



Challenges encountered by employers in the posting of workers in Slovakia*

Posting of workers in the framework of the provision of services

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Introduction

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In Slovakia, the posting of workers is a widely utilised labour mobility mechanism enabling employers to send their employees to carry out a service in another EU Member State on a temporary basis. In 2018, Slovakia was the 6th largest sending country in the EU with over 135,000 portable documents A1 (PDs A1) issued by the Social Insurance Agency (De Wispelaere & Pacolet, 2019). Although the [Directive 2018/957](#) of the European Parliament and of the Council of 28 June 2018 amending Directive 26/71/EC concerning the posting of workers addressed several problems in the implementation practice of posting, such as imposing limitations on the length of posting or clarifying a definition of remuneration for the posted workers, Slovak employers still experience various obstacles in posting workers which increase their transaction and financial costs. Moreover, implementation difficulties have a negative impact on the working conditions and labour rights of the posted workers.

Keywords: posting of workers, access to information, determining remuneration, constrained capacities of public institutions, Slovakia

The aim of this policy brief is to present (i) main obstacles the Slovak employers encounter in the posting of workers and (ii) policy recommendations addressing these obstacles and improving the implementation practice in utilising this

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labour mobility instrument. Findings presented in this policy paper are based on literature review and interviews with key stakeholders in posting (public authorities, employers, trade unions, and non-governmental organisations)[‡] as part of the POW-Bridge project - Bridging the gap between legislation and practice in the posting of workers. The full **Slovakia country report** (Kováčová, Studená & Mýtna-Kureková, 2021) on the posting of workers can be [downloaded here](#). In this project, the posting of workers was explored with a special focus on implementation problems in posting in the construction and automotive sectors both from the sending and receiving perspective.

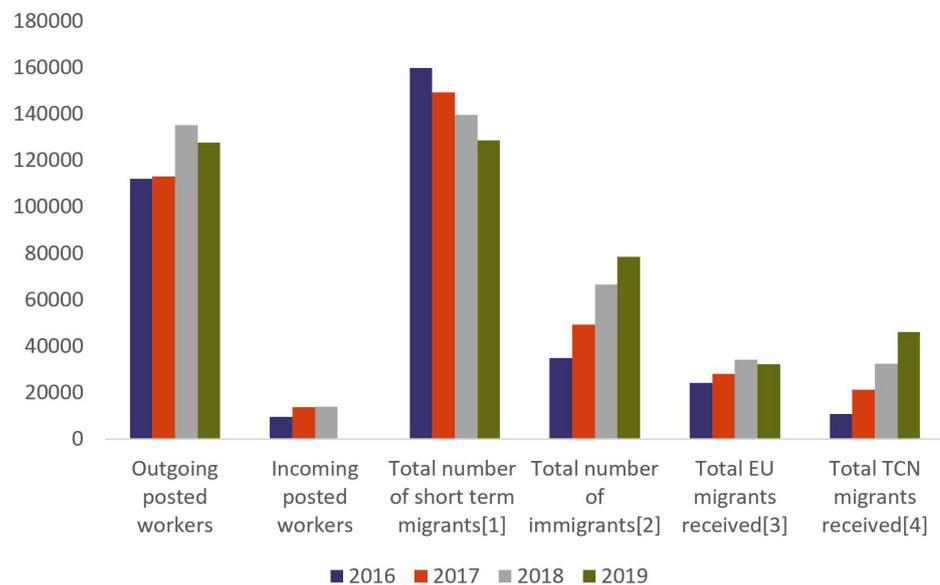
Slovakia as a sending country

As it can be seen in Figure 1, posting is largely practiced in the country with more than 127,000 portable documents A1 issued to posted workers in 2019. Workers are sent from Slovakia mainly to Germany, Austria, and the Czech Republic and the main sectors of employment of posted workers abroad are services (38%), the construction sector (35%) and other industries (26%)[§]. The number of posted workers sent to Slovakia from other EU countries is considerably smaller with only about 14,000 posted workers sent to Slovakia in 2018 (De Wispelaere & Pacolet, 2019). There is a growing trend in posting observable over time, which might be due to significant labour supply shortages in some sectors. Workers have been posted to Slovakia mainly from Germany, Poland, and Hungary, and are employed mainly in the construction sector (37%), services (33%), and other industries (28%) (for 2019) (De Wispelaere & Pacolet, 2019).

‡ Specifically: During September-December 2020 we conducted three interviews with the representatives of employers in automotive and construction sector (including two individual and one group interview with three respondents), two interviews with representatives of the employers' associations, one interview with a trade unionist, three interviews with representatives of the public sector organisations (including main public enforcement agencies relevant for the posting of workers), and three interviews with representatives of non-governmental organisations active in protecting rights of migrant workers.

§ Social Insurance Agency [Email communication, November 25, 2020].

Figure 1: Trends in general labour mobility and posting in Slovakia in the last four years



Source: De Wispelaere & Pacolet, 2017; De Wispelaere & Pacolet, 2018; De Wispelaere & Pacolet, 2019; Social Insurance Agency [Email communication, November 25, 2020]; Eurostat [lfsa_ur-gaed]; Statistical Office of the Slovak Republic, DataCube, 2020 [pr0204qs]; [3] Eurostat [earn_mw_cur].

