



**POWBRIDGE**

Bridging the gap between legislation  
and practice in the posting of workers



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workers**

**POW-BRIDGE**

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**Bridging the gap between legislation and practice in the posting of  
workers:  
Slovakia Country Report**

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## Executive Summary

- In 2018, Slovakia was the 6<sup>th</sup> largest sending country in the EU with 135,151 portable documents A1 issued by the Social Insurance Agency. In recent years, the main destination countries of workers posted from Slovakia have been Germany, Austria, and the Czech Republic. By contrast, the number of incoming posted workers from other EU countries was only 13, 993 in 2018. Workers have been posted to Slovakia predominantly from Germany, Poland, and Hungary.<sup>1</sup>
- Main sectors of employment of workers posted from Slovakia to other Member States are services (38%), construction (35%) and other industries (26%) in 2019. Workers posted from other Member States to Slovakia are employed predominantly in the construction sector (37%), services (33%), and other industries (28%).<sup>2</sup>
- Although posting of workers currently appears to be a common tool of labour mobility in Slovakia, a lack of scholarship can be identified around this phenomenon, particularly with regards to implementation practice, administrative and procedural obstacles, or posted workers' rights protection.
- The aim of this research study is to explore how the Posting of Workers Directive and other EU regulations interplay with the national regulatory framework concerning social security, health insurance, temporary agency work and company law. The study also identifies gaps between procedures (legal basis) and practices (experiences) in posting rule enactments.
- The methodology utilizes both secondary data and primary (empirical) data. The research is based on an actor-oriented approach, meaning that the data were gathered through the viewpoints of relevant stakeholders in posting, particularly employers, public authorities, trade unions, and non-governmental organisations. For this purpose, semi-structured interviews with a vignette design were used to elicit insights from both sending and receiving perspectives on posting practices. The research was specifically focused on the construction sector and automotive industry.
- The research showed different challenges in the implementation practice of posting. Employers' experiences with posting differ considerably due to distinct legal and regulatory provisions in destination countries and different industries. The most common barriers are currently: determining the remuneration for posted workers, the limited access to information about legal requirements in destination countries, and the constrained capacities of public authorities which effect the speed of issuance of documents and slow down the response time.
- Enforcement agencies (particularly Labour Inspectorates at the regional and local level) lack personal capacities to handle complex cases of misconduct in posting. Since posting of workers transcends different EU jurisdictions, cross-border cooperation is a crucial aspect of monitoring and controlling activities of law enforcement agencies. The public authorities pointed out several issues in cross-border cooperation, such as slow exchange of information (for example, no deadlines for responses to labour inspectorates), discrepancies in the labour or migration law across EU countries, and

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<sup>1</sup> De Wispelaere and Pacolet, 2019.

<sup>2</sup> Social Insurance Agency [Email communication, November 25, 2020].

overall deficiencies in coordination between labour inspectorates in conducting inspections.

- In May 2021, the Slovak Social Insurance Agency intends to join the Electronic Exchange of Social Security Information System which will serve to enhance communication between social insurance agencies across EU countries. Also, strengthening competences of the European Labour Authority is considered as promising in respect to enhanced cooperation between labour inspectorates across the EU.
- The research indicated that third country nationals are exceptionally vulnerable in posting since they are often subjected to fraud (such as illegal contracts) and exploitative working conditions. The workers' protection is characterized by deficiencies such as restricted access to legal assistance and limited capacities of enforcement agencies to tackle complex cases of exploitative labour conditions. Exploited foreign workers are regularly treated as perpetrators of the law of illegal work rather than victims of employers' malpractices.
- The research showed that trade unions do not play an active role in posting due to a lack of personal and expert capacities that would allow them to be more engaged in representing posted workers. Foreign workers might be also perceived as a threat to the local economy and the temporariness of their stay may also discourage trade unions from being more pro-active in representing their rights.
- Posting of workers in Slovakia is characterized by long subcontracting chains with a large involvement of temporary work or personal agencies. That may cause dispersion of responsibilities towards employees which then results in violating labour laws and leads to discriminatory treatment of posted workers.
- The evidence collected with respect to employers' practice indicates that the Posting of Workers Directive regulates only a small part of the real dynamics of labour mobility between Slovakia and other EU countries. Human resource specialists in Slovakia share that it is problematic to develop capacity to act accordingly with respect to diverse jurisdictions of other EU countries or even their regions. Many questions from practice remain open and need to be addressed, and this might require further research.
- The amendment of Directive 2018/957 addressed several obstacles in the implementation practice of posting in Slovakia, such as limitations on the length of posting or a different definition of remuneration covering accommodation or other associated expenses. Nevertheless, some obstacles have not been addressed, such as troublesome identification of the responsible employer in the supply chain, poor monitoring and law enforcement mechanism protecting the labour rights of posted workers, and weak representation by trade unions including access to collective bargaining and action.

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# 1 Introduction

Outward labour outward mobility in Slovakia is characterized by high rates of short-term labour migration and comparatively smaller but fast-growing numbers of incoming labour migrants (Kahanec and Kureková, 2016). In 2020, according to Labour Force Survey data, about 120,000 workers from Slovakia worked abroad, although a decreasing trend in short-term labour mobility has been evident since 2017 when it constituted more than 150,000 workers<sup>3</sup>. While Slovakia is traditionally a sending country, there is an increasing number of foreign workers coming from EU member states as well as third countries. Based on data of the Central Labour Office, the number of foreign nationals tripled between 2015 and 2020 when the number of foreigners employed in Slovakia increased from nearly 25,000 to over 70,000. In spite of rising immigration, Slovakia continues to lag behind in migrant integration policies, in particular those related to labour market mobility. According to the MIPEX index, while slight improvements in some areas appeared, Slovakia underperforms in immigrant integration and implementation of equal opportunities relative to other EU countries<sup>4</sup>. An additional stream of mobility takes place across the borders and relates to cross-border pendulum migration to Hungary, Austria, and the Czech Republic. These trends present several challenges to Slovak public authorities in the area of management of migration in the country from the perspective of the outgoing (and returning) pendulum as well as incoming work migrants, which relates, for example, to the bureaucratic burden of cross-border movements, missing diaspora support, brain drain of youth or violations of foreign workers' rights in Slovakia (Bahna, 2018; Haluš et al., 2017; Chudžíková and Bargerová, 2018; Kureková, 2018a).

According to available figures about the numbers of issued portable documents (PD) A1, Slovakia also participates strongly in intra-EU labour mobility organized via a channel of posted work. In the EU, it belongs to countries with the highest numbers of outgoing posted workers. In 2018 about 135,000 workers annually were posted, mainly in the construction sector and other industries.<sup>5</sup> In contrast, the number of incoming posted workers is significantly smaller, since in 2018 it was only about 14,000 (De Wispelaere and Pacolet, 2019). Workers from Slovakia are posted mainly to Germany, Austria, and the Czech Republic, while incoming workers are posted to Slovakia predominantly from Germany, Poland, and Hungary<sup>6</sup>.

In Slovakia, posting of workers is a commonly utilised tool of labour mobility in regard to the labour management of demand and the supply of skilled labour, especially from a sending perspective. In spite of the relative magnitude of posting and a rising trend in recent years, there is a lack of scholarship about the implementation practice of posting in Slovakia, particularly regarding the experiences of the relevant stakeholders with posting procedures or workers' rights protection. Therefore, the aim of this study is to explore how the Posting of Workers Directive and other EU regulations interplay with the national regulatory framework concerning social security, health insurance, temporary agency work

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<sup>3</sup> Statistical Office of the Slovak Republic, DataCube, 2020, Labour Force Survey, available at: [http://datacube.statistics.sk/#!/view/sk/VBD\\_SK\\_WIN/pr3105qr/v\\_pr3105qr\\_00\\_00\\_00\\_sk](http://datacube.statistics.sk/#!/view/sk/VBD_SK_WIN/pr3105qr/v_pr3105qr_00_00_00_sk)

<sup>4</sup> [www.mipex.eu/slovakia](http://www.mipex.eu/slovakia)

<sup>5</sup> All data about posting trends were provided by Social Insurance Agency on the basis of PD A1 documents [Email communication, November 25, 2020].

<sup>6</sup> Ibid.

and company law. The country study also identifies gaps between procedures (legal basis) and practices (experiences) in posting rules enactment.

The methodology of the study combines desk research based on secondary data with primary data collection. Desk research builds on a literature review of existing research about labour migration and posting, a review of national legislation and data analysis relating to posting in Slovakia based on PD A1 data. The analytical approach is based on identifying relevant national legislation, government decrees and other types of regulation and practices ranging from national to sectoral or firm levels regarding different aspects of posting, cross-border mobility, and employment of foreigners. In respect to empirical research, an actor-oriented approach was used, meaning that the data were gathered through viewpoints of relevant stakeholders engaged in posting, representing employers, public authorities, trade unions, and non-governmental organisations. For this purpose, semi-structured interviews with a vignette design were applied to elicit insights from both the sending and receiving perspective on posting practices, and from two different sectors, focusing on construction and automotive industries. Such a combination of primary and secondary data aspires to provide a comprehensive picture of the mechanism of posting and implementation practice through the lenses and experiences of relevant stakeholders from diverse backgrounds.

The posting Directive 2018/957 addressed different obstacles in the posting implementation practice in Slovakia, such as limitations of the length of posting or the applicability of collective agreements. Nevertheless, different discrepancies in labour and migration laws across EU countries continue to bring multiple challenges. The most common obstacles that sending employers encounter relate to determining the remuneration for posted workers and the limited access to information about regulatory frameworks in destination countries. The Slovak law enforcement agencies appear to lack capacities to handle complex cases of misconduct in posting and face deficiencies in enforcement agencies' cross-border cooperation. Posting of workers in Slovakia is characterized by long supply chains involving temporary work agencies which often results in the dispersion of responsibilities towards posted workers and, consequently, labour law violations, especially towards third country nationals. Poor monitoring and law enforcement mechanisms, underdeveloped protection of labour rights, and weak representation of posted workers in collective bargaining remain an issue.

The study is structured in six chapters including this first Introduction chapter. The second chapter provides an overview of the socio-economic context and labour migration with the specific focus on trends in posting in Slovakia. The third chapter specifies the methodological framework, analytical approach, and limits of the research. The fourth chapter presents the results of the desk research and interviews regarding the regulatory framework, implementation and enforcement practices, employers' practices and experiences with posting, and tools and challenges of workers' protection. Whereas the fifth chapter summarizes the main findings, the last part proposes policy recommendations at the national and EU-levels.

## 2 Country Context

### 2.1 Socio-economic overview

Slovakia has been positioned among the weak labour market performers in the European Union (EU) because of the high unemployment rates, structural imbalances, and large regional disparities since its transformation in the nineties and in the following decades (Machlica, Žudel and Hidas, 2014). The poor performance of the labour market was attributed to the weak labour demand after the traditional production sectors collapsed in the nineties. The most vulnerable groups in terms of the labour market situation have traditionally been the youth, low- skilled adults, and ethnic minorities, in particular the Roma (Brozovicova et al, 2013).

