found that “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)” (p. 10 of Greek report).

The limited extent of posting of workers in Bulgaria can be attributed to various factors, as it is mentioned in their literature review report. “One possible explanation is that Bulgaria is not an attractive destination for foreign companies to provide services due to its relatively low economic development and wages compared to other EU countries. Additionally, the administrative and legal procedures for posting workers may be seen as cumbersome and time-consuming, which may discourage companies from choosing Bulgaria as a destination for posting workers” (p. 3). It is mentioned that “the study by Sakellaropoulos and Stergiou (2011) highlights the need for effective monitoring and enforcement of the existing regulations on posting of workers in Bulgaria. This is particularly important to prevent cases of undeclared work and ensure that posted workers are protected and have access to social welfare benefits” (p. 3).

Again, the Bulgarian report refers that “the trend of legal labour migration of third-country nationals in Bulgaria has been gaining attention in recent years. In response, the Bulgarian government has made several amendments to the legislation aimed at easing the access of third-country nationals to the labour market while preserving the rights of Bulgarian and EU citizens. One such trend is the presentation of market access legislation, which aims to reduce bureaucratic obstacles and to balance the workforce needs of Bulgarian businesses with the interests of Bulgarian and EU citizens” (p. 6). It seems that “is perceived as highly bureaucratic, which could discourage employers from complying even at the risk of not providing the necessary workforce (Ilieva, 2015)”.

² See <https://www.dianeosis.org/> (*in Greek*) and <https://www.dianeosis.org/en/>.

³ For details see <https://www.dianeosis.org/research/covid-19/> (*in Greek*).

Conclusions

In several countries, one of the main challenges to ensuring the effectiveness of compliance with the legislation applicable to the posting of workers is the identification of a given concrete situation as being of posting (Portugal report, p. 12). However, this “concrete situation” is only partially known in most countries involved in this European study. Most of them referred to the lack of scientific studies and a limited national debate revealed in the literature that was analysed by the national teams.

There are, probably, significant differences between some European countries. And there are also differences between those countries that belong to the EU and those that are not EU member states. But a deeper analysis on those differences and similarities should be further analysed with a research study with more resources and time.

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