Despite a high number of workers that are being posted from the Slovak Republic to the EU, research is thin in particular with respect to evidence about how posting is functioning in respective legal and administrative environments for Slovak employers and what effects posting has on employment and working conditions of the posted workers. The research showed that employers most frequently experience three types of obstacles in practicing posting, namely (1) restricted access to information about different obligations and working conditions in the receiving countries; (2) issues with determining the remuneration for posted workers; and (3) constrained capacities of public institutions preventing a more effective and flexible support framework for employers who post workers. All types of obstacles intertwine and, hence, will be discussed also in relation to each other in the next section.

Key obstacles encountered by the employers

Restricted access to information about different obligations and working conditions in the receiving countries

Slovak employers encounter challenges in accessing accurate and timely information about legal requirements and administrative procedures in the home and receiving countries. To be more specific, firms often face difficulties



"Employers are interested mainly in notification procedures and obligations, working conditions and especially if the industrial collective agreements are applicable to rights of the posted worker."

*Representative of
a public enforcement
organisation*

in accessing full information about **(i) minimum remuneration for the posted workers; (ii) notification obligations in the receiving countries; (iii) specificities about the labour conditions embedded not only in the national labour laws but also in the collective agreements.** Employers are often not able to collect all necessary information to start a process of posting or to flexibly consult ad hoc problems they encounter during the process of posting. They also experience difficulties with interpreting the labour law or specific regulations applicable for the receiving country and, in this respect, employers might be challenged to identify the relevant authority that could assist them in the respective receiving country.

Industry-specific or regional **collective agreements** are a particularly notable concern since they are rarely translated into all official EU languages and hence often not into the national language of the employers who post workers and, thus, are not easily accessible to the employers. In other words, different obligations and legal provisions the employer must adhere to are fragmented in distinct legal acts which aggravates problems with access to information. Importantly, the lack of information may lead to labour rights' violations and consequently to **less favourable working conditions for posted workers, and possibly to labour rights breach.**

To address this problem, the common practice in large companies is to hire a **legal expert with relevant language skills** who systematises and interprets all relevant information about legal and administrative requirements in respective countries before an employer starts the process of posting. Subsidiaries of multinational companies located in Slovakia usually cooperate with HR departments of their counterparts or business partners in the receiving countries that provide all necessary material and documentation and hence significantly reduce the transaction costs. Similar forms of legal assistance are not accessible or not financially feasible for small and medium-sized companies (SMEs).

Difficulties in calculating the remuneration for posted workers

Finding the necessary information for calculating a legally appropriate remuneration of the posted workers is a salient issue for the employers. Minimum remuneration might be determined not only by the receiving country labour law but also by collective agreements at national, sectoral or company levels. Language barriers may cause specific problems regarding collective agreements as not all of them are accessible in the national language of the sending employer or at least in English. Furthermore, even when standards are set, additional facets of the overall remuneration package such as the length of work experience are often considered differently across the EU countries.



Further ambiguities arise with respect to the calculation of travel and subsistence costs. According to the Directive 2018/957 travel costs should not be included in the calculation of remuneration. However, calculating travel costs as part of – rather than in addition to – the wage of workers posted from Slovakia is a frequent malpractice. It is understood that paying both higher wages (to abide with the principle of equal working conditions in the receiving country) and paying travel costs on top of the minimum wage in the posting country is not an economically viable option for companies competing in the European Single market. Some employers might weigh their decision to fully comply with the national and international regulation against the low likelihood of the inspection and penalty.

Due to these various opacities arising from the complexity of legal and regulatory frameworks combined with profit-maximizing behaviour of firms, employers (especially SMEs) often face additional transaction costs related to the posting procedures.

Constrained capacities of public institutions creating procedural and administrative obstacles and delays in posting

Constrained administrative capacities and expert personnel of public institutions and enforcement agencies engaged in posting causes various problems. Slovak employers struggle with the slow speed of issuing prolongation permissions by the public authorities in some receiving countries caused by the absence of enforceable deadlines and undefined response time. This might have an adverse impact on business relations due to late delivery of services. Greater flexibility and timely response of public institutions might be needed also in the instances of unexpected prolongation of postings, for example in the case of weather-related construction delays. The problem with the constrained capacities of the public authorities is further aggravated by information discrepancies and the lack of harmonisation in labour and migration laws across the EU countries. Delays in the formalization of posting are undesirable also from the perspective of the posted workers whose working status is temporary and unclear.

Posting of workers to Slovakia picks up and will need more attention

Slovakia has a relatively low number of workers posted from other EU countries to Slovakia. However, posting to Slovakia is rising as the labour market increasingly suffers from labour supply shortages.



"Third country nationals are those who are vulnerable already in the recruitment phase when they are approached by employers via social media or at the market in Lviv (Ukraine), via formal and informal networks."