The negative situation in the labour market has started to improve over the past few years (Table 1). The unemployment rate has been falling since 2016, reaching a new, historical minimum each year - marking 5.8% in December 2019. Concurrently, the employment rate has been growing steadily. Among the key reasons behind the improvements is the tightening of the labour market, which is caused by a combination of factors consisting of a negative demographic trend, a continued outmigration of labour, and possibly changes to the strategy of public employment services in respect to the engagement with disadvantaged workers (OECD, 2019). In spite of general improvements, several groups in Slovak society including the Roma, low-skilled or people with disabilities continue to be marginalized, with poor efforts by the public services to integrate the most marginalized (UHP, IVP and ISP, 2020; Holubová et al, 2021).

Table 1: Overall labour market dynamics

	2017	2018	2019
GDP real (annual growth in %) <sup>7</sup>	3	3.8	2.3
Employment rate, population aged 15-64 (%) <sup>8</sup>	66.2	67.6	68.4
Job vacancy rate (%) <sup>9</sup>	1.1	1.2	1.1
Unemployment rate, population aged 15-74 (%) <sup>10</sup>	8.1	6.5	5.8
Average monthly gross wage (in EUR) <sup>11</sup>	954	1013	1092
Monthly gross minimum wage (in EUR) <sup>12</sup>	435	480	520

In recent years Slovakia has experienced severe labour supply shortages which have been notable in specific sectors such as the automotive sector. Responding to pressures from employers, short-term solutions supporting labour migration to fill in these gaps have been introduced, including the relaxation of a fairly strict labour immigration policy. Further pressure on the labour supply is anticipated also in the coming years, together with skills shortages in some sectors (Lichner et al, 2018). In terms of working conditions, the most discussed phenomena relevant for this report is the concentration of self-employed in some sectors of the labour market, mainly in the construction sector, manufacturing, wholesale, and retail trade<sup>13</sup>.

<sup>7</sup> Eurostat [tec00115]

<sup>8</sup> Eurostat [lfsi\_emp\_a]

<sup>9</sup> Eurostat [jvs\_a\_rate\_r2]

<sup>10</sup> Eurostat [lfsa\_urgaed]

<sup>11</sup> Statistical Office of the Slovak Republic, DataCube, 2020 [pr0204qs]

<sup>12</sup> Eurostat [earn\_mw\_cur]

<sup>13</sup> Eurostat [LFSO\_17CSNA]

It is argued that in Slovakia the favourable tax-benefit treatment of self-employed workers may have led to disguised regular contracts in the form of bogus self-employment or preference for looser types of contracts with determined durations ("work agreements") (Machlica, 2020; Remeta et al, 2015). Such arrangements are relatively easy to be terminated and put such workers in especially vulnerable positions.

The COVID-19 crisis is already affecting the labour market negatively. Non-standard workers including the self-employed or agency workers are particularly vulnerable to a loss of job and income (Machlica, 2020). However, comparatively speaking, the growth of unemployment due to the COVID crisis in 2020 resulted only in a mild increase in unemployment. This can be attributed to government policies, in particular the support of *Kurzarbeit* (a short-time work scheme), but also to the recent experience of many employers with skill shortages, which has contributed to strategies aimed at the preservation of their workforce in anticipation of a relatively fast recovery.

## 2.2 Labour mobility and posting rates and trends

The labour mobility in Slovakia is characterized by significant, short-term migration. The data of the Statistical Office for 2020 based on the Labour Force Survey (3<sup>rd</sup> quartal) show that around 120,000 citizens of Slovakia migrate for work and return home at least once a year while in 2017, the figure was approximately 150,000.<sup>14</sup> In addition, permanent emigration has also been significant with about 300,000 Slovaks estimated to have left the country permanently in recent decades (Haluš et al, 2017). Combined, these numbers represent a significant portion of the Slovak labour force implying that labour migration significantly alters the functioning of the national labour market.

Although Slovakia remains a sending country, the number of foreigners working in Slovakia has significantly increased in recent years. Between November 2015 and November 2020<sup>15</sup>, the total number of employed foreigners tripled, meaning that it has increased from approximately 25,000 to 70,000<sup>16</sup>. In 2020, more than 43% of foreign workers were EU/EEA citizens, while the remaining workers were third country nationals (TCNs). Intra-EU work migrants come mainly from Romania, Hungary, and the Czech Republic, while most of TCNs come from Serbia, Ukraine, and South Korea.

During the last five years, the number of posted workers, measured by the number of the portable documents A1, has increased both in terms of outgoing posted workers and incoming posted workers. While in 2015 the number of outgoing posted workers was over 96,000, in 2019 the number significantly increased to 127,700 with a peak of 135,000 in 2018 (Table 2). The number of posted workers to Slovakia is substantially lower. In 2018 the total number of PDs A1 issued to Slovakia was only 13,993. While posting to Slovakia is less significant than posting from Slovakia, there is a clear, increasing trend in both aspects of posting (De Wispelaere and Pacolet, 2019).

The main destination countries of posted workers from Slovakia to other Member States between 2017-2019 are Germany, Austria, the Czech Republic, Netherlands, France, and Belgium. Workers were posted to Slovakia from Germany, Poland, Hungary, and the Czech Republic. However, the available statistics do not reveal the full dynamics of the actual posting

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<sup>14</sup> Statistical Office of the Slovak Republic, DataCube, 2020.

<sup>15</sup> Central Labour Office of the Slovak Republic, data is available only on a monthly basis.

<sup>16</sup> The number includes figures for third country nationals with a work permit, third country nationals with the infocard (without a work permit) and EU citizens with the infocard.

as information gathered from the interviews indicates that TCNs, mainly from Serbia and Ukraine, are frequently posted to Slovakia by companies (including temporary work agencies) registered in other Member States such as Poland and Hungary for work in the automotive industry and the construction sector.

Data for 2019 show that workers posted from Slovakia to another Member State are predominantly employed in services (37.9%), the construction sector (35%) and other industries (26%). Workers posted from other member states to Slovakia are employed mainly in the construction sector (36.7%), services (33.6%), and industry sector (28%).

Interestingly, Slovakia issues a high share of PDs A1 to self-employed persons; in 2019, more than 30% of all posted workers were self-employed. Slovakia is a country with the highest share of posted self-employed workers in the EU (De Wispelaere and Pacolet, 2019) even though the overall share of the self-employed in Slovakia is only slightly above the EU average - the share of self-employed workers in the total workforce in Slovakia in 2018 presents 15%, whereas the EU average is 14%.<sup>17</sup>

The presented trends in labour migration and posting in terms of trends, sectoral composition and destinations, complemented by the insights gathered in the interviews with stakeholders, suggest that posting has been used as a strategy to manage the labour supply of mainly skilled workers (both blue collar and white collar) in the key sectors of the Slovak economy. Employers have been using posting as a complementary tool in response to the existing migration framework which has been rather restrictive, especially in terms of the incoming workforce.

*Table 2: General labour migration and posting trends in the last three years available*

	2016	2017	2018	2019
Total number of emigrants <sup>18</sup>	159, 700	149, 300	139, 600	128, 600
Total number of immigrants <sup>19</sup>	34, 999	49, 287	66, 610	78, 375
Total EU migrants received <sup>20</sup>	24, 245	28, 039	34, 062	32, 322
Total TCN migrants received <sup>21</sup>	10, 754	21, 248	32, 548	46, 053
Share of immigrants of working age (19-65 years old) in %	n/a	n/a	n/a	59.2 <sup>22</sup>
Total number of outgoing posted workers <sup>23</sup>	112, 070	112, 978	135, 151	127, 706
Total number of incoming posted workers <sup>24</sup>	9, 694	13, 759	13, 993	N/A
Labour market share of incoming posted workers <sup>25</sup>	0.4%	n/a	n/a	n/a
Main countries of destination for posted workers <sup>26</sup>	DE, CZ, AT	DE, AT, CZ	DE, AT, CZ	DE, AT, CZ

<sup>17</sup> Eurostat, available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20190430-1>

<sup>18</sup> Statistical Labour Office, DataCube, Temporary work migration abroad, [pr3105qr]. Emigrants are defined for the purpose of the table as temporary labour migrants working abroad.

<sup>19</sup> Central Labour Office of the Slovak Republic

<sup>20</sup> Central Labour Office of the Slovak Republic

<sup>21</sup> Central Labour Office of the Slovak Republic

<sup>22</sup> [https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Feb/un\\_2019\\_internationalmigration\\_wallchart.pdf](https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Feb/un_2019_internationalmigration_wallchart.pdf)

<sup>23</sup> Social Insurance Agency [Email communication, November 25, 2020].

<sup>24</sup> De Wispelaere and Pacolet, 2017; De Wispelaere and Pacolet, 2018; De Wispelaere and Pacolet, 2019.

<sup>25</sup> De Wispelaere and Pacolet, 2017

<sup>26</sup> Social Insurance Agency [Email communication, November 25, 2020].

Main countries of origin of posted workers received <sup>27</sup>	DE, PL, CZ	DE, PL, HU	DE, PL, HU	N/A
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Sources: See footnotes for each source.

### 3 Methodology

#### 3.1 Data collection

##### *Data sources and approaches*

Data sources for the analysis undertaken for this report are based on (1) desk research covering national legislation and practice relevant for posting and labour flows generally; (2) primary qualitative data collection; (3) quantitative data on postings obtained per request from relevant public authorities; (4) secondary quantitative data on labour flow and relevant socio-economic indicators retrieved from publicly accessible databases, mainly from Eurostat.

Primary data were collected through semi-structured interviews following the unified methodology developed by the project consortium. National data are drawn from a literature review and available national and comparative statistics.

##### *Qualitative data and vignette methodology*

The core element of data sources used with the aim to assess the impact of different regulations on actual practices in posting are primary qualitative data. These were collected by semi-structured interviews with posting employers and representatives of public authorities and social partners. A particular feature of the qualitative interviews is the use of vignettes methodology integrated with other sections based on semi-structured questions. Vignettes are a methodological tool used to gather sensitive or normative data (Finch, 1987). The vignettes were designed for both directions of posting flows - sending and receiving - applied to different types of respondents to elicit insights on posting practices from both sides of the institutional relationship: posting employers and street-level bureaucrats/state agencies' representatives. Vignette scenarios focused on eliciting posting experiences about (1) the process of posting and institutional infrastructure in a respective country, (2) minimum working standards, (3) the role of sectoral or company-level regulations, such as collective agreements, and (4) issues pertaining to health and safety and social rights, including access to health care.

The interviewee selection focused on two industrial sectors with dominant positions in posting in Slovakia, following general research design agreed by the consortium. In addition to the construction sector as a prototypical posting sector, which has been covered in all country studies of the project consortium, we also covered the car manufacturing industry. The latter is a leading sector of the Slovak economy with well represented interest structures, several key large end-production factories, and a rich net of suppliers. The automotive industry is highly internationalized, export-oriented and demands skilled labour. It has experienced skill shortages in the past years, which have been filled by an incoming foreign workforce (Kureková, 2018b). The core workforce with above national standard working conditions is combined with non-standard employment of agency workers, including foreign workers, in order to respond to fluctuations in demand (Drahokoupil, Myant and Domonkos, 2015). The choice of the automotive sector was further guided by the relevance for the cross-country comparison.

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<sup>27</sup> De Wispelaere and Pacolet, 2017; De Wispelaere and Pacolet, 2018; De Wispelaere and Pacolet, 2019.

### *Fieldwork process*

To obtain access to respondents we have put an emphasis on prior identification of plausible respondents based on desk research and communication with associated partners. During the initial review of the thematic area and available evidence for Slovakia, it has become evident that information and research about posting and workers' rights are very limited. Therefore, seeking to improve targeting and identification of respondents for interviews we included interviews with key informants for which we adjusted the interview template accordingly. In terms of the structure of respondents, as requested by the general project template defining the structure of the report and the research question for each chapter, we approached employers, employers' associations, and public administration bodies including the National Labour Inspectorate, Social Insurance Agency, and the Ministry of Labour, Social Affairs and Family. In addition, in order to gain a deeper understanding of broader migration management processes and issues, we also approached additional stakeholders including the Border and Foreign Police, International Organisation for Migration, NGOs and migration experts in the field.

We approached 33 potential respondents and received 13 positive responses (in some cases it took several exchanges and repeated communication to recruit the respondent) achieving an about 40% response rate. The fieldwork including the communication phase started in September 2020. All interviews were carried out between September and December 2020. The summary of the fieldwork and some details about the interviewees are summarised in Table 3 and Table 4.

*Table 3: Summary of interviews by stakeholders groups and interview methodology*

Stakeholder	Number of interviews	types of interview (vignettes for sending or receiving)
Employer	3 (includes 1 group interview with 3 respondents)	2 SENDING 1 SENDING/ RECEIVING
Employer Association	2	1 SENDING 1 KEY INFORMANT
Trade Union	1	RECEIVING
Public Authority	3	1 SENDING 1 SENDING/ RECEIVING
NGO	3	KEY INFORMANT

*Table 4: Fieldwork – overview of interviews*

#	Gender	Type of interview	Profession/position	date of interview	Interviewers
1	F	KEY INFORMANT	Researcher and NGO practitioner (immigrants' integration)	Oct 9, 2020	LK, IS
2	F	KEY INFORMANT	Expert and practitioner (immigrant issues)	Oct 15, 2020	LK, LMK, IS
3	M	KEY INFORMANT	Association of employers	Oct 16, 2020	LK, LMK, IS
4	F	RECEIVING	Trade Unions	Oct 16, 2020	LMK

5	M	SENDING	Public official, insurance	Oct 16, 2020	LK, IS
6	F	KEY INFORMANT	Immigration expert	Oct 23, 2020	LK
7	M	SENDING/RECEIVING	Public official (employment issues)	Oct 30, 2020	LK, LMK, IS
8	M	KEY INFORMANT	Public official (immigration issues)	Nov 6, 2020	LK
9	F	SENDING/RECEIVING	Employer/ Automotive sector	Nov 16, 2020	LK, LMK
9	M	SENDING/RECEIVING	Employer/ Automotive sector	Nov 16, 2020	LK, LMK
9	F	SENDING/RECEIVING	Employer/ Automotive sector	Nov 16, 2020	LK, LMK
10	F	SENDING	Public official	Nov 13, 2020	LK, LMK, IS
11	M	SENDING	Association of employers	Nov 19, 2020	LK, IS
12	F	SENDING	Employer/ Legal Consultant on posting	Dec 7, 2020	LK, IS
13	F	SENDING	Employer/ Construction sector	Dec 17, 2020	IS

Because of the pandemic situation and limited possibilities to meet in person, with the exception of one interview (Interview No. 7), all were conducted via videocalls in the Slovak language. As the data we obtained in the interviews allowed us to answer the research questions of the project, these circumstances did not have negative effect on the character and the quality of the input. The contact with the respondents and general atmosphere during the interviews were relaxed and several respondents, despite their initially limited availability, extended the time of their interviews and discussion over 60 minutes. All interviews were recorded, and extended summaries of the key points were written in the Slovak language. Consent was gained from the respondents informing them that their responses and input would be used for analytical purposes only and would be presented in an anonymised manner. Data recordings and summaries are shared within the research team only in an online cloud tool and will be stored only for the necessary period of time.

### 3.2 Analytical Framework

The data analysis utilizes a mixed-methods approach based on a qualitative data analysis combined with a quantitative data analysis and national framework review.

The desk research focusing on the national framework review comprised of the identification of the national legislation, policy measures, government instructions, firm or sectoral-level practices and related regulations in various domains pertaining to posting, cross-border labour mobility, temporary agency work, social security, health insurance, company law and any other relevant regulation such as illegal work. Documents under study included aspects of rights and obligations of posted workers, cross-border mobile workers, and posting companies as well as conditions for and incentives of cross-border service provision.

Primary qualitative data were analysed by using qualitative thematic analysis. In an iterative effort, the interview responses were thematically organized and then compared with each other in order to create a comprehensive picture of the situation in question and of the perceived challenges. Secondary data on national legislation and practices relevant for posting and labour flows as well as key informants' background interviews have been used to (1) identify potential

challenges and weak spots; (2) contextualise information obtained from the qualitative data analysis.

Qualitative data were collected by interviews with key stakeholders, following the suggested methodology to include representatives of the two production sectors subject to analysis for the case of Slovakia; the construction sector and the automotive subsector of the manufacturing sector.

### 3.3 Challenges and limitations

We faced several challenges in conducting this research.

Firstly, there is a relative **lack of scholarship about posting of workers** in Slovakia. Most existing research studies the issues of labour migration more broadly, with very few studies looking at posting specifically.

Secondly, the available **data about posted workers are solely based on the portable documents A1** issued by the Social Insurance Agency. Moreover, the data available to researchers based on PD A1s is aggregated and does not enable us to look at specific aspects of posting, such as the profiles of incoming or outgoing posted workers. Other data sources which are used to study labour migration, such as the Labour Force Survey, do not allow distinguishing posting as a particular form of labour mobility.

Thirdly, we faced some difficulties accessing employer associations and trade unions for various reasons. Several social partner respondents said that they do not have experience with posting and do not focus on it within their key agenda due to limited human and financial resources. Even though we approached several representatives of trade unions, **only one representative of a trade union at the sectoral level could provide us with information about the topic**. Greater involvement of trade unions in the issue would be potentially beneficial since trade unions could contribute to the understanding of posting within the broader context of working conditions and challenges that employees in Slovakia encounter. A particular gap was evident with respect to the situation of workers posted to Slovakia, which can be related to the recently developing history of workers posted to Slovakia. More generally, respondents among employers and employers' associations, in particular, were less available due to dealing with critical issues amidst the COVID-19 crisis which intensified during the time of the fieldwork.

Fourthly, our research has revealed that **temporary work agencies play a pivotal role in posting of workers in Slovakia**. To fully understand their role, practices and complicated ownership and business relations in which they operate, further research should be conducted including exploring regulation and operation of letterbox companies. This has been beyond the scope of this research project and it would require implementing a different research design since it appears to be a sensitive topic which may prevent companies to openly speak about malpractices conducted by agencies. Although the report does not provide space for an in-depth study of agencies and letterbox companies, it provides relevant insights about their role in posting in the context of subcontracting chains and, thus, a dispersion of responsibilities among different players involved in the chain.

## 4 Results

### 4.1 Regulatory Framework

In Slovakia, the posting of workers is primarily regulated by a separate law on cross-border cooperation in posting of workers which was adopted as a transposition of the Directive 96/71/EC concerning posting of workers, and the labour law. Specific aspects of posting of workers, such as employment of TCNs or illegal work, are regulated by migration law, law on illegal work, and labour inspection. During recent years, the labour law was repeatedly amended with the purpose to regulate conditions for labour migration of TCNs. In the following sections we present this legislation in greater detail.

#### 4.1.1 Posting and cross-border labour mobility

In 2015, Slovakia adopted the **Act no. 351/2015 on cross-border cooperation in posting of workers for the purpose of service provision** (hereinafter “Act on Posting”), which came into effect in June 2016. Adoption of the Act on Posting was a result of a transposition of Directive 96/71 of the European Parliament and of the Council concerning the posting of workers in the framework of the provision of services into the Slovak legal system. The Act on Posting specifies:

- (1) The competencies of the National Labour Inspectorate and local labour inspectorates regarding cross-border cooperation with the competent authority in another EU member state or another state that signed an agreement on the European Economic Area. The cooperation concerns controlling and monitoring of compliance of posting practices with legal and administrative rules in posting, identification of posting and enforcement of sanctions and penalties.
- (2) The obligations of the receiving and sending employer; in particular, the law specifies procedural aspects of posting and administrative requirements the receiving and sending employer must follow in posting.

Regarding **enforcement of sanctions and fines**, from the sending perspective, the local labour inspectorate may impose a sanction on the sending employer and requests its counterpart in another Member State to deliver a decision over imposing a fine to the sending employer via the Internal Market Information System (IMIS). If the fine cannot be enforced by the Slovak local labour inspectorate within the duration of six months, the National Labour Inspectorate will forward the request to the counterpart in the Member State where the employer operates. From the receiving perspective, according to the same legal act, if the fine is imposed by the inspectorate from another Member State to the employer operating in Slovakia, the Slovak local labour inspectorate will deliver the decision to the employer and carry out the enforcement of the fine.

The definition of posting is presented in the **Labour Code** (Act no. 311/2001) which also specifies a definition of posted workers, administrative requirements regarding the written consent form about posting between the posted worker and their employer, obligations of employers to provide posted workers with adequate information about working conditions at the receiving company, posted workers’ rights, and working conditions, and complaints procedures in case workers’ rights are violated. In 2019, Slovakia adopted the amendment of the Labour Code (effective since July 2020); the purpose of the amendment was to transpose Directive 957/2018 EU of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers. The amendment distinguishes between short-term and long-term posting, alters the definition of remuneration, specifies successive postings in the whole duration of posting, extends the workers’ rights concerning

remuneration and reimbursement of expenditures covering work-related travel expenses, board, and lodging expenses, and specifies the conditions of accommodation provided by the employer.