"It is particularly difficult to protect this group of people because the Slovak legislation is very complex and they [TCNs] do not receive information in an understandable way. "

Lawyer with expertise in the migration law

In our research we found that third country nationals (TCNs) posted to Slovakia from other EU Member States are particularly vulnerable to exploitation since they may be subjected to fraud and insecure life and work circumstances. The respondents have indicated that employment conditions are negatively affected by long sub-contracting chains which seem to play an important role in some sectors, especially in the manufacturing. This means that several players are included in employment of posted workers, such as recruitment agencies, employment agencies, and main contractors, which may result in dispersion of responsibilities towards employees and violating labour laws.

The scope of this research did not allow to study the labour rights of posted workers in Slovakia in detail. We thus call for further research that would specifically focus on the situation and labour rights of TCNs posted to Slovakia.

Policy Recommendations

Several steps have already been taken to target some of the above-mentioned problems. First, in July 2021, the Slovak Social Insurance Agency joined the Electronic Exchange of Social Security Information System (EESSI) which aims to enhance cross-border cooperation and coordination between social insurance institutions across the EU countries, particularly regarding PD A1 documents. By using EESSI, public enforcement agencies should be able to verify whether a posted worker has a valid PD A1 and exchange information with their counterparts abroad more effectively. Implementation of EESSI thus replaces the bilateral exchange of information about PDs A1 between social insurance institutions. Implementation of this transnational tool facilitates and speeds up administrative and monitoring processes. Second, the European Labour Authority's competences comprise the coordination of national labour inspectorates in the EU countries. Although, the exact competences of the European Labour Authority in posting regulation have not yet been specified, EU level coordination is expected to address several issues related to the transnational nature of posting.

Nevertheless, further policy measures should be implemented to address the obstacles encountered by the employers. Based on the research conducted in the POW-BRIDGE project, including systematic interactions with key stakeholders in Slovakia and those from the project partner countries, several recommendations were developed:



At the EU level:

- **Strengthening competences of the European Labour Authority** is particularly important regarding the coordination of the work of the national labour inspectorates and fostering their cross-border cooperation. Also, it is recommended to **launch joint labour inspection activities** at the EU level, with a particular purpose to enhance capacities of public enforcement agencies in investigating companies with complicated ownership or business relations and letterbox companies when a smooth and fast interaction between enforcement bodies would be particularly beneficial.

At the national level:

- **Strengthening personnel and expert capacities of public enforcement agencies.** Our research (Kováčová, Studená & Mýtna-Kureková, 2021) showed that enforcement agencies, such as the Social Insurance Agency, the Foreign Police and the National Labour Inspectorate, play a key role in posting and would benefit from increased personnel and expert capacities, especially with respect to cross-border cooperation, handling complex cases of misconduct in posting and the issuance of documents.
- **Improving awareness and quality of information about posting for the employers via using multiple communication channels at the sectoral, national and the EU levels. Websites as communication channels** should provide an overview with key information about labour conditions, notification-related obligations and other posting requirements in receiving countries. The information should be provided in a user-friendly way meaning that information is easily accessible, well-structured and precise, preferably by using visual aids, infographics and well-structured design of the website or any other communication platform. Websites should also contain links to relevant institutions and legislation. It is highly recommended to provide employers with the necessary key documents available in all official EU languages, especially collective agreements (of the higher degree at the industrial level) applicable for all the economic sectors, regions, and professions.
- Employers should be provided with a wide range of specific information with the purpose to reduce their transaction and administrative costs. Information that has been most demanded by the employers relates to: (1) the minimum wage for a certain industry or profession; (2) notification obligations; (3) relevant provisions in the collective agreements at the

national or sectoral levels; (4) a contact list of relevant public authorities in key receiving countries; and (5) any specific legal obligations relevant for posting. **A good practice example for an information portal about posting is www.posting-workers.eu** which provides key information about posting in the European construction sector. The portal relies on visual aids and infographics.

- **Providing timely and accessible legal assistance to employers is especially important in interpreting the posting regulation.** Legislation on posting in receiving countries might be blurred with different inconsistencies arising from distinct national legislation and collective agreements in receiving countries. It is recommended to implement a systemic provision of legal assistance in an effective way such as **hotlines** enabling *ad hoc* consultations about particular problems that the employers encounter. In this area, good practice from other countries points towards a useful role that the Embassies or Consulates of Slovakia in receiving countries could play.
- Posting of workers from other EU countries to Slovakia is characterised in some sectors by long sub-contracting chains and activities of temporary agencies some of which are letterbox companies. We found signs that the current situation might lead to severe breaches of workers' rights especially with regard to third country nationals. **In this respect, more analytical work ideally by bringing together social scientists, legal experts and social security experts is required.**
- **Leveraging posting to a social dialogue level.** In Slovakia, in spite of the sizeable magnitude of posting, social partners remain largely disengaged from the political debate and from the practical aspects of the management of posting. In some countries, employer associations and trade unions are important partners acting as intermediaries in conflict resolution. When social partners strongly engage in the posting of workers multiple benefits are expected for companies as well as for posted workers in Slovakia.



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