Amendments of the **Act no. 5/2004 on Employment Services and Act no. 404/2011 on Residence of Foreigners** in 2018 (came into effect in May 2018), introduced two novel provisions about posting. **Firstly**, it constituted that a work permit is mandatory if (1) a third country national is employed by an employer whose office is registered out of the territory of the Slovak Republic and this employer posts the worker to Slovakia or (2) a third country national will be employed in the border area of the Slovak Republic and will return at least once a week to a state neighbouring the Slovak Republic, where they have a permanent residence (the border area of the Slovak Republic means the territory of the district, which is adjacent to the state borders). **Secondly**, in case a third country national is posted from another Member State to Slovakia in the framework of the provision of services, the recipient of the service (the receiving employer) is obliged to inform the local Labour Office within seven workdays about the posting and provide personal information about these posted workers.

Before May 2018, posting of workers was exempt from the requirement of obtaining a work permit. Since May 2018, according to the Act on Residence of Foreigners, the employer could hire a third country national only if (1) the worker is a holder of the Blue Card of the European Union; (2) the worker has been granted a temporary residence permit for the purpose of work; (3) the worker has been granted a work permit and temporary residence permit for family reunification purposes; (4) the worker has been granted a work permit and temporary residence permit as a third country national who has been granted a status of long-term resident in the EU member state; (5) the worker meets the conditions according to § 23a of Act no. 5/2004 on Employment Services.

**§ 23a of the Act on Employment Services** specifies exemptions from the requirement of obtaining a work permit. The obligation to obtain a work permit does not apply if: (1) the worker has been granted a permanent residence permit; (2) the worker has been granted a temporary residence permit for family reunification purposes; (3) the worker's relative is a citizen of a EU member state and, at the same time, has a right to residency in the territory of the Slovak Republic; (4) the worker has been granted a temporary residence for study and research purposes (under additional conditions); (5) the worker has applied for asylum or has been granted asylum or subsidiary protection; (6) **the worker has been posted by the employer established in another EU Member State in the course of the provision of services provided by that employer.** The latter exemption is applied only if the duration of posting does not exceed 90 days. If the duration of the posting is longer than 90 days, the worker must apply and obtain a permit for temporary work purposes.<sup>28</sup>

#### 4.1.2 Temporary agency work

Temporary work agencies can post workers (including TCNs) to other Member States, and according to the Slovak Labour Code, they must follow the same procedures in posting of workers as other employers. In the application form for the PD A1, workers must indicate (1) the legal form and (2) type of business. The type of business must correspond with the purpose

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<sup>28</sup> Other exemptions: the worker is employed in international public transport; if he/she has been posted by the foreign employer to perform work; and the worker provides with assembly, warranty and repair work, programming or professional training (provided that the duration of posting does not exceed 90 days), and others. Third country nationals who have been victims of human trafficking or who have been subjected to exploitative working conditions have an exemption too.

of posting and type of service that will be provided within the posting, otherwise, the application might be rejected.

In 2015, the Ministry of Labour, initiated an amendment of the Act on Employment Services with the purpose to clearly distinguish between the (1) **temporary staff allocation** (a type of personal leasing) to the host employer and (2) **the posting of workers**, as two separate instruments of labour mobility. According to the former public official of the Ministry of Labour, due to the stricter regulation in the temporary staff allocation (adopted in 2012), temporary work agencies started utilising posting of workers instead of temporary staff allocation. As a response to these practices, the Ministry of Labour initiated the amendment of Act on Employment Services which clearly distinguishes between these two instruments of labour mobility; meaning that if the posted worker performs tasks on the employer's premises, it fulfils conditions of temporary staff allocation and not of posting. In that case, according to the §58 of the Labour Code, workers are entitled to utilise at least the same working conditions as other (core) workers. As a result, according to the representative of the sectoral trade union in the automotive industry, the labour costs of employees employed based on the temporary staff allocation regulation might be higher than the labour costs of the posted workers.

To post workers to the receiving company, the employer must employ the worker for at least 90 days prior to the start date of the posting (meaning that the social and health insurance contributions for the whole duration of the employment must have been paid). According to a former representative of the Ministry of Labour interviewed, this legal provision was supposed to address troublesome recruitment practices of agencies that recruited new employees solely for the purpose of posting and at the end of posting, the employment contract between the agency and the employee usually expired or was terminated.

According to the Act on Employment Services, the Central Labour Office and local Labour Offices may impose administrative sanctions on employers (including TWAs) if they do not abide with the labour law, particularly regarding different conditions for employing TCNs (a maximum amount is 100,000 EUR). In this respect, the Central Labour Office shares competences with the Labour Inspectorate. Besides that, according to the §68a, the Central Labour Office may impose a sanction on TWAs to the amount of 5,000 – 100,000 EUR if the TWA conducts business activities without being registered as a TWA. Consequently, the TWA might be even excluded from a list of TWAs administered by the Central Labour Office.

#### 4.1.3 Social security

According to the information on the website of the Slovak Social Insurance Agency, employers must apply for the PD A1 at the local social insurance agency office by filling in the relevant form (downloadable from the website). **The Act no. 461/2003 on Social Insurance** does not specifically refer to the posting of workers, nevertheless, it stipulates that the employer is obliged to provide the employee with income (based on the employment contract) and pay social insurance contributions. A self-employed person is obliged to pay social insurance contributions themselves. The Social Insurance Agency may impose a fine on the employer for non-payment of social security contributions for employees (maximum 16,000 EUR).

#### 4.1.4 Health insurance and coverage

Similarly, the **Act no 580/2004 on Health Insurance** does not mention any specific provisions regarding posting of workers but it stipulates that the employer is obliged to provide the employee (including posted) with income (based on the employment contract) and pay health

insurance contributions. A self-employed person is obliged to pay health insurance contributions themselves.

#### 4.1.5 Company law

**The Commercial Code** (Act no. 513/1991) specifies conditions concerning registration of companies in the Commercial Register and obtaining a trade license for business purposes. These legal provisions are crucial in the process of assessing applications for issuing PDs A1 and conducting monitoring controlling activities regarding the compliance with the labour and commercial law, since without being a registered company/employer, the company cannot be engaged in posting.

#### 4.1.6 Other relevant regulation

Regarding illegal work, the **Act no. 85/2005 on Illegal Work** specifies that if the employer has not paid social insurance or health insurance contributions for the employee, the employment is considered illegal. The Act further stipulates that the sending employer bears a responsibility for the illegal work and according to the **Act no 125/2006 on Labour Inspection** employers might be fined up to 200,000 EUR<sup>29</sup>. Employees might be fined as well, although the respondent from the National Labour Inspectorate claimed that they do not customarily impose financial penalties on workers. Also, the Directive on posting specifies that the Labour Inspectorates may impose sanctions on the foreign employer only for breaching the law on posting, not for illegal work.

Table 5: Rules and regulations on posting in the national context

	Law/Regulation	Posting Workers Rights	Posting Companies Rights and Incentives	Posting Companies Obligations	Public Authorities Mandate
Posting-specific or cross-border service provision regulations	Act no. 351/2015 on cross-border cooperation in posting workers for the purpose of service provision.  The Labour Code	Act no 351/2015: the right of the posted worker to obtain a salary; the working conditions are regulated by the legislation of a receiving country.  The Labour Code: working conditions of posted workers (working time, vacation leave, salary, OSH provisions, non-discriminatory treatment).	Act no 351/2015: the employer has a right to complain if their rights or interests were violated – a complaint might be filed at the Labour Inspectorate or court.	Act no. 351/2015: administrative requirements relating to the posting (including procedures sending and receiving employers must follow) and obligations.  The Labour Code: obligations regarding exchange of information between sending and receiving employers; obligations regarding	Act no. 351/2015: Competences of Labour Inspectorate; provisions regarding cross-border cooperation between enforcement agencies and the sanction mechanism.

<sup>29</sup> Based on the Act on Labour Inspection, labour inspectorates may impose a fine on employer for minor breaches in the amount of 500 EUR (such as missing documents concerning posting). For illegal employment of a single person the fine may be imposed to the minimum amount of 2,000 EUR and for multiple persons 5,000 EUR.

				exchange of information between the employer towards the posted worker.	
Temporary Agency Work regulations	Act no. 5/2004 on employment services  The Labour Code  Act no. 351/2015 on cross-border cooperation in posting workers for the purpose of service provision.	The Labour Code: see above (provisions applies to all employers)  Act no. 351/2015: see above (provisions applies to all employers)	Act no. 351/2015: see above (provisions applies to all employers)	Act no. 5/2004: general requirements for registering and operating TWAs.  Act no. 351/2015: see above (provisions applies to all employers)  The Labour Code: see above (provisions applies to all employers)	Act no. 5/2004: Controlling mechanism of TWAs (Central Labour Office) and penalty system.
Health insurance and coverage	Act no. 580/2004 on health insurance			The employer is obliged to pay a salary including health insurance contributions.	Sanction mechanism regarding non-payment of health insurance contributions.
Social security regulation	Act no. 461/2003 on social insurance			The employer is obliged to pay a salary including social security contributions.	Sanction mechanism regarding non-payment of social security insurance contributions.
Company law	The Commercial Code			Conditions concerning registration of companies in the Commercial Register and obtaining a trade license for business purposes.	
Any other relevant legislation, e.g., anti-dumping laws	Act no. 404/2011 on Residence of Foreigners  Act no. 82/2005 on Illegal work	Act no. 404/2011: the rights of the foreigners (TCNs) encountering detention or administrative deportation; the rights of the foreigners placed in the facility for detained foreigners (TCNs).		Act no. 82/2005: obligations of the employer to provide public authorities with the relevant documentation proving legality of employment.  Act: no 404/2011: provisions on employing a foreigner (obtaining a temporary work permit).	Act no. 82/2005: Controlling and monitoring activities and competences of the Labour Inspectorates, Foreign Police and the Labour Offices; a penalty system.  Act: no 404/2011: competences of the Foreign and Border Police regarding the administrative deportation,

## 4.2 National implementation and enforcement

The institutional framework in Slovakia regarding posting of workers consists of four key public authorities that administer the process of posting and carry out monitoring and controlling activities; namely the Social Insurance Agency, the National Labour Inspectorate, the Central Office of Labour, Social Affairs and Family (COLSAF), and the Border and Foreign Police. We will also consider employers' associations and trade unions as part of the institutional framework with respect to posting as these institutions are parties in collective bargaining at industry and company level and can engage actively in, for example, the protection of posted workers' rights or in conflict mediation. In this report, we will focus on associations and trade unions in the construction sector and automotive industry. In terms of workers' right protection, an important role is played by international and local NGOs by providing information and legal assistance, predominantly to TCNs. The findings presented below are based on the interviews with the representatives of the institutions.

### 4.2.1 Institutional Framework

Portable documents A1 are issued by local branches of **the Social Insurance Agency**. Its headquarters provides the branches with a methodical guide in order to coordinate and implement coherent and standardized practices in posting and provide uniform interpretation of the regulation in posting. Additionally, the Social Insurance Agency provides counselling services via a hotline and communicates with other enforcement bodies within joint monitoring and controlling activities in posting, such as exchange of information for the purpose of investigation provided that the posting regulation has been violated.

**The National Labour Inspectorate** is an enforcement agency supervising compliance with the labour law and labour relations (including commitments in collective agreements of a higher degree) and enforcing corrective and preventive interventions. While the corrective interventions refer to conducting inspections at workplaces, preventive interventions focus on providing employers and employees with information and consultations. According to the representative of the National Labour Inspectorate, the institution is also a contact point for employers and posted workers. Additionally, the National Labour Inspectorate participates in the commenting process in the drafting of legislation. In this respect, the National Labour Inspectorate collaborated with the Ministry of Labour in transposing Directive 2014/67 into the Slovak legislative framework. Furthermore, the National Labour Inspectorate represents the Slovak Republic in the Committee of Experts on Posting of Workers at the EU-level, which serves to support Member States in exchanging experience and good practices as well as identifying challenges in the posting implementation practice.<sup>30</sup>

**The Office of Border and Foreign Police** (hereinafter "Foreign Police") is the institution which oversees the granting of residence permits to TCNs. As mentioned in the previous chapter, the posted worker coming from a third country does not have to obtain a temporary residence permit for work purposes if the duration of posting does not exceed 90 days. The Foreign Police carries out corrective interventions concerning illegal work of foreign nationals in collaboration with the Labour Inspectorates and the local Labour Offices, including the issue and execution of deportation decisions.

<sup>30</sup> <https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2274>

#### 4.2.2 Enforcement Agencies Practices

As explained by the representative of the Social Insurance Agency, portable documents A1 are issued by the local branches of the Social Insurance Agency. If the employer wants to post their workers abroad, they must apply for A1 based on the form provided by the Social Insurance Agency in which they fill in identification data about the company, identification data about to-be-posted workers, contact details and basic information about the posting. Self-employed persons must also apply for A1 using a distinct form. After submitting the form, the Social Insurance Agency checks if the company and the posting itself meets all the criteria of posting, such as duration of prior employment of to-be-posted employee, and payment of social security contributions for at least one month before the posting start date, etc. If the application is declined, the employer must register the worker in the social security system in the receiving country.

The representative of the Social Insurance Agency further explained that if the employer is a temporary work agency, they must insert information about their legal status in the form. The Social Insurance Agency checks the legal status of the agency and its business type; since a type of business must correspond with a type of services the posted worker will carry out in the receiving country. Temporary work agencies follow the same rules and procedures in posting as other employers.

In respect to the **notification obligations**, the employer in Slovakia is obliged to notify the local office of the National Labour Inspectorate and the local Labour Office about the posting by filling in a form provided by the Labour Office (within 7 workdays).

According to the representative of the Social Insurance Agency, if there is an assumption that legal obligations of posting were violated (usually relating to remuneration), the labour inspector notifies the Social Insurance Agency, which then provides the Inspectorate with data about the amount of paid social contributions. This data enables calculating if the amount of the social contributions corresponds with the income the employee obtains. In return, the Social Insurance Agency may approach the Labour Inspectorates if there is any suspicion that the employer does not pay social security contributions to the amount corresponding with the income the employee officially obtains (as indicated on the payslip). The Labour Inspectorate is also usually approached by the local Labour Office, e.g., if the local Labour Office receives too many infocards from the same employer which might signal potential breaches of the law.

The representative of the Foreign Police stipulated that the local Labour Inspectorates in collaboration with the Foreign Police and Local Labour Offices carry out **inspections at workplaces**. The local Labour Inspectorate supervises compliance with the labour law, while the Foreign Police oversees compliance with the migration law, particularly the Act on Residence of Foreigners.

With respect to posted workers, the labour inspectors check employment contracts and labour relations (meaning that they identify the receiving and sending employer and legal relations between them) and portable documents A1. The labour inspectors also investigate if the income was paid out (also based on the degree of work intensity) and if overall working conditions comply with the existing regulation.

If a **posting is bogus** (e.g., PD A1 is forged), the sending employer bears the responsibility, nevertheless, if there is **no employment contract or employment contract has been forged**, the receiving employer is responsible as they breached the Labour Code (§5). According to the Act on Illegal Work (§7b para 5), the receiving company as a customer of a service, might be sanctioned as well. As claimed by the representative of the National Labour Inspectorate, the workers that have been employed illegally might be also fined. Nevertheless, in the

implementation practice the inspectorates rarely impose penalty payments on workers. The sending (foreign) employer is fined only for breaching the posting legislation but not for illegal work as the local offices of the Labour Inspectorate cannot enforce penalties outside the territory of the Slovak Republic for this misconduct.

If workers are EU citizens, only the local Labour Offices participate in conducting inspections, as stated by the representative of the Foreign Police. If the employee is a TCN, the Foreign Police is invited to cooperate and jointly carry out the inspection with the labour inspector. Unlike the EU citizen, the TCN must submit a permit for work purposes (if the posting exceeded the maximum duration of 90 days). If the TCNs is employed illegally but they have a residence permit (without a permit to work), they might be deported to their home country, but the decision over deportation is left to the discretion of the Foreign Police. If the worker has no residence permit, then they must be deported based on the Act on Residence of Foreigners.

If the Labour Inspectorate decides that the worker is employed illegally, the Foreign Police launches an investigation and, if needed, invites translators to assist in interrogation (the representative of the Foreign Police). A deportation decision is generally issued within 24 hours, meaning that the foreign worker must leave the territory of the Slovak Republic and the Schengen area within 7-30 days. The police may also issue a ban from entering the territory of the Slovak Republic and the Schengen area for the duration of 1-10 years. According to Directive 2008/115 EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, the public authorities should prefer voluntary return over forced return, and if a foreigner leaves the country within a given deadline, they have the right to apply for cancellation of the entry-ban. If the foreigner has no valid ID documents, they are detained in a special facility for foreigners and returned to their home country with the assistance of the police. At this stage, the Slovak Foreign Police does not cooperate with the foreign public authorities except for obtaining the document about the return from the Border Police of the home country of the deportee. If the foreigner can leave the country voluntarily, the Foreign Police must inform them that they have the right to assistance provided by the International Organisation for Migration.

According to the representative of the Foreign Police, foreign workers are often subjected to fraud and are not aware that they have been working illegally in Slovakia. Such exploitation is taken into consideration in the decision-making process over deportation and it is assessed on an individual basis.

As stipulated by the representative of the National Labour Inspectorate, trade unions at the sectoral or national level or the employers' associations do not play any specific role in the enforcement of the posting regulation. Trade unions at the company level do not usually participate in conducting inspections at workplaces in small companies. The collaboration with trade unions at the company level exists, particularly concerning controls over occupational health and safety measures at the workplace. According to a sectoral level trade union representative in the automotive industry, the trade unions primarily represent the interests of national employees who are members of the unions, whereas posted workers are not members of Slovak trade unions. Trade unions represent the interests of posted workers if workers are members of trade unions in their home countries; then the cooperation is carried out based on the cross-border cooperation between the trade unions that signed the Pact of Solidarity. The same applies to the workers posted to Slovakia. According to the same respondent, the sectoral level trade union in the automotive industry has already been engaged in solving labour law breaches encountered by a worker posted from Slovakia to Germany based on the cross-border cooperation between trade unions.

Posted workers, especially TCNs, might experience limited access to trade union representation that might be caused by segregation in housing (dormitories solely for foreign workers), language barriers, a lack of information or the uncertain migration or employment status of TCNs (as posted workers) (Novitz & Andrijasevic, 2020).

Several interviewees, including representatives of public authorities, the trade union at the sectoral level in the automotive industry and NGOs pointed to several instances of **temporary work agencies violating the law on posting**. In practice, based on information provided by the representative of the National Labour Inspectorate, if the company that breached the posting law is a temporary work agency (e.g., registered in Hungary), the company is often pre-registered to another person which makes enforcement of sanctions more difficult.

#### 4.2.3 Enforcement through Transnational Cooperation

Currently (January 2021), the cooperation between Social Insurance Agency and its counterparts abroad in the field of exchange of information is based on bilateral agreements. According to the representative of the Social Insurance Agency, the exchange of information or documents between the countries is carried out via email communication which may cause delays in handling cases. In March 2021, the Social Insurance Agency intends to join the system of **the Electronic Exchange of Social Security Information**. The representative of the Social Insurance Agency is of the opinion that it will speed up the exchange of documents and information between social insurance entities.

Exchange of information between Labour Inspectorates across Member States is also based on bilateral agreements. According to the representatives of the National Labour Inspectorate, the quality and intensity of cooperation differs from country to country and may be dependent on capacities of the local enforcement agencies in each country. The Labour Inspectorate communicates and exchanges information with its counterparts abroad via email or the online tool **Internal Market Information System (IMIS)**. Nevertheless, the exchange of information is time-consuming which creates difficulties particularly when handling complex cases (to be elaborated on in the next section of the report). The representative of the Labour Inspectorate emphasised the need for the systemic coordination of collaboration between labour inspectorates. The European Labour Authority is expected to take over the coordination of cooperation between national inspections in Member States.

The **Ministry of Labour of the Slovak Republic has signed an agreement with the Serbian authorities** due to the increasing number of incidences of labour exploitation encountered by Serbian workers in Slovakia. As a result of this agreement, preventive activities have been launched towards exploited workers in the form of raising awareness activities (such as leaflets containing information about rights and responsibilities of foreign nationals in the Serbian language).

#### 4.2.4 Enforcement Agencies Challenges

The respondents identified several challenges the enforcement agencies encounter in carrying out their duties. As implied above, the **(1) exchange of information and documentation relating to posting** is according to the representative of the Labour Inspectorate as well as the respondent of the Social Insurance Agency often slow and ineffective and, in case of some countries, the responsiveness of their foreign counterparts is low. The pace of cooperation plays a key role in investigating complex cases, for example if letterbox companies are involved in the potential misconduct or if ownership or business relations of the companies engaged in postings are complicated. The quality of cooperation differs from country to country, varying from intense collaboration and flexible responsiveness of the national enforcement bodies to

slow responsiveness, which makes certain investigations last even several months. Additionally, absence of deadlines for responses make dealing with the cases more difficult.

**(2) Limited personnel capacities of labour inspectorates and the Foreign Police Units** present another key challenge and accelerate other issues. Firstly, it slows down investigation of complex cases (with the involvement of the letterbox companies with a complicated system of ownership relations). According to the representative of the Labour Inspectorate, some inspections last 2-3 hours, whereas others may last several months. Secondly, the whole process of investigation is then slower, considering the broad agenda that law enforcement bodies must handle. The representative of the Foreign Police stated that several years ago the department of the foreign police was in every district city of the country, while now there is only one department of the Foreign Unit per region. Not only is the number of departments reduced but also the number of foreigners working in Slovakia has risen significantly during the last ten years. The representative of the Labour Inspectorate also stated that the Inspection receives a high number of reports. These two issues are inter-linked with a low level of digitalisation of public administration in Slovakia.

**(3) Distinct labour laws across Member States** appear to make it difficult for labour inspectorates in investigating the cases, as well. For instance, several countries (such as Spain) recognize the declaration of the employer as proof of legal work employment, while in countries like Slovakia the employment contract signed by both parties must be submitted to demonstrate a legality of a work contract. The same applies to the different sanction systems the Member States implement. For example, the respondent of the Labour Inspectorate explained that while Austria imposes fines to both legal entities and natural persons, Slovak and Czech inspectors impose decision of penalties solely on legal entities (companies). This causes problems in law enforcement across borders as in this instance Slovak authorities cannot fine individuals as it might be requested by foreign counterparts.

## 4.3 Employer practices and challenges

### 4.3.1 Employer practices

This part describes key findings based on the interviews with employers and employer associations in the two covered sectors. We focus on discussing factors which influence firms' decision to post and/or receive posted workers relative to other options, such as registering a Slovak company as a foreign contributor to the destination country's social security. We also discuss practices with respect to remuneration of posted workers.

#### *Employers' practices with respect to posting from Slovakia vary considerably.*

In the process of interviews, we have found that companies' decisions about posting are conditional on several factors related to the legal and regulatory frameworks in the destination country, sector of activities, size of the company, competitive strategy, and other related issues. Companies are rational profit seekers, and they are bound in their decisions by the character of their business opportunities and potential margin that they could realize.

In general, conditions and regulations in the destination countries including application of the posting directive have been perceived by the Slovak employers and employer associations as protective measures against competition from Central and East European countries. The representative of the largest employer association shared:

*"There is a lot of circumstantial evidence - an issue often discussed in Business Europe - that the aim [of the posting directive] is to eliminate competition under the veil of improved working conditions - on the one hand it may be legitimate, on the other hand it denies the principles of the free market" [Employer association\_interview 11]*

However, the competition via postings from Slovak companies on the basis of wage differentials is diminishing, especially in the construction sector where a large share of postings from Slovakia has been taking place in the past. A representative of the construction industry association observed that the conditions are tightening, the space for competition on the basis of wage differentials is diminishing, and the business opportunities for construction works delivered by Slovak entities in other EU countries have become difficult:

*"Gone are the days when Slovak workers were cheaper, [wage] it is no longer a benefit, now countries are protecting the market, local competition is watching this closely and ensuring that regulations are not violated, conditions must be respected (for example in Germany, employees must be employed as German workers, plus travel allowances)" [Employer association\_interview 3]*

When considering posting from Slovakia, a destination country's labour regulation and legal conditions and other relevant factors are assessed against other options. The employer social contributions in Slovakia (more than 35%) are one of the highest in the EU. Therefore, while posting from Slovakia is a widely used tool for worker mobility, other options are assessed in destination countries where employer contributions are lower. For illustration, an employer from a construction company posting regularly in different countries across Europe and the world pointed to the fact that the employer contributions are lower in Germany or Norway, compared to Slovakia (35% in Slovakia compared to about 22% in Germany).

The respondent from the association of employers pointed to more frequent cases of small companies in the construction sector posting from Slovakia to other EU countries motivated by the wage differentials in the past and losing this motivation after the stricter rules for posting workers from Slovakia became effective. In the specific case of Germany, where postings by a

Slovak employer would not make sense in terms of labour costs, the large share of self-employed construction workers working in Germany on the basis of the posting instrument would correspond to the practice of avoiding high employer social contributions in Slovakia. The self-employed are exempt from the employer security contributions and their labour costs are therefore lower than the labour costs for an employer/company. Posting could in such cases function as an "easy work permit" based on the respondent's view. The self-employed are likely to be in more vulnerable positions working as posted workers abroad and more evidence would be needed to elaborate on the issue to understand vulnerable spots in the common EU labour market.

The complexity of a country's specific conditions has been also found to lead to a breach of the posting rules. Information is being sought out individually for specific countries by companies and the reported lack of support in access to information might lead to a violation of the rules, especially by smaller companies posting workers from Slovakia.

The automotive sector is dominated by large multinationals in Slovakia. The large automotive multinational company participating in our research posts both lower skilled workers and high skilled professionals to other countries. Our respondents were HR professionals and they reported that posting to other countries is a part of the complex worker mobility (in both directions) and during the interview they were not differentiating between posting via Posting directive and intra-company transfers. However, the complexity of the worker mobility processes has been emphasized involving the internal tax and financial rules of the multinational company and the actual mobility contracts that are being dealt with by externally hired legal companies.

The companies participating in the interviews did not admit they would be breaching the rules related to posting workers from Slovakia. Other respondents including from the employer association or an expert in posting, however, pointed out to multiple examples of misconduct. For example, including travel costs in minimal remuneration of posted workers from Slovakia is a frequent malpractice of companies, since travel costs should not be included in the wage according to the Directive 2018/957. It is understood that paying higher wages and including travel costs on top of the minimal wage in the posting country would not be an economically viable option for many companies which are engaging in such malpractice. Some employers would also weight their decision to comply fully against the likelihood of the inspection and penalty.

### ***Postings to Slovakia***

The number of postings to Slovakia is about ten times lower compared to postings from Slovakia (see section 1 for more details), however, the trend is increasing. In our interviews we had a relatively limited response from employers on the practice and problems related to postings to Slovakia, but more information was shared by other respondents. Information from interviews provided evidence on postings to Slovakia in connection with the manufacturing/automotive industry.

The multinational automotive company included in our interviews applies different mobility options within intra-company transfers between the Slovak branch and the foreign mother company. Part of the postings to Slovakia has been taking place in relation to knowledge transfer and learning. As in the case of postings from Slovakia, it was not possible to differentiate when the Posting Directive is being applied but it is part of the mobility dynamics.

Sectoral conditions and trends can have a significant impact on how posting is being organised. For illustration, there is currently evident increasing competitive pressure in the automotive industry resulting in pressure on decreasing labour costs:

*"The trend in the automotive industry is to reduce production costs, because they [the cars] cannot be sold so expensively, but they [the producers] want to keep the margin the same, carmakers are pushing the suppliers, these have a lower budget, and are pushing for lower wages; they buy the service, it is not personnel costs." [Employer, expert on posting in automotive\_interview12]*

The respondent also supported indications that with increasing pressure on labour costs, the employers would seek to avoid regulation, in line with the findings on different social dumping strategies (Berntsen & Lillie, 2015). However, the scope of our field work did not allow for more details on concrete ways adopted by the employers, nor could we arrive at more generalised statements on the scope of such practices in the automotive sector.

In the manufacturing industry, the role of intermediaries can have a negative impact on the work conditions of workers posted to Slovakia. This has been mentioned by the respondent from public administration who stated that postings to Slovakia are associated with breaches of rules, mentioning a negative role of TWAs. We did not succeed in obtaining more information from the employers on whether this is the practice in the automotive industry as well, but it should not be excluded.

#### 4.3.2 Employer challenges in applying posting rules

##### **Access to information about posting**

In the process of posting, the language barrier and the lack of capacity to access and evaluate relevant information about posting from Slovakia and about other worker mobility options to undertake business activities or provide services in other EU countries, are consistently reported as one of the key barriers to labour mobility:

*"If we go to a new EU country, let's say France, and we [company HR specialists] do not have the language skills, (and I speak with 4 languages but not French), I would be very paralyzed, I would have to hire someone to work with me, who would look up information sources on the French web pages, and we sometimes try that but with no effect...maybe consulates could be more helpful... if we have a problem we turn to auditor companies but we need to pay these..." [Employer sending\_interview 13]*

One of the respondents from a multinational automotive company in Slovakia, described that they operate within a bigger internal HR team to deal with different types of postings, including postings from Slovakia and to Slovakia, inter-company transfers, and long-term stays, and yet they rely on the external services of a legal company which supports the mobility contracts and other tasks related to mobility.

The demand for legal support in dealing with postings from or to Slovakia especially in the automotive sector has been confirmed also by another respondent, a legal expert in posting, who is providing such services as an external consultant. Being an expert in the specific area, the respondent confirms the complexity of cases and diverse information sources she needs to identify and analyse in the language of the destination country in order to provide effective support to companies posting workers in both directions. Such services are too costly for small and medium-sized companies.

The language barrier needs to be addressed also during the actual posting of the workers who often do not have the language skills. The employer from the construction sector shared that a team posted by their company from Slovakia always includes at least one employee at managerial position, who deals with team management and has local language knowledge.

It is particularly challenging to get precise and reliable information about legal requirements with respect to determining wage levels in different countries. In practice, opinions vary among human resource management of how individual wage components should be correctly set by the posting employer:

*... "Legislation does not state how to define wages, opinions also differ in the community of lawyers with respect to what needs to be included in the total wage."  
[Employer\_interview9]*

Larger companies hire external legal consultants, but this is a costly service for most companies.

In some instances, companies reported that they prohibited overtime work to their workers posted from Slovakia abroad due to doubts about legal obligations in terms of overtime work. To avoid possible penalties, they had agreements with workers that no overtime work would be claimed, i.e., no overtime work could be carried out.

### **Low capacity of public administration in dealing with postings**

Companies posting workers in a foreign country invest in professional capacity, including language and administrative/legal human resource management skills. However, dealing with public officials in destination countries often remains problematic. One specific problem signalled by the employers is an undefined *response time for public officials in destination countries* in dealing with posting employers' requests. This can pose problems in efficient management of posted workers and top up costs of posting for employers.

Even when complying fully with posting rules, companies can face uncertainty in some stages of posting which are in return costly in terms of required administrative support. This has been documented on the example of applying for the exception in the maximum length of the posting, which is a possible and legal option. A global construction sector employer needed to apply for exceptions in order to prolong the stay of its employees due to delays against planned time schedules which are frequent in complex industrial constructions with multiple providers. This employer applies in such a situation for an extension of the maximum stay of their expert workers and the application is usually approved. The time for response is not defined by law. While it is not possible to anticipate the need for an extension in advance, public officials in some countries take a long time to respond and the length of stay of the concerned posted workers extends over the maximum time allowed by the posting rules, and is therefore at risk of being in an irregular situation. While usually the exceptions are approved, in a minority of cases they are refused and then the administrative burden of dealing retrospectively with the situation of the worker abroad is considerable, especially in terms of social security payments.

Supported capacity at embassies was also seen as a good way forward in improving information flows. While embassies provide support to companies, and have the advantage of local language knowledge, they rarely follow more specific practical problems related to posting. The capacities of individual embassies vary across countries, and creating specific positions or explicit capacities to deal with more specific issues of posting could be effective in improving support to companies as well as in enhancing the information base.

## 4.4 Worker Protection

### 4.4.1 Mechanisms for worker protection: institutional, social partners

The protection of workers' rights is embedded in the Labour Code that specifies provisions over working conditions and labour relations, while the labour inspection is regulated by a separate legal act. According to the Act 125/2006 on Labour Inspection, **the worker can report violation of the labour law to the local Labour Inspectorate**. Such worker should provide information including the name of the complainant, the contact address of the employer, and the nature of the violation. A complaint might be also submitted anonymously, but in that case the complainant will not be informed about the outcome of the inspection and the decision over launching the investigation is up to the discretion of the Labour Inspectorate. As the representative of the Social Insurance Agency stated, workers posted from Slovakia to other Member States may also turn to the Social Insurance Agency if their rights are violated and in that case the Labour Inspectorate will be notified about the case and launch an investigation.

**Workers may also report misconduct to trade unions at the company level.** The representative of the sectoral trade union stated that if a worker posted from Slovakia to another Member State reports that their rights are being violated by the host employer, Slovak trade unions will seek collaboration with a trade union established at the host country employer. Based on the Solidarity Pact<sup>31</sup> of 2014, within the IndustriAll Europe, the members of IndustriAll Europe are committed to represent the rights of workers that are members of other partner trade unions. Posted workers are then provided with, for instance, legal counselling.

Industrial relations in Slovakia are characterised by the relatively centralized representation of employers and of workers (Duman and Kureková, 2012). Both sectors covered in the report are relatively well organized with functional collective bargaining at sectoral and/or company level. On the sectoral level, the **Integrated Trade Union Association** (*Integrovaný odborový zväz - IOZ*) represents workers in the construction sector, along with workers in the textile, clothing industry, public and road transportation, public administration and other industries and sectors. The Integrated Trade Union Association is associated in the **Confederation of Trade Unions of Slovakia** (*Konfederácia odborových zväzov - KOZ*) which represents a tripartite social partner at the national level. Employers in the construction sector are associated in the **Association of Construction Entrepreneurs of the Slovak Republic** (*Zväz stavebných podnikateľov - ZSP SR*). Currently, eighty-five employers in the construction sector are members of the Association, including the largest construction companies operating in Slovakia and other European countries.

Trade unions at the company level in the automotive industry are associated mainly in the sectoral trade union **OZ KOVO** (associating trade unions in engineering, electrical, metallurgical and glass industry) which is also a member of the Confederation of Trade Unions of Slovakia. Recently, there can be seen a trade union fragmentation in the automotive industry due to the emergence of modern trade unions in major car manufactures (Volkswagen, Peugeot, and Land Rover) that are not members of OZ KOVO (Drahokoupil et al, 2019). Employers' interests in the automotive industry are represented in the **Union of Engineering Industry** (*Zväz strojárskoho priemyslu*). A member of the Union is also the **Automotive Industry Association** (*Zväz automobilového priemyslu Slovenskej republiky*) representing key car manufacturers operating in the country (KIA, Jaguar Land Rover, Citroen Peugeot, and Volkswagen) and subcontractors in the automotive industry and secondary vocational schools.

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<sup>31</sup>The Solidarity Pact was adopted as a response to challenges of the European Integrated labour market relating to protection of rights working abroad. [https://news.industrial-europe.eu/content/documents/upload/2020/10/637390745837901189\\_Solidarity%20Pact%202013.pdf](https://news.industrial-europe.eu/content/documents/upload/2020/10/637390745837901189_Solidarity%20Pact%202013.pdf)

The Automotive Industry Association does not engage in collective bargaining autonomously. The employers' associations in both automotive and construction sector are members of the **Republican Union of Employers** (*Republiková únia zamestnávateľov*), a tripartite partner on the national level.

Employees working in the automotive and construction sectors are protected by **collective agreements of a higher degree** dealing with working conditions, wages, protection of workers' rights, and the social policy of the employer. These collective agreements are signed between employers and trade unions at the sectoral level. In the construction sector, the collective agreement is signed between the Integrated Trade Union Association and Association of Construction Entrepreneurs of Slovakia. In the automotive industry, the collective agreement of a higher degree is signed between Metal Workers Union (OZ KOVO) and Union of the Engineering Industry of the Slovak Republic since the collective agreement also concerns professions in the automotive industry. Collective agreements of a higher degree apply to workers of the whole sector, including posted workers. The representative of the National Labour Inspectorate stated that collective agreements at the company level apply only to temporarily allocated workers but not to posted workers.

The role of **NGOs** in posting is related predominantly to providing foreign nationals with the legal counselling services, community activities and language courses. A few NGOs engaged in these activities are locally based and provide community activities, while the **Information Migration Centre of the International Organisation for Migration** provides legal advice regarding different types of residence permits, but also provides legal aid in interpretation of the labour law if needed. Currently, no NGO in Slovakia provides legal assistance in the labour law or particularly in posting to foreign nationals.

Specific legal provisions can be identified in the mechanism for **workers' protection of foreign nationals** who are subjected to exploitative working conditions and human trafficking. If the worker was (1) illegally employed and at the same time was subjected to exploitative working conditions or (2) is a victim of human trafficking aged at least 18, they may be granted a tolerated residence permit, which is a specific type of residence that may be granted to a foreign national for a maximum of 180 days and the foreign national may stay in Slovakia within this period until the cessation of the specific reasons. According to the representative of the Foreign Police, a tolerated residence serves to ensure the presence of a victim in the territory of Slovakia for the duration of investigation and judicial processes. During this time, a foreign national that is being granted a tolerated residence is not provided with any financial compensation.

Regarding the access to legal assistance, foreign nationals may approach the **Information Migration Information Centre** (MIC) of the International Organisation of Migration based in Bratislava and Košice. However,, the MIC is not specifically focused on the posting legislation and has limited personnel capacities for providing legal support and consultations regarding the labour law. According to the representative of the MIC, it is focused predominantly on the residence law and third country nationals.

**Preventive activities** are carried out by the Labour Inspectorate and the Foreign Police and currently entail, mainly, the distribution of leaflets in different language versions with the purpose to inform workers about their rights, standards of working conditions in Slovakia and the complaint mechanism.

#### 4.4.2 Challenges to worker protection: access to information, legal support, and trade union representation

Several types of breaches of workers' rights have been identified based on the interviews and the desk research, namely: (1) breaches in the remuneration and payment of social and health insurance contributions for posted workers; (2) overtime work (without provision of subsistence); (3) low quality of accommodation.

According to multiple respondents, **breaches of the legislation concerning remuneration** present a common misconduct in posting. The wage usually does not correspond with the minimum wage guaranteed by the legislation in the host country, meaning that the travel expenses are calculated in the total income the employee gets, and social insurance contributions are not paid from these travel expenses. The representative of the law firm providing legal assistance to employers stated that workers report this type of malpractice only if they encounter specific problems, such as if they receive a low amount of unemployment benefits<sup>32</sup> after they become unemployed. Also, workers might not have enough information to understand that it is a malpractice. For inspection purposes, according to the representative of the Social Insurance Agency and the National Labour Inspectorate, employers tend to issue payslips with a salary that complies with the legislation, but the employee receives another payslip.

**Overtime work** appears to be common especially in the construction sector since it is a seasonal and weather-dependent sector when the weather affects the schedule of outdoor work. On the other hand, the representative of the employer in the construction sector posting employees abroad claimed that in some countries (such as Austria), penalties are high enough to prevent employers from requesting any overtime work from workers. The respondents from the Social Insurance Agency and the trade union indicated several cases when the overtime work has not been paid to a posted foreigner in Slovak companies.

**A low quality of accommodation** is encountered by third country nationals that are being posted to Slovakia. Accommodation is provided by the employer and must comply with the standards specified in the Decree no. 259/2008 of the Ministry of Health. The NGO respondents identified several breaches of the law concerning the quality of housing, such as low hygienic conditions or overcrowded housing facilities.

**Third country nationals** posted to Slovakia from other member states are particularly vulnerable to exploitation and poor working conditions since they may be subjected to fraud and exploitative working conditions. Based on the interviews and the desk research, **factors that might reinforce their vulnerable position** include: (1) a language barrier; (2) a lack of social capital; (3) low awareness of rights, and a lack of information about the national and EU legislation which is also related to the complicated regulatory framework; (4) and the low capacity of law enforcement agencies in Slovakia (Bargerová et al, 2014; Chudžíková & Bargerová, 2018; Novitz and Andrijasevic, 2020). **Fragmentation of responsibility** towards employees caused by the long sub-contracting chain also plays an important role, especially if temporary work agencies are involved in employing or recruiting the workers (Novitz and Andrijasevic, 2020).

According to the representative of the National Labour Inspectorate, some workers do not even know who their employer is, whether the posting documents comply with the law, and whether their employment status is legal. It means that foreign nationals may feel some sort of

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<sup>32</sup> In the Slovak system of social security, unemployment insurance is a part of social insurance.

uncertainty over their employment and migration status, which means that **they might be reluctant to report misconduct and cooperate with the enforcement agencies**. As claimed by the representative of the Labour Inspectorate, the NGO representative and the representative of the Foreign Police, TCNs are also less likely to report misconduct due to fear of deportation, threats from employers, potential loss of job and income or other negative consequences. As stated in subchapter *4.1 Regulatory Framework*, a deportee might be forbidden to enter not only Slovakia but the whole Schengen area for up to 10 years. In the implementation practice, as claimed by the representative of the Foreign Police, the fact that a foreign national has been subjected to fraud and might not have been aware of their illegal migration status is taken into consideration when issuing entry-ban decisions. This means that they are offered a voluntary return option or even if they are deported, the entry-ban decision is cancelled.

Those who were subjected to exploitation at work might be granted a **tolerated residence permit** for the duration of investigation and judiciary process. Nevertheless, holders of a tolerated residence permit are not granted any financial aid and are not permitted to work, which means that during this time they must bear all financial costs related to their stay in Slovakia.

Regarding this, Bargerová et al. (2014) pointed out that **foreign workers are often treated as perpetrators of the labour law rather than as victims**, although they are often subject to exploitation and fraudulent practices beyond the labour market. In the existing framework, exploitative working conditions are prosecuted if human trafficking is involved. However, the Slovak authorities do not utilise a wider definition of labour exploitation (e.g., provided by the ILO) which refers also to human dignity in working relations and not only the legal nature of the employment contract. Additionally, human trafficking is often confused with illegal work and there is no compensation system for victims of human trafficking.

**Access to legal assistance** appears to be extremely limited. The Centres of Legal Aid (Centrá právnej pomoci) provide legal assistance to the persons in material need. According to an NGO representative, although some foreign nationals could fall under this category, they are unlikely to approach the Centres, while there are no other public authorities or NGOs, except for MIC, that would provide legal services. As a result, TCNs who have been subject to exploitation at work rather opt to leave Slovakia (also due to financial reasons) and do not pursue any legal action towards the exploitative employer.

**Trade unions** at the sectoral or company level do not appear to conduct any specific preventive actions or systematic intervention regarding violations of foreign or posted workers' rights. Posting of workers, as such, does not seem to be an integral part of Slovak trade unions' agenda, and the main trade unions do not actively recruit posted workers. According to Andrijasevic and Novitz (2020), trade unions in Slovakia may consider posted workers as a threat to the local economy and the rights of "local" workers. According to the former representative of the Ministry of Labour, the attitude of trade unions differs from company to company, meaning that some trade unions actively also recruit foreign workers or provide them with information, which was also confirmed by the representative of the sectoral trade union. A representative of trade union shared instances when they assisted a worker posted to Slovakia in the case when it was a member of a union in the company which had posted him, based on the Pact of solidarity mentioned above.

**Self-employed persons** represent another vulnerable group in posting. According to the representative of the sectoral trade union in the automotive industry, the self-employed are out of the scope of trade unions and from this respect, they are a hard-to-reach group. As stated in the subchapter *2.2 Labour mobility and posting rates and trends*, in 2019 they presented 30% of all workers posted from Slovakia to other Member States.

## 5 Synthesis and Conclusions

Data shows increasing trends in postings in Slovakia, particularly in terms of the number of outgoing workers posted from Slovakia to other Member states. Even though posting of workers has become a crucial instrument of temporary labour mobility in Slovakia, there is a lack of empirical data about implementation practice, administrative and procedural obstacles relating to posting as well as attitudes of relevant stakeholders towards posting. Limited attention has also been given to workers' rights protection and working conditions of posted workers including TCNs posted to Slovakia. This report helps to breach the gap.

Enforcement agencies, particularly the Labour Inspectorates and Departments of the Foreign Police (mainly at the local and regional level) would benefit from increased personal capacities to handle complex cases of misconduct in posting. In this respect, cross-border cooperation constitutes a key aspect in conducting inspections in posting, as it takes place in distinct jurisdictions of EU countries. Public authorities pointed to a couple of deficiencies in cross-border cooperation, such as slow exchange of information (for example, no response deadlines for labour inspectorates and less effective communication channels), discrepancies in the labour or migration laws across Member States slowing down inspection processes, and the overall deficiencies in coordination between labour inspectorates in the EU countries.

Nevertheless, different steps have been recently taken to increase the quality of cross-border cooperation between public authorities in posting. First, the Social Insurance Agency will this year join the Electronic Exchange of Social Security Information System which will serve to enhance communication between social insurance agencies across the EU countries. Also, strengthening the competences of the European Labour Authority is considered as promising in respect to an enhanced cooperation between labour inspectorates across the EU.

Experiences of employers with posting differ substantially depending on the national legislative and regulatory frameworks of Member States, including collective agreements at the sectoral level, as well as specific regulations in particular industries. In general, the main obstacles that employers encounter in posting are related to uncertainties in determining the remuneration of posted workers, limited access to information about legal conditions and unclear notification obligations in the destination countries. Economies of scale, limited human resource capacities, and lacking language skills are barriers in assessing alternative legal routes for placing employees and conducting activities in foreign countries. All the procedures linked to posting increase transaction costs on the side of employers.

Employers report that they would welcome improved access to specific and up to date information in the Slovak language relevant in dealing with the situation of workers posted to other countries. A web portal with all available information where countries and different types of labour movements would be collected was seen as an effective solution. For smaller companies, improved access to information could considerably improve dealing with or avoiding irregular situations with respect to posting. Training in this area would also be very welcome.

Although the number of incoming posted workers remains relatively low and Slovakia can be still considered a sending country, the agenda of foreign workers is becoming more important due to their increasing number on the Slovak labour market. Foreign workers from third countries are specifically vulnerable since they are likely to be subjected to fraudulent practices, such as illegal contracts, no payments of health or social insurance contributions or unpaid overtime work. The vulnerabilities of foreign workers are reinforced by a range of factors, such as language barriers, a lack of social capital, a lack of information about the national legislation

or limited access to legal assistance. In this respect, it seems that trade unions do not play an active role in representing posted or foreign workers' rights due to a lack of personnel capacities as well as limited experiences with the agenda, as such. Additionally, a large portion of outgoing posted workers are formally self-employed persons who are not covered by collective bargaining.

The presence of subcontracting chains in the automotive industry and construction sector poses an underlying problem for posting of workers. It causes fragmentation of responsibilities towards posted employees which may result in violation of labour laws and the discriminatory treatment of posted workers (Novitz and Andrijasevic, 2020, Hollan and Danaj, 2018). Chains of agencies, recruiting and employing workers, appear to play a pivotal role in the problematic implementation practices.

Importantly, posting of workers should be assessed in the broader context of Slovak migration policies. Employment of TCNs is seen as time-consuming with high administrative costs. In times of labour shortages, employers may seek different ways to recruit and employ foreign workers and utilise different tools of labour migration, including posting. Some researchers propose that posting of workers is not used by employers as a way to utilize work of temporary workers to meet production needs, but as a way to avoid strict labour migration regulations (Mussche, Corluy and Marx, 2016, Novitz and Andrijasevic, 2020), especially in terms of employing TCNs (mainly Ukrainians, Bosnians or Serbians). We found additional support for this claim also during interviews conducted with a diverse range of stakeholders in this project.

Although the amendment of Directive 2018/957 may have addressed certain obstacles in the implementation practice of posting in Slovakia (such as limitations on the length of posting or a different definition of remuneration covering accommodation or other associated expenses), some aspects have not been addressed, such as troublesome identification of the responsible employer in the supply chain, poor monitoring and law enforcement mechanism protecting labour rights of posted workers, and weak representation by trade unions including access to collective bargaining and action.

## 6 Policy Recommendations

Table 6 summarizes the key policy proposals aimed at facilitating posting as a tool of temporary labour migration, structured by the level of governance and the type of stakeholder. These recommendations are based on the findings from interviews with all four types of stakeholders (public authorities, trade unions, employers, and NGOs) and the literature review. At the EU level, **strengthening competences of European Labour Authority** is particularly important for coordinating the work of national inspectorates and accelerating cross-border collaboration between them. Because of malpractices transcending different jurisdictions of Member States, **joint inspection activities should be launched at the EU level**. That is specifically necessary in investigating companies with complicated ownership or business relations and letterbox companies when a smooth and fast interaction between enforcement bodies would be beneficial. Also, at the EU level, more intense cooperation between trade unions across Member States would be valuable in exchanging information and launching collaborative actions in workers' rights protection.

At the national level, it is recommended to **support the expert and personnel capacities of enforcement agencies**, specifically the Labour Inspectorates and Departments of the Foreign Police with the purpose to make them well-equipped to effectively handle complicated cases and pursue not only corrective but also preventive activities.

The research indicated that employers encounter various difficulties in the access to information about rules and obligations concerning posting in destination countries (such as determining the remuneration, notification obligations, provisions of collective agreements). **Websites as communication channels** offering an overview of key information about conditions in receiving countries (such as [www.posting-workers.eu](http://www.posting-workers.eu) in European construction sector) might be helpful in accelerating administrative procedures in posting and reducing transaction costs on the employers' side. These websites could contain key information such as (1) the minimum wage for a certain industry or profession; (2) notification obligations; (3) provisions in the collective agreements (at the national and sectoral level); (4) a contact list of relevant public authorities in the receiving country; (5) any specific legal obligations relevant for posting.

Employers also need **legal assistance in interpreting the posting regulation**. Legislative framework on posting is perceived as unclear with various inconsistencies arising from distinct national legislation of the receiving countries, but also collective agreements. Consequently, the employers would welcome a systemic provision of legal assistance in the form of flexible and *ad hoc* consultations.

Enforcement agencies are recommended to **further pursue and enhance preventive activities** at workplaces towards both employer and employees about their rights and obligation in posting. Special attention should be given to hard-to-reach-groups, such as TCNs that are exceptionally vulnerable to labour exploitation or other malpractices on the labour market. Preventive activities might also be implemented by NGOs working in the communities of foreigners.

**To increase protection of posted workers, several measures could be considered.** Firstly, workers, including TCNs, should be provided with free of charge legal assistance regardless of their socio-economic status. Secondly, it is recommended to elaborate and implement a guide on recognizing exploitative labour conditions (Bargerová et al, 2014). In this respect, public authorities could employ a broader definition of human trafficking that will include also undignified working conditions and take into account the different vulnerabilities of foreign workers. Thirdly, posted workers, and particularly TCNs, should be provided with legal

assistance (free of charge and accessible) that would encourage them to pursue complaints and legal actions against misconducts. Fourthly, victims of exploitative working conditions and human trafficking should be provided with adequate financial aid to be able to stay in Slovakia for the duration of the investigation and judicial process.

Trade unions could play a more active role in protection of posted workers' rights. The main barrier for their more active involvement is represented by their limited expert and personnel capacities. Strengthened **expert and personnel capacities** would enable trade unions to be more engaged in preventive activities, in developing cross-border cooperation, or representing posted workers in criminal proceedings.

Table 6: A list of key policy proposals regarding posting of workers

<b>EU level</b>	
	Strengthen competences of European Labour Authority mainly in the context of coordination of activities of national inspections and interpretation of the labour law
	Strengthening cooperation of trade unions at the EU level
<b>National level</b>	
	Foster capacities of enforcement agencies, particularly the regional labour inspectorates involved in the field work
<b>Industry level</b>	
	Establish websites/information platforms specific to different industries to support exchange of key information about posting between employers
<b>Enforcement State Agencies</b>	
	Further pursue and enhance preventive and awareness-raising activities towards both workers and employers
	Provide employers with legal assistance regarding interpretation of the posting regulation
	Prepare a guide on identifying exploitative conditions
	Provide legal assistance to workers including TCNs
	Establish a compensation system of victims of exploitative conditions and human trafficking (particularly relevant for TCNs)
<b>Social partners</b>	
<b>Trade unions</b>	Encourage increased capacity and expertise of trade unions in posting
	Pursue awareness-raising activities among posted workers

To make posting of workers an effective policy tool of labour migration, several other provisions must be implemented along with the above-mentioned ones, such as digitalisation of public services that would accelerate communication between the public authorities, employers, and workers. Also, to improve regulation and implementation of posting practice, policy makers should also reconsider the regulation of temporary work agencies and focus specifically on regulation of letterbox companies. Temporary work agencies seem to play a

pivotal role in posting of workers, especially foreign nationals. At the same time, they are frequently associated with incidences of labour rights violations and exploitative working conditions (often repetitively without being penalised). The representatives of law enforcement agencies reported that investigating a case when a temporary work agency is involved in posting is difficult due to complex ownership or business relations, and even more difficult, if not impossible, when an agency turns out to be a letterbox company. Such an investigation is time-consuming and requires prompt cooperation between stakeholders. More effective regulation of temporary work agencies including law enforcement and imposing penalties for misconduct would prevent exploitation of vulnerable groups of workers and reduce the number of operating agencies that breach the law. Since temporary work agencies go beyond the scope of the research, further exploration of agencies and their role in labour mobility is needed to formulate more specific recommendations.

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### **Legislation**